

for bringing election contests, and in part on the failure to avail themselves of the legal steps to challenge alleged discrimination prior to the elections.

The Committee report did state, however, that in arriving at such conclusions, the committee did not condone disenfranchisement of voters in the 1964 or previous election, nor was a precedent being established to the effect that the House would not take action, in the future, to vacate seats of sitting Members. It noted that the Federal Voting Rights Act of 1965 had been enacted in the interim and that if evidence of its violation were presented to the House in the future, appropriate action would be taken.

“Prizes” to Campaign Workers

§ 11.4 A contestee’s offer of prizes to his precinct captains has been found by an elections committee not to be a violation of that section of the Corrupt Practices Act prohibiting expenditures to influence votes.

In *McAndrews v Britten* (§ 47.12, *infra*), a 1934 Illinois contest, the contestant had alleged in his notice of contest that the contestee had “offered prizes to the various precinct captains whose precincts voted the largest

votes in proportion to the Republican votes that were given in these precincts.” The offering of such prizes was acknowledged by the contestee on the floor of the House during debate. The committee found that this offering of prizes was not a violation of 2 USC § 150, which made it unlawful “for any person to make or offer to make an expenditure . . . either to vote or withhold [a] vote or to vote for or against any candidate. . . .”

§ 12. Voting Booth and Balloting Irregularities

As a basis for contesting an election, a wide variety of charges have been made in election contests with respect to use of voting booths and voting machines and equipment. Similarly, alleged improprieties in balloting are frequently cited as a reason for overturning the result of an election.

Voter Confusion as Excuse for Official’s Entering Booth

§ 12.1 In determining whether an election official, in entering a voting booth and conversing with voters, was act-

ing fraudulently and in conspiracy with a candidate, the elections committee may consider the extent to which there existed voter confusion as to the proposition on the ballot or in the operation of voting machines.

In *Gormley v Goss* (§47.9, *infra*), a 1934 Connecticut contest, contestant failed to establish that an election official's actions in entering a booth and talking to voters were fraudulent and conspiratorial. The committee noted that there existed voter confusion as to the placement of a proposition on the ballot and that there were no complaints of interference with voter intent.

Balloting irregularities

§ 12.2 A committee finding of evidence of irregularities in the conduct of an election will not provide a sufficient basis for overturning that election where there is no evidence connecting contestee with such irregularities.

In *Miller v Cooper* (§48.3, *infra*), a 1936 Ohio contest, the Committee on Elections found evidence of irregularities in the destruction of ballots, tabulations of votes cast, and in the method of conducting the election. However,

there was no evidence whatsoever connecting the contestee therewith, and the committee recommended that he be seated.

§ 12.3 Where votes are cast by persons not qualified to vote, being only temporarily in the district, such votes are considered invalid.

In *Swanson v Harrington* (§50.4, *infra*), a 1940 Iowa contest, contestant claimed that 70 of the 528 votes cast in a certain precinct were illegal as they were cast by Works Progress Administration workers only temporarily in the district; the committee ruled, however, that while such votes were illegal and could be disregarded, they would not affect the outcome of the election.

§ 12.4 An allegation that contestee had received a disproportionately large number of "split votes" must be supported by the evidence.

In *McAndrews v Britten* (§47.12, *infra*), a 1934 Illinois contest, contestant alleged that contestee had received a "split vote" so disproportionately large as compared to the "straight ticket votes" that a presumption of fraud followed. This allegation was rejected as not supported by the evidence, the testimony of an

expert being regarded as “frail and unconvincing”; it appeared that a large split vote had been the case for many members of contestee’s political party, as they had to have “run ahead of the ticket” to have been elected.

§ 12.5 An elections committee will not presume ballots marked for the Presidential nominee of contestant’s party to have been intended as “straight ticket” votes where the state law provides for a separate circle for casting “straight ticket” ballots.

In *Ellis v Thurston* (§47.6, *infra*), an election contest originating in the 1934 Iowa election, the contestant argued that on a number of ballots on which the voters had marked the squares opposite the Presidential and Vice Presidential candidates but which indicated no choice for Representative, the voters had intended to vote a straight party ticket. The committee ruled against this contention, however, noting that the state statute provided that a cross be placed in a separate party circle in order to cast a straight party ticket.

§ 12.6 Where state law voids ballots cast for more than one “straight party” ticket, an elections committee will

not validate ballots that are marked for “straight ticket” and, in addition, for a local “wet party” ticket, the latter being adjacent to a column permitting a vote for repeal of the 18th amendment, in the absence of evidence that such voters intended to vote for repeal and mistakenly voted for two “straight tickets.”

In *Fox v Higgins* (§47.8, *infra*), a 1934 Connecticut contest, the Committee on Elections, while conceding the probability of some voter confusion, found that the juxtaposition of the “wet party” entry with the column relating to the repeal of the 18th amendment, had been arranged in the customary way by a competent state elections official.

§ 12.7 Statutory violations by voters in failing to comply with state absentee voting laws were held sufficient to invalidate the ballots cast.

In the 1958 Maine contested election case of *Oliver v Hale* (§57.3, *infra*), arising from the Sept. 10, 1956, election, the report of the Committee on House Administration listed nine areas stressed by the contestant in which there had been a failure on the part of the voter to comply

with the absentee voting laws of Maine: application for absentee or physical incapacity ballot not signed by the voter; application for physical incapacity ballot not certified by physician; envelope not notarized; no signature of voter on envelope; jurat not in form as prescribed by statute; name of voter and official giving the oath are the same; variance in writing between signature on application and signature on envelope; failure of voter to specify on envelope his reason for absentee voting; and voter not properly registered or qualified to vote.

The committee concluded that there were 109 instances where the voter failed to substantially comply with the election laws, leading to rejection of the ballots as compliance was mandatory.

§ 12.8 Where state law required alternation of names of all candidates on ballots so that each name appeared an equal number of times at the beginning, end, and at intermediate places thereon, failure to comply with the requirement did not result in overturning the election.

In the 1951 Ohio contested election case of *Huber v Ayres* (§ 56.1, *infra*), a newly adopted state constitutional provision required alternation of the candidates' names an equal number of times in various positions on the ballot. However, the majority recommended, and the House agreed to, a resolution dismissing the contest on the basis that the remedy under state law had not been exhausted.

D. DEFENSES

§ 13. Generally

Under the new Federal Contested Elections Act (2 USC §§ 381–396), the contestee may, prior to answering the contestant's notice of contest, make the following defenses by motion served on the contestant and such motions may form the basis of a motion to dismiss made before the Committee on House Administra-

tion: insufficiency of service of notice of contest; lack of standing of the contestant; failure of the notice of contest to state grounds sufficient to change the result of the election; and failure of the contestant to claim right to the contestee's seat [see 2 USC § 383(b)]. These statutory defenses are supplemental to those described in the precedents below.