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to the Committee on House Administration a letter from the Clerk transmitting a communication from Carlton H. Myers which complained about the conduct of the election held Nov. 4, 1958, for Representative from the 22d Congressional District of Illinois. In that communication, Mr. Myers, the defeated Democratic candidate, claimed that his opponent had appointed the editor and owner of a local paper, which paper later supported his opponent and refused Mr. Myers coverage, to a position as acting postmaster, in violation of the Federal Corrupt Practices Act. Mr. Myers also alleged attempts of bribery and coercion against him by representatives of the opposing political party. The Clerk's letter was ordered printed to include the notice of contest copy, which had been filed with that office.(15)

There was no record in the proceedings of the 86th Congress to indicate that contestant complied with the requirements of the laws regulating contested election cases (2 USC §§ 201 et seq.), and no record that the Committee on House Administration had taken action in this contest.

Note: Syllabi for Myers v Springer may be found herein at § 18.1 (compliance with statutory requisites).

§ 59. Eighty-seventh Congress, 1961–62

§ 59.1 Roush or Chambers

In 1961, the House conducted an investigation of the question of the right of J. Edward Roush or George O. Chambers, from the Fifth Congressional District of Indiana, to a seat in the 87th Congress, although the case was not one that had been brought pursuant to the contested election statute.

On the organization of the House of Representatives of the 87th Congress on Jan. 3, 1961, Mr. Clifford Davis, of Tennessee, objected to the oath being administered to the Member-elect, George O. Chambers, from the Fifth Congressional District of Indiana, who was then asked by the Chair, under the precedents, to stand aside while other Members-elect and the Resident Commissioner-elect were sworn.

Mr. Davis then submitted the following resolution:(16)

> *Resolved,* That the question of the right of J. Edward Roush or George O.

15. H. Doc. No. 123, 105 CONG. REC. 7242, 7265, 86th Cong. 1st Sess.

16. 107 CONG. REC. 23–25, 87th Cong. 1st Sess.

Chambers, from the Fifth Congressional District of Indiana, to a seat in the Eighty-seventh 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; and be it further

Resolved, That until such committee shall report upon and the House decide the question of the right of either J. Edward Roush or George O. Chambers to a seat in the Eighty-seventh Congress, neither shall be sworn.

Mr. Davis immediately moved the previous question on the resolution, which was ordered by a roll call vote of 252 yeas to 166 nays. The House then agreed to the resolution by division, 205 yeas to 95 nays. Thus the adoption of House Resolution 1 automatically nullified the certificate of election which had been issued by the Governor of Indiana on Nov. 15, 1960, which certified that Mr. Chambers had been elected by a 12-vote majority out of 214,615 ballots cast.

Upon election and organization of the Committee on House Administration, its Subcommittee on Elections, acting pursuant to a motion adopted by the full committee to conduct a complete recount of ballots, proceeded to the Fifth Congressional District of Indiana to conduct the required investigation and recount. The actual counting of ballots and auditing of returns was accomplished by 13 auditors of the General Accounting Office assigned to the committee. The counting procedures as prescribed by the committee were as follows: (1) examination and removal of all material pertinent to the congressional election; (2) separation of materials by category; (3) counting of ballots by categories; (4) recorded count by category for each precinct; (5) packaging and labelling all materials to be retained and removed from counties by committee; (6) recording data from precinct audit sheets on summary analysis sheets for each county; (7) summarizing county totals on analysis; and (8) returning remaining material to precinct container.

Prior to the counting by the committee auditors, the subcommittee had met in executive session to establish the following criteria for classifying ballots examined and categorized by the auditors:

A. Regular ballots:

1. Paper ballots were considered regular if, among other requirements, they were (a) marked with a blue pencil for "nonabsentee" ballots; (b) marked by a clearly defined "X"—two discernible lines

crossing at any angle; (c) and marked by two initials on the lower left of the reverse side.

2. All machine ballots, determined from reading the voting machine registers assigned to the respective candidate, were classified as regular.

B. Questionable ballots (all ballots not meeting the criteria established for regular ballots) were characterized by:

1. Any mark other than an acceptable mark.

2. Any apparently distinguishing mark, erasure, or strikeover.

3. A mark made other than with blue pencil for nonabsentee ballots.

4. A mark not in the proper place, as lines not crossing within a box.

5. Multiple markings for the same office.

6. Ballots without proper markings on the reverse side, lower left corner.

C. Absentee ballots, regular or questionable: the same criteria as above were applied except:

1. Marking was permissible with any color ink or pencil, and

2. Ballots were examined for seal and signature or initials of county clerk on reverse side in lower left corner.

D. Ballots with no votes for Congressman.

In its initial investigation conducted in the Fifth Congressional District of Indiana, the subcommittee also examined and retained absentee and nonabsentee ballots which had not been counted by precinct officials, as well as all other materials relevant to the congressional election. Voters' poll lists and tally sheets were compared with certificates of total votes cast, and discrepancies noted.

The Subcommittee on Elections, meeting in executive session on Mar. 15, 1961, in Washington, directed that ballots classified as questionable or questionable absentee ballots or ballots not counted by precinct officials, be held by the committee for further review. (Regular ballots, determined as such during the first investigation, were not held for further review.) The above categories were further classified into 30 subcategories. The subcommittee, considering the lack of uniformity in the interpretation of the Indiana election laws by various local officials, adopted, on Apr. 12, 1961, a motion designed to achieve uniformity. The adoption of such motion resulted in several actions taken by the Subcommittee on Elections which were not consistent with Indiana statutes and court opinions in point. One effect

of the adoption of these rules was validation of the ballots marked with some instrument other than a blue pencil, some of which had been counted and some of which had been rejected by the precinct officials. There were 436 such ballots, 10 of which had been rejected by local officials. The subcommittee ruled that all 436 ballots were valid, despite Indiana court opinions which had invalidated ballots (nonabsentee paper ballots) marked with ink or lead pencil. With respect to absentee ballots either marked and then retraced with red lead pencil, or marked with black lead pencil but having one line of the "X" retraced and crossing two parallel lines at least one-sixteenth of an inch apart, the subcommittees disregarded state court opinions which had ruled such ballots invalid. The subcommittee cited instances [Goodich v Bullock (2 Hinds' Precedents § 1038) and Kearby v Abbott (2 Hinds' Precedents § 1076)] in which the House had held that state statutory requirements that ballots be marked with designated instruments were directory and not mandatory, particularly where the proper instrument was not available to the voter. [See also Denny, Jr. v Owens (2 Hinds' Precedents § 1088).] Further, the subcommittee ruled that where state law does not declare ballots void when an improper instrument is used, as was the case under Indiana "Rules for Counting Votes," which were silent on the matter, the law designating use of certain instruments was merely directory.

In adopting as valid the distinction between mandatory and directory provisions of state law pertaining to elections, the subcommittee cited the Nebraska case of *Waggonner* v *Russell,* 34 Neb. 116, 51 N.W. 465 (1892), which had incorporated language from Paines' treatise on elections as follows:

> In general, those statutory provisions which fix the day and the place of the election and the qualifications of the voters are substantial and mandatory, while those which relate to the mode of procedure in the election, and to the record and the return of the results, are formal and directory. Statutory provisions relating to elections are not rendered mandatory, as to the people, by the circumstance that the officers of the election are subjected to criminal liability for their violation.

Adoption by the subcommittee of the motion referred to above also had the effect of validating all regular ballots and absentee ballots not properly initialed on the back by the precinct clerks. Absentee ballots were accepted where the county clerk's initials

or signature appeared on the back so long as there also appeared on the back the seal of the county clerk. Thus, 2,492 ballots considered questionable were validated under this rule, though 562 of those ballots were reconsidered under other questionable categories. In resolving that the initialing requirements of state law were directory rather than mandatory, provided that the clerk's seal was affixed and his initials were upon absentee ballots, the subcommittee obviated state law requiring that two precinct clerks initial in ink the backs of non-absentee ballots in the lower left corner and that the voter fold the ballot to expose the initials, and stating that ballots not bearing clerk's initials were void. The subcommittee agreed with an Indiana Supreme Court opinion which had held that a precinct clerk's initials need not be in ink. The subcommittee, however, overruled state court decisions that ballots which did bear two sets of initials were void. The subcommittee did accept state law that the clerk's seal was mandatory on the absent voter's ballot, as well as state court opinions that absentee ballots were valid without the initials of the precinct or poll clerks, but with the initials (not necessarily the signature) of the county clerk. The subcommittee then considered precedents of the House, citing Moss v Rhea (2 Hinds' Precedents § 1120) for the proposition that "the failure of the clerks to initial the ballots was a mistake of which the voter himself was not a participant and the ballots should be counted." Citing McCrary, *A Treatise on the Law of Elections* (1897 ed., 522, 523) the committee report affirmed the proposition that the "acts of election officials are merely directory and the voter will not be disfranchised for failure of these officials to perform their duty."

The committee report then distinguished two House election contests [Steward v Childs (2 Hinds' Precedents § 1056) and Belknap v Richardson (2 Hinds' Precedents § 1042)] in which the Committee on House Elections in its report had rejected ballots which did not bear initials of precinct clerks as required by state law, but upon which reports the House did not act. The committee report then cited the contest of Taylor v England (6 Cannon's Precedents § 177) in which case the Committee on House Elections had unanimously agreed that:

> The House of Representatives should not consider itself obligated to follow the drastic statute of the State of West Virginia, under the provisions of which

all ballots not personally signed by the clerks of election in strict compliance with the manner prescribed had been rejected, but should retain the discretionary right to follow the rule of endeavoring to discover the clear intention of the voter.

As part of the motion described above, the Subcommittee on Elections had agreed to accept as valid those ballots so marked as to indicate the clear intention of the voter, provided that the ballots did not bear any distinguishing mark, that is, a mark which would enable a person to single out and separate the particular ballot from others cast, thereby evading the law insuring the secrecy of the ballot. The committee report cited the provisions of state law which governed the form of county ballots to be used and the way they were to be marked, as well as the statutory rules for counting votes, as interpreted by the Indiana Supreme Court. The subcommittee found that there had been no uniform application of the counting rules by precinct officials. The subcommittee also found that there was no provision of state law authorizing a state recount for a legislative offlce. Consequently, by the adoption of its ground rules, the Subcommittee on Elections took the following initial action before ruling on the counting of ballots marked apparently not in strict conformity with what the subcommittee deemed very narrow court interpretations of very strict statutory rules for marking of a ballot:

Resolved, That the Subcommittee on Elections hereby agrees that it will accept the precedents of the House of Representatives as binding in reaching its decision to the extent that the power to examine ballots and to correct both deliberate and inadvertent mistakes be vested in the subcommittee, the decisions of the Indiana courts being not necessarily conclusive but guiding and controlling only when such decisions commend themselves to the subcommittee's consideration.

The committee report posed as the central issue to be decided, the question of whether the "House will necessarily follow state court decisions in ruling on validity of questionable ballots, particularly when those decisions seem to be contrary to the intention of the voter in honestly trying to indicate a choice between candidates." The report then cited several "instances in which the House, through its Committee on Elections, has held that decisions of a state court are not binding on the House in the examination of ballots to correct deliberate or inadvertent mistakes and errors." [Brown v Hicks (6 Cannon's Precedents § 143) and Carney v Smith (6 Cannon's Precedents

§ 146).] The committee report then stated as follows:

> Although the House of Representatives generally follows State law and the rulings of State courts in resolving election contests, this is not necessarily so with respect to the validity of ballots where the intention of the voter is clear and there is no evidence of fraud.

The committee report then cited precedents of the House in which the Committee on House Elections (1) had declined to reject ballots because not marked strictly within the square as required by state law [Moss v Rhea (2 Hinds' Precedents § 1121), H. Rept. No. 1959, 57th Cong.]; (2) had gone behind the ballot to ascertain the intent of the voter by bringing in evidence of circumstances surrounding the election so as to explain ambiguities (not to contradict ballots) [Lee v Rainey (1 Hinds' Precedents § 641), H. Rept. No. 578, 44th Cong.]; (3) had held that "there being no doubt of the intent of the voter, the wrong spelling of a candidate's name does not vitiate the ballot" [Stroback v Herbert (2 Hinds' Precedents § 966), H. Rept. No. 1521, 47th Cong.]; and (4) where there was no ambiguity, had declined to go beyond the ballots to derive intention of voters [Wallace v McKinley (2 Hinds' Precedents § 987), H. Rept. No. 1548, 48th Cong.].

Having cited these precedents, the subcommittee proceeded to evaluate the various categories of questionable ballots to determine "whether the intent of the voter was clear from the markings on the ballots and whether the ballots were cast by properly registered voters."

With respect to sustaining the intention of the voter in judging many ballots irregularly marked, certain members of the subcommittee voted against validating many such ballots, contending that the motion adopted by the subcommittee regarding intention of the voter was being too liberally construed by the subcommittee, in contradiction to precedents which had voided similar ballots. Mr. John Lesinski, Jr., of Michigan, "felt that the intention of the voter was not sufficiently clear . . . where the party was marked and the voter also marked the square for individual candidates for other offices in the same party column but did not mark the square opposite the congressional candidate."

The subcommittee evaluated the validity of 85 absentee servicemen's ballots, or ballots of dependents of servicemen, which had been rejected, 28 of them having been marked "not registered" by local election officials. In 1953 the

Indiana legislature had adopted a general absentee registration law which made it mandatory for the clerk of the circuit court or the board of registration of a county to register without further application any member of the armed forces upon application, properly executed, for an absentee ballot. In 1957 the legislature attempted to repeal that provision making a member of the armed forces application for an absentee ballot sufficient to constitute registration.

The committee elicited and accepted as binding opinions from the bipartisan state election board, all of which construed the above statute to require that if such an application be received by the county clerk, that an application for registration shall be sent to the serviceman so applying and that an absentee ballot sent to a serviceman not registered as provided by law could not be counted because there was no automatic system of registration under state law.

The subcommittee found that 918 more ballots had been voted than the total number of persons who had signed voters' poll lists or whose names were written in as absentee voters. The subcommittee investigation disclosed no evidence of fraud, but numerous instances wherein precinct election officials had not required voters to sign poll lists, although affidavits of registration were marked to reflect that only eligible voters had voted. Thus the subcommittee validated all ballots cast by persons who had not signed poll lists, which were otherwise valid.

Following the election in November 1960, two candidates filed affidavits with the Special Campaign Expenditures Committee of the 86th Congress. Mr. Roush alleged that more absentee ballots had been recorded as cast than had been cast, and the special committee, upon conducting an investigation, reported that Mr. Chambers had been incorrectly credited with 11 too many absentee votes, and that Mr. Roush had incorrectly received four too many, a net loss of seven votes to Chambers. Mr. Chambers alleged that a tally sheet error in another precinct would add five votes to his total, and would thereby re-establish his overall majority at three votes. The special committee did not investigate Mr. Chambers' petition. This action by the Special Campaign Expenditures Committee prompted Mr. Glenard P. Lipscomb, of California, Mr. John B. Anderson, of Illinois, Mr. Charles E. Chamberlain, of Michigan, and Mr. Charles E. Goodell,

of New York, to file additional views to the final report of the Committee on House Administration in this contest. These minority members of the committee objected to the action taken by the House in the adoption of House Resolution 1, whereby the House had declared the seat from the Fifth Congressional District of Indiana vacant pending final report of the committee. These members in their additional views cited the *House Rules and Manual,* § 236 as follows:

> [B]ut the House admits on his prima facie showing and without regard to final right a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned (1 Hinds' Precedents §§ 528–534).

These members claimed that a document circulated by the Clerk of the House, containing a compilation purporting to certify that Mr. Roush had been elected by two votes, but which had taken cognizance only of the claims made by the Special Committee on Campaign Expenditures, was partially instrumental in denying Mr. Chambers the prima facie right to his seat.

In its investigation of the question of the final right to the congressional seat from the Fifth Congressional District of Indiana, the Subcommittee on Elections considered both petitions filed by the candidates with the Special Committee on Campaign Expenditures of the 86th Congress, though that special committee had only investigated Mr. Roush's petition. The subcommittee found that Mr. Chambers had not been denied five votes due to failure to count five tally marks in unnumbered blanks. The subcommittee ruled that only one of the two tally sheets from the precinct in question showed these five tally marks, but that this tally sheet had not been filed with the precinct material, and that "the congressional ballots counted by the auditors for the entire precinct total agreed with the total vote for both congressional candidates as shown on the precinct certification." The subcommittee investigation confirmed the report of the special committee with respect to the petition filed by Mr. Roush, which claimed that 15 more absentee ballots had been recorded as cast than had been cast. The subcommittee therefore ruled that in Jefferson Precinct No. 1, Mr. Chambers had suffered a net loss of seven votes.

The subcommittee found that in Precinct No. 4 of Madison County, 42 absentee ballots had been illegally procured and cast, though there was no proof as to the per-

son for whom they were cast. The subcommittee applied the "general rule followed in the House for deduction of illegal votes where it is impossible to determine for which candidate they were counted."

Thus the subcommittee first determined the total votes cast for each candidate in the precinct (615 for Mr. Roush and 352 for Mr. Chambers), then determined the number of absentee votes counted for each candidate in the precinct (20 for Mr. Roush and 42 for Mr. Chambers), a total of 62 absentee ballots counted, 68 percent of which were cast for Mr. Chambers and 32 percent for Mr. Roush. Applying these percentages to the 42 votes to be deducted, the subcommittee deducted 29 votes from Mr. Chambers' total and 13 votes from Mr. Roush's total. The committee report then proceeded to cite precedents of the House in which the proportionate deduction method had been followed [for example, Oliver v Hale, H. Rept. No. 2482, 85th Cong.; Macy v Greenwood, H. Rept. No. 1599, 82d Cong.; Finley v Walls (2 Hinds' Precedents § 903); Platt v Goode (2 Hinds' Precedents § 923); Finley v Bisbee (2 Hinds' Precedents § 934); Wickersham v Sulzer and Grigsby (6 Cannon's Precedents § 113); Chandler v Bloom (6 Cannon's Precedents § 160); Bailey v Walters (6 Cannon's Precedents § 166); and Paul v Harrison (6 Cannon's Precedents § 158)].

The subcommittee took special precautions to insure the integrity of the questionable ballots by adopting a motion requiring the separation and sealing of all ballots ruled valid or invalid, without having been counted, and then requiring all previously sealed ballots to be opened and the final results of the election determined by two teams composed of a subcommittee member and a staff auditor. The count of the 6,072 questionable ballots was then rechecked by the audit staff, and no differences were noted. Thus the recount conducted by the Subcommittee on Elections showed Mr. Roush to have received a majority of 99 votes.

The additional views cited above expressed concern over what appeared to be inconsistent positions taken by the subcommittee, which had validated nonabsentee ballots in disregard of previous decisions of local precinct boards, but which had invalidated absentee ballots by adopting a policy of accepting the decisions of the local authorities, particularly with respect to servicemen's ballots, rather than "persisting in its liberal interpretation

of the law when the servicemen's ballots were before us." The members signing the additional views also expressed a hope that future contests would be decided according to statutes governing contested election cases, at a greatly reduced cost. These members advocated new federal legislation.

Robert T. Ashmore, of South Carolina, Chairman of the Subcommittee on Elections, submitted the unanimous report from the Committee on House Administration, which report had been unanimously recommended by the subcommittee, on June 13, 1961. This report (H. Rept. No. 513) accompanied House Resolution 339,[17] which was referred to the House Calendar and ordered printed as follows:

> Whereas the Committee on House Administration has concluded its investigation, including a recount of the ballots cast at the election of November 8, 1960, in the Fifth Congressional District of Indiana, pursuant to House Resolution 1; and
>
> Whereas such investigation and recount reveals that J. Edward Roush received a majority of the votes cast in said district for Representative in Congress: Therefore, be it
>
> *Resolved,* That J. Edward Roush was duly elected as a Representative to the Eighty-seventh Congress from the Fifth Congressional District of Indiana, and is entitled to a seat therein.

17. 107 CONG. REC. 10186, 87th Cong. 1st Sess.

On June 14, 1961, preceding debate in the House on the above resolution, John W. McCormack, of Massachusetts, the Majority Leader, requested:

> Mr. Speaker, in connection with the debate on the Roush-Chambers election matter today, I ask unanimous consent that general debate may continue for not longer than two hours; in other words, to provide an additional hour of general debate. That time, under my unanimous-consent request, is to be equally divided between the chairman of the subcommittee and the ranking minority member, the gentleman from Ohio [Mr. Schenck]; also, that upon the termination of debate, the previous question shall be considered as ordered.

During the debate which ensued, Mr. Ashmore, the subcommittee chairman, emphasized that "the intention of the voter was usually the controlling factor in passing upon these questionable ballots by your committee." He then pointed to the practice adopted by the subcommittee of separating and sealing ballots by category, and then examined and either validated or invalidated by the subcommittee by groups, without the subcommittee knowing for whom they had been cast.

Mr. Paul F. Schenck, of Ohio, the ranking minority member of the full committee, questioned "the possible overlap of jurisdiction of a special committee ap-

pointed each two years for the purpose of studying campaign expenditures . . . that the special committee in this past 86th Congress went too far and went beyond its proper jurisdiction in the actions recommended by its chairman on January 3 of this year."

Mr. Charles A. Halleck, Mr. E. Ross Adair, Mr. Richard L. Roudebush, Mr. William G. Bray, Mr. Earl Wilson, Mr. Ralph Harvey, and Mr. Donald C. Bruce, Members of the 87th Congress from Indiana, all joined with Mr. William C. Cramer, of Florida, ranking minority member of the Special Committee on Campaign Expenditures of the 86th Congress, to (1) dispute the initial need for a recount contrary to the three certifications of the Indiana secretary of state that Mr. Chambers had been duly elected, which fact was not understood by many majority members who were led to believe by the document circulated by the Clerk that both candidates had been certified; (2) to protest the action by the House in declaring the seat vacant with out permitting debate; and (3) to dispute the uniform "ground rules" adopted by the subcommittee, which did not follow the laws of the State of Indiana, to determine the validity of questionable ballots. They contended that the fact that local officials had not uniformly applied state election laws was no reason for the subcommittee to prescribe new rules, but rather that the subcommittee should better have uniformly applied State law.

In response to (3) above, Mr. Ashmore stated that the Committee on House Elections has always been reluctant to refuse to follow state elections laws, but that, under the Constitution which makes each House the final judge of the elections and returns of its members, the House is free to regard state law when it so desires.

Mr. McCormack argued that the House was fully justified in declaring the seat vacant, as the certificates of election, being merely prima facie evidence of election, had been sufficiently contradicted by certificates of error filed by county clerks and by the facts found by the Special Committee to Investigate Campaign Expenditures.

All time having expired for general debate on the resolution, the resolution was agreed to by a division vote demanded by Mr. Wilson, of Indiana, of 138 yeas to 51 nays. Mr. Roush was thereby declared entitled to the seat from the Fifth Congressional District of Indiana, and immediately ap-

peared at the bar of the House and took the oath of office.

On June 13, 1961, Mr. Ashmore had also submitted the unanimous committee report (H. Rept. No. 514) to accompany House Resolution 540,[18] which provided:

> *Resolved,* That the House of Representatives having considered the question of the right of J. Edward Roush or George O. Chambers, from the Fifth Congressional District of Indiana, to a seat in the House in the Eighty-seventh Congress, House Resolution 1, Eighty-seventh Congress, and having decided that the said J. Edward Roush is entitled to a seat in the House in such Congress with the result that the said J. Edward Roush is entitled to receive and will be paid the compensation, mileage, allowances, and other emoluments of a Member of the House from and after January 3, 1961, there shall be paid out of the contingent fund of the House such amounts as are necessary to carry out the provisions of this resolution in connection with such decision of the House, as follows:
>
> (1) The said George O. Chambers shall be paid an amount equal to compensation at the rate provided by law for Members of the House for the period beginning January 3, 1961, and ending on the date of such decision of the House.
>
> (2) The said J. Edward Roush and the said George O. Chambers each shall be paid an amount equal to the mileage at the rate of 10 cents per mile, on the same basis as now provided by law for Members of the House, for each round-trip between his home in the Fifth Congressional District of Indiana and Washington, District of Columbia, in response to the request of the Committee on House Administration for his appearance between the committee in connection with the investigation authorized by House Resolution 1, Eighty-seventh Congress.
>
> (3) The said J. Edward Roush and the said George O. Chambers each shall be reimbursed for those expenses actually incurred by him in connection with the investigation by the Committee on House Administration authorized by House Resolution 1. Eighty-seventh Congress, in accordance with that part of the first section of the Act of March 3, 1879 (20 stat. 400; 2 USC 226), which provides for payment of expenses in election contests.

The resolution was agreed to without debate and by voice vote. The committee report reasoned that "had the investigation . . . been an actual 'election contest,' both the contestant and contestee would have been authorized to [claim] reimbursement of those expenses actually incurred in connection with the investigation conducted by the committee."

Note: Syllabi for Roush or Chambers may be found herein at § 9.3 (certificates of election); § 10.6 (distinction between mandatory and directory laws); § 17.2 (alternatives to election contests);

18. *Id.* at p. 10391.

§ 37.3 (method of proportionate deduction); § 37.18 (marking ballot with improper instrument); § 38.4 (state law as an aid in interpreting voter intention); § 41.5 (use of auditors); § 45.4 (payments to candidates involved in alternatives to statutory election contests); § 45.5 (retroactive payments).

§ 60. Eighty-eighth Congress, 1963–64

§ 60.1 Odegard v Olson

On Feb. 7, 1963, the Speaker laid before the House a communication from the Clerk of the House, which contained contestant's notice of intention to contest the election held Nov. 6, 1962, in the Sixth Congressional District of Minnesota, contestee's answer thereto, and contestee's subsequent motion to dismiss the contest, with supporting brief. The Clerk's letter was read, and, together with the accompanying papers, referred on Feb. 7, to the Committee on House Administration and ordered printed as a House document.[19]

In his notice of contest, contestant alleged general irregularities on the part of election clerks and judges with respect to the counting of ballots, and requested the House to order a recount. Contestant had received 76,962 votes to 77,310 votes for contestee, a margin of only 348 votes. Contestee in his answer included a motion to dismiss the contest for failure of contestant to specify particular grounds in his notice of contest, thereby depriving the House of jurisdiction under 2 USC § 201, which requires contestant to "specify particularly the grounds upon which he relied in the contest." Contestee claimed that contestant had further attempted to "cloud his valid election" by obtaining a restraining order from the state supreme court, which, after a court hearing, had been vacated, thereby permitting the secretary of state to issue to contestee his certificate of election. Contestee further requested the House to require contestant to submit a bill of particulars setting out specific precincts and specific instances of error, irregularity, and failure to conform to law.

In his subsequent motion to dismiss the contest, contestee claimed that the 40-day period for gathering evidence by contestant had expired and that no evidence had been obtained and forwarded to the Clerk as provided by 2 USC §§ 203, 223, and therefore that no contest existed. In his supporting

19. H. Doc. No. 62.