AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

C. GROUNDS OF CONTEST

§ 8. Generally

While the new Federal Contested Elections Act (2 USC §§ 381–396) does not attempt to describe or specify the grounds upon which a contestant may bring an election contest, it is significant that 2 USC § 383(b)(3) provides that the contestee may assert as a defense "failure of notice of contest to state *grounds sufficient to change result of election*" (emphasis supplied). Hence, the grounds asserted by the contestant in bringing an election contest should be sufficient to change the result of the election, under the new statute.

The House generally will not unseat a Member for alleged campaign irregularities if he possesses a proper certificate of election and where the violations of the applicable statutes were unintentional and not fraudulent.[6]

Failure to file timely and accurate expenditure reports with the Clerk of the House does not necessarily deprive a contestee of his seat, and the Committee on House Administration will consider evidence of mitigating circumstances and negligence, as opposed to fraud.[7]

6. See Ch. 8, supra.

7. *Id.*

§ 9. Faulty Credentials; Citizenship

After presentation of a certificate of election to the Clerk, the Member-elect is usually administered the oath along with the other Members-elect, unless he is asked to step aside. Once sworn and seated, the contestee may benefit from a number of presumptions which must be refuted by the contestant (see §§ 35, 36, infra). Hence, the possession of a certificate of election, issued by state authorities, declaring a candidate to be the winner of the election, is of great importance.

A challenge to seating a Member-elect may also be based on his failure to meet the constitutional requirements as to citizenship, residence, or age for the office, and in that context is treated as a matter of "exclusion" and not as an election contest. (See Ch. 8, supra.)

Certificates of Election

§ 9.1 Where two persons claim a seat in the House from the same congressional district, one having a certificate of election signed by the Governor of the state, and the

other having a certificate of election from a citizens' elections committee, the House may refuse to permit either to take the oath of office and refer the dispute to a House committee on elections.

In the 1934 Kemp, Sanders investigation (§ 47.14, infra), both parties claimed credentials to the seat from the Sixth Congressional District of Louisiana. The Clerk transmitted a certificate of election of Mrs. Bolivar E. Kemp, signed by the Governor of Louisiana and attested by the secretary of the State of Louisiana, to fill a vacancy created by the death of her husband. The Clerk's letter also transmitted a certificate of election of J. Y. Sanders, prepared by the "Citizens' Election Committee of the Sixth Congressional District," to fill the vacancy. The House refused to permit either party to take the oath of office and referred the question of their prima facie credentials to the Committee on Elections.[8]

§ 9.2 There have been instances in which the House has permitted a contestee to be seated pending the outcome of a contest brought against him, notwithstanding the fact that he does not hold a certificate of election signed by the Governor of his state.

In Brewster v Utterback (§ 47.2, infra), a 1933 Maine contest, it was contended that the House should not recognize the prima facie right of a contestee to a seat by permitting him to take the oath absent a certificate of election. It was ruled, following earlier precedents, that the House may permit a Member-elect to take the oath of office after being "satisfied [from the evidence] that the man was elected," though it appears that his election might still be in dispute.

§ 9.3 A certificate of election from a state Governor is only prima facie evidence of election and may be rendered ineffective by adoption of a House resolution referring the election contest to the Committee on House Administration without seating either candidate.

In the 1961 Indiana investigation of the right of Roush or Chambers to a seat in the House (§ 59.1, infra), the House agreed, by a division of 205 yeas to 95 nays, to a resolution on the day of organization that referred the case to the Committee on House

8. Certificates of election are also discussed in Ch. 8, supra.

Administration, and seating neither party to the dispute, although the Governor of Indiana had already certified Chambers as the winner with a 12-vote majority of the 214,615 votes cast.

Citizenship

§ 9.4 A Member-elect who has not been a citizen for seven years when elected or upon the convening of Congress may be challenged as unqualified under the Constitution.

In the 1933 investigation of the citizenship qualifications of a Member-elect from Pennsylvania, In re Ellenbogen (§ 47.5, infra), initiated by the filing of a memorial by an individual with the Clerk, the committee determined that the Member-elect, who was born in Vienna, Austria on Apr. 3, 1900, and was admitted to citizenship on June 17, 1926, was qualified to take the oath of office at the time of the commencement of the second session of the 73d Congress on Jan. 3, 1934. The Member-elect, who had been a citizen for only six years and five months at the time of his election on Nov. 8, 1932, and for only six years and eight months at the time of the commencement of the first session of the 73d Congress on Mar. 9, 1933, had been a citizen for over seven and a half years at the time of the convening of the second session of the 73d Congress, thus satisfying the requirements of article I, section 2, clause 2 of the Constitution.

§ 10. Violation of Federal or State Election Laws

Frequently alleged as a basis for an election contest are violations of state and federal laws relating to the conduct of such elections. Whether a challenge based on such grounds will be sufficient to overturn the result of the election depends in part on whether the candidate himself participated, whether the errors were committed by election officials, and whether the violations were of laws regarded as merely directory or mandatory.

Until 1972, campaign practices in congressional elections were governed by the Corrupt Practices Act of 1925, as amended.[9] The Federal Election Campaign Act of 1971, which became effective 60 days after the date of enactment (Feb. 7, 1972), repealed the Corrupt Practices Act of 1925 and established a new and comprehensive code for campaign practices and expenditures.[10]

9. 2 USC §§ 241–256 (repealed).

10. 2 USC §§ 431 et seq.; Pub. L. No. 92–225; 86 Stat. 3, Feb. 7, 1972. Viola-