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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 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

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

contestee on the 10th day following the official declaration of the results of the election. Contestee filed timely answer on Dec. 20, 1956.

On Jan. 24, 1957, the contestant petitioned the House requesting an additional 20 days in which to take testimony. The petition was transmitted in a letter from the Clerk which the Speaker laid before the House, ordered printed as a House document to include contestant's petition, and which the Speaker referred to the Committee on House Administration on Jan. 29,[16] and was considered by its Subcommittee on Elections on Feb. 5, 1957. The subcommittee considered several House precedents (cited in the final report of the full committee) in which an extension of time had been granted after a showing of reasonable diligence, and no laches, by either the contestant or the contestee. The subcommittee also noted, however, that for insufficient reasons shown, a party to a contest had been denied a requested extension of time. The subcommittee recommended denial in this instance. The unanimous subcommittee opinion was unanimously adopted by the full committee on Feb. 6, 1957, and, being negative, no formal report was made to the House.

On Apr. 17, 1957, contestant filed three motions which were included in a letter from the Clerk which the Speaker]aid before the House, ordered printed, and referred to the Committee on House Administration.[17] The Subcommittee on Elections recommended that they be denied on May 7, and approval by the full committee of the subcommittee action followed on May 8.

(1) The committee determined that contestant's motion to "amend the pleadings to make them conform to the proof" was premature, as the testimony had not yet been printed and referred to the committee.

(2) The committee ruled that contestant's motion for a "directed verdict" was also premature, as a contrary ruling would be in violation of the rules of the House [Rule XI clause 9(k), *House Rules and Manual* (1973)] which requires contested elections to be referred to the Committee on House Administration, and in violation of 2 USC §§ 201 et seq., which requires testimony to be collected by the Clerk, printed, and laid before the House for reference.

(3) Contestant's motion asking the Committee on House Adminis-

16. H. Doc. No. 84, 103 CONG. REC. 1217, 85th Cong. 1st Sess.

17. H. Doc. No. 153, 103 CONG. REC. 5941, 85th Cong. 1st Sess.

tration to assume custody of the ballots was also denied. The subcommittee felt that the responsibility for the preservation of ballots, in congressional contests as well as in state or local elections, was with the state. However, the laws of Iowa afforded no mode of preserving ballots cast, as county auditors were required to destroy congressional ballots six months after the election. Thus the committee, while recognizing contestant's right under 2 USC §§ 206, 219 to use the subpena duces tecum "acting through a Federal District Judge or even a notary to require the production and preservation of ballots and other pertinent paraphernalia," directed its chairman to telegraph all county auditors requesting them to preserve all ballots and other papers for possible use by the committee. The request was honored in each county.

The contest was not presented to the House until Aug. 26, 1957, four days prior to adjournment of the first session of the 85th Congress. On that date the letter from the Clerk transmitting the testimony and required papers was referred by the Speaker to the committee, having been laid before the House and ordered printed by the Speaker.[18]

Mr. Robert T. Ashmore, of South Carolina, submitted the report of the majority of the Committee on House Administration on Apr. 22, 1958.[19] The committee first determined that contestant had properly invoked the jurisdiction of the committee, as there was no remedy available to him for either a recount or a contest under state law. Contestee had served copies of his notice of contest on state officials to challenge the applicability of state laws to a congressional contested election. In a written opinion dated Dec. 3, 1956, the Attorney General of Iowa had advised the Governor and Secretary of State that the laws of Iowa contained no provision for contesting a House seat.

The committee, therefore, agreed with the contestant that there was not available to him any forum or tribunal in his state to hear this contest and that he had appropriately presented his case to this committee, through its elections subcommittee, pursuant to Rule XI of the House of Representatives and sections 101–130 of the Revised Statutes of the United States. The committee, in adopting this view, expressly rejected the view of the committee

18. H. Doc. No. 235, 103 CONG. REC. 15968, 85th Cong. 1st Sess.

19. H. Rept. No. 1626, 104 CONG. REC. 6939, 85th Cong. 2d Sess.

in the contest of Swanson v Harrington in the 76th Congress, which had required the contestant there to show that the Iowa election laws did not permit him a recount when he had not sought recourse to the highest state court regarding the application of state laws to a House contest.

The committee took "judicial notice of the complaints filed by the contestant with the Special House Committee to Investigate Campaign Expenditures, 84th Congress, and the failure of that committee to draw any conclusions whatever as to the allegations of his complaint or to otherwise grant him any relief."

Contestant's major complaints concerned irregularities in the casting of absentee ballots and the use of certain designated voting machines. Contestant alleged widespread miscounting and incorrect tallying of absentee ballots, several fraudulent practices regarding the casting and preservation and delivery of absentee ballots by voters, party workers, and election officials alike throughout the Fourth Congressional District. The majority of the committee found, with respect to the disputed absentee ballots, that violations of the state laws governing absentee voting had been committed by election officials throughout the district, but that contestee had not fraudulently participated in those violations. The majority found that contestant had not shown that he had exhausted his state remedies to prevent improper absentee ballots from being cast or to punish those responsible. As contestant had not proven fraud by contestee and had not challenged absentee ballots under state law, he had not sustained his burden of proving that the election results would have been different. Citing the contest of Huber v Ayres (§ 56.1, supra) in the 82d Congress, the majority determined that contestant had not properly entered objections to errors in the form of the absentee ballots prior to the election, as permitted by Iowa law, and that therefore the results of the election could not be "overturned because of some preelection irregularity."

The minority report of the Committee on House Administration was signed by Mr. George S. Long, of Louisiana, and Mr. John Lesinski, of Michigan. They cited several provisions of the election laws which imposed mandatory duties and criminal sanctions on the election officials, violations of which they contended should void certain absentee ballots or all ballots in counties where ballots had

been commingled and were inseparable. The minority cited the contest of Steel v Scott, 6 Cannon's Precedents § 146, for the proposition that total disregard of election laws by election officials, though absent fraud, was the basis for a recount, which in this contest would show contestant (Mr. Carter) the winner by 1,260 votes.

Contestant alleged that the voting machines in a certain county were not set up to permit voting a straight party ticket by a party lever. The committee could not determine, however, whether any votes had been lost by the contestant because straight party voting was not permitted. The committee decided that contestant had not properly filed his objections to errors as provided by state law, and that the voting machines in question had been used in the fourth congressional district for many years. Contestant had challenged neither the machines nor the tickets used therein.

Finally, the committee pointed out that contestant had not sought a legal opinion from the state attorney general regarding administration of the election laws, which opinion would have been binding on the local election officers. Thus the committee recommended the adoption of House Resolution 533, which declared contestee entitled to his seat.

Mr. Lesinski in his additional dissenting views proposed that the House should consider declaring the seat vacant, which would require the Iowa Governor to call a special election. He cited several precedents of the House to support the proposition that where irregularities make it impossible to determine who has been elected, the seat is declared vacant.

Mr. Ashmore called up as privileged House Resolution 533 on June 17, 1958. Mr. Lesinski took the floor to recommend the minority report to the House and to call attention to the fact that Iowa, as well as Missouri, Maine, and Minnesota, had no legal apparatus for determining the prima facie right of a Member-elect to his seat. Subsequently, House Resolution 533 was agreed to without further debate, and thereby the contestee was held entitled to his seat. House Resolution 533 Provided: [20]

> *Resolved,* That Karl M. LeCompte was duly elected as Representative from the 4th Congressional District of the state of Iowa in the 85th Congress and is entitled to his seat.

Note: Syllabi for Carter v LeCompte may be found herein at

20. 104 CONG. REC. 11512, 85th Cong. 2d Sess.

§ 5.7 (actions by election committee to preserve evidence); § 5.13 (advisory opinions on state law); § 7.2 (appeal to state court regarding preelection irregularities); § 10.15 (violations and errors by officials as grounds for contest); § 13.5 (failure to exhaust state remedy); §§ 13.6, 13.7 (preelection irregularities); § 18.3 (compliance with statutory requisites for commencing the contest); § 21.1 (substituted service of notice of contest); § 23.1 (motion for directed verdict); § 27.13 (extension of time to take testimony for good cause).

§ 57.2 Dolliver v Coad

On Jan. 16, 1957, the Speaker referred to the Committee on House Administration a letter from the Clerk relating to an election contest and transmitting a communication from the contestee, Merwin Coad. The communication related that Mr. Coad had been certified as Representative from the Sixth Congressional District of Iowa as a result of the election held Nov. 6, 1956, and had been sworn in as a Member of the 85th Congress, and that Mr. Coad had not received written notice of his opponent's intention to contest the election within 30 days after the result had been officially determined. The Clerk's letter was ordered printed to include contestee's communication.[1]

Mr. Robert T. Ashmore, of South Carolina, submitted the unanimous committee report[2] on Apr. 11, 1957, to accompany House Resolution 230. The report stated that the Subcommittee on Elections had met in executive session on Feb. 5, 1957, to consider the sufficiency of both the service of the notice and of the notice itself. No decision being then made, public hearings were held on Feb. 11. Counsel for Mr. Dolliver contended that 2 USC § 201 governing the notice of contest was complied with by leaving a copy of the notice with the wife of the contestee at his home. Counsel argued that Rules 4(d)1 and 56(a) of the Federal Rules of Civil Procedure, which permit such substituted service, should control the question of proper service under 2 USC § 201. The subcommittee, however, did not decide this issue, as they agreed that if the notice were found defective for the reason that it was not signed by contestant, then the question of the sufficiency of the service would become moot.

On Mar. 11, 1957, the Subcommittee on Elections unani-

1. H. Doc. No. 53, 103 CONG. REC. 604, 85th Cong. 1st Sess.
2. H. Rept. No. 343, 103 CONG. REC. 5549, 85th Cong. 1st Sess.

mously decided that notice of contest was not sufficient, as it did not bear the original signature of the contestant. Therefore the subcommittee did not determine whether personal service was required under 2 USC § 201.

Mr. Ashmore called up House Resolution 230 as privileged on Apr. 11, 1957. By agreeing to the resolution without debate,[3] the House (1) resolved that it should not recognize an unsigned paper as valid notice of contest; and (2) resolved that in this case the unsigned notice of contest was not in the form required by 2 USC § 201. House Resolution 230 provided as follows:

> *Resolved,* That it would be unwise and dangerous for the House of Representatives to recognize an unsigned paper as being a valid and proper instrument with which notice may be given to contest the seat of a returned Member. . . . That the unsigned paper by which attempt was made to give notice to contest the election of the returned Member from the Sixth Congressional District of the State of Iowa to the 85th Congress is not the notice required by the Revised Statutes of the United States, title II, chapter 8, section 105.

Note: Syllabi for Dolliver v Coad may be found herein at § 22.4 (necessity of signature on notice of contest).

3. 103 CONG. REC. 5501, 5502, 85th Cong. 1st Sess.

§ 57.3 Oliver v Hale

On Aug. 6, 1958, Mr. Robert T. Ashmore, of South Carolina, submitted the unanimous committee report[4] from the Committee on House Administration in the contested election case of Oliver v Hale, from the First Congressional District of Maine. The contest had come to the House on Aug. 29, 1957, when the letter from the Clerk of the House[5] transmitting the required papers was laid before the House, referred by the Speaker to the committee, and ordered printed.

The record showed that the original canvass of votes disclosed a 29-vote plurality for Robert Hale, the contestee, in the election held Sept. 10, 1956. As permitted by state law, the contestant asked for an inspection and recount of all votes cast, which was conducted under the supervision of five two-man teams (with each party represented on each team) and with representatives of the "Special Committee to Investigate Campaign Expenditures of the House of Representatives" present at the recount. At the conclusion

4. H. Rept. No. 2482, 104 CONG. REC. 16481, 85th Cong. 2d Sess.; H. Jour. 838.

5. H. Doc. No. 237, 103 CONG. REC. 16516, 85th Cong. 1st Sess.; H. Jour. 872.

of the recount, contestee requested that a certificate of election be issued to him, to which request the contestant objected. The Governor declined to issue such certificate pending an advisory opinion from the Supreme Court of Maine as to the authority of the Governor to determine the validity of the disputed ballots, and, lacking such authority, whether a certificate should be issued to the apparent winner as determined by the canvass. The Supreme Court advised the Governor that he had no authority to determine validity of disputed ballots, but that he should issue a certificate based on the canvass. Accordingly, the Governor issued the certificate of election to contestee on Dec. 5, 1956.

In contestee's answer to contestant's notice of contest, which notice had been filed on Jan. 2, 1957, contestee claimed that the service of such notice was not timely, i.e., not "within thirty days after the result of such election shall have been determined . . ." as required by 2 USC § 201. In deciding against contestee's claim that the determination date should have been considered as Sept. 26, 1956, the date of the official canvass, the committee ruled that there was no determination under the federal statute above cited until the actual issuance of the certificate to contestee on Dec. 5, 1956.

The report of the "Special Committee to Investigate Campaign Expenditures," referred to above, was submitted Dec. 22, 1956. The majority of that committee recommended that the Committee on House Administration of the 85th Congress immediately investigate the disputed ballots (about 4,000) and report to the House by Mar. 15, 1957. The minority contended that a committee of the 85th Congress should not "purport to dictate to the Committee on House Administration of the 85th Congress how it shall conduct its operations or when it shall file its report."

The Committee on House Administration, on Apr. 30, 1958, adopted a motion to conduct an examination and recount of the disputed ballots, as well as a motion to request counsel for both parties to reduce further, if possible, the number of ballots in dispute. Accordingly, counsel reduced the number to 142 regular ballots and 3,626 absentee ballots in dispute, thus giving contestee a stipulated plurality of 174 votes. The committee first considered the disputed 142 regular ballots. By examining each ballot, and by applying state law which required that a ballot not be counted "if for any

reason it is impossible to determine the voter's choice," the committee determined that 57 votes had been cast for each candidate and that 28 votes could not be ascertained. Thus contestee's plurality remained at 174.

With respect to the 3,626 absentee and physical incapacity ballots, questions arose as to the proper completion of the application and/or envelope by the voter prior to the casting of his ballot, or with subsequent disposition of such material by the election officials. The ballots themselves were in proper form and could be counted for one or the other candidate. Thus, the committee divided contestant's allegations into two classes: (1) alleged violations by the election officials, and (2) alleged violations by the voter.

(1) Alleged violations by election officials consisted of failures of the board of registration to retain the application and/or envelope, or failure of various clerks to send in the application and envelopes along with the absentee ballots. State law required officials at the polls to compare signatures on the envelopes containing the ballots with signatures on the applications attached thereto, and, after a favorable comparison, to deposit the ballots with the regular ballots, and then to preserve the applications and envelopes as the ballots were preserved. The committee proceeded to cite state court opinions which construed similar violations of Maine election laws. The report quoted at length an advisory opinion, *Opinion of the Justices* (1956), 152 Me. 219, 130 A.2d 526, as follows:

> We conclude that the provisions of the statute touching the procedure to be employed at the polls and the disposition of applications and envelopes following an election are *directory and not mandatory in nature.* In other words, violation of the statute by election officials in the situations here under consideration, at least in the absence of fraud, is not a sufficient ground for invalidating ballots.

The committee applied such construction and did not invalidate those ballots which had been improperly handled due to actions by election officials.

(2) The contestant alleged nine separate types of violations by voters themselves in complying with the state absentee voting laws (including unsigned ballots, physical incapacity ballots not certified by physicians, envelopes not signed or notarized, jurats not in proper form, identical names of voter and official giving oath, variance in signatures on application and on envelope, voters either not registered or not qualified to vote, and failure of voters to specify

reason for absentee voting on envelope).

Following a discussion of the required procedure for absentee voting in Maine, the committee cited state court decisions which distinguished between acts of the voter and acts of election officials, and which required the voter to substantially comply with the statute in order for his vote to be considered as properly cast. [*Opinion of the Justices* (1956), 152 Me. 219, 130 A.2d 526; *Miller* v *Hutchinson* (1954), 150 Me. 279, 110 A.2d 577.] Thus, the committee determined that 109 absentee and physical disability ballots should be rejected, but that there was no possible way of relating the invalid absentee voting material to the particular ballots cast by those voters. The committee, therefore, sought an equitable method of deducting 109 absentee ballots from the totals of the contestant and contestee.

The committee applied the test prescribed in the election contest of Macy v Greenwood (§ 56.4, supra) in the 82d Congress, which method presupposes that each candidate received invalid ballots in the same proportion that he received his total vote in the election precinct. Thus, by dividing the number of absentee votes received by a candidate in a precinct by the total number of absentee votes cast in that precinct, and by then multiplying the fraction thereby obtained, by the number of absentee votes rejected in the precinct, the committee determined that 86 votes should be deducted from contestee's total, and 23 votes from contestant's total. The final result showed a 111-vote plurality for the contestee.

Accordingly, on Aug. 12, 1958, Mr. Ashmore called up as privileged House Resolution 676,[6] which the House agreed to without debate. Thereby, the contestee, was held entitled to his seat. House Resolution 676 provided as follows:

> *Resolved,* That Robert Hale was duly elected as Representative from the First Congressional District of the State of Maine in the Eighty-fifth Congress and is entitled to his seat.

Note: Syllabi for Oliver v Hale may be found herein at § 5.3 (overlapping jurisdiction of committee); § 5.10 (committee power to examine and recount disputed ballots); § 7.3 (advisory opinions by state courts); §§ 10.7, 10.8 (distinction between mandatory and directory laws); § 12.7 (balloting irregularities); § 20.5 (commencement of statutory 30-day period); § 37.4 (method of proportionate

6. 104 CONG. REC. 17119, 85th Cong. 2d Sess.; H. Jour. 858.

deduction); § 38.2 (voter intention as paramount concern in interpreting ballot); § 39.4 (recount pursuant to state law, with House supervision).

§ 58. Eighty-sixth Congress, 1959–60

§ 58.1 Investigation of right of Dale Alford to a seat.

During the organization of the House of Representatives of the 86th Congress on Jan. 7, 1959, a single objection having been made to the oath being administered to the Member-elect, Dale Alford from the Fifth Congressional District of Arkansas, Mr. Alford was asked by the Speaker, under the precedents, to stand aside while the other Members and Delegates-elect were sworn. Thereupon the House agreed to House Resolution 1.[7] House Resolution 1 provided as follows:

> *Resolved,* That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Arkansas, Mr. Dale Alford.
>
> *Resolved,* That the question of the final right of Dale Alford to a seat in the 86th Congress be referred to the Committee on House Administration, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution.

The previous question was immediately ordered on the resolution, at which time Mr. Thomas P. O'Neill, Jr., of Massachusetts, propounded a parliamentary inquiry as to whether 40 minutes of debate would be permitted on the resolution, there having been no debate prior to the adoption of the previous question. Speaker Sam Rayburn, of Texas, replied that "under the precedents, the 40-minute rule does not app]y before the adoption of the rules." The resolution was thereupon agreed to by voice vote and without further debate which authorized the Speaker to administer the oath to Mr. Alford, and which referred to the Committee on House Administration the question of the final right of Dale Alford to the seat. The committee was authorized to send for persons and papers and to examine witnesses under oath.

On Apr. 15, 1959, the committee adopted a motion making it mandatory for the committee to investigate the election, and requesting the federal authorities in possession of the ballots and other documents to release them to the committee. To facilitate the investigation, the Subcommittee on Elections traveled to Little Rock, Arkansas, to take physical cus-

7. 105 CONG. REC. 14, 86th Cong. 1st Sess.