

So these attempts to harass the Members of the House and Senate are simply in contempt of both Houses, and as the chairman of the Judiciary Committee [Mr. Sumners] said, they should be ignored.

On May 17, 1945, the Speaker laid before the House a letter from the Clerk<sup>(12)</sup> of the House which stated that the Clerk "does not regard the said Moss A. Plunkett as a person competent to bring a contest for a seat in the House under the provisions of the laws governing contested elections." Mr. Plunkett was attempting to contest the election of 79 returned Members from districts of various states, growing out of the election held Nov. 7, 1944, though it appeared from the four sealed packages of testimony that Mr. Plunkett had not been party to any of the elections. The Clerk's letter was ordered printed by the Speaker as a House document, and referred to the Committee on Elections No. 1. There is no record that the committee submitted a report in this case, or that the House acted in any way upon the contest.

*Note:* Syllabi for *In re Plunkett* may be found herein at § 5.1 (committee jurisdiction over contest under contested election statutes);

12. H. Doc. No. 181, 91 CONG. REC. 4726, 79th Cong. 1st Sess.; H. Jour. 347.

§ 6.6 (items transmitted by Clerk); § 19.6 (contestants as candidates in general election).

## § 54. Eightieth Congress, 1947-48

### § 54.1 *Lowe v Davis*

On Apr. 27, 1948, Mr. Karl M. LeCompte, of Iowa, submitted the unanimous report<sup>(13)</sup> of the Committee on House Administration in the contested election case of *Lowe v Davis*, from the Fifth Congressional District of Georgia.

On July 25, 1947, the House had considered by unanimous consent and agreed to a resolution (H. Res. 337)<sup>(14)</sup> as follows:

*Resolved*, That notwithstanding any adjournment or recess of the Eightieth Congress, testimony and papers received by the Clerk of the House in any contested-election case shall be transmitted by the Clerk to the Speaker for reference to the Committee on House Administration in the same manner as though such adjournment or recess had not occurred: *Provided*, That any such testimony and papers referred by the Speaker shall be printed as House documents of the next succeeding session of the Congress. (Emphasis supplied.)

13. H. Rept. No. 1823, 94 CONG. REC. 4922, 80th Cong. 2d Sess.; H. Jour. 377.

14. 93 CONG. REC. 10210, 80th Cong. 1st Sess.; H. Jour. 698.

On July 25, 1947, Mr. Ralph A. Gamble, of New York, by unanimous consent offered another resolution by direction of the Committee on House Administration (H. Res. 338):<sup>(15)</sup>

*Resolved*, That notwithstanding any adjournments or recesses of the first session of the Eightieth Congress, the Committee on House Administration is authorized to continue its investigation in the contested-election cases of Mankin against Davis, Lowe against Davis, and Wilson against Granger. For the purpose of making such investigations the committee, or any subcommittee thereof, is authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recesses, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, record, correspondence, memoranda, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

House Resolution 338 was agreed to by voice vote and without debate.

Thereupon, Mr. LeCompte offered the following privileged resolution<sup>(16)</sup> from the Committee on

15. *Id.*

16. *Id.*

House Administration (H. Res. 339) to implement House Resolution 338, which had previously been agreed to:

*Resolved*, That the expenses of the investigations to be conducted pursuant to House Resolution 338, by the Committee on House Administration, acting as a whole or by subcommittee, not to exceed \$5,000, including expenditures for the employment of investigators, attorneys, and clerical, stenographic, and other assistants, shall be paid out of the contingent fund of the House on vouchers authorized by such committee or subcommittee, signed by the chairman of such committee, or subcommittee, and approved by the Committee on House Administration.

House Resolution 339 was agreed to by voice vote and without debate.

On July 26, 1947, the House had adjourned to Jan. 6, 1948, but had been convened by proclamation of the President on Nov. 17, 1947, a continuation of the first session of the 80th Congress. The question of whether this reconvening of the Congress was to be considered a continuation of the existing session or a special or additional session arose in connection with the effective date of certain amendments to the rules of civil procedure in the courts, which amendments were to take effect three months subsequent to the adjournment of the first regular session of the Congress. The

Senate adopted as controlling a memorandum of the Federal Law Section, Library of Congress, to the effect that where Congress adjourns to a day certain—not *sine die*—and is convened earlier by proclamation of the President, such convening is a continuation of the existing session and not a special or additional session.

On Nov. 17, the Speaker took from the Speaker's table and referred to the Committee on House Administration a letter from the Clerk<sup>(17)</sup> transmitting the required papers (absent contestee's brief). The Speaker did not lay the communication before the House, but did order it printed as a House document (H. Doc. No. 434) of the first session of the 80th Congress. (Neither the *Congressional Record*, p. 10613, nor the Journal, p. 771, indicate, however, that the communication had been ordered printed by the Speaker.)

The committee report indicated that the committee had held full hearings on Mar. 17, 1948, and had given consideration to contestee's brief, which had not been filed within 30 days after reception of a copy of contestant's brief, as required by 2 USC §223. The summary report recom-

mended that the contest be dismissed "as lacking in merit."

The debate on House Resolution 552,<sup>(18)</sup> which dismissed the accompanying contest of Mankin v Davis on Apr. 27, 1948, indicated that contestant was disputing the method by which contestee had been nominated in the primary election. Contestee had been selected as his party's nominee under Georgia state law, which prescribed use of the "county unit system." Contestant in this case had not been a candidate in the general election. Presumably, as in the later case of Lowe v Davis (§56.3, *infra*) in the 82d Congress, contestant had been a candidate for the Democratic nomination in the primary election.

On Apr. 27, 1948, Mr. LeCompte called up House Resolution 553<sup>(19)</sup> as privileged, which provided as follows:

*Resolved*, That the election contest of Wyman C. Lowe, contestant, against James C. Davis, contestee, Fifth Congressional District of Georgia, be dismissed and that the said James C. Davis is entitled to his seat as a Representative of said District and State.

Whereupon the resolution was agreed to without debate and without a record vote, thereby dis-

17. H. Doc. No. 434, 93 CONG. REC. 10613, 80th Cong. 1st Sess.; H. Jour. 771.

18. 94 CONG. REC. 4902, 80th Cong. 2d Sess.; H. Jour. 374.

19. *Id.*

missing the contest and holding contestee entitled to his seat.

### § 54.2 Mankin v Davis

On July 25, 1947, the House, in the first session of the 80th Congress, considered by unanimous consent and agreed to the following resolution (H. Res. 337),<sup>(20)</sup> offered by Mr. Ralph A. Gamble, of New York:

*Resolved*, That notwithstanding any adjournment or recess of the Eightieth Congress, testimony and papers received by the Clerk of the House in any contested-election case shall be transmitted by the Clerk to the Speaker for reference to the Committee on House Administration in the same manner as though such adjournment or recess had not occurred: *Provided*, That any such testimony and papers referred by the Speaker shall be printed as House documents of the *next* succeeding session of the Congress. [Emphasis supplied.]

On July 25, 1947, Mr. Gamble, by unanimous consent offered another resolution by direction of the Committee on House Administration (H. Res. 338):<sup>(1)</sup>

*Resolved*, That notwithstanding any adjournments or recesses of the first session of the Eightieth Congress, the Committee on House Administration is authorized to continue its investigation in the contested-election cases of

20. 93 CONG. REC. 10210, 80th Cong. 1st Sess.; H. Jour. 698.

1. *Id.*

Mankin against Davis, Lowe against Davis, and Wilson against Granger. For the purpose of making such investigations the committee, or any subcommittee thereof, is authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recesses, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

House Resolution 338 was agreed to by voice vote and without debate.

Thereupon, Mr. LeCompte offered the following privileged resolution from the Committee on House Administration (H. Res. 339)<sup>(2)</sup> to implement House Resolution 338 which had previously been agreed to:

*Resolved*, That the expenses of the investigations to be conducted pursuant to House Resolution 338, by the Committee on House Administration, acting as a whole or by subcommittee, not to exceed \$5,000, including expenditures for the employment of investigators, attorneys, and clerical, stenographic, and other assistants, shall be

2. *Id.*

paid out of the contingent fund of the House on vouchers authorized by such committee or subcommittee, signed by the chairman of such committee, or subcommittee, and approved by the Committee on House Administration.

On July 26, 1947, the House had adjourned to Jan. 6, 1948, but had been convened by proclamation of the President on Nov. 17, 1947, which session was considered a continuation of the first session of the 80th Congress.

The question of whether this reconvening of the Congress resulting from the Presidential proclamation was to be considered a continuation of the existing session or a special or additional session arose in connection with the effective date of certain amendments to the rules of civil procedure in the courts, which amendments were to take effect three months subsequent to the adjournment of the first regular session of the Congress. The Senate adopted as controlling a memorandum of the Federal Law Section, Library of Congress, to the effect that where Congress adjourns to a day certain—not *sine die*—and is convened earlier by proclamation of the President, such convening is a continuation of the existing session and not a special or additional session.

On Nov. 17, the Speaker took from the Speaker's table and re-

ferred to the Committee on House Administration a letter from the Clerk<sup>(3)</sup> transmitting the required papers (absent contestee's brief). The Speaker did not lay the communication before the House, but did order it printed as a House document (H. Doc. No. 433) of the first session of the 80th Congress. (Neither the *Congressional Record*, p. 10613, nor the Journal, p. 771, indicate, however, that the communication had been ordered printed by the Speaker.)

The committee report indicated that the committee had held full hearings in the contest, and had given consideration to contestee's brief, which had not been filed within 30 days after reception of a copy of contestant's brief, as required by 2 USC §223. The summary report recommended that the contest be dismissed "as lacking in merit."

House Resolution 552<sup>(4)</sup> was called up as privileged by Mr. Karl M. LeCompte, of Iowa, on Apr. 27, 1948, accompanied by the unanimous reports<sup>(5)</sup> of the Committee on House Administration

3. H. Doc. No. 443, 93 CONG. REC. 10613, 80th Cong. 1st Sess.; H. Jour. 771.
4. 94 CONG. REC. 4902, 80th Cong. 2d Sess.; H. Jour. 374.
5. H. Rept. No. 1823, 94 CONG. REC. 4922, 80th Cong. 2d Sess.; H. Jour. 377.

submitted by Mr. LeCompte on that date. The debate which ensued indicated that contestant was disputing the method by which contestee had been nominated in the primary election. Contestant had not herself been a candidate in the general election. Contestee had been selected as his party's nominee under Georgia State law which required use of the "county unit system"<sup>(6)</sup> (presumably whereby each county of the district was accorded one vote, determined by the majority of votes cast therein, and the nominee is thereafter determined by the majority of the county votes cast). Mr. LeCompte contended that unless the House desired to invalidate the state election laws as they pertained to this election, the House should adopt House Resolution 552. Accordingly the House agreed to House Resolution 552 without further debate and without a record vote and thereby dismissed the contest and declared contestee entitled to his seat:

*Resolved*, That the election contest of Helen Douglas Mankin, contestant, against James C. Davis, contestee, Fifth Congressional District of Georgia, be dismissed and that the said James C. Davis is entitled to his seat as a

6. 94 CONG. REC. 4902, 80th Cong. 2d Sess.

Representative of said District and State.

*Note:* Syllabi for Mankin v Davis may be found herein at §6.11 (items transmitted by Clerk); §24.1 (contestee's failure to make timely answer); §43.2 (form of report).

### § 54.3 Michael v Smith

On Apr. 22, 1947, the Speaker laid before the House a letter from the Clerk<sup>(7)</sup> of the House transmitting copies of the notice of contestant and the reply thereto in the contest of Michael v Smith from the Eighth Congressional District of Virginia. The Clerk's letter stated that no testimony had been taken by either party within the time permitted by law. The contestant had filed with his notice of contest a copy of the court record of a suit which had been initiated by contestant in the United States District Court for the Eastern District of Virginia to determine certain legal issues raised by the election of Nov. 5, 1946. On Apr. 22, 1947, the Speaker referred to the Committee on House Administration the Clerk's letter, and ordered it printed, together with the accompanying papers mentioned above, as a House document.

Contestant alleged in his brief that the election had not been

7. H. Doc. No. 213, 93 CONG. REC. 3800, 3827, 80th Cong. 1st Sess.; H. Jour. 281, 282.

conducted in conformity with the 14th and 15th amendments to the United States Constitution, in that state law imposed a poll tax and required certain registration forms in violation thereof, which requirements, furthermore, were not applied uniformly to all citizens. Contestee in his answer alleged that contestant had no standing to contest the election, as he conceded having been defeated by 7,513 votes and that his only contention presented strictly a legal question to be decided in court, which question had been decided contrary to contestant's position. No testimony was transmitted to the House.

On July 26, 1947, the Clerk transmitted contestee's motion to dismiss<sup>(8)</sup> the contest to the Speaker, who laid the Clerk's communication before the House, referred it to the Committee on House Administration, and ordered it printed with the accompanying motion to dismiss. On that same day Mr. Ralph A. Gamble, of New York, submitted the unanimous report<sup>(9)</sup> from the Committee on House Administra-

8. H. Doc. No. 418, 93 CONG. REC. 10522, 80th Cong. 1st Sess.; H. Jour. 714.

9. H. Rept. No. 1106, 93 CONG. REC. 10523, 80th Cong. 1st Sess.; H. Jour. 716, 746.

tion, which summary report also provided for disposition of the election contests of Roberts v Douglas (14th Congressional District of California) and Woodward v O'Brien (Sixth Congressional District of Illinois). The report recited that no testimony in behalf of contestants had been taken during the time prescribed by law in any of the contests, and recommended that notices of intention to contest the elections of contestees be dismissed.

Mr. Gamble called up House Resolution 345<sup>(10)</sup> on July 26, 1947, which was agreed to by the House without debate and by voice vote, and which—

*Resolved*, That the election contest of Harold C. Woodward, contestant, against Thomas J. O'Brien, contestee, Sixth Congressional District of Illinois, be dismissed, and that the said Thomas J. O'Brien is entitled to his seat as a Representative of said district and State; and be it further

*Resolved*, That the election contest of Frederick M. Roberts, contestant, against Helen Gahagan Douglas, contestee, Fourteenth Congressional District of California, be dismissed and that the said Helen Gahagan Douglas is entitled to her seat as a Representative of said district and State; and be it further

*Resolved*, That the election contest of Lawrence Michael, contestant, against

10. 93 CONG. REC. 10445, 80th Cong. 1st Sess.; H. Jour. 716.

Howard W. Smith, contestee, Eighth Congressional District of the State of Virginia, be dismissed, and that the said Howard W. Smith is entitled to his seat as a Representative of said district and State.

#### § 54.4 Roberts v Douglas

On July 25, 1947, the Speaker laid before the House a letter from the Clerk<sup>(11)</sup> which related that neither party had taken testimony during the time prescribed by law and that the contest of Roberts v Douglas, from the 14th Congressional District of California, appeared abated. The Clerk's letter, together with copies of contestant's notice of contest and contestee's motion to dismiss with a copy of her attorney's letter in support thereof, were referred to the Committee on House Administration by the Speaker and ordered printed with those accompanying papers as a House document.

Contestant's notice recited only that—

Contest of your right to hold said seat is entered upon the grounds of failure to meet residence requirements under both the Constitution of the United States and of the State of California.

Additional grounds for contest of your right to hold said congressional

seat is to be found in many fraudulent practices alleged in the election of November 5, 1946, which justify congressional investigation.

Contestee in her motion to dismiss claimed (1) that contestant had not instituted a valid contest, as the statute (2 USC §201) and House precedents required contestant to "specify particularly the grounds upon which he relies in the contest," i.e., the notice stated no facts which contestee could either admit or deny in an answer; and (2) contestant had taken no testimony within the 90 days permitted to support his notice of contest.

On the following day, July 26, 1947, Mr. Ralph A. Gamble, of New York, submitted the unanimous report<sup>(12)</sup> from the Committee on House Administration, which summary report also provided for disposition of the election contests of Woodward v O'Brien (Sixth Congressional District of Illinois) and Michael v Smith (Eighth Congressional District of Virginia). [H. Rept. No. 11061.] The report stated that no testimony in behalf of contestants had been taken during the time prescribed by law in any of the contests, and recommended that notices of intention to contest the

11. H. Doc. No. 416, 93 CONG. REC. 10211, 80th Cong. 1st Sess.; H. Jour. 710, 711.

12. 93 CONG. REC. 10523, 80th Cong. 1st Sess.; H. Jour. 716, 746.

elections of contestees be dismissed.

Mr. Gamble called up House Resolution 345<sup>(13)</sup> on July 26, 1947, which was agreed to by the House without debate and by voice vote, and which—

*Resolved*, That the election contest of Harold C. Woodward, contestant, against Thomas J. O'Brien, contestee, Sixth Congressional District of Illinois, be dismissed, and that the said Thomas J. O'Brien is entitled to his seat as a Representative of said district and State; and be it further

*Resolved*, That the election contest of Frederick M. Roberts, contestant, against Helen Gahagan Douglas, contestee, Fourteenth Congressional District of California, be dismissed and that the said Helen Gahagan Douglas is entitled to her seat as a Representative of said district and State; and be it further

*Resolved*, That the election contest of Lawrence Michael, contestant, against Howard W. Smith, contestee, Eighth Congressional District of the State of Virginia, be dismissed, and that the said Howard W. Smith is entitled to his seat as a Representative of said district and State.

*Note:* Syllabi for Roberts v Douglas may be found herein at §6.7 (items transmitted by Clerk); §13.8 (failure to specify grounds relied upon by contestant); §22.3 (failure to state grounds with particularity); §27.4 (dismissal for

13. 93 CONG. REC. 10445, 80th Cong. 1st Sess.; H. Jour. 716.

failure to take testimony within statutory period); §44.3 (form of resolution disposing of contest).

### § 54.5 Wilson v Granger

On June 17, 1948 (Calendar Day June 18), Mr. Karl M. LeCompte, of Iowa, submitted the report<sup>(14)</sup> to accompany House Resolution 692 from the (Committee on House Administration in the contested election case of Wilson v Granger from the First Congressional District of Utah. The contest had been presented to the House on Feb. 12, 1948, when the Clerk had transmitted to the Speaker a letter<sup>(15)</sup> accompanied by the required testimony and papers, which letter the Speaker pro tempore<sup>(16)</sup> had on that date laid before the House and referred to the committee. The Clerk's letter, which was not ordered printed as a House document, provided:

Sir: The Clerk has received from Frank W. Otterstrom, the officer before whom testimony was taken in the contested-election case of David J. Wilson against Walter K. Granger, for a seat in the Eightieth Congress from the First Congressional District of the State of Utah, letters dated January

14. H. Rept. No. 2418, 94 CONG. REC. 8964, 80th Cong. 2d Sess.; H. Jour. 709, 713.

15. 94 CONG. REC. 1276, 80th Cong. 2d Sess.; H. Jour. 118.

16. Earl C. Michener (Mich.).

10, February 3, and February 6, 1948, with reference to the transmission of testimony and exhibits in the aforesaid case.

The letters from this officer, together with the two express packages, the air-mail package, and exhibit No. 109 referred to therein, as well as copies of all other papers heretofore filed with the Clerk relating to this case, are transmitted to the House for its action.

On July 25, 1947, Mr. Ralph A. Gamble, of New York, offered two privileged resolutions by direction of the Committee on House Administration.<sup>(17)</sup> The first, House Resolution 337 which was agreed to by voice vote and without debate, provided:

*Resolved*, That notwithstanding any adjournment or recess of the Eightieth Congress, testimony and papers received by the Clerk of the House in any contested-election case shall be transmitted by the Clerk to the Speaker for reference to the Committee on House Administration in the same manner as though such adjournment or recess had not occurred: *Provided*, That, any such testimony and papers referred by the Speaker shall be printed as House documents of the next succeeding session of the Congress.

Mr. Gamble then offered House Resolution 338 which was also agreed to by voice vote and without debate, and which provided:

*Resolved*, That notwithstanding any adjournments or recesses of the first

17. 93 CONG. REC. 10210, 80th Cong. 1st Sess.; H. Jour. 698.

session of the Eightieth Congress, the Committee on House Administration is authorized to continue its investigation in the contested-election cases of Mankin against Davis, Lowe against Davis, and Wilson against Granger. For the purpose of making such investigations the committee, or any subcommittee thereof, is authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Thereupon, Mr. LeCompte reported<sup>(18)</sup> and called up the following privileged resolution<sup>(19)</sup> from the Committee on House Administration (H. Res. 339) to implement House Resolution 338, which had previously been agreed to:

*Resolved*, That the expenses of the investigations to be conducted pursuant to House Resolution 338, by the

18. H. Rept. No. 1089, 93 CONG. REC. 10283, 80th Cong. 1st Sess.; H. Jour. 698.

19. 93 CONG. REC. 10210, 80th Cong. 1st Sess.; H. Jour. 698.

Committee on House Administration, acting as a whole or by subcommittee, not to exceed \$5,000, including expenditures for the employment of investigators, attorneys, and clerical, stenographic, and other assistants, shall be paid out of the contingent fund of the House on vouchers authorized by such committee or subcommittee, signed by the chairman of such committee, or subcommittee, and approved by the Committee on House Administration.

House Resolution 339 was agreed to by voice vote and without debate.

The committee report acknowledged "numerous and widespread errors and irregularities in many parts of the district, which revealed a lack of knowledge of the law and a failure to enforce properly the registration and election statutes by those charged with that duty." The committee found that the correct result of the election was not affected by the irregularities shown. The minority report, signed by four members of the committee, claimed that contestant should be seated, due to various voting-law violations, which would nullify the total votes of various precincts and thereby overturn the 104-vote majority received by contestee. Specifically, the minority claimed that state laws prohibiting transportation of voters to places of registration and confining registration to certain hours and by cer-

tain officials were violated "in all of the populous counties in the district."

The delay of over a year by the parties in filing the required papers with the Clerk as provided by statute is explained merely by the statement in the report that "the extensions of time heretofore granted in this contest by the Committee on House Administration are hereby authorized and approved."

House Resolution 692<sup>(20)</sup> was called up as privileged by Mr. LeCompte and agreed to after a short statement by him, without further debate, on June 19, 1948. The resolution, adopted by voice vote, provided as follows:

*Resolved*, That the election contest of David J. Wilson, contestant, against Walter K. Granger, contestee, First Congressional District of Utah, be dismissed, and that the said Walter K. Granger is entitled to his seat as a Representative of said district and State.

*Note*: Syllabi for *Wilson v Granger* may be found herein at §5.12 (continuing investigations by elections committee); §10.12 (distinction between mandatory and directory laws); §27.14 (subsequent authorization for informal extension of time); §35.3 (burden

20. 94 CONG. REC. 9184, 80th Cong. 2d Sess.; H. Jour. 770.

of showing results of election would be changed); §45.1 (payments from contingent fund).

### § 54.6 Woodward v O'Brien

On Feb. 27, 1947, the Speaker laid before the House a letter from the Clerk<sup>(1)</sup> of the House transmitting (1) a copy of the notice of contest growing out of the election held Nov. 5, 1946, in the Sixth Congressional District of Illinois, and (2) a letter from the contestant, Harold C. Woodward, stating that contestee had not answered the notice of contest filed with him within the time prescribed by 2 USC §202, and requesting that all allegations contained in the notice be considered as admitted by contestee and that a default be entered against contestee by the House. As stated in the Clerk's letter—

Since the letter of the contestant (item 2) requests the Clerk to refer this matter to the House of Representatives for appropriate action, and further, since the question raised by the contestant in this communication will have to be decided by the House itself, the Clerk is transmitting these communications herewith for consideration by the appropriate committee.

The Clerk's letter was referred by the Speaker to the Committee

1. H. Doc. No. 156, 93 CONG. REC. 1517, 80th Cong. 1st Sess.; H. Jour. 159.

on House Administration on Feb. 28, 1947, and ordered printed as a House document to contain the papers itemized above.

Contestant's notice recited that the 13,076-vote majority which had been certified for contestee had been determined by election judges and clerks who improperly counted and reported the votes, or improperly certified the election results. Contestant's notice set forth 17 particular forms of error which he alleged would, if corrected, establish 20,000 votes for him.

On July 11, 1947, the Speaker laid before the House a letter<sup>(2)</sup> from the Clerk transmitting a motion by contestee to dismiss the contest, which motion recited that contestee had, on Mar. 5, filed an answer to contestant's notice (though not within the time required by statute), that more than 90 days had elapsed since such answer, during which time no testimony had been taken by contestant. The Speaker referred the Clerk's letter to the committee and ordered it printed to include the motion to dismiss.

On July 26, 1947, Mr. Ralph A. Gamble, of New York, submitted the unanimous report<sup>(3)</sup> from the

2. H. Doc. No. 400, 93 CONG. REC. 8756, 80th Cong. 1st Sess.; H. Jour. 575.

3. 93 CONG. REC. 10523, 80th Cong. 1st Sess.; H. Jour. 716, 746.

Committee on House Administration in the contests of Woodward v O'Brien, which summary report also provided for disposition of the election contests of Roberts v Douglas (14th Congressional District of California), and Michael v Smith (Eighth Congressional District of Virginia). [H. Rept. No. 1106.] The report recited that no testimony in behalf of contestants had been taken during the time prescribed by law in any of the contests, and recommended that notices of intention to contest the elections of contestees be dismissed.

Mr. Gamble called up House Resolution 345<sup>(4)</sup> on July 26, 1947, which was agreed to by the House without debate and by voice vote, and which—

*Resolved*, That the election contest of Harold C. Woodward, contestant, against Thomas J. O'Brien, contestee, Sixth Congressional District of Illinois, be dismissed, and that the said Thomas J. O'Brien is entitled to his seat as a Representative of said district and State; and be it further

*Resolved*, That the election contest of Frederick M. Roberts, contestant, against Helen Gahagan Douglas, contestee, Fourteenth Congressional District of California, be dismissed and that the said Helen Gahagan Douglas is entitled to her seat as a Representative of said district and State; and be it further

4. 93 CONG. REC. 10445, 80th Cong. 1st Sess.; H. Jour. 716.

*Resolved*, That the election contest of Lawrence Michael, contestant, against Howard W. Smith, contestee, Eighth Congressional District of the State of Virginia, be dismissed, and that the said Howard W. Smith is entitled to his seat as a Representative of said district and State.

*Note*: Syllabi for Woodward v O'Brien may be found herein at §5.6 (committee power to dismiss election contests); §23.2 (motion for default judgment); §27.5 (dismissal of contests for failure to take testimony within statutory period); §43.1 (form of committee report).

## § 55. Eighty-first Congress, 1949-50

### § 55.1 Browner v Cunningham

Mr. Thomas B. Stanley, of Virginia, submitted the unanimous report<sup>(5)</sup> of the Committee on House Administration on Aug. 11, 1949, in the contested election case of Browner v Cunningham from the Fifth Congressional District of Iowa. (The report also contained committee recommendations in the contested election cases of Fuller v Davies, 35th Congressional District of New York, and of Thierry v Feighan,

5. H. Rept. No. 1252, 95 CONG. REC. 11316, 81st Cong. 1st Sess.; H. Jour. 831.