

DISMISSING THE ELECTION CONTEST AGAINST BART
GORDON

JULY 15, 2003.—Referred to the House Calendar and ordered to be printed

Mr. NEY, from the Committee on House Administration,
submitted the following

R E P O R T

[To accompany H. Res. 318]

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

COMMITTEE ACTION

On February 5, 2003, by voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House.

COMMITTEE OVERSIGHT FINDINGS

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

STATEMENT ON BUDGET AUTHORITY AND RELATED ITEMS

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

STATEMENT OF FACTS

On December 5, 2002, J. Patrick Lyons (“contestant”) filed with the Clerk of the House of Representatives a Notice of Contest captioned “J. Patrick Lyons, Contestant, v. Bart J. Gordon, Contestee.” The document, prepared by the contestant, was filed pursuant to the Federal Contested Elections Act (“FCEA”).¹

The contestant ran as an Independent for the seat in the Sixth Congressional District of Tennessee on November 5, 2002. The other principal candidates for the Sixth Congressional District seat were incumbent Democrat Bart Gordon (“contestee”) and Republican challenger Richard L. Garrison. The results released by the Tennessee Secretary of State showed that the contestee received 117,034 votes; Mr. Garrison, 57,401 votes; and the contestant, 3,065 votes. The Tennessee Secretary of State certified the contestee as the winner of the Sixth Congressional District seat on December 2, 2002.

BASIS OF CONTEST

In the Notice of Contest, the contestant alleges that the contestee has committed violations of the Constitution that amount to acts of insurrection. To begin, the contestant claims that an incumbent member of Congress is required by the Constitution—specifically, (1) Article I, section 6, paragraph 2² and (2) the 20th Amendment, section 1³—to resign his or her seat prior to seeking re-election to that seat. According to the contestant, the contestee’s failure to resign his seat prior to running for re-election rendered him an ineligible candidate for the seat.

Moreover, the contestant asserts that the contestee, who is an inactive member of the Tennessee Bar, is violating the “separation of powers” principle enshrined in the Constitution by remaining “a Judicial Officer of the Courts of Tennessee” while serving “as a Legislative Officer of the United States.” In the contestant’s estimation, by allegedly contravening the aforementioned constitutional principles, the contestee qualifies as an “insurrectionist” who is breaching his sworn duty to support the Constitution, citing Article VI, clause 3.⁴ Therefore, according to the contestant, the contestee is constitutionally forbidden from holding federal office by clause 3 of the 14th Amendment, which states: “No person shall be a Senator or Representative in Congress, * * * who, having previously taken an oath, as a member of Congress, * * * to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same * * *.”

¹ 2 U.S.C. §§ 381–96.

² “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 increased 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.”

³ “The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

⁴ “The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution * * *.”

The contestant makes no allegations of irregularities, fraud, or wrongdoing with respect to the election for the Sixth Congressional District seat.⁵

STANDING

To have standing under the FCEA, a contestant must have been a candidate for election to the House of Representatives in the last preceding election and claim a right to the contestee's seat.⁶ In the instant case, the contestant's name was printed as a candidate for the Sixth Congressional District on the official ballot for the November 5, 2002 election. Thus, the first prong of the two-part test is met.

As to the second prong, the contestant states in his Notice of Contest that "Contestant claims a right to Contestee's seat because, the Contestee was ineligible/not-qualified to be on the 5 November 2002 General Election Ballot." The contestant, however, fails to explain the logical connection between the contestee's alleged ineligibility and the contestant's entitlement to the contestee's congressional seat. It is unclear whether merely claiming a right to a contestee's seat without explaining the nexus between the alleged election deficiencies and the contestant's right to the seat is sufficient to establish standing.⁷ However, the Committee opts not to resolve this issue at this time, instead choosing to resolve this election contest on other grounds.

TIMING/NOTICE

The Notice of Contest appears to have been served upon Congressman Gordon and filed within the appropriate time structures of the FCEA.

RESPONSE BY MR. GORDON

The contestee did not file a formal answer in response to the Notice of Contest (though he did submit a one-page letter dated January 3, 2003 that related to the matter). Nevertheless, the burden remains upon the contestant to provide credible allegations to the House sufficient to support a claim under the FCEA.⁸

ANALYSIS

As a threshold matter, the Committee will proceed to consider a Notice of Contest only if the Notice states grounds sufficient to change the result of an election. In other words, a contestant must allege irregularities, fraud, or wrongdoing with respect to the conduct of an election that, if proven, would likely overturn the origi-

⁵The Committee notes that the contestant also brought a case in federal district court in Tennessee challenging the qualifications of the contestee, in which he set forth the same arguments as he does in this election contest. On May 29, 2003, the district court dismissed with prejudice the contestant's case. *Lyons v. Thompson*, No. 3:02-1004 (M.D. Tenn. May 29, 2003).

⁶2. U.S.C. § 382(a).

⁷The Committee considers the contestant's claim that he has as a right to the Sixth Congressional seat in Tennessee to be meritless. As the contestant acknowledges in his own filings, he finished a distant third in the final vote totals. Even if we were to assume that Mr. Gordon was ineligible to serve in Congress, the contestant has put forth no reasons why he would be more entitled to the seat than the second-place finisher who received over 54,000 more votes than the contestant did. Therefore, the contestant does not appear to be in a position to claim a right to Tennessee's Sixth Congressional seat.

⁸*Id.* § 385.

nal election outcome. Otherwise, the Committee will recommend dismissal of the contest.

As noted above, the contestant does not advance a single allegation of irregularity or fraud in the conduct of the election for Tennessee's Sixth Congressional seat. In addition, the contestant raises no objections regarding the accuracy of the vote totals certified by the Tennessee Secretary of State that showed him receiving 2 percent of the vote and Mr. Gordon receiving 66 percent. Rather, the contestant's Notice of Contest relies exclusively on his contention that Mr. Gordon was not qualified either to run for Tennessee's Sixth Congressional seat or to serve in the Congress if elected.

The Committee finds 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 an election. Nothing in the contestant's Notice of Contest persuades the Committee to reconsider this common interpretation of the FCEA. Consequently, the Committee concludes that the contestant's arguments regarding Mr. Gordon's qualifications to serve in Congress do not constitute grounds sufficient to change the result of the election and, therefore, recommends that this election contest be dismissed.