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PRECEDENTS

OF THE

United States House of Representatives

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(Note: references to future volumes of this series will be denoted with underscores (*e.g.*, Precedents (_____) Ch. 35.))

For Hinds' and Cannon's Precedents, cite to volume, series, section number:

1 Hinds' Precedents § 101; 7 Cannon's Precedents § 3900

For Deschler's Precedents, Deschler–Brown Precedents, Deschler–Brown–Johnson Precedents, and Deschler–Brown–Johnson–Sullivan Precedents, cite to Deschler's Precedents, chapter, section number:

Deschler's Precedents Ch. 11 § 1.1

TABLE OF ABBREVIATIONS AND TERMS

A. (or A.2d)	Atlantic Reporter
ad hoc	For a particular purpose or end
A.L.R.	American Law Reports Annotated
Am Jur	American Jurisprudence
amend.	Amendment to the Constitution
Annals of Cong.	Annals of Congress (1789–1824)
App. D.C.	Appeal Cases, District of Columbia
App. Div.	Appellate Division
art.	Article of the Constitution
C.A.	Court of Appeals
cert.	Certiorari
cf.	Compare with
CFR	Code of Federal Regulations
Ch.	Chapter
Cir.	Circuit Court of Appeals (federal)
Cir. Ct. App.	Circuit Court of Appeals (state)
cl.	clause
Comm.	Committee
Cong.	Congress
Cong. Deb.	Congressional Debates (1824–1837)
Cong. Globe	Congressional Globe (1833–1873)
Cong. Rec.	Congressional Record
contra	Contradictory authority
Crim. App.	Court of Criminal Appeals
Ct. Cl.	Court of Claims
D.	District Court (federal)
Daily Ed.	Daily edition of Record
e.g.	For example
et al.	Omission of party in case name
et seq.	And the following
ex rel.	On the relation of . . .
Exec. Comm.	Executive Communication
F.2d	Federal Reporter
FCA	Federal Code Annotated
Fed. Reg.	Federal Register
FRD	Federal Rules Decisions
F. Supp.	Federal Supplement
H. Con. Res.	House Concurrent Resolution
H. Doc.	House Document
H.J. Res.	House Joint Resolution
H. Jour.	House Journal
H.R.	House Bill
H. Rept.	House Report
H. Res.	House Resolution

TABLE OF ABBREVIATIONS AND TERMS

Id.	Citation to same authority as in immediately preceding citation
i.e.	That is
In re	In the matter of . . .
infra	Subsequent section or chapter
inter alia	Among others
L.Ed (or L.Ed2d)	Lawyers' Edition, U.S. Supreme Court Reports
L.J.	Law Journal
L. Rev.	Law Review
Mem.	Disposition of case without opinion
N.E. (or N.E.2d)	North Eastern Reporter
N.W. (or N.W.2d)	North Western Reporter
Op. Att'y Gen.	Attorney General's Opinions
P. (or P.2d)	Pacific Reporter
Per Curiam	Disposition of case with short opinion
Priv. L.	Private Law
P.L.	Uncodified Statute or Session Law
S.	Senate Bill
S. Con. Res.	Senate Concurrent Resolution
S. Ct.	Supreme Court Reporter
S. Doc.	Senate Document
S.E. (or S.E.2d)	South Eastern Reporter
Sess.	Session
[*sic*]	Mistake in original of quoted material
S.J. Res.	Senate Joint Resolution
S. Jour.	Senate Journal
S. Rept.	Senate Report
S. Res.	Senate Resolution
So. (or So.2d)	Southern Reporter
Stat.	Statutes at large
Sup. Ct.	Supreme Court
supra	Prior section or chapter
S.W. (or S.W.2d)	South Western Reporter
U.S.	United States Supreme Court Reports
U.S.C. (or U.S.C.A.)	United States Code (or United States Code Annotated)
U.S. Code Cong. & Ad. News	United States Code Congressional and Administrative News
U.S. Const.	United States Constitution
U.S.L.W.	United States Law Week

Contents

Chapter 7. The Members

A. Membership of the House

§ 1. In General; Scope of Chapter
§ 2. Delegates and Resident Commissioners

B. Qualifications and Disqualifications

§ 3. Qualifications
§ 4. Incompatible Offices

C. Salary and Benefits

§ 5. Salary and Benefits; Compensation
§ 6. Other Benefits; Office and Staff

D. Immunities

§ 7. Immunities of Members Generally; Service of Process
§ 8. Speech or Debate Immunity
§ 9. Immunity from Arrest

Chapter 8. Elections and Election Campaigns

A. Apportionment; Voting Districts

§ 1. Constitutional and Statutory Requirements
§ 2. Districting and Redistricting

B. Time, Place, and Regulation of Elections

§ 3. State and Federal Jurisdiction over House Elections

§ 4. Vacancies; Continuity of Operations

C. Campaign Practices

§ 5. Election Campaigns and Campaign Financing Regulation
§ 6. The Federal Election Commission
§ 7. House Ethics Rules

Chapter 9. Election Contests

A. Jurisdiction and Authority

§ 1. Constitutional Provisions; Historical Background
§ 2. Statutory Provisions; Former Statutory Provisions
§ 3. State and Local Election Procedures
§ 4. Jurisdiction: House, Committees, and Courts

B. Grounds and Defenses

§ 5. Grounds for Initiating a Contest
§ 6. Defenses to a Contest

C. Procedure

§ 7. Standing; Parties
§ 8. Notice of Contest
§ 9. Other Pleadings
§10. Taking Testimony; Depositions

D. Committee and House Consideration

§11. Burden of Proof; Presumptions
§12. Ballot Issues; Recounts
§13. Disposition of Contests

E. Summaries of Election Contests, 1973–2020

§14. Ninety–third Congress, 1973–1974
§15. Ninety–fourth Congress, 1975–1976

CONTENTS

§16. Ninety–fifth Congress, 1977–1978
§17. Ninety–sixth Congress, 1979–1980
§18. Ninety–seventh Congress, 1981–1982
§19. Ninety–eighth Congress, 1983–1984
§20. Ninety–ninth Congress, 1985–1986
§21. One Hundredth Congress, 1987–1988
§22. One Hundred First Congress, 1989–1990
§23. One Hundred Second Congress, 1991–1992
§24. One Hundred Third Congress, 1993–1994
§25. One Hundred Fourth Congress, 1995–1996
§26. One Hundred Fifth Congress, 1997–1998
§27. One Hundred Sixth Congress, 1999–2000
§28. One Hundred Seventh Congress, 2001–2002
§29. One Hundred Eighth Congress, 2003–2004
§30. One Hundred Ninth Congress, 2005–2006
§31. One Hundred Tenth Congress, 2007–2008
§32. One Hundred Eleventh Congress, 2009–2010
§33. One Hundred Twelfth Congress, 2011–2012
§34. One Hundred Thirteenth Congress, 2013–2014
§35. One Hundred Fourteenth Congress, 2015–2016
§36. One Hundred Fifteenth Congress, 2017–2018
§37. One Hundred Sixteenth Congress, 2019–2020
§38. One Hundred Seventeenth Congress, 2021–2022

CHAPTER 7

The Members

A. Membership of the House
§ 1. In General; Scope of Chapter
§ 2. Delegates and Resident Commissioners

B. Qualifications and Disqualifications
§ 3. Qualifications
§ 4. Incompatible Offices

C. Salary and Benefits
§ 5. Salary and Benefits; Compensation
§ 6. Other Benefits; Office and Staff

D. Immunities
§ 7. Immunities of Members Generally; Service of Process
§ 8. Speech or Debate Immunity
§ 9. Immunity from Arrest

Commentary and editing by Max Spitzer, J.D., LL.M.

A. Membership of the House

§ 1. In General; Scope of Chapter

Membership in the House of Representatives affords certain rights and privileges not conferred on ordinary citizens and other non–Members. Many of these privileges derive from constitutional provisions. Others can be found in statute, while still others have evolved from the standing rules, precedents, and customs of the House. This chapter explores the concept of membership in the House and its attendant privileges and prerogatives. Other chapters may contain related material, as described below.

As early as the 18th century, the House recognized the status of certain nonvoting representatives from United States territory that had not been admitted to statehood. These individuals, styled "Delegates" or "Resident Commissioners," while not Members of the House, do enjoy many of the same rights and privileges as Members. The differences between Delegates, Resident Commissioners, and Members are discussed in Section 2 of this chapter.

Before becoming a Member of the House, an individual must first campaign for the office and win election in their district. The conduct of election campaigns, including legal and ethical requirements, state and Federal jurisdiction over elections, and the filling of vacancies by special election, are discussed in Chapter 8 of this series.[1] This chapter examines the qualifications necessary to become a Member, and the conditions that may exist for an individual to be disqualified from holding a seat in the House.[2] It also explores the concept of other offices that are constitutionally incompatible with service in the House.[3] Unsuccessful candidates for seats in the House may choose to challenge the election, on the basis that the election was invalid due to mistake, fraud, or other irregularities. Such election contests are discussed in Chapter 9 of this series.[4]

An individual does not assume all of the privileges and prerogatives of membership until they take the oath of office, as required by the Constitution. Oath–taking procedures, including the composition of the Clerk's roll

1. Chapter 8 also explores the constitutional and statutory requirements for creating congressional districts and adjusting those districts following the decennial census.
2. See § 3, *infra.*
3. See § 4, *infra.*
4. Chapter 9 contains descriptions of election contests initiated between the 93d and 117th Congresses. For election contests in earlier Congresses, see Deschler's Precedents Ch. 9 (and the appendix thereto); 6 Cannon's Precedents §§ 90–189; 1 Hinds' Precedents §§ 634–844; and 2 Hinds' Precedents §§ 845–1135.

of Members–elect and the process for challenging the right to be sworn, are discussed in Chapter 2 of this series.

In addition to constitutional privileges (such as Speech or Debate immunity[5] and Immunity from Arrest),[6] this chapter also reviews statutory privileges such as the franking privilege.[7] It further examines how Members supervise and direct their congressional offices,[8] and how they are compensated for their public service.[9] The House's disciplinary procedures and ethics requirements sometimes intersect with those topics. For example, allegations of misuse of official resources may give rise to an investigation conducted by the Committee on Ethics.[10]

The privileges and prerogatives of Members (and the House itself) are defended via formal House action, which usually takes the form of a simple resolution. Such resolutions may be considered under special procedures pursuant to rule IX,[11] which relate to all questions of the privileges of the House.[12] Resolutions raised as questions of privilege may be used to defend individual Member privileges (*e.g.*, permitting a particular Member to respond to judicial process)[13] or privileges of the House more generally (*e.g.*, the House's constitutional prerogative to originate revenue legislation).[14]

Finally, the major party organizations in the House (the Democratic Caucus and the Republican Conference) have long played a role in the House's institutional structure.[15] Many aspects of Member activity are thus regulated not by formal House rule but by internal Caucus or Conference rules. The extent to which Member seniority is taken into account is now largely a matter of internal party caucus procedures. Such procedures may provide for particular committee rankings on the basis of seniority in the House.[16]

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5. See § 8, *infra.*

6. See § 9, *infra.*

7. See § 6, *infra.*

8. *Id.*

9. See § 5, *infra.*

10. Violations of campaign practices may also be investigated by the Committee on Ethics. For more on the House's disciplinary procedures generally, see Deschler's Precedents Ch. 12; and Precedents (_____) Ch. 12.

11. See *House Rules and Manual* §§ 698–713 (2021).

12. For more on questions of privilege generally, see Deschler's Precedents Ch. 11; and Precedents (_____) Ch. 11.

13. For more on service of process on Members, see § 7, *infra.*

14. For more on the House's institutional prerogatives, see Deschler's Precedents Ch. 13; and Precedents (_____) Ch. 13.

15. For more on party organization generally, see Deschler's Precedents Ch. 3; and Precedents (Wickham) Ch. 3.

16. See, *e.g.*, Rules Committee Print 115–37, Democratic Caucus, 115th Cong., Rule 19(F). See also Precedents (Wickham) Ch. 3 § 8.3.

House rules and precedents are largely silent on the issue of seniority, though certain longstanding traditions continue to be observed. For instance, the Member with the longest continuous service (called the Dean of the House) is the Member traditionally called upon to administer the oath of office to a newly–elected Speaker.[17] Ceremonial committees (such as escort committees or funereal committees) are often named in order of seniority.[18] The most senior Member of a state's delegation will typically make announcements to the House regarding the status of that delegation (for example, announcing the death of a Member from that state).

§ 2. Delegates and Resident Commissioners

Although only duly–sworn Members of the House enjoy the full spectrum of privileges and prerogatives of membership, Congress has chosen to invest others with the ability to participate in House proceedings as nonvoting representatives.[1] Such individuals have been styled "Delegates" or "Resident Commissioners"[2] and represent nonstate areas of the United States, such as territories, commonwealths, or the Federal district.[3] The positions of nonvoting Delegate or Resident Commissioner are not constitutional offices,

17. See Precedents (Wickham) Ch. 1 § 4. See also Deschler's Precedents Ch. 1 §§ 6, 6.4; and Deschler's Precedents Ch. 7 § 2.20. For earlier precedents noting inconsistencies in prior practice, see 6 Cannon's Precedents §§ 6, 7; and 1 Hinds' Precedents §§ 81, 131–133.

18. See, *e.g.*, Deschler's Precedents Ch. 7 § 2; and Deschler's Precedents Ch. 38 § 8.

1. *Parliamentarian's Note:* Although nonvoting Delegates have a long history in the House, the Senate has never accepted participation in its proceedings by nonvoting representatives. For an instance where an amendment to add a nonvoting representative to the Senate was held germane to a bill creating a similar position in the House, see 119 CONG. REC. 33656–57, 93d Cong. 1st Sess. (Oct. 10, 1973).

2. *Parliamentarian's Note:* The law establishing the Office of Delegate for the Northern Mariana Islands uses the term "Resident Representative" (as well as the term "Delegate") in its statutory language describing the position, but the term "Resident Representative" is not used in the House. See 48 U.S.C. §§ 1751, 1757.

3. United States territory that has not been admitted as a state may be classified in a variety of different ways. Throughout the 19th century, the U.S. established "territories" to administer Federal land that had not been admitted to statehood. If Congress passed an organic act to structure how the territory would be governed, the territory would be considered "organized." Territories that had no organic act were termed "unorganized." Following the Spanish–American War in 1898, former Spanish territory acquired by the United States obtained the legal status of "unincorporated" territory. The categories of "organized/unorganized" and "incorporated/unincorporated" continue to be used to define the nonstate areas over which the United States exercises sovereignty.

but have instead been created by statute.[4] This section discusses the history of these officers, the authorities they exercise, and limitations or restrictions on those authorities.

History

The Constitution does not mention Delegates to Congress, but the concept of a nonvoting representative from territories of the United States in fact predates the ratification of the Constitution. The act of the Continental Congress establishing the Northwest Territory in 1787 further provided for a nonvoting Delegate to that Congress.[5] Over the course of the history of the United States, many states passed from territorial status to statehood, sometimes with representation in the House in the form of a nonvoting Delegate during the former period.[6]

Delegates were initially thought of as special representatives concerned solely with parochial issues; namely, the issues directly affecting the territory represented by each Delegate.[7] Thus, committee and floor prerogatives were more limited than they would become in the 20th century. Over time, Delegates accrued greater rights to participate in House business, including floor privileges, the right to debate, the right to vote in committee, and ultimately the right to vote on the floor of the House when the House is operating as the Committee of the Whole.

The Spanish–American War of 1898 concluded with the United States exercising sovereignty over areas that had formerly been Spanish territory.

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4. The qualifications for office have been provided in statute and mirror the qualifications for Members of the House. See 2 U.S.C. § 25a; and 48 U.S.C. §§ 892, 1713, 1733, and 1753. Such statutes may impose qualifications not applicable to Members, such as the requirement that the Resident Commissioner from Puerto Rico be able to "read and write the English language" (48 U.S.C. § 892) and that the Delegate from the District of Columbia shall hold "no other paid public office" (2 U.S.C. § 25a). For more on qualifications of Members, see § 3, *infra.*

5. See 1 Hinds' Precedents § 421.

6. *Parliamentarian's Note:* In 1794, a Delegate arrived with credentials from the Ohio Territory, and the House had first occasion to pass on the question of the rights and privileges of such Delegates. The matter was referred to a select committee, which recommended that he be seated in the House with the right to debate but not to vote. A proposal to have the oath administered to the Delegate was not carried. See 1 Hinds' Precedents § 400. For an 1862 statute declaring that "[e]very Territory shall have the right to send a Delegate to the House of Representatives of the United States," see 2 Hinds' Precedents § 1290.

7. For example, a 1904 House rule automatically assigned the Resident Commissioner for Puerto Rico to a single committee: the Committee on Insular Affairs. 2 Hinds' Precedents § 1306. For an earlier rule assigning Delegates to specified committees, see 2 Hinds' Precedents § 1297.

Such territory included the Philippine Islands and the island of Puerto Rico. By statute, the Philippines was granted authority to send first two "resident commissioners" to the House, and later, one.[8] These Resident Commissioners were treated by the House the same as the nonvoting Delegates.[9] In 1900, the position of Resident Commissioner from Puerto Rico was created by statute.[10] By House rule (first adopted in 1904), the Resident Commissioner was given the same status as Delegates to the House, and permitted to serve on the Committee on Insular Affairs.[11] A subsequent statute, enacted in 1917, changed the Resident Commissioner's term from a two–year term to a four–year term, and provided the Resident Commissioner with certain House benefits, such as access to stationery and mileage accounts and the franking privilege.[12]

In 1959, Alaska and Hawaii were admitted as states and the Delegate positions that had been created under their former territorial status were eliminated.[13] Between 1959 and 1970, no Delegates were sent to the House, and the only nonvoting representative was the Resident Commissioner from Puerto Rico. In the early 1970s, laws creating the offices of Delegate from the District of Columbia,[14] Guam,[15] and the U.S. Virgin Islands[16] were enacted. Amendments to House rules brought the Delegates and the Resident Commissioner further under the jurisdiction of House authority (for example, by specifying that they are subject to the Code of Official Conduct).[17] Additional Delegate positions were created in 1978 for

8. 39 Stat. 552. Amendments made by the Tydings–McDuffie Act of 1934 reduced the number of Resident Commissioners from two to one. See P.L. 73–127, 48 Stat. 456. This statutory authority to send a Resident Commissioner became obsolete when the Philippines gained independence in 1946. See Deschler's Precedents Ch. 7 § 3.3.

9. *Parliamentarian's Note:* As "unincorporated" territory of the United States, the Philippines and Puerto Rico were regarded by some as unlikely candidates for eventual statehood. As such, it was considered more proper for such territories to be represented by a Commissioner rather than a Delegate. See 33 CONG. REC. 3632, 56th Cong. 1st Sess. (Apr. 2, 1900) (Sen. Spooner's remarks indicating that, "No Congress gives a Delegate to a people except upon the theory that the time is to come when they shall be admitted to statehood and entitled to participate as one of the States of the Union . . . I will not vote to give Puerto Rico at this time a Delegate in Congress. I willingly vote for the proposition in this bill to give them, at the expense of the United States, a commissioner, whose status shall enable him to represent their necessities and their wants to the Congress.").

10. 31 Stat. 86.

11. See 2 Hinds' Precedents § 1306.

12. 39 Stat. 963.

13. See Deschler's Precedents Ch. 7 §§ 3.4, 3.5.

14. See 2 U.S.C. § 25a. See also Deschler's Precedents Ch. 7 § 3.1.

15. See 48 U.S.C. §§ 1711–1715. See also Deschler's Precedents Ch. 7 § 3.2

16. *Id.*

17. See Deschler's Precedents Ch. 7 §§ 3.8–3.10.

American Samoa,[18] and in 2008 for the Northern Mariana Islands.[19] Thus, since 2008, there are six nonvoting Delegates and Resident Commissioners in the House of Representatives.

All current Delegates are elected for the same term as Members: one (two–year) Congress, commencing on January 3 of an odd–numbered year.[20] The Resident Commissioner from Puerto Rico is elected for a four–year term, beginning on January 3 following the general election.[21] Delegates and the Resident Commissioner may resign their offices,[22] and vacancies are typically filled by special election.[23] The statute establishing the Resident Commissioner from Puerto Rico contains special procedures by which the Governor of Puerto Rico (with the consent of the Senate of Puerto Rico) may appoint an individual to fill a vacancy in the office.[24] Delegates and Resident Commissioners are administered the oath of office upon their election[25] or appointment.[26]

With regard to the administrative functions of the House, House rules do not typically distinguish between Members, Delegates, and Resident Commissioners. Rules changes in the 92d and 93d Congresses extended to Delegates and Resident Commissioners the same privileges as Members with respect to services of the Clerk and Sergeant–at–Arms of the House.[27] Such

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18. See 48 U.S.C. §§ 1731–1735.

19. See 48 U.S.C. §§ 1751–1757.

20. 48 U.S.C. §§ 1712, 1732, and 1752. The statute regarding the Delegate from the District of Columbia simply states that the Delegate "shall be elected to serve during each Congress." 2 U.S.C. § 25a. For an earlier discussion of terms of office for Delegates, see 1 Hinds' Precedents § 403.

21. 48 U.S.C. § 891.

22. *Parliamentarian's Note:* Members of Congress typically address their letters of resignation to the appropriate official of the state from which the Member was elected, a copy of which is forwarded to the Speaker and laid before the House for the information of Members. Delegates and Resident Commissioners, however, have addressed their resignation letters directly to the Speaker. See 2 Hinds' Precedents § 1304; and Deschler's Precedents Ch. 37 § 3.8. For resignations generally, see Deschler's Precedents Ch. 37; and Precedents (_____) Ch. 37.

23. The statutes establishing the Delegate for Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands all provide that vacancies in the position be filled by special election. See 48 U.S.C. §§ 1712, 1732, and 1752. Election procedures for the Delegate from the District of Columbia follow the District of Columbia Elections Act. See 2 U.S.C. § 25a.

24. See 48 U.S.C. § 892. See also Deschler's Precedents Ch. 37 § 3.8.

25. *Parliamentarian's Note:* On opening day of a new Congress, Members–elect, Delegates–elect, and the Resident Commissioner–elect are sworn in *en masse.* Under early practice, Delegates were not always administered the oath. For a 1794 instance where a proposal to administer the oath of office to a Delegate was rejected by the House, see 1 Hinds' Precedents § 400. But see 1 Hinds' Precedents § 401 (1801 instance of the oath being administered to a Delegate at organization of a new Congress).

26. *Parliamentarian's Note:* When, pursuant to statute, the Governor of Puerto Rico appoints an individual to fill a vacancy in the Office of Resident Commissioner, such individual is administered the oath of office. See Deschler's Precedents Ch. 37 § 3.8.

27. See Deschler's Precedents Ch. 7 § 3.8.

changes also brought Delegates and Resident Commissioners under the jurisdiction of the Code of Official Conduct (now rule XXIII).[28] Salary and benefits for Delegates and Resident Commissioners are regulated by statute.[29]

Authorities and Limitations

The primary prerogative enjoyed by Delegates and Resident Commissioners to the House is the ability to be recognized by the presiding officer to debate. The original language from the 1787 act establishing the Northwest Territory specified that Delegates enjoyed "the right of debating, but not of voting"[30] and such language was carried forward in statutes throughout the 19th century. Thus, the parliamentary rights of Delegates and Resident Commissioners have always encompassed the right to debate.[31] Pursuant to clause 2(a)(1) of rule IV, Delegates, Delegates–elect, the Resident Commissioner, and the Resident Commissioner–elect are granted the privileges of the floor.[32]

The normal rules regarding parliamentary speech apply to Delegates and Resident Commissioners in the same manner as they apply to Members of the House. Thus, Delegates and Resident Commissioners who transgress the standards for proper debate in the House may be called to order.[33] Delegates and Resident Commissioners may likewise demand that others recognized in debate abide by the rules of decorum.[34]

Delegates and Resident Commissioners enjoy many of the same parliamentary prerogatives as Members. With respect to the regular parliamentary motions recognized by the House (the motion to lay on the table, the

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28. *Id.* See also *House Rules and Manual* § 1095 (2021).

29. See, *e.g.*, 48 U.S.C. §§ 893, 894, 1715, 1735, and 1755.

30. See 2 Hinds' Precedents § 1290.

31. *Parliamentarian's Note:* Under original House practice regarding the Resident Commissioners from the Philippines, the House would typically adopt a simple resolution each Congress extending floor privileges to the Commissioners and specifically authorizing their participation in debate. See 6 Cannon's Precedents §§ 244, 245. The practice fell into disuse after 1911, and the House thereafter did not question the inherent authority of Resident Commissioners to debate. See 6 Cannon's Precedents § 246.

32. *House Rules and Manual* § 678 (2021). The rule on floor privileges was amended in the 116th Congress to specify that Delegates–elect and the Resident Commissioner–elect are entitled to the floor. For an 1854 instance where the House declined to permit the Delegate from New Mexico to bring a translator onto the floor of the House, see 2 Hinds' Precedents § 1296.

33. For an example of a Delegate being censured by the House for unparliamentary language, see 2 Hinds' Precedents § 1305. For decorum issues generally, see Deschler's Precedents Ch. 29 §§ 40–66; and Precedents (_____) Ch. 29.

34. See 2 Hinds' Precedents § 1295.

motion for the previous question, etc.), Delegates and Resident Commissioners may make any such motions as Members would.[35] The one exception is the motion to reconsider, which requires the individual making the motion to have voted on the prevailing side of the question on which reconsideration is moved.[36] As Delegates and Resident Commissioners are not eligible to vote in the full House, they are consequently unable to meet this prerequisite condition. For this same reason, Delegates and Resident Commissioners are unable to vote on motions that they themselves propose.[37] A Delegate has offered the motion to refer with respect to the resolution establishing the rules of the House at the beginning of a Congress.[38]

The House recognizes a variety of points of order that may be raised with regard to the offering of propositions, the content of those proposals, or other aspects of House business.[39] Delegates and Resident Commissioners are empowered under the rules and precedents of the House to raise any such points of order in the same manner as Members.[40] Many items of business in the House are transacted pursuant to a unanimous–consent request offered by a Member.[41] Under the precedents of the House,[42] Delegates and Resident Commissioners may offer such requests, and are likewise permitted to object to such requests.[43]

The most consequential restriction on the ability of Delegates and Resident Commissioners to participate in House proceedings is the inability to

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35. See 2 Hinds' Precedents §§ 1291, 1292; and 6 Cannon's Precedents § 240. For motions generally, see Deschler's Precedents Ch. 23; and Precedents (_____) Ch. 23.

36. See 2 Hinds' Precedents § 1292. For more on the motion to reconsider, see Deschler's Precedents Ch. 23 §§ 33–41; and Precedents (_____) Ch. 23.

37. See, *e.g.*, § 2.1, *infra.*

38. *Parliamentarian's Note:* The new majority in the 112th Congress had offered a rules package that eliminated the ability of Delegates and Resident Commissioners to vote in the Committee of the Whole. The Delegate from the District of Columbia moved to refer the resolution to a select committee to consider reinstating that provision. See § 2.2, *infra.*

39. For points of order generally, see Deschler's Precedents Ch. 31 §§ 1–13; and Precedents (_____) Ch. 31.

40. See 6 Cannon's Precedents § 240.

41. For more on unanimous–consent requests generally, see Deschler's Precedents Ch. 23 §§ 42–48; and Precedents (_____) Ch. 23.

42. *Parliamentarian's Note:* Early precedents did not recognize the ability of Delegates and Resident Commissioners to object to unanimous–consent requests. See 2 Hinds' Precedents §§ 1293, 1294. However, these precedents were essentially overturned by a 1930 ruling permitting the Delegate from Alaska to object to the consideration of a bill under procedures for the Consent Calendar. See 6 Cannon's Precedents § 240. For a similar instance involving Delegates and Private Calendar procedures, see Deschler's Precedents Ch. 7 § 3.7.

43. See § 2.4, *infra.*

vote in the House.[44] This principle has been consistently applied throughout the House's history, and the District of Columbia Circuit Court has held that casting a vote in the full House constitutes an exercise of legislative power reserved to Members only.[45] Delegates and Resident Commissioners are ineligible to vote in the election for Speaker of the House.[46]

Although Delegates and Resident Commissioners may offer resolutions of impeachment,[47] Delegates and Resident Commissioners may not vote on impeachment articles. In the 105th Congress, a resolution proposing to grant the Delegate from the District of Columbia the right to vote on articles of impeachment against the President or Vice President was determined not to constitute a question of the privileges of the House.[48]

It has been held that "a majority of the total membership of the House" in clause 2(b) of rule XV (the discharge rule) means 218 Members, and therefore a discharge petition may only be signed by Members of the House.[49] A Delegate or Resident Commissioner may not sign a discharge petition, even by unanimous consent.[50]

Committees

In recent decades, Delegates and Resident Commissioners have joined one of the two major party caucuses in the House: the Democratic Caucus or the Republican Conference.[51] Committee assignments for Delegates and

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44. Statutes creating the different Delegate and Resident Commissioner positions may specify that the individual does not have voting rights. See, *e.g.*, 2 U.S.C. § 25a (the District of Columbia Delegate shall have "the right of debate, but not of voting"). However, a statutory prohibition on voting, as an extension of the House's constitutional rulemaking authority, could be modified by subsequent House rules. See Precedents (Wickham) Ch. 5 § 7. The prohibition on voting in the House instead derives from the Constitution, which permits only Members to vote in the House. See *Michel* v. *Anderson,* 14 F.3d 623, 630 (D.C. Cir. 1994). Although Delegates and Resident Commissioners have never been allowed to vote in the House, a Delegate has been appointed as a teller when the House used that method of voting. 2 Hinds' Precedents § 1302.

45. *Michel* v. *Anderson*, 14 F.3d 623, 630 (D.C. Cir. 1994) ("[I]t would be unconstitutional to permit anyone but members of the House to vote in the full House under any circumstances.").

46. See § 2.5, *infra.*

47. See, *e.g.*, 2 Hinds' Precedents § 1303 (1808 instance where the Delegate from Mississippi moved to impeach a Federal judge and was subsequently appointed chair of the investigatory committee).

48. See § 2.6, *infra.*

49. See Deschler's Precedents Ch. 18 § 1.2.

50. See § 2.7, *infra.*

51. For party organization generally, see Deschler's Precedents Ch. 3; and Precedents (Wickham) Ch. 3.

Resident Commissioners therefore follow the same procedure as that for Members: nomination by a party caucus and the adoption of a simple House resolution electing the Delegate or Resident Commissioner to the committee.(52) Seniority and rank on a committee are matters within the purview of the party caucuses.(53)

Committee participation by Delegates was originally limited to committees whose jurisdiction covered U.S. territories and the Federal district.(54) Gradually, the rule was expanded to permit one Delegate to be assigned to each of several committees specified by rule.(55) Ultimately, Delegates and Resident Commissioners attained their committee assignments in the same manner as Members following the rules changes of 1910: election via the individual party caucuses.(56) Rules changes in the 93d, 96th, 103d, and 116th Congresses expanded the Speaker's appointment authority to permit the appointment of Delegates and Resident Commissioners to select, joint, and conference committees.(57) Prior to these changes, such appointments could only be made by unanimous consent.(58)

Although early House practice was not consistent with respect to the ability of Delegates and Resident Commissioners to vote in committee,(59) it has

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52. Changes to House rules in the 92d and 93d Congresses specifically provided that the Delegates and Resident Commissioners be elected to serve on committees "in the same manner as Members." Rule XII, clauses 1 and 2; *House Rules and Manual* § 740 (1973). Prior to this time, committee assignments for Delegates and Resident Commissioners were provided in the rule itself. The current rule on committee assignments may be found at Rule III, clause 3(a); *House Rules and Manual* § 675 (2021).

53. For an announcement regarding Democratic Caucus seniority as applied to Delegates and Resident Commissioners, see Deschler's Precedents Ch. 7 § 3.11. For a resolution adjusting the rank of a Delegate on a committee, see § 2.8, *infra.*

54. See 2 Hinds' Precedents § 1297.

55. See 2 Hinds' Precedents § 1297; and 6 Cannon's Precedents § 242. Occasionally, the House would acquiesce to a Delegate being placed on a committee not mentioned in the rule. See, *e.g.*, 2 Hinds' Precedents § 1298.

56. See Deschler's Precedents Ch. 7 § 3.9. See also Precedents (Wickham) Ch. 3 § 8.

57. Rule III, clause 3(b); *House Rules and Manual* § 676 (2021). When the House recodified its rules in the 106th Congress, corresponding amendments were made to clause 11 of rule I (*House Rules and Manual* § 637 (2021)) delineating the Speaker's appointment authority. See 145 CONG. REC. 87, 106th Cong. 1st Sess. (Jan. 6, 1999). For a historical instance of a Delegate being appointed to a select committee (as chair) in 1811, see 2 Hinds' Precedents § 1299. See also 2 Hinds' Precedents § 1303 (Delegate appointed chair of a special impeachment investigation committee).

58. See, *e.g.*, § 2.10, *infra.* For an instance of the Speaker inadvertently appointing a Delegate to a conference committee (and the House subsequently vacating that action by unanimous consent), see § 2.9, *infra.* See also 119 CONG. REC. 25201, 93d Cong. 1st Sess. (July 20, 1973) (remarks in debate expressing "surprise and dismay" that the Resident Commissioner could not be appointed to a conference committee).

59. *Parliamentarian's Note:* A report from 1841 suggested that Delegates had been voting in the standing committees of the House for some time (2 Hinds' Precedents § 1301)

now been well established that Delegates and Resident Commissioners have voting rights in committees of the House. In the 92d and 93d Congresses, clause 1 of rule XII (now clause 3(a) of rule III) was substantially revised to specifically provide that Delegates and Resident Commissioners elected to committees of the House "shall possess in such committees the same powers and privileges as the other members of the committee."[60]

Committee of the Whole

In the 103d Congress, the House adopted rules that for the first time permitted Delegates and Resident Commissioners to vote on the floor of the House when the House is operating as the Committee of the Whole.[61] The Committee of the Whole is a very old parliamentary device derived from British practice, with special procedures for the consideration of legislative measures.[62] Certain constitutional provisions do not apply in the Committee of the Whole.[63] A key feature of the Committee of the Whole is that it cannot take final action on a measure, but merely recommends action to the House.[64] The Committee of the Whole may be thought of as similar to any of the committees of the House: a separate forum for preliminary action on a measure, with the ability to report its recommendations to the House for final disposition. As Delegates and Resident Commissioners had

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and an 1884 instance indicated that the issue was being studied by the Committee on Rules (2 Hinds' Precedents § 1300). However, as late as 1932, a committee reported to the House its finding that Delegates were not competent to vote in committees of the House. See 6 Cannon's Precedents § 243.

60. *House Rules and Manual* § 675 (2021). See also Deschler's Precedents Ch. 7 § 3.10. Statutory authority creating the different Delegate and Resident Commissioner positions may also reference voting rights in committee. See, *e.g.*, 48 U.S.C. § 1715 (". . . the right to vote in committee shall be as provided by the Rules of the House of Representatives."). It should be noted that the House's ability to provide for Delegate and Resident Commissioner voting in committees or in the Committee of the Whole does not depend on statutory authority, but is instead part of the House's inherent constitutional authority to make its own rules of proceeding. For more on the interaction between statutory rulemaking and the House's standing rules, see Precedents (Wickham) Ch. 5 § 7.

61. See Deschler's Precedents Ch. 30 § 59.1.

62. For more on the Committee of the Whole generally, see Deschler's Precedents Ch. 19; and Precedents (_____) Ch. 19.

63. For example, quorum requirements in the Committee of the Whole are lower than those in the full House, and Members may not demand the constitutional yeas and nays in the Committee of the Whole. See Deschler's Precedents Ch. 19 § 1.

64. *Parliamentarian's Note:* Committees of the House do not take final action on any measure, and it has been said that the Committee of the Whole is "but a committee of the House, though a large one." 4 Hinds' Precedents § 4706.

been granted the privilege of voting in the committees of the House, it was thought appropriate to extend that privilege to the Committee of the Whole.(65)

An additional feature of the Delegate voting rule provided for an automatic revote in the full House should the votes of the Delegates and Resident Commissioners prove decisive in the Committee of the Whole.(66) In other words, but for the votes of the Delegates and Resident Commissioners, the vote in the Committee of the Whole would have been reversed. In such circumstances, the rule provided that the Committee of the Whole rise, and that the same vote be taken again in the full House (where Delegates and Resident Commissioners are ineligible to vote).(67)

This feature of the rule was raised in subsequent litigation commenced by the minority party in an attempt to have the rule declared unconstitutional.(68) The District Court for the District of Columbia held that because of the revote provision, the votes of the Delegates and Resident Commissioners could not affect the ultimate result, and thus could not be an exercise of legislative power in violation of the Constitution.(69) On appeal, the District of Columbia Circuit Court was less concerned with the revote provision, but ultimately agreed that the rule provided authority that was "largely symbolic"(70) and thus free of constitutional defects.(71)

Between the 103d Congress and the 116th Congress, the Delegate voting rule would be repealed and reinstated multiple times.(72) The Delegate voting rule has been accompanied by a related provision permitting Delegates

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65. "The Delegates and the Resident Commissioners represent 4.6 million Americans who now have no voting representation in the House other than in the standing committees . . . [t]his amendment would allow these Americans to be represented in the preliminary decisions of the House through votes in the Committee of the Whole." (remarks of Rep. Louise Slaughter of New York). See 139 CONG. REC. 54, 103d Cong. 1st Sess. (Jan. 5, 1993).

66. See Deschler's Precedents Ch. 30 § 59.1.

67. For an example of such a revote being taken in the House, see §§ 2.12, 2.13, *infra.* For parliamentary inquiries regarding the operation of the rule, see §§ 2.14, 2.15, *infra.*

68. See *Michel* v. *Anderson,* 817 F. Supp. 126 (D.D.C. 1993) and *Michel* v. *Anderson,* 14 F.3d 623 (D.C. Cir. 1994). See also Deschler's Precedents Ch. 30 § 59.2.

69. See *Michel* v. *Anderson,* 817 F. Supp. 126, 147–48 (D.D.C. 1993), ("In a democratic system, the right to vote is genuine and effective only when, under the governing rules, there is a chance, large or small, that, sooner or later, the vote will affect the ultimate result. The votes of the Delegates in the Committee of the Whole cannot achieve that.").

70. *Michel* v. *Anderson,* 14 F.3d 623, 632 (D.C. Cir. 1994).

71. *Id.* ("[W]e do not think this minor addition to the office of delegates has constitutional significance.").

72. The Delegate voting rule was first introduced by the Democratic Caucus when the Democratic Party was in the majority in 1993. When the Republican Party became the

and Resident Commissioners to serve as chair of the Committee of the Whole.[73] This provision was likewise revoked and reinstated in subsequent Congresses, and was most recently reinstated in the 115th Congress.[74] In the 116th Congress, clause 6(a) of rule XVIII[75] was amended to clarify that the Delegates and the Resident Commissioner count for purposes of establishing a quorum in the Committee of the Whole.

§ 2.1 Delegates and the Resident Commissioner may make any of the ordinary motions[76] in the House (such as a motion to adjourn), but may not vote on such motions.

On January 9, 1981,[77] the Delegate from American Samoa offered the motion to adjourn, as follows:

ADJOURNMENT

Mr. [Fofo] SUNIA [of American Samoa]. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 25 minutes p.m.), under its previous order, the House adjourned until Tuesday, January 13, 1981, at 12 o'clock noon.

§ 2.2 Delegates and the Resident Commissioner may make any of the ordinary motions[78] in the House (such as the motion to refer), but may not vote on such motions.

On January 5, 2011,[79] the Delegate from the District of Columbia offered a motion to refer the resolution adopting the rules of the House to a select committee:

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majority party in the following Congress, the rule was repealed. See Deschler's Precedents Ch. 30 § 59.3. The rule was reinstated in the 110th Congress, repealed in the 112th Congress, and reinstated again in the 116th Congress. See *House Rules and Manual* § 675 (2021).

73. Rule XVIII, clause 1; *House Rules and Manual* § 970 (2021). For the inaugural instance of a Delegate presiding over the Committee of the Whole, see § 2.16, *infra.*

74. *House Rules and Manual* § 970 (2021).

75. *House Rules and Manual* § 982 (2021). Amendments to clause 6(e) of rule XVIII also clarified that Delegates and the Resident Commissioner may be counted to support a request for a recorded vote in the Committee of the Whole. See *House Rules and Manual* § 983a (2021).

76. *Parliamentarian's Note:* The one exception to this principle is that Delegates and the Resident Commissioner may not move reconsideration, as they are unable to meet the requirement that the individual offering the motion to reconsider must have voted on the prevailing side of the question. See 2 Hinds' Precedents § 1292.

77. 127 CONG. REC. 248, 97th Cong. 1st Sess. See also Deschler's Precedents Ch. 29 § 23.65.

78. *Parliamentarian's Note:* The one exception to this principle is that Delegates and the Resident Commissioner may not move reconsideration, as they are unable to meet the requirement that the individual offering the motion to reconsider must have voted on the prevailing side of the question. See 2 Hinds' Precedents § 1292.

79. 157 CONG. REC. 83–84, 112th Cong. 1st Sess.

MOTION TO REFER

Ms. [Eleanor] NORTON [of District of Columbia]. Mr. Speaker, I rise to offer a motion that is at the desk.

The SPEAKER pro tempore.[80] The Clerk will report the motion.

The Clerk read as follows:

> Ms. Norton moves to refer the resolution to a select committee of five members, to be appointed by the Speaker, not more than three of whom shall be from the same political party, with instructions not to report back the same until it has conducted a full and complete study of, and made a determination on, the constitutionality of the provision that would be eliminated from the Rules that granted voting rights in the Committee of the Whole to the Delegates from the District of Columbia, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands and the Resident Commissioner from Puerto Rico, including the decision of the United States Court of Appeals for the District of Columbia in Michel v. Anderson (14 F.3d 623 (D.C. Cir. 1994)), which upheld the constitutionality of these voting rights.

MOTION TO TABLE

Mr. [Eric] CANTOR [of Virginia]. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. Cantor moves to lay on the table the motion to refer.

The SPEAKER pro tempore. The question is on the motion to table.

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

Ms. NORTON. 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 223, nays 188, not voting 20, as follows:

[Roll No. 3] . . .

Messrs. LEVIN, BRADY of Pennsylvania, HINOJOSA, ALTMIRE, CARDOZA, and Mrs. MALONEY changed their vote from "yea" to "nay."

Mr. JONES, Mrs. MYRICK, Mrs. BACHMANN, and Ms. HAYWORTH changed their vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

§ 2.3 Delegates and the Resident Commissioner may make any of the ordinary motions in the House (such as the motion to recommit),[81] but may not vote on such motions.

80. Steven LaTourette (OH).

81. *Parliamentarian's Note:* Delegates and the Resident Commissioner may make any motion not contingent on the right to vote. Motions to recommit a measure back to committee are not contingent on the right to vote. Rather, the requisite qualification for

On October 27, 2015,[82] the Delegate from the District of Columbia offered a motion to recommit a bill to the committee of jurisdiction:

The SPEAKER pro tempore.[83] All time for debate has expired.

Pursuant to House Resolution 450, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Ms. [Eleanor] NORTON [of District of Columbia]. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. NORTON. I am.

Mr. [Jeb] HENSARLING [of Texas]. Mr. Speaker, I reserve a point of order.

The SPEAKER pro tempore. A point of order is reserved.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. Norton moves to recommit the bill H.R. 597 to the Committee on Financial Services.

The SPEAKER pro tempore. The gentlewoman from the District of Columbia is recognized for 5 minutes.

Ms. NORTON. I yield back the balance of my time.

Mr. HENSARLING. Mr. Speaker, I withdraw my reservation of a point of order.

The SPEAKER pro tempore. The reservation of the point of order is withdrawn.

Mr. [Frank] LUCAS [of Oklahoma]. Mr. Speaker, I wish to claim time in opposition to the motion to recommit.

The SPEAKER pro tempore. Does the gentleman from Texas seek recognition?

Mr. HENSARLING. Yes, I wish to seek time in opposition.

POINT OF ORDER

Mr. LUCAS. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore. The gentleman from Oklahoma will state his point of order.

Mr. LUCAS. Mr. Speaker, in order to seek time in opposition, wouldn't the gentleman or gentlewoman have to be opposed to the motion to recommit?

The SPEAKER pro tempore. Time in opposition is reserved for an opponent.

Mr. LUCAS. So, Mr. Speaker, would it be in order to reaffirm that whoever ultimately claims the time is, indeed, in opposition to the motion to recommit?

The SPEAKER pro tempore. The Chair would ascertain that before granting recognition.

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offering such motion is an averment that the offeror is opposed to the underlying measure. See rule XIX, clause 2(a); *House Rules and Manual* § 1001 (2021).

82. 161 CONG. REC. 16588–89, 114th Cong. 1st Sess.

83. Rodney Davis (IL).

Does the gentleman from Texas seek recognition in opposition to the motion to recommit?

Mr. HENSARLING. Yes, I have sought time in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. Mr. Speaker, if the gentleman from Oklahoma, another valuable member of the House Financial Services Committee, who I know we are on opposite sides of this issue, if the gentleman would like time to speak, I would be happy to yield to the gentleman.

Mr. LUCAS. Will the gentleman yield for a brief response?

Mr. HENSARLING. I yield to the gentleman from Oklahoma.

Mr. LUCAS. Mr. Chairman, I very much appreciate the opportunity to respond. I think that probably it is better that you finish the discussion.

Mr. HENSARLING. Okay. The gentleman declines.

The SPEAKER pro tempore. Does the gentleman wish to yield back?

PARLIAMENTARY INQUIRIES

Mr. [Mick] MULVANEY [of South Carolina]. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman from Texas yield to the gentleman from South Carolina?

Mr. HENSARLING. Yes, I yield to the gentleman from South Carolina for his parliamentary inquiry.

Mr. MULVANEY. If this is not dilatory, what is the effect of passing this motion to recommit?

I so often hear the preface, "This doesn't send it back to committee; it doesn't kill the bill."

The SPEAKER pro tempore. If adopted, the motion would recommit the bill back to committee.

Mr. MULVANEY. So passing this motion to recommit would send this bill back to committee?

The SPEAKER pro tempore. That is correct.

Mr. MULVANEY. For how long?

The SPEAKER pro tempore. The motion does not put a time limit on the committee to consider the bill.

Mr. MULVANEY. Fair enough.

Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MULVANEY. Does the person offering this motion represent to this body that they are in favor of this motion in order to qualify?

The SPEAKER pro tempore. The gentlewoman qualified by stating her opposition to the bill.

Mr. MULVANEY. Fair enough.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Texas may continue.

Mr. HENSARLING. Again, Mr. Speaker, I would say we are having a debate on the underlying bill that has been vigorously debated on both sides.

The motion to recommit, if people are genuinely interested in looking for an opportunity for an amendment process that was denied as the discharge petition came to the floor.

I have served under many committee chairmen on the Financial Services Committee. I have never known one to bring a bill through committee that was not supported by a majority of their members, and I did not bring this bill because it was not supported by a majority of Republican members.

I understand the ability to use this discharge petition; and if people are looking for opportunities to amend, I wish it would have been done in the discharge petition.

But if it is the will of the House to send this to committee, the committee has had three different hearings on the Ex-Im Bank already—a couple of them in conjunction with the Oversight and Government Reform Committee—and I would be happy to have even more hearings on the subject and listen to the new points that have been brought about by this debate.

I yield to the gentleman from South Carolina (Mr. MULVANEY).

PARLIAMENTARY INQUIRY

Mr. MULVANEY. Mr. Speaker, I rise for the purpose of making another parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MULVANEY. The reason I am confused is, I do so often hear that introduction, the MTRs won't kill; it won't send it to committee; it will proceed immediately forthwith to the House for a vote.

So here is my question on a parliamentary inquiry basis. If the MTR is passed, I understand from your previous ruling that the bill goes back to committee. Is it amendable in committee? Or does it immediately return forthwith to the House for a vote?

The SPEAKER pro tempore. The bill would return to the committee for its consideration.

Mr. MULVANEY. And the committee has full control over that piece of legislation?

The SPEAKER pro tempore. The committee would have the bill before it again.

Mr. HENSARLING. Mr. Speaker, again, I appreciate the gentleman from South Carolina making his parliamentary inquiries. I think it has helped clarify the matter.

At this point, if it is the will of the House to send this back to committee, I look forward to the vote and would be very happy to reconsider this in committee.

I yield back the balance of my time.

PARLIAMENTARY INQUIRY

Ms. MAXINE WATERS of California. Mr. Speaker, parliamentary inquiry.

I wish the Chair would clarify that there will be a vote taken on the motion to recommit and that, should that fail, this will not go back to the committee under any circumstances. Is that correct?

The SPEAKER pro tempore. If the motion is not adopted, the bill will not return to committee.

Ms. MAXINE WATERS of California. Well, if I may, you just said what I said in reverse. And I just wanted it to be clear.

As the chairman of the committee tried to state that he would be willing to hold hearings and do what he has not done as we have tried to consider this, that if, in fact, this body does not support it going back to committee, he has no opportunity to try to do what he has not done in the process. Is that correct?

The SPEAKER pro tempore. If the motion is not adopted, the Chair plans to proceed. The next step would be the question of passage of the bill.

Ms. MAXINE WATERS of California. Thank you, Mr. Speaker.

The SPEAKER pro tempore. Without objection, the previous question is 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. HENSARLING. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the order of the House of today, further proceedings on this question will be postponed.

VACATING DEMAND FOR YEAS AND NAYS ON MOTION TO RECOMMIT

Mr. HENSARLING. Mr. Speaker, I ask unanimous consent to withdraw my request for the yeas and nays on the motion to recommit to the end that the motion stand disposed of by the voice vote thereon.

The SPEAKER pro tempore. Without objection, the ordering of the yeas and nays is vacated, and pursuant to the earlier vote by voice, the motion is not adopted.

There was no objection.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

Ms. MAXINE WATERS of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PARLIAMENTARY INQUIRY

Mr. HENSARLING. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. HENSARLING. Since I withdrew the request for the yeas and nays on the motion to recommit, then would it be possible for the ranking member, the gentlewoman from California, to withdraw her request for the yeas and nays on the underlying bill, should she so choose?

Ms. MAXINE WATERS of California. Mr. Speaker, that is wishful thinking on the part of the chairman. I will not.

§ 2.4 In response to a parliamentary inquiry, the Speaker confirmed that Delegates and the Resident Commissioner have the right to object to unanimous–consent requests.

On June 29, 1984,[84] the Resident Commissioner from Puerto Rico objected to a unanimous–consent request (an action which was the subject of subsequent parliamentary inquiries):

84. 130 CONG. REC. 20259–67, 98th Cong. 2d Sess. See also 6 Cannon's Precedents § 241.

CORRECTING TECHNICAL ERRORS IN THE ENROLLMENT OF H.R. 4170, TAX REFORM ACT OF 1983

Mr. [Sam] GIBBONS [of Florida]. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 328) entitled "Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 4170," with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the concurrent resolution. . . .

The SPEAKER.[85] Is there objection to the initial request of the gentleman from Florida?

Mr. [Baltasar] CORRADA [of Puerto Rico]. Mr. Speaker, reserving the right to object, I would like to know if in this technical amendment a clarification was made to reflect the true intent of the conferees that the $75 million provided through December 31, 1984, under the redistillation program for Puerto Rico, rebates of excise taxes, would also allow the cane neutral spirits program to be included under those provisions?

Mr. GIBBONS. Mr. Speaker, if the gentleman will yield, no changes were made by the Senate to accomplish that end.

Mr. CORRADA. Then, Mr. Speaker, I object.

The SPEAKER. Objection is heard.

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent to speak for 1 minute.

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

There was no objection.

PARLIAMENTARY INQUIRY

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. FRENZEL. Mr. Speaker, does the Delegate have the right to object?

The SPEAKER. A Delegate does have the right to object to a unanimous-consent request.

§ 2.5 In response to parliamentary inquiries, the Clerk (as presiding officer on opening day of a new Congress) confirmed that Delegates–elect and the Resident Commissioner–elect are ineligible to vote in the election of the Speaker of the House.

On January 6, 1999,[86] in response to parliamentary inquiries, the Clerk confirmed that only Members–elect may vote in the election of the Speaker:

The CLERK.[87] The Honorable J. DENNIS HASTERT, a Representative-elect from the State of Illinois, and the Honorable RICHARD A. GEPHARDT, a Representative-elect from the State of Missouri, have been placed in nomination.

Are there further nominations?

There being no further nominations, the Clerk will appoint tellers.

85. Thomas O'Neill (MA).

86. 145 CONG. REC. 43, 106th Cong. 1st Sess.

87. Jeffrey J. Trandahl.

The Clerk appoints the gentleman from California (Mr. THOMAS), the gentleman from Connecticut (Mr. GEJDENSON), the gentlewoman from New Jersey (Mrs. ROUKEMA), and the gentlewoman from Ohio (Ms. KAPTUR).

The tellers will come forward and take their seats at the desk in front of the Speaker's rostrum.

The roll will now be called, and those responding to their names will indicate by surname the nominee of their choice.

The reading clerk will now call the roll.

The tellers having taken their places, the House proceeded to vote for the Speaker.

PARLIAMENTARY INQUIRY

Mr. [Carlos] ROMERO-BARCELÓ [of Puerto Rico] (during the vote). Have we been eliminated already? Have we been eliminated from the voting procedure?

The CLERK. Delegates and the Resident Commissioners are not qualified to vote.

Mr. ROMERO-BARCELÓ. We have always been qualified to vote.

The CLERK. That is not the case.

Mr. ROMERO-BARCELÓ. What is that?

The CLERK. That is not the case.

Mr. ROMERO-BARCELÓ. Yes. We voted the last time.[88]

PARLIAMENTARY INQUIRY

Mr. [Patrick] KENNEDY of Rhode Island. Mr. Clerk, would the Clerk respond to a parliamentary inquiry?

The CLERK. The gentleman will state his inquiry.

Mr. KENNEDY of Rhode Island. The parliamentary inquiry for the Clerk is for the delegates who represent American citizens. Where does that vote come today? Will they not be allowed to vote for Speaker of this House? The Member from Puerto Rico represents 4 million American citizens.

The CLERK. Representatives-elect are the only individuals qualified to vote in the election of the Speaker.

§ 2.6 A resolution proposing to permit the Delegate from the District of Columbia to cast votes in the full House on articles of impeachment directed at the President was held to constitute a change in House rules, and thus did not qualify as a question of the privileges of the House.

On December 18, 1998,[89] the Delegate from the District of Columbia offered House Resolution 613, which was determined by the Speaker pro tempore not to constitute a valid question of privilege:

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88. *Parliamentarian's Note:* Contrary to the assertion made here, Delegates–elect and the Resident Commissioner–elect did not vote in the election of Speaker in the 105th Congress. See 143 CONG. REC. 117, 105th Cong. 1st Sess. (Jan. 7, 1997).

89. 144 CONG. REC. 27825–27, 105th Cong. 2d Sess.

PRIVILEGES OF THE HOUSE—PROVIDING VOTE FOR THE DELEGATE TO CONGRESS FROM THE DISTRICT OF COLUMBIA IN CONSIDERATION OF PRESIDENTIAL IMPEACHMENT RESOLUTIONS

Ms. [Eleanor] NORTON [of District of Columbia]. Mr. Speaker, I rise to offer a privileged resolution that is at the desk.

The Clerk read the resolution, as follows:

H. RES. 613

Whereas rule IX of the Rules of the House of Representatives provides that questions of privilege shall arise whenever the rights of the House collectively or the Members individually in their representative capacity are affected;

Whereas under the precedents, customs, and traditions of the House pursuant to rule IX, a question of privilege has arisen in cases involving the constitutional prerogatives of the House and of Members of the House; and

Whereas the House is prepared to consider a resolution impeaching the President, and the Delegate to the Congress from the District of Columbia seeks to assert the constitutional prerogative to cast a vote in the consideration of the resolution: Now, therefore, be it

Resolved,

SECTION 1. PROVIDING VOTE FOR DELEGATE FROM THE DISTRICT OF COLUMBIA IN CONSIDERATION OF PRESIDENTIAL IMPEACHMENT RESOLUTIONS.

Pursuant to section 2 of article I of the Constitution and the twenty-third article of amendment thereto granting the people of the District of Columbia the right to vote in presidential elections, the Delegate to the Congress from the District of Columbia shall be permitted to cast a vote in the House of Representatives in the same manner as a member of the House in the consideration by the House of any resolution impeaching the President or Vice President of the United States.

SEC. 2. EFFECTIVE DATE.

Section 1 shall apply with respect to any resolution impeaching the President or Vice President of the United States that is considered by the House of Representatives after the adoption of this resolution.

The SPEAKER pro tempore.(90) Does any Member wish to be heard on whether the resolution constitutes a question of the privileges of the House?

Ms. NORTON. I ask to be heard, Mr. Speaker.

The SPEAKER pro tempore. The gentlewoman from the District of Columbia is recognized.

Ms. NORTON. Mr. Speaker, most Americans do not know and most people in the world are unaware that the residents of the Nation's Capitol do not have any representation in the Senate and cannot vote on this floor.

But the Constitution of the United States, in its 23rd amendment, does give to the residents of the District the right to vote for President and Vice President of the United States. The same Constitution that gives the District the right to vote for President must recognize the right of District residents to representation for a vote on removal of the President.

I have submitted a narrowly-tailored resolution, along with a legal memorandum, for a narrowly-tailored right. I am not here asking for the delegate vote in the Committee of the Whole at this time. I am not asking for a House vote. I am asking to vote only on impeachment, in order to perfect the rights of District residents under the 23rd amendment. The House has abundant authority to grant me this right at this time.

Clause 2 of the 23rd amendment gives the House the power to enforce the amendment through legislation. My resolution is that legislation. The District clause, as this body

90. Ray LaHood (IL).

so often reminds us, gives Members full authority over the District of Columbia, and the impeachment clause gives Members unilateral authority, or the sole power of impeachment.

The 23rd amendment explicitly treats the District as a State for purposes of electing the President and the Vice President.

I ask for this right in the name of half a million people, the only Americans who pay Federal income taxes who do not have full representation in the Congress. They are a third per capita in Federal income taxes. Their one right that is explicitly mentioned in the Constitution is the right to vote for President and Vice President.

The decision to expel a President from office is as important as the decision to elect the President to office. Indeed, the decision to expel him is more momentous. There are no partial rights in the Constitution. It is unconstitutional and irrational to interpret the 23rd amendment to afford a vote for President, but no vote on whether to impeach a President.

Let this process begin on a high note of fairness. In the name of the half million American citizens who happen to live in the Nation's Capital, I ask for the vote in these impeachment proceedings, Mr. Speaker.

Mr. Speaker, today I introduce a resolution affording the District of Columbia Delegate a vote in impeachment proceedings. The House is fully empowered to enact my resolution under Article I, § 2, clause 5 of the Constitution (stating that the "House of Representatives . . . shall have the sole Power of Impeachment"); the Twenty-Third Amendment affording the people of the District of Columbia the right to vote for President of the United States; and Article I, § 8, clause 17 of the Constitution affording Congress plenary power over the District of Columbia.

I am seeking to protect the constitutional right of District residents to vote for President by securing a vote in the impeachment proceedings only. My resolution is narrowly tailored and would not be a grant of voting privileges to the Delegate in other proceedings of the House.

American citizens living in the District of Columbia participated in the last two presidential elections by choosing as their electors three citizens pledged to President Clinton. Unless Congress acts to remedy the situation under the Twenty-Third Amendment, the District population will be the only community of American citizens who participated in the Presidential elections of 1992 and 1996 who will have no vote at all on impeachment or conviction.

This constitutional asymmetry not only violates the rights of more than half a million voters; it is unnecessary. Congress has sufficient authority under the District Clause and under the enforcement clause of the Twenty-Third Amendment to grant the District of Columbia Delegate to the House of Representatives a vote in the House impeachment process on the House floor. The Supreme Court has liberally construed enforcement clauses in all of the suffrage amendments to vindicate the broad and central constitutional purpose of securing equal voting and participation rights for all Americans.

The Twenty-Third Amendment put the District of Columbia essentially on the same level as the states for purposes of presidential elections.

The purpose of Twenty-Third Amendment was to give Congress the power to provide the residents of the District an equal role in selecting the President and the Vice President. The Amendment allows District residents to participate in presidential elections on an equal footing with the states.

Today, this right can be fully vindicated only by reading the Twenty-Third Amendment to permit Congress to grant the District of Columbia Delegate a vote on the Resolution Impeaching William Jefferson Clinton, President of the United States. Otherwise, the political will and sovereignty of residents of the District of Columbia in the selection of the president will be lost in violation of the Twenty-Third Amendment.

The legislative history of the Twenty-Third Amendment does not contradict this conclusion. Apparently because impeachment has been so rare, there was no discussion of this problem at the time. This is the first occasion that articles of presidential impeachment will go to the floor of the House since the Twenty-Third Amendment was added to the Constitution in 1961. This is a case of first impression.

The Twenty-Third Amendment is part of our Constitution's progressive inclusion of all ''the governed'' in the processes of government. The Fifteenth Amendment secured the right of African-Americans to vote. The Nineteenth Amendment extended the right to vote to women. The Twenty-Fourth Amendment abolished the poll tax. The Twenty-Sixth Amendment gave the right to vote to 18-year olds. All of these suffrage amendments have been interpreted liberally to secure the inclusion of once disenfrachised Americans. As the Supreme Court stated in *Reynolds* v. *Sims* in 1964: ''history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.'' 337 U.S. 533 (1964).

This reasoning applies equally to the Twenty-Third Amendment and American citizens who happen to live in the nation's capital.

The case for the Delegate's vote on impeachment would be harder put if such participation had to be self-executing. But section 2 provides that, ''the Congress shall have power to enforce this article by appropriate legislation.'' Since Congress is given the instrumental role in activating and enforcing the Twenty-Third Amendment, it may interpret that amendment to give the Delegate the right to cast her vote along with the representatives of all the other states that participated in the presidential electoral college.

The Supreme Court has clearly treated impeachment as a political question solely within legislative competence and control. In *Nixon* v. *United States,* 506 U.S. 224 (1993), the Court rejected an impeached judge's attack on Senate Impeachment Rule XI, under which the presiding officer appoints a committee of Senators to ''receive evidence and take testimony.'' The Court found that this process of delegating to a committee was wholly within the Senate's powers because the Senate has ''the sole power to try all Impeachments.'' Article I, Section 3, Clause 6. The Court found that the ''common sense meaning of the word 'sole' is that the Senate alone shall have authority to determine whether an individual should be acquitted or convicted. . . . If the courts may review actions of the Senate in order to determine whether that body 'tried' an impeached official, it is difficult to see how the Senate would be 'functioning . . . independently and without assistance or interference.' ''

Just as the Senate has the ''sole power'' to shape and control the trial process, the House of Representatives has the ''sole power of Impeachment'' in the first instance. Article I, Section 2, Clause 5. As the Nixon Court itself pointed out in discussing the nonreviewability of the Senate trail, ''the word 'sole' appears only one other time in the Constitution—with respect to the House of Representatives' sole Power of Impeachment.'' Thus, like the Senate, the House of Representatives is free to structure the impeachment proceeding consistent with its own judgment of constitutional requirements.

The Delegate's participation on the impeachment articles can thus be accomplished by way of a House rule. Article 1, Section 5 of the Constitution generally makes "Each House" both "the Judge of the Elections, Returns and Qualifications of its own Members" and the sole body to "determine the Rules of its proceedings." As precedent, the House unilaterally granted the Delegate from the District of Columbia and other Delegates full power to vote in Committee of the Whole deliberations, a decision upheld against constitutional attack in *Michel* v. *Anderson.* This case, too, presents little constitutional difficulty because the House is not acting in its bicameral legislative capacity but rather in its unilateral capacity to "have the sole power of Impeachment" under Article 1, Section 2. Thus, the House must be able to design and enforce its own rules for conducting the impeachment process.

The Supreme Court has recognized an extremely broad degree of interpretive powers under congressional enforcement clauses found in the Constitution's suffrage amendments. In Katzenbach versus Morgan it upheld the power of Congress, under Section 5 of the Fourteenth Amendment, to override a New York law and grant the right to vote to all persons who had completed the sixth grade in Puerto Rican schools regardless of their inability to read or write English. The Court rejected the argument that Congress' powers under the enforcement clause were limited only to what the Fourteenth Amendment itself required, stating rather that: "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective."

The Court emphasized that Congress was acting to protect voting rights and expressed reluctance to interfere with congressional judgement in this field. The Court said: "It was well within congressional authority to say that this need of the Puerto Rican minority for the vote warranted federal intrusion upon any state interests served by the English literacy requirement. It was for Congress, as the branch that made this judgement, to assess and weigh the various conflicting considerations . . ."

The Court concluded that any legislation enacted under the enforcement clause of the Fourteenth Amendment was permissible so long as the enactment "'is plainly adapted to [the] end'" of enforcing Equal Protection and "is not prohibited by but is consistent with 'the letter and spirit of the Constitution,'" regardless of whether Equal Protection itself dictates such a result.

Elsewhere, the Court has also found that enforcement clauses give the Congress the power to act to vindicate voting interests even where a particular statutory result is not constitutionally required. In South Carolina versus Katzenbach, the Court upheld Congress' power under Section 2 of the Fifteenth Amendment to enact the Voting Rights Act of 1965, which included a ban on literacy tests, the requirement that new voting rules must be precleared, and the use of federal voting examiners. The Court stated that "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." These powers are defined in these terms: "Whatever legislation is appropriate, that is, adapted to carry out the objects the [Reconstruction] amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

In Oregon versus Mitchell, the Court unanimously upheld the Voting Rights Act Amendments of 1970, which banned literacy tests for five years. Using a mere rationality test, the court found that Congress could rationally have found that these measures were needed to attack the perpetuation of racial discrimination. In City of Rome

versus United States, the Court upheld Congress' Section 2 power to ban electoral changes that are discriminatory in effect intentional discrimination in voting. Thus, the Court found that Congress' enforcement authority under Section 2 went beyond the strict requirements of Section 1. The Court stated that it "is clear . . . that under Section 2 of the Fifteenth Amendment Congress may prohibit practices that in and of themselves do not violate Section 1 of the Amendment, so long as the prohibitions attacking racial discrimination in voting are 'appropriate.' "

Because the Twenty-Third Amendment is an attempt to bring voting rights to a historically disenfranchised population, its enforcement clause should be read in a very broad way consistent with the Court's deference to congressional enforcement of suffrage rights. It is also relevant that the District Clause, contained in Article 1, Section 8, Clause 17 of the Constitution, provides that Congress shall exercise "exclusive Legislation in all cases whatsoever over "the District." This "plenary power" has been interpreted by the Supreme Court to give Congress complete authority over the District. There is thus ample constitutional basis for Congress having the final authority to define the meaning of the Twenty-third amendment, given that this is a "case" involving the District. The courts, at any rate, would, in all likelihood, treat this matter as a political question solely within the legislative competence, as impeachment is clearly a political question, as determined by the Supreme Court in *Nixon* versus *United States*, 506 U.S. 224 (1993).

The SPEAKER pro tempore. Are there other Members who wish to be heard?

The Chair is prepared to rule. The resolution offered by the gentlewoman from the District of Columbia seeks to provide the Delegate from the District of Columbia the right to vote in the House on a resolution of impeachment.

Pursuant to Title II, section 25(a) of the United States Code, the Delegate to the House of Representatives from the District of Columbia is accorded a seat in the House, with the right of debate but not of voting.

Under rule XII of the rules of the House, the right of a Delegate to vote is confined to committee. The Chair will state a basic principle on proper questions of privilege as recorded on page 366 of the House Rules and Manual.

A question of the privileges of the House may not be invoked to affect a change in the rules or standing orders of the House. Altering the right to vote of a delegate is tantamount to a change in the rules of the House and is not a proper question of privilege.

§ 2.7 In response to parliamentary inquiries, the Speaker confirmed that, under the precedents of the House,[91] Delegates and the Resident Commissioner are ineligible to sign discharge petitions, and the Chair declines to entertain a unanimous–consent request to that effect.

On October 1, 2003,[92] the Chair entertained parliamentary inquiries regarding the inability of Delegates and the Resident Commissioner to sign discharge petitions:

91. *Parliamentarian's Note:* On April 15, 1936, Speaker Joseph Byrns of Tennessee held that the discharge rule required "the exact number of 218 *Members* . . . irrespective of temporary vacancies dues to death, resignation, or other causes." (emphasis added). Deschler's Precedents Ch. 18 § 1.2. As Delegates and Resident Commissioners are not counted as part of the "total membership of the House" under the rule (Rule XV, clause 2(b); *House Rules and Manual* § 892 (2021)), they are unable to sign discharge petitions.

92. 149 CONG. REC. 23853, 108th Cong. 1st Sess.

CONCURRENT RECEIPT

The SPEAKER pro tempore (Mrs. [Candice] MILLER of Michigan). Under a previous order of the House, the gentlewoman from Guam (Ms. BORDALLO) is recognized for 5 minutes.

Ms. [Madeleine] BORDALLO [of Guam]. . . .

Madam Speaker, the people of Guam are shy people. It takes a lot of courage for them to stand up in public and to speak out their mind. So when Victor spoke to me about concurrent receipt, I listened. He served our country with duty and honor and pride, and now it is time for us to step up and do the same. If just one of my colleagues will sign that discharge petition today, they will have the deepest thanks from the people of Guam and a very grateful Delegate who cannot sign the petition.

Mr. [Bob] FILNER [of California]. Madam Speaker, will the gentlewoman yield?

Ms. BORDALLO. I yield to the gentleman from California.

PARLIAMENTARY INQUIRY

Mr. FILNER. Madam Speaker, would it be in order to ask unanimous consent to request to allow the gentlewoman to sign the discharge petition?

The SPEAKER pro tempore. No, the Chair will not entertain that request.

Mr. FILNER. Why is that?

The SPEAKER pro tempore. The respective rights and privileges of the Members and Delegates are established by rules and by law; so that unanimous consent request will not be entertained.

Mr. FILNER. Madam Speaker, I thank the gentlewoman for bringing this up because this is an insult to her constituents, it is an insult to her. I will say if the Democrats get control of the House, the right to vote and sign discharge petitions, we hope, will get back to the delegates.

Ms. BORDALLO. Madam Speaker, I thank the gentleman for his interest and concern.

§ 2.8 The rank of a Delegate or Resident Commissioner on a committee of the House may be adjusted by privileged resolution in the same manner that the rank of a Member may be so adjusted.

On August 11, 1992,[93] the following privileged resolution was offered to adjust the ranks of the Delegate from American Samoa and the Resident Commissioner from Puerto Rico on the Committee on Foreign Affairs:

ESTABLISHING RANK OF MEMBERSHIP ON COMMITTEE ON FOREIGN AFFAIRS

Mr. [Steny] HOYER [of Maryland]. Mr. Speaker, I offer a privileged resolution (H. Res. 550) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 550

Resolved, That Antonio J. Colorado, of Puerto Rico, elected to the Committee on Foreign Affairs on March 17, 1992, pursuant to H. Res. 400, shall rank after Eni F.H. Faleomavaega, of American Samoa, thereon.

93. 138 CONG. REC. 23030, 102d Cong. 2d Sess.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 2.9 Under former practice,[94] Delegates and Resident Commissioners were not eligible to be appointed to conference committees, and where a Delegate was inadvertently appointed, the House vacated the appointment by unanimous consent.

On September 18, 1973,[95] the Speaker made the following conferee appointments:

APPOINTMENT OF CONFEREES ON S. 1141, TO PROVIDE NEW COINAGE DESIGN FOR BECENTENNIAL OF THE AMERICAN REVOLUTION

Mr. [John] PATMAN [of Texas]. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 1141) an act to provide a new coinage design and date emblematic of the Bicentennial of the American Revolution for dollars, half dollars, and quarter dollars, to authorize the issuance of special gold and silver coins commemorating the Bicentennial of the American Revolution, and for other purposes, and agree to the conference asked by the Senate.

The SPEAKER.[96] Is there objection to the request of the gentleman from Texas?

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, reserving the right to object, is this just permission to go to conference?

Mr. PATMAN. Mr. Speaker, it is.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Mr. PATMAN, Mrs. SULLIVAN, Messrs. FAUNTROY, MITCHELL of Maryland, BARRETT, GONZALEZ, YOUNG of Georgia, STARK, MOAKLEY, WIDNALL, WYLIE, Mrs. HECKLER of Massachusetts, Messrs. MCKINNEY, RINALDO, and RONCALLO of New York.

Later that day,[97] a Member asked unanimous consent to authorize the Speaker to appoint a Member in lieu of the Delegate from the District of Columbia (who was ineligible to serve as a conferee under the rules of the House at that time):

WITHDRAWAL OF APPOINTMENT AS CONFEREE AND APPOINTMENT AS CONFEREE ON S. 1141 TO PROVIDE NEW COINAGE DESIGN AND DATE COMMEMORATING BICENTENNIAL OF AMERICAN REVOLUTON

Mr. PATMAN. Mr Speaker, prior to the Speaker's appointment of conferees on the bill S. 1141 today I had inadvertently recommended that the Delegate from the District of Columbia (Mr. FAUNTROY) be named as a conferee.

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94. *Parliamentarian's Note:* At the time of this precedent, the Speaker had no authority to appoint Delegates or Resident Commissioners to conference committees. In the 96th Congress, the Speaker was given authority to appoint Delegates and the Resident Commissioner to conferences where such individuals served on the relevant committees of jurisdiction. In the 103d Congress, this authority was expanded to encompass any conference. See *House Rules and Manual* § 676 (2021).

95. 119 CONG. REC. 30144, 93d Cong. 1st Sess.

96. Carl Albert (OK).

97. 119 CONG. REC. 30144, 93d Cong. 1st Sess.

I therefore ask unanimous consent that the Speaker designate a Member as a conferee in lieu of the Delegate from the District of Columbia.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none and appoints the gentleman from New York (Mr. KOCH) as a conferee.

§ 2.10 Under former practice, Delegates and Resident Commissioners were not eligible to be appointed to select committees, and unanimous consent was required to permit the Speaker to make such an appointment.

Although the standing rules of the House have allowed the Speaker to appoint Delegates and Resident Commissioners to select committees since the 96th Congress, prior to this time unanimous consent was required to authorize the Speaker to make such appointments (as was done on September 21, 1976):[98]

AUTHORIZING THE SPEAKER TO APPOINT THE DELEGATE FROM THE DISTRICT OF COLUMBIA AS ONE OF THE MEMBERS OF THE SELECT COMMITTEE AUTHORIZED BY HOUSE RESOLUTION 1540

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker. I ask unanimous consent that the Speaker be authorized to appoint the delegate from the District of Columbia as one of the members of the select committee authorized by House Resolution 1540.

The SPEAKER.[99] Is there objection to the request of the gentleman from Missouri? There was no objection.

§ 2.11 Inaugural instance of Delegates and the Resident Commissioner voting in the Committee of the Whole pursuant to clause 2 of rule XII (now clause 3(a) of rule III).[100]

On February 3, 1993,[101] Delegates and the Resident Commissioner voted on an amendment in the Committee of the Whole:

The vote was taken by electronic device, and there were—ayes 187, noes 244, not voting 4, as follows:

[Roll No. 15]

AYES—187

Allard	Goodling	Neal (NC)
Archer	Goss	Nussle
Armey	Grams	Orton
Bachus (AL)	Grandy	Oxley

98. 122 CONG. REC. 31673, 94th Cong. 2d Sess. For a similar instance involving the Resident Commissioner form Puerto Rico, see 123 CONG. REC. 33763–64, 95th Cong. 1st Sess. (Oct. 14, 1977).

99. Carl Albert (OK).

100. *House Rules and Manual* § 675 (2021).

101. 139 CONG. REC. 2035–36, 2038, 2041, 103d Cong. 1st Sess.

Baker (CA)
Baker (LA)
Ballenger
Barcia
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Blute
Boehner
Bonilla
Brewster
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Carr
Castle
Clinger
Coble
Collins (GA)
Combest
Condit
Cox
Crane
Crapo
Cunningham
de la Garza
Deal
DeLay
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards (TX)
Emerson
Everett
Ewing
Fawell
Fields (TX)
Fowler
Franks (CT)
Gallegly
Gallo
Gekas
Geren
Gilchrest
Gillmor
Gingrich
Goodlatte
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hobson
Hoekstra
Hoke
Horn
Houghton
Huffington
Hunter
Hutchinson
Hyde
Inglis
Inhofe
Istook
Johnson (CT)
Johnson, Sam
Kasich
Kim
King
Kingston
Knollenberg
Kolbe
Kopetski
Kyl
Lancaster
Lazio
Leach
Levy
Lewis (CA)
Lewis (FL)
Lightfoot
Linder
Livingston
Lloyd
Manzullo
McCandless
McCollum
McCrery
McDade
McHugh
McInnis
McKeon
McMillan
Meyers
Mica
Michel
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Packard
Paxon
Payne (VA)
Penny
Peterson (MN)
Petri
Pickett
Pickle
Pombo
Porter
Pryce (OH)
Quillen
Quinn
Ramstad
Regula
Ridge
Roberts
Rogers
Rohrabacher
Roth
Rowland
Royce
Santorum
Schaefer
Schiff
Sensenbrenner
Shaw
Shuster
Sisisky
Skeen
Slattery
Smith (MI)
Smith (OR)
Smith (TX)
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (WY)
Torkildsen
Upton
Valentine
Vucanovich
Walker
Walsh
Weldon
Whitten
Wolf
Young (FL)
Zeliff

NOES—244

Abercrombie
Ackerman
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Bacchus (FL)
Baesler
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bevill
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamburg
Harman
Hastings
Hefner
Hilliard
Hinchey
Hoagland
Hochbrueckner
Holden
Owens
Pallone
Parker
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Ravenel
Reed

Bilbray
Bishop
Blackwell
Boehlert
Bonior
Borski
Boucher
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Cooper
Coppersmith
Costello
Coyne
Cramer
Danner
Darden
de Lugo (VI)
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Engel
English (AZ)
English (OK)
Eshoo
Evans
Faleomavaega (AS)
Fazio
Fields (LA)
Filner
Fingerhut
Fish
Flake
Foglietta
Ford (MI)
Frank (MA)
Franks (NJ)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Hoyer
Hughes
Hutto
Inslee
Jacobs
Jefferson
Johnson (GA)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Klein
Klink
Klug
Kreidler
LaFalce
Lambert
Lantos
LaRocco
Laughlin
Lehman
Levin
Lewis (GA)
Lipinski
Long
Lowey
Machtley
Maloney
Mann
Manton
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCurdy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murphy
Murtha
Nadler
Natcher
Neal (MA)
Norton (DC)
Oberstar
Obey
Olver
Ortiz
Reynolds
Richardson
Roemer
Romero-Barcelo (PR)
Ros-Lehtinen
Rose
Rostenkowski
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Saxton
Schenk
Schroeder
Schumer
Scott
Serrano
Sharp
Shays
Shepherd
Skaggs
Skelton
Slaughter
Smith (IA)
Smith (NJ)
Snowe
Spratt
Stark
Stokes
Strickland
Studds
Stupak
Swett
Swift
Synar
Tanner
Tejeda
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Underwood (GU)
Unsoeld
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt
Waxman
Wheat
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOT VOTING—4

Ford (TN)
Henry
Washington
Young (AK)

PARLIAMENTARY INQUIRY

Mr. [Newt] GINGRICH [of Georgia]. Madam Chairman, it is 8:10. I simply want to clarify, on a parliamentary inquiry, whether or not on the last vote, if we count only the States which have been admitted to the Union, the vote was 187 to 239, and that in fact the additional 5 votes include four Delegates whose territories do not pay taxes to the U.S. Treasury and one Delegate, so that all five are Delegates, not currently States, but the vote among the States, those Representatives representing the State, was actually 187 to 239. I simply want to clarify for the RECORD that that was the vote among Representatives.

The CHAIRMAN.[102] The gentleman's statement which is not a parliamentary inquiry will appear in the RECORD.

Under the rule, it is now in order for the gentleman from Pennsylvania [Mr. GOODLING] to offer his second amendment.

AMENDMENT OFFERED BY MR. GOODLING

Mr. [William] GOODLING [of Pennsylvania]. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment offered by Mr. GOODLING: Amend section 101(2)(B) to add a new clause as follows:
> (iii) any employee of an employer whose absence during leave would clearly result in substantial and grievous economic injury to the operations of the employer or substantial endangerment to the health and safety of other employees of the employer or the public. . . .

Mr. GINGRICH. Madam Chairman, I want to make certain that at this point the RECORD would show that among those Representatives——

The CHAIRMAN. May the Chair ask: Is the gentleman making a parliamentary inquiry?

PARLIAMENTARY INQUIRY

Mr. GINGRICH. Madam Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GINGRICH. Madam Chairman, I inquire whether it would be accurate to state that on the last vote among those Representatives representing States, the vote was 184 to 233 against, and among those delegates not representing States, the vote was 0 in favor and 5 against.

The CHAIRMAN. The vote in the RECORD will indicate that, and the Chair feels that this is not a parliamentary inquiry but rather a statement of fact.

Mr. GINGRICH. Madam Chairman, I was just inquiring of the Chair if that is how it would show in the RECORD.

The CHAIRMAN. The vote will appear in the RECORD, sir.

Mr. GINGRICH. I thank the chairman. . . .

So the amendment was agreed to.

The result of the vote was announced as above recorded.

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102. Barbara Kennelly (CT).

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as modified, as amended.

PARLIAMENTARY INQUIRY

Mr. GINGRICH. Madam Chairman, I was going to make a parliamentary inquiry. I am not sure what the Chair is doing, and I think we need order before we rush through whatever the next phase is.

The CHAIRMAN. The gentleman was on his feet, and the gentleman will state his parliamentary inquiry.

Mr. GINGRICH. Madam Chairman, my parliamentary inquiry was, were there any votes cast on that amendment which were in violation of article I, section 2 of the Constitution?

The CHAIRMAN. That is not a parliamentary inquiry.

Mr. GINGRICH. I would ask the Chair, it is not a legitimate inquiry to ask the nature of the votes which were just cast? At what point is it appropriate to ask the nature of the votes which were just cast, I would ask the Chair?

The CHAIRMAN. The Chair replies that the votes were cast in accordance with the rules as adopted by this House.

Mr. GINGRICH. That was not my question, Madam Chairman. I would ask the Chair, all I am seeking, article I, section 2, simply mentions Representatives of the States.

I would make my inquiry differently, Madam Chairman. I would inquire of the Chair, were there any votes cast on the last amendment which were cast by people not Representatives of the States?

The CHAIRMAN. The Chair responded when the question was asked in another manner previously. The vote was announced. The vote will appear in the RECORD as was taken and was announced.

Mr. GINGRICH. I misunderstood the Chair. The Chair, I thought, reassured me on the two previous occasions that in the RECORD it would show both the votes by State Representatives and the votes by delegates as clearly separate. Maybe I did not hear in the confusion, but did the Chair announce the votes? I must have misunderstood.

The CHAIRMAN. The Chair announced that the votes would appear in the RECORD tomorrow as cast under the rules.

Mr. GINGRICH. I would ask the Chair, meaning lumped together, so that the Representatives and delegates would be lumped together in one vote?

The CHAIRMAN. It would be alphabetical; the ayes and then the noes.

Mr. GINGRICH. I thank the Chair for allowing me to ask that.

§ 2.12 When a vote is taken in the Committee of the Whole, and the votes of the Delegates and the Resident Commissioner are found to be determinative of the outcome,[103] the Committee of the Whole rises automatically, the vote is recapitulated in the House

103. *Parliamentarian's Note:* The House essentially utilizes a "but for" test to determine whether the votes of the Delegates and the Resident Commissioner were decisive (*i.e.*, but for the votes of the Delegates and the Resident Commissioner, the outcome of the vote would have been different).

(where the Delegates and the Resident Commissioner are ineligible to vote), and the decision of the Committee of the Whole may be reversed.

On March 17, 1994,[104] an amendment in the nature of a substitute was considered in the Committee of the Whole and rejected. Pursuant to clause 2(d) of rule XXIII (now clause 6(h) of rule XVIII),[105] the Committee rose automatically and the chair of the Committee of the Whole reported to the House that the votes of the Delegates and the Resident Commissioner had been decisive in rejecting the amendment. Thus, pursuant to the rule, the vote was taken again in the House, and the amendment in the nature of a substitute was adopted:

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BARTON OF TEXAS

Mr. [Joe] BARTON of Texas. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN.[106] The Clerk will report the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. BARTON of Texas: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE—

''SECTION 1. Prior to each fiscal year, Congress shall adopt a statement of receipts and outlays for such fiscal year in which total outlays are not greater than total receipts . . .

RECORDED VOTE

Mr. BARTON of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 215, not voting 10, as follows:

[Roll No. 62] . . .

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Pursuant to clause 2(d) of rule XXIII the Committee rises.

Pursuant to clause 2(d) of rule XXIII the Committee rose; and the Speaker pro tempore [Mr. BONIOR] having assumed the chair, Mr. SKAGGS, Chairman of the Committee of the

104. 140 CONG REC. 5341, 5351–52, 103d Cong. 2d Sess. For a similar instance later in the same Congress, see 140 CONG. REC. 14382–84, 103d Cong. 2d Sess. (June 24, 1994).

105. *House Rules and Manual* § 985 (2021).

106. David Skaggs (CO).

Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (House Joint Resolution 103) proposing an amendment to the Constitution to provide for a balanced budget for the Government and for greater accountability in the enactment of tax legislation, directs him to report that on a recorded vote on an amendment the votes of the delegates and of the Resident Commissioner from Puerto Rico were decisive.

The SPEAKER pro tempore.[107] The Clerk will report the amendment.

The Clerk read as follows:

> Amendment in the nature of a substitute offered by Mr. BARTON of Texas: Strike all after the resolving clause and insert the following:
>
> That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:
>
> "ARTICLE—
>
> ''SECTION 1. Prior to each fiscal year, Congress shall adopt a statement of receipts and outlays for such fiscal year in which total outlays are not greater than total receipts. . . .

Mr. [Robert] WALKER [of Pennsylvania] (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. Pursuant to clause 2 of rule XXIII, the Chair will now put the question de novo on the amendment in the nature of a substitute offered by the gentleman from Texas [Mr. BARTON].

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

RECORDED VOTE

Mr. [David] PRICE of North Carolina. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 211, noes 204, not voting 18, as follows:

[Roll No. 63] . . .

So the amendment in the nature of a substitute was agreed to.

§ 2.13 When a vote is taken in the Committee of the Whole, and the votes of the Delegates and the Resident Commissioner are found to be determinative of the outcome,[108] the Committee of the

107. David Bonior (MI).

108. *Parliamentarian's Note:* The House essentially utilizes a "but for" test to determine whether the votes of the Delegates and Resident Commissioners were decisive (*i.e.*, but

Whole rises automatically, the vote is recapitulated in the full House (where the Delegates and the Resident Commissioner are ineligible to vote), and the decision of the Committee of the Whole may be affirmed.

On June 18, 2009,[109] an amendment was considered in the Committee of the Whole and rejected. Pursuant to clause 6(h) of rule XVIII,[110] the Committee rose automatically and the chair of the Committee of the Whole reported to the House that the votes of the Delegates and the Resident Commissioner had been decisive in rejecting the amendment. Thus, pursuant to the rule, the vote was taken in the full House, and the amendment was again rejected:

AMENDMENT NO. 118 OFFERED BY MR. LEWIS OF CALIFORNIA

The CHAIR.[111] The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. LEWIS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 118 offered by Mr. LEWIS of California:

> At the end of the bill (before the short title), insert the following:
> ''SEC. None of the funds made available in this Act may be used to implement Executive Order 13492, issued January 22, 2009, titled ''Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities''.''

RECORDED VOTE

The CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIR. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 212, noes 216, not voting 11, as follows:

[Roll No. 360] . . .

ANNOUNCEMENT BY THE CHAIR

The CHAIR (during the vote). There are 2 minutes remaining in the vote.

Ms. WASSERMAN SCHULTZ changed her vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIR. Pursuant to clause 6(h) of rule XVIII, the Committee rises.

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for the votes of the Delegates and the Resident Commissioner, the outcome of the vote would have been reversed).

109. 155 CONG. REC. 15624–26, 111th Cong. 1st Sess.

110. *House Rules and Manual* § 985 (2021).

111. Jason Altmire (PA).

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HOLDEN) having assumed the chair, Mr. ALTMIRE, Chair of the Committee of the Whole House on the State of the Union, reported to the House that during consideration of the bill (H.R. 2847) making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes, pursuant to Resolution 552, the votes cast by the Delegates and the Resident Commissioner were decisive on a recorded vote on the amendment offered by the gentleman from California (Mr. LEWIS).

PARLIAMENTARY INQUIRY

Mr. [Tom] PRICE of Georgia. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore.[112] The gentleman will state his inquiry.

Mr. PRICE of Georgia. Mr. Speaker, my understanding is that because the vote in the Committee of the Whole was within the margin of the number of Delegates that there are in the House, the Committee has now risen and we're in the Whole House and the vote that we are about to have will be the same amendment; is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. PRICE of Georgia. I thank the Speaker.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The Clerk designated the amendment.

The SPEAKER pro tempore. Pursuant to clause 6(h) of rule XVIII, the Chair will put the question to the House de novo.

The question is on the amendment.

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

Mr. PRICE of Georgia. 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 212, nays 213, not voting 9, as follows:

[Roll No. 361] . . .

So the amendment was rejected.

The result of the vote was an announced as above recorded.

The SPEAKER pro tempore. Pursuant to clause 6(h) of rule XVIII, the Committee will resume its sitting.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2847) making appropriations for the Departments of Commerce and Justice, and Science, and Related Agencies for the fiscal year ending September 30, 2010, and for other purposes, with Mr. ALTMIRE in the chair.

The Clerk read the title of the bill.

The CHAIR. When the Committee of the Whole rose earlier today, the amendment offered by the gentleman from California (Mr. LEWIS) had been rejected on a recorded vote on which the votes cast by the Delegates and the Resident Commissioner were decisive.

112. Thomas Holden (PA).

That result has since been affirmed by the House.

§ 2.14 In response to parliamentary inquiries, the chair of the Committee of the Whole confirmed that the votes of the Delegates and the Resident Commissioner were not decisive of the outcome, and thus no revote in the House was required under the rule.

On April 20, 1994,[113] the House rejected an amendment in the Committee of the Whole by a vote of 212 ayes to 217 noes (with nine Members not voting). In response to parliamentary inquiries, the chair of the Committee of the Whole confirmed that the votes of the Delegates and the Resident Commissioner (all voting in the negative) were not decisive of the outcome as, absent their votes, the amendment would still have been rejected on a tie vote:

The CHAIRMAN.[114] All time has expired. The question is on the amendment offered by the gentleman from Florida [Mr. MCCOLLUM].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. [Ira] MCCOLLUM [of Florida]. Mr. Chairman, on that I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 212, noes 217, not voting 9, as follows:

[Roll No. 131] . . .

PARLIAMENTARY INQUIRIES

Mr. [Thomas] DELAY [of Texas]. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DELAY. Mr. Chairman, I think I know the answer to this inquiry, but for the record, Mr. Chairman, the Delegates number 5.

Is it true that the delegates voting, if we voted again, would cause a tie, and the amendment would fail because of a tie?

The CHAIRMAN. The gentleman correctly states that the votes cast by delegates were not decisive.

Had the Delegates not voted, it would have been a tie. On a tie vote, the amendment fails.

Mr. DELAY. So actually one could say it is a tie, so each vote to the negative on the amendment is a very crucial vote?

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113. 140 CONG. REC. 7936–37, 103d Cong. 2d Sess. For a similar instance where, in response to parliamentary inquiries, the Chair confirmed that the votes of the Delegates and Resident Commissioners were not decisive of the outcome, see 139 CONG. REC. 10408–409, 103d Cong. 1st Sess. (May 19, 1993).

114. Robert Torricelli (NJ).

The CHAIRMAN. That is not a parliamentary inquiry. The Chair answered the inquiry as it was stated.

Mr. [Newt] GINGRICH [of Georgia]. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman from Georgia will state his parliamentary inquiry.

Mr. GINGRICH. Mr. Chairman, I just want to clarify, because I do not think, given the way the House currently counts votes, that a normal citizen would realize that the real vote among the elected Members was 212 to 212.

The CHAIRMAN. The gentleman must state a parliamentary inquiry.

Mr. GINGRICH. In the record, among Members, not counting Delegates, is it correct, first, that the vote was 212 to 212?

The CHAIRMAN. If the gentleman's inquiry is whether or not the delegates were decisive in the outcome, they were not. Had they not voted, it would have been a tie vote, and the amendment would have failed. If that is the gentleman's inquiry, the Chair has answered it.

Mr. GINGRICH. And therefore, each of the 212 was the decisive vote?

The CHAIRMAN. The gentleman is not stating a parliamentary inquiry.

Mr. MCCOLLUM. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. MCCOLLUM. Do not the rules state that when a vote is decided by five or fewer votes and the Delegates have voted, the five Delegates, that a revote is in order regardless of what the outcome might or might not be, hypothetically?

The CHAIRMAN. That is not correct. The rule operates where they are decisive, which means where there would have been a different outcome, had they not voted.

Mr. MCCOLLUM. But since there were, in fact, nine Members, the inquiry is this, Mr. Chairman: Where there were Members not voting, in this case there were nine Members not voting, would not the possibility of a revote be that five or fewer votes could change the outcome in a situation like we have before us today on this previous vote?

The CHAIRMAN. A motion to reconsider is not in order in the Committee of the Whole.

Mr. [Barney] FRANK of Massachusetts. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Is there some procedure by which you can explain the rules to them elsewhere so we can get on with the business?

The CHAIRMAN. That is also not a parliamentary inquiry.

§ 2.15 In response to parliamentary inquiries, the Speaker pro tempore affirmed that, because of the votes of the Delegates and the Resident Commissioner, the number of total possible votes permitted in the Committee of the Whole differs from the total number of possible votes permitted in the House.

On May 2, 2007,[115] the Speaker pro tempore answered parliamentary inquiries regarding the Delegate voting rule as follows:

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. WEINER) having assumed the chair, Mr. KIND, Acting Chairman of the Committee of the Whole House

115. 153 CONG. REC. 11081, 110th Cong. 1st Sess.

on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1429) to reauthorize the Head Start Act, to improve program quality, to expand access, and for other purposes, pursuant to House Resolution 348, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore.[116] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment reported from the Committee of the Whole?

PARLIAMENTARY INQUIRY

Mr. [Tom] PRICE of Georgia. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. PRICE of Georgia. Mr. Speaker, isn't it true that under the rules adopted by this House, the number of votes allowed in the Committee of the Whole is different than the number of votes allowed when the House sits?

The SPEAKER pro tempore. The gentleman is correct.

Mr. PRICE of Georgia. Mr. Speaker, further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. PRICE of Georgia. Isn't it further true, Mr. Speaker, that because of the rules, any re-vote in the House on an amendment that passed in the Committee of the Whole with full participation, the total votes cast would be different?

The SPEAKER pro tempore. That is correct.

Mr. PRICE of Georgia. I thank the Speaker.

The SPEAKER pro tempore. If not, the question is on the amendment.

The amendment was agreed to.

§ 2.16 Inaugural instance of the Speaker appointing a Delegate to serve as chair of the Committee of the Whole.[117]

On October 6, 1994,[118] the Delegate from the U.S. Virgin Islands served as chair pro tempore of the Committee of the Whole:

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the joint resolution (H.J. Res. 416) providing limited authorization for the participation of United States Armed Forces in the multinational force in Haiti and providing for the prompt withdrawal of United States Armed Forces from Haiti, with Mr. DERRICK, Chairman pro tempore, in the chair.

The Clerk read the title of the joint resolution. . . .

Mr. [Benjamin] GILMAN [of New York]. Mr. Chairman, I am pleased to yield 3 minutes to the gentlewoman from New York [Ms. MOLINARI].

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116. Anthony Weiner (NY).

117. *Parliamentarian's Note:* The rule permitting Delegates and the Resident Commissioner to preside over the Committee of the Whole was adopted for the first time in the 103d Congress. This rule was repealed in the 104th Congress, reinstated in the 110th Congress, repealed in the 112th Congress, and reinstated in the 115th Congress. See *House Rules and Manual* § 970 (2021).

118. 140 CONG. REC. 28529, 28533, 103d Cong. 2d Sess.

The Chairman pro tempore (Mr. [Ron] DE LUGO [of Virgin Islands]) took the chair.

Ms. [Guy] MOLINARI [of New York]. Mr. Chairman, I thank the gentleman for yielding.

§ 2.17 The House adopted a resolution amending the standing rules of the House to reinstate the Delegate voting rule following its repeal in a prior Congress.(119)

On January 24, 2007,(120) the House considered House Resolution 86 (proposing to reinstate the Delegate voting rule) on which the question of consideration was demanded. The question of consideration was decided in the affirmative, and the House (following debate) adopted the resolution as follows:

PERMITTING DELEGATES AND THE RESIDENT COMMISSIONER TO CAST VOTES IN THE COMMITTEE OF THE WHOLE

Mr. [Alcee] HASTINGS of Florida. Madam Speaker, pursuant to House Resolution 86, I call up the resolution (H. Res. 78) amending the Rules of the House of Representatives to permit Delegates and the Resident Commissioner to the Congress to cast votes in the Committee of the Whole House on the state of the Union, and ask for its immediate consideration.

The Clerk read the title of the resolution.

Mr. [Patrick] MCHENRY [of North Carolina]. Madam Speaker, I demand the question of consideration.

The SPEAKER pro tempore (Mrs. [Ellen] TAUSCHER [of California]). The gentleman from North Carolina demands the question of consideration. The question is: Will the House consider the resolution?

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

RECORDED VOTE

Mr. MCHENRY. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 186, not voting 24, as follows:

[Roll No. 56] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

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119. *Parliamentarian's Note:* The Delegate voting rule was initially adopted by the House in the 103d Congress. It was repealed in the following Congress after a switch in party majorities. The rule was reinstated in the 110th Congress, as described in the proceedings below. The rule would be subsequently repealed again in the 112th Congress, but reinstated in the 116th Congress. See *House Rules and Manual* § 675 (2021).

120. 153 CONG. REC. 2140–41, 2150–51, 110th Cong. 1st Sess.

A motion to reconsider was laid on the table. . . .

The SPEAKER pro tempore. The Clerk will re-report the title.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 86, the resolution is considered read.

The text of the resolution is as follows:

H. RES. 78

Resolved,

SECTION 1. VOTING BY DELEGATES AND RESIDENT COMMISSIONER IN COMMITTEE OF THE WHOLE.

(a) PERMITTING VOTES TO BE CAST.—Clause 3(a) of rule III of the Rules of the House of Representatives is amended to read as follows:

''3. (a) In a Committee of the Whole House on the state of the Union, each Delegate and the Resident Commissioner shall possess the same powers and privileges as Members of the House. Each Delegate and the Resident Commissioner shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in such committees the same powers and privileges as the other members of the committee.''.

(b) APPOINTMENT OF CHAIR.—The first sentence of clause 1 of rule XVIII of the Rules of the House of Representatives is amended by striking ''a Chairman'' and inserting ''a Member, Delegate, or the Resident Commissioner as Chairman''.

(c) REPEATING OF CERTAIN VOTES.—Clause 6 of rule XVIII of the Rules of the House of Representatives is amended by adding at the end the following new paragraph:

''(h) Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall rise and the Speaker shall put such question de novo without intervening motion. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.''. . . .

Mr. HASTINGS of Florida. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 86, the previous question is ordered on the resolution.

The question is on the resolution.

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

Mr. HASTINGS of Florida. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 226, nays 191, not voting 18, as follows:

[Roll No. 57] . . .

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

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.

§ 2.18 The daily prayer has been delivered by a guest chaplain sponsored by a Delegate.

On June 26, 1991,[121] the daily prayer was offered by a guest chaplain[122] (the Reverend Kirk D. Monroe) who had been sponsored by the Delegate from the District of Columbia:

The House met at 10 a.m.

The Reverend Kirk D. Monroe, Sr., pastor, Mount Zion United Methodist Church, Washington, DC, offered the following prayer:

Good morning God; we come to You seeking harmony and peace. We ask for Your sovereign protection over the limits and boundaries of our Nation. As You have called us to mark the paths of history we ask for Your wisdom and Your goodness to intern us toward mercy.

We pray for America, for all of her children. Please help us to let justice roll down like waters and righteousness like an everflowing stream. Please guide us and kindle us for fine heroic living; please humble us when the ordinary is transformed into some mountaintop experience for Your people.

So as the rose tells its secret in its perfume, so as the Sun tells its secret in light and heat, may we who serve America tell of its secret in our benevolence and our compassion.

Hear our prayer O God. Amen.

THE JOURNAL

The SPEAKER.[123] The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved. . . .

THE REVEREND KIRK MONROE

(Ms. NORTON asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Ms. [Eleanor] NORTON [of District of Columbia]. Mr. Speaker, it is a personal pleasure to welcome Rev. Kirk Monroe, pastor of Mount Zion United Methodist Church, at 175 years old this year, the oldest black congregation in Washington. Located in Georgetown, Mount Zion United Methodist Church is among a treasure of historic churches located in the Nation's Capital.

It is only fitting that one of our most distinguished and historic churches would have as its minister a distinguished and able young man, a graduate of Howard University Divinity School, who has been cited in the Afro-American newspaper as one of the District's top 25 preachers.

Mr. Speaker, we in the District are grateful for Mount Zion's spiritual and civic influence and for the energetic and excellent contributions of Rev. Kirk Monroe.

121. 137 CONG. REC. 16359, 102d Cong. 1st Sess.

122. For more on guest chaplains, see Precedents (Wickham) Ch. 6 § 16.

123. Tom Foley (WA).

B. Qualifications and Disqualifications

§ 3. Qualifications

The Constitution imposes certain qualifications on individuals seeking to become a Member of the House of Representatives.[1] The first such qualification is age: an individual must be at least 25 years of age in order to become a Member.[2] The second qualification is citizenship: an individual must have been a citizen of the United States for seven years.[3] The third qualification is inhabitancy: an individual must have been an inhabitant of the state in which they were elected at the time of the election.[4]

With respect to the first two qualifications, the Constitution does not specify the point at which the requirements must be met. However, it has been the practice of both Houses of Congress to admit individuals who meet those qualifications at the time at which the oath of office is administered and they formally assume all the rights and privileges of Members of Congress. Thus, where a Member–elect had not yet reached the required age at the opening of the Congress to which he was elected, the administration of the oath was delayed until the constitutional requirement had been met.[5] Similarly, where a Member–elect was a U.S. citizen, but not for the required seven years, the administration of the oath was delayed until the full seven–year period had elapsed.[6] With respect to the third qualification (inhabitancy), the Constitution does specify that the qualification must be met at the time of election.[7]

It has been held that the constitutional qualifications are "exclusive of others."[8] In other words, neither the states (which administer the election

1. U.S. Const. art. I, § 2, cl. 2 ("No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."). See also *House Rules and Manual* §§ 9–13 (2021).
2. U.S. Const. art. I, § 2, cl. 2.
3. U.S. Const. art. I, § 2, cl. 2. The Constitution further defines citizenship as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1.
4. U.S. Const. art. I, § 2, cl. 2.
5. See 1 Hinds' Precedents § 418. For a similar case in the Senate, see Deschler's Precedents Ch. 7 § 10.2.
6. See Deschler's Precedents Ch. 7 §§ 9.2, 10.1.
7. U.S. Const. art. I, § 2, cl. 2 (Representatives must inhabit the state "when elected.").
8. 1 Hinds' Precedents § 414.

of Members), nor the House (which determines who is entitled to seats in the House) has the authority, under the Constitution, to impose additional qualifications on those seeking to become Members. With respect to states, early precedents demonstrate a clear reluctance on the part of the House to refuse to seat individuals who had not met state–mandated requirements for eligibility.(9) With respect to the House itself, in 1967, the House voted to exclude a Member–elect (Adam Clayton Powell of New York) based on alleged corrupt activities occurring in the prior Congress.(10) This action was challenged in Federal court,(11) and eventually led to a Supreme Court ruling in Powell's favor.(12) The Court held that, "Congress is limited to the standing qualifications prescribed in the Constitution . . . since Adam Clayton Powell, Jr., was duly elected by the voters of the 18th Congressional District of New York and was not ineligible to serve under any provision of the Constitution, the House was without power to exclude him from its membership."(13) Similar questions regarding the Senate's ability to exclude qualified individuals from the Senate for campaign violations were raised in the 1940s, though without definitive conclusions.(14)

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9. See, *e.g.*, 1 Hinds' Precedents §§ 414–417. It should be noted that, with respect to vacancies that occur in the Senate, the Constitution provides that "any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct." U.S. Const. amend. XVII. This authorization would seem to allow state legislatures to impose additional qualifications on those appointed to the Senate to fill a vacancy. See Deschler's Precedents Ch. 7 § 9.7 (fn. 17) ("[a] state legislature may empower the state executive to make temporary appointments to the Senate in the event of a vacancy, with the legislature setting qualifications for appointees.").

10. See Deschler's Precedents Ch. 7 §§ 9.1, 11.1. The issue of the final right to the seat in question was investigated by a committee, which recommended seating Powell but subjecting him to fines and other disciplinary actions. This proposition was rejected by the House. Deschler's Precedents Ch. 7 § 9.3.

11. See Deschler's Precedents Ch. 7 § 9.4.

12. *Powell* v. *McCormack,* 395 U.S. 486, 489 (". . . petitioner Powell is entitled to a declaratory judgment that he was unlawfully excluded from the 90th Congress.").

13. *Id.* at 550. For the Court's analysis of constitutional provisions beyond age, habitancy, and citizenship that may be regarded as qualifications of the office, see *id.* at 520 (fn. 41).

14. *Parliamentarian's Note:* In 1941, Senator William Langer of North Dakota was accused of "campaign fraud and conduct involving moral turpitude." Deschler's Precedents Ch. 7 § 9.5. As Sen. Langer had already been sworn in at the time of the challenge, the Senate considered the matter as an expulsion rather than an exclusion, and the expulsion vote failed to achieve the necessary two–thirds majority. Deschler's Precedents Ch. 7 § 11.3. In 1947, Senator Theodore Bilbo of Mississippi was accused of "fraudulent campaign practices" and conspiracy "to prevent the exercise of voting rights of certain citizens." Deschler's Precedents Ch. 7 § 9.6. The issue was postponed due to Sen. Bilbo's

The House (and Senate) have debated the extent to which loyalty to the United States should be considered as a relevant factor in determining whether an individual is qualified to serve in Congress. During the Civil War, Congress enacted the so–called "test oath" (or "ironclad oath") for civil servants and other government employees.[15] The oath required takers to affirm that they had never "voluntarily borne arms against the United States"[16] —which had the intended effect of barring most ex–Confederates from government service. Congress eventually applied the "test oath" to its own Members, and used it to exclude from membership those who could not or would not take the oath.[17] The 14th Amendment to the Constitution, ratified in 1868, provided that anyone who had "engaged in insurrection or rebellion" or who had "given aid or comfort to the enemies" of the United States, was barred from membership in the House or Senate.[18] Congress, by a two–thirds vote of each House, could "remove such disability."[19]

In the aftermath of World War I, another loyalty case came to the House with the election of Victor L. Berger, who had been convicted by a Federal court under a wartime espionage act for distributing antiwar materials.[20] There was no question that Berger had been validly elected, but the House nevertheless chose to exclude Berger on the basis of disloyalty under the 14th Amendment. In the special election to fill the vacancy caused by Berger's exclusion, Berger was again elected, and the House again adopted a resolution to exclude him from membership.[21]

The House has, on occasion, investigated the citizenship status of a Member–elect in order to determine whether the individual has properly met the constitutional requirement.[22] The very first election contest to reach the House in the First Congress involved questions as to the citizenship of the

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ill health, and he died prior to any decision by the Senate. Deschler's Precedents Ch. 7 § 11.2.

15. 20 Stat. 502.

16. *Id.*

17. See 1 Hinds' Precedents §§ 442–453.

18. U.S. Const. amend. XIV, § 3. For election cases involving this provision, see 1 Hinds' Precedents §§ 454–463.

19. U.S. Const. amend. XIV, § 3. Statutes enacted in 1872 (17 Stat. 142) and 1898 (30 Stat. 432) removed such disability for certain groups.

20. For descriptions of the Berger cases in the 66th Congress, see 6 Cannon's Precedents §§ 56–59.

21. See 6 Cannon's Precedents § 59. In the 68th Congress, Victor Berger was again elected, and the House chose to seat him without challenge. Berger also served in the 69th and 70th Congresses.

22. See, *e.g.*, 1 Hinds' Precedents §§ 424–427. For similar citizenship qualification issues in the Senate, see 1 Hinds' Precedents §§ 428–430.

Member–elect.[23] Naturalized citizens meet the constitutional requirement, and there have been historical instances of the House investigating the date of naturalization in order to confirm eligibility.[24] In a 20th century case, the citizenship status of a Member–elect was challenged, and the House resolved the question by seating the Member–elect and referring the issue of the final right to the seat to a committee.[25]

The constitutional requirement of inhabitancy has also been the basis for challenges of, and investigations into, the qualifications of individuals elected to the House.[26] Typically, such cases involve individuals who maintain two residences, and the dispute is centered on which should be considered their primary place of habitation.[27] A distinction has been made between "actual" and "legal" residence for purposes of interpreting this constitutional mandate.[28] The House has generally declined to accept challenges where the individual was engaged in government service at some location (*e.g.*, a foreign country, or the District of Columbia) that was not their primary residence.[29] A contestant in an election contest has been found to be ineligible to pursue his claim due to lack of inhabitancy in the relevant jurisdiction.[30]

The positions of Delegate and Resident Commissioner are not constitutional offices, and therefore the qualifications for Members do not apply.[31] Instead, the qualifications for such positions are laid out in the statutes that create those offices.[32] Nevertheless, these qualifications typically mirror the

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23. See 1 Hinds' Precedents § 420.

24. See 1 Hinds' Precedents §§ 424, 425.

25. See Deschler's Precedents Ch. 7 § 10.3. No further action was taken in the case and the Member served his full term. See Deschler's Precedents Ch. 7 § 11.4.

26. For Senate cases involving the question of inhabitancy, see 1 Hinds' Precedents §§ 437–440.

27. See, *e.g.*, 1 Hinds' Precedents § 432.

28. See 6 Cannon's Precedents § 55 (newspaper correspondent living in D.C. nevertheless maintained his legal residence in Indiana, where he paid taxes and voted).

29. *See, e.g.*, 1 Hinds' Precedents §§ 433, 435. But see 1 Hinds' Precedents § 434 (State Department clerk disqualified due to lengthy habitation in D.C. and the abandonment of any true residence in his home state).

30. See 1 Hinds' Precedents § 436.

31. For more on Delegates and Resident Commissioners generally, see Deschler's Precedents Ch. 7 § 3; and § 2, *supra*.

32. See 2 U.S.C. § 25a; and 48 U.S.C. §§ 892, 1713, 1733, and 1753. In the 27th Congress, the House investigated the qualifications of a Delegate from the Florida Territory, and a committee concluded: "While not strictly or technically a Representative, yet, considering the dignity and importance of the office, the strongest reasons of public policy would require that he should possess qualifications similar to those required by a Representative." 1 Hinds' Precedents § 423.

constitutional qualifications for Members, including the three attributes of age, citizenship, and inhabitancy.[33]

Procedure; Distinguishing Other Requirements

A challenge to the seating of a Member–elect on the basis of qualifications is typically made on opening day of a new Congress.[34] If a Member–elect believes that another Member–elect lacks the requisite qualifications, an objection may be raised to administering the oath of office to the challenged Member–elect. The House may then resolve the issue by: not seating the challenged Member–elect; seating the Member–elect despite the challenge; or seating the challenged Member–elect, but referring the issue of the final right to the seat to a committee.[35] If the House determines that a Member–elect does not meet the constitutional qualifications, the oath of office is not administered, and the Member–elect is termed "excluded" from the House.[36]

An exclusion from the House should be distinguished from an expulsion from the House.[37] In an expulsion proceeding, the individual is already a sworn Member and there is no question as to the individual's right to the seat. Therefore, the constitutional requirement of a two–thirds vote in favor of expulsion applies.[38] By contrast, a proposition to exclude a Member–elect from the House may be adopted by a simple majority vote. This is the case even where the individual has been sworn, but the question as to the final right to the seat is still pending before the House.[39]

An exclusion from the House should also be distinguished from proceedings in the nature of an election contest.[40] Election contests occur

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33. For an earlier statute requiring Delegates from certain territories to be citizens of the United States, see 1 Hinds' Precedents § 431.

34. *Parliamentarian's Note:* If an individual were to be elected to a seat in the House via special election (to fill a vacancy), a qualifications challenge would be made when the Member–elect arrives to take the oath.

35. For more on challenges to seating Members–elect at the organization of a new Congress, see Precedents (Wickham) Ch. 2 § 4.

36. For an earlier treatment of exclusion from the House, see Deschler's Precedents Ch. 12 § 14.

37. For expulsion generally, see Deschler's Precedents Ch. 12 § 13; and Precedents (_____) Ch. 12.

38. U.S. Const. art. I, § 5, cl. 2.

39. Deschler's Precedents Ch. 12 § 14 ("[A]lthough a two–thirds vote is required to expel a Member, only a majority is required to exclude a Member who has been permitted to take the oath of office pending a final determination by the House of his right to the seat.").

40. For election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

when there is a dispute as to whether the individual in question was properly elected—not whether the individual meets the constitutional requirements for membership. However, the procedure is effectively the same: an individual determined by the House not to have been properly elected will be barred from taking a seat (*i.e.*, the administration of the oath of office will not be authorized). In cases where the contestant in an election contest bases their challenge on the claim that the contestee is ineligible to serve for lack of qualification, the House may treat the issue as one of exclusion rather than a contested election.[41] If a Member–elect is excluded from the House for failing to meet the constitutional requirements for eligibility, the candidate receiving the next highest number of votes cast is not entitled to the seat.[42]

Finally, the Constitution mandates other requirements (apart from qualifications) that individuals must meet in order to be admitted to membership in the House. For example, the individual must agree to take the oath of office, as required by article VI of the Constitution.[43] Further, the individual must not hold an "incompatible office"[44] at the time the oath of office is taken.[45] Lastly, if an individual is impeached by the House and convicted by the Senate, they may be subject to "disqualification" from "any Office of honor, Trust or Profit under the United States . . ."[46] Thus, such

41. For examples of the House addressing issues of qualification in the context of an election contest, see, *e.g.*, Precedents (Smith) Ch. 9 §§ 15.4, 29.2, 30.1, and 31.5.

42. *Parliamentarian's Note:* Under early British practice, the opposite rule prevailed: where a candidate for a seat in the House of Commons was determined to be ineligible to serve, the candidate receiving the next highest number of votes would be entitled to the seat. However, in the United States, both Houses of Congress have declared that the determination that an individual elected to Congress is ineligible to serve results in the nullification of the election and a vacancy in the seat in question. See, *e.g.*, 1 Hinds' Precedents §§ 323, 326, 417, 424, 435, 450, 463, and 469; 6 Cannon's Precedents §§ 58, 59; and Deschler's Precedents Ch. 7 § 9.

43. "The Senators and Representatives . . . shall be bound by Oath or Affirmation, to support this Constitution . . ." U.S. Const. art. VI, cl. 3. The form of the oath is provided by statute. See 5 U.S.C. § 3331. As the oath requires individuals to swear or affirm that they will support and defend the Constitution, and "bear true faith and allegiance to the same," the taking of the oath necessarily involves issues of loyalty to the United States. However, the "House has not reached the question whether an express disavowal of the oath" could serve as a bar to membership. Deschler's Precedents Ch. 7 § 12. For earlier precedents regarding the relationship between the oath and qualifications, see 1 Hinds' Precedents §§ 441–463. The Senate (though not the House) has debated the question of whether competency to take the oath (*i.e.*, whether the individual is mentally capable of taking a meaningful oath) should be used as a factor in determining qualifications. See 1 Hinds' Precedents § 441.

44. "No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office." U.S. Const. art. I, § 6, cl. 2.

45. For more on incompatible offices generally, see § 4, *infra.* See also Deschler's Precedents Ch. 7 §§ 13, 14.

46. U.S. Const. art. I, § 3, cl. 7.

individuals may be precluded from membership in the House as a consequence of their prior impeachment and conviction.

§ 4. Incompatible Offices

The separation of powers principle inherent in the structure of the Federal government is manifested in a variety of constitutional provisions. One such provision is found in section 6 of article I,[1] and delineates restrictions on Members of Congress serving simultaneously in other government positions: "No Senator or Representative shall, during the Time for which he was elected, be appointed to any Civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office." This provision ensures that powers delegated to the different branches of government are not commingled by being exercised by the same person.[2]

The prohibition described in this constitutional provision is two–fold. First, a Member of the House may not simultaneously serve in an "office" under the United States, such concurrent service being considered incompatible with service as a Member. Second, a Member may not be appointed to any office that was either created during the time the Member was serving in Congress, or whose compensation was increased during such time. This section discusses both prohibitions.

Definitions; Application

The Constitution does not precisely define an "office" for purposes of determining whether service in Congress is incompatible. Subsequent practice by the House (as well as case law laid down by the courts) has established certain guidelines for determining whether or not a Member may accept an additional office during their term. There has been broad consensus that the primary offices within other branches of the Federal government are incompatible with congressional service.[3] So, for example, Members of Congress

1. U.S. Const. art. I, § 6, cl. 2; and *House Rules and Manual* §§ 96, 97 (2021).
2. In referring to this constitutional provision, an 1864 committee report evinced the view that "[t]he House has ever been awake to this constitutional guaranty of its independence." 1 Hinds' Precedents § 492. Even earlier, in 1816, Rep. John Randolph of Virginia "urged that the House should be very jealous of any invasion of these guaranties of the Constitution." 1 Hinds' Precedents § 506.
3. Similarly, simultaneous service in both Houses of Congress is impermissible. See fn. 6, *infra*.

may not be appointed to Cabinet positions in the executive,[4] or to open seats in the judicial branch,[5] and may not be seated in the Senate,[6] without first resigning their House seats.

An 1867 Supreme Court case[7] articulated certain principles regarding what constitutes a "public office." Specifically, the Court held that: "An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties."[8] In 1899, the Committee on the Judiciary reported to the House the results of its investigation into whether certain Members had accepted incompatible offices.[9] The committee report relied heavily on the *Hartwell* analysis, including the four elements of tenure, duration, compensation (emoluments), and duties.[10] Additionally, the committee report cited other authorities for the proposition that the office must confer upon the individual "legislative, executive, or judicial powers"[11] or "some of the sovereign functions of government, to be exercised . . . for the benefit of the public."[12]

The issues of tenure and duration may be reframed as an inquiry into the temporal nature of the position at issue. Where the position is merely "transient, occasional, or incidental"[13] the office may be deemed to be compatible with service as a Member of the House. For example, early practice showed that Members of Congress would occasionally be appointed by the executive to undertake certain temporary offices—inspector of post roads, examiner of land offices, treaty negotiator, etc.—and a House committee concluded that such temporary service (even if compensated) did not violate the Constitution.[14] By contrast, an examination into concurrent service in

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4. For examples of Members of the House resigning to take positions within the executive branch, see Deschler's Precedents Ch. 37 § 4.2.

5. For examples of Members of the House resigning to assume judicial positions, see Deschler's Precedents Ch. 37 §§ 4.8, 4.9.

6. For examples of Members resigning their House seats in order to serve in the Senate, see Deschler's Precedents Ch. 37 §§ 4.3, 4.4. See also 1 Hinds' Precedents § 502 (where a Member had accepted a seat in the Senate, the House adopted a resolution declaring his House seat vacant).

7. *United States* v. *Hartwell,* 73 U.S. 385 (1867).

8. *Id.* at 393.

9. See 1 Hinds' Precedents § 493.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. See 1 Hinds' Precedents § 495. In 1806, the House considered a resolution declaring "That a contractor under the Government of the United States is an office within the

Congress and the National Guard led one House committee to report that, "it is apparent that a commissioned officer in the National Guard clearly meets the definition in United States v. Hartwell of an officer of the United States; that is, that his office embraces the idea of tenure, duration, emoluments, and duties, and that his duties are continuing and permanent, not occasional and temporary."(15)

The issue of compensation (or emoluments) has been raised on several occasions in the context of determining whether the office under consideration is incompatible with congressional service. As early as 1816, the House debated whether providing compensation to the delegation negotiating the Treaty of Ghent violated the constitutional prohibition.(16) Another war commission (the World War Foreign Debt Commission) was the subject of similar deliberation in the Senate in 1922.(17) There, the majority opinion of a committee report concluded that the offices were incompatible, but minority views, as well as the opinion of the Attorney General, concluded otherwise, and the Senate voted to confirm the appointments.(18) Under the Attorney General's reasoning, the positions were compatible because "[t]he commissioners receive no compensation."(19) In 1945, Congress passed a law providing for U.S. participation in the United Nations. An amendment offered in the House provided that no compensation would be paid to the U.S. representative to the U.N. should such person be a Member of Congress.(20) The legislative history of this amendment reveals that Members believed this provision was necessary to cure possible incompatibility under the Constitution.(21)

With respect to duties, it has been held that some offices require affirmative duties that are inherently in conflict with service in Congress. Although the office of Governor of a state is, by definition, not an office "under the United States," House precedents state that there is "an absolute inconsistency in the functions of the two offices, Member of Congress and governor."(22) But where an office has no duties to perform, acceptance of the

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purview and meaning of the Constitution, and, as such, is incapable of holding a seat in this House." However, the House rejected this resolution. See 1 Hinds' Precedents § 496.

15. See 6 Cannon's Precedents § 60.

16. See 1 Hinds' Precedents § 506.

17. See 6 Cannon's Precedents § 64.

18. *Id.*

19. *Id.* See also 6 Cannon's Precedents § 63 (service on the board of a soldier's home was compatible as "the members of the Board of Managers receive no compensation.").

20. See Deschler's Precedents Ch. 7 § 13.2.

21. *Id.*

22. See 6 Cannon's Precedents § 65. For an example of a Member resigning her seat in the House in order to accept the office of state Governor, see § 4.4, *infra.* For an example of the House adopting a privileged resolution to authorize the administration of the

office by a Member may be permitted. In one instance, a Member retained an office (Federal tax assessor) beyond the beginning of his congressional term, but the House concluded that the assessments had already occurred and that therefore "no official duty remained to be performed" by the Member.[23]

Military Service

The issue of military service has long been a concern of Congress with regard to the constitutional prohibition on incompatible offices. The earliest precedents indicate that the House considered acceptance of a military commission as being fundamentally incompatible with congressional service.[24] In 1803, a Member of the House was appointed by President Thomas Jefferson to a position in the militia of the District of Columbia.[25] The House subsequently voted unanimously for a resolution declaring the Member as having forfeited his seat by this action.[26] Similar cases in the pre–Civil War period stand for the general principle that acceptance of a military commission automatically creates a vacancy in the seat held by the accepting Member.[27]

The issue of concurrent military and congressional service again came before the House in the late 19th century, during both the Civil War[28] and the Spanish–American War.[29] In the context of the latter, the Committee

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oath to a Member–elect following completion of his service as Governor, see § 4.2, *infra.* For a 1792 example of a Member assuming that acceptance of a state judicial position rendered him ineligible for further service in the House, see 1 Hinds' Precedents § 501. For proceedings involving concurrent service as a Member and as an elected municipal officer (city council), see § 4.3, *infra*. It should be noted that any action by the House in response to a Member or Member–elect holding a state or local office must be carefully considered in light of the Supreme Court's holding in *Powell* v. *McCormack,* 395 U.S. 486 (1969). See § 3, *supra.*

23. 1 Hinds' Precedents § 497.

24. *Parliamentarian's Note:* In an 1862 case, the Committee on Elections had occasion to discuss the distinction between service in the Army of the United States and service in a state militia. For purposes of determining constitutional incompatibility, the committee found such distinction "of little importance. If [the Member] was actually mustered into service of the United States, he was, by that act, placed in an office totally incompatible with that of Representative in Congress." 1 Hinds' Precedents § 490.

25. See 1 Hinds' Precedents § 486.

26. *Id.* Rep. John Randolph of Virginia "asked the House, in the important precedent which it was about to establish, to vote unanimously to exclude even the shadow of executive influence."

27. See 1 Hinds' Precedents §§ 487–489.

28. See, *e.g.*, 1 Hinds' Precedents §§ 490–492.

29. See, *e.g.*, 1 Hinds' Precedents §§ 493, 494.

on the Judiciary reported (consistent with earlier cases) that "the office of Member of Congress and an officer in the Army of the United States are incompatible and can not be held at the same time."[30]

During World War I, several Members of the House took leaves of absence in order to attend military training exercises for possible mobilization. In 1916, the Committee on the Judiciary was tasked with investigating whether service in the National Guard was compatible with congressional service. Relying on the *Hartwell* decision,[31] it concluded once again that "the seats of those Members of the House of Representatives who shall accept commissions in the National Guard . . . will at once become vacant."[32] Subsequently, the House did adopt a resolution providing for salary and clerk allowances for such Members during their leaves of absence, subtracting any compensation received for their Army service.[33]

During World War II, the executive played a greater role policing the appropriate boundary between congressional service and military service. As with previous military conflicts, Members began requesting leaves of absence so that they could attend military training exercises.[34] In response, the Secretary of War and the Secretary of the Navy informed the Speaker that activation of Members with reserve commissions would be discouraged, and that new applications for enlistment by Members would not be approved.[35] The President subsequently recalled Members who had been in active military service back to Congress.[36] Faced with the choice of serving either in the House or in the military, some Members chose to resign their House seats.[37] Others chose to delay their taking of the oath of office in order to complete military service before assuming their seats in the House.[38] Unlike in World War I, Members who took leaves of absence for military service during World War II were not provided congressional salary during that period.[39]

An 1899 report noted that "it is settled law that persons on the retired list of the Army do not hold office under the United States in the constitutional sense."[40] However, in 1921, a Member who was commissioned in the

30. 1 Hinds' Precedents § 494.
31. *United States* v. *Hartwell,* 73 U.S. 385 (1867).
32. 6 Cannon's Precedents § 60.
33. See 6 Cannon's Precedents § 61.
34. See Deschler's Precedents Ch. 7 § 14.4.
35. See Deschler's Precedents Ch. 7 § 14.3.
36. *Id.*
37. See Deschler's Precedents Ch. 7 § 14.6.
38. See Deschler's Precedents Ch. 7 § 14.5.
39. See Deschler's Precedents Ch. 7 § 14.7.
40. 1 Hinds' Precedents § 494.

Army reserves requested a leave of absence to attend military training—a request that drew objection on grounds of possible incompatibility.[41] A statute originally enacted in 1956 specifically provides that: "A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity."[42] In 2003, a Member requested an indefinite leave of absence in the expectation that he would be called up from the Army reserves to active duty.[43]

Procedure; Timing

Under modern practice, issues involving incompatible offices are typically resolved before the potential for conflict arises—either via the resignation of the Member from the House prior to the assumption of the other office,[44] or the resignation of a Member–elect from a potentially incompatible position prior to taking a seat in the House. Thus, the House often takes no cognizance of the potential conflict beyond acknowledging the vacancy created by a Member's resignation. In the 19th century, Members would sometimes inform the House that they were accepting an incompatible office (with or without explicitly resigning their House seats), and the House would pass a resolution declaring the affected seat vacant.[45] In one instance, the issue arose whether the adoption of such a resolution constituted, in effect, an expulsion from the House, and would therefore require

41. See 6 Cannon's Precedents § 62.

42. 5 U.S.C. § 2105(d).

43. See § 4.1, *infra.* Although the request was granted without objection, the Member was never called up to active service.

44. See, *e.g.*, § 4.4, *infra*.

45. See, *e.g.*, 1 Hinds' Precedents § 487. Some older proceedings suggested that the acceptance of an incompatible office automatically creates a vacancy in the affected seat, without further action by either the Member or the House. For example, a committee report in 1898 stated that when Members accept Army commissions, their seats "are vacant, and have been since they accepted their commission in the Army. The only action necessary to so declare by resolution, as a matter of convenience and to aid the Speaker and others in discharging their public duties. No act or resolution of Congress can change the legal effect of their acts." 1 Hinds' Precedents § 494. A 1909 committee report likewise stated that "[W]hen a person, while occupying one position accepts another incompatible with the first he, ipso facto, absolutely vacates the office and his title thereto is terminated without any further act or proceeding." 6 Cannon's Precedents § 65. However, it should be noted that this theory is not in consonance with modern practice, and issues involving possible disqualification from service in the House should be viewed in light of the Supreme Court's holding in *Powell* v. *McCormack,* 395 U.S. 486 (1969).

the constitutionally–mandated two–thirds vote.[46] However, the House sustained the Speaker's ruling that the resolution merely declaring the vacancy should not be construed as an expulsion from the House.[47]

Because the constitutional prohibition on incompatible offices applies only to simultaneous service, a relevant factor is timing, *i.e.*, whether the individual actually held both offices at the same time. An individual elected to the House does not become a Member until the term of office begins and the oath of office is taken.[48] Thus, during the period between the certification of the election results and the beginning of the new Congress (when the individual is merely a "Member–elect"), simultaneous service in an otherwise incompatible office is permissible. A Member–elect holding an incompatible office has until the beginning of the Congress to decide whether to accept the House seat and resign the incompatible office, or retain the incompatible office and decline the seat in the House.[49] There have been numerous instances of Members of the House[50] (and Senators)[51] retaining their additional office beyond the start of the new Congress, and delaying the administration of the oath of office until they had resigned the other office.

Creating Offices; Increasing Emoluments

The other prohibition contained in section 6 of article I of the Constitution prevents the appointment of Members of Congress to civil offices of the United States whose "emoluments" were increased by law during the time that the individual served in Congress. The rationale for this constitutional provision is to prohibit Members of Congress from voting to increase the compensation of positions to which said Members may then later be appointed.[52] The same clause of the Constitution prohibits the appointment

46. U.S. Const. art. I, § 5, cl. 2 ("Each House may . . . punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.").

47. 1 Hinds' Precedents §§ 490, 504.

48. For more on the oath of office, see Precedents (Wickham) Ch. 2.

49. "The House has manifestly leaned to the idea that a contestant holding an incompatible office need not make his election until the House has declared him entitled to the seat." 1 Hinds' Precedents § 505. See also 1 Hinds' Precedents §§ 492, 498, and 499 (examples of Members resigning incompatible offices prior to the beginning of a new Congress); 1 Hinds' Precedents § 500 (example of an Army officer elected to Congress but declining to take his seat); and Deschler's Precedents Ch. 7 § 14.6 (examples of Members resigning their House seats to serve in the military in World War II).

50. See Deschler's Precedents Ch. 7 § 14.5. See also § 4.2, *infra.*

51. See 1 Hinds' Precedents § 503; and Deschler's Precedents Ch. 7 § 13.1.

52. *Parliamentarian's Note:* Although the presumed purpose of the clause is to prevent Members of Congress from participating in the design of government positions that

of Members to newly–created positions as well, for the same concerns over possible conflicts of interest.

It has been held that where an increase in compensation is merely speculative, and not a certainty, the constitutional proscription does not apply.(53) For example, where a Member was nominated to become Secretary of Defense, the Attorney General opined that the procedures under the newly–enacted Federal Salary Act for increasing the compensation of Cabinet officials did not provide a guarantee that such an increase would actually occur.(54) Similarly, in 1937, the Senate confirmed a Senator to the Supreme Court, overriding concerns that the new justice might eventually receive retirement benefits that had been increased during his term in the Senate.(55)

In order to avoid any possible controversy under this constitutional provision, Members of Congress may choose to resign their seats to assume the new office before the increase in compensation becomes effective.(56) Alternatively, Congress has on occasion passed legislation to specifically reduce or roll back the salary of the public office at issue, so that an otherwise ineligible Member of Congress may be appointed to that office. This method of achieving constitutional compliance has been called the "Saxbe fix,"(57) after Senator William Saxbe of Ohio, who was nominated by President Richard Nixon to become Attorney General. Congress passed a law to roll back

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they may later fill themselves, the language of the clause speaks only to the temporal issue: the position cannot have been created (or the emoluments thereof increased) "during the Time for which [the Member of Congress] was elected." U.S. Const. art. I, § 6, cl. 2. Thus, some sources have argued that the resignation of a Member of Congress does not cure the ineligibility, so long as the relevant law was passed at some point during the term to which such Member elected. See, *e.g.*, 17 Op. Att'y Gen. 365 (1882). Indeed, in the very first controversy over a possible violation of this constitutional provision, President George Washington withdrew his appointment of a Senator to the Supreme Court so that it could be resubmitted following the expiration of the Senator's term (notwithstanding the fact that the Senator had previously resigned his Senate seat). See *The Emoluments Clause: History, Law, and Precedents,* CRS Report R40124 (Jan. 7, 2009).

53. See Deschler's Precedents Ch. 7 § 13.6.

54. *Id.*

55. See Deschler's Precedents Ch. 7 § 13.4.

56. See Deschler's Precedents Ch. 7 § 13.5. See also Deschler's Precedents Ch. 37 § 4.8.

57. *Parliamentarian's Note:* Although the term "Saxbe fix" is often used to describe this legislative maneuver, the method did not originate at that time. In 1909, President William Taft nominated Senator Philander Knox of Pennsylvania to become Secretary of State. Because Congress had increased the compensation for the Secretary of State during Knox's congressional term, he was thought to be ineligible under the Constitution. In response, Congress enacted legislation to revert the salary back to its prior level. See *The Emoluments Clause: History, Law, and Precedents,* CRS Report R40124 (Jan. 7, 2009).

the salary of the Attorney General to what it had been prior to Senator Saxbe's term.[58] In subsequent decades, the "Saxbe fix" would be utilized on several occasions to reduce the compensation of executive officers in expectation that a Member of Congress would be chosen to fill a vacancy.[59]

§ 4.1 A Member has requested an indefinite leave of absence after informing the Speaker that he expected to be called up from the Army reserves to active duty.[60]

On March 20, 2003,[61] the Speaker made the following remarks, after which Rep. Steve Buyer of Indiana's request for an indefinite leave of absence was granted:

HOPES AND PRAYERS FOR STEVE BUYER, MEMBER OF CONGRESS, AND HIS FAMILY AS HE DEPARTS FOR MILITARY DUTY

(Mr. HASTERT asked and was given permission to address the House for 1 minute.)

Mr. [Dennis] HASTERT [of Illinois]. Mr. Speaker, I would like to read into the RECORD a letter that I received today.

"Dear Mr. Speaker: I have been called to active duty in the United States Army. Pending further orders, I request immediate indefinite leave of the United States House of Representatives to accommodate my military duties.

"Respectfully, Steve Buyer, Member of Congress"

Mr. Speaker and my colleagues, the resolution we are considering affects one of our own today and may affect others in the near future. Our hopes and prayers are with STEVE and his family as he prepares to depart for Iraq.

OUR DUTY TO PROTECT AMERICA

Mr. HASTERT. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

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58. See Deschler's Precedents Ch. 7 § 13.7. See also P.L. 93–178, 87 Stat. 697.

59. *Parliamentarian's Note:* Since the Saxbe case in 1973, the following additional cases have arisen: Robert Casey (a Member of the House) was appointed to the Federal Maritime Commission, and the salary of the commissioner position reduced by P.L. 94–195, 89 Stat. 1108; Edmund Muskie (a Senator) was appointed as Secretary of State, and the office's salary reduced by P.L. 96–241, 94 Stat. 343; Lloyd Bentsen (a Senator) was appointed as Secretary of the Treasury, and the office's salary reduced by P.L. 103–2, 107 Stat. 4; Hillary Clinton (a Senator) was appointed as Secretary of State, and the office's salary reduced by P.L. 110–455, 122 Stat. 5036; and Ken Salazar (a Senator) was appointed as Secretary of the Interior, and the office's salary reduced by P.L. 111–1, 123 Stat. 3.

60. *Parliamentarian's Note:* Although Rep. Steve Buyer's leave of absence was granted, he was never in fact called up to active military service.

61. 149 CONG. REC. 6958, 108th Cong. 1st Sess.

The SPEAKER pro tempore (Mr. [Michael] SIMPSON [of Idaho]). Without objection, the gentleman from Illinois is recognized?

There was no objection.

Mr. HASTERT. Mr. Speaker, we will be considering a very important resolution before us this evening. I rise in strong support of that resolution, and I expect that all of my colleagues would vote for it.

Our men and women in uniform are now engaged in an important conflict in the country of Iraq. We are engaged with 30-some other nations, and it involves certainly a tyrant who has defined himself over the last 20 years.

Like my colleagues, I remember the day of September 11, 2001. I remember standing in the front of my office waiting to get a call from the Vice President and looking and watching an unfamiliar phenomenon, a roll of black smoke going across the mall that I can look down from my window and see. And I asked one of my staff, I said, find out; that black smoke is not supposed to be there. A minute and a half later they came in and said, well, the third plane had gone into the Pentagon.

Little beknownst to me and the rest of us at that time, there was a fourth plane involved, and 9 or 10 or 11 brave young men and women brought that plane down into an empty field in southern Pennsylvania. We know now that if it had not been for the actions of those people, that plane would have been in the west front of the Capitol.

That being said, many of us visited right after the World Trade Center. We had walked the halls of the Pentagon and visited those folks who helped pull their comrades out, some to safety, some beyond help. We talked to the families who lost their folks in the Pentagon, the World Trade Towers; we passed some extraordinary legislation.

But this country suffered a huge loss that day. I think I speak for all of us when I say that that is something that we do not want to see visited upon this Nation again. We know that in Iraq Saddam Hussein has weapons of mass destruction. We know that he has a nexus to al Qaeda, and we know that that training has been going on over an extended period of time. I believe that it is our duty, this Nation's duty, to protect our Nation and to make sure that that is not visited upon this Nation ever again.

The men and women whom we are about to salute and wish well tonight and send our best thoughts and prayers to are doing a job that nobody wants to do. Nobody wishes this to have to happen. But in the tradition of this Nation, in the tradition of keeping this country free, and in the tradition of trying to stabilize the Middle East, we are doing this job. We are doing it with 30 other nations who have decided this is the right thing to do.

Mr. Speaker, as we go through this very sober debate tonight, I would ask for your positive consideration and positive vote.

COMMUNICATION FROM THE HONORABLE STEVE BUYER, MEMBER OF CONGRESS

The SPEAKER laid before the House the following communication from the Honorable STEVE BUYER, Member of Congress:

HOUSE OF REPRESENTATIVES,
March 20, 2003.

Hon. DENNIS HASTERT,

Speaker, House of Representatives, H–232, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I have been called to active duty in the United States Army. Pending further orders, I request immediate indefinite leave of the House of Representatives to accommodate my military duties.

Respectfully,

STEVE BUYER,
Member of Congress

LEAVE OF ABSENCE[62]

By unanimous consent, leave of absence was granted to:

Mr. BUYER (at the request of Mr. HASTERT) for an indefinite period of time on account of military service.

§ 4.2 The House has adopted a privileged resolution authorizing the administration of the oath to a Member–elect serving as a state Governor on a specified date following the expiration of their state office term.

On January 6, 1987,[63] the House adopted the following privileged resolution:

AUTHORIZING THE SPEAKER OR HIS DEPUTY TO ADMINISTER OATH OF OFFICE TO THE HONORABLE JOSEPH E. BRENNAN AT PORTLAND, ME

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I offer a resolution (H. Res. 8) and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore.[64] Is there objection to the request of the gentleman from Washington.

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 8

Whereas Joseph E. Brennan, a Representative-elect from the State of Maine, from the First District thereof, has been unable to appear in person to be sworn as a Member of the House, and there being no contest or question as to his election: Therefore be it

Resolved, That the Speaker, or deputy named by him, be. and he is hereby, authorized to administer the oath of office to the Honorable Joseph E. Brennan at Portland, Maine,

62. *Parliamentarian's Note:* Rep. Buyer's leave of absence request was inadvertently omitted from the *Congressional Record* of March 20, 2003. A note on the omission, and the request itself (as excerpted here) was printed in a subsequent edition of the *Congressional Record.* See 149 CONG. REC. 7307, 108th Cong. 1st Sess. (Mar. 24, 2003).

63. 133 CONG. REC. 19, 100th Cong. 1st Sess. For a similar case where the administration of the oath of office was delayed to accommodate continued service in an incompatible office, see Precedents (Wickham) Ch. 2 § 1.7.

64. Richard Gephardt (MO).

on or after January 9, 1987, and that the said oath be accepted and received by the House as the oath of office of the said Joseph E. Brennan.

The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 4.3 The House has adopted a resolution authorizing the administration of the oath to a Member–elect, notwithstanding her continued service as an elected municipal official.

On November 29, 2018,[65] the House adopted the following privileged resolution:

DIRECTING THE SPEAKER TO ADMINISTER THE OATH OF OFFICE TO THE REPRESENTATIVE-ELECT FROM THE 13TH CONGRESSIONAL DISTRICT OF MICHIGAN

Mr. [Sander] LEVIN [of Michigan]. Mr. Speaker, I offer a privileged resolution (H. Res. 1161) and ask for its immediate consideration in the House.
The Clerk read the resolution, as follows:

H. RES. 1161
Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to Ms. Brenda Jones, a representative-elect from the 13th Congressional District of Michigan.

The resolution was agreed to.
A motion to reconsider was laid on the table.

SWEARING IN OF THE HONORABLE BRENDA JONES, OF MICHIGAN, AS A MEMBER OF THE HOUSE

The SPEAKER.[66] Will the Representative-elect and the members of the Michigan delegation present themselves in the well.
All Members will rise and the Representative-elect will please raise her right hand.
Ms. JONES of Michigan appeared at the bar of the House and took the oath of office, as follows:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

The SPEAKER. Congratulations, you are now a Member of the 115th Congress.

On December 6, 2018,[67] the Speaker inserted the following extension of remarks into the *Congressional Record*:

65. 164 CONG. REC. H9700 [Daily Ed.], 115th Cong. 2d Sess.
66. Paul Ryan (WI).
67. 164 CONG. REC. E1601 [Daily Ed.], 115th Cong. 2d Sess. The Speaker's clarification that a question of constitutional incompatibility was not presented by these circumstances is consistent with the statement recorded in Deschler's Precedents Ch. 7

H. RES. 1161, RELATING TO THE ADMINISTRATION OF THE OATH TO THE MEMBER ELECT FROM THE 13TH DISTRICT OF MICHIGAN

HON. PAUL D. RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 6, 2018

Mr. RYAN of Wisconsin. Mr. Speaker, on November 29, 2018, the House by unanimous consent adopted House Resolution 1161 in advance of the administration of the oath of office to Representative BRENDA JONES of Michigan. Representative JONES was elected on November 6, 2018 to fill a vacancy in the 13th Congressional District of Michigan for the remainder of the 115th Congress. Her certificate of election was received by the House on November 29, 2018. Representative JONES also currently serves as the President of the Detroit City Council. Representative JONES has indicated that she will abide by guidance from the House Committee on Ethics to minimize the conflicts that may exist with her duties as President of the City Council during this short tenure in the House.

The Speaker, with the concurrence of the Democratic Leader, finds that this resolution (1) represents a narrow exception to the restriction established by the House on January 20, 1909, that the duties of a Member of the House and the Governor of a State are ''absolutely inconsistent'' and may not be ''simultaneously discharged'' by the same Member and (2) does not address the Constitutional qualifications of a Member.

§ 4.4 A Member submitted her resignation effective immediately prior to taking the oath as Governor of a state.

On December 27, 2018,[68] the Chair laid before the House the following communication from Rep. Lujan Grisham of New Mexico:

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES

The SPEAKER pro tempore laid before the House the following resignation from the House of Representatives:

HOUSE OF REPRESENTATIVES,
Washington, DC, December 21, 2018.

Speaker PAUL RYAN,
The Capitol,

§ 13 that while, "high state office is incompatible with congressional membership," the "Constitution does not prohibit Members of Congress from holding state elective or appointive offices." As noted (see fn. 22, *supra*), any action taken by the House in response to a Member or Member–elect holding state or municipal office should be carefully considered in light of the Supreme Court's holding in *Powell* v. *McCormack*, 395 U.S. 486 (1969). See also § 3, *supra*.

68. 164 CONG. REC. H10597 [Daily Ed.], 115th Cong. 2d Sess.

Washington, DC.

DEAR SPEAKER PAUL RYAN, Serving as the Congresswoman from New Mexico's First Congressional District has been one of the greatest honors of my life. However, I will be sworn into office as the Governor of New Mexico on January 1, 2019 at 12:01 a.m.

Therefore, I am resigning my Congressional seat effective December 31, 2018 at 11:59 p.m.

Sincerely,

MICHELLE LUJAN GRISHAM,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC, December 21, 2018.

Governor SUSANA MARTINEZ,
Office of the Governor,
Sante Fe, NM.

DEAR GOVERNOR MARTINEZ, Serving as the Congresswoman from New Mexico's First Congressional District has been one of the greatest honors of my life. However, I will be sworn into office as the Governor of New Mexico on January 1, 2019 at 12:01 a.m.

Therefore, I am resigning my Congressional seat effective December 31, 2018 at 11:59 p.m.

Sincerely,

MICHELLE LUJAN GRISHAM,
Member of Congress.

C. Salary and Benefits

§ 5. Salary and Benefits; Compensation

Pursuant to article I, section 6 of the Constitution, "Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States."(1) Although virtually all funding for legislative branch operations is provided in the annual Legislative Branch Appropriations bill, the salaries of Members of Congress (including Delegates and Resident Commissioners) are funded through a permanent appropriation in law.(2) Under the 27th

1. U.S. Const. art. I, § 6, cl. 1. See also *House Rules and Manual* § 85 (2021).

2. 2 U.S.C. § 4501. For more on the distinction between annual "discretionary" spending, and permanent "mandatory" or "direct" spending, see Deschler's Precedents Ch. 25; Deschler's Precedents Ch. 41; Precedents (_____) Ch. 25; and Precedents (_____) Ch. 41. Although Members' salaries are not funded through the annual appropriations

Amendment, no law "varying the compensation" of Members of Congress may take effect until after an election of Representatives has intervened.[3] This amendment ensures that Members cannot vote to increase (or decrease) their own salaries directly, but only the salaries of those elected to a subsequent Congress.[4]

Pursuant to law, Members' salaries are paid on a monthly basis.[5] Following their election, Members–elect who have filed the appropriate credentials with the Clerk of the House are entitled to compensation from the constitutionally–defined beginning of their term (January 3) until the House formally assembles for its first session.[6] After the first session begins, Members–elect must take the oath of office and be sworn in before receiving their salary.[7] If a Member–elect holds an incompatible office at the time the House assembles, such individual may defer taking the oath of office (in order to complete service in the other office), and is entitled to salary back to the beginning of the term.[8] In cases where the right to a seat is contested,[9] the House may provide that both the contestant and the contestee

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process, such bills (most often the Legislative Branch Appropriations bill) have often been used as vehicles for amendments dealing indirectly with Members' compensation. See, *e.g., Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022).

3. U.S. Const. amend. XXVII. For House consideration of a concurrent resolution acknowledging the successful ratification of the 27th Amendment, see Deschler's Precedents Ch. 34 § 12.4.

4. For litigation involving the interaction between automatic cost–of–living pay increases and the 27th Amendment, see *Boehner* v. *Anderson,* 809 F. Supp. 138 (D.D.C. 1992), *aff'd,* 30 F.3d 156 (D.C. Cir. 1994); and *Schaffer* v. *Clinton,* 54 F. Supp. 2d 1014 (D. Colo. 1999).

5. 2 U.S.C. §§ 5301, 5302.

6. *Id.*

7. *Parliamentarian's Note:* Although the statute contemplates separate time periods that define who is entitled to compensation (*e.g.*, the period between January 3 and the formal assembly of the new Congress, the period between assembly and the swearing–in of Members–elect, etc.), in practice these periods typically occur in rapid sequence. For example, the opening of the 117th Congress occurred on January 3 itself and Members were administered the oath on that date. However, in some cases the House has not assembled until several weeks after the beginning of the term of office on January 3. See *House Rules and Manual* § 243 (2021). Similarly, while most Members–elect are sworn in on the date that the House first assembles, there have been innumerable instances of Members–elect failing to appear and instead taking the oath of office at a later date. For a rare instance of an individual elected to one Congress (but never sworn) becoming eligible for salary upon his swearing–in at the beginning of the next Congress, see § 5.1, *infra.* For the administration of the oath of office generally, see Deschler's Precedents Ch. 2; and Precedents (Wickham) Ch. 2.

8. For more on incompatible offices, see § 4, *supra.*

9. For election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

receive salary during the pendency of the contest (without regard to whether either was permitted to take the oath).[10] In one instance, where a Member–elect fell into a coma and was unable to take the oath of office on opening day, the House adopted a resolution providing for compensation in lieu of salary.[11]

If an individual is elected to the House via a special election to fill a vacancy, such person is entitled to salary as of the date of the election.[12] When Members resign their seats in the House, they are no longer entitled to salary as of the effective date of their resignation.[13] A Member–elect excluded from the House (*i.e.*, not permitted to take a seat despite valid credentials)[14] does not become a Member of the House at that time, and is thus not entitled to salary. However, the House may choose to authorize the payment of salary to an excluded Member–elect pending a determination as to the final right to the seat.[15] When a Member of the House dies, statutory provisions describe the potential beneficiaries who would be entitled to the deceased Members' unpaid balance of salary.[16] By tradition, the spouse (or other close relative) of a deceased Member typically receives a gratuity from the House equal to one year's salary of a Member.[17]

Some Members holding leadership offices are entitled to higher salary as compared to other Members. For example, the Speaker of the House, the Majority Leader, and the Minority Leader, are all compensated at a higher rate, pursuant to statute.[18]

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10. See, *e.g.*, Deschler's Precedents Ch. 7 § 4.5; and Precedents (Smith) Ch. 9 § 20.1. See also 2 Hinds' Precedents § 1148 ("When a Member is unseated in a contest he retains the compensation already received and is paid his salary to the day on which his case is decided.").

11. See Precedents (Wickham) Ch. 2 § 1.6.

12. 2 U.S.C. § 5304. See also 6 Cannon's Precedents § 202. Under earlier statutes, an individual elected to the House via special election would receive salary commencing at the point at which the previous occupant of that seat ceased receiving salary. See, *e.g.*, 2 Hinds' Precedents §§ 1148, 1155.

13. It was formerly the case that Members who resigned prior to the adjournment of the Congress forfeited any mileage allowance for their return to their districts. See 2 Hinds' Precedents § 1149. For resignations generally, see Deschler's Precedents Ch. 37; and Precedents (_____) Ch. 37.

14. For more on exclusion generally, see Deschler's Precedents Ch. 7 § 12; and Deschler's Precedents Ch. 12 § 14.

15. See Deschler's Precedents Ch. 7 § 4.3. For an example of the House authorizing salary payments to both claimants in contested election case pending a resolution to the contest, see Precedents (Smith) Ch. 9 § 20.1.

16. 2 U.S.C. § 5305.

17. See § 5.2, *infra*. See also P.L. 117–31, 135 Stat. 309; Deschler's Precedents Ch. 7 § 4; Deschler's Precedents Ch. 38 § 3.4; and 6 Cannon's Precedents § 204. By law, such payments are considered gifts only. 2 U.S.C. § 4506.

18. 2 U.S.C. § 4501. See also Executive Order 13866. For a bill addressing civil service annuity benefits for Members in leadership positions, see Precedents (Wickham) Ch. 3

The House officer with the responsibility to disburse salaries to Members is the Chief Administrative Officer (CAO).[19] The CAO assumed this duty when the office was created in the 104th Congress.[20] Previously, the Sergeant–at–Arms handled salary disbursement to Members.[21] The Clerk and the Speaker both have administrative roles in certifying payroll documents, including salary and mileage accounts.[22] Although Members may not waive their salaries, any salary received by a Member may be donated as a gift.[23]

Members of the House are required to pay both Federal and state taxes on the income they receive from Congress. Such taxes are typically withheld from the monthly disbursement of salary (similar to tax withholding practices in the private sector).[24] Members are eligible for a variety of additional benefits (such as health insurance and retirement benefits), and payroll deductions are often used to finance those programs.[25]

Although Members' salaries are not funded through the regular annual appropriations process, Members nevertheless have often used such bills to address Members' compensation in various ways.[26] For example, automatic cost–of–living increases in Members' salaries have often been declined by Congress via language in an appropriation bill or continuing resolution.[27] In recent years, there have been legislative proposals to tie Members' salaries to certain legislative actions. For instance, the "No Budget, No Pay Act" (enacted in the 113th Congress)[28] provided that the salaries of Members of Congress would be held in escrow and not paid to Members until Congress adopted a concurrent resolution on the budget (or at the end of the Congress if no budget resolution were adopted).[29]

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§ 5.4; and Precedents (Wickham) Ch. 6 § 29.2. For leadership positions generally, see Precedents (Wickham) Ch. 3 §§ 5–7; and Precedents (Wickham) Ch. 6 § 1.

19. 2 U.S.C. § 5309.

20. For more on the role of the CAO, see Precedents (Wickham) Ch. 6 § 17.

21. See Deschler's Precedents Ch. 6 § 19; and Deschler's Precedents Ch. 7 § 4. See also 2 Hinds' Precedents § 1148.

22. 2 U.S.C. §§ 5301, 5307, 5308, and 5310.

23. See 31 U.S.C. § 3113 and GAO Decision B-206396.2 (Nov. 15, 1988). See also Deschler's Precedents Ch. 7 §§ 4.8, 4.9, and 6 Cannon's Precedents § 203.

24. For the origins of state income tax withholding practices, see § 5.3, *infra.*

25. See § 6, *infra.*

26. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022). For examples of germaneness rulings on amendments addressing Members' salaries, see Deschler's Precedents Ch. 28 §§ 13.9, 15.32, 15.33, and 35.66.

27. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022).

28. P.L. 113–3, 127 Stat. 51. See § 5.4, *infra.*

29. *Parliamentarian's Note:* The rationale for holding Members' salaries in escrow concerned the operation of the 27th Amendment, which delays the effect of laws "varying"

Travel

Travel reimbursements for Members has long been part of House practice, dating back to 1789. During the First Congress, the first statute on Members' compensation specifically provided that part of the compensation would take the form of reimbursements for travel expenses associated with travelling to and from Members' districts.(30) Mileage expenses were a common feature of Members' compensation throughout the 19th and 20th centuries.(31)

In the 92d Congress in 1971, the Committee on House Administration was given authority to make adjustments in various allowance accounts for Members, including travel and mileage accounts.(32) But under modern practice, Members are allocated a single allowance (known as the Member's Representational Allowance) and such allowance may be used for travel expenses.

Members often travel on official business, either domestically or internationally. The House may reimburse such official travel expenses either with funds allocated to committees or other applicable accounts of the House.(33) For overseas official travel (known as "CODELs" or "Congressional Delegations") reimbursements may be made by the House itself, or through the use of "counterpart" funds (*i.e.*, foreign currency funds credited to the United States which can only be spent in the foreign country).(34) By statute, Members are reimbursed from House accounts for travel expenses associated with attending the funeral of a deceased Member.(35)

Travel expenses reimbursed by others raises the issue of potential conflicts of interest or corruption, and House rules regulate such travel reimbursements in the same manner as other gifts to Members. Clause 5(a)(2)(A) of rule XXV provides the definition of a "gift" under the House's ethics rules, and that definition includes "gifts of services, training, transportation, lodging, and meals."(36)

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the compensation of Members of Congress until an election has intervened (*i.e.*, until the following Congress). Thus, the salaries of Members of Congress in the 113th Congress could not be permanently withheld, but, as the statute prescribed, could be temporarily held in escrow and disbursed before the end of the Congress. It should also be noted that these budgetary provisions applied only to the 113th Congress.

30. See 2 Hinds' Precedents § 1148 (fn. 2).

31. For older precedents on 19th century practice with regard to mileage expenses, see 2 Hinds' Precedents §§ 1156–1158. For mileage expenses related to special sessions of Congress, see 2 Hinds' Precedents §§ 1159, 1160.

32. See Deschler's Precedents Ch. 7 §§ 6.1–6.3.

33. See Deschler's Precedents Ch. 7 § 6.

34. 22 U.S.C. § 1754.

35. 2 U.S.C. § 5606. For more on funeral committees established by the House, see Deschler's Precedents Ch. 38 § 8.

36. *House Rules and Manual* § 1100 (2021). Clauses 5(b)–(d) of rule XXV provide further limitations on what types of travel reimbursements are permissible, exceptions for certain types of charitable or educational events, and additional disclosure requirements.

Deductions; Absences

Under certain circumstances, amounts may be deducted from Members' salaries as monetary fines, under the House's constitutional authority to "punish its Members."[37] In the 91st Congress in 1969, the House by resolution authorized the administration of the oath of office to a challenged Member–elect,[38] but also provided that the Member–elect be required to pay a fine (deducted from his salary) for past improper conduct.[39] Beginning in the 115th Congress, the Sergeant–at–Arms was authorized to levy fines on Members for the improper use of electronic devices for photography or audio–visual broadcasting on the floor of the House. Such fines would be deducted from Member's salaries by the CAO.[40] In the 117th Congress, Members were required to wear masks or other face–coverings during the pendency of a designated pandemic emergency and failure to abide by this requirement would result in fines to be deducted from the Members' salaries.[41] Also in the 117th Congress, the House adopted a rule requiring security screening to enter the House Chamber, and imposing fines on Members who do not undergo such screening.[42] Members who have had fines deducted pursuant to the provisions above may avail themselves of an appeals process overseen by the Committee on Ethics.[43]

Pursuant to law,[44] certain absences from the House may also result in deductions from Members' salaries, though this provision has no applicability in modern practice. Pursuant to clause 1 of rule III,[45] Members "shall be present within the Hall of the House during its sittings, unless

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For more on ethics rules relating to travel, see Deschler's Precedents Ch. 12; and Precedents (_____) Ch. 12.

37. U.S. Const. art. I, § 5, cl. 2. See also *House Rules and Manual* §§ 62–67 (2021). For the House's use of fines as a disciplinary measure, see Precedents (_____) Ch. 12.

38. For challenges to the seating of Members–elect, see Precedents (Wickham) Ch. 2 § 4.

39. See Deschler's Precedents Ch. 7 § 4.4.

40. H. Res. 5, 163 CONG. REC. 36, 115th Cong. 1st Sess. (Jan. 3, 2017).

41. H. Res. 38, 167 CONG. REC. H126 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 12, 2021).

42. See H. Res. 73, 167 CONG. REC. H274–H275 [Daily Ed.], 117th Cong. 1st Sess. (Feb. 2, 2021). A Capitol Police regulation dating back to the 1960s had already prohibited the carrying of firearms into the House Chamber. Violations of such policy did not, however, result in fines deducted from Members' salaries.

43. For examples of notifications from the Committee on Ethics that certain Members had filed appeals regarding rule violations that had resulted in salary deductions, see 167 CONG. REC. H1715 [Daily Ed.], 117th Cong. 1st Sess. (Apr. 8, 2021) (security screening); and 167 CONG. REC. H3164 [Daily Ed.], 117th Cong. 1st Sess. (June 28, 2021) (masks).

44. 2 U.S.C. § 5306.

45. *House Rules and Manual* § 671 (2021).

excused or necessarily prevented." A statute authorizes the CAO to deduct the amount of salary for each day that the Member is absent from the House, unless the Member is absent due to sickness (or sickness within the Member's family).[46] This provision of law has a long history and can be traced back to a statute first enacted in 1856.[47] However, for virtually its entire history, this provision of law has not been enforced in the House. In 1894, the Committee on the Judiciary undertook an inquiry into whether or not the statute had been repealed (indicating that the House had not enforced the provision in many years).[48] A similar instance occurred in 1914, when the House agreed to a resolution revoking all leaves of absence, and requiring the Sergeant–at–Arms (the officer who at that time made salary disbursements) to enforce the law mandating deductions.[49] However, this resolution was repealed by the House less than two months later.[50] The 1914 proceedings appear to be the last time that the statute was enforced in the House.[51]

Despite the fact that no Members have had salary involuntarily deducted for an absence in more than a century, requests for leaves of absence remain a routine part of House business. Such requests are made via written requests submitted to the party cloakrooms, and are transacted by unanimous consent typically at the end of each legislative day.[52] Although penalties for failing to attend House sessions have not been imposed since the

46. 2 U.S.C. § 5306. A separate statute authorizes the forfeiture of mileage expenses should a Member resign from the House prior to the adjournment of the Congress. 2 U.S.C. § 4522.

47. See 2 Hinds' Precedents § 1154. For an 1872 version of the law, see 2 Hinds' Precedents § 1150.

48. See 2 Hinds' Precedents § 1153. For a resolution regarding this issue raised as a question of privilege (but ruled invalid), see 3 Hinds' Precedents § 2690.

49. See 6 Cannon's Precedents § 198.

50. *Id.*

51. See Deschler's Precedents Ch. 7 § 5 ("Not since 1914, however, have those provisions been enforced. Due to the number of Members, and to the proliferation of their official duties in Congress, committee field work, and in their home states, enforcement is no longer feasible."). See also 2 Hinds' Precedents § 1148 (In 1907 "[t]he statutes also provide for deductions from the pay of Member who are absent . . . but this penalty is rarely enforced.").

52. *Parliamentarian's Note:* Requests for leaves of absence were once considered privileged business in the House (2 Hinds' Precedents § 1146), but today they no longer enjoy any special status under the rules. Although under modern practice requests for leaves of absence are transacted by unanimous consent, a motion to that effect may also be made. See 2 Hinds' Precedents § 1142. In order to expedite the processing of these requests, the Speaker has requested that Members submit their leaves of absence requests in writing through the cloakrooms rather than orally on the floor. See 6 Cannon's Precedents § 199. But see § 5.5, *infra.* Leaves of absence requests should be made

early 20th century, Members have traditionally used requests for leaves of absence to inform the House of the reasons for the absence,[53] and have sometimes accompanied such requests with statements regarding how the Member would have voted on questions put before the House during the absence. Although requests for leaves of absence may be refused by the House, this has not occurred in many decades.[54] A Member–elect who has not yet been sworn need not submit a request for a leave of absence for any absences occurring before the oath of office is administered.[55]

In the 116th and 117th Congresses, the House instituted a method of proxy voting for Members necessarily absent due to pandemic disease. Members who attested that they were unable to physically attend a session of the House due to the ongoing pandemic could designate other Members to cast votes on their behalf during the pendency of such pandemic (specifying the type of vote to be cast on each question).[56]

Ethics Rules, conflicts of interest, and Other Sources of Income

The issue of Members' compensation has long been the subject of congressional ethics rules and statutory provisions aimed at preventing bribery, conflicts of interest, and other corrupt practices. Federal law makes it a crime to bribe or attempt to bribe Members of Congress.[57] The same statute addresses possible conflicts of interest, barring Members of Congress from receiving compensation for representing others before government agencies in which the United States has a substantial interest.[58] The Federal government routinely contracts with private entities to undertake diverse projects, and Federal law prohibits Members of Congress from having interests in said contracts.[59]

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by the individual requesting leave and not by others. 6 Cannon's Precedents § 200. For a rare instance of an *en bloc* leave of absence request (for a group of Members to travel on official business), see § 5.7, *infra*.

53. The reasons stated may be as simple as "on account of illness" or "official business" though Members may provide more details if they choose. See, *e.g.*, Deschler's Precedents Ch. 7 § 5.

54. See Deschler's Precedents Ch. 7 § 5.5 ("The good faith of a Member in requesting a leave of absence is not customarily questioned by other Members of the House."). For historical examples of requests for leaves of absence being challenged or rejected, see 2 Hinds' Precedents §§ 1143–1145.

55. See 2 Hinds' Precedents § 1154. For a modern example of a leave of absence request submitted by Members on behalf of a Member–elect (and therefore unnecessary, as the statute only applies to sworn Members), see 159 CONG. REC. 47, 113th Cong. 1st Sess. (Jan. 3, 2013).

56. See H. Res. 965, 166 CONG. REC. H2019, H2021 [Daily Ed.], 116th Cong. 2d Sess. (May 15, 2020); and H. Res. 8, 167 CONG. REC. H17 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 4, 2021).

57. 18 U.S.C. § 201.

58. 18 U.S.C. § 203.

59. See 18 U.S.C. § 431; and 41 U.S.C. § 6306. See also 2 Hinds' Precedents §§ 1164–1166; and 6 Cannon's Precedents § 225.

A House rule dating back to the First Congress in 1789 states that "Every Member shall . . . vote on each question put, unless having a direct personal or pecuniary interest in the event of such question."[60] This rule is not enforced by the presiding officer, or even the House itself, but rather it is considered the responsibility of each Member to judge whether the circumstances of the vote require withdrawal.[61] Under the precedents, the disqualifying interest must be one that involves the Members directly and not merely one that affects a class to which the Member belongs.[62]

In the 18th and 19th centuries, Congress did not generally meet continuously through the year, and it was expected that Members might retain other sources of income in addition to their congressional salaries.[63] By the 20th century, as the workload of Congress increased and sessions became longer, the work of a Member became more and more a full–time occupation. Thus, scrutiny was increasingly applied to outside income earned by Members and the potential conflicts with legislative duties such remuneration may present. Towards the end of the 20th century, statutory enactments and House ethics rules were used both to enhance transparency with respect to Members' financial holdings and to create limits on what outside earned income could be accepted by Members.[64]

In the 95th Congress in 1977, the House amended its rules to provide the first limit on the amount of outside income that could be earned by Members (as well as officers and employees of the House).[65] The precise limit

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60. Rule III, clause 1; *House Rules and Manual* §§ 671, 673 (2021). The form of the rule as originally adopted was as follows: "No Member shall vote on any question, in the event of which he is immediately and particularly interested." 1 ANNALS OF CONG. 104, 1st Cong. 1st Sess. (Apr. 7, 1789). Thomas Jefferson, in his *Manual of Parliamentary Practice*, states that, "Where the private interests of a Member are concerned in a bill or question he is to withdraw . . . it is for the honor of the House that this rule of immemorial observance should be strictly adhered to." *House Rules and Manual* § 376 (2021). See also 5 Hinds' Precedents § 5949.

61. See Deschler's Precedents Ch. 30 §§ 3.1, 3.2, and 3.4–3.8. See also 5 Hinds' Precedents §§ 5941, 5949–5951, 5956–5958, and 5960–5962; and 8 Cannon's Precedents §§ 3071, 3072.

62. See Deschler's Precedents Ch. 30 § 3.9. See also 5 Hinds' Precedents §§ 5952–5955; and 8 Cannon's Precedents §§ 3071, 3072.

63. See *Congressional Careers: Service Tenure and Patterns of Member Service, 1789-2021,* CRS Report R41545 (Jan. 5, 2021) ("Many lawmakers in the 18th and 19th centuries might be characterized as "citizen legislators," holding full-time nonpolitical employment and serving in Congress on a part–time basis for a short number of years. During the 20th century, congressional careers lengthened as turnover decreased and Congress became more professionalized.").

64. *Parliamentarian's Note:* This chapter addresses the subject of Members' financial disclosures and limits on outside income in the context of Members' compensation generally. For a more detailed analysis of specific ethics rules and their evolution, see Deschler's Precedents Ch. 12; and Precedents (_____) Ch. 12.

65. *House Rules and Manual* § 1099 (2021).

has been adjusted several times, and is currently defined as a yearly amount of no more than "15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year."[66] In the 110th Congress, the House adopted rule XXVII,[67] which prohibits Members from directly negotiating for future employment opportunities unless they first file a statement with the Committee on Ethics detailing the nature of the negotiations.

Members of Congress are often invited to give speeches, make appearances, or write articles for private organizations. For such activities, Members have often been encouraged by such organizations to accept compensation, known as "honoraria," from the organization. In the 95th Congress in 1977, the House put in place the first restrictions on honoraria, limiting Members to $750 per honorarium.[68] These limits and restrictions were adjusted several times over the next decade,[69] until the enactment of the Ethics Reform Act of 1989. That act imposed an outright ban on honoraria, with certain limited exceptions for charitable donations. The current House rule addressing outside income, honoraria, and copyright royalties is rule XXV (clauses 1–4).[70]

The House's "gift rule" is another mechanism designed to reduce improper influence in the legislative process. In the 90th Congress in 1968, the House adopted its first prohibition on the acceptance of gifts by Members from persons with a direct interest in legislation.[71] The modern form of the rule was adopted in the 104th Congress in 1995, and operates as a ban on most gifts from any source, subject to limited exceptions.[72] Subsequent amendments to the rule have modified the exceptions and increased disclosure requirements.[73] The House's gift rule is supplemented by statutory prohibitions against receiving gifts in exchange for official acts.[74] The Constitution

66. Rule XXV, clause 1(a)(1); *House Rules and Manual* § 1099 (2021).

67. *House Rules and Manual* § 1100 (2021).

68. *House Rules and Manual* § 1099 (2021).

69. For an example of the Committee on Standards of Official Conduct (now the Committee on Ethics) submitting an interpretation of the House's honoraria rule in 1979, see § 5.8, *infra.* For examples of the House adjusting the amount of outside earned income and honoraria that could be accepted by Members, see §§ 5.11–5.13, *infra.*

70. *House Rules and Manual* § 1099 (2021).

71. *House Rules and Manual* § 1095 (2021).

72. *House Rules and Manual* § 1100 (2021). See also House Ethics Manual, 110th Cong. 2d Sess. (2008 ed.), pp. 23–86.

73. *Id.*

74. 5 U.S.C. § 7353. This statutory rule was put in place as part of the Ethics Reform Act of 1989 and applies to Members of Congress as well as executive branch and judicial branch officials.

also prohibits Members from receiving any type of gifts or "emoluments" from foreign entities.[75]

Finally, Members are subject to financial disclosure requirements contained both in statute and in House rules. The earliest financial disclosure rules were adopted as House rules, as part of the ethics reforms that occurred in the late 1960s.[76] The categories of required disclosures were revised and refined over the course of the 1970s through subsequent changes to House rules.[77] In the 95th Congress, the Ethics in Government Act of 1978 was enacted,[78] and title I of that act was formally incorporated into the House rules.[79] That act further defined the types of financial information required to be reported, and the House rule requires all such financial reports to be filed with the Clerk of the House (who then submits the reports to the Committee on Ethics). The Stop Trading on Congressional Knowledge Act of 2012 requires the Clerk to make these financial disclosure reports available to the public in electronic form.[80]

Rate of Compensation: History and Practice

A statute enacted in the First Congress in 1789 provided that Members of the House would be compensated for their service at a rate of $6 for every day that the House was in session, plus mileage expenses associated with travelling to and from Washington, D.C.[81] In the mid–19th century, daily allowances were replaced with fixed salaries that covered the entire Congress (or sessions thereof).[82] For most of the 20th century, salary increases

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75. U.S. Const. art. I, § 9, cl. 8 ("[N]o Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.").

76. See H. Res. 1099, 114 CONG. REC. 8803, 90th Cong. 2d Sess. (Apr. 3, 1968).

77. See *House Rules and Manual* § 1103 (2021). For campaign financial reporting requirements, see Deschler's Precedents Ch. 8; Deschler's Precedents Ch. 12; Precedents (Smith) Ch. 8; and Precedents (_____) Ch. 12.

78. P.L. 95–521, 92 Stat. 1824.

79. *House Rules and Manual* § 1103 (2021). Because title I of the Ethics in Government Act of 1978 is formally incorporated into the standing rules of the House, statutory amendments to that title necessarily result in changes to House rules. For example, the Lobbying Disclosure Act of 1995 amended the financial disclosure reporting requirements of the Ethics in Government Act of 1978, thus resulting in a change in House rules. See P.L. 104–65, 109 Stat. 691.

80. P.L. 113–7, 127 Stat. 438.

81. See Deschler's Precedents Ch. 7 § 4 (fn. 6).

82. An 1856 statute set the rate of pay for Members of the House at $6,000 per Congress, minus deductions for absences. An 1866 statute revised this compensation scheme to provide $5,000 per session of Congress (each Congress typically consisting of two sessions). An increase to this amount was enacted in 1873, but repealed the following

would periodically be effectuated by statute (either stand–alone legislation or incorporated into a larger reform effort, such as the Legislative Reorganization Act of 1946).

In 1967, Congress created the Commission on Executive, Legislative, and Judicial Salaries as an alternate mechanism for adjusting the salaries of Members of Congress.[83] The Commission was authorized to make recommendations with respect to the compensation of various Federal officeholders. The President would then submit such recommendations to Congress, and Congress would have a set period of time in which to formally disapprove of such recommendations.[84] If no disapproval resolution were enacted, the recommended salary adjustments would take effect. Between 1969 and 1989, Congress accepted three salary increases via this method, and rejected three.[85]

In 1975, Congress enacted another statute[86] that provided for automatic annual "cost of living" adjustments to the salaries of certain public officials, including Members of Congress. Such adjustments would be formally submitted to Congress by the President for approval or disapproval. Between

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year. See 1 Hinds' Precedents § 1148. A statute of 1907 increased Members' salaries to $7,500 per session, and similar increases were made by statute prior to 1968. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022). For a catalog of laws establishing the salaries of Members from 1789 to 1977, see Deschler's Precedents Ch. 7 § 4 (fn. 6).

83. *Parliamentarian's Note:* The rate of Members' compensation has often been a fraught political question, due to public perceptions of Members voting to increase their own salaries. Thus, Congress has experimented with different mechanisms to provide adjustments in Members' salaries that require fewer votes in Congress—methods such as recommendations by independent commissions, or automatic adjustments pursuant to statutory formulas. The adoption of the 27th Amendment to the Constitution (requiring an election to intervene before any law "varying the compensation" of Members can take effect) partially mitigated the concerns about Members' salaries, but the issue remains salient to this day. For an example of a special order of business resolution specifically prohibiting the issue of Members' salaries being addressed by amendment, see § 5.9, *infra.*

84. *Parliamentarian's Note:* This process for formally disapproving salary adjustment recommendations by the commission was challenged in court by a Member of the House (Rep. Larry Pressler of South Dakota). Although the U.S. District Court for the District of Columbia found that the Member did have standing, it further held that the procedure for adjusting Members' salaries contained in the Federal Salary Act of 1967 and the Executive Salary Cost–of–Living Adjustment Act of 1975 did not violate the Constitution. See *Pressler* v. *Simon,* 428 F. Supp. 302 (D.D.C. 1976), *aff'd mem. sub nom. Pressler* v. *Blumenthal,* 434 U.S. 1028 (1978). For a notice from the Sergeant–at–Arms that he had been served in the litigation described above, see § 5.10, *infra.*

85. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022).

86. P.L. 94–82, 89 Stat. 419. Title II of this law is known as the Executive Salary Cost–of–Living Adjustment Act.

1975 and 1989, Congress used this system to accept several increases to Members' salaries, and reject several others.[87]

In 1983, the Supreme Court invalidated the practice of "congressional vetoes" (simple or concurrent resolutions to ratify (or not) executive branch decisions) of the type employed in the statutes described above.[88] In response, Congress amended the Federal Salary Act in 1989 to provide that the salary adjustment recommendations would not go into effect unless Congress passed a bill or joint resolution approving the adjustment.[89]

The Ethics Reform Act of 1989[90] significantly altered both the Federal Salary Act of 1967 and the annual automatic adjustment process created in 1975. With respect to the former, the Ethics Reform Act redesignated the Commission on Executive, Legislative and Judicial Salaries as the Citizens' Commission on Public Service and Compensation. Legislation to address the proposed salary recommendations was made "a matter of highest privilege in each House"[91] in order to facilitate its consideration. However, the quadrennial review of salaries contemplated by the statute was not adhered to, and since 1993 no such review has taken place.[92] Although the Commission and the procedures to effectuate its recommendations remain in law,[93] Congress has not used this method of adjusting the salaries of Members in almost three decades.

With respect to the statutory method for automatically increasing Members' salaries, the Ethics Reform Act of 1989 tied these annual adjustments to private sector wage data, as measured by the Employment Cost Index.[94] Thus, the salaries of Members would increase annually pursuant to a statutory formula linked to private sector wage growth, unless Congress affirmatively rejected or modified such increases.[95] Since the advent of this method for adjusting Members' salaries, Congress has allowed increases to take

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87. During this period, there were five increases in Members' salaries that were accepted by Congress, and ten that were declined. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022).

88. *Immigration and Naturalization Service* v. *Chadha,* 462 U.S. 919 (1983). See also *Consumer Energy Council of America* v. *FERC,* 673 F.2d 425 (D.C. Cir. 1982), aff'd 463 U.S. 1216 (1983).

89. See P.L. 101–194, 103 Stat. 1716. For an example of a joint resolution considered by the House (and later enacted into law) to disapprove of an increase under the Federal Salary Act, see H. J. Res. 129, 135 CONG. REC. 1708–26, 101st Cong. 1st Sess. (Feb. 7, 1989).

90. P.L. 101–194, 103 Stat. 1716.

91. 2 U.S.C. § 359.

92. See *House Rules and Manual* § 1130(12) (2021).

93. Authority for the commission is codified at 2 U.S.C. §§ 351–360.

94. The Employment Cost Index is compiled by the U.S. Bureau of Labor Statistics on a quarterly basis, and tracks private sector wages across numerous industries and occupational categories.

95. *Parliamentarian's Note:* In 1992, Members of the House challenged these provisions in court as a violation of the 27th Amendment. However, the U.S. District Court for the

effect in approximately 50% of cases.[96] The last adjustment that was not declined occurred in 2009 and increased Members' salaries to $174,000 per year.

§ 5.1 Where an individual is elected to the House for the next Congress, but also (pursuant to state law) to fill a vacancy in the current Congress, such individual is entitled to salary for service in the current Congress when sworn.[97]

On January 7, 1997,[98] the following letters were laid before the House:

RESIGNATION FROM THE HOUSE OF REPRESENTATIVES AFTER SINE DIE ADJOURNMENT

Mr. BROWNBACK submitted the following resignation from the House of Representatives:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 26, 1996.

Hon. NEWT GINGRICH,
Speaker of the
House of Representatives,
The Capitol, Washington, DC.

District of Columbia held that the "methodology for automatic annual adjustments to Congressional salaries meets both the language and the spirit of the 27th amendment." See *Boehner* v. *Anderson,* 809 F. Supp. 138 (D.D.C. 1992), *aff'd,* 30 F.3d 156 (D.C. Cir. 1994). For a similar case (also unsuccessful) brought in 1999, see *Schaffer* v. *Clinton,* 54 F. Supp. 2d 1014 (D. Colo. 1999).

96. Between 1991 and 2021, Congress accepted 13 adjustments in salary and declined 18 adjustments. See *Salaries of Members of Congress: Recent Actions and Historical Tables,* CRS Report 97–1011 (Aug. 8, 2022).

97. *Parliamentarian's Note:* Under Kansas law, an election to a seat in the House for the next Congress is deemed an election to the same seat in the current Congress should said seat become vacant. Mr. Jim Ryun was elected to a seat in the 105th Congress on November 5, 1996. The occupant of that seat in the 104th Congress (Rep. Sam Brownback) resigned on November 27, 1996, in order to take a seat in the Senate. Thus, under Kansas law, Mr. Ryun was considered elected to fill the vacancy caused by Rep. Brownback's resignation. Although Mr. Ryun would be entitled to salary for his service in the 104th Congress at the time of his swearing–in, he did not come to Washington, D.C., to be administered the oath of office until the commencement of the new Congress. Therefore, Rep. Ryun was entitled to his salary for service in the 104th Congress when the oath was administered on January 7, 1997.

98. 143 CONG. REC. 188, 105th Cong. 1st Sess. For similar examples, see 156 CONG. REC. 17626–27, 111th Cong. 2d Sess. (Nov. 16, 2010) (Rep. Marlin Stutzman of Indiana); 164 CONG. REC. H9498–H9499 [Daily Ed.], 115th Cong. 2d Sess. (Nov. 13, 2018) (Rep. Kevin Hern of Oklahoma); and Precedents (Wickham) Ch. 2 § 3.9 (Rep. Steve Largent of Oklahoma).

DEAR NEWT: Attached please find a copy of the letter I have sent to Kansas Governor Bill Graves informing him that I am resigning from the House of Representatives effective at 12:00 p.m. central time on Wednesday, November 27, 1996.

It has been an honor and a privilege to serve with you in the House of Representatives. We enacted reforms during the 104th Congress that has moved this country in the right direction. I look forward to continuing to work with you to balance the federal budget, reduce the size, scope, and intrusiveness of the federal government, and restore the American Dream.

Sincerely,

SAM BROWNBACK,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 25, 1996.

Gov. BILL GRAVES,
State Capitol, Topeka, KS.

DEAR GOVERNOR GRAVES: For the past two years, it has been my privilege to serve the people of Kansas' Second District as their elected Representative in the U.S. Congress. It has been an eventful tenure.

These are remarkable times, and public servants have a tremendous opportunity and responsibility for making America a better place.

There is much work to be done, and the people rightly expect that we will begin it in earnest. Toward that end, I am scheduled to be sworn in as a U.S. Senator for Kansas at 2:00 p.m. central time, Wednesday, November 27, 1996. Accordingly, I am resigning my seat in the U.S. House of Representatives effective at 12:00 p.m. central time, Wednesday, November 27, 1996.

The work of renewing America is unfinished. I see cause for great hope as I believe we are now clearly focused on those very problems which most confound us. There has never been a challenge which the American nation recognized clearly and approached resolutely which we did not overcome. We have cause for great Thanksgiving.

Sincerely,

SAM BROWNBACK.

COMMUNICATION FROM THE CLERK OF THE HOUSE AFTER SINE DIE ADJOURNMENT

OFFIC OF THE CLERK,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, December 2, 1996.

Hon. NEWT GINGRICH,
The Speaker,
U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of the original Certificate of Election received from the Honorable Ron Thornburgh, Secretary of State,

State of Kansas. indicating that, according to the results of the General Election held on November 5, 1996, and pursuant to K.S.A. 25–3503(d), which states, "In the event that any vacancy occurs . . . on or after the date of any general election of state officers and before the term of office in which the vacancy has occurred expires, votes cast for the office of congressman in the district in which such vacancy occurs shall be deemed to have been cast to fill such vacancy for the unexpired term, as well as for election for the next regular term," the Honorable Jim Ryun was elected to the office of Representative in Congress, from the Second Congressional District, State of Kansas.

With warm regards,

ROBIN H. CARLE.

§ 5.2 By tradition, when a Member of the House dies in office, the surviving spouse (or other close relative) is typically provided a gratuity in an amount equal to the annual compensation for a Member.

On January 6, 1973,[99] the House adopted the following resolution providing a gratuity to the widow of a deceased Member–elect:

Mr. [Thomas] O'NEILL [of Massachusetts]. Mr. Speaker, I offer a resolution (H. Res. 93) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 93

Resolved, That there shall be paid out of the contingent fund of the House a sum equal to the annual compensation of a Representative In Congress as a gratuity to Cardiss R. Collins, widow of George W. Collins, late a Representative-elect from the State of Illinois.

Resolved, That there shall be paid from the contingent fund of the House, until otherwise provided by law, such sums as may be necessary to compensate the clerical assistants designated by former Representative George W. Collins in the 92d Congress and borne upon the clerk hire pay rolls of the House of Representatives at the close of the 92d Congress at the rates of compensation then payable to said clerical assistants, until a successor is elected to fill the vacancy in the 7th Congressional District of the State of Illinois caused by the death of the late George W. Collins: *Provided*, That the Clerk is authorized to make, from time to time, such salary adjustments as he deems advisable with respect to the aforementioned employees.

The SPEAKER.[100] Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

On July 29, 2021,[101] the House suspended the rules and concurred in a Senate amendment to an emergency supplemental appropriation bill that contained the following provision regarding widow gratuities:

99. 119 CONG. REC. 379, 93d Cong. 1st Sess. For similar examples, see Deschler's Precedents Ch. 38 § 3.4; and 6 Cannon's Precedents § 204.

100. Carl Albert (OK).

101. 167 CONG. REC. H4265 [Daily Ed.], 117th Cong. 1st Sess.

EMERGENCY SECURITY SUPPLEMENTAL APPROPRIATIONS ACT, 2021

Ms. [Rosa] DELAURO [of Connecticut]. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3237) making emergency supplemental appropriations for the fiscal year ending September 30, 2021, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike all after the enacting clause and insert the following:

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2021, and for other purposes, namely: . . .

HOUSE OF REPRESENTATIVES

Payments to Widows and Heirs of Deceased Members of Congress

For payment to Susan M. Wright, widow of Ronald Wright, late a Representative from the State of Texas, $174,000.

For payment to the heirs at law of Alcee Hastings, late a Representative from the State of Florida, $174,000.

§ 5.3 The House has adopted a resolution (subsequently made permanent law)[102] authorizing the salary disbursement officers of the House to enter into agreements with state governments to provide for the voluntary withholding of state income taxes from the salary of Members.

On November 4, 1975,[103] the House adopted the following resolution, authorizing the Sergeant–at–Arms and the Clerk[104] to enter into agreements with state authorities to withhold state income tax from the salary of Members:

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 732) to authorize voluntary withholding of State income taxes in the case of Members and congressional employees, as amended.

The Clerk read as follows:

H. RES. 732

Resolved, That (a) until otherwise provided by law, the Clerk of the House of Representatives (hereinafter in this resolution referred to as the ''Clerk'') and the Sergeant at Arms of the House of Representatives (hereafter in this resolution referred to as the

102. Later in the 94th Congress, this resolution was enacted into permanent law by P.L. 94–440, 90 Stat. 1439, now codified at 2 U.S.C. § 4555.

103. 121 CONG. REC. 34915, 34939–40, 94th Cong. 1st Sess.

104. *Parliamentarian's Note:* At the time of this proceeding, the Clerk and Sergeant–at–Arms were responsible for different aspects of salary disbursement to Members. These functions were taken over by the CAO when that position was created in the 104th Congress. The underlying statute was also amended to reflect this change in House administration. See P.L. 104–186, 110 Stat. 1718. For more on the role of the CAO, see Precedents (Wickham) Ch. 6 § 17.

''Sergeant at Arms'') shall, in accordance with the provisions of subsections (b), (c), and (d) enter into an agreement with any State, at the request for agreement from the proper State official. The agreement shall provide that—

(1) the Clerk, in the case of employees whose compensation is disbursed by the Clerk; and

(2) the Sergeant at Arms, in the case of Members of the House of Representatives; shall withhold State income tax in the case of each Member and employee who is subject to such income tax and who voluntarily requests such withholding.

(b) Any agreement entered into under subsection (a) shall not require the Clerk or the Sergeant at Arms to remit sums withheld pursuant to any such agreement more often than once each calendar quarter.

(c)(1) The Clerk and the Sergeant at Arms shall, before entering into any agreement under subsection (a), transmit a statement with respect to the proposed agreement to the Committee on House Administration of the House of Representatives (hereinafter in this resolution referred to as the ''committee''). Such statement shall set forth a detailed description of the proposed agreement, together with any other information which the committee may require.

(2) If the committee does not disapprove, through appropriate action, any proposed agreement transmitted to the committee under paragraph (1) no later than ten legislative days after receiving such proposed agreement, then the Clerk or the Sergeant at Arms, as the case may be, may enter into such proposed agreement. The Clerk or the Sergeant at Arms, as the case may be, may not enter into any proposed agreement if such proposed agreement is disapproved by the committee under this paragraph.

(d)(1) A Member or employee may have in effect at any time only one request for withholding under subsection (a), and such Member or employee may not have more than two such requests in effect with respect to different States during any one calendar year. The request for withholding is effective on the first day of the month in which the request is processed by the Clerk or the Sergeant at Arms, but in no event later than on the first day of the first month beginning after the day on which such request is received by the Clerk or the Sergeant at Arms, except that—

(A) when the Clerk or the Sergeant at Arms first enters into an agreement with a State under subsection (a), a request for withholding shall be effective on such date as the Clerk or the Sergeant at Arms may determine;

(B) when an individual first receives an appointment as an employee, the request shall be effective on the day of appointment, if the individual makes the request at the time of appointment; and

(C) when an individual first becomes a Member, the request shall be effective on the day such individual takes the oath of office as a Member, if the individual makes the request at such time.

(2) A Member or employee may change the State designated by such Member or employee for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. A Member or employee also may revoke any request of such Member or employee for withholding. Any change in the State designated or revocation is effective on the first day of the month in which the request or the revocation is processed by the Clerk or the Sergeant at Arms, but in no event later than on the first day of the first month beginning after the day on which such request or revocation is received by the Clerk or the Sergeant at Arms.

(e) This resolution imposes no duty, burden, or requirement upon the United States, the House of Representatives, or any officer or employee of the United States, except as specifically provided in this resolution. Nothing in this resolution shall be deemed to consent to the application of any provision of law which has the effect of subjecting the United States, the House of Representatives, or any officer or employee of the United States to any penalty or liability by reason of the provisions of this resolution. Any paper, form, document, or any other item filed with, or submitted to, the Clerk or the Sergeant at Arms under this resolution is considered to be a paper of the House of Representatives within the provisions of the Rules of the House of Representatives.

SEC. 2. For purposes of this resolution—

(1) the terms ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States;

(2) the term ''Member'' means a Member of the House of Representatives, the Delegates from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner from Puerto Rico; and

(3) the term ''legislative days'' does not include any calendar day on which the House of Representatives is not in session. . . .

AUTHORIZING VOLUNTARY WITHHOLDING OF STATE INCOME TAXES IN THE CASE OF MEMBERS AND CONGRESSIONAL EMPLOYEES

The SPEAKER.[105] The unfinished business is the question of suspending the rules and agreeing to the resolution (H. Res. 732), as amended.

The Clerk read the title of the resolution.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey (Mr. THOMPSON) that the House suspend the rules and agree to the resolution, House Resolution 732, as amended, on which the yeas and nays are ordered.

The question was taken.

Mr. [John] ASHBROOK [of Ohio]. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were-yeas 394, nays 7, not voting 32, as follows:

[Roll No. 663] . . .

Mr. FORSYTHE and Mr. McDONALD of Georgia changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof), the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

§ 5.4 The House has considered a bill (subsequently enacted into law) that, *inter alia*, made the timely receipt of salary by Members of Congress contingent upon the adoption of a concurrent resolution on the budget.

On January 23, 2013,[106] the House considered the following bill:

NO BUDGET, NO PAY ACT OF 2013

Mr. [David] CAMP [of Michigan]. Mr. Speaker, pursuant to House Resolution 39, I call up the bill (H.R. 325) to ensure the complete and timely payment of the obligations of the United States Government until May 19, 2013, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore.[107] Pursuant to House Resolution 39, the amendment printed in House Report 113–2 is considered adopted, and the bill, as amended, is considered read.

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105. Carl Albert (OK).

106. 159 CONG. REC. 485–86, 492–93, 498–99, 113th Cong. 1st Sess. For the special order governing consideration of this measure, see 159 CONG. REC. 475–83, 113th Cong. 1st Sess. (Jan. 23, 2013). For remarks in the Senate concerning the severability of the salary provision from the remainder of the bill, see 159 CONG. REC. 826, 113th Cong. 1st Sess. (Jan. 31, 2013). It should also be noted that these budgetary provisions applied only to the 113th Congress.

107. Raymond Terry (NE).

The text of the bill, as amended, is as follows:

H.R. 325

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Budget, No Pay Act of 2013''.

SEC. 2. TEMPORARY SUSPENSION OF DEBT CEILING.

(a) SUSPENSION.—Section 3101(b) of title 31, United States Code, shall not apply for the period beginning on the date of the enactment of this Act and ending on May 18, 2013.

(b) SPECIAL RULE RELATING TO OBLIGATIONS ISSUED DURING SUSPENSION PERIOD.—Effective May 19, 2013, the limitation in section 3101(b) of title 31, United States Code, as increased by section 3101A of such title, is increased to the extent that—

(1) the face amount of obligations issued under chapter 31 of such title and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) outstanding on May 19, 2013, exceeds

(2) the face amount of such obligations outstanding on the date of the enactment of this Act.

An obligation shall not be taken into account under paragraph (1) unless the issuance of such obligation was necessary to fund a commitment incurred by the Federal Government that required payment before May 19, 2013.

SEC. 3. HOLDING SALARIES OF MEMBERS OF CONGRESS IN ESCROW UPON FAILURE TO AGREE TO BUDGET RESOLUTION.

(a) HOLDING SALARIES IN ESCROW.—

(1) IN GENERAL.—If by April 15, 2013, a House of Congress has not agreed to a concurrent resolution on the budget for fiscal year 2014 pursuant to section 301 of the Congressional Budget Act of 1974, during the period described in paragraph (2) the payroll administrator of that House of Congress shall deposit in an escrow account all payments otherwise required to be made during such period for the compensation of Members of Congress who serve in that House of Congress, and shall release such payments to such Members only upon the expiration of such period.

(2) PERIOD DESCRIBED.—With respect to a House of Congress, the period described in this paragraph is the period which begins on April 16, 2013, and ends on the earlier of—

(A) the day on which the House of Congress agrees to a concurrent resolution on the budget for fiscal year 2014 pursuant to section 301 of the Congressional Budget Act of 1974; or

(B) the last day of the One Hundred Thirteenth Congress.

(3) WITHHOLDING AND REMITTANCE OF AMOUNTS FROM PAYMENTS HELD IN ESCROW.—The payroll administrator shall provide for the same withholding and remittance with respect to a payment deposited in an escrow account under paragraph (1) that would apply to the payment if the payment were not subject to paragraph (1).

(4) RELEASE OF AMOUNTS AT END OF THE CONGRESS.—In order to ensure that this section is carried out in a manner that shall not vary the compensation of Senators or Representatives in violation of the twenty-seventh article of amendment to the Constitution of the United States, the payroll administrator of a House of Congress shall release for payments to Members of that House of Congress any amounts remaining in any escrow account under this section on the last day of the One Hundred Thirteenth Congress.

(5) ROLE OF SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall provide the payroll administrators of the Houses of Congress with such assistance as may be necessary to enable the payroll administrators to carry out this section.

(b) TREATMENT OF DELEGATES AS MEMBERS.—In this section, the term ''Member'' includes a Delegate or Resident Commissioner to the Congress.

(c) PAYROLL ADMINISTRATOR DEFINED.—In this section, the ''payroll administrator'' of a House of Congress means—

(1) in the case of the House of Representatives, the Chief Administrative Officer of the House of Representatives, or an employee of the Office of the Chief Administrative Officer who is designated by the Chief Administrative Officer to carry out this section; and

(2) in the case of the Senate, the Secretary of the Senate, or an employee of the Office of the Secretary of the Senate who is designated by the Secretary to carry out this section.

The SPEAKER pro tempore. Debate shall not exceed 1 hour with 40 minutes equally divided and controlled by the chair and ranking minority member of the Committee on

Ways and Means and 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on House Administration.

The gentleman from Michigan (Mr. CAMP) and the gentleman from Michigan (Mr. LEVIN) each will control 20 minutes. The gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Pennsylvania (Mr. BRADY) each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CAMP).

GENERAL LEAVE

Mr. CAMP. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.R. 325.

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

There was no objection.

Mr. CAMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of H.R. 325, the No Budget, No Pay Act of 2013. This legislation directs Members of the House and Senate to adopt a budget resolution by April 15, 2013. If either body does not adopt a budget resolution by April 15, 2013, Members of that body will have their pay withheld until they pass a budget. It's simple: no budget, no pay. The American people understand that they don't get paid if they don't do their job, and neither should Members of Congress.

In addition, to ensure the complete and timely payment of the obligations of the U.S. Government, this legislation allows Treasury to issue debt between the date of enactment and May 18, 2013. However, Treasury may only issue enough debt necessary to pay bills coming due before May 18. I want to be perfectly clear on this point: this bill does not allow Treasury to run up an unlimited amount of debt between now and May 18.

The debt authorized under this bill must be tied to bills coming due during that timeframe. Further, on May 19, a new debt limit is automatically established.

So that's what this bill does. The larger question is, why are we even talking about the debt and debt limit? Our Nation's debt is not just some abstract number. It has a direct impact on American families. During the President's fiscal commission, the Simpson-Bowles Commission, we heard nonpartisan testimony that when the debt is this large in comparison to the economy, it costs the country the equivalent of about 1 million jobs. Think about that. If Washington got its debt and spending under control, then 1 million more Americans would be working today.

And if that wasn't sobering enough, Fitch Ratings recently warned that the failure to come up with a plan for reducing our debt would likely still result in a downgrade of the U.S. credit rating. A lower credit rating is sure to mean higher interest rates. That means higher credit card payments, higher car payments, higher student loans, and certainly higher mortgage payments.

Despite these nonpartisan warnings, the Democrat-controlled Senate has not produced a budget in more than 1,300 days. That's 4 years without a budget. How can we begin to get our debt under control when Democrats won't even produce a budget? This bill is the first step in forcing Democrats to put forward a budget so we can start holding Washington accountable for its out-of-control spending.

Every day, American families have to make decisions about their household finances. They have to adjust their spending to cover a whole host of things: groceries, student

loan payments, braces for children, and a replacement for that aging refrigerator. Of course, they can't buy everything they want. Every day, they have to make tough choices.

It's time for Congress—the House and the Senate—to make some tough choices. To be honest, Mr. Speaker, this isn't a tough choice where I come from. Where I grew up, if you didn't do your job, you didn't get paid. It's time for Congress to start living with the same facts of life everyone else in America has to live with. I support the No Budget, No Pay Act because it brings back a bit of accountability and common sense to Washington. I urge my colleagues to join me in passing this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. [Sander] LEVIN [of Michigan]. Mr. Speaker, I yield myself such time as I shall consume.

This Republican bill is not a change in policy. It's a change in tactics. House Republicans continue to play with economic fire. They're playing political games with the debt ceiling, and that undermines certainty.

Yesterday, economist Simon Johnson of MIT testified before our committee saying that a short-term increase would only extend uncertainty. He said:

> You will continue to undermine the private sector. You will continue to delay investment and to reduce employment relative to what it would be otherwise.

Let's, for a second, remember history, the last time the House Republicans played political games with the debt ceiling. In August 2011, our economy produced the lowest job growth in 3 years. During that 2-month period, the Dow Jones plummeted 2,000 points, including one of its worst single-day drops in history—635 points on August 8. S&P downgraded the U.S. credit rating for the first time in history.

Leading Republicans in June, 2011, criticized the notion of a short-term debt ceiling increase as providing a lack of certainty. The majority leader said:

> We feel very strongly that one of the reasons why we continue to see an ailing economy is that people have very little confidence, have very little certainty in terms of where we are headed.

Our Ways and Means chairman echoed that feeling only days later saying about the prospect of a short-term debt ceiling increase, It does not give you certainty.

This bill does not give certainty, but uncertainty.

The action we took New Year's Day to avoid the fiscal cliff brought our total deficit reduction over the past 2 years to $2.5 trillion. What's more, it set the stage for future further balanced agreements that include both spending cuts and new revenue. We should proceed with that effort, not plunge into further uncertainty.

I reserve the balance of my time. . . .

Mrs. [Candice] MILLER of Michigan. Madam Speaker, I yield myself such time as I may consume.

I rise today in strong support of H.R. 325, the No Budget, No Pay Act.

The Budget Act of 1974 requires each House of Congress to pass a budget each year by April 15. This is important, of course, because the budget that we pass is our blueprint, literally, for how we're going to spend the hard-earned tax dollars that the American people send here to Washington to run our Nation.

Today, we are in a situation where the United States Senate has not passed a budget in nearly 4 full years, leaving the American people with no idea of how the Senate intends to deal with the fiscal crisis that is facing our Federal Government. In the time

since the Senate last passed a budget, the Federal Government has experienced deficits of over $1 trillion each and every year, and we have added more than $5 trillion to our national debt. Obviously, this is a very serious fiscal crisis, and the American people are demanding answers.

This legislation will allow us room to begin working on a solution that will put our Nation on a much more sound financial footing. This bill will extend our Nation's borrowing authority for 90 days to give each House of Congress, the House and the Senate, the needed time to do what they are legally required to do, which is to pass a budget to show the American people how we intend to deal with the many challenges that we face. But while giving Congress time to do its work, it also has a very important caveat associated with it that says, if we don't do what we are required to do by law, that we will not be paid. Simply put: no budget, no pay.

This idea actually came, Madam Speaker, from previous bipartisan efforts to bring fiscal responsibility to Washington. And now the President has indicated that if it reaches his desk, he will sign it, that he does not oppose it.

As well, there have been very promising indications coming out of the United States Senate from many Democratic Members that they will also step up, after 4 long years of inaction, and put forward a budget.

I believe that this can be the impetus today for us to begin working together to make the difficult decisions to finally address our fiscal challenges. Today, we can send that very strong message to the American people with a bipartisan vote to show that we are willing to put our paychecks on the line to meet these challenges.

Now, some are concerned about whether or not this legislation is constitutional because of the 27th Amendment's restriction that the pay of Members of Congress cannot be varied—that is really the operative phrase of that amendment, "varied"—that it can neither be raised nor reduced until another election has taken place. This bill, Madam Speaker, was carefully crafted to comply with the requirements of the 27th Amendment.

So this is how it will work:

If either the House or the Senate does not pass a budget by April 15, the deadline, then beginning on April 16, the pay for Members of that Chamber will be placed into an escrow account and will only be paid when that Chamber—either the House or the Senate—has passed a budget or when we reach the end of the 113th Congress. The amount that Members are paid will not be reduced nor will it be raised, so we stay in strict compliance with the terms of the 27th Amendment.

There is no requirement in the 27th Amendment which states that Members have to be paid weekly, biweekly, monthly, or bimonthly or what have you, only that the pay that they receive will not vary.

Now, some have suggested that the escrow account into which the Member pay would be deposited should bear interest so that that could then, as well, be paid to the Members. This cannot happen because that would actually cause Member pay to increase, of course. It would then vary their pay, which would not be in compliance with the strict terms of the 27th Amendment.

So I am extremely hopeful, Madam Speaker, that we will successfully conclude our work in a timely basis here in the House, and I hope that this additional provision, as well, encourages the Senate to also complete our important work and pass a budget.

What we are suggesting certainly is not unreasonable. I'll tell you, I come from southeast Michigan, and one thing I can tell you that is true about the people that I am honored to serve is that they get up every single day, every morning and work hard all day,

every day. They simply do not understand how Congress can fail to do our job for almost 4 years—no budget out of the Senate for almost 4 years—and yet suffer no consequences.

The American people are demanding that their Members of Congress deal effectively with the challenges we face. Our problems are real, and it's time for real solutions or real consequences.

The concept, again, very simple: no budget, no pay. When times are tight, you balance your checkbook. When you run out of money, you stop spending. When your credit card is maxed out, you cut it up or get a plan together to pay it off. And if you don't do your job, you don't get paid. These are the principles, Madam Speaker, that Americans live by, and we certainly should be no exception.

So I would urge my colleagues to join me in supporting this bill.

I reserve the balance of my time.

Mr. [Robert] BRADY of Pennsylvania. Madam Speaker, I yield myself such time as I may consume.

This bill is not a serious or viable attempt to address the debt ceiling issue and is merely another way to avoid dealing with the difficult choices we need to make.

We have been here before. We know what happens when we govern with this kick-the-can-down-the-road mentality. The most troubling effect, again, is the constitutionality of this bill is also dangerously unclear.

I was not on the floor last week when my colleagues read the Constitution. Maybe they didn't reach the 27th Amendment. I am not a constitutional attorney. I am not an attorney in any way, and I make no apologies for that. But it's real easy:

> No law, varying the compensation for the services of the Senators or Representatives, shall take effect, until an election of the Representatives shall have intervened.

"Varying" is the, again, as my friend did say, operative word. If you aren't getting a paycheck in a month and you're going to wait for 18 months, that's varying. So it could be—and, in my opinion, it is—a constitutional problem.

But be that as it may, I do commend the majority for recognizing that Congress must pay its bills, that raising the debt ceiling isn't about spending more money, it's about paying for bills we already incurred.

There is widespread, bipartisan acknowledgement of how difficult and serious the fiscal challenges before us have become. However, this proposal is just another attempt to yet again put the discussion off for another day.

Madam Speaker, I came here and I saw the sign, "No Budget, No Pay." It probably should say, "No Budget, Delayed Pay," but it sounds better when you say "No Budget, No Pay." That means we may not be getting paid, but we're going to get paid; it will be delayed, but we're going to get paid.

Every year in this house we do pass a budget; although, it's a budget that I can't vote for. It's a budget that hurts the middle class, the working class, the want-to-be-working class, and it also hurts the American people's safety net. We know again this year we will pass that budget. So our friends on the other side of the aisle are putting up a No Budget, No Pay quite well knowing that they will probably pass their budget and we probably will get paid.

On another thought, as my good friend, Mr. DOYLE, from Pittsburgh has said to me, why not no gun control, no pay? Why not no immigration reform, no pay? Why not no DISCLOSE Act, no pay?

So, Madam Speaker, in my opinion—and I think in a lot of my colleagues' opinion—it's a gimmick bill. No Budget, No Pay has no teeth.

With that, I reserve the balance of my time.

Mrs. MILLER of Michigan. Madam Speaker, before I yield time to my good colleague here, a couple of comments in regards to what my ranking member has said from the committee, why not no gun control, no pay, or using some other examples. I would just point out that none of those are required by law, as passing a budget is required by law.

Also, there was some comment again about the significance of the 27th Amendment. I would just add quickly a statement from David Rivkin, Jr., and Lee Casey. These are two constitutional attorneys that served in former administrations who say the bill passes muster. Their comment:

> It does not vary Members' compensation instead holding it in escrow until such time that a budget is passed or, at the latest, this Congress comes to an end. It is attentive to the text and structure of the Constitution.

And just one other quote. This is from another constitutional attorney, a Greg Watson—actually, a gentleman who rallied the support to pass the 27th Amendment. I will proudly point out, in 1992 it was my State of Michigan that put it over the three-fourths threshold. But at any rate, he said:

> Nowhere in such a proposal do I see any violation of the terms and provisions of the 27th Amendment. Such a proposal does not vary the dollar amount of compensation to Members of Congress. The proposal merely delays the disbursement of that dollar amount.

STATEMENT OF DAVID B. RIVKIN, JR., AND LEE A. CASEY

> Members of Congress are accountable not just to serve their constituents but also to support and defend the Constitution of the United States. The House of Representatives' debt ceiling extension furthers both. The American people expect that their elected representatives in Congress will work together to enact a budget resolution, and the House bill's approach holds them personally accountable for doing so. It honors both Article I and the Twenty-Seventh Amendment to the U.S. Constitution because it does not vary Members' compensation, instead holding it in escrow until such time that a budget is passed or, at the latest, this Congress comes to an end. This mechanism is a model for the way that Congress ought to work: it is creative, it is fiscally responsible, and it is attentive to the text and structure of the Constitution.

Madam Speaker, at this time I am very honored and privileged to yield 2 minutes to the gentleman from Mississippi (Mr. HARPER), who is a distinguished member of the Committee on House Administration.

Mr. [Gregg] HARPER [of Mississippi]. Madam Speaker, the No Budget, No Pay portion of this bill was written specifically to ensure that it complies with the 27th Amendment to the Constitution. The bill does not vary the amount of compensation and is, therefore, constitutional. It only changes when Representatives and Senators are paid if they fail to adopt a budget resolution, as required by law.

Currently, Representatives are paid monthly and Senators are paid twice a month. This bill simply says, if the House does not adopt a budget resolution, the Members of that House, instead, get paid at the end of that term of Congress.

In 1789, James Madison, when he introduced the 27th Amendment, spoke of preventing changes in compensation from being for the benefit of those determining them. The clear purpose of the amendment—which, as we know, was not ratified until 1992—was to prevent Members from drawing higher salaries from the public treasury without

giving voters an opportunity to speak on that decision. This bill does not benefit Members at the expense of taxpayers, and it is consistent with the provisions of the 27th Amendment. . . .

The SPEAKER pro tempore.[108] The question is on the passage of the bill.

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

RECORDED VOTE

Mr. BRADY of Pennsylvania. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 285, noes 144, not voting 3, as follows:

[Roll No. 30] . . .

Messrs. BROOKS of Alabama, DUNCAN of Tennessee and GUTIERREZ changed their vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. GENE GREEN of Texas. Madam Speaker, on rollcall No. 30, had I been present, I would have voted "aye."

Leaves of Absence

§ 5.5 Although leaves of absence are typically submitted to the respective party cloakrooms and granted by unanimous consent at the end of each legislative day, a Member may personally submit the leave of absence request (which must be in writing) to the Chair.

On March 7, 2001,[109] a Member made a personal request for a leave of absence from the floor as follows:

PERMISSION FOR LEAVE OF ABSENCE

Mr. [Isaac] SKELTON [of Missouri]. Mr. Speaker, I have at the desk a personal request.

The SPEAKER pro tempore.[110] The Clerk will report the leave of absence request.

The Clerk read as follows: Leave of absence requested for Mr. SKELTON of Missouri for tomorrow.

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108. Virginia Foxx (NC)

109. 147 CONG. REC. 3023–24, 107th Cong. 1st Sess.

110. Henry Bonilla (TX).

The SPEAKER pro tempore. Without objection, the gentleman's written request will be granted.

There was no objection.

§ 5.6 Members may request that their salary be reduced on account of absences from the House, pursuant to statutory authority[111] permitting such deductions.

On October 24, 1979,[112] a Member made the following request:

REPRESENTATIVE MARTIN REQUESTS REDUCTION IN PAY

(Mr. MARTIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. [James] MARTIN [of North Carolina]. Mr. Speaker, I know not what course Exxon may take, but as for me, in accordance with title 2, United States Code, section 39, I make a unanimous-consent request that my pay be reduced for the 3 days during which I was not in attendance at sessions of the House on October 9, 11, and 12.

The SPEAKER.[113] Is there objection to the request of the gentleman from North Carolina?

There was no objection.

§ 5.7 The House has granted a leave–of–absence request by a Member on behalf of a group of Members travelling internationally on official business.

On September 14, 1988,[114] the following *en bloc* request for leaves of absence was made:

ANNOUNCEMENT OF ATTENDANCE BY MEMBERS AT INTERPARLIAMENTARY UNION MEETING

Mr. [Claude] PEPPER [of Florida]. Mr. Speaker, tomorrow afternoon I, as chairman of the United States delegation of the Interparliamentary Union meeting in Sofia, Bulgaria, leave for that conference.

The Speaker has appointed me as chairman of the delegation, and the gentleman from California [Mr. BROWN], the gentleman from New York [Mr. SCHEUER], the gentleman from New York [Mr. WORTLEY], and the gentleman from Guam [Mr. BLAZ] as delegates from the House of Representatives to attend this conference.

This is an organization of 108 nations embracing all the nations that are our closest friends in the world.

Mr. Speaker, I ask that the gentleman appointed by the Speaker to attend this conference be granted a leave of absence during the time they are attending this conference by the House of Representatives.

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111. *Parliamentarian's Note:* This statutory authority is now codified at 2 U.S.C. § 5306.

112. 125 CONG. REC. 29379, 96th Cong. 1st Sess.

113. Thomas O'Neill (MA).

114. 134 CONG. REC. 23820, 23852, 100th Cong. 2d Sess.

The SPEAKER pro tempore (Mr. [James] CLARKE [of North Carolina]). Is there objection to the request of the gentleman from Florida?

There was no objection. . . .

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BROWN of California (at the request of Mr. PEPPER), for September 15–24, 1988, on account of official business.

Mr. SCHEUER (at the request of Mr. PEPPER), for September 15–24, 1988, on account of official business.

Mr. BLAZ (at the request of Mr. PEPPER), for September 15–24, 1988, on account of official business.

Mr. WORTLEY (at the request of Mr. MICHEL), for today through September 28, 1988, on account of official business.

Mr. BARNARD (at the request of Mr. FOLEY), for today and the balance of the week, on account of illness.

§ 5.8 The chair of the Committee on Standards of Official Conduct (now the Committee on Ethics)[115] inserted into the *Congressional Record* the committee's interpretation of the House's former rule regarding honoraria.[116]

On October 19, 1979,[117] the chair of the Committee on Standards of Official Conduct made the following statement regarding the House's rule on Members receiving honoraria:

EARNED INCOME LIMITATION

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. [Robert] BENNETT [of Utah]. Mr. Speaker, the Committee on Standards of Official Conduct has received several inquiries concerning the effect of the cost-of-living salary increase on the earned income limit in House rule XLVII, as well as the application of that rule to the assignment of income to charity. The following response to these questions is provided for the information of my colleagues.

House rule XLVII limits a Member's outside earned income in a calendar year to 15 percent of the aggregate salary paid to the Member during such calendar year. The cost-

115. The Committee on Standards of Official Conduct was redesignated as the Committee on Ethics at the beginning of the 112th Congress. *House Rules and Manual* § 721b (2021).

116. *Parliamentarian's Note:* The guidance provided by the committee here relates to the form of the rule as it existed in the 96th Congress. For more recent interpretations of the House's ethics rules (included rules regarding honoraria) by the Committee on Ethics, see the House Ethics Manual, 110th Cong. 2d Sess. (2008 Ed.), pp. 189–196.

117. 125 CONG. REC. 28917, 96th Cong. 1st Sess.

of-living adjustment effective October 1 will increase the aggregate salary paid to a Member in 1979 to $58,290.62. Thus, the limit on outside earned income for personal services rendered is $8,743.60, for calendar year 1979. The limit in 1980, based on a salary level of $60,662.50 will be $9,099.38.

Rule XLVII also limits to $1,000 the amount a Member may accept as an honorarium for an single speech or article. Honoraria assigned to a tax-exempt charity is not treated as earned income subject to the limitations in the rule. If a Member chooses to have an honorarium donated to a specific tax-exempt charity selected by the Member, he should direct the paying organization to make the payment directly to the charity. In addition, any honorarium returned by the Member to the payor before the close of the calendar year will not be counted against the earned income limitation.

Any honoraria assigned to a charitable organization should be reported in the Member's annual financial disclosure statement required by the Ethics in Government Act of 1978, with the notation that the income was assigned to charity. It should also be noted that honoraria assigned to charity must be reported by the Member as gross income for tax purposes, and may be deducted as a charitable contribution (see Revenue ruling 79–121).

§ 5.9 The House has adopted a special order of business resolution providing for the consideration of a legislative branch appropriation bill and restricting the offering of amendments to a section addressing salary adjustments for Members of Congress.[118]

On June 13, 1979,[119] the House considered the following special order of business resolution:

MAKING IN ORDER CONSIDERATION OF H.R. 4390, LEGISLATIVE APPROPRIATIONS, 1980

Mr. [John] MOAKLEY [of Massachusetts]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 312 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 312

Resolved, That during the consideration of the bill (H.R. 4390) making appropriations for the legislative branch for the fiscal year ending September 30, 1980, and for other purposes, all points of order against sections 303 and 305 of said bill for failure to comply

118. *Parliamentarian's Note:* The special order of business prohibited amendments (including those contained in a motion to recommit) to section 305 of the bill concerning adjustments to Members' salaries. The special order did permit a single amendment to reduce the amount of the adjustment from 7% to 5.5%. The House rejected the motion for the previous question and subsequently amended the special order to provide for consideration of a substitute amendment striking the adjustment altogether. 125 CONG. REC. 14650–51, 96th Cong. 1st Sess. (June 13, 1979). That substitute was rejected and the original amendment merely reducing the adjustment was adopted. 125 CONG. REC., 14663, 96th Cong. 1st Sess. (June 13, 1979). However, on final passage, the House ultimately rejected the bill containing the salary adjustment. 125 CONG. REC. 14674, 96th Cong. 1st Sess. (June 13, 1979). For the House's rejection of a similar bill later in the same Congress (a continuing resolution also providing for an increase in Members' salaries), see 125 CONG. REC. 25345–54, 96th Cong. 1st Sess. (Sept. 13, 1979).

119. 125 CONG. REC. 14642–45, 14650–51, 96th Cong. 1st Sess.

with the provisions of clause 2, rule XXI are hereby waived. No amendment to section 305 of said bill shall be in order except an amendment in the following form: ''On page 30, strike out '7 percent' and insert '5.5 percent' '', and said amendment shall not be subject to amendment but shall be debatable by the offering of pro forma amendments. No other amendments to and no motion to recommit said bill having the effect of changing or modifying section 305 of said bill shall be in order.

The SPEAKER.[120] The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Ohio (Mr. LATTA). Pending that, I yield myself such time as I may consume.

Mr. Speaker, the resolution provides certain procedures during the consideration of the legislative branch appropriation —H.R. 4390.

The rule waives points of order against section 303, relating to terms of service for pages, and section 305, which places a limit on the pay raises which would otherwise go to Congressmen, Senators, judges, and other high level Federal employees. Both sections would otherwise be subject to points of order as legislation in an appropriations bill.

The rule would also permit an amendment to further reduce the limitation on pay raises which would otherwise be granted to persons covered by section 305. . . .

Mr. [Robert] BAUMAN [of Maryland]. The motion to recommit is also restricted. That motion is permitted, but it is restricted in the sense that no motion to recommit can amend the section dealing with the pay raise; so that there is no opportunity under this rule to strike out the pay raise or to do anything but vote on an amendment reducing it from 7 percent to 5.5 percent. No other amendment and no other motion to recommit is permitted. . . .

Mr. [Adam] BENJAMIN [of Indiana]. Speaker, House Resolution 312, the rule proposed for the legislative branch appropriations bill, fiscal year 1980, appears to be considerably more provocative than that which was formally requested by the Committee on Appropriations.

Section 305, providing a 7-percent restriction, was added to H.R. 4390 by the committee to limit an automatic salary adjustment for Members of Congress, Federal judges, and other top Government officials which could have amounted to 11.3 percent or more. The Rules Committee, in its wisdom, invoked an alternate limitation of a maximum of 5.5 percent, presumably that which will be proposed by the President under the Federal Pay Comparability Act of 1970.

Mr. Speaker, I support the rule. I take this time to explain the dilemma invoked by using the legislative branch appropriations bill to vent disagreement with the salary structure.

In 1975, the Congress adopted the Executive Salary Adjustment Act which provided that top Government officials, including Members of Congress, would automatically receive the same Governmentwide percentage pay increase granted to Civil Service workers under the Federal Pay Comparability Act of 1970. Under this law, adjustments are recommended to keep Federal employee pay scales comparable to the private sector. The President must issue an Executive order putting the recommendation or an alternate proposal, subject to one-House congressional veto, into effect by October 1.

Under the Executive Salary Adjustment Act, Members of Congress and other top Government officials did receive an adjustment in 1975. However, in 1976, the legislative

120. Thomas O'Neill (MA).

branch appropriations bill was used to deny payment of the adjustment in fiscal year 1977.

In 1977, the increase recommended under the Federal Salary Act of 1967 took effect. In the same year, Public Law 95–66 was adopted providing that the salaries of Members of Congress and other top Government officials that were increased by the Quadrennial Commission would not be increased again in the same year by the comparability pay adjustment. This effectively denied a 7-percent increase.

In 1978, and again this year, the legislative branch appropriations bill, is being used to deny payment of adjustments under the Executive Salary Adjustment Act—not to deny increases as Public Law 95–66 did in 1977.

Please distinguish this carefully. The use of the legislative branch appropriations bills in 1976, 1978, and 1979 are not erasing adjustments which occur automatically as entitlements pursuant to the Executive Salary Adjustment Act—you are merely abating payment while the adjustments continue to increase the salaries.

If it is the intent of the Congress to deny payment pursuant to or separate itself from the provisions of the Executive Salary Adjustment Act, then the proper approach is that found in Public Law 95–66 and the proper committee of jurisdiction is the House Post Office and Civil Service Committee.

I urge my colleagues to familiarize themselves with the General Accounting Office report of May 17, 1979, which urged that annual adjustments under the Executive Salary Adjustment Act be allowed to take effect and that Congress unlink itself to executive level II salaries because of its political propensity to abate payments thereby compressing the schedule.

Quite frankly, our collective zeal to castigate ourselves has developed a precarious situation which could lead to an increase that the opponents of this rule assert that they do not want.

I urge the adoption of the rule and a vote on the preferred adjustment. Then, I urge passage of the bill which has great merit beyond the question of salaries. Finally, I urge that the matter of comparability pay be addressed to the proper committee and that future legislative branch appropriations bills not be used for the annual salary fight.

I include the following explanation of section 305:

EXPLANATION OF SECTION 305 OF H.R. 4390

This amendment provides for a 7 percent increase for those individuals in the legislative, executive, and judicial branches or in the government of the District of Columbia, whose rate of pay was either directly or indirectly increased as a result of the March 1977 pay increases which went into effect under the Quadrennial Commission mechanism and whose pay, as a result of various legislative actions, has been frozen since that time.

The first sentence of the amendment provides that the rate of pay may not be increased by more than 7 percent of the rate in effect on September 30, 1978, which is the last day before the 1978 comparability adjustment would have taken effect. It also defines in clauses (1) and (2) the individuals who are subject to the limitation. Under clause (1) any individual whose rate of pay is $47,500 or more (that is equal to or greater than level V of the Executive Schedule) is covered. This covers those individuals whose rate of pay was directly affected by the 1977 Quadrennial increase (such as Members, Senators, judges, heads and assistant heads of cabinet departments), as well as individuals whose rate of pay is administratively set at rates above $47,500 (such as certain high level positions in the Postal Service).

Clause (2) covers those individuals whose rates of pay were not directly affected by the 1977 Quadrennial increase, but whose rates of pay nevertheless increased because the Quadrennial increase raised the statutory (or other) salary ceiling on their rates of pay.

For example, the published rate for a GS-18 is $61,449, but pay payable is only $47,500 because of the statutory level V ceiling (5 U.S.C. § 5308) which has been frozen since March 1977. Under the amendment the $47,500 ceiling is increased by 7 percent to $50,825. The

amendment also makes comparable adjustments for ceilings on rates of pay for committee staffs, other officers and employees of the House and Senate, and for administrative assistants whose maximum rate of pay is limited by congressional resolution.

The amendment applies to individuals in all three branches, and thus includes individuals in the Postal Service, and the military service. The Office of Personnel Management has informally estimated that the amendment will affect 15,046 individuals broken down as follows:

Executive Branch:	
Currently at level V or above	742
Additional affected by frozen ceiling	12,807
Legislative Branch	584
Judicial Branch	913

Most of these individuals have had no adjustment since March 1977. The 1978 adjustment was denied pursuant to a limitation on the use of funds contained in the FY1979 Legislative Branch Appropriations Act (P.L. 95–391). The 1977 comparability adjustment for these individuals was eliminated by Public Law 95–66. During the period when comparability adjustments have been denied (March 1977 through April 1979) the Consumer Price Index has increased by 18.8 percent.

Under the amendment the 7 percent limitation will be in effect only for FY1980. If a limitation is to continue beyond Fiscal Year 1980, it will be necessary for Congress to enact a similar limitation on funds again next year.

If no limitation is enacted this year, and assuming that the President submits an alternative plan to limit the October 1979 comparability adjustment to 5.5 percent, the pay of individuals covered by this amendment would increase by approximately 11.3 percent since both the FY1979 adjustment (5.5 percent) and the FY1980 adjustment (assumed to be 5.5 percent) would go into effect simultaneously (See Attachment).

Subsection (b) of the amendment provides a special rule to cover positions created after September 30, 1978, and requires the appropriate officials in each branch to promulgate regulations to ensure that the pay for such positions will be set at a rate equivalent to that for comparable positions which were in existence on September 30, 1978.

This provision ensures that individuals in positions which are transferred to the new Senior Executive Service (SES), which was created by the Civil Service Reform Act, will not receive pay increases of more than 7 percent during FY1980. Although the maximum rate of pay for the SES is set at level IV of the Executive Schedule, those positions transferred into the SES which on September 30, 1978, were subject to the level V ceiling will continue to be subject to the adjusted level V ceiling. The amendment, however, pertains only to increases in basic pay. Performance awards and other lump-sum payments which are in addition to basic pay are not limited by the amendment.

Subsection (c) provides that the salary or pay actually paid to an employee, as a result of the application of the amendment, will serve as the basis for computing life insurance, retirement, and other benefits, rather than the higher statutory rate.

	March 1977 [1]	Oct. 1977 [2]	Oct. 1, 1978 [3]	Oct. 1, 1979 [4]
Speaker, Vice President, Chief Justice	75,000	75,000	75,000 (79,100)	80,250 (83,500)
Cabinet heads (Executive Level I)	66,000	66,000	66,000 (69,600)	70,620 (73,400)
Members, circuit court justices (Executive Level II)	57,500	57,500	57,500 (60,700)	61,525 (64,000)
Executive Level III	52,500	52,500	52,500 (55,400)	56,175 (58,400)
Executive Level IV (SES maximum)	50,000	50,000	50,000 (52,800)	53,500 (55,700)
Executive Level V (GS maximum)	47,500	47,500	47,500 (50,100)	50,825 (52,900)

[1] Rate established pursuant to Quadrennial Commission recommendations.
[2] Comparability adjustment denied pursuant to Public Law 95–66.
[3] Limitation on use of funds (Public Law 95–391) limits rates payable to those in effect on Sept. 30, 1978. Legal rates, reflecting the 5.5-percent increase, are shown in parentheses.
[4] Rates payable if 7-percent limitation is adopted. Legal rates are shown in parentheses (assumes President limits this year's comparability adjustment to 5.5 percent).

. . .

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

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

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

The yeas and nays were ordered.

The question was taken; and there were—yeas 126, nays 292, not voting 16, as follows:

[Roll No. 223] . . .

The Clerk announced the following pairs:

On this vote:

Mr. Conyers for, with Mrs. Schroeder against.

Until further notice:

Mr. Biaggi with Mr. Brown of Ohio.
Mr. Flood with Mr. Dixon.
Mr. Derrick with Mr. Kemp.
Mr. Smith of Iowa with Mr. Forsythe.
Mr. Treen with Mr. Walgren.
Mr. John L. Burton with Mr. Bob Wilson.

Messrs. BONKER, TRAXLER, LENT, GUDGER, MADIGAN, GUARINI, DICKS, IRELAND, PURSELL, VANDER JAGT, and ROBERTS changed their vote from "yea" to "nay."

So the previous question was not ordered.

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. LATTA

Mr. LATTA. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. LATTA: Strike all after the resolving clause and insert in lieu thereof the following:

''That during the consideration of the bill (H.R. 4390) making appropriations for the legislative branch for the fiscal year ending September 30, 1980, and for other purposes, all points of order against sections 303 and 305 of said bill for failure to comply with the provisions of clause 2, rule XXI are hereby waived. No amendment to section 305 of said bill shall be in order except amendments in the following form: (1) ''on page 30, strike out '7 percent' and insert '5.5 percent' '', and (2) a substitute amendment for said amendment striking out the words 'by more than 7 percent', and said amendments shall not be subject to further amendment but shall be debatable by the offering of pro forma amendments. No other amendment to and no motion to recommit said bill having the effect of changing or modifying section 305 shall be in order.''

The SPEAKER. The gentleman from Ohio (Mr. LATTA) is recognized for 1 hour.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is exactly the amendment I referred to earlier in the well of the House. I have been informed by the Parliamentarian that the vote, should this be adopted, would occur first on the substitute for the 5.5-percent amendment. By adopting the substitute for the 5.5-percent amendment, you would strike out the words "by more than 7 percent," which would mean there would be no—and I emphasize the word "no"—cost-of-living increase for Members of Congress and the other Federal employees I mentioned earlier. There are a total of 13,500 employees involved. I shall vote for the substitute and "no" on the cost-of-living increases as I am not voting—and have not ever voted—for any increase in salary or other benefits for myself and do not intend to do so now.

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

Mr. LATTA. Mr. Speaker, I yield to the gentleman from Massachusetts (Mr. MOAKLEY) for the purposes of debate only.

Mr. MOAKLEY. I thank the gentleman for yielding.

Mr. Speaker, I think the position of the House in this matter has been made clear and I see no reason to extend debate any further.

The amendment in the nature of a substitute proposed by the gentleman from Ohio (Mr. LATTA) is fair and reasonable. It gives us a clear and structured procedure for accomplishing the will of the House in this matter.

For the majority on the committee, we have no objection to the amendment and I urge its adoption.

Mr. LATTA. Mr. Speaker, I move the previous question on the amendment and on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the amendment in the nature of a substitute offered by the gentleman from Ohio (Mr. LATTA).

The amendment in the nature of a substitute was agreed to.

The SPEAKER. The question is on the resolution, as amended.

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

Mr. CHARLES H. WILSON of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

§ 5.10 The Sergeant–at–Arms of the House, having been served in litigation concerning the process for adjusting Members' salaries under the Federal Salary Act, notified the House of such service of process, and the communications (including the subpoena and the underlying complaint) were printed in the *Congressional Record.*[121]

On May 20, 1976,[122] the following communications were printed in the *Congressional Record* for the information of Members:

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121. *Parliamentarian's Note:* When officers of the House receive subpoenas or summons as part of a judicial process, such documents are not typically printed in full in the *Congressional Record* (so as to not give undue publicity to the plaintiff's claims). However, in this instance, because the litigation was initiated by a Member of the House, and because the underlying issue involve Members' salaries, the full text of the documents was included for the information of Members. For more on service of process issues regarding officers of the House (including current rule VIII procedures), see Precedents (Wickham) Ch. 6 §§ 26, 27.

122. 122 CONG. REC. 14926–28, 94th Cong. 2d Sess. For a privileged resolution reported by the Committee on House Administration authorizing the Sergeant–at–Arms to retain counsel in this case, see H. Res. 1497, 122 CONG. REC. 28937, 94th Cong. 2d Sess. (Sept. 2, 1976). The U.S. District Court for the District of Columbia ultimately held that the provisions of the Federal Salary Act of 1967 and the Executive Salary Cost–of–Living Adjustment Act of 1975 did not violate the Constitution. See *Pressler* v.

COMMUNICATION FROM THE SERGEANT AT ARMS—SUBPOENA SERVED ON SERGEANT AT ARMS KENNETH R. HARDING IN CASE OF PRESSLER AGAINST SIMON, VALEO, AND HARDING

The SPEAKER laid before the House the following communication from the Sergeant at Arms:

OFFICE OF THE SERGEANT AT ARMS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 20, 1976.

Hon CARL ALBERT,
Speaker, U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I have in my official capacity as Sergeant at Arms of the House of Representatives been served in a civil action in the United States District Court for the District of Columbia (Civil Action File No. 76–0782). Having in mind that the privileges of the House of Representatives may be involved, I am bringing this matter to your attention.

Today I addressed a letter to the Honorable Earl J. Silbert, United States Attorney for the District of Columbia, requesting assignment of counsel to represent the Sergeant at Arms, as provided for in 2 United States Code 118. A copy of that letter is attached hereto.

Sincerely,

KENNETH R. HARDING,
Sergeant at Arms.

[United States District Court for the District of Columbia]

SUMMONS

Larry Pressler, Plaintiff v. William E. Simon, Secretary of the Treasury; Francis R. Valeo, Secretary of the U.S. Senate; Kenneth R. Harding, Sergeant at Arms of the U.S. House of Representatives, Defendant.

To the above named Defendant: Kenneth R. Harding.

You are hereby summoned and required to serve upon Larry Pressler, bringing suit pro se, whose address is 1238 Longworth House Office Building, U.S. House of Representatives, Washington, DC 20515, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY,
Clerk of Court.

MAY 7, 1976.

OFFICE OF THE SERGEANT AT ARMS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 20, 1976.

Simon, 428 F. Supp. 302 (D.D.C. 1976), *aff'd mem. sub nom. Pressler* v. *Blumenthal,* 434 U.S. 1028 (1978).

Hon. EARL J. SILBERT,
U.S. Attorney for the District of Columbia, U.S. Courthouse, Washington, DC.

DEAR MR. SILBERT: I respectfully request that you assign counsel to represent the Sergeant at Arms of the House of Representatives, Kenneth R. Harding, in a civil action in the United States District Court for the District of Columbia (Civil Action File Number 76–0782), pursuant to 2 United States Code 118. I was served in my official capacity on May 7, 1976, with instructions to answer the complaint within sixty days after service.

I am enclosing herewith a copy of the summons and complaint which was served on me. I may add that I will be available at any time to confer with any counsel that you may assign to this case.

Very truly yours,

KENNETH R. HARDING,
Sergeant at Arms.

OFFICE OF THE SERGEANT AT ARMS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 7, 1976.

Hon. EDWARD H. LEVI,
Attorney General of the United States, Department of Justice, Washington, DC.

DEAR MR. LEVI: I am sending you a copy of summons and complaint, which I received by mail from the Department of Justice on May 6, 1976, in Civil Action No. 76–0782 in the United States District Court for the District of Columbia, filed against me in my official capacity as Sergeant at Arms of the House of Representatives.

In accordance with the provisions of 2 U.S.C. § 118, I have sent a copy of the summons and complaint in this action to the United States Attorney for the District of Columbia, requesting that he take appropriate action under the supervision and direction of the Attorney General. A copy of my letter to the United States Attorney for the District of Columbia is enclosed.

With kind regards, I am

Sincerely yours,

KENNETH R. HARDING.
Sergeant at Arms.

The SPEAKER. The Clerk will read the subpena.

The Clerk read as follows:

[In the U.S. District Court for the District of Columbia, Civil Action]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR THREE-JUDGE COURT

Larry Pressler, U.S. House of Representatives, Washington, DC, Plaintiff, v. William E. Simon, Secretary of the Treasury, Department of the Treasury, Washington, DC; Francis R. Valeo, Secretary of The U.S. Senate, United States Senate, Washington, DC; Kenneth

R. Harding, Sergeant at Arms of the U.S. House of Representatives, U.S. House of Representatives, Washington, DC, Defendants.

This Memorandum is submitted in support of plaintiff's Application for Three-Judge Court pursuant to 28 U.S.C. § 2282. Section 2282 provides that

"[a]n interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title."

Provided that a substantial constitutional question has been presented, a three-judge court must be empaneled for hearing and determining the question of the constitutionality of the statute which is attacked by the complaint. *California Water Service Co.* v. *City of Redding*, 304 U.S. 252 (1938); *Telephone News System, Inc.* v. *Ill. Bell. Tel. Co.*, 210 F. Supp. 471 (D.C. Ill. 1962), *aff'd* 376 U.S. 782.

The instant case falls squarely within the ambit of the foregoing rule. Plaintiff seeks to enjoin the enforcement, operation and execution of provisions of the Federal Salary Act of 1967 (2 U.S.C. §§ 351–361) and of the Executive Salary Cost-of-Living Adjustment Act (2 U.S.C. § 31, as amended) on the ground of their repugnance to Article I, Section 1 and Article I, Section 6, Clause 1 of the Constitution of the United States. That the constitutional questions presented by the complaint are substantial is most convincingly established by the fact that a three-judge court which did not reach the merits of the case was convened pursuant to 28 U.S.C. § 2282 in 1970 to determine the very question presented by Count I of the instant complaint. *Richardson* v. *Kennedy*, 313 F.Supp. 1282 (W.D. Pa. 1970). *aff'd*, 401 U.S. 901 (1971).

The substantiality of the constitutional questions presented by the instant complaint is further demonstrated when those questions are tested against traditional standards for determining when a substantial constitutional question has *not* been presented. Such standards were laid down by the Supreme Court in *California Water Service Co.* v. *City of Redding*, *supra*:

"The lack of substantiality in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject." 304 U.S. at 255.

See also, *e.g.*, *Jasper* v. *Sawyer*, 100 F. Supp. 421 (D.C.D.C. 1951); *Acret* v. *Harwood*, 41 F. Supp. 492 (D.C. Cal. 1942).

The constitutional questions presented by the instant complaint are neither "obviously without merit" nor have they been foreclosed by frequent decisions of the Supreme Court of the United States with respect to them. Indeed, the questions presented by the instant complaint have never been determined by any court, much less the Supreme Court of the United States. It is noteworthy in this regard that the challenged statutes are not of long standing, having been enacted in December, 1967 and August, 1975, respectively. Accordingly, they do not have a long history of construction by the courts.

For the foregoing reasons it is respectfully submitted that a three-judge court must be empaneled pursuant to 28 U.S.C. § 2282 to hear and determine the constitutional questions presented by the instant complaint.

LARRY PRESSLER, *Pro se.*

Dated: May 7, 1976.

U.S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA,
Washington, DC, May 14, 1976.

KENNETH R. HARDING,
Sergeant at Arms of the U.S. House of Representatives, U.S. House of Representatives, Washington, DC.

LARRY PRESSLER VS. WILLIAM E. SIMON, ET AL

DEAR MR. HARDING: Attached hereto is a copy of the designation of judges to serve on a three-judge panel in the above-entitled case.

Kindly furnish this office with two copies of all papers filed by you to date and three copies of all papers filed in the future.

Very truly yours,

JAMES F. DAVEY,
Clerk.

By ETHEL B. JOHNSON,
Deputy Clerk.

[U.S. Court of Appeals for the District of Columbia Circuit, Civil Action No. 76–782]

DESIGNATION OF JUDGES TO SERVE ON THREE-JUDGE DISTRICT COURT

Larry Pressler, Plaintiff v. William E. Simon, et al., Defendants.

The Honorable Gerhard A. Gesell, United States District Judge, having notified me that a complaint has been filed in the United States District Court for the District of Columbia seeking to enjoin the enforcement, operation and execution of provisions of the Federal Salary Act of 1967 (2 U.S.C. §§ 351–361) and of the Executive Salary Cost-of-Living Adjustment Act (2 U.S.C. § 31, as amended) on the ground of their repugnance to Article I, Section 1 and Article I, Section 6, Clause 1 of the Constitution of the United States, it is

Ordered pursuant to Section 2284 of Title 28, United States Code, that The Honorable Carl McGowan, United States Circuit Judge, and The Honorable William B. Jones, Chief Judge, United States District Court, are hereby designated to serve with The Honorable Gerhard A. Gesell, United States District Judge, as members of the Court to hear and determine this action.

DAVID L. BAZELON,
Chief Judge for the
District of Columbia Circuit.

Dated: May 13, 1976.

[In the U.S. District Court for the District of Columbia, Civil Action No. 76–0782]

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Larry Pressler, United States House of Representatives, Washington, DC, Plaintiff, v. William E. Simon, Secretary of the Treasury, Department of the Treasury, Washington, DC; Francis R. Valeo, Secretary of the United States Senate, United States Senate, Washington, DC; Kenneth R. Harding, Sergeant at Arms of the United States House of Representatives, United States House of Representatives, Washington, DC, Defendants.

JURISDICTION

1. This action seeks a declaratory judgment that provisions of the Federal Salary Act of 1967 and of the Executive Salary Cost-of-Living Adjustment Act which set forth procedures to establish new rates of compensation for Members of Congress are void in that they are violative of Article I, Section 1, and Article I, Section 6, Clause 1 of the Constitution of the United States. This action also seeks a permanent injunction to prohibit defendants, who are Secretary of the Treasury, Secretary of the United States Senate and Sergeant at Arms of the United States House of Representatives, from requisitioning, authorizing payment of or disbursing increases in congressional salaries effected pursuant to the Federal Salary Act of 1967 or the Executive Salary Cost-of-Living Adjustment Act.

2. This action arises under Article I, Section 1, and Article I, Section 6, Clause 1 of the Constitution of the United States, under Section 225(f)(A) of the Federal Salary Act of 1967, 2 U.S.C. § 356(A) (Pub. L. 90–206, Title II; 81 Stat. 642) and under Section 204(a) of the Executive Salary Cost-of-Living Adjustment Act, 2 U.S.C. § 31, as amended (Pub. L. 94–82, Title II; 89 Stat. 419), as hereinafter more fully appears. Jurisdiction is conferred on this court by 28 U.S.C. § 1331, 28 U.S.C. §§ 2201–2202. Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(e). There exists between the parties an actual controversy, justiciable in character, in respect of which plaintiff requests a declaration of his rights

by this Court. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000).

PARTIES

3. Plaintiff Larry Pressler is a citizen of the United States and a taxpayer of the United States. Plaintiff is also a Member of the House of Representatives from the First Congressional District of the State of South Dakota.

4. Defendant William E. Simon is an officer of the United States. He is sued in his official capacity as Secretary of the Treasury of the United States, with official residence in Washington, DC. It is his duty, pursuant to 31 U.S.C. § 1002, to issue warrants authorizing the payment of monies out of the Treasury of the United States.

5. Defendant Francis R. Valeo is an officer or employee of the United States. He is sued in his official capacity as Secretary of the United States Senate, with official residence in Washington, DC. It is his duty, pursuant to 2 U.S.C. § 64, to requisition monies for the payment of congressional salaries and to disburse such salaries to the Members of the United States Senate.

6. Defendant Kenneth R. Harding is an officer or employee of the United States. He is sued in his official capacity as Sergeant at Arms of the United States House of Representatives, with official residence in Washington, DC. It is his duty, pursuant to 2 U.S.C. §§ 78 and 80, to requisition monies for the payment of congressional salaries and to disburse such salaries to the Members of the United States House of Representatives.

THREE-JUDGE COURT

7. As appears more fully in the Application for Three-Judge Court and the supporting Memorandum of Points and Authorities submitted herewith pursuant to Local Rule 1–11, this is a proper case for determination by a three-judge court pursuant to 28 U.S.C. § 2282 inasmuch as plaintiff seeks an injunction to restrain the enforcement, operation and execution of 2 U.S.C. § 356(A) and 2 U.S.C. § 31, as amended, on the ground that such statutory provisions are violative of Article I, Section 1 and Article I, Section 6, Clause 1 of the Constitution of the United States.

COUNT I

8. Plaintiff repeats and realleges each of the allegations contained in paragraph 1 through 7 above.

9. The Federal Salary Act of 1967 became law December 16, 1967 (the ''1967 Act''). Pub. L. 90–206, Title II; 2 U.S.C. §§ 351–361. The 1967 Act established a Commission on Executive, Legislative and Judicial Salaries (the ''Commission''). The Commission is required to make recommendations to the President, at four-year intervals, on the rates of pay for Senators, Representatives, Federal judges, cabinet officers and other agency heads, and certain other officials in the executive, legislative and judicial branches. The law requires that the President, in the budget next submitted by him after receipt of a report of the Commission, set forth his recommendations with respect to the exact rates of pay he deems advisable for those offices and positions covered by the 1967 Act. The President's recommendations become effective 30 days following transmittal of the budget, unless in the meantime other rates have been enacted by law or at least one House of Congress has enacted legislation which specifically disapproves of all or part of the recommendations. A copy of the 1967 Act is attached hereto as Exhibit A.

10. The first Commission was appointed in July, 1968 and made its recommendations to the President in December, 1968. The President's pay recommendations took effect in March, 1969, and congressional salaries were increased from $30,000 to $42,500 per annum. The United States, through the Secretary of the Treasury, the Secretary of the United States Senate, and the Sergeant at Arms of the House of Representatives authorized the payment of increases in congressional compensation and disbursed said increases to Members of Congress.

11. The second Commission was appointed in December 1972, too late to report to the President by January 1, 1973. As a result, the President's pay recommendations based on the second Commission's report were submitted to Congress on February 4, 1974. The Committee on Post Office and Civil Service reported a resolution (S. Res. 293) on February 28, 1974, which would have permitted all provisions of the President's proposal to take effect, except those providing adjustments in the pay of Members of Congress. The Senate, however, amended the Resolution to disapprove all of the President's recommendations and rejected the entire proposal on March 6, 1974.

12. According to the statutory scheme, the next Commission is scheduled to be appointed in 1976 and to report its recommendations to the President no later than January 1, 1977.

13. Insofar as they provide a mechanism for adjusting salaries of Members of Congress, the foregoing procedures authorized by the 1967 Act are repugnant to Article I, Section 1 and Article I, Section 6, Clause 1 of the Constitution of the United States. Article I, Section 1 provides that ''[a]ll Legislative Powers herein granted shall be vested in a Congress of the United States.'' Article I, Section 6, Clause 1 provides that ''[t]he Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.'' Properly interpreted in light of the intentions of the draftsmen of the Constitution, those constitutional provisions require that congressional salaries be determined by the legislative branch by specific enactment in each instance. Under the 1967 Act, however, congressional salaries are ascertained by Presidential recommendation.

14. The acts of defendants in disbursing the increased salary to Members of Congress have injured and will continue to injure the plaintiff as a United States citizen in that they deprive him of his right as a citizen to have Members of Congress accountable for increases authorized in their compensation.

15. The acts of the defendants have injured and will continue to injure the plaintiff as a United States taxpayer in that they deprive him of his right as a taxpayer to have tax monies received by the Federal Government expended pursuant to laws enacted in accordance with the Constitution of the United States.

16. The acts of the defendants have injured and will continue to injure the plaintiff as a Member of the United States House of Representatives by interfering with the performance of his constitutional responsibilities and congressional duties and by depriving him of his constitutional right to vote on each adjustment proposed in congressional salaries.

17. Unless defendants are enjoined by this Court from requisitioning, authorizing the payment of increases, and disbursing the increases in congressional salaries, defendants will disburse increased congressional salaries adjusted in contravention of constitutional requirements, violating the rights of plaintiff described herein and working upon plaintiff an unusual hardship or an irreparable injury and damage for which there exists no adequate remedy at law.

COUNT II

18. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 7 above.

19. The Executive Salary-Cost-of-Living Adjustment Act became law August 9, 1975 (the ''1975 Act''). Pub. L. 94–82. The 1975 Act provides for an automatic annual cost-of-living adjustment in the salaries of certain executive, legislative and judicial officers and employees of the United States, including Members of Congress. Section 204(a) of the 1975 Act amended 2 U.S.C. § 31, the statutory provision relating to compensation for Members of Congress, to provide that the annual rate of pay for Members of Congress would be the rate established pursuant to Presidential recommendation under the 1967 Act, as annually and automatically increased by a cost-of-living adjustment. Such automatic annual cost-of-living adjustment in all of the salaries covered by the 1975 Act, including the salaries of Members of Congress, is equal in amount to the overall percentage of increase made in the rates of pay of federal employees covered by the General Schedule, which increase is made pursuant to Presidential recommendation authorized by 5 U.S.C. § 5305. The adjustment in salaries covered by the 1975 Act becomes effective at the beginning of the first pay period starting on or after the first day of the month in which the adjustment in General Schedule salaries under 5 U.S.C. § 5305 takes place. A copy of the 1975 Act is attached hereto as Exhibit B.

20. On October 6, 1975, Executive Order No. 11883, 40 F.R. 47091, ordered that the General Schedule salaries be adjusted and that the salaries covered by the 1975 Act be adjusted accordingly. As a result, salaries of Members of Congress were increased from $42,500 to $44,600 per annum. A copy of Executive Order No. 11883 is attached hereto as Exhibit C.

21. Pursuant to the provisions of said Executive Order, the United States, through the Secretary of the Treasury, the Secretary of the United States Senate, and the Sergeant at Arms of the House of Representatives authorized the payment of increases in the congressional compensation and disbursed said increases to the Members of Congress.

22. Insofar as they provide a mechanism for adjusting the salaries of Members of Congress, the foregoing procedures authorized by the 1975 Act repugnant to Article I, Section 1 and Article I, Section 6, Clause 1 of the Constitution of the United States. Article I, Section 1 provides that ''[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.'' Article I, Section 6, Clause 1 provides that ''[t]he Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.'' Properly interpreted in light

of the intentions of the draftsmen of the Constitution, those constitutional provisions require that congressional salaries be determined by the legislative branch by specific enactment in each instance. Under the 1975 Act, however, Congressional salaries are automatically increased in an amount based upon Presidential recommendations with respect to General Schedule salaries.

23. The acts of defendants in disbursing the increased salary to Members of Congress have injured and will continue to injure plaintiff as a United States citizen in that they deprive him of his right as a citizen to have Members of Congress accountable for increases authorized in their compensation.

24. The acts of the defendants have injured and will continue to injure the plaintiff as a United States taxpayer in that they deprive him of his right as a taxpayer to have tax monies received by the Federal Government expended pursuant to laws enacted in accordance with the Constitution of the United States.

25. The acts of the defendants have injured and will continue to injure the plaintiff as a Member of the United States House of Representatives by interfering with the performance of his constitutional responsibilities and congressional duties and by depriving him of his constitutional right to vote on each adjustment proposed in congressional salaries.

26. Unless defendants are enjoined by this Court from requisitioning, authorizing the payment of increases, and disbursing the increases in congressional salaries, defendants will disburse increased congressional salaries adjusted in contravention of constitutional requirements, violating the rights of plaintiff described herein and working upon plaintiff an unusual hardship or an irreparable injury and damage for which there exists no adequate remedy at law.

Wherefore, plaintiff prays:

1. That plaintiff have a judgment and decree of this Court declaring his rights and status, and more particularly adjudicating:

(a) That the 1967 Act is void and unconstitutional insofar as it establishes procedures for adjusting congressional rates of pay and salaries; and

(b) That the 1975 Act is void and unconstitutional insofar as it establishes procedures for adjusting congressional rates of pay and salaries.

2. That this Court issue a permanent injunction restraining defendants, and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, from requisitioning, authorizing the payment of, or disbursing any future increases in congressional salaries effected pursuant to the 1967 Act or the 1975 Act.

3. That this Court accord *de facto* validity to the past acts of defendants, their agents, servants, employees and attorneys, and all persons in active concert or participation with them, in requisitioning, authorizing the payment of, and disbursing past increases in congressional salaries effected pursuant to the 1967 Act and the 1975 Act.

4. That this Court stay, for such period as the Court believes reasonably adequate for Congress, if it so desires, to further ascertain congressional salaries ''by Law'', the Court's judgment insofar as it affects the authority of defendants to requisition, authorize the payment of, and disburse congressional salaries at the current rate of pay, in order to afford Congress an opportunity to ascertain congressional salaries ''by Law'', in accord with the requirements of the Constitution of the United States.

5. That this Court grant plaintiff such other and further relief as may be just and proper.

LARRY PRESSLER, *Pro se.*

Dated: May 7, 1976.

§ 5.11 The House by resolution amended its standing rules to adjust the amount of outside earned income and honoraria that Members may receive under the House's ethics rules (following the rejection of a similar resolution earlier in the Congress).[123]

123. *Parliamentarian's Note:* The modern form of the House's rule on outside income, honoraria, and copyright royalties is Rule XXV (clauses 1–4). See *House Rules and Manual* § 1099 (2021). The proceedings here reflect the form of the rule prior to revisions made by the Ethics in Government Act of 1989. See P.L. 101–194, 103 Stat. 1716.

On October 28, 1981,[124] the House had considered (and ultimately rejected) a resolution amending the House rules to revise the limits on outside earned income and honoraria that Members could receive:

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 258 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 258

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 251) amending the Rules of the House of Representatives to increase the amount of outside earned income which a Member may have in 1981, 1982, and 1983, and to increase the amount of the maximum honorarium which a Member may accept. After general debate, which shall be confined to the resolution and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Rules, the resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the resolution for amendment, the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the resolution and amendments thereto to final adoption without intervening motion except one motion to recommit.

The SPEAKER.[125] The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour. . . .

Mr. [Trent] LOTT [of Mississippi]. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this rule. It is a completely open and straightforward means of allowing the House to work its will on the question of outside earned income limitations.

This rule will make in order House Resolution 251, which was reported yesterday from the Committee on Rules as a matter of original jurisdiction. The resolution would amend the rules of the House to raise the outside earned income limit for Members from 15 to 40 percent of their salaries during the calendar years 1981–83. In addition, the proposed resolution raises the limit on a single honorarium from $1,000 to $2,000. . . .

The CHAIRMAN.[126] All time has expired.

The Clerk will read.

The Clerk read as follows:

H. RES. 251

Resolved, That clause 1 of rule XLVII of the Rules of the House of Representatives is amended—

(1) by striking out ''Except as provided by paragraph (b)'' in paragraph (a) and inserting in lieu thereof ''Except as provided by paragraphs (b) and (c)'';

(2) by striking out ''In the case of any individual'' in paragraph (b) and inserting in lieu thereof ''Except as provided by paragraph (c), in the case of any individual''; and

(3) by adding at the end thereof the following new paragraph:

''(c) With respect to any calendar year beginning on or after January 1, 1981, and ending on or before December 31, 1983, the term '15 per centum' in paragraphs (a) and (b) shall be deemed to read '40 per centum'.''.

SEC. 2. Clause 2 of rule XLVII of the Rules of the House of Representatives is amended by striking out ''$1,000'' and inserting in lieu thereof ''$2,000''.

124. 127 CONG. REC. 25670, 25686, 25688–89, 97th Cong. 1st Sess.

125. Thomas O'Neill (MA).

126. William Natcher (KY).

SEC. 3. The amendments made by this resolution shall take effect on the date of its adoption. . . .

The SPEAKER. Without objection, the previous question is ordered on the resolution.

There was no objection.

The SPEAKER. The question is on the resolution.

RECORDED VOTE

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 147, noes 271, not voting 15, as follows:

[Roll No. 282] . . .

So the resolution was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

However, on December 15, 1981,(127) the House adopted a similar resolution by unanimous consent:

AMENDING RULES OF THE HOUSE OF REPRESENTATIVES TO INCREASE OUTSIDE EARNED INCOME

Mr. [John] MURTHA [of Pennsylvania]. Mr. Speaker, I have at the desk a resolution and I ask for its immediate consideration.

The SPEAKER.(128) The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 305

Resolved, That clause 1 of Rule XLVII of the Rules of the House of Representatives is amended by striking out ''15'' both times it appears therein and by inserting in lieu thereof ''30''.

SEC. 2. Clause 2 of Rule XLVII of the Rules of the House of Representatives is amended to read as follows:

''2. For purposes of clause 1, honoraria shall be attributable to the calendar year in which payment is received.''.

SEC. 3. The amendments made by this resolution shall take effect on January 1, 1981.

Mr. MURTHA (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table. . . .

127. 127 CONG. REC. 31529, 31546, 97th Cong. 1st Sess.

128. Thomas O'Neill (MA).

REQUEST TO VACATE PROCEEDINGS WHEREBY HOUSE RESOLUTION 305 WAS AGREED TO

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Speaker, I ask unanimous consent to vacate proceedings whereby House Resolution 305 was agreed to.

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

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

§ 5.12 Following the House's adoption (by unanimous consent) of a resolution revising the limitation on outside earned income that Members may receive, the House subsequently considered another resolution vacating the adoption of the earlier resolution, and thus returning the rules on outside earned income to their prior form.

On April 22, 1986,[129] the House by unanimous consent adopted the following resolution regarding outside earned income by Members:

AMENDING THE RULES OF THE HOUSE TO INCREASE AMOUNT OF OUTSIDE EARNED INCOME WHICH A MEMBER MAY ACCEPT

Mr. [John] MURTHA [of Pennsylvania]. Mr. Speaker, I offer a resolution (H. Res. 427) amending the Rules of the House of Representatives to increase the amount of outside earned income which a Member may accept, and I ask unanimous consent for its immediate consideration.

The SPEAKER.[130] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 427

Resolved, That clause 1 of rule XLVII of the Rules of the House of Representatives is amended by striking out ''which is in excess'' and all that follows in both paragraph (a) and paragraph (b) and inserting in lieu thereof in each instance ''in excess of the percentage of the aggregate salary as a Member, paid to the Member during such calendar year, to which such outside earned income is limited by law.''.

SEC. 2. The amendments made by the first section of this resolution shall take effect on January 1, 1986.

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

Mr. [Patrick] HILER [of Indiana]. Mr. Speaker, reserving the right to object, could we be enlightened as to what the gentleman's resolution is about?

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

Mr. HILER. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Speaker, this has been cleared by the leadership on both sides. It just changes the rules to bring them into closer compliance with the Senate rules.

The intent of this amendment to the House rule is to change the current 30-percent limitation to 40 percent.

Mr. HILER. Mr. Speaker, I withdraw my reservation of objection.

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

129. 132 CONG. REC. 8328, 99th Cong. 2d Sess.

130. Thomas O'Neill (MA).

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

On April 23, 1986,[131] a Member asked unanimous consent to consider a resolution that would have restored the rule to its prior form, effectively nullifying the resolution of the day before, but that request drew objection:

Mr. [Richard] DURBIN [of Illinois]. Mr. Speaker, I offer a resolution (H. Res. 431) amending clause 1, rule XLVII of the Rules of the House, and ask unanimous consent for its immediate consideration.

The SPEAKER.[132] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 431

Resolved, That clause 1 of rule XLVII of the Rules of the House of Representatives be amended to read as follows:

1. (a) Except as provided by paragraph (b), no Member may, in any calendar year beginning after December 31, 1978, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

(b) In the case of any individual who becomes a Member during any calendar year beginning after December 31, 1978, such Member may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

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

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Speaker, I object.

Mr. [Trent] LOTT [of Mississippi]. Mr. Speaker, I object.

The SPEAKER. Will the gentleman who offered the objection stand?

Mr. LOTT. Mr. Speaker, I object.

The SPEAKER. The gentleman objects. Objection is heard.

PARLIAMENTARY INQUIRY

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

The SPEAKER. The gentleman will state it.

Mr. DURBIN. Mr. Speaker, is there any procedure presently available before the House to consider this resolution which would restore the language of rule XLVII to exactly the same language as it was?

The SPEAKER. The matter may be referred to the Rules Committee, and if there is a report, a two-thirds vote will bring it to the floor today, and if there is approval on the minority side we will bring the matter to the floor this afternoon.

Mr. DURBIN. Mr. Speaker, will it be brought to the floor this afternoon?

The SPEAKER. It is the intention to refer the matter to the Rules Committee. The Chair cannot dictate what the Rules Committee is going to do, but it will recommend to the Rules Committee.

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131. 132 CONG. REC. 8443, 99th Cong. 2d Sess.

132. Thomas O'Neill (MA).

Mr. DURBIN. I thank the Speaker.

Later on April 23, 1986,[133] the House considered a resolution reported by the Committee on Rules[134] vacating the adoption of the original resolution and laying said resolution on the table:

VACATING THE PROCEEDINGS BY WHICH HOUSE RESOLUTION 427 WAS ADOPTED BY THE HOUSE ON APRIL 22, 1986 AND PROVIDING THAT SAID RESOLUTION SHALL BE CONSIDERED TO HAVE BEEN LAID ON THE TABLE

Mr. PEPPER, from the Committee on Rules, reported the following privileged resolution (H. Res. 432, Rept. 99–553) which was referred to the House Calendar and ordered to be printed:

H. RES. 432

Resolved, That the proceedings by which H. Res. 427 was adopted by the House on April 22, 1986 are hereby vacated, and said resolution shall be considered to have been laid on the table.

Mr. [Claude] PEPPER [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 432 and ask for its immediate consideration.

The SPEAKER.[135] The Clerk will report the resolution.

The Clerk read the resolution.

The SPEAKER. The question is, Will the House now consider House resolution 432?

The question was taken.

Mr. [John] MURTHA [of Pennsylvania]. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present. The resolution requires a two-thirds vote for passage.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 333, nays 68, not voting 32, as follows: . . .

So (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 432.

The result of the vote was announced as above recorded.

The SPEAKER. Does the gentleman from Florida (Mr. PEPPER) desire time?

Mr. PEPPER. Mr. Speaker, House Resolution 432 vacates the proceedings by which House Resolution 427 was adopted yesterday and lays the resolution on the table. As my colleagues are aware, yesterday a resolution passed this House that had the effect of lifting the limitation on outside earned income for Members. The resolution now before the Members would restore the limitations that were in place before yesterday's

133. 132 CONG. REC. 8474–75, 99th Cong. 2d Sess

134. *Parliamentarian's Note:* Resolutions reported by the Committee on Rules may not be considered by the House on the same legislative day on which they are reported, unless the House, by a two–thirds vote on the question of consideration, waives that requirement. Rule XIII, clause 6(a); *House Rules and Manual* § 857 (2021). In this case, the vote on the question of consideration achieved the required two–thirds vote.

135. Thomas O'Neill (MA).

action. In other words, House Resolution 432 would reimpose the 30-percent limitation on outside earned income for Members by vitiating the action taken by the House.

Mr. Speaker, it is clear that Members are concerned about the absence of full legislative scrutiny of the amendment to the rules of the House adopted yesterday. There is a general consensus that the sensitive issues of Members' compensation and outside income should be addressed through careful study and deliberation.

The committee wishes to make the legislative intent in this matter clear. The committee's action in reporting this resolution should not be viewed as an endorsement of the previous rule setting a ceiling on outside income of 30 percent of a Members' pay. Nor should it be viewed as a rejection of the 40-percent limit adopted by the House yesterday, or of any other higher or lower limit which might be proposed in any subsequent legislation, subject to the normal procedure. The resolution presented today simply responds to the concerns I have discussed, by restoring the status quo. The committee views it as important to do so promptly, to avoid arousing passions about matters which should be reviewed with care and sensitivity.

The controversy surrounding the previous resolution, and the pending matter, make it clear that the current limit on outside income, and the disparate practices of the two Houses, are issues of some importance, which deserve to be addressed through subsequent hearings and study in appropriate legislative fora.

The Committee on Rules, and other committees of appropriate jurisdiction, will continue their legislative and oversight reviews of the issues of Members' pay and allowances, limitations and standards governing honoraria and other outside income, and comparability of these matters between the two Chambers.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 5.13 In the 104th Congress, the House adopted a resolution amending its rules regarding limits on outside earned income and copyright royalties.

On December 22, 1995,[136] the House adopted the following resolution:

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, pursuant to House Resolution 322, I call up House Resolution 299 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 299

Resolved,

SECTION 1. AMENDMENT TO HOUSE RULES.

(a) Clause 3(e) of rule XLVII of the Rules of the House of Representatives is amended to read as follows:

''(e) The term 'outside earned income' means, with respect to a Member, officer, or employee, wages, salaries, fees, and copyright royalties earned while a Member, officer or employee of the House, and other amounts received or to be received as compensation for personal services actually rendered but does not include—

''(1) the salary of such individual as a Member, officer, or employee;

''(2) any compensation derived by such individual for personal services actually rendered prior to the effective date of this rule or becoming such a Member, officer, or employee, whichever occurs later;

136. 141 CONG. REC. 38488, 38493, 104th Cong. 1st Sess.

''(3) any amount paid by, or on behalf of, a Member, officer, or employee, to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such individual from such a plan;

''(4) in the case of a Member, officer, or employee engaged in a trade or business in which the individual or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by such individual so long as the personal services actually rendered by the individual in the trade or business do not generate a significant amount of income; and

''(5) copyright royalties for works published before becoming a Member, officer, or employee of the House.''.

(b) Clause 3 of rule XLVII of the Rules of the House of Representatives is further amended by adding at the end the following new paragraphs:

''(g) A Member, officer, or employee of the House may not—

''(1) receive any copyright royalties pursuant to a contract entered into after becoming a Member, officer, or employee—

''(A) unless the royalty is received from an established publisher pursuant to usual and customary contractual terms; and

''(B) without the prior approval of the contract by the Committee on Standards of Official Conduct; or

''(2) receive any advance payment for any such work. However, the rule does not prohibit literary agents, research staff, and other persons working on behalf of the Member, officer, or employee, from receiving advance payments directly from the publisher.

''(h) The Committee on Standards of Official Conduct, subject to such exceptions as it deems appropriate, shall not approve any contract which permits the deferral of royalty payments beyond the year in which earned.''.

SEC. 2. EFFECTIVE DATE.

The amendments made by this resolution shall apply to copyright royalties earned by a Member, officer, or employee of the House of Representatives after December 31, 1995.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Speaker, I offer an amendment in the nature of a substitute. The Clerk read as follows:

Amendment in the Nature of a Substitute offered by Mr. SOLOMON:

SECTION 1. AMENDMENT TO HOUSE RULE XLVII (LIMITATIONS ON OUTSIDE EMPLOYMENT AND EARNED INCOME).

Rule XLVII of the rules of the House of Representatives is amended by redesignating clause 3 as clause 4 and by inserting after clause 2 the following new clause:

''3. A Member, officer, or employee of the House may not—

''(1) receive any advance payment on copyright royalties, but this paragraph does not prohibit any literary agent, researcher, or other individual (other than an individual employed by the House or a relative of that Member, officer, or employee) working on behalf of that Member, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual; or

''(2) receive any copyright royalties pursuant to a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Standards of Official Conduct as complying with the requirement of clause 4(e)(5) (that royalties are received from an established publisher pursuant to usual and customary contractual terms).''.

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall take effect on January 1, 1996. . . .

The SPEAKER pro tempore.[137] Pursuant to House Resolution 322, the gentleman from New York [Mr. SOLOMON] and the gentleman from Massachusetts [Mr. MOAKLEY] will each be recognized for 15 minutes.

The Chair recognizes the gentleman from New York [Mr. SOLOMON].

Mr. [John] MOAKLEY [of Massachusetts]. Mr. Speaker, I ask unanimous consent that my 15 minutes of general debate be controlled by the gentleman from Washington [Mr. MCDERMOTT].

137. Douglas Bereuter (NE).

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

There was no objection.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume. . . .

The SPEAKER pro tempore (Mr. BEREUTER). Pursuant to the House Resolution 322, the previous question is ordered on the amendment and on the resolution.

The question is on the amendment in the nature of a substitute offered by the gentleman from New York [Mr. SOLOMON].

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

Mr. SOLOMON. 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 219, nays 174, answered "present" 2, not voting 38, as follows:

[Roll No. 882] . . .

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

So the amendment in the nature of a substitute was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BEREUTER). The question is on the resolution, as amended.

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

RECORDED VOTE

Mr. [James] MCDERMOTT [of Washington]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 259, noes 128, answered "present" 2, not voting 44, as follows:

[Roll No. 883] . . .

§ 6. Other Benefits; Office and Staff

Members of the House have the responsibility to administer their congressional offices, both in Washington, D.C., and in their home districts. On Capitol Hill, Members are provided with office space in one of the three House office buildings named after former Speakers Cannon, Longworth, and Rayburn.(1) Pursuant to statute,(2) Members reelected to a subsequent

1. The House has additional office space in the O'Neill and Ford office buildings, used mostly for committee staff and other House support offices. For more on the Capitol complex generally, including House office buildings, see Deschler's Precedents Ch. 4 and Precedents (Wickham) Ch. 4.

2. 2 U.S.C. § 2004.

Congress are generally permitted to keep the same office in the new Congress.[3] For freshman Members, a lottery system overseen by the Chief Administrative Officer (CAO) and Architect of the Capitol determines which Members receive which offices.[4] Members typically maintain an office (or multiple offices) in their home districts to facilitate constituent communications and services.[5]

Members are also tasked with hiring staff to assist them in their legislative duties. In modern practice, Members often retain large staffs who fill a variety of positions within the office. Legislative assistants and correspondents (overseen by a legislative director) are most directly involved in advancing Members' legislative priorities. Press secretaries and communications directors oversee Members' public communications and announcements, while schedulers manage Members' time commitments (*i.e.*, floor votes, committee work, constituent services, etc.) Additional staff are typically employed to assist with constituent services and district work, information technology support, and other administrative tasks. All of these positions are supervised by a chief of staff, often assisted by a deputy chief of staff.

Although Members enjoy a great deal of freedom in making hiring decisions, the House is subject to a variety of workplace rights, anti–discrimination, and other employment laws.[6] The primary statutory source for such rules is the Congressional Accountability Act (CAA),[7] originally enacted in the 104th Congress in 1995.[8] The CAA applied a variety of Federal labor

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3. Statutory provisions also regulate the exchange of office space between Members, the Architect of the Capitol's authority to assign unused office space, and other matters relating to the use of House facilities. See 2 U.S.C. §§ 2001–2013.

4. *Parliamentarian's Note:* For much of the House's early history, Members did not have individual offices but instead kept their files and papers at their desks on the House floor. In 1845, the House adopted its first lottery system for desk assignments. In 1913, the individual desks in the Chamber were replaced by benches, and Members were forced to relinquish their desks and move their papers to their offices in the newly–completed House office building (now known as the Cannon House Office Building). For earlier descriptions of the process for assigning office space to Members, see Deschler's Precedents Ch. 4 § 6; and 8 Cannon's Precedents §§ 3648–3655. For 19th century proposals to remove individual Member desks, see 5 Hinds' Precedents § 7282.

5. It was formerly the case that Members could be allocated office space in Federal buildings located in their district. See Deschler's Precedents Ch. 7 § 8.6. However, this statutory authority was repealed in the 95th Congress. See P.L. 95–391, 92 Stat. 763. Under modern practice, Members are responsible for arranging their own office space, with rent and utilities to be paid for out of the Members' Representational Allowance (MRA).

6. For a discussion of employment practices of the House generally, see Precedents (Wickham) Ch. 6 § 28.

7. 2 U.S.C. §§ 1301 *et seq.* See also Precedents (Wickham) Ch. 6 § 28.3.

8. *Parliamentarian's Note:* Several earlier attempts by the House to apply private–sector employment laws to House hiring practices were ultimately overtaken by the CAA. For

and civil rights laws (such as the Fair Labor Standards Act and the Family and Medical Leave Act) to the legislative branch.[9] It also created the Office of Congressional Workplace Rights (originally titled the Office of Compliance),[10] which is tasked with ensuring that Members' offices comply with the terms of the CAA (through education, dispute resolution, and other enforcement mechanisms). In the 115th Congress, the House created an Office of Employee Advocacy to provide legal advice and representation to congressional employees, including Members' staff.[11] In the 116th Congress, the House created the Office of Diversity and Inclusion to assist Members in recruiting and retaining a diverse staff.[12] Additionally, the House has required Members' offices to adopt anti–discrimination and anti–harassment policies and to display a statement of workplace rights at each office location.[13] Finally, House rule XXIII (the Official Code of Conduct)[14] contains provisions prohibiting Members from: engaging in discriminatory hiring practices (clause 9); employing individuals who do not perform duties "commensurate with the compensation" such individuals receive (clause 8); and engaging in sexual activity with employees under the supervision of the

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example, in the 100th Congress in 1988, the House adopted the Fair Employment Practices Resolution (focused on nondiscrimination in hiring practices and dispute resolution), which was incorporated into the standing rules in the following Congress. See Precedents (Wickham) Ch. 6 § 28.1. In the 103d Congress in 1994, the so–called "Application of Certain Laws" Resolution applied a variety of Federal workplace laws to the House in a similar manner as the CAA. See Precedents (Wickham) Ch. 6 § 28.2. These House rules were rendered moot by the passage of the CAA in the 104th Congress in 1995. See Precedents (Wickham) Ch. 6 § 28.3.

9. 2 U.S.C. § 1302.

10. In the 115th Congress, the Office of Compliance was redesignated as the Office of Congressional Workplace Rights. See P.L. 115–397, 132 Stat. 5297.

11. The Office of Employee Advocacy was initially created by simple House resolution. See H. Res. 724, 164 CONG. REC. H813–H814 [Daily Ed.], 115th Cong. 2d Sess. (Feb. 6, 2018).

12. The Office of Diversity and Inclusion was created by a separate order contained in the resolution adopting the rules for the 116th Congress. See H. Res. 6, 165 CONG. REC. H22 [Daily Ed.], 116th Cong. 1st Sess. (Jan. 3, 2019). It was made part of the standing rules (clause 9 of rule II) in the 117th Congress. See H. Res. 8, 167 CONG. REC. H13–H14 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 4, 2021). See also *House Rules and Manual* § 670c (2021).

13. This requirement was originally contained in House Resolution 724 of the 115th Congress. See 164 CONG. REC. H813–H814 [Daily Ed.], 115th Cong. 2d Sess. (Feb. 6, 2018). It was reiterated via separate order in the resolution adopting rules for the 116th Congress (see H. Res. 6, 165 CONG. REC. H21 [Daily Ed.], 116th Cong. 1st Sess. (Jan. 3, 2019)), and by the same method in the 117th Congress (see H. Res. 8, 167 CONG. REC. H15–H16 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 4, 2021)).

14. *House Rules and Manual* § 1095 (2021).

Member (clause 18). In several instances, Members have been reprimanded or censured for improper hiring practices.[15]

If a Member ceases to become a Member (by death, resignation, or expulsion), the Clerk is required pursuant to clause 2(i) of rule II[16] to "supervise the staff and manage the office" of the Member who is no longer in office. Staff members continue to receive salary and are overseen by the Clerk, who may terminate existing employees or (with the approval of the Committee on House Administration) appoint new employees.[17] These authorities continue until a new Member is elected.[18] If a seat in the House is vacant due to a state not issuing a certificate of election to any individual for that seat, the Clerk will likewise supervise that office until a special election can be held to fill the vacancy.[19] In one instance, where a Member–elect had fallen into a coma and was determined not to be able to take a seat in the House, the House declared the seat vacant and provided authority for the Clerk to administer the office until the vacancy had been filled.[20] In another instance, the House adopted a resolution on opening day seating neither claimant to a contested seat and instructing the Clerk to administer the vacant office until the election contest had been resolved.[21]

Pursuant to law,[22] Members are provided with an allowance to fund all aspects of their congressional office. This lump–sum amount is known as the Members' Representational Allowance (MRA), "which shall be available to

15. See, *e.g.*, § 6.10, *infra*.

16. *House Rules and Manual* § 653 (2021).

17. *Id.*

18. For more on the management of Member offices following the death of the Member, see Deschler's Precedents Ch. 38 § 4. For older practice regarding clerk–hires following the death of a Member, see 6 Cannon's Precedents §§ 208, 209. It was formerly the case that, pursuant to law, former Speakers were provided with staff assistance "in connection with the administration, settlement, and conclusion" of matters relating to their service as Speaker. 2 U.S.C. § 5128 (now repealed). Under former clause 2(i)(2) of rule II, the Clerk would supervise such staff for 60 days following the death of a former Speaker. *House Rules and Manual* § 653 (2021). However, this provision of law was repealed in the 115th Congress (P.L. 115–244, 132 Stat. 2897) and the House rule eliminated at the outset of the 117th Congress (H. Res. 8, 167 CONG. REC. H13 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 4, 2021)).

19. *Parliamentarian's Note:* At the beginning of the 116th Congress, no certificate of election from the Ninth District of North Carolina had been received by the Clerk, and the Clerk supervised the office until the seat was filled via special election. See *House Rules and Manual* § 653 (2021).

20. See § 6.8, *infra*. See also Precedents (Wickham) Ch. 2 § 1.6.

21. See Precedents (Smith) Ch. 9 § 20.1. See also Precedents (Wickham) Ch. 2 § 4.1.

22. 2 U.S.C. §§ 5341 *et seq.*

support the conduct of the official and representational duties of a Member of the House of Representatives."[23] Members use this allowance to fund: the salaries of staff; office and administrative expenses; official mail and communications; rent and utilities (for district office space); and travel.[24] The use of MRAs is regulated by several different entities. Under House rule, the Committee on House Administration retains jurisdiction over Members' "allowance and expenses"[25] and under statute, the committee has the authority to prescribe regulations on the use of the MRA.[26] The House Communications Standards Commission[27] issues regulations regarding the proper use of the franking privilege (a privilege now funded through the MRA).[28] Finally, the House Committee on Ethics may issue advisory opinions or otherwise provide information to Members regarding permissible and impermissible uses of the MRA.[29] There are strict prohibitions in place against using the MRA for personal expenses, or for campaign purposes.[30] Disbursements from each Members' MRA account are published by the CAO.[31]

Office and Staff—Historical Practices

For much of the House's early history, Members generally did not hire large staffs to assist them with their congressional duties as under modern practice. The House Page program began in the 19th century,[32] and pages would attend to Members on the House floor, but there was no system to

23. 2 U.S.C. § 5341(a).

24. The MRA is formally divided into three categories of spending: personnel, office expenses, and official mail (franking). The amount for office expenses varies from Member to Member based on the characteristics of the district, but personnel amounts are the same for every Member. Approximately 70% of the MRA is allocated for personnel expenses. See *Members' Representational Allowance: History and Usage,* CRS Report R40962 (Mar. 24, 2022).

25. Rule X, clause 1(k)(1); *House Rules and Manual* § 724 (2021).

26. 2 U.S.C. § 5341(d).

27. The House Commission on Congressional Mailing Standards was redesignated as the House Communications Standards Commission in the 116th Congress. See P.L. 116–260, 134 Stat. 1182.

28. 2 U.S.C. § 501. The Official Mail Allowance was merged into the MRA in the 104th Congress. 2 U.S.C. § 5341(b).

29. See House Ethics Manual (2008 Edition), Committee on Standards of Official Conduct, 110th Cong. 2d Sess., pp. 323–333.

30. Members' Congressional Handbook, Committee on House Administration, 117th Cong. 2d Sess. (Apr. 5, 2022), p. 2.

31. These statements of disbursements have been required by statute since 1964. See P.L. 88–454, 79 Stat. 535. These provisions of law have been codified at 2 U.S.C. § 4108.

32. For more on the House Page program, see Precedents (Wickham) Ch. 6 § 24.

provide individual Members with clerks, secretaries, or other assistants. It was only in 1893 that the House first instituted a clerk–hire program, whereby Members would certify the hiring of personal clerks whose salaries would then be reimbursed by the House.[33] In 1907, Members were given a lump sum amount to hire any clerks they wished,[34] subject to certain limitations regarding the number of clerks and the total compensation any one clerk could receive.[35] Subsequent statutory enactments[36] in 1923, 1939, 1955, and 1956, made further adjustments to these limitations (generally increasing both the maximum number of permitted clerks and their compensation).

Beginning in the 92d Congress in 1971, the House empowered the Committee on House Administration to make adjustments to a variety of House administrative accounts, including Members' clerk–hire accounts.[37] Such adjustments would take place via orders issued by the committee and typically published in the *Congressional Record*. The clerk–hire account was increased on several occasions during the period in which the Committee on House Administration retained this authority.[38]

A similar evolution occurred with respect to other aspects of Members' office operations. Beginning in the late 19th century, the Clerk was tasked with maintaining a stationery room, and Members were given a lump sum amount to purchase stationery from the Clerk.[39] In 1920, Congress enacted statutory authority[40] for Members to purchase stationery from the Public Printer.[41] These stationery accounts were transferred to the jurisdiction of

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33. See 2 Hinds' Precedents §§ 1151, 1152.

34. See 2 Hinds' Precedents § 1151; and 6 Cannon's Precedents § 206.

35. See 6 Cannon's Precedents §§ 206, 207. Older precedents also describe opinions of the Comptroller General regarding the status of clerks upon the death of a Member (6 Cannon's Precedents §§ 208, 209), the hiring of clerks by multiple Members (6 Cannon's Precedents § 210), and the timing of clerks' compensation (6 Cannon's Precedents §§ 211, 212). Special rules also regulated the hiring of clerks by committees. See 2 Hinds' Precedents § 1152.

36. See 42 Stat. 1217; 53 Stat. 1080; 69 Stat. 509; and 70 Stat. 990.

37. See Deschler's Precedents Ch. 7 § 8.

38. See Deschler's Precedents Ch. 7 §§ 8.1, 8.2, and 8.4.

39. See 2 Hinds' Precedents §§ 1161, 1162. A statute from 1923 prohibited using the stationery allowance to purchase nonstationery items. See 6 Cannon's Precedents § 213.

40. See 6 Cannon's Precedents § 214.

41. *Parliamentarian's Note:* The position of Public Printer of the United States was formally established in 1876 to be head of the Government Printing Office. In 2014, the office was redesignated as the Government Publishing Office (GPO), and the title of Public Printer was changed to Director of GPO. See P.L. 113–235, 128 Stat. 2130. At the time of this writing, the Director of GPO is Mr. Hugh Halpern (a former staff director for the House Committee on Rules).

the Committee on House Administration in the 92d Congress, when the committee was authorized to make unilateral adjustments in all such office accounts.[42] Allowances for postage stamps, electronic equipment, telephone service, and other office furnishings were all subject to periodic adjustments by the Committee on House Administration, funded through the contingent fund for House operations. The committee would typically provide notice to Members of such adjustments via publication in the *Congressional Record*.[43]

In the 95th Congress in 1976, the authority to make overall adjustments to these accounts was significantly restricted,[44] though separate accounts were still maintained for different aspects of Members' staffing and office needs.[45] Between 1976 and 1995, these individual accounts were gradually consolidated until the House ultimately established a single account to address all aspects of Members' representational and legislative duties.[46] This single account is known as the Members' Representational Allowance (MRA).

Other Benefits

Members of the House receive additional benefits similar to those routinely provided in the private sector and the other branches of government. The two most significant benefits are health insurance and retirement benefits.

With respect to health insurance, the Affordable Care Act (ACA), enacted in 2010, requires all Members with government health insurance to obtain it through the District of Columbia Health Benefit Exchange Authority.[47] Members make contributions to their health insurance payments via salary deductions, and the Federal government acts as Members' "employer" for purposes of employer contributions.[48]

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42. See Deschler's Precedents Ch. 7 § 8.3. The original authority was provided by House Resolution 457 of the 92d Congress, made permanent law by P.L. 92–184, 85 Stat. 627. For an example of a periodic adjustment to one of these accounts, see § 6.1, *infra*. See also 120 CONG. REC. 40960, 93d Cong. 2d Sess. (Dec. 18, 1974); 121 CONG. REC. 5556, 94th Cong. 1st Sess. (Mar. 6, 1975); 121 CONG. REC. 15483, 94th Cong. 1st Sess. (May 20, 1975); 122 CONG. REC. 21623–24, 94th Cong. 2d Sess. (June 30, 1976); and Deschler's Precedents Ch. 7 §§ 8.4–8.7. For an example of a modification to an existing committee order under this former authority, see § 6.2, *infra*.

43. For parliamentary inquiries regarding this practice, see § 6.3, *infra*.

44. See § 6.4, *infra*. The restrictions on authority were made permanent by P.L. 94–440, 90 Stat. 1443.

45. For examples of adjustments made within a single account, see §§ 6.5, 6.6, *infra*.

46. See § 6.7, *infra*. See also 2 U.S.C. §§ 5341 *et seq*.

47. This provision is found in section 1312 of the ACA. See P.L. 111–148, 124 Stat. 119; and D.C. Code § 31–3171.

48. See *Health Benefits for Members of Congress and Designated Congressional Staff: In Brief,* CRS Report R43194 (Jan. 13, 2017).

Prior to the advent of the ACA, Members could obtain health insurance through the Federal Employees Health Benefits Program (FEHBP).[49] This program, originally created in 1959,[50] offers health insurance to all Federal employees, including those in the executive and judicial branches, and certain legislative branch employees.[51]

Additionally, Members are eligible for certain Federal health programs that provide other kinds of medical coverage. These include the Federal Flexible Spending Account Program (FSAFEDS) (which allows Members to contribute pre–tax dollars to health savings accounts), and the Federal Employees Dental and Vision Insurance Program (FEDVIP) (which provides supplementary vision and dental insurance).[52] Members are also eligible to participate in the Federal Long Term Care Insurance Program (FLTCIP).[53] Members pay a tax on their wages to fund the Medicare (Part A) program, and Members over 65 years of age are eligible to take Medicare benefits.[54]

The House first provided Members with retirement benefits in 1946[55] (following the advent of the Social Security system in the 1930s). Members were initially placed in the Civil Service Retirement System that had been created in 1920 for Federal employees.[56] In the 1980s, Federal employees were brought into the Social Security system, and a new Federal retirement program (called the Federal Employees Retirement System (FERS)) was created to integrate contributions and benefits and avoid duplication.[57] For a time, Members could choose from among several different retirement programs, until the older Civil Service Retirement System was gradually phased out. In the 108th Congress in 2003, Members began to be automatically enrolled in the FERS system, in addition to Social Security.[58] FERS and Social Security contributions are deducted from Members' salaries. The FERS system allows Members to take an annuity (pension) based on years

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49. See *Federal Employees Health Benefits (FEHB) Program: An Overview,* CRS Report R43922 (Feb. 3, 2016).

50. P.L. 86–382, 73 Stat. 708.

51. The ACA requires Members and certain designated staff to obtain health insurance through the District of Columbia. However, many congressional staff remain within the FEHB system.

52. See *Health Benefits for Members of Congress and Designated Congressional Staff: In Brief,* CRS Report R43194 (Jan. 13, 2017).

53. *Id.*

54. *Id.*

55. These benefits were provided as part of the Legislative Reorganization Act of 1946. See P.L. 79–601, 60 Stat. 812.

56. See P.L. 66–215, 41 Stat. 614.

57. See *Retirement Benefits for Members of Congress,* CRS Report RL30631 (Aug. 8, 2019).

58. P.L. 108–83, 117 Stat. 1007.

of service, and also provides a voluntary contribution system (with employer matching) to a separate retirement account.[59]

Members are entitled to receive certain government documents as part of their congressional service, including copies of the *Congressional Record,*[60] the House Journal,[61] and the United States Code.[62] The *House Rules and Manual* is published each Congress pursuant to House resolution,[63] and distributed to Members by the House Parliamentarian. Similarly, volumes of House precedents are published pursuant to law,[64] and "printed in sufficient quantity to be available to every Member"[65] of the House.

The Franking Privilege

The "franking privilege" refers to the ability of Members of Congress to use the U.S. postal system free of charge to communicate with their constituents.[66] While other Member privileges are constitutional in origin, the franking privilege is a statutory privilege only—albeit one with a longstanding history in American legislative practice.[67] Although the advent of

59. See *Retirement Benefits for Members of Congress,* CRS Report RL30631 (Aug. 8, 2019).

60. 44 U.S.C. § 906.

61. Rule II, clause 2(c)(3); *House Rules and Manual* § 647 (2021).

62. 2 U.S.C. § 5345. The statute specifies that Members must request the U.S. Code from the Clerk, and that it shall be paid for out of the MRA.

63. See Precedents (Wickham) Ch. 5 § 2.1.

64. 2 U.S.C. § 28.

65. 2 U.S.C. § 28a. A similar provision of law authorizes the printing and distribution to Members of a condensed and up–to–date version of the House's parliamentary precedents (known as *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*). See 2 U.S.C. § 29.

66. *Parliamentarian's Note:* Although the franking privilege is exercised primarily by Members of Congress, others (such as executive branch officials and military personnel) have exercised similar prerogatives with respect to the postal system. For more information, see *Franking Privilege: Historical Development and Options for Change,* CRS Report RL34274 (May 3, 2016).

67. *Parliamentarian's Note:* The franking privilege in fact predates the Constitution. Derived from British practice in the House of Commons, this privilege was exercised by officials in the colonial period, and the First Continental Congress enacted legislation to extend this privilege to its members. A variety of government officials under the Articles of Confederation were afforded the same privilege to use the postal system without charge, including members of its Congress, heads of departments, and certain military officers. See *Franking Privilege: Historical Development and Options for Change,* CRS Report RL34274 (May 3, 2016).

electronic communication has provided Members with many efficient methods of communicating with their constituents, the franking privilege remains an important part of modern House practice.

Members' use of franked mail has evolved considerably since the first franking statute was enacted in 1789.[68] Initially, there were few restrictions on what Members could send under their frank, and early practice allowed constituents to send material to Members free of charge as well.[69] Perceived abuse of this system led to numerous accounting reforms in the 19th century, aimed at controlling costs and reducing burdens on the postal system. The franking privilege was even temporarily abolished in 1873 but fully restored in 1895. Its restoration was accompanied by various new regulations involving weight limits and restrictions on when franked mail could be sent.[70] Government documents of various kinds (including excerpts of the *Congressional Record*)[71] could be sent under the frank, as well as agricultural seeds provided by the Department of Agriculture.[72] However, the inclusion of unfrankable matter (such as personal communications) destroyed the privilege.[73] Former Members were also allowed to exercise the franking privilege, until December 1 following the expiration of their term (a privilege eliminated in 1975).[74]

The mid–20th century saw increased scrutiny of the practice of franking, and for the first time Congress began to reimburse the Post Office for the cost of franked mail.[75] Lawsuits challenging the constitutionality of the franking privilege were also initiated during this time.[76] Consequently, the

68. 1 Stat. 70.

69. The privilege of receiving franked mail from constituents was eliminated in 1895. For a 1930 opinion of an Assistant Postmaster General indicating that no provision of law permitted using the frank for return reply, see 6 Cannon's Precedents § 219.

70. For a description of franking practices in the early 20th century, see 2 Hinds' Precedents § 1163.

71. See, *e.g.*, Deschler's Precedents Ch. 7 § 7.4.

72. For a description of special packing boxes provided to Members for franked mail (including the transmission of seeds and plants), see 6 Cannon's Precedents § 215. For a description of the use of the frank to send telegrams or cablegrams, see 6 Cannon's Precedents §§ 217, 220.

73. See, *e.g.*, 6 Cannon's Precedents § 221.

74. See 6 Cannon's Precedents § 217. This provision was later changed to move the expiration of the privilege back to April 1. See P.L. 93–191, 87 Stat. 737. See also Deschler's Precedents Ch. 7 § 7. The privilege for former Members was eliminated in the 94th Congress. See P.L. 94–177, 89 Stat. 1032. Nothing may be mailed under the frank of a deceased Member. See 6 Cannon's Precedents § 224.

75. See *Franking Privilege: Historical Development and Options for Change,* CRS Report RL34274 (May 3, 2016).

76. See *Common Cause* v. *Bolger,* 574 F. Supp. 672 (D.D.C. 1982). The advocacy group Common Cause had argued that the franking privilege violated the First and Fifth

1970s saw a number of substantial reforms to the franking privilege, including a comprehensive new franking statute enacted in the 93d Congress in 1973.(77) This statute created the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission) to regulate the use of the frank by House Members.(78) Membership on the commission is determined by the Speaker of the House, who (pursuant to statute) must appoint three Members each from the majority and minority parties in the House, and designate as chair a Member who serves on the Committee on House Administration.(79) The Commission issues advisory opinions and regulations to enforce statutory provisions regarding proper use of the frank. The Commission may also undertake investigations of alleged violations, which may be subject to judicial review or a referral to the House Committee on Ethics.(80) The rules and practices of the Commission have been published in the *Congressional Record* for the information of Members.(81)

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amendments to the Constitution by providing an indirect, government–funded subsidy for incumbent Members of Congress (*i.e.*, that free use of the mail gave incumbents an unfair advantage in their reelection campaigns). The United States District Court for the District of Columbia upheld the constitutionality of the franking privilege, stating that, while the potential for abuse did exist, the statute was designed to restrict the frank to legitimate, official government communications (rather than campaign communications), and that any impact on electoral processes was speculative. For resolutions authorizing compliance with subpoenas issued in this case, and subsequently authorizing the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission) to intervene, see §§ 6.15, 6.16, *infra*. In 1992, a similar case was brought, challenging the constitutionality of a provision that allowed franked mail to be sent to persons not in the Member's district, but who may become part of the district due to decennial redistricting. There, the D.C. Circuit Court did find a direct connection between the mailings and electoral processes, applied a "heightened scrutiny" analysis to the provision, and found it to be constitutionally impermissible. See *Coalition to End the Permanent Congress* v. *Martin T. Runyon et al.*, 979 F.2d 219 (D.C. Cir. 1992). The provision was formally repealed in the 102d Congress. See P.L. 102–392, 106 Stat. 1703.

77. P.L. 93–191, 87 Stat. 737.

78. In the Senate, use of the frank by Senators is regulated by the Senate Select Committee on Ethics. *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction,* CRS Report RL30650 (Mar. 22, 2021).

79. 2 U.S.C. § 501. The statute refers to the Committee on Post Office and Civil Service, but that committee was eliminated in the 104th Congress and its jurisdiction over the franking privilege transferred to the Committee on House Oversight. The Committee on House Oversight was redesignated as the Committee on House Administration in the 106th Congress. *House Rules and Manual* § 724 (2021).

80. 2 U.S.C. § 501. The Committee on Standards of Official Conduct was redesignated as the Committee on Ethics at the beginning of the 112th Congress. *House Rules and Manual* § 721b (2021).

81. See § 6.12, *infra*.

In 1977, further changes were made to the franking privilege in the House via amendments to the House rules. As part of a larger package of ethics reforms, the House amended its rules to provide further limitations on the use of the frank, including restrictions on the number of mass mailings per year and an expansion of the time period prior to an election in which mass mailings are prohibited.(82) Many of these provisions were codified in statute in the 97th Congress.(83)

Subsequent reforms to the practice of franking generally addressed issues of cost and transparency. In the 101st Congress in 1990, the House established a separate official mail allowance for House Members, subject to regulations issued by the Committee on House Administration.(84) Thus, for the first time, Members were subject to an overall limit on franked mail expenditures, with monthly updates from the Postmaster General as to the rate of expenditure. In the 104th Congress in 1995, the separate official mail allowance was eliminated when all remaining Member allowances were consolidated into the MRA, although it remained one of the three subcategories of permissible expenses.(85) In the 105th Congress in 1996, official mail expenses of Members were required to be included in the Statement of Disbursements published by the CAO.(86) In the 110th Congress in 2008, the Committee on House Administration required Members to disclose the cost of mass communications on a quarterly basis.(87) In the 116th Congress, new statutory provisions were enacted that redesignated the House Commission on Congressional Mailing Standards as the House Communications Standards Commission, and expanded the commission's jurisdiction to cover any official mass communications (including digital communications).(88)

Although an allegation that a Member has misused the franking privilege may be raised as a question of privilege as an ethics matter,(89) a resolution that constitutes a change in House rules regarding the franking privilege does not qualify as a question of privilege under rule IX.(90) A resolution

82. See H. Res. 287, 123 CONG. REC. 5933–53, 95th Cong. 1st Sess. (Mar. 2, 1977).

83. See P.L. 97–69, 95 Stat. 1041.

84. P.L. 101–520, 104 Stat. 2254.

85. See fn. 24, *supra.*

86. P.L. 104–197, 110 Stat. 2394. This law also required all franked mail to include a notice stating that "This mailing was prepared, published, and mailed at taxpayer expense."

87. See *Franking Privilege: Historical Development and Options for Change,* CRS Report RL34274 (May 3, 2016).

88. P.L. 116–260, 134 Stat. 1182.

89. See Deschler's Precedents Ch. 12 § 5. For an example of a Member rising to a point of personal privilege in response to an accusation that he had misused the franking privilege, see Deschler's Precedents Ch. 7 § 7.5.

90. See § 6.13, *infra*. For more on questions of privilege generally, see Deschler's Precedents Ch. 11; and Precedents (_____) Ch. 11.

disapproving of the actions of certain members of the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission) constitutes a valid question of the privileges of the House.[91]

Former Practice: Committee on House Administration Orders

§ 6.1 During the 92d through 94th Congresses,[92] the Committee on House Administration was authorized to issue committee orders making adjustments to a variety of House accounts used by Members for staffing and office management.

Prior to the advent of the MRA, Members' staffing and office expenses were funded through a variety of separate accounts, each of which could be adjusted by the Committee on House Administration via the issuance of committee orders. The following order of August 20, 1974,[93] was published in the *Congressional Record* for the information of Members:

CHANGES IN ALLOWANCES FOR MEMBERS

The SPEAKER pro tempore.[94] Under a previous order of the House, the gentleman from New Jersey (Mr. THOMPSON) is recognized for 5 minutes.

Mr. [Frank] THOMPSON of New Jersey. Mr. Speaker, House Resolution 457, 92d Congress, provided the Committee on House Administration the authority to fix and adjust from time to time various allowances of Members of the House of Representatives. Pursuant to this authority the committee has issued order Nos. 13 and 14 as follows:

COMMITTEE ORDER NO. 13

Resolved, That in addition to postage stamps authorized to be furnished under any other provision of law, until otherwise provided by order of the Committee on House Administration, the Clerk of the House of Representatives shall for each regular session of Congress procure and furnish United States postage stamps to each Representative, the Resident Commissioner of Puerto Rico, and the Delegates from the District of Columbia, Guam, and the Virgin Islands in an amount not exceeding $230, and to each standing committee of the House of Representatives upon request of the chairman thereof, in an amount not exceeding $140. In addition to postage stamps authorized under any other provision of law, until otherwise provided by order of the Committee on House Administration, the Speaker, the majority and minority leaders, and the majority and minority

91. See § 6.14, *infra*.

92. *Parliamentarian's Note:* This authority was significantly restricted in the 94th Congress. See § 6.4, *infra*. The committee retained the ability to make adjustments within individual accounts even after the authority to adjust overall levels was restricted. See §§ 6.5, 6.6, *infra*. Under current practice, the committee retains the authority to make adjustments in the single remaining account: the MRA. 2 U.S.C. § 4313.

93. 120 CONG. REC. 29407, 93d Cong. 2d Sess. For examples of similar committee orders published in the *Congressional Record,* see 120 CONG. REC. 40960, 93d Cong. 2d Sess. (Dec. 18, 1974); 121 CONG. REC. 5556, 94th Cong. 1st Sess. (Mar. 6, 1975); 121 CONG. REC. 15483, 94th Cong. 1st Sess. (May 20, 1975); and 122 CONG. REC. 21623–24, 94th Cong. 2d Sess. (June 30, 1976). See also Deschler's Precedents Ch. 7 § 8.4.

94. John McFall (CA).

whips of the House of Representatives shall each be allowed United States postage stamps in an amount not exceeding $205.

COMMITTEE ORDER NO. 14

Resolved, that until otherwise provided by order of the Committee on House Administration; the allowance for Stationery for each Member of the House of Representatives, Delegate, and Resident Commissioner, shall be $6,500 per regular session. Such payment shall be made to each Member, Delegate, and the Resident Commissioner serving as such on or after the date of adoption of this resolution.

§ 6.2 During the 92d through 94th Congresses, the Committee on House Administration's authority to issue committee orders adjusting the level of Members' office accounts encompassed the authority to modify an existing committee order.

On October 30, 1975,[95] the Committee on House Administration issued a committee order making a modification to a prior order adjusting the amount available for leasing office equipment:

HOUSE ADMINISTRATION COMMITTEE ORDER NO. 24

The SPEAKER pro tempore.[96] Under a previous order of the House, the gentleman from Ohio (Mr. HAYS) is recognized for 5 minutes.

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, House Resolution 457, 92d Congress, enacted by Public Law 92–184 into permanent law on December 15, 1971, provides the Committee on House Administration the authority to fix and adjust from time to time various allowances of members, the Resident Commissioner from Puerto Rico or a delegate to the House of Representatives. Pursuant to this authority the committee has issued order No. 24 which is effective October 1, 1975.

Committee Order No. 24 incorporates and supersedes committee order No. 18, and increases from $650 to $750 the amount authorized to lease equipment utilized in connection with official duties as prescribed by the regulations of the Committee on House Administration. This increase is merely to cover the rise in the monthly rental rates that have occurred since the leasing program was instituted.

The order follows:

COMMITTEE ORDER NO. 24

Resolved, That effective October 1, 1975, until otherwise provided by order of the Committee on House Administration, each Member, the Resident Commissioner from Puerto Rico or a Delegate to the House of Representatives is authorized a $750 per month allowance to lease office equipment, and upon written request to the Committee on House Administration, a Member, the Resident Commissioner from Puerto Rico or a Delegate to the House of Representatives may allocate an amount not to exceed $250 a month of any unused portion of his or her clerk hire allowance for the leasing of equipment necessary for the conduct of his or her office in connection with his or her official duties. The said monthly allowances are not cumulative.

95. 121 CONG. REC. 34463, 94th Cong. 1st Sess.
96. John McFall (CA).

§ 6.3 In response to a parliamentary inquiry, the Speaker affirmed that committee orders issued by the Committee on House Administration regarding adjustments to Members' office accounts took effect upon final action by the committee, and not at the time such orders were published in the *Congressional Record.*[97]

On June 29, 1976,[98] the Speaker addressed the following parliamentary inquiries regarding committee orders issued by the Committee on House Administration:

REQUEST TO INSERT MATERIAL IN RECORD

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I ask unanimous consent that I may be permitted to insert some statements at this point in the RECORD.

The SPEAKER.[99] Is there objection to the request of the gentleman from New Jersey?

Mr. [Robert] BAUMAN [of Maryland]. Reserving the right to object, Mr. Speaker, will the gentleman from New Jersey tell us whether these are the orders of the Committee on House Administration that were adopted Monday?

Mr. THOMPSON. If the gentleman will yield, they are.

Mr. BAUMAN. Mr. Speaker, I object.

The SPEAKER. Objection is heard. . . .

PARLIAMENTARY INQUIRY

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

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. BAUMAN. Mr. Speaker, is it not a fact that under the terms of House Resolution 475, adopted in 1971, if the gentleman enters these statements into the RECORD, then they have the force and effect of law and the allowances are effective without letting the full House work its will? That is what I object to strongly.

The SPEAKER. The Chair will state that the Chair is not aware of that requirement for printing in the RECORD. . . .

EXPLANATION OF REQUEST TO INSERT IN RECORD ORDERS OF COMMITTEE ON HOUSE ADMINISTRATION

(Mr. BOLLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

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97. *Parliamentarian's Note:* Under former practice described here, the Committee on House Administration could effectuate adjustments in various individual accounts used by Members to manage their offices. Under current practice, Members receive a single account (the MRA). The committee retains the authority to make adjustments to the MRA via committee order, and although such orders are typically published in the *Congressional Record,* such publication is not required.

98. 122 CONG. REC. 21146, 21150, and 21168, 94th Cong. 2d Sess.

99. Carl Albert (OK).

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, I asked for this time in order to clarify some facts, but not to engage in controversy, with respect to the content of the orders that the Committee on House Administration has issued, which will be worked out in detail, I am sure, by the various members of the committee, minority and majority.

However, Mr. Speaker, I think it is important for the Members not to have the misconception that in order for those orders to have the force of law, they must be published in the RECORD.

Mr. Speaker, I would like to read from the law simply so that all Members will understand the facts. I read as follows:

Until otherwise provided by law, the Committee on House Administration, may, as the Committee considers appropriate, fix and adjust from time to time, by order of the Committee, the amounts of allowances (including the terms, conditions, and other provisions pertaining to those allowances) within the following categories . . .

Then, Mr. Speaker, it goes on at length.

The matter of the unanimous-consent request was merely an attempt to comply, as I understand it, with the spirit of the debate which took place on July 21, 1971, when that law was passed by the House. In effect, it said that the committee would take care to assure the Members of the content of any action. Therefore, the unanimous-consent request to put the orders in the RECORD would not have any effect on their having the force of law; and it was merely an attempt to comply with the spirit of the debate when the law was enacted.

Mr. Speaker, I started out by saying that I have no intention of getting involved in the controversy over the content of the orders, and I do not. . . .

REQUEST FOR EXTENSION OF REMARKS

Mr. [Philip] SHARP [of Indiana]. Mr. Speaker, I ask unanimous consent that the following Members be permitted to extend their remarks and to include additional matter in that section of the RECORD entitled "Extensions of Remarks":

Mr. GONZALEZ in three instances. . . .

Mr. BRADEMAS in three instances.

Mr. THOMPSON in three instances.

Mr. BAUMAN. Mr. Speaker, I reserve the right to object to the request regarding the gentleman from New Jersey (Mr. THOMPSON).

The SPEAKER. The gentleman from Maryland reserves the right to object to the inclusion of the name of the gentleman from New Jersey (Mr. THOMPSON). . . .

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. BAUMAN. Mr. Speaker, my parliamentary inquiry is this: Is the opinion expressed by the distinguished gentleman from Missouri (Mr. BOLLING), earlier today that these orders take effect upon the date the committee finally acts upon them, rather than upon any printing in the RECORD at a subsequent time, correct?

The SPEAKER. The Chair will state that the statement the gentleman from Missouri (Mr. BOLLING) made was accurate.

Mr. BAUMAN. So that no objection to a request to insert them in the RECORD from any Member would prevent them from taking effect?

The SPEAKER. They would take effect immediately upon the final action of the Committee on House Administration. If thereafter either placed in the RECORD or sent out

by other means such as a Dear Colleague letter, that is simply for the convenience of the Members.

Mr. BAUMAN. Further inquiring of the Chair, may I also understand that such committee orders take effect at a time when the Committee on House Administration finally acts on language that all Members understand to be the form agreed upon.

The SPEAKER. The Chair is of the opinion that when they take effect should be reflected by the minutes of the committee, which should show exactly what they did and when.

Mr. BAUMAN. I thank the Chair for his indulgence, and I withdraw my reservation of objection. . . .

§ 6.4 In the 94th Congress, the House significantly restricted the authority for the Committee on House Administration to issue committee orders adjusting the overall level of Members' staffing and office accounts.(100)

On July 1, 1976,(101) the House adopted the following resolution significantly restricting the authority for the Committee on House Administration to make overall adjustments to Members' office accounts via committee order:

The SPEAKER.(102) The Clerk will report House Resolution 1372.

The Clerk read as follows:

H. RES. 1372

Resolved, That, (a) until otherwise provided by law, any allowance specified in subsection (a)(1) of the first section of H. Res. 457, Ninety-second Congress, relating to expenditures of funds from the contingent fund of the House of Representatives for certain allowances to Members, officers, and standing committees of the House (2 U.S.C. 57), adopted July 21, 1971, and enacted as permanent law by the Supplemental Appropriations Act, 1972 (Public Law 92–184; 85 Stat. 627), hereinafter in this section referred to as ''H. Res. 457, Ninety-second Congress'', may be fixed or adjusted only through the adoption of a resolution by the House of Representatives, except that the Committee on House Administration may fix or adjust such allowance in any case in which such action by such committee is made necessary by—

(1) any change in the price of materials, services, or office space;

(2) any technological change or other improvement in electrical or mechanical equipment; or

(3) any increase in the cost of living which results in action under the Federal Pay Comparability Act of 1971.

(b) Upon the date of the adoption of this resolution, the authority of the Committee . . . on House Administration under H. Res. 457, Ninety-second Congress, shall be subject to the provisions of this resolution.

The SPEAKER. Pursuant to the rule, on this resolution the gentleman from New Jersey (Mr. THOMPSON) and the gentleman from Alabama (Mr. DICKINSON) will each be recognized for 30 minutes.

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100. *Parliamentarian's Note:* Following this change to the rules of the House, the Committee on House Administration retained the ability to make adjustments within any single account. See, *e.g.*, §§ 6.5, 6.6, *infra*.

101. 122 CONG. REC. 21815–16, 21823–25, 94th Cong. 2d Sess.

102. Carl Albert (OK).

The Chair recognizes the gentleman from New Jersey (Mr. THOMPSON).

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I yield myself 10 minutes. . . .

The committee met all day on last Thursday and again on last Friday, except during the times when because we could not get unanimous consent, we could not sit during the 5-minute rule. One of the results of that series of meetings—and the last meeting was on this past Monday when the committee convened at 8 o'clock a.m. and worked for many, many hours—was the adoption of nine items, three of which are proposed regulations, the remainder of which are committee orders, which under the 1971 act have the force of law. Seven of the nine items adopted were adopted unanimously or by a voice vote—seven of the nine. The other two were adopted by votes of 14 to 8, in other words, along party lines. The result was the prolongation of the orders and regulations which appeared in the RECORD as referred to earlier.

House Resolution 1372 by the gentleman from Michigan (Mr. NEDZI) was then considered. It was debated and was not reported, because the result was an 11 to 11 tie vote. Earlier in an action superseded by the subsequent adoption of the nine committee orders and regulations, the committee reported House Resolution 900, the first section of which is identical to the emasculation resolution now before us.

The Committee on Rules under its authority took up House Resolution 1372 offered by my distinguished friend, the gentleman from Michigan, and reported it on yesterday with the rule which has been adopted.

I would like to make some specific comments. I think that the GAO matter needs only brief comment, and I think we discussed it earlier. Having checked the law with the GAO and its lawyers as well as consulting with the Parliamentarian and with the committee staff lawyers, I requested formally that the GAO audit, beginning with the Committee on House Administration, all of its vouchers and records, and that it do so for all of the other committees which must come before the Committee on House Administration for their funds out of the Contingent Fund. That includes all committees except the Committee on Appropriations and the Committee on the Budget. That procedure will start on Tuesday next. . . .

With respect to the most controversial item, the so-called consolidation item, it is not consolidation in the form which was requested by the Obey committee. Rather it is in effect a lumping together of the seven categories as they are now without even a 5-cent increase and making it possible in the Member's individual discretion to use those monies in the same manner in which they are now used but with the additional requirement of reporting and vouchering on a standard form. Also at the Member's individual discretion he may transfer moneys from one account . . . to the other, except from the clerk hire account.

If this resolution is adopted, the Committee on House Administration will be emasculated of all of those powers except its right on the basis of proofs of increased costs. to increase the costs of living as they occur. With respect to the employees of the House the committee would have the discretion to increase if under the 1971 Pay Act they are granted a 4-percent increase, and the Committee on House Administration by action of the full committee can authorize an increase which would go to each Member. That Member at his or her discretion may or may not grant his or her employees a cost-of-living increase. It is entirely up to the Member. . . .

The SPEAKER. Under the rule, the previous question is ordered.

MOTION TO RECOMMIT OFFERED BY MR. RHODES

Mr. [John] RHODES [of Arizona]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the resolution?

Mr. RHODES. I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. RHODES moves to recommit H. Res. 1372 to the Committee on House Administration with instructions to report back the same forthwith with the following amendments: Strike all after the resolving clause and insert in lieu thereof the following:
>
> ''That, (a) until otherwise provided by law, any allowance specified in subsection (a) (1) of the first section of H. Res. 457, Ninety-second Congress, relating to expenditures of funds from the contingent fund of the House of Representatives for certain allowances to Members, officers, and standing committees of the House (2 U.S.C. 57), adopted July 21, 1971, and enacted as permanent law by the Supplemental Appropriations Act, 1972 (Public Law 92–184; 85 Stat. 627), hereinafter in this section referred to as ''H. Res. 457, Ninety-second Congress'', may be fixed or adjusted only through the adoption of a resolution by the House of Representatives.
>
> ''(b) The authority of the Committee on House Administration under H. Res. 457, Ninety-second Congress, shall be subject to the provisions of this resolution effective June 23, 1976.''

The SPEAKER. Under the rule, the previous question is ordered on the motion to recommit.

The question is on the motion to recommit.

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

Mr. RHODES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 165, nays 236, not voting 31, as follows:

[Roll No. 502] . . .

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.

Mr. [William] FRENZEL [of Minnesota]. 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 311, nays 92, not voting 29, as follows:

[Roll No. 503] . . .

Messrs. ANDERSON of Illinois, GUYER, KEMP, SKUBITZ, REGULA, CONLAN, and HILLIS changed their vote from "yea" 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.

§ 6.5 Although the authority for the Committee on House Administration to issue committee orders adjusting the overall level of

Members' individual office accounts was significantly restricted in the 94th Congress, the committee retained the ability to make adjustments within any single account.

On March 21, 1977,[103] the following committee order from the Committee on House Administration was published in the *Congressional Record:*

COMMITTEE ORDER NO. 31—CLERK-HIRE ALLOWANCE

The SPEAKER.[104] Under a previous order of the House, the gentleman from New Jersey (Mr. THOMPSON) is recognized for 5 minutes.

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, the committee on House Administration, pursuant to its authority under Public Law 92–184 and Public Law 94–440, has issued committee order No. 31 which is effective April 1, 1977.

Committee order No. 31 ties the maximum annual rate of compensation which may be paid from the clerk-hire allowance to executive schedule level V.

The order follows:

COMMITTEE ORDER NO. 31

Resolved, That effective April 1, 1977, until otherwise provided by order of the Committee on House Administration, each Member, Delegate or Resident Commissioner of the House of Representatives may compensate employees from the clerk-hire allowance at a per annum rate equivalent to, and not to exceed, the highest per annum rate of basic pay, as in effect from time to time, authorized for Level V of the Executive Schedule (6 U.S.C. 5316).

§ 6.6 Although the authority for the Committee on House Administration to issue committee orders adjusting the overall level of Members' individual office accounts was significantly restricted in the 94th Congress, the committee retained the ability to make adjustments within any single account.

On April 21, 1983,[105] the following committee order from the Committee on House Administration was published in the *Congressional Record:*

COMMITTEE ORDER NO. 35 ADJUSTMENT OF CLERK-HIRE ALLOWANCE AND OFFICIAL EXPENSES ALLOWANCE

(Mr. HAWKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. [Augustus] HAWKINS [of California]. Mr. Speaker, at the direction of the Committee on House Administration and under the authority granted in Public Law 94–184 and Public Law 94–440, the committee yesterday issued Committee Order No. 35, which will become effective on May 1, 1983. I will be sending each Member a "dear colleague" letter within the next few days describing the limitations and administration of this change.

I include at this point in the RECORD the text of Committee Order No. 35:

103. 123 CONG. REC. 8227, 95th Cong. 1st Sess.

104. Thomas O'Neill (MA).

105. 129 CONG. REC. 9339, 98th Cong. 1st Sess.

COMMITTEE ORDER NO. 35

Resolved, That effective May 1, 1983, until otherwise provided by the Committee on House Administration, the Clerk-Hire Allowance and the Official Expenses Allowance are adjusted as follows:

1. The base allowance for Official Expenses is increased by $15,000.

2. Each session a Member may allocate not to exceed $30,000 from the basic Clerk-Hire Allowance which may be used to supplement the Official Expenses Allowance, and may allocate not to exceed $30,000 from the Official Expenses Allowance to supplement the basic Clerk-Hire Allowance, provided however that monthly Clerk-Hire disbursements may not exceed 10 percent of the basic Clerk-Hire Allowance.

All disbursements and allocations shall be made in accordance with rules and regulations established by the Committee on House Administration.

§ 6.7 In the 104th Congress, the House consolidated the remaining individual accounts for Members' office support (clerk hire, official expenses, and official mail) and created a new single allowance known as the Members' Representational Allowance (MRA).

On August 4, 1995,[106] the chair of the Committee on House Oversight (now the Committee on House Administration)[107] submitted for printing in the *Congressional Record* the following committee order consolidating Members' office accounts and creating the new MRA:[108]

SUBMISSION OF COMMITTEE ORDER FROM COMMITTEE ON HOUSE OVERSIGHT

(Mr. THOMAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. [William] THOMAS [of California]. Mr. Speaker, I submit a committee order from the Committee on House Oversight.

At the direction of the Committee on House Oversight, in accordance with the authority granted to the committee as reflected in 2 U.S.C. 57, the committee issued Committee Order No. 41 on August 3, 1995, which will become effective on September 1, 1995. Members will receive information describing this change through a dear colleague.

I include at this point in the RECORD the text of Committee Order No. 41.

Resolved, That (a) effective September 1, 1995, and subject to subsection (b), the Clerk Hire Allowance, the Official Expenses Allowance, and the Official Mail Allowance shall cease to exist and the functions formerly carried out under such allowances shall be carried out under a single allowance, to be known as the ''Members' Representational Allowance''.

(b) Under the Members' Representational Allowance, the amount that shall be available to a Member for franked mail with respect to a session of Congress shall be the amount allocated for that purpose by the Committee on House Oversight under paragraphs (1)(A) and (2)(B) of subsection (e) of section 311 of the Legislative Branch Appropriations Act, 1991, plus an amount equal to the amount permitted to be transferred to the former Official Mail Allowance under paragraph (3) of that subsection.

SEC. 2. The Committee on House Oversight shall have authority to prescribe regulations to carry out this resolution.

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106. 141 CONG. REC. 22085, 104th Cong. 1st Sess.

107. *Parliamentarian's Note:* During the 104th and 105th Congress, the Committee on House Administration was redesignated as the Committee on House Oversight. *House Rules and Manual* § 724 (2021).

108. The MRA was made permanent law by P.L. 104–186, 110 Stat. 1718. These provisions of law have now been codified at 2 U.S.C. §§ 5341 *et seq.*

Clerk Supervision of Vacant Offices

§ 6.8 Where a Member–elect was incapacitated and unable to take the oath of office, the House adopted a resolution: (1) providing such Member–elect with compensation in lieu of salary; and (2) authorizing the Clerk of the House to administer the Member–elect's office.

Member–elect Gladys Noon Spellman of Maryland fell into a coma prior to opening day of the 97th Congress, and was thus unable to take the oath of office. On January 27, 1981,(109) the House adopted the following resolution authorizing payment in lieu of salary and requiring the Clerk to administer the office until further action by the House:

COMPENSATION IN LIEU OF SALARY TO THE HONORABLE GLADYS NOON SPELLMAN

Mr. [Gillis] LONG of Louisiana. Mr. Speaker, I send to the desk a resolution (H. Res. 41) relating to compensation in lieu of salary to GLADYS NOON SPELLMAN, and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 41

Resolved, That, from the contingent fund of the House of Representatives, the Clerk of the House of Representatives shall, at the end of each month pay as compensation in lieu of salary to Gladys Noon Spellman an amount equal to the compensation which would be payable in accordance with section 39 of the Revised Statutes (2 U.S.C. 35) but for her inability to subscribe to the oath of office. The Clerk shall deduct from any such payment the amounts necessary to provide for continued (1) health and life insurance and retirement benefit coverage and (2) Federal and State income tax withholding.

SEC. 2. (a) Until otherwise provided by law or by action of the House of Representatives, administrative support may be provided and clerical assistants for the office of Gladys Noon Spellman may be designated and adjusted by the Clerk of the House of Representatives (in accordance with any regulations prescribed under subsection (b)) and borne upon the clerk hire payrolls of the House of Representatives. The Clerk shall take such action as may be necessary to apply the principles of section 2 of the joint resolution entitled ''Joint resolution relating to the continuance on the payrolls of certain employees in cases of death or resignation of Members of the House of Representatives, Delegates, and Resident Commissioners.'', approved August 21, 1935 (2 U.S.C. 92c), to clerical assistants employed pursuant to the preceding sentence.

(b) The Committee on House Administration shall have authority to prescribe regulations for the carrying out of this section.

(c) Payments under this section shall be made on vouchers approved by the Committee on House Administration and signed by the chairman of such committee.

The SPEAKER pro tempore.(110) Is there objection to the request of the gentleman from Louisiana? . . .

Mr. [Trent] LOTT [of Mississippi]. All right. Would this in any way affect the proxy voting in subcommittees or committees, this resolution?

Mr. LONG of Louisiana. I am informed that because of the fact that the Member has not been sworn in, there would be no voting rights in this instance.

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109. 127 CONG. REC. 974–75, 97th Cong. 1st Sess.

110. Thomas Foley (WA).

Mr. LOTT. I thank the gentleman. . . .

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

There was no objection.

The resolution was agreed to.

On February 24, 1981,[111] after it was determined that Ms. Spellman would not be able to take a seat in the House, the House adopted the following resolution to declare the seat vacant and to authorize the Clerk to continue supervising the vacant office until a successor could be chosen:

DECLARING VACANCY IN 97TH CONGRESS FROM FIFTH CONGRESSIONAL DISTRICT OF MARYLAND

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I offer a privileged resolution (H. Res. 80) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 80

Whereas a certificate of election has been received by the Clerk of this House showing the election of Gladys Noon Spellman as a Representative in the Ninety-seventh Congress from the Fifth Congressional District in the State of Maryland; and

Whereas Representative-elect Gladys Noon Spellman has not appeared to take the oath of office as a Member of this House as required by article VI of the Constitution of the United States; and

Whereas information has been provided to the Speaker that Representative-elect Gladys Noon Spellman has been unable to take the oath of office due to an incapacitating illness; and

Whereas the most recent medical information provided to the Speaker indicates that there is no likelihood that Representative-elect Gladys Noon Spellman will recover sufficiently to be able to take the oath of office and serve as a Member of this House, or to expressly resign the office in order to create a vacancy; Therefore, be it

Resolved, That this House of Representatives hereby determines that there is a vacancy in the Ninety-seventh Congress from the Fifth Congressional District in the State of Maryland because of the absence and continuing incapacity of Representative-elect Gladys Noon Spellman.

SEC. 2. That the Speaker of the House is hereby directed to notify the Governor of the State of Maryland of this action so that appropriate measures to fill the vacancy may be undertaken by the Governor pursuant to article I, section 2 of the Constitution of the United States.

SEC. 3. The first section of House Resolution 41 of this Congress shall cease to be effective on the adoption of this resolution and section 2 of House Resolution 41 shall cease to be effective when a successor is elected to fill the vacancy.

The SPEAKER.[112] The Chair recognizes the gentleman from Texas (Mr. WRIGHT).

Mr. WRIGHT. Mr. Speaker, I think there is an understanding of the intent and effect of this resolution. It would declare vacant a seat which was held in the last Congress by the Honorable GLADYS NOON SPELLMAN, she having been reelected to serve in this Congress.

I know that all of us share the sadness with which Dr. Freeman Cary, the attending physician for the Congress, after consultation with her physicians at Walter Reed, and with his personal observations, concluded that Mrs. SPELLMAN had no real likelihood of

111. 127 CONG. REC. 2916–18, 97th Cong. 1st Sess.

112. Thomas O'Neill (MA).

being able to serve out this term of office, and that in a trancelike state of consciousness she would not be able to take the oath of office. . . .

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that the letter addressed to the Honorable THOMAS P. O'NEILL, JR., by the attending physician, Dr. Freeman Cary, be printed in the RECORD at this point.

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

There was no objection.

The letter referred to is as follows:

THE ATTENDING PHYSICIAN,
CONGRESS OF THE UNITED STATES,
February 20, 1981.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: As you know Congresswoman Gladys Spellman suffered cardiac arrest on October 31, 1980, while at a political rally. Despite prompt by-stander cardiopulmonary resuscitation and rescue squad response, there appeared to be a delay in restoring effective blood flow to the brain.

Since that time she has been hospitalized first in her district and now at Walter Reed Army Medical Center Hospital, where intensive rehabilitative care is being given. A trance-like state of consciousness persists.

After consultation with her physicians at Walter Reed and with my personal observations, there is no likelihood that she will be able to serve out her term of office.

Yours sincerely,

FREEMAN H. CARY, M.D.

. . .

Mr. WRIGHT. 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.

Floor Privileges for Members' Staff

§ 6.9 Pursuant to clause 2(a)(8) of rule IV,[113] Members' personal staff may exercise floor privileges, but Members are limited to not more than one personal staff at a time, and only when that Member has an amendment under consideration.[114]

On August 18, 1982,[115] the Speaker made the following announcement regarding the presence of Members' personal staff on the floor:

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113. *House Rules and Manual* § 678 (2021).

114. *Parliamentarian's Note:* Members' staff on the floor are prohibited from attempting to influence Members with regard to legislation under consideration, pursuant to clause 5 of rule IV. *House Rules and Manual* § 681 (2021). For announcements by the Chair regarding improper activities on the floor by Members' personal staff, see Precedents (Wickham) Ch. 4 §§ 5.9, 5.10.

115. 128 CONG. REC. 21934–35, 97th Cong. 2d Sess.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER.[116] The Chair desires to make the following announcement.

Last evening the Chair received many complaints from Members that too many staff people were on the floor, and the Members of the House would bring their personal staff people on the floor although they had no prerogative to do that.

So the Chair cautions and warns the Members not to bring their personal staff members on the floor. The rules prohibit it, and the Chair's announced policy requires committee staff who are permitted to be on the floor when business from their committees is under consideration to remain by the committee tables unobtrusively.

Improper Use of Official Funds

§ 6.10 Misuse of official funds may be investigated by the Committee on Ethics, and a Member has been censured and fined for, *inter alia*, improper use of the clerk–hire account.

On July 19, 1979,[117] the chair of the Committee on Standards of Official Conduct (now the Committee on Ethics)[118] filed a privileged report recommending censure of Rep. Charles Diggs of Michigan for improper use of the clerk–hire account:[119]

REPORT ON RESOLUTION IN THE MATTER OF REPRESENTATIVE CHARLES C. DIGGS, JR.

Mr. BENNETT, from the Committee on Standards of Official Conduct, submitted a privileged report (Rept. No. 96–351), on the resolution (H. Res. 378) in the matter of Representative CHARLES C. DIGGS, JR., which was referred to the House Calendar and ordered to be printed.

PRINTING OF HOUSE RESOLUTION 378, IN THE MATTER OF REPRESENTATIVE CHARLES C. DIGGS, JR.

Mr. [Charles] BENNETT [of Florida]. Mr. Speaker, I ask unanimous consent that the report on the resolution (H. Res. 378) in the matter of Representative CHARLES C. DIGGS, JR., be printed in two volumes, and that volume 2 be limited to 600 copies.

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116. Thomas O'Neill (MA).

117. 125 CONG. REC. 19580, 96th Cong. 1st Sess.

118. The Committee on Standards of Official Conduct was redesignated as the Committee on Ethics at the outset of the 112th Congress. *House Rules and Manual* § 721b (2021).

119. *Parliamentarian's Note:* In its committee report, the Committee on Standards of Official Conduct noted that Rep. Charles Diggs of Michigan had been convicted of mail fraud and making false statements in a United States district court, and that the "gravamen of the charges against Representatives Diggs was that he inflated several of his employees' salaries in order to enable them to pay certain of his personal and congressional expenses." H. Rept. 96–351, 96th Cong. 1st Sess., p. 1. For a similar case later in the same Congress, where a Member (Rep. Charles H. Wilson of California) was censured for, *inter alia,* retaining a clerk with knowledge that said clerk did not perform duties commensurate with his compensation, see H. Rept. 96–930, 96th Cong. 2d Sess., p. 20. See also Precedents (Wickham) Ch. 3 § 3.1; Precedents (Wickham) Ch. 5 § 20.15; and Precedents (_____) Ch. 12.

The SPEAKER pro tempore.[120] Is there objection to the request of the gentleman from Florida?

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, reserving the right to object, could the gentleman tell us why he is limiting the second volume? Is there something special in there?

Mr. BENNETT. Mr. Speaker, if the gentleman will yield, the reason is purely to save money. It is many hundreds of pages thick. It is the transcript of the trial and the report refers to it, but it is really not necessary to print thousands of copies of the transcript of the trial, which is available to Members otherwise. It is just purely to save money.

Mr. ROUSSELOT. Members can pick it up from the court?

Mr. BENNETT. That is correct.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's explanation, and I withdraw my reservation of objection.

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

Mr. [William] DANNEMEYER [of California]. Mr. Speaker, reserving the right to object, did the distinguished gentleman from Florida plan to take up this resolution today?

Mr. BENNETT. No. It would have to be scheduled by the Speaker.

Mr. DANNEMEYER. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

On July 31, 1979,[121] the House agreed to a privileged resolution adopting the committee's report and formally censuring Rep. Diggs:[122]

IN THE MATTER OF REPRESENTATIVE CHARLES C. DIGGS, JR.

Mr. [Charles] BENNETT [of Florida]. Mr. Speaker, I call up a privileged resolution (H. Res. 378) in the matter of Representative CHARLES C. DIGGS, JR., and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 378

Resolved,

(1) that Representative Charles C. Diggs, Junior, be censured;

(2) that Representative Charles C. Diggs, Junior, forthwith present himself in the well of the House for the pronouncement of censure;

(3) that Representative Charles C. Diggs, Junior, be censured with the public reading of this resolution by the Speaker;

(4) that Representative Charles C. Diggs. Junior, is ordered to execute and deliver to the House an interest-bearing demand promissory note for $40,031.66, made payable to the Treasury of the United States;

(5) that Representative Charles C. Diggs, Junior, is ordered, for the remainder of the Ninety-sixth Congress, to require his employees to certify to the Committee on Standards of Official Conduct that the funds he or she receives from clerk-hire funds are received in full compliance with current House rules; and

(6) that the House of Representatives adopt the report of the Committee on Standards of Official Conduct dated July 19, 1979, In The Matter of Representative Charles C. Diggs, Junior.

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120. Joseph Minish (NJ).

121. 125 CONG. REC. 21584–85, 21591–92, 96th Cong. 1st Sess.

122. *Parliamentarian's Note:* Rep. Charles Diggs of Michigan resigned later in the Congress. See 126 CONG. REC. 13005, 96th Cong. 2d Sess. (June 3, 1980).

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER.[123] The Chair wishes to make a statement after which the gentleman from Florida (Mr. BENNETT) will be recognized for 1 hour.

The Chair must acknowledge the gravity of the pending resolution insofar as the House will be called up to discipline one of its Members. While there should of course, be an opportunity to debate all aspects of this matter, the Chair wishes to remind Members of the restrictions imposed by clause I, rule XIV, and by the precedents relating to references to Members in debate. These restrictions indicate that Members should refrain from using language which is personally abusive. While a wide range of discussion relating to conduct of the Member in question will be permitted, it is the duty of the Chair to maintain proper decorum in debate. It is the intention of the Chair to enforce the rules.

The gentleman from Florida (Mr. BENNETT) is recognized for 1 hour.

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to extend their remarks in the extension of remarks section of the RECORD, and that this not include any revisions of remarks delivered in the House today.

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

There was no objection.

Mr. BENNETT. Mr. Speaker, for the purposes of debate only I yield 20 minutes to the gentleman from South Carolina (Mr. SPENCE); and for the purposes of debate only I yield 20 minutes to the gentleman from Michigan (Mr. DIGGS), pending which I yield myself such time as I may consume.

Mr. Speaker, on February 1 of this year, as chairman of the Committee on Standards of Official Conduct, I communicated to the other members of the committee my intention, subject to their approval, to appoint a subcommittee of two to inquire into the conviction of Representative DIGGS. At the organizational meeting of the committee on February 7, the gentleman from Indiana (Mr. HAMILTON) and the gentleman from New Jersey (Mr. HOLLENBECK) were so appointed.

On February 2, the gentleman from Georgia, Representative GINGRICH, and 18 other Members filed a sworn complaint charging that Representative DIGGS had violated House Rule XLIII, clause 1, Code of Official Conduct, by reason of his misuse of clerk-hire allowances-essentially the same conduct which had led in 1978 to his indictment and conviction in the U.S. District Court.

On March 21, a formal resolution to conduct an inquiry into the official conduct of Representative DIGGS was adopted by the committee. These initiatives, and the investigation that ensued, culminated in the recommendation of the committee that the House adopt the resolution now under discussion.

During the preceding Congress, Representative DIGGS was the subject of an investigation by the Department of Justice into alleged violations of Federal law concerning the use of his clerk-hire allowance. On March 23, 1978, a grand jury sitting in the District of Columbia indicted Representative DIGGS on 14 counts of violating 18 U.S.C. 1341 (mail fraud) and 21 counts of violating 18 U.S.C. 1001 (false statement). All counts were related to an alleged scheme by Representative DIGGS to defraud the Government by either: First, inflating employees' salaries so that they could use the increase to pay his

123. Thomas O'Neill (MA).

personal and congressional expenses; or second, adding individuals to his congressional payroll to compensate them for providing him with personal services.

On October 7, 1978, the jury returned a verdict of guilty on the 29 counts that were prosecuted. On November 21, 1978, Representative DIGGS was sentenced to 3 years imprisonment on each of these counts, the sentences to run concurrently. Between the time of the conviction and sentencing, on November 7, 1978, Representative DIGGS was reelected to Congress. Representative DIGGS has this conviction under appeal at this time; and a decision by the Court of Appeals for the District of Columbia is anticipated some time during the next few months.

Special counsel appointed by the committee undertook a thorough analysis of the transcript of evidence from the trial of Representative DIGGS and interviewed various potential witnesses, following which the committee unanimously approved and served upon Representative DIGGS a statement of alleged violations, charging violations of clauses 1 and 8, of the Code of Official Conduct. Clause 1 imposes an obligation on every Member "to conduct himself at all times in a manner which shall reflect creditably on the House." Clause 8 prohibits a Member from retaining a staff employee "who does not perform duties commensurate with the compensation he receives."

The summary of the trial testimony appears in the committee report, pages 9–16; and the statement of alleged violations appears as part of appendix A (pages 28–37).

Appendix F to the report (pages 148–177) contains various exhibits introduced during the trial of Representative DIGGS which record the changes in salary of various staff members and disbursements by them to pay personal and office related expenses of the Member.

After the statement of alleged violations was served, counsel for Representative DIGGS filed various motions, including a motion to defer all committee action pending the outcome of the judicial proceedings and a motion to dismiss for lack of jurisdiction.

The motion to defer was based upon the argument that any proceedings the committee might undertake would generate publicity that might prejudice the Member's criminal court proceedings. The motion was denied by an 8–3 vote, the majority being of the opinion that the possibility, that any publicity of the committee proceedings adversely affecting the rights of Representative DIGGS in the ongoing judicial proceedings, was remote and insubstantial.

The motion to dismiss for lack of jurisdiction was based on the argument that the power of the House to punish for misconduct was terminated by the Member's reelection, at least where the alleged misconduct was known to his constituency prior to his reelection. Counsel for Representative DIGGS maintained that the power to expel, conferred by article I, section 5 of the Constitution, conflicted with the right of his constituency under article I, section 2 to elect, and have him serve as their representative, even following his conviction; and that the conflict had to be resolved in favor of the Member's constituency.

Special counsel to the committee argued that any question about the power to expel was premature since the precedents were: That the House has jurisdiction under article I, section 5 to inquire into the misconduct of a Member occurring prior to his last election; and, under appropriate circumstances, to impose at least those disciplinary sanctions that fall short of expulsion. The motion to dismiss for lack of jurisdiction was unanimously denied, following which Representative DIGGS filed a general denial to all counts in the statement of alleged violations.

The committee then ordered a disciplinary hearing, but before the date set for its commencement. Special Counsel for the committee and counsel for the Member engaged in discussions which led to the committee's recommended disposition of the proceedings.

The discussions between counsel culminated in an admission of guilt by Representative DIGGS with respect to certain violations of House rules; and a further admission that he had personally benefited from the employment of some members of his staff: and an agreement to: First, make restitution of amounts . . . from which he derived personal benefit; second, to apologize to the House for his wrongdoing; and third, to accept censure therefor. This was formally presented to the committee in open session by Representative DIGGS' counsel; and Representative DIGGS signed the letter and orally before the committee acknowledged it to be his—which letter appears at page 16 of the report.

On recommendation of the committee's Special Counsel, Representatives DIGGS' letter of admissions was accepted and the committee recommended that Representative DIGGS be found guilty of violating rule XLII, clauses 1 and 8, an the basis of his admissions; and that Representative DIGGS be censured and required to make restitution by execution of an interest—bearing demand promissory note for the full amount of his personal benefit from the use of clerk-hire funds as disclosed in the evidence. Representative HAMILTON moved the resolution, the full text of which appears in the report (pages 17–19). Representative HAMILTON'S resolution was unanimously adopted.

The committee did not proceed to conduct the evidentiary hearing originally contemplated because Representative DIGGS' letter of admission of guilt, plus the evidence taken from the criminal proceedings, constituted a more than adequate record on which to judge the case. An evidentiary hearing—which would have been largely repetitious of trial proceeding—would not have resulted in a different committee recommendation regarding punishment.

As to the punishment recommended, the committee concluded, after research of precedents, that expulsion, the most extreme penalty possible under the Constitution, would be inappropriate. More serious offenses have in the past not received this penalty; and in fact on only three occasions in the history of our country has this penalty been imposed. They were in the Civil War period when elected Members joined the Confederacy, which was an action viewed by some as treason. Further, Representative DIGGS as all Congressmen—is answerable also in the criminal and civil courts, in addition to proceedings in the House; and he may eventually lose his freedom if he loses his appeal in the criminal proceedings. Some feel that in that event he should be expelled; but the present proceedings do not address that question, which is at this time premature, since it is not now a certainty that he will not succeed in his appeal of the judicial proceedings.

The committee rejected recommending expulsion in this case as too severe and inappropriate for the offenses involved, serious as they are. We considered, among other things, the admission by this Member of violations of House rules and his apology therefor; and the respect owed his constituency which reelected him following his conviction. In sum, we believe that censure, together with the other obligations imposed on the Member by the resolution before you represents a just conclusion of these proceedings. This was the unanimous recommendation of the committee, following the unanimous recommendation of its subcommittee.

I reserve the balance of my time. . . .

Mr. BENNETT. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

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

Mr. SPENCE. 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 414, nays 0, answered "present" 4, not voting 16, as follows:

[Roll No. 404] . . .

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.

CENSURE OF REPRESENTATIVE CHARLES C. DIGGS, JR.

The SPEAKER. Will the gentleman from Michigan (Mr. DIGGS) kindly appear in the well?

Mr. DIGGS presented himself at the bar of the House.

The Speaker read House Resolution 378, as follows:

H. RES. 378

Resolved,

(1) that Representative Charles C. Diggs, Junior, be censured;

(2) that Representative Charles C. Diggs, Junior, forthwith present himself in the well of the House for the pronouncement of censure;

(3) that Representative Charles C. Diggs, Junior, be censured with the public reading of this resolution by the Speaker;

(4) that Representative Charles C. Diggs, Junior, is ordered to execute and deliver to the House an interest-bearing demand promissory note for $40,031.68, made payable to the Treasury of the United States;

(5) that Representative Charles C. Diggs, Junior, is ordered, for the remainder of the Ninety-sixth Congress, to require his employees to certify to the Committee on Standards of Official Conduct that the funds he or she receives from clerk-hire funds are received in full compliance with current House rules; and

(6) that the House of Representatives adopt the report of the Committee on Standards of Official Conduct dated July 19, 1979, In The Matter of Representative Charles C. Diggs, Junior.

The SPEAKER. The matter is closed.

§ 6.11 When a Member of the House is expelled, a vacancy is created in that congressional seat, and, under former practice,[124] the House could provide authorization for staff of the former Member to continue in their employment under the supervision of the Clerk until the vacancy could be filled (authorization that is now provided under clause 2(i) of rule II).[125]

124. *Parliamentarian's Note:* At the time of this precedent, the Clerk did not have standing authority to supervise the office of a Member who had died, resigned, or been expelled. Such authority was added to the standing rules at the outset of the 98th Congress in 1983, and is currently provided by clause 2(i) of rule II. See *House Rules and Manual* § 653 (2021).

125. *House Rules and Manual* § 653 (2021).

On October 2, 1980,[126] following the expulsion of Rep. Michael Myers of Pennsylvania, the House adopted the following resolution concerning the former Member's staff:

PROVIDING FOR LIMITED CONTINUATION OF PAY OF CLERICAL ASSISTANCE TO MEMBERS IN CERTAIN CASES OF TERMINATION OF SERVICE

Mr. [Lucien] NEDZI [of Michigan]. Mr. Speaker, I offer a resolution (H. Res. 804), and I ask unanimous consent for its immediate consideration.

The SPEAKER.[127] The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 804

Resolved, That (a) until otherwise provided by law, for purposes of the joint resolution entitled ''Joint resolution relating to the continuance on the payrolls of certain employees in cases of death or resignation of Members of the House of Representatives, Delegates, and Resident Commissioners.'', approved August 21, 1935 (2 U.S.C. 92b, 92c, and 92d), any termination of service during a term of office of a Member of the House that is not described in the first section of such joint resolution shall be treated as if such termination were described in such section.

(b) The Clerk of the House shall take such action as nay be necessary to apply the principles of section 2 of the joint resolution referred to in subsection (a) (2 U.S.C. 92c) in the carrying out of this resolution.

SEC. 2. The Committee on House Administration shall have authority to prescribe regulations for the carrying out of this resolution.

SEC. 3. Payments under this resolution shall be made on vouchers approved by the Committee on House Administration and signed by the chairman of such committee.

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

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I withdraw my reservation of objection.

Mr. NEDZI. 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.

The Franking Privilege

§ 6.12 Shortly after the creation of the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission), the rules and practices of the commission were inserted into *Congressional Record* for the information of Members.

On February 19, 1974,[128] the following insertion was made to the *Congressional Record*:

126. 126 CONG. REC. 28978, 96th Cong. 2d Sess. For more information on the expulsion case of Rep. Michael Myers of Pennsylvania, see Precedents (_____) Ch. 12.

127. Thomas O'Neill (MA).

128. 120 CONG. REC. 3298, 93d Cong. 2d Sess.

PROCEEDINGS BEFORE THE HOUSE COMMISSION ON CONGRESSIONAL MAILING STANDARDS

(Mr. UDALL asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. [Morris] UDALL [of Arizona]. Mr. Speaker, I submit for printing in the RECORD at this point the Rules of Practice in Proceedings before the House Commission on Congressional Mailing Standards.

Mr. Speaker, notice is hereby given that, pursuant to section 5 of the act of December 18, 1973 (87 Stat. 742; Public Law 93–191), the Rules of Practice in Proceedings before the House Commission on Congressional Mailing Standards, as hereinafter set forth, have been prescribed and established by the House Commission on Congressional Mailing Standards at its organizational meeting held on February 4, 1974.

Subsection (e) of section 5 provides in part that the Commission "shall prescribe regulations for the holding of investigations and hearings, the conduct of proceedings, and the rendering of decisions under this subsection providing for equitable procedures and the protection of individual, public, and Government interests. The regulations shall, insofar as practicable, contain the substance of the administrative procedure provisions of sections 551–559, and 701–706, of title 5, United States Code. These regulations shall govern matters under this subsection subject to judicial review thereof."

In view of the fact that a commission of the legislative branch is not authorized to publish documents, such as these rules of practice, in the Federal Register (44 U.S.C. 1501), the commission has determined to provide public notice thereof by printing them in the CONGRESSIONAL RECORD. In addition to the notice hereby given, copies of the rules will be made available to any person upon request to the commission.

Due to the fact that the only remedy now available to persons who may wish to commence a proceeding on a violation of the franking privilege as it relates to the House of Representatives, is the filing of a complaint and proceedings before the commission under section 5 of the act of December 18, 1973 (87 Stat. 742; Public Law 93–191), the commission has determined that these rules shall take effect immediately.

Although the commission does not anticipate any specific future changes in these regulations, the commission would appreciate, and therefore invites comments or suggestions which might assist in future revision of the rules. Comments should be submitted with at least 10 copies and may be mailed to the commission at 207 Cannon House Office Building, Washington, DC 20515.

In consideration of the foregoing, the Rules of Practice in Proceedings before the House Commission on Congressional Mailing Standards as hereinafter set forth are made effective immediately.

The rules, issued in Washington, DC, on February 19, 1974, are as follows: . . .

§ 6.13 A resolution directing the Committee on House Administration to prohibit certain payments for Members' official mailing expenses, and further providing that the provisions of a bill that had not been considered by the House be implemented immediately, constitutes a change to House rules and as such does not qualify as a question of the privileges of the House under rule IX.(129)

129. *House Rules and Manual* §§ 698, 699 (2021).

On July 30, 1992,[130] the following resolution was determined by the Chair not to qualify as a valid question of the privileges of the House, as it constituted a change in House rules:

PRIVILEGES OF THE HOUSE—RESOLUTION REQUIRING IMMEDIATE IMPLEMENTATION OF H.R. 4104 AND DIRECTING COMMITTEE ON HOUSE ADMINISTRATION TO PROHIBIT PAYMENT FOR THE PURPOSE OF CERTAIN MASS MAILINGS

Mr. [William] THOMAS of California. Mr. Speaker, I rise to a question of privileges of the House, and I offer a privileged resolution (H. Res. 533).

The SPEAKER pro tempore (Mr. [Kweisi] MFUME [of Maryland]). The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 533

Whereas, the House of Representatives acted on April 8, 1992, and passed by a vote of 408–8 a motion to recommit the conference report on the bill S. 3 instructing conferees to include the provisions of the bill H.R. 4104 and;

Whereas, the House voted on June 24, 1992, by a margin of 417–2 to include H.R. 4104 in the Legislative Branch appropriations for FY1993 and;

Whereas the U.S. Court of Appeals has on July 30, 1992, declared section 3210(d)(1)(B) of Title 39 of the U.S. Code unconstitutional under the First and Fifth Amendments thereby removing the authority of members of Congress to frank mass mailings to areas outside the district from which the member was elected, and;

Whereas, members of the House have engaged in activities now declared by the courts as unconstitutional and;

Whereas such activities impugn the integrity of the proceedings of the House now therefore be it resolved:

Resolved, That the House of Representatives directs the Committee on House Administration to prohibit payment from any account for the purpose of mass mailings franked outside the district from which the member was elected and further that the provisions of H.R. 4104 be implemented immediately.

PARLIAMENTARY INQUIRY

Mr. [Harold] VOLKMER [of Missouri]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. VOLKMER. Mr. Speaker, listening to the resolution, as I understand, the gentleman is offering this as a privileged resolution.

The SPEAKER pro tempore. That is correct. The Chair is examining the resolution.

Mr. VOLKMER. As a privileged resolution?

The SPEAKER pro tempore. The gentleman will suspend while the resolution is examined. The gentleman's parliamentary inquiry will be addressed.

Mr. VOLKMER. Because I raise a question whether it is a privileged resolution of a Member of the House; not appropriate.

The SPEAKER pro tempore. The Chair will rule. The Chair's understanding is that the resolution essentially directs a rules change by immediate implementation of an introduced bill which then is not a question of privilege. The resolution does not constitute a question of privilege.

The gentleman may proceed.

130. 138 CONG. REC. 20339, 102d Cong. 2d Sess.

§ 6.14 A resolution alleging improper conduct by Members appointed to the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission), and expressing the disapproval of the House as to that conduct, constitutes a valid question of the privileges of the House under rule IX.[131]

On July 29, 2009,[132] the following resolution was raised as a question of the privileges of the House, and subsequently laid on the table:

RAISING A QUESTION OF THE PRIVILEGES OF THE HOUSE

Mr. [John] BOEHNER [of Ohio]. Mr. Speaker, I have a privileged resolution at the desk.

The SPEAKER pro tempore.[133] The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 690

Whereas page 5 of the ''Regulations on the Use of the CONGRESSIONAL FRANK By Members of the House of Representatives'' states, ''It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities and duties of the Congress of the United States. It is the intent of the Congress that such official business, activities and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.'';

Whereas clause 5 of rule XXIV of the Rules of the House of Representatives provides, ''Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.'';

Whereas the House Commission on Congressional Mailing Standards, authorized in Public Law 91–191, is commonly referred to as the ''Franking Commission'';

Whereas the Democratic staff director and Republican staff director of the Franking Commission have served in their respective positions for more than a decade and report to the Democratic and Republican members of the Franking Commission, respectively;

Whereas during the 111th Congress the members of the Franking Commission are Representatives Susan Davis (D–CA), chairwoman; Rep. Dan Lungren (R–CA), ranking Republican member; Rep. Donna Edwards (D–MD), Rep. Kevin McCarthy (R–CA), Rep. Brad Sherman (D–CA) and Rep. Tom Price (R–GA);

Whereas the aforementioned Franking Commission advisory opinions required for Members seeking approval to send mass mailings, or their electronic equivalents, are routinely signed on behalf of the Commission by its Democratic and Republican staff directors or their designees;

Whereas no Member may receive Franking Commission approval without signatures from both majority and minority staff;

Whereas the Commission's Democratic staff director has been permitted by the Commission's Democratic Members to abuse her position during the current Congress by willfully and knowingly applying different standards to material submitted for Franking Commission approval by Republican Members than she applies to material submitted by Democratic Members;

131. *House Rules and Manual* §§ 698, 699 (2021).

132. 155 CONG. REC. 19687–89, 111th Cong. 1st Sess.

133. Jason Altmire (PA).

Whereas on July 27, 2009, the Commission's Democratic staff director refused to approve a mailing proposed by Representative Joe Barton of Texas which included the words ''Democrat majority'', but indicated she would approve the mailing if Representative Barton instead substituted the words ''congressional majority'', yet on August 3, 2006, the same Democratic staff director signed a Franking Commission approval document for a mailing issued by then-Minority Leader Nancy Pelosi that included the following sentence, ''But too many here and across our nation are paying the price for the Republican Congressional majority's special interest agenda . . .''

Whereas the Democratic staff director has refused to grant permission to Republican Members wishing to provide their constituents with copies of a chart intended to illustrate in graphic form many of the provisions of the Democrats' proposed health care legislation;

Whereas charts similar in form and general purpose have for many years been approved routinely by the Commission's Democratic staff director in mailings produced by Members on both sides of the aisle;

Whereas on December 12, 1993, the Franking Commission granted approval to Rep. David Levy of New York to disseminate a similar chart, intended to illustrate graphically the provisions of comprehensive health care legislation proposed by the Clinton Administration;

Whereas the Commission's Democratic staff director has refused to approve requests by Republican Members to informally characterize certain features of the Democrats' pending health care proposal as ''government run health care'' but has approved requests by Democratic Members to informally characterize the same aspects of the bill as ''the public option'';

Whereas the Commission's Democratic staff director has refused to approve more than twenty requests by Republican Members to use the phrase ''cap and tax'' to describe a Democratic proposal to reduce carbon emissions by imposing new fees, taxes and higher costs on American consumers and businesses;

Whereas a search for the term ''cap and tax'' on the Google internet search engine yielded at least 4,478,000 appearances of this commonly used phrase;

Whereas an article in the April 27, 2009 edition of ''Politico'' newspaper quoted the most senior Member of the House, Democratic Representative John Dingell of Michigan, the former chairman of the House Committee on Energy and Commerce, as saying, ''Nobody in this country realizes that cap and trade is a tax, and it's a great big one.'';

Whereas the Commission's Democratic staff director has dismissed the proposed descriptive term, ''cap and tax'' as an informal and inappropriate characterization of the legislation, while at the same time granting approval to Democratic Members seeking to use the phrase ''cap and trade'' to informally and inappropriately characterize the same bill;

Whereas the Commission's Democratic staff director has refused to approve material submitted by Republican Members seeking to convey to the public those Members' concern about substantial job losses expected to result if the Democrats' proposed national energy tax is enacted, while at the same time approving mailings submitted by Democratic Members informing the public about large numbers of new jobs the Democrats claim will be created by the same legislation;

Whereas the Democratic staff director's actions have prompted a steady stream of media reports describing a climate of partisan censorship imposed on the House by the Democratic majority;

Whereas an article in the July 23, 2009, edition of Roll Call newspaper stated, ''A dispute over the right of House Republicans to use the chamber's official franking service to send a mailer critical of Democratic health care plans has escalated beyond the Franking Commission to 'high levels on the Democratic side,' Franking Commission member Rep. Dan Lungren (R–CA) said at a Thursday press conference. Asked whether he believed the matter had been referred to Rep. Pelosis (D–CA) office, Lungren, the ranking member of the House Administration Committee, said, 'All I've been told is that its above the Franking Commission and that it appears to be above our committee, so I don't know where you go after that'.'';

Whereas by permitting the Commission's Democratic staff director to carry out her duties in a partisan and unfair manner, the Democratic Members of the Franking Commission have brought discredit on the House; and,

Whereas clause 1 of rule XXIII of the Rules of the House of Representatives, also known as the Code of Official Conduct, provides ''A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House'': Now, therefore, be it

Resolved, That the House views with disapproval the failure of the Democratic Members of the Franking Commission to ensure that the Commission's Democratic staff carries out its important responsibilities in a professional, fair, and impartial manner.

The SPEAKER pro tempore. The resolution presents a question of privilege.

MOTION TO TABLE

Mr. [Steny] HOYER [of Maryland]. Mr. Speaker, I move that the resolution be laid on the table.

The SPEAKER pro tempore. The question is on the motion to table.

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on the motion to suspend the rules on S. 1513.

The vote was taken by electronic device, and there were—yeas 244, nays 173, answered "present" 11, not voting 5, as follows:

[Roll No. 656] . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

§ 6.15 The House has adopted a privileged resolution permitting House employees to respond to subpoenas *duces tecum* requesting documents and other material relevant to ongoing litigation concerning the constitutionality of the franking privilege.(134)

On March 9, 1976,(135) the House adopted the following resolution permitting House employees to respond to subpoenas:

COMMUNICATION FROM MAJORITY LEADER—COMMON CAUSE ET AL. AGAINST BAILER ET AL. IN U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

The SPEAKER laid before the House the following communication from the majority leader of the House of Representatives, which was read and ordered to be printed:

WASHINGTON, DC,

March 4, 1976.

Hon. CARL ALBERT,
The Speaker, House of Representatives,

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134. *Parliamentarian's Note:* At the time of this proceeding, House officers and employees did not have the ability to respond to subpoenas absent specific authorization by the House. Standing authorization to respond to various types of judicial process is now included as part of rule VIII. See *House Rules and Manual* § 697 (2021). For more on the history of rule VIII and its precursors, see Precedents (Wickham) Ch. 6 §§ 26, 27.

135. 122 CONG. REC. 5829–32, 94th Cong. 2d Sess.

Washington, DC.

DEAR MR. SPEAKER: I am forwarding herewith a copy of a legal stipulation and protectiveorder dated February 24, 1976, as amended and approved by order of the United States District Court for the District of Columbia on March 1, 1976, in the case of Common Cause v. Bailer (Civil Action No. 1887–73).

This order involves the production of documents in the possession of certain employees of the House, including the Superintendent of the House Majority Room and others, which documents cannot be produced without the consent of the House.

I am, therefore, referring the matter to you so that it may be laid before the House.

With best wishes,

Sincerely,

THOMAS P. O'NEILL, Jr.

The court order reads as follows:

[U.S. District Court for the District of

Columbia—Civil Action No. 1887–73]

ORDER

(Common Cause et al., plaintiffs, *v.*

Benjamin Bailer et al., defendants)

The above matter came before the Court at a status call on February 2, 1976, to receive a report concerning the progress of discovery and to resolve any outstanding issues.

(1) With respect to the discovery sought of employees of the House of Representatives, it was represented that a stipulation and consent order were in the process of being worked out between counsel for the respective parties. Said stipulation and order dated February 24, 1976, were subsequently filed. Accordingly, it is by the Court, Ordered, that said stipulation and consent order dated February 24, 1976, as amended to include the paragraph described in (4) below, be and are hereby approved.

(2) With respect to the discovery sought of U.S. Senate employees Estep and Needham, a stipulation under date of January 7, 1976, has been entered into between counsel for the respective parties. Accordingly, it is by the Court,

Ordered, that said stipulation be approved and accepted for filing with the understanding that it be read to include the provisions of the proposed order described in (4) below.

(3) With respect to the matter of subpoenas being directed to one hundred administrative assistants or aides of U.S. Senators, it is understood that counsel are endeavoring to work out a solution which will include the directing of one subpoena to a single staff employee who will represent all one hundred Senators in the furnishing of documents under the protection of anonymity. Accordingly, it is by the Court,

Ordered, that the proposed procedure be and hereby is approved, the Court to be notified as to the precise procedure agreed upon.

(4) With respect to defendants' request that they be assured of the full opportunity to participate in any discovery proceedings conducted in this cause, it is by the Court, Ordered, that any order, or agreement or stipulation approved by the Court regarding

the production of information or documents in the above-captioned action shall be subject to the following terms:

That, in addition to the procedures required by the Federal Rules of Civil Procedure, defendants shall be entitled to every right accorded plaintiffs herein and shall be provided with a copy of all materials obtained by plaintiffs hereunder; and plaintiffs shall notify defendants in advance of any interview, by deposition or otherwise, provided for herein and be given the opportunity to participate fully in such interview.

(5) With respect to Senate employee Fern, plaintiffs seek production of the following internal documents of the Senate Select Committee on Standards and Conduct:

(A) The actual text of (a) all complaints to the Select Committee concerning the use of the frank by Members of the Senate and the disposition thereof, (b) all written requests from Members of the Senate to the Select Committee for advice concerning the use of the frank and the written responses thereto and (c) deponent Fern's notes or other memoranda concerning oral requests for advice and oral responses, or, in lieu of the actual text of the documents, a summary of each such document with the full document made available to plaintiffs' counsel to verify the accuracy of the summaries; and

(B) All internal memoranda of the Committee concerning the use of the frank which have been approved by the Select Committee or used as the basis for rendering advice to Members of the Senate.

Actual text was defined by plaintiffs' counsel as a copy of the full text of the document or the original document itself, with only the identification of the Senator deleted.

In a "Memorandum of Deponent Fern in Explanation of Position," Mr. Fern's counsel indicated that after a decision by the Select Committee not to produce the documents, the Senate on December 17, 1975, itself considered the matter and adopted a resolution reaffirming a previous Senate resolution prohibiting "the disclosure of the internal records of the Senate Select Committee on Standards and Conduct" for reasons of confidentiality. On January 27, 1976, the Select Committee again considered the matter and determined that under the order of the Senate it could make no change in its position that said documents could not be produced. At the February 2, 1976, status call, counsel for Mr. Fern reiterated the Select Committee's position that Fern would not be permitted to hand over physical possession of the documents, but, as an alternative, indicated that he would supply summaries of the documents described in subparagraph (A) above. Plaintiff insists on an actual inspection of the original documents to ensure the accuracy of the summaries. The Select Committee has declined to permit inspection of the documents themselves and has rejected plaintiffs' proposal. This particular matter is therefore in the same posture as it was on January 12, 1976, the time of the previous status call.

We have given careful thought to the contentions of the parties. It is conceded that the documents themselves are relevant to the issues in this case. Whether the documents are privileged may be determined by whether they relate to the business of Senators or the business of candidates for the Senate. This approaches a capsule description of the ultimate issue in this case. We can agree that a privilege for Senatorial documents exists, without deciding that these documents are Senatorial and therefore privileged.

At this stage in the lawsuit we think it better to act as if the documents were Senatorial and privileged, with the ultimate decision reserved. Inspection by plaintiffs' counsel, even with all safeguards, would in some sense defeat the privilege, if in ultimate analysis these documents were found to be properly entitled to protection. However, there is no doubt that the privilege claimed, if it exists, is not absolute but is defeasible upon a showing of proper need. As the recent Watergate experience has taught us, a President's

claim of absolute privilege on the grounds of confidentiality must yield when a proper showing is made that the overriding considerations of the public interest require disclosure. The body to make such a determination is the judiciary after an *in camera* inspection of the material. *United States* v. *Nixon* U.S. (1974).

It is our judgment that plaintiffs have up to this point failed to demonstrate the showing of particular need to overcome the Select Committee's claim of privilege. It may well be that the summaries themselves plus additional discovery in other areas will satisfy the plaintiffs' evidentiary problems and will make it unnecessary for us to order at this time the production of the documents themselves. On the other hand, we see no reason why Mr. Fern should not be required also to supply summaries of "all internal memoranda" described in subparagraph (B) above. It is understood that the entire file of original documents is quite limited in size. Accordingly, it is by the Court,

Ordered, that plaintiffs' motion to compel production of original documents by the witness Fern be and is hereby denied *without prejudice;* and it is

Further ordered, that the witness Fern be and is hereby ordered to produce summaries of all documents covered in subparagraphs (A) and (B) above.

MALCOLM R. WILKEY.
U.S. Circuit Judge.

WILLIAM B. JONES,
U.S. District Judge.

JOHN H. PRATT,
U.S. District Judge.

MARCH 1, 1976.

[U.S. District Court for the District of

Columbia—Civil Action No. 1887–73]

STIPULATION AND PROTECTIVE ORDER REGARDING PRODUCTION OF INFORMATION AND DOCUMENTS BY CERTAIN EMPLOYEES OF THE HOUSE OF REPRESENTATIVES

Common Cause, et al., plaintiffs, *v.* Bailer,

et al., defendants

INTRODUCTORY STATEMENT

The following production of information and documents shall constitute a satisfactory return to all subpoenas previously issued by Plaintiffs to Thomas Lankford, David Ramage, Ell Bjellos and Victor Smiroldo. The materials to be provided to Plaintiffs will not publicly identify individual Members of Congress by name. Further, these materials shall not be disclosed publicly except to the extent that, consistently with this Stipulation, they become a part of the public record in this litigation. Further discovery will not be sought by Plaintiffs from these four individuals nor from other employees of or personnel associated with the House Majority and/or Minority Rooms, the Publications Distribution Service and the House Commission on Congressional Mailing Standards.

I. Thomas Lankford-David Ramage

Messrs. Lankford and Ramage are, respectively, the Minority and Majority Clerks of the House of Representatives. As such, each has responsibilities connected with the printing of franked materials. Messrs. Lankford and Ramage agree to provide such information as is available in their files disclosing the sources of funds used to defray printing

costs for mass-mailed franked materials. This information will be provided on a per seat basis. However, in lieu of actual identification of individual Members, Members will be referred to in accordance with the procedures described in Part V, *infra,* of this Stipulation.

For each seat, the dollar amount of funds will be broken down into the following categories:

a. Stationery account.

b. Personal check from a Member.

c. Personal check from someone other than a Member.

d. House office account.

e. Political committee.

f. Unknown.

This information is to be provided by Messrs. Lankford and Ramage on an annual basis extending from January 1, 1973, through November 30, 1975, inclusive.

In addition, Messrs. Lankford and Ramage will identify the banks and bank accounts by number in which the proceeds of their printing operations are deposited.

Finally, Messrs. Lankford and Ramage will not be deposed.

II. Eli Bjellos

Mr. Bjellos is Chief, House Publications Distribution Service (PDS). As such, he supervises the handling of franked materials preparatory to delivery to the U.S. Postal Service.

Mr. Bjellos will make such of his files, for the period 1967-present, as pertain to the handling of franked materials by the PDS directly available to members of the legal staff (including volunteers) working under the direct supervision of the undersigned counsel for Plaintiff Common Cause for the sole purpose of preparing compilations of the per seat volume and timing of franked mail sent by individual Members of Congress. At any one time, not more than five such members of Plaintiff's legal staff, previously designated to the Court and deponents' counsel, shall have access to these files of the PDS. All persons having such access shall not disclose, during discovery or at trial or thereafter, to any other persons the identity of any individual Members of Congress either in connection with their use of information obtained from Mr. Bjellos' *files* or for any other purpose resulting from or made possible by their prior access to Mr. Bjellos' files; nor shall any Information derived from the inspection of the files be used for any purpose other than the aforesaid compilations. The undersigned counsel for Plaintiffs shall ensure that, before they obtain access to PDS files, all such members of the legal staff of Plaintiff Common Cause shall acknowledge in writing to the Court that they have been informed of the terms of this Stipulation and Protective Order and are bound thereby.

The PDS files and the worksheets of the members of Plaintiffs' legal staff shall at all times remain in the offices of the PDS. After the final compilation of the PDS data is completed by Plaintiffs' legal staff, the data will be processed and provided to Plaintiffs' counsel as described in Part V, *infra.* Deponents' counsel, by coding the processed final compilation of PDS data, shall not be deemed to have conceded the accuracy or validity of the data or compilation thereof supplied by Plaintiffs, and shall be free thereafter to contest the accuracy and/or validity thereof should Plaintiffs seek to rely on the data for any purpose during this litigation.

In the alternative, Plaintiffs may request that information be compiled by Mr. Bjeilos' staff, reflecting the per seat volume and timing of franked mail sent by Individual Members, on a daily basis for the period 1967 to the present. Such compilations will be processed as described in Part V, *infra,* and will be provided subject to the following conditions:

(a) that Plaintiffs bear the full costs of compilation efforts, including the compensation of personnel involved; and (b) that such compilation efforts as Plaintiffs may specify will not, in Mr. Bjellos' reasonable opinion, result in significant interference with the regular operations of the Publications Distribution Service.

Deponents' counsel shall retain a copy of the final compilation and the originals of all worksheets, for any purpose which the House deems appropriate. Upon reasonable notice, Plaintiffs' counsel may inspect the worksheets to insure the accuracy of the final compilation.

Mr. Bjellos will not be deposed. However, Mr. Bjellos will make himself available, upon notice to his counsel, for an informal interview to answer questions agreed upon between counsel for Plaintiffs and Mr. Bjellos in advance of the entry of this Stipulation and Protective Order. Also, Mr. Bjellos will, upon reasonable notice to himself and his counsel, make himself available informally to answer such questions as are necessary to decipher notations or similarly clarify information contained in the materials provided to Plaintiffs' counsel under this Part.

III. Victor Smiroldo

Mr. Smiroldo Is Staff Director and Counsel, House Commission on Congressional Mailing Standards. On behalf of the House Commission, Mr. Smiroldo will provide Plaintiffs, at their expense, with copies of all documents and other writings pertaining to all formal Complaint proceedings, pending or completed. In addition, Plaintiffs will receive copies of all documents in the files of the Commission that embody (a) formal or informal advice rendered by the Commission and/or its staff to Members of Congress regarding their use of the franking privilege; or (b) policy statements or regulations of general applicability adopted by the Commission regarding permissible uses of the franking privilege by Members of Congress; or (c) communications of the Commission or its staff with third parties outside the House of Representatives that relate to the franking privilege. The only omissions from these materials will be such details as identify a particular Congressman.

This voluntarily offered material includes:

a. Correspondence and other communications from the Commission to Members of Congress or their staffs, advising a Member with respect to the frankability of a proposed mailing.

b. Correspondence and other communications from Members of the House Commission staff to Members of Congress or their staffs that provide such advice.

c. Correspondence and other communications relating to the franking privilege, between, on the one hand, the House Commission or its staff and, on the other hand, individuals other than Members of Congress or their staff.

d. Internal staff memoranda addressed to the Commission in cases where staff memoranda have been adopted by the Commission as the basis for its final action in (i) rendering advice on the frankability of a proposed mailing, or (ii) adopting policies or regulations of general application with respect to permissible uses of the franking privilege by Members of Congress.

Where available, a copy of the actual proposed mailing under consideration by the House Commission or its staff (with details identifying individual Members omitted) will be attached to the above-described materials.

Also, where necessary to understand the advice rendered by the Commission or its staff, portions of the requests for advisory opinions will be provided.

Mr. Smiroldo will not be deposed. However, Mr. Smiroldo will make himself available for an informal interview, and submit an affidavit answering the questions propounded

by Plaintiff's counsel, if necessary, to clarify the materials provided to Plaintiff's counsel it is specifically understood and agreed that Mr. Smiroldo will not provide Plaintiffs with information or access to other materials consisting of (a) internal memoranda that were not adopted by the Commission as the basis for advice or policy decisions by the Staff or the Commission (b) requests for advice by members, except as otherwise provided for above, and (c) either the identity or the code number for the members involved. See Part V, *infra.*

A unique multi-digit code number shall be assigned each document provided under this Part and lodged with the Court together with a unique "key" which shall correlate each code number with the code numbers separately and uniquely assigned to each Member's list of attributes as provided for in Part V. The code assigned the documents shall differ from all other codes herein provided for and the "key" shall differ from the "keys" provided for in Part V. Plaintiff's counsel may move, upon reasonable notice to Deponents' counsel and upon a showing of particularized need therefor, for access to the code for the documents and the "key" correlating the documents to the list of attributes. The terms of access to the key and code shall be Identical to those in Part V.

IV. Descriptive information with respect to individual Members

Plaintiffs will prepare and provide Deponents' counsel with a list of current Members of Congress, associating each Member with the following descriptive information:

a. Primary and general election vote percentages for each Member and challenger for each election held in the years 1966 through 1974, rounded off to the nearest percent.

b. Month of each primary election for each Member who sought reelection in the years 1972 through 1974.

c. The seniority by number of terms for those presently Members and the numbers of terms served by those not presently Members, reported as freshmen, two terms, three to five years, and more than five terms.

d. Where applicable, whether the Member did not seek renomination or reelection.

e. General region of the country; e.g., South or non-South.

f. The percentage of urban population for each Member's district reported in categories of ten percent; except that categories 0 and 100% shall be reported separately.

g. The primary and general election campaign spending totals for each incumbent seeking reelection and for each challenger reported in categories of $25,000; except that expenditures in excess of $200,000 shall be reported as one category.

h. The general election vote percentage which the Presidential candidate of the Member's political party won in 1968 and 1972, reported in categories of five percent.

i. Month and year of reapportionment since 1966.

Deponents' counsel will then process the data for each seat in accordance with Part V, *infra,* and provide the Court and Plaintiffs' counsel with the coded list of attributes. Deponents shall not be deemed to have conceded the accuracy or validity of the attributes supplied by Plaintiffs, and shall be free thereafter to contest its accuracy and/or validity should Plaintiffs seek to rely on the data for any purpose during this litigation. The coded list of attributes processed in accordance with Part V will be subject to the seal of the Court, and will not, in whole or in part, be disclosed to any other person or introduced in this action, except under seal, at any time during discovery or at trial or thereafter with the following exceptions:

1. The coded list of attributes may be provided to other persons, solely in connection with this litigation, for the purpose of preparing aggregate statistical analyses by certain categories of Members of Congress.

2. The coded list of attributes may be provided to expert witnesses, solely in connection with this litigation, in order to obtain an affidavit or testimony, which affidavit or testimony may be publicly disclosed or filed with the court only if they do not disclose, directly or indirectly, the coded list of attributes or any portion thereof.

3. Aggregate statistical analyses by certain categories of Members of Congress may be introduced publicly in this action so long as such statistical analyses do not consist of any category that contains less than 10 Members of Congress.

Persons having access to the coded list of attributes or portions thereof or information derived therefrom shall not further disclose the coded list of attributes or portions thereof of information derived therefrom to any other persons. The undersigned counsel for Plaintiffs shall ensure that, before obtaining access to the coded list of attributes, persons to be provided access shall acknowledge in writing to the Court that they have been informed of the terms of this Stipulation and Protective Order and are bound thereby.

V. Compilation and processing of data

Counsel for Deponents Ramage, Lankford and Bjellos will prepare a coded version of the per seat list of attributes described in Part IV, *supra,* by substituting a unique multidigit number for the name of each Member. In addition, Deponents' counsel will file a "key," assigning a number to each individual Member of the House, to this coded version with the Court *in camera,* to be kept in the chambers of one of the three judges assigned to this case. This "key" will not be provided or otherwise made available to Plaintiffs or their counsel, except that Plaintiffs may seek access to particular portions of the "key" by motion, served on Deponents' counsel, demonstrating a particularized need for access to such particular portions that clearly outweigh the interests supporting the confidentiality of the code. Plaintiffs' counsel will receive a copy of the coded version of the per seat lists of attributes.

The data from Messrs. Ramage, Lankford and Bjellos for each Member of the House will be separately compiled. After compilation, the name of each Member will be deleted and a unique multi-digit identifying code number will be substituted by Deponents' counsel.

The unique multi-digit code numbers for the list of attributes will not be identical to the unique multi-digit code numbers for the compilation of data from the files of Messrs. Ramage, Lankford and Bjellos. Instead, Deponents' counsel will prepare a second "key," to permit the separately coded data compilation for each Member to be coordinated with pertinent coded list of attributes applicable to that Member. This second "key" will be available to Plaintiffs and their counsel as follows: Plaintiffs' undersigned counsel will receive a single copy of this "key," to be retained solely by him, except that the key may be made available to Karen Paget, a computer expert, or such other qualified single individual selected by Plaintiffs' counsel as a replacement, where a replacement is necessary and Deponents' counsel is so notified, to enable her to assist counsel in processing the data for purposes of this litigation and for no other purpose. Karen Paget, or her qualified replacement, shall not disclose this key, or portions thereof, to any other person. Further, counsel for Plaintiffs shall ensure that, before obtaining access to this key, or portions thereof, Karen Paget, or her qualified replacement, shall acknowledge in writing to the Court that she has been informed of the terms of this Stipulation and Protective Order and is bound thereby.

VI. Record of computer processing

Plaintiffs' counsel shall maintain or supervise the maintenance of a complete record of all computer input and output generated in the course of Plaintiffs' processing of data

to be supplied in accordance with this Stipulation and Protective Order. This record of computer input and output shall be made available to counsel for Deponents only upon motion, previously served upon counsel for Plaintiffs, if it appears that public disclosure of use of the frank by named individual Members of the House may have occurred in possible violation of this Protective Order. This record shall not be used by Deponents for any purpose other than in relation to such a suspected violation.

VII. Discovery from other sources

When other persons against whom discovery is sought provide documents to Plaintiffs that identify or refer to a particular Member, Plaintiffs will first have such persons submit such documents to the Court and receive the code number associated with the list of attributes. Plaintiffs' counsel will have the person deposed prepare and provide Plaintiffs' counsel with copies of such documents with details that identify a particular Member omitted. In lieu of identification by name, Members will be referred to by the code number assigned to that Member's descriptive characteristics. Also, in lieu of identification by name, Members shall be referred to by their coded number by any witnesses who may actually testify either during discovery or during any trial that may occur. Finally, Plaintiffs will refer to individual Members in the course of discovery or trial or in any motion for summary judgment or the like only by reference to their coded number.

VIII. Defendants' access to data from House Employees

The counsel for Defendants shall be provided with copies of all materials furnished to Plaintiffs' counsel. Said counsel for Defendants shall not further disclose the contents of such information and materials, or any portions thereof, to any other person or persons without prior approval of the Court, such approval to be sought by motion previously served upon counsel for Deponents.

IX. Verification

The accuracy and authenticity of information described in Parts I through III that is provided to Plaintiffs, Defendants and the Court by Deponents will be verified by the Affidavits of Deponents.

Agree to the foregoing Stipulation and

Protective Order

For Plaintiffs:

KENNETH J. GUIDO.

For Messrs. Ramage, Lankford, Bjellos and Smiroldo:

EDWIN M. ZIMMERMAN.

So Ordered:

MALCOM R. WILKEY.

WILLIAM B. JONES.

JOHN R. PRATT.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 24th day of February 1976, caused copies of the foregoing "Stipulation and Protective Order Regarding Production of Information and Documents by certain Employees of the House of Representatives" to be served by hand delivery on—

Cornelius Kennedy, Esq., Kennedy & Webster, 888 17th Street, N.W., Washington, DC 20006

Kenneth J. Guido, Jr., Esq., Common Cause, 2030 M Street, N.W., Washington, DC 20036

Bruce E. Titus Esq., Department of Justice, 10th and Constitution Ave., N.W., Room 3337, Washington, DC 20530

ARTHUR F. FERGENSON.

Mr. [Thomas] O'NEILL [of Massachusetts]. Mr. Speaker, I offer a privileged resolution (H. Res. 1082) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1082

Whereas in the case of Common Cause et al. against Bailar et al. (fromerly Common Cause et al. against E.T. Klassen et al.) (Civil Action Number 1887–73) pending in the United States District Court for the District of Columbia, subpoenas duces tecum were served upon various employees of the House of Representatives; and

Whereas the House of Representatives on January 23, 1975, adopted House Resolution 85 and on December 4, 1975, adopted House Resolution 902 asserting the privileges of the House against the production of documents and disclosure of information pursuant to the order of the ordinary courts of justice without the consent of the House, authorizing the Speaker to designate counsel to represent the interest of the House and of the aforementioned employees in any proceeding related to the disposition of the subpoenas or motions served thereon in this case, and further providing for the cooperation of the House consistent with its privileges upon a court determination of the materiality and relevancy of the material covered by subpoenas; and

Whereas the Court on July 30, 1975, filed a memorandum and order granting Plaintiff's motion to compel discovery with respect to the House employees but committing to further negotiations between Plaintiffs and the House employees the exact nature and bulk of the materials to be produced; and

Whereas said negotiations have resulted in an agreement which was filed with the Court on February 24, 1976, and which was amended and approved by the said Court on March 1, 1976; Therefore, be it

Resolved, That by the privileges of this House no evidence of a documentary character under the control and in the possession of the House can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission, and no House employee may be compelled to disclose information obtained pursuant to his official duties as an employee of the House, without the consent of the House; be it further

Resolved, That the consent of this House is hereby given to the subpoenaed employees to produce the information requested pursuant to the stipulation and protective order dated February 24, 1976, as amended and approved by order dated March 1, 1976, of the United States District Court for the District of Columbia in the case of Common Cause v. Bailar (Civil Action 1887–73); and be it further

Resolved, That legal and administrative expenses incurred in formulating and executing the stipulation and protective order are authorized to be paid from the contingent fund of the House pursuant to vouchers signed by the Speaker; and be it further

Resolved, That a copy of these resolutions be submitted to the said Court by the Clerk of the House of Representatives or by his authorized representative.

The SPEAKER.(136) The Chair recognizes the gentleman from Massachusetts (Mr. O'NEILL).

Mr. O'NEILL. Mr. Speaker, this resolution relates to the case of Common Cause against Bailar, in which the organization entitled "Common Cause" is contesting the constitutionality of the laws governing the congressional franking privilege. As stated in the resolution, the House has previously passed several resolutions in the 94th Congress protecting the files of the House of Representatives from overly broad subpoenas directed to a number of employees of the House.

136. Carl Albert (OK).

The intention of this resolution is to allow compliance by the House employees with a stipulation and protective order which was granted by the U.S. District Court for the District of Columbia and which after long and careful deliberations, was negotiated with the concurrence of the leadership on both sides of the aisle, by the counsel appointed by the Speaker pursuant to authority given him by the House and by the counsel for Common Cause. The protective order allows plaintiffs in the suit access to only such files and information which are material and relevant to the constitutional issue asserted by the plaintiffs, and prohibits their access to the names and identities of individual Members.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 6.16 The House has, by privileged resolution, authorized the House Commission on Congressional Mailing Standards (now the House Communications Standards Commission) to intervene on behalf of the House in a lawsuit challenging the constitutionality of the franking privilege.

On July 1, 1976,[137] the House adopted the following resolution:

AUTHORIZING INTERVENTION OF HOUSE COMMISSION ON CONGRESSIONAL MAILING STANDARDS IN THE CASE OF COMMON CAUSE VERSUS BAILAR ET AL.

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1382 and ask its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1382

Resolved, That the House Commission on Congressional Mailing Standards is authorized to seek to intervene in the pending action entitled ''Common Cause et al. v. Benjamin Bailar et al.'', Civil Action Numbered 1887–73, pending in the United States District Court for the District of Columbia.

The SPEAKER.[138] The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. LOTT), pending which I yield myself such time as I may consume.

Mr. Speaker, this resolution was introduced by the majority leader and the minority leader. It is an action recommended to the Congress by the Justice Department. It will enable the House Commission on Congressional Mailing Standards to seek to intervene in the suit against the Department of the Treasury having to do with the frank.

It is, as far as I know, totally noncontroversial, and it is in the interests of the House and the Members of the House that the resolution be agreed to.

Mr. [Trent] LOTT [of Mississippi]. Mr. Speaker, I thank the gentleman for his explanation, and I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1382 is designed to authorize the House Commission on Congressional Mailing Standards to seek to intervene in the action entitled "Common

137. 122 CONG. REC. 21852–53, 94th Cong. 2d Sess.

138. Carl Albert (OK).

Cause et al. v. Benjamin Bailar et al." which presently is pending in the U.S. District Court for the District of Columbia. This action arose in 1973 when Common Cause filed suit against the Postmaster General and the Secretary of the Treasury to prevent the expenditure of funds to honor the congressional frank, alleging that the franking statute was unconstitutional.

Since the suit was filed, several employees of the House have been issued subpenas. Private attorneys were retained by authority of House Resolution 85 to assist these employees in responding to the subpenas and to examine the alternatives available to the House. Thereafter, a conclusion was reached that the best interests of the House would be served by its intervening in the matter in order to argue the constitutionality of the franking statute before the court. Pursuant to this determination, House Resolution 1382 was introduced by the majority and minority leaders and referred to the Committee on Rules. On June 30 the resolution was passed unanimously by that committee and ordered reported to the House.

Mr. Speaker, I favor this resolution and support its adoption.

Mr. BOLLING. 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.

§ 6.17 Pursuant to statute,[139] the House approves certain adjustments to the Members' Representational Allowance via the adoption of a simple House resolution.

On June 27, 2017,[140] the House adopted the following resolution authorizing a temporary increase in the MRA:

ADJUSTING THE AMOUNT OF THE MEMBERS' REPRESENTATIONAL ALLOWANCE

Mr. [Gregg] HARPER [of Mississippi]. Mr. Speaker, I send to the desk a resolution, and I ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[141] Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The text of the resolution is as follows:

H. RES. 411

Whereas on June 14, 2017, an armed gunman opened fire at a practice for the annual Congressional Baseball Game for Charity, wounding five individuals;

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139. *Parliamentarian's Note*: Under 2 U.S.C. § 4313, the Committee on House Administration may make such adjustments via committee order, but only for specified reasons (for example, an increase in the cost of materials or services). Here, the increase in the MRA was provided for additional security resources, and thus could only be effectuated by House resolution. See 2 U.S.C. § 4314(b).

140. 163 CONG. REC. H5202 [Daily Ed.], 115th Cong. 1st Sess.

141. Doug Collins (GA).

Whereas Members of the House are understandably concerned about the security of their staff and the constituents they serve, as well as their personal security;

Whereas the Members' Representational Allowance (MRA) is available for ordinary and necessary expenses associated with security measures; and

Whereas heightened security concerns necessitate an adjustment in the MRA to provide Members with additional resources: Now, therefore, be it

Resolved, That pursuant to section 1(b) of House Resolution 1372, Ninety-fourth Congress, agreed to July 1, 1976, as enacted into permanent law by section 101 of the Legislative Branch Appropriation Act, 1977 (2 U.S.C. 4314), the Members' Representational Allowance applicable as of the date of the adoption of this resolution for each Member of the House of Representatives (including the Delegates and Resident Commissioner to the Congress) is increased by $25,000, to be available through January 2, 2018.

The resolution was agreed to.

A motion to reconsider was laid on the table.

D. Immunities

§ 7. Immunities of Members Generally; Service of Process

The Constitution specifies two types of immunities enjoyed by Members of Congress. Pursuant to article I, section 6, clause 1, Members "shall . . . be privileged from Arrest during their attendance" at sessions of Congress.(1) Pursuant to the same clause, "for any Speech or Debate . . . they shall not be questioned in any other place."(2)

These two grants of immunity have a long history stretching back to earlier British and colonial practices.(3) Their purpose is to preserve the independence of the legislative branch in our Federal system of separated powers, and ensure that Members are not prevented by others from exercising

1. *House Rules and Manual* §§ 90, 91 (2021). This privilege is applicable "in all Cases, except Treason, Bribery, and Breach of the Peace." U.S. Const. art. I, § 6, cl. 1. The scope of the exception has been interpreted "to mean all indictable crimes." 3 Hinds' Precedents § 2673. For more on this privilege, see § 9, *infra.*
2. *House Rules and Manual* §§ 92–95 (2021). For more on this privilege, see § 8, *infra.*
3. Following the violent conflicts between the king and Parliament in 17th–century England, Parliament asserted its privileges with respect to the crown by adopting a "Bill of Rights" in 1689. See JOSH A. CHAFETZ, DEMOCRACY'S PRIVILEGED FEW: LEGISLATIVE PRIVILEGE AND DEMOCRATIC NORMS IN THE BRITISH AND AMERICAN CONSTITUTIONS, (Yale University Press 2007), pp. 134–143. Similar privileges were asserted by colonial assemblies at various times before American independence, and the Articles of Confederation included language nearly identical to that found in the Constitution. See *United States* v. *Johnson,* 383 U.S. 169, 177 (1966). At the Constitutional Convention, relatively little deliberation occurred on importing these privileges and immunities into the new Constitution of the United States—potentially reflecting the noncontroversial

their representational responsibilities.[4] To deny a Member the ability to attend sessions of Congress (by physically arresting said Member, or burdening said Member with judicial process)[5] is to deny representation to that Member's constituents. This is not to say that Members of Congress are above the law, or not subject to the same legal rules applicable to ordinary citizens.[6] Rather, it is a recognition that the representational duties of Members are central to our system of government, and that an appropriate balance must be struck between exercising such duties and responding to legal processes.

The constitutional privileges described above "act as procedural defenses"[7] and are thus asserted almost exclusively in the context of judicial proceedings involving Members. Federal courts have therefore provided most of the analysis of these privileges and immunities—defining their scope and

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nature of these longstanding prerogatives of legislatures. See Deschler's Precedents Ch. 7 § 16.

4. *See, e.g., United States* v. *Johnson,* 383 U.S. 169, 180–81 (1966) ("[I]t is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits . . . but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary."); *United States* v. *Brewster,* 408 U.S. 501, 507 (1972) ("The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators."); *United States* v. *Helstoski,* 442 U.S. 477, 491 (1979) ("The Speech or Debate Clause was designed neither to assure fair trials nor to avoid coercion. Rather, its purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities."); and *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 511 (1975) ("This case illustrates vividly the harm that judicial interference may cause . . . [t]he Clause was written to prevent the need to be confronted by such 'questioning' and to forbid invocation of judicial power to challenge the wisdom of Congress' use of its investigative authority.").

5. The privilege from arrest in British practice "extended to protection against being sued during Parliament time because responding to suits was so difficult that it would take a Member away from his parliamentary duties, almost as certainly as arresting him would." See JOSH A. CHAFETZ, DEMOCRACY'S PRIVILEGED FEW: LEGISLATIVE PRIVILEGE AND DEMOCRATIC NORMS IN THE BRITISH AND AMERICAN CONSTITUTIONS (Yale University Press 2007), pp. 111–133.

6. The textual exceptions listed in the Constitution (fortified by subsequent case law) make it clear that Members of Congress cannot avoid criminal liability through an assertion of these parliamentary privileges. In *Brewster,* the Supreme Court stated unequivocally that the Speech or Debate Clause was not intended "to make Members of Congress super–citizens, immune from criminal responsibility." *United States* v. *Brewster,* 408 U.S. 501, 516 (1972).

7. See Deschler's Precedents Ch. 7 § 15.

providing interpretations of the relevant constitutional language. In doing so, the courts have recognized a sphere of legitimate legislative activity that is protected from judicial process or inquiry. With respect to those protected legislative acts, Members: may not be held personally liable;[8] are shielded from most inquiries into those acts;[9] and may be relieved of the burden of defending themselves against judicial process aimed at those acts.[10] Further, Members may not be compelled to testify or produce documents when the privilege is invoked.[11]

When process is served on Members of the House, the Member (or the House itself) has the constitutional privilege of asserting one of these immunities to quash the inquiry. Over the course of its history, the House has chosen a variety of procedural methods for responding to subpoenas or other judicial orders served on its Members, officers, and employees.[12]

It has been said that "the privilege of the Member [is] the privilege of the House and that privilege [cannot] be waived except with the consent of the House."[13] Thus, throughout the 19th century, when Members became involved in litigation (for example, by being called to testify before a court), such Members would seek a decision of the House as to whether the appearance would be consistent with the rights and privileges of membership. A simple resolution of the House, denying[14] or authorizing[15] compliance with the court order, would then be presented as a question of the privileges of the House for a vote by the full body.[16] If no resolution authorizing compliance was adopted, the privilege would be retained.[17]

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8. See *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

9. See *Tenney* v. *Brandhove,* 341 U.S. 367 (1951); and *United States* v. *Johnson,* 383 U.S. 169 (1966).

10. See *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967).

11. See *Brown Williamson Tobacco* v. *Williams,* 62 F.3d 408 (D.C. Cir. 1995); and *U.S.* v. *Rayburn House,* 497 F.3d 654 (D.C. Cir. 2007).

12. For service of process on officers, officials, and employees of the House, see Deschler's Precedents Ch. 6 § 23; Deschler's Precedents Ch. 11 § 16; and Precedents (Wickham) Ch. 6 §§ 26, 27.

13. 3 Hinds' Precedents § 2662. See also 6 Cannon's Precedents § 586 (Rep. Fiorello LaGuardia of New York stating that, "I can not obey that subpoena without the permission of this House.").

14. See, *e.g.*, 3 Hinds' Precedents § 2661.

15. See, *e.g.*, 3 Hinds' Precedents § 2662; Deschler's Precedents Ch. 7 § 15.1; and Deschler's Precedents Ch. 11 §§ 14.1, 14.3, 14.6, 14.7, 14.10, 15.1, and 15.2.

16. For more on questions of privilege generally, see Deschler's Precedents Ch. 11; and Precedents (_____) Ch. 11.

17. See 6 Cannon's Precedents § 586 (subpoena *duces tecum* issued to a Member but no resolution offered authorizing compliance). See also Deschler's Precedents Ch. 11 §§ 14.2, 14.4, 14.5, 14.8, and 14.9.

By the middle of the 20th century, this method of addressing court orders served on Members of the House was beginning to be seen as cumbersome and time–consuming. As questions of privilege, resolutions to authorize (or deny) compliance could be raised at any point during the House's legislative business, and thus had the potential to delay the consideration of even highly–privileged legislative measures.[18] This procedure also required the House to be in session to adopt the required resolutions, which could have the effect of creating delays in judicial proceedings if process was served on Members during periods of adjournment or recess.

Between 1948 and 1979, there occurred a gradual shift in the methods the House utilized to defend the constitutional privileges of its Members. The intent of these efforts was to provide ongoing authority for Members themselves to make an initial determination as to whether or not compliance with judicial process was permissible—effectively shifting the burden of asserting the privilege from the House itself to the Member. During this period, a variety of resolutions were adopted that provided this kind of authorization,[19] first to officers of the House and then to Members themselves.[20]

Ultimately, the House adopted what is now rule VIII[21] of its standing rules to address subpoenas and other service of process issues. The rule grants standing authority for Members, Delegates, Resident Commissioners, officers, and employees of the House to comply with properly–served judicial subpoenas or orders, upon a determination by the affected individual that such compliance is consistent with "the privileges and rights of the House."[22] The rule requires those who have been served to inform the

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18. For the precedence of questions of privilege as compared to other items of House business, see Deschler's Precedents Ch. 11 §§ 4, 5; and Precedents (_____) Ch. 11.

19. For a list of such resolutions and brief description of the authorities conveyed, see Precedents (Wickham) Ch. 6 § 26 (fn. 13).

20. *Parliamentarian's Note:* Officers, officials, and employees of the House have often been subject to judicial process, frequently in their capacity as custodians of official documents relevant to the case at issue. The procedures used by the House in asserting its constitutional privileges as applied to such officers and employees of the House have often mirrored the procedures applicable to Members. Today, both are covered under the rubric of rule VIII of the standing rules of the House. *House Rules and Manual* § 697 (2021). For a discussion of issues involving the service of process on officers and employees of the House, see Precedents (Wickham) Ch. 6 §§ 26, 27. For an earlier treatment, see Deschler's Precedents Ch. 6 § 23; and Deschler's Precedents Ch. 11 § 16.

21. *House Rules and Manual* § 697 (2021). The rule was originally adopted as rule L in the 97th Congress in 1981.

22. Rule VIII, clause 1(a); *House Rules and Manual* § 697 (2021). In the 107th Congress, the rule was expanded to expressly include administrative subpoenas as well as judicial subpoenas and orders. However, that aspect of the rule was eliminated in the 115th

Speaker of such service, and whether the proposed response is consistent with the privileges of the House. The Speaker in turn is required by the rule to inform the House of the proposed action to be taken. In doing so, the Speaker permits the House as a body to pass judgment on the proposed response, and potentially take steps to modify or prohibit the response. Thus, the House as an institution retains the ultimate authority in defending its constitutional privileges.

§ 7.1 Pursuant to rule VIII,[23] (1) Members are required to notify the Speaker if they have been served with judicial process; (2) the Speaker is required to promptly lay such matters before the House; and (3) Members themselves make the initial determination as to whether compliance with the subpoena or order is consistent with the privileges of the House.[24]

On January 30, 2017,[25] the following letters were laid before the House, indicating that Members of the House had been served with subpoenas, and that (after consultation with the Office of General Counsel), the Members had determined that compliance was consistent with the privileges of the House:

COMMUNICATION FROM THE HONORABLE ELIJAH E. CUMMINGS, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable ELIJAH E. CUMMINGS, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 30, 2017.

Hon. PAUL D. RYAN,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives that we have been served with a subpoena for documents, issued by the District Court for the District of Maryland in Benisek v Lamone.

Congress. See § 7.9, *infra.* The rule was substantially revised in the 115th Congress to consolidate and clarify the notification aspects of the rule and to eliminate a former requirement that the Clerk provide a copy of the rule to the court.

23. *House Rules and Manual* § 697 (2021).

24. *Parliamentarian's Note:* Although not required by the rule, most Members avail themselves of the services of the Office of General Counsel (or, occasionally, outside counsel) for legal advice regarding the requirements of judicial process and the House's constitutional prerogatives. For more on the Office of General Counsel, see clause 8 of rule II. See also Precedents (Wickham) Ch. 6 § 19.

25. 163 CONG. REC. 1332, 115th Cong. 1st Sess. For similar examples of Members indicating that they intended to comply with judicial subpoenas, see 160 CONG. REC. 15477–78, 113th Cong. 2d Sess. (Nov. 12, 2014).

After consultation with the Office of General Counsel, we have determined that compliance with the subpoena will be consistent with the privileges and rights of the House.

Sincerely,

ELIJAH E. CUMMINGS,
Member of Congress.

COMMUNICATION FROM THE HONORABLE STENY H. HOYER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable STENY H. HOYER, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 30, 2017.

Hon. PAUL D. RYAN,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives that I have been served with a witness subpoena for documents, issued by the District Court for the District of Maryland in Benisek v Lamone.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena will be consistent with the privileges and rights of the House.

Sincerely,

STENY H. HOYER.

COMMUNICATION FROM THE HONORABLE C.A. DUTCH RUPPERSBERGER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable C.A. DUTCH RUPPERSBERGER, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 30, 2017.

Hon. PAUL D. RYAN,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives that we have been served with a subpoena for documents, issued by the District Court for the District of Maryland in Benisek v Lamone.

After consultation with the Office of General Counsel, we have determined that compliance with the subpoena will be consistent with the privileges and rights of the House.

Sincerely,

C.A. DUTCH RUPPERSBERGER,
Member of Congress.

COMMUNICATION FROM THE HONORABLE JOHN P. SARBANES, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN P. SARBANES, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 30, 2017.

Hon. PAUL D. RYAN,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives that we have been served with a subpoena for documents, issued by the District Court for the District of Maryland in Benisek v Lamone.

After consultation with the Office of General Counsel, we have determined that compliance with the subpoena will be consistent with the privileges and rights of the House.

Sincerely,

JOHN P. SARBANES,
Member of Congress.

§ 7.2 Pursuant to rule VIII,[26] Members are required to notify the Speaker of the receipt of judicial subpoenas, and may indicate in such correspondence that they have determined that compliance with such subpoenas is inconsistent with the privileges of the House.

On September 24, 2015,[27] the following communications were laid before the House, indicating that Members had be served with subpoenas and that (after consultation with the Office of General Counsel), they had determined that compliance with the subpoenas was inconsistent with the privileges of the House:

COMMUNICATION FROM CHAIR OF COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

The SPEAKER pro tempore laid before the House the following communication from the chair of the Committee on Oversight and Government Reform:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, September 22, 2015.

Hon. JOHN A. BOEHNER,

26. *House Rules and Manual* § 697 (2021).

27. 161 CONG. REC. 14775–76, 114th Cong. 1st Sess. For similar examples of Members indicating that they intended to move to quash judicial subpoenas, see 159 CONG. REC. 3377, 113th Cong. 1st Sess. (Mar. 12, 2013); and 159 CONG. REC. 3775, 113th Cong. 1st Sess. (Mar. 15, 2013).

Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena, issued by the Superior Court for the District of Columbia, purporting to require that, in connection with a particular criminal case, I produce certain official documents and appear to testify at trial on official matters.

After consultation with the Office of General Counsel, I have determined, pursuant to Rule VIII, that the subpoena (i) is not a "proper exercise of jurisdiction by the court," (ii) seeks information that is not "material and relevant," and/or (iii) is not "consistent with the privileges and rights" of the House, its Members, its officers, or its employees. Accordingly, I intend to move to quash the subpoena, or for other protective relief.

Sincerely,

JASON CHAFFETZ,
Chairman.

COMMUNICATION FROM RANKING MEMBER OF COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

The SPEAKER pro tempore laid before the House the following communication from the ranking member of the Committee on Oversight and Government Reform:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, September 22, 2015.

Hon. JOHN A. BOEHNER,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena, issued by the Superior Court for the District of Columbia, purporting to require that, in connection with a particular criminal case, I produce certain official documents and appear to testify at trial on official matters.

After consultation with the Office of General Counsel, I have determined, pursuant to Rule VIII, that the subpoena (i) is not a "proper exercise of jurisdiction by the court," (ii) seeks information that is not "material and relevant," and/or (iii) is not "consistent with the privileges and rights" of the House, its Members, its officers, or its employees. Accordingly, I intend to move to quash the subpoena, or for other protective relief.

Sincerely,

ELIJAH E. CUMMINGS,
Ranking Member.

§ 7.3 Pursuant to rule VIII,[28] Members are required to notify the Speaker upon receipt of a subpoena or other judicial order, and

28. *House Rules and Manual* § 697 (2021).

may supplement such correspondence to correct errors or omissions in the initial notification.

On March 11, 2011,[29] the following communication was laid before the House:

COMMUNICATION FROM CHAIR OF COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

The SPEAKER pro tempore (Mr. HARRIS) laid before the House the following communication from the chair of the Committee on Oversight and Government Reform:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, March 11, 2011.

Hon. JOHN A. BOEHNER,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: My letter of March 3, 2011 notified you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that the Committee on Oversight and Government Reform has been served with a subpoena for documents issued by the United States District Court for the District of Columbia in a case now ending before that Court. That letter incorrectly referenced the pending case as a civil case. In fact, it is a criminal case.

Sincerely,

DARRELL E. ISSA,
Chairman, Committee on Oversight
and Government Reform.

§ 7.4 The procedural requirements of rule VIII[30] regarding the receipt of subpoenas and judicial orders apply to Delegates and Resident Commissioners in the same manner as they apply to Members.

On September 30, 2015,[31] the following communication from the Delegate from the District of Columbia was laid before the House pursuant to rule VIII:

COMMUNICATION FROM THE HONORABLE ELEANOR H. NORTON, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. YOUNG of Iowa) laid before the House the following communication from the Honorable Eleanor H. Norton, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 30, 2015.

29. 157 CONG. REC. 3849–50, 112th Cong. 1st Sess.
30. *House Rules and Manual* § 697 (2021).
31. 161 CONG. REC. 15497, 114th Cong. 1st Sess.

Hon. JOHN A. BOEHNER,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have received a subpoena, issued by the Superior Court for the District of Columbia, in connection with a particular criminal case, that I produce certain official documents and appear to testify at trial on official matters.

After consultation with counsel, I will make the determination required by Rule VIII.

Sincerely,

ELEANOR H. NORTON,
Member of Congress.

§ 7.5 Pursuant to rule VIII, Members are permitted to make the initial determination as to whether compliance with judicial process is consistent with the privileges and prerogatives of the House, but that "[u]nder no circumstances may minutes or transcripts of executive sessions, or evidence of witnesses in respect thereto, be disclosed or copied."(32)

Rule VIII, permitting Members to determine on an individual basis whether compliance with subpoenas or other judicial orders is consistent with the privileges of the House, does not extend to the production of executive session material.(33) On March 17, 1998,(34) the following letter from a Member, indicating that the Office of General Counsel had advised him that compliance with subpoenas was not consistent with the privileges of the House, was laid before the House:

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

The SPEAKER pro tempore laid before the House a communication from the Chairman of the Committee on Standards of Official Conduct:

COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT,
Washington, DC, March 16, 1998.

Hon. NEWT GINGRICH,

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32. Rule VIII, clause 3(b); *House Rules and Manual* § 697 (2021).

33. *Parliamentarian's Note:* The Committee on Standards of Official Conduct (now the Committee on Ethics) always meets in executive session (pursuant to clause 3(c)(1) of rule XI) unless the committee votes to open the session to the public. *House Rules and Manual* § 806 (2021). The documents sought here were of executive session material, and therefore could not be produced under rule VIII.

34. 144 CONG. REC. 3838, 105th Cong. 2d Sess. For a similar case prior to the advent of rule VIII (where the House took no action with respect to a subpoena for executive session material, thus precluding the production of said documents), see 120 CONG. REC. 16918, 93d Cong. 2d Sess. (May 30, 1974).

Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you, pursuant to Rule L (50) of the Rules of the House of Representatives, that the Committee on Standards of Official Conduct ("Committee") has been served with a grand jury subpoena (for documents) issued by the U.S. District Court for the District of Massachusetts and directed to the Committee's "Keeper of Records."

After the consultation with the Office of General Counsel, the Committee has determined that compliance with the subpoena is not consistent with the precedents and privileges of the House and, therefore, that the subpoena should be resisted.

Sincerely,

JAMES V. HANSEN,
Chairman.

Prior Practice

§ 7.6 Under prior practice, Members were not permitted to respond to judicial process without the explicit consent of the House, which could be granted via privileged resolution.[35]

As exemplified by these proceedings of January 22, 1976,[36] prior to the advent of rule VIII,[37] Members needed specific authorization from the House (in the form of a privileged resolution) in order to comply with judicial subpoenas or orders:

PRIVILEGES OF THE HOUSE—SUBPOENA IN CASE OF BOSTON PNEUMATICS, INC. AGAINST INGERSOLL-RAND CO.

Mr. [Joseph] MCDADE [of Pennsylvania]. Mr. Speaker, I rise to a question of the privileges of the House.

The SPEAKER pro tempore (Mr. [Thomas] O'NEILL [of Massachusetts]). The gentleman will state it.

Mr. MCDADE. Mr. Speaker, I have been subpoenaed by the U.S. District Court for the District of Columbia to appear at the office of Stassen, Kostos and Mason, 450 Federal Bar Building West, Washington, DC, on January 26, 1976, at 10 a.m., to testify on

35. *Parliamentarian's Note:* Under modern procedures pursuant to rule VIII, Members notify the House when they receive subpoenas or other judicial orders, but are otherwise allowed to determine for themselves whether a response is consistent with the rights and privileges of the House. The adoption of a separate resolution in each case is no longer required.

36. 122 CONG. REC. 581, 94th Cong. 2d Session. For similar examples of the House adopting privileged resolutions authorizing Members to respond to subpoenas, see 119 CONG. REC. 21180, 93d Cong. 1st Sess. (June 25, 1973); 121 CONG. REC. 16860, 94th Cong. 1st Sess. (June 4, 1975); 121 CONG. REC. 37888–89, 94th Cong. 1st Sess. (Dec. 1, 1975); and 122 CONG. REC. 145, 94th Cong. 2d Sess. (Jan. 19, 1976).

37. *House Rules and Manual* § 697 (2021).

behalf of Boston Pneumatics, Inc., at the taking of a deposition in the case of Boston Pneumatics, Inc. against Ingersoll-Rand Co., civil action No. 72–1729, now pending in the U.S. District Court for the Eastern District of Pennsylvania.

Under the precedents of the House, I am unable to comply with this subpoena without the consent of the House, the privileges of the House being involved. I, therefore, submit the matter for the consideration of this body.

Mr. Speaker, I send the subpoena to the desk.

The SPEAKER pro tempore. The Clerk will read the subpoena.

The Clerk read as follows:

[In the U.S. District Court for the District of Columbia, Civil Action File, U.S.D.C. Eastern District of Pennsylvania, 72–1729; FS. 76–0013.]

Boston Pneumatics, Inc. *vs.* Ingersoll-Rand Company.

To Joseph M. McDade, United States House of Representatives, 2202 Rayburn House Building, Washington, DC.

You are commanded to appear at the office of Stassen Kostos and Mason, 450 Federal Bar Building West in the city of Washington on the 26th day January, 1976, at 10:00 o'clock A.M. to testify on behalf of Plaintiff, Boston Pneumatics, Inc. at the taking of a deposition in the above entitled action pending in the United States District Court for the Eastern District of Pennsylvania and bring with you any written correspondence between your office and the Ingersoll-Rand Company and between your office and the General Services Administration, regarding allegations of violations of the Buy-American Act by Boston Pneumatics during the period around July 1969 to July 1970.

Dated January 16, 1976.

JAMES F. DAVEY,
Clerk.

By MARY B. DEAVERS,
Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

Mr. [John] MCFALL [of California]. Mr. Speaker, I offer a privileged resolution (H. Res. 971) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 971

Whereas Representative Joseph M. McDade, a Member of this House, has been served with a subpoena issued by the United States District Court for the District of Columbia to appear at the office of Stassen, Kostos and Mason, 450 Federal Bar Building West, Washington, DC, on the 26th of January 1976, at 10:00 A.M. to testify on behalf of Boston Pneumatics, Inc., at the taking of a deposition in the case of Boston Pneumatics, Inc. against Ingersoll-Rand Company, civil action number 72–1729, now pending in the United States District Court for the Eastern District of Pennsylvania; and

Whereas by the privileges of the House no Member is authorized to appear and testify but by the order of the House: Therefore, be it

Resolved, That Representative Joseph M. McDade is authorized to appear in response to the subpoena of the United States District Court for the District of Columbia to testify at the taking of deposition in the case of Boston Pneumatics, Inc. against Ingersoll-Rand Company at such time as when the House is not sitting in session; and be it further

Resolved, That as a respectful answer to the subpoena a copy of this resolution be submitted to the said court.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 7.7 Under prior practice, Members were not permitted to respond to judicial process without the specific authorization of the House, and the House (via privileged resolution) could choose to assert its privileges with respect to the release of documents under its control.[38]

The proceedings of December 19, 1975,[39] demonstrate prior practice with respect to subpoenas issued for House documents. In this instance, the House adopted a resolution (raised as a question of the privileges of the House) asserting its privilege to deny the production of the requested documents:

PRIVILEGES OF THE HOUSE-BALTIMORE CONTRACTORS, INC. AGAINST THE UNITED STATES

The SPEAKER.[40] The Chair recognizes the gentleman from Massachusetts (Mr. O'NEILL).

Mr. [Thomas] O'NEILL [of Massachusetts]. Mr. Speaker, I rise to a question of the privileges of the House.

Mr. Speaker, the U.S. Court of Claims, on June 17, 1975, entered an order in the case of Baltimore Contractors, Inc., against the United States (Ct. Cl. No. 272–70) requiring the production of certain Government documents. Certain of those documents covered by the said order of the court are documents of the House Building Commission and as such they are documents which are within the control and possession of the House of Representatives. The order of the court requiring their production, therefore, gives rise to a question of the privileges of the House.

Mr. Speaker, as a member of the House Building Commission I send to the desk a privileged resolution (H. Res. 947) in response to the said order of the court.

The SPEAKER. The Clerk will read the resolution.

The Clerk read the resolution, as follows:

H. RES. 947

Whereas in the case of Baltimore Contractors, Inc. against the United States (Case No. 272–70) pending in the United States Court of Claims, an order was issued by the said

38. *Parliamentarian's Note:* Under current rule VIII procedures, Members must notify the House with respect to any subpoenas they receive, but the determination whether or not to comply is left to the judgment of the individual Member (typically after consultation with the Office of General Counsel or, more rarely, outside counsel).

39. 121 CONG. REC. 41972–73, 94th Cong. 1st Sess.

40. Carl Albert (OK).

court on June 17, 1975 granting the plaintiff's motion for the production of certain documents in the possession and under the control of the House of Representatives: Therefore be it

Resolved, That by the privileges of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission; be It further

Resolved, That a copy of this resolution be submitted to the said court as a respectful answer to the order aforementioned.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 7.8 Under prior practice, Members were not permitted to respond to judicial process without the specific authorization of the House, and when the House (by inaction) failed to provide such authorization, compliance with the judicial order was not permitted.(41)

Under prior practice of the House with regard to the receipt of subpoenas, authorization to respond to the subpoena could only be provided by the House itself via the adoption of a privileged resolution.(42) Failure to adopt such a resolution constituted the House's judgment that such authorization should not be provided, as occurred on December 11, 1979:(43)

PRIVILEGES OF THE HOUSE—SUBPOENA DUCES TECUM IN THE CASE ON DONALD GASQUE

Mr. [Parren] MITCHELL of Maryland. Mr. Speaker, I rise to a question of the privileges of the House.

The SPEAKER pro tempore.(44) The gentleman will state it.

Mr. MITCHELL of Maryland. Mr. Speaker, I have been served with subpoena duces tecum for the circuit court of Anne Arundel County, MD, to appear Thursday, December 30, 1979, in the ease of Donald Gasque.

Under the precedents I am unable to respond without the permission of the House and the privileges of the House being involved.

I send the subpoena to the desk for such action as the House may take.

The SPEAKER pro tempore. The Clerk will read the subpoena.

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41. *Parliamentarian's Note:* The advent of rule VIII (and related precursor resolutions) essentially reversed the burdens with respect to judicial process. Under current rules, Members are permitted to make the initial determination as to whether compliance with the subpoena or other judicial order is consistent with the rights and privileges of the House, and inaction by the House constitutes acquiescence in the Members' judgment.

42. For an example of a resolution authorizing compliance with a subpoena, see § 7.6, *supra.* For an example of a resolution prohibiting compliance, see § 7.7, *supra.*

43. 125 CONG. REC. 35469, 96th Cong. 1st Sess. For a similar occasion where the House did not adopt a resolution authorizing a response to a subpoena, see 126 CONG. REC. 30050, 96th Cong. 2d Sess. (Nov. 18, 1980).

44. Robert Giaimo (CT).

The Clerk read as follows:

SUMMONS DUCES TECUM

Defendant: Donald Gasque.

Case No. 22,854.

State of Maryland, Anne Arundel County, Sct:

To: Parren J. Mitchell, 1018 Federal Office Building, 31 Hopkins Plaza, Baltimore, Maryland 21201.

You are hereby summonsed to appear before the Judges of the Circuit Court for Anne Arundel County, Court House, Church Circle, Annapolis, Maryland, on Thursday, the 13th day of December 1979, at 1:30 PM, to testify for the Defendant, and to bring with you a report which you have in your possession which outlines and discusses the conditions at the Maryland House of Corrections, Jessup, Maryland.

Failure to attend, may result in your arrest.

Witness the Honorable Judges of the Circuit Court for Anne Arundel County, Maryland.

W. Garrett Larrimore, Clerk.

By Donna Heins, Deputy.

Date issued: December 6, 1979.

Requested by:

Name: James D. McCarthy, Jr.

Address: Assistant Public Defender, 60 West Street, Suite 203, Annapolis, Maryland 21401.

§ 7.9 Under a prior form of rule VIII,[45] administrative subpoenas were treated in the same manner as judicial subpoenas, and subject to the same procedural requirements.

During the 107th through 114th Congresses, rule VIII expressly applied both to judicial subpoenas and orders as well as administrative subpoenas issued by executive agencies. The current form of the rule (as well as the form of the rule prior to the 107th Congress) does not apply to administrative subpoenas, though the House retains the ability to respond to such subpoenas via the adoption of a privileged resolution.[46] The proceedings of May 3, 1999,[47] provide an example of a Member notifying the House that an administrative subpoena had been received, and the House choosing not to authorize a response:

COMMUNICATION FROM CHAIRMAN, HOUSE REPUBLICAN CONFERENCE

The SPEAKER pro tempore laid before the House a communication from the Honorable J.C. WATTS, Jr., Chairman, House Republican Conference:

House Republican Conference,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 30, 1999.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,

45. *House Rules and Manual* § 697 (2021).

46. See, *e.g.*, Deschler's Precedents Ch. 11 § 14.8.

47. 145 CONG. REC. 8040, 106th Cong. 1st Sess. For a similar example, see 144 CONG. REC. 18298, 105th Cong. 2d Sess. (July 30, 1998).

Washington, DC.

DEAR MR. SPEAKER: I write to notify you pursuant to L. Deschler, 3 Deschler's Precedents of the United States House of Representatives ch. 11, § 14.8 (1963), that I have been served with an administrative agency subpoena (in my capacity as Chairman of the House Republican Conference) issued by the Federal Election Commission. The subpoena seeks information and documents relating to Conference activity from 1996.

Sincerely,

J.C. WATTS, JR.,
Chairman.

COMMUNICATION FROM THE HONORABLE JOHN A. BOEHNER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN A. BOEHNER, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
April 30, 1999.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you pursuant to L. Deschler, 3 Deschler's Precedents of the United States House of Representatives ch. 11 § 14.8 (1963), that I have been served with an administrative agency subpoena issued by the Federal Election Commission.

Sincerely,

JOHN A. BOEHNER.

COMMUNICATION FROM STAFF MEMBER OF THE HONORABLE JOHN A. BOEHNER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Barry Jackson, Chief of Staff to the Honorable JOHN A. BOEHNER, Member of Congress:

Congress of the United States,
HOUSE OF REPRESENTATIVES,
April 30, 1999.

Hon. J. DENNIS HASTERT,
Speaker, U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you pursuant to L. Deschler, 3 *Deschler's Precedents of the United States House of Representatives* ch. 11, § 14.8 (1963), that I have been served with an administrative agency subpoena issued by the Federal Election Commission.

Sincerely,

BARRY JACKSON,
Chief of Staff.

§ 8. Speech or Debate Immunity

"[F]or any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other place." This principle, articulated in article I, section 6, clause 1[1] of the Constitution, is derived directly from the English Bill of Rights of 1689, which provides "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."[2] Although originally designed to prevent royal interference with parliamentary deliberations, this privilege in the American context plays a similar role in maintaining the independence of the legislative branch against encroachments by the executive or the judiciary.[3]

Although textually limited to "Speech or Debate"[4] this privilege has been interpreted more broadly to encompass all legislative acts.[5] Speeches or debates on the floor of the House during its sitting[6] are obviously covered as one of the most fundamental legislative acts in which a Member may engage.[7] Similarly, voting on measures (and introducing them for consideration) has been held entitled to protection under the Speech or Debate Clause.[8] In a recent circuit court case, the D.C. Circuit Court held that the system of proxy voting instituted by the House in response to the COVID–19 pandemic concerned "core legislative acts" that cannot be questioned due to Speech or Debate immunity."[9] Related activities, such as participating

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1. *House Rules and Manual* §§ 92–95 (2021).

2. See Deschler's Precedents Ch. 7 § 16. The Articles of Confederation formulated the same immunity provision as follows: "Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress." See *United States* v. *Johnson,* 383 U.S. 169, 177 (1966).

3. See § 7, *supra.*

4. For examples of Speech or Debate immunity raised in the context of defamation suits, see Deschler's Precedents Ch. 7 §§ 16.3, 16.4.

5. See, *e.g.*, *Gravel* v. *United States,* 408 U.S. 606 (1972). See also Deschler's Precedents Ch. 7 § 17.

6. *Parliamentarian's Note:* The clause applies not only to words actually spoken in debate, but also remarks inserted into the *Congressional Record* with the consent of the House. See Deschler's Precedents Ch. 7 § 16.3.

7. *Parliamentarian's Note:* It should be noted that the speech of Members is protected from being subject to challenge outside of the House, not within the House. The House is at liberty to adopt rules of decorum that regulate the content of speeches made during its legislative sessions. Such restrictions do not run afoul of the constitutional principle discussed here. See § 8.1, *infra.* See also 3 Hinds' Precedents § 2671. For more on decorum in debate, see Deschler's Precedents Ch. 29 §§ 40–66; and Precedents (_____) Ch. 29.

8. See, *e.g.*, *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

9. See *McCarthy* v. *Pelosi,* No. 20–5240 slip op. at 8 (D.C. Cir. 2021) ("Indeed, we are hard–pressed to conceive of matters more integrally part of the legislative process than

in committee meetings and hearings,[10] producing committee reports,[11] conducting investigations and general information–gathering for legislative purposes,[12] have all been considered legislative acts covered by the grant of immunity. Even House and Senate regulations regarding admission to their respective press galleries (despite potential First Amendment concerns) have been held immune from challenge under the Speech or Debate Clause.[13]

A seminal Supreme Court case interpreting the Speech or Debate Clause occurred in 1880.[14] The House had established a special committee to investigate certain real estate transactions, and empowered said committee with the authority to subpoena witnesses and documents. Hallett Kilbourn, a private citizen, was instructed to produce relevant documents, and upon his refusal to do so, the House Sergeant–at–Arms was directed to take Kilbourn into custody. Kilbourn sued both Members of the House and House officers for false imprisonment. The Court held that the Speech or Debate Clause provided the Member defendants with an affirmative defense: that their actions in facilitating the imprisonment of Kilbourn (reporting facts to the House, considering the resolution authorizing the imprisonment, voting in favor of said resolution, etc.) should all be considered activities protected by the Speech or Debate Clause.

In the mid–20th century, a series of cases further defined the scope of the immunity in the context of criminal charges brought against Members. *United States* v. *Johnson*[15] and *United States* v. *Brewster*[16] both involved corruption schemes implicating sitting Members of Congress. In both cases, the Court held that the prosecutions were within the power of the government, but that the Speech or Debate Clause protected Members' legislative acts from being relied upon in that prosecution.[17] Inquiries into the motives or reasons behind a legislative act are similarly precluded.[18] Actions

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the rules governing how Members can cast their votes on legislation and mark their presence for purposes of establishing a legislative quorum.").

10. See, *e.g.*, *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

11. See, *e.g.*, *Hentoff* v. *Ichord,* 318 F. Supp. 1175 (D.D.C. 1970).

12. See, *e.g.*, *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491 (1975).

13. See *Consumers Union of United States, Inc.* v. *Periodical Correspondents' Association,* 515 F.2d 1341, 1350 (D.C. Cir. 1975) (The Correspondents' Association "was performing delegated legislative functions; in fact these were an integral part of the legislative machinery.").

14. *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

15. 383 U.S. 169 (1966). See also Deschler's Precedents Ch. 7 § 16.1.

16. 408 U.S. 501 (1972). See also Deschler's Precedents Ch. 7 § 16.2.

17. See *United States* v. *Johnson,* 383 U.S. 169, 184–85 (1966) ("The indictment itself focused with particularity upon motives underlying the making of the speech and upon its contents . . . [w]e hold that a prosecution under a general criminal statute dependent on such inquiries necessarily contravenes the Speech or Debate Clause.").

18. See *United States* v. *Johnson,* 383 U.S. 169, 177 (1966) ("We see no escape from the conclusion that such an intensive judicial inquiry, made in the course of a prosecution

tangential or merely related to the legislative process, however, were not protected.[19] In a subsequent case, the Court held that a promise to undertake a legislative act (as opposed to the act itself) is not protected by Speech or Debate immunity.[20]

In other criminal cases, courts have had to balance the immunity conferred on Members by the Constitution with the government's interest in investigating corruption and other illegal acts committed by Members.[21] A case occurred in 2006, when the FBI executed a search warrant at a Member's office in the Rayburn House Office Building. Paper and electronic documents were seized as part of an investigation into alleged acts of bribery, fraud, and other crimes. In the ensuing litigation, the court noted that this was "the first time a sitting Member's congressional office has been searched by the Executive"[22] and that the case had obvious implications for the separation of powers. Ultimately, the court found that the Member was "entitled to the return of all legislative materials (originals and copies) that are protected by the Speech or Debate Clause seized" from his office, and further that the executive branch officials executing the seizure were barred from disclosure and from further involvement in the pending criminal matter.[23] In another case in 2015, the FBI sought a search warrant to inspect a Member's email accounts for evidence in a fraud, extortion and bribery investigation.[24] The Member attempted to quash the search warrant prior

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by the Executive Branch under a general conspiracy statute, violates the express language of the Constitution and the policies which underlie it."). See also *Miller* v. *Transamerican Press, Inc.,* 709 F.2d 524, 530 (9th Cir. 1983) ("Because Steiger's insertion of the article into the Record was privileged, questions about it are prohibited. This proscription includes questions about his motive or legislative purpose.").

19. See *United States* v. *Brewster,* 408 U.S. 501, 528 (1972) (the "Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions.").

20. See *United States* v. *Helstoski,* 442 U.S. 477, 490 (1979) ("[I]t is clear from the language of the Clause that protection extends only to an act that has already been performed. A promise to deliver a speech, to vote, or to solicit other votes at some future date is not 'speech or debate.' Likewise, a promise to introduce a bill is not a legislative act."). Private discussions about potential future legislative acts are similarly not protected. See *U.S.* v. *Renzi,* 651 F.3d 1012, 1025 (9th Cir. 2011) ("[T]he fact that the Court permitted Brewster's prosecution for his alleged purpose in negotiating with private parties, solicitation of a bribe, demonstrates that private negotiations between Members and private parties are not protected 'legislative acts . . .'").

21. See *U.S.* v. *Rayburn House Office Building,* 497 F.3d 654, 664 (D.C. Cir. 2007) ("[T]he remedy must give effect not only to the separation of powers underlying the Speech or Debate Clause but also to the sovereign's interest under Article II, Section 3 in law enforcement.").

22. See *U.S.* v. *Rayburn House Office Building,* 497 F.3d 654, 659 (D.C. Cir. 2007).

23. *Id.* at 666.

24. See *In re Search of Elec. Commc'ns,* 802 F.3d 516 (3d Cir. 2015).

to its execution, claiming Speech or Debate immunity. The court found that the motion to quash was premature, and that the Speech or Debate Clause did not prevent the search: "Permitting an interlocutory appeal of an order denying a motion to quash an unexecuted search warrant based on the Speech or Debate Clause would set bad precedent and insulate Members from criminal investigations and criminal process. This, of course, cannot and should not be the purpose of the Clause."[25] In both cases described here, the courts stressed the importance of utilizing "taint teams"[26] or "filter teams"[27] to screen potentially privileged material before disclosure to executive authorities.

The Court in *Brewster* articulated a distinction between legislative acts and other acts (potentially also undertaken in an official or representative capacity) that are merely "political" in nature, and thus cannot take advantage of the protection afforded by the Speech or Debate Clause.[28] In *Hutchinson* v. *Proxmire* the Court held that press releases, newsletters, and similar constituent communications are not protected legislative acts.[29] Members often travel on official business, but courts have held that such activity does not constitute a legislative act that would prohibit inquiries into other (nonofficial) purposes of the travel.[30]

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25. *Id.* at 531.

26. *Id.* at 530.

27. *United States* v. *Rayburn House Office Building,* 497 F.3d 654, 656–57 (D.C. Cir. 2007).

28. *United States* v. *Brewster,* 408 U.S. 501, 512–13 (1972) ("It is well known, of course, that Members of the Congress engage in many activities other than the purely legislative activities protected by the Speech or Debate Clause. These include a wide range of legitimate 'errands' performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so–called 'news letters' to constituents, news releases, and speeches delivered outside the Congress. The range of these related activities has grown over the years. They are performed in part because they have come to be expected by constituents, and because they are a means of developing continuing support for future elections. Although these are entirely legitimate activities, they are political in nature, rather than legislative, in the sense that term has been used by the Court in prior cases. But it has never been seriously contended that these political matters, however appropriate, have the protection afforded by the Speech or Debate Clause."). See also Deschler's Precedents Ch. 7 § 16.2.

29. 443 U.S. 111, 133 (1979) ("Valuable and desirable as it may be in broad terms, the transmittal of such information by individual Members in order to inform the public and other Members is not a part of the legislative function or the deliberations that make up the legislative process . . . [a]s a result, transmittal of such information by press releases and newsletters is not protected by the Speech or Debate Clause."). For the formation of a Senate committee authorized to file an amicus brief in the *Hutchinson* case, see 125 CONG. REC. 6080, 96th Cong. 1st Sess. (Mar. 22, 1979).

30. See *U.S.* v. *Biaggi,* 853 F.2d 89, 102 (2d Cir. 1988) ("Travel itself normally lacks the necessary legislative character to trigger speech–or–debate protection.").

The House's investigatory authorities permit the House and its committees to engage in a variety of actions that courts have held to be legislative acts protected by Speech or Debate immunity.[31] Issuing subpoenas and seeking judicial enforcement of those subpoenas are thus considered legislative acts protected under the Constitution.[32] Documents that come into the possession of the House or its committees become part of the legislative process, and the Speech or Debate Clause may preclude inquiries into those documents or their provenance.[33] Preparing, printing, and distributing committee reports have also been held protected legislative acts.[34]

In 1972, the Supreme Court considered the case of a U.S. Senator who had entered the text of the classified "Pentagon Papers" into the record of a subcommittee hearing.[35] The Court held that this action was a legislative act protected by the Speech or Debate Clause. However, the Senator's attempt to publish the same material through a private publishing company was found to be not protected.[36] The Court defined a legislative act as an "integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to

31. See Deschler's Precedents Ch. 7 § 17.

32. See *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 507 (1975) ("We conclude that the Speech or Debate Clause provides complete immunity for the Members for issuance of this subpoena."). See also *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

33. See, *e.g.*, *Brown Williamson Tobacco* v. *Williams,* 62 F.3d 408, 423 (D.C. Cir. 1995) (The claim "is to a right to engage in a broad scale discovery of documents in a congressional file that comes from third parties. The Speech or Debate Clause bars that claim."); and *Senate Permanent Subcommittee on Investigations* v. *Ferrer,* 856 F.3d 1080, 1086 (D.C. Cir. 2017) (". . . the separation of powers, including the Speech or Debate Clause, bars this court from ordering a congressional committee to return, destroy, or refrain from publishing the subpoenaed documents.").

34. See, *e.g.*, *MINPECO, S.A.* v. *Conticommodity Servs., Inc.,* 844 F.2d 856, 861 (D.C. Cir. 1988) ("As the preparation of the statement for publication in the subcommittee report was part of the legislative process, that is the end of the matter. It is the responsibility of Congress, not of the courts, to assure the integrity of its reports.").

35. *Gravel* v. *United States,* 408 U.S. 606 (1972). See also Deschler's Precedents Ch. 7 § 17.4. For a resolution of the Senate authorizing reimbursement for Senator Gravel's legal fees, see Deschler's Precedents Ch. 7 § 17.5.

36. *Gravel* v. *United States,* 408 U.S. 606, 625 (1972). Although speeches contained in the *Congressional Record* are protected under Speech or Debate immunity, courts have considered whether circulating unofficial reprints of the *Congressional Record* is itself a legislative act that would enjoy similar protection. See Deschler's Precedents Ch. 7 § 16.3 (". . . the absolute privilege to inform fellow legislators becomes a qualified privilege when portions of the *Congressional Record* are republished and unofficially disseminated."). Similarly, dissemination of legislative correspondence (see *Chastain* v. *Sundquist,* 833 F.2d 311 (D.C. Cir. 1987)) or committee reports (see *Doe* v. *McMillan,* 412 U.S. 306 (1973)) may not be protected by Speech or Debate immunity.

the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House."[37]

In a recent case involving the constitutionality of prayers delivered by the House Chaplain, a circuit court stated that "legislative prayer is not 'an integral part of the deliberative and communicative process.'"[38] Thus, Speech or Debate immunity could not be invoked to terminate the litigation.

The House's own internal disciplinary processes have sometimes come under scrutiny with respect to Speech or Debate considerations. In general, courts have found compliance with the House's ethics requirements to be nonlegislative actions. So, for example, neither reimbursement receipts nor financial disclosure forms have been found to be legislative documents protected under Speech or Debate immunity.[39] Likewise, testimony given before the House's Committee on Ethics has been held nonlegislative in character and therefore may become the subject of inquiries by the judicial branch.[40] However, actions taken by the House to impose disciplinary sanctions on its Members (filing reports by the Committee on Ethics, considering disciplinary resolutions on the floor of the House, voting to impose sanctions, etc.) have been treated as legislative acts, and Members are immune from any liability stemming from such actions.[41]

The courts have addressed whether personnel decisions by Members are "legislative acts" that may be protected by the Speech or Debate Clause. A circuit court in 1986[42] found that such decisions regarding the employment of staff are integral to the legislative process, and thus protected. However, in 2006, the same court (relying on Supreme Court decisions handed down in the interim) partially repudiated that analysis,[43] stating that Speech or Debate immunity should not be viewed as creating a bar to employment discrimination claims under the Congressional Accountability Act.[44] However,

37. See *Gravel* at 625.

38. *Barker* v. *Conroy,* 921 F.3d 1118, 1127 (D.C. Cir. 2019).

39. See, *e.g.*, *United States* v. *Schock,* 891 F.3d 334 (7th Cir. 2018); and *U.S.* v. *Rose,* 28 F.3d 181 (D.C. Cir. 1994).

40. See, *e.g.*, *U.S.* v. *Rose,* 28 F.3d 181 (D.C. Cir. 1994) (". . . the Supreme Court has never decided if the Speech or Debate Clause protects a Member's testimony given in a personal capacity to a congressional committee. We conclude that it does not . . .").

41. See, *e.g.*, *Rangel* v. *Boehner,* 785 F.3d 19 (D.C. Cir. 2015).

42. *Browning* v. *Clerk,* 789 F.2d 923 (D.C. Cir. 1986). But see *Walker* v. *Jones,* 733 F.2d 923 (D.C. Cir. 1984) ("For the reasons set out below, however, we believe that personnel actions regarding the management of congressional food services are too remote from the business of legislating to rank 'within the legislative sphere.'").

43. *Fields* v. *Office of Eddie Bernice Johnson,* 459 F.3d 1 (D.C. Cir. 2006).

44. P.L. 104–1, 109 Stat. 3.

as with other types of claims, Speech or Debate immunity may present plaintiffs with evidentiary difficulties, as inquiries related to the claim may be barred by the privilege.[45]

Immunities of Officers and Staff

Courts have also grappled with the question of whether congressional officers, staff, aides, or employees are themselves (at least in some circumstances) protected by the Speech or Debate Clause. The text of the Constitution mentions only Senators and Representatives, and early cases distinguished between protected acts performed by legislators themselves and unprotected acts performed by officers or employees of the House.[46] However, more recent cases have articulated rationales for deeming staff as protected by the constitutional immunity. Such "aides and assistants . . . must be treated as the [Member's] alter ego" if the purpose of the Clause is not to be frustrated.[47] Thus, when officers or employees of the House engage in duties to effectuate the legislative acts of Members of Congress, they are protected under the Speech or Debate Clause on the same basis as Members.

Waivers

As noted earlier, Speech or Debate immunity operates as a procedural defense to judicial process.[48] It is thus incumbent on the affected Member to

45. *Fields* v. *Office of Eddie Bernice Johnson,* 459 F.3d 1, 14–15 (D.C. Cir. 2006) ("The Speech or Debate Clause therefore may preclude some relevant evidence in suits under the Accountability Act.").

46. See Deschler's Precedents Ch. 7 § 16 ("employees of the House charged with the execution of the resolution could be held personally liable for enforcing an unconstitutional congressional act" (citing *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880)). See also *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967) (". . . the doctrine of legislative immunity is less absolute when applied to officers or employees of legislative bodies."); and *Powell* v. *McCormack,* 395 U.S. 486 (1969) (". . . although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employees who participated in the unconstitutional activity are responsible for their acts . . .").

47. *Gravel* at 616, 617. See also *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 507 (1975) ("We conclude that the Speech or Debate Clause provides complete immunity for the Members for issuance of this subpoena. We draw no distinction between the Members and the Chief Counsel."); and *Rangel* v. *Boehner,* 785 F.3d 19, 25 (D.C. Cir. 2015) (plaintiff's argument that two congressional staffers did not enjoy immunity "runs headlong into *Gravel.* . . . [t]he key consideration, Supreme Court decisions teach, is the act presented for examination, not the actor.").

48. For current procedures for responding to service of process under rule VIII (and the ability of Members to waive applicable constitutional protections under those procedures), see § 7, *supra.*

assert that defense as litigation proceeds. Former voluntary compliance with investigatory authorities or judicial orders, or prior waivers of other constitutional protections, does not constitute a waiver of Speech or Debate immunity.[49] The Court in *United States* v. *Helstoski* further held that waivers of the immunity "can be found only after explicit and unequivocal renunciation of the protection."[50]

§ 8.1 In response to parliamentary inquiries, the Chair confirmed that the Constitution's Speech or Debate immunity granted to Members of Congress does not prevent the House from enforcing appropriate decorum standards with respect to debate on the floor of the House.

On May 25, 1995,[51] the Chair reiterated the House's decorum standards with respect to matters pending before the Committee on Standards of Official Conduct (now the Committee on Ethics) and further confirmed that the Constitution's grant of Speech or Debate immunity to Members of Congress does not bar the enforcement of such rules of decorum:

REGARDING THE ETHICS PROCESS IN THE HOUSE

The SPEAKER pro tempore.[52] Under the Speaker's announced policy of May 12, 1995, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 60 minutes as the designee of the minority leader.

Mrs. [Patricia] SCHROEDER [of Colorado]. I thank the Speaker very much for yielding to me. . . .

This letter was addressed to both NANCY JOHNSON and JIM MCDERMOTT, care of the Committee on Ethics, and it is about the issue of the pending matters in front of the Committee on Ethics that appear, according to news printed stores, to be in deadlock. . . .

Well, we still have not heard anything from the Committee on Ethics that this has been approved, and yet today we saw announcements that he was going off on a 35 city tour come August break, sponsored, I assume, by the same company that is doing the book. And there are an awful lot of issues around that. . . .

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49. 442 U.S. 477, 492 (1979) ("The exchanges between Helstoski and the various United States Attorneys indeed indicate a willingness to waive the protection of the Fifth Amendment; but the Speech or Debate Clause provides a separate, and distinct, protection which calls for at least as clear and unambiguous an expression of waiver."). For an insertion into the *Congressional Record* of the text of the *Helstoski* decision by the chair of the Committee on House Administration, see 125 CONG. REC. 15303–306, 96th Cong. 1st Sess. (June 18, 1979).

50. *Id.* at 491.

51. 141 CONG. REC. 14434–36, 104th Cong. 1st Sess. For the parliamentary limits on Speech or Debate immunity described in Jefferson's *Manual of Parliamentary Practice,* see 3 Hinds' Precedents § 2671. See also *House Rules and Manual* § 302 (2021).

52. Danny Burton (IN).

We are also asking questions about, are there any conflicts of interest? Who is paying for the tour and is there any conflict of interest vis-a-vis legislation in front of this body, because we understand, if it is Mr. Murdoch, Mr. Murdoch has some very, very important interests in this body on the telecommunications issues and many others. . . .

PARLIAMENTARY INQUIRIES

Mr. [John] PORTER [of Illinois]. Mr. Speaker, I have a parliamentary inquiry.

Mrs. SCHROEDER. Mr. Speaker, I yield to the gentleman from Illinois [Mr. PORTER] for a parliamentary inquiry.

The SPEAKER pro tempore (Mr. BURTON of Indiana). The gentleman will state it.

Mr. PORTER. Mr. Speaker, I would inquire as to whether this discussion is within the rules of the House or outside the rules of the House?

The SPEAKER pro tempore. Members should not engage in debate concerning matters that may be pending in the Committee on Standards of Official Conduct.

Mr. [Lloyd] DOGGETT [of Texas]. Mr. Speaker, I have a parliamentary inquiry.

Mrs. SCHROEDER. Mr. Speaker, I yield to the gentleman from Texas [Mr. DOGGETT] for a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. DOGGETT. In March of this year, Speaker GINGRICH announced that under the speech and debate clause applying to this Congress that Members were free to speak on any subject at any time. I am wondering if that pronouncement does not control in a situation that applies to the Speaker as well.

The SPEAKER pro tempore. The "Speech and debate" clause does not apply with respect to the subject of the parliamentary inquiry just asked by the gentleman from Illinois.

The Chair will again state that Members should not engage in debate concerning matters that may be pending in the Committee on Standards of Official Conduct.

§ 8.2 A resolution expressing the sense of the House with regard to the scope of the Constitution's Speech or Debate immunity provision, and further requesting that the United States Supreme Court issue a writ of certiorari to review a circuit court decision interpreting such provision, constitutes a valid question of the privileges of the House.

On May 12, 1988,[53] the Majority Leader (Rep. Tom Foley of Washington), on behalf of himself and the Minority Leader (Rep. Bob Michel of Illinois), offered the following resolution as a question of the privileges of the House:

PRIVILEGES OF THE HOUSE—RELATING TO THE DUTIES AND PRIVILEGES OF MEMBERS OF THE HOUSE OF REPRESENTATIVES

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I offer a privileged resolution (H. Res. 446) and ask for its immediate consideration.

53. 134 CONG. REC. 10574, 10576, 10579, 100th Cong. 2d Sess.

The Clerk read the resolution, as follows:

H. RES. 446

Whereas, consistent with the Constitution and the history of parliamentary bodies, the Members of the United States House of Representatives have always considered it to be an integral part of the official responsibilities of Members of Congress to inform the citizens they represent and the agencies of government regarding issues of public importance;

Whereas, the judiciary of the United States has in a long series of decisions established the doctrine of official immunity pursuant to which all public officials are provided certain protections from civil liability when engaged in the good faith performance of their official functions;

Whereas, in 1985 Representative Don Sundquist, a Member of this House, communicated with the Attorney General of the United States, the Federal Legal Services Corporation, and the citizens of the congressional district which he represents, informing them of an ongoing issue of public importance, a controversy relating to the expenditure of federal funds by the Memphis Area Legal Services in that federally funded organization's continuing dispute with the State of Tennessee's judicial branch;

Whereas, Wayne Chastain an attorney with the Memphis Area Legal Services filed suit against Representative Sundquist seeking in excess of one million dollars in personal damages based on Representative Sundquist's official communications with the Attorney General of the United States, the Federal Legal Services Corporation, and the citizens of Tennessee;

Whereas, the United States District Court for the District of Columbia dismissed the suit, holding that Representative Sundquist's actions were official and that for the good faith performance of their official duties Members of Congress, like all other public officials, are protected from civil liability;

Whereas, on November 6, 1987, a divided panel of the United States Court of Appeals for the District of Columbia Circuit, departed from the precedent of that Court and the Supreme Court and reversed the ruling of the District Court holding that the doctrine of official immunity, which provides certain protections from civil liability to all public officials engaged in the good faith performance of their official duties, was not applicable to the official actions of a Member of Congress;

Whereas, despite the expressed desire of a majority of the participating judges of the Court of Appeals for the District of Columbia Circuit to review the decision of the panel's majority by rehearing the case en banc, the en banc Court of Appeals declined to rehear the case;

Whereas, Representative Sundquist, through the Office of General Counsel to the Clerk of the House, is presently seeking a writ of certiorari from the Supreme Court of the United States;

Whereas, the decision of the divided panel of the Court of Appeals raises the most serious concerns for the doctrine of separation of powers provided in the Constitution and for the ancient and historic rights and privileges of the House; and

Whereas, the decision of the divided panel of the Court of Appeals, if left standing, will have an adverse effect on the performance of important official duties by Members of the House and will deprive citizens of an irreplaceable source of information about the functioning of their government: Now, therefore, be it

Resolved, That the House of Representatives considers the informing of citizens and executive branch agencies on matters of public importance to be a part of the official duties of a Member of the House; and be it further

Resolved, That the House of Representatives considers it to be appropriate that Members of the House engaged in the performance of their official duties will be treated by the Courts with the same respect and protection presently afforded by the Courts to all other public officials; and be it further

Resolved, That the House of Representatives views with deep concern the decision of the divided panel of the Court of Appeals of the District of Columbia Circuit in the case of Wayne Chastain v. The Honorable Don Sundquist because of its impact on the necessary and proper functioning of the House of Representatives as a coordinate branch of government and as the elected representatives of the American people; and be it further

Resolved, That the House of Representatives respectfully requests the Supreme Court of the United States to grant a writ of certiorari, so that it may review this matter, and reach a just result; and be it further

Resolved, That the Clerk of the House shall forthwith transmit a certified copy of this resolution to the Honorable Clerk of the Supreme Court.

The SPEAKER pro tempore (Mr. [Charles] SCHUMER [of New York]). The resolution presents a question of privilege, and the Chair recognizes the gentleman from Washington for 1 hour.

Mr. FOLEY. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the distinguished gentleman from Illinois [Mr. MICHEL], pending which I yield myself such time as I may consume.

Mr. FOLEY. Mr. Speaker, on behalf of the Republican leader, Mr. MICHEL and myself, I have introduced this privileged resolution. The resolution expresses, to the Supreme Court of the United States, a respectful request of this House. By adopting this resolution we will be asking that the Court grant a review of a recent decision of the Federal Court of Appeals for the District of Columbia Circuit which impacts on the day-to-day operation of the House and its Members.

The litigation at issue, Chastain versus Sundquist, is a civil action which alleges that Congressman SUNDQUIST, our colleague from Tennessee, included defamatory material in a letter which he sent to a Federal agency discussing an issue of public importance and controversy in the Memphis area. Specifically, Representative SUNDQUIST, in his letters and in his discussions with his constituents, expressed his concerns with respect to the operation of a federally funded program, the Memphis Area Legal Services. . . .

Mr. Speaker, I would ask then to include with my remarks at the conclusion of my opening remarks the text of our "Dear Colleague" letter that the gentleman from Washington [Mr. FOLEY] and I jointly signed to the membership.

I will reserve the balance of my time.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR COLLEAGUE: On Wednesday, May 11, 1988, we will seek floor consideration of a privileged resolution. The resolution requests the Supreme Court to review a recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Chastain* v. *Sundquist.* The Speaker and the Bipartisan Leadership of the House believe that the opinion of the divided panel of the Court of Appeals represents a significant departure from established precedent and seriously threatens the proper functioning of Members of the House as representatives of the American people.

The Court of Appeals has held that Members of Congress do not receive the protections provided to all other public officials under the doctrine of official immunity. This ruling was issued, and permitted to stand, by a sharply divided Court of Appeals in a million dollar lawsuit brought against our colleague, Don Sundquist.

Congressman Sundquist had written letters to the appropriate Executive Branch officials expressing his concern with the allocation of resources, and the manner of operation, of the Memphis Area Legal Services, a federally funded entity. He also brought these concerns on this ongoing public controversy to the attention of his constituents.

A lawyer, who was mentioned in one of the letters, brought suit against Congressman Sundquist alleging that the communications with the Executive Branch and with the public had been defamatory. The suit sought in excess of one million dollars in damages.

Congressman Sundquist was represented by the General Counsel to the Clerk of the House. The District Court dismissed the suit, holding that Congressman Sundquist had been engaged in his official duties and, therefore, was protected by the doctrine of official immunity. Pursuant to that doctrine, all public officials who are engaged in the discretionary performance of their official functions can only be subjected to suit and liability

for violations of clearly established standards of statutory or constitutional law. Since the Plaintiff had not alleged that Congressman Sundquist had violated any statute or constitutional provision, the District Court dismissed the case.

On appeal a three-judge panel ruled, on a two-to-one vote, that Members of Congress engaged in official, but not legislative actions, receive no protection whatsoever. The justification for this treatment, which differs from the treatment accorded every other public official at all levels and in all branches of government, was that the Constitution provides Members with an absolute privilege for legislative actions under the Speech or Debate Clause and that, therefore, no other privilege would apply.

Judge Mikva, a former Member of the House, dissented and wrote a strongly worded opinion which argued for the application of the immunity and pointed out that the two-judge majority was departing from the established precedent of the Court of Appeals.

Congressman Sundquist sought to have the decision reviewed by the full Court of Appeals, but despite the agreement of a six-judge plurality that the panel's decision should be reviewed, the full court declined to rehear the case. Congressman Sundquist is presently seeking a review of the matter by the Supreme Court.

Our resolution simply requests the Supreme Court to review the case. Adoption of the resolution will not ask the Court to rule in any particular fashion on the merits of Congressman Sundquist's argument but will highlight for the Court the extreme importance of this question to all Members of the House. Every one of us is called upon on a daily basis to perform many official functions which are not integral parts of the legislative process. The job of a Congressman extends far beyond the confines of formulating, debating and acting on legislative proposals. Each of us is in daily contact with Executive agencies and with our constituents. Part of our task is to bridge the gap between the federal government and the citizens we represent. It is important that we be able to attend to these responsibilities without unnecessary fear or inconvenience from litigation. The same reasoning that has led the Judicial Branch to provide a degree of protection to Executive and Judicial Branch officials ranging from cabinet officers to local dog catchers should lead the Court to review a decision denying that protection to Members of Congress.

We hope you will support our privileged resolution.

THOMAS S. FOLEY,
Majority Leader.

ROBERT H. MICHEL,
Republican Leader.

. . .

Mr. FOLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. [Barton] GORDON [of Tennessee]). The question is on the resolution.

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

Mr. FOLEY. 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 413, nays 0, answered "present" 2, not voting 16, as follows:

[Roll No. 128] . . .

§ 9. Immunity from Arrest

The Constitution grants Members of Congress "privilege from arrest"[1] during their attendance at congressional sessions, and during travel to and from such sessions.[2] As with Speech or Debate immunity, this constitutional provision has its origins in English practice dating back centuries, and was originally devised as a means to counter royal interference with Members of Parliament. In the American context, it serves to insulate the legislative branch from the other branches of government in recognition of the principle of separation of powers.

At the time of the Constitutional Convention, arrest and imprisonment for civil offenses was still common, and it was primarily towards these arrests that the provision was aimed.[3] The Constitution specifies that the immunity from arrest does not apply in cases of "Treason, Felony, and Breach of the Peace."[4] Subsequent court rulings have clarified the scope of this language as encompassing all criminal offenses.[5] Because arrest in civil cases is no longer generally part of the American legal system, this constitutional provision has been described as virtually obsolete.[6]

The immunity applies to Members, and had also been considered applicable to Delegates and Resident Commissioners.[7] Members–elect travelling to

1. U.S. Const. art. I, § 6, cl. 1. The full passage reads: "They shall in all Cases, except Treason, Felony or Breach of the Peace, be privileged from Arrest during their attendance at the Session of their respective Houses, and in going to and returning from the same." See also *House Rules and Manual* §§ 90, 91 (2021).
2. For an 1886 court case articulating a broad interpretation of travel to and from congressional sessions, see 3 Hinds' Precedents § 2674. See also 3 Hinds' Precedents § 2676 (House determination that a Member arrested on vacation could not continue to be held after Congress assembled).
3. See Deschler's Precedents Ch. 7 § 18. For an example of a Member being arrested in a civil debt case, and the House's subsequent assertion of the constitutional privilege to secure his release, see 3 Hinds' Precedents § 2676.
4. U.S. Const. art. I, § 6, cl. 1.
5. See, *e.g.*, *Williamson* v. *U.S.,* 207 U.S. 425 (1908) (". . . from the foregoing it follows that the term 'treason, felony, and breach of the peace,' as used in the constitutional provision relied upon, excepts from the operation of the privilege all criminal offenses. . . ."). See also 6 Cannon's Precedents § 589. In 1878, the House Committee on the Judiciary studied the issue and concluded that Members were not immune from state criminal processes. See 3 Hinds' Precedents § 2673.
6. See Deschler's Precedents Ch. 7 § 18 (fn. 18).
7. See Deschler's Precedents Ch. 7 § 18 (fn. 10) (citing *Doty* v. *Strong,* 1 Pinn. 84 (Sup. Ct. Wisc. Territ. 1840)).

Washington, D.C., to be sworn at the assembly of a new Congress are also covered by this grant of immunity.[8]

Although this constitutional provision has virtually no modern applicability, the issue of how to balance Members' representational responsibilities with the requirements of judicial process remains salient. Court orders, summonses and subpoenas are routinely issued to Members of Congress in their capacity as private citizens.[9] Courts have ruled (and the House has acknowledged) that such requests are not "arrests" that would be prohibited under the Constitution's grant of immunity.[10] Nevertheless, such processes have the potential to interfere with legislative activity if Members are frequently called away to participate in judicial proceedings. Thus, courts have typically demonstrated a willingness to make accommodations to Members of Congress whose involvement in legal proceedings is required. Such accommodation has often taken the form of granting extensions or continuances until the House would no longer be in session.[11]

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8. See *House Rules and Manual* § 300 (2021) (statement in Jefferson's *Manual of Parliamentary Practice* that "Privilege from arrest takes place by force of election."). See also Deschler's Precedents Ch. 7 § 18 (fn. 8) (citing *Dunton & Co.* v. *Halstead,* 2 Clark 236 (Dist. Ct. Phil. 1840)).

9. For more on service of process on Members generally, see § 7, *supra.*

10. See Deschler's Precedents Ch. 7 § 18 (fn. 19) (citing *Long* v. *Ansell,* 293 U.S. 76 (1934)). In one instance in 1929, a Senator indicated that he would ignore a grand jury summons issued to him by the Supreme Court of the District of Columbia. Subsequently, the court noted, "Section 6, Article I, of the Constitution of the United States, gives immunity to arrest to the Members of Congress while that body is in session. It does not say that they are privileged from subpoena, but if they do not obey, the only step the court could take would be to issue an attachment for their arrest. Since the Constitution provides immunity from arrest, in my opinion they are not subject to such action." See 6 Cannon's Precedents § 588.

11. See Deschler's Precedents Ch. 7 § 18 (fn. 3) (citing *James* v. *Powell,* 274 N.Y.S. 2d 192, 26 App. Div. 2d 295 (1966) for the proposition that "where actual interference with the legislative process is shown the courts will make suitable provision by way of adjournment or fixing of a time and place of examination which will obviate any real conflict.").

Adjournment
Delegates and Resident Commissioners, motion to adjourn offered by, §§ 2, 2.1
motion to adjourn, ability of Delegates and Resident Commissioners to offer, §§ 2, 2.1
American Samoa
Delegates from, § 2
Chaplain
Delegate or Resident Commissioner sponsoring guest chaplain, § 2.18
guest chaplain sponsored by Delegate or Resident Commissioner, § 2.18
Chief Administrative Officer (CAO)
compensation of Members, role in disbursing, § 5
Members' Representational Allowance (MRA), publication of disbursements, § 6
office space, role in assigning, § 6
Clerk
compensation, role in disbursement, § 5
vacancies, role in managing office, §§ 6, 6.8, 6.11
Code of Official Conduct
see **Ethics**
Committee of the Whole
automatic revote provision, §§ 2, 2.12, 2.13, 2.14
Delegates and Resident Commissioners, authority to preside over, §§ 2, 2.16
Delegates and Resident Commissioners, voting rights in, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17
presiding officer, Delegates and Resident Commissioners serving as, §§ 2, 2.16
quorum rules, § 2
voting rights of Delegates and Resident Commissioners, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17
Committee on House Administration
allowances, former authority to adjust, §§ 5, 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6
allowances, role in authorizing, §§ 5, 6, 6.17
Members' Representational Allowance (MRA), role regarding, §§ 5, 6, 6.17
vacancies, role regarding, § 6
Committees
assignment of Delegates and Resident Commissioners to, §§ 2, 2.8
Committee of the Whole, see **Committee of the Whole**
Delegates and Resident Commissioners, voting rights in, § 2
rank of Delegates and Resident Commissioners on, §§ 2, 2.8
voting rights of Delegates and Resident Commissioners, § 2
Compensation
27th Amendment, operation of, § 5
appropriations process, relationship to, § 5
Chief Administrative Officer (CAO), role in disbursements, § 5
Citizens' Commission on Public Service and Compensation, § 5
Clerk, role in disbursements, § 5
Commission on Executive, Legislative, and Judicial Salaries, § 5
Committee on House Administration, role regarding, § 5
conflicts of interest, § 5
constitutional provisions regarding, § 5
cost–of–living adjustments, § 5
death, effect of, § 5
death gratuities, §§ 5, 5.2
deductions for leaves of absence, § 5
deductions for rule violations, § 5
election contests, relationship to, § 5
Ethics Reform Act of 1989, § 5

Federal Salary Act of 1967, § 5
financial disclosure requirements, § 5
fines, § 5
generally, § 5
gift rules § 5
health benefits, § 6
history, § 5
honoraria, §§ 5, 5.8, 5.11
incompatible offices, relationship to, § 4
leaves of absence, deductions for, §§ 5, 5.6
mileage expenses, § 5
"No Budget, No Pay" bills, §§ 5, 5.4
oath, relationship to, §§ 5, 5.1
outside earned income, §§ 5, 5.11, 5.12, 5.13
party leaders, § 5
rate of compensation, § 5
resignation, effect of, § 5
retirement benefits, § 6
royalties, §§ 5, 5.13
"Saxbe fix", § 4
Sergeant–at–Arms, former role in disbursements, §§ 5, 5.10
Speaker, § 5
Speaker's administrative role regarding, § 5
statutory rulemaking related to, § 5
taxes, §§ 5, 5.3
term of office, relationship to, § 5
travel reimbursements, § 5
waiving salary, § 5

Conferences
conference committees, appointment of Delegates and Resident Commissioners, §§ 2, 2.9
Delegates and Resident Commissioners, appointment to conference committees, §§ 2, 2.9

Congressional Record
allowances, adjustments published in, §§ 6, 6.3
copies provided to Members, § 6
franking privilege, ability to send copies via, § 6
franking privilege regulations published in, §§ 6, 6.12

Constitution
compensation of Members, provisions regarding, § 5
emoluments, provisions regarding, § 4
franking privilege, constitutionality of, §§ 6, 6.15, 6.16
immunities of Members generally, § 7
incompatible offices, provisions regarding, § 4
privilege from arrest, §§ 7, 9
qualifications of Members, provisions regarding, § 3
Speech or Debate immunity, §§ 7, 8

Contested Elections
see **Election Contests**

Death
compensation of Members, effect of, § 5
gratuities, §§ 5, 5.2

Debate
Delegates and Resident Commissioners, rights to, § 2

Decorum
Delegates and Resident Commissioners, applicability to, § 2
Speech or Debate immunity, relationship to, §§ 8, 8.1

Delegates and Resident Commissioners
Chaplain, guest chaplains sponsored by, § 2.18
Code of Official Conduct, applicability, § 2
committee assignments, §§ 2, 2.8
Committee of the Whole, presiding over, §§ 2, 2.16
Committee of the Whole, voting in, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17
compensation, § 2

conference committees, appointment to, §§ 2, 2.9
decorum rules, applicability, § 2
discharge petition, inability to sign, §§ 2, 2.7
election of Speaker, inability to vote in, §§ 2, 2.5
floor privileges, § 2
history, § 2
impeachment articles, ability to offer, § 2
impeachment articles, inability to vote on, § 2
impeachment articles, question of privilege regarding, §§ 2, 2.6
joint committees, appointment to, § 2
motion to adjourn, ability to offer, § 2.1
motion to recommit, ability to offer, § 2.3
motion to reconsider, inability to offer, § 2
motion to refer, ability to offer, § 2.2
motions, ability to offer generally, § 2
oaths, § 2
objections to unanimous–consent requests, authority to raise, §§ 2, 2.4
party organization, relationship to, §§ 2, 2.8
points of order, authority to raise, § 2
privilege from arrest, § 9
privileges generally, § 2
qualifications, § 3
rank on committees, §§ 2, 2.8
salary and benefits, § 2
select committees, appointment to, § 2
seniority, §§ 2, 2.8
service of process on, § 7.4
Speaker election, inability to vote in, §§ 2, 2.5
statutory origin, § 2
term of office, § 2
unanimous–consent request to sign discharge petition not entertained, §§ 2, 2.7
unanimous–consent requests, authority to propose, § 2
vacancies, § 2
voting rights in the Committee of the Whole, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17

Discharge Petitions
Delegates and Resident Commissioners may not sign, §§ 2, 2.7
unanimous–consent request to allow Delegates and Resident Commissioners to sign not entertained, §§ 2, 2.7

District of Columbia
Delegates from, § 2

Election Contests
compensation pending resolution of case, § 5
exclusion distinguished from, § 3
expulsion distinguished from, § 3

Election of Speaker
see **Speaker of the House**

Ethics
censure, §§ 6, 6.10
Code of Official Conduct, applicability to Delegates and Resident Commissioners, § 2
Code of Official Conduct, employment rules contained in, § 6
Committee on Ethics, §§ 5, 6
conflicts of interest, § 5
employment rules, § 6
Ethics Reform Act of 1989, § 5
expulsion, see **Expulsion**
financial disclosure requirements, § 5
fines for rule violations, § 5
gift rules, § 5
honoraria rules, §§ 5, 5.8, 5.11
Members' Representational Allowance (MRA), ethics rules regarding, § 6
outside earned income, §§ 5, 5.11, 5.12, 5.13

reprimand, § 6
Speech or Debate immunity, relationship to, § 8
Exclusion
compensation, effect on, § 5
election contests distinguished from, § 3
expulsion distinguished from, § 3
incompatible offices, relationship to, §§ 3, 4
Powell v. McCormack, § 3
qualifications, relationship to, § 3
vacancies created by, § 3
Expulsion
election contests distinguished from, § 3
exclusion distinguished from, § 3
vacancies created by, § 6.11
Floor Privileges
Delegates and Resident Commissioners, § 2
staff of Members, § 6.9
Franking Privilege
Congressional Record, regulations published in, §§ 6, 6.12
constitutionality, §§ 6, 6.15, 6.16
generally, § 6
history, § 6
House Communications Standards Commission, §§ 6, 6.12, 6.14, 6.16
Members' Representational Allowance (MRA), relationship to, § 6
questions of privilege regarding, §§ 6, 6.13, 6.14
Guam
Delegates from, § 2
House Administration
see **Committee on House Administration**
Impeachment
Delegates and Resident Commissioners may not vote on articles, § 2
Delegates and Resident Commissioners may offer resolution of impeachment, § 2
qualifications, relationship to, § 3
question of privilege regarding Delegate and Resident Commissioner voting, §§ 2, 2.6
resolution of impeachment, offering by Delegates or Resident Commissioners, § 2
Incompatible Offices
compensation, §§ 4, 5
declination, relationship to, § 4
duties, § 4
emoluments, prohibition on increasing, § 4
executive branch offices, § 4
generally, §§ 3, 4
judicial branch offices, § 4
leaves of absence, relationship to, §§ 4, 4.1
military service, relationship to, §§ 4, 4.1
oath, relationship to, §§ 4, 4.2, 4.3
resignation, relationship to, §§ 4, 4.4
"Saxbe fix," § 4
Senate service, § 4
state offices, relationship to, §§ 4, 4.3, 4.4
temporary offices, § 4
term of office, relationship to, §§ 4, 4.2
vacancies created by, § 4
Joint Committees
Delegates and Resident Commissioners, appointment to, § 2
Journal
copies provided to Members, § 6
Leaves of Absence
compensation, effect on, §§ 5, 5.6
incompatible offices, relationship to, §§ 4, 4.1
oath, relationship to, § 5

procedure, §§ 5, 5.5, 5.6, 5.7
unanimous consent to obtain, §§ 5, 5.5, 5.6, 5.7
Members
allowances, see **Members' Representational Allowance (MRA)**
compensation, § 5
Congressional Record, copies provided to, § 6
death gratuities, §§ 5, 5.2
Delegates and Resident Commissioners distinguished, § 2
ethics rules, see **Ethics**
franking privilege generally, § 6
incompatible offices, see **Incompatible Offices**
Journal, copies provided to, § 6
leaves of absence generally, § 5
oath of office, see **Oath of Office**
office and staff, see **Members' Office and Staff**
privileges and immunities generally, §§ 7, 8, 9
qualifications, § 3
salary and benefits, § 5
service of process, §§ 7, 7.1, 7.2, 7.3
travel, § 5
Members' Office and Staff
allowances generally, §§ 5, 6
allowances, historical practices regarding, §§ 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6
Code of Official Conduct, applicability, § 6
district offices, § 6
ethics rules regarding, § 6
floor privileges for Members' staff, § 6.9
generally, § 6
House Page program, § 6
Members' Representational Allowance (MRA), §§ 5, 6, 6.7, 6.17
Office of Congressional Workplace Rights, § 6
Office of Diversity and Inclusion, § 6
Office of Employee Advocacy, § 6
office space, § 6
staff employment, rules regarding, § 6
vacancies, effect of, §§ 6, 6.8, 6.11
Members' Representational Allowance (MRA)
adjustments, §§ 5, 6, 6.17
allowances, former rules regarding, §§ 5, 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6
Chief Administrative Officer (CAO), publication of disbursements by, § 6
Committee on Ethics, role regarding, § 6
Committee on House Administration, role regarding, §§ 5, 6, 6.7, 6.17
franking privilege, relationship to, § 6
history, §§ 5, 6, 6.7
House Communications Standards Commission, regulations issued by, §§ 6, 6.12
Motion to Adjourn
see **Adjournment**
Motion to Recommit
Delegates and Resident Commissioners, ability to offer, § 2.3
Motion to Reconsider
Delegates and Resident Commissioners, inability to offer, § 2
Motion to Refer
Delegates and Resident Commissioners, ability to offer, §§ 2, 2.1
Northern Mariana Islands
Delegates from, § 2
Oath of Office
challenging the right to be sworn, § 3
compensation, relationship to, §§ 5, 5.1
Delegates and Resident Commissioners, requirement to take, § 2
incompatible offices, relationship to, §§ 4, 4.2, 4.3
leaves of absence, relationship to, § 5

qualifications, relationship to, § 3
Party Organization
committee assignments, role regarding Delegates and Resident Commissioners, §§ 2, 2.8
compensation of floor leaders, § 5
Delegates and Resident Commissioners, membership in, § 2
floor leaders, compensation of, § 5
seniority of Delegates and Resident Commissioners, §§ 2, 2.8
Philippine Islands
Resident Commissioners from, § 2
Points of Order
Delegates and Resident Commissioners, authority to raise, § 2
Privilege from Arrest
constitutional provisions, §§ 7, 9
Delegates and Resident Commissioners, applicability, § 9
generally, §§ 7, 9
history, §§ 7, 9
Puerto Rico
Resident Commissioner from, § 2
Qualifications
age, § 3
citizenship, § 3
constitutional provisions regarding, § 3
Delegates and Resident Commissioners, statutory requirements, § 3
exclusion, relationship to, § 3
impeachment, relationship to, § 3
inhabitancy, § 3
loyalty, § 3
oath, relationship to, § 3
Powell v. McCormack, § 3
Questions of Privilege
Delegates and Resident Commissioners not permitted to vote on articles of impeachment via, §§ 2, 2.6
franking privilege, resolutions regarding, §§ 6, 6.13, 6.14
Speech or Debate immunity, resolution regarding, § 8.2
Quorums
Committee of the Whole, Delegates and Resident Commissioners counted, § 2
Delegates and Resident Commissioners counted in Committee of the Whole, § 2
Reconsideration
see **Motion to Reconsider**
Resignation
compensation, effect on, § 5
incompatible offices, relationship to, §§ 4, 4.4
Rules of the House
amendments to standing rules regarding compensation, §§ 5, 5.11, 5.12, 5.13
Federal Salary Act of 1967, § 5
House precedents, publication and distribution of, § 6
House Rules and Manual, publication and distribution of, § 6
statutory rulemaking related to Members' salaries, § 5
Salary and Benefits of Members
see **Compensation**
"Saxbe fix"
see **Incomptaible Offices**
Select Committees
Delegates and Resident Commissioners, appointment to, §§ 2, 2.10
Sergeant–at–Arms
compensation of Members, former role regarding, §§ 5, 5.10
salary of Members, former role regarding, §§ 5, 5.10
salary of Members, litigation involving, §§ 5, 5.10
Service of Process
administrative subpoenas, § 7.9
Delegates and Resident Commissioners, procedure, §§ 7, 7.4

executive session material, §§ 7, 7.5
former practice, §§ 7.6, 7.7, 7.8, 7.9
Members, procedure, §§ 7, 7.1, 7.2, 7.3
Rule VIII procedures, §§ 7, 7.1, 7.2, 7.3
Speaker of the House, role regarding, §§ 7, 7.1

Speaker of the House
compensation, § 5
compensation of Members, role regarding, § 5
Delegates and Resident Commissioners may not vote in election of, §§ 2, 2.5
election, Delegates and Resident Commissioners may not vote in, §§ 2, 2.5
service of process, role regarding, §§ 7, 7.1

Speech or Debate Immunity
constitutional provisions, § 8
decorum rules, relationship to, §§ 8, 8.1
ethics rules, applicability, § 8
generally, § 8
Hutchinson v. Proxmire, § 8
In re Search of Elec. Commc'ns, § 8
Kilbourn v. Thompson, § 8
legislative acts, definition, § 8
prayer, constitutionality challenged, § 8
questions of privilege involving, § 8.2
staff, applicability, § 8
United States v. Brewster, § 8
United States v. House Rayburn Office Building, § 8
United States v. Johnson, § 8
waivers, § 8

Travel
CODELs, § 5
mileage expenses, § 5
reimbursements, § 5

Unanimous Consent
Delegates and Resident Commissioners, authority to object, §§ 2, 2.4
Delegates and Resident Commissioners, authority to propose requests, § 2
Delegates and Resident Commissioners may not sign discharge petitions via, §§ 2, 2.7
discharge petitions, request to allow Delegates and Resident Commissioners to sign, §§ 2, 2.7
leaves of absence transacted via, §§ 5, 5.5, 5.6, 5.7

U.S. Virgin Islands
Delegates from, § 2

Virgin Islands
see **U.S. Virgin Islands**

Voting
Committee of the Whole, authority for Delegates and Resident Commissioners to vote in, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17
Delegates and Resident Commissioners, authorities and limitations, §§ 2, 2.11, 2.12, 2.13, 2.14, 2.15, 2.17
Delegates and Resident Commissioners, prohibition on voting in Speaker election, §§ 2, 2.5
disqualification for personal or pecuniary interest, § 5
leaves of absence, statements regarding missed votes, § 5
proxy voting, § 5
Speaker election, authority to vote in, §§ 2, 2.5

CHAPTER 8

Elections and Election Campaigns

A. Apportionment; Voting Districts
§ 1. Constitutional and Statutory Requirements
§ 2. Districting and Redistricting

B. Time, Place, and Regulation of Elections
§ 3. State and Federal Jurisdiction over House Elections
§ 4. Vacancies; Continuity of Operations

C. Campaign Practices
§ 5. Election Campaigns and Campaign Financing Regulation
§ 6. The Federal Election Commission
§ 7. House Ethics Rules

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A. Apportionment; Voting Districts

§ 1. Constitutional and Statutory Requirements

Pursuant to article I, section 2, clause 3, of the U.S. Constitution, Members of the House of Representatives are to be "apportioned among the several States . . . according to their respective numbers."[1] This process of allocating Representatives to the states based on population can be described as proceeding in three distinct phases. First, information regarding the population of each state must be compiled via the taking of the decennial census. Then, Congress (by law) must make the formal allocation of Representatives to each state—a process known as "apportionment."[2] Finally, each state must then decide how constituencies within the state are to elect each of its Representatives—a process known as "districting" (or "redistricting").[3] Over the course of its history, the United States has chosen a variety of methods to effectuate each of these tasks, consistent with constitutional requirements.

The Census

With respect to the taking of the census, the Constitution provides that, "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct."[4] Pursuant to the same clause, each state is to receive at least one Representative, and there shall be no more than one Representative per 30,000 people.[5] The

1. *House Rules and Manual* § 14 (2021).
2. For earlier treatment of apportionment issues, see 1 Hinds' Precedents §§ 297–308; 6 Cannon's Precedents §§ 38–52; and Deschler's Precedents Ch. 8 §§ 1, 2.
3. For earlier treatment of issues relating to districting or redistricting, see 1 Hinds' Precedents §§ 309–319; 6 Cannon's Precedents §§ 53, 54; and Deschler's Precedents Ch. 8 §§ 3, 4.
4. U.S. Const. art. I, § 2, cl. 3; *House Rules and Manual* § 15 (2021).
5. *Parliamentarian's Note:* During the First Congress, the House and Senate passed a series of 12 constitutional amendments, ten of which would later be known as the Bill of Rights. The remaining two amendments were not ratified by the requisite number of states when initially proposed. One such amendment achieved ratification in 1992 and became the 27th Amendment to the Constitution. The remaining amendment has never been ratified. That amendment, the so–called "Congressional Apportionment Amendment" would have required one representative per 30,000 constituents until the size of the House reached 100 Members; thereafter one Representative per 40,000 constituents until the size of the House reached 200 Members; and thereafter one Representative per 50,000 constituents. Had this amendment been adopted, the current

Constitution itself provided the initial allocation of 65 Representatives to the original 13 states.[6] The first census was taken in 1790, and has been taken every ten years since that time.[7]

Under the original terms of the Constitution, the census count included free persons, excluded "Indians not taxed," and counted only three–fifths of enslaved persons.[8] The abolishment of slavery by the 13th Amendment to the Constitution[9] rendered moot the provision regarding enslaved persons, and section 2 of the 14th Amendment affirmatively revised the apportionment requirements as follows: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."[10] In 1924, Congress passed two laws regarding the status of Native Americans and their relationship to Federal taxation. The Indian Citizenship Act[11] conferred U.S. citizenship on all Native Americans born within the territorial limits of the United States. The Revenue Act of 1924[12] expanded the category of persons subject to Federal taxation to include Native Americans. Thus, following the enactment of these laws (and decisions of the Supreme Court relating to taxation of Native Americans),[13] there were no longer considered any individuals in the category "Indians not taxed" for census–taking purposes. The 1940 census message from the executive affirmatively noted that Native Americans had been included in the tabulation.[14]

Section 2 of the 14th Amendment to the Constitution also provides that a state's representation in the House may be proportionally reduced by Congress if the state denies otherwise qualified inhabitants the right to vote.[15] This authority, however, has never been used to reduce the number of Members to which a state is entitled under the most recent census.[16]

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population of the United States would have resulted in a House of Representatives of over 6,000 Members.

6. The initial apportionment of Representatives was as follows: New Hampshire, three Representatives; Massachusetts, eight; Rhode Island, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

7. *House Rules and Manual* § 15 (2021).

8. U.S. Const. art. I, § 2, cl. 3; *House Rules and Manual* § 15 (2021).

9. *House Rules and Manual* § 224 (2021).

10. *House Rules and Manual* § 226 (2021).

11. P.L. 68–175, 43 Stat. 253.

12. P.L. 68–176, 43 Stat. 253.

13. See, *e.g.*, *Superintendent* v. *Commissioner,* 295 U.S. 418 (1935).

14. See Deschler's Precedents Ch. 8 §§ 1.1, 2.3.

15. *House Rules and Manual* § 226 (2021).

16. For an attempt to offer an amendment to an apportionment bill to require the President to reduce the representation of certain states (held to be nongermane), see

The executive branch is responsible for conducting the decennial census. During the early 19th century, the census was taken by U.S. Marshals under the auspices of the Department of State. In 1849, jurisdiction over the census was transferred to the Department of the Interior. In 1902, Congress established a permanent Census Bureau, which was moved the following year into the newly–created Department of Commerce and Labor. When the Departments of Commerce and Labor were separated in 1913, the Census Bureau was retained by the Department of Commerce, where it remains today.[17]

Although originally designed as a simple count of population, the census now includes additional information and statistics to be used for purposes other than congressional apportionment.[18] The results of each decennial census are transmitted to the House via presidential message.[19]

Pursuant to clause 1(n)(8) of rule X, the Committee on Oversight and Reform has jurisdiction over "Population and demography generally, including the Census."[20] Measures relating to the census are therefore referred by the Speaker to that committee. Under a former line of precedents involving matters of "constitutional privilege," measures concerning the census were accorded high privilege and could be brought up on the floor at virtually any time.[21] However, in 1926, Speaker Nicholas Longworth of Ohio overturned those earlier precedents by ruling that reapportionment legislation was not privileged under House rules.[22] In so ruling, Speaker Longworth held that such constitutional matters are "directory" rather than "mandatory" and that the regular rules for the consideration of nonprivileged legislation should apply. Today, matters relating to the census, apportionment, or districting enjoy no special status within the House.

Apportionment

Following the transmittal of census data by the executive to Congress, Congress uses that data to allocate Representatives to each state consistent

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Deschler's Precedents Ch. 8 § 2.7. See also Deschler's Precedents Ch. 8 § 2.8 (an amendment requiring a report on the number of citizens denied the right to vote ruled not germane to a civil rights bill).

17. For more on the history of the Census Bureau, see https://www.census.gov/history/www/census_then_now/ (last visited Oct. 19, 2022).

18. See Deschler's Precedents Ch. 8 § 2.1.

19. See, *e.g.*, Deschler's Precedents Ch. 8 § 2.2. For presidential messages and communications generally, see Deschler's Precedents Ch. 35; and Precedents (_____) Ch. 35.

20. *House Rules and Manual* § 732 (2021).

21. See 1 Hinds' Precedents §§ 305, 306. See also 6 Cannon's Precedents §§ 49, 50.

22. See Deschler's Precedents Ch. 8 §§ 1.2, 2.4. See also 6 Cannon's Precedents § 48.

with constitutional[23] requirements—a process known as "apportionment."[24] Throughout the 19th century, Congress used a variety of mathematical models to determine how seats in the House should be allocated.[25] Until the 1920 census, Congress would enact a new law apportioning seats to the several states. However, the 1920 census proved controversial[26] and Congress was unable to enact the required legislation. The election of Members to the House throughout the 1920s thus proceeded under the apportionment made pursuant to the prior census. In 1929, the impasse was finally resolved, and Congress passed the Reapportionment Act of 1929 (also known as the Permanent Apportionment Act of 1929).[27] That act for the first time established in law a mathematical formula that would be used to apportion Representatives to the House automatically after each decennial census. The particular mathematical method of apportionment was specified as the method of "equal proportions."[28] Under the law, the executive forwards the

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23. Although the Constitution does not specify a particular method of apportionment, it does require: (1) that the allocation of Representatives to the states be based on population (*i.e.*, "according to their respective numbers"); (2) that the number of Representatives shall not exceed one per 30,000; and (3) that, regardless of population, each state is entitled to at least one Representative. U.S. Const. art. I, § 2, cl. 3; U.S. Const. amend. XIV, § 2.

24. *Parliamentarian's Note:* Following the first census of 1790, Congress passed a law apportioning Members of the House to the states in proportion to their population. However, the method used to allocate Representatives was considered by President George Washington to be constitutionally defective, thus occasioning the first veto in American history. 3 ANNALS OF CONG. 539, 2d Cong. 1st Sess. (Apr. 5, 1792). A revised apportionment bill was signed into law on April 14, 1792.

25. *Parliamentarian's Note:* Over the course of the 19th century, there were three main competing methods of apportionment, known by the names of their original advocates: Hamilton, Jefferson, and Webster. Because of variations in population from state to state, it was impossible to divide a finite set of Members across the states such that each Member represented the same number of people. Each method thus involved a slightly different way of treating remainders and fractional seats. Jefferson's method was generally used prior to 1840, after which Webster's method was more common. In the latter part of the 19th century, Hamilton's method (also known as Vinton's method) gained prominence. In the 20th century, a new formula, known as the method of "equal proportions" (also known as the Huntington–Hill method), was established in law as the mechanism to allocate seats in the House following a decennial census. See Deschler's Precedents Ch. 8 § 2.6.

26. The results of the 1920 census revealed that, for the first time, a majority of Americans lived in urban as opposed to rural areas. Conflict between urban and rural interests in Congress prevented the enactment of reapportionment legislation based on the 1920 census numbers.

27. P.L. 71–13, 46 Stat. 21. These provisions of law have been codified at 2 U.S.C. §§ 2a *et seq*.

28. See *Apportionment and Redistricting Process for the U.S. House of Representatives,* CRS Report R45951 (Oct. 10, 2019).

census results to Congress, and applies the method of equal proportions to indicate how many seats in the House each state shall receive. The Clerk of the House is then required, within 15 calendar days, to submit a formal certification of these numbers to the executive branch of each state.[29]

With respect to the total number of Representatives to be allocated to the states, ad hoc adjustments were replaced in the 20th century by a statutory cap. Throughout the 19th century, each census would typically be followed by a new apportionment law that increased the size of the membership of the House and divided the new total among the states.[30] Thus, the House grew from its original 65 Members in 1789, to over 100 Members after the first census, to over 200 Members in 1823, and over 300 Members in 1883.

The Apportionment Act of 1911[31] established the size of the House at 435 Members—a total number that has remained unchanged (with one exception) to this day.[32] Following the admission of Alaska and Hawaii as states in 1959, the size of the House was temporarily increased to 437.[33] However, following the 18th decennial census in 1960, the size of the House was returned to 435 Members.

The (constitutional) apportionment of Representatives to the House is an entirely separate process from the (statutory) allocation of nonvoting Delegates or Resident Commissioners. Over the course of its history, the United States has provided for nonvoting representation to the House from U.S. territories (such as the U.S. Virgin Islands or Guam), commonwealths (such as Puerto Rico and the Northern Mariana Islands), and Federal districts (such as the District of Columbia).[34] The Representatives from such areas have been styled "Delegates" or "Resident Commissioners."[35] The number

29. 2 U.S.C. § 2a(c).

30. *Parliamentarian's Note:* In the 19th century, there were only two instances of the size of the House being reduced following a decennial census. Following the sixth decennial census in 1840, the size of the House was reduced from 242 to 223 Members. Between the seventh decennial census in 1850 and the eighth decennial census in 1860, three new states were admitted and California was apportioned two additional seats—increasing the number of Representatives from 233 to 239. However, following the eighth census, the original total number of seats from the 1850 apportionment law was retained, and those 233 seats reapportioned accordingly.

31. P.L. 62–5, 37 Stat. 13.

32. *Parliamentarian's Note:* The Apportionment Act of 1911 divided 433 seats among the existing states, and provided for one Representative each for the territories of Arizona and New Mexico should they be admitted as states before the next census (which they were). The Reapportionment Act of 1929 reiterated the 435–Member total and mandated automatic reapportionment using the method of equal proportions.

33. See Deschler's Precedents Ch. 8 § 2.

34. For more on Delegates and Resident Commissioners generally, see Deschler's Precedents Ch. 7 § 3; and Precedents (Smith) Ch. 7 § 2.

35. For an overview of the history of Delegates and Resident Commissioners to the House, see *Delegates to the U.S. Congress: History and Current Status,* CRS Report R40555 (Aug. 25, 2015).

of such Delegates and Resident Commissioners depends on the statute authorizing such representation. For example, when the Philippines was a territorial possession of the United States, it was represented for a time by two Resident Commissioners. Currently, there is one nonvoting Delegate or Resident Commissioner per jurisdiction having such representation in the House.[36]

As with legislation related to the census, legislation relating to apportionment enjoys no special privilege in the House, and must be considered under the rules for ordinary (nonprivileged) measures.[37] Pursuant to clause 1(l)(3) of rule X, the Committee on the Judiciary has jurisdiction over "Apportionment of Representatives."[38] This same provision has been interpreted to encompass state redistricting standards as well.[39]

§ 2. Districting and Redistricting

The process of apportioning Representatives to the states should be distinguished from the process of dividing the states into districts to elect those Representatives. As described above, the apportionment process occurs at the Federal level, via the gathering of census data and the use of statutory formulas to allocate Representatives. The states themselves have no role in apportionment. By contrast, the districting (or redistricting) process occurs primarily at the state level, via the enactment of state laws that divide the state into districts whose constituencies elect their Representatives.

Although the states are primarily responsible for the districting process, the Constitution grants Congress the authority to enact laws that supersede state procedures.[1] Over the course of the 19th century, Congress would periodically pass laws mandating that certain principles be adhered to when the states exercise their authority to create congressional districts. The first such Federal law was enacted in 1842,[2] and required states to use single–

36. Statutes authorizing nonvoting Delegates or Resident Commissioners to the House have been codified as follows: 48 U.S.C. §§ 891–894 (Resident Commissioner from Puerto Rico); 2 U.S.C. § 25a (Delegate from the District of Columbia); 48 U.S.C. §§ 1711–1715 (Delegate from Guam); 48 U.S.C. §§ 1711–1715 (Delegate from the U.S. Virgin Islands); 48 U.S.C. §§ 1731–1735 (Delegate from American Samoa); and 48 U.S.C. §§ 1751–1757 (Delegate from the Northern Mariana Islands).

37. See Deschler's Precedents Ch. 8 §§ 1.2, 2.4. See also 6 Cannon's Precedents § 48.

38. *House Rules and Manual* § 729 (2021).

39. See Deschler's Precedents Ch. 8 § 3.2.

1. U.S. Const. art. I, § 4 ("The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.").

2. 5 Stat. 491.

Member districts only.[3] It further required that each district be composed of continuous territory.[4] In 1872, another law required that districts be created such that each district in the state would have approximately the same population.[5] Another law, enacted in 1901, required districts to be as compact as possible.[6] The Reapportionment Act of 1911 consolidated these three principles (compact, single–Member districts, of roughly equal population) into a single law articulating Federal standards for state districting.[7]

The Reapportionment Act of 1929 substantially revised the 1911 law, retaining the overall total of 435 Members, but instituting an automatic process for apportioning Representatives based on the method of "equal proportions." In revising the apportionment laws, the act of 1929 failed to reiterate the earlier Federal standards for state redistricting processes. In a 1932 case,[8] the Supreme Court confirmed that these Federal standards were no longer applicable. Over the ensuring decades, the issue of authority over state districting standards was extensively litigated in the courts. In 1946, the Supreme Court declined to enter the "political thicket" of state districting, declaring that such issues were nonjusticiable political questions.[9] The seminal case of *Baker* v. *Carr* in 1962 essentially reversed this analysis, articulating new standards for determining whether a nonjusticiable political question exists.[10] Relying on the Equal Protection Clause of the 14th Amendment, the Court held that the malapportioned state legislative districts violated the principle of "one person, one vote." Two years later, the issue of congressional districting came directly before the Court in the case *Wesberry* v. *Sanders*.[11] In that case, the Court held that a Georgia districting law that allowed for wide disparities in population among districts was unconstitutional (effectively reinstating the earlier statutory requirement that congressional districts within a state be roughly equal in population).[12] Subsequent case law articulated factors that a court may consider

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3. See Deschler's Precedents Ch. 8 § 3. The single–Member district requirement was repealed in 1850 (9 Stat. 428), but reinstated in 1862 (12 Stat. 572).

4. See Deschler's Precedents Ch. 8 § 3.

5. 17 Stat. 28.

6. 31 Stat. 733.

7. *Parliamentarian's Note:* Although these Federal standards for state districting were established in law, the House demonstrated considerable reluctance to reject the seating of Members who had been elected via procedures that did not meet these standards. See, *e.g.*, 1 Hinds' Precedents § 310 (Member–elect from an at–large district allowed to take his seat). See also Deschler's Precedents Ch. 8 §§ 3, 3.7. For more on election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

8. *Wood* v. *Broom,* 287 U.S. 1 (1932).

9. *Colegrove* v. *Greene,* 328 U.S. 549 (1946).

10. 369 U.S. 186 (1962).

11. 376 U.S. 1 (1964).

12. *Parliamentarian's Note:* Due to the mathematical impossibility of creating districts exactly equal in population, the Supreme Court has struggled with the degree to which

in determining whether a state's districting plan meets constitutional muster. Such factors include: the compactness of the districts, the contiguity of the districts (*i.e.*, whether they are composed of continuous territory), and whether the districts cross geographic or political/municipal boundaries.[13]

With respect to the issue of whether states could provide for at–large or multi–Member districts, Congress affirmatively reinstated the requirement of single–Member districts only via the enactment of a new statute in 1967.[14] The law provides that states with more than one Representative must create "a number of districts equal to the number of Representatives to which such State is so entitled" and that no district may elect more than one Representative.[15]

B. Time, Place, and Regulation of Elections

§ 3. State and Federal Jurisdiction over House Elections

The U.S. Constitution divides jurisdiction over elections to the House between the House and the states. Article I, section 4, clause 1, provides: "The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations."[1] In

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a congressional district map may deviate from the theoretical ideal. For subsequent cases addressing those questions, see, *e.g.*, *Kirkpatrick* v. *Preiser,* 394 U.S. 526 (1969); *Mahan* v. *Howell,* 410 U.S. 315 (1973); and *Karcher* v. *Daggett,* 462 U.S. 725 (1983). The Court has also addressed the issue of which individuals should be counted in determining the population of a district. See *Evenwel* v. *Abbott,* 578 U.S.____ (2016).

13. See, *e.g.*, *Reynolds* v. *Sims,* 377 U.S. 533 (1964). The courts have also been responsive to claims that improper districting by states has resulted in the denial or dilution of voting rights of minority populations. See, *e.g.*, *United Jewish Organizations, Inc.* v. *Carey,* 430 U.S. 144 (1977); *Thornburg* v. *Gingles,* 478 U.S. 30 (1986); *Shaw* v. *Reno,* 509 U.S. 630 (1993); *Shaw* v. *Hunt,* 517 U.S. 899 (1996); *Easley* v. *Cromartie,* 532 U.S. 234 (2001); and *Shelby County* v. *Holder,* 570 U.S. 529 (2013). The extent to which districts may be drawn to favor one political party has also been the subject of litigation, though majority opinions announcing clear standards have been rare. See, *e.g.*, *Davis* v. *Bandemer,* 478 U.S. 109 (1986); *Vieth* v. *Jubelirer,* 541 U.S. 267 (2004); *LULAC* v. *Perry,* 548 U.S. 399 (2006); *Gill* v. *Whitford,* 585 U.S.____ (2018); *Lamone* v. *Benisek,* 588 U.S.____ (2019); and *Rucho* v. *Common Cause,* 588 U.S.____ (2019).

14. P.L. 90–196, 81 Stat. 581. This law has been codified at 2 U.S.C. § 2c. See also Deschler's Precedents Ch. 8 § 3.3

15. 2 U.S.C. § 2c.

1. *House Rules and Manual* §§ 42–44 (2021).

practice, this concurrent jurisdiction over House elections has been resolved in favor of the states with respect to the administration of the elections themselves and the procedures for conducting them, while the House has maintained the authority to review (and in some cases override) actions by the states. Ultimately, the House has plenary authority, under the Constitution,[2] to judge which individuals have been properly elected to its membership.

The Supreme Court has held that Congress's power to prescribe regulations for the conduct of congressional elections is "comprehensive" and that it is within the power of Congress to provide "a complete code for congressional elections."[3] Despite this vast authority to regulate elections to the House, the House has traditionally deferred to the states with respect to the administration of such elections (including the validity of ballots, recount procedures, and similar matters). Ultimately, the House has the ability to refuse to seat Members–elect where state election procedures are considered deficient.[4]

Under the Constitution, voters in House elections must meet the qualifications that the state requires for elections to the "most numerous branch" of the state legislature.[5] In the earliest years of the republic, states would often mandate property requirements as a qualification for voting, but such conditions have long since been eliminated. Although courts have held that states may restrict the franchise in certain ways (for example, by requiring the absence of a criminal record to vote), states do not have unfettered discretion in this area, and must abide by other voter qualification provisions of the Constitution. For example, the 15th, 19th, 24th, and 26th amendments to the Constitution each impose restrictions on the ability of states to limit the franchise.[6]

In addition to these constitutional protections regarding the right to vote, Congress has enacted a variety of civil rights laws designed to safeguard the ability of citizens to exercise the franchise.[7] These laws provide Federal

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2. U.S. Const. art. I, § 5 ("Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . .").

3. *Smiley* v. *Holm*, 285 U.S. 355, 366 (1932).

4. For more on election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

5. U.S. Const. art. I, § 2.

6. The 15th Amendment states that the right to vote may not be denied or abridged based on "race, color, or previous condition of servitude" of the citizen. Similar language in the 19th Amendment eliminated restrictions based on sex, while the 26th Amendment expanded the franchise to anyone 18 years of age or older. The 24th Amendment prohibited denying the right to vote for failure to pay a poll tax.

7. See, *e.g.*, the Civil Rights Act of 1870 (16 Stat. 140); the Civil Rights Act of 1957 (P.L. 85–315, 71 Stat. 634); the Civil Rights Act of 1964 (P.L. 88–352, 78 Stat. 241); and the Voting Rights Act of 1965 (P.L. 89–110, 79 Stat. 437).

remedies for individuals whose right to vote was impeded or denied by their state or local governments. For example, section 5 of the Voting Rights Act of 1965[8] required covered jurisdictions to obtain preclearance from either the Attorney General or U.S. District Court for the District of Columbia before implementing any changes to state voting procedures, in order to ensure that such changes were not made to discriminate against particular groups of voters. In recent decades, laws such as the Help America Vote Act[9] have been enacted to provide states with Federal assistance in conducting their elections, particularly technical assistance with electronic voting equipment and other resources to help secure the integrity of the electoral process.

Virtually all states require eligible voters to first register and be placed on the voting rolls before being permitted to cast votes.[10] At the Federal level,[11] Congress enacted the National Voter Registration Act[12] in 1993 to require greater access to registration services (for example, by requiring states to provide voter registration materials at social service agencies). That act also permits registration via Federal form and prohibits removing voters from registration lists in certain circumstances.[13]

Congress has also enacted statutes designed to improve accessibility, both in the registration process and at state polling places. The Voting Accessibility for the Elderly and Handicapped Act, originally passed in 1984, requires states to provide accommodations at polling sites and registration locations for disabled or elderly voters.[14] Assistance and support for citizens overseas (particularly members of the military) to exercise their right to

8. 52 U.S.C. § 10304. In 2013, the Supreme Court held that the coverage formula in section 4 of the Voting Rights Act was unconstitutional, resulting in the inability to enforce the preclearance requirements of section 5. *Shelby County* v. *Holder,* 570 U.S. 529 (2013).

9. 52 U.S.C. §§ 20901 *et seq.*

10. North Dakota is the only state that does not require voters to register for Federal or state elections. Many states provide for automatic registration, and/or the ability to register on the same day as the election.

11. For jurisdiction over voter registration in Federal elections, see Deschler's Precedents Ch. 8 § 6 ("congressional authority to preempt state regulation extends to the registration process").

12. 52 U.S.C. §§ 20501 *et seq.*

13. See *Federal Role in Voter Registration: the National Voter Registration Act of 1993 and Subsequent Developments,* CRS Report R45030 (May 11, 2022).

14. 52 U.S.C. §§ 20101 *et seq.* The Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), while not directly concerned with voting procedures, has been interpreted by Justice Department regulations as encompassing accessibility issues at polling places. The Justice Department routinely publishes an "ADA Checklist for Polling Places" to assist states with compliance.

vote is provided by the Uniformed and Overseas Citizens Absentee Voting Act (most recently amended in 2009 by the Military and Overseas Voter Empowerment Act).[15]

Federal regulation of state election procedures extends beyond general elections to encompass party primaries as well.[16] As with state laws regarding the general election, Congress typically defers to the states to establish appropriate procedures for the conduct of primary elections. However, Congress has the authority to make laws that supersede such procedures.

Where Congress has asserted its role in regulating elections administered by the states, it has typically been to ensure that states conduct elections in compliance with their own procedures or to standardize procedures across states where necessary.[17] Ultimately, the House's sole authority to judge who has been properly elected to its membership provides a mechanism by which a state's administration of an election may be reviewed. Election contests may be brought in the House, either pursuant to its inherent authority under the Constitution or pursuant to the procedures of the Federal Contested Elections Act.[18] Investigations made while evaluating a contested election may involve an examination of the conduct of state election administrators, state election statutes, and state judicial opinions interpreting such statutes.[19]

With respect to nonvoting Delegates or Resident Commissioners who represent nonstate areas of the United States, the election of such individuals proceeds according to the statutes that create those positions.[20] There is no constitutional provision conferring jurisdiction over such elections to the territories, commonwealths, or districts themselves—only statutory provisions that may be altered by law at any time. As a result, Congress has a greater ability to impose specific requirements for the election of Delegates and Resident Commissioners than it does for the election of Members.[21]

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15. 52 U.S.C. §§ 20301 *et seq*.

16. See Deschler's Precedents Ch. 8 §§ 7.2–7.5.

17. See Deschler's Precedents Ch. 8 § 5 (". . . congressional regulation [of congressional elections] has been directed largely towards the failure of the states to ensure the regularity of elections under their own state laws.").

18. See Precedents (Smith) Ch. 9.

19. *Id.*

20. See 48 U.S.C. §§ 891–894 (Resident Commissioner from Puerto Rico); 2 U.S.C. §§ 25a (Delegate from the District of Columbia); 48 U.S.C. §§ 1711–1715 (Delegate from Guam); 48 U.S.C. §§ 1711–1715 (Delegate from the U.S. Virgin Islands); 48 U.S.C. §§ 1731–1735 (Delegate from American Samoa); and 48 U.S.C. §§ 1751–1757 (Delegate from the Northern Mariana Islands).

21. *Parliamentarian's Note:* The statutes creating the different Delegate and Resident Commissioner positions typically provide some amount of discretion to the territory or commonwealth to administer the election as it chooses. The House will generally defer to

§ 4. Vacancies; Continuity of Operations

The resignation of a Member from the House causes a vacancy in that congressional seat.[1] The resigning Member submits their resignation to an appropriate state official (most often the Governor), and such correspondence is laid before the House for the information of other Members. Members have sometimes resigned prospectively, *i.e.*, with a future effective date for the resignation, in which case the vacancy occurs when the resignation becomes effective.

A vacancy in a House seat may also arise due to the death or incapacity of the Member,[2] a Member–elect declining to take the seat,[3] the exclusion of a Member–elect from the House,[4] or the expulsion of a Member.[5] Because only the House has the constitutional authority to decide who is entitled to its membership, the House is the ultimate arbiter of when a vacancy exists in any of its seats. The House has been informed of the presumptive death of a Member–elect, and responded by declaring a vacancy in his congressional seat.[6] Where a Member became incapacitated (falling into a

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such laws in judging election contests in the same manner that it defers to state law. See, *e.g.*, Deschler's Precedents Ch. 8 § 5.5. See also Precedents (Smith) Ch. 9 § 20.2.

1. For resignations generally, see Deschler's Precedents Ch. 37; and Precedents (_____) Ch. 37.

2. See Deschler's Precedents Ch. 38; and Precedents (_____) Ch. 38. There have been instances where a candidate died just prior to the general election, but nevertheless succeeded in winning the seat posthumously. For example, Rep. Patsy Mink of Hawaii died before the general election for the 108th Congress, but was nevertheless elected. See Deschler's Precedents Ch. 38 §§ 2.5, 5.7. The resulting vacancy was filled by special election.

3. See, *e.g.*, 1 Hinds' Precedents § 415 (Member–elect never took his seat in the House, having been elected to the Senate). See also 2 Hinds' Precedents §§ 1230–1232, and 1234. There have also been historical instances of vacancies being created when a Member of the House accepts a constitutionally–incompatible office. See, *e.g.*, 1 Hinds' Precedents § 486. For more on incompatible offices generally, see Deschler's Precedents Ch. 7 §§ 13, 14; and Precedents (Smith) Ch. 7 § 4.

4. For exclusion generally, see Deschler's Precedents Ch. 12 § 14; and Precedents (_____) Ch. 12.

5. For expulsion generally, see Deschler's Precedents Ch. 12 § 13; and Precedents (_____) Ch. 12.

6. Rep. Nick Begich of Alaska and Rep. Hale Boggs of Louisiana were among the passengers of an airplane that disappeared between Anchorage and Juneau, on October 16, 1972. Based on an Alaskan judicial order declaring the presumptive death of Rep. Begich, the Governor of Alaska declared a vacancy and scheduled a special election to fill Begich's seat. Louisiana authorities took no action with regard to the status of Boggs' seat. The House subsequently adopted House Resolution 1, declaring a vacancy and providing for a funeral delegation to attend memorial services for the late Rep.

coma following a heart attack) but was reelected to the next Congress, the House adopted a privileged resolution declaring the seat vacant.[7] A vacancy may also arise where the House does not receive a certificate of election from relevant state officials, and no individual claims a right to the seat.[8]

When a vacancy occurs in a House seat, a new Member is elected via special election.[9] Special elections proceed according to the laws of the individual states. While the timing of general elections is a matter of Federal law, the timing of special elections is determined by relevant state laws. If the vacancy occurs within a certain numbers of days of the next regular election, state law may provide that the special election to fill the vacancy occur at the same time as the general election for the next Congress.[10]

Boggs. H. Res. 1, 119 CONG. REC. 15–16, 93d Cong. 1st Sess. (Jan. 3, 1973). See also Deschler's Precedents Ch. 38 §§ 2.15–2.17.

7. See H. Res. 80, 127 CONG. REC. 2916–17, 97th Cong. 1st Sess. (Feb. 24, 1981). The Member–elect (Gladys Noon Spellman of Maryland) never regained consciousness and passed away on June 19, 1988. See Deschler's Precedents Ch. 38 § 2.17.

8. *Parliamentarian's Note:* At the beginning of the 116th Congress, no certificate of election was issued to either of the candidates from the Ninth District of North Carolina, due to alleged ballot fraud. See 165 CONG. REC. H1 [Daily Ed.], 116th Cong. 1st Sess. (Jan. 3, 2019). Later that Congress, state officials communicated to the House that a special election would be held to fill the vacancy. See 165 CONG. REC. H2736 [Daily Ed.], 116th Cong. 1st Sess. (Mar. 14, 2019). At the beginning of the 117th Congress, no certificate of election had been received for the 22nd District of New York (due to the closeness of the election and ongoing, state–level recount procedures). 167 CONG. REC. H1 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 3, 2021). The election was finally certified on February 5, 2021, and the Member–elect was sworn in on February 11, 2021. 167 CONG. REC. H491–H492 [Daily Ed.], 117th Cong. 1st Sess. (Feb. 11, 2021). See also *House Rules and Manual* § 22a (2021).

9. *Parliamentarian's Note:* This is to be contrasted with vacancies that occur in Senate seats, which are filled by appointment by the state's Governor. U.S. Const. amend. XVII.

10. *Parliamentarian's Note:* Some state laws have special rules for conducting special elections that occur close to the next regularly scheduled general election. For example, in 1994, Oklahoma law provided that any vacancy that occurred after March 1 of an election year would be filled by the winner of the general election in November. An Oklahoma Member (Rep. James M. Inhofe) resigned his seat on November 15, 1994, in order to take a seat in the Senate. Mr. Steve Largent had already won his election to the same seat for the upcoming 104th Congress. Under Oklahoma law, the Governor of Oklahoma had the ministerial duty of "appointing" Mr. Largent to the vacant seat for the 103d Congress, following the resignation of Rep. Inhofe. Although state Governors do not have the authority to appoint persons to vacant House seats, the House deferred to state law and treated the Oklahoma procedures as a valid election of Mr. Largent to a seat in the 103d Congress. A privileged resolution was offered on November 29, 1994, to authorize the Speaker to administer the oath of office to Mr. Largent,

A special election proceeds in the same manner as a general election. The state certifies the winner of the election, and issues a certificate of election to the winning candidate.(11) The certificate is then forwarded to the Clerk of the House, and the Member–elect appears to take the oath of office. The oath is typically administered by the Speaker of the House, though a Speaker pro tempore may also perform this function.(12)

Pursuant to clause 5(d) of rule XX,(13) when a vacancy arises or is filled, the Chair announces to the House the new "whole number" of the House. The whole number of the House is the number of Members "chosen, sworn, and living, and whose membership in the House has not been terminated by resignation or by action of the House."(14)

Following the terrorist attacks of September 11, 2001, the House undertook several studies aimed at developing procedures that would be used to ensure the continuity of House operations in the wake of a catastrophic event.(15) One of the overarching concerns was how the House should respond to a mass casualty event where a substantial portion of its membership had been either killed or incapacitated. The most significant parliamentary question with regard to such a circumstance was how to address the Constitution's quorum requirements in the event that a regular (majority) quorum could not be formed.

At the beginning of the 109th Congress, the House adopted a new rule to address these issues. Clause 5(c) of rule XX provides procedures should the House find itself without a quorum due to "catastrophic circumstances." This rule establishes the concept of a "provisional number of the House" where a quorum based on the whole number of the House cannot be obtained. The provisional number of the House is determined on the basis of an extended call of the House (lasting multiple days) that reveals the inability to assemble a regular quorum. Members who are able to respond to said

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and referring the question of final right to the seat to the Committee on House Administration. See H. Res. 585, 140 CONG. REC. 29585–86, 103d Cong. 2d Sess. (Nov. 29, 1994). See also Precedents (Wickham) Ch. 2 § 3.9.

11. See Precedents (Wickham) Ch. 2 §§ 3.5, 3.6. Special elections may also become the subject of election contests in the same manner as general elections. See Deschler's Precedents Ch. 9 §§ 10.17, 10.18.

12. See Deschler's Precedents Ch. 6 § 12.8; and Precedents (Wickham) Ch. 6 §§ 11, 12.4.

13. *House Rules and Manual* § 1024b (2021).

14. Rule XX, clause 5(c)(7)(B); *House Rules and Manual* § 1024a (2021).

15. In May 2002, the House established a bipartisan Continuity of Congress Working Group to investigate what changes should be made to House rules to account for catastrophic circumstances. For remarks by the cochair of the Working Group, see 148 CONG. REC. 22676–77, 107th Cong. 2d Sess. (Nov. 14, 2002). For remarks by the chair of the Committee on Rules regarding these continuity of operations issues, see 150 CONG. REC. 19033–41, 108th Cong. 2d Sess. (Sept. 22, 2004).

quorum call constitute the provisional number of the House, and the Constitution's quorum requirements are interpreted with reference to that provisional number.[16]

A House resolution, adopted in 2002 and sent to the chief executive official of each state, encouraged each state to examine the policies and procedures for conducting special elections so that vacancies "may be filled in a timely fashion."[17] Some states in response reported information about their special election practices to the House via memorial.[18]

Congress also addressed the possibility of numerous vacancies in House seats though changes in the statutory law regarding special elections.[19] In "extraordinary circumstances" (defined as over 100 vacancies in the House), the statute authorizes expedited filling of such vacancies via special election.[20] Such special elections "shall take place not later than 49 days" after the Speaker of the House has announced the existence of the required vacancies.[21] A joint resolution proposing an amendment to the Constitution regarding the filling of House vacancies in extraordinary circumstances was considered in the House, but failed to reach the necessary two–thirds supermajority for passage.[22]

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16. *Parliamentarian's Note:* When the provisional quorum rule was first adopted, some Members questioned whether the rule was consistent with the Constitution's quorum requirements. Rep. Brian Baird of Washington attempted to raise a "constitutional point of order" against the resolution adopting rules for the 109th Congress, but the Speaker declined to entertain the point of order. As an alternative, Rep. Baird raised the question of consideration with respect to the resolution, which was agreed to by the House. See 151 CONG. REC. 44–46, 109th Cong. 1st Sess. (Jan. 4, 2005).

17. H. Res. 559, 148 CONG. REC. 18919–25, 107th Cong. 2d Sess. (Oct. 2, 2002).

18. See 148 CONG. REC. 22946, 107th Cong. 2d Sess. (Nov. 17, 2002).

19. See P.L. 109–55, 119 Stat. 588, codified at 2 U.S.C. § 8.

20. 2 U.S.C. § 8(b)(4)(A).

21. 2 U.S.C. § 8(b)(2).

22. H.J. Res. 83, 150 CONG. REC. 11287–305, 108th Cong. 2d Sess. (June 2, 2004). In 1960, the House considered a Senate measure proposing to amend the Constitution to provide a mechanism for state officials to fill vacancies in the House in certain circumstances. However, the House amended the Senate measure to remove that provision (the remaining text would later be ratified as the 23rd Amendment). See S.J. Res. 39, 106 CONG. REC. 12571, 86th Cong. 2d Sess. (June 14, 1960). For an earlier constitutional amendment passed by the Senate regarding filling House vacancies (but not considered by the House), see S.J. Res. 39, 100 CONG. REC. 7658–69, 83d Cong. 2d Sess. (June 4, 1954).

C. Campaign Practices

§ 5. Election Campaigns and Campaign Financing Regulation

The constitutional authorities described in the preceding sections of this chapter allow Congress to regulate the time, place, and manner of elections to the House, and give the House the exclusive right to judge the elections and returns of its own Members. The Supreme Court has further clarified that these constitutional authorities over election processes extend to issues regarding voter registration, primary elections, and election campaign practices.(1) This last category is the subject of this section, with an emphasis on the regulation of campaign financing of House elections.

Although election campaigns have been a part of American democracy since its founding, it was not until the 20th century that the first Federal laws were passed regulating the financing of election campaigns.(2) One of the earliest of such laws was the Tillman Act of 1907,(3) which prohibited corporations from contributing to political campaigns. The National Publicity Act(4) followed in 1910, instituting financial disclosure requirements on political parties, and limiting the amount of money such parties could contribute to House elections. Amendments to these laws were consolidated into a revision of campaign finance laws with the passage of the Federal Corrupt Practices Act of 1925.(5)

In 1928, the House established its first "special committee" to investigate campaign practices and campaign expenditures.(6) The committee was to report on "the campaign expenditures of the various presidential candidates, vice presidential candidates, senatorial candidates, and candidates for the House of Representatives in both parties, the names of the persons, firms,

1. *Smiley* v. *Holm,* 285 U.S. 355, 366 (1932).
2. "Prior to 1890 no law had been passed in the United States regulating the use of money in elections. Indeed, until the presidential election of 1904 the subject of campaign funds had not received any serious public consideration." JAMES K. POLLOCK, JR., PARTY CAMPAIGN FUNDS (A.A. Knopf 1926), p. 7.
3. P.L. 59–36, 34 Stat. 864. A similar restriction on contributions from unions was passed in 1947, over the veto of President Harry Truman. See P.L. 80–101, 61 Stat. 136.
4. P.L. 61–274, 36 Stat. 822. This act was also known as the Federal Corrupt Practices Act of 1910.
5. P.L. 68–506, 43 Stat. 1070. For earlier treatment of campaign laws under this act, including relevant court cases and election contests, see 6 Cannon's Precedents §§ 67–79.
6. H. Res. 232, 69 CONG. REC. 10688, 70th Cong. 1st Sess. (May 29, 1928).

or corporations subscribing, the amount contributed, the method of expenditure of said sums, and all facts in relation thereto, not only as to the subscriptions of money and expenditures thereof but as to the use of any other means or influence, including the promise or use of patronage, and all other facts in relation thereto that would not only be of public interest but would aid the Congress in any necessary remedial legislation."[7] This committee was further provided with subpoena authority and other investigative powers.

Similar committees were formed by the House in each successive Congress for over 40 years.[8] Although the investigative scope of these committees varied over time, they were primarily focused on collecting data on campaign expenditures—the individuals, groups, and other entities contributing to election campaigns, the amounts of such contributions, the amount of spending by candidates for House seats, etc. These committees were also charged with investigating whether any Federal laws regarding campaign financing had been violated. On occasion, information from such special committees would be found to have bearing on an election contest pursued with regard to a particular House election.[9] Jurisdiction over the same campaign issues was formally given to the Committee on House Administration in the 94th Congress.[10]

§ 6. The Federal Election Commission

Prior to 1971, campaign financial disclosures for House Members were required to be reported to the Clerk of the House. The Clerk, however, had no method to enforce this requirement, and over time compliance waned. Between 1971 and 1976, a series of statutory enactments on the part of the legislative branch and constitutional rulings on the part of the judicial branch laid the foundation for current Federal regulation of election campaigns. In 1971, Congress passed the Federal Election Campaign Act (FECA),[1] repealing the earlier Federal Corrupt Practices Act. FECA initially divided its enforcement powers among the Clerk of the House (for

7. *Id.*

8. See Deschler's Precedents Ch. 8 § 14. See also "Guide to the Records of the United States House of Representatives at the National Archives, 1789–1989: Bicentennial Edition," https://www.archives.gov/legislative/guide/house/chapter-22.html (last visited Aug. 25, 2022).

9. See Deschler's Precedents Ch. 8 §§ 14.4–14.8.

10. See Deschler's Precedents Ch. 8 § 10.10.

1. P.L. 92–225, 86 Stat. 3.

House Members),[2] the Secretary of the Senate (for Senators), and the Comptroller General of the General Accounting Office[3] (for the presidential campaign). This structure was fundamentally changed by the FECA amendments of 1974[4]—the law that created the Federal Election Commission (FEC).

The FEC was empowered with enforcing the disclosure and expenditure limits imposed by FECA. It was to be headed by six commissioners—two to be appointed by the President, two to be appointed by the President pro tempore of the Senate and two to be appointed by the Speaker of the House.[5] The Clerk of the House and the Secretary of the Senate were made ex officio, nonvoting members of the Commission. This structure for the commission was challenged as impermissibly mixing executive and legislative functions. The Supreme Court ultimately ruled that the commission's appointment structure violated the Constitution's principle of separation of powers.[6] Congress responded by passing the FECA amendments of 1976.[7] This act introduced a new organizational structure designed to pass constitutional scrutiny. The new FEC, still with six commissioners, would be appointed by the President with the advice and consent of the Senate. The act further stipulated that no more than three commissioners may belong to the same political party, and that most decisions of the commission would require four votes to be adopted. This appointment and voting structure was intended to foster independence and bipartisan decision–making.[8]

The 1974 amendments to FECA contained contribution limits to Federal campaigns, which restricted the amount of money that could be given to candidates seeking Federal office. The Supreme Court, in the same ruling that declared unconstitutional the FEC's original appointment structure, held that such contribution limits violated the First Amendment's right to free speech. Thus, the contribution limits were also repealed in the 1976

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2. For precedents relating to the Clerk's role in campaign finance regulation under the original 1971 act, see Deschler's Precedents Ch. 8 §§ 10.6–10.10.

3. *Parliamentarian's Note:* The General Accounting Office was redesignated as the Government Accountability Office in 2004.

4. P.L. 93–443, 88 Stat. 1263.

5. See Deschler's Precedents Ch. 8 § 10.11.

6. See *Buckley* v. *Valeo,* 424 U.S. 1 (1976).

7. P.L. 94–283, 90 Stat. 475.

8. *Parliamentarian's Note:* Although the bipartisan nature of the commission was designed to achieve fair and impartial regulation of campaign laws, it often had the effect of creating deadlock votes among the commissioners, where the agreement of four commissioners could not be obtained and action could not therefore be taken. Additionally, in recent years, the FEC has sometimes lost its policymaking quorum due to vacancies. This occurred in 2007, 2019, and 2020.

amendment. Further amendments to the act in 1979 simplified some of the act's reporting requirements and prohibited the use of campaign funds for personal purposes.[9]

The FEC may issue regulations to enforce campaign finance laws. Such regulations are subject to congressional disapproval via special procedures contained in statute.[10] Following the revisions to FECA made in 1979,[11] a disapproval resolution reported by a committee of the House has priority on the floor, and a motion to proceed to its consideration is deemed "highly privileged" under House rules.[12]

§ 7. House Ethics Rules

The statutes described above represent the primary mechanism by which the financing of congressional election campaigns is regulated. Thus, the enforcement of campaign financing rules is principally the role of executive branch entities, such as the Federal Election Commission (FEC) and the Department of Justice. However, campaign–related activities are, to a limited extent, also covered by House ethics rules. These rules have long provided guidelines and prohibitions regarding the use of campaign funds that are similar to the statutory provisions described in preceding sections.

Although the Code of Official Conduct devotes comparatively little attention to the issue of campaign financing relative to other matters, several longstanding provisions do address the proper use of campaign funds by Members. When the House first adopted its Code of Official Conduct in the 90th Congress in 1968, it contained a provision requiring Members to keep

9. P.L. 96–187, 93 Stat. 1339.

10. 52 U.S.C. § 30111(d). Any "rule, regulation, or form" promulgated by the Commission must first be submitted to Congress for its review. Pursuant to the original form of the statute, either House of Congress could then disapprove of the proposal within a specified time period. However, in 1983, the Supreme Court held that these types of "congressional veto" procedures in statute were unconstitutional, thus prohibiting the nullification of executive regulations by simple resolution of one House of Congress or concurrent resolution of both Houses. See *Immigration and Naturalization Service* v. *Chadha,* 462 U.S. 919 (1983). Thus, for the disapproval mechanism in the FECA to be effective, it must be done via a joint resolution of both Houses that is signed by the President.

11. P.L. 96–187, 93 Stat. 1339.

12. *Parliamentarian's Note:* Prior to the amendments of 1979, such disapproval resolution had no special privilege in the House. For an example of a disapproval resolution being considered pursuant to a special order of business resolution prior to the enactment of the 1979 amendments, see Deschler's Precedents Ch. 8 § 10.12.

"campaign funds separate from personal funds."[1] The same provision (with certain amendments) is retained in the current House rules as clause 6 of rule XXIII.[2] The Ethics Reform Act of 1989[3] made additional changes to the Code of Official Conduct, including a requirement that funds from campaign accounts may only be used for "bona fide campaign or political purposes."[4] Although it is rare for campaign–related activity to become the subject of an inquiry by the Committee on Ethics, there have been instances where Members have been reprimanded,[5] or censured[6] for failure to abide by either statutory or House ethics rules regarding the disclosure of campaign financing and proper use of campaign funds.[7]

§ 7.1 A Member has been reprimanded for, *inter alia,* failure to abide by campaign financing disclosure requirements, conversion of campaign funds to personal use, and the misuse of official resources for campaign purposes, in violation of House ethics rules and applicable law.

On July 31, 2020,[8] the House adopted a privileged report from the Committee on Ethics reprimanding a Member for filing false campaign financing reports, failing to properly disclosure campaign contributions, accepting impermissible campaign contributions, converting campaign funds for personal use, misusing official resources for campaign purposes, and pressuring official staff to perform campaign work:

IN THE MATTER OF REPRESENTATIVE DAVID SCHWEIKERT OF ARIZONA

Mr. [Theodore] DEUTCH [of Florida]. Madam Speaker, by direction of the Committee on Ethics, I offer a privileged resolution (H. Res. 1074) in the matter of Representative DAVID SCHWEIKERT, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

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1. H. Res. 1099, 114 CONG. REC. 8802, 90th Cong. 2d Sess. (Apr. 3, 1968).

2. *House Rules and Manual* § 1095 (2021).

3. P.L. 101–194, 103 Stat. 1716.

4. Rule XXIII, clause 6(c); *House Rules and Manual* § 1095 (2021).

5. See §§ 7.1–7.3, *infra.*

6. See § 7.4, *infra.*

7. *Parliamentarian's Note:* It was alleged that Speaker James Wright of Texas used campaign funds to produce a book from which he derived royalties. Although other aspects of the book's production and financing resulted in the Committee on Standards of Official Conduct concluding that House ethics rules had been breached, the committee concluded that no campaign funds were used to produce the book. For more on the ethics case against Speaker Wright (and his subsequent resignation of the speakership), see Deschler's Precedents Ch. 37 § 9.1 and Precedents (Wickham) Ch. 6 § 7.4.

8. 166 CONG. REC. H4194–H4197 [Daily Ed.], 116th Cong. 2d Sess.

H. RES. 1074

Resolved, (1) That the House adopt the Report of the Committee on Ethics dated July 30, 2020, In the Matter of Allegations Relating to Representative David Schweikert.

The SPEAKER pro tempore.[9] The gentleman from Florida is recognized for 1 hour.

Mr. DEUTCH. Madam Speaker, I yield an equal amount of time to the gentleman from Texas (Mr. MARCHANT), the ranking member of the Committee on Ethics, for purposes of debate only, and I ask unanimous consent that he be permitted to control that time.

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

There was no objection.

Mr. DEUTCH. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, as chairman of the Committee on Ethics, I rise in support of a resolution for Representative DAVID SCHWEIKERT of Arizona to be reprimanded by the House of Representatives.

One of our most basic obligations as Members of Congress is to adhere to the principle that public office is a public trust. To uphold that trust and to maintain civic confidence in the integrity of the body, we, as Members, have bound ourselves by certain standards of official conduct.

Our Constitution vests the House with the responsibility for self-discipline and self-accountability to those ethical standards. The Committee on Ethics, whose membership is evenly divided between Republicans and Democrats and whose work is supported by nonpartisan staff, is charged with: enforcing the laws and rules governing our official conduct; investigating allegations that those laws and rules have been violated; and, where appropriate, making recommendations to the House for the disposition of such investigations. We are here today to fulfill that charge.

Our committee began reviewing allegations involving Representative SCHWEIKERT after public reports detailed potential misconduct by him and his former chief of staff, who is no longer employed by the House.

In 2018, the Office of Congressional Ethics sent two separate referrals regarding Representative SCHWEIKERT to the Ethics Committee for further review. Those referrals included: troubling allegations of systemic campaign finance violations and reporting errors by Representative SCHWEIKERT's authorized campaign committees; allegations of misuse of his Members' Representational Allowance, or MRA, for unofficial purposes; and evidence that he pressured his official staff to perform campaign work.

During the 115th Congress, the committee impaneled an investigative subcommittee to lead a bipartisan review of these allegations. At the start of the 116th Congress, the committee reestablished that evenly divided bipartisan panel and appointed Representative DEAN PHILLIPS of Minnesota as its chair, along with Representative BILL FLORES of Texas, Representative JAMIE RASKIN of Maryland, and Representative JOHN KATKO of New York.

The subcommittee, which was capably supported by the committee's professional, nonpartisan investigative staff, took testimony from 18 witnesses and reviewed several hundred thousand pages of documents. The investigative subcommittee also heard from Representative SCHWEIKERT himself and considered his views and interpretation of the evidence without prejudgment.

9. Diana DeGette (CO).

Upon completing its exhaustive investigation, the subcommittee unanimously concluded that there was substantial reason to believe that Representative SCHWEIKERT'S conduct violated various House rules, the Code of Ethics for Government service, Federal laws, and other applicable standards.

On June 30, 2020, the investigative subcommittee unanimously adopted a Statement of Alleged Violations, or SAV, detailing 11 separate violations and the facts giving rise to those violations.

As set forth in counts 1 through 6 of the SAV, between 2010 and 2017, Representative SCHWEIKERT's campaign committees erroneously disclosed or failed to disclose hundreds of thousands of dollars in loans that were made or obtained for the benefit of his congressional campaigns, including a fictional $100,000 loan that purported to be sourced from personal funds. His campaign committees also failed to report or falsely reported hundreds of thousands of dollars in campaign disbursements and contributions.

For those cumulative and sustained acts, Representative SCHWEIKERT violated: Federal Election Commission Act reporting requirements; clause 1 of the Code of Official Conduct of House rule XXIII, which requires Members of this House to behave at all times in a manner that reflects creditably on this House; and the Code of Ethics for Government Service.

Count 7 addresses conduct by Representative SCHWEIKERT'S former chief of staff, who made hundreds of thousands of dollars in impermissible outlays on behalf of Representative SCHWEIKERT'S campaign committees over a 7-year period. Even though these outlays were eventually reimbursed by the campaign, they amounted to impermissible campaign contributions under Federal law.

For knowing of this practice as it was ongoing but failing to prevent it, Representative SCHWEIKERT violated clause 1 of House rule XXIII and the Code of Ethics for Government Service.

As detailed in count 8, between 2011 and 2018, Representative SCHWEIKERT converted campaign funds for personal purposes, primarily by accepting personal items from several staff members that were later reimbursed using campaign funds.

The conduct violated: Federal election law and regulations; clause 6 of House rule XXIII, which states campaign funds must be kept separate and cannot be converted to personal use; and the Code of Ethics for Government Service.

Count 9 addresses Representative SCHWEIKERT's misuse of official resources—including official funds, staff time, and congressional office space—for unofficial and campaign purposes between 2011 and 2017.

By misusing his MRA and failing to provide necessary oversight over its use, Representative SCHWEIKERT violated 31 U.S. Code, section 1301, clause 1 of House rule XXIII, and the Code of Ethics for Government Service.

As set forth in count 10, Representative SCHWEIKERT violated clause 1 of House rule XXIII by pressuring his former chief of staff to fundraise for his campaigns and fostering an office environment in which congressional staff felt pressured to perform campaign work.

Finally, as detailed in count 11, Representative SCHWEIKERT violated clause 1 of House rule XXIII by failing to exercise the proper candor and due diligence necessary in responding to these allegations, including a finding by this investigate subcommittee that certain aspects of his testimony lacked credibility.

Under House and committee rules, a Member confronted with a Statement of Alleged Violations may either challenge the allegations with a public hearing of an adjudicatory

subcommittee or, instead, reach a negotiated resolution with the investigative subcommittee.

In this instance, Representative SCHWEIKERT, with the assistance of his counsel, negotiated a resolution in which he admitted to all 11 counts in a Statement of Alleged Violations. He also agreed to waive his rights to any additional process, including his right to an adjudicatory hearing.

For his misconduct, Representative SCHWEIKERT agreed to accept a sanction of reprimand by the House as well as a $50,000 fine to be paid to the United States Treasury.

The investigative subcommittee carefully considered whether censure, rather than a reprimand, befitted Representative SCHWEIKERT's egregious conduct. Ultimately, the bipartisan subcommittee agreed to this negotiated sanction of a monetary fine and public reprimand by his colleagues, in large part because of Representative SCHWEIKERT's willingness to accept responsibility for his own misconduct.

On July 29, our bipartisan Ethics Committee unanimously voted to adopt the subcommittee's recommendations and transmit to the House the resolution currently under consideration. Yesterday morning, Ranking Member MARCHANT and I filed our committee's report, together with the report of the investigative subcommittee, accompanying exhibits, Representative SCHWEIKERT'S responsive views, and the materials provided to the committee by the Office of Congressional Ethics in its referrals. I urge all of my colleagues, if they have not done so already, to carefully read those materials. . . .

I encourage all Members of this House, all candidates and Congressional staff, to avail themselves of our committee's resources to help them satisfy their ethical obligations and to avoid the mistakes like those by Representative SCHWEIKERT that bring us to the floor of the House today.

Madam Speaker, I urge by colleagues to vote "aye" as well, and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 7.2 A Member has been reprimanded for, *inter alia,* misusing official resources for campaign purposes, and pressuring official staff to perform campaign work, in violation of House ethics rules and applicable law.

On August 2, 2012,[10] the House adopted a privileged report from the Committee on Ethics reprimanding a Member for, *inter alia,* converting campaign funds for personal use, and pressuring official staff to perform campaign work:

IN THE MATTER OF REPRESENTATIVE LAURA RICHARDSON OF CALIFORNIA

Mr. [Josiah] BONNER, Jr. [of Alabama]. Mr. Speaker, by direction of the Committee on Ethics, I offer a privileged resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

10. 158 CONG. REC. 13191–93, 13195, 112th Cong. 2d Sess.

H. RES. 755

Resolved, That the House adopt the Report of the Committee on Ethics dated August 1, 2012, In the Matter of Representative Laura Richardson.

The SPEAKER pro tempore.(11) The gentleman from Alabama is recognized for 1 hour.

Mr. BONNER. Mr. Speaker, I yield an equal amount of time in this debate to a lady with whom I am honored to serve, the gentlewoman from California (Ms. SÁNCHEZ), the ranking member of the Committee on Ethics, for purposes of debate only, and I ask unanimous consent that she be permitted to control that time.

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

There was no objection.

Mr. BONNER. Mr. Speaker, I yield myself such time as I may consume.

As chairman of the Committee on Ethics, I rise in support of a resolution before us today which calls for a reprimand for Representative LAURA RICHARDSON of California. . . .

Mr. Speaker, while the full committee report, the investigative subcommittee report, Representative RICHARDSON'S responsive views, and all exhibits were filed by the ranking member and me yesterday morning, and have been available to the House and to the American people since that time, here now, in summary, are the seven counts of violation:

First, Representative RICHARDSON violated the Purpose Law, title 31, section 1301, United States Code, by using official resources of the House for campaign, political, personal, and other nonofficial purposes.

Second, Representative RICHARDSON violated House rule XXIII by retaining a full-time employee in her district office who did not perform duties commensurate with their compensation.

Third, Representative RICHARDSON violated House rule XXIII by behaving in a manner that did not reflect credibly upon this House when she unlawfully used House resources for nonofficial purposes.

Fourth, Representative RICHARDSON violated House rule XXIII by behaving in a manner that did not reflect credibly upon the House when she improperly compelled members of her official staff to do campaign work by threatening, attempting to intimidate, directing or otherwise pressuring them to do such work.

Fifth, Representative RICHARDSON violated House rule XXIII by behaving in a manner that did not reflect credibly upon the House when she obstructed and attempted to obstruct the investigation of this committee into these allegations.

Sixth, Representative RICHARDSON violated clause 2 of the Code of Ethics for Government Service by failing to uphold the laws and legal regulations discussed above and being a party to their evasion.

Seventh, Representative RICHARDSON violated House rule XXIII by failing to abide by the letter and spirit of House and committee rules.

The record should note that anytime a Member is confronted with a Statement of Alleged Violation, he or she has the option of challenging those allegations with a public hearing of an adjudicatory subcommittee or, in the case of Representative RICHARDSON, negotiating a resolution with the investigative subcommittee.

11. Steve Womack (AR).

In this instance, Representative RICHARDSON negotiated a resolution in which she admitted to all seven counts in the Statement of Alleged Violation and has waived her rights to any additional process in this matter, including waiving her right to an adjudicatory hearing. Representative RICHARDSON has also agreed to accept a reprimand by the House as well as a $10,000 fine to be paid out of personal funds to the U.S. Treasury no later than December 1, 2012.

In the history of our country, five Members have been expelled from Congress; 23 Members have been censured; and eight Members have been reprimanded. Representative RICHARDSON negotiated—and we recommend—the sanction of reprimand.

The investigative subcommittee unanimously adopted a report recommending a resolution including these terms to the full committee, and on July 31, 2012, the full committee adopted the recommendations of the subcommittee. . . .

Mr. [Charles] DENT [of Pennsylvania]. I want to thank the gentleman from Alabama and the gentlelady from California for their leadership of the committee.

As a member of the Committee on Ethics and as the chairman of the investigative subcommittee, or ISC, in this matter, I do rise in support of the resolution, which calls for the adoption of this committee's report and will serve as a reprimand of Representative LAURA RICHARDSON for her conduct and will impose upon her a $10,000 fine. . . .

Here is a summary of the findings of the report and why the committee recommends that Representative RICHARDSON be reprimanded by the House for her conduct.

As discussed fully in the investigative subcommittee report, fundamentally, Representative RICHARDSON failed to acknowledge the boundaries between the official and political realms. On page 59 of the ISC report, it reads in part:

> This case is about boundaries. The House entrusts Members with a great deal of discretion over a large amount of taxpayer resources . . . This constructive trust requires Members to delineate between the official, the political, and the personal in ways that are at times quite tidy and at others tangled . . . Representative Richardson did not acknowledge these boundaries. She acted to consume the resources endowed to her as a Member for whatever purpose suited her whims at the moment, be they official acts, her reelection, or her person needs . . . The ISC discovered significant evidence suggesting that her wrongdoing continued even after learning that the committee was investigating her.
>
> If the committee fails to exact a steep price for such conduct, the message is one of a set of rules with a toothless enforcement mechanism.

Representative RICHARDSON'S misconduct included that, first, she improperly compelled or coerced members of her staff to do campaign work. Representative RICHARDSON required the staff of her district office in Long Beach, California, to perform campaign work each weeknight from approximately 6:30 p.m. through 9 p.m. during at least the 2 months prior to the 2010 primary and general elections. This practice alone accounted for hundreds of hours of conscripted campaign work by public servants who did not wish to perform it and may not be forced to do so. She also required her district staff to perform additional campaign work on the weekends. Representative RICHARDSON applied the same philosophy to her Capitol Hill staff. This demonstrates a blatant disregard for the boundaries between official events and campaign events.

Second, Representative RICHARDSON used official resources of the House for campaign and nonofficial purposes. While the report has a detailed exposition of many of the resources used by Representative RICHARDSON, some of the more significant improper uses of resources included the use of staff time during the official work day to conduct campaign activities, repeated use of the House email system to conduct campaign business,

use of the MRA to lease a car, which she parked at her house and used as her only mode of transportation in the district, regardless as to whether her destination was official, campaign, or personal in nature.

Third, Representative RICHARDSON paid her deputy district director as a full-time House employee, but for months before the 2010 elections she directed this employee to conduct campaign work for a significant portion of each day. Additionally, in 2011, nearly a year after Representative RICHARDSON received notice of the committee's investigation into misuse of House resources, Representative RICHARDSON hired a new district director, who, with Representative RICHARDSON's knowledge and approval, spent much of his time performing campaign work.

Taken together, a theme emerges. Representative RICHARDSON used her staff as she saw fit. The evidence does not demonstrate isolate incidents of compelled campaign work. If that were, in fact, the case, we would not likely be here today. It demonstrates a constant effort by Representative RICHARDSON to direct and pressure her official employees to perform as much campaign work as possible, regardless of whether or not they wanted to volunteer. . . .

Mr. BONNER. Mr. Speaker, in closing, I want to once again thank members of the committee, as well as members of the pool, for their tremendous service that they render to this institution. And on behalf of the entire House, I want to again thank the nonpartisan, professional committee staff for their extraordinary hard work and commitment to the House of Representatives and to the American people that we all serve. . . .

Mr. Speaker, while some might prefer a harsher sentence, perhaps a few might even think a reprimand is too severe, I urge my colleagues to support the unanimous recommendation of the only evenly divided committee in this House of Representatives.

And with that, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 7.3 A Member has been reprimanded by the House for failure to disclose campaign contributions in violation of applicable law.

On October 13, 1978,[12] the House considered a privileged resolution to adopt a report filed by the Committee on Standards of Official Conduct (now the Committee on Ethics) reprimanding Rep. John McFall of California for violations of Federal campaign laws:

IN THE MATTER OF REPRESENTATIVE JOHN J. MCFALL

Mr. [John] FLYNT [of Georgia]. Mr. Speaker, I offer a privileged resolution (H. Res. 1415) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1415

Resolved, That the House of Representatives adopt the Report by the Committee on Standards of Official Conduct dated October 6, 1978. In the Matter of Representative JOHN J. MCFALL of California.

12. 124 CONG. REC. 37005–7006, 37020, 95th Cong. 2d Sess.

The SPEAKER.[13] The gentleman from Georgia (Mr. FLYNT) is recognized for 1 hour.

Mr. FLYNT. Mr. Speaker, for the purposes of debate only, I yield 20 minutes to the gentleman from South Carolina (Mr. SPENCE) and also for the purposes of debate only, I yield 20 minutes to the gentleman from California (Mr. MCFALL) and pending that I yield myself such time as I may consume.

The SPEAKER. The gentleman is recognized.

Mr. FLYNT. Mr. Speaker, this resolution relates to the matter of Representative JOHN J. MCFALL, a Representative from the State of California.

On the basis of evidence which has been gathered by the committee, and which Is set forth in length in the committee report accompanying this resolution, and which had been painstakingly reviewed by the committee in open session, the committee filed a Statement of Alleged Violation against Mr. MCFALL on July 12 of this year. The Statement of Alleged Violation contained three counts. After Mr. MCFALL'S lawyer received full discovery of materials relevant to his case, after hearing arguments from Mr. MCFALL'S attorney in support of a motion to dismiss the charges, and after hearing from Mr. MCFALL himself, the committee voted to hold a public hearing to resolve the charges. At the hearing, Mr. MCFALL was ably represented by counsel, was permitted, through counsel, to cross examine witnesses called by the staff and was permitted to subpoena, and in fact did subpoena, witnesses to testify on his behalf.

After the close of the hearing, and after receiving both written and oral arguments from counsel on both sides, the committee determined, by a vote of 8 to 3, that one of the three counts in the Statement of Alleged Violation had been sustained by clear and convincing evidence. The committee decided, in its findings of fact, that Mr. MCFALL did receive a $3,000 campaign contribution from Mr. Tongsun Park in October 1974 which he did not report as a campaign contribution as the law in existence at that time required. The committee found that the other two charges were not sustained.

The committee then voted, 8 to 3, that Mr. MCFALL should be reprimanded and that the adoption of this report shall constitute such reprimand. The facts relating both to the count which was sustained and the counts which were not sustained are clearly and succinctly set forth in the report and in the sworn testimony. Summaries of those facts prepared by the special staff and by the attorneys for Representative MCFALL, are contained in appendices A and B of this report.

The testimony that this $3,000 was a campaign contribution is made clear by the testimony of him who gave it and the testimony of him who received it and by the testimony of him on whose behalf it was received.

Mr. Ray Barnes, at that time administrative assistant to Mr. MCFALL, on one of his later appearances before the committee told the committee that he had requested from the messenger of Mr. Park, one John Gibbons, permission to change this from a contribution in the nature of a campaign contribution and asked if it could be used in Mr. MCFALL'S then existing office account.

Mr. John Gibbons of whom Mr. Ray Barnes testified he had asked that question, testified that he had no recollection of Mr. Ray Barnes or of anyone else, either directly or indirectly, asking him for permission to change the nature of the campaign contribution.

Mr. Ray Barnes then subsequently testified that perhaps he had talked with somebody else in the office of Mr. Tongsun Park and of Mr. John Gibbons, but no such person's name was ever given to the committee, and no such person was ever brought to testify

13. Thomas O'Neill (MA).

that this was other than a campaign contribution, and that Mr. MCFALL and Mr. Ray Barnes assumed that they had the right to change the nature of the contribution from that which the donor intended, as clearly expressed by a note in writing, saying, "Good luck in your campaign," or "Good luck in the upcoming election," or words to that effect.

Let me say, Mr. Speaker, that the committee found that the allegations in Count 1 had been sustained.

Mr. Speaker, let me say that JACK MCFALL is a man with whom I have served in this body for most of my service here and for all of his service here. He is a man with whom I proudly served on the Committee on Appropriations of the House of Representatives, and a man next to whom I sat on the Subcommittee on Defense of the Committee on Appropriations. Let me say that I consider JACK MCFALL the same good friend of mine that he has always been during the period of our service. I commend him for his services to his district, to his State, and to our Nation, which we both love. However, if campaign expenditure reporting acts of the United States of America are going to mean anything, Mr. Speaker, I submit that it is the responsibility of those who receive them to report them, to turn them back, or to get clear and unmistakable authority from him who gave them to change them from the nature of a campaign contribution.

In asking the House of Representatives to sustain the recommendations of this committee, let me say clearly, as Mr. MCFALL has said so many times, that he appreciates the fact that the committee itself dismissed the two charges which would have reflected adversely on his honor, his honesty, and his integrity. The committee found, by a majority vote, that the last two charges had not been sustained. The committee found, by a vote of 8 to 3, that the charges contained in the statement of alleged violations in count 1 had been sustained by clear and convincing evidence.

Mr. Speaker, based upon the testimony which appears in the report, which, if necessary, I could relate by chapter and verse, paragraph and line here today, but for reasons of compassion I choose not to do so, Mr. Speaker, I ask that the House of Representatives sustain the Committee on Standards of Official Conduct in the recommendation that Mr. MCFALL, the respondent in this matter, be reprimanded and that by the adoption of this resolution, the reprimand be considered as having been administered.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER. The Chair recognizes the gentleman from South Carolina (Mr. SPENCE).

Mr. [Floyd] SPENCE [of South Carolina]. I yield myself 3 minutes.

Mr. Speaker, as I have said before, this is not an easy task. We did not ask for this job, but it has to be done. We spent months and months and months compiling the evidence which is contained within this publication. We did not expect today to come before the Members and lay all of this out. We simply do not have the time, and I doubt very seriously if many would be here to hear it. We have had public hearings open for anyone to come and spend as much time as he or she wanted to obtain the answers to any of these questions that you may now have. The evidence is here in this report for all of you to read.

As I stated earlier, our decisions have been based on the facts contained within these reports. I believe the facts compel the conclusion reached by eight members of our committee that the gentleman from California (Mr. MCFALL) received $3,000 as a cash campaign contribution from Tongsun Park in October 1974, and he did not report this as the law requires. We find that the gentleman from California (Mr. MCFALL) has conducted himself in a manner which did not reflect creditably on the House of Representatives and is, therefore, guilty of a violation of rule 1 of the Code of Conduct.

The SPEAKER. The Chair recognizes the gentleman from California (Mr. MCFALL) for 20 minutes.

Mr. [John] MCFALL [of California]. Mr. Speaker, today the Members of this House are asked to consider the recommendation of the Committee on Standards of Official Conduct that I receive a reprimand for failing to report a campaign contribution.

The committee—after an investigation that began February 9, 1977—has made its determination that a $3,000 donation to me from Tongsun Park constituted a campaign contribution for which I was bound by the Federal Election Campaign Act to report—rather than a donation to my office account, which I was not required to report.

It is this finding of the committee that forms the basis for its bringing a recommendation for reprimand.

The violation of statute as cited by the committee is a civil violation—one that heretofore has been adjudicated administratively by the Federal Election Commission.

Nevertheless, I am ready to accept the decision of the House.

Each of us who serve in the Congress has been chosen by the people to be the lawmakers for all.

As you and every other individual in our country, I am required to abide by the laws we make.

Consequently, I accept full responsibility for any violation by me of any law or rule of this House.

Throughout the past 2 years that the news media, then the Department of Justice, and subsequently the Committee on Standards of Official Conduct have been investigating the Korean matter, I have been forthright and candid with them and the people I am privileged to serve. Voluntarily and readily, I have provided all information, files and related documents, and answered any and all questions that would assist in arriving at the truth.

I know first hand the degree to which the committee has diligently pursued its directive under House Resolution 252.

As I stated to the committee In open hearing and to my constituents many times, I welcomed the investigation and the opportunity it provided me to place the record in full view for all to examine and judge.

Following its lengthy investigation, the committee has judged me innocent of involvement in any situation of real or apparent influence in the performance of my governmental duties.

Furthermore, it has judged me innocent of misusing funds donated to me for my office account.

In this regard, the committee has affirmed my honesty and integrity, and has rejected any allegation that I participated in any situation involving improper influence.

For this I am grateful.

The committee, however, has decided that a $3,000 donation should have been reported as a campaign contribution.

It should be borne in mind that the $3,000 had been legally and properly placed in my office account, whether or not it had been reported as a campaign contribution.

As the evidence showed, there was confusion in 1974 in the interpretation of the campaign law on this point. Whether or not the donation was in fact a reportable campaign contribution is a question about which reasonable men and women can—and still do—disagree. However, after lengthy deliberations the committee resolved this legal question against me.

The committee decided that I made a mistake, even though I believed at the time that my actions were in full compliance with the law and rules of the House.

I am thankful that in 1978, the Congress has clearer laws and regulations to guide us all in the handling of contributions. These rules will protect all candidates and help to assure confidence in our electoral system.

I accept their determination that I made a mistake, and say to you and the people I represent that I am sincerely sorry for having made it.

I respect this House, and hold the trust of the people in me to be the highest honor that can be bestowed by one person upon another.

I look to the future in the hope that I can continue to serve the people and this House. . . .

Mr. FLYNT. Mr. Speaker, I have no further requests for time.

Mr. SPENCE. Mr. Speaker, I have no further requests for time.

Mr. MCFALL. Mr. Speaker, I have no further requests for time.

Mr. FLYNT. 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.

§ 7.4 A Member has been censured for, *inter alia,* converting campaign funds for personal use in violation of House ethics rules.

On June 10, 1980,[14] the House adopted a privileged resolution censuring Rep. Charlie H. Wilson of California for violating House rules regarding the use of campaign funds:

IN THE MATTER OF REPRESENTATIVE CHARLES H. WILSON

The SPEAKER.[15] The unfinished business is the further consideration of the resolution(H. Res. 660) in the matter of Representative CHARLES H. WILSON.

The Clerk will report the resolution.

The Clerk read the resolution as follows:

> *Resolved*,
> (1) That Representative Charles H. Wilson be censured;
> (2) That Representative Charles H. Wilson be denied the chair on any committee or subcommittee of the House of Representatives for the remainder of the Ninety-sixth Congress;
> (3) That upon adoption of this resolution, Representative Charles H. Wilson forthwith present himself in the well of the House of Representatives for the public reading of this resolution by the Speaker; and
> (4) That the House of Representatives adopt the report of the Committee on Standards of Official Conduct dated May 3, 1980, in the matter of Representative Charles H. Wilson.

The SPEAKER. Pursuant to the rules of the House and the unanimous-consent agreement, the gentleman from Florida (Mr. BENNETT) has 12 minutes remaining; the gentleman from South Carolina (Mr. SPENCE), has 8 minutes remaining; the gentleman from California (Mr. CHARLES H. WILSON), or his designee, has 1 hour remaining.

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14. 126 CONG. REC. 13801–805, 13807–11, 13818–20, 96th Cong. 2d Sess.

15. Thomas O'Neill (MA).

The Chair recognizes the gentleman from Florida (Mr. BENNETT).

Mr. [Charles] BENNETT [of Florida]. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on May 29, the House voted to postpone further proceedings on House Resolution 660 until today, after my assurances in the May 29 proceedings that the committee would consider in an additional meeting of the committee any rebuttal to the newly offered evidence that Representative WILSON might wish to submit to the committee. I wrote Representative WILSON and his lawyer on May 30 and offered to receive from them "any objection, comments, or additional proof on the new evidence submitted by Representative WILLIAM M. THOMAS on the House floor May 29." The committee met on June 5 and the proceedings of that meeting have been printed and are available to each Member. The matter now before the House is the original report of the committee dated May 8, which the committee has not changed in any respect.

Based on the record of the disciplinary hearing, the committee's findings and recommendations stand.

In debate on disciplinary matters such as this, no rule prohibits any Member at any later time from bringing up material germane to the question whether or not the material had been before the committee previously. This was the effect of the ruling by the Speaker on May 29. Obviously it would be best to receive evidence in the committee's proceedings, where rules govern its admission and the witnesses are under oath, and cross examination is possible. But then the Constitution states in (art. I, sec. 5) that the House is granted the power to "punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." Therefore, as unwieldly as it may be, these issues can be raised and decided upon before the whole House and it is doubtful that any statute or rule could change this. The House can consider these additional materials in any way it wishes. But the recommendation in this case as made on April 24, 1980, and the committee's report filed on May 8, 1980, are the principal matters before the House today.

I reserve the balance of my time. . . .

The SPEAKER pro tempore.[16] The Chair recognizes the gentleman from California (Mr. CHARLES H. WILSON).

Mr. CHARLES H. WILSON of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first, I would like to emphasize most emphatically that I am not guilty and have not been guilty of any disorderly conduct insofar as this House of Representatives is concerned or any of my activities in the House of Representatives. I mention that because the chairman just mentioned that the Constitution provides the Congress with the authority to punish its Members if they are guilty of disorderly conduct. Further, I will state most emphatically that I am not guilty of any of the charges which have been brought against me by this committee. I make that statement because in some of the "Dear Colleague" letters which we have sent to you to try and educate you on my side of this problem, some Members have been concerned that I stressed the fact that the committee had not proven its case and I had not denied guilt at any time. I am, therefore, at this time denying guilt absolutely of any crime or any charge whatsoever that this committee has brought against me.

This is the second time that this resolution is before you. We are here again because a member of the committee was unconvinced that certain counts would be supported by the House. We had to have additional evidence. As he said:

16. Paul Simon (IL).

> In discussing the matter with Members on the floor, they were indicating that, although it was clear and convincing, that there were perhaps some gaps that made it less clear and convincing.

Quoting further:

> I found that they were not going to agree with the committee based upon the arguments that were made about the gaps.

So here we are again. We have no assurance that additional new evidence may not be offered. But for the moment, the committee now seems satisfied that they have plugged the gaps in their case.

Twice now I have mentioned the committee's case. Many of you may not realize that this particular case was one that the committee initiated. No Member, no private individual or group signed a complaint against me. The committee staff initiated this case on their own in February of 1979. They investigated this case for 9 months, including the issuing of subpenas before the committee had its first majority vote in November. I was then asked to appear before them and answer their questions. You may remember, on page 2 of the committee report, it is mentioned that I declined to testify in this executive session.

Ladies and gentlemen, the committee had not voted at that time to hold an official inquiry into the case. How was I going to refute information in one executive session without knowing what they had discovered in an investigation that spanned two Congresses?

The need to provide the House with an ethics system to protect the institution of Congress is apparent to all of us. This resolution, however, shows that how we go about protecting the institution is still in need of refinement. The most glaring need is to address the issue of the committee initiating, investigating, and prosecuting its own complaint. When the committee proceeds, as in this case, it writes its own script. Rather than objectively viewing the facts, they must prejudiciously support the resolution. The committee develops tunnel vision, seeing only that which proves its own complaint it initiates. This is the process where, once it begins, there can be no stopping it until it reaches the floor of the House. It is natural, under the circumstances, but it must be eliminated from proceedings such as this.

I will wager that there will be major changes made in the procedures of this committee as a result of the case against CHARLES H. WILSON. If the arguments of my lawyers have had any influence at all in any area at all, it will be that there have to be major changes made in the proceedings.

But what of the violations of House rule XLIII? There are two points to keep in mind. First, these alleged violations took place in 1971 and 1972. I think it is a statement of the committee's efforts that six of the seven oldest counts are the ones presented to you. The committee not only dropped the four most recent counts, but they also found no evidence on the counts alleging criminal violations of bribery, perjury, and payroll kickbacks. These last counts are the allegations the press chose to highlight throughout these last 6 months, even after they had been dropped by the committee, and these are the allegations I was accused of during the recent campaign in which I was defeated for renomination. These are the allegations that were leaked the day before the committee chose to vote an official inquiry into this matter.

I have never acted in a criminal manner, I have not violated the rules of the House.

Second, the evidence must show that these violations were in direct conflict with the standards and rules as enforced and observed in 1971 and 1972.

There can be no mixing of rule definitions and application from year to year. The violations must have been those expressly forbidden in 1971 and 1972.

But once again, the committee confuses or counts on confusion when it presents this resolution. It is not surprising that 60 percent of the committee is comprised of Members who are in their second term or less. This is directly reflective of the fact that 60 percent of the Members of this Congress, today, did not even serve their first day in office until after the alleged violations I have been accused of took place. I supported the ethic reform legislation in 1977. The House was right in its decision. But who will argue that retroactive application of stricter rules and enforcement mechanisms is what the House intended? The very fact changes and refinements were made is indicative of the fact that the 1971 and 1972 standards and procedures were far different from the 1977 changes and what they are today. Members must, somehow, reject all they know or understand now about the rules in force now and learn and know the rules as they were in 1971 and 1972.

The years after Watergate brought on a new era as far as this institution is concerned. The committee knows, and I know, that for you to ignore your reactions to that situation, to try to displace that anger caused by Watergate, is beyond your, or my, ability. By issuing this report, the committee is asking each Member to walk a tight, impossible line of judging standards that are not only alien but unacceptable to many of you. It is the specific purpose of House rule 10 to protect Members under an ethics investigation from being held in violation of House rules for changes in standards from one period to another. It is a protection that prohibits the committee either directly or indirectly to confuse a standard of one era with that of another. House rule 10 is an ethical standard of the House just as House rule 43 is. Unfortunately, House Resolution 660 speaks to the literal reading of the rules. It ignores the compliance and interpretation of those rules in effect in 1971 and 1972 and the conflict that sitting Members have in their post-Watergate experience.

One last word on the background of these allegations. As many of you know, the Obey commission provided the House with a major overhaul of the ethics provisions in 1977. Among the commission's changes were fuller financial disclosure requirements, unofficial office account prohibitions, unearned income provisions, and the prohibition of using campaign funds for personal use. In making these changes, the commission stated that the 1971 and 1972 rules and standards "were essentially unenforceable because of the totally subjective nature of their terms." Standards that were "neither defined nor discussed in the legislative history" when these rules were drafted.

What is this resolution all about? It is a resolution to censure a sitting Member of Congress for action of over 7 and 8 years ago. It is a resolution that asks you to censure a Member because you did not anticipate what would happen to the ethics rules 7 and 8 years later.

This is a matter where the House will agree to be subjected to the same open process and parameters the committee used in the matter of CHARLES H. WILSON. It is the full House that rightly determines its future and that of its Members. This resolution gives the full House that opportunity.

There is no dispute to the need of protecting this institution from ethic abuses. But, the institution is made up of each individual Member as a collective body. When divided into individuals, they should be afforded the same protection the institution deems necessary for itself.

If there is one charge that a Member must refute it is that he used his office for his own gain. I flatly deny these allegations by the committee. No one can buy a piece of

me. There is no evidence that shows me selling out my profession. The facts do not support these allegations. The committee has not carried the burden of proof. It continually infers my guilt. It continually circles around the accusation. But they have not proved it because no such action on my part existed.

What is it the committee wants you to believe? It is asking you to take the testimony of an expert in postal legislation at face value. George Gould began gaining experience in postal legislation in 1973, not 1971 or 1972, when he became my staff director of the subcommittee handling postal affairs. To his credit he has become an expert in postal affairs. But the committee makes no note that my postal subcommittee and George Gould's expertise were after these alleged violations took place in 1971 and 1972. The committee would have you believe that in 1971 and 1972 my simple little Committee on Census and Statistics was enough of a position for me to have a conflict of interest in the setting of postal rates. How ridiculous.

But, the committee also ignores two other points; 3 years before my taking the chairmanship of the Postal Subcommittee, postal rates were removed from the full committee and the House when the independent Postal Rate Commission was created. No one on the committee, no one in the House, could after that time change postal rates. To do so would require the influencing of the Postal Rate Commission, not a Member of Congress.

Second, the committee points to specific legislation that showed that I acted with a conflict of interest. This legislation was referred to the Interstate and Foreign Commerce Committee, not the Post Office and Civil Service Committee, of which I was one of 26 Members. The committee would have you believe that my taking the postal subcommittee for the first time in 1973 is clear and convincing evidence of my unethical actions in 1971 and 1972 and for legislation that was pending in the Interstate and Foreign Commerce Committee of which I was not a member.

The committee's own witness, Mr. Lee Rogers, is the one who swore under penalty of perjury that the two $5,000 checks he gave to me were loans. Loans were written on them and in response to questions by members of the committee, he said this was not an unusual procedure for him and he off the top of his head named half a dozen other people who he had made similar loans to under similar circumstances, without notes, without interest or anything of the sort, and yet the committee would tell you that because I did not report in 1977 these two $5,000 checks as unsecured notes on my financial disclosure report that I did not consider them as loans.

Well, let me tell you that in California there is a 4-year statute of limitations on unpaid loans and those loans were not collectible at that time and did not have to be reported in 1977.

Now, Mr. Cheney the other day went through a list of the years prior to 1977 when I did not include these checks as unpaid loans. The law at that time said unsecured loans in excess of $10,000. I was not required to report those on the financial disclosure forms at that time. It was 1977 when the law became effective that required loans of $10,000 or more be reported.

Now, the committee bypasses Mr. Rogers' testimony completely. He swore under penalty of perjury, he had immunity, that was the only thing that he could be caught on was to lie to the committee, and they accepted that testimony without any question at the time and I do not know whether they are going to bring perjury charges against Mr. Rogers at the present time or not, because they are ignoring completely the testimony which he presented to the committee and they are now calling these $5,000 checks gifts,

instead of loans which they rightly were. I was not bought by Lee Rogers. I have not been bought by anyone.

The committee has erred to excess in trying to put these charges over on the House. It is disgusting that the committee would attempt such juggling of dates and facts and come up with these allegations, but it is not surprising. This resolution is the end product of the committee's own initiated investigation.

The committee proof lies not in the facts it presents, but in the conjecture and misstatements of events. The committee plays upon what each Member knows to infer the events of almost a decade ago. The committee is under the belief that its mandate requires an accused Member to carry the burden of proof of his own innocence.

With all of the time available to it, its investigative powers, its access to funding, the committee has come up with allegations of 7 and 8 years ago.

This is a resolution based on someone's gut feeling, not on facts. This resolution is based on the proposition where there was one violation, there must be others. The committee feels it is obligated to find other violations, regardless of the time that has passed on or the changes made in the rules and standards.

If you have read the materials I have sent to you, it is apparent that the Ethics Committee has pushed this matter beyond all bounds of realistic fairness. I have worked hard for my constituents. I have never let them down. I would never have knowingly violated their trust. Yet, in June I was defeated in my own primary. That defeat was the most heartbreaking of all. It was as if my whole career in this House was meant to be repudiated, but it really could not be otherwise based upon the 5 and 6 months of extensive press and media and open opposition pronouncements at every turn of the committee process, even to the date before the committee voted to start its proceedings. I was tried and convicted time and again, four times I was tried and convicted. To this very day I could pick up a paper and find the disproved charges of bribery, perjury and payroll kickbacks in the articles.

When will the record finally be set straight? To expect my constituents to ignore such constant reinforcement of unethical behavior and criminal conduct, though there never was, would be disrespectful of their value and standards.

The fact remains I have lost everything of value that I worked so hard to achieve professionally. What is left is my self-respect and my reputation.

I suppose I could have walked away from this whole thing months ago. I suppose I could have walked away from this whole thing yesterday, but I cannot because the committee is wrong. These 18 years have given me enough insight to know when to fight or not to fight for an issue.

Practicalities bear a great deal on making those decisions. But in this instance, practicalities have no bearing. This resolution brands me as something I am not. I have not acted in any manner that is disrespectful of this House. This institution has been my life. I cannot let these years go by and end as the committee would like.

Every issue in this House is given a full and fair hearing. Every issue in this House has its supporter and detractor. But every issue that comes before this House is judged on its merits in the way in which it came before this House.

Sometimes personalities become more dominant than the facts and the procedures, but the House, in its wisdom, always seems to make the right decision. I believe that this last fight for me can be judged on its merits.

Oh, I recognize I am not a popular person in this House. I have emotionally objected to unanimous-consent requests of people, Ms. HOLTZMAN, Mr. GRAMM. I have even antagonized other people, some of my colleagues on this side because I vote with the folks

on this side on some matters of international affairs, which mean so much to me. But I do not think that how you vote on this matter today should be based upon whether I am a popular Member of the House or not. It should be based on what is right and what is wrong.

Reading all that has been presented, listening to all that has been spoken, this House must come to grips with this resolution. My constituents have made their decision based upon what they know.

I have fought this resolution based upon what I know, and what I have been advised to do by my counsel. And let me tell you, I take their advice. They are very expensive.

You must evaluate all that has been presented to you, factually and otherwise.

Let me know, let each succeeding House know what this institution considers to be the facts and the truth. Let each succeeding Congress know what it expects of the Members as individuals, and let each individual Member know what he can expect from the institution as a whole.

I thank my colleagues for their patience. . . .

Mr. MCCLOSKEY. Mr. Speaker, we participate today in an extremely important part of the legislative process. Under the Constitution we are specifically granted the power to discipline a Member by a majority vote, or to expel a Member under our rules and our Code of Ethics by a two-third vote. We have guides under the Constitution but no mandate as to what rules to apply as to guilt or innocence.

Clearly, a Member has a constitutional right against self-incrimination. He has the right to counsel. But whether we in the House today are sitting as a jury, a trier of the fact, or an appellate court is not clear. We vote as our consciences dictate.

One thing is clear, however. We have adopted our own rules that before we discipline a Member, we apply the test of clear and convincing evidence. We do not apply a civil test of the weight of the evidence on one side or the other, and we do not go so far as to require, under the criminal rule, guilt beyond a reasonable doubt. But we do require clear and convincing evidence, here we recognize, that we as the House sit independent of the committee.

The committee has served as an investigator. It has served as a prosecutor. It has served as grand jury. That committee contains, I think, some of our ablest Members, people that do a job for all of us, and I thank them for the job that they have done in this case. But I respectfully disagree that the quantum of evidence shown in the record—and I have read that record three times now—meets the clear and convincing test. I would not have been presumptuous enough to make this argument on Mr. WILSON'S behalf but for having had the privilege of spending 14 years as a small-town lawyer, serving as president of the Conference of Barristers of the State Bar of California, and having edited the procedural handbook on ethics that is used by the California Bar for disciplinary proceedings. I think that as a bar, we attorneys apply to ourselves a higher standard of guilt than we do to criminal defendants, and that for that standard of guilt, in my judgment—were Mr. WILSON to be tried for professional misconduct before the State Bar in California—this evidence would not suffice to meet the clear and convincing evidence test.

Let me take up the eight specific counts and the proof in the record. These eight counts essentially divide into two categories. The first counts 1, 2, and 3 involve three checks that were given to Mr. WILSON by a Mr. Lee Rogers in June of 1971, in June of 1972, and in December of 1972. I think the committee concedes that if those three checks were loans, Mr. WILSON is guilty of nothing. If they were gifts, then he is guilty of the counts as charged.

We as triers of the fact must look at the record, and I would ask the committee to point to anything in the record which furnishes clear and convincing evidence that the checks were not loans. The sole evidence, the sole witness who appeared before the committee, Mr. Lee Rogers himself who signed these three checks, said that they were loans. Two of the checks bore the word "loan" on the face of them. The committee went to that point and said, well, there was no promissory note; there was no due date on the loan; there was no rate of interest. Mr. Rogers never sued to get the money back. All of those things are true, but Mr. Rogers was in a peculiar relationship with Mr. WILSON. He was a member of his staff.

He was the chairman of his key committee to raise money for Mr. WILSON in his campaigns. He was a multimillionaire. He was a man who testified before the committee that he was not accustomed to sue to get loans back, and that he rarely was repaid. He listed a number of people to whom he had given loans, and only on one occasion had the individual paid him back. So the evidence is in a state of confusion, in my judgment, as to whether or not these transactions were loans or gifts. You could go either way. In our consciences as Members, it is perfectly appropriate for the members of the committee to reach the conclusion that on the evidence that they examined, they believed these were gifts and not loans. But I would submit to you that applying a clear and convincing evidence test to this evidence, you would have to give the benefit of the doubt to Mr. WILSON.

This was a peculiar relationship, to have a man on your staff who was an expert in postal matters; ran three companies engaged in the mail order business; obviously giving advice to Mr. WILSON on his payroll at $1,000 a month, $12,000 a year between 1971 and 1974; taken off of the payroll in 1974; put back in 1976. This was a transaction between a man and his employee, and while it is peculiar and it is strange, it does not seem to me to qualify as clear and convincing evidence that this was a gift of funds and not a loan.

Now take the second set of counts, the last five counts of conversion. These were moneys, about $15,000 in counts 7 and 8 and $9,900 in counts 9, 10, and 11, which were paid from Mr. WILSON'S campaign account to him. The first two checks, roughly, $15,000, were repaying bank loans that he had taken out during the 1970 campaign.

I pointed out in a letter to the committee before this matter was heard on May 29 that there was no evidence in the record to show that this $15,000 in debts, incurred during the campaign in 1970, were not taken out by Mr. WILSON to pay his campaign expenses.

The gentleman from California (Mr. THOMAS), with documents that were obtained just before the hearings, showed those documents to me, and those documents conclusively show, in my judgment, that these moneys were not spent for campaign expenses in 1970. There is a statement by Mr. WILSON made to the California authorities, not required by law to the Federal authorities, that he had incurred no personal expenses for campaign purposes in 1970, and I advised Mr. WILSON that if the record stayed in that condition, I would not argue on his behalf that these moneys were used either for campaign expenses or were used for personal expenses. But what were they used for? Mr. WILSON brought forth, and it is in the record of the committee hearings, that he held two fundraisers. The first was held in March of 1969, and his campaign account shows deposits of about $15,700 in that period of time from that fundraiser, and he paid himself $15,500 to pay these two loans back.

In November 1971, 7 or 8 months later, he held a second fundraiser, and in that fundraiser he raised over $13,000. He then wrote three checks, counts 9, 10, and 11, for

$9,900 to himself. But where in the record is there any indication or any fact or any evidence to indicate that those were not reimbursement, say, for newsletters, or travel expenses?

We were accustomed, in 1967 when I was first elected to the Congress, until 1977, 10 years later—in fact, I think most Members did—to raise money from our supporters to pay those costs of newsletters and travel which were not covered by the House expense allowances. I can remember in 1967 coming back here as a freshman when the House funded six trips a year back and forth to California. We were accustomed to making 20 or 25 trips a year back and forth to our districts. And there are Members from California who go back every weekend. Until 1977 it was eminently proper, and it was accepted as right, to raise money from your supporters to pay for these business expenses, the additional expenses of newsletters, and travel which were not funded by the House and were not proper campaign expenses.

There is no showing in the record that these funds were not used for this purpose, so we are left with a situation dating back to 1971 that Mr. WILSON applied $25,000 to his own use, but there is no evidence to show that it was not for proper purposes, for congressional expenses. The violation was to use them for personal expenses.

We are faced, then, as a trier of the fact with the question, where should the burden of proof lie, the committee having come forward with evidence of suspicious payments? Should the burden be on the Member to produce records from 9 years ago showing that these expenses were for a specific valid purpose?

We in the Congress have applied a 5-year statute of limitation on crimes to all other citizens. We are not bound by that statute of limitation, but I think we should consider the reasoning behind the statute of limitation. The reason for the statute of limitation is that very few of us can reach back more than 5 years and produce evidence of what we spent money for at any given time. That statute of limitation is founded in a rule of reason that no person should be charged with a crime that occurred so long ago that he cannot easily produce evidence to refute the accusations. I think we should apply in these proceedings the constitutional view that a person is presumed innocent until proven guilty. We have adopted as one of our rules that that proof be by clear and convincing evidence.

I have no disagreement with the gentleman of the committee except on this one point. It seems to me that the clear and convincing evidence of what happened 9 years ago should be on the committee to produce, not on the part of the defendant to try to refute. It is that reason and that reason alone that causes me to urge that we should vote for an acquittal on all eight of the counts with which Mr. WILSON is charged.

It is not a disagreement with the fairness of the proceedings that the committee has undertaken, but it seems to me that we make a record here that is going to stand for 200 years. If we are going to insist on proof that is clear and convincing, then we must do so on the record before us and the record of this evidence is not clear and convincing; it is evidence that raises a suspicion; it may raise a possibility or even a probability of guilt, but it is not evidence that if we were arguing this case before a jury, or we were arguing this case before our peers in the Bar Association or any other professional organization that we could say meets the clear and convincing test. . . .

Mr. [Wyche] FOWLER [of Georgia]. Mr. Speaker, I believe I speak for all members of the committee when I say, that this is not a pleasant task. Our charge was to proceed fairly, dispassionately, and without any sense of moral righteousness. I think we did that, and we acted in a nonpartisan manner in presenting the committee's recommendations for discipline which we have given to all Members of the House.

I will proceed quickly because we have only 4 or 5 minutes left, most of the time having been used last week.

Let me try to summarize why the committee has recommended what it has:

First, there was no substantial rebuttal to the charges that there were conversions from Mr. WILSON'S campaign account—moneys traced from his campaign funds to his office account to a California bank account—to pay off personal debts. Why? Because Mr. WILSON refused to testify.

Second, today, for the first time, Mr. WILSON has spoken. He says that what the committee found were "gifts" were in fact "loans." We do think that the evidence was clear and convincing that these moneys were gifts, but Mr. WILSON cannot argue it both ways.

I ask all Members to read the testimony of Mr. Lee Rogers. Mr. Rogers described himself as a multimillionaire engaged in the mail order business. He testified he was made a congressional employee of Mr. WILSON by Mr. WILSON for 3 years and paid $12,000 a year. Mr. Rogers did claim that the moneys he gave to Mr. WILSON were "loans." The committee, however, found the evidence to belie this interpretation, and dismissed the charges relating to "loans." However, Mr. WILSON now for the first time insists on the interpretation of "loans." I can say in rebuttal that there was substantial evidence that Mr. Rogers was put on the congressional payroll as a method of repaying the money that was "loaned" by Mr. Rogers.

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

Mr. FOWLER. I will not yield until I have finished my statement. Now, all Members must determine whether it was a "gift" or whether it was a "loan." You have heard Mr. WILSON. We did not. He refused to testify at any time before the committee.

I am willing to accept what Mr. WILSON has said, but you must determine the credibility of his testimony in light of that of Mr. Rogers. There are only four pages of his testimony. Please read it.

Finally, on the subject of the statute of limitations. The statute of limitations, I say to my colleagues and fellow lawyers at the bar, was put on the books in English and American constitutional history to deal primarily with petty crimes—crimes committed outside of the jurisdiction, crimes that had been consciously concealed, as well as lesser infractions considered "stale" by the passage of time.

But there are some crimes that so shock the public conscience that there is no statute of limitations.

The committee dealt with this question of what happened in 1972 as soon as it came to light. We did not tarry out of a sense of forgiveness to Mr. WILSON. All delays or postponements were at his request.

Your committee is not a court of law. What we tried to do was pierce procedure to get at the substance while protecting Mr. WILSON in his constitutional rights. Much of the outrage at the judicial branch of our Government occurs when technical defenses, properly presented, are allowed to shadow or obscure the real issues, the issues of substance.

Here, I submit, are the issues of substance which we must decide after hearing and reading all the evidence:

First, was there a conversion of campaign funds for personal use? The committee, by an overwhelming majority, found that there was.

Second, was the congressional office of Mr. WILSON being used for private rather than public purposes, or used so casually as to violate the responsibilities of stewardship with which we are all charged? The committee, by an overwhelming majority, thought it was.

Last, I must say that there was a duty, an absolute duty of Mr. WILSON, to speak in defense of himself and in defense of the institution of the Congress.

Mr. WILSON does not stand questioned by the courts. He stands questioned by his peers. And the question is direct and profound: Did he violate his oath of office?

This is different than an accusation against the butcher or the baker or the candlestick maker. If a member of any of those occupations are brought before any court of inquiry and found guilty, it would not affect the institution of butchering or baking or candlestick making. It would leave no taint on any other practitioner of the profession. No other butcher or baker or candlestick maker would be affected.

The SPEAKER. The time of the gentleman from Georgia (Mr. FOWLER) has expired.

Mr. BENNETT. Mr. Speaker, I yield 1 additional minute to the gentleman from Georgia.

Mr. FOWLER. Mr. Speaker, but whenever we are accused, when any one of our Members is accused, then we all stand accused. He does stand alone, because the institution is therefore brought under question. The institution of Congress is also the name which then must be cleared. And that duty accrues to Mr. WILSON, as a sitting Member of this Congress, to clear the name of this institution as much as it is to clear himself.

My colleagues, it is extremely unpleasant, after the defeat of Mr. WILSON of California, to be here. The committee tried for months to bring this matter for resolution. We have granted the delays of Mr. WILSON, who has asked over and over to postpone it beyond his primary. But all I can say to you, to answer the gentleman from South Carolina, who quoted Sir Thomas More accurately, though not completely, is that when asked, "Who will defend after the laws?" the answer by Roper was, "God will defend." And the answer of Sir Thomas More was, "Then let God strike down the laws."

We have laws called "rules" for protection of the institution. We must defend them. It is our duty, regardless of all externalities like elections. The committee has found, in a strong nonpartisan vote, after hearing the evidence, that the punishment recommended, regretfully, should be accepted by this House. . . .

Mr. [Louis] STOKES [of Ohio]. Mr. Speaker, I am a member of the Committee on Standards of Official Conduct. As such, I am the only member of the committee who voted against each and every count which the committee found to be proved. I also voted against the committee's recommendations that CHARLES H. WILSON be censured and stripped of his chairmanships.

Mr. Speaker, I did not seek membership on this committee. In fact, as you know, I resisted this appointment for a considerable amount of time. In agreeing to go on this committee, I did consider that my background might enable me to bring a different perspective to the committee. The background to which I refer is that of having been a trial defense lawyer in criminal cases for 14 years. That experience included trying hundreds of cases ranging from first degree murder down to simple assault. It also included participation in several cases in the U.S. Supreme Court.

One of these cases which I argued in that Court, Terry against Ohio, a landmark case, is still the law of the land in stop and frisk, search and seizure law under the fourth amendment to the Constitution. I mention this, Mr. Speaker, not out of braggadocio, but to say that I think I bring to the committee some understanding of our system of justice and more importantly a real understanding of due process of law. I also understand that the Ethics Committee is not a court of law and that in proceedings before it, ordinary rules of evidence in a court of law do not apply. But, I say to my colleagues that even disciplinary tribunals such as the Ethics Committee cannot divest themselves of the requirement to afford a respondent due process of law and fundamental fairness. As one

who has spent a great part of his life preserving the constitutional rights of criminals in order that that constitutional right would be available to America's best citizens if ever need be, I can only say to you, that the due process and fundamental fairness denied to CHARLES WILSON today may be denied to you or me tomorrow.

It is for that reason that there is something fundamentally wrong with a system where the same Members of the House who initiate an investigation of a Member, charge him with violations, investigate the charges, hear the evidence relating to the charges, decide the guilt as to the charges, and then decide the punishment for the charges. There is something fundamentally wrong with this system, otherwise 9 of the 12 members sitting on this committee in February 1979, would not have proposed to the House under House Resolution 136 legislation to change the rules and initiate new methods of disciplinary proceedings which would insure due process and fairness.

The gentleman from Missouri (Mr. CLAY) is correct. The members of the committee were in and out of the room, in absentia, and otherwise occupied during proceedings where witnesses were giving testimony against the respondent for whom they now recommend this severe punishment. One afternoon, while witnesses were testifying, I had to spend over 2 hours in the Rules Committee. I did not want to leave CHARLIE'S hearing, but, I had to make a choice, legislation affecting my congressional district won priority over my obligation to my colleague. Sure I had the transcript to read, but did you know that accompanying the transcript was a letter from our staff director which said:

> The enclosed transcripts from the Wilson hearings are for your review. It is the opinion of the committee staff that the transcripts are not totally accurate, therefore the reporting company will be asked to review their tapes.

This means then that not only did those of us who missed hearing witnesses not only have no opportunity to observe the witnesses on the stand, to observe their demeanor, to evaluate their appearance of truthfulness or lack of thruthfulness, but we made up for this by reading "not totally accurate transcripts." How would any of you today like to have your fate determined, be censured, and stripped by some jurors who were running around answering bells and taking care of regular congressional business while deciding your fate?

Now, let us talk about counts 7, 8, 9, 10, and 11 which all dealt with conversion of campaign funds to personal use 8 and 9 years ago. The House rule which the respondent is alleged to have violated which was in effect in 1971 and 1972, and which is in effect today, prohibits conversion to personal use of funds "in excess of reimbursement for legitimate and verifiable prior campaign expenses." Thus, under the House rule in question, a Member has the absolute right to be reimbursed from campaign funds for campaign expenses he may have incurred and once reimbursed may use the reimbursed amount for personal or any other use. Under the rules of our committee, it was incumbent upon the staff to prove by clear and convincing evidence that these transfers were not reimbursements for prior campaign expenses.

The key to the lack of clear and convincing proof that Representative WILSON committed any offense can be found in the statements of our distinguished chairman on the floor here last week. With references to counts 7, 8, 9, 10, and 11, the chairman in his remarks used phases such as, "the committee was offered no evidence that this loan was for prior campaign expenses," or "the committee was offered no evidence that this loan was for legitimate campaign expenses," or "no evidence was offered to the contrary." The fact, my colleagues, is that Representative WILSON had no burden of proof as to his innocence. The committee was required, but they did not offer one scintilla of evidence that

the transfers were "in excess of reimbursement for legitimate and verifiable campaign expenses."

They cannot absolve themselves of such burden of proof by transferring the burden of proof to the respondent. Additionally and more importantly, let us admit that the House has played around a little bit with the same law Representative WILSON has been found guilty of violating. Conversion of campaign funds to personal use was not prohibited by law in 1971 and 1972. It also was not prohibited by the Federal Election Campaign Act. Even the more recent amendment does not prohibit conversion of campaign funds for Members in office on January 8, 1980. The House rule relating to conversion was adopted in 1968.

In 1975 the rule was amended to prohibit conversion unless "otherwise specifically provided by law." This change in the law, as we all know, was enacted to permit a special circumstance to occur in the House. Once the circumstance was over, in 1977 we removed the 1975 provision and went back to the previous law. Thus, two points appear to be evident. First, there is no well-stated policy in this area and second, we have alternately prohibited and permitted under certain circumstances the same thing Representative WILSON has been found guilty of. My conscience will not under these circumstances permit me to find him guillty of these 8- and 9-year-old charges. And since the charges are not criminal in nature, and since few of us would be able to reconstruct campaign records 8 or 9 years later, the absence of a statute of limitations would seem to me to be denial of fundamental fairness.

Lastly, I want to say that I do not condone wrongdoing, nor do I oppose disciplinary proceedings against any Member of the House under proper circumstances. As a member of this committee, I can say to you without fear of refutation, that all members of the committee acknowledged Representative WILSON'S attorney, Mr. Bonner's observation that at one time or another, each of us, with the exception of the chairman and perhaps one other member had missed some portion of the proceedings. Every member agreed that before deliberating they wanted to read the transcripts so that they could accurately and intelligently discuss the evidence. Therein was the admission that the circumstances under which we acted as jurors did not lend itself to our being able to act as jurors. Here was an admission by the entire committee that they were unable to deliberate and decide this case upon the evidence they had seen and heard. Even in a court of law when jurors cannot remember the evidence they are instructed that they must recall the evidence as they saw and heard it in the courtroom.

Mr. Speaker, my conscience will not let me find Representative WILSON guilty of any of these charges. The question for you to ask yourselves is this: Would you want yourself or anyone near and dear to you to be found guilty based upon this kind of evidence? I urge a no vote on this resolution. . . .

Mr. [Lunsford] PREYER [of North Carolina]. Mr. Speaker, I will just touch on two points very briefly: First, to respond to the testimony of the gentleman from California (Mr. MCCLOSKEY) that was offered a little earlier this afternoon. What Mr. MCCLOSKEY pointed out was the source of the campaign funds in the campaign fund account of Mr. WILSON. But the point we are concerned with is the transfer from that campaign fund account to the office account then to pay for his personal expenses. For example, the first of the fundraisers occurred on February 26, 1971. On March 9, Mr. WILSON withdrew $10,283.35 for deposit in his office account, and on the day following drew the same amount of money, to the penny, and repaid a loan at the Imperial Bank. That loan was characterized on the loan approval and credit report as being for "personal expenses."

Clearly, in the absence of even a single fragment of evidence that these funds were used for any other purpose, the committee is entitled to clearly and convincingly conclude that the funds were used precisely for the purpose stated on the approval of the credit report. I think the same rationale applies to the other counts dealing with the conversion of funds.

Let me finally just briefly mention the statements that have been made about this being a "mock trial," that we have "leveled all of the rules of constitutional procedure," and that we have abolished protection for Members of the House here. I think as a matter of policy we may want to change the way we have proceeded, and I have cosponsored H.R. 136 because I think as a matter of policy we ought to get Members of the House more involved in these ethics procedures rather than leaving it up to the committee to handle all aspects of these things. But I want to make it very clear to you that by cosponsoring that bill does not mean I have the slightest question about the constitutionality of the procedures of the Committee on Standards of Official Conduct.

There can be no question under the law that our proceedings are entirely constitutional. They are customary procedures that protect all sorts of professional organizations, medical societies, bar associations, and the rules which we follow offer every sort of protection for a Member, including adequate notice, the right to counsel, the right to challenge any member of the committee who he believes cannot make an impartial decision, the right of discovery, the right of cross-examination, the right to call witnesses and to offer evidence in his own defense. Mr. WILSON'S attorneys were granted access to all of the committee's evidence in this case before the hearing commenced, and every motion filed, whether it was timely or not—and some were not timely—was heard by the committee. The committee granted his subpenas for all the witnesses that he requested. The committee granted every reasonable request of the respondent in this case.

These disciplinary procedures are not criminal cases. They are not the same. If they were, the ability of any institution to protect its own integrity would be in question. But the committee rules as applied in this case have been fair and certainly are in no way violative of due process. . . .

Mr. LIVINGSTON. Mr. Speaker, the charges against Mr. WILSON are contained in the original committee report, in the RECORD of May 29, 1980, and in the amended report.

There is no need to dwell on the facts. The record is complete.

Mr. WILSON is charged first with violating House rule 43, clause 4, in three counts, to wit: receiving gifts of substantial value from a person with direct interest in legislation.

The committee found sufficient evidence to prove clearly and convincingly that Mr. WILSON received three checks totaling $10,500 from Lee Rogers, and that Lee Rogers, whose principal business was a mail order operation, had a direct interest in postal legislation, over which Mr. WILSON, as a member of the Postal Subcommittee, had direct jurisdiction.

The question is whether the checks constituted "loans" or "gifts." The definitions of both were inserted by me into the RECORD of May 29, 1980.

The committee found that, although two checks were marked "loans," and Lee Rogers called them "loans," there was—

No written agreement;

No maturity date;

No interest:

No repayment schedule;

No attempt to repay; and

No demand to repay.

In fact, it was deemed totally unreasonable to believe them to be anything other than "gifts."

Hence, the committee found Mr. WILSON guilty of counts 1, 2, and 3. In counts 7, 8, 9, 10, and 11, Mr. WILSON was charged with five instances of syphoning off campaign funds for his personal use, in violation of House rule 43, clause 6. In fact, the committee found Mr. WILSON violated rule 43, clause 6 by convert $25,383.35 of campaign funds to his personal use.

The checks show the transactions. The only question is this: Were they reimbursements for prior loans to his campaign?

Mr. WILSON did not testify, but he leaves the House with the clear implication that he is claiming they were reimbursement for prior loans.

Lacking any evidence to prove such is true, the committee found evidence to show clearly and convincingly that money was taken by Mr. WILSON strictly for his personal use, and that these funds were not campaign debts to him. There is no evidence at all to show they were campaign obligations to Mr. WILSON.

Moreover, documents introduced by Representative BILL THOMAS, show categorically, by Mr. WILSON'S own hand, that in the only campaign preceding these transactions, the candidate, Mr. WILSON, contributed no money to the campaign. He loaned no money to the campaign, and the campaign was completed in the black, without debt. So there was no need for Mr. WILSON to loan the campaign money.

Now we hear that Mr. WILSON raised $15,727 in a fundraiser in February 1971 and $13,880 in November 1971.

Mr. WILSON would now have us believe that this money was raised to reimburse himself for out-of-pocket campaign costs or office expenses not reflected on his campaign documents—$25,383.35 to be exact.

This argument simply does not hold water, and is beyond belief for an average reasonable man. There are simply no documents which verify such out-of-pocket expenditures.

The checks supporting counts 7 through 11 make it abundantly clear that Mr. WILSON had personal obligations which had nothing to do with his campaign, and that he took the money from his campaign to pay them off.

Thus, there is ample justification to support the committee's finding that Mr. WILSON is guilty of counts 7, 8, 9, 10, and 11.

He took the money;

He converted it to his own use; and

It was not for loans by him to a previous campaign.

I urge the committee to find Mr. WILSON guilty as charged and to censure him for his conduct.

Mr. [Harold] HOLLENBECK [of New Jersey]. Mr. Speaker, I had not intended to speak again in this matter but am constrained to by certain further statements and allegations made by members and counsel since the beginning portion of this hearing.

Let me refer to statements by counsel at the June 5, 1980, hearing (transcript p. 26, 1. 12; through p. 27, 1. 20). These statements allude to his feelings that he was "sandbagged" by members of the committee and the House who "have taken the position that Mr. WILSON did not have a full defense, because certain documents, no evidence was put in, he only chose to call an abbreviated number of witnesses." (p. 27, 1. 4–6). Counsel's

defensiveness surprises this Member since in reviewing the floor statements and dear colleague letters I find no allegations that Mr. WILSON "did not have a full defense."

On the contrary, counsel provided an outstanding defense. But simply put, on the basis of all the evidence adduced, the charges were proven to the committee by the "clear and convincing" standard and that proof is in the report of the committee.

This Member, in his initial remarks, enunciated his firm belief that the House should act on the record adduced at the hearings for two reasons—he was afraid of the introduction of additional evidence on the floor as was attempted by Mr. WILSON and Mr. THOMAS and, second, he felt that the dignity of the House might be besmirched by additional allegations and statements made on the floor under the immunity of the speech and debate clause but not made under oath at the hearings. And after listening to the gentleman from Missouri (Mr. CLAY) use unfounded and unsubstantiated statistics to attack the committee itself, I realize I should have had a third fear.

Let me say in closing that I respect the views of the gentleman from California (Mr. MCCLOSKEY) who, I add parenthetically, I agree with on several counts, and his basis for them. He, as I, and as I hope this body will have based our conclusions on the facts, on the record and not on extraneous material or on an unfounded attack on the committee's basic fairness.

Mr. BENNETT. Mr. Speaker, I move the previous question on the resolution, as amended.

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. MCLOSKEY

Mr. MCCLOSKEY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the resolution?

Mr. MCCLOSKEY. Yes I am, Mr. Speaker.

The SPEAKER. The gentleman qualifies.

The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. MCCLOSKEY moves to recommit the resolution (H. Res. 660) to the Committee on Standards of Official Conduct with instructions to report the same to the House forthwith with the following amendment:
>
> Strike out all after the resolving clause and insert in lieu thereof the following:
>
> That Representative CHARLES H. WILSON be reprimanded.

The SPEAKER. The question is on the motion to recommit offered by the gentleman from California (Mr. MCCLOSKEY).

The question was taken; and the Speaker being in doubt, the House divided, and there were—ayes 67, noes 102.

Mr. FORD of Michigan. 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 97, nays 308, answered "present" 4, not voting 24, as follows:

[Roll No. 307] . . .

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, as amended.

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

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

The yeas and nays were refused.

So the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

CENSURE OF REPRESENTATIVE CHARLES H. WILSON OF CALIFORNIA

The SPEAKER. Will the gentleman from California (Mr. CHARLES H. WILSON) kindly appear in the well?

Mr. CHARLES H. WILSON of California presented himself at the bar of the House.

The SPEAKER read House Resolution 660, as amended, as follows:

H. RES. 660

Resolved,

(1) That Representative Charles H. Wilson be censured.

(2) That upon adoption of this resolution, Representative Charles H. Wilson forthwith present himself in the well of the House of Representatives for the public reading of this resolution by the Speaker; and

(3) That the House of Representatives adopt the report of the Committee on Standards of Official Conduct dated May 8, 1980, in the matter of Representative Charles H. Wilson.

The SPEAKER. The matter is closed.

Apportionment
Apportionment Act of 1911, § 1
constitutional provisions regarding, § 1
Delegates and Resident Commissioners, relationship to, § 1
"equal proportions" method, § 1
historical development, § 1
jurisdiction, of House committees, § 1
methods of apportionment, history, § 1
Permanent Apportionment Act of 1929, § 1
privilege of legislation regarding, § 1
size of the House, relationship to, § 1
Campaigns
see **Election Campaigns**
Census
African–Americans, historical treatment of, § 1
Committee on Oversight and Reform, jurisdiction, § 1
constitutional requirement to take, § 1
executive agencies with jurisdiction over, § 1
historical development, § 1
jurisdiction, of executive agencies, § 1
jurisdiction, of House committees, § 1
Native Americans, historical treatment of, § 1
presidential messages regarding, § 1
privilege of legislation regarding, § 1
proportional reduction of House seats, § 1
Committee on Ethics
see **Ethics**
Committee on House Administration
campaign practices, jurisdiction over, § 5
Committee on Oversight and Reform
census, jurisdiction over, § 1
Committee on the Judiciary
apportionment, jurisdiction over, § 1
Committees
apportionment, jurisdiction over, § 1
campaign practices, jurisdiction over, § 5
campaign practices, special committee on, § 5
census, jurisdiction over, § 1
special committee on campaign practices, § 5
Constitution
apportionment, provisions regarding, § 1
campaign contribution limits, constitutionality of, § 6
census, provisions regarding, § 1
Federal Election Commission (FEC), constitutional defects in original appointment structure, § 6
quorum requirements, § 4
Contested Elections
see **Elections to the House**
Continuity of Operations
see **Vacancies**
Delegates and Resident Commissioners
apportionment, relationship to, § 1
elections of, § 3
Districting
Baker v. Carr, § 2
compactness, § 2
congressional authority over, § 2
contiguity, § 2
equal population, requirements regarding, § 2
generally, § 2
gerrymandering, § 2
single–Member districts, use of, § 2
state authority over, § 2
Wesberry v. Sanders, § 2
Election Campaigns
campaign expenditures, regulation of, § 5

contribution limits, constitutionality of, § 6
disclosure requirements, § 5
Federal Corrupt Practices Act of 1925, § 5
Federal Election Commission (FEC), § 6
National Publicity Act of 1910, § 5
Tillman Act of 1907, § 5

Election Contests
see **Elections to the House**

Elections to the House
accessibility, § 3
campaigns, see **Election Campaigns**
certificate of election, lack of, § 4
civil rights laws, effect of, § 3
congressional authority over, § 3
constitutional amendments, effect of, § 3
constitutional provisions regarding, § 3
Delegates and Resident Commissioners, elections of, § 3
election campaigns, see **Election Campaigns**
election contests, § 3
Federal Contested Elections Act (FCEA), § 3
Federal Election Commission, see **Federal Election Commission (FEC)**
oath of office, requirement to take, § 4
primary elections, § 3
qualifications for voting, § 3
registration of voters, § 3
special committee on campaign practices, § 5
special elections, § 4
state authority over, § 3
vacancies, see **Vacancies**
voter qualifications, § 3
voter registration, § 3

Ethics
campaign finance violations, §§ 5, 6, 7
censure, §§ 7, 7.4
code of official conduct, campaign provisions in, § 7
Committee on Ethics, § 7
Ethics Reform Act of 1989, § 7
reprimand, §§ 7, 7.1–7.3

Federal Election Commission (FEC)
constitutional defects in original appointment structure, § 6
enforcement powers, § 6
Federal Election Campaign Act (FECA), § 6
historical development, § 6
membership, § 6
regulations issued by, § 6

Gerrymandering
see **Districting**

Invesigations and Inquiries
election contests, relationship to special committee on campaign practices, § 5
special committee on campaign practices, § 5

Oath of Office
requirement to take, § 4
Speaker, administration of oath by, § 4
Speaker pro tempore, administration of oath by, § 4

Presidential Messages
census results transmitted via, § 1

Privileged Questions
census, former precedents regarding, § 1
statutory disapproval procedures under the Federal Election Campaign Act (FECA), § 6

Quorums
constitutional requirements, § 4
continuity of operations, § 4
provisional quorums, § 4
whole number adjustment, § 4

Redistricting

see **Districting**
Resignation
prospective resignations, § 4
vacancies caused by, § 4
Rules of the House
statutory rulemaking under the Federal Election Campaign Act (FECA), § 6
Speaker of the House
oath of office, administration by, § 4
Speaker pro tempore, § 4
Special Committees
see **Committees**
Vacancies
certificate of election, lack of, § 4
continuity of operations, § 4
death, § 4
declination, § 4
exclusion, § 4
expulsion, § 4
incapacitation, § 4
resignation, § 4
whole number adjustment, § 4

CHAPTER 9

Election Contests

A. Jurisdiction and Authority
§ 1. Constitutional Provisions; Historical Background
§ 2. Statutory Provisions; Former Statutory Provisions
§ 3. State and Local Election Procedures
§ 4. Jurisdiction: House, Committees, and Courts

B. Grounds and Defenses
§ 5. Grounds for Initiating a Contest
§ 6. Defenses to a Contest

C. Procedure
§ 7. Standing; Parties
§ 8. Notice of Contest
§ 9. Other Pleadings
§10. Taking Testimony; Depositions

D. Committee and House Consideration
§11. Burden of Proof; Presumptions
§12. Ballot Issues; Recounts
§13. Disposition of Contests

E. Summaries of Election Contests, 1973–2020
§14. Ninety–third Congress, 1973–1974
§15. Ninety–fourth Congress, 1975–1976
§16. Ninety–fifth Congress, 1977–1978
§17. Ninety–sixth Congress, 1979–1980

Commentary and editing by Max Spitzer, J.D., LL.M.

§18. Ninety–seventh Congress, 1981–1982
§19. Ninety–eighth Congress, 1983–1984
§20. Ninety–ninth Congress, 1985–1986
§21. One Hundredth Congress, 1987–1988
§22. One Hundred First Congress, 1989–1990
§23. One Hundred Second Congress, 1991–1992
§24. One Hundred Third Congress, 1993–1994
§25. One Hundred Fourth Congress, 1995–1996
§26. One Hundred Fifth Congress, 1997–1998
§27. One Hundred Sixth Congress, 1999–2000
§28. One Hundred Seventh Congress, 2001–2002
§29. One Hundred Eighth Congress, 2003–2004
§30. One Hundred Ninth Congress, 2005–2006
§31. One Hundred Tenth Congress, 2007–2008
§32. One Hundred Eleventh Congress, 2009–2010
§33. One Hundred Twelfth Congress, 2011–2012
§34. One Hundred Thirteenth Congress, 2013–2014
§35. One Hundred Fourteenth Congress, 2015–2016
§36. One Hundred Fifteenth Congress, 2017–2018
§37. One Hundred Sixteenth Congress, 2019–2020
§38. One Hundred Seventeenth Congress, 2021–2022

A. Jurisdiction and Authority

§ 1. Constitutional Provisions; Historical Background

When the House first convenes at the outset of a Congress, Members–elect arrive to be sworn in as full Members of the House. If there are no controversies or disputes with respect to the election of any individual, the states will have conveyed the required certificates of election to the Clerk of the House, and each Member–elect will be administered the oath of office.[1] However, the right of any individual to a seat in the House may be challenged by others who may formally "contest" the election. This chapter addresses the subject of election contests brought before the House of Representatives.[2]

The individual who initiates the election contest is known as the contestant. The individual responding to the contest (most often the Member–elect bearing a certificate of election) is known as the contestee. In contested election cases, the matter is styled similar to a court case: "Contestant v Contestee" (with the contestant's name given first).

The format of this chapter will follow the arrangement used in the preceding Deschler's Precedents series. The various elements of an election contest will be analyzed separately in the initial sections, while the remaining sections will contain full summaries of each election contest considered by the House between the 93d and 117th Congresses.[3]

Issues surrounding the expulsion of Members from the House, or exclusion of individuals from its membership, are addressed in Chapter 12 of this series.[4] Similarly, a more detailed discussion of election practices may be found in Chapter 8.[5] In addition, Chapter 2 concerns the administration

1. For more on the administration of the oath, see Precedents (Wickham) Ch. 2. See also Deschler's Precedents Ch. 2.
2. For earlier treatment of election contests generally, see 1 Hinds' Precedents §§ 528–755; 6 Cannon's Precedents §§ 88–120; and Deschler's Precedents Ch. 9 §§ 1–45.
3. For summaries of election contests brought during the First Congress through the 59th Congress (1789–1906), see 1 Hinds' Precedents §§ 756–844; and 2 Hinds' Precedents §§ 845–1135. For summaries of election contests brought during the 60th Congress through the 72d Congress (1907–1933), see 6 Cannon's Precedents §§ 121–189; and the Appendix to Deschler's Precedents Ch. 9. For summaries of election contests brought during the 72d Congress through the 92d Congress (1931–1972), see Deschler's Precedents Ch. 9 §§ 46–64.
4. See also 2 Hinds' Precedents §§ 1236–1289; 6 Cannon's Precedents §§ 236–239; and Deschler's Precedents Ch. 12 § 13, 14.
5. See also 1 Hinds' Precedents §§ 507–527; 6 Cannon's Precedents §§ 66–87; and Deschler's Precedents Ch. 8.

of the oath of office and the certificates of election, while Chapter 7 contains material on the qualification of Members.[6]

Constitutional Provisions

Article I, section 4, of the U.S. Constitution provides that the "Times, Places, and Manner" of holding elections for Representatives to the House shall be vested in the legislatures of the individual states.[7] However, Congress may "at any time"[8] enact laws to alter the regulations propounded by state legislatures. These constitutional provisions effectively create concurrent jurisdiction over the election of Representatives, and Congress has on many occasions exercised its authority to regulate state election procedures.[9]

Pursuant to article I, section 5, of the Constitution, the House "shall be the Judge of the Elections, Returns, and Qualifications of its own Members."[10] The Supreme Court has held that the question as to the right of an individual to a seat in the House is a "nonjusticiable political question."[11] The House itself has asserted its right under the Constitution to be the final arbiter of who is entitled to membership.[12]

§ 2. Statutory Provisions; Former Statutory Provisions

When the House first convened in 1789, it had no statutory mechanism for resolving election contests. Instead, it established a standing Committee of Elections to handle any disputes that arose.[1] That committee promulgated rules for taking evidence and other procedures relating to election contests. These procedures were codified in statute in 1798, and remained in force until the mid–19th century.[2]

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6. See also 1 Hinds' Precedents §§ 127–185, 414–506; 2 Hinds' Precedents § 1136–1235; 6 Cannon's Precedents §§ 6–22 and 55–65; Deschler's Precedents Ch. 2; and Deschler's Precedents Ch. 7.

7. *House Rules and Manual* § 42 (2021).

8. *Id.*

9. Voting and election laws have been codified in Title 52 of the U.S. Code. Chapter 301 concerns the regulation of Federal election campaigns and campaign financing. See 52 U.S.C. §§ 30101 *et seq.*

10. *House Rules and Manual* § 46 (2021). See also 1 Hinds' Precedents § 634.

11. *Roudebush* v. *Hartke*, 405 U.S. 15, 19 (1972).

12. See Deschler's Precedents Ch. 9 § 1 (fn. 3) (The right to a seat in the House "is in the sole and exclusive jurisdiction of the House of Representatives."). See generally, 1 Hinds' Precedents §§ 634–677; and 6 Cannon's Precedents §§ 90–96.

1. 1 ANNALS OF CONG. 127, 1st Cong. 1st Sess. (Apr. 14, 1789).

2. 1 Stat. 537. See also STAFF OF H. COMM. ON ADMIN., 112TH CONG. A HISTORY OF THE COMMITTEE ON HOUSE ADMINISTRATION 1947–2012, at 27–30 (Comm. Print 2013).

In 1851, a second statute addressing contested congressional elections was enacted into law.[3] This statute, the Contested Elections Act, was used to govern proceedings in election contests from the 32d Congress to the 91st Congress. In 1969, Congress passed the Federal Contested Elections Act (FCEA),[4] which has regulated the consideration of election contests from the 92d Congress to the present. The enactment of the modern statute affirmatively repealed the earlier contested elections law. All election contests discussed in this chapter were decided after enactment of the modern statute.

The FCEA prescribes procedures for initiating an election contest,[5] taking testimony and evidence,[6] and filing pleadings.[7]

§ 3. State and Local Election Procedures

Although the Constitution confers on Congress the ability to alter any state or local regulations concerning the conduct of elections for Members to the House, Congress has typically deferred to state and local election boards to conduct elections in the manner of their choosing. The House has no authority to direct state or local officials to conduct a recount, or to otherwise intervene in those election procedures. If an election contest is pursued, the case is typically brought to the House after state and local officials have completed their work (*i.e.*, the result has been officially certified by the relevant state authorities). State courts have often disclaimed jurisdiction over election contests, in deference to the constitutional provision giving the House sole authority to judge the elections of its Members.[1]

§ 4. Jurisdiction: House, Committees, and Courts

As noted earlier, constitutional provisions confer jurisdiction over the election of its Members to the House. Under the Federal Contested Elections Act (FCEA), the House attains jurisdiction over an individual election contest when the notice of contest is filed by the contestant with the Clerk of

3. 9 Stat. 568. Prior to its repeal, this statute (along with subsequent amendments to the original act) had been codified at 2 U.S.C. §§ 201–226.

4. 2 U.S.C. §§ 381–396.

5. See § 8, *infra.*

6. See § 10, *infra.*

7. See § 9, *infra.*

1. See, *e.g.*, McCuen v Dickey, § 24.1, *infra* (Arkansas circuit court dismissed case, citing lack of jurisdiction).

the House. The Clerk then transmits the notice and any accompanying papers or pleadings to the Committee on House Administration. No further action of the House is required for the Committee on House Administration to begin consideration of the case.

An election contest may also be initiated by the House itself.[1] On opening day of a new Congress, prior to the swearing–in of Members–elect, any Member–elect may offer a challenge to the seating of any other Member–elect.[2] The House must then decide how to resolve the challenge, either by seating the Member–elect despite the challenge, by seating the Member–elect conditionally but referring the issue to the Committee on House Administration, or by declining to seat the Member–elect and referring the case to committee.

Under the FCEA, a notice of contest must first be filed before the House takes cognizance of the election contest. This requirement does not, however, affect the House's plenary authority under the Constitution to decide election cases. Where the House finds no merit in the contest (for example, the contestant is found to be incompetent under the statute to bring a claim), it may summarily dismiss the contest prior to committee consideration.[3] Similarly, where there is extrinsic evidence of irregularities in an election, the House may itself initiate a contest even where no notice of contest has been filed.[4] There have also been instances where the House has failed to take formal action on an election contest—most often where the contestee is determined to have the final right to the seat but is already a sworn Member.[5]

On April 14, 1789, the House established a "Committee of Elections," and chose seven Members by ballot to serve on such committee.[6] Members of this committee were charged with examining certificates of election, taking "into their consideration all such matters as shall or may come in

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1. See Precedents (Wickham) Ch. 2 § 4.

2. *Parliamentarian's Note:* Since the advent of the modern statute prescribing procedures for resolving election contests, challenges on the floor of the House on opening day have been extremely rare. Since the 93d Congress in 1973, there have only been two instances of a Member–elect being challenged, both occurring in 1985. See Precedents (Wickham) Ch. 2 §§ 4.1, 4.2; McCloskey v McIntyre, § 20.1; and Hansen v Stallings, § 20.3, *infra.* In the 117th Congress, a challenge was made to the seating of all Members–elect from certain states, and the House subsequently adopted a privileged resolution authorizing the Speaker to administer the oath of office to all Members–elect. See 167 CONG. REC. H7–H8 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 3, 2021).

3. See Deschler's Precedents Ch. 9 §§ 4.4, 4.5.

4. See, *e.g.*, McCloskey v McIntyre, § 20.1, *infra.*

5. See Deschler's Precedents Ch. 9 §§ 42.19, 42.20.

6. 1 ANNALS OF CONG. 127–28, 1st Cong. 1st Sess. (Apr. 14, 1789).

question . . . touching returns and elections," and to report their findings back to the House.[7] In 1794, the House adopted a resolution requiring that a Committee of Elections "be appointed at the commencement of each session."[8] This committee would have exclusive jurisdiction over election contests for the next century.

Toward the end of the 19th century, as the membership of the House grew larger, the workload of the committee correspondingly increased. In 1895, the Committee on Elections was split into three separate committees: Committee on Elections No. 1, Committee on Elections No. 2, and Committee on Elections No. 3.[9] These three committees handled election contests until the mid–20th century. As part of the Legislative Reorganization Act of 1946,[10] committee jurisdictions were streamlined, numerous committees were consolidated, and the jurisdiction of the three election committees was subsumed into the new Committee on House Administration.[11] The Committee on House Administration maintains a Subcommittee on Elections to address contested elections. It has also chosen to form ad hoc task forces and panels to address individual election contests.

Pursuant to clause 1(k)(12) of rule X,[12] the Committee on House Administration has jurisdiction over the election of Members, as well as all election contests. Similarly, the FCEA contemplates actions by the relevant "committee" of the House, which is defined as the Committee on House Administration.[13]

B. Grounds and Defenses

§ 5. Grounds for Initiating a Contest

The Federal Contested Elections Act (FCEA) does not specify the grounds on which an election contest may be based. Contestants are thus free to assert any basis for challenging the right of the contestee to the seat in question. However, it should be noted that the statute contemplates affirmative

7. *Id.*
8. 1 ANNALS OF CONG. 879–80, 3d Cong. 2d Sess. (Nov. 13, 1794).
9. See 4 Hinds' Precedents § 4019.
10. P.L. 79–601, 60 Stat. 812.
11. STAFF OF H. COMM. ON ADMIN., 112TH CONG. A HISTORY OF THE COMMITTEE ON HOUSE ADMINISTRATION 1947–2012, at 21–22 (Comm. Print 2013).
12. *House Rules and Manual* § 724 (2021).
13. *Parliamentarian's Note:* As codified, the FCEA still refers to the Committee on House Administration by its former name: the Committee on House Oversight. The Committee on House Administration was known by this name during the 104th and 105th Congresses. See *House Rules and Manual* § 724 (2021).

defenses that the contestee may utilize in responding to a notice of contest. One such defense directly addresses the claims made by the contestant in the notice of contest: the contestant must state grounds sufficient to change the result of the election.[1] Thus, whatever facts the contestant alleges as a basis for contesting the election must be sufficient to meet this burden.

The notice of contest must also state "with particularity" the grounds on which the contestant seeks to challenge the results of the election.[2] Vague or ambiguous allegations will not be sufficient for the contestant to succeed, and the Committee on House Administration has often recommended the dismissal of election contests on the basis that the grounds relied upon in the notice of contest were insufficiently specific to carry the burden of proof.[3]

Voting and Balloting Irregularities

By far the most common allegation proffered in a notice of contest is that there were substantial irregularities in election procedures or the tabulation of votes.[4] The specifics of such claims vary from contest to contest. For instance, the contestant may assert that voting machines or equipment failed to accurately record votes.[5] The contestant may claim that the ballots themselves (or the process of marking ballots) were confusing or ambiguous and that, as a result, the intent of the voter was not properly ascertained.[6] It may also be asserted that individuals not qualified to vote were nevertheless permitted to cast votes illegally.[7]

The conduct of election officials is often raised as an issue in the contestant's notice of contest. The contestant may claim that election officials either intentionally breached their duties under state and local election laws,[8] or that the officials were negligent in carrying out such duties.[9]

Improper Attempts to Influence Voters

Another common ground for initiating an election contest is the allegation that the contestee sought to improperly influence or confuse voters.[10] The

1. 2 U.S.C. § 383(b)(3).
2. 2 U.S.C. § 382(b).
3. See, *e.g.*, § 5.1, *infra.*
4. For an earlier treatment of such issues, see Deschler's Precedents Ch. 9 § 12.
5. See, *e.g.*, § 5.2, *infra.*
6. See, *e.g.*, § 5.3, *infra.*
7. See, *e.g.*, § 5.4, *infra.*
8. See, *e.g.*, § 5.5, *infra.*
9. See, *e.g.*, Hansen v Stallings, § 20.3; and Curtis v Feeney, § 31.2, *infra.*
10. For an earlier treatment of such issues, see Deschler's Precedents Ch. 9 § 11.

specifics of this type of claim may involve: harassment or intimidation of voters;[11] "vote–buying" or other attempts to bribe voters;[12] or the dissemination of misleading information to voters.[13]

Violations of Campaign Practices Laws

Election campaigns are conducted pursuant to a variety of Federal, state, and local laws.[14] Such laws regulate how campaign contributions are collected and spent, what communications to voters are permitted, and other campaign practices. A contestant may base their challenge to the results of the election on allegations that the contestee violated these laws (and that, but for the election campaign violations, the contestant would have been elected instead).[15]

Qualifications; Exclusion

The contestant may assert that the contestee in an election contest is not entitled to a seat in the House on the grounds that the contestee does not meet the qualifications for office laid out in the Constitution (and thus was never a viable candidate for the seat).[16] However, the House has been reluctant to treat such claims as a legitimate basis for initiating an election contest, as the individual was still properly elected to the seat. Instead, the House had usually viewed such claims as more appropriately adjudicated in the context of exclusion from the House, rather than as an election contest.[17]

However, the Committee on House Administration has on occasion taken up cases where one of the bases for the election contest was the lack of proper qualifications by the contestee.[18] In no such cases since the advent

11. See, *e.g.*, § 5.6, *infra.*

12. *Id.*

13. See, *e.g.*, Young v Mikva, § 15.1, *infra.*

14. See Precedents (Smith) Ch. 8. For earlier treatment of the regulation of campaign practices, see Deschler's Precedents Ch. 8 §§ 10–14.

15. See, *e.g.*, § 5.7, *infra.* See also Deschler's Precedents Ch. 9 § 10.

16. *Parliamentarian's Note:* The differences in outcome between an election contest and a case of exclusion can be summarized as follows: an election contest in which the contestant is successful results in the unseating of the contestee and the seating of the contestant. However, the exclusion of an individual from the House, on the basis that the individual is not qualified to serve, results in a vacancy in the seat (which must be filled via special election).

17. See Precedents (Smith) Ch. 7. See also Deschler's Precedents Ch. 7 §§ 9–14 and Deschler's Precedents Ch. 12 § 14.

18. See, *e.g.*, § 5.8, *infra.*

of the FCEA did the committee find that the arguments by the contestant had merit; all were thus dismissed by the House.

Other Grounds

Since the advent of the FCEA, a variety of other arguments have been raised as possible grounds for challenging the outcome of an election. These have included: abuse or misuse of an official position;[19] intimidation of, or threats directed at, the contestant;[20] and refusal to debate the contestant.[21] Finally, a number of election contests have been brought under the FCEA based on alleged fraud or error in the primary election to select party candidates for the general election.[22] In general, the House has been reluctant to treat such grounds as valid, on the theory that losing primary candidates do not have standing to challenge the results of the general election.[23]

§ 5.1 Grounds for initiating an election contest must be based on specific evidence, and the notice of contest must state "with particularity" the basis for challenging the results of the election.

In the case of Wilson v Hinshaw (§ 15.3, *infra*), the committee report evinced the proposition that the contestant must provide enough evidence to allow the committee to determine whether "contestant's claims are substantial and not frivolous"[24] Allegations of fraud in the notice of contest "should disclose with particularity what, when, where, how much and by whom."[25] The committee ultimately concluded that the allegations in that case were "vague and uncertain as to the necessary particulars."[26] In the case of Lowe v Fowler (§ 16.7, *infra*), the committee asserted that the contestant must meet the high burden of providing specific, substantial evidence, and, in dismissing the contest, concluded that this "standard has not been met by the contestant in his pleadings."[27]

§ 5.2 A notice of contest may be based on allegations that voting machines or equipment failed to accurately record votes.

19. See, *e.g.*, § 5.9, *infra.*
20. See, *e.g.*, § 5.10, *infra.*
21. See, *e.g.*, § 5.11, *infra.*
22. See, *e.g.*, § 5.12, *infra.*
23. See § 7, *infra.*
24. H. Rept. 94–761, 94th Cong. 1st Sess. p. 3.
25. *Id.* at p. 4.
26. *Id.*
27. H. Rept. 95–724, 95th Cong. 1st Sess. p. 4.

In the case of McCuen v Dickey (§ 24.1, *infra*), the contestant alleged that "the position of the individual voting pointers, *vis a vis* the location of the names on the ballot inserts associated with these pointers, was misleading to voters."[28] Contestant further alleged that certain voting machines were "improperly programmed and were defective"[29] and that other machines were not properly secured against tampering.[30] In the case of Gonzalez v Diaz–Balart (§ 31.1, *infra*), the contestant alleged that voting machines "were hacked or had their data tabulations altered by electronic means."[31] In both of these cases, the committee found the claims of the contestants unpersuasive, and resolved the contests in favor of the contestees.

§ 5.3 A notice of contest may be based on the allegation that ballots were inherently confusing or ambiguous, and thus the intent of the voter was not properly ascertained.

In the case of Dehr v Leggett (§ 16.5, *infra*), the election was conducted using IBM Votomatic machines, where a data card is inserted underneath a plastic ballot sheet and perforated when the voter makes a selection. The contestant argued that penciled–in notations regarding write–in candidates obscured the contestant's name and thus misled voters as to whom they were selecting (a claim ultimately rejected by the Committee on House Administration).[32] In the case of Archer v Packard (§ 19.1, *infra*), Votomatic machines were also used, and it was alleged by the contestant that voters attempting to vote for a write–in candidate defaced some machines—leading to possible confusion by subsequent voters using those machines.[33] However, the contestant could only provide one substantiated instance of a voter who claimed that his vote had been affected by a defaced machine,[34] and the case was dismissed. In the case of McCuen v Dickey (§ 24.1, *infra*), the contestant alleged that it was "difficult for voters to align the name of the person for whom they wished to vote, with the pointer designated for the person" due to the ballot design.[35] The committee, however, was not persuaded by this argument and the case was ultimately dismissed.

§ 5.4 A notice of contest may be based on the allegation that individuals ineligible to vote were nevertheless permitted to cast ballots.

28. H. Rept. 103–109, 103d Cong. 1st Sess. p. 4.
29. *Id.* at p. 5.
30. *Id.* at p. 6.
31. H. Rept. 110–175, 110th Cong. 1st Sess. p. 2.
32. H. Rept. 95–654, 95th Cong. 1st Sess. pp. 2, 3.
33. H. Rept. 98–452, 98th Cong. 1st Sess. p. 4.
34. *Id.*
35. H. Rept. 103–109, 103d Cong. 1st Sess. p. 5.

In the case of Hansen v Stallings (§ 20.3, *infra*), the contestant claimed that "illegal votes had been cast by persons not properly registered" to vote, and that such votes "if removed from the results, would change the outcome of the election."[36] The Committee on House Administration in that case went on to analyze Idaho state law regarding proper registration procedures, and concluded that "no facts have been produced from which it could be concluded that the voters involved were not qualified."[37] In the Dornan v Sanchez (§ 26.1, *infra*) case, the contestant argued that illegal votes were cast by a variety of unqualified individuals, including "under–age voters" "noncitizens," and "convicted felons." The contestant ultimately narrowed his claims to the issue of voting by noncitizens. The committee investigation did find evidence that illegal votes were cast, but not enough to make a difference.

§ 5.5 A notice of contest may allege intentional or negligent improper conduct by state and local election officials.

In the case of Freeman v Mitchell (§ 17.2, *infra*), the contestant argued that improper conduct by election officials was intentional, that "contestee and associates conspired with election officials," and that the "election was illegally and improperly certified."[38] Ultimately, the committee concluded in that case that the contestant had "failed to support" such allegations "with documentary or other evidence."[39] In the Archer v Packard (§ 19.1, *infra*) case, the contestant incorporated into his notice of contest the allegations contained in a petition filed in state court that claimed "a variety of inadequacies in the . . . conduct of officials charged with overseeing the election."[40] However, the committee "found no evidence of criminal violations of the California Election Code by election officials" and the case was dismissed.[41] The Anderson v Rose (§ 25.1, *infra*) case involved a "long laundry list of allegations, principally directed at elections officials in Robeson County"[42] by the contestant. The contestant claimed both intentional and negligent conduct by election officials—that "[b]allots were improperly remarked by election officials,"[43] and that "election officials were improperly advising and assisting voters."[44] Ultimately, the committee concluded that

36. H. Rept. 99–290, 99th Cong. 1st Sess. p. 3.
37. *Id.* at p. 4.
38. H. Rept. 96–226, 96th Cong. 1st Sess. p. 4.
39. *Id.*
40. H. Rept. 98–452, 98th Cong. 1st Sess. p. 2.
41. *Id.* at p. 4.
42. H. Rept. 104–852, 104th Cong. 2d Sess. p. 18.
43. *Id.* at p. 5.
44. *Id.* at p. 12.

the contestant did not provide the necessary evidence to support his claims, and the case was dismissed.

§ 5.6 A notice of contest may be based on the allegation that the contestee sought to improperly influence, intimidate, or confuse voters.

In the Anderson v Rose (§ 25.1, *infra*) case, contestant submitted affidavits and other evidence "suggesting that voters were harassed at certain polling stations."[45] The contestant also claimed that "[b]ribes were offered to voters with funds contributed" by the contestee.[46] Similarly, in the Hayward v Cuellar (§ 34.1, *infra*) case, the contestant argued that some voters were "intimidated"[47] and that others "were given free tacos, and were provided money in return for their vote."[48] Accusations of bribery were also at the center of the Wilson v Leach (§ 17.4, *infra*) case, where contestant alleged that voters were "paid to vote in the election for Contestee."[49] In the Young v Mikva (§ 15.1, *infra*) case, contestant claimed that the election was marred by "[w]idespread dissemination by Contestee to hundreds of thousands of voters of false and misleading information about Contestant."[50] In all of these cases, the committee found that the contestant did not support the allegations with sufficient evidence, and the cases were dismissed.

§ 5.7 Allegations that the contestee violated laws regarding permissible campaign practices have been used as the basis of a notice of contest.

Federal, state, and local laws govern what activities candidates for House seats may engage in during their campaigns. Contestants have sometimes based their contests on accusations that the contestee violated such laws. For example, one of the allegations contained in the notice of contest in the Young v Mikva (§ 15.1, *infra*) case was the "acceptance by Contestee of political contributions in violation of the FECA of 1971, and the failure to report these contributions as required by law."[51] In the Wilson v Hinshaw (§ 15.3, *infra*) case, a grand jury indicted contestee "on one count of conspiracy to pay voters in order to secure his election and ten counts of paying voters"[52]

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45. H. Rept. 104–852, 104th Cong. 2d Sess. p. 13.
46. *Id.* at p. 5.
47. H. Rept. 113–22, 113th Cong. 1st Sess. p. 2.
48. *Id.* at p. 4.
49. H. Rept. 96–784, 96th Cong. 2d Sess. p. 3.
50. H. Rept. 94–759, 94th Cong. 1st Sess. p. 2.
51. *Id.*
52. H. Rept. 94–761, 94th Cong. 1st Sess. p. 2.

but the contestee was acquitted by a Federal jury. Ultimately, "Contestant withdrew any allegations of involvement by Contestee"[53] in the alleged fraud and irregularities surrounding the election. Both of these cases were decided by the committee in favor of the contestee.

§ 5.8 The House has viewed claims that the contestee failed to meet constitutional requirements for qualification as more properly framed as a matter of exclusion to be decided by the House rather than as a legitimate basis to contest an election.

In the Mack v Stokes (§ 15.4, *infra*) case, the committee "took note of the fact that this case is a qualifications case and as such would more appropriately be brought to the House of Representatives by a petition or memorial rather than by proceeding in the nature of a contest."[54] In the case of Lyons v Gordon (§ 29.2, *infra*), contestant advanced the theory that the contestee was not qualified to serve in the House because certain actions of his rendered him an "insurrectionist" under clause 3 of the 14th Amendment.[55] In response, the committee found that, "as a general matter, challenges to the qualifications of a member–elect to serve in the Congress fall outside the purview of the FCEA, which was designed to consider allegations relating to the actual conduct of the election."[56] In the Cox v McCrery (§ 31.5, *infra*) case, the contestant argued that "the Contestee was not, when elected on November 7, 2006, an inhabitant of the state of Louisiana within the meaning of the Qualification clause."[57] The committee, however, found that, "[u]nder the precedents, a challenge to the qualifications of a Member is not treated as an election contest"[58] and that "challenges to the qualifications of a Member–elect to serve in the Congress are not a proper subject for a contest brought under the FCEA."[59] Although in each of these cases the committee recommended dismissal based on a failure to adequately support their grounds for the contests, it nevertheless evinced a view that qualifications challenges should not be made in the context of an election contest.

§ 5.9 A notice of contest has been based on the allegation that contestee (or others) abused or misused an official position to affect the outcome of the election.

53. *Id.* at p. 3.
54. H. Rept. 94–762, 94th Cong. 1st Sess. p. 2.
55. H. Rept. 108–208, 108th Cong. 1st Sess. p. 2.
56. *Id.* at p. 4.
57. H. Rept. 110–177, 110th Cong. 1st Sess. p. 2.
58. *Id.* at p. 3.
59. *Id.* at p. 4.

In the Wilson v Hinshaw (§ 15.3, *infra*) case, the contestant argued that "misconduct by Contestee and abuse of his position as County Assessor"[60] resulted in an election that was not "fair, independent, and open."[61] In the case of Saunders v Kelly (§ 16.1, *infra*), the contestant alleged that "the chairman of the Florida Ethics Commission carried out an attack . . . against her candidacy"[62] and that the contestee "conspired with the Chairman of the committee to attack her candidacy."[63] In both of these cases, the accusations of misuse of official positions were deemed by the committee as not sufficiently supported with specific evidence, and the cases were dismissed.

§ 5.10 A notice of contest has been based on allegations that the contestee made threats against the contestant or engaged in other acts of intimidation.

In the case of Freeman v Mitchell (§ 17.2, *infra*), the contestant "alleged acts of violence and intimidation to herself, her husband, her campaign staff, and her supporters."[64] Such acts allegedly included "telephone death threats," "attempts to extort money," and "a threat to contestant's own life at gunpoint."[65] However, the committee determined that the contestant did not sufficiently support such claims and "failed to meet the burden placed on contestant by the act in order to overcome the motion to dismiss."[66]

§ 5.11 A notice of contest has been based in part on the allegation that, but for contestee's failure to debate the contestant, the outcome of the election would have been different.

In the Tataii v Abercrombie (§ 32.1, *infra*) case, the committee report noted that "Contestant's sole allegation supporting his contest is that, but for Contestee's refusal to debate him, Contestant would have won election to the First Congressional District" of Hawaii.[67] However, the committee concluded that such accusations were "no more than unsupported speculation" and that contestant's "claims do not cast sufficient doubt on the results of the election to merit further investigation."[68] The case was subsequently dismissed.

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60. See H. Rept. 94–761, 94th Cong. 1st Sess. p. 2.
61. *Id.*
62. H. Rept. 95–242, 95th Cong. 1st Sess. p. 2.
63. *Id.*
64. H. Rept. 96–226, 96th Cong. 1st Sess. p. 4.
65. *Id.*
66. *Id.* at p. 5.
67. H. Rept. 111–68, 111th Cong. 1st Sess. p. 3.
68. *Id.* at p. 4.

§ 5.12 The House has rejected fraud or error in the primary election as a valid basis for a notice of contest.

In the Perkins v Byron (§ 17.1, *infra*) case, the contestant "claimed that the Maryland Democratic Central Committee failed to provide adequate notice of the meeting"[69] at which an alternative nominee was selected following the death of the prior nominee. The committee report stated that the contestant "made no claim of any irregularity in the conduct of the general election."[70] It concluded that the contestant "failed to demonstrate that his allegations, if true, would have changed the election results."[71] The case of Tataii v Case (§ 29.1, *infra*) also involved the death of one party's nominee prior to the general election. The deceased candidate won the general election posthumously, and a special election was held to fill the resulting vacancy. The committee report on the contest summarized the basis for contestant's claim as follows: ". . . the contestant's claim to why he is entitled to the Second Congressional seat is based chiefly on his argument that Representative Mink should have been disqualified as a primary candidate, that he should have been declared the Democratic nominee by default, and that as the nominee, he would have been the inevitable general election winner."[72] The committee was not persuaded by this argument, deciding that "the basis for the contestant's Notice of Contest falls outside the scope of the FCEA."[73] In its analysis, the committee stated unequivocally that, "[b]y its very terms, the FCEA does not contemplate considering Notices of Contest that are based on the conduct of primary elections."[74] Thus, the case was decided in favor of the contestee.

§ 6. Defenses to a Contest

The Federal Contested Elections Act (FCEA) provides four possible defenses that a contestee may assert in opposition to a notice of contest filed by the contestant. These are: (1) insufficiency of service; (2) lack of standing of the contestant; (3) failure of the notice of contest to state grounds sufficient to change the results of the election; and (4) failure of contestant to claim a right to contestee's seat.[1]

69. H. Rept. 96–78, 96th Cong. 1st Sess. p. 3.
70. *Id.*
71. *Id.* at p. 4.
72. H. Rept. 108–207, 108th Cong. 1st Sess. pp. 4, 5.
73. *Id.* at p. 5.
74. *Id.* at p. 4.
1. 2 U.S.C. § 383(b).

The notice of contest filed by the contestant must be properly served on the contestee in conformity with the statute's service requirements.[2] The statute requires that the notice of contest be filed within 30 days after the results of the election have been officially declared by the relevant state authorities.[3] Thus, the untimely filing of a notice of contest may be raised by the contestee as a possible defense.[4] Other deficiencies in service (such as lack of proof of service, or improper form of the notice) may similarly be raised by the contestee under this statutory defense.[5]

The contestant must have proper standing to challenge the results of the election, and the contestee may allege lack of standing as a defense to a notice of contest.[6] The FCEA specifies that, to have proper standing, an individual must have been "a candidate for election in the last preceding election."[7] Thus, losing primary election candidates, campaign organizations, or other individuals who were not candidates in the general election, will not be able to meet the requirements for standing under the statute.[8]

To prevail in an elections contest case, the contestant must show not only that there were errors, fraud, or irregularities in the conduct of the election, but also that such factors were sufficient to change the result of the election.[9] In other words, but for such factors, the contestant (rather than the contestee) would have been declared the winner of the election. Since the advent of the FCEA, contestees have often asserted the defense that, even accepting the truth of the contestant's claims regarding the election, the contestant did not demonstrate that the result would have been different.[10]

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2. 2 U.S.C. § 382(c).

3. 2 U.S.C. § 382(a).

4. See, *e.g.*, § 6.1, *infra.*

5. See, *e.g.*, § 6.2, *infra.*

6. 2 U.S.C. § 383(b)(2). For a discussion of standing generally, see § 7, *infra.* For examples of election contests where the contestee raised the issue of standing, see, *e.g.*, Lowe v Fowler, § 16.7; Thorsness v Daschle, § 17.5; and Project Hurt v Waters, § 34.3, *infra.* See also Deschler's Precedents Ch. 9 §§ 14.1, 14.2.

7. 2 U.S.C. § 382(a). Under the former Contested Elections Act, the standing requirements were not as strict as under the FCEA, and the statute theoretically permitted "any person" to challenge the results of an election. See Deschler's Precedents Ch. 9 § 19. Nevertheless, even under the old statute, the House considered individuals who were not candidates in the general election as incompetent to pursue a claim. See Deschler's Precedents Ch. 9 § 19.1.

8. *Parliamentarian's Note:* Although the individual or entity filing a notice of contest under the FCEA may lack proper standing, the Committee on House Administration may nevertheless elect to consider the merits of the case in order to dismiss the case on substantive rather than merely procedural grounds. See, *e.g.*, Project Hurt v Cohen, § 34.2, *infra.*

9. 2 U.S.C. § 383(b)(3).

10. See, *e.g.*, § 6.3, *infra.* See also Deschler's Precedents Ch. 9 § 13.3.

The final statutory defense under the FCEA is a failure by the contestant to claim a right to contestant's seat.[11] This defense has been asserted where, for example, the individual initiating the contest was only a candidate in the party primary election, but not a candidate in the general election.[12] In other cases, this defense has essentially merged with the third statutory defense (failure to demonstrate that the results of the election would have been different) because the inability to claim that the result would have changed necessarily precludes the contestant from claiming that they should be seated in place of the contestee.[13]

In addition to these defenses provided by the FCEA, House precedents delineate additional nonstatutory defenses that a contestee may assert to counter the allegations made in a notice of contest.[14] Some of these nonstatutory defenses are analytically similar to the defenses (or other requirements) provided in statute. For example, the House has recognized the failure on the part of the contestant to state the grounds for the contest with specificity as a valid defense for the contestee[15] (mirroring the statutory requirement that the contestant state grounds "with particularity").[16] Contests that the House has determined were brought on mere "conjecture" have likewise been dismissed as lacking the required specificity.[17]

Pursuant to the statute, contestants must also request proper relief in their notice of contest (*i.e.*, claim a right to the contestee's seat). Where a contestant merely requests a recount of certain disputed ballots or precincts (without further claiming that the result of the recount would demonstrate that the contestant was the actual winner), the committee has recommended dismissal of the case.[18]

The failure of the contestant to make a prima facie case has also been recognized by the House as a legitimate defense in an election contest.[19] Where the contestee asserts that the contestant has made no claim that there were any irregularities, fraud, or misconduct in the administration of the election, the House may choose to dismiss the case as lacking a proper foundation.[20]

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11. 2 U.S.C. § 383(b)(4).

12. See, *e.g.*, Hill and Panlasigui v Clay, § 16.6, *infra.*

13. See, *e.g.*, § 6.4, *infra.*

14. See Deschler's Precedents Ch. 9 § 13.

15. See, *e.g.*, § 6.5, *infra.* See also Deschler's Precedents Ch. 9 § 13.8.

16. 2 U.S.C. § 382(a).

17. See, *e.g.*, Freeman v Mitchell, § 17.2, *infra* (contestee claimed insufficient knowledge to response to vague allegations by contestant). See also Jennings v Buchanan, § 31.4, *infra.*

18. See, *e.g.*, Ziebarth v Smith, § 15.5; and Hendon v Clarke, § 19.2, *infra.*

19. See Deschler's Precedents Ch. 9 § 13.1.

20. See, *e.g.*, § 6.6, *infra.*

The House has been reluctant to accord legitimacy to election contests where the contestant had opportunities at the state level to pursue claims related to the conduct of the election but chose to forgo those opportunities.[21] The defense of a "failure to exhaust state remedies" has been asserted in election contests since the advent of the FCEA, though the statute does not specifically require contestants to avail themselves of state processes prior to commencing an election contest.[22]

Where the contestant asserts that irregularities or misconduct occurred prior to the election (for example, errors in the production or distribution of absentee ballots), the contestee may offer the defense that such issues should have been addressed at the state level prior to the election. The House has accepted this defense in earlier cases,[23] noting that candidates should attempt to resolve known pre–election issues prior to the election (*i.e.*, when there is still time to prevent those issues from affecting the outcome of the election).[24]

It is important to note that the contestee is not required to assert any defense in an election contest in order to prevail. The burden at all times is on the contestant to prove the case. The FCEA provides that the "failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest."[25] Since the enactment of the statute, several cases have proceeded to committee consideration despite the lack of any answer or defense offered by the contestee.[26] The contestant may respond to contestee's defenses by noting that they were not filed within the time period prescribed by the statute, and thus should be disregarded as untimely.[27] However, as even the lack of defense does not shift the burden of proof, an untimely defense presents no barrier to the success of the contestee.

Abatement; Laches

An election contest may become moot due to the failure of the contestant to continue the case to its conclusion.[28] Contestants may withdraw their

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21. See Deschler's Precedents Ch. 9 §§ 13.4, 13.5.

22. See, *e.g.*, Anderson v Rose, § 25.1; and Dornan v Sanchez, § 26.1, *infra.*

23. See Deschler's Precedents Ch. 9 §§ 13.6, 13.7.

24. See, *e.g.*, Won Pat v Blaz, § 20.2, *infra.*

25. 2 U.S.C. § 385.

26. See, *e.g.*, § 6.7, *infra;* and Tataii v Abercrombie, § 32.1, *infra.* Withdrawal from the case by the contestant necessarily moots any lack of defense on the part of the contestee. See Kyros v Emery, § 15.2, *infra.*

27. See, *e.g.*, Hansen v Stallings, § 20.3, *infra.*

28. See, *e.g.*, Hart v Miller–Meeks, § 38.1, *infra*.

notice of contest at any point, including during committee consideration of the claims, in which case the election contest is terminated. Furthermore, pursuant to the FCEA, the contested election "shall abate" in the event of the death of the contestant.[29] Where a notice of contest has been filed, but the contestant does not thereafter provide the House with any testimony or evidence in support of the claim, the House may dismiss the case on that basis.[30] The House may also choose to dismiss an election contest upon a finding that the contestant has unreasonably delayed the proceedings by failing to gather evidence, submit testimony, or file required briefs within the time periods established by law.[31]

§ 6.1 Contestees may avail themselves of the defense that the contestant failed to file the notice of contest within the required time period.

In the Rayner v Stewart (§ 17.3, *infra*) case, the contestee averred that the notice of contest was not timely filed—a claim that the ad hoc panel investigating the case concluded was true.[32] The committee also found no merit to contestant's substantive claims, and therefore recommend dismissal of the case, "based on procedural and substantive grounds."[33] In the Gonzalez v Diaz–Balart (§ 31.1, *infra*) case, contestee sought "to have this election contest dismissed based on Contestant's failure to timely file the Notice of Contest with the Clerk of the House of Representatives pursuant to the filing requirements under FCEA."[34] Although the committee chose to dismiss the case on substantive grounds, the minority views accompanying the report agreed with contestee's assertion regarding the proper method of filing the notice of contest, and concluded that the case could have been dismissed on this procedural ground alone.[35] In the Project Hurt v Cohen (§ 34.2, *infra*) case, the committee report noted that "Project Hurt filed the Notice of Contest with the Clerk of the House of Representatives on March 27, 2013, 112 days past the certification date. The notice of contest was not timely and therefore should not be considered."[36] For this and other reasons, the case was dismissed.

§ 6.2 Contestees may base their defense on the lack of (or deficiencies in) proper service of process.

29. 2 U.S.C. § 395.
30. See, *e.g.*, Deschler's Precedents Ch. 9 §§ 15.1–15.3.
31. See, *e.g.*, Deschler's Precedents Ch. 9 §§ 16.1, 16.2.
32. H. Rept. 96–316, 96th Cong. 1st Sess. p. 3.
33. *Id.* at p. 5.
34. H. Rept. 110–175, 110th Cong. 1st Sess. p. 3.
35. *Id.* at pp. 5, 6.
36. H. Rept. 113–132, 113th Cong. 1st Sess. p. 3.

The FCEA provides that the contestant must properly serve the contestee with the notice of contest, and lays out the requirements for proper service.[37] Contestees may therefore offer a defense that the notice was not properly served. For instance, in the Rayner v Stewart (§ 17.3, *infra*) case, contestee countered contestant's notice of contest by claiming, in part, that there was no proof of service.[38] This alleged procedural defect, along with other procedural defects related to the notice contest, was accepted by the committee as accurate, and the case was dismissed "based on both procedural and substantive grounds."[39]

§ 6.3 Contestees may offer the defense that, even accepting the factual claims made by the contestant, contestant did not demonstrate how the result of the election would have been different.

In the Pierce v Pursell (§ 16.4, *infra*) case, contestee "filed a Motion to Dismiss and asserted that the contestant had failed to state grounds sufficient to change the result of the election."[40] In assessing whether or not to grant contestant's request for a recount, the committee stated that "some substantial allegations of fraud must be alleged, and the likelihood must exist that the result of the election would have been different were not for such irregularity or fraud."[41] The committee ultimately concluded that the contestant had not met this burden. In the case of Anderson v Rose (§ 25.1, *infra*), contestee's motion to dismiss "demanded dismissal on the grounds that Anderson's Notice failed to state sufficient grounds to change the result of the election."[42] The committee report in this case evinced the following standard for evaluating whether contestant has shown that the outcome would have been different: credible allegations must be made which "show either that: (1) more ballots mere improperly cast than the margin of victory; or (2) because of contaminating factors such as bribery, harassment of voters, corruption of officials, etc., in certain precinct(s), the credibility of the vote total is irreparably damaged."[43] However, the committee concluded that the "allegations did not meet the required standard to survive the Motion to Dismiss."[44] The contestee in the Curtis v Feeney (§ 31.2, *infra*) case also filed a motion to dismiss based on the defense that the contestant

37. 2 U.S.C. § 382(c).
38. H. Rept. 96–316, 96th Cong. 1st Sess. pp. 2, 3.
39. *Id.* at p. 5.
40. H. Rept. 95–245, 95th Cong. 1st Sess. p. 2.
41. *Id.* at p. 4.
42. H. Rept. 104–852, 104th Cong. 2d Sess. p. 6.
43. *Id.* at p. 7.
44. *Id.* at p. 12.

"failed to claim a right to the office and support that claim with specific credible allegations of irregularities or fraud that if proven true would be sufficient to change the result of the election."[45] The committee reiterated this standard, stating that to "survive a motion to dismiss, Contestant must proffer allegations that, if proven, would have altered the election outcome."[46] In recommending dismissal, the committee concluded that "Contestant's claims amount to no more than raw conjecture and speculation unsupported by specific and credible allegations of irregularity sufficient to put into doubt the outcome of the election."[47]

§ 6.4 Contestees may offer a defense that the contestant's notice of contest failed to include an affirmative claim of right to the seat at issue.

In the Hill and Panlasigui v Clay (§ 16.6, *infra*) case, a "Concerned Citizens Committee" filed a notice of contest on behalf of two primary election candidates alleging that the election was tainted by illegal voting and other irregularities and seeking a new primary election.[48] The committee concluded that no claims were made regarding the general election and that therefore the contest should be dismissed on the ground that the "notice of contest and subsequent pleadings did not sustain contestants' claim of a right to contestee's seat."[49] In the Ziebarth v Smith (§ 15.5, *infra*) case, one defense offered by the contestee was the "[f]ailure of contestant to claim right to contestee's seat."[50] In that case, the contestant sought a recount in certain precincts, but after the committee's review of the pleadings it concluded that there was no "indication as to the factual basis for contestant's opinion that a recount would change the result of the election and substantiate contestant's claim of a right to the seat in question."[51] Similarly, the contestant in the Pierce v Pursell (§ 16.4, *infra*) case also claimed that a recount of ballots would demonstrate that he was the rightful winner of the election, and contestee filed a motion to dismiss based in part on the defense that contestant "had failed to claim a right to contestee's seat."[52] The committee agreed that the "present case lacks all of the ingredients that our colleagues in earlier Congresses have found essential to ordering a recount"

45. H. Rept. 110–176, 110th Cong. 1st Sess. p. 3.
46. *Id.*
47. *Id.* at p. 6.
48. H. Rept. 95–723, 95th Cong. 1st Sess. p. 2.
49. *Id.* at p. 4.
50. H. Rept. 94–763, 94th Cong. 1st Sess. p. 4.
51. *Id.*
52. H. Rept. 95–245, 95th Cong. 1st Sess. p. 2.

and recommended dismissal of the case.[53] Finally, in the Project Hurt v Waters (§ 34.3, *infra*) and the Project Hurt v Cohen (§ 34.2, *infra*) cases, a not–for–profit organization attempted to challenge two different congressional elections, but in both cases the committee stated, "Project Hurt does not claim a right to the office"[54] and both cases were resolved in favor of the contestee.

§ 6.5 Contestees may offer a defense that the contestant has not stated the grounds for the contest with sufficient specificity.

In the Saunders v Kelly (§ 16.1, *infra*) case, the contestee claimed that the notice of contest "was so vague and ambiguous" that the contestee was "unable to adequately respond thereto."[55] The committee ultimately agreed that the contestant "has not made the sort of specific allegations accompanied by supportive evidence that is required to overcome a motion to dismiss."[56] Similarly, the contestee in the Freeman v Mitchell (§ 17.2, *infra*) case claimed that he was "without sufficient knowledge or information to respond"[57] to contestant's allegations, and that contestant "failed to support her allegations with documentary evidence."[58] The committee reiterated the statutory requirement to state grounds for the contest with "particularity"[59] and ultimately recommended dismissal of the case.

§ 6.6 Contestees may assert a defense that the contestant has not made a prima facie showing that would overcome the presumption that the election was properly conducted.

To overcome the presumption that certified election results were correct and valid, a contestant must make out a prima facie case demonstrating how fraud, mistake, or other irregularities could successfully impeach those results.[60] Contestees may therefore assert a defense that the contestant has not made such a showing. For example, in the Thorsness v Daschle (§ 17.5, *infra*) case, contestee argued that "Contestant made no showing of fraud, irregularities, or misconduct."[61] The committee concurred, stating

53. *Id.* at p. 4.
54. H. Rept. 113–133, 113th Cong. 1st Sess. p. 3; and H. Rept. 113–132, 113th Cong. 1st Sess. p. 3.
55. H. Rept. 95–242, 95th Cong. 1st Sess. p. 2.
56. *Id.* at p. 4.
57. H. Rept. 96–226, 96th Cong. 1st Sess. p. 2.
58. *Id.* at p. 3.
59. *Id.* at p. 5.
60. See, *e.g.*, Deschler's Precedents Ch. 9 § 13.1.
61. H. Rept. 96–785, 96th Cong. 2d Sess. p. 2.

that, contestant's notice of contest was not initially supported by any documentary evidence establishing the allegations[62] and the case was dismissed.

§ 6.7 Pursuant to the FCEA, the burden of proof rests with the contestant, and the lack of any timely defense or answer on the part of the contestee is not to be construed as an admission of the truth of claims made in the notice of contest.

In the Lyons v Gordon (§ 29.2, *infra*) case, the committee report noted that the contestee submitted a one–page letter relating to the case but "did not file a formal answer in response to the Notice of Contest."[63] The committee went on to reiterate that the "burden remains upon the contestant to provide credible allegations to the House sufficient to support a claim under the FCEA."[64] The case was ultimately dismissed. In the Hansen v Stallings (§ 20.3, *infra*) case, the contestant argued that contestee's motion to dismiss should not be granted because it was not timely filed.[65] However, the committee explained that a "Motion to Dismiss, whenever filed, is always in order for the Committee's consideration"[66] and that "it is immaterial whether the Committee dismisses the contest on its own initiative, or upon the motion of the contestee, whenever such motion is filed."[67]

C. Procedure

§ 7. Standing; Parties

Under the Federal Contested Elections Act (FCEA), an individual filing a notice of contest challenging the results of an election must have been a candidate in that election.[1] In other words, to have standing to file a notice of contest, the individual must be eligible to claim a right to the seat. However, as the House is (under the Constitution) the ultimate arbiter of any

62. *Id.* at p. 4.
63. H. Rept. 108–208, 108th Cong. 1st Sess. p. 3.
64. *Id.*
65. H. Rept. 99–290, 99th Cong. 1st Sess. p. 8.
66. *Id.*
67. *Id.*
1. In order to file a notice of contest under the FCEA, an individual must have been "a candidate for election in the last preceding election." 2 U.S.C. § 382(a).

disputes with regard to its membership, the House is at liberty to decide election cases brought by those who were not candidates for the seat at issue.[2]

Despite the statutory requirement that a contestant be a candidate in the general election for the seat, the House has taken up several election contests initiated by other individuals or organizations.[3] Individuals who lost primary elections, and were thus precluded from competing in the general election, have sometimes filed notices of contest.[4] In one case, the Committee on House Administration treated a losing primary candidate as competent to file a notice of contest under the statute on the theory that such an individual was eligible to win the seat as a write–in candidate.[5] The House has rejected contests initiated by the campaign manager for a losing general election candidate,[6] candidates in an unofficial "shadow" election,[7] and a citizen challenging multiple elections via petition.[8]

The FCEA applies both to elections to the House as Members and to elections to the House as Delegates or Resident Commissioners.[9]

§ 7.1 In order to have standing to pursue a claim under the FCEA, a contestant must be an individual who was a candidate in a general election for a seat in the House.

Under the statutory definition,[10] organizations (such as advocacy groups, citizens committees, etc.) are not competent to file claims under the FCEA. The cases of Project Hurt v Cohen (§ 34.2, *infra*) and Project Hurt v Waters (§ 34.3, *infra*) were both filed by the same not–for–profit organization. The committee report in both cases stated that "Project Hurt does not meet the

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2. *Parliamentarian's Note:* Under the earlier act (the Contested Elections Act, formerly codified at 2 U.S.C. §§ 201–226), "any person" could give notice of an intention to contest an election. However, the House still considered individuals who were not candidates in the general election as incompetent to pursue a claim. See Deschler's Precedents Ch. 9 § 19.1.

3. For examples of organizations, rather than individuals, filing notices of contest, see, *e.g.*, Hill and Panlasigui v Clay, § 16.6; Project Hurt v Cohen, § 34.2; and Project Hurt v Waters, § 34.3, *infra*.

4. See, *e.g.*, Tataii v Case, § 29.1, *infra.* See also Deschler's Precedents Ch. 9 §§ 19.1, 19.4, and 19.5.

5. See, *e.g.*, Haas v Bass, § 25.2, *infra* (The committee report states that the contestant "would have apparent standing to contest the election.").

6. See Deschler's Precedents Ch. 9 § 19.2.

7. See Deschler's Precedents Ch. 9 § 19.3.

8. See Deschler's Precedents Ch. 9 § 19.6.

9. 2 U.S.C. § 381(1). See, *e.g.*, Won Pat v Blaz, § 20.2, *infra.*

10. 2 U.S.C. § 382(a).

definition of Contestant under the FCEA and is not authorized to file a contest."[11] These cases were ultimately dismissed by the House.

§ 7.2 Although losing primary election candidates are not competent to file claims under the FCEA, the House may nevertheless accept such a filing under the theory that such individuals may have qualified as write–in candidates in the general election.

In the case of Tataii v Case (§ 29.1, *infra*), the contestant's substantive claims were aimed at irregularities in the primary election, and he was not a candidate in the general election.[12] The committee stated that it was "unclear, however, whether a contestant may claim a right to a seat, and thus have standing, when the basis of his or her complaint relates to the conduct of the primary election, not the general election."[13] The committee went on to dismiss the case on other grounds, without resolving the question of standing. In the Haas v Bass (§ 25.2, *infra*) case, the contestant was a losing primary candidate who nevertheless, under New Hampshire law, was permitted to solicit votes as a write–in candidate.[14] The committee concluded that the contestant "would have apparent standing to contest the election."[15]

§ 8. Notice of Contest

Pursuant to the Federal Contested Elections Act (FCEA), an election contest commences when the contestant files the required initial pleading: the notice of contest.[1] A defeated candidate in an election to the House has 30 days under the statute to submit this document to the Clerk of the House,

11. H. Rept. 113–133, 113th Cong. 1st Sess. p. 2; and H. Rept. 113–132, 113th Cong. 1st Sess. p. 2.

12. H. Rept. 108–207, 108th Cong. 1st Sess. p. 3. Although the contestant was not a candidate in the general election, he was a candidate in the special election to fill the vacancy caused by the death of the incumbent prior to the general election.

13. *Id.*

14. H. Rept. 104–853, 104th Cong. 2d Sess. p. 2. The FCEA defines a "candidate" for purposes of the act as someone whose name was printed on the general election ballot, or who seeks the office "by write–in votes, provided that he is qualified for such office" and state law permits such write–in candidates. 2 U.S.C. § 381(2).

15. H. Rept. 104–853, 104th Cong. 2d Sess. p.3.

1. For an example of the House summarily dismissing an election contest due to the contestant having failed to file a notice of contest, see Deschler's Precedents Ch. 9 § 20.1. See also Deschler's Precedents Ch. 9 §§ 18.1, 18.2.

and to serve upon the contestee written notice that the contest has been initiated.[2] The 30–day period runs from the point at which the election is formally certified by the relevant state or local election officials.[3]

The House may choose to dismiss an election contest on the procedural ground that the notice of contest was not timely filed.[4] However, the House may also choose to overlook an untimely submission, often to dismiss the case on substantive rather than merely procedural grounds.[5] In some cases, the House has treated the mailing of the required notice of contest within the statutory time period as sufficient to initiate a contest.[6] There is no prohibition on the same individual initiating contests with respect to the same seat in successive elections.[7]

The form of the notice of contest is provided by statute.[8] The notice of contest must state "with particularity" the grounds on which the contest is being pursued, and inform the contestee that an answer to the notice of contest must be filed within 30 days.[9] The notice of contest must be signed by the contestant and verified by "oath or affirmation."[10] The contestant may revise a notice of contest by filing an amended notice of contest.[11] The Committee on House Administration may recommend dismissal of a contest on the basis that the notice of contest was in improper form.[12] The lack of specificity with respect to the grounds for commencing the contest has often been used by the House as the basis for dismissing an election contest.[13] Similarly, the statute provides two affirmative defenses to an election contest that address the content of the notice of contest: (1) that the notice of contest did not state grounds sufficient to change the result of the election;[14] and (2) that the notice of contest did not claim a right to the contestee's seat.[15]

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2. 2 U.S.C. § 382(a).

3. *Id.* See, *e.g.*, Dornan v Sanchez, § 26.1, *infra.* See also Deschler's Precedents Ch. 9 §§ 20.4, 20.5.

4. See, *e.g.*, § 8.1, *infra.*

5. *Id.* See also Deschler's Precedents Ch. 9 §§ 20.2, 20.3.

6. See, *e.g.*, Gonzalez v Diaz–Balart, § 31.1; and Russell v Brown–Waite, § 31.3, *infra.* The minority views in each of these cases would have determined that the notice of contest was not timely filed and would have dismissed the contest based on that procedural ground.

7. See Deschler's Precedents Ch. 9 § 18.4.

8. 2 U.S.C. § 382(b).

9. *Id.*

10. *Id.* See Deschler's Precedents Ch. 9 § 22.4.

11. See § 9, *infra.*

12. See, *e.g.*, § 8.2, *infra.*

13. See, *e.g.*, Saunders v Kelly, § 16.1, *infra.* See Deschler's Precedents Ch. 9 §§ 13.8, 22.1–22.3.

14. 2 U.S.C. § 383(b)(3).

15. 2 U.S.C. § 383(b)(4).

The notice of contest must also be properly served upon the contestee.[16] The FCEA provides a variety of methods by which service of process may be executed and verified.[17] Lack of proper service may provide a basis for the Committee on House Administration to recommend dismissal of the election contest.[18] Lack of proper service is also provided as a possible defense by the contestee.[19]

§ 8.1 The House may choose to dismiss an election contest based on the untimely filing of the notice of contest, though the House has also taken mitigating factors into account when deciding whether to dismiss the case on procedural grounds.

Under the FCEA, a contestant seeking to challenge the results of an election must file the notice of contest within 30 days of the final certification of results.[20] If the contestant fails to abide by this requirement, the House may dismiss the case for lack of timely filing. For example, in both the Project Hurt v Cohen (§ 34.2, *infra*) case and the Project Hurt v Waters (§ 34.3, *infra*) case, the committee report stated that the "Notice of Contest was not timely filed and therefore should not be considered."[21] In some cases, the House has chosen to accept an untimely filing and instead dismiss the case on substantive rather than procedural grounds. For example, in the Tataii v Abercrombie (§ 32.1, *infra*) case, the committee report concluded that "the Contestant's Notice of Contest was filed untimely with the Clerk of the House of Representatives."[22] However, the committee went on to state that "it is acknowledged that the Contestant may have received inaccurate advice on exhausting his remedies and timely filing. Therefore the Committee will evaluate Contestant's claims on their merits."[23] In the Gonzalez v Diaz–Balart (§ 31.1, *infra*) case and the Russell v Brown–Waite (§ 31.3, *infra*) case, the minority views accompanying the committee's report in each case took issue with the method of filing, stating that "[w]hile mailing does suffice for service of other kinds of pleading, it does not suffice for

16. 2 U.S.C. § 382(c).

17. *Id.* Under the prior statute, it was unclear whether substituted service (rather than personal service) was sufficient to meet statutory requirements. See Deschler's Precedents Ch. 9 § 21.1. However, under the current statute, substituted service is permissible.

18. See, *e.g.*, § 8.3, *infra.* For minority views concluding that an election contest should have been dismissed for lack of proper service, see Oberweis v Underwood, § 38.2, *infra.*

19. 2 U.S.C. § 383(b)(a).

20. 2 U.S.C. § 382(a).

21. H. Rept. 113–133, 113th Cong. 1st Sess. p. 3; and H. Rept. 113–132, 113th Cong. 1st Sess. p. 3.

22. H. Rept. 111–68, 111th Cong. 1st Sess. p. 3.

23. *Id.*

the initial filing of the contest. We believe the proper interpretation of FCEA requires the document actually be in the possession of the Clerk within the prescribed period."[24] The majority, however, accepted the date on the certificate of service as the date of submission and did not address the question of untimely filing.

§ 8.2 The House may dismiss an election contest on the basis that contestant's notice of contest was not in proper form.

The FCEA provides that the notice of contest must abide by certain formal requirements, including a statement of the grounds for initiating the contest, a verified signature, etc.[25] The House may dismiss a contest on the basis that the notice of contest lacked these required elements. For example, in the Rayner v Stewart (§ 17.3, *infra*) case, the contestee's motion to dismiss noted several deficiencies in contestant's notice of contest, including: lack of timely filing; failure to name the proper party; and failure to state when contestee's answer would be due under the statute.[26] The committee accepted that these formal requirements were not met and dismissed the case "based both on procedural and substantive grounds."[27]

§ 8.3 The House may dismiss an election contest on the basis that the notice of contest was not properly served upon the contestee.

The FCEA provides certain methods for properly notifying the contestee that an election contest has been initiated.[28] If the contestant fails to demonstrate proof of proper service, the House may dismiss the case. For example, the House in the Rayner v Stewart (§ 17.3, *infra*) case concluded that "there was no proof of service" by the contestant.[29] This omission was one of the procedural grounds on which the committee recommended dismissal.

§ 9. Other Pleadings

As noted above,[1] the statutory method for commencing an election contest is the filing by the contestant of a notice of contest. This initial pleading

24. H. Rept. 110–175, 110th Cong. 1st Sess. pp. 5, 6; and H. Rept. 110–178, 110th Cong. 1st Sess. pp. 5, 6.
25. 2 U.S.C. § 382(b).
26. H. Rept. 96–316, 96th Cong. 1st Sess. pp. 2, 3.
27. *Id.* at p. 5.
28. 2 U.S.C. § 382(c).
29. H. Rept. 96–316, 96th Cong. 1st Sess. p. 4.
1. See § 8, *supra.*

is the required first step under the Federal Contested Elections Act (FCEA), and its filing confers jurisdiction over the election contest to the House (specifically, the Committee on House Administration). This pleading may be revised or supplemented, either by filing an amended notice of contest[2] or by submitting an addendum to the original notice of contest.[3]

A variety of additional pleadings may also be filed in an election contest once the notice of contest has been filed. In response to a notice of contest, the contestee has three options available under the statute. In most cases that have arisen since the advent of the FCEA, the contestee has responded to the notice of contest with a motion to dismiss. The contestee may submit this motion prior to filing an answer to the notice of contest, and invoke one or more of the defenses described in the statute.[4] Alternatively, the contestee may take issue with the specificity of the complaint in the notice of contest, and file instead a motion for a more definite statement. Finally, the contestee may simply file an answer to the notice of contest.

Answer

After the notice of contest has been filed, the contestee has 30 days under the statute to submit a reply, termed the "answer."[5] The answer should admit or deny the charges made in the notice of contest, or state that the contestee has insufficient information to admit or deny such claims.[6] While the statute contemplates that an answer will be filed in response to any notice of contest, the failure on the part of the contestee to make such a pleading does not shift the burden of proof.[7] "The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest."[8] In most election contests that have arisen under the FCEA, the contestee has foregone the opportunity to file an answer to the notice of contest.[9] If the contestee does file an answer, the contestant may choose to file a subsequent response.[10]

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2. See, *e.g.*, § 9.1, *infra.*

3. *Id.*

4. The contestee may also raise one of the nonstatutory defenses recognized under the precedents. See § 6, *supra.*

5. 2 U.S.C. § 383(a).

6. *Id.*

7. See § 11, *infra.*

8. 2 U.S.C. § 385.

9. See, *e.g.*, Tataii v Abercrombie, § 32.1, *infra.*

10. See, *e.g.*, McCuen v Dickey, § 24.1, *infra.* The statute does not require a response to the answer, nor is such a response specifically contemplated under the statutory procedures.

Motion for a More Definite Statement

In some cases, the contestee will aver that the allegations contained in the notice of contest are insufficiently specific, and that the contestee is therefore unable to formulate an appropriate answer. The FCEA thus permits the contestee to instead file a "motion for a more definite statement."[11] This pleading must identify the defects in the notice of contest, and what details are required to prepare a response.[12] If the committee grants this motion, the statute provides ten days for the contestant to submit a more detailed statement.[13] Failure to do so in the allotted time may be used by the committee as a basis for dismissing the case.[14]

Motion to Dismiss

Under the FCEA, the burden is on the contestant to present a prima facie case in the notice of contest.[15] The rationale for this requirement is that lengthy inquiries or investigations should be avoided if the contestant cannot show how such investigations would prove the allegations made in the notice of contest. Thus, the contestee is permitted to file a motion to dismiss (in lieu of an answer) before any testimony or evidence is gathered, in order to expedite the dismissal of cases that on their face fail to properly challenge the results of the election. In formulating the motion to dismiss, contestees may avail themselves of any of the four prescribed defenses provided in the FCEA.[16] In addition, the House has also recognized other nonstatutory defenses that may also be asserted in a motion to dismiss.[17]

The motion to dismiss may be accompanied by additional information, in the form of "memoranda" or "appendices" in support thereof.[18] Contestees may also file a supplemental motion to dismiss containing additional arguments or defenses.[19] A motion to dismiss that is initially postponed in order for conduct discovery may be renewed following the submission of testimony or evidence.[20]

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11. 2 U.S.C. § 383(c). For examples of election contests where a motion for a more definite statement was filed, see, *e.g.*, Ziebarth v Smith, § 15.5; Saunders v Kelly, § 16.1; Perkins v Byron, § 17.1; and Dornan v Sanchez, § 26.1, *infra.*

12. 2 U.S.C. § 383(c).

13. *Id.* For an example of a response to a motion for a more definite statement, see, *e.g.*, Dornan v Sanchez, § 26.1, *infra.*

14. 2 U.S.C. § 383(c).

15. 2 U.S.C. § 385.

16. 2 U.S.C. § 383(b).

17. See § 6, *supra.*

18. See, *e.g.*, Anderson v Rose, § 25.1; and Jennings v Buchanan, § 31.4, *infra.*

19. See, *e.g.*, Perkins v Byron, § 17.1, *infra.*

20. See, *e.g.*, Dornan v Sanchez, § 26.1, *infra.*

In response to a motion to dismiss, the contestant may choose to file a pleading in opposition. Since the advent of the FCEA, these pleadings have been styled as: a "memorandum in opposition;"[21] a "reply;"[22] a "response;"[23] and an "answer."[24] Regardless of how the pleading is presented, its purpose is to counter the defenses raised in the motion to dismiss and raise arguments for the committee to consider in evaluating whether or not dismissal is warranted. In response to this pleading by the contestant, the contestee may in turn file a reply,[25] and the contestant may then submit a response to said reply.[26]

Discovery Motions

Election contests may proceed to the discovery stage, wherein the parties may take depositions, issue subpoenas, and otherwise gather evidence to support their claims. Pleadings at the discovery stage may request that the time for conducting discovery be extended or enlarged.[27] They may also call for compliance with duly–issued subpoenas,[28] or request that subpoenas issued by the other party be modified or quashed.[29] The committee itself may request that the parties supply pertinent information, and additional pleadings may be filed in response to such a request.[30] Should a witness refuse to sign the transcript of a deposition, the statute provides for a motion to suppress the deposition.[31]

Other Motions

In several election contests since the enactment of the FCEA, the contestant has filed a motion to stay the proceedings.[32] While not recognized under the statute, this motion has been used in cases where there is ongoing litigation related to the election contest, and the contestant desires the

21. See, *e.g.*, Mack v Stokes, § 15.4, *infra.*
22. See, *e.g.*, Ziebarth v Smith, § 15.5, *infra.*
23. See, *e.g.*, Won Pat v Blaz, § 20.2; McCuen v Dickey, § 24.1; and Anderson v Rose, § 25.1, *infra.*
24. See, *e.g.*, Thorsness v Daschle, § 17.5; and Archer v Packard, § 19.1, *infra.*
25. See, *e.g.*, Won Pat v Blaz, § 20.2; and Anderson v Rose, § 25.1, *infra.*
26. See, *e.g.*, Anderson v Rose, § 25.1, *infra.*
27. See, *e.g.*, Paul v Gammage, § 16.2; Freeman v Mitchell, § 17.2; and Dornan v Sanchez, § 26.1, *infra.*
28. See, *e.g.*, Dornan v Sanchez, § 26.1, *infra.*
29. 2 U.S.C. § 388(e). See Dornan v Sanchez, § 26.1, *infra.*
30. See, *e.g.*, Dornan v Sanchez, § 26.1, *infra.*
31. 2 U.S.C. § 386(h).
32. See, *e.g.*, § 9.2, *infra.*

court proceedings to conclude prior to moving forward with the election contest in the House. The Committee on House Administration may grant such a motion on the theory that the court proceedings may render further inquiry by the committee moot.

In one election contest, the committee task force evaluating the case had recommended dismissal, and the contestant thereafter filed with the committee a "motion to reconsider" the determination of the task force.[33] Ultimately, the committee chose not to reconsider that determination and the contest was dismissed.

§ 9.1 Contestants in election contests may be permitted to supplement their initial notice of contest by filing an amended notice of contest or an addendum to the original filing.

In the McCuen v Dickey (§ 24.1, *infra*) case, the contestant "filed an Amended Notice of Election Contest with the Clerk, providing additional information and arguments in support of his two initial contentions, and providing documentary evidence and exhibits."[34] In the Kyros v Emery (§ 15.2, *infra*) case, the contestant initially made claims regarding violations of campaign practices, but "the Contestant, with the consent of the Contestee, withdrew these charges by filing an Amended Notice of Contest."[35] In the Anderson v Rose (§ 25.1, *infra*) case, the contestant filed two addenda to the initial notice of contest containing new allegations relating to financial improprieties and residency requirements.[36]

§ 9.2 In cases where an election contest was initiated while litigation relating to the election remained ongoing, the contestant has sometimes filed a motion to stay the proceedings pending an outcome of the litigation.

In the case of Paul v Gammage (§ 16.2, *infra*), the contestant filed a motion "requesting that the House stay all proceedings pending the outcome of court proceedings in Texas."[37] In the Freeman v Mitchell (§ 17.2, *infra*) case, the contestant filed a "Motion for stay of proceeding pending resolution of appeal to the Court of Special Appeals of Maryland."[38] In the Thorsness v Daschle (§ 17.5, *infra*) case, the contestant filed a "Motion to Extend Time Until the South Dakota Supreme Court Acts Upon Disputed Ballots."[39] The

33. See Anderson v Rose, § 25.1, *infra*.
34. H. Rept. 103–109, 103d Cong. 1st Sess. p. 4.
35. H. Rept. 94–760, 94th Cong. 1st Sess. p. 2.
36. H. Rept. 104–852, 104th Cong. 2d Sess. p. 4 (fn. 6).
37. H. Rept. 95–243, 95th Cong. 1st Sess. p. 2.
38. H. Rept. 96–226, 96th Cong. 1st Sess. p. 3.
39. H. Rept. 96–785, 96th Cong. 2d Sess. p. 2.

committee did ultimately render its decision after the South Dakota Supreme Court had ruled in favor of the contestee, and incorporated that ruling into its determination to grant contestee's motion to dismiss.[40]

§ 10. Taking Testimony; Depositions

Either party in an election contest may take testimony from witnesses via deposition, to be used for discovery purposes or as evidence.[1] The opposing party, as well as third–party witnesses or any other person, may be subpoenaed to give testimony.[2] Under the statute, the contestant's period for taking testimony occurs first: after the contestee's answer is filed (or following the expiration of the time period for filing an answer), the contestant has 30 days in which to take testimony.[3] After that 30–day period for the contestant to take evidence expires, the contestee's 30–day period begins.[4] After that period is exhausted, the contestant has a further 10 days to take rebuttal testimony.[5] Depositions must be taken before an officer authorized to administer oaths.[6] The other party is to be notified two days in advance of any deposition.[7] The statute provides for penalties for witnesses who refuse to appear in response to a subpoena.[8] The committee may extend or enlarge the period for discovery at the request of either party.[9] Evidence submitted to the committee may be withdrawn by the parties.[10]

Examination of Parties and Witnesses

Pursuant to the Federal Contested Elections Act (FCEA), depositions in an election contest are taken before an "officer authorized to administer

40. *Id.* at p. 4.

1. 2 U.S.C. § 386(a). It should be noted that a successful motion to dismiss necessarily terminates the case, thus precluding these statutory mechanisms for taking evidence. Since the advent of the Federal Contested Elections Act, only one election contest has proceeded to the discovery phase. See Dornan v Sanchez, § 26.1, *infra.*

2. *Id.*

3. 2 U.S.C. § 386(c).

4. *Id.*

5. *Id.*

6. 2 U.S.C. § 386(d).

7. 2 U.S.C. § 387(a).

8. 2 U.S.C. § 390.

9. See § 9, *supra.* See also Deschler's Precedents Ch. 9 §§ 27.10–27.15. For an example of the time for taking testimony being tolled while ballots were in the possession of a court, see Deschler's Precedents Ch. 9 § 27.8.

10. See Deschler's Precedents Ch. 9 § 32.1.

oaths".[11] Said officer puts the witness under oath, and the witness' testimony is recorded and transcribed.[12] The opposing party is permitted to cross–examine any witness, which may be done in person or by the submission of written interrogatories.[13]

Following the completion of a deposition, the witness reviews the transcript of the proceedings to ensure its accuracy.[14] Review of the transcript may be waived by the witness and the parties.[15] The witness may make revisions in form or in substance, but must provide reasons for the proposed change.[16] After review, the deposition shall be signed by the witness. If the witness is unable to sign, or refuses to sign, the officer who conducted the deposition shall sign it, and note any reasons for the failure of the witness to sign the deposition.[17] Where the witness refuses to sign the deposition, the committee may entertain a motion to suppress the deposition.[18]

The officer before whom the deposition is taken is required by statute to certify the deposition, attesting to its accuracy and that the witness was properly sworn.[19] The officer then files the deposition with the Clerk of the House,[20] and notifies the parties of its filing.[21]

Scope of Examination; Objections

Witnesses may be examined with regard to any matter relevant to the election contest, whether it relates to claims made by the contestant or defenses proffered by the contestee.[22] Questions may pertain to records, documents, or other materials known to the witness that are relevant to the case.[23] Witnesses may also be questioned regarding the identity of persons with additional knowledge or relevant facts regarding the election contest.[24] The opposing party is entitled to cross–examine any witness.[25]

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11. 2 U.S.C. § 386(d).
12. 2 U.S.C. § 386(g).
13. *Id.*
14. 2 U.S.C. § 386(h).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* See Deschler's Precedents Ch. 9 § 28.1.
19. 2 U.S.C. § 391(a).
20. *Id.*
21. 2 U.S.C. § 391(b).
22. 2 U.S.C. § 386(b).
23. *Id.* On the issue of whether ballots are considered "papers" that may be subpoenaed in an election contest, see Deschler's Precedents Ch. 9 §§ 29.2, 29.3.
24. 2 U.S.C. § 386(b).
25. *Id.*

Either party may raise objections to the testimony presented, and the officer conducting the deposition notes all such objections.[26] Objections may also be raised with regard to manner of taking the deposition or the qualifications of the officer conducting the deposition.[27]

Subpoenas; Affidavits

The FCEA allows for the issuance of subpoenas to compel testimony from witnesses[28] or the production of documents or other materials.[29] The statute provides the form that the subpoena should take[30] and delineates the procedures for their issuance (including timing, method of service, and proof of service).[31] Subpoenas in election contests are to be issued by a judge or clerk located in the district, state, or county in which the examination is to take place, upon application by any party.[32] Witnesses are only required to attend examinations where the person resides or transacts business, or within 40 miles of the place of service.[33] Failure to comply with a subpoena under the FCEA is punishable by fines, imprisonment, or both.[34] In the only election contest to proceed to the discovery phase since the FCEA's enactment, the House adopted a resolution demanding that the U.S. Attorney file criminal charges against an entity for failure to comply with validly–issued subpoenas.[35]

Parties in the case, or recipients of subpoenas issued pursuant to the FCEA, may file with the committee motions to quash or modify the subpoenas.[36] In response to such motions, the committee has voted to modify and enforce the subpoenas,[37] quash the subpoenas,[38] or hold the subpoenas in abeyance pending a determination as to their relevancy.[39]

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26. 2 U.S.C. § 386(g).
27. *Id.*
28. 2 U.S.C. § 388(a).
29. 2 U.S.C. § 388(e).
30. 2 U.S.C. § 388(d).
31. 2 U.S.C. § 388(b).
32. 2 U.S.C. § 388(a). For an example of a district court issuing a subpoena in an election contest, but later recalling said subpoena, see Dornan v Sanchez, § 26.1, *infra.*
33. 2 U.S.C. § 388(c).
34. 2 U.S.C. § 390. Under the earlier statute, there were no penalties prescribed for failure to comply with subpoenas. See Deschler's Precedents Ch. 9 § 30.2.
35. See H. Res. 244, 143 CONG. REC. 20876–85, 105th Cong. 1st Sess. (Sept. 30, 1997). See also Dornan v Sanchez, § 26.1, *infra.*
36. See § 9, *supra.*
37. See H. Rept. 105–416, 105th Cong. 2d Sess., p. 13.
38. *Id.*
39. *Id.*

The FCEA provides that testimony may be provided to the committee in the form of an affidavit.[40] The parties may also agree to written stipulations, confirming the mutual understanding of what a witness would have testified to had a deposition been taken.[41] The filing procedures (and timelines) are the same as those for taking testimony via deposition.[42] When filing the notice of contest, the contestant may choose to include affidavits or other testimony in support of the claims therein.[43]

Committee Investigations

Independent of the statutory mechanisms for taking testimony and deposing witnesses, other procedures may be used by the Committee on House Administration to evaluate whether the election contest has merit. The committee has sometimes sent observers to the congressional district in dispute in order to monitor a state–ordered recount or other election proceeding.[44] The committee has also conducted a preliminary review of disputed ballots.[45] The committee may solicit the assistance of the Government Accountability Office (GAO) in testing and analyzing electronic voting equipment[46] or tabulating ballots in a recount.[47]

Like the parties in the case, the committee itself may also issue subpoenas, interrogatories, or other requests for information in furtherance of the investigation.[48] In order to protect private or sensitive information, the committee may issue protective orders indicating how information is to be transmitted and safeguarded.[49] The committee may also instruct state or local election officials to safeguard ballots, voting machines, or other equipment and materials, so that the committee can conduct its own recount.[50]

Effect of Motion to Dismiss

As noted earlier,[51] the contestee in an election case may, prior to the taking of any testimony, offer a motion to dismiss the case. The motion to

40. 2 U.S.C. § 387(c).
41. *Id.*
42. *Id.*
43. See, *e.g.*, § 10.2, *infra.*
44. See, *e.g.*, § 10.3, *infra.*
45. See, *e.g.*, Kyros v Emery, § 15.2, *infra.*
46. See, *e.g.*, § 10.4, *infra.*
47. *Id.*
48. See, *e.g.*, § 10.5, *infra.*
49. *Id.*
50. *Id.*
51. See § 9, *supra.*

dismiss will be granted where the contestant has not made a prima facie case that the contestant, and not the contestee, is entitled to the seat. Because the motion to dismiss is available prior to the statutory periods for conducting discovery, the granting of the motion necessarily terminates the case before testimony under the statutory procedures is obtained. Subpoenas or notices of deposition issued while a motion to dismiss is pending may be rendered moot by the House's dismissal of the case.[52] Where consideration of a motion to dismiss is postponed by the committee, discovery under the statute may proceed.[53] Since the advent of the FCEA in 1969, there has only been one election contest that has proceeded to the stage of taking testimony under the statute.[54]

§ 10.1 During the discovery phase[55] of an election contest, the parties are authorized to issue subpoenas through judicial officials, and submit pleadings relating to the enforcement of such subpoenas.

In the case of Dornan v Sanchez (§ 26.1, *infra*), the contestant issued numerous subpoenas, and the Committee on House Oversight[56] itself issued interrogatories[57] and subpoenas in furtherance of its investigation.[58]

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52. See, *e.g.*, § 10.6, *infra.*

53. *Id.*

54. See Dornan v Sanchez, § 26.1, *infra.*

55. *Parliamentarian's Note:* The FCEA authorizes the parties in an election contest to issue subpoenas and take depositions in order to gather evidence if the case proceeds to discovery. Since the advent of the FCEA, only the Dornan v Sanchez case (§ 26.1, *infra*) has continued to this phase. The Paul v Gammage case (§ 16.2, *infra*) and the Freeman v Mitchell case (§ 17.2, *infra*) were both dismissed prior to the discovery phase, but prior to dismissal, the contestants in both cases filed pleadings seeking to enlarge the period of discovery by 30 days. See H. Rept. 95–243, 95th Cong. 1st Sess., p. 2, and H. Rept. 96–266, 96th Cong. 1st Sess., p. 3. In Freeman v Mitchell (§ 17.2, *infra*), the contestant also filed notices of deposition and subpoenas *duces tecum*, but such motions were temporarily quashed and ultimately mooted when the contestee's motion to dismiss was granted. See H. Rept. 96–226, 96th Cong. 1st Sess., p. 3. Under the statute, deposition may be subject to a motion to suppress if the deponent refuses to sign the deposition (2 U.S.C. § 386(h)) but no case thus far under the FCEA has utilized this procedure.

56. *Parliamentarian's Note:* During the 104th and 105th Congresses, the Committee on House Administration was redesignated as the Committee on House Oversight. *House Rules and Manual* § 724 (2021).

57. *Parliamentarian's Note:* The committee, by unanimous consent, delegated the authority to issue interrogatories to the chair of the committee after consultation with the ranking minority member. However, it should be noted that clause 2(m)(3)(A) of rule XI, which permits committees to delegate certain investigatory authorities to the chair, is textually limited to "the power to authorize and issue subpoenas" and is silent with respect to other forms of compulsory process. Although no challenge was made to the committee's authorization here, the ranking minority member of the committee did express concern that he was not appropriately consulted with respect to the issuance of the interrogatories. 143 CONG. REC. 21828–29, 105th Cong. 1st Sess. (Oct. 8, 1997).

58. H. Rept. 105–416, 105th Cong. 2d Sess. pp. 12, 13.

These subpoenas became the subject of pleadings by both parties, seeking to have the subpoenas enforced, modified, quashed, or held in abeyance pending the submission of further evidence.[59]

§ 10.2 When initiating an election contest, a contestant may choose to submit affidavits or other testimony in support of the notice of contest.

In the Jennings v Buchanan (§ 31.4, *infra*) case, the contestant submitted "affidavits memorializing the eyewitness accounts" of voters attesting to their difficulty in using the voting software used in the election.[60] In the Freeman v Mitchell (§ 17.2, *infra*) case, the contestant submitted four affidavits from "campaign associates" relating to claims of harassment and intimidation against the contestant.[61]

§ 10.3 In its investigation of an election contest, the Committee on House Administration may send staff to the relevant district, in order to gather information or monitor recounts or other state–level proceedings relating to the contest.

In the Lowe v Fowler (§ 16.7, *infra*) case, "the Committee dispatched staff . . . to meet with the Atlanta assistant city attorney" and other election officials.[62] In the Hill and Panlasigui v Clay (§ 16.6, *infra*) case, "committee dispatched staff to St. Louis to meet with the incumbent board of election commissioners, the commission secretary, and the commission counsel."[63] In the Lehr v Deggett (§ 16.5, *infra*) case, the committee report noted that the contestant had "filed for a recount of the returns in Sacramento County, which recount was duly conducted and observed by the parties in interest, their attorneys, and staff from the Committee on House Administration."[64] Similarly, in the Paul v Gammage (§ 16.2, *infra*) case, a "recount was conducted under the general observation of inspectors from the Secretary of State of Texas and by counsel from Elections Subcommittee of the House Administration Committee."[65] The committee report in the Young v Mikva (§ 16.3, *infra*) case described a proceeding in a local court where contestant had petitioned to have certain absentee ballots counted, and noted that "staff of this committee was present during this proceeding."[66] Prior to the withdrawal of the contestant in the Kyros v Emery

59. *Id.*
60. H. Rept. 110–528, 110th Cong. 2d Sess. p. 7.
61. H. Rept. 96–226, 96th Cong. 1st Sess. p. 5.
62. H. Rept. 95–724, 95th Cong. 1st Sess. p. 2.
63. H. Rept. 95–723, 95th Cong. 1st Sess. p. 3.
64. H. Rept. 95–654, 95th Cong. 1st Sess. p. 1.
65. H. Rept. 95–243, 95th Cong. 1st Sess. p. 2.
66. H. Rept. 95–244, 95th Cong. 1st Sess. p. 2.

(§ 15.2, *infra*) case, the "Subcommittee on Elections directed its staff to conduct a preliminary review of the disputed ballots in Portland, Maine."[67] In the Wilson v Leach (§ 17.4, *infra*) case, a Member "accompanied by Majority and Minority staff, made arrangements with the Department of Justice to visit the Department and individually review each of the FBI interviews of voters from the precinct in which specific violations were alleged to have occurred."[68] Finally, in the Dornan v Sanchez (§ 26.1, *infra*) case, the task force investigating the case held a field hearing in Santa Ana, California, to hear testimony from state and local election officials.[69]

§ 10.4 In investigating election contests, the Committee on House Administration has availed itself of assistance from the Government Accountability Office (GAO) in analyzing voting equipment and tabulating ballots.

In the Jennings v Buchanan (§ 31.4, *infra*) case, the task force investigating the contest "unanimously voted to retain the Government Accountability Office (GAO) to investigate whether the voting machines used in Sarasota County contributed to the unusually high number of undervotes."[70] In the McCloskey v McIntyre (§ 20.1, *infra*) case, the committee undertook its own recount of the ballots used in the election, and "arranged with the General Accounting Office[71] to provide two–person teams of auditors to actually count the ballots . . . under the overall direction of the Task Force."[72]

§ 10.5 In furtherance of its investigation into election contests, the Committee on House Administration may issue requests for information, protective orders, or instructions to local officials to safeguard ballots or other materials.

In the Dornan v Sanchez (§ 26.1, *infra*) case, the committee "voted to authorize the issuance of interrogatories" to the contestant, the contestee, and various state and local election officials.[73] In the same case, the committee deemed it necessary "to issue its own subpoenas and undertake a larger role

67. H. Rept. 94–760, 94th Cong. 1st Sess. p. 2.

68. H. Rept. 96–784, 96th Cong. 2d Sess. p. 2.

69. H. Rept. 105–416, 105th Cong. 2d Sess. p. 13.

70. H. Rept. 110–528, 110th Cong. 2d Sess. pp. 1614, 1615.

71. The General Accounting Office was renamed the Government Accountability Office in 2004. See P.L. 108–271, 118 Stat. 811.

72. H. Rept. 99–58, 99th Cong. 1st Sess. p. 33.

73. H. Rept. 105–416, 105th Cong. 2d Sess. p. 13. For a discussion of the committee's delegation of this authority to the chair of the committee, see § 10.1 (fn. 57), *supra*.

in the investigation" when earlier requests for information were not complied with.[74] The committee also issued "three protective orders that specify the term of production and custody of documents produced under subpoena" in order to "protect the legitimate privacy interests of those organizations and individuals subpoenaed by the Contestant."[75] In the McCloskey v McIntyre (§ 20.1, *infra*) case, the committee instructed all county clerks in the district to "protect and keep safe" all relevant documents in the case "including but not limited to all ballots, certifications, poll books, and tally sheets."[76]

§ 10.6 If the contestee's motion to dismiss is granted, any pending subpoenas or notices of deposition become moot due to the termination of the case, but where a motion to dismiss is merely postponed, discovery may proceed.

In the Freeman v Mitchell (§ 17.2, *infra*) case, the ad hoc elections panel investigating the case temporarily quashed subpoenas filed by the contestant pending a decision on contestee's motion to dismiss.[77] These subpoenas were rendered moot when the motion to dismiss was granted and the House adopted a resolution dismissing the case. By contrast, in the Dornan v Sanchez (§ 26.1, *infra*) case, the task force investigating the case "voted to postpone the disposition of Ms. Sanchez's Motion to Dismiss until a hearing on the merits."[78] Ultimately that motion to dismiss was renewed (and granted) following the committee's investigation.

D. Committee and House Consideration

§ 11. Burden of Proof; Presumptions

When evidence is submitted in an election contest, the Committee on House Administration (often through a subcommittee or ad hoc task force) must evaluate said evidence and make judgments as to its relevance, credibility, etc. The House has articulated a "fair preponderance of the evidence"

74. *Id.*
75. *Id.* at p. 12.
76. H. Rept. 99–58, 99th Cong. 1st Sess. p. 13.
77. H. Rept. 96–226, 96th Cong. 1st Sess. p. 3.
78. H. Rept. 105–416, 105th Cong. 2d Sess. p. 3.

standard in evaluating claims made in election contests.[1] Hearsay evidence will not be admitted[2] and unsupported claims will generally lead to a dismissal of the case.[3] Evidence regarding elections to prior Congresses will not be considered relevant for an election contest brought in the current Congress.[4] In the past, evidence gathered by special committees investigating campaign practices has been submitted to the Committee on House Administration where relevant to an ongoing election contest.[5]

The burden of proof in election contests is always on contestants to demonstrate that their claims are well–founded.[6] The contestee is not required to answer the notice of contest, and the failure to answer (pursuant to statute) is not to be considered an admission of the claims made by the contestant.[7] Evidence submitted with or as part of the notice of contest must be sufficient to survive a motion to dismiss, and a motion to dismiss may be granted before any evidence is gathered under the statutory procedures.[8] If the contestant argues that a recount of ballots by the committee is necessary, the contestant must demonstrate both that there were errors in the tabulation of votes and that ballots have been properly preserved for recount purposes.[9]

Contestants must also overcome the presumption of regularity that attaches to the official results of any election.[10] State and local election officials are presumed to have undertaken their duties competently and in good

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1. See Deschler's Precedents Ch. 9 §§ 35.2, 36.5, 47.9, 50.2; and 6 Cannon's Precedents § 91. It should be noted that, although the fair preponderance standard has been used most frequently, the House has also articulated different evidentiary standards in different contexts. For example, in the Dornan v Sanchez case (§ 26.1, infra), the committee report stated that "Only clear and convincing evidence can provide the basis to overcome the presumption of legitimacy of the electoral process." H. Rept. 105–416, 105th Cong. 2d Sess. p. 15. An earlier case evinced the view that, where the contestant requests that votes be rejected, evidence that they were illegally cast must "leave no doubt." Deschler's Precedents Ch. 9 §§ 35.5, 56.5. In another case, the committee accepted "none but clear and convincing testimony" regarding the number and contents of disputed ballots. Deschler's Precedents Ch. 9 App. § 1.6. Similarly, in an 1890 case, the committee determined that a "clear preponderance of competent evidence" must be demonstrated before a vote could be "thrown out for illegality." 1 Hinds' Precedents § 585.

2. See Deschler's Precedents Ch. 9 § 35.9.

3. See, *e.g.*, § 11.1, *infra.*

4. See, *e.g.*, § 11.2, *infra.*

5. See Deschler's Precedents Ch. 9 § 34.1.

6. See Deschler's Precedents Ch. 9 § 35.

7. 2 U.S.C. § 385 ("The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest.").

8. See §§ 9, 10, *supra.*

9. See Deschler's Precedents Ch. 9 §§ 35.10, 37.19, 37.20, 40.5–40.8, and 41.3.

10. See Deschler's Precedents Ch. 9 § 36. See also § 11.3, *infra*.

faith.[11] Fraud is never to be presumed but must be proven.[12] A valid certificate of election issued by state officials has been considered prima facie evidence of the regularity and correctness of the election.[13] The mere closeness of an election in no way creates a presumption that fraud or error has occurred.[14]

§ 11.1 The burden of proof rests with the contestant in an election contest, and claims that lack sufficient evidentiary support will not be accepted.

In the Mack v Stokes (§ 15.4, *infra*) case, the committee found that the contestant did not meet this burden of proof, stating that "only conclusions of law are alleged and no substantial offer of proof is made."[15] The committee report in the Perkins v Byron (§ 17.1, *infra*) case reiterated the fact that the contestant "must initially support his allegations and conclusions with documentary evidence, or provide some other showing that would change the result of the election."[16] However, no such showing was made: "Contestant Perkins failed to present any documentary evidence supporting his allegations"[17] The House ultimately dismissed the case.

§ 11.2 Evidence relating to actions or events in elections to prior Congresses will not be considered relevant for purposes of evaluating claims regarding an election to the current Congress.

In the Wilson v Hinshaw (§ 15.3, *infra*) case, the contestant made "allegations of violations of law, misconduct, and other actions both in the 1972

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11. See, *e.g.*, McCloskey v McIntyre, § 20.1, *infra* ("election officials are presumed to have operated in good faith").

12. See, *e.g.*, Young v Mikva, § 15.1, *infra.*

13. See, *e.g.*, McCloskey v McIntyre, § 20.1, *infra* ("To prevent election disputes from degenerating into partisan confrontations, the House has created a general presumption in favor of the candidate who is certified by the appropriate state election official as a Member–elect. That certification carries with it the presumption that the state election procedures have been timely, regular, and fairly implemented."). See also Gonzalez v Diaz–Balart, § 31.1, *infra* ("Contestant's allegations are no more than unsupported speculation and his claims do not cast sufficient doubt on the results of the election to merit investigation. For the committee to come to any other conclusion would be to remove the presumption of regularity that attaches to the state certification and would make all elections open to contest and investigation based on mere conjecture or speculation.").

14. See, *e.g.*, § 11.4 *infra.* See also Deschler's Precedents Ch. 9 § 36.11.

15. H. Rept. 94–762, 94th Cong. 1st Sess. p. 3.

16. H. Rept. 96–78, 96th Cong. 1st Sess. p. 3.

17. *Id.*

congressional election (in which contestee was a candidate) and the 1974 congressional election, on the part of contestee and other individuals."[18] However, the committee stated that the "allegations of wrongdoing by the Contestee in 1973 for a seat in the 93d Congress cannot be considered in this election contest for a seat in the 94th Congress."[19] Similarly, in the Lowe v Fowler (§ 16.7, *infra*) case, one of the contestant's claims was that, because contestant had received substantially more votes in the 1970 primary election as compared to the 1977 special election at issue, "a presumption of fraud or irregularity" could be inferred.[20] The committee rejected this argument, stating that "Disparity in the number of votes is not, in itself, sufficient to demonstrate fraud or irregularity."[21]

§ 11.3 The official returns and certification by state and local election officials constitutes prima facie evidence that the election was properly administered, and the contestant must provide sufficient evidence to overcome that presumption.

A presumption of regularity attaches to the official returns of an election, and contestants bear the burden of overcoming this presumption with substantial evidence. As stated in the Jennings v Buchanan (§ 31.4, *infra*) case, "It is the Constitutional duty of the House of Representatives to investigate a valid election contest, yet only clear and convincing evidence can provide the basis to overcome the presumption of regularity accorded a State's certified results."[22] The committee report in the Gonzalez v Diaz–Balart (§ 31.1, *infra*) case similarly describes the presumption that contestants must overcome: "Contestant's allegations are no more than unsupported speculation and his claims do not cast sufficient doubt on the results of the election to merit investigation. For the committee to come to any other conclusion would be to remove the presumption of regularity that attaches to the state certification and would make all elections open to contest and investigation based on mere conjecture or speculation."[23] In the Haas v Bass (§ 25.2, *infra*) case, the committee stated in its conclusion that the "official certification of election submitted to the Clerk of the House by the New Hampshire Secretary of State provides prima facie evidence of the regularity and correctness of state election returns and of Mr. Bass' presumption of entitlement to the seat"[24] and that the contestant failed "to present any

18. H. Rept. 94–761, 94th Cong. 1st Sess. p. 2.
19. *Id.* at p. 5.
20. H. Rept. 95–724, 95th Cong. 1st Sess. p. 2.
21. *Id.* at p. 3.
22. H. Rept. 110–528, 110th Cong. 2d Sess. p. 12.
23. H. Rept. 110–175, 110th Cong. 1st Sess. p. 4.
24. H. Rept. 104–853, 104th Cong. 2d Sess. p. 3.

basis on which the Committee could overcome, rebut, or contradict this presumption."[25]

§ 11.4 The mere closeness of an election does not raise a presumption or inference of fraud or irregularity, and the contestant must prove any such fraud or irregularity by presenting sufficient evidence.

Contestants have sometimes argued that a close result in the election should lead to the presumption that fraud or other irregularities must have occurred. This type of argument has not been accepted by the House, which has required contestants to demonstrate (via substantial evidence) what fraud or irregularities occurred and what impact they had on the election. As stated in the Young v Mikva (§ 15.1, *infra*) case, "fraud is never presumed but must be proven, and . . . the mere closeness of the result of an election raises no presumption of fraud, irregularities, or dishonesty."[26] The committee report in the Ziebarth v Smith (§ 15.5, *infra*) case articulated the same principle in denying contestant's request for a recount based solely on the closeness of the election results.[27]

§ 12. Ballot Issues; Recounts

The Committee on House Administration may find it necessary, in exceptional circumstances, to examine disputed ballots used in an election or conduct its own recount.[1] Most states have adopted their own recount procedures, often triggered automatically when the difference in votes between the winning and losing candidates is within a certain margin. In addition, some states have voluntary procedures by which unsuccessful candidates can request recounts of some or all precincts.[2] In general, the Committee on House Administration is highly deferential to state election procedures, and where state recount processes exist, the committee is unlikely to intervene to conduct its own count of the ballots.[3] On occasion, the committee

25. *Id.* at p. 4.

26. H. Rept. 94–759, 94th Cong. 1st Sess. pp. 4, 5.

27. H. Rept. 94–763, 94th Cong. 1st Sess. pp. 15, 16.

1. Under modern statutory procedures, committee–conducted recounts have become exceedingly rare. For earlier treatment of recounts under the prior statute, see Deschler's Precedents Ch. 9 § 39–41.

2. See, *e.g.*, Illinois' "discovery recount" procedures described in Young v Mikva, § 15.1, and Idaho's partial recount provisions described in Hansen v Stallings, § 20.3, *infra.* See also Deschler's Precedents Ch. 9 § 41.2 (New Hampshire state law permitted either candidate to request a recount).

3. See § 12.1, *infra.* See also Deschler's Precedents Ch. 9 § 41.1 (committee indicated that it would not conduct its own recount where state recount procedures existed). But see McCloskey v McIntyre, § 20.1, *infra.*

has sent observers to supervise a recount conducted by state officials.[4] There have also been historical instances where the parties to an election contest have agreed to conduct their own recount.[5]

Despite the House's reluctance to conduct its own recounts, it is also the case that states have long recognized the House's authority, under the Constitution, to determine which individuals have been properly elected to its membership.[6] Thus, states may have adopted procedures that do not permit recounts in elections to Federal office, preferring instead to defer to the House's jurisdiction over election contests.[7]

A request that the House conduct a recount of ballots used in the election is not a proper form of relief under the Federal Contested Elections Act. Instead, the contestant must affirmatively claim a right to contestee's seat. Merely requesting a recount, without offering supporting evidence demonstrating that the result of the election would have been different, is not sufficient under the statute.[8] This principle conforms to the House's overarching goal in election contests to balance the need to adjudicate valid, substantiated claims with the desire to avoid time–consuming and meritless investigations.

In evaluating ballots, the House weighs a variety of factors to reach a decision. Of paramount importance is determining the intent of the voter.[9] The focus on voter intent supports the goal of avoiding voter disenfranchisement wherever possible. A secondary factor is compliance with state and local election laws. The House has distinguished between "mandatory" provisions in state election statutes, and "directory" provisions. "Mandatory" provisions are those which are "substantial,"[10] "essential to the validity of the election,"[11] and "confer rights of suffrage."[12] "Directory" provisions, by

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4. See, *e.g.*, Young v Mikva, § 15.1; Paul v Gammage, § 16.2; Dehr v Leggett, § 16.5; and Dornan v Sanchez, § 26.1, *infra.* See also Deschler's Precedents Ch. 9 § 39.4.

5. See Deschler's Precedents Ch. 9 §§ 39.1, 39.2.

6. See, *e.g.*, Ziebarth v Smith, § 15.5, *infra* (Nebraska court determined that there was no method to contest an election to the House under Nebraska law, and thus only the House could conduct a recount of ballots); Rayner v Stewart, § 17.3, *infra* (U.S. district court held that the House has exclusive jurisdiction over the final determination as to who was elected to one of its seats); and McCuen v Dickey, § 24.1, *infra* (Arkansas state court dismissed complaint on the grounds that it lacked jurisdiction over a contested House election).

7. See, *e.g.*, § 12.2, *infra*.

8. See, *e.g.*, Ziebarth v Smith, § 15.5; and Hendon v Clarke, § 19.2, *infra.* See also Deschler's Precedents Ch. 9 § 40.

9. See Deschler's Precedents Ch. 9 § 38.1.

10. See Deschler's Precedents Ch. 9 § 10.6.

11. See Deschler's Precedents Ch. 9 § 10.11.

12. See Deschler's Precedents Ch. 9 § 10.10.

contrast, are merely "formal,"[13] "relate to the mode of procedure,"[14] and constitute only "administrative requirements."[15] Provisions of state law that regulate the conduct of voters have been considered "mandatory," while those regulating the conduct of election officials have been considered merely "directory."[16] As a result, the House will generally not invalidate ballots where the only issue is lack of compliance by election officials with "directory" provisions of election law.[17]

In determining voter intent, the House examines the format of the ballot, the markings of the voter, and the requirements of state law. The House has distinguished ambiguous or misleading ballots (where recourse to extrinsic evidence may clarify voter intent) and conflicting voter marks (where the intent of the voter is a "matter of conjecture.").[18] State laws (and the interpretation of those laws by state courts), are accorded some deference in evaluating the validity of ballots, but are not considered binding.[19] Ambiguities in state law will generally be resolved in favor of validating ballots where the intent of the voter is clear.[20]

On occasion, the House has had to make determinations as to voter intent in the context of straight–ticket voting. In general, where the clear intent of the voter is to vote for all candidates of a single party, the House candidate of that party is entitled to such straight–ticket votes.[21] However, an intent to vote straight–ticket will not be presumed based on selections for other candidates.[22]

The House has also addressed ambiguities in ballots that allow for write–in candidates. The misspelling of a candidate's name, where the intent of the voter is otherwise clear, will not be sufficient to invalidate a ballot.[23] Where a voter writes in a candidate's name, but fails to properly mark the ballot next to the name, the vote may still be accepted.[24]

The voter's markings on the ballot are obviously the best evidence of voter intent, but such markings may be ambiguous or conflicting. Stray marks or

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13. See Deschler's Precedents Ch. 9 § 10.6.

14. *Id.*

15. See Deschler's Precedents Ch. 9 § 10.11.

16. See Deschler's Precedents Ch. 9 § 10.7.

17. See, *e.g.*, Deschler's Precedents Ch. 9 § 10.14. However, election results may be invalidated where there is "evidence of legal fraud or intentional corruptness" on the part of election officials. See Deschler's Precedents Ch. 9 § 10.13.

18. See Deschler's Precedents Ch. 9 §§ 37.1, 38.3.

19. See Deschler's Precedents Ch. 9 § 38.4.

20. See Deschler's Precedents Ch. 9 § 38.5.

21. See Deschler's Precedents Ch. 9 § 37.7.

22. See Deschler's Precedents Ch. 9 §§ 37.6, 37.8.

23. See Deschler's Precedents Ch. 9 § 37.12.

24. See Deschler's Precedents Ch. 9 §§ 37.9, 37.16.

an improperly formed "check" or "X" will generally be accepted as a valid marking if the intent of the voter is clear.[25] Ballots with conflicting marks for both candidates, however, will be rejected.[26] State election law requirements regarding the type of marking device (*e.g.*, pencil,[27] sticker,[28] etc.) or other formalities (*e.g.*, detaching a ballot stub)[29] may be taken into account in evaluating ballots, and have been subject to the "mandatory" versus "directory" analysis described above.

Where there is evidence that some number of votes in the election were cast illegally, but it is impossible to determine for which candidate the illegal votes were cast, the House has used a "proportionate deduction" rule to invalidate such votes.[30] This method deducts the illegal votes from both candidates in the proportion of each candidate's share of the overall vote.

Since the advent of the Federal Contested Elections Act, the Committee on House Administration has only conducted one full recount of an election to the House.[31] In the case of McCloskey v McIntyre (§ 20.1, *infra*), the committee had concluded that many valid ballots had been rejected by state and local officials for technical errors and that the standards for invalidating ballots were not uniform.[32] It thus authorized a task force to obtain the ballots used in the election, and conduct a new recount. The task force developed protocols for how to evaluate problematic ballots,[33] and conducted a full recount[34] utilizing the resources of the Government Accountability Office (GAO).[35]

§ 12.1 Where state recount procedures are available to the parties, the Committee on House Administration has been reluctant to authorize its own review of disputed ballots.

25. See Deschler's Precedents Ch. 9 §§ 37.10, 37.11.
26. See Deschler's Precedents Ch. 9 § 37.15.
27. See Deschler's Precedents Ch. 9 § 37.18.
28. See Deschler's Precedents Ch. 9 § 37.14.
29. See Deschler's Precedents Ch. 9 § 37.17.
30. See Deschler's Precedents Ch. 9 §§ 37.3–37.5.
31. See § 12.3, *infra*. In one other election contest, the committee began an investigation into disputed ballots, but the contestant ultimately withdrew the case, rendering the committee investigation moot. See Kyros v Emery, § 15.2, *infra*.
32. See H. Rept. 99–58, 99th Cong. 1st Sess. pp. 15–32.
33. *Id.* at pp. 3, 4.
34. But see H. Rept. 99–58, 99th Cong. 1st Sess., pp. 55–57 (dissenting views questioned why certain ballots were not included in the recount).
35. At the time of this election contest, GAO was known as the General Accounting Office. For an earlier example of the House utilizing the services of GAO in an election contest, see Deschler's Precedents Ch. 9 § 41.5.

In the Thorsness v Daschle (§ 17.5, *infra*) case, the ad hoc election panel investigating the case noted that the South Dakota Supreme Court had already conducted a review of the disputed ballots, and concluded, "In light of this exhaustive de novo recount by South Dakota's highest Court, it would seem both redundant and presumptuous for this panel to recount the ballots ourselves and substitute our judgement for the courts."[36] In the case of Hendon v Clarke (§ 19.2, *infra*), the contestant's request for a recount was denied by both state election officials and Federal courts.[37] In considering whether to conduct its own recount, the Committee on House Administration noted that, "In previous contests the Committee has held that before it will conduct a recount, a Contestant must meet his evidentiary burden, *i.e.*, demonstrate that the recount would change the result of the election."[38] The committee determined that this burden had not been met and the case was ultimately dismissed.

§ 12.2 State recount procedures may not provide for state-level review of disputed ballots in Federal elections.

The case of Kyros v Emery (§ 15.2, *infra*) involved a Maine law that allowed for state officials to make determinations as to disputed ballots except for elections governed by the Federal Constitution.[39] Thus, the parties agreed that only the House of Representatives had the authority to review disputed ballots. The Subcommittee on Elections began a preliminary review before the contestant terminated the case by withdrawing.[40]

§ 12.3 The House has the authority to conduct its own review and recount of disputed ballots in a House election.

In the case of McCloskey v McIntyre (§ 20.1, *infra*), the Committee on House Administration (following state-level recounts) chose to conduct a full recount of the ballots cast in the election.[41] However the committee stressed that "The House has consistently extended considerable deference to state election procedure"[42] and that it was only the "manifest"[43] irregularities and inconsistencies in state election processes that compelled the committee to authorize a recount.[44]

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36. H. Rept. 96–785, 96th Cong. 2d Sess. p. 3.

37. H. Rept. 98–453, 98th Cong. 1st Sess. p. 2.

38. *Id.*

39. H. Rept. 94–760, 94th Cong. 1st Sess. p. 5.

40. *Id.* at pp. 2–4.

41. H. Rept. 99–58, 99th Cong. 1st Sess. p. 33.

42. *Id.* at p. 3.

43. *Id.*

44. For dissenting views in this case, arguing that a recount was not justified, see H. Rept. 99–58, 99th Cong. 1st Sess. pp. 53, 54.

§ 13. Disposition of Contests

As noted above,[1] under the Federal Contested Elections Act (FCEA), the House obtains jurisdiction over an election when a notice of contest is filed with the Clerk of the House. The Clerk then forwards this pleading, along with any accompanying documentation, to the Committee on House Administration, which has jurisdiction over election contests pursuant to clause 1(k)(12) of rule X.[2] The committee then assigns the matter to either a subcommittee, or an ad hoc task force (most often composed of three Members—two from the majority party and one from the minority party).[3] The task force or subcommittee will generally review the matter, and make a recommendation to the full committee. The full committee then meets to compose a committee report on the matter, and make a recommendation to the full House.[4] As with most committee reports in the House, members of the committee who do not wish to associate themselves entirely with the report may instead file separate views to accompany the report.[5] The filing of a committee report on an election contest is a privileged matter under clause 5(a)(3) of rule XIII.[6]

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1. See § 8, *supra.*

2. *House Rules and Manual* § 724 (2021). The FCEA also defines the relevant committee for purposes of the act as the Committee on House Administration. See 2 U.S.C. § 381(7).

3. *Parliamentarian's Note:* The Committee on House Administration has maintained a Subcommittee on Elections since the consolidation of the three elections committees in the Legislative Reorganization Act of 1946.

4. *Parliamentarian's Note:* Until the 94th Congress, House rules mandated that the Committee on House Administration file a final report on every election contest. See *House Rules and Manual* § 733 (1973). Deadlines were imposed by rule on the committee to complete its action. See Deschler's Precedents Ch. 9 §§ 43.5, 43.6. Although these requirements are no longer in House rules, the committee generally does file a report for every contest (even those deemed more properly brought as an issue exclusion rather than an election contest). See, *e.g.*, Cox v McCrery, § 31.5, *infra.* See also Deschler's Precedents Ch. 9 § 43.3. Committee reports have typically been filed even where the contestant withdraws from the case (see, *e.g.*, Deschler's Precedents Ch. 9 §§ 43.10, 43.12; and Kyros v Emery, § 15.2, *infra.*), but there have been instances where no committee report was filed. See, *e.g.*, Deschler's Precedents Ch. 9 § 43.11; and Hart v Miller–Meeks, § 38.1, *infra.* For other historical examples of the committee failing to take action on election contests, see Deschler's Precedents Ch. 9 §§ 43.13, 43.14.

5. Rule XI, clause 2(l); *House Rules and Manual* § 804 (2021). For examples of committee reports on election contests with dissenting or minority views, see, *e.g.*, Paul v Gammage, § 16.2; Hendon v Clarke, § 19.2; McCloskey v McIntyre, § 20.1; Anderson v Rose, § 25.1; Dornan v Sanchez, § 26.1; Gonzalez v Diaz–Balart, § 31.1; and Russell v Brown–Waite, § 31.3, *infra.* See also Deschler's Precedents Ch. 9 §§ 43.7–43.9.

6. *House Rules and Manual* §§ 853–855 (2021). For an example of a committee report on an election contest filed with the Clerk rather than on the floor as a privileged matter, see Jennings v Buchanan, § 31.4, *infra.*

No contestant has been successful in an election contest pursued under the FCEA, and thus no contestant has been seated in place of the contestee.[7] In the vast majority of cases, the contestee filed a motion to dismiss the case, which the committee (after consideration of the case) recommended be granted. In other cases, the contestee chose not to file any pleadings in the case, and the committee, on its own authority, recommended that the case be dismissed. In prior years, election contests were occasionally resolved by adopting a resolution seating neither the contestant nor the contestee, but instead declaring the seat vacant.[8]

Under modern practice, the committee report accompanies a simple House resolution formally resolving the contest. There is no prescribed form that such resolutions must take.[9] It is possible for a single resolution to resolve multiple election contests,[10] but under modern procedures a separate resolution is used for each individual contest.[11] Issues relating to the seating of Members have long been recognized as constituting questions of the privileges of the House,[12] and thus the 72–hour layover period for committee reports does not apply.[13]

A resolution to resolve an election contest may be offered as a privileged question,[14] but in recent years the committee member filing the report usually requests unanimous consent for the immediate consideration of the resolution.[15] In one instance, such a unanimous–consent request also specified other aspects of the resolution's consideration, such as debate time.[16] Absent such types of provisions, a resolution resolving an election contest is

7. *Parliamentarian's Note:* The election contest of McCloskey v McIntyre (§ 20.1, *infra*) did involve an ultimately successful challenge to the seating of the contestee in favor of the contestant, but that contest proceeded under the House's own constitutional authority and not pursuant to statutory procedures.

8. See Deschler's Precedents Ch. 9 §§ 42.11, 42.12, and 42.15.

9. *Parliamentarian's Note:* As all contests brought under the FCEA to date have been unsuccessful, the resolutions resolving such contests have typically consisted of a single sentence dismissing the case.

10. See, *e.g.*, Deschler's Precedents Ch. 9 § 44.3.

11. For an example of two election contests being dismissed in serial fashion via individual resolutions, see Project Hurt v Cohen, § 34.2; and Project Hurt v Waters, § 34.3, *infra.*

12. See 1 Hinds' Precedents § 322; and 3 Hinds' Precedents §§ 2579–2587. For questions of privilege raised during the pendency of an election contest (either to resolve the contest or address collateral issues), see McCloskey v McIntyre, § 20.1; and Dornan v Sanchez, § 26.1, *infra.* For questions of privilege generally, see Precedents (_____) Ch. 11; and Deschler's Precedents Ch. 11.

13. See *House Rules and Manual* § 850 (2021).

14. See, *e.g.*, Hansen v Stallings, § 20.3, *infra.*

15. See, *e.g.*, Hayward v Cuellar, § 34.1, *infra.*

16. See, *e.g.*, Jennings v Buchanan, § 31.4, *infra.* In that instance, the unanimous–consent request allowed ten minutes of debate time (equally divided between the chair and

considered under the hour rule. The time for debate on a resolution resolving an election contest may be extended by unanimous consent.[17] Under the precedents, the side supporting the seating of the contestant is entitled to close debate.[18] Contestants in election contests are entitled to floor privileges "during the pendency of their cases" under clause 2(a)(2) of rule IV,[19] but may not participate in debate.[20] Contestees who are seated Members may participate in debate on the resolution disposing of the contest.[21] A resolution resolving an election contest is subject to the regular parliamentary motions recognized by the House, such as amendment,[22] a motion to recommit the resolution to committee,[23] and a demand for a division of the question.[24]

Expenses; Compensation

Witnesses who give depositions in election contests are, pursuant to statute,[25] entitled to fees and travel expenses. Parties may also apply to the committee for reimbursement for certain funds.[26] Under the earlier statute, there was a cap for such expenses, but the modern FCEA only requires that the expenses be "reasonable."[27] In prior years, the House would occasionally authorize payments from the "contingent fund"[28] of the House to cover costs associated with the contest.[29] In the McCloskey v McIntyre (§ 20.1, *infra*) election contest, neither the contestee nor the contestant were seated on opening day, but both were paid (pursuant to the resolution transferring jurisdiction of the case to the Committee on House Administration) "an

ranking member of the Committee on House Administration) and ordered the previous question to final adoption of the resolution without intervening motion.

17. See Deschler's Precedents Ch. 9 § 42.9.

18. See Deschler's Precedents Ch. 9 § 42.8.

19. *House Rules and Manual* § 678 (2021).

20. See Deschler's Precedents Ch. 9 § 42.6.

21. See Deschler's Precedents Ch. 9 § 42.7.

22. See Deschler's Precedents Ch. 9 §§ 42.17, 42.18.

23. See Deschler's Precedents Ch. 9 § 42.16.

24. See Deschler's Precedents Ch. 9 §§ 42.13, 42.14.

25. 2 U.S.C. § 389(b).

26. 2 U.S.C. § 396.

27. *Id.*

28. *Parliamentarian's Note:* References to the "contingent fund" were eliminated in the 104th Congress and replaced with "applicable accounts of the House." See rule X, clause 1(k)(1); *House Rules and Manual* § 724 (2021).

29. See, *e.g.*, Deschler's Precedents Ch. 9 §§ 45.1, 45.2. For an unusual example of a joint resolution authorizing payment from the Treasury of the United States to compensate parties in an election contest, see Deschler's Precedents Ch. 9 § 45.3.

amount equal to the daily equivalent of the annual rate of basic pay payable to a Member of the House" for the period commencing with the adoption of the resolution and ending upon resolution of the contest.[30]

§ 13.1 A contestant may withdraw the election contest at any point, resulting in a termination of the case.

An election contest may end upon a withdrawal by the contestant, and there have been several instances of contestants choosing not to pursue their cases to a final decision by the House. In the Kyros v Emery (§ 15.2, *infra*) case, the committee begin an investigation into certain contested ballots, but the contestant concluded that continuing the review would not overturn sufficient ballots to reverse the outcome of the election, and he stated an intention to withdraw.[31] The committee report noted that the "withdrawal of Contestant Kyros terminated this case."[32] The Hart v Miller–Meeks (§ 38.1, *infra*) case was also terminated by the withdrawal of the contestant, and in that case no committee report was filed.[33]

E. Summaries of Election Contests, 1973–2020

§ 14. Ninety–third Congress, 1973–1974

There were no election contests considered by the House during the 93d Congress.

§ 15. Ninety–fourth Congress, 1975–1976

§ 15.1 Young v Mikva

The general election for the office of Representative to Congress from the Tenth District of Illinois was conducted on November 5, 1974.[1] The general

30. See McCloskey v McIntyre, § 20.1, *infra*. For similar past instances, see Deschler's Precedents Ch. 9 §§ 45.4, 45.5.

31. H. Rept. 94–760, 94th Cong. 1st Sess. p. 4.

32. *Id.*

33. For a letter regarding the case from the chair of the committee to the Speaker that was submitted to the *Congressional Record*, see 167 CONG. REC. E464–E465 [Daily Ed.], 117th Cong. 1st Sess. (Apr. 28, 2021).

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 94–759, 94th Cong. 1st Sess.

election candidates were Abner J. Mikva (the Democratic candidate) and Samuel H. Young (the Republican candidate). The official canvass of votes indicated that 164,054 total votes were cast, of which 83,457 were cast for Mr. Mikva and 80,597 were cast for Mr. Young. Mr. Mikva's margin of victory was therefore 2,860 votes. Mr. Mikva was thereafter certified as the winner of the election. His credentials were presented to the House of Representatives, and on January 14, 1975, he was duly administered the oath of office without objection or challenge.

The Clerk of the House, on December 23, 1974, received a notice of contest filed by Mr. Young (hereafter "contestant") under the Federal Contested Elections Act. This initial pleading was forwarded to the Committee on House Administration for its consideration. The pleading was accompanied by the requisite proof of service.

Contestant's notice of contest requested that he be declared by the House to have won the general election and that he was entitled to the seat at issue. Alternatively, the contestant requested that the House declare a vacancy in the office of Member of the House of Representatives for the Tenth District of Illinois.

Contestant advanced three categories of allegations to support his requested relief. First, the contestant alleged dissemination by Mr. Mikva (hereafter "contestee") of false or misleading information about the contestant to voters. Second, the contestant alleged that the contestee violated the Federal Elections Campaign Act of 1971 by receiving certain kinds of campaign contributions and failing to report such contributions. Third, the contestant alleged that a recount of all ballots in the contest would show that a sufficient number had been improperly cast for the contestee to reduce the number he received below that of the contestant. Contestee moved to dismiss the contest on the basis that contestant had not stated grounds sufficient to change the result of the election (one of the four possible statutory defenses).[2]

In its committee report, the Committee on House Administration concluded that the contestant's claim was without merit and that the motion to dismiss should be granted. The committee concluded that the contestant failed to demonstrate how the allegations would have changed votes sufficient to reverse the outcome of the election. The committee reiterated that a presumption of regularity must be overcome by the production of sufficient proof of fraud or error. In the view of the committee, the contestant did not present sufficient evidence to overcome this presumption.

The committee further concluded that the contestant's request for a recount should not be granted, as the contestant failed to provide evidence

2. See 2 U.S.C. § 383(b)(3).

justifying such recount. The committee noted that state election procedures allowed losing candidates who attained certain vote thresholds to request a partial recount of certain precincts (a "discovery recount").[3] The contestant availed himself of this procedure, and alleged that, as a result of this process, a number of absentee ballots should be invalidated for technical errors. However, the committee expressed "considerable doubt"[4] that Illinois law required the invalidation of such ballots, and further determined that the contestant had not presented any evidence that votes were either willfully or fraudulently miscounted. The committee reiterated that the burden is on the contestant to show sufficient evidence to justify a committee–conducted recount, which, in the committee's estimation, the contestant failed to do.

On December 18, 1975, the committee's report was filed with the House with the recommendation that the election contest be dismissed. On December 19, 1975,[5] the House by unanimous consent adopted House Resolution 894, dismissing the contest:

DISMISSAL OF ELECTION CONTEST OF SAMUEL H. YOUNG

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 894), and ask unanimous consent for its immediate consideration.

H. RES. 894

Resolved, That the election contest of Samuel H. Young, contestant, against Abner J. Mikva, contestee, Tenth Congressional District of the State of Illinois, be dismissed.

The SPEAKER.[6] Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 15.2 Kyros v Emery

The general election for the office of Representative to Congress from the First District of Maine was conducted on November 5, 1974.[7] The general election candidates were Peter N. Kyros (the Democratic candidate) and David F. Emery (the Republican candidate). The official canvass of votes indicated that 187,727 total votes were cast, of which Mr. Emery obtained a margin of victory of 679 votes. Mr. Emery was thereafter certified as the

3. H. Rept. 94–759, 94th Cong. 1st Sess. p. 5.

4. *Id.* at p. 6.

5. 121 CONG. REC. 41868–69, 94th Cong. 1st Sess.

6. Carl Albert (OK).

7. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 94–760, 94th Cong. 1st Sess.

winner of the election on December 23, 1974. His credentials were presented to the House of Representatives, and on January 14, 1975, he was duly administered the oath of office without objection or challenge.

Due to the closeness of the result, Mr. Kyros requested that a recount be conducted pursuant to state law. The recount commenced on November 25, 1974, supervised by the Maine Secretary of State. On December 19, 1974, a review of disputed ballots was begun. The parties agreed that, under state law and the Constitution, only the House of Representatives has the authority to determine the winner of elections to House seats, and thus only the House had jurisdiction over the disputed ballots.

On December 27, 1974, Mr. Kyros (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was then forwarded to the Committee on House Administration. On December 30, 1974, the Maine Secretary of State executed an affidavit correcting the vote totals, and bringing Mr. Emery's margin of victory down to 421 votes.

The contestant offered two arguments in support of his claim to be seated as the Member from the First District of Maine. First, the contestant argued that proper application of the law to the disputed ballots would show a plurality in favor of the contestant. Second, the contestant alleged that Mr. Emery (hereafter "contestee") engaged in unfair and fraudulent campaign practices. This second category of allegations was withdrawn by the contestant via an amended notice of contest filed on March 17, 1975, and the committee did not consider those claims.

The Subcommittee on Elections heard oral arguments in the case on March 25, 1975, focusing on the proper standard for evaluating the disputed ballots. Counsel for the parties were instructed to file briefs relating to that issue. For the duration of five days in May 1975, staff for the subcommittee conducted a preliminary review in Portland, Maine, in order to resolve challenges and reduce the number of ballots in dispute. The remaining disputed ballots were counted and sealed by a United States Marshal, and delivered to the Committee on House Administration in Washington, D.C.

During July 1975, the Subcommittee on Elections met to discuss the types of ballots in dispute and the proper standard for evaluating how such ballots should be counted. On July 15, 1975, the subcommittee made several rulings with regard to the disputed ballots. On July 16, 1975, the subcommittee met again, but before continuing its review, the contestant announced that he was withdrawing his notice of contest. In doing so, the contestant stated that he did not believe a further review of disputed ballots would demonstrate that the contestee had received fewer votes.

In its committee report, the Committee on House Administration included a lengthy analysis of how challenges to the disputed ballots should be received. The committee reviewed the relevant state laws, discussed the extent to which the House should be bound by such laws, and articulated the

standard for evaluating voter intent.[8] The committee also reiterated the House's constitutional authority to judge the elections of its Members, and the extent to which it has in the past deferred to state law and the interpretations of that law by state courts. The committee report reaffirmed the distinction between "directory" and "mandatory" laws—the latter viewed as being "of the very essence of the thing done" and essential to the "vital purpose" of the statute,[9] while the former regarded as merely formal or technical requirements. The overarching consideration is to prevent the disenfranchisement of voters for innocent errors committed by election officials.

As the contestant ultimately withdrew his case, the committee did not make a formal recommendation to the House as to which side should prevail. Instead, it simply noted in its report that "The withdrawal of Contestant Kyros terminated this case."[10] On December 19, 1975,[11] the House by unanimous consent adopted House Resolution 895, dismissing the contest:

DISMISSAL OF ELECTION CONTEST OF PETER N. KYROS

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 895), and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 895

Resolved, That the election contest of Peter N. Kyros, contestant, against David F. Emery, contestee, First Congressional District of the State of Maine, be dismissed.

The SPEAKER.[12] Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 15.3 Wilson v Hinshaw

The general election for the office of Representative to Congress from the 40th District of California was conducted on November 5, 1974.[13] The general election candidates were Roderick J. Wilson (the Democratic candidate) and Andrew J. Hinshaw (the Republican candidate). The official canvass of votes indicated that 173,299 total votes were cast, of which Mr. Hinshaw

8. H. Rept. 94–760, 94th Cong. 1st Sess. p. 5.

9. *Id.* at p. 9.

10. *Id.* at p. 5.

11. 121 CONG. REC. 41869, 94th Cong. 1st Sess.

12. Carl Albert (OK).

13. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 94–761, 94th Cong. 1st Sess.

received 116,499 votes and Mr. Wilson received 56,850. Mr. Hinshaw's margin of victory was therefore 59,599 votes. Mr. Hinshaw was thereafter certified as the winner of the election on December 10, 1974, by the Secretary of State of California. His credentials to the House of Representatives, and on January 14, 1975, he was duly administered the oath of office without objection or challenge.

Mr. Wilson (hereafter "contestant") served a notice of contest on Mr. Hinshaw (hereafter "contestee") by mail on January 3, 1975. The notice of contest was received by the Clerk of the House on January 6, 1975, and forwarded to the Committee on House Administration for its consideration.

The contestant alleged that the contestee engaged in numerous violations of law, including both Federal campaign laws and civil rights laws. In particular, the contestant alleged that the contestee abused his position as county tax assessor to both interfere with the contestant's campaign and distribute illegal favors to contestee's supporters. In sum, contestant's allegations described a wide–ranging conspiracy by the contestee and others to deprive voters of a "free, independent, and open election."(14)

In response, the contestee filed a motion to dismiss the contest, based on the statutory defense that the contestant had failed to state grounds sufficient to change the result of the election.(15) The Subcommittee on Elections held a hearing on March 25, 1975, to consider this motion. In its committee report, the committee noted that to prevail, a contestant must show with particularity how the allegations contained in the notice of contest would support a conclusion that the results of the election would have been different. General assertions and vague or uncertain allegations are insufficient to carry the contestant's burden. The committee concluded that the contestant had presented "no concrete evidence"(16) demonstrating how votes would have been different had the alleged violations of law not occurred.

The committee reiterated that alleged criminal violations are not grounds for determining an election contest if such violations cannot be connected by substantial evidence to the conduct of the election. The committee also noted that some of the allegations involved conduct in the preceding election in 1972, and that the House (as a "separate constitutional entity" each Congress)(17) thus does not have jurisdiction over prior claims of misconduct or criminal activity.

For these reasons, the committee adopted its report recommending dismissal of the case. On December 19, 1975,(18) the House by unanimous consent adopted House Resolution 896, dismissing the contest:

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14. H. Rept. 94–761, 94th Cong. 1st Sess. p. 2.

15. *Id.* at p. 3. See also 2 U.S.C. § 383(b)(3).

16. *Id.* at p. 4.

17. *Id.* at p. 6.

18. 121 CONG. REC. 41869, 94th Cong. 1st Sess.

DISMISSAL OF ELECTION CONTEST OF RODERICK J. WILSON

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 896), and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 896

Resolved, That the election contest of Roderick J. Wilson, contestant, against Andrew J. Hinshaw, contestee, Fortieth Congressional District of the State of California, be dismissed.

The SPEAKER.[19] Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 15.4 Mack v Stokes

The general election for the office of Representative to Congress from the 21st District of Ohio was conducted on November 5, 1974.[20] The general election candidates were William Mack (the Republican candidate) and Louis A. Stokes (the Democratic candidate). Mr. Stokes was certified by the Secretary of State of Ohio as the winner of the election on December 10, 1974. His credentials were presented to the House of Representatives, and on January 14, 1975, he was duly administered the oath of office without objection or challenge.

Mr. Mack (hereafter "contestant") filed a notice of contest with the Clerk of the House on the same day that Mr. Stokes (hereafter "contestee") was certified as having won the election. The Clerk referred the notice to the Committee on House Administration for its consideration. On January 8, 1975, the Clerk received a motion to dismiss (as well as briefs and exhibits in support thereof) from the contestee, which was also referred to the Committee on House Administration. In response, the contestant, on January 13, 1975, filed a memorandum in opposition to the motion to dismiss, along with related documents.

Contestant's only argument in the case was that contestee lacked essential qualifications for the office; specifically, that the contestee was not an inhabitant of the state, as required by the Constitution.[21]

The committee's report noted that, as essentially a qualifications case rather than an election contest, it "would more appropriately be brought to

19. Carl Albert (OK).

20. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 94–762, 94th Cong. 1st Sess.

21. U.S. Const. art. I, § 2, cl. 2; and *House Rules and Manual* § 11 (2021).

the House of Representatives by a petition or memorial rather than by proceeding in the nature of a contest."[22] It further noted the "inappropriateness of the procedure"[23] but nevertheless chose not to recommend dismissal on mere procedural grounds.

Turning to the merits of contestant's argument, the committee found that the contestant had only advanced conclusions of law, and did not provide any specific evidence to support those conclusions. The committee briefly summarized the legal issues surrounding qualifications cases, such as the definitions of "inhabitancy" and "legal residence" (citing both House precedents and Federal and state case law). In recommending dismissal of the case, the committee reiterated that the contestant must carry the burden of proof and substantiate their claims with something more than "unsupported generalities."[24]

On December 19, 1975,[25] the House by unanimous consent adopted House Resolution 897, dismissing the contest:

DISMISSAL OF ELECTION CONTEST OF WILLIAM (BILL) MACK

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 897) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 897

Resolved, That the election contest of William (Bill) Mack, contestant, against Louis A. Stokes, contestee, Twenty-first Congressional District of the State of Ohio, be dismissed.

The SPEAKER.[26] Is there objection to the request of the gentleman from Ohio?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 15.5 Ziebarth v Smith

The general election for the office of Representative to Congress from the Third District of Nebraska was conducted on November 5, 1974.[27] The general election candidates were Virginia H. Smith (the Republican candidate)

22. H. Rept. 94–762, 94th Cong. 1st Sess. p. 2.

23. *Id.*

24. *Id.* at p. 4.

25. 121 CONG. REC. 41869, 94th Cong. 1st Sess.

26. Carl Albert (OK).

27. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 94–763, 94th Cong. 1st Sess.

and Wayne Ziebarth (the Democratic candidate). The Nebraska State Canvassing Board reported that 80,992 votes had been cast for Mrs. Smith, and that 80,225 votes had been cast for Mr. Ziebarth. Mrs. Smith was certified by the Nebraska State Canvassing Board as the winner of the election on December 3, 1974. Her credentials were presented to the House of Representatives, and on January 14, 1975, she was duly administered the oath of office without objection or challenge.

Mr. Ziebarth (hereafter "contestant") filed a notice of contest with the Clerk of the House on December 30, 1974, which was referred to the Committee on House Administration for its consideration. On January 7, 1975, contestant filed additional documents, including a copy of a petition for a recount filed with the Nebraska state courts.[28] On January 24, 1975, Mrs. Smith (hereafter "contestee") filed a motion to dismiss, or, in the alternative, a motion for a more definite statement (as provided by the Federal Contested Elections Act)[29] along with supporting documentation.

Contestant claimed that the reported vote totals from various precincts contained errors, and that statistical evidence showed that a recount would confirm that contestant had in fact received more votes than the contestee. Contestant relied heavily on a statistical analysis conducted by a statistician with experience in election cases.

Contestee availed herself of two of the defenses to the contest provided under the statute: (1) that by merely requesting a recount, the contestant had failed to properly claim a right to the seat at issue;[30] and (2) that the contestant failed to state grounds sufficient to change the result of the election.[31] Contestee also filed, as an alternative to the motion to dismiss, a motion for a more definite statement. In that pleading, contestee requested more specific information about the precincts at issue, the nature of the statistical analysis supporting contestant's claims, and how precisely a new canvass of the votes would demonstrate a reversal of the certified results.

On March 11, 1975, the Subcommittee on Elections held the motion to dismiss in abeyance while granting the motion for a more definite statement. The committee report noted the lack of any state recount procedures, and that it was in the interest of justice to allow the contestant the opportunity to add specificity to his claims. In response, the contestant filed an

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28. The contestant's request for a recount had been denied by the Nebraska Secretary of State. See H. Rept. 94–763, 94th Cong. 1st Sess. p. 3. On May 15, 1975, a Nebraska district court held that there was no method of contesting a congressional election under Nebraska law. Thus, the only entity with jurisdiction to conduct a recount, as requested by the contestant, was the House of Representatives.

29. 2 U.S.C. § 383(c).

30. 2 U.S.C. § 383(b)(4).

31. 2 U.S.C. § 383(b)(3).

amended notice of contest on April 8, 1975. However, the committee concluded that the contestant failed to supply the needed particularization to cure the defects in the initial pleading.

On April 17, 1975, the contestee filed an answer to the amended notice of contest. This pleading contained an affidavit from the Nebraska Secretary of State rebutting the allegations of overcounts and undercounts in precincts identified by the contestant. The committee report stated that during the next two months, the contestant failed to utilize the discovery processes under the statute to substantiate any of the general assertions made in prior pleadings. The committee concluded that the contestant was only seeking a recount under the auspices of the House because no such relief was available at the state level.

The committee report analyzed the circumstances under which the Committee on House Administration should undertake a recount in order to resolve an election contest. In summarizing the issues, the committee cited "traditional requirements of pleading and proof" drawn from earlier contests.(32) In essence, a committee–ordered recount should only be granted where the contestant has made specific claims and offers preliminary proof of fraud or irregularity sufficient to change the result of the election. Absent the offering of such evidence, the committee would likely be inundated with requests for "fruitless, time–consuming fishing expeditions,"(33) based on little more than the closeness of the election results. The committee reiterated the presumption of regularity that attaches to any election properly certified by the relevant state officials.

The committee thus concluded that the contestant had failed to meet the burden of proof required under the statute, and that therefore contestee's motion to dismiss should be granted. On December 19, 1975,(34) the House by unanimous consent adopted House Resolution 898, dismissing the contest:

DISMISSAL OF ELECTION CONTEST OF WAYNE ZIEBARTH

Mr. [Wayne] HAYS of Ohio. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 898) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 898

Resolved, That the election contest of Wayne Ziebarth, contestant, against Virginia H. Smith, contestee, Third Congressional District of the State of Nebraska, be dismissed.

The SPEAKER.(35) Is there objection to the request of the gentleman from Ohio?

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32. H. Rept. 94–763, 94th Cong. 1st Sess. p. 11.

33. *Id.* at p. 12.

34. 121 CONG. REC. 41869, 94th Cong. 1st Sess.

35. Carl Albert (OK).

There was no objection.
The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 16. Ninety–fifth Congress, 1977–1978

§ 16.1 Saunders v Kelly

The general election for the office of Representative to Congress from the Fifth District of Florida was conducted on November 2, 1976.[1] The general election candidates were Richard Kelly (the Republican candidate) and JoAnn Saunders (the Democratic candidate). The Elections Canvassing Commission of Florida reported that 138,371 votes had been cast for Mr. Kelly, and that 96,260 votes had been cast for Ms. Saunders. Mr. Kelly was certified as the winner of the election on November 10, 1976. His credentials were presented to the House of Representatives, and on January 4, 1977, he was duly administered the oath of office without objection or challenge.

On December 10, 1976, Ms. Saunders (hereafter "contestant") filed a notice of contest with the Clerk of the House of Representatives, which was forwarded to the Committee on House Administration for its consideration. On January 13, 1977, Mr. Kelly (hereafter "contestee") filed both a motion to dismiss the case, and a motion for a more definite statement. On March 2, 1977, the Committee on House Administration appointed an ad hoc panel of three Members to review the case and make recommendations on the motions before it. The panel met on March 10, 1977, and again on March 30, 1977, to hear oral arguments and review the evidence presented.

Contestant argued that contestee conspired with the Florida Ethics Commission to circulate negative information about the contestant and her financial disclosure statements. Contestant also argued that Florida's requirement for candidates to file such disclosures was unconstitutional, in that it added new qualifications to those required under the Constitution.

Contestee, in reply briefs, argued that the contestant's notice of contest was too vague and ambiguous to allow an adequate response. Contestee also noted the decision of a Federal district court, which had held that the Florida ethics requirements were not unconstitutional. Finally, contestee asserted the statutory defense that the contestant had not stated grounds sufficient to change the outcome of the election.[2]

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1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–242, 95th Cong. 1st Sess.

2. 2 U.S.C. § 383(b)(3).

The panel and the full committee agreed that the contestant had not met her burden in this case. Rather than support her claims with specific evidence of fraud, misconduct, or irregularities, the contestant asserted merely generalized allegations and uncertain accusations of wrongdoing. The committee therefore recommended dismissal of the case in its committee report. On May 9, 1977,[3] the committee offered House Resolution 525 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST RICHARD KELLY

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 525), and ask for its immediate consideration.

The CLERK read the resolution, as follows:

H. RES. 525

Resolved, That the election contest of JoAnn Saunders, contestant, against Richard Kelly, contestee, Fifth Congressional District of the State of Florida, be dismissed.

The SPEAKER pro tempore.[4] The Chair recognizes the gentleman from New Jersey (Mr. THOMPSON) for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I intend to call up three additional privileged resolutions dealing with contested election cases—House Resolutions 526, 527, and 528.

I intend further, Mr. Speaker, to defer in each instance to the member of the Committee on House Administration who chaired the respective contested election panel.

Before proceeding, however, I should like to note several matters briefly for the RECORD.

The U.S. Constitution gives the House plenary power to judge its own elections.

Under the rules of the House, jurisdiction over election contests lies with the Committee on House Administration.

Eight election contests, a nearly unprecedented number, have arisen from elections to the 95th Congress.

In order to expedite the processing and resolution of these eight cases, I assigned each one to a three-member contested election panel.

Four of these contested election panels have concluded their hearings and deliberations, and have reported to the full House Administration Committee.

These four matters are before the House this afternoon; because of the serious import of a contest for a Member's seat in Congress, I urge my colleagues to pay particular attention.

In each of the four election cases before us today I want to commend the superb work done by the panel chairman and members. The investigation and resolution of a cloud to a Member's seat is always a heavy responsibility. In each instance our colleagues met that responsibility with distinction.

Mr. Speaker, the instant resolution, House Resolution 525, deals with the contested election matters of Saunders against Kelly. The ad hoc panel assigned to this case was

3. 123 CONG. REC. 13953–54, 95th Cong. 1st Sess.

4. William Natcher (KY).

chaired by the Honorable JOSEPH MINISH and consisted of our colleagues ROBERT MOLLOHAN and SAMUEL DEVINE.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. MINISH) for debate only.

Mr. [Joseph] MINISH [of New Jersey]. Mr. Speaker, this resolution pertains to the election contest brought against the Honorable RICHARD KELLY.

Congressman KELLY was certified on November 10, 1976, as the duly elected U.S. Representative from Florida's Fifth District; the official canvass of that race showed that Mr. KELLY had defeated his opponent in the general election, Ms. JoAnn Saunders by 42,111 votes. His credentials were presented to the House and he took the oath and was seated without objection on January 4, 1977.

On December 10, 1976, Ms. Saunders filed a notice of contest pursuant to the Federal Contested Elections Act.

The contestant alleged that during the campaign she had been involved in a controversy with the Florida Ethics Commission concerning her filing of a personal financial disclosure statement which is required by State law. She asserted that the requirement that a candidate file a statement of financial interest at the time qualifying papers are filed is unconstitutional. The contestant further alleged that the chairman of the Florida Ethics Commission carried on "an attack—against" her candidacy and that the contestee "conspired with the chairman" of the Commission to attack her candidacy. She stated that prior to the controversy surrounding her difficulties with the Ethics Commission she was leading in the campaign, and that her subsequent loss to Mr. KELLY was "solely as a result of the unconstitutional action" of the Ethics Commission. She cited unfavorable press publicity because of this matter.

On January 13, 1977, the contestee filed two motions pursuant to the act. One was a motion for a more definite statement which asserted that the contestant's notice of contest was so vague and ambiguous that he was unable to respond adequately to it.

The other was a motion to dismiss. It cited a Federal district court order which held that Florida's personal financial disclosure statute was not unconstitutional and asserted that the contestant had failed in his notice of contest to state grounds sufficient to change the results of the election.

On March 2, 1977, the Committee on House Administration adopted a resolution which assigned the consideration of the case to an ad hoc panel consisting of myself as chairman and the Honorable ROBERT L. MOLLOHAN and the Honorable SAMUEL L. DEVINE as members. The panel was charged in the resolution "to report findings and to make recommendations on this matter to the Committee on House Administration."

On March 10, 1977, the panel met in open session and heard oral argument by counsel for contestant and contestee on contestee's motion to dismiss. The panel then took the matter under advisement. The record was held open for postsubmission filings.

On March 30, 1977, the panel met again in an open hearing to discuss the evidence presented in this case relevant to the pending motion. Pursuant to a motion made by Mr. DEVINE, the panel voted unanimously to recommend to the Committee on House Administration that the contestee's motion to dismiss should be granted.

On April 28 the Committee on House Administration approved that recommendation and reported the resolution.

The Commission is of the opinion after careful consideration of the record that the case should be dismissed. We reached this conclusion only after a thorough review of the oral argument by counsel and the written submissions on behalf of the contestant and the contestee.

The contest should be dismissed because the contestant has failed to meet the burden placed by the act on all contestants if such a motion to dismiss is to be denied.

The statute, together with its legislative history and the precedents construing it, indicate that more than mere notice pleading and generalized allegations are required if a motion to dismiss is to be denied. This was made clear in the case of Tunno against Veysey, the first case to arise under the present statute, where the Committee noted that—

> Under the new law then the present contestant and any further contestant, when challenged by motion to dismiss, must have presented in the first instance, sufficient allegations and evidence to justify his claim to the seat in order to overcome the motion to dismiss.

The contestant in the case has not made the sort of specific allegations accompanied by supportive evidence that is required to overcome a motion to dismiss. Indeed, she has offered no specific evidence in support of her claim.

Accordingly, the committee recommends to the House that the resolution be adopted dismissing this contested election case.

Mr. THOMPSON. Mr. Speaker, does the gentleman from California (Mr. WIGGINS) seek recognition for debate?

Mr. [Charles] WIGGINS [of California]. I do, Mr. Speaker.

Mr. THOMPSON. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WIGGINS), for debate only.

Mr. WIGGINS. Mr. Speaker, the contest of Saunders against Kelly is ripe for disposition on the merits. The decision of the House committee to dismiss the Saunders contest is correct. But I do not agree with the reasons for that action which are stated in the majority report and I will take just a moment to tell the Members why.

It is clear from the notice of contest filed by Ms. Saunders that she has not alleged a legal basis entitling her to any relief and it is clear that she cannot do so. Accordingly it is wholly appropriate to entertain a motion to dismiss.

Now why is it that she has not alleged a legal basis for relief? The contestant Ms. Saunders complains that election officials in the State of Florida called to the attention of the electorate the fact that she had failed to comply with certain procedural requirements of the Florida statute. If that is her only complaint, it does not justify overturning an election. It is not a legal basis for doing so since it does not challenge the propriety of the election process itself. Accordingly I join in the majority's view that this contest should be dismissed.

But please do not understand my support to be agreement with the reasons stated by the majority that there is a duty on the part of the respondent faced with a motion to dismiss to go forward and instantly prove all elements of his or her case. That is a misplaced burden of proof as we shall explain later in connection with other contests.

Mr. THOMPSON. 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.

§ 16.2 Paul v Gammage

The general election for the office of Representative to Congress from the 22nd District of Texas was conducted on November 2, 1976.[5] The general

5. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–243, 95th Cong. 1st Sess.

election candidates were Ron Paul (the Republican candidate) and Bob Gammage (the Democratic candidate). The initial vote totals indicated that Mr. Gammage received 96,433 votes, while Mr. Paul received 96,197 votes. Because of the closeness of the result, a recount was conducted by the Secretary of State of Texas, with observers from the Committee on House Administration. The final count showed 96,535 votes cast for Mr. Gammage and 96,267 votes cast for Mr. Paul. Mr. Gammage's margin of victory was therefore 268 votes. On November 22, 1976, Mr. Gammage was certified as the winner of the election by the Texas Secretary of State. His credentials were presented to the House of Representatives, and on January 4, 1977, he was duly administered the oath of office without objection or challenge.

On December 19, 1976, Mr. Paul (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. On January 19, 1977, Mr. Gammage (hereafter "contestee") filed both an answer to the notice of contest, and a motion to dismiss the case. On February 8, 1977, the contestant filed a motion to extend the time for discovery, requesting an additional 30 days to take depositions.

On February 23, 1977, an ad hoc panel of the Committee on House Administration met to hear arguments regarding the above pleadings, and an additional filing from the contestant (a motion to stay all proceedings pending the resolution of a Texas state court case). On March 2, 1977, the Texas Supreme Court ruled that state proceedings contesting the election of this Federal office were invalid under the Constitution, and state court proceedings where therefore terminated. On March 9, 1977, the ad hoc panel met and voted to recommend that the motion to dismiss be granted.

In its committee report, the Committee on House Administration reiterated the "weighty" burden placed on contestants by the Federal Contested Elections Act (FCEA) to overcome a motion to dismiss.[6] The committee also reiterated the presumption of regularity that attaches to official returns and actions of election officials. Not only must the contestant overcome those presumptions, but in doing so, the contestant must also demonstrate how the outcome of the election would have been changed absent the alleged irregularities. Contestant "alleged instances of improper and perhaps even illegal voting"[7] but did not support such allegations with specific evidence. The committee report concluded by noting the time and expense involved in pursuing meritless claims, and recommended that the House grant contestee's motion to dismiss.

In its dissenting views accompanying the committee report, Members from the minority party evinced disagreement with the majority party's

6. H. Rept. 95–243, 95th Cong. 1st Sess. p. 4.

7. *Id.*

analysis. The primary issue in dispute was the extent to which a contestant must "prove"[8] the allegations contained in the notice of contest in order to prevail on a motion to dismiss. Because the statute provided for the possibility of an extensive discovery process, the dissent argued for a lower threshold for the contestant to reach at the initial pleading stages. In essence, the dissent argued that the committee impermissibly reversed the burden of proof under the statute, and that contestant should have been allowed to proceed to the discovery stage in order to gather additional evidence to support his allegations.

On May 9, 1977,[9] the committee offered House Resolution 526 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST BOB GAMMAGE

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 526) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 526

Resolved, That the election contest of Ron Paul, contestant, against Bob Gammage, contestee, Twenty-second Congressional District of the State or Texas, be dismissed.

The SPEAKER pro tempore.[10] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, this resolution deals with the contested election case of Paul against Gammage. The ad hoc committee investigating this case was chaired by the gentleman from Pennsylvania (Mr. AMMERMAN) and consisted of the gentleman from Michigan (Mr. NEDZI) and the gentleman from California (Mr. WIGGINS).

Mr. Speaker, I yield such time as he may consume, for debate only, to the gentleman from Pennsylvania (Mr. AMMERMAN), the panel chairman.

Mr. [Joseph] AMMERMAN [of Pennsylvania]. Mr. Speaker, the subject of House Resolution 526, for which I now rise, is the contested election case of Paul against GAMMAGE arising out of the general election of November 2, 1976, for a seat in the 59th Congress from the 22d district of Texas. I will briefly summarize events which have taken place from the date of the general election, November 2, 1976, up to this moment.

The result of the November 2, 1976, general election involving Mr. GAMMAGE and Mr. Paul showed a difference of 236 votes in Mr. GAMMAGE'S favor.

Mr. Paul requested and obtained a full recount pursuant to Texas law which resulted in a difference of 268 votes in Mr. GAMMAGE'S favor.

The recount was conducted under the general observation of inspectors from the secretary of state of Texas and by counsel from the House Administration Committee. Accordingly, on November 22, 1976, BOB GAMMAGE received a certificate of election from

8. *Id.* at p. 7.

9. 123 CONG. REC. 13954–57, 95th Cong. 1st Sess.

10. William Natcher (KY).

the secretary of state of Texas. Mr. GAMMAGE was duly sworn, without objection, as a Member of the 95th Congress on January 4, 1977.

Mr. Paul filed an election contest in the State district court of Harris County, Tex., pursuant to Texas law. Mr. GAMMAGE responded with a motion to dismiss and State court litigation was joined.

On December 19, 1976, contestant Paul filed a notice of contest with the U.S. House of Representatives pursuant to the Federal Contested Election [*sic*][11] Act. The matter was referred to the Committee on House Administration and on January 19, 1977, contestee GAMMAGE filed an answer and motion to dismiss.

During this period, Chairman FRANK THOMPSON, Jr., appointed me to chair a contested election panel to deal with this matter. Also serving on that panel are LUCIEN NEDZI and CHARLES WIGGINS.

On February 23, 1977, the panel conducted an open hearing for the purpose of hearing oral arguments from both sides pertaining to three motions:

First. A motion by contestant Paul requesting that the House stay all proceedings pending the outcome of court proceedings in Texas.

Second. A motion by contestant Paul requesting 30 additional days for taking depositions.

Third. A motion by contestee GAMMAGE for a dismissal of the case. Arguments were heard and taken under advisement. The record was held open for postsubmission briefs.

One week after the panel hearing, on March 2, 1977, the Supreme Court of Texas ruled that the provisions of Texas law under which contestant Paul had brought his State court contest, as it applied to Federal offices "is in diametrical conflict with and contrary to article I, section 5 of the U.S. Constitution."

The State court cases were thereby terminated and the question of staying House proceedings was moot.

On March 9, 1977, again 1 week later, the panel met in an open hearing for the purpose of discussing the evidence presented. Pursuant to a motion made by Chairman AMMERMAN, the panel voted 2 to 1 to recommend to the full Committee on House Administration that contestee GAMMAGE'S motion to dismiss be granted.

On April 28, 1977, at a full committee meeting, the Committee on House Administration voted 16 to 6 to adopt House Resolution 526:

> *Resolved*, That the election contest on Ron Paul, contestant, against BOB GAMMAGE, contestee, 22d Congressional District of the State of Texas, be dismissed.

That is the resolution before the House this afternoon.

Mr. Speaker, a contest for a seat in the House is a matter of the most serious import. The House underlined its concern when it passed, in 1969, the Contested Election Act.

The thrust of the legislative history and first House cases interpreting the contested election law can be summarized simply:

> The contestant must, at the outset, make allegations with sufficient supportive evidence to justify his claim to the seat. In other words, Mr. Speaker, the contestant must come forward with sufficient evidence, which if substantiated, would show he would have won the election.

Mere allegations or statements by one's campaign workers do not meet the high standard of supportive evidence that must be offered before a contestant is entitled to go forward.

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11. As in the original. Text should read: Elections.

The dissenting views object because an evidentiary burden is placed on contestant Paul. However, Mr. Speaker and my fellow colleagues, that is only proper: The contested election law does not purport to allow losing candidates to go on fishing expeditions. Indeed, had the committee permitted, Mr. Paul might have attempted to depose every voter in the 22d district.

Mr. Speaker, Ron Paul had his "days in court." This committee allowed him ample opportunity to argue his case and present supportive and credible evidence that would show his entitlement to this seat in Congress.

He argued at length, but failed to present evidence to support his claim to this seat.

Mr. Speaker, I urge the adoption of House Resolution 526.

Mr. THOMPSON. Mr. Speaker, before yielding to the distinguished gentleman from California, I am constrained to say with considerable pride that in this instance and in the preceding one, the wisdom of setting up bipartisan panels, including bipartisan staff and bipartisan investigators, is vindicated by the splendid work done by the gentleman from Pennsylvania (Mr. AMMERMAN) and the gentleman from New Jersey (Mr. MINISH), as well as the two panel chairmen to follow. The gentleman from Pennsylvania (Mr. AMMERMAN) has been a U.S. attorney for western Pennsylvania, and has had extensive experience as a prosecutor, as a lawyer, and certainly has given evidence of a splendid knowledge of law in this instance.

Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from California (Mr. WIGGINS), a distinguished constitutional lawyer second only to the gentleman from Texas (Mr. ECKHARDT).

Mr. [Charles] WIGGINS [of California]. Mr. Speaker, I thank the gentleman for yielding to me. I object to the resolution, and will urge my colleagues to vote against it, but I assure the gentleman that my objections are not based upon any constitutional argument.

Ladies and gentlemen, we are in the process of adopting a totally improper procedure for the consideration of election contests, and it is important that we correct it now. It has nothing to do with the merits of Mr. Paul's case or the case that will follow. It is important, however, that whatever the merits may be, we adopt a procedure providing for the orderly, fair disposition of election contests.

Let me explain very briefly, ladies and gentlemen, what our statute provides. The new contested election statute enacted by this House provides that a contest will be commenced by the filing of a document known as a notice of contest. This is something akin to a complaint. It is a pleading which initiates the process.

That pleading, the notice of contest, must be filed within 30 days following the certification of the results of an election by the appropriate State election officers. In this case, there is no challenge at all to the fact that Mr. Paul filed an appropriate notice of contest within the time provided by law.

The next section of our election contest statute says what the contestee must do when served with a notice of contest. The statute says that the contestee may do one of two things: He may either file an answer within 30 days of service of the notice of contest, in which answer the contestee admits, denies or otherwise answers the complaint: or, alternatively, the contestee may raise certain motions by way of defense.

Those motions include a statement that the complaint, that is, the notice, is so ambiguous that it is impossible to frame an answer to it. We understand such a motion. It is addressed to the sufficiency of the pleading. The statute also provides that a contestee may, by way of motion, complain that the notice of contest fails to state with particularity the grounds upon which the contest is founded or that it would change the result of the election. Such a motion is also addressed to the pleadings.

Bear in mind that the burden on the maker of that motion is to "state," only to allege, the basis of the contest.

The statute goes on to provide a method of collecting evidence in support of a well-pleaded notice of contest. The statute says that 30 days after this answer comes in, the contestant may start collecting his evidence by way of noticing depositions, obtaining affidavits, or entering into stipulations.

That is the technique envisioned in the law for the proof of allegations contained in a notice of contest.

That is the process, I say to the Members. Let me tell the Members what is wrong with our treatment of that process.

We are authorizing the contestee to file a motion to dismiss any time after the filing of the notice of contest. When that motion to dismiss is filed, the majority says that there is a burden cast upon the contestant. He is a respondent to the motion. The immediate burden is cast on the respondent of the motion to come forward and prove the case at that time, even though the time for taking depositions and the collection of evidence has not yet run.

There is an analogy in Federal civil practice.

It is clear that the maker of a motion to dismiss is asking for a disposition of the case on the merits. He is not challenging the pleadings. It is not in the nature of a demurrer.

In that respect, the motion to dismiss is very much like a motion for summary judgment.

There are enough attorneys in this Chamber right now to know that the maker of a motion for summary judgment carries a very heavy burden of proof.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. WIGGINS) has expired.

Mr. THOMPSON. Mr. Speaker, I yield 5 additional minutes for the purpose of debate only to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Speaker, as I just said, this motion to dismiss is very much like a motion for summary judgment. When confronted with a motion for summary judgment in civil litigation, the responding party does not carry the burden, nor should he. The maker of the motion carries the burden. And he must show that there are no issues of fact justifying going to the jury, and he must show that he is entitled to judgment as a matter of law. The responding party need not prove his case to defeat the motion.

He must merely show credible questions of fact which justify going forward.

Mr. Speaker, we are now abandoning all those lessons, and we are saying that the making of motion to dismiss immediately after a notice of contest casts upon the respondent the duty of proving his case right then in response to the motion, even though the effect of granting the motion, as in this case, is to cut off the opportunity of taking depositions, which is the technique envisioned in the statute for collecting the evidence.

Let me suggest a proper disposition of this matter. Clearly this resolution ought to go back to the committee so that the contestant can go forward with his attempt to prove his case, as envisioned by the statute. I have no idea whether he is going to prove it or not. He has undertaken a pretty tough case to prove, and it may be that he cannot prove it. But surely he should have the chance to do so, and he should not be cut off.

The proper disposition of the pending resolution is to recommit that resolution to the Committee on House Administration so that the contestant will have a chance to prove his case. If in fact he cannot do so, of course, we will dispose of his contest quickly, but

under no circumstances should we right now on this floor ratify a procedure which denies to a contestant the opportunity of proving his case.

In conclusion, Mr. Speaker, it might be alleged that Mr. Paul had that chance. After all, the statute gives him 30 days within which to take depositions. But the statute also says that he may extend that time for good cause, and within 30 days Mr. Paul through his attorney came forward and made a formal request to extend time.

Our committee did not even reach that motion. It elected to dismiss it on the merits and with prejudice because the contestee filed a notice to dismiss.

We cannot tolerate this procedure. We cannot tolerate it in the future. There are going to be other contests by Republicans and Democrats, so let us not look at this as a partisan issue. This question will come up again in the future. If we do anything today, let us establish a precedent, a precedent that will provide for the fair disposition of all election contests according to the election contest statute. Let us not emasculate that statute as is suggested by the majority.

Mr. Speaker, I urge a "no" vote on the resolution. I urge an "aye" vote on the motion to recommit which will be made.

Mr. THOMPSON. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. NEDZI).

Mr. [Lucien] NEDZI [of Michigan]. Mr. Speaker, I thank the gentleman from New Jersey (Mr. THOMPSON) for yielding me this time.

Mr. Speaker, I was very pleased to hear the gentleman from California (Mr. WIGGINS) say that this is not a partisan issue. I think the Members on our side have demonstrated that it is not a partisan issue because we voted across the board in all four of these contests. We disallowed them basically because evidence was not presented to our committee which warranted that kind of response upholding any of the contests.

Mr. Speaker, the issue is a pretty simple one which I think each of us is going to have to resolve in his own mind. The gentleman from California (Mr. WIGGINS) has taken one approach to the statute. I, along with my colleagues on this side of the aisle, have taken another approach which I think is the more reasonable one.

The question is whether we are going to insist upon all of the fine legalisms of procedure that exist in a court of law in these election contests which are, as all of us know, fraught with political pitfalls and political temptations.

This is the problem, Mr. Speaker. It is not a partisan issue.

I think that in many cases if we go the route of allowing these legal procedures to tie up the Committee on House Administration and the House of Representatives to a point where we cannot resolve these election contests expeditiously, we are going to find that in each of the congressional districts anyone who thinks that he has a good shot at whoever is pronounced the winner of an election, during the next election will engage in an election contest. He will come in and have a forum which will enable him to get a leg up as far as the next election is concerned. The issue will not be resolved within that period of time.

Therefore, Mr. Speaker, the question is whether we are going to seek to resolve these issues expeditiously where evidence has not been presented to the panel with any degree of sufficiency, or whether we are going to insist on permitting these people to go on fishing expeditions.

There is an historical presumption that the certificate of election is valid; and unless that is refuted with adequate evidence, we certainly should stick to that presumption.

Mr. [George] MAHON [of Texas]. Mr. Speaker, will the gentleman yield?

Mr. NEDZI. I yield to the gentleman from Texas

Mr. MAHON. Mr. Speaker, I concur in the remarks of the gentleman from Michigan (Mr. NEDZI). The Committee on House Administration has now investigated this matter and is satisfied that Mr. GAMMAGE received the majority of the votes in the election and that in the recount he continued to receive a majority of the votes. He was certified by the secretary of state of Texas as having been elected to the Congress from the 22d District. Any close election always raises questions, but it seems to me this now should not be a partisan matter and that the proper action of the House is to approve the recommendation of the Committee on House Administration so that the people of the 22d District of Texas can be represented.

I urge the House to defeat the motion to recommit and to approve the recommendation of the committee.

Mr. THOMPSON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ARCHER), for purposes of debate only.

Mr. [William] ARCHER [of Texas]. Mr. Speaker, last November voters of the 22d Congressional District of Texas went to the polls to elect their Congressman.

The true outcome of that election is still very much in doubt, and it now appears quite probable from the proceedings today that it will be forever in doubt.

Mr. Speaker, I must question the action taken by the Committee on House Administration. The committee has denied the right to pursue justice, which is sacred to our American principles, and denied it to one of the staunchest defenders of justice and liberty who has ever served in the Congress.

Certainly the time is now to put to rest any doubts whatsoever about the outcome of last November's election. However, that does not mean that we have a right to unfairly limit a fellow American's right to present evidence to prove his case; and that is what the majority will be doing today if it votes to dismiss Congressman Ron Paul's contest.

Mr. Speaker, as my colleague, the gentleman from California has stated so eloquently, Congressman Ron Paul has procedurally been denied the opportunity to present evidence substantiating his claim that the election should be invalidated.

For the second time now, Congressman Ron Paul has been told that he has no right to present evidence to prove his case.

The Texas Supreme Court ruled in effect that the people of the State of Texas do not have any right to use their court system to settle questions involving Federal elections. But I might point out that that was a 5 to 4 decision of a 9-judge panel, all of whom are Democrats.

Is this body going to rule that the people of the State of Texas also cannot depend upon the U.S. House of Representatives to seek out the truth in such disputes? If so, that is really quite a frightening comment on our system of justice in this country.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I cannot leave unanswered the remarks of the gentleman from Texas (Mr. ARCHER). To say that there is still doubt may be a valid claim in his mind. It is not in the judgment of the committee.

To say that there has been a denial of justice by the Committee on House Administration is an absolute and complete untruth and is deeply resented.

I refuse to yield.

To say that we should yield this matter to the Supreme Court of Texas is to say to the Supreme Court of Texas, notwithstanding the 5-to-4 vote that, no, you are wrong, we throw it back to you.

To say that we have not considered motives, to say that we have been unfair, is an absolute insult to the members of the Committee on House Administration and I do not intend to let it go unanswered.

I deeply regret having to say this to the gentleman.

The gentleman from California (Mr. WIGGINS) has not accused us of evil motives. He bases his case on legal theory. The gentleman from Texas may make such judgments as he wants on the Americanism of anybody—whatever that is, whether it be love of mother, or apple pie, or Texas, or whatever. He can have his definition. I have wondered for years at the definition of a great American. I have heard a great many described as great Americans whom I would not describe as such, but I have not taken their definition.

Mr. Speaker, I yield briefly to the gentleman from California (Mr. WIGGINS) for the purpose of debate only.

Mr. WIGGINS. Mr. Speaker, I did not at all understand the gentleman from Texas (Mr. ARCHER) to impugn in any way the motives and the integrity of the members of the committee on which we both serve but, nevertheless, I fully share the views of the gentleman from Texas that justice has been denied in this case because the committee is approving a procedure which prevents one of the parties from going forward to prove his case. That is a fair observation and I hope the gentleman from New Jersey does not take it personally.

Mr. THOMPSON. Mr. Speaker, if the gentleman will yield, we have adhered strictly to the standards set forth in the statute. I concede to the gentleman that it can be bad but I deny that there was any justice denied in this case.

Mr. WIGGINS. Indeed, the words "motion to dismiss" do not appear anywhere in this statute. This is not a statutory motion. Rather is calls upon the inherent authority of the committee to dismiss a frivolous petition on a good showing. Strangely, we require the respondent to prove his case in order to resist the motion. That is not right, my colleagues, and I do not believe that that is what justice is all about. This emasculates the statute. I urge the Members to read it, it is all in title 2, section 382.

Mr. THOMPSON. Mr. Speaker, I yield 2 minutes, for debate only, to the gentleman from California (Mr. JOHN L. BURTON).

Mr. JOHN L. BURTON [of California]. Mr. Speaker, later on there is another contest Pierce against PURSELL that is a very close election that will forever be in doubt in the minds of many people, including the member of the Democratic Party whose motion was dismissed by majority members of the House Administrative Committee. He was denied any means of pursuing his action, which was merely a recount, because there is no provision available. We did it consistent with the laws and the procedures of this House and the Committee on House Administration. That election will also forever be in doubt in the mind of the Democrat who ran for office.

I would say to my colleagues on this side of the aisle I will wonder if we did the right thing if this all becomes a partisan basis in the view that elections will forever be in doubt, because we do not have a procedure—and I would like to see one—for recount. But we were struck with the fact that under the laws and under our precedents there is no procedure except to call them as we see them, and that is how we did it, fairly and squarely. I do not see anybody raising that issue on the Pierce against PURSELL matter.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. AMMERMAN).

Mr. AMMERMAN. Mr. Speaker, we, the panel, notified the contestant of the hearings and for him to come forward with whatever he had. We heard the argument and questions were put by the gentleman from Michigan (Mr. NEDZI) directly to his counsel—which the transcript will show—such as, "Do you have anything? Why do you not present it?"

It boils down simply to this: Do the Certificate of Election and the results of the election that it certifies mean anything, or does the person who was certified have to go in and show that the contestant was wrong? It is strictly a technicality. He had an opportunity to present everything he had. He had taken depositions over a period of almost 89 days, and he did not even present them. There was an opportunity not only that day but in the ensuing week, which we gave him, to present anything, and it was not done.

Mr. THOMPSON. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. WIGGINS

Mr. WIGGINS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the resolution?

Mr. WIGGINS. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk reads as follows:

> Mr. WIGGINS moves to recommit the resolution, H. Res. 526, to the Committee on House Administration.

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. WIGGINS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 126, nays 260, answered "present" 2, not voting 44, as follows:

[Roll No. 211] . . .

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

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

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

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

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

The yeas and nays were refused.

So the resolution was agreed to.
A motion to reconsider was laid on the table.

§ 16.3 Young v Mikva

The general election for the office of Representative to Congress from the Tenth District of Illinois was conducted on November 2, 1976.[12] The general election candidates were Samuel H. Young (the Republican candidate) and Abner J. Mikva (the Democratic candidate). The initial vote totals indicated that Mr. Mikva received 106,804 votes, while Mr. Young received 106,603 votes. Mr. Mikva's margin of victory was therefore 201 votes. On November 5, 1976, a county clerk filed a petition in an Illinois state court to have certain absentee ballots counted, despite their having not been delivered to their required precincts in time to be counted. The court, however, dismissed the action. A similar action filed on November 12, 1976, was also dismissed. Mr. Mikva was declared the winner of the election by the Governor on November 22, 1977.

On November 24, 1976, Mr. Young took advantage of the state's "discovery recount" procedures to request a partial recount of certain precincts. This recount, supervised by state officials and observers from the Committee on House Administration, began on December 6, 1976, and was concluded on December 7, 1976.

On December 16, 1976, Mr. Young filed a petition for a court–ordered recount of certain precincts. Mr. Mikva opposed this motion on January 6, 1977, and the court granted Mr. Mikva's motion to dismiss on January 18, 1977, finding that the state's recount provisions were inapplicable to Federal elections, and that there were no state procedures for contesting such elections. Mr. Young appealed to the Illinois Supreme Court, but at the time of the filing of the committee's report in this election contest, the Illinois Supreme Court had not issued a decision.

On December 20, 1976, Mr. Young (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. On January 20, 1977, Mr. Mikva (hereafter "contestee") filed a motion to dismiss, and on March 8, 1977, an ad hoc panel from the Committee on House Administration met to consider oral arguments and written testimony. The panel gave the parties an additional ten days to submit further information. Action on the motion to dismiss was deferred until April 20, 1977. At that time, the ad hoc panel recommended granting contestee's motion to dismiss.

In its report recommending dismissal of the contest, the Committee on House Administration reiterated previously–articulated standards for evaluating motions to dismiss. The report noted the presumptions of regularity

12. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–244, 95th Cong. 1st Sess.

that accompany official state election documents (such as certificates of election), as well as actions by election officials. The burden is thus placed on the contestant to overcome these presumptions of regularity by substantial evidence. Not only must the contestant show that there existed fraud, mistake, or other irregularities in the election process, but that such factors were determinative of the outcome. Ultimately, the committee found that the contestant had failed "to sustain the necessary burden to overcome"[13] the motion to dismiss.

One minority party Member (Rep. Dave Stockman of Michigan) filed minority views to accompany the committee's report. In his statement, Rep. Stockman claimed that it was "premature" and "improper"[14] for the House to dismiss the contest. He described the contestant as facing a "Catch–22"[15] dilemma, where state recount procedures denied him the ability to inspect ballots and, lacking such supporting evidence, contestant could not proceed to the discovery phase under the FCEA. In Rep. Stockman's view, the motion to dismiss should not be granted, in order to afford contestant the opportunity to gather additional evidence. In additional dissenting views submitted by all minority party members of the committee, the argument was made that "the majority elevates a certificate of election to a conclusive presumption of the validity of an election by denying to the contestant any means of challenging it."[16]

On May 9, 1977,[17] the committee offered House Resolution 527 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST ABNER J. MIKVA

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 527), and ask for its immediate consideration.

The CLERK read the resolution, as follows:

H. RES. 527

Resolved, That the election contest of Samuel H. Young, contestant, against Abner J. Mikva, contestee, Tenth Congressional District of the State of Illinois, be dismissed.

The SPEAKER pro tempore.[18] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

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13. H. Rept. 95–244, 95th Cong. 1st Sess. p. 7.
14. *Id.* at p. 9.
15. *Id.* at p. 8.
16. *Id.* at p. 10.
17. 123 CONG. REC. 13957–60, 95th Cong. 1st Sess.
18. William Natcher (KY).

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution deals with the contested election case of Young against Mikva. The ad hoc panel investigating this case was chaired by the gentleman from California, the Honorable LEON PANETTA, and consisted of the gentleman from California, the Honorable AUGUSTUS HAWKINS, and the gentleman from Michigan, the Honorable DAVE STOCKMAN.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. PANETTA), the panel chairman.

Mr. [Leon] PANETTA [of California]. Mr. Speaker, we deal now with House Resolution 527, which involves the election contest between Samuel Young, the contestant, and ABNER MIKVA, the contestee, in the 10th Congressional District of Illinois.

The Committee on House Administration recommends adoption of the resolution for dismissal. The history of this case is rather complicated. I will try to present a brief summary to the House.

The general election was held on November 2, 1976, at which time Mr. MIKVA won over Mr. Young by 201 votes. On November 22 Mr. MIKVA was certified and declared by the Governor of Illinois as having been duly elected.

On November 24, Mr. Young filed a petition for discovery recount with the clerk of Cook County. On December 6 and 7, a recount was held before representatives of Mr. Young and Mr. MIKVA, the clerk of Cook County, and staff members of the Committee on House Administration. A retabulation was made of approximately 53,000 votes, and it was indicated at that time that there was only a difference of four votes in the election result.

On December 16, 1976, a petition for a recount was filed by Mr. Young in the circuit court, and on December 20, 1976, Mr. Young filed a notice of intention to contest the election with the House of Representatives.

Mr. Speaker, the notice of intention to contest was based on approximately five grounds, alleging malfunction of voting machines, ballots with various identifying marks, ballots not initialed by election judges, ballots cast by nonresidents, and others.

On January 4, 1977, Mr. MIKVA was sworn in as the Representative from the 10th Congressional District. On January 6, 1977, he filed a motion to dismiss the petition for recount in the courts, and the courts upheld Mr. MIKVA and dismissed the case. That case is still under appeal to the supreme court in Illinois.

On January 20, 1977, Mr. MIKVA filed a motion to dismiss with the committee under section b(3), which states that the contestant must state grounds that are sufficient to change the result of the election, and the position by Mr. MIKVA was that the motion did not state grounds sufficient to change the result of the election.

Hearings were held on March 8, by the ad hoc subcommittee chaired by myself, with the distinguished gentleman from California (Mr. HAWKINS) and also the distinguished gentleman from Michigan (Mr. STOCKMAN). On April 5 an additional hearing was held, and on April 20 a final hearing was held on the motion to dismiss. And a vote was taken of 2 to 1 recommending dismissal.

The basic issue that faces the House is whether the notice of contest filed by Mr. Young states grounds sufficient to change the result of the election. The law in this case is very clear. In an amendment adopted by the House in 1969 makes it clear that an individual can file a motion for dismissal in order to challenge notices of contest that do not meet the burden of presenting sufficient facts and evidence.

In Tunno against Veysey, which is one of the cases handled by the House, the point was made that there is a substantial burden on the contestant not only to come forward

with allegations, but also to present evidence and facts supporting those allegations. This is a heavy burden placed on the contestant.

Indeed, in one case, Gormley against Goss, it was held that there were three prerequisites, one, that the official returns themselves are prima facie evidence that the conduct of the election officials was legal; second, that there is also a presumption that the officials performed their duty honestly.

Therefore, the burden to resist these presumptions is a heavy one and falls on the contestant.

Mr. Speaker, this is not just a motion for summary judgment. It should not be compared to other civil proceedings. This is not just simple notice pleadings. There is a substantial burden on the contestant to come forward not only with allegations; but with facts.

In this case, Mr. Speaker, the initial allegations were based not on fact but on information and belief. The affidavits filed by the contestant showed, at most, a difference of 4 to 10 votes out of 53,000 votes.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. PANETTA) has expired.

Mr. THOMPSON. Mr. Speaker, I yield 3 additional minutes to the gentleman from California (Mr. PANETTA), for purposes of debate only.

Mr. PANETTA. To continue what I was saying, Mr. Speaker, the contestant showed a difference of 4 to 10 votes out of the 53,000 vote recount and out of the 200,000 vote election result.

The question is, Are 4 to 10 votes enough of a difference to warrant this House proceeding with a full investigation and a full recount of that election?

Mr. Speaker, it was the decision of the panel, which has the right to exercise its discretion in these matters, based on the facts presented to it, that the contestant had not met his burden. We are not in the business of helping the contestant to make out his case. We may argue with procedure. We may not like the process established, but the fact is that we must adhere to the procedures that we have before the House. The fact is that the contestant did not meet or comply with those procedures.

Mr. Speaker, it could well be said that any argument with procedures should be dealt with legislatively; but it should not be dealt with in the context of a quasijudicial proceeding. Therefore, Mr. Speaker, based on the time and effort that would be involved in further investigating this case and based on the dangerous precedent that could be established, it was the decision of the panel that we recommend dismissal of the case.

I, too, Mr. Speaker, as chairman of that panel, recommend dismissal of this case and that the Members agree to House Resolution 527.

Mr. THOMPSON. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Michigan (Mr. STOCKMAN), for the purposes of debate only.

Mr. [David] STOCKMAN [of Michigan]. Mr. Speaker, I rise in opposition to the resolution before us.

I just want to make clear before I proceed into the argument that we do not take this position in this case for the purpose of merely overturning the result of a certified election. We are not taking this position, because we wish to deny the seat to a sitting Member of this body, because we want to see a seat switched from one side of the aisle to the other, and certainly not because we think the proceedings which took place before our panel and our full committee were unfair.

Mr. Speaker, our purpose, really, in raising these questions on these resolutions is to prevent the accumulation of precedents which, in our judgment, will render our whole contested elections procedure null and void and will make it, for all practical purposes, a useful instrument to resolve election contests.

I think it is important for the House to understand that the resolution before the House today is not the product of a hearing on the merits of this case. No evidence was gathered by the committee. Neither of the parties involved in this contest took depositions or other steps to gather evidence. No examination or cross examination occurred.

All of the procedures that are provided by U.S.C. 386 to 389 were not used, because we did not get that far. This motion to dismiss was interposed; and as a result, the basic procedures of the Contested Elections Act were not used.

The fact is that the motion to dismiss must clearly rest on a showing by the contestee that grounds sufficient to change the result of the election were not presented.

Mr. Speaker, the majority of the panel and the majority of the committee have concluded that such grounds were not presented.

I would like to take just about 2 minutes to lay before the House some of the information that was contained in the notice of contest, in the pleadings of the contestant in this case, and then I would ask the Members, on the basis of this evidence, whether or not they think sufficient grounds were presented.

The following pieces of information were presented to us in the original notice of the contestant, first, it showed that there were 10 votes that were counted for the contestee which actually belonged to the contestant, as a result of a discovery recount that was made, and those have not been questioned by the contestee.

Second, it showed in this same discovery recount which was carried out pursuant to State procedure, that there were 230 ballots which were uninitialed by the election judges and, nevertheless, they were counted, even though that is a violation of the State law in Illinois.

The third thing that the notice showed, or contended, or alleged, was that there were 611 ballots containing distinguishing marks, numbers, some of them in sequential order; these ballots also contained lines, checks, and all of these marks, again, are prohibited by the election act in Illinois.

These ballots were counted, therefore, in violation of the basic election act in this State under which the election was carried out.

Then, finally, the notice of contest filed by the contestant contained the names and addresses of 20 individuals who voted in that election despite the fact that they had been stricken from the registration rolls previous to the election. Nevertheless, those ballots cast by unregistered voters were counted.

What does this add up to? It adds up to a showing, a clear, concrete, material showing, that 871 ballots were counted in that contest which were either—No. 1, erroneously tabulated; No. 2, counted in violation of the State law; or, No. 3, illegally cast.

We were dealing with an election involving a difference of only 201 votes and we have a showing in the pleadings, in the notice of contest, that there were 871 ballots which are subject to question.

The only thing that the notice of contest does not show is whether or not each of those 871, or even 500 of them, would have gone to the contestee or the declared winner in that election, Mr. MIKVA and, therefore, would not change the outcome.

But I would suggest to the House that proving which way each one of those ballots would have gone is not something that has to be done in the initial notice; that is something that should be done during hearings on the merits.

This case is far different from some of those we have had in the past, because I think the notice is sufficient and demonstrates that the outcome could have been different.

I would urge that the House recommit this matter to the committee.

Mr. THOMPSON. Mr. Speaker, before yielding to the gentleman from California (Mr. JOHN L. BURTON) following which I presume the gentleman from California (Mr. WIGGINS) would want to be heard—I might point out that, in substance, the legal groundwork for this and the other three contests today is essentially the same. I would think that it is a matter which will come up later, and which deserves some further in depth discussion, probably in the Committee on House Administration which has the substantive legislative jurisdiction.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California (Mr. JOHN L. BURTON) for debate only.

Mr. JOHN L. BURTON [of California]. Mr. Speaker, I thank the gentleman from New Jersey for yielding to me.

This case, again, is not unlike the next matter that will be before us and it is not unlike a matter that was before us 2 years ago out in the State of Nebraska, Ziebarth versus Smith, where there was a close election and where the loser petitioned on the basis of statistical information and probabilities that the counting of the ballots had to be erroneous and, therefore, the winning candidate, Mrs. SMITH of Nebraska, should not have been seated.

At that time the Committee on House Administration, with a majority joined by the minority and only myself voting in the negative, dismissed the contest. The matter went to the floor and again the contest was dismissed. I voted in the negative, because I thought there should be some procedure in a close election whereby there should be an avenue of recourse. I found out, chairing the Pierce-Pursell matter that in fact there was not. Based on that I would hope to introduce later this year legislation to provide for a recount procedure for the House of Representatives and that does not exist at the present time in many of the States. But again here we are faced with a close election.

The minority members felt somehow that the burden of proof was met by the losing candidate and voted not to dismiss—the same facts. The numbers are a little bit different. I think there is maybe a 100-vote difference in the margin in the Michigan contest. We on the majority—including myself who voted against dismissing a similar matter 2 years ago because I thought there had to be recourse—voted to dismiss, because there was just no way in the world that we could go in and start ordering local governments to pay for some kind of a recount.

So I would hope that the gentleman from Michigan (Mr. STOCKMAN) —and we have discussed this—would join with me in coming up with a procedure to deal with close elections.

Mr. CHARLES H. WILSON of California. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON. I yield to the gentleman from California.

Mr. CHARLES H. WILSON of California. I thank the gentleman for yielding.

I wonder if the gentleman will agree with me that perhaps we should have a rollcall vote when the next resolution comes up.

Mr. JOHN L. BURTON. Possibly on the next one.

Mr. CHARLES H. WILSON of California. Apparently these are all going on a party-line vote.

Mr. JOHN L. BURTON. We did not operate on a party-line basis when we dismissed Smith and Ziebarth 2 years ago, Kyros and Emery 2 years ago, and the Pierce-Pursell

matter this year. I am kind of distressed that some of these things become partisan, because the facts are the same.

We are dealing with a close election. Unfortunately, there is no procedure under the laws we can address ourselves to, and I hope we can deal with these in fairness as with the others.

I thank the gentleman for yielding.

Mr. THOMPSON. Mr. Speaker, for debate only, I yield 3 minutes to the gentleman from California (Mr. WIGGINS).

Mr. [Charles] WIGGINS [of California]. Mr. Speaker, I should like to paint a little picture here which demonstrates how utterly preposterous this procedure is. Let us suppose you are a plaintiff and you file a complaint, and you allege in the complaint a cause of action entitling you to relief. Let us suppose that the defendant instead of answering immediately files a motion to dismiss your well-pleaded complaint and sets it down for hearing on his motion to dismiss. You go into court, and the judge says to you, the plaintiff:

> Well, what have you got to say for yourself? Why shouldn't we dismiss your complaint? Prove it. Prove it now. Prove up your allegations.

Your answer is:

> Well, Your Honor, this is not my motion. It is not my burden to establish a motion to dismiss. Moreover, I am entitled to take depositions to find out what the evidence is to support my well-pleaded allegations.

We have that procedure in civil litigation, because it is fair, and doing it in this context is unfair.

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

Mr. WIGGINS. I yield to the gentleman from New Jersey.

Mr. THOMPSON. I thank the gentleman for yielding.

We are in an entirely different situation here, I respectfully say. We are not in court. There is a presumption to which a Member is entitled when his secretary of state or Governor certifies to his election.

Mr. WIGGINS. I stipulate that presumption, but it is not a constructive presumption which prohibits someone from offering evidence that it is improper. To maintain this position is to do away with our election contest statute.

Mr. THOMPSON. If the gentleman will yield further—and if necessary I will yield him additional time for debate—in the matter of the case just disposed of, the contestee was given an opportunity of in excess of 10 days to submit additional evidence.

The rules of discovery are not applicable here as they are or perhaps should be. The legal situation, as the gentleman knows, is different.

Mr. WIGGINS. But surely the rules of discovery in our own election contests statute are applicable; are they not?

Mr. THOMPSON. Yes, and with respect to existing standards the gentleman is quite right, and the rules have been strictly adhered to.

Mr. WIGGINS. It provides that those depositions be made after answer and the answer was never filed in this case.

Mr. THOMPSON. But those procedures were not utilized by Dr. Paul.

Mr. WIGGINS. If the gentleman wishes to go back and reargue that case, I will if the gentleman will extend the time.

In this case there is a stronger answer. There was not any answer at all filed. In this case the gentleman from Illinois (Mr. MIKVA), for whom I have the greatest respect, filed an immediate motion to dismiss, cutting off any opportunity.

Mr. THOMPSON. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. PANETTA).

Mr. PANETTA. Mr. Speaker, I would say very briefly if we get into the game of trying to take outside legal procedures and try to apply them here, it is a very dangerous game. Those procedures are just not the same.

As a matter of fact, in standard civil proceedings, if a person comes forward with a motion and the respondent on the motion does not present anything, he is going to get thrown out of court.

In 2 U.S.C. section 385, default of contestee, the language says:

> The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat. (P.L. 91–138, §6, Dec. 5, 1969, 83 Stat. 286.)

If the gentleman from Illinois (Mr. MIKVA) did not do anything, file a motion to dismiss, or whatever, and he did nothing, according to this statute the burden would still be on the contestant, Mr. Young, to prove his case.

Mr. WIGGINS. Mr. Chairman. if the gentleman will yield, I agree totally with the gentleman. Of course the burden rests on the contestant to prove his case, but the time to prove that case is when the case is submitted on the record, not before one has had an opportunity to develop that record.

Mr. PANETTA. I understand the gentleman's argument and I have the greatest respect for his expertise. I respectfully disagree with him. I think it extremely important that we do not come into these cases as advocates and that we do not take the position of simply supporting one side or the other because of party. We must deal with the facts as they are presented to the committee.

The second point I would like to make is that it is extremely dangerous for this House if we permit free and open notices to be filed by everyone everywhere to contest elections. They must be based on fact.

Mr. THOMPSON. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. WIGGINS

Mr. WIGGINS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the resolution?

Mr. WIGGINS. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. WIGGINS to recommit the resolution (H. Res. 527) to the Committee on House Administration.

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 motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the resolution.

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

Mr. WIGGINS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 272, nays 107, answered "present" 3, not voting 50, as follows:

[Roll No. 212] . . .

Mr. ST GERMAIN changed his vote from "nay" to "yea."

Mr. HAGEDORN changed his vote from "yea" 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.

§ 16.4 Pierce v Pursell

The general election for the office of Representative to Congress from the Second District of Michigan was conducted on November 2, 1976.[19] The general election candidates were Carl D. Pursell (the Republican candidate) and Edward C. Pierce (the Democratic candidate). The official canvass of votes indicated that Mr. Pursell received 95,397 votes, while Dr. Pierce received 95,053 votes. Mr. Pursell's margin of victory was therefore 344 votes. On November 23, 1976, Mr. Pursell was certified as the winner of the election by the Michigan Board of Canvassers. His credential were presented to the House of Representatives, and on January 4, 1977, he was duly administered the oath of office without objection or challenge.

On November 8, 1976, Dr. Pierce filed suit in state court to obtain a review of tally sheets and vote totals, but the initial order granting this request was reversed on appeal. Dr. Pierce next filed a petition for a recount with the Board of Canvassers, but this request was also denied, on the basis that state law did not provide for a recount of elections for Federal office.

On December 2, 1976, Dr. Pierce (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. The notice of contest claimed that certain mistakes had been made in the tabulation of votes, and that certain precincts should be recounted. In reply, Mr. Pursell (hereafter

19. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–245, 95th Cong. 1st Sess.

"contestee") filed a motion to dismiss, asserting the statutory defenses that the contestant had not properly claimed a right to the seat, and that contestant had not stated that, but for the alleged errors, the result of the election would have been different.

The Committee on House Administration established an ad hoc panel of three Members on March 2, 1977, to investigate the matter. The panel met on March 7, 1977, to hear oral arguments on contestee's motion to dismiss. On March 16, 1977, the ad hoc panel voted unanimously to recommend that the committee grant the motion to dismiss.

In its committee report, the Committee on House Administration reviewed prior precedents regarding the circumstances under which the committee would undertake a recount after the initiation of an election contest. The committee concluded that the case "lacks all of the ingredients that our colleagues in earlier Congresses have found essential to ordering a recount."[20] To prevail on a request for a recount, "substantial allegations of fraud must be alleged"[21] and "the likelihood must exist that the result of the election would have been different."[22] The committee recommended that the House adopt a resolution to dismiss the contest.

Members of the minority party filed supplemental views to accompany the committee report. In those views, the minority desired to distinguish this case from a similar case in the same Congress.[23] There, the minority felt that the contestant had affirmatively alleged specific ballots errors sufficient to change the result of the election. Here, however, the contestant had advanced merely a suspicion of error without any supporting evidence. Thus, while the minority agreed that the motion to dismiss should be granted, it disagreed with the standard used by the majority in evaluating such cases.

On May 9, 1977,[24] the committee offered House Resolution 528 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST CARL D. PURSELL

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 528) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 528

Resolved, That the election contest of Edward C. Pierce, contestant, against Carl D. Pursell, contestee, Second Congressional District of the State of Michigan, be dismissed.

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20. H. Rept. 95–245, 95th Cong. 1st Sess. p. 4.

21. *Id.*

22. *Id.*

23. See Young v Mikva, § 16.3, *supra.*

24. 123 CONG. REC. 13960–61, 95th Cong. 1st Sess.

The SPEAKER pro tempore.[25] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution deals with the contested election case of Pierce against Pursell. The ad hoc panel investigating this case was chaired by the gentleman from California, the Honorable JOHN L. BURTON, and consisted of the gentleman from Illinois, the Honorable FRANK ANNUNZIO, and the gentleman from New Hampshire, the Honorable JAMES CLEVELAND.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. JOHN L. BURTON), the chairman of the panel, for purposes of debate only.

Mr. JOHN L. BURTON [of California]. Mr. Speaker, I thank the chairman of the committee for yielding this time to me.

This is the election contest matter to which I referred in debate on the other two resolutions in which the margin of victory, out of more than 190,000 votes, was 344 votes.

In this matter I will listen, I am sure, very closely to the motion to recommit offered by the gentleman from California, and I will see if he raises any arguments that would cause me to change my mind from my original intention.

Mr. Speaker, we found ourselves in this situation with the same problems as did the other election panels. This was a close election that will forever be in doubt. There is a contest in which the losing candidate raised some probabilities of error in the tabulation of votes that could lead one to believe that the outcome of the election might have been changed.

After listening to testimony, we found that whatever we did would be second-guessing the results of this election, with no real information brought to us, other than some statistical probabilities, that could guide us to do anything but dismiss the contest.

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

Mr. JOHN L. BURTON. I yield to the gentleman from New Jersey.

Mr. THOMPSON. May I ask the gentleman this question, Mr. Speaker:

Am I correct that in this matter, following the canvass showing the difference of 344 votes and the presentation of the credentials of Mr. PURSELL to the House, on November 8 the contestant, Dr. Pierce, filed a suit in the State court seeking an order permitting an inspection and review of tally sheets containing the vote totals and that the initial court granted the requested order, but that decision was reversed on appeal; is that correct?

Mr. JOHN L. BURTON. By the Supreme Court: yes, it was.

Mr. THOMPSON. By the Supreme Court of the State?

Mr. JOHN L. BURTON. By the Supreme Court of the State of Michigan.

Mr. THOMPSON. In other words, it is a situation analogous to the Supreme Court decision in the Paul case; is that correct?

Mr. JOHN L. BURTON. I believe that the State Supreme Court of Michigan and the State Supreme Court of Texas are the highest judicial branches in those States.

Mr. Speaker, it is interesting to point out that if this were a primary election, a recount could have been granted, under State of Michigan law. If it were an election for a judgeship in the State or for the State legislature, there could have been a recount under the State law.

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25. William Natcher (KY).

The only place where there cannot be a recount is in the general election for a Member of Congress or the U.S. Senate.

There was a feeling on my part, as I expressed earlier, that there should be a procedure whereby, especially in a State that provides for recounts all the way up the line, with this one exception, a recount might be in order. However, we have no guidelines for a recount. We really have no policy with respect to a recount.

Therefore, based on that information, I felt that it was my duty, in fairness and in equity, notwithstanding the fact that this Member very strongly wanted the losing party, Dr. Pierce, to win the general election, to decide that the only thing I could do, in fairness and in equity, and that the members of committee, the gentleman from Illinois (Mr. ANNUNZIO) and the gentleman from New Hampshire (Mr. CLEVELAND) could do was to dismiss this contest, not on a party-line basis, not on an ideological basis, but in fairness and in honesty.

Mr. Speaker, I do feel, based on my experience with this contest and with the others, that there should be a procedure whereby recount procedures are available in congressional elections; and I would hope that our committee would move on such a matter.

As I say, I think this is really pretty well on all fours with the Gammage matter, and with the Mikva matter.

Mr. Speaker, somebody wants to vote. I do not know whether the motion to recommit will come now or later. I certainly believe that consistency is the hobgoblin of small minds, but I would still vote against the motion to recommit this matter, as I did on the others.

Mr. THOMPSON. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. WIGGINS), for purposes of debate only.

Mr. [Charles] WIGGINS [of California]. Mr. Speaker, some of the Members of this body believe that this contest is fairly analogous to the previous ones, the Paul and Mikva contests.

It is not. There are some important legal distinctions between them, and I will take just a moment to explain them.

In this case the notice of contest alleges only as follows:

> Contestant Pierce bases this contest on information and belief that certain mistakes were committed and corrections thereof should be made. Contestant Pierce considers himself to be aggrieved by such mistakes.

Mr. Speaker, that is the pleading we have in this case. In both the Mikva case and the Paul case the complaint specified with great particularity the precise nature of the irregularities.

They were sufficiently numerous to change the result of an election. The case before us now is indeed on all fours with the case we decided 2 years ago, Zeibarth versus Smith. In that case Mr. Zeibarth could not point to any specific irregularities, he merely had a close election on his hands and he was disappointed in the result and said,

> It is so close there must be some irregularity, I ought to have a recount.

The decision in Zeibarth versus Smith was that a close election standing alone was not a sufficient basis to overturn an election.

The gentleman from California thought there should be a procedure for a recount and I would not resist amending the code to provide an automatic recount in close elections, even with no specific allegation of irregularity.

But in Zeibarth versus Smith 2 years ago we said that closeness alone is not enough and that you must allege with specificity the particular irregularities which occurred in the election. Clearly Mr. Pierce has not done so. All that was shown is what I have read to the Members, that certain unspecified mistakes were committed and the contestant conceives himself to have been aggrieved. Therefore the proper disposition in this case, in light of those pleadings, and no offer to amend it on his part, is to approve the resolution before the committee.

It is not my intention to offer a motion to recommit, but if the majority would wish to do so, I would not resist it.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I gather there is sort of an element of throwing the gauntlet by the gentleman from California (Mr. WIGGINS). I do not anticipate any motion to recommit unless it is made by the gentleman from California.

I would like to point out a few things. First of all, the notice of contest in the Mikva case, was based on information and belief and not on particularities and not until the committee granted an extension were there any affidavits presented.

For those Members who subscribe and have subscribed to the argument presented by the gentleman from California (Mr. WIGGINS) in the earlier cases today, it would seem that the same standard should apply in this case. For those Members who desire different standards and who voted earlier to recommit House Resolution 526, perhaps they should consider turning this matter down, in order to be consistent because they are analogous.

Mr. JOHN L. BURTON. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Speaker, I would like to say there was a showing which I would consider, there was one precinct where there seemed to be a disproportionate falloff, or a possible loss in which the losing party or the moving party claimed 90 votes. I think the winning party stipulated it could not have been more than 40 or 50. There were further showings made, but we did not consider them in any way sufficient enough to go in and order an election. There was a partial recount that showed a switch of four votes.

I really believe this is on all fours with the others.

I might say that I believe as the gentleman from Michigan (Mr. STOCKMAN) does, that we should have a procedure setting forth how we could deal with this type of matter because it is not an easy thing to deal with, especially when you are in the majority and calling them as you see them and then you find out that other people appear to see things differently depending on how you look at it from one side to the other.

Mr. THOMPSON. 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. [Elliott] LEVITAS [of Georgia]. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 371, nays 8, answered "present" 2, not voting 51, as follows:

[Roll No. 213] . . .

Mr. MILLER of California changed his vote from "nay" to "yea."
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.

§ 16.5 Dehr v Leggett

The general election for the office of Representative to Congress from the Fourth District of California was conducted on November 2, 1976.[26] The general election candidates were Robert L. Leggett (the Democratic candidate) and Albert Dehr (the Republican candidate). The official returns indicated that Mr. Leggett received 75,866 votes, while Mr. Dehr received 75,202 votes. Mr. Leggett's margin of victory was therefore 664 votes. Following the canvass, Mr. Dehr filed for a recount in Sacramento County, which was observed by staff from the Committee on House Administration. Following the recount, Mr. Leggett's margin of victory was reduced to 651 votes. On December 3, 1976, Mr. Leggett was certified as the winner of the election by the California Secretary of State. His credentials were presented to the House of Representatives, and on January 4, 1977, he was duly administered the oath of office without objection or challenge.

On December 31, 1976, Mr. Dehr (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration.

In his notice of contest, contestant argued that the IBM Votomatic system used in the election did not reliably record voters' choices. Specifically, contestant alleged that the ballot and punch–card system made it difficult for voters to correctly distinguish between votes for write–in candidates and votes for Mr. Leggett (hereafter "contestee").

On March 2, 1977, the Committee on House Administration formed an ad hoc panel of three Members to review the case. On July 15, 1977, the panel met to hear oral arguments from the parties. On July 29, 1977, the panel voted to recommend that the contest be dismissed.

In its committee report, the Committee on House Administration rejected the contention that the voters were confused by the Votomatic system used in the election. The committee noted the consistent manner in which candidates were listed on the master ballot, and considered it unlikely that voters would be confused as to how to vote for the contestee or for a write–in candidate. The contestant had presented no direct evidence as to how

26. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–654, 95th Cong. 1st Sess.

specifically votes would have been changed as a result of these ostensibly ambiguous ballots.

On October 27, 1977,[27] the committee offered House Resolution 770 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST OF ALBERT DEHR AGAINST ROBERT L. LEGGETT

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration I call up a privileged resolution (H. Res. 770), and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 770

Resolved, That the election contest of Albert Dehr, contestant, against Robert L. Leggett, contestee, Fourth Congressional District of the State of California, be dismissed.

The SPEAKER pro tempore.[28] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to my distinguished colleague, the chairman of the ad hoc election panel, the gentleman from New York (Mr. PATTISON).

Mr. [Edward] PATTISON of New York. Mr. Speaker, before getting into this contest, allow me to go into some background. Eight cases were filed before the Committee on House Administration arising out of elections for seats in the 95th Congress, five from the general election of November 2, 1976, two from primary elections, and one from a subsequent special election.

The U.S. Constitution provides Congress with plenary power over its own elections and the rules of the House give the Committee on House Administration authority and jurisdiction to process these matters.

In order to provide for both an efficient and expeditious handling of these eight cases, the Honorable FRANK THOMPSON, JR., chairman of the full Committee on House Administration, pursuant to the rules of the House and the rules adopted for the Committee on House Administration, designated this and seven other three-member ad hoc panels to deal with these eight separate cases to the point of disposition, subject to the approval of the full committee and ultimately the full House.

This ad hoc panel consists of Mr. JONES of Tennessee, Mr. BURKE of Florida, and myself, as chairman.

A formal notice of contest was filed by Albert Dehr, unsuccessful candidate for a seat in the 95th Congress in the November 1976 general election. Mr. Dehr filed his notice of contest in this case on January 3, 1977. Pursuant to the rules of the House, the case was referred to the committee on House Administration.

Congressman LEGGETT responded on February 8, 1977, and the matter was brought before the ad hoc election panel.

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27. 123 CONG. REC. 35407–408, 95th Cong. 1st Sess.

28. James Wright (TX).

On July 15, the panel heard oral argument, both sides being represented by able counsel. The contestant claimed that Congressman LEGGETT received votes allegedly cast for a write-in candidate.

On July 29, 1977, the panel met again to consider this matter. After carefully considering the legal arguments, examining copies of the ballot inserts and receiving a staff report from committee general counsel, the panel voted unanimously to dismiss the election contest.

I might say, Mr. Speaker, it was clear to the panel that the likelihood of any votes being erroneously cast for Congressman LEGGETT was extremely remote. The contestant was given every opportunity to demonstrate otherwise, but failed to do so.

Finally, on September 21, 1977, the full Committee on House Administration met and voted, again unanimously, to dismiss this contest.

Mr. Speaker, this matter was fully investigated and fairly heard. I urge my colleagues to vote with the committee to dismiss this contest.

Mr. THOMPSON. I yield for the purpose of debate only to the ranking minority member of the panel, the gentleman from Florida (Mr. BURKE).

Mr. [Herbert] BURKE of Florida. Mr. Speaker, I thank the gentleman from New York for yielding.

As the ranking minority member of this ad hoc committee, I would like to concur with a statement my colleague from New York has just given. This matter has been examined fully by the committee. My opinion is that the committee was fair with the attorneys on both sides, and after hearing all the testimony and the probable evidence the committee found no reason that the outcome of this election should be reversed. I agree with the recommendations of the committee.

Mr. THOMPSON. 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.

§ 16.6 Hill and Panlasigui v Clay

The primary election to nominate a Democratic candidate for the office of Representative to Congress from the First District of Missouri took place on August 3, 1976.[29] Of the seven candidates, William L. Clay received the most votes (by a margin of 26,526 votes compared to the next highest vote–getter). A "Concerned Citizens Committee" on behalf of two losing primary candidates (Felix J. Panlasigui and Elsa D. Hill), filed a petition with election officials, alleging that the candidates' names were left off of certain ballots, that candidates' names were not in the correct position on other ballots, that illegal votes had been cast, and that voting machines had been tampered with. The St. Louis Board of Election Commissioners investigated the allegations, and concluded that there was "no merit"[30] to the complaints.

29. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–723, 95th Cong. 1st Sess.

30. H. Rept. 95–723, 95th Cong. 1st Sess. p. 2.

Thereafter, suits were filed in both state and Federal courts, both of which were dismissed on lack of jurisdiction grounds. On October 14, 1976, the "Concerned Citizens Committee" requested that the FBI conduct an investigation into the matter. In December, the Justice Department concluded the matter, stating that it was "lacking foundation."(31)

On August 30, 1976, the "Concerned Citizens Committee," on behalf of Mr. Panlasigui and Ms. Hill (hereafter "contestants") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. The notice of contest reiterated the claims made to state officials and the FBI. On March 2, 1977, the Committee on House Administration formed an ad hoc panel of three Members to review the allegations. On August 18, 1977, committee staff traveled to St. Louis to meet with state and local election officials and review documents related to the case. On September 29, 1977, the ad hoc panel recommended dismissal of the case.

In its committee report, the Committee on House Administration concluded that contestants' "allegations were not well founded."(32) The contestants failed to demonstrate sufficient grounds to change the result of the election, and their pleadings did not sustain a claim of a right to the seat. The committee thus recommended that the case be dismissed. On October 27, 1977,(33) the committee offered House Resolution 822 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST OF ELSA DEBRA HILL AND FELIX J. PANASIGUI [*sic*](34) AGAINST WILLIAM CLAY

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 822), and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 822

Resolved, That the election contest of Elsa Debra Hill and Felix J. Panasigui, contestants, against William Clay, contestee, First Congressional District of the State of Missouri, be dismissed.

The CHAIRMAN.(35) The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to my distinguished colleague, the gentleman from California (Mr. VAN DEERLIN), chairman of the ad hoc election panel.

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31. *Id.* at p. 3.

32. *Id.* at p. 4.

33. 123 CONG. REC. 35408, 95th Cong. 1st Sess.

34. As in the original. Text should read: Panlasigui.

35. James Wright (TX).

Mr. [Lionel] VAN DEERLIN [of California]. Mr. Speaker, this contested election involves the Democratic primary in the First Congressional District of Missouri.

NED PATTISON and BILL FRENZEL also served the ad hoc panel hearing the case.

The Democratic primary for the First Congressional District of Missouri was held on August 3, 1976. There were seven candidates.

Congressman WILLIAM L. CLAY received 29,094 votes. I will skip over the second, third, and fourth finishers, all of whom accepted the official tally.

The fifth highest number of votes cast were for one of the contestants in this action, Felix J. Panasigui. He received 957 votes.

The sixth highest number of votes were for the other contestant, Elsa D. Hill, who received 574.

On August 30, 1976, the contestants Panasigui and Hill filed their notice of contest with the Clerk of the House.

Since that time the contestants have filed numerous documents and pleading with our committee. The allegations contained in those documents raise substantially the same charges that the contestants filed with the St. Louis Board of Election commissioners. They are:

First. That Ms. Hill's and Mr. Panlasigui's names were left off the primary ballot in at least 17 different polling places;

Second. That in a number of instances, the name of Ms. Hill appeared on the ballot in a place other than its designated position;

Third. That illegal votes were cast under the names of registered voters who did not appear at the polls; and

Fourth. That some votes were cast on the machines after the closing of the polls.

A staff report prepared by committee general counsel indicates that the St. Louis board of election commissioners thoroughly investigated the described charges, and found that: "There is no merit in the complaints filed by Mrs. Hill."

The staff report also indicates that the contestants requested that the Public Integrity Section of the Criminal Division of the Justice Department conduct an investigation, and that subsequently an investigation was conducted by the Federal Bureau of Investigation. Attached to the staff report was a letter from Justice stating that: "The matter was closed in the Criminal Division as lacking foundation."

Additionally, committee staff went to St. Louis and met with the board of election commissioners and their counsel. At that meeting the board's investigation was discussed, and supporting documents were provided to staff.

On September 29, 1977, the ad hoc election panel voted, unanimously, to dismiss the election contest.

Finally, on October 20, 1977, the full Committee on House Administration voted, again unanimously, to dismiss this matter.

Mr. Speaker, over the past several weeks, members of the committee and staff have been harassed—even threatened—in connection with this case. Enough of the taxpayers money has been expended on the matter, which clearly has no basis in fact or law.

Mr. Speaker, I urge colleagues to join in supporting the recommendations of the panel and committee, and dismissing this election contest.

Mr. THOMPSON. Mr. Speaker, I thank the gentleman from California.

Mr. Speaker, I yield, for purposes of debate only, such time as he may consume to our distinguished colleague, the gentleman from Minnesota (Mr. FRENZEL).

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I thank the chairman for yielding.

I subscribe to the statement of the gentleman from California and hope this resolution will be speedily adopted.

Mr. THOMPSON. 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.

§ 16.7 Lowe v Fowler

On January 30, 1977, Andrew Young (Representative from the Fifth District of Georgia) resigned from the House in order to serve as Ambassador to the United Nations.(36) A special election to fill his vacant seat was conducted on March 15, 1977. Twelve candidates took part in the election, and no candidate received a majority of votes cast. A runoff election was then held on April 5, 1977, with Wyche Fowler receiving 54,378 votes and John Lewis receiving 32,732 votes.

On April 15, 1977, one of the 12 initial candidates, Wyman C. Lowe (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. The contestant alleged that Mr. Fowler (hereafter "contestee") was ineligible to run for the seat because he had not resigned from the Atlanta City Council. The notice of contest also stated that the low vote totals for contestant (as compared to vote totals in a prior election) gave the presumption of fraud or irregularity. Contestant also claimed that a large number of unused extra ballots supported the claims of fraud or error. Contestee filed a motion to dismiss the contest, based on lack of standing by the contestant, and a failure to state grounds sufficient to change the result of the election.

On March 2, 1977, the Committee on House Administration established an ad hoc panel of three Members to review the matter. On September 16, 1977, staff of the committee met with state and local officials in Georgia. They obtained from the Atlanta City attorney an opinion that state law did not require resignation from the Atlanta City Council in order to run for another office. Committee staff also met with election officials to review documents relating to the claim of unused extra ballots. The committee concluded that the "apparent discrepancies were either explicable or normal."(37)

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36. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 95–724, 95th Cong. 1st Sess.

37. H. Rept. 95–724, 95th Cong. 1st Sess. p. 3.

With respect to the claims regarding low vote totals compared to prior elections, the committee's report cited earlier precedents[38] for the proposition that a mere disparity in the number of votes from one election to the next does not raise the presumption of irregularity. Vague or uncertain allegations will not be sufficient for a contestant to prevail in an election contest. The committee thus recommended granting contestee's motion to dismiss.

On October 27, 1977,[39] the committee offered House Resolution 825 (dismissing the contest) as a privileged matter, which the House adopted by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST W. WYCHE FOWLER, JR.

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 825), and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 825

Resolved, That the election contest of Wyman C. Lowe, contestant, against W. Wyche Fowler, Junior, contestee, Fifth Congressional District or the state of Georgia, be dismissed.

The SPEAKER pro tempore.[40] The gentleman from New Jersey is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, before yielding to the chairman of the ad hoc panel, I would like to express my appreciation not only to the three panel chairmen who are presenting these election contest matters today, but to all the other members, majority and minority, of the Committee on House Administration who served on these panels.

We think that we have saved a tremendous lot of time, money, and that each and every one of the panel chairmen have done a really outstanding job, as have their colleagues from the minority.

In this case, the panel chairman to whom I yield, is the gentleman from Pennsylvania (Mr. AMMERMAN).

Mr. [Joseph] AMMERMAN [of Pennsylvania]. Mr. Speaker, I have been designated by the Honorable FRANK THOMPSON, chairman of the Committee on House Administration, to chair the ad hoc panel investigating the contested election involving the Fifth Congressional District of Georgia.

Also serving with me are the Honorable LUCIEN NEDZI of Michigan, and the Honorable BILL FRENZEL of Minnesota.

By way of background, a special election was held in Atlanta, Ga., on March 15, 1977, to fill the seat vacated by U.N. Ambassador, Andy Young. There were 12 candidates in that election. WYCHE FOWLER ran first with 29,898 votes; John Lewis ran second with 21,531. The contestant in today's case, Wyman Lowe, came in eighth, with 276 votes.

38. See 2 Hinds' Precedents § 942; and Deschler's Precedents Ch. 9 § 47.9.

39. 123 CONG. REC. 35408–409, 95th Cong. 1st Sess.

40. James Wright (TX).

As Mr. FOWLER did not receive a majority, a runoff election was held on April 5, 1977. In that election, Mr. FOWLER defeated Mr. Lewis by 54,378 to 32,732 votes.

On April 15, 1977, Mr. Lowe filed this election contest with the House of Representatives. Since that time, Mr. Lowe has filed numerous documents and pleadings with this committee. Generally, Mr. Lowe alleges three grounds in support of his election contest:

First. That since Mr. FOWLER, who was president of the Atlanta City Council did not resign that seat, he was ineligible to run for Congress;

Second. Mr. Lowe asserts that since he received 36,000 votes in the 1970 Democratic primary against Andy Young and only 276 votes in his 1977 race, there must exist fraud because of the disparity in vote totals; and

Third. That the vote tallys did not properly total and that there were shortages in unused, extra ballots.

The members of the panel have been provided with a staff report prepared by committee general counsel.

In summary, that report indicates that the office of the Atlanta city attorney had ruled on February 16, 1976, that members of the Atlanta City Council did not have to resign to run for other office.

The staff report also concluded that the precedents of the House require a higher degree of proof than a showing that a candidate received substantially fewer votes in a subsequent election.

Additionally, committee staff went to Atlanta and met with the city attorney's office and Fulton County election officials. It was determined that the allegations of the voting irregularities made by Mr. Lowe were not substantiated. In many instances Mr. Lowe apparently misread the tally sheets and used the congressional vote rather than the total vote cast for Congress and the county commissioner race. The staff was satisfied that the alleged discrepancies were either explained away by examination or normal to the election process.

On October 6, 1977, the ad hoc election panel met and unanimously voted to dismiss the election contest.

Finally, on October 13, the full Committee on House Administration met and voted, again unanimously, to dismiss this case.

Mr. Speaker, I might point to my colleagues that this is the third election contest Mr. Lowe has filed with the House. This contest has no claim to legitimacy—in either fact or law—and I strongly urge my colleagues to promptly dismiss this matter.

Mr. THOMPSON. Mr. Speaker, I yield such time as he may consume to the distinguished minority member of the panel, the gentleman from Minnesota (Mr. FRENZEL), for debate only.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I thank the distinguished gentleman from New Jersey for yielding to me.

I support the statement of the distinguished gentleman from Pennsylvania, the task force chairman, and hope that the resolution will be promptly adopted.

Mr. THOMPSON. 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.

§ 16.8 Moreau v Tonry

The general election for the office of Representative to Congress from the First District of Louisiana was conducted on November 2, 1976.[41] Richard A. Tonry (the Democratic candidate) was certified as the winner of that election. Another Democratic candidate, James A. Moreau, who had lost to Mr. Tonry in the Democratic primary, petitioned the Committee on House Administration to investigate the circumstances of the primary election.[42] In addition, Mr. Moreau pursued his claim in state courts, and the Louisiana Supreme Court ultimately dismissed the case and refused the invalidate the election.[43]

On February 11, 1977, several Louisiana election officials pleaded guilty to casting fraudulent votes for Mr. Tonry. As the Committee on House Administration continued its investigation, Mr. Tonry decided to resign his seat, thus mooting the election contest.[44] No committee report was therefore filed in this case. Mr. Tonry's letter of resignation was laid before the House on May 4, 1977:[45]

RESIGNATION AS MEMBER OF HOUSE OF REPRESENTATIVES

The SPEAKER laid before the House the following communications, which were read:

Washington, DC., *May 4, 1977.*
Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House, Washington, DC.

DEAR MR. SPEAKER: Enclosed please find my letter of resignation addressed this day to the Honorable Edwin W. Edwards, the Governor of the State of Louisiana.

My short stay in the House has been the most rewarding experience of my life. I am tremendously impressed by the integrity and industry of its members. I have made friends whom I will never forget.

Keep my seat warm and tell my colleagues not to forget me because I am running again and will win again.

With kindest personal regards, I am.

Sincerely,

RICHARD A. TONRY.

HOUSE OF REPRESENTATIVES,
Washington, DC., May 4, 1977.

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41. For more details on this case, see *Contested Election Cases in the House of Representatives: 1933 to 2011,* CRS Report 98–194 (Dec. 12, 2011).

42. *Parliamentarian's Note:* As Mr. Moreau was not a candidate in the general election, he would not have had standing to pursue his election contest under the FCEA.

43. See *Moreau* v. *Tonry,* 339 So. 2d 3, 5 (La. 1976), *rev'g* 338 So. 2d 791 (La. 1976).

44. *Parliamentarian's Note:* Following his resignation, Mr. Tonry was charged with taking illegal campaign contributions. He pleaded guilty and served a six–month prison term.

45. 123 CONG. REC. 13391, 95th Cong. 1st Sess.

Hon. EDWIN W. EDWARDS,
Governor, State Capitol,
Baton Rouge, La.

DEAR GOVERNOR EDWARDS: This is perhaps the hardest letter I have ever had to write.

I am sure you are familiar with the continuing controversy that has surrounded my election to Congress. My own personal investigation and that of the House Committee has convinced me that there were fraudulent and illegal votes cast in my favor and in favor of my opponent. I sincerely believe and have always felt that if all the fraudulent and illegal votes were subtracted from the total I would still be declared the winner.

However, what I believe is not important. What must be protected is our beloved Louisiana and this Nation. That fraudulent votes were cast at all is deplorable. This democracy must be protected and the people of the First Congressional District must rest with the assurance that their Congressman has been elected by a majority of the people.

I have enjoyed nothing as much as serving my people in Congress. I know I have been a good Congressman.

But the divisiveness must be cured and the will of the people in the First Congressional District must be definitively recognized.

For these reasons, I hereby tender my resignation as the United States Representative for the First Congressional District.

I respectfully request that you call a new election as soon as possible so that the people of my district will not be without representation for any significant length of time.

Sincerely,

RICHARD A. TONRY.

§ 17. Ninety–sixth Congress, 1979–1980

§ 17.1 Perkins v Byron

The general election for the office of Representative to Congress from the Sixth District of Maryland was conducted on November 7, 1978.[1] The general election candidates were Beverly Byron (the Democratic candidate) and Melvin Perkins (the Republican candidate). The official returns indicated that Mrs. Byron had received 122,374 votes, while Mr. Perkins had received 14,276 votes. On November 30, 1978, Mrs. Byron was certified as the winner of the election by the Maryland State Board of Canvassers.

On November 28, 1978, Mr. Perkins (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its review. The notice of contest asserted that Mrs. Byron (hereafter the "contestee") had been improperly selected by the state Democratic party to stand in the election in place of her

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 96–78, 96th Cong. 1st Sess.

husband, who had died prior to the general election. The contestant argued that a special election should have been held to fill the vacancy.

On December 28, 1978, contestee filed both a motion to dismiss (based on lack of proper service) and a motion for a more definite statement. A supplemental motion to dismiss was filed by contestee on February 23, 1979, on the basis that contestant had not properly claimed a right to the seat, and that contestant had failed to state grounds sufficient to change the result of the election.

The Committee on House Administration formed an ad hoc panel of three Members to review the case. On February 28, 1979, the panel met to hear oral arguments, and, after executive session deliberation, voted to recommend that the contestee's motion to dismiss be granted. On March 1, 1979, the full committee voted to recommend dismissal of the case.

In its committee report, the Committee on House Administration found that the statutory requirement that contestee be properly served with the notice of contest had not been met. It further concluded that contestant had not stated grounds sufficient to change the result of the election. Contestant "failed to present any documentary evidence supporting his allegations,"[2] nor did contestant attempt to demonstrate how the allegations, if true, would have changed the outcome of the election. The committee report noted provisions of state law regarding the death of candidates and the circumstances under which special elections are to be held, and concluded that there was no requirement to hold a special election in this case. The committee therefore recommended that the contestee's motion to dismiss be granted.

On March 29, 1979,[3] the committee filed its privileged report, and the House (by unanimous consent) adopted House Resolution 189 to dismiss the contest:

DISMISSING ELECTION CONTEST AGAINST BEVERLY BYRON

Mr. NEDZI, from the Committee on House Administration, submitted a privileged report (Rept. No. 96–78) on the resolution (H. Res. 189) dismissing the election contest against BEVERLY BYRON, which was referred to the House Calendar and ordered to be printed.

Mr. [Lucien] NEDZI [of Michigan]. Mr. Speaker, I ask unanimous consent for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 189

Resolved, That the election contest of Melvin Perkins, contestant, against Beverly B. Byron, contestee, Sixth Congressional District of the State of Maryland, be dismissed.

2. H. Rept. 96–78, 96th Cong. 1st Sess. p. 3.

3. 125 CONG. REC. 6832–33, 96th Cong. 1st Sess.

The SPEAKER.[4] Is there objection to the request of the gentleman from Michigan? There was no objection.

The SPEAKER. The gentleman from Michigan (Mr. NEDZI) is recognized for 1 hour.

Mr. NEDZI. Mr. Speaker, the rules of the House and title 2 of the United States Code place contested elections under the jurisdiction of the Committee on House Administration. This year five contested elections were filed with the committee.

In order to insure the timely and responsive handling of these election contests, so that all five might go forward simultaneously, the committee has established five three-member panels, consisting of two members of the majority and one member of the minority, with majority and minority legal staff assigned to support the panels.

Each panel examines the record of the particular case assigned to it, and then conducts hearings and factfinding as may be necessary. After considering the information presented by the parties, and after due deliberation, the election panel then recommends to the full committee what it considers to be the appropriate disposition of the contest. The committee then reviews the recommendation, makes a final determination, and refers its final action to the House. This procedure has been extremely successful in insuring that both the contestant and contestee have a timely and responsive forum for consideration of each contest.

The election contest before the House this afternoon is Perkins against Byron. It is the first of five which the House will consider under the elections panel procedure this Congress. Each of these contested elections is being considered under the provisions of 2 U.S.C. 381 et seq., which was enacted in 1969. The first contest decided under the 1960 act was Tunno against Vesey. [*sic*][5] There the contestant alleged various irregularities, and contestee moved to dismiss the contest. The committee examined the contestant's arguments, and his showing that the allegations, if true, would change the result of the election. However, notwithstanding contestant's allegations, he failed to demonstrate to the satisfaction of the committee that further proceedings would be fruitful. The committee then recommended, and the House adopted, a resolution dismissing the case, without a full presentation of the evidence, because contestant had failed to demonstrate that his allegations, if true, would have changed the results of the election. Such a failure is statutory defense to a contest.

The legislative branch is a policy-making body with a constitutional responsibility to determine its own proceedings, such as elections contests, impeachment matters and other similar pronouncements. The standards and procedures must, of course, be fair to all sides. However, the legislative branch is not the judicial branch, either in its constitutional duties or its procedures. In that regard, the House has determined by statute that it need not proceed to full presentation of evidence on the merits, when it is evident on the face of the allegations and supporting materials, that an elections contest is frivolous, or that the results of the election will not be changed. Thus the burden, on a motion to dismiss, properly rests on the contestant, who must demonstrate, by more than mere allegation, that there is some documentable basis for his allegations.

To quote the House report in Tunno against Veysey,

> It has been the experience of Congress that exhaustive hearings and investigations have, in the past, been conducted only to find that if the contestant has been required at the outset to make proper allegations, with sufficient supportive evidence that could

4. Thomas O'Neill (MA).

5. As in the original. Text should read: Veysey.

most readily have been garnered at the time of the election, such further investigation would have been unnecessary and unwarranted.

Under the new law, then, the present contestant, and any future contestant, must have presented, in the first instance, sufficient allegations and evidence to justify his claim to the seat in order to overcome the motion to dismiss.

Mr. Speaker, I yield 10 minutes, for the purposes of debate only, to the gentleman from New York (Mr. PEYSER), the distinguished chairman of the Ad Hoc Elections Panel which reviewed the contest.

Mr. [Peter] PEYSER [of New York]. Mr. Speaker, I thank the gentleman from Michigan, the ranking member of the Committee on House Administration, for his clarification of the act.

This elections contest was filed by Mr. Melvin Perkins against Mrs. BEVERLY BYRON for the seat in the Sixth Congressional District of Maryland. In the election held November 7, 1978, BEVERLY BYRON received 122,374 votes to Mr. Perkins' 14,276 votes, a margin of 108,098 votes. The election results were certified by the Maryland State Board of Canvassers on November 30, 1978. BEVERLY BYRON was sworn in and took office on January 15, 1979, after presenting her credentials to the House.

On November 28, 1978, Melvin Perkins filed a handwritten notice of contest with the Clerk of the House. The notice of contest was somewhat ambiguous, and portions were illegible. But the general allegation was that Mrs. BYRON was improperly selected by the Democratic State Central Committee of Maryland to replace her husband, the late honorable Goodloe Byron, who was selected by primary election as the Democratic nominee for reelection, but who died before the date of the general election. The notice of contest asserted that a special election should be held to fill the vacancy during the unexpired term.

On December 28, 1978, Mrs. BYRON filed a motion to dismiss the contest and subsequently filed a supplemental motion to dismiss. The grounds for the motion were: First, improper service of the notice of contest; second, failure of the contestant to allege grounds sufficient to change the result of the election; and third, failure of the contestant to claim a right to contestee's seat—all statutory grounds for dismissing an election contest under the provisions of 2 U.S.C. 383.

On February 28, 1979, the ad hoc elections panel, consisting of myself as chairman, the honorable ED JONES, and the honorable CARROLL A. CAMPBELL, JR., held an open hearing for the purpose of receiving oral argument on the motion to dismiss. Contestant Perkins and his counsel were present, and counsel for Mrs. BYRON was present. Each side was provided 20 minutes to argue on the motion. Upon conclusion of the hearing, the election panel reviewed the record before it, and considered the oral arguments. After due deliberation, the panel adopted a motion, by a vote of 3 ayes and 0 nays, to recommend to the full committee that contestee's motion to dismiss be granted. On March 1, 1979, the full committee reviewed the panel's recommendation and by a rollcall vote of 23 ayes and 0 nays, adopted a resolution recommending dismissal of the contest to the House. That recommendation is before you now.

In assessing the record of the contest, the panel noted that contestant Perkins failed to provide documented proof of service of the notice of contest on Mrs. BYRON in accordance with the provisions of section 282 of title 2, United States Code, and that Mr. Perkins failed to state grounds sufficient to change the result of the election. The panel did not deem it necessary to reach the question of whether contestant failed to claim a right to Mrs. BYRON'S seat.

Although contestant is not required to prove his case on a motion to dismiss, contestant must initially support his allegations and conclusions with documentary evidence, or provide some other showing which would change the result or the election.

Contestant Perkins failed to present any documentary evidence supporting his allegations, which claimed that the Maryland Democratic Central Committee failed to provide adequate notice of the meeting at which the successor to the late Honorable Goodloe Byron was nominated. Furthermore, Perkins failed to demonstrate that his allegations, if true, would have changed the results of the election.

The panel concluded that the case should be dismissed, because contestant Perkins failed to provide service of the notice of contest on Mrs. BYRON in accordance with the requirements of the act, and failed to support his allegations with evidence sufficient to meet contestant's burden in overcoming a motion to dismiss, and failed to demonstrate that his allegations, if true, would have changed the election results.

The decision is, therefore, based both on the procedural defect of lack of proper service, and on the substantive defect of failure to allege grounds, and to support such grounds with documentary evidence sufficient to change the election results.

Mr. Speaker, I want the House to know that the ad hoc committee gave every opportunity to Mr. Perkins to present his case and to listen to him beyond the time normally allotted, and that the questioning was very careful and thoughtful. I particularly want to thank my colleague who served with me on that committee, the gentleman from South Carolina (Mr. CAMPBELL) who pursued a line of questioning that was very important in reaching a decision.

Mr. Speaker, I would be glad to yield at this time to the gentleman from South Carolina.

Mr. [Carroll] CAMPBELL [of South Carolina]. I thank the gentleman for yielding, and I thank him for his comments. As the gentleman has stated, the line of questioning was pursued, and there was no substantiation of the allegations that were made. The findings were that Mrs. BYRON was not properly served. We found that we did not have to go into the further motion for dismissal by Mrs. BYRON which alleged that a dismissal at that time should be made because of the failure to claim a right to the seat. That was not a matter that we had to bring up. It might also be pointed out, as the gentleman from New York (Mr. PEYSER) has so eloquently stated here, that there were no irregularities in the election vote whatsoever. Because of the hearings and because of the work of the chairman of the subcommittee who did such an outstanding job, I rise to support the resolution, and, as he has pointed out, it was a unanimous recommendation.

Mr. PEYSER. I thank the gentleman for his comments.

Mr. Speaker, I yield back the remainder of my time.

Mr. NEDZI. 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.

§ 17.2 Freeman v Mitchell

The general election for the office of Representative to Congress from the Seventh District of Maryland was conducted on November 7, 1978.[6] The

6. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 96–226, 96th Cong. 1st Sess.

general election candidates were Parren J. Mitchell (the Democratic candidate) and Debra Freeman (an Independent candidate). The official canvass indicated that Mr. Mitchell received 51,996 votes, while Mrs. Freeman received 6,626 votes. On November 30, 1978, Mr. Mitchell was certified as the winner by the Maryland State Administrative Board of Election Laws. His credentials were presented to the House of Representatives, and on January 15, 1979, he was duly administered the oath of office without objection or challenge.

On November 17, 1978, Mrs. Freeman filed a petition in state court seeking authorization to inspect voting machines and an injunction against certifying the election. This petition was denied and an appeal was subsequently filed.

On December 29, 1978, Mrs. Freeman (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. On January 26, 1979, Mr. Mitchell (hereafter the "contestee") filed a motion to dismiss and an answer to the notice of contest. On January 30, 1979, the Committee on House Administration established an ad hoc panel of three Members to evaluate the pleadings.

In her notice of contest, contestant alleged that both contestee and election officials engaged in a variety of illegal acts to win the election, including tampering with voting machines, intimidating voters, fraud, extortion, and other "dirty tricks."[7] Contestee's motion to dismiss asserted that the contestant had not stated ground sufficient to change the result of the election, and further alleged that the notice of contest had not been filed in a timely manner under the statute.

On February 26, 1979, contestant filed several additional pleadings: (1) a motion to stay the proceedings pending the outcome of the state litigation then on appeal; (2) a motion to enlarge the time for discovery; and (3) notices for depositions and subpoenas *duces tecum* for election officials. The ad hoc panel temporarily quashed the subpoenas pending a determination on the contestee's motion to dismiss. On March 14, 1979, the panel met to hear oral arguments on the motion to dismiss.

On April 3, 1979, the panel deliberated and recommended that contestee's motion to dismiss be granted. The panel concluded that the contestant had not shown "by documentary evidence or otherwise"[8] that the alleged illegal behavior had the effect of reversing the outcome of the election.

In its committee report, the Committee on House Administration agreed with the conclusions of the ad hoc panel. The entirety of the contestant's

7. H. Rept. 96–226, 96th Cong. 1st Sess. p. 2.

8. *Id.*

evidence consisted of unsupported allegations in the notice of contest and "four affidavits from campaign associates."[9] These documents were insufficient to carry the burden under the statute, and therefore the committee recommended dismissal of the case.

On June 12, 1979,[10] the committee offered House Resolution 198 (dismissing the contest) as a privileged matter, and the House adopted the resolution by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST PARREN J. MITCHELL

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I call up a privileged resolution (H. Res. 198) dismissing the election contest against PARREN J. MITCHELL, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 198

Resolved, That the election contest of Debra Hannania Freeman, contestant, against Parren J. Mitchell, contestee, Seventh Congressional District of the State of Maryland, be dismissed.

The SPEAKER.[11] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, under the Constitution and the Rules of the House, the Committee on House Administration is charged with the responsibility for investigating contested elections. In this Congress five election contests were filed. In each case I, as chairman of the committee, appointed an ad hoc panel to conduct the investigation.

In the contest before the House today, Freeman against MITCHELL, the panel was chaired by our colleague, the gentleman from Connecticut, Mr. WILLIAM RATCHFORD. Also serving with Chairman RATCHFORD were the committee members, the gentleman from North Carolina, Mr. CHARLES ROSE, and the gentleman from Georgia, Mr. NEWT GINGRICH.

Mr. Speaker, I now yield such time as he may consume to the gentleman from Connecticut (Mr. RATCHFORD).

Mr. [William] RATCHFORD [of Connecticut]. Mr. Speaker, I thank the gentleman from New Jersey, the chairman of the Committee on House Administration.

This election contest was filed by Mrs. Debra Hannania-Freeman against PARREN J. MITCHELL for the seat in the Seventh Congressional District of Maryland. In the election held on November 7, 1978, PARREN J. MITCHELL received 51,996 votes to Mrs. Freeman's 6,626 votes, a margin of 45,370 votes. The election results were certified by the Maryland State Board of Election Laws on November 30, 1978. PARREN J. MITCHELL was sworn in and took office on January 15, 1979, after presenting his credentials to the House.

On December 29, 1978, Mrs. Freeman filed a notice of intention to contest against Mr. MITCHELL with the Clerk of the House. The notice of contest alleged inadequate and insufficient police protection of voting machines, conspiracy between Mr. MITCHELL and

9. *Id.* at p. 5.

10. 125 CONG. REC. 14457–58, 96th Cong. 1st Sess.

11. Thomas O'Neill (MA).

election officials, malfunction of voting machines due to tampering, improper and illegal certification of Mr. MITCHELL and various acts of fraud, violence, intimidation, assault, theft, extortion, and "dirty tricks."

On January 26, 1979, Mr. MITCHELL filed a motion to dismiss and answer to the notice of intention to contest. The grounds for the motion and answer were: First, The notice of intention to contest was not timely filed within the required statutory period: second, The notice of intention to contest failed to state grounds sufficient to change the results of the election; and third, The contestee was without sufficient knowledge or information to respond to the remaining allegations.

Counsel for the contestant made his appearance on February 26, 1979, and subsequently filed the following papers with the committee:

First. Motion for stay of proceeding pending resolution of appeal to the Court of Special Appeals of Maryland;

Second. Motion to enlarge time for discovery by 30 days;

Third. Two notices of depositions, and

Fourth. A motion to strike and answer to motion to dismiss.

On March 5, 1979, the attorney general of Maryland filed a motion to quash subpenas, and I issued an order on March 6, 1979, which temporarily quashed subpenas without prejudice to the contestant.

The ad hoc election panel consisting of the Honorable CHARLES ROSE, the Honorable NEWT GINGRICH and me as chairman held an open hearing on March 14, 1979, for the purpose of receiving oral argument on the motion to dismiss. Contestant Freeman and her counsel were present, counsel for the contestee was present, and the assistant attorney general for the State of Maryland was present. All sides were provided 20 minutes each to argue on the motion.

All parties were heard and upon conclusion of the hearing, the election panel took the case under advisement.

On April 3, 1979, the panel, on my motion, voted unanimously to go into executive session to discuss the oral argument, pleadings and motions on the case. After due deliberation the panel adopted a motion, by a vote of 3 ayes and 0 nays, to recommend to the full committee that the contestee's motion to dismiss be granted. On April 4, 1978, the full committee reviewed the panel's recommendation and by voice vote unanimously adopted a resolution recommending dismissal of the contest to the House. That recommendation is now before the House.

In assessing the record, the panel noted that contestant Freeman failed to provide sufficient record to support the allegations contained in her notice of contest in accordance with the provisions of 2 U.S.C. 383, and that Mrs. Freeman failed to state grounds sufficient to change the result of the election. The panel did not deem it necessary to rule on the remaining motions.

Although contestant is not required to prove her case on a motion to dismiss, contestant must initially support her allegations and conclusions with documentary evidence, or provide some other showing which would change the result of the election.

Contestant Freeman failed to present documentary evidence sufficient to support her allegations of inadequate and insufficient police protection of voting machines, conspiracy, malfunction of voting machines, improper and illegal certification, fraud, intimidation, extortion or "dirty tricks." Furthermore, contestant failed to demonstrate that her allegations, if true, would have changed the results of the election.

The panel concluded that the case should be dismissed because contestant Freeman failed to support her allegations with evidence sufficient to meet the contestant's burden in overcoming a motion to dismiss.

The decision is therefore based on the substantive defect of failure to allege grounds, and to support such grounds with documentary evidence, sufficient to change the election results.

Mr. Speaker, at this point I yield to the gentleman from Georgia (Mr. GINGRICH).

Mr. [Newt] GINGRICH [of Georgia]. I thank the gentleman for yielding.

Mr. Speaker, I just want to commend the gentleman from Connecticut (Mr. RATCHFORD). The hearings made it very clear that there was no evidence that was substantial enough to warrant any question about who won the election. I think it was very clear there were a number of allegations with no proof. I would hope that the House would vote to dismiss the charges and to vote for passage of House Resolution 198.

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

The previous question was ordered.

The SPEAKER. The question is on the resolution.

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

Mr. [John] ERLENBORN [of Illinois]. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 378, nays 0, not voting 56, as follows:

[Roll No. 208] . . .

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.

§ 17.3 Rayner v Stewart

The general election for the office of Representative to Congress from the First District of Illinois was conducted on November 7, 1978.[12] The general election candidates were A. A. Sammy Rayner (the Republican candidate) and Bennett M. Stewart, Jr. (the Democratic candidate). The official canvass indicated that Mr. Stewart received 47,581 votes, while Mr. Rayner received 33,540 votes. The Board of Canvassers declared the result on November 19, 1978, and certifying credentials were signed by the Secretary of State and Governor of Illinois on November 30, 1978. Mr. Stewart's credentials were presented to the House of Representatives, and on January 15, 1979, to he was duly administered the oath of office without objection or challenge.

Mr. Rayner filed suit in a U.S. district court, but the case was dismissed due to lack of jurisdiction. In the court's memorandum opinion of March 14,

12. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 96–316, 96th Cong. 1st Sess.

1979, the judge held that the House of Representatives had exclusive jurisdiction over the final determination as to the outcome of an election to one of its seats.

On December 27, 1978, Mr. Rayner (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. On January 22, 1979, Mr. Stewart (hereafter the "contestee") file a motion to dismiss the contest. In contestant's notice of contest, he alleged "massive errors, irregularities, fraud and mistake in the conduct of said election."(13) Contestant further alleged illegal assistance to voters in casting ballots, irregularities in voting displays, removal of poll–watchers, and other errors. Contestee's motion to dismiss asserted that the notice of contest had numerous procedural deficiencies (lack of proper service, failure to name the proper party, untimely filing, etc.) and further, that contestant had failed to state grounds sufficient to change the result of the election.

The Committee on House Administration formed an ad hoc panel of three Members to review the pleadings. The panel met on March 6, 1979, to hear oral arguments. On April 25, 1979, it met again and recommended that contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration agreed with the conclusions of the ad hoc panel. To prevail against a motion to dismiss, the contestant "must initially support his allegations and conclusions with documentary or other evidence."(14) The committee found that the contestant had not produced such evidence, and the documents that were provided were insufficient to support the allegations. The committee also took issue with technical deficiencies in contestant's pleadings, and thus rendered its decision "based both on procedural and substantive grounds."(15)

On June 28, 1979,(16) the committee filed its privileged report with the House. By unanimous consent, the House took up House Resolution 344 (dismissing the contest), and adopted the resolution by a division vote of 63 to 0:

DISMISSING THE ELECTION CONTEST AGAINST BENNETT M. STEWART

Mr. NEDZI, from the Committee on House Administration, submitted a privileged report to accompany a resolution (H. Res. 344) on the election contest of A.A. Sammy Rayner, Jr., contestant, against BENNETT M. STEWART, contestee, First Congressional District of the State of Illinois, which was referred to the House Calendar and ordered to be printed.

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13. H. Rept. 96–316, 96th Cong. 1st Sess. p. 2.

14. *Id.* p. 3.

15. *Id.* p. 5.

16. 125 CONG. REC. 17225–26, 96th Cong. 1st Sess.

Mr. [Lucien] NEDZI [of Michigan]. Mr. Speaker, I ask unanimous consent for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 344

Resolved, That the election contest of A.A. Sammy Rayner, Jr., contestant, against Bennett M. Stewart, contestee, First Congressional District of the State of Illinois, be dismissed.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. NEDZI) is recognized for 1 hour.

Mr. NEDZI. Mr. Speaker, the Rules of the House and title 2 of the United States Code, place uncontested elections under the jurisdiction of the Committee on House Administration. This year five contested elections were filed with the committee.

The election contest before the House this afternoon is Rayner against Stewart. It is the fourth of the five contests which the House will consider under the elections panel procedure.

This election contest was filed by Mr. A. A. Sammy Rayner, Jr., against Mr. BENNETT M. STEWART for the seat in the First Congressional District of Illinois. In the election held on November 7, 1978, BENNETT STEWART received 47,581 votes to Mr. Rayner's 33,540, a margin of 14,041 votes. The election results were certified by the Board of Canvassers on November 19, 1978. The results were filed with the Cook County Circuit Court on November 20, 1978. Certifying credentials were signed by the Secretary of State and the Governor, and were issued to Mr. STEWART on November 30, 1978. BENNETT STEWART was sworn in and took the oath of office on January 15, 1979, after presenting his credentials to the House.

On December 27, 1978, Mr. Rayner filed with the Clerk of the House a "petition under the Federal Contested Elections Act" against the Chicago Board of Election Commissioners and the Clerk of Cook County. Nowhere in his pleadings did Mr. Rayner mention Mr. STEWART as a party to the proceeding. The petition went on to allege "massive errors, irregularities, fraud, and mistakes in the conduct of said election which impaired the plaintiff's right to vote and the right to have his vote counted." The petition further alleged illegal vote totals on the backs of voting machines, illegal assistance to voters in casting their votes, prohibition of Rayner vote watchers from polling places, numerous counting errors and electioneering at or near the polls.

On January 22, 1979, Mr. STEWART filed a motion to dismiss the contest. The grounds for the motion were as follows:

First. The notice of contest failed to state grounds sufficient to change the result of the election.

Second. The notice of contest was not filed within the statutory 30-day period in accordance with the provisions of 2 United States Code 282(a);

Third. The notice of contest failed to name a proper party—BENNETT M. STEWART, in accordance with the provisions of 2 United States Code 381(d).

Fourth. The notice of contest failed to State that Mr. STEWART had 30 days in which to answer pleadings, in accordance with the provisions of 2 United States Code 382(b); and

Fifth. The notice of contest was insufficient for failure of Mr. Rayner to show proof of service upon Mr. STEWART, as required by 2 United States Code 382(c).

On March 6, 1979, the Ad Hoc Elections Panel, consisting of myself as chairman, the Honorable ROBERT H. MOLLOHAN, and the Honorable JERRY LEWIS, held an open hearing for the purpose of receiving oral argument on the motion to dismiss. Contestant Rayner and his counsel were present, and counsel for contestee STEWART was present. Each side was provided 20 minutes to argue the motion. Upon conclusion of the arguments, the panel took the matter under advisement.

After a thorough review of the record, and after due deliberation, on April 25, 1979, the Panel adopted a motion by a vote of three "ayes" and no "nays," to recommend to the full committee that the contestee's motion to dismiss be granted.

On April 25, 1979, by a unanimous voice vote, the Committee on House Administration adopted the panel's resolution to recommend dismissal of the contest to the House. That recommendation is before you now.

In assessing the record of the contest, the panel noted that contestant Rayner failed to overcome any of the contestee's procedural defenses in his motion to dismiss. However, the principal deficiency in contestant's pleading and upon which the committee primarily relied, was contestant's failure to state grounds sufficient to change the result of the election.

Although contestant is not required to prove his case on a motion to dismiss, contestant must initially support his allegations and conclusions with documentary or other evidence, and must provide some showing that his allegations, if true, would change the result of the election.

Contestant Rayner failed to present sufficient documentary or other evidence supporting his allegations of massive errors, irregularities, fraud, and mistake. For example, contestant alleged the "possibility of 10,449 (vote) forgeries", but did not demonstrate by affidavit or other showing, a single convincing instance of forgery. Contestant alleged an "8,000 vote discrepancy", but failed to explain how that discrepancy, if true, would change the results of the election. Contestant filed 12 affidavits which alleged questionable circumstances at polling places. But even if such circumstances were assumed to be true, contestant was unable to demonstrate that the circumstances would change the result of the election.

The panel concluded that the case should be dismissed because of the contestant's numerous technical errors, and because contestant failed to support his allegations with documentary or other evidence, sufficient to meet the contestant's burden in overcoming a motion to dismiss. Contestant further failed to demonstrate that his allegations, if true, would have changed the election result.

The decision is therefore based both on procedural deficiencies, and on the substantive defect of failure to allege grounds sufficient to change the election results and to support such grounds with documentary or other evidence.

Mr. Speaker, I yield to our colleague and member of the panel, the gentleman from California (Mr. LEWIS).

Mr. [Jerry] LEWIS [of California]. Mr. Speaker, I thank the gentleman from Michigan for yielding. It was my responsibility to serve with my chairman of the subcommittee and to share his responsibility. It was very apparent that the chairman was more than willing to take testimony, respond to questions, and ask questions. There was a 15,000 vote spread in this election. There was no evidence presented whatsoever for a change of the vote.

Mr. Speaker, I personally would recommend an "aye" vote on this motion, and support the position of the committee.

Mr. NEDZI. I thank the gentleman.

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 on a division (demanded by Mr. SYMMS) there were ayes 63; noes 0.

So the resolution was agreed to.

A motion to reconsider was laid on the table.

§ 17.4 Wilson v Leach

The general election for the office of Representative to Congress from the Fourth District of Louisiana was conducted on November 7, 1978.[17] The general election candidates were Jimmy Wilson (the Republican candidate) and Anthony C. Leach, Jr. (the Democratic candidate). The official canvass indicated that Mr. Leach received 65,583 votes, while Mr. Wilson received 65,317 votes. Mr. Leach's margin of victory was therefore 266 votes. The Louisiana Secretary of State and Governor certified Mr. Leach as the winner of the election on November 21, 1978. Mr. Leach's credentials were presented to the House of Representatives, and on January 15, 1979, he was duly administered the oath of office without objection or challenge.

On December 20, 1978, Mr. Wilson (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. On January 11, 1979, the contestant filed an amended notice of contest. On January 22, 1979, Mr. Leach (hereafter the "contestee") filed a motion to dismiss, on the basis that contestant had failed to state grounds sufficient to change the result of the election.

Shortly after the election, a Federal investigation began regarding allegations of vote–buying by the contestee. On July 20, 1979, contestee was indicted on 11 counts relating to payments to individuals to secure his election. The committee deferred action on contestee's motion to dismiss until after court proceedings had concluded. On November 3, 1979, contestee was acquitted on all 11 counts.

Thereafter, the Committee on House Administration formed an ad hoc panel of three Members to review the case. On November 28, 1979, the panel met to hear oral arguments from the parties. The panel also agreed to extend its investigation to include the Department of Justice's criminal

17. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 96–784, 96th Cong. 2d Sess.

case against contestee. A member of the panel reviewed FBI interviews of voters conducted during its investigation. On December 20, 1979, the panel voted to recommend that the contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration reiterated the high burden that must be overcome if a contestant is to prevail against a motion to dismiss. The contestant must show with specific evidence not only that irregularities occurred, but that "but for"[18] the irregularities, the result of the election would have been different.

The committee acknowledged that evidence of fraud and irregularities did exist in this case, but further noted that such irregularities were not connected to the contestee, that contestee had been acquitted of involvement in those activities by a Federal jury, and that the contestant had withdrawn claims of alleged involvement by the contestee. The committee report discussed the FBI's investigation of vote–buying, and concluded that while some accounts were substantiated, they were insufficient to cause a reversal of the election's outcome. The committee thus recommended dismissal of the case.

Members of the minority party filed separate minority views to accompany the committee's report. In those views, the minority party Members recognized the need to quickly dispose of frivolous contests, but asserted that the committee must fully investigate situations where there is substantiated evidence of fraud and illegal conduct. The minority would have denied the motion to dismiss in order to proceed to the discovery stage under the Federal Contested Elections Act and gather additional evidence. Only after such a process could a determination be made as to which individual is entitled to the seat in question. In short, the minority believed that the contestant had carried his burden under the statute.

On March 4, 1980,[19] the committee called up House Resolution 575 (dismissing the contest) as a privileged matter. The House adopted the resolution by a vote of 241 to 153 (with three Members voting "present" and 36 Members not voting):

DISMISSING THE ELECTION CONTEST AGAINST ANTHONY CLAUDE LEACH, JR.

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I call up a privileged resolution (H. Res. 575) dismissing the election contest against ANTHONY CLAUDE LEACH, Jr., and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 575

Resolved, That the election contest of Jimmy H. Wilson, contestant, against ANTHONY CLAUDE LEACH, JUNIOR, contestee, Fourth Congressional District of the State of Louisiana, be dismissed.

18. H. Rept. 96–784, 96th Cong. 2d Sess. p. 3.

19. 126 CONG. REC. 4491–98, 96th Cong. 2d Sess.

The SPEAKER pro tempore.[20] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in this case I also appointed an ad hoc panel of House Administration Committee members to conduct the investigation of the Wilson against LEACH matter. The panel was chaired by our colleague JOHN BURTON. Also serving with Chairman BURTON were JOSEPH G. MINISH and ROBERT E. BADHAM.

Mr. Speaker, at this point I yield for purposes of debate only such time as he may consume to the gentleman from California (Mr. JOHN L. BURTON).

Mr. JOHN L. BURTON [of California]. Mr. Speaker, the election contest before the House today was filed by Mr. Jimmy H. Wilson against Mr. ANTHONY CLAUDE LEACH, JR., for the seat in the Fourth Congressional District of Louisiana. The official canvass of the Fourth District of Louisiana showed that in the November 7, 1978, election Mr. LEACH received 65,583 votes and Mr. Wilson received 65,317 votes, a difference of 266 votes. Mr. LEACH was certified by the State of Louisiana as the elected representative from the Fourth District and he presented his credentials and was sworn in and took office on January 15, 1979.

On December 20, 1978, Mr. Wilson filed with the House of Representatives a notice of contest. The matter was referred under the rules of the House to the Committee on House Administration. The chairman of the committee appointed an ad hoc panel which I chaired and on which I was joined by Mr. JOSEPH MINISH and Mr. ROBERT BADHAM of the committee. The panel reviewed the evidence and held hearings on the matter, reporting its findings to the full committee. After careful deliberation the committee voted to recommend to the House that the contest be dismissed.

This is not an instance where the incumbent's involvement in the alleged vote fraud is at issue. He has been acquitted of all such charges by a Federal district court jury, and just as important, the contestant has withdrawn any allegation of his involvement. As is clear from the case of Evans against Turner, which is reprinted as appendix A in the committee's report, it would be inappropriate to ascribe to Mr. LEACH any fraud or irregularities involving third parties.

So it is clear that the question before the House today is not his guilt or innocence; that has already been decided. The question today is simply the sufficiency of the contestant's evidence.

It is clear under the governing statute and House precedent that a contestant has a substantial burden to carry. A contestant must provide the House with evidence not only that fraud or irregularity existed but that the fraud or irregularity was sufficiently widespread to have changed the outcome of the election.

In the present contest, the contestant, Mr. Wilson, consequently, was required to allege and support with specific evidence that at least 266 votes, the margin of the incumbent's victory, were illegally cast for the incumbent. It is the judgment of the majority of the committee that the contestant has not met this burden.

The record fails to substantiate the claim that more than 266 votes were fraudulently cast for the incumbent. In fact the evidence falls short of this mark. The evidence offered specifically identified only 32 potentially illegal votes. And even going outside the record, as the committee has done, to review the evidence generated by the FBI in its investigation of vote buying in the election, at most only an additional 34 votes become suspect.

20. Carroll Hubbard, Jr. (KY).

The contestant relies on a notebook which was offered in evidence at the trial of Mr. LEACH to support his claim that the outcome of the election was affected. He claimed that the notebook contained the names of 440 voters who were paid to vote in the election for the incumbent.

The FBI, however, interviewed 283 of the 440 voters named in the notebook. The vast majority of those interviewed, 225 of the 283, stated that they were not paid to vote. Only 58 admitted receiving payment and of those 17 were not instructed on how to vote and only 14 were instructed to vote for Mr. LEACH.

A thorough investigation by the U.S. attorney's office and the FBI revealed only 14 votes illegally cast for the incumbent. The contestant has provided the House with no reason to believe a further investigation by the House would be more successful.

That an election contestant feels that he may, some day and in some unspecified way, show sufficient fraud is not the point; he must demonstrate to the House a likelihood that further investigation will bear fruit. The contestant has not done so. Given the substantial burden of proof imposed, the contestant has been unable to demonstrate that the result of the election would be changed by whatever deplorable illegal activity might have occurred in the election.

Given the choice between dismissing the contest or embarking on a fishing expedition, House precedent and reason call for the dismissal of the contest. In that recommendation, a majority of the committee concurred.

I would, before yielding for purposes of debate only, like to say that the committee's report was delayed for some time because, after allegations were brought and indictments were brought by a Federal grand jury, our discussions with the Department of Justice indicated their very strong desire that we not proceed further until the legal proceedings had come to an end. It is for that reason we were forced into a delayed time.

I would also like to commend my colleague, the ranking minority member of the subcommittee task force for the time and effort that he has put into this matter. I would like to further commend him, for in this matter he rose above the position of partisanship and press conferences and addressed himself to the issues as best he could, and to some questions that were in his mind. Although we disagree on the final disposition of this matter, I know he does this from a point of view that he just feels another disposition other than dismissal would be in order. We feel also, as a matter of conscience, given the statutes and the precedents of the House, that the dismissal is the only course of conduct that the committee or the House could take.

Mr. THOMPSON. Mr. Speaker, I yield for purposes of debate only 10 minutes to the gentleman from California (Mr. BADHAM).

Mr. [Robert] BADHAM [of California]. I thank the distinguished chairman. I hope I will have the opportunity to thank him more as time progresses.

Mr. THOMPSON. I would say to my distinguished colleague, the gentleman from California, that I hope so, too. Let us see how we do with the first third.

Mr. BADHAM. That is certainly agreeable to me, I will say to my distinguished chairman.

Mr. Speaker, we are confronted here today with a most trying and difficult situation that involves a Member of this House, the integrity of this House, and the situation that we might be facing in the future when allegations are brought against Members of this House, as have been brought recently in the so-called Abscam, and about how we proceed as a body that is responsible for its own membership, and the terms of membership as opposed to court proceedings that are for the purpose of uncovering criminal matters.

First of all, let me state as a member of the panel in the matter of the contested election of the gentleman from Louisiana (Mr. LEACH) that I and my colleagues on the committee can find no fault with the actions of Mr. LEACH because Mr. LEACH is not on trial in these proceedings, or in the panel, or in the resolution before the House, because, as my distinguished friend and colleague, the gentleman from California, Mr. BURTON, has so aptly pointed out, Mr. LEACH has been acquitted by a Federal jury in Louisiana of 12 men tried and true by a vote of 12 to 0. So, again, this is not a criminal proceedings in any stretch of the imagination.

What we have before us, on the contrary, is a contest of election which, as in previous contests that have been brought before this body. We understand this procedure prescribes very difficult hurdles for a contestant to surmount. First of all, the contestant must demonstrate in a specific allegation that a sufficient number of votes were illegally cast so as to change the outcome of the election. In this case when specific allegations were brought by Mr. Jimmie Wilson of the 4th District in Louisiana, he surmounted the hurdles and established a prima facie case.

In the particular election contest at hand, we have specific allegations made by the contestant that over 400 votes were illegally cast and the election was fraught with fraud. There is nothing in the brief of the contestee, Mr. LEACH, that would tend to deny this. In sworn testimony by over 20 people who were convicted in court or entered guilty pleas in Federal court trial in the State of Louisiana, that these votes were, indeed, illegally cast. The majority and, indeed, my good friend, the chairman of the panel, the gentleman from California, Mr. BURTON, has made the statement that it is true that the guilty pleas add up to approximately 33 illegally cast votes. The prosecution allowed each of the defendants to plead guilty to only one count of vote-buying. Sworn testimony in the Federal court in Louisiana indicates otherwise, but these guilty were allowed to plead on one count alone and that added up to about 33 votes.

I would now like to read into the RECORD a portion of the transcript of sworn testimony by the former mayor of the town in which all of this went on. The gentleman who was the mayor was a fellow named Ralph D. McRae, Jr., who served as mayor of the town of Leesville. Mr. McRae testified to the following:

Mr. Ralph D. McRae, Jr., called as a witness by counsel for the government for the purpose of giving evidence, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. LYDICK:
Q. Would you tell us your name, please?
A. My name is Ralph D. McRae, Jr.
Q. And how do you spell the last?
A. M-c capital R-A-E.
Q. Where do you live, Mr. McRae?
A. I live in Leesville.
Q. Were you raised in the Leesville area?
A. Yes, sir.
Q. How long have you lived in Leesville?
A. All my life except for the time spent in the Service and at college.
Q. How old are you?
A. I am thirty-five.
Q. Are you married?
A. Yes, sir.
Q. Do you have any children?
A. Yes, sir.
Q. How many?
A. I have three.
Q. Have you ever served in the Armed Forces?
A. Yes, sir.

Q. In what capacity and during what period of time?
A. I was an infantry officer and a pilot from June, 1966 until August, 1972.
Q. Were you decorated while in the Service?
A. Some, yes, sir.
Q. What decorations did you receive?
A. Distinguished Flying Cross, Bronze Star, Vietnamese Cross of Gallantry. I have at over twenty-eight Oak Leaf Clusters, Army Accommodation Medal, numerous campaign and service ribbons.

Now, this is not your ordinary, run-of-the-mill, vote buyer; and he said in sworn testimony, unrefuted, unchallenged the following:

Question. Did you talk with other people about the term commercial voters?
Answer. Yes, sir.
Question. What did that term commercial voters mean between the people that you talked with?
Answer. Sir, the term refers to a person who has, in the past, or expects to be paid to vote.
Question. Do you recall where it was?
Answer. Yes, sir. It was in an automobile.
Question. What was said on that occasion?
Answer. On that occasion Mr. Leach told me that he had reconsidered and he would like for me to help him in the commercial area in District Two. I told him I thought five thousand dollars would do it.
Question. Did you have any additional discussions at that time concerning that money?
Answer. Yes, sir. I told him that the way I arrived at the five thousand dollars was I felt that we could get by with paying five dollars a vote, and we would need about twenty-five hundred dollars to pay the voters and twenty-five hundred dollars to pay the drivers.
Question. What occurred during that meeting, Mr. McRae?
Answer. Well, that meeting was kind of a repeat of the first. Mr. Leach was in a hurry. He was on his way someplace. Shreveport, I guess. And he asked me how it was going. I told him I thought things were in pretty good shape. And he gave me a thousand dollars at that time.

Again I want to stress that Mr. LEACH is not on trial. What is on trial are two things here: The integrity of the U.S. House of Representatives and the integrity of the election held in the Fourth District of Louisiana on November 7, 1978. While Mr. LEACH is not on trial; the election process of this country is; and it was found to be faulty; admittedly fraudulent by the majority of the panel. This puts us in a terrible dilemma. First of all, from a question of timeliness, the House of Representatives Committee on House Administration's panel on this contested election had to delay any sort of investigation until the case was prosecuted fully in the Federal courts, and only then on resolution of that could we then legitimately, without obstructing prosecution in the Federal courts, conduct our own investigation if one was to be held. Now we are in the 2d session of the 96th Congress. The case almost a year and a half old, and the question comes out, then, Could we at this point investigate? That is the question that should be answered by the House of Representatives because the panel could not and did not. Neither did the full committee.

But, Mr. Speaker, I say that we have a situation where fraud was conducted in an election for membership to this body. Such being the case, it falls squarely upon us to investigate fully and to determine whether or not a person was beneficiary of a fraudulent election. The people of that district have the right to be represented in a true election.

Mr. Speaker, I feel that this resolution to dismiss must be opposed because not only has the matter not been investigated from the standpoint of the integrity of the House of Representatives, but I might add that the criminal prosecution and the criminal investigation of this same election on November 7, 1978, is not only still under investigation,

but the grand jury, a Federal grand jury in Louisiana, has within the past week accepted another guilty plea to another count of vote buying in that election race of 1978, and two others indicted on February 29 in Shreveport on multiple counts of vote buying in Sabine Parish. The indictment named names of people who were given money to vote for candidates in that congressional race in the primary and in the general election.

Mr. THOMPSON. Mr. Speaker, I yield to the gentleman from California (Mr. BADHAM) an additional 20 minutes for purposes of debate only.

Mr. BADHAM. I thank the distinguished gentleman.

Mr. Speaker, both in the primary and in the general election—and a Mrs. Lorraina Sepulveda was indicted by that same grand jury on nine counts of vote buying in that same election. It is to be noted that both grand juries above mentioned are still in session. The Shreveport one announced it had heard 52 witnesses and it would reconvene this matter on March 17, 1978.

Mr. Speaker, I cannot believe, in all conscience, that the Members of the body in which we are privileged to serve can condone this and call it just a little bit of fraud, as was the gist of the Kentucky case.

For purposes of debate I now yield of my time 3 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think this is an important vote for the House of Representatives. I have the feeling some of the Members may want to look on this as something very routine—a normal dismissal of a contest for election.

It is a good deal more than that because of the widespread fraud which did occur in this particular district. I believe that fraud cast a kind of a shadow over the whole House of Representatives.

This matter is one that should not be dismissed without a great deal of thought, a great deal more investigation, and, certainly, until the completion of the legal actions that are going forward in the State of Louisiana.

Mr. Speaker, I look upon this resolution as not being pernicious but certainly being very premature under the circumstances.

In the Committee on House Administration there is a precedent that we are very careful about accepting election contests. We try to make sure that we do not overturn the opponent will of the people unless we have very strong evidence that the will of the people was somehow controverted by fraud, miscount or some other reason. That is a good precedent. We should stick to it.

However, Mr. Speaker, we have a case where there was widespread fraud. There were 22 guilty pleas. Not one or two or an isolated one. Not disadvantaged, uneducated people. The exmayor of the town is involved in this election fraud.

Mr. Speaker, I would like to repeat the words of my distinguished colleague from California (Mr. BADHAM). We are not talking here about our colleague, BUDDY LEACH. The gentleman's innocence has been determined by a jury of his peers and of that we are glad. However, we are talking about the process that brought Mr. LEACH into this body.

Mr. Speaker, if we compare the Daschle case which has just been dispatched by this House, we will recall that there we let the State supreme court make the decision. We deferred action until all the local dust had settled.

In this case, as was pointed out by gentleman from California (Mr. BADHAM), grand juries are still in operation. There were two guilty pleas accepted last week. Obviously

grand juries are still sitting on this matter. The matter has not been completed in Louisiana and there is no reason for this House to dismiss the complaint.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. BADHAM. Mr. Speaker, I yield 2 additional minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, the contestee has submitted documentation showing 440 allegedly bought votes. That contest was won by our colleague, the gentleman from Louisiana (Mr. LEACH) by 266 votes. The 22 people who pleaded guilty are certainly not going to plead guilty for any more than they have to, so we have a very small number of votes that have been admittedly bought.

However, Mr. Speaker, I think, when we have 22 guilty pleas previously, a couple of more now and a grand jury still sitting, there is a strong presumption that more than 266 votes may have been involved.

Mr. Speaker, because the election process is so fundamental and our representativeness is so fundamental, I think it would be a terrible mistake, and a terrible precedent, for this House to dismiss this case at this time.

Obviously, the House should retain jurisdiction of this contest until all of us are absolutely certain that there is no pall, no shadow hanging over the election of our colleague.

Therefore, Mr. Speaker, I recommend very strongly, as strongly as I can to this body, do not take this measure lightly. It is not some kind of indictment of the gentleman from Louisiana (Mr. LEACH). It is simply an earnest desire on our part to find out what indeed happened in that election district. We have not yet found out.

Mr. BADHAM. Mr. Speaker, I yield 1 minute to the gentleman from Alabama (Mr. DICKINSON).

Mr. [William] DICKINSON [of Alabama]. Mr. Speaker, at this time I rise to express my strong opposition to the pending motion in the House to dismiss the election contest from the Fourth Congressional District of Louisiana.

I am certain that many of my colleagues have shared my shock and outrage at the various revelations which have been made through court testimony and FBI reports as to how improper influences were exerted to affect the outcome of this race for a seat here in the U.S. House of Representatives. One could easily come to the conclusion that this was one of the most sordid election contests in modern times—and, yet, the majority on the Committee on House Administration would have us believe that there was not enough wrongdoing to question the 266-vote margin in this election.

On the basis of information obtained to date, it would, of course, be impossible to say how many fraudulent votes were cast in favor of the alleged winner in this race. We do know that 24 individuals have been convicted of vote-buying activities and a notebook was offered in evidence at one of the trials in this case containing the names of 440 voters who were purportedly paid to vote for the contestee in the general election. Various investigations and court proceedings are still underway in this matter.

Under these circumstances, I must disagree with the conclusion of the majority of the Committee on House Administration that the "contestee LEACH received the majority of the votes cast and was duly elected by the voters of the Fourth Congressional District." I do not think that the House should give its stamp of approval to the outcome of a race which is so shrouded in uncertainty and chicanery.

Therefore, I urge the House to reject this motion dismissing the election contest against Mr. LEACH and I further urge that the Committee on House Administration then examine the case on its merits by conducting a full inquiry into all available evidence—something which the committee has not done to date.

Mr. BADHAM. Mr. Speaker, I now yield 3 minutes to the gentleman from South Carolina (Mr. CAMPBELL).

Mr. [Carroll] CAMPBELL [of South Carolina]. Mr. Speaker, the House is today taking up House Resolution 575, dismissing without full investigation the election contest against our colleague from Louisiana. As a small step toward restoring public confidence in this institution, this resolution should be defeated.

The House Administration Committee majority sees its responsibility in election disputes as one of separating challenges which "merit a full investigation from those where further investigation appears to be unwarranted," and I concur.

In this case, the record is clear that further investigation is in fact warranted. The committee report states that:

> It is apparent that fraud and irregularities were involved in the election in question.

And bases its recommendation for dismissal on the grounds that there is no hard evidence that the contestee himself was directly involved with the vote buying that evidently went on. Nothing in the statute, however, suggests that a fraudulent election is any less so whether or not the beneficiary of that fraud actively participates.

The majority contends that since there are only 58 proven cases of vote buying and the margin of the contestee's victory was 266 votes, there is no reason for further investigation. Again, however, the record suggests strongly that the votes still in question may well have changed the outcome of the election.

Mr. Speaker, I make no accusation against any Member of this House, but I believe we owe it to the American people—and to ourselves—to avoid even the appearance of coverup where the integrity of this body is at stake.

Mr. BADHAM. Mr. Speaker, I would just like to say that the remarks made by the Members who have served on the Committee on House Administration with me are remarks that are proper. I would again recite the facts that the House of Representatives has never taken an investigative posture or role in this case; that indictments are still coming down from the Federal grand juries at work in the State of Louisiana; that the FBI did only a very cursory examination and did not even inquire of people under oath as to the reasons for and matters surrounding their activities and their presence in various notebooks.

I think it would be a shame for the House of Representatives at this juncture to give up the jurisdiction of this case.

I would like to thank the distinguished chairman of the panel, the gentleman from California, for his understanding in this matter, and the committee chairman for allowing the minority to have this time, because I think it is serious and I think the integrity of this House is further cast in a light that is not altogether good for this House with the people of the United States, whom we represent.

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, will the gentleman yield?

Mr. BADHAM. I yield to my colleague from California.

Mr. ROUSSELOT. Mr. Speaker, could the gentleman tell us, did the committee have any kind of hearing of fact on this?

Mr. BADHAM. I can respond to the gentleman by saying, yes, we did have a hearing in that the representatives of the contestant and the representatives of the contestee were both allowed time before the committee to make statements and plead their case, as it were, but as far as investigation or hearings into the actual fact, I will have to say "no."

Mr. ROUSSELOT. So, as the gentleman has already stated then, there really was not an adequate investigation on our part?

Mr. BADHAM. That is correct.

Mr. ROUSSELOT. Well, it is certainly unfortunate because we have enough problems as it is with credibility these days, and that is certainly too bad. I am sorry to hear that.

Mr. BADHAM. I thank the gentleman.

May I inquire of the Speaker as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman has 8 minutes remaining.

Mr. [Elliott] LEVITAS [of Georgia]. Mr. Speaker, will the gentleman yield for a question?

Mr. BADHAM. I will be happy to yield to the gentleman from Georgia.

Mr. LEVITAS. Mr. Speaker, along with other Members of the House I have been sitting through this debate, trying to read the committee report and form a judgment. There were two points that I am still not clear about, and certainly I want to make a judgment based on the facts and not some partisan consideration. I am sure the gentleman from California feels likewise.

In the opening statement of the gentleman from California he read or referred to testimony from a Mayor McRae of Leesville, I believe it is, Louisiana. Does the gentleman from California know whether Mayor McRae's testimony was given at the trial of Congressman LEACH, which resulted in his acquittal?

Mr. BADHAM. Yes. The record will show that the testimony that I referred to was given by former Mayor McRae of Leesville in the trial of Congressman LEACH.

Mr. LEVITAS. The reason I asked the question is, if that testimony were to be believed by myself or by a jury, then it was pretty clear that Congressman LEACH was guilty of the crime alleged; and since the jury acquitted him, it must have been based on some judgment by that jury that Mr. McRae's testimony was not credible.

Mr. BADHAM. I find the gentleman's analysis striking. I find the gentleman's analysis extremely logical, and I have a hard time believing the whole thing, too.

Mr. LEVITAS. May I ask another question?

Mr. BADHAM. I would be delighted to yield.

Mr. LEVITAS. The other question is this, and it was a point which both the gentleman from South Carolina and the gentleman from California made; that is, there was another reason that perhaps the committee should retain jurisdiction. That relates to the fact that there are ongoing investigations by other grand juries involving this same matter.

I wonder if the gentleman from California (Mr. BADHAM) or the gentleman from California (Mr. JOHN L. BURTON) would care to give some guidance to those of us who are not on the committee as to the significance of the ongoing grand jury investigations?

Mr. BADHAM. Well, I think it is somewhat clear that the Federal Justice Department is not satisfied that all the wrongdoing pertinent to that particular election has been uncovered and brought to the Federal court.

I would be happy to yield to the gentleman from South Carolina for further response.

Mr. CAMPBELL. Mr. Speaker, the point being that in the committee report we state that there was—paraphrasing—there were not enough votes that were proved to have been bought to overturn the result of the election. Now, in the process of pleading, plea bargaining, many of the people involved plead to one instance of vote buying when in fact there had been a number of instances under question. The fact that now there are other instances coming to light strengthens the argument that there were in fact enough

votes in question, and that in fact if the investigation were to continue and we were to consider all of the numbers that were in question as fraudulent votes, that it would probably be enough to change the result of an election. Not knowing that fact at this time, we are making the argument that this committee should retain jurisdiction until such time as it is closed out, and that we are satisfied completely that there are enough votes.

I am not condoning a little sin in the process, but that is the way the committee has operated on this, and we have tried to look at all elections along those lines.

Mr. JOHN L. BURTON. Mr. Speaker, will the gentleman yield?

Mr. BADHAM. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Speaker, I thank the gentleman for yielding. I have got my own time. I was just standing.

Mr. BADHAM. Mr. Speaker, I reserve the balance of my time.

Mr. THOMPSON. Mr. Speaker, how much time does my colleague, Mr. BADHAM, have remaining?

The SPEAKER pro tempore. The gentleman from California (Mr. BADHAM) has 2 minutes remaining.

Mr. THOMPSON. Could it be agreed that the gentleman reserve the balance of his time, but that the last 2 minutes be given to the chairman of the panel, the gentleman from California (Mr. JOHN L. BURTON)?

Mr. BADHAM. I have no objection to that.

Mr. THOMPSON. We want to be fair in this debate.

Mr. BADHAM. If the gentleman will yield, I have always agreed that the gentleman, the distinguished chairman, is eminently fair.

Mr. THOMPSON. I thank the gentleman.

Mr. BADHAM. And the distinguished gentleman, the chairman of the panel, also.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. JOHN L. BURTON).

Mr. JOHN L. BURTON. Mr. Speaker, I would ask the distinguished chairman of the full committee if I may be yielded such time as I may consume.

Mr. THOMPSON. The chairman yields such time as he may consume to the gentleman from California, with the request that the chairman be informed as to when we approach the last 3 minutes.

Mr. JOHN L. BURTON. Mr. Speaker, the precedents of the House must be followed. We have a duty to ourselves. I think we also have a duty to the contestants, we have a duty to the voters of that congressional district, and certainly, in the words of our great friend and colleague, the chairman of the Republican Policy Committee, Representative SHUSTER of Pennsylvania, who said:

> The position is that the people of the Fourth District of Louisiana have a right to a final determination of this question, or this matter.

Mr. Speaker, I submit that is what we are doing.

Unsupported allegations of fraud or irregularity are insufficient to overturn an election. This is in the matter of Mr. Pierce, who was a contestant, versus Mr. PURSELL, a member of the minority party, an incumbent. I was on that panel. I chaired that panel, and we held in favor of a member of the opposition that unsupported allegations of fraud or irregularity were insufficient, that there must be specificity, and that we cannot just go on a fishing expedition.

I think my good friend, the gentleman from California (Mr. BADHAM), will admit that he is not sure what we would do if we did not dismiss today, but we probably should go somewhere and look at something. Notwithstanding the fact the FBI investigation was alleged to be cursory, however, I submit it is a crime to lie to a law enforcement official in his official capacity, whether one is under oath or not.

We were asked to take the testimony of an admitted felon, former Mayor McRae, but the jury listened to it and did not agree to it at the time they acquitted Mr. LEACH of any wrongdoing.

Allegations of fraud or irregularity absent a showing of the contestee's involvement must be supported by evidence sufficiently specific—and I underline that—to support a finding that final and further investigation will likely bear fruit.

Nobody is saying this is likely to bear fruit. They are saying we should go on a fishing expedition in order to find out whether it bears fruit.

Mr. [Daniel] LUNGREN [of California]. Mr. Speaker, will the gentleman yield?

Mr. JOHN L. BURTON. Mr. Speaker, if I could finish this first, I will be happy to yield. Let me finish this reference to Evans against Turner, and then I will be happy to yield to my friend, the gentleman from California.

The case of Evans against Turner in the 56th Congress was very persuasive at least on this Member as we were trying to determine what the facts are and if there were any irregularity in election, and yet the person thought to be penalized, if you will, was not a participant in those irregular activities.

In this case, Mr. Speaker, there was a circulation of a general circular proposing bribery, of which the contestee was not cognizant, and it did not vitiate the election although it was accompanied by acts of bribery.

On February 5, 1900, Mr. Romulus R. Linney, of North Carolina, from the Committee on Elections No. 1, submitted a report in the Kentucky case of Evans against Turner. The grounds of the contest alleged by the contestant were fraud and bribery, the specifications of which were denied by the sitting Member.

Again, Mr. Speaker, it seems to be right on all fours with this matter.

The opinion states that the sitting Member had been returned by a plurality of 568 votes, a close election. The committee decided the contestant had not successfully attacked that vote, and enough votes were not vitiated.

Again, Mr. Speaker, that is the finding the majority panel made.

> The evidence offered by the contestant tends to prove the allegations of fraud and bribery, and much of it discloses the resort to methods which were disreputable—

As was the case here with whatever actions other people were taking.

To continue, Mr. Speaker:

> it is in evidence that on the morning of the election a circular was issued and generally distributed in the city of Louisville among the political workers of the contestant, printed on the paper of the Congressional Campaign Committee, on that date, and containing a proposition to place $100 in each precinct, and requesting Captains of each ward, if they did not get the money by 6:30 on the morning of the election, to come to headquarters. The circular was issued by enemies of the contestant. This is a novel method in the history of political struggles in the United States, and in the opinion of the committee demands the unqualified condemnation of the committee.

And, Mr. Speaker, I would say the activities that were engaged in by persons were admitted felons, including one whose testimony was read to the House or to those who

are persons unknown at this time, are equally reprehensible to this Member of Congress and, I am sure, to the entire House.

Returning to the finding, Mr. Speaker:

> This evidence tends strongly to establish the contention of the contestant but does not show the contestee was a party to the fraud.
>
> There is no evidence tending to show that the contestee had anything to do with the fake circular, and there is much evidence offered by the contestee showing the propositions of bribery came from persons who were organized for the purpose of obtaining money from someone—anyone from whom they could obtain it. Upon a careful consideration, the committee was unable to determine the exact number of votes tainted and vitiated by fraud and bribery.

Then, Mr. Speaker, without debate or division, I might add, the House agreed to the resolutions confirming title on the sitting Member.

Mr. Speaker, I would also like to point out that the allegations concerned a certain area in Vernon Parish, ward 1, precinct 11, called the "Crossing." Historically, in 1971 Representative LEACH got 71.6 percent of the vote against two candidates. In 1975 that total was raised when he was a State senator by 15 percentage points, and he received 86.7 percent of the vote. In this election it was increased by less than 7 percent, by 6.3 percent or half of the increase over the prior 4 years, and he received 93 percent of the vote.

I mention this just to indicate that the historical support here was predominantly, if not totally, black. It was a black constituency that the incumbent had, and it is highly unlikely that he would have to buy allegiance at this time. It was evident in fact that he was so popular in the community that a variety of candidates—I think, including the school board and the county sheriff or parish sheriff, who parenthetically received 15 percent of all Federal revenue sharing right off the top in the State of Louisiana, and in fact including the distinguished senior Senator—were attaching themselves to his coattails, and he was leading several slates.

Mr. Speaker, I believe that the people do, as our good friend, the gentleman from Pennsylvania (Mr. SHUSTER), said, have a right to a resolution of this matter. It is our opinion that the only resolution can be dismissal, and to go on a fishing expedition, I think, is unfair and does not resolve the matter for them nor for the incumbent.

Again the testimony of an admitted felon who was relied upon here was listened to by a jury of 12 men and women, good and true, and it is a fact in judicial law that they were there watching the demeanor of and were able to assess the credibility of that person and chose to believe that person was not in fact telling the truth. I think we are in a situation where we cannot gainsay that.

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

Mr. JOHN L. BURTON. I am happy to yield to the gentleman from California.

Mr. BADHAM. Mr. Speaker, I would like to inquire of the Chair if it is not true that we are to use our remaining 2 minutes after the time the gentleman speaks?

Mr. JOHN L. BURTON. Mr. Speaker, may I inquire, how much time do I have remaining.

Mr. [Carroll] HUBBARD [of Kentucky]. The Chair will state that the gentleman from New Jersey (Mr. THOMPSON) has 12 minutes remaining.

Mr. JOHN L. BURTON. Mr. Speaker, I would be happy to yield 1 minute to the gentleman from California (Mr. LUNGREN).

Mr. LUNGREN. Mr. Speaker, may I begin by saying that the gentleman from California (Mr. BADHAM) made a good point.

Mr. JOHN L. BURTON. Mr. Speaker, if I may interrupt, I will ask the Chair to remind me when I have 5 minutes remaining. I yield 1 minute now to the gentleman from California (Mr. LUNGREN).

Mr. LUNGREN. Mr. Speaker, as the Members know, I am not a member of this committee, but I have been trying to listen to find out what the criteria is that was used for this resolution.

I heard the gentleman from California tell us that unless there is sufficient evidence that shows there is in fact a true contest of an election, the resolution before us would be appropriate, and I would like to ask two questions of the gentleman from California.

First, do we have in this House in past experience a situation which parallels this, that is, one in which 24 people have already been convicted either by a plea or by a conviction of a court of vote fraud?

Second, I would like to ask the gentleman, is it not true that most of us who have been involved with legal proceedings know that plea bargaining usually amounts to a lessening of the charges that were originally brought and may in fact not really limit themselves to all of the charges that were brought?

Mr. JOHN L. BURTON. If the gentleman will yield, I will be happy to answer the question.

Mr. LUNGREN. I yield to the gentleman.

Mr. JOHN L. BURTON. The 34 was the number that totaled those in the indictment, not the plea bargaining. So the 34 was what they were indicted for. They plea-bargained that down to a lesser number. The number 34 was the number of illegal votes that were named or alleged in the indictments. So that answers that question.

Mr. LUNGREN. There were 24, I understand, who have been convicted to this point, although 2 more are in the process.

Mr. JOHN L. BURTON. Thirty-four was the total number of tainted votes that were alleged in the indictments and, as the gentleman knows, an indictment is an accusation and not a fact.

Mr. LUNGREN. My question then is this: Is the gentleman suggesting that the 24 who have been convicted is the total sum and substance of all of the possible fraud? And I mean by "possible," for which there is some credible evidence that existed in that election. Is that what we are to believe and, therefore, are consistent in saying that in no way could there have been 266 falsehoods?

Mr. JOHN L. BURTON. I think we would be consistent in saying that in no way do we know in any election in the Nation there may or may not have been a fraudulent vote cast.

I would just respond by saying—and then I will yield to the gentleman from Louisiana for debate only—that under the rules of the House, and as the chairman of the task force involving a member of your party, a member of this party over here, we ruled at that time that there would have to be specific allegations that lead you somewhere and you cannot just say there has been some fraud and to go about it. Even our good friend, the gentleman from California (Mr. BADHAM), was at a specific loss to tell us what to do except that our committee somehow could have done a better job than the FBI. I do not believe that we could have. I believe, with the precedents of the House, with the allegations that were made, specific allegations that were made by Mr. WILSON, that the numbers do not add up to a total. That in no way says a little fraud is not a bad thing. A little fraud, like a little bit of learning, is a dangerous thing.

Mr. Speaker, I yield to the gentleman from Louisiana (Mr. BREAUX) for purposes of debate only.

Mr. [John] BREAUX [of Louisiana]. I thank the gentleman for yielding.

Mr. Speaker, I take this time, although I did not plan to, just to make a couple of observations.

I think, somehow, that the gentleman from Louisiana (Mr. LEACH) really becomes a victim of the political climate, and I think, in making him the victim of the political climate, we really make the House a victim of the political climate. I say that because I think that our minds are really made up on this issue and it is basically being made up because of which party we happen to belong to. This election contest is not being decided based on how we should interpret the law that we passed in this area, but it is being decided based on how many press releases we can issue on Congressman LEACH'S election.

I think we do ourselves a disservice in this area. We passed a law which should govern what action we should take in this regard, and it says that the person who is challenging must show grounds sufficient to change the result of the election, not the fact that there was fraud, or that there were votes bought in the election. That is admitted. A trial has cleared Congressman LEACH of any wrongdoing in that regard completely. In fact, the challenger does not even contest LEACH'S involvement any more.

But if you accept as fact all of the votes that the challenger says were bought were in fact bought, it does not affect the outcome of the election. And the law that we in this House passed clearly states that the challenger must show that enough votes were fraudulently cast to change the outcome of the election. That clearly has not been done.

We have been looking at this election for over a year; the U.S. attorney has; the FBI has; and you can book it that the challenger has. And despite all of that, despite all of those interviews, they still have not come up with a standard that we ourselves have placed on the challenger, that he has to show that there were votes bought and that it would in fact change the result of the election.

So are we interested in doing a service to this House and to this body and not just to our party? I think we have to look at those facts, forget the press releases, and do justice to the gentleman whose career, really, is at stake and indeed the integrity of this House is at stake.

Mr. THOMPSON. Mr. Speaker, I yield such further time as he may consume to the gentleman from California (Mr. JOHN L. BURTON).

Mr. JOHN L. BURTON. Mr. Speaker, I yield 2 minutes to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. [Corinne] BOGGS [of Louisiana]. I thank the gentleman from California and the gentleman from New Jersey.

Mr. Speaker, I would like to address myself to the climate that we have indeed created here or have simply reflected here, and there is another climate that we have to think about aside from the integrity of this House, and that is the integrity of the people of Louisiana and the integrity of all of the people who have worked for so many years in trying to make certain that all of the chores of democracy have been properly done, that the voters are properly registered, that the voters know what the issues are, that the voters know where the polling places are, that they have easy access to the vote, that the vote will be administered over by honest and efficient commissioners, that the vote will be properly counted, honestly counted and promptly promulgated.

There have been groups in Louisiana which have been working in these regards for over 40 years. We were one of the first States to having voting machines, we were one of the first States to have permanent registration since 1941. We worked diligently to

enlarge the franchise, particularly to blacks and other minorities, and many of the people who have worked in this regard also worked very diligently in the campaign of the gentleman whose contest is before us today.

So I do think we have to remember these elements as well.

I have been a member of the Elections Subcommittee of House Administration, and I have worked with many of the Members who have spoken previously today. I think I have agreed on that committee very, very often with the gentleman from Minnesota (Mr. FRENZEL). I have also agreed with the gentleman from California (Mr. JOHN L. BURTON). And I do think that we all know that in other contests that we have looked at, we agreed that it was not worth the time and the effort and the moneys that would have to be expended to attorneys and other investigators to look into cases where not sufficient amounts of evidence had been shown that the election could be overturned by the number of votes that were in contest.

I hope that my colleagues will join me in voting to dismiss this contest.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. THOMPSON) has 4 minutes remaining, and the gentleman from California (Mr. BADHAM) has 2 minutes remaining.

Mr. BADHAM. Mr. Speaker, I yield 30 seconds to the gentleman from South Carolina (Mr. CAMPBELL).

Mr. CAMPBELL. I thank the gentleman for yielding.

Mr. Speaker, one point should be made. There was a statement made concerning partisanship of this nature, and I think that the majority side would agree that we have heard many contested elections this year and that we on the minority side have in every instance agreed with the majority in all cases in dismissing challenges by, in all cases, the minority candidates. And, this happens to be one that we stand on the merits of the case, and I do not think that it should be inferred that this is strictly partisanship on the part of the minority. Rather, it is a stand against fraud in the election process.

Mr. BADHAM. Mr. Speaker, I reserve the balance of my time.

Mr. JOHN L. BURTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to respond that the members of the committee have never raised this on a partisan level, and I commended the gentleman from California (Mr. BADHAM) for it. The gentleman from California (Mr. BADHAM) was out of the country on official business at the time that your leadership held a press conference before our first meeting on it, to let us know what they were going to do. So any remarks certainly would not go to any of the minority members of either the task force or the committee. So the gentleman is to be commended for approaching this with an open mind. It was the Republican leadership which chose to make this a partisan issue and practically decide what the votes were going to be before we had our hearing on it. I wanted to make that straight, to differentiate the gentleman from the position of the leadership. I think the gentleman did approach it, as we did, with as open a mind as possible, but it was their leadership press conference that sought to put this in a somewhat partisan light. I do not think the members of the committee did, because it was not an easy situation for them.

Mr. BADHAM. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I would like to just mention a couple of comments that were made by the Members from Louisiana, that really one of the basic items here at question is the book of 440 people, allegedly the commercial vote, were they taken to the polls as just innocent black folks being driven to the polls, or were they actually paid? That is where the whole thing turns. We have had no investigation of that.

Mr. Speaker, I yield the balance of my time to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. [E.G.] SHUSTER [of Pennsylvania]. I thank the gentleman for yielding.

Mr. Speaker, we are not questioning the integrity of the gentleman from Louisiana (Mr. LEACH). We are not even asking for a final disposition here today. We are simply saying that this should not be swept under the rug. We are simply saying that there is evidence of fraud. After all, several people have already been convicted. There is an ongoing, continuing FBI investigation. Eight people are still under investigation. So there is evidence of fraud; the question of how many votes were bought is still at issue. We have no issue over whether or not some votes were bought, that is agreed upon.

The issue is how many votes were bought, and we think that not only Republicans but Democrats, as well, should join in not permitting this to be swept under the rug. The issue is not Mr. LEACH'S integrity.

The issue is the integrity of the electoral process.

Let us vote down this resolution so that the committee can proceed with a full hearing into this contested election.

Mr. THOMPSON. I yield 2 minutes to the gentleman from California (Mr. JOHN L. BURTON).

Mr. JOHN L. BURTON. I thank the chairman of the Republican policy committee of the House for his nonpartisan statement.

I also thank him for the bipartisan statements that were made before we even had our first hearings. I would refer him to his own statement:

> The position is that the people of the Fourth District have a right to a final resolution of this matter.

This is what we are trying to do. We differ as to whether or not a House committee could do a better investigatory job than the FBI. We do not think we could.

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

Mr. JOHN L. BURTON. I yield to my friend, the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. I thank the gentleman for yielding.

I would ask the gentleman is it not true that Republicans on the committee vigorously supported dismissing the election contest brought by a Republican, Leo Thorsness? So our position is not simply a partisan decision.

Mr. JOHN L. BURTON. I will not talk about the Republicans on the committee. I commended them. It was the leadership on the gentleman's side that chose to put this in partisan perspective before we had our first committee hearing, assuming we were going to give them 5 minutes and not let them talk. The gentleman from California (Mr. BADHAM) was told—well, he was out of the country on official business—like his vote had already been counted at a certain place. I do not think that was proper.

We voted to dismiss counts. In fact, we are following precedents laid down in the matter of Pierce against Pursell where I, as a Democrat, chaired the subcommittee and ruled against the Democrat contestee.

So these matters have been nonpartisan, but it was the leadership of the other side that sought to put this here.

The people of the State of Louisiana, who have to be as outraged and shocked as anybody that there could be a tainted election in that State, need a resolution of this problem. They have never seen the likes of this in any election prior to this, and hope they never see any tainted elections again.

I just believe that the motion to dismiss is the right thing for the integrity of the House and the right thing for the integrity of Mr. LEACH. I think it is very important that this has been cast by some Members under a partisan pall.

Mr. THOMPSON. Mr. Speaker, I think enough has been said on the question, and 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 noes appeared to have it.

Mr. JOHN L. BURTON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 241, nays 153, answered "present" 3, not voting 36, as follows:

[Roll No. 114] . . .

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

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

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.

§ 17.5 Thorsness v Daschle

The general election for the office of Representative to Congress from the First District of South Dakota was conducted on November 7, 1978.[21] The general election candidates were Thomas Daschle (the Democratic candidate) and Leo K. Thorsness (the Republican candidate). The official results indicated that Mr. Daschle received 64,661 votes, while Mr. Thorsness received 64,647 votes. Mr. Daschle's margin of victory was therefore 14 votes. After a state recount, Mr. Daschle's margin of victory grew to 105 votes. The South Dakota Secretary of State certified Mr. Daschle as the winner of the election on November 27, 1978. Mr. Daschle's credentials were presented to the House of Representatives, and on January 15, 1979, he was duly administered the oath of office without objection or challenge.

Under South Dakota state law, candidates may appeal recount decisions to the state Supreme Court. Mr. Thorsness filed a writ of certiorari with the court, and on August 27 and August 28, 1979, the court conducted its own recount and review of disputed ballots. The court determined that Mr. Daschle had won the election.

On December 26, 1979, Mr. Thorsness (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the

21. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 96–785, 96th Cong. 2d Sess.

Committee on House Administration for its review. Contestant alleged that a fair review of disputed ballots would show that contestant received a plurality. Contestant further alleged that Mr. Daschle's representatives conducted illegal and fraudulent training sessions for the state's recount boards.

On January 25, 1979, Mr. Daschle (hereafter the "contestee") filed an answer and a motion to dismiss, arguing that contestant: (1) had failed to state grounds sufficient to change the results of the election; (2) had failed to show any fraud, irregularities, or misconduct on the part of election officials; (3) did not have standing to file a contest; and (4) had waived his right to contest the election by proceeding in state courts.

The Committee on House Administration formed an ad hoc election panel of three Members to review the case. The panel met on March 1, 1979, to hear oral arguments from the parties. The parties stipulated that the allegation regarding improper training sessions would be withdrawn. On December 13, 1979, the panel met again, noted the results of the South Dakota Supreme Court proceeding (which had concluded that contestee had won the election) and thereafter voted to recommend that contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration agreed with the ad hoc panel that the motion to dismiss should be granted. The committee found that the contestant had not supported his allegations with sufficient documentary evidence to show that the election result would have been different. The report relied heavily on the fact that the South Dakota Supreme Court had reviewed disputed ballots and had declared contestee the winner of the election. In the words of the ad hoc election panel, it would be "redundant and presumptuous for this panel to recount the ballots ourselves and substitute our judgement for the courts."[22] The committee agreed that any committee–conducted recount would not be advisable.

On March 4, 1980,[23] the committee called up House Resolution 576 (dismissing the contest) as a privileged matter. The House adopted the resolution by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST THOMAS DASCHLE

Mr. [Frank] THOMPSON [of New Jersey]. Mr. Speaker, I call up a privileged resolution (H. Res. 576), dismissing the election contest against THOMAS DASCHLE, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 576

Resolved, That the election contest of Leo K. Thorsness, contestant, against Thomas Daschle, contestee, First Congressional District of the State of South Dakota, be dismissed.

22. H. Rept. 96–785, 96th Cong. 2d Sess. p. 3.

23. 126 CONG. REC. 4490–91, 96th Cong. 2d Sess.

The SPEAKER pro tempore.[24] The gentleman from New Jersey (Mr. THOMPSON) is recognized for 1 hour.

Mr. THOMPSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 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. In this Congress, five contested elections were filed. In each case I appointed as chairman an ad hoc panel to conduct the investigation.

In the contest before the House today, Thorsness against DASCHLE, the panel was chaired by our distinguished colleague, the gentleman from California (Mr. FAZIO). Also serving with the gentleman from California (Mr. FAZIO) were committee members, the gentleman from South Carolina (Mr. DAVIS) and the gentleman from Minnesota (Mr. FRENZEL).

Mr. Speaker, I now yield such time as he may consume to the gentleman from California, the chairman of the panel (Mr. FAZIO).

Mr. [Victor] FAZIO [of California]. Mr. Speaker, I thank the gentleman from New Jersey, the chairman of the Committee on House Administration.

This election contest was filed by Mr. Leo K. Thorsness against THOMAS A. DASCHLE for the seat in the First Congressional District of South Dakota. In the election held on November 7, 1978, THOMAS DASCHLE received 64,661 votes to Mr. Thorsness' 64,647 votes, a margin of 14 votes.

Acting under provisions of the laws of the State of South Dakota, Mr. Thorsness requested a recount for certain selected districts, at which time the margin of votes grew larger in Mr. DASCHLE'S favor. Thereupon, a complete district-wide recount was made and Mr. DASCHLE'S margin of victory grew to a total of 105 votes.

The election results were subsequently certified on November 27, 1978, by the secretary of state and the Governor, and credentials were issued to THOMAS DASCHLE. Mr. DASCHLE was sworn in and took office on January 15, 1979, after presenting his credentials to the House.

On December 26, 1978, Mr. Thorsness filed a "notice of contest" against Mr. DASCHLE with the Clerk of the House. The notice of contest alleged that a fair and impartial review of more than 2,000 ballots still in dispute would show that the contestant, Mr. Thorsness, did in fact receive a plurality.

At the same time, the contestant appealed the determination of the recount board to the supreme court of South Dakota.

On January 25, 1979, the contestee, Mr. DASCHLE, filed a motion to dismiss the contest alleging, among other things, a failure to make a showing of grounds sufficient to change the results of the election.

On March 1, 1979, the ad hoc election panel, consisting of myself as chairman, the Honorable MENDEL DAVIS and the Honorable BILL FRENZEL, held an open hearing for the purpose of receiving oral arguments on the motion to dismiss. Both contestee and contestant were represented by counsel. The contest centered on the issue of whether "a fair and impartial review" of the disputed ballots would result in a plurality for the contestant.

The ad hoc election panel again met, on December 13, 1979, with all members present, to consider the motion to dismiss. After a thorough review of the record and after due deliberation and notification from the South Dakota supreme court that it had determined DASCHLE to be the winner, the panel voted 3 to 0 to recommend to the full committee that the contestee's motion to dismiss be granted.

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24. Carroll Hubbard, Jr. (KY).

On February 12, 1980, a quorum being present, by unanimous voice vote, the Committee on House Administration adopted the panel's resolution to recommend dismissal of the contest to the House.

In assessing the record of the contest the panel noted that contestant Thorsness' case hinged on the allegation that "a fair and impartial review" of the contested ballots would prove him the winner. The panel held that in light of the exhaustive de novo recount by South Dakota's highest court, it would seem both redundant and presumptuous for the panel to recount the ballots and substitute its judgment for that of the courts. While we certainly have that authority, we found no reason to use it.

The contestant was unable to produce any documentary or other evidence of sufficient weight to demonstrate to the satisfaction of the committee that the allegations, if true, would have changed the election result. It was the committee's unanimous opinion that the case should therefore be dismissed.

Mr. Speaker, I yield to the gentleman from Minnesota (Mr. FRENZEL) for any comments the gentleman wishes to make.

Mr. FRENZEL. Mr. Speaker, I thank the distinguished chairman of the elections panel for yielding.

Mr. Speaker, I rise in support of the privileged resolution. The contestant and the contestee have had their day in court. The supreme court of the State of South Dakota has ruled in favor of our colleague, the gentleman from South Dakota (Mr. DASCHLE).

The panel has made a good decision. The committee has made a good decision. The minority believes that the House should ratify that decision by passing the privileged resolution today.

Mr. Speaker, I thank the gentleman for yielding.

Mr. THOMPSON. 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.

§ 18. Ninety–seventh Congress, 1981–1982

There were no election contests considered by the House during the 97th Congress.

§ 19. Ninety–eighth Congress, 1983–1984

§ 19.1 Archer v Packard

The general election for the office of Representative to Congress from the 43rd District of California was conducted on November 2, 1982.[1] The general election candidates were Roy Archer (the Democratic candidate),

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 98–452, 98th Cong. 1st Sess.

Johnnie R. Crean (the Republican candidate), and Ron Packard (a write–in candidate). The official results indicated that Mr. Packard won a plurality with 66,444 votes, as compared to 57,995 for Mr. Archer and 56,297 for Mr. Crean. On December 3, 1982, the California Secretary of State certified the results of the election, and credentials were issued to Mr. Packard. Mr. Packard's credentials were presented to the House of Representatives, and on January 3, 1983, he was duly administered the oath of office without objection or challenge.

On December 16, 1982, Mr. Archer filed a petition with a state court seeking to contest the election. On January 13, 1983, the judge dismissed the complaint, stating that "[t]he evidence in this case falls far short of that required to set aside the results of this election."[2]

On December 29, 1982, Mr. Archer (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. In the notice of contest, contestant alleged that election officials had engaged in a variety of improper and illegal behavior. On January 21, 1983, Mr. Packard (hereafter "contestee") filed a motion to dismiss.

The committee designated a task force to review the matter. On June 30, 1983, the task force met to hear oral arguments from the parties. On August 3, 1983, the task force voted to recommend that contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration agreed with the conclusion reached by its task force. It reiterated prior precedents regarding the need for contestant to show that, but for the alleged acts of election officials, the result of the election would have been different. The committee relied on the conclusion reached by the state court that "exonerated contestee and all election officials."[3] It also relied on the determination by a county district attorney that no prosecutions connected to the election were warranted. The committee acknowledged that California's process for voting for write–in candidates using the Votomatic machines caused the defacement of certain machines, but concluded that there was no evidence to support the idea that confusion about how to vote properly was sufficient to change the outcome of the election.

On November 15, 1983,[4] the committee called up House Resolution 305 (dismissing the contest) as a privileged matter. The House adopted the resolution by voice vote:

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2. H. Rept. 98–452, 98th Cong. 1st Sess. p. 2.

3. *Id.* at p. 4.

4. 129 CONG. REC. 32704–705, 98th Cong. 1st Sess.

DISMISSING THE ELECTION CONTEST AGAINST RON PACKARD

Ms. [Mary Rose] OAKAR [of Ohio]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 305) dismissing the election contest against RON PACKARD, and ask for its immediate consideration in the House.

The Clerk read the resolution, as follows:

H. RES. 305

Resolved, That the election contest of Roy ''Pat'' Archer, contestant, against Ron Packard, contestee, Forty-third Congressional District of the State of California, be dismissed.

The SPEAKER pro tempore.(5) The gentlewoman from Ohio (Ms. OAKAR) is recognized for 1 hour.

Ms. OAKAR. Mr. Speaker, I yield 30 minutes, for purposes of debate only, to the gentleman from California (Mr. THOMAS) and pending that I yield myself such time as I may consume.

Mr. Speaker, House Resolution 305 is a resolution to dismiss the election contest filed in the 43d Congressional District of California.

In the contest before the House, Archer against Packard, I chaired the investigating task force and I was joined by committee members AL SWIFT and WILLIAM THOMAS.

This election contest was filed by Pat Archer against Ron Packard for the seat in the 43d Congressional District of California. In the election held on November 2, 1982, the Republican candidate, Johnnie Crean, received 56,297 votes, the Democratic candidate, Pat Archer, received 57,995 votes, and the write-in candidate, RON PACKARD, received 66,444 votes for an 8,449 vote margin of victory. On December 3, 1982, certifying credentials were signed by the Secretary of State and were issued to Mr. PACKARD. The credentials of Mr. PACKARD were presented to the House of Representatives on January 3, 1983. He took the oath of office and was seated on the same day.

Mr. Archer contested the results of the election charging that irregularities took place during the election. Mr. Archer challenged the results in California court and his case was dismissed for lack of evidence.

On June 30, 1983, the task force held an open hearing for receiving oral argument on the motion to dismiss. On August 3, 1983, the task force again met and voted by a rollcall vote of three ayes and zero nays to recommend to the committee that the motion to dismiss be granted and that contest be dismissed.

On October 25, 1983, by a unanimous vote, a quorum being present, the committee adopted the task force's resolution to recommend dismissal of the contest to the House.

The recommendation for dismissal is based upon the fact that the contestant failed to establish, as required by the Contested Election Act, that the outcome of the election was affected by the alleged irregularities.

I would note that a contestant has a substantial burden to carry and the contestant in this matter has fallen far short of doing so. The contestant lost by over 8,000 votes, and has not presented any evidence that puts the outcome in doubt. However, I would note that the election system employed did have inherent weaknesses when it comes to write-in efforts, such as that successfully mounted by Mr. PACKARD. Therefore, the report included a recommendation that election officials in California explore alternative means for handling write-in candidacies.

5. Ronald Coleman (TX).

Mr. [William] THOMAS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 305, the resolution dismissing the election contest filed by Mr. Roy Pat Archer against Congressman RON PACKARD.

The election of Congressman PACKARD was the fourth time in U.S. history that a Member was elected to Congress through the write-in process. Viable write-in candidacies are rare, and pretty obviously, elected write-in candidates are rarer yet. It is unique in the history of the House that we currently have two write-in candidates sitting.

Although the county election officials did provide the poll inspectors in the 43d District with extra training on write-in voting, the importance of frequent checks of the voting booths, and inspection of the voting devices, they did not anticipate the volume of problems encountered by the confusion created by the write-in procedures and the mechanical devices used in voting. The committee's recommendation to improve the write-in procedures is, I think, a good one.

Mr. Archer presented his case for himself, and the committee rejected his conclusions, as did the District Attorney and the superior court in California previously, and I would strongly urge the House to do likewise.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, will the gentleman yield?

Mr. THOMAS of California. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I take this time only to compliment the six members of these two election task forces who have worked over nearly a year on these particular cases.

I think these two cases illustrate some of the behind-the-scenes work that is done in this Congress of which the outside world is not aware and in fact some of our own Members are not aware.

I would further state that in each of these cases the task forces and the committee uncovered defective State systems. In the case of North Carolina, there was the problem of not allowing a candidate a recount and the problem of counting votes in different ways. In the case of California, there was the difficulty of administering a write-in system.

Our committee has no jurisdiction over State election systems, and all we can do is make recommendations. But I hope that the Members of the House are aware of the extra effort being put in by members of this committee and of their untiring efforts to see that the will of the people is maintained in election contests.

Mr. Speaker, I thank the gentleman for yielding.

Mr. THOMAS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. OAKAR. 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.

§ 19.2 Hendon v Clarke

The general election for the office of Representative to Congress from the 11th District of North Carolina was conducted on November 2, 1982.[6] The

6. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 98–453, 98th Cong. 1st Sess.

general election candidates were James M. Clarke (the Democratic candidate), and William Hendon (the Republican candidate). The official vote count indicated that Mr. Clarke had received 85,410 votes, and that Mr. Hendon had received 84,085 votes. On December 6, 1982, the North Carolina Secretary of State and Governor certified the results of the election. Mr. Clarke's credentials were presented to the House of Representatives, and on January 3, 1983, he was duly administered the oath of office without objection or challenge.

The election contest centered on ballots used in five of the 17 counties in the 11th District of North Carolina. In those countries, the computer punch–card system used allowed voters to cast ambiguous ballots by selecting both individual names and a straight–party ticket. Under North Carolina law, such ambiguous ballots would be counted as straight–party tickets and the additional markings for individual candidates ignored. Mr. Hendon challenged the constitutionality of this North Carolina law in Federal court.

The U.S. District Court for the Western District of North Carolina ruled against Mr. Hendon's request for a recount and his request to enjoin the certification of Mr. Clarke. The court held that the North Carolina statute did not violate the Equal Protection Clause because all voters in the affected precincts were treated the same. The case was appealed to the U.S. Court of Appeals for the Fourth Circuit. The appellate court did accept Mr. Hendon's claim that parts of the North Carolina law were unconstitutional, but decided that the relief requested should not be granted. The court held that known pre–election issues should be resolved prior to the election. Allowing parties to challenge election laws after the fact "would encourage parties to gamble on the favorable outcome of the election, and then, having lost, to seek to overturn the results in court by challenging" the election procedures.[7] The court thus refused to invalidate the election.

On December 3, 1982, Mr. Hendon (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. The notice alleged that because of the ballot system used, the true intent of the voter was not reflected in the vote totals. On December 17, 1982, Mr. Clarke (hereafter "contestee") filed a motion to dismiss the case.

The Committee on House Administration formed a task force composed of three Members to investigate the contest. On July 25, 1983, the task force met to hear oral arguments from the parties. On August 3, 1983, the task force voted to recommend that contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration reiterated the substantial burden that a contestant must overcome to prevail

7. H. Rept. 98–453, 98th Cong. 1st Sess. p. 3.

against a motion to dismiss. In the view of the committee, the "evidence submitted by Contestant amounted to mere speculation"[8] and that the contestant had not shown with specificity how the result of the election would have been different had different balloting procedures been used. The committee also took issue with the relief sought, *i.e.*, a recount of the votes cast in the five affected counties. The report evinced great reluctance for the committee to conduct its own recount, which would necessarily involve making judgments as to disputed ballots and potentially disenfranchising some voters. Such a process "would not guarantee that the voters' intent would be carried out."[9] The committee report concluded that contestee's motion to dismiss should be granted.

Members of the minority party filed dissenting views to accompany the committee report. They argued the North Carolina law, which had been declared unconstitutional, had the effect of favoring Democratic candidates and ignoring voters' attempts to make split–ticket voting choices. In their view, the committee should have made the decision to review disputed ballots and attempt to discern voter intent (consistent with prior occasions where the committee took these steps). Because the House is the sole judge of its elections under the Constitution, the minority party Members, in their dissent, felt that this "constitutional mandate compels that we act."[10]

On November 15, 1983,[11] the committee called up House Resolution 304 (dismissing the contest) as a privileged matter. The House adopted the resolution by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST JAMES MCCLURE CLARKE

Mr. [Jim] BATES [of California]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 304) dismissing the election contest against JAMES MCCLURE CLARKE, and ask for its immediate consideration in the House.

The Clerk read the resolution, as follows:

H. RES. 304

Resolved, That the election contest of William M. Hendon, contestant, against James McClure Clarke, contestee, Eleventh Congressional District of the State of North Carolina, be dismissed.

The SPEAKER pro tempore (Mr. [Ronald] COLEMAN of Texas). 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 California (Mr. BADHAM), pending which I yield myself such time as I may consume.

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8. *Id.* at p. 5.

9. *Id.* at p. 6.

10. *Id.* at p. 11.

11. 129 CONG. REC. 32702–704, 98th Cong. 1st Sess.

Mr. Speaker, 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.

In this Congress, two election contests were filed. In both contests, the chairman of the Committee on House Administration, AUGUSTUS HAWKINS, established a task force to conduct the investigation.

In the contest before the House today, Hendon against Clarke, I chaired the investigating task force and I was joined by committee members ED JONES and ROBERT BADHAM.

This election contest was filed by William Hendon against James McClure Clarke for the seat in the 11th Congressional District of North Carolina. In the election held on November 2, 1982, Mr. CLARKE received 85,410 votes while Mr. Hendon received 84,085 votes. On December 6, 1982, certifying credentials were signed by the secretary of state and Governor and were issued to Mr. CLARKE. The credentials of Mr. CLARKE were presented to the House of Representatives, and he appeared, took the oath of office, and was seated without objection on January 3, 1983.

Mr. Hendon contested the results of the election and requested a recount of the ballots cast. Specifically, Mr. Hendon challenged the vote counting procedures used in 5 of the 17 counties in the district. In these five counties, ballots which had markings for both a straight party ticket and for an individual candidate of another party were counted as a straight party vote. This procedure was consistent with North Carolina election law and the ballots had clear instructions that ambiguously marked ballots would be counted in this way.

Mr. Hendon challenged the constitutionality of the North Carolina election law in Federal court and requested a recount of ballots cast in the five counties. A district court rejected Mr. Hendon's case. However, the appeals court found the North Carolina law unconstitutional, but denied Mr. Hendon's request for a recount, holding that it is the duty of parties having grievances with election laws to challenge the laws prior to the election in question.

On July 25, 1983, the task force held an open hearing and received oral argument on a motion to dismiss the contest. On August 3, 1983, the task force again met and heard additional arguments. The concerns of this task force centered on whether the outcome of the election had been affected by the vote counting procedures used in the election, and whether the committee should conduct a recount of the ballots. At the conclusion of the oral presentation, the task force recommended to the committee, by a rollcall vote of 2 ayes and 1 nay that the motion to dismiss be granted, and that the contest be dismissed.

On October 25, 1983, by voice vote, a quorum being present, the committee adopted the task force's resolution to recommend dismissal of the contest to the House.

These are two bases for the recommendation of dismissal. First the contestant failed to demonstrate with sufficient evidence, as required by the Contested Election Act, that the outcome of the election was affected. The committee found no evidence indicating that the election was affected by the vote counting procedures used in the election. Mr. Hendon presented only unsubstantiated speculation, and the committee felt that the will of the people as expressed at the ballot box should not be thwarted by mere speculation.

The second basis for dismissal is that a contestant, wishing to challenge an election on the basis of known preelection irregularities, must challenge the irregularities prior to the election in question. This was the ruling of the U.S. Court of Appeals, and it is

entirely consistent with House precedent. I would like to point out that the law which the contestant challenged has been on the books since 1955, and it is the same law under which the contestant won election to Congress in 1980, at which time he did not challenge the validity of the statute. To quote the appeals court:

> Failure to require preelection adjudication would permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in court action.

For these reasons, the committee recommends that the contest of Hendon against Clarke be dismissed. The House has before it House Resolution 304 and I urge its adoption.

Mr. [Robert] BADHAM [of California]. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this case is case is before us because of the responsibilities the U.S. Constitution entrusts to the House of Representatives. Article I, section 5, clause 1 states specifically that it is the obligation of the House to "be the Judge of the Elections, Returns, and Qualifications of its own Members," We are fortunate in having in this case more than the evidence collected through the Federal Contested Election Act (FCEA) (2 U.S.C. 381–96 (1981)). We also have the benefit of a U.S. Court of Appeals decision. *Hendon* v. *North Carolina Board of Elections*, No. 82–2122 (4th Cir. June 23, 1983). The ruling provides a fair and impartial analysis that we cannot ignore. The court found unconstitutional the law under which the Hendon-Clarke ballots were counted.

In addition to the ruling on the methods of vote tabulation, Mr. Hendon presented this task force with sufficient evidence to show that he would have won the election if the ballots had been counted in a constitutional manner. The precedents of the House allow us to examine the ballots. Equity and our duties under the Constitution require that we recount those ballots, or, at the very least, set aside the election, declare the seat vacant, and hold a new election.

Mr. Hendon brought this contest under the FCEA on the grounds that the counting and casting of ballots in his congressional race denied voters equal protection of the law. He also filed suit in U.S. District Court for the Western District of North Carolina. The accuracy of the tabulation is crucial because Democrat Clarke defeated incumbent Hendon by 1,325 votes out of 171,047 cast. The 15 counties in the 11th Congressional District employed 4 voting methods: a hand-counted paper ballot listing only the congressional race; a mechanical lever voting machine; an electronic punch card system (CES); and an optically scanned paper ballot system (Airmac). Hendon protested the tabulation of votes on the CES, where voters punched a hole beside the name of a party or candidate and the ballots were counted electronically by machine, and on the Airmac system, where voters used a special pen to mark ballots counted by an optical scanning device. Five counties used these methods.

Hendon's complaint and the fourth circuit's opinion both center on the North Carolina statute permitting a person to vote a straight party ballot by marking a circle above that party's column. More than 50 contests faced 11th Congressional District voters last November. Democrats had candidates for all the races while Republicans fielded less than 10 in some counties. Therefore, a voter wanting to split his ballot and vote for candidates of different parties had to mark a square by each candidate's name. A voter wanting to vote a straight party ticket had to make only one mark.

The court found the application of these statutes unconstitutional because of the way a CES or Airmac ballot with a mark in the straight party circle, but also in the square

of an individual candidate, was counted. Such ballots registered as a straight party vote, with the vote for the individual of the other party not counted. But voters using paper ballots or mechanical lever voting machines could split their tickets, even if they marked the straight party circle, by just marking Hendon's name.

Mr. Hendon provided the task force with convincing evidence that this system of counting votes deprived him of enough votes to change the result of the election. Examining the system, the fourth circuit rules:

> The imposition of a legislative preference for the straight party candidate, when the voter has indicated no such preference, is an arbitrary subversion of the electoral process that serves no compelling State interest.

Mr. Hendon provided the task force with specific evidence that a constitutional tabulation would have given him enough votes to change the outcome through affidavits from disenfranchised voters and through evidence that a manual count necessitated by an election night breakdown of some CES and Airmac machines showed Hendon votes not being counted.

While the fourth circuit found the method of vote counting in the Hendon-Clarke election unconstitutional, it did not order a recount as had been requested and arrayed for by the Hendon forces. Although Mr. Clarke and his supporters have tried to make much of this, the Constitution makes the House the sole judge of the elections of its Members. See *Brit* v. *Board of Canvassers* (172 N.C. 797, 90 S.E. 1005, 1007 (1916)); see also, *Roudebush* v. *Hartke* (405 U.S. 15, 25–26 (1972)); *Keough* v. *Homer* (8 F. Supp. 933 (S.D. Ill. 1933)). The court knew during its deliberations that Mr. Hendon had filed an election contest with the House of Representatives. The court's decision avoids any interference with the constitutional prerogative of a coequal branch of government.

The precedents of the House of Representatives clearly allow us to examine contested ballots to insure the integrity of an election. See *Roush* v. *Chambers* (H.R. Rep. No. 513, 87th Cong., 1st Sess. (1961)); *Moreland* v. *Scharetz* (H.R. Rep. No. 1158, 78th Cong., 1st Sess. (1944)). Faced, as we are, with an election conducted in a manner a U.S. Court of Appeals has found unconstitutional, such is our obligation. As this committee said:

> The power to examine the ballots and to correct both deliberate and inadvertent mistakes and errors shall always remain in the House.

Kyros v. *Emery* (H.R. Rep. No. 760, 94th Cong., 1st Sess. 6 (1975)); (quoting *Brown* v. *Hicks* (H.R. Rep. No. 1328, 64th Cong., 1st Sess. (1916)); see also *Mikva* v. *Young* (H.R. Rep. No. 244, 95th Cong., 1st Sess. (1977)); *Ziebart* v. *Smith* (H.R. Rep. No. 763, 94th Cong., 1st Sess. (1975)); L. Deschler, "Deschler's Precedents of the House of Representatives" (Ch. 8, § 8.4–8.5 (1978)). In previous contests, such recounts have been conducted by bipartisan teams supervised by this committee. See, for example, Kyros against Emery, *supra.* Mr. Hendon has estimated that 64,000 votes are being contested and that the recount would take only 5 days.

The precedents of this House further state that disputed ballots, such as the split ticket ballots in this case, "should be counted on the basis of obvious voter intent." *Mikva* v. *Young* (H.R. Rep. No. 759, 94th Cong., 1st Sess. 4 (1975)). The North Carolina statute holds:

> No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. (N.C. Gen. Stat. § 163–170.)

Indeed, the fourth circuit rules that no compelling State interest existed for the method used to count split tickets on CES and Airmac systems as was done in the 11th Congressional District. Equity and fairness demand that these ballots be recounted so that this election can truly reflect the voters intent.

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.

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

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.

§ 23. One Hundred Second Congress, 1991–1992

There were no election contests considered by the House during the 102d Congress.

§ 24. One Hundred Third Congress, 1993–1994

§ 24.1 McCuen v Dickey

The general election for the office of Representative to Congress from the Fourth District of Arkansas was conducted on November 3, 1992.[1] The general election candidates were Jay Dickey (the Republican candidate), and Bill McCuen (the Democratic candidate). Mr. McCuen was also the Arkansas Secretary of State, and therefore the state official with the responsibility to issue a certificate of election to the winner of the election. An unofficial canvass of votes on December 5, 1992, showed that Mr. Dickey had received 113,004 votes, and that Mr. McCuen had received 102,911 votes. A state circuit court, following a petition by Mr. McCuen, instructed him to issue the requisite certificate of election. On December 23, 1992, such certificate was issued, with the final vote tallies indicating that Mr. Dickey had received 113,009 votes and Mr. McCuen had received 102,918 votes. Mr. Dickey appeared on January 5, 1993, at the opening of the 103d Congress, and was administered the oath of office without objection or challenge.

As noted, Mr. McCuen initially went to state court alleging irregularities with the voting machines used in the election. The court ordered the machines impounded, and the machines were then inspected, with representatives of all parties in attendance. Following the inspection, the court dismissed the complaint, citing lack of jurisdiction over a contested House election.

On December 4, 1992, Mr. McCuen (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. An amended notice of contest was filed the following day, with additional arguments and documents to support the claims made in the initial notice of contest. Contestant alleged that voting machines and ballots had misled voters, and that defective machines failed to properly record or count votes. On January 4, 1993, Mr. Dickey (hereafter "contestee") filed an answer and a motion to dismiss the case. On January 20, 1993, contestant filed a response to the answer and in opposition to the motion to dismiss.

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 103–109, 103d Cong. 1st Sess.

The Committee on House Administration established a task force of three Members to review the pleadings in this case. On February 4, 1993, the task force met to hear oral arguments from the parties. Contestant made four specific allegations: (1) that the form of certain ballots was not in compliance with state law; (2) that the form of certain ballots misaligned candidates' names, making it difficult for voters to select the correct candidate; (3) that programming errors caused incorrect tabulation of votes in some machines; and (4) that voting machines were not properly secured.

The task force rejected each of these arguments as insufficient to overcome the motion to dismiss. The task force considered it "merely conjectural"[2] that the lack of strict compliance with state law affected any votes. Similarly, "no irregularity, sufficient to change the result of the election, could be reasonable inferred"[3] from the form of the ballots used. An expert witness testified that programming errors discovered during the inspection did not affect the congressional races. The lack of proper security for the voting machines was "entirely speculative and without any evidentiary basis."[4] Ultimately, the committee agreed with the assessment of its task force, and concluded that "no credible evidence of irregularities sufficient to change the result of the election"[5] was presented. The committee thus recommended granting contestee's motion to dismiss.

On May 25, 1993,[6] the committee filed its privileged report. By unanimous consent, the House agreed to take up House Resolution 182 (dismissing the contest), which was agreed to by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST JAY DICKEY

Mr. KLECZKA, from the Committee on House Administration, reported the following privileged resolution (H. Res. 182, Rept. No. 103–109) dismissing the election contest against JAY DICKEY, which was referred to the House Calendar and ordered to be printed:

H. RES. 182

Resolved, That the election contest of Bill McCuen, contestant, against Jay Dickey, contestee, relating to the office of Representative from the Fourth Congressional District of Arkansas, is dismissed.

Mr. [Gerald] KLECZKA [of Wisconsin]. Mr. Speaker, I ask unanimous consent for the immediate consideration in the House of the resolution (H. Res. 182) dismissing the election contest against JAY DICKEY.

The SPEAKER pro tempore.[7] The Clerk will report the resolution.

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2. H. Rept. 103–109, 103d Cong. 1st Sess. p. 4.

3. *Id.* at p. 5.

4. *Id.* at p. 6.

5. *Id.* at p. 7.

6. 139 CONG. REC. 11046–47, 103d Cong. 1st Sess.

7. Michael McNulty (NY).

The Clerk read the resolution.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KLECZKA] is recognized for 1 hour.

Mr. KLECZKA. Mr. Speaker, I yield the customary half hour, for the purpose of debate only, to the ranking member of the contested election task force and the full Committee on House Administration, the gentleman from California [Mr.THOMAS], pending which I yield myself such time as I may consume.

Mr. Speaker, to provide the House with a little background, on Tuesday, November 3, 1992, the general election for the Fourth Congressional District in the State of Arkansas was held. This is a largely rural district consisting of 26 counties in the southern half of the State.

The initial results of this election had JAY DICKEY, the Republican candidate, leading Bill McCuen, the Democrat, by 10,093 votes.

On December 4, 1992, Mr. McCuen filed a notice of election contest with the Clerk of the House, based on two contentions: First, that the ballot and voting machines misled voters, and, second, that defective voting machines produced inaccurate totals.

On December 5, 1992, Mr. McCuen filed an amended notice of election contest with the Clerk, providing additional information and arguments in support of his two initial contentions, and providing documentary evidence and exhibits.

Mr. Speaker, on January 27, 1993, pursuant to House Administration Committee rule 16, the chairman of the committee, Mr. ROSE, created a task force to review the election contest. This task force was charged with reviewing the documentary record, receiving oral arguments, and recommending to the committee the disposition of an election contest filed pursuant to 2 U.S.C. 381 through 396, by Mr. McCuen.

The House is given its authority to judge election returns, primarily from article I, section 5 of the Constitution which provides that: "Each House shall be the judge of the elections, returns, and qualifications of its own members * * *." This provision, taken with section 4 or article I, invest in Congress near complete authority to establish procedures and render final decisions relating to the election of its Members.

Although the House could assume complete responsibility for resolving election contests, to date it has declined to do so. Instead, both Chambers have recognized and relied upon State contest and recount procedures to clarify and resolve issues relating to election contests. The State of Arkansas, in this case, however, has chosen not to assert its jurisdiction.

In fact, the Governor of Arkansas, in his letter to the Clerk of the House, certifying the results of the Fourth Congressional District race, stated:

> The enclosed certification should not be interpreted as my position on the merits of the contest. In fact, I am greatly disturbed by the apparent defects in the voting machines in Garland County and by the finding of the Garland County Circuit Court that the voting machines have errors and faults.

Thus, it became the House's obligation to resolve this matter.

I was appointed to chair this task force, which also consisted of Mr. THOMAS of California and the gentleman from Michigan, Mr. KILDEE.

On Thursday, February 4, the task force met and heard testimony on Mr. DICKEY'S motion to dismiss the contest. Upon review of the arguments presented by contestant and

the contestee, the task force unanimously agreed to recommend dismissal, thus reaffirming JAY DICKEY as the duly elected Member of Congress from the Fourth Congressional District of Arkansas.

Mr. Speaker, the members of the task force unanimously agreed that the contestant's allegations were not sufficiently specific to put into serious question either the results of the election, or the propriety of the actions of election and other State and local officials in the conduct of the election, so as to justify proceeding further with an election contest.

It should be noted that in contested election proceedings in the House, the contestant always has the burden of specifically alleging, and supporting with documentation, irregularities sufficient to change the outcome of the election. The contestant must also demonstrate that he is entitled to the seat. If the contestant fails to meet this burden, the Committee on House Administration may suggest dismissal of the contest.

On Wednesday, March 17, the full Committee on House Administration concurred in the task force's decision that the contestant failed to sustain his burden with evidence sufficient to overcome a motion to dismiss. It accordingly moved to favorably report an original resolution dismissing this election contest.

It is therefore the finding of the committee that contestee JAY DICKEY received the highest number of votes cast in the election and was duly elected by the voters of the Fourth Congressional District of the State of Arkansas.

Mr. Speaker, I reserve the balance of my time.

Mr. [Williams] THOMAS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, about a decade ago I addressed the floor of the House on another contested election. I think it is significant to note the differences between the one we have before us today and that one of a decade ago.

The gentleman from Wisconsin [Mr. KLECZKA] correctly pointed out that this was brought to the floor under the Contested Election Act and that we examined the contention of irregularities in the race according to Arkansas law. Over a decade ago, Mr. Speaker, we did not do that. We examined a contest in Indiana brought to the task force by resolution in which a set of rules that existed nowhere in the world, in any State, and especially in the State of Indiana, was used to examine a series of ballots, and that through sheer force of partisan majority an election that had been certified by the secretary of state of Indiana was overturned. I am pleased to say that today we have an election in front of us that was certified by the secretary of state of Arkansas who, by coincidence, happened to be the opponent in this case, Mr. McCuen. And we examined his contentions about whether or not there were irregularities in the ballots, in the voting machines, and in the manner in which people voted in those voting machines in particular areas.

Mr. Speaker, there was an extensive hearing. Evidence was presented. Numerous questions were asked. Followup information was presented. And the chairman, the gentleman from Wisconsin [Mr. KLECZKA], the gentleman from Michigan [Mr. KILDEE], and myself exhausted our questions, and to our satisfaction none of the allegations about irregularities in the election were proved. Under the law of the State of Arkansas our colleague, Mr. DICKEY, was duly elected.

So, Mr. Speaker, it is with extreme pleasure that I come before the Members today and support the majority in asking unanimous consent to move forward House Resolution 182 which finally puts the election contest against Mr. DICKEY to rest, a contest that

never should have been presented, that never had credible evidence to carry it forward, and that put a taint on his election by the people in Arkansas.

The answer is: Mr. DICKEY won the election day, he won on the recount, he won on the challenge in the court, and he won in front of the task force. It seems to me the gentleman from Arkansas [Mr. DICKEY] has been certified more than any other Member of the House, that he truly won that election, and it is about time we move forward with saying so formally, and so I am pleased to ask my colleagues to support House Resolution 182.

Mr. Speaker, I yield back the balance of my time.

Mr. KLECZKA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, after the last comments by the gentleman from California [Mr. THOMAS] I am thinking of withdrawing the resolution. Let us keep the hype up for the gentleman from Arkansas [Mr. DICKEY]. But I will not do so, Mr. Speaker.

Mr. Speaker, I yield back the balance of my 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.

§ 25. One Hundred Fourth Congress, 1995–1996

§ 25.1 Anderson v Rose

The general election for the office of Representative to Congress from the Seventh District of North Carolina was conducted on November 8, 1994.[1] The general election candidates were Charlie Rose (the Democratic candidate), and Robert Anderson (the Republican candidate). The official election returns showed that Mr. Rose had received 62,670 votes, and that Mr. Anderson had received 58,849 votes.

On November 28, 1994, Mr. Anderson filed a complaint against certain county election officials, alleging violations of election laws and other irregularities. The State Board of Elections initially voted to delay certification of the results, but later reversed that decision. The State Bureau of Investigation began an investigation of the alleged violations on November 18, 1994.

On December 28, 1994, Mr. Anderson (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Oversight[2] for its consideration. The committee appointed

1. This summary is derived from the report filed by the Committee on House Oversight relating to this election contest. See H. Rept. 104–852, 104th Cong. 2d Sess.

2. *Parliamentarian's Note:* During the 104th and 105th Congresses, the Committee on House Administration was redesignated as the Committee on House Oversight. *House Rules and Manual* § 724 (2021).

a task force of three Members to review the matter. On February 8, 1995, Mr. Rose (hereafter "contestee") filed a motion to dismiss and a memorandum in support thereof. The task force met on June 9, 1995, and August 3, 1995, to hear testimony from the parties. On August 3, the task force voted both to grant contestee's motion to dismiss, and to refer allegations of Federal law violations to the Department of Justice.

In his notice of contest, the contestant alleged a variety of irregularities in the election, including: illegal voting by those ineligible to vote; tampering with voting machines; illegal conduct by election officials; bribery of voters; harassment of poll workers; and voter intimidation. Contestant also based his claim on the fact that one county increased its turnout from the 1992 election while all other counties saw a decrease in turnout (concluding that only fraud or error explained the difference). Finally, contestant questioned whether contestee fulfilled North Carolina's residency requirements, alleging that contestee was actually an inhabitant of Virginia and therefore ineligible to be elected to a North Carolina seat.

Contestee's motion to dismiss denied the allegations of the contestant, stating that the claims were based on mere conjecture, and that he had not met his burden under the statute to show how the election results would have been changed. Alternatively, contestee argued that contestant failed to take advantage of state remedies for the alleged violations, and should therefore be precluded from advancing those claims with the House.

In its committee report, the Committee on House Oversight articulated a standard for determining whether or not a motion to dismiss should be granted. The committee's standard focused on "credibility," *i.e.,* did the contestant provide "specific, credible allegations"[3] that either showed how the outcome of the election would have been reversed, or that the election as a whole was so tainted by fraud or error as to be inherently unreliable. The committee report attempted to distinguish prior cases (decided when the other party was in the majority) where the motion to dismiss presented "an insurmountable barrier to election contestants."[4] In their report, the majority cited their own prior dissents, from when they were in the minority, that took issue with standards used by the previous majority.

Despite these expressed differences in the standard for evaluating motions to dismiss, the committee nevertheless concluded that the contestant had not met his burden under the statute. The committee report discussed each allegation, and dismissed each as either not credible, insufficiently specific, or as having an uncertain effect on the outcome of the election. The committee also relied heavily on the state investigation and the conclusions of

3. H. Rept. 104–852, 104th Cong. 2d Sess. p. 7.

4. *Id.*

state authorities with respect to the alleged irregularities. Ultimately, the committee agreed that contestant's claims were insufficient to overcome the burdens imposed by the statute, and thus recommended to the House dismissal of the contest.

Minority party Members filed supplemental views to accompany the majority's report. The minority criticized the majority's conduct in all election contests during the 104th Congress, arguing that the majority's standard for evaluating pre–answer motions under the statute was flawed, and inevitably led to "unnecessary and wasteful proceedings."[5] The supplemental views cited earlier precedents that set the bar for contestants to prevail against motions to dismiss very high, so as to deter meritless claims and avoid unnecessary investigations. Ultimately, the disagreement centered on the extent to which contestants must be able to support claims of alleged irregularities in the election with substantive evidence in order to proceed to the discovery stage under the statute. The supplemental views argued that the committee report failed to strike the correct balance between allowing credible claims to move forward and turning aside claims that are unlikely to be substantiated. Nevertheless, the minority ultimately agreed with the majority's conclusion that the contestant in this case did not meet his burden under the statute.

On September 26, 1996,[6] the committee filed its privileged report. By unanimous consent, the House agreed to take up House Resolution 538 (dismissing the contest), which was agreed to by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST CHARLIE ROSE

Mr. THOMAS, from the Committee on House Oversight, submitted a privileged report (Rept. No. 104–852) on the resolution (H. Res. 538) dismissing the election contest against CHARLIE ROSE, which was referred to the House Calendar and ordered to be printed.

Mr. [William] THOMAS [of California]. Mr. Speaker, I ask unanimous consent for immediate consideration of the resolution (House Resolution 538) dismissing the election contest against CHARLIE ROSE.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[7] Is there objection to the request of the gentleman from California?

Mr. [Victor] FAZIO of California. Reserving the right to object, Mr. Speaker, and I obviously do not intend to object, but I would like my colleague, the gentleman from California, to explain the purpose of this resolution.

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

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5. *Id.* at p. 18.

6. 142 CONG. REC. 25242, 104th Cong. 2d Sess.

7. Mark Foley (FL).

Mr. FAZIO of California. I yield to the gentleman from California.

Mr. THOMAS. I thank the gentleman for yielding, Mr. Speaker.

As was announced, this was a resolution dismissing the election contest filed by Mr. Robert Anderson against the gentleman from North Carolina, Mr. CHARLIE ROSE, for the seat in the Seventh Congressional District in North Carolina.

As chairman of the Committee on House Oversight, I appointed a task force from the committee, comprised of the gentleman from Ohio, JOHN BOEHNER, as chairman, the gentleman from Louisiana, WILLIAM JEFFERSON, and the gentleman from Michigan, VERN EHLERS, to hear the matter.

The task force heard allegations of election irregularities and fraud but concluded that there were not sufficient credible allegations that, if proven, would change the outcome of the election.

The task force met on August 3, 1995, and voted unanimously to dismiss the contest. I believe the House clearly should so indicate to the gentleman from North Carolina [Mr. ROSE], since October 25, 1995, the full committee agreed unanimously to recommend dismissal.

I do want to thank the minority for lifting the hold on unanimous consents so we could present this resolution this evening.

Mr. FAZIO of California. Further reserving the right to object, Mr. Speaker, I simply want to join with the gentleman from California [Mr. THOMAS] in removing our colleague, the gentleman from North Carolina [Mr. ROSE], from his 2-year term in purgatory.

With that, Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 538

Resolved, That the election contest of Robert Anderson, contestant, against Charlie Rose, contestee, relating to the office of Representative from the Seventh Congressional District of North Carolina, is dismissed.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 25.2 Haas v Bass

The general election for the office of Representative to Congress from the Second District of New Hampshire was conducted on November 8, 1994.[8] This election contest, however, involved candidates for the Republican primary rather than the general election. Joseph S. Haas, Jr. (hereafter "contestant") lost to Charles F. Bass (hereafter "contestee") in that primary election. The contestee went on to win the general election, and was seated by the House on opening day of the 104th Congress.

On December 6, 1994, contestant filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Oversight[9]

8. This summary is derived from the report filed by the Committee on House Oversight relating to this election contest. See H. Rept. 104–853, 104th Cong. 2d Sess.

9. *Parliamentarian's Note:* During the 104th and 105th Congresses, the Committee on House Administration was redesignated as the Committee on House Oversight. *House Rules and Manual* § 724 (2021).

for its consideration. The committee formed a task force of three Members to review the case. The only allegation made by contestant was that New Hampshire law required all candidates to file an affidavit attesting to the fact that they are not a "subversive person,"[10] and that contestee had failed to abide by this requirement.

Given that the contestant was only a candidate in the primary election and not the general election, the task force first addressed the question of whether contestant had standing to bring an election contest under the Federal Contested Elections Act. The task force concluded that New Hampshire law allows write–in candidates, and thus the contestant was an eligible write–in candidate in the general election.

The task force then turned to the specific allegation of the violation of New Hampshire law. After investigating New Hampshire law, the task force found both that this provision of law had not been enforced in many decades (due to its apparent unconstitutionality), and that it had in fact been formally repealed prior to the 1994 elections.

In its committee report, the committee agreed with the conclusions of its task force that the contestant was unable to offer "any basis"[11] to contradict the presumption that contestee's valid certificate of election entitled him to his seat. The committee thus recommended dismissal of the contest.

On September 26, 1996,[12] the committee filed its privileged report. By unanimous consent, the House agreed to take up House Resolution 539 (dismissing the contest), which was agreed to by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST CHARLES BASS

Mr. THOMAS, from the Committee on House Oversight, submitted a privileged report (Rept. No. 104–853) on the resolution (H. Res. 539) dismissing the election contest against CHARLES F. BASS, which was referred to the House Calendar and ordered to be printed.

Mr. [William] THOMAS [of California]. Mr. Speaker, I ask unanimous consent for immediate consideration in the House of the resolution (H. Res. 539) dismissing the election contest against CHARLES F. BASS.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[13] Is there objection to the request of the gentleman from California?

Mr. [Victor] FAZIO of California. Reserving the right to object, Mr. Speaker, I ask my friend, the gentleman from California, to kindly explain the purpose of this resolution.

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

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10. H. Rept. 104–853, 104th Cong. 2d Sess. p. 3.

11. *Id.* at p. 4.

12. 142 CONG. REC. 25243, 104th Cong. 2d Sess.

13. Mark Foley (FL).

Mr. FAZIO of California. I yield to the gentleman from California.

Mr. THOMAS. I thank the gentleman for yielding to me, Mr. Speaker.

This is, as the last was, a contested election. A task force was appointed, as matter of fact, the identical task force to the one that investigated the North Carolina allegations, the gentleman from Ohio, JOHN BOEHNER, as chairman, the gentleman from Louisiana, WILLIAM JEFFERSON, and the gentleman from Michigan, VERN EHLERS, as members. It was in the State of New Hampshire, in the Second District.

Mr. Haas's claim was based on the application of a New Hampshire statute which required that a candidate file an oath stating that they were not "a subversive person." This statute had not been applied to candidates in New Hampshire elections since 1966, when the State Attorney General notified the Secretary of State that the United States Supreme Court had ruled such oaths unconstitutional.

Therefore, on March 15, the task force voted unanimously to dismiss the contest, and on May 10 the full committee agreed unanimously to recommend dismissal.

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

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 539

Resolved, That the election contest of Joseph Haas, contestant, against Charles F. Bass, contestee, relating to the office of Representative from the Second Congressional District of New Hampshire, is dismissed.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 25.3 Munster v Gejdenson

The election contest of Munster v Gejdenson (Second District of Connecticut) was withdrawn by the contestant before the House could complete its review of the case.[14] The Committee on House Oversight did not issue a report.

§ 25.4 Brooks v Harman

The election contest of Brooks v Harman (36th District of California) was withdrawn by the contestant before the House could complete its review of the case.[15] The Committee on House Oversight did not issue a report.

§ 26. One Hundred Fifth Congress, 1997–1998

§ 26.1 Dornan v Sanchez

14. See *Contested Election Cases in the House of Representatives: 1933 to 2011,* CRS Report 98–194 (Dec. 12, 2011).

15. *Id.*

The general election for the office of Representative to Congress from the 46th District of California was conducted on November 5, 1996.[1] The general election candidates were Robert K. Dornan (the Republican candidate), and Loretta Sanchez (the Democratic candidate). The Orange County Registrar of voters certified the election on November 22, 1996, declaring Ms. Sanchez the winner by 984 votes. Following a state recount requested by Mr. Dornan, Ms. Sanchez's margin of victory was reduced to 979 votes.

On December 4, 1997, state authorities (including the California Secretary of State and the Orange County District Attorney) began investigating alleged instances of vote fraud occurring in the election.

On December 26, 1997, Mr. Dornan (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Oversight[2] for its consideration. On January 7, 1997, Ms. Sanchez (hereafter "contestee") appeared on opening day of the new Congress and was administered the oath of office without objection or challenge.[3]

On January 8, 1997, the committee formed a task force of three Members to review the matter. On January 31, 1997, contestee filed a motion to dismiss the case or, in the alternative, a motion for a more definite statement. On February 10, 1997, the contestant filed an opposition to the motion to dismiss and a response to the motion for a more definite statement. On February 26, 1997, the task force agreed to a request from the contestee to postpone consideration of the motion to dismiss until a field hearing in Orange County could be conducted. The field hearing was conducted on April 19, 1997.

Contestant's notice of contest identified a variety of grounds on which the contest was based, including allegations that more total votes were cast than could be accounted for in county records, that illegal votes had been cast by those not eligible to vote, and that election officials had made tabulation and other errors sufficient to change the result of the election. At the April 19, 1997, hearing, contestant narrowed this claims to: (1) alleged

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1. This summary is derived from the report filed by the Committee on House Oversight relating to this election contest. See H. Rept. 105–416, 105th Cong. 2d Sess.

2. *Parliamentarian's Note:* During the 104th and 105th Congresses, the Committee on House Administration was redesignated as the Committee on House Oversight. *House Rules and Manual* § 724 (2021).

3. *Parliamentarian's Note:* Although no challenge was made to the seating of Ms. Sanchez on opening day, parliamentary inquiries were propounded by both majority party and minority party Members, which established that an election contest was being pursued under the Federal Contested Elections Act, that Ms. Sanchez had appeared with valid credentials from the state of California, and that her seating was without prejudice to the final right to the seat.

voting by noncitizens; and (2) voting irregularities, including improper delivery of absentee ballots, double voting, and phantom voting.

Contestee's motion to dismiss argued that contestant's notice of contest was defective on a number of procedural grounds: that it was not timely filed; that it failed to affirmatively claim a right to contestee's seat; that it was insufficiently specific with regard to its claims; and that contestant had failed to exhaust available state remedies. Contestee's substantive arguments alleged that contestant had failed to make credible allegations of fraud or irregularity sufficient to change the result of the election, and that, with no indication for which candidate illegal votes might have been cast, such illegal votes would be deducted proportionally[4] from both candidates.

By postponing a decision on contestee's motion to dismiss, the task force triggered the discovery process under the Federal Contested Elections Act. On March 10, 1997, contestant's period of discovery commenced, and on March 18, 1997, he issued 24 subpoenas signed by a U.S. district court judge. Ultimately, 20 more subpoenas were issued before May 20, 1997. Contestee's period for discovery commenced on April 9, 1997, but she did not issue any subpoenas.

On April 16, 1997, the committee met to resolve motions to quash or modify the subpoenas issued by contestant. The committee chose to hold in abeyance some subpoenas, to enforce other subpoenas, and also to issue protective orders to protect the privacy interests of organizations or individuals who were issued subpoenas. On May 21, 1997, the committee again met and voted to hold certain subpoenas in abeyance, while denying motions to quash other subpoenas. On September 24, 1997, the committee voted to quash certain subpoenas, modify and enforce other subpoenas, and issue its own interrogatories.[5] The committee also voted to recommend a House resolution urging the U.S. Attorney for the Central District of California to file criminal charges against an organization for failure to comply with a subpoena.[6]

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4. For more on the concept of proportional deduction of improper votes in election contests, see § 12, *supra.*

5. *Parliamentarian's Note:* Pursuant to a committee resolution, such interrogatories would be issued by the chair of the committee after consultation with the ranking minority member. For a one–minute speech by the ranking minority member complaining that such consultation did not take place, see 143 CONG. REC. 21828–29, 105th Cong. 1st Sess. (Oct. 8, 1997).

6. *Parliamentarian's Note:* Contestant had filed a criminal complaint against the organization with the District Attorney in Los Angeles. The committee wrote to the U.S. Attorney's office twice in an attempt to spur action on the matter. Ultimately, the House adopted the resolution recommended by the committee on September 30, 1997. See H. Res. 244, 143 CONG. REC. 20876–85, 105th Cong. 1st Sess.

The committee also took an active role in the investigation by issuing its own subpoenas to the Immigration and Naturalization Service (INS). The committee requested that the INS match its data on undocumented aliens to eligible voters lists from Orange County. The committee also requested access to relevant INS databases. These subpoenas were in addition to the interrogatories and protective orders described above.

Using the data received from INS, the task force "found clear and convincing evidence that 748 invalid votes were cast" in the election.[7] The task force was unable to substantiate other allegations of illegal voting by undocumented aliens. Because the number of confirmed cases of illegal voting was "substantially less than the 979 vote margin"[8] the committee concluded that contest should be dismissed.

Members of the minority filed three separate "minority" or "additional" views to accompany the majority's report. These additional views found fault with the majority's application of the statute, and argued that contestee's motion to dismiss should have been granted at the outset because contestant had failed to show "credible" evidence that the outcome of the election would have been different.[9] The minority party Members also alleged that committee procedures were not followed, that the majority failed to provide documents to the minority, and that the majority failed to consult with the minority as required. Finally, the minority views took issue with the process for determining whether illegal votes had been cast by noncitizens. Ultimately, the minority felt that the majority had misconstrued the applicable burdens of proof under the statute and House precedents, and would have reached the same conclusion (*i.e.*, dismissal of the contest) prior to the extensive discovery that was conducted.

During the course of this election contest, some Members took issue with the conduct of the contestant on the House floor.[10] Ultimately, a resolution, offered as a question of the privileges of the House under rule IX, was adopted barring the contestant from the floor until the election contest was resolved.[11]

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7. H. Rept. 105–416, 105th Cong. 2d Sess. p. 15.

8. *Id.* at p. 16.

9. *Id.* at p. 1026.

10. *Parliamentarian's Note:* Under clause 2(a)(2) of rule IV, contestants in election cases are entitled to floor privileges during the pendency of their cases. In this case, the contestant was a former Member, and as such, he separately had floor privileges pursuant to clause 2(a)(15) of rule IV. *House Rules and Manual* § 678 (2021). For parliamentary inquiries regarding the behavior of the contestant in this case, and whether he should be prohibited from the floor pursuant to clause 4(a)(2) of rule IV, see 143 CONG. REC. 19026, 105th Cong. 1st Sess. (Sept. 17, 1997). For more on floor privileges generally, see Precedents (Wickham) Ch. 4 § 5.

11. H. Res. 233, 143 CONG. REC. 19340–45, 105th Cong. 1st Sess. (Sept. 18, 1997).

As the contest proceeded further into the first session of the 105th Congress, and ultimately into the second session, the minority party began to offer resolutions to dismiss the contest, raised as questions of the privileges of the House. The first such resolution was offered by the Minority Leader and tabled on October 23, 1997.[12] Additional resolutions were offered and laid on the table on October 29, 1997,[13] October 30, 1997,[14] and November 5, 1997.[15] Members also gave notice to offer additional resolutions that were never formally called up for consideration.[16] On November 6, 1997, the House adopted a resolution restricting the noticing and offering of questions of privilege to the Majority Leader and the Minority Leader, and eliminating the requirement that the Speaker designate a time within the two-day period set forth in clause 2(a)(1) of rule IX for consideration of existing resolutions noticed pursuant to rule IX.[17] Before the contest was ultimately resolved, the Minority Leader offered three additional resolutions to dismiss the contest (on November 8, 1997,[18] November 9, 1997,[19] and January 28, 1998).[20]

The Committee on House Oversight filed its privileged report to dismiss the contest on February 11, 1998.[21] On February 12, 1998, House Resolution 355 (dismissing the contest) was offered as a privileged matter by the direction of the committee. A motion to recommit the resolution back to committee with instructions to strike the preamble was rejected. The resolution was adopted by the House, by a vote of 378 yeas, 33 nays, and 19 Members not voting.

The proceedings of February 12, 1998,[22] are as follows:

DISMISSING THE ELECTION CONTEST AGAINST LORETTA SANCHEZ

Mr. [William] THOMAS [of California]. Mr. Speaker, by direction of the Committee on House Oversight, I call up a privileged resolution (H. Res. 355) and ask for its immediate consideration.

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12. H. Res. 276, 143 CONG. REC. 23231–41, 105th Cong. 1st Sess.

13. H. Res. 287, 143 CONG. REC. 23695–96, 105th Cong. 1st Sess.

14. Eight separate resolutions were offered on this day: H. Res. 290, H. Res. 291, H. Res. 292, H. Res. 293, H. Res. 294, H. Res. 295, H. Res. 296, and H. Res. 297. See 143 CONG. REC. 23959–67, 105th Cong. 1st Sess.

15. H. Res. 307, 143 CONG. REC. 24645–53, 105th Cong. 1st Sess.

16. See 143 CONG. REC. 24017–48, 105th Cong. 1st Sess. (Oct. 31, 1997); 143 CONG. REC. 24410–13, 105th Cong. 1st Sess. (Nov. 4, 1997); and 143 CONG. REC. 24596–603, 105th Cong. 1st Sess. (Nov. 5, 1997).

17. H. Res. 305, 143 CONG. REC. 24776–87, 105th Cong. 1st Sess.

18. H. Res. 315, 143 CONG. REC. 25294–96, 105th Cong. 1st Sess.

19. H. Res. 318, 143 CONG. REC. 25721–22, 105th Cong. 1st Sess.

20. H. Res. 341, 144 CONG. REC. 175–76, 105th Cong. 2d Sess.

21. 144 CONG. REC. 1263, 105th Cong. 2d Sess.

22. 144 CONG. REC. 1323–24, 1334, 105th Cong. 2d Sess.

The Clerk read the resolution, as follows:

H. RES. 355

Whereas credible allegations by contestant Robert Dornan of election fraud in the 46th Congressional District of California were received by the House of Representatives and an investigation has been conducted under the authority of the Federal Contested Election Act;

Whereas that investigation was repeatedly hindered and delayed by the lack of cooperation by the Department of Justice, the Immigration and Naturalization Service, and key witnesses;

Whereas the delay and lack of cooperation included the following:

(1) The refusal of the Immigration and Naturalization Service to provide any information to the Committee on House Oversight until the Service was subpoenaed and the failure 8 months after the subpoenas to provide the accurate information needed by the Committee.

(2) The refusal of key witnesses to provide evidence under the provisions of the Federal Contested Election Act.

(3) The refusal of the Department of Justice, in complete disregard of a resolution passed by the House of Representatives, to enforce the Federal Contested Election Act by prosecuting any of the 11 witnesses who refused to comply with the provisions of such Act which require production of evidence on a timely basis;

Whereas despite the lack of full cooperation from witnesses and government agencies, the investigation of the election contest in the 46th Congressional District of California has resulted in evidence that over 700 illegal votes were cast in that election, including votes cast by persons who were not citizens of the United States;

Whereas the evidence of illegal voting comes from the following sources:

(1) The Registrar of Voters of Orange County has indicated that 124 absentee ballots were cast illegally in the November 1996 General Election.

(2) The Committee on House Oversight's comparison of Immigration and Naturalization Service records and Orange County voter registration records provide evidence that more than 600 additional votes were illegally cast in that election;

Whereas the number of votes shown to be illegal by clear and convincing evidence is less than the post-recount 979 vote margin by which the election was decided;

Whereas it is critical that the incidence of illegal voting be reduced and eliminated in future elections and that the ability of investigators in future election contests to detect and punish voter fraud be enhanced;

Whereas the Committee on House Oversight should continue its investigation of illegal voting practices and recommend to the House of Representatives legislative measures to reduce voter fraud and improve the integrity of the voting process; and

Whereas the Committee on the Judiciary and the Committee on Appropriations should closely examine the operations of the Department of Justice and the Immigration and Naturalization Service to ensure that proper steps are being taken to enforce the laws of the United States and accurately provide information on the citizenship status of individuals, as required by Federal law: Now, therefore, be it

Resolved, That the election contest of Robert Dornan, contestant, against Loretta Sanchez, contestee, relating to the office of Representative from the 46th Congressional District of California, is dismissed.

The SPEAKER pro tempore (Mr. [David] CAMP [of Michigan]). The reported resolution constitutes a question of the privileges of the House and may be called up at any time.

The gentleman from California (Mr. THOMAS) is recognized for 1 hour.

Mr. THOMAS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Maryland (Mr. HOYER), pending which I yield myself such time as I may consume.

Mr. Speaker, the resolution before us dismisses the contested election in California's 46th District. That is clearly the substance. The real story is that in the process of examining this particular contested election, it is clear that voter rolls across the country are suspect.

We all know that elections are fundamental to our democracy. Free and fair elections are essential in selecting our Representatives in this Republic. The belief on the part of people who cast their ballot that their ballot may be negated by someone who should

not have been able to vote in an election erodes the fundamental basis of our democracy and our Republic.

There have been attempts in this process to argue that our concern about making sure that only those people who are eligible to be registered and, therefore, eligible to vote, was not the focus of our concern. Their arguments have been that, quite frankly, what we are doing is "racist;" that we are on a "witch hunt."

It is extremely difficult to understand why someone would not want to make sure that voter rolls are accurate. It is without contention, Mr. Speaker, that in those areas involving people who wish to become naturalized citizens that there are enormous problems today. We discovered just this week that the Immigration and Naturalization Service has hired one of the big five accounting firms to examine the way in which their process operates.

We have been accused of racism because we thought we needed some firmer identification than is currently available from the INS. The INS now admits that they are going to look at a proposal which requires digitized photographs and fingerprints at the beginning of the process, in the middle of the process, and at the end of the process.

It just seems to me that if that system is admittedly flawed, and that people have become citizens who should not have become citizens, or, even more regrettably, those private organizations who participated, ostensibly, in bringing this citizenship about, utilized the opportunity to interact with these nascent citizens in a way that put them on voter rolls illegally, has got to be investigated until it is resolved.

Included in the Coopers & Lybrand report is the suggestion that these private operations should be shut down. In the particular contested election in front of us, one of those private organizations, Hermandad Nacional, had 60 percent of the people it registered flawed. That kind of a ratio either indicates sloppiness or an unwillingness to follow the rules. Which clearly indicates we should not use these private organizations. Now, whichever instance it is, it simply means voter rolls are flawed.

Mr. Speaker, I yield 8 minutes to the gentleman from Michigan, (Mr. VERN EHLERS), the chairman of the task force, to give my colleagues an understanding of the details of this particular examination of an election beyond the normal examination of contested elections historically. And thank goodness we are finally looking at the problems behind the surface.

Mr. [Vernon] EHLERS [of Michigan]. Mr. Speaker, I thank the chairman of the committee for yielding me this time. I am pleased to come to the House and report on the results of a very thorough investigation of the DORNAN-SANCHEZ contested election race.

I was given the following charge by the chairman of the committee, when I took this task: I was asked to chair this task force because of my reputation for integrity and honesty, and he emphasized in the initial assignment that he wanted me to be fair, honest, factual and thorough. This charge was reinforced by the Republican leadership of the House several times during the course of this investigation when certain issues came up, and once again I was always encouraged to be fair, honest, factual and thorough in the investigation. And I have certainly attempted to do that because that is the way I want it to be.

It is regrettable that many false charges were made by the minority party, even on the floor of the House, during the course of this investigation. Because I felt it improper for anyone involved in the investigation to comment, I restrained my comments at that time.

Initially, there were several charges made in the contest documents filed by former Representative Dornan. As we examined these, we found that many of them simply could

not be substantiated. But what we did find was that charges of illegal voting, specifically of fraudulent voting by noncitizens, could be substantiated and, in fact, were true.

The initial examination by the registrar of voters of Orange County discovered 124 absentee ballots which were invalid, and so that reduced the 979 vote margin by 124. The California Secretary of State did an independent investigation of the election, along with the Los Angeles office of the Immigration and Naturalization Service, and identified in their first pass 305 noncitizens who had registered to vote and had voted.

Mr. [Steny] HOYER [of Maryland]. Mr. Speaker, will the gentleman yield?

Mr. EHLERS. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I do not want to interrupt the gentleman's statement, but I want to ask him a question to clarify what he just said.

When the gentleman indicated that reduced the margin by 124, am I correct that in order to do that, we would have to assume that all of those votes were cast for the gentlewoman from California (Ms. SANCHEZ)?

Mr. EHLERS. Mr. Speaker, I thank the gentleman for calling that to my attention. I did not mean to imply that. Reducing the margin gets into another issue, but my point is that the reports from the Registrar of Voters and the Secretary of State certainly indicated substantial problems with the election.

Unfortunately, the national headquarters of the INS stopped the process by telling the Los Angeles office they were no longer allowed to cooperate with the California Secretary of State. At that point, the House Oversight Committee asked the INS to cooperate, and again we were told no. All this resulted in approximately a 3-month delay, until the committee issued subpoenas and the INS then responded to the subpoenas. The delay was most unfortunate because we wanted to wrap up the investigation quickly.

Another delay occurred with the subpoenas issued by former Congressman Dornan in an attempt to engage in the discovery process and get more information. All of those subpoenas were ignored by the recipients and no progress was made on that point.

Furthermore, the request by the House to the Department of Justice to enforce the subpoenas resulted in no action and, again, we incurred approximately a 3-month delay.

Finally, the Congress itself issued subpoenas to a few crucial witnesses and organizations, and after considerable work on our part and their part, they responded and we did get some information, although it is still in question as to how thorough that was.

I give this only by background to illustrate some of the difficulties encountered by the task force in attempting to ascertain the truth and, as I said, to be fair, honest, factual, and thorough.

Let me give a very brief report of the process and of the discoveries we made. This chart looks very complex because it is, and it is very hard to read because there is a lot of information on one sheet. I will not go through it in detail; I simply want to illustrate that the process started by getting a computer tape of the Orange County voter registration list, computer tapes of the INS database, and running comparisons. And that is what we started from.

The rest of the work primarily was going through the results of the computer match because we wanted to determine to the maximum extent possible what names had to be eliminated because they had proof of citizenship at time of registration to vote. So most of the work, contrary to what one might expect from a Republican majority task force, was not devoted to finding additional noncitizen voters but rather to prove that we could verify and document the results presented here.

Let me report now on what we discovered in terms of number of votes. After doing the computer check, eliminating obvious mismatches, we had an original number of 7,841

suspect votes. Upon further examination, going through not just the INS computer tapes but also through the INS written records and trying to clear up the many discrepancies we encountered, we discovered that 5,303 of the 7,841 actually were citizens and were legitimate registrants. So we subtracted that from the 7,841 and that indicated we still had 2,538 suspect registrants. Then, checking the voter records carefully, we determined that 1,718 of them, even though they had registered illegally, did not vote and so, therefore, had no impact on the election.

But it does illustrate the point that the chairman of the committee made a moment ago, this is definitely a matter of concern. Altogether, we have approximately 2,500 illegal registrants discovered in our process; and that has to be taken care of as a separate issue, through further legislation. That indicated that there were still 820 suspect registrants who did vote in the November 1996 election.

At that point we went into extensive examination of the data to try to document in the best possible way those that we could be certain were illegal noncitizens who voted, and the number that emerged was 624. We had circumstantial evidence that an additional 196 had voted but were unable to document it to my and our satisfaction; and, therefore, we decided not to include those in the total of questionable votes.

If we add to the 624 illegal noncitizen voters that we have identified the 124 absentee ballots that had previously been disallowed by the Orange County Registrar of Voters, then we discover 748 illegal votes. And that is the total that we had emerge as the number of illegal votes cast in that election. If one were to include those votes with circumstantial evidence of illegality, there would be 944.

Let me remind my colleagues again, the margin of victory was 979. Let me also remind my colleagues, the three options open to the committee and the task force were, number one, to dismiss the election, simply saying there is not sufficient proof to change the result of the election; number two, to say the evidence was so overwhelming in favor of the contestant that we had to overthrow the election and seat Mr. Dornan; and number three, to simply say, we cannot tell the result of the election, no one can tell the result of the election, and we vacate the seat and the State must call a new election.

It is our recommendation to the committee, and its recommended to the Congress, that we dismiss the election in view of the fact that the number of illegal votes we identified is less than the margin of victory that was previously determined . . .

The SPEAKER pro tempore (Mr. CAMP). The question is on the resolution.

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

Mr, HOYER. 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 378, nays 33, not voting 19, as follows:

[Roll No. 16] . . .

Mr. WATTS of Oklahoma changed the vote from "nay" to "yea."

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.

§ 27. One Hundred Sixth Congress, 1999–2000

There were no election contests considered by the House during the 106th Congress.

§ 28. One Hundred Seventh Congress, 2001–2002

There were no election contests considered by the House during the 107th Congress.

§ 29. One Hundred Eighth Congress, 2003–2004

§ 29.1 Tataii v Case

The general election for the office of Representative to Congress from the Second District of Hawaii was conducted on November 2, 2002.[1] On September 21, 2002, the Hawaii Democratic party held a primary election to choose a candidate for the general election. Rep. Patsy Mink won the primary over Mr. Steve Tataii by over 50,000 votes. On September 27, 2002, Mr. Tataii filed a state election contest with the Hawaii Supreme Court, arguing that Rep. Mink's poor health required either that she withdraw from the contest or that she be disqualified by state election officials or party officials. The Hawaii Supreme Court ruled against Mr. Tataii, noting that the statute "allows, but does not mandate"[2] a candidate's disqualification under such circumstances.

On September 28, 2002, prior to the general election, Rep. Mink died.[3] Nevertheless, her name remained on the ballot, and she received 56 percent of the votes cast. Her death thus caused a vacancy in the Second District of Hawaii, both for the remainder of her term for the 107th Congress, and for the seat in the 108th Congress. Mr. Tataii was a candidate in the special election to fill the seat for the remainder of 107th Congress, but received only 28 votes as compared to Mr. Ed Case, who received over 23,000 votes. Mr. Tataii was also a candidate in the special election to fill the vacancy for the 108th Congress. In that election, Mr. Tataii received only nine votes, as compared to Mr. Case, who received over 33,000 votes.

On January 31, 2003, Mr. Tataii (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. Mr. Case (hereafter "contestee") did not file an answer to the notice of contest nor any other pleadings.

The committee first addressed the issue of standing, noting that the Federal Contested Elections Act applies to general or special elections, but not

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 108–207, 108th Cong. 1st Sess.
2. H. Rept. 108–207, 108th Cong. 1st Sess. p. 2.
3. See Deschler's Precedents Ch. 38 § 2.5.

partisan primary elections. Nevertheless, the committee chose not to recommend dismissal of the case based on this procedural consideration. Instead, the committee addressed the merits of the contestant's argument, which was centered on the activities of the Democratic party in conducting its primary election. Contestant presented no evidence of any kind regarding the primary election, claiming only that a victory in the primary would have assured victory in any subsequent general election because of "Hawaii's traditional Democratic voting for this seat."(4) The committee did not find this reasoning persuasive, reiterating that the burden for contestants under the Federal Contested Elections Act is high, as they must show with substantial evidence that the results of the election would have been different absent any irregularities. The committee concluded that contestant had not met this burden, and thus recommended that the House dismiss the case.

On July 15, 2003,(5) the committee filed its privileged report. By unanimous consent, the House agreed to take up House Resolution 317 (dismissing the contest), which was agreed to by voice vote:

RESOLUTION DISMISSING ELECTION CONTEST AGAINST ED CASE OF HAWAII

Mr. NEY, from the Committee on House Administration, submitted a privileged report (H. Rept. 108–207) on the resolution (H. Res. 317) dismissing the election contest against ED CASE, which was referred to the House Calendar and ordered to be printed.

Mr. [Robert] NEY [of Ohio]. Mr. Speaker, I ask unanimous consent for the immediate consideration of the resolution (H. Res. 317) dismissing the election contest relating to the office of Representative from the Second Congressional District of Hawaii.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.(6) The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 317

Resolved, That the election contest relating to the office of Representative from the Second Congressional District of Hawaii is dismissed.

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

Mr. [John] LARSON of Connecticut. Mr. Speaker, reserving my right to object, I yield to the distinguished chairman to explain the purpose of this resolution.

Mr. NEY. Mr. Speaker, I want to thank the gentleman from Connecticut, our ranking member, for yielding.

I rise in support of House Resolution 317, a bill to dismiss an election contest filed against Representative ED CASE of Hawaii's Second Congressional District. There is bipartisan and complete agreement that the contest fails to state grounds sufficient to change the result of the election and therefore should be dismissed.

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4. H. Rept. 108–207, 108th Cong. 1st Sess. p. 4.

5. 149 CONG. REC. 18031, 108th Cong. 1st Sess.

6. Eugene Shaw, Jr. (FL).

The contestant challenged the late Representative Patsy Mink in the 2002 Democrat primary, where he received 15 percent of the vote. The contestant argues that Representative Mink, who was seriously ill at the time of the primary and passed away 1 week later, should have been disqualified as a primary candidate, that he should have been declared the Democrat nominee by default and that as the nominee he therefore would have been the inevitable general election winner.

The Federal Contested Elections Act does not contemplate considering Notices of Contest that are based on the conduct of primary elections. Consequently, the committee concludes that the basis for the contestant's Notice of Contest falls outside the scope of the FCEA, and it was totally agreed to without any dissension.

Mr. LARSON of Connecticut. Mr. Speaker, further reserving my right to object, I rise in support of the resolution reported unanimously by the Committee on House Administration to dismiss this frivolous election contest against our colleague from Hawaii ED CASE.

Representative CASE won a special election with 44 candidates on the ballot on January 4, 2003, by an overwhelming margin; and I want to commend the gentleman from Ohio (Chairman NEY) for the bipartisan cooperation that has been demonstrated throughout this process.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 29.2 Lyons v Gordon

The general election for the office of Representative to Congress from the Sixth District of Tennessee was conducted on November 5, 2002.[7] The general election candidates were Bart J. Gordon (the Democratic candidate), Robert L. Garrison (the Republican candidate), and J. Patrick Lyons (an Independent candidate). The results provided by the Tennessee Secretary of State indicated that Mr. Gordon had received 117,034 votes, Mr. Garrison had received 57,401 votes, and Mr. Lyons had received 3,065 votes. On December 2, 2002, the Tennessee Secretary of State certified the results of the election, and credentials were issued to Mr. Gordon. Mr. Gordon's credentials were presented to the House of Representatives, and on January 7, 2003, he was duly administered the oath of office without objection or challenge.

On December 5, 2002, Mr. Lyons (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its review. Mr. Gordon (hereafter "contestee") did not submit formal pleadings in this case, but did submit a letter to the committee relating to the matter.

7. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 108–208, 108th Cong. 1st Sess.

Contestant's basis for contesting the election centered on two constitutional claims. The first is that incumbent Members of Congress are ineligible to be elected to the following Congress without first resigning their seats. The second is that retaining membership in the Tennessee Bar made contestee a "judicial officer of the courts of Tennessee"[8] and thus his election to a legislative seat would violate the constitutional principle of separation of powers. The latter violation, in contestant's view, rendered contestee an "insurrectionist" under the 14th Amendment.[9]

In its committee report, the Committee on House Administration did not find contestant's claims persuasive. The contestant "does not advance a single allegation of irregularity or fraud in the conduct of the election."[10] Instead, contestant's constitutional arguments only addressed the issue of contestee's ineligibility and provided no "nexus"[11] between this allegation and contestant's right to the seat in question. Ultimately, the committee concluded that the alleged controversy should be viewed more properly as a qualifications case rather than an election contest.[12] The committee thus recommended dismissal of the case.

On July 15, 2003,[13] the committee filed its privileged report. By unanimous consent, the House adopted House Resolution 318 (dismissing the contest):

RESOLUTION DISMISSING ELECTION CONTEST AGAINST BART GORDON OF TENNESSEE

Mr. NEY, from the Committee on House Administration, submitted a privileged report (H. Rept. 108–208) on the resolution (H. Res. 318) dismissing the election contest against BART GORDON, which was referred to the House Calendar and ordered to be printed.

Mr. [Robert] NEY [of Ohio]. Mr. Speaker, I ask unanimous consent for the immediate consideration of the resolution (H. Res. 318) dismissing the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[14] The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 318

Resolved, That the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee is dismissed.

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8. H. Rept. 108–208, 108th Cong. 1st Sess. p. 2.

9. *Id.*

10. *Id.* at p. 4.

11. *Id.* at p. 3.

12. For similar cases, see Mack v Stokes, § 15.4, *supra;* Lyons v Gordon, § 30.1, *infra.*; and Cox v McCrery, § 31.5, *infra.* See also § 5, *supra.* For qualifications generally, see Precedents (Smith) Ch. 7 § 3.

13. 149 CONG. REC. 18032, 108th Cong. 1st Sess.

14. Eugene Shaw, Jr. (FL).

The SPEAKER pro tempore (Mr. SHAW). Is there objection to the request of the gentleman from Ohio?

Mr. [John] LARSON of Connecticut. Mr. Speaker, reserving the right to object, I yield to the distinguished chairman, the gentleman from Ohio (Mr. NEY), to explain the purpose of this resolution.

Mr. NEY. Mr. Speaker, I thank the ranking member for yielding.

In keeping with the tradition of the dismissal of "Election Contest Day" here in the U.S. House, I rise in support of House Resolution 318, a bill to dismiss an election contest filed against the gentleman from Texas (Mr. GORDON) in Tennessee's Sixth District.

The contestant, a candidate on the November 2002 ballot against the gentleman from Tennessee (Mr. GORDON), filed a notice of contest under the Federal Contested Elections Act contending that the gentleman from Tennessee (Mr. GORDON) is unqualified for the office because the Constitution bars an incumbent from running for reelection without first resigning his or her seat and being an inactive member of the State Bar Association. The contestant makes no allegations of irregularities, fraud, or wrongdoing in respect to the election of the sixth congressional seat.

The committee finds that challenges to the qualifications of a Member-elect to serve in the Congress fall outside the purview of the FCEA, which was designed to consider allegations relating to the actual conduct of an election. Consequently, the committee concludes that the contestant's arguments regarding the qualifications of the gentleman from Tennessee (Mr. GORDON) to serve in Congress do not constitute grounds sufficient to change the results of the election and, therefore, recommends that this election contest be dismissed.

Again, in the frame of the other resolution, we had full support on this and deem it to be frivolous.

Mr. LARSON of Connecticut. Mr. Speaker, further reserving my right to object, I rise in support of this resolution reported unanimously by the Committee on House Administration, dismissed as a frivolous election contest against our colleague, the gentleman from Tennessee (Mr. GORDON). The gentleman from Tennessee (Mr. GORDON) was reelected with 66 percent of the vote.

Again, I would like to commend the gentleman from Ohio (Chairman NEY) for his fair-handed and fair-minded bipartisan cooperation that has been demonstrated throughout this process.

Mr. NEY. Mr. Speaker, if the gentleman will yield again briefly under his reservation, I would like to thank our ranking member, the gentleman from Connecticut (Mr. LARSON), and members of the committee for their work on these two issues.

Mr. LARSON of Connecticut. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 30. One Hundred Ninth Congress, 2005–2006

§ 30.1 Lyons v Gordon

The general election for the office of Representative to Congress from the Sixth District of Tennessee was conducted on November 2, 2004.[1] The general election candidates were Bart J. Gordon (the Democratic candidate), Nick Demas (the Republican candidate), and Norman R. Saliba (an Independent candidate). Another Independent candidate, J. Patrick Lyons, was also on the ballot. The results provided by the Tennessee Secretary of State indicated that Mr. Gordon had received 167,448 votes, Mr. Demas had received 87,523 votes, Mr. Saliba had received 1,802 votes, and Mr. Lyons had received 3,869 votes. On December 7, 2004, the Tennessee Secretary of State certified the results of the election, and credentials were issued to Mr. Gordon. Mr. Gordon's credentials were presented to the House of Representatives, and on January 4, 2005, he was duly administered the oath of office without objection or challenge.

On December 28, 2004, Mr. Lyons (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. The arguments made by contestant in this case were identical to those raised by the same individual, with respect to the same seat, in the prior Congress.[2] In both cases, contestant argued that Mr. Gordon (hereafter "contestee") was not qualified to take a seat in the House of Representatives. In neither case did the contestant allege any fraud or irregularities in the election, nor did the contestant dispute the vote totals as reported by state and local officials.

In its committee report, the Committee on House Administration concluded that "as a general matter, challenges to the qualifications of a member–elect to serve in the Congress fall outside the purview of the Federal Contested Elections Act, which was designed to consider allegations relating to the actual conduct of an election."[3] As a result, the contestant had not presented any evidence that would show that the result of the election would have been different. Accordingly, the committee recommended dismissal of the case.

On April 27, 2005,[4] the committee filed its privileged report:

REPORT ON RESOLUTION DISMISSING ELECTION CONTEST RELATING TO OFFICE OF REPRESENTATIVE FROM TENNESSEE'S SIXTH CONGRESSIONAL DISTRICT

Mr.NEY, from the Committee on House Administration, submitted a privileged report (Rept. No. 109–57) on the resolution (H. Res. 239) dismissing the election contest relating

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 109–57, 109th Cong. 1st Sess.
2. See Lyons v Gordon, § 29.2, *supra.*
3. H. Rept. 109–57, 109th Cong. 1st Sess. p. 4.
4. 151 CONG. REC. 7990, 109th Cong. 1st Sess.

to the office of Representative from the Sixth Congressional District of Tennessee, which was referred to the House Calendar and ordered to be printed.

The same day,[5] by unanimous consent, the House adopted House Resolution 239 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE SIXTH CONGRESSIONAL DISTRICT OF TENNESSEE

Mr. [Robert] NEY [of Ohio]. Mr. Speaker, I offer a resolution (H. Res. 239) dismissing the election relating to the office of Representative from the Sixth Congressional District of Tennessee, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[6] Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 239

Resolved, That the election contest relating to the office of Representative from the Sixth Congressional District of Tennessee is dismissed.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 31. One Hundred Tenth Congress, 2007–2008

§ 31.1 Gonzalez v Diaz–Balart

The general election for the office of Representative to Congress from the 21st District of Florida was conducted on November 7, 2006.[1] The general election candidates were Frank J. Gonzalez (the Democratic candidate), and Lincoln Diaz–Balart (the Republican candidate). On November 20, 2006, the Florida Elections Canvassing Commission certified the following results: 66,784 votes for Mr. Diaz–Balart, and 45,522 votes for Mr. Gonzalez. On November 22, 2006, the Florida Secretary of State issued credentials to Mr. Diaz–Balart. Mr. Diaz–Balart's credentials were presented to the House of Representatives, and on January 4, 2007, he was duly administered the oath of office without objection or challenge.

On December 20, 2006, Mr. Gonzalez (hereafter "contestant") filed a notice of contest, which was received in the House on December 28 and officially delivered to the Clerk on January 3, 2007. In the notice of contest,

5. 151 CONG. REC. 7994, 109th Cong. 1st Sess. (Apr. 27, 2005).

6. Michael Simpson (ID).

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 110–175, 110th Cong. 1st Sess.

contestant alleged that the voting machines used in the elections had been "hacked or had their data tabulations altered by electronic means."[2] Contestant further argued that the lack of a verified paper trail made any recount based on the original electronic totals inherently inaccurate. On January 17, 2007, Mr. Diaz–Balart (hereafter "contestee") filed a motion to dismiss the contest based on the failure to file a timely notice of contest pursuant to the Federal Contested Elections Act (FCEA).

In its committee report, the Committee on House Administration noted that the primary argument advanced by the contestant was that voting machines in a neighboring congressional district registered inaccurate totals, and the same type of voting machines were used in the 21st District. The committee viewed this evidence as irrelevant, as it presented no direct evidence that the machines in the 21st District were affected. The committee also concluded that contestant's allegation of misconduct and insufficient testing of voting equipment by election officials was not persuasive, absent some evidence that such irregularities affected the outcome of the election. "For the Committee to come to any other conclusion would be to remove the presumption of regularity that attaches to the state certification and would make all elections open to contest and investigation based on mere conjecture or speculation."[3] The committee thus recommended dismissal of the case.

In the minority view filed with the committee's report, Members from the minority party agreed with the ultimate conclusion, but would have dismissed the case on procedural grounds. The minority views focused on the temporal requirements of the FCEA. Specifically, they argued that the notice of contest, though dated December 20, 2006 (*i.e.*, within the 30–day time frame laid out by the statute), was not actually received by the Clerk until January 3, 2007. Thus, the minority would have found the filing of that initial pleading untimely, and would have dismissed the case on that basis.

On June 6, 2007,[4] the committee filed its privileged report:

REPORT ON HOUSE RESOLUTION 459, DISMISSING ELECTION CONTEST RELATING TO OFFICE OF REPRESENTATIVE FROM 21ST CONGRESSIONAL DISTRICT OF FLORIDA

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted a privileged report (Rept. No. 110–175) on the resolution (H. Res. 459) dismissing the election contest relating to the office of Representative from the Twenty-first Congressional District of Florida, which was referred to the House Calendar and ordered to be printed.

2. H. Rept. 110–175, 110th Cong. 1st Sess. p. 2.

3. H. Rept. 110–175, 110th Cong. 1st Sess. p. 4.

4. 153 CONG. REC. 14661, 110th Cong. 1st Sess.

On June 12, 2007,[5] by unanimous consent, the House adopted House Resolution 459 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE TWENTY-FIRST CONGRESSIONAL DISTRICT OF FLORIDA

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 459 in the House.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 459

Resolved, That the election contest relating to the office of Representative from the Twenty-first Congressional District of Florida is dismissed.

The SPEAKER pro tempore.[6] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 31.2 Curtis v Feeney

The general election for the office of Representative to Congress from the 24th District of Florida was conducted on November 7, 2006.[7] The general election candidates were Clint Curtis (the Democratic candidate), and Tom Feeney (the Republican candidate). On November 20, 2006, the Florida Elections Canvassing Commission certified the following results: 123,795 votes for Mr. Feeney, and 89,863 votes for Mr. Curtis. Consequently, the Florida Secretary of State issued credentials to Mr. Feeney. Mr. Feeney's credentials were presented to the House of Representatives, and on January 4, 2007, he was duly administered the oath of office without objection or challenge.

On December 20, 2006, Mr. Curtis (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. In his notice of contest, contestant alleged that voting machines did not record accurate vote totals, and that they had been "hacked and the software manipulated."[8] Contestant also alleged that election officials did not take "necessary procedural safeguards"[9] to ensure that voting machines were not tampered with.

5. 153 CONG. REC. 15453, 110th Cong. 1st Sess.

6. John Salazar (CO).

7. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 110–176, 110th Cong. 1st Sess.

8. H. Rept. 110–176, 110th Cong. 1st Sess. p. 2.

9. *Id.*

On January 19, 2007, Mr. Feeney (hereafter "contestee") filed a motion to dismiss the contest. The motion to dismiss argued that contestant had not claimed a right to the seat in question, and had not supported his allegations with evidence sufficient to change the result of the election.

In its committee report, the Committee on House Administration addressed five separate categories of alleged errors, fraud, or voting machine irregularities. The committee found that the contestant did not provide substantial evidence to support his claims, relying instead on historical trends, polls, and other data to conclude that the election must have been poorly administered. Even if the contestant's claims of errors and irregularities were taken as true, no direct evidence was presented that would have shown how the outcome of the election would have been reversed. The committee concluded that contestant's claims were "built on shifting sands of speculation and conjecture."[10] It therefore recommended dismissal of the contest.

On June 6, 2007,[11] the committee filed its privileged report:

REPORT ON HOUSE RESOLUTION 461, DISMISSING ELECTION CONTEST RELATING TO OFFICE OF REPRESENTATIVE FROM 24TH CONGRESSIONAL DISTRICT OF FLORIDA

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted a privileged report (Rept. No. 110–176) on the resolution (H. Res. 461) dismissing the election contest relating to the office of Representative from the Twenty-fourth Congressional District of Florida, which was referred to the House Calendar and ordered to be printed.

On June 12, 2007,[12] by unanimous consent, the House adopted House Resolution 461 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE TWENTY-FOURTH CONGRESSIONAL DISTRICT OF FLORIDA

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 461 in the House.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 461

Resolved, That the election contest relating to the office of Representative from the Twenty-fourth Congressional District of Florida is dismissed.

The SPEAKER pro tempore.[13] Is there objection to the request of the gentleman from Pennsylvania?

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10. *Id.* at p. 4.

11. 153 CONG. REC. 14661, 110th Cong. 1st Sess.

12. 153 CONG. REC. 15453, 110th Cong. 1st Sess.

13. John Salazar (CO).

There was no objection.
The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 31.3 Russell v Brown–Waite

The general election for the office of Representative to Congress from the Fifth District of Florida was conducted on November 7, 2006.[14] The general election candidates were Virginia Brown–Waite (the Republican candidate), and John Russell (the Democratic candidate). On November 20, 2006, the Florida Elections Canvassing Commission certified the following results: 162,421 votes for Mrs. Brown–Waite, and 108,959 votes for Mr. Russell. On November 22, 2006, the Florida Secretary of State issued credentials to Mrs. Brown–Waite. Mrs. Brown–Waite's credentials were presented to the House of Representatives, and on January 4, 2007, she was duly administered the oath of office without objection or challenge.

On January 3, 2007, Mr. Russell (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its review. Contestant argued that votes were not accurately recorded by the voting machines used in the election because "their data tabulations [had been] altered by electronic means."[15] Because the voting machines did not provide a verified paper trail, contestant alleged that no accurate recount could be conducted. On January 17, 2007, Mrs. Brown–Waite (hereafter "contestee") filed a motion to dismiss the contest. Contestee argued that contestant's notice of contest was not timely filed pursuant to statutory requirements, and should be rejected on that basis.

In its committee report, the Committee on House Administration noted that the only direct evidence of discrepancies in the voting process were affidavits submitted by the contestant alleging that six votes in one precinct were different than those recorded. Given that the margin of victory in the election was over 50,000 votes, the committee concluded that the contestant had not demonstrated how the alleged irregularities would have changed the result of the election. The committee further found that "contestant's musing" about the possibility of software error or manipulation of the electronic voting machines "does not form the basis for a cognizable claim."[16]

Members of the minority party submitted minority views to accompany the committee's report. Those views agreed with the decision to dismiss the case, but would have done so for procedural reasons. Specifically, the minority would have considered the contestant's notice of contest as not timely

14. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 110–178, 110th Cong. 1st Sess.

15. H. Rept. 110–178, 110th Cong. 1st Sess. p. 2.

16. *Id.* at p. 4.

filed under the statute, and would have thus dismissed the case on that basis.

On June 6, 2007,[17] the committee filed its privileged report:

REPORT ON HOUSE RESOLUTION 463, DISMISSING ELECTION CONTEST RELATING TO OFFICE OF REPRESENTATIVE FROM FIFTH CONGRESSIONAL DISTRICT OF FLORIDA

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted a privileged report (Rept. No. 110–178) on the resolution (H. Res. 463) dismissing the election contest relating to the office of Representative from the Fifth Congressional District of Florida, which was referred to the House Calendar and ordered to be printed.

On June 12, 2007,[18] by unanimous consent, the House adopted House Resolution 463 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE FIFTH CONGRESSIONAL DISTRICT OF FLORIDA

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 463 in the House.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 463

Resolved, That the election contest relating to the office of Representative from the Fifth Congressional District of Florida is dismissed.

The SPEAKER pro tempore.[19] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 31.4 Jennings v Buchanan

The general election for the office of Representative to Congress from the 13th District of Florida was conducted on November 7, 2006.[20] The general election candidates were Christine Jennings (the Democratic candidate), and Vern Buchanan (the Republican candidate). In that election, Mr. Buchanan received 119,105 votes and Mrs. Jennings received 118,737 votes, giving Mr. Buchanan a margin of victory of 368 votes. A recount ordered by the Florida Elections Canvassing Commission pursuant to state law increased the margin of victory by one vote. On November 20, 2006, the Florida Elections

17. 153 CONG. REC. 14661, 110th Cong. 1st Sess.

18. 153 CONG. REC. 15453, 110th Cong. 1st Sess.

19. John Salazar (CO).

20. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 110–528, 110th Cong. 2d Sess.

Canvassing Commission certified these results as final. Mr. Buchanan's credentials were presented to the House of Representatives and on January 4, 2007, he was duly administered the oath of office without objection or challenge.[21]

Florida officials discovered a potential undercount in the vote in Sarasota County, and on November 9, 2006, an audit was conducted at the behest of the Florida Secretary of State. The final audit report, released on February 23, 2007, concluded that there was no evidence to suggest that the electronic voting machines used in the election failed to properly record votes.

Mrs. Jennings filed a contested election suit in state court, arguing that votes cast in Sarasota County were not properly recorded due to malfunctioning voting machines. Mrs. Jennings sought access to the machines and their software in order to test their accuracy. On December 29, 2006, a state judge denied this request. This decision was upheld at the appellate level on June 18, 2007, and no further state court proceedings occurred before Mrs. Jennings ultimately withdrew her challenge in the courts on November 26, 2007.

On December 20, 2006, Mrs. Jennings (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its consideration. Contestant took issue with the state recount, calling it a "meaningless exercise"[22] because there was no separate paper trail to verify the results. Contestant also presented statistical evidence of the undervote in Sarasota County, and provided affidavits from individuals who claimed to have had difficulty registering votes for the congressional seat at issue. On January 19, 2007, Mr. Buchanan (hereafter "contestee") filed a motion to dismiss the contest, citing the findings of the state audit of the voting machines.

On February 7, 2007, the chair of the committee (Rep. Millender–McDonald of California) reached an agreement with Sarasota County officials to safeguard half of the voting machines for further testing. On March 23, 2007, the committee established a task force to review the matter. The task force first met on May 2, 2007, and voted to retain the services of the Government Accountability Office to conduct an inspection of the machines. The

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21. *Parliamentarian's Note:* Although no challenge was made to the seating of Mr. Buchanan on opening day, parliamentary inquiries were propounded by both majority party and minority party Members, which established that an election contest was being pursued under the FCEA, that Mr. Buchanan had appeared with valid credentials from the state of Florida, and that his seating was without prejudice to the final right to the seat. See 153 CONG. REC. 5, 110th Cong. 1st Sess. (Jan. 4, 2007).

22. H. Rept. 110–528, 110th Cong. 2d Sess. p. 6.

final Government Accountability Office report, delivered to the task force on February 8, 2008, determined that "the voting systems used in Sarasota County did not contribute to the undervote."[23] The task force thus voted to recommend dismissal of the case.

In its committee report, the Committee on House Administration agreed with the conclusions of the task force, noting that "only clear and convincing evidence can provide the basis to overcome the presumption of the regularity accorded a State's certified results."[24] The committee thus concluded that the contest should be dismissed.

On February 25, 2008,[25] the House adopted a special order of business by unanimous consent and immediately considered House Resolution 989 (dismissing the contest) pursuant to such order. The resolution was agreed to by voice vote:

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE 13TH CONGRESSIONAL DISTRICT OF FLORIDA

Mr. [Charles] GONZALEZ [of Texas]. Madam Speaker, I ask unanimous consent that it shall be in order at any time to consider in the House, House Resolution 989; that the resolution shall be considered as read; and that the previous question shall be considered as ordered on the resolution to its adoption without intervening motion except 10 minutes of debate equally divided and controlled by the chairman and the ranking minority member of the Committee on House Administration, or their designees.

The SPEAKER pro tempore.[26] Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. GONZALEZ. Madam Speaker, pursuant to the previous order, I call up House Resolution 989 and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 989

Resolved, That the election contest relating to the office of Representative from the Thirteenth Congressional District of Florida is dismissed.

The SPEAKER pro tempore. Pursuant to the order of the House of today, the gentleman from Texas (Mr. GONZALEZ) and the gentleman from California (Mr. MCCARTHY) each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. GONZALEZ. Madam Speaker, I would ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks in the RECORD on this resolution.

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23. *Id.*

24. *Id.* at p. 12.

25. 154 CONG. REC. 2426–28, 110th Cong. 1st Sess.

26. Tammy Baldwin (WI).

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

There was no objection.

Mr. GONZALEZ. Madam Speaker, I yield myself as much time as I may consume.

On February 12, the Committee on House Administration unanimously recommended dismissal of the election contest relating to the 13th Congressional District of Florida.

The late chairwoman, Juanita Millender-McDonald, established a task force to investigate this contested election in which over 18,000 ballots did not show a vote cast in the United States congressional race in Sarasota County, Florida. The task force consisted of Representative ZOE LOFGREN and Representative KEVIN MCCARTHY of California, and I had the honor of serving as the Chair of the task force.

After the task force established the need to conduct an investigation, every vote by the task force to determine the scope and direction in the investigation was, in fact, unanimous.

I want to thank the members of the task force for their dedication to the investigation and the Government Accountability Office for a systematic investigation of the voting equipment. I would also like to thank both the majority and the minority staffs, along with the House recording studio.

The task force authorized the GAO to investigate whether the voting machines used in Sarasota County contributed to the unusually high number of undervotes. The task force also directed the GAO to evaluate whether additional testing was needed. After the GAO recommended further testing in October, the task force directed the GAO to design and execute testing to determine the reliability of the Sarasota voting equipment.

The GAO presented its final findings to the task force on February 8, 2008, when the GAO reported the Sarasota County voting machines did not contribute to the large undervote in the congressional race for the 13th District of Florida.

The GAO acknowledged that the undervote could have been caused by other elements, such as voters who intentionally did not vote in the race or voters who unintentionally did not cast their ballots because of poor ballot design.

However, because the contestant's central argument claimed voting machine malfunction caused the abnormal undervote, the GAO's analysis was limited to the voting machine malfunction issue. Due to the GAO's determination with a high degree of certainty that the voting machines did not cause the undervote, the task force unanimously recommended to the full committee, and the full committee has unanimously recommended to the House, that the contest be dismissed.

I urge Members to vote in favor of this resolution.

Madam Speaker, I reserve the balance of my time.

Mr. [Kevin] MCCARTHY of California. Madam Speaker, I yield 3 minutes to the ranking Republican on the full committee, the gentleman from Michigan (Mr. EHLERS).

Mr. [Vernon] EHLERS [of Michigan]. I thank the gentleman for yielding.

Madam Speaker, this is the third time I have served or been involved with a task force dealing with contested elections, and I believe this is by far the best procedure that has been developed and can help serve as a model for future decisions of this sort.

I congratulate the two gentlemen before you, who, representing the majority and the minority, did the yeoman's work on investigating the issue, deciding to pull in the Government Accountability Office, which I think was a good addition to the entire process. A careful examination has made it very clear that there was nothing wrong with the

voting machines in this particular election; and, therefore, the contestant's claims that the undervote was caused by faulty machines is just not valid.

What the real reasons were, we will never know. It could have been ballot design. It could be several other factors that we have considered.

But the simple fact is that Mr. BUCHANAN did win the election, and the results of our vote tonight will demonstrate that. He did, in fact, win the election and will remain as a Member of the Congress.

I want to once again compliment the individuals here. Chairman GONZALEZ of the task force was eminently fair, thorough, and complete in all his evaluations and discussions. Mr. MCCARTHY, in his first time on an assignment of this sort, has carried it out very carefully, very thoroughly and contributed a great deal to the discussions and the decisions.

I am just very proud that the House Administration Committee has completed this task which can be, I can assure you, a very onerous and difficult task; but the committee has completed it very competently, thoroughly and fairly; and the result, I believe, is beyond question.

This will serve as a model for future situations of this sort.

Mr. GONZALEZ. Madam Speaker, I reserve the balance of my time.

Mr. MCCARTHY of California. Madam Speaker, I rise today in support of this resolution to dismiss the election contest related to the results of the 13th Congressional District of Florida race in 2006.

Madam Speaker, I want to congratulate the chairman of this task force, Mr. GONZALEZ. It was a three-member task force with Congresswoman ZOE LOFGREN and myself. Every bit of this contest, as we went through studying it and spent the hours on it, was a unanimous decision. This was a bipartisan movement, a bipartisan investigation; and I just want to thank the chairman for his professionalism, his respect and the ethics in which he carried this out.

In my former life, I was actually a staff member to a former chairman of House Administration, and I was an individual that investigated some contestant elections. I will tell you this is probably the most thorough investigation we have seen.

We knew after the last election that there were races in this body that were even closer, within 100 votes; and we did not contest those as they went. But we wanted to make sure, as Christine Jennings moved this debate and this argument, as we were going through, that we looked at every single one.

I want to thank the State of Florida. Before we even went to study it, they went through analyzing all the machines. We had the GAO look at every ability of the machines, even miscalculating the machines as they came forward to make sure they were still correct.

The American public can be very proud to know that every vote in the 13th District was counted. The outcome was correct, and Congressman VERN BUCHANAN was elected on that day and still elected today. I want to congratulate the work that was done by the task force.

Madam Speaker, I yield back the balance of my time.

Mr. GONZALEZ. Madam Speaker, I just do want to have some parting words to the members of the task force, Congresswoman ZOE LOFGREN, and, of course, my colleague from California, Congressman MCCARTHY, because they really worked very hard. As indicated, all decisions were unanimous, which made the process go smoothly.

I also want to recognize Congressman DAN LUNGREN from California, who is not an official member of the task force but was present during some of the briefings and was very instructive.

The last thought is, of course, that the task force and the full committee simply were acknowledging the responsibility that is laid before this body, and that is to determine the qualifications and who actually will sit and take the oath and have the great privilege of joining us here in what is often referred to as the people's House.

Mr. BRADY of Pennsylvania. Madam Speaker, I rise in support of House Resolution 989.

Madam Speaker, on February 12th the Committee on House Administration unanimously recommended dismissal of the election contest relating to the 13th Congressional district of Florida. The late Chairwoman Juanita Millender-McDonald had established a task force to investigative this contest election in which over 18,000 ballots did not show a vote cast for the U.S. Congressional race in Sarasota County, Florida. Former judge, and our colleague, Representative CHARLES GONZALEZ was appointed Chair, along with Representatives LOFGREN and MCCARTHY as members of the task force. After the task force established the need to investigate, every vote to determine the scope and direction of the investigation was unanimous.

The task force engaged the Government Accountability Office (GAO) to explore whether the voting machines used in Sarasota County contributed to the unusually high number of undervotes. GAO also was instructed to assess whether additional voting machines testing was needed. When GAO recommended further testing in October 2007, the task force directed the GAO to design and execute testing protocols to determine the reliability of the Sarasota County voting equipment.

Last week, the GAO presented its findings and conclusions to the task force. They found that the Sarasota County voting machines did not contribute to the large undervote in the Congressional race for the 13th District of Florida. The GAO acknowledged that the undervote could have been caused by voters who chose not vote for that race, or by voters who did not properly cast their ballots because of poor ballot design. In any case, the machines were not the culprits. Since that time, some groups have attacked the GAO study as imprecise for a host of speculative reasons. However, the Contestant's central argument in the election contest before the committee was that voting machine malfunction caused the abnormal undervote, and GAO's focus of analysis was directed solely to the voting machine malfunction issue.

Under the Federal Contested Election Act, a Contestant must submit allegations that, if proven, would have altered the election outcome. The task force and the Committee on House Administration have conducted a thorough investigation and believe that the findings of the GAO are compelling. Therefore, the Contestant's argument that malfunctioning electronic voting machines caused the 18,000 undervote in Sarasota County was not supported. For this reason, I urge members to support to passage of House Resolution 989 to dismiss this election contest.

Mr. GONZALEZ. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to the order of the House of today, the resolution is considered read and the previous question is ordered.

The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 31.5 Cox v McCrery

The general election for the office of Representative to Congress from the Fourth District of Louisiana was conducted on November 7, 2006.[27] The general election candidates were Jim McCrery (a Republican candidate), Artis R. Cash (a Democratic candidate), Patti Cox (a Democratic candidate), and Chester T. Kelley (a Republican candidate). In that election, Mr. McCrery received 77,078 votes, Mr. Cash received 22,757 votes, Mrs. Cox received 17,788 votes, and Mr. Kelley received 16,649 votes. Based on these results, Mr. McCrery was certified as the winner of the election on November 20, 2006.

On December 20, 2006, Mrs. Cox (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its consideration. Contestant did not allege any fraud or mistake in the election itself, but claimed that Mr. McCrery was not an inhabitant of the state of Louisiana (as required by the Constitution) and was therefore not qualified to serve as a Member of Congress from the Fourth District. On January 18, 2007, Mr. McCrery (hereafter "contestee") filed an answer and a motion to dismiss the case. Contestee's response included an affidavit from the property owner of his Louisiana residence indicating that he had maintained that residence during the requisite period.

In its committee report, the Committee on House Administration stated unequivocally that "this contest should not have been brought before the House under the FCEA" and that "a challenge to the qualifications of a Member is not treated as an election contest."[28] It therefore concluded that the contestant had not made a proper claim of a right to the seat in question, and that the contest should therefore be dismissed.

On June 6, 2007,[29] the committee filed its privileged report:

> REPORT ON HOUSE RESOLUTION 462, DISMISSING ELECTION CONTEST RELATING TO OFFICE OF REPRESENTATIVE FROM FOURTH CONGRESSIONAL DISTRICT OF LOUISIANA
>
> Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted a privileged report (Rept. No. 110–177) on the resolution (H. Res. 462) dismissing the election contest relating to the office of Representative from the Fourth Congressional District of Louisiana, which was referred to the House Calendar and ordered to be printed.

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27. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 110–177, 110th Cong. 1st Sess.

28. H. Rept. 110–177, 110th Cong. 1st Sess. p. 3.

29. 153 CONG. REC. 14661, 110th Cong. 1st Sess.

On June 12, 2007,[30] by unanimous consent, the House adopted House Resolution 462 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE FOURTH CONGRESSIONAL DISTRICT OF LOUISIANA

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 462 in the House.

The Clerk read the title of the resolution.

The text of the resolution is as follows:

H. RES. 462

Resolved, That the election contest relating to the office of Representative from the Fourth Congressional District of Louisiana is dismissed.

The SPEAKER pro tempore.[31] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 32. One Hundred Eleventh Congress, 2009–2010

§ 32.1 Tataii v Abercrombie

The general election for the office of Representative to Congress from the First District of Hawaii was conducted on November 4, 2008.[1] (The general election candidates were Neil Abercrombie (the Democratic candidate), and Steve Tataii (the Republican candidate). In that election, Mr. Abercrombie received 154,208 votes and Mr. Tataii received 38,115 votes. Mr. Abercrombie was certified by the Office of Elections for the State of Hawaii as the winner on November 24, 2008, though the certification was not received by the Clerk of the House until December 16, 2008. Mr. Abercrombie's credentials were presented to the House of Representatives, and on January 6, 2009, he was duly administered the oath of office without objection or challenge.

On January 16, 2009, Mr. Tataii (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. Contestant also filed an election

30. 153 CONG. REC. 15453, 110th Cong. 1st Sess.

31. John Salazar (CO).

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 111–68, 111th Cong. 1st Sess.

contest with the Supreme Court of Hawaii. Mr. Abercrombie (hereafter "contestee") did not file any pleadings in this case.

The sole basis for contestant's challenge was that contestee refused to engage in a televised debate with the contestant. Had voters been given the opportunity to see the candidates debate one another, contestant argued, the result of the election would have been different.

In its committee report, the Committee on House Administration noted, as a threshold matter, that contestant's notice of contest appeared to have been untimely filed. However, given that "contestant may have been given inaccurate advice on exhausting state remedies and timely filing"[2] the committee chose to review the case on its merits rather than dismiss the case solely on procedural grounds.

With respect to contestant's claims, the committee was not persuaded that contestant had carried his burden under the statute. Contestant offered no direct evidence that votes would have been changed had the public debate occurred. Contestant provided only "unsupported speculation"[3] and nothing that would "remove the presumption of regularity that attached to the state certification of the election."[4] Thus, the committee recommended dismissal of the case.

On March 31, 2009,[5] the committee filed its privileged report, and by unanimous consent, the House adopted House Resolution 303 (dismissing the contest):

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

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted a privileged report (Rept. No. 111–68) on the resolution (H. Res. 303) dismissing the election contest relating to the office of Representative from the First Congressional District of Hawaii, which was referred to the House Calendar and ordered to be printed.

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I call up House Resolution 303 and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[6] Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The text of the resolution is as follows:

H. RES. 303

Resolved, That the election contest relating to the office of Representative from the First Congressional District of Hawaii is dismissed.

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2. H. Rept. 111–68, 111th Cong. 1st Sess. p. 3.

3. *Id.* at p. 4.

4. *Id.*

5. 155 CONG. REC. 9207, 111th Cong. 1st Sess.

6. Elijah Cummings (MD).

The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 33. One Hundred Twelfth Congress, 2011–2012

There were no election contests considered by the House during the 112th Congress.

§ 34. One Hundred Thirteenth Congress, 2013–2014

§ 34.1 Hayward v Cuellar

The general election for the office of Representative to Congress from the 28th District of Texas was conducted on November 6, 2012.[1] The general election candidates were William Hayward (the Republican candidate), and Henry Cuellar (the Democratic candidate). In that election, Mr. Cuellar received 112,456 votes and Mr. Hayward received 49,309 votes. The Texas Secretary of State certified Mr. Cuellar as the winner of the election on December 6, 2012, and credentials were issued on December 7, 2012. Mr. Cuellar's credentials were presented were presented to the House of Representatives, and on January 3, 2013, he was duly administered the oath of office without objection or challenge.

On December 11, 2012, Mr. Hayward (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was referred to the Committee on House Administration for its review. On January 15, 2013, Mr. Cuellar (hereafter "contestee") filed a motion to dismiss the contest. Contestant argued that fraud and vote tampering marred the election, and that voters who supported the contestant were intimidated from going to the polls. Contestee's motion to dismiss argued that the contestant did not support his claims with evidence that the result of the election would have been changed.

In its committee report, the Committee on House Administration first addressed the threshold question of whether contestant's notice of contest conformed to the statutory requirements. In particular, the committee questioned whether contestant had properly claimed a right to contestee's seat. The notice of contest requested that a new election be held so that the will of the voters (absent the alleged fraud and intimidation) could be

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 113–22, 113th Cong. 1st Sess.

ascertained. The committee ultimately chose to assume that contestant had proper standing to pursue the case, and turned to the merits of contestant's argument.

With respect to contestant's allegations of voter fraud, machine tampering, voter intimidation, vote–buying, and other irregularities, the committee found that contestant offered only "hearsay of unnamed sources and his own testimony."[2] Absent specific, credible evidence of fraud or irregularity, the committee felt bound to recommend granting contestee's motion to dismiss.

On March 19, 2013,[3] the committee filed its privileged report, and by unanimous consent, the House adopted House Resolution 127 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE TWENTY EIGHTH CONGRESSIONAL DISTRICT OF TEXAS

Mrs. MILLER of Michigan, from the Committee on House Administration, submitted a privileged report (Rept. No. 113–22) on the resolution (H. Res. 127) dismissing the election contest relating to the office of Representative from the Twenty Eighth Congressional District of Texas, which was referred to the House Calendar and ordered to be printed.

Mrs. [Candice] MILLER of Michigan. Mr. Speaker, I call up House Resolution 127 and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mr. [Rob] WOODALL [of Georgia]). Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The text of the resolution is as follows:

H. RES. 127

Resolved, That the election contest relating to the office of Representative from the Twenty Eighth Congressional District of Texas is dismissed.

Mr. [Robert] BRADY of Pennsylvania. Mr. Speaker, I agree with the majority that this election contest should be dismissed and that it stands before us without merit. The Contestant notified the House that he should be the winner of the election not based on the finding of any solid evidence but based on rumors, conjecture and hearsay.

Contestant also raises accusations of misconduct by law enforcement and election officials without proof. The Contestant does not support any of his arguments with specific creditable evidence. Based on this, I am voting to grant the Contestee relief by disposing of this contest.

My only regret is that the House was not able to dismiss this frivolous contest earlier in the 113th Congress.

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2. H. Rept. 113–22, 113th Cong. 1st Sess. p. 4.

3. 159 CONG. REC. 3946, 113th Cong. 1st Sess.

The resolution was agreed to.
A motion to reconsider was laid on the table.

§ 34.2 Project Hurt v Cohen

The general election for the office of Representative to Congress from the Ninth District of Tennessee was conducted on November 6, 2012.[4] Project Hurt (hereafter "contestant")[5] was not a candidate in the election, and did not dispute the election results, in which Steve Cohen (hereafter "contestee") was certified as the winner. No claims of fraud or other election irregularities were made by the contestant. Instead, in its notice of contest (filed on March 27, 2013), contestant argued that contestee had failed to respond to contestant's allegations of impeachable offenses committed by the President, and that therefore contestee was "complicit in those massive criminal activities."[6] Absent such activities, contestant alleges that it would have been able to recruit a candidate to successfully challenge contestee in the election.

In its committee report, the Committee on House Administration noted that Project Hurt is not an individual, and therefore does not meet the definition of a contestant under the Federal Contested Elections Act. Even assuming that Project Hurt was qualified to file a notice of contest, the committee further noted that it was not a candidate in the election, and had not formally claimed a right to the seat in question. For these reasons, the committee concluded that "Project Hurt does not have standing to pursue a contest."[7] The committee report also concluded that contestant's notice of contest was not timely filed under the statute.

For these various procedural defects, the committee was persuaded that contestee's motion to dismiss should be granted. It concluded that contestant's claims "do not in any way speak to whether or not [contestee] was validly elected."[8]

On June 26, 2013,[9] the committee filed its privileged report, and by unanimous consent, the House adopted House Resolution 277 (dismissing the contest):

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE NINTH CONGRESSIONAL DISTRICT OF TENNESSEE

Mrs. MILLER of Michigan, from the Committee on House Administration, submitted a privileged report (Rept. No. 113–132) on the resolution (H. Res. 277) dismissing the

4. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 113–132, 113th Cong. 1st Sess.

5. *Parliamentarian's Note:* Project Hurt was a 501(c)(3) not–for–profit organization.

6. H. Rept. 113–132, 113th Cong. 1st Sess. p. 2 (internal quotations omitted).

7. *Id.* at p. 3. The committee reiterated that its analysis would have been the same had the organization's founder, Dwayne Anderson, filed the contest in his individual capacity.

8. *Id.* at p. 3.

9. 159 CONG. REC. 10425, 113th Cong. 1st Sess.

election contest relating to the office of Representative from the Ninth Congressional District of Tennessee, which was referred to the House Calendar and ordered to be printed.

Mrs. [Candice] MILLER of Michigan. Madam Speaker, I call up House Resolution 277 and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.[10] Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The text of the resolution is as follows:

H. RES. 277

Resolved, That the election contest relating to the office of Representative from the Ninth Congressional District of Tennessee is dismissed.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 34.3 Project Hurt v Waters

The general election for the office of Representative to Congress from the 43rd District of California was conducted on November 6, 2012.[11] Project Hurt (hereafter "contestant")[12] was not a candidate in the election, and did not dispute the election results, in which Maxine Waters (hereafter "contestee") was certified as the winner. In its notice of contest filed on March 27, 2013, contestant made similar accusations against contestee as it made in another election contest in the 113th Congress.[13] Specifically, contestant claimed that Ms. Waters was complicit in "massive criminal activities"[14] engaged in by the President, and that such activities negatively affected the recruitment of other candidates.

As with the earlier case,[15] the Committee on House Administration found that Project Hurt: (1) was not a legitimate contestant under the Federal Contested Election Act; (2) was not a candidate in the preceding election (and thus did not have standing to pursue an election contest under the statute); (3) had failed to claim a right to the seat in question; and (4) had failed to file the notice of contest before the deadline imposed by the statute. It therefore recommended dismissal of the case.

On June 26, 2013,[16] the committee filed its privileged report, and by unanimous consent, the House adopted House Resolution 278 (dismissing the contest):

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10. Virginia Foxx (NC).

11. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 113–133, 113th Cong. 1st Sess.

12. *Parliamentarian's Note:* Project Hurt was a 501(c)(3) not–for–profit organization.

13. See Project Hurt v Cohen, § 34.2, *supra.*

14. H. Rept. 113–133, 113th Cong. 1st Sess. p. 2.

15. See Project Hurt v Cohen, § 34.2, *supra.*

16. 159 CONG. REC. 10426, 113th Cong. 1st Sess.

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE FORTY THIRD CONGRESSIONAL DISTRICT OF CALIFORNIA

Mrs. MILLER of Michigan, from the Committee on House Administration, submitted a privileged report (Rept. No. 113–133) on the resolution (H. Res. 278) dismissing the election contest relating to the office of Representative from the Forty Third Congressional District of California, which was referred to the House Calendar and ordered to be printed.

Mrs. [Candice] MILLER of Michigan. Madam Speaker, I call up House Resolution 278 and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore.(17) Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The text of the resolution is as follows:

H. RES. 278

Resolved, That the election contest relating to the office of Representative from the Forty Third Congressional District of California is dismissed.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 35. One Hundred Fourteen Congress, 2015–2016

There were no election contests considered by the House during the 114th Congress.

§ 36. One Hundred Fifteenth Congress, 2017–2018

There were no election contests considered by the House during the 115th Congress.

§ 37. One Hundred Sixteenth Congress, 2019–2020

There were no election contests considered by the House during the 116th Congress.

17. Virginia Foxx (NC).

§ 38. One Hundred Seventeenth Congress, 2021–2022

§ 38.1. Hart v Miller–Meeks

The election contest of Hart v. Miller-Meeks (Second District of Iowa) was withdrawn by the contestant before the House could complete its review of the case. The Committee on House Administration did not issue a report, but the chair of the committee submitted a letter to the Speaker describing the case for inclusion in the *Congressional Record*. That letter of April 28, 2021,[1] is as follows:

LETTER FROM CHAIRPERSON LOFGREN TO SPEAKER PELOSI ON THE DISPOSITION OF THE ELECTION CONTEST IN IOWA'S SECOND CONGRESSIONAL DISTRICT

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 28, 2021

Ms. LOFGREN. Madam Speaker, I include the following letter in the RECORD:

House of Representatives,
Committee on House Administration,
Washington, DC, April 28, 2021.

Hon. NANCY PELOSI,
Speaker of the House,
Washington, DC.

DEAR SPEAKER PELOSI: I hereby report to the House the disposition of the election contest in Iowa's Second Congressional District. Contestant Rita Hart properly filed a notice of contest under the Federal Contested Election Act (FCEA) on December 22, 2020. Contestee Mariannette Miller-Meeks filed motion to dismiss on January 21, 2021. On February 19, 2021, the Committee adopted a resolution to establish procedures in contested election cases properly filed under the FCEA in the 117th Congress. After reviewing additional filings from the parties, including a response to the Contestee's motion filed by the Contestant and a reply filed by the Contestee, the Committee on House Administration voted on March 10, 2021, to postpone disposition of the motion to dismiss. On March 31, 2021,Contestant Hart announced she would withdraw her contest. A letter of withdrawal from Contestant Rita Hart, mailed on March 31, 2021, was transmitted to the Committee on House Administration by the Clerk of the House on April 8, 2021.

After a review of House and Committee precedent in contested elections cases in which the contestant withdraws, I have determined no further House or Committee action is required to dismiss the contest. The contestant's letter of withdrawal was entered into

1. 167 CONG. REC. E464–E465 [Daily Ed.], 117th Cong. 1st Sess.

the record of the Committee on House Administration's Markup on April 28, 2021, and the Committee will take no further action on this contest.

Sincerely,

ZOE LOFGREN,
Chairperson.

§ 38.2. Oberweis v Underwood

The general election for the office of Representative to Congress from the 14th District of Illinois was conducted on November 3, 2020.[2] The general election candidates were Lauren Underwood (the Democratic candidate) and James Oberweis (the Republican candidate). In that election, Ms. Underwood received 203,209 votes and Mr. Oberweis received 197,835 votes (a difference of 5,347 votes). On December 4, 2020, the Illinois State Board of Elections certified the vote totals. Ms. Underwood's credentials were presented to the House of Representatives, she appeared on January 3, 2021, and was administered the oath of office without objection or challenge.[3]

On January 4, 2021, Mr. Oberweis (hereafter the "contestant") filed a notice of contest with the Clerk of the House, which was referred to the committee on House Administration for its review. On February 3, 2021, Ms. Underwood (hereafter the "contestee") filed a motion to dismiss the contest.[4] Contestant argued that the election was marred by fraud and irregularities (particularly in the use of mail–in ballots), violations of Illinois election law, and inconsistent administration of the election by local authorities. The contestee maintained that contestant did not provide evidence sufficient to change the outcome of the election, as required by the Federal Contested Elections Act (FECA).

In its committee report on the case, the Committee on House Administration concluded that contestant had "failed to make a credible and specific claim that he is entitled to office."[5] Contestant claimed that certain county

2. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 117–28, 117th Cong. 1st Sess.

3. *Parliamentarian's Note:* On January 3, 2021, when the seating of Members–elect from six different states was challenged by another Member–elect, the House subsequently adopted a privileged resolution to authorize the Speaker to administer the oath of office to all Members–elect (including Ms. Underwood). Due to social distancing protocols adopting in light of the COVID–19 pandemic, Members–elect were administered the oath in groups. See 167 CONG. REC. H7–H8 [Daily Ed.], 117th Cong. 1st Sess. (Jan. 3, 2021).

4. Pursuant to a committee resolution, both parties were permitted to file additional briefs in support of and in opposition to the motion to dismiss. See H. Rept. 117–28, 117th Cong. 1st Sess., p. 3 (fn. 6).

5. H. Rept. 117–28, 117th Cong. 1st Sess., p. 4.

clerks had mailed vote–by–mail applications to registered voters in those counties—something not provided to voters in other counties. Contestant further argued that this disparate treatment violated the 14th Amendment's Equal Protection Clause, and thus all mailed in ballots from the affected counties should be invalidated. The committee did not consider the invalidation of votes a "constitutionally appropriate remedy," even if the factual and legal claims made by the contestant were accepted.[6] Relying on prior election contests, the committee noted the "longstanding practice of counting all ballots validly cast by eligible voters where the voters' intent is clear."[7] Regarding contestant's additional claims, it was conceded by the contestant that the "number of votes in contention . . . are insufficient, by themselves, to change the outcome of the election."[8] The committee concluded its report by recommending dismissal of the contest for failure to allege facts sufficient to alter the outcome of the election.

Members of the minority party on the committee filed separate views in this case that came to the same conclusion as the majority. However, in the minority's view, the case should have dismissed on procedural grounds alone. The minority concluded that the contestant "failed to effect proper and timely service of process"[9] as required under the Federal Contested Elections Act (FECA). This constituted a "fatal procedural error"[10] and thus the analysis of contestant's substantive claims was unnecessary.

On May 11, 2021,[11] the Committee on House Administration filed its report in the House recommending dismissal of the case:

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Ms. LOFGREN: Committee on House Administration. House Resolution 379. Resolution dismissing the election contest relating to the office of Representative from the Fourteenth Congressional District of Illinois (Rept. 117–28). Referred to the House Calendar.

On May 12, 2021,[12] the House adopted a special order of business resolution providing, *inter alia*, that House Resolution 379 (dismissing the contest) be adopted:

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6. *Id.*
7. H. Rept. 117–28, 117th Cong. 1st Sess., p. 5.
8. *Id.*
9. H. Rept. 117–28, 117th Cong. 1st Sess., p. 8.
10. *Id.*
11. 167 CONG. REC. H2192 [Daily Ed.], 117th Cong. 1st Sess.
12. H. Res. 380, 167 CONG. REC. H2235 [Daily Ed.], 117th Cong. 1st Sess.

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE FOURTEENTH CONGRESSIONAL DISTRICT OF ILLINOIS

The SPEAKER pro tempore.[13] Pursuant to section 7 of House Resolution 380, House Resolution 379 is hereby adopted.

The text of the resolution is as follows:

H. RES. 379

Resolved, That the election contest relating to the office of Representative from the Fourteenth Congressional District of Illinois is dismissed.

13. Henry Cuellar (TX).

Ad Hoc Task Forces
see **Committee Investigations**
Affidavits
use of, §§ 10, 10.2, 17.2
Amended Notice of Contest
see **Notice of Contest**
Anderson v Rose, § 25.1
Answer
failure by contestee to file, §§ 9, 11
response by contestant, § 9
statutory requirements regarding, § 9
Archer v Packard, § 19.1
Ballots
absentee ballots, § 20.2
instructions to election officials to safeguard, §§ 10.5, 20.1
irregularities in offered as grounds, §§ 16.5, 19.1, 19.2, 24.1
proportionate reduction, §§ 12, 26.1
review of, §§ 10, 10.4, 12, 12.1–12.3, 15.1, 15.2
voter intent, standards for evaluating, §§ 12, 20.1
Brooks v Harman, § 25.4
Burden of Proof
generally, §§ 9, 11, 11.1, 16.2, 20.3, 26.1
standards of proof, § 11
Certificates of Election
presentation to Clerk, § 1
presumption of regularity attaches to, §§ 11, 11.3, 15.1, 15.5, 16.2, 16.3, 31.1, 32.1
Clerk of the House
deposition transcription filed with, § 10
notice of contest received by, § 4, 13
Committee Investigations
ad hoc task forces, use of, § 13
ballots, instructions to safeguard, §§ 10.5, 20.1
ballots, review of by committee, §§ 10, 10.4, 12, 12.3, 15.2, 20.1
committee reports, see **Committee Reports**
funding, § 13
generally, § 10
interrogatories, use of, §§ 10, 10.1, 10.5, 26.1
observers, use of, §§ 10, 10.3, 12, 16.5, 16.6, 16.7, 26.1
protective orders, use of, §§ 10, 10.5, 26.1
recounts conducted by committee, §§ 10, 12, 20.1
reports, see **Committee Reports**
subcommittees, use of, § 13
subpoenas, use of §§ 10, 26.1
Committee Reports
additional or supplemental views, §§ 13, 16.2, 16.3, 16.4, 17.4, 19.2, 20.1, 25.1, 26.1, 31.1, 31.3, 38.2
generally, § 13
lack of, §§ 16.8, 25.3, 25.4, 38.1
minority or dissenting views, §§ 13, 16.2, 16.3, 16.4, 17.4, 19.2, 20.1, 25.1, 26.1, 31.1, 31.3, 38.2
privilege, § 13
Committee on Elections
see **Former Committee on Elections**
Committee on House Administration
ad hoc task forces, use of, § 13
election contests, jurisdiction over, §§ 4, 13
history, § 4
investigations by, see **Committee Investigations**
jurisdiction over election contests, §§ 4, 13
referrals to, § 4
reports, see **Committee Reports**
subcommittees on elections, §§ 4, 13
Congress

authority regarding election of Members, §§ 1, 3, 4
Congressional Record
insertion regarding disposition of case, § 38.1
Consideration of Resolution Resolving Contest
amendment, § 13
debate, right to close, § 13
debate time, § 13
division of the question for voting, applicability, § 13
hour rule, § 13
question of consideration, § 20.1
reconsideration, see **Motion to Reconsider**
right to close debate, § 13
unanimous consent, § 13
Constitution
election of Members, provisions regarding, § 1
Contestant
definition, § 1
floor privileges, §§ 13, 26.1
salary payment pending resolution of case, §§ 13, 20.1
Contested Elections
see **Election Contests**
Contestee
definition, § 1
salary payment pending resolution of case, §§ 13, 20.1
Cox v McCrery, § 31.5
Curtis v Feeney, § 31.2
Defenses
change the result, failure to state grounds sufficient to, §§ 6, 6.3
death of contestant, effect on contest, § 6
failure to claim right to seat, §§ 6, 6.4
lack of, §§ 6, 6.7
motion to dismiss, relation to, § 9
notice of contest, defects in, § 8
notice of contest not properly served, §§ 6, 6.2, 17.1, 17.3, 38.2
notice of contest untimely filed, §§ 6, 6.1, 17.3, 26.1, 31.1, 31.3, 32.1, 34.2, 34.3
particularity, failure to state grounds with, §§ 5, 5.1, 6, 6.5, 8, 15.3, 15.4, 16.1, 16.7, 19.2, 26.1
pre–election issues not timely addressed, §§ 6, 19.2, 20.2
prima facie case, failure to make, §§ 6, 6.6
recount as improper relief, §§ 6, 6.4, 12, 15.1, 15.5
service of process, deficiencies in, §§ 6, 6.2, 17.1, 17.3, 38.2
standing, lack of, § 6
state remedies, failure to exhaust, §§ 6, 32.1
statutory defenses, § 6
timeliness, § 6
withdrawal by contestant, effect on contest, §§ 6, 13.1, 25.3, 25.4, 38.1
Dehr v Leggett, § 16.5
Delegates and Resident Commissioners
election contests involving, §§ 7, 20.2
Depositions
Clerk of the House, transcripts filed with, § 10
cross–examination of witnesses, § 10
evidence obtained by, § 10
motion to suppress, §§ 9, 10
oath requirements, § 10
objections raised during, § 10
signature requirement, §§ 9, 10
statutory authority to take, § 9
testimony gathered by, § 10
transcripts filed with Clerk, § 10
transcripts generally, § 10
transcripts, right to review, § 10
waiver of right to review transcript, § 10

Discovery
committee–initiated motions and requests, §§ 9, 26.1
depositions, statutory authority to take, §§ 9, 10
enlarge time for, requests to, §§ 9, 10, 16.2, 17.2
evidence, determinations as to relevancy, § 11
evidence obtained by special committee, § 11
evidence, procedures to obtain, §§ 9, 11, 26.1
evidence regarding prior congresses, §§ 11, 11.2, 15.3, 16.7
generally, §§ 9, 10
interrogatories issued by committee, §§ 9, 10, 10.1, 26.1
interrogatories issued by parties, § 10
motion to dismiss, effect of, §§ 10, 11, 26.1
motions regarding, §§ 9, 10, 26.1
subpoenas, statutory authority to issue, §§ 9, 10
timeliness of motions, § 10
Disposition of Contests
committee report, lack of, §§ 16.8, 25.3, 25.4, 38.1
Congressional Record insertion in lieu of committee report, § 38.1
generally, § 13
resolution, contests resolved by, § 13
withdrawal of notice of contest, §§ 13.1, 15.2, 25.3, 25.4, 38.1
Division of the Question for Voting
applicability to resolution resolving election contests, § 13
Dornan v Sanchez, § 26.1
Election Contests
committee jurisdiction over, § 4
referrals, § 4
statutory provisions regarding, § 2
style, § 1
Election of Members
Congress, authority regarding, §§ 1, 3, 4
constitutional provisions regarding, § 1
states, authority regarding, §§ 1, 3, 4
Election Officials
misconduct by used as grounds, §§ 5, 5.5, 17.3, 19.1, 20.1, 20.3, 31.1, 31.2, 38.2
presumption of good faith, §§ 11, 11.3
Electronic Voting Machines
see **Voting Equipment**
Evidence
see **Discovery**
Exclusion
election contests, relationship to, § 5
Federal Contested Elections Act (FCEA)
burden of proof under, §§ 9, 11
former Contested Elections Act, § 2
generally, § 2
history, § 2
jurisdiction pursuant to, § 13
pleadings under, § 9
recounts not proper relief under, §§ 6, 6.4, 12, 15.1, 15.5
Floor Privileges
contestant prohibited from exercising, § 26.1
contestants, privileges extended to, §§ 13, 26.1
Former Committee on Elections
history, § 4
Fraud
presumptions regarding, §§ 11, 11.2, 11.4, 16.7
Freeman v Mitchell, § 17.2
Gonzalez v Diaz–Balart, § 31.1
Government Accountability Office (GAO)
recounts, use of during, §§ 10, 12, 20.1
voting equipment, analysis of by, §§ 10, 10.4

Grounds
ballot irregularities offered as, §§ 5, 5.3, 16.5, 19.1, 19.2
campaign law, violations offered as, §§ 5, 5.7, 15.1, 15.2, 15.3
generally, § 5
illegal voting offered as, §§ 5, 5.4, 12, 16.2, 16.6, 16.8, 20.3, 25.1, 26.1
improper conduct by contestee offered as, §§ 5, 5.6
intimidation of contestant offered as, §§ 5, 5.10
misconduct by election officials offered as, §§ 5, 5.5, 17.3, 19.1, 20.1, 20.3, 31.1, 31.2, 38.2
misuse of official position offered as, §§ 5, 5.9, 15.3
particularity, requirement to state with, §§ 5, 5.1, 6, 6.5, 15.3, 15.4, 16.1, 16.7, 19.2, 26.1
primary election, fraud or error in offered as, §§ 5, 5.11, 16.5, 25.2, 29.1
qualifications, §§ 5, 5.8, 15.4, 16.1, 16.7, 25.1, 25.2, 29.2, 30.1, 31.5
refusal to debate offered as, §§ 5, 5.11
vote buying or bribery offered as, §§ 17.4, 25.1
voter confusion offered as, §§ 5, 5.3, 16.5, 19.1
voter intimidation offered as, §§ 5, 25.1, 34.1
voting equipment malfunction offered as, §§ 5, 5.2, 16.5, 16.6, 17.2, 19.1, 19.2, 24.1, 25.1, 31.1, 31.2, 31.3, 31.4, 34.1
Haas v Bass, § 25.2
Hansen v Stallings, § 20.3
Hart v Miller–Meeks, § 38.1
Hayward v Cuellar, § 34.1
Hendon v Clarke, § 19.2
Hill and Panlasigui v Clay, § 16.6
Hour Rule
resolution resolving election contest considered under, § 13
House Administration
see **Committee on House Administration**
Interrogatories
committee–issued, §§ 9, 10, 10.1, 10.5, 26.1
parties may issue, § 10
Investigations and Inquiries
see **Committee Investigations**
Jennings v Buchanan, § 31.4
Kyros v Emery, § 15.2
Legislative Reorganization Act of 1946
election contest provisions, § 4
Lowe v Fowler, § 16.7
Lyons v Gordon (108th Congress), § 29.2
Lyons v Gordon (109th Congress), § 30.1
Mack v Stokes, § 15.4
McCloskey v McIntyre, § 20.1
McCuen v Dickey, § 24.1
Moreau v Tonry, § 16.8
Motion for a More Definite Statement
statutory requirements regarding, § 9
timeliness, § 9
use of, §§ 9, 15.5, 16.1, 26.1
Motion to Dismiss
defenses raised in opposition to, § 9
discovery, effect on, §§ 10, 10.5, 11
generally, § 9
memoranda or appendices to, § 9
pleadings in opposition to, § 9
postponement, §§ 9, 10, 10.5, 26.1
supplemental filings, § 9
timeliness, §§ 9, 20.3
Motion to Quash Subpoenas
statutory procedures, §§ 9, 10
use of, §§ 10.1, 17.2, 26.1
Motion to Recommit
resolution resolving election contests, applicability to, §§ 13, 20.1, 26.1

Motion to Reconsider
use of, § 9
Motion to Stay Proceedings
use of, §§ 9, 9.2, 16.2, 17.2
Motion to Suppress a Deposition
statutory authority, §§ 9, 10
Munster v Gejdenson, § 25.3
Notice of Contest
addenda, §§ 9, 9.1
amended notice of contest, §§ 8, 9, 9.1, 15.2, 15.5, 24.1
Clerk, received by, §§ 4, 13
deadline for filing, §§ 8, 8.1, 17.3, 26.1, 31.1, 31.3, 32.1, 34.2, 34.3
defects in used as defense, § 8
form, §§ 8, 8.2
particularity, grounds must be stated with, §§ 5, 5.1, 6, 6.5, 8, 15.3, 15.4, 16.1, 16.7, 19.2, 26.1
service of process requirements, §§ 8, 8.3, 17.1, 17.3, 38.2
signature requirement, § 8
timeliness, §§ 8, 8.1, 17.3, 26.1, 31.1, 31.3, 32.1, 34.2, 34.3
withdrawal of claims contained in, §§ 9.1, 15.2
Oaths
administration to Members–elect, § 1
challenging the right to be sworn, §§ 4, 20.1, 20.3
depositions, requirement to take, § 10
Oberweis v Underwood, § 38.2
Organizations
election contests initiated by, §§ 7, 34.2, 34.3
Particularity
grounds must be stated with, §§ 5, 5.1, 6, 6.5, 8, 15.3, 15.4, 16.1, 16.7, 19.2, 26.1
notice of contest must state grounds with, §§ 5, 5.1, 6, 6.5, 8, 15.3, 15.4, 16.1, 16.7, 19.2, 26.1
Paul v Gammage, § 16.2
Perkins v Byron, § 17.1
Pierce v Pursell, § 16.4
Postponement
motion to dismiss, effect of, §§ 9, 10, 10.5, 26.1
Primary Candidates
election contests initiated by, §§ 7, 7.2, 16.5, 25.2, 29.1
Privileged Reports
see **Committee Reports**
Project Hurt v Cohen, § 34.2
Project Hurt v Waters, § 34.3
Qualifications
grounds for initiating a contest, §§ 5, 5.8, 15.4, 16.1, 16.7, 25.1, 25.2, 29.2, 30.1, 31.5
Question of Consideration
applicability, § 20.1
Questions of Privilege
floor privileges of contestant address via, § 26.1
resolution regarding election contests constitutes, §§ 13, 20.1
Rayner v Stewart, § 17.3
Reconsideration
see **Motion to Reconsider**
Recounts
committee–conducted, §§ 10, 12, 20.1
Government Accountability Office (GAO), use of during, §§ 10, 12, 20.1
improper relief under FCEA, §§ 6, 6.5, 12, 15.1
observers from committee sent to monitor, §§ 10, 10.3, 12, 16.5
standard for requesting, §§ 11, 11.4, 15.5, 16.4, 17.5, 19.2, 20.1, 20.3
state authority and procedures, §§ 2, 12, 12.1, 12.2, 15.1, 15.2, 15.5, 16.3, 16.4, 16.5, 17.5, 20.1, 20.3
Referrals
election contests, referrals to committee, § 4
Resident Commissioners

see **Delegates and Resident Commissioners**
Resignation
effect on case, § 16.8
Russell v Brown–Waite, § 31.3
Saunders v Kelly, § 16.1
Service of Process
notice of contest, §§ 8, 8.3, 17.1, 17.3, 38.2
subpoenas, § 10
Specificity
see **Particularity**
Standing
general or special election candidates, §§ 7, 7.1, 29.1
generally, § 7
organizations, §§ 7, 34.2, 34.3,
primary election candidates, §§ 7, 7.2, 16.5, 25.2, 29.1
write–in candidates, §§ 7, 7.2, 16.5, 25.2
State and Local Election Procedures
authority regarding election of Members, §§ 1, 3, 4
deference accorded, §§ 12, 12.1, 15.2, 20.1, 20.3
directory laws distinguished from mandatory laws, §§ 12, 15.2
generally, §§ 12, 12.1, 12.2
mandatory laws distinguished from directory laws, §§ 12, 15.2
recounts under, §§ 12, 12.1, 12.2, 15.1, 15.2, 15.5, 16.3, 16.4, 16.5, 17.5, 20.1, 20.3
straight–ticket voting, §§ 12, 19.2
Subcommittee on Elections
see **Committee on House Administration**
Subpoenas
committee, issued by, §§ 10, 26.1
evidence obtained by, §§ 10, 26.1
held in abeyance, §§ 10, 10.1, 26.1
modification of, §§ 9, 10, 10.1, 26.1
parties, issued by, §§ 10, 10.1, 17.2, 26.1
penalties for failure to respond, §§ 10, 26.1
quash, motions to, §§ 9, 10, 10.1, 17.2, 26.1
service of process, § 10
statutory authority to issue, § 9
Tataii v Abercrombie, § 32.1
Tataii v Case, § 29.1
Testimony
affidavits, §§ 10, 10.2, 17.2
depositions to obtain, § 10
stipulations, § 10
witnesses, §§ 10, 13
Thorsness v Daschle, § 17.5
Timeliness
discovery motions, statutory deadlines regarding, § 10
motion for a more definite statement, statutory deadlines regarding, § 9
motion to dismiss, statutory deadlines regarding, §§ 9, 20.3
notice of contest, statutory deadlines regarding, §§ 8, 8.1, 31.1, 31.3, 32.1, 34.2, 34.3
Unanimous Consent
resolution resolving election contest considered by, § 13
Voting Equipment
Government Accountability Office (GAO), analysis by, §§ 10, 10.4
malfunction of offered as grounds, §§ 16.5, 16.6, 17.2, 19.1, 19.2, 24.1, 25.1, 31.1, 31.2, 31.3, 31.4, 34.1
Waiver
deposition transcript, waiver of right to review, § 10
Wilson v Hinshaw, § 15.3
Wilson v Leach, § 17.4
Withdrawal
claims in a notice of contest, §§ 9, 15.2
evidence, § 10

notice of contest, §§ 13.1, 15.2, 25.3, 25.4, 38.1
Witnesses
cross–examination, § 10
depositions issued to, § 10
fees and travel expenses of, § 13
testimony gathered from, § 10
Won Pat v Blaz, § 20.2
Write–in Candidates
standing to initiate election contest, §§ 7, 7.2, 25.2
voter intent regarding, §§ 12, 16.5, 19.1
Young v Mikva (94th Congress), § 15.1
Young v Mikva (95th Congress), § 16.3
Ziebarth v Smith, § 15.5