

## Chapter CL <sup>1</sup>

### THE CLERK'S ROLL OF MEMBERS ELECT.

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#### 1. The statutes covering the making of the roll. Section 2.

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**2. A statute provides that the Clerk shall make a roll of the Representatives elect, placing thereon the names of those whose credentials show election in accordance with law.**

**An instance in which the Clerk in making the roll of Members elect recognized as the official credentials the certificate of the Governor of the State rather than the returns of the election judges.**

On April 15, 1929,<sup>1</sup> during the call of the roll of Members elect to ascertain the presence of a quorum preliminary to the organization of the House, the name of Mr. Augustus McCloskey of Texas, was called.

The Clerk<sup>2</sup> interrupted the roll call and said:

The Clerk begs leave to state, in reference to the fourteenth congressional district of the State of Texas, that there were filed in his office copies of returns made by the county canvassing boards to the State canvassing board of Texas, which showed the election of Harry M. Wurzbach, and that there was also filed with the Clerk a certificate of election signed by the Governor and secretary of state of the State of Texas, authenticated by the seal of the State of Texas, showing that Augustus McCloskey "was duly elected as Representative in Congress from said district according to the face of said returns." This certificate also contains the following statement:

"I further certify that there has been filed with the State canvassing board, composed of the secretary of state, the governor of the State, and the attorney general of the State, a contest of the returns from Bexar County, alleging the same to be illegal and fraudulent, and a protest against the canvassing of said returns and the issuing of a certificate of said election to the said McCloskey; but the said canvassing board, after consideration of the briefs filed and arguments presented, has determined that under the Constitution and laws of the United States and of the State of Texas it had no jurisdiction to consider or determine said contest, and therefore has taken no action thereon."

The law provides:

"Before the first meeting of each Congress the Clerk of the next preceding House of Representatives shall make a roll of the Representatives elect, and place thereon the names of those persons and of such persons only, whose credentials show that they were regularly elected in accordance with the laws of their States, respectively, or the laws of the United States." (U.S.C., title 2, par. 26.)

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<sup>1</sup>Supplementary to Chapter II.

<sup>2</sup>First session Seventy-first Congress, Record, p. 22.

<sup>3</sup>William Tyler Page, of Maryland, Clerk.

In conformity with this provision the Clerk considered it to be his duty to be governed by the certificate of the Governor of Texas rather than by returns of election judges, which certificate is in itself sufficient in form and substance and legal intendment to establish the prima facie title of Mr. McCloskey, and the Clerk therefore placed the name of Augustus McCloskey on the roll as the Representative elect from the fourteenth congressional district of the State of Texas.

It is proper to add that the Clerk has knowledge of the bringing of a contest to determine the ultimate right to the seat by Harry M. Wurzbach, contestant, against Augustus McCloskey, contestee, in the manner prescribed by law, as evidenced by the filing in the Clerk's office of copies of the notice of contest and of contestee's reply thereto.

Thereupon the Clerk continued the call of the roll.