

Michael A. Feighan, contestee, Twentieth Congressional District of the State of Ohio, be dismissed and that the said Michael A. Feighan is entitled to his seat as a Representative of said district and State.

§ 56. Eighty-second Congress, 1951-52

§ 56.1 Huber v Ayres

Mr. Omar T. Burluson, of Texas, submitted the majority report⁽¹⁸⁾ on Aug. 21, 1951, in the contested election case of Huber v Ayres, from the 14th Congressional District of Ohio. The case had been presented to the House on July 11, 1951, on which date the Speaker had referred to the Committee on House Administration and ordered printed a letter from the Clerk⁽¹⁹⁾ transmitting the required papers and testimony pursuant to 2 USC §§201 et seq. The record showed that there had been three candidates in the election held Nov. 7, 1950, and that contestee (Mr. Ayres) had received a plurality of 1,921 votes over the contestant (102,868 to 100,947, the independent candidate having received 7,246 votes).

The contestant "alleged a failure on the part of the county

boards of elections to rotate properly the names of the three candidates on the general election ballot as required by section 2 (a) of article V of the Ohio Constitution." As a result of this failure contestant requested that the election be declared void or that he be seated as the elected member. The committee ruled that "the matter of rotating the names on the ballot is a procedural requirement of the State election process and a matter which Congress has consistently left for the States to determine." Under section 4 of article I of the United States Constitution, state legislatures are left free to determine times, places, and manner of elections for Congress, subject to alteration by congressional regulation. As Congress had only seen fit to regulate the date on which congressional elections were to be held, and to regulate the form of the ballots to be used (2 USC §§7, 9), the majority proceeded to apply state law, namely the constitutional provision which:

. . . [R]equires that the names of all candidates shall be so alternated that each name shall appear (insofar as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs (Ohio Constitution, art. V, §2a, adopted Nov. 8, 1949).

18. H. Rept. No. 906, 97 CONG. REC. 10494, 82d Cong. 1st Sess.; H. Jour. 645.

19. H. Doc. No. 189, 97 CONG. REC. 8015, 82d Cong. 1st Sess.; H. Jour. 479.

The committee majority then ruled that the contestant had not exhausted the remedies available to him under state law, as he had not requested remedial action by protesting the form of the ballots to the board of elections. The majority report cited state law requirements which provided for the publication and display of ballots for a 24-hour period before the election, with notice to committees representing each party on the ballot to permit them to inspect the ballots for irregularities. The report then stated:

Apparently, if objections were entertained by the contestant to errors in the form of the ballots or ballot labels, he had adequate recourse under Ohio law to request remedial action by protesting to the board of elections. In event he failed to secure satisfaction from the boards, he had recourse to the State courts. Failing to exhaust the remedies available to him under State law, the final election having been held, with no allegations or evidence of fraud, and the results proclaimed, the committee is of the opinion that the results of that election cannot be overturned because of some preelection irregularity.

Thus, the majority noted that there had been discrimination against contestant in the rotation method employed, but that contestant had not exhausted his state remedies, and that the discrimination may have been due to

the failure of the Ohio legislature to implement the constitutional provision.

The dissenting views were signed by Mr. Wayne L. Hays, of Ohio, Mr. Charles R. Howell, of New Jersey, Mr. Edward A. Gar-matz, of Maryland, Mr. Reva Beck Bosone, of Utah, and Mr. Victor L. Anfuso, of New York. These members of the committee first pointed out that the constitutional provision needed no new implementing legislation to be fully effective, nor had its adoption effected the repeal of a state law which required voting machine rotation of ballots. These dissenting members then argued that contestant had not been granted a fair chance by state law to discover the mistake of the election officials in time to assure correction by the officials or by state courts. The minority took particular exception to the adequacies of state remedial procedures as they were interpreted by the majority. The majority, in taking the position that the Ohio law requirements, as to the alternation of names on ballots and as to publication of ballots and display for 24 hours, were mandatory before the election but only directory afterward, was unsound, contended the minority, as it was impossible for the contestant to ascertain the unequal method of ro-

tation in advance of the election in time to invoke state law remedies. The minority then cited the Ohio Supreme Court decision of *Otworth v Bays* (1951), 155 Ohio 366, 98 N.E.2d 812, for the proposition that the irregularities in the instant case would render the election invalid because such irregularities "affect the result of the election or render it uncertain." The minority also cited the Kentucky Supreme Court case of *Lakes v Estridge* (1943), 294 Kentucky 655, 172 S.W.2d 454, which invalidated an election for failure, among other reasons, to rotate the names of candidates on the ballots as required by state law. Thus, the minority claimed that evidence had been produced which gave contestant a substantial plurality, assuming a correct rotation of names on ballots.

Nevertheless, Mr. Burleson called up as privileged House Resolution 400⁽²⁰⁾ on Aug. 21, 1951, which the House agreed to without debate by voice vote. House Resolution 400 provided as follows:

Resolved, That William H. Ayres was duly elected as Representative from the Fourteenth Congressional District of the State of Ohio to the Eighty-second Congress and is entitled to his seat.

20. 97 CONG. REC. 10479, 82d Cong. 1st Sess.; H. Jour. 644.

Note: Syllabi for *Huber v Ayres* may be found herein at §7.1 (appeal to state court regarding preelection irregularities); §10.9 (distinction between mandatory and directory laws); §12.8 (balloting irregularities).

§ 56.2 Karst v Curtis

On Aug. 21, 1951, the unanimous report⁽¹⁾ from the Committee on House Administration in the contested election case of *Karst v Curtis*, from the 12th Congressional District of Missouri, was submitted by Mr. Omar T. Burleson, of Texas. The contest had been presented to the House on Apr. 12, 1951, when the Speaker laid before the House a letter from the Clerk⁽²⁾ of the House transmitting communications relative to the contest. The Clerk's letter related that time for taking testimony appeared expired and that no testimony had been received by his office. The Speaker referred the communication to the Committee on House Administration and ordered it printed as a House document to include the following material: (1) contestant's notice of contest filed with the

1. H. Rept. No. 905, 97 CONG. REC. 10494, 82d Cong. 1st Sess.; H. Jour. 645.
2. H. Doc. No. 111, 97 CONG. REC. 3800, 3801, 82d Cong. 1st Sess.; H. Jour. 256.

Clerk for information only; (2) contestee's answer to said notice filed for information only; (3) contestee's motion to dismiss for failure of contestant to take testimony within 40 days after service of answer; (4) a memorandum from contestant explaining his failure to take testimony within the 40 days; and (5) contestee's renewed motion to dismiss for failure of contestant to take testimony during the 90-day statutory period.

On June 7, 1951, the Speaker laid before the House a further communication⁽³⁾ from the contestant, which related that he had been requested by a unanimous vote of the County Democratic Committee of St. Louis County, based on charges of improper tallying of ballots in a local election, to file his notice of recount of votes cast for a Member of Congress in the same election. Based upon the recount of votes in the local election which failed to disclose the irregularities suggested by the county committee, contestant informed the House of his decision to discontinue any further action in the contest for the seat from the 12th Congressional District. The alleged discrepancy had

3. H. Doc. No. 160, 97 CONG. REC. 6241, 82d Cong. 1st Sess.; H. Jour. 388.

represented 15 percent of the total votes cast in the congressional election, of which contestee had received 110,992 votes to 106,935 for contestant. The Speaker referred this communication to the Committee on House Administration and ordered it printed.

The committee report related that "no testimony was taken or forwarded to the Clerk of the House in this case as required by sections 203, 223, of title 2, United States Code."

Accordingly, the committee recommended the adoption of House Resolution 399,⁽⁴⁾ which was called up as privileged by Mr. Burleson and agreed to without debate and by voice vote on Aug. 21, 1951. House Resolution 399 stated:

Resolved, That the election contest of Raymond W. Karst, contestant, against Thomas B. Curtis, contestee, Twelfth Congressional District of the State of Missouri, be dismissed.

Note: Syllabi for Karst v Curtis may be found herein at §6.4 (items transmitted by Clerk); §25.4 failure to produce evidence); §33.3 (withdrawal of contests).

§ 56.3 Lowe v Davis

Mr. Omar T. Burleson, of Texas, submitted the unanimous re-

4. 97 CONG. REC. 10479, 82d Cong. 1st Sess.; H. Jour. 644.

port⁽⁵⁾ of the Committee on House Administration on Aug. 21, 1951, in the contested election case of *Lowe v Davis*, from the Fifth Congressional District of Georgia. The report indicated that contestant had been defeated by contestee in the primary election, and had not been a candidate and had not received any votes in the general election. The report stated that:

Nothing in the record indicates that the contestee was guilty of any acts in connection with that primary which would disqualify him for office of United States Representative in Congress. [Citing the contest of *Miller v. Kirwan*, 77th Congress (H. Res. 54).]

The report indicated that contestant had filed a record in the contest with the Clerk, but that contestant had not taken testimony within the time prescribed by 2 USC §203.

There was no record of referral of a letter from the Clerk transmitting the contest to the committee, nor did the House adopt a resolution referring the contest to the committee. As well, there is no record that the contestant petitioned the Congress to take action in this matter.

House Resolution 398⁽⁶⁾ was called up as privileged by Mr.

5. H. Rept. No. 904, 97 CONG. REC. 10494, 82d Cong. 1st Sess.; H. Jour. 645.

6. 97 CONG. REC. 10479, 82d Cong. 1st Sess.; H. Jour. 644.

Burleson and agreed to without debate and by voice vote on Aug. 21, 1951. House Resolution 398 stated:

Resolved, That the election contest of Wyman C. Lowe, contestant, against James C. Davis, contestee, Fifth Congressional District of the State of Georgia, be dismissed.

Note: Syllabi for *Lowe v Davis* may be found herein at §19.5 (contestants as candidates in general election); §27.3 (dismissal for failure to take testimony within statutory period); §43.3 (form of report).

§ 56.4 *Macy v Greenwood*

On Apr. 2, 1951, the Speaker laid before the House, ordered printed, and referred to the Committee on House Administration a letter from the Clerk of the House⁽⁷⁾ transmitting a stipulation signed by attorneys for the contestant and the contestee in the contest of *Macy v Greenwood*, from the First Congressional District of New York. The stipulation related that the contestant had, at the contestee's request, adjourned the calling of two witnesses for six days during the 40-day period allotted contestant for the taking of testimony under 2 USC §§201 et

7. H. Doc. No. 104, 97 CONG. REC. 3123, 82d Cong. 1st Sess.; H. Jour. 227.

seq. Both parties had thus agreed to a compensatory extension of six days subsequent to the 40-day period, subject to approval of the House. That approval was granted by the House, when, on Apr. 12, 1951, Mr. Thomas B. Stanley, of Virginia, submitted the committee report⁽⁸⁾ and called up House Resolution 184⁽⁹⁾ as privileged. The resolution was agreed to upon assurance by Mr. Stanley that there would be no further extensions of time. House Resolution 184, having been agreed to by voice vote, provided as follows:

Resolved, That the time allowed for taking testimony in the election contest, W. Kingsland Macy, contestant, against Ernest Greenwood, contestee, First Congressional District of the State of New York, shall be extended for a period of 6 days.

That the time allowed for taking of testimony by the contestant shall be extended for a period of 6 days beginning April 16, 1951, and ending April 21, 1951.

During the time permitted by statute for contestee to take testimony, the contestee transmitted to the Clerk his motion to "close the hearing and print the record." The Speaker laid the Clerk's let-

8. H. Rept. No. 315, 97 CONG. REC. 3807, 82d Cong. 1st Sess.; H. Jour. 254.

9. 97 CONG. REC. 3751, 82d Cong. 1st Sess.; H. Jour. 254.

ter⁽¹⁰⁾ before the House on May 17, 1951, and had ordered it printed to include contestee's motion. The motion was based upon contestee's assertion that he would rely on the testimony adduced by contestant, thereby obviating the need to take testimony of his own. Contestee also desired to have the contest resolved during the first session of the 82d Congress, prior to the July 31 adjournment date provided in the Legislative Reorganization Act. The Committee on House Administration did not, however, act upon this motion of contestee.

On Mar. 19, 1952, Mr. Omar T. Burluson, of Texas, submitted the unanimous committee report⁽¹¹⁾ recommending adoption of House Resolution 580.⁽¹²⁾ Contestee (Mr. Greenwood), had received 76,375 votes to 76,240 for the contestant (Mr. Macy), a plurality of 135 votes, in the Nov. 7, 1950, election. In addition to contestant's notice of contest filed under the laws governing contested election cases, contestant had filed a sworn complaint with the "Special

10. H. Doc. No. 135, 97 CONG. REC. 5483, 82d Cong. 1st Sess.; H. Jour. 341, 343.

11. H. Rept. No. 1599, 98 CONG. REC. 2545, 82d Cong. 2d Sess.; H. Jour. 187.

12. 98 CONG. REC. 2517, 82d Cong. 2d Sess.; H. Jour. 186.

Committee to Investigate Campaign Expenditures for the House of Representatives, 1950," which committee had been created by the 81st Congress and had been directed to report to the House by Jan. 3, 1951, concerning the campaigns. That committee (the "Mansfield Committee") found that the votes in this election had been fairly tabulated. The committee report and files were given to the Committee on House Administration in the event that a contest was filed.

The contestant alleged that 2,790 illegal votes had been cast and counted. He claimed that 932 voters were not qualified as to residence, for the reason that they had entered the district and had voted although they had not been "for the last four months a resident of the county . . . in which he . . . may vote" (as required by state law). Contestant argued that the four-month period for residence began to run on the date when the voter actually moved into the district rather than on the date of the signing of the contract to purchase the house. The committee found that the board of election commissioners had relied on a court case handed down by a county court within the election district, which had construed the term "residence" to begin to run

on the date of the contract for purchase of the home, rather than on the date the voter moved into the premises. The committee report could not cite a case:

. . . [W]herein the House had rejected votes as illegal for the reason that the voter had not resided in the county for the statutory period of time, although votes have been rejected where voters voted in the wrong district. It is apparently the settled law of elections that where persons vote without challenge they are presumed to be entitled to vote and that the election officers receiving the votes did their duty properly and honestly. [Citing the election contest of *Finley v. Bisbee* (2 Hinds' Precedents § 933).]

The committee further found that no challenges were made under provisions of New York law which permitted challenging of voters at time of registration or of voting. Contestant's only efforts to ascertain discrepancies involved a recanvass of the vote under the supervision of the "Mansfield Committee" referred to above, and a summary proceeding brought in state court, both of which had failed to disclose any irregularities in the official tabulation, but which had not passed upon the allegations and issues raised in this contest.

The committee did state that had it found "the 932 votes illegally cast, the votes presumably would be deducted proportionally

from both candidates, according to the entire vote returned for each. This is the general rule when it cannot be ascertained for which candidate the illegal votes were cast.”

The contestant further alleged that 841 voters voted when the registration books showed only 684 names entered as registered on election day; 79 names entered below the red line signifying entry after the end of registration; 45 names entered without any date; 13 voters having higher numbers than the highest number certified for that district; 20 voters having subdivided registration numbers. The committee found that as for the 79 persons whose names were entered under the red line, it is presumed that these persons were properly registered on election day (rather than on either of two earlier registration days), as permitted by state law. The committee further found that “in the absence of fraud, the remaining charges of irregularities as to registration and the failure of election officials to assign ballot numbers to electors will not invalidate the votes cast.”

Regarding contestant’s allegation that contestee had violated the Federal and State Corrupt Practices Acts, the committee found no evidence that the extra

editions of “Newsday” which had been devoted exclusively to the defeat of the contestant, had been financed or inspired by conduct of contestee.

On Mar. 19, 1952, Mr. Burleson called up House Resolution 580 as privileged. The House agreed to the resolution without debate and by voice vote, as follows:

Resolved, That Ernest Greenwood was duly elected as Representative from the First Congressional District of the State of New York to the Eighty-second Congress and is entitled to his seat.

Note: Syllabi for *Macy v Greenwood* may be found herein at §7.4 (state court determinations as controlling); §10.16 (violations and errors by election officials); §11 2 (financing extra editions of magazines); §27.15 (stipulation by parties for extension of time); §34.1 (collecting evidence for future use); §36.10 (effect of failure to challenge voter); §37.5 (method of proportionate deduction).

§ 56.5 *Osser v Scott*

In the election for United States Representative from the Third Congressional District of Pennsylvania, held on Nov. 7, 1950, the contestee, Hardie Scott, received 68,217 votes to 67,286 votes for the contestant, Maurice S. Osser, a plurality of 931 votes. Contestant filed timely notice of his in-

tention to contest the election, claiming that “fraud, and irregularities were committed both before the election by permitting persons to register or failing to cancel the registration for persons not qualified and on election day by permitting unregistered persons to vote and through other irregularities.” Contestant claimed that such irregularities were caused by failure of a “Republican dominated Philadelphia County Board of Elections” and a similarly constituted registration commission to perform their duties, i.e., to cancel the registrations of persons who did not actually reside in the precincts involved. Contestant also complained that he was unable to secure watchers and overseers who truly represented his party and who resided in the districts wherein they acted.

The contest was presented to the House on Oct. 10, 1951, on which date the letter from the Clerk of the House⁽¹³⁾ transmitting the relevant papers was referred to the committee and ordered printed. Contestant’s testimony enumerated instances where persons had registered, giving fictitious addresses as resi-

dences, and against which registrants contestant had filed “strike off petitions” (some 2,000 in number). The committee, in its unanimous report⁽¹⁴⁾ submitted by Mr. Omar T. Burleson, of Texas, on Mar. 19, 1952, found that “no direct testimony was presented to the committee showing that any of the persons claimed to have been illegally registered and to have voted had been actually interrogated by the contestant or his counsel.” The committee found that no evidence had been presented to show that any of the illegal registrants had voted for the contestee. The committee concluded that the contestant had not presented sufficient evidence to impeach the returns, stating in its report as follows:

[W]here contestant asks the committee to reject votes for the reason that they were illegally cast by persons not residing where they claimed to reside, the committee requires such evidence as to leave no doubt.

The committee found that contestant had not presented any evidence to establish misconduct on the part of the election officials. The committee report cited provisions of state law which established district election boards con-

13. H. Doc. No. 253, 97 CONG. REC. 12908, 82d Cong. 1st Sess.; H. Jour. 772.

14. H. Rept. No. 1598, 98 CONG. REC. 2544, 82d Cong. 2d Sess.; H. Jour. 187.

sisting of three elected members, two from the majority party in the district, and which established registration commissions of equal party affiliation. The report further related that contestant did not take advantage of a remedy provided by state law in addition to the "strike-off petition," namely, petition by five voters in a district to a county court for the appointment of "overseers" to supervise the election officials and to report to the court. Such overseers were distinguished from "watchers" appointed by political parties, who, contestant claimed, were not "honest-to-goodness Democratic."

As to contestant's claim regarding failure of the Democratic Party to appoint suitable watchers and to present suitable candidates for election board member, the committee would not decide, "the general maxim (being) that every official is presumed to do his duty."

Accordingly, Mr. Burleson called up House Resolution 579⁽¹⁵⁾ as privileged on Mar. 19, 1952. Upon adoption of the resolution without debate and by voice vote, the contestee, Mr. Scott, was held entitled to his seat. House Resolution 579 provided that:

Resolved, That Hardie Scott was duly elected as Representative from

15. 98 CONG. REC. 2517, 82d Cong. 2d Sess.; H. Jour. 186.

the Third Congressional District of the State of Pennsylvania to the Eighty-second Congress and is entitled to his seat.

Note: Syllabi for *Osser v Scott* may be found herein at §§ 35.5, 35.6 (burden of showing results of election would be changed); § 36.2 (official returns as presumptively correct).

§ 57. Eighty-fifth Congress, 1957-58

§ 57.1 Carter v LeCompte

Mr. Karl LeCompte was re-elected as Representative from the Fourth Congressional District of Iowa at the election held Nov. 6, 1956, having received, according to the official state canvass, 58,024 votes to 56,406 votes for Steven V. Carter, a plurality of 1,618 votes. This result was officially "determined" on Dec. 10, 1956. Contestant personally served contestee with notice of contest on Dec. 17, though he had on Nov. 24 served contestee by "substituted service" prior to "determination" of the result. The committee in its majority report decided that the subsequent personal service "rendered moot any question as to sufficiency of the service contemplated by 2 USC § 201," and that it was served on