Public Law 91-138

December 5, 1969
[H. R. 14195]

AN ACT

To revise the law governing contests of elections of Members of the House of Representatives, and for other purposes.

Federal Contested Election Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Contested Election Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(a) The term "election" means an official general or special election to choose a Representative in or Resident Commissioner to the Congress of the United States, but does not include a primary election, or a caucus or convention of a political party.

(b) The term "candidate" means an individual (1) whose name is printed on the official ballot for election to the House of Representatives of the United States, or (2) notwithstanding his name is not printed on such ballot, who seeks election to the House of Representatives by write-in votes, provided that he is qualified for such office and that, under the law of the State in which the congressional district is located, write-in voting for such office is permitted and he is eligible to receive write-in votes in such election.

(c) The term "contestant" means an individual who contests the election of a Member of the House of Representatives of the United States under this Act.

(d) The term "contestee" means a Member of the House of Representatives of the United States whose election is contested under this Act.

(e) The term "Member" means an incumbent Representative in or Resident Commissioner to the Congress of the United States, or an individual who has been elected to either of such offices but has not taken the oath of office.

(f) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(g) The term "committee" means the Committee on House Administration of the House of Representatives of the United States.

(h) The term "State" includes territory and possession of the United States.

(i) The term "write-in vote" means a vote cast for a person whose name does not appear on the official ballot by writing in the name of such person on such ballot or by any other method prescribed by the law of the State in which the election is held.

NOTICE OF CONTEST

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

(b) Such notice shall state with particularity the grounds upon which contestant contests the election and shall state that an answer

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thereto must be served upon contestant under section 4 of this Act within thirty days after service of such notice. Such notice shall be signed by contestant and verified by his oath or affirmation.

(c) Service of the notice of contest upon contestee shall be made as follows:

(1) by delivering a copy to him personally;

(2) by leaving a copy at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein;

(3) by leaving a copy at his principal office or place of business with some person then in charge thereof;

(4) by delivering a copy to an agent authorized by appointment to receive service of such notice; or

(5) by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business. Service by mail is complete upon mailing;

(6) the verified return by the person so serving such notice, setting forth the time and manner of such service shall be proof of same, and the return post office receipt shall be proof of the service of said notice mailed by registered or certified mail as aforesaid. Proof of service shall be made to the Clerk promptly and in any event within the time during which the contestee must answer the notice of contest. Failure to make proof of service does not affect the validity of the service.

ANSWER; DEFENSES MADE BY MOTION

SEC. 4. (a) Any contestee upon whom a notice of contest as described in section 3 shall be served, shall, within thirty days after the service thereof, serve upon contestant a written answer to such notice, admitting or denying the averments upon which contestant relies. If contestee is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this shall have the effect of a denial. Such answer shall set forth affirmatively any other defenses, in law or fact, on which contestee relies. Contestee shall sign and verify such answer by oath or affirmation.

(b) At the option of contestee, the following defenses may be made by motion served upon contestant prior to contestee's answer:

(1) Insufficiency of service of notice of contest.

(2) Lack of standing of contestant.

(3) Failure of notice of contest to state grounds sufficient to change result of election.

(4) Failure of contestant to claim right to contestee's seat.

(c) If a notice of contest to which an answer is required is so vague or ambiguous that the contestee cannot reasonably be required to frame a responsive answer, he may move for a more definite statement before interposing his answer. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the committee is not obeyed within ten days after notice of the order or within such other time as the committee may fix, the committee may dismiss the action, or make such order as it deems just.

(d) Service of a motion permitted under this section alters the time for serving the answer as follows, unless a different time is fixed by order of the committee: If the committee denies the motion or postpones its disposition until the hearing on the merits, the answer shall be served within ten days after notice of such action. If the committee grants a motion for a more definite statement the answer shall be served within ten days after service of the more definite statement.

SERVICE AND FILING OF PAPERS OTHER THAN NOTICE OF CONTEST; HOW MADE; PROOF OF SERVICE

SEC. 5. (a) Except for the notice of contest, every paper required to be served shall be served upon the attorney representing the party, or, if he is not represented by an attorney, upon the party himself. Service upon the attorney or upon a party shall be made:

(1) by delivering a copy to him personally;

(2) by leaving it at his principal office with some person then in charge thereof; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with a person of discretion not less than sixteen years of age then residing therein; or

(3) by mailing it addressed to the person to be served at his residence or principal office. Service by mail is complete upon mailing.

(b) All papers subsequent to the notice of contest required to be served upon the opposing party shall be filed with the Clerk either before service or within a reasonable time thereafter.

(c) Papers filed subsequent to the notice of contest shall be accompanied by proof of service showing the time and manner of service, made by affidavit of the person making service or by certificate of an attorney representing the party in whose behalf service is made. Failure to make proof of service does not affect the validity of such service.

DEFAULT OF CONTESTEE

SEC. 6. The failure of contestee to answer the notice of contest or to otherwise defend as provided by this Act 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.

TAKING TESTIMONY BY DEPOSITION

SEC. 7. (a) Either party may take the testimony of any person, including the opposing party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the contested election case, or for both purposes. Depositions shall be taken only within the time for the taking of testimony prescribed in this section.

(b) Witnesses may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending contested election case, whether it relates to the claim or defense of the examining party or the claim or defense of the opposing party, including the existence, description, nature, custody, condition and location of any books, papers, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. After the examining party has examined the witness the opposing party may cross examine.

(c) The order in which the parties may take testimony shall be as follows:

(1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 4, within thirty days after the time for answer has expired.

(2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired.

(3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 8(c), contestant may take rebut-

tal testimony within ten days after contestee's time for taking testimony has expired.

(d) Testimony shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(e) Attendance of witnesses may be compelled by subpena as provided in section 9.

(f) At the taking of testimony, a party may appear and act in person, or by his agent or attorney.

(g) The officer before whom testimony is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. All objections made at the time of examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party served with a notice of deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and the parties. Any changes in the form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and note on the deposition the fact of the waiver or of the illness or the absence of the witness or the fact of refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the committee rules that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

NOTICE OF DEPOSITIONS; TESTIMONY BY AFFIDAVIT OR STIPULATION

SEC. 8. (a) A party desiring to take the deposition of any person upon oral examination shall serve written notice on the opposing party not later than two days before the date of the examination. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. A copy of such notice, together with proof of such service thereof, shall be attached to the deposition when it is filed with the Clerk.

(b) By written stipulation of the parties, the deposition of a witness may be taken without notice. A copy of such stipulation shall be attached to the deposition when it is filed with the Clerk.

(c) By written stipulation of the parties, the testimony of any witness of either party may be filed in the form of an affidavit by such witness or the parties may agree what a particular witness would testify to if his deposition were taken. Such testimonial affidavits or stipulations shall be filed within the time limits prescribed for the taking of testimony in section 7.

SUBPENAS; PRODUCTION OF DOCUMENTS

SEC. 9. (a) Upon application of any party, a subpena for attendance at a deposition shall be issued by:

(1) a judge or clerk of the United States district court for the district in which the place of examination is located;

(2) a judge or clerk of any court of record of the State in which the place of examination is located; or

(3) a judge or clerk of any court of record of the county in which the place of examination is located.

(b) Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 10. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.

(c) A witness may be required to attend an examination only in the county wherein he resides or is employed, or transacts his business in person, or is served with a subpena, or within forty miles of the place of service.

(d) Every subpena shall state the name and title of the officer issuing same and the title of the contested election case, and shall command each person to whom it is directed to attend and give testimony at a time and place and before an officer specified therein.

(e) A subpena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein, but the committee, upon motion promptly made and in any event at or before the time specified in the subpena for compliance therewith, may (1) quash or modify the subpena if it is unreasonable or oppressive, or (2) condition denial of the motion upon the advancement by the party in whose behalf the subpena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. In the case of public records or documents, copies thereof, certified by the person having official custody thereof, may be produced in lieu of the originals.

OFFICER AND WITNESS FEES

SEC. 10. (a) Each judge, clerk of court, or other officer who issues any subpena or takes a deposition and each person who serves any subpena or other paper herein authorized shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the district courts of the United States.

(b) Witnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses subpenaed to appear before the House of Representatives or its committees.

PENALTY FOR FAILURE TO APPEAR, TESTIFY, OR PRODUCE DOCUMENTS

SEC. 11. Every person who, having been subpenaed as a witness under this Act to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisonment for not less than one month nor more than twelve months, or both.

CERTIFICATION AND FILING OF DEPOSITIONS

SEC. 12. (a) The officer before whom any deposition is taken shall certify thereon that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition, together with any papers produced by the witness and the notice of deposition or stipulation, if the deposition was taken without notice, in an envelope endorsed with the title of the contested election case and marked "Deposition of (here insert name of witness)" and shall within thirty days after completion of the witness' testimony, file it with the Clerk.

(b) After filing the deposition, the officer shall promptly notify the parties of its filing.

(c) Upon payment of reasonable charges therefor, not to exceed the charges allowed in the district court of the United States for the district wherein the place of examination is located, the officer shall furnish a copy of deposition to any party or the deponent.

RECORD; PRINTING AND FILING OF BRIEFS AND APPENDIXES

SEC. 13. (a) Contested election cases shall be heard by the committee on the papers, depositions, and exhibits filed with the Clerk. Such papers, depositions, and exhibits shall constitute the record of the case.

(b) Contestant shall print as an appendix to his brief those portions of the record which he desires the committee to consider in order to decide the case and such other portions of the record as may be prescribed by the rules of the committee.

(c) Contestee shall print as an appendix to his brief those portions of the record not printed by contestant which contestee desires the committee to consider in order to decide the case.

(d) Within forty-five days after the time for both parties to take testimony has expired, contestant shall serve on contestee his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(e) Within thirty days of service of contestant's brief and appendix, contestee shall serve on contestant his printed brief of the facts and authorities relied on to establish his case together with his appendix.

(f) Within ten days after service of contestee's brief and appendix, contestant may serve on contestee a printed reply brief.

(g) The form and length of the briefs, the form of the appendixes, and the number of copies to be served and filed shall be in accordance with such rules as the committee may prescribe.

FILINGS OF PLEADINGS, MOTIONS, DEPOSITIONS, APPENDIXES, BRIEFS, AND OTHER PAPERS

SEC. 14. (a) Filings of pleadings, motions, depositions, appendixes, briefs, and other papers shall be accomplished by:

(1) delivering a copy thereof to the Clerk of the House of Representatives at his office in Washington, District of Columbia, or to a member of his staff at such office; or

(2) mailing a copy thereof, by registered or certified mail, addressed to the Clerk at the House of Representatives, Washington, District of Columbia: *Provided*, That if such copy is not actually received, another copy shall be filed within a reasonable time; and

(3) delivering or mailing, simultaneously with the delivery or mailing of a copy thereof under paragraphs (1) and (2) of this subsection, such additional copies as the committee may by rule prescribe.

(b) All papers filed with the Clerk pursuant to this Act shall be promptly transmitted by him to the committee.

TIME; COMPUTATION AND ENLARGEMENT

SEC. 15. (a) In computing any period of time prescribed or allowed by this Act or by the rules or any order of the committee, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For the purposes of this Act, "legal holiday" shall mean New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

"Legal holiday."

(b) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a pleading, motion, notice, brief, or other paper upon him, which is served upon him by mail, three days shall be added to the prescribed period.

(c) When by this Act or by the rules or any order of the committee an act is required or allowed to be done at or within a specified time, the committee, for good cause shown, may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, but it shall not extend the time for serving and filing the notice of contest under section 3.

DEATH OF CONTESTANT

SEC. 16. In the event of the death of the contestant, the contested election case shall abate.

ALLOWANCE OF PARTY'S EXPENSES

SEC. 17. The committee may allow any party reimbursement from the contingent fund of the House of Representatives of his reasonable expenses of the contested election case, including reasonable attorneys fees, upon the verified application of such party accompanied by a complete and detailed account of his expenses and supporting vouchers and receipts.

REPEALS

SEC. 18. The following provisions of law are repealed:

(a) Sections 105 through 129 of the Revised Statutes of the United States (2 U.S.C. 201–225).

(b) The second paragraph under the center heading "House of Representatives" in the first section of the Act of March 3, 1879 (2 U.S.C. 226).

20 Stat. 400.

(c) Section 2 of the Act entitled "An Act further supplemental to the various Acts prescribing the mode of obtaining evidence in cases of contested elections", approved March 2, 1875 (2 U.S.C. 203).

EFFECTIVE DATE

SEC. 19. The provisions of, and the repeals made by, this Act shall apply with respect to any general or special election for Representative in, or Resident Commissioner to, the Congress of the United States occurring after the date of enactment of this Act.

Approved December 5, 1969.

Public Law 91-139

December 5, 1969
[H. R. 13949]

AN ACT

To provide certain equipment for use in the offices of Members, officers, and committees of the House of Representatives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) at the request of any Member, officer, or committee of the House of Representatives, or the Resident Commissioner from Puerto Rico, and with the approval of the Committee on House Administration, but subject to the limitations prescribed by this Act, the Clerk of the House shall furnish electrical and mechanical office equipment for use in the office of that Member, Resident Comissioner, officer, or committee. Office equipment so furnished is limited to equipment of those types and categories which the Committee on House Administration shall prescribe.

House of Representatives.
Office equipment for Members.

(b) Office equipment furnished under this section shall be registered in the office of the Clerk of the House of Representatives and shall remain the property of the House of Representatives.

(c) The cost of office equipment furnished under this section shall be paid from the contingent fund of the House of Representatives.

(d) The Committee on House Administration shall prescribe such regulations as it considers necessary to carry out the purposes of this section. The regulations shall limit, on such basis as the committee considers appropriate, the total value of office equipment, with allowance for equipment depreciation, which may be in use at any one time in the office of a Member or the Resident Commissioner.

SEC. 2. (a) The joint resolution entitled "Joint resolution to authorize the Clerk of the House of Representatives to furnish certain electrical or mechanical office equipment for the use of Members, officers, and committees of the House of Representatives", approved March 25, 1953 (2 U.S.C. 112a–112d, inclusive), is repealed.

Repeal.

67 Stat. 7;
70 Stat. 30.

(b) The repeal by subsection (a) of this section of the joint resolution of March 25, 1953, does not deprive any Member, officer, or committee of the House of Representatives, or the Resident Commissioner from Puerto Rico, of entitlement to the continued possession and use of office equipment furnished, under any provision of that joint resolution, to that Member, officer, committee, or the Resident Commissioner from Puerto Rico, and in use on the effective date of this Act. However, the total value (less allowance for depreciation) of that equipment furnished to a Member or the Resident Commissioner under the first section and section 2 of the joint resolution of March 25, 1953, while in use by that Member or the Resident Commissioner on and after the effective date of this Act shall be taken into account for the

Total value of equipment.
Determination.