

<sup>55</sup> S. Rep. No. 94-597, *supra* note 29, at 3-5.

<sup>56</sup> See *Willis v. Van Nuys*, S. Rep. No. 281, 76th Cong., 1st Sess. 8 (1939) (rejecting recount because of the absence of a prima facie showing that it might result in unseating of the contestee); *Bursum v. Bratton*, S. Rep. No. 724, 69th Cong., 1st Sess. 7-10 (1926) (recount unjustified because no preliminary evidence was offered tending to cast doubt upon the accuracy of the official returns).

<sup>57</sup> See *Sweeney v. Kilgore*, S. Rep. No. 81-802, *supra* note 29, at 9.

<sup>58</sup> See, e.g., *Hurley v. Chavez*, S. Rep. No. 83-1081, *supra* note 28, at 265.

<sup>59</sup> For example, in the *Durkin v. Wyman* contest, the committee ordered a recount of the approximately 3,500 ballots that had been before the state ballot law commission. S. Rep. No. 94-156, part 2, *supra* note 29, at 8. The committee may also begin with a limited recount to determine if there are sufficient grounds for a wider investigation and state-wide recount. See *O'Connor v. Markey*, S. Rep. No. 1284, 80th Cong., 2d Sess. 3, 11-12 (1948) (preliminary five-county recount subsequently widened to state-wide recount in light of trend reducing incumbent's lead).

<sup>60</sup> An alternative approach is to count the ballots at locations in the state, and only bring to Washington those ballots remaining in dispute for committee review. See *O'Connor v. Markey*, S. Rep. No. 80-1284, *supra* note 59, at 3.

<sup>61</sup> See *Durkin v. Wyman*, S. Rep. No. 94-156, part 1, *supra* note 29, at 4; *Heflin v. Bankhead*, S. Rep. No. 568, 72d Cong., 1st Sess. 36 (1932); *Peddy v. Mayfield*, S. Rep. No. 973, 68th Cong., 2d Sess. 3 (1925).

<sup>62</sup> See *Hurley v. Chavez*, S. Rep. No. 83-1081, *supra* note 28, at 75; *Steck v. Brookhart*, S. Rep. No. 69-498, *supra* note 24, at 2.

<sup>63</sup> D. Tibbetts, *supra* note 38, at 60.

<sup>64</sup> See *Durkin v. Wyman*, S. Rep. No. 94-156, part 1, *supra* note 29, at 35; *Hurley v. Chavez*, S. Rep. No. 83-1081, *supra* note 28, at 276.

<sup>65</sup> *Hurley v. Chavez*, *id.* at 55.

<sup>66</sup> *Id.* at 16. In the *Sweeney v. Kilgore* contest, 22 investigators hired by the committee spent a total of 7,006 man-days over a period of 18 months conducting field investigations. S. Rep. No. 81-802, *supra* note 29, at 6.

<sup>67</sup> See *Edmondson v. Bellman*, S. Rep. No. 94-597, *supra* note 29, at 27-50; *Steck v. Brookhart*, S. Rep. No. 69-498, *supra* note 24, at 23-33.

<sup>68</sup> See *Pritchard v. Bailey*, S. Rep. No. 1151, 72d Cong., 2d Sess. 1 (1933); *Hoidale v. Schall*, S. Rep. No. 1066, 72d Cong., 2d Sess. 6 (1933).

<sup>69</sup> See *Willis v. Van Nuys*, S. Rep. No. 76-281, *supra* note 56, at 2; *Heflin v. Bankhead*, S. Rep. No. 72-568, *supra* note 61, at 20-21.

<sup>70</sup> E.g., *Sweeney v. Kilgore*, S. Rep. No. 81-802, *supra* note 29, at 18; *Hook v. Ferguson*, S. Rep. No. 801, 81st Cong., 1st Sess. 1 (1949); *O'Connor v. Markey*, S. Rep. No. 80-1284, *supra* note 59, at 17; *Steck v. Brookhart*, S. Rep. No. 69-498, *supra* note 24, at 15; *Bursum v. Bratton*, S. Rep. No. 69-724, *supra* note 56, at 10.

<sup>71</sup> See *Hurley v. Chavez*, S. Rep. No. 83-1081, *supra* note 28, at 5. The Senate rejected the committee's recommendation and permitted Chavez to retain his seat.

<sup>72</sup> S. Rep. No. 94-156, part 1, *supra* note 29, at 1.

<sup>73</sup> S. Rep. No. 94-597, *supra* note 29, at 1-2.

<sup>74</sup> Although the standard has not been expressly stated by the committee in these terms, this would appear to be the most accurate characterization of the burden of proof that the committee has applied in election contests. See, e.g., *Wilson v. Vare*, S. Rep. No. 47, 71st Cong., 2d Sess. 2 (1929) ("it must be found, not beyond a reasonable doubt, perhaps, but it must be the conviction of reasonable men, at least, that the proof sustained the charges").

<sup>75</sup> *Pritchard v. Bailey*, S. Rep. No. 72-1151, *supra* note 68, at 1.

<sup>76</sup> *O'Connor v. Markey*, S. Rep. No. 80-1284, *supra* note 59, at 14; *Wilson v. Vare*, S. Rep. No. 71-47, *supra* note 74, at 5 (1927); *Sweeney v. Kilgore*, S. Rep. No. 81-802, *supra* note 29, at 7.

<sup>77</sup> *Id.* at 18; *Edmondson v. Bellman*, S. Rep. No. 94-597, *supra* note 29, at 22; *Heflin v. Bankhead*, S. Rep. No. 72-568, *supra* note 61, at 21; *Senate Election Cases*, *supra* note 5, at 384 (In *Sweeney v. Kilgore*, the committee found that fraudulent ballots did not effect the outcome of the election; therefore, the committee recommended that the state-certified victor retain his seat.).

<sup>78</sup> For example, in the *Hurley v. Chavez* contest, the committee adopted a number of evidentiary presumptions to govern its recount. Two examples are illustrative. The recount rules provided that, absent direct or circumstantial proof to the contrary, any erasure marks on a ballot would be treated as made by the voter and the ballot would be thrown out. On the other hand, where a ballot had been mutilated or had its secret number exposed, absent proof to the

contrary, someone other than the voter would be deemed responsible and the vote would be counted. S. Rep. No. 83-1081, *supra* note 28, at 268.

<sup>79</sup> Likewise, the Senate is not bound by the decisions of state courts or the results of state recount proceedings, though such state determinations are often accorded "great weight." *Johnson v. Schall*, S. Rep. No. 69-1021, *supra* note 53, at 9. For additional references, see *supra* note 29.

<sup>80</sup> 121 Cong. Rec. 18620 (1975).

<sup>81</sup> See 84 Cong. Rec. 3611 (1939) (statement of Sen. George); 76 Cong. Rec. 3544 (1933) (statement of President pro tempore). See also *Riddich's Senate Procedure*, *supra* note 32, at 706.

<sup>82</sup> *Id.* at 560. In the *Durkin v. Wyman* contest, both parties, together with their counsel, were permitted to sit in the rear of the Senate chamber during the debate. See D. Tibbetts, *supra* note 38, at 123. *Durkin*, by unanimous consent, was given the privilege of the floor. 121 Cong. Rec. 1472 (1975). No such motion was required for *Wyman*, as he already had floor privileges as an ex-senator.

<sup>83</sup> See S. Res. 2, 70th Cong., 1st Sess., 69 Cong. Rec. 338 (1927) (according William Vare "the privileges of the floor of the Senate for the purpose of being heard touching his right to receive the the oath of office and to membership in the Senate"). There were even early instances when counsel for the parties were permitted to address the Senate. See 17 Annals of Cong. 187-207 (1808) (statement of Francis Scott Key); *id.* at 207-234 (statement of R.G. Harper).

<sup>84</sup> See, e.g., S. Res. 123, 76th Cong., 1st Sess., 84 Cong. Rec. 4183 (1929) (*Willis v. Van Nuys*); S. Res. 115, 76th Cong., 1st Sess., 84 Cong. Rec. 3611-12 (1929) (*Neal v. Steward*); S. Res. 343, 72d Cong., 2d Sess., 76 Cong. Rec. 3544-45 (1933) (*Hoidale v. Schall*).

<sup>85</sup> See S. Res. 142, 81st Cong., 1st Sess., 95 Cong. Rec. 10321 (1949) (*Sweeney v. Kilgore*); S. Res. 141, 81st Cong., 1st Sess., 95 Cong. Rec. 10321 (1949) (*Hook v. Ferguson*); S. Res. 234, 80th Cong., 2d Sess., 94 Cong. Rec. 6160 (1948) (*O'Connor v. Kilgore*).

<sup>86</sup> See S. Res. 194, 69th Cong., 1st Sess., 67 Cong. Rec. 7301 (1926) (*Steck v. Brookhart*).

<sup>87</sup> See, e.g., *Senate Election Cases*, *supra* note 5, at 333 (Frank L. Smith, 1926-28); *id.* at 328 (*William B. Wilson v. William S. Vare*, 1926-29); *id.* at 283 (*William Lorimer*, 1910-12). *But see id.* at 314 (*Daniel F. Steck v. Smith W. Brookhart*, 1925-26).

<sup>88</sup> See e.g., S. Res. 346, 72d Cong., 2d Sess., 76 Cong. Rec. 5008 (1933); S. Res. 256, 69th Cong., 1st Sess., 67 Cong. Rec. 12633 (1926); S. Res. 211 & 212, 69th Cong., 1st Sess., 67 Cong. Rec. 10563-64 (1926); S. Res. (unnumbered), 47th Cong., 1st Sess., 13 Cong. Rec. 2047 (1922); S. Res. (unnumbered), 46th Cong., 3d Sess., 11 Cong. Rec. 1911-12 (1991).

<sup>89</sup> See 79 Cong. Rec. 14449-50 (1935) (declining payment of attorney's fees for contestant and memorialists in *Henry v. Holt* election contest).

<sup>90</sup> S. Res. 247, 94th Cong., 1st Sess., 121 Cong. Rec. 39861 (1975).

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1061, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg amendment No. 1070, to prohibit the use of funds for national testing in reading and mathematics, with certain exceptions.

Coats/Gregg amendment No. 1071 (to Amendment No. 1070), to prohibit the devel-

opment, planning, implementation, or administration of any national testing program in reading or mathematics unless the program is specifically authorized by Federal statute.

Specter amendment No. 1069, to express the sense of the Senate that the Attorney General has abused her discretion by failing to appoint an independent counsel on campaign finance matters and that the Attorney General should proceed to appoint such an independent counsel immediately.

Coats/Nickles amendment No. 1077, to prohibit the use of funds for research that utilizes human fetal tissue, cells, or organs that are obtained from a living or dead embryo or fetus during or after an induced abortion.

AMENDMENT NO. 1077

The PRESIDING OFFICER. Amendment No. 1077 is now pending.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, we will be resuming discussion of the amendment I offered last evening. I don't intend to repeat all that I said last evening. I do know there are a few other Senators who wish to speak on this amendment, and, hopefully, we can accomplish that in a reasonable time and then move to a vote.

It is not my intention to utilize this amendment as a means of delaying a vote on the larger appropriations bill or specifically on the amendment that we adopted last evening, increasing funding for Parkinson's research, an amendment I supported and worked together with Senator WELLSTONE and others on this effort. I was pleased the Senate adopted my amendment related to the whole area of medical research so that we can commission a study which would give us, before the next appropriations and authorization cycle, a better idea of how we can direct research funds to achieve the greatest good for the greatest number.

There are allocations currently made on the basis of who has the best lobbying effort and perhaps who has the best champion in the Congress. While I don't in any way mean to impugn the motives of anyone here who is putting their heart and soul into providing support for research on a disease that affects them or that they believe is important and critical, I do think that in the interest of the widespread number of diseases that are currently under research at NIH and other places and the Federal funds that are used for that research, having a better understanding of where we can best apply those dollars to achieve the breakthroughs that can prevent the suffering and, hopefully, provide the cures for a number of these diseases is the direction we ought to go. We adopted that amendment last evening, and I am pleased the Senate supported that.

This particular amendment is designed to address a specific issue that relates to the utilization of human fetal tissue in research in a number of neurological disease areas. There is a broader question of whether we ought to utilize human fetal tissue and put restrictions on how that is sustained as