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104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–853

DISMISSING THE ELECTION CONTEST AGAINST CHARLES BASS

SEPTEMBER 26, 1996.—Referred to the House Calendar and ordered to be printed

Mr. THOMAS, from the Committee on House Oversight, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H. Res. 539]

The Committee on House Oversight, having had under consideration an original resolution, dismissing the election contest against Charles F. Bass, report the same to the House with the recommendation that the resolution be agreed to.

COMMITTEE ACTION

On May 10, 1995, by voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT ON BUDGET AUTHORITY AND RELATED ITEMS

The resolution does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures and a statement under clause 2(l)(3)(B) or rule XI of the Rules of the House of Representa-

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tives and section 308(a)(1) of the Congressional Budget Act of 1974 is not required.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee states, with respect to the resolution, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 403 of the Congressional Budget Act of 1974.

OVERSIGHT FINDING OF COMMITTEE ON GOVERNMENT OPERATIONS

The Committee states, with respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, that the Committee on Government Reform and Operations did not submit findings or recommendations based on investigations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

TASK FORCE ON CONTESTED ELECTION

Pursuant to rule 16(b) of the Rules of Procedure of the Committee on House Oversight, the Honorable Bill Thomas, Chairman of the Committee, established a Task Force on February 8, 1995 to examine the documentary record, to receive oral arguments, and to recommend to the Committee, the disposition of an election contest filed pursuant to the Federal Contested Election Act (2 U.S.C. § 381, et seq.) by Mr. Joseph S. Haas, Jr. (contestant) against Mr. Charles F. Bass (contestee). The Task Force consisted of the Honorable John Boehner, Chairman, the Honorable Vern J. Ehlers, and the Honorable William J. Jefferson.

On March 15, 1995, the Task Force voted unanimously to dismiss the contest.

STATEMENT OF FACTS

On December 6, 1994, Joseph S. Haas, Jr. filed with the Clerk of the House of Representatives a document captioned "Notice of Contest." The document, prepared by Mr. Haas, was filed pursuant to the Federal Contested Elections Act ("FCEA").[1]

STANDING

The first issue is whether the Act permits Mr. Haas to file a Notice of Contest, i.e., whether Mr. Haas has standing to bring such action as a contestant. The FCEA specifically provides that only a candidate for election to the House of Representatives in the last preceding election may bring such an action.[2] "Candidate" is defined as an individual whose name was printed on the official ballot for election to the House of Representatives of the United States, or if their name was not printed on the ballot, sought election to the House of Representatives by soliciting write-in votes, provided they were qualified for such office and write-in votes were permitted under the laws of the state.[3] Mr. Haas was a candidate for the Republican nomination, losing to Mr. Bass in the primary

[1] 2 U.S.C. §§ 381–396 (1988).
[2] 2 U.S.C. § 382(a) (1988).
[3] 2 U.S.C. § 381(b) (1988).

election.[4] Mr. Haas alleges that he was a write-in candidate in the general election and its qualified for the office. New Hampshire law permits write-in votes for congressional candidates. On the face of the Notice of Contest document, Mr. Haas would have apparent standing to contest the election.

TIMING/NOTICE

The Notice of Contest appears to have been served upon Congressman Bass and filed within the appropriate time structures of the FCEA.

RESPONSE BY MR. BASS

Mr. Bass did not respond to the Notice of Contest. Notwithstanding such failure, the burden remained upon Mr. Haas to provide credible allegations to the House sufficient to support a claim under the FCEA.[5]

BASIS OF CONTEST

In light of relevant New Hampshire statutes, Mr. Haas' Notice of Contest and his attached affidavit fail to allege facts or provide any legal basis which would support a successful contest under the FCEA.

The substance of Mr. Haas' claim is that no candidate, except himself, in the last election to the House of Representatives of the United States from New Hampshire filed an affidavit attesting to the fact that they were "not a subversive person" as defined in New Hampshire statutes.[6] Based on this claim, Mr. Haas states that he has a right to the office as the sole properly qualified candidate.[7]

In the past, New Hampshire law did require a candidate for any election to file an oath that they were not a "subversive person" with their declaration of candidacy. No candidate for any office appearing upon the New Hampshire ballot has been required to sign such a loyalty oath since 1996. In December of 1966 the New Hampshire Attorney General notified the Secretary of State, who is the Chief Election Officer of the State, that the United States Supreme Court had declared such an oath as provided for in New Hampshire statute unconstitutional.[8] The particular provision of New Hampshire law cited by Mr. Haas was repealed by the New Hampshire legislature effective June 21, 1994.[9]

CONCLUSION

The official certification of election submitted to the Clerk of the House by the New Hampshire Secretary of State provides prima facie evidence of the regularity and correctness of state election returns and of Mr. Bass' presumption of entitlement to the seat.

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[4] Under N.H. Rev. Stat. Ann. § 653:8, the primary election was held September 13, 1994, and the general election was held on November 8, 1994.

[5] 2 U.S.C. § 385 (1988).

[6] N.H. Rev. Ann. § 648:6 (II) (1995).

[7] To resolve this contest, it was not necessary for the Task Force to address the issue of whether ballot or office qualifications can be raised in a contest filed pursuant to the FCEA.

[8] Letter from Deputy New Hampshire Secretary of State to Clerk of New Hampshire House of Representatives, December 28, 1994.

[9] N.H. Rev. Stat. Ann. § 648 (repealed effective June 21, 1994).

Contestant Haas need not in his Notice of Contest provide sufficient evidence to the Task Force to overcome this presumption, but the Contestant must provide credible allegations of irregularities or fraud which, if subsequently proven true, would likely change the outcome of the election and overcome this presumption. On the basis of Mr. Haas' Notice of Contest, accepting the facts as alleged as true, and making all inferences most favorable to Mr. Haas' position, his Notice fails to present any basis on which the Committee could overcome, rebut, or contradict this presumption. The Committee therefore concludes, that this contest should be dismissed.

SUPPLEMENTAL VIEWS

The decision to dismiss the contest brought by Joseph Haas is a proper one, though we want to state clearly the rationale for doing so. The committee dismissed this matter solely because the contest was based on an unconstitutional and repealed statute.

In bringing his claim, the contestant relied exclusively on a particular statute of the state of New Hampshire. The statute in question is unconstitutional—some twenty-nine years ago, in 1966, the Attorney General of New Hampshire determined the unconstitutionality of the provision, and declared that it would no longer be enforced. The particular provision was repealed by the New Hampshire legislature effective June 21, 1994, prior to the last general election.

Contestant's reliance on an unconstitutional and repealed statute to complain about the 1994 general election is misplaced, and the committee is compelled to dismiss for that reason alone.

VIC FAZIO.
SAM GEJDENSON.
STENY HOYER.
BILL JEFFERSON.
ED PASTOR.