

DISMISSING THE ELECTION CONTEST RELATING TO THE
OFFICE OF REPRESENTATIVE FROM THE FOURTH CON-
GRESSIONAL DISTRICT OF LOUISIANA

JUNE 6, 2007.—Referred to the House Calendar and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House
Administration, submitted the following

R E P O R T

[To accompany H. Res. 462]

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest relating to the office of Representative from the Fourth Congressional District of Louisiana, report the same to the House with the recommendation that the resolution be agreed to.

DISMISSING THE ELECTION CONTEST IN THE FOURTH CONGRESSIONAL
DISTRICT OF LOUISIANA

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest against James Otis (“Jim”) McCrery, reports the same to the House with recommendation that the resolution be agreed to.

COMMITTEE ACTION

On May 8, 2007, 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 3(c)(1) rule XIII 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. Thus, clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are not applicable.

STATEMENT OF FACTS

On December 20, 2006, Patti M. Cox (“Contestant”) filed with the Clerk of the House of Representatives a Notice of Contest captioned “Patti M. Cox, Contestant, v. James Otis (“Jim”) McCrery, Contestee.” The document, prepared by Contestant, was filed pursuant to the Federal Contested Elections Act (“FCEA”).¹

Contestant ran as one of two Democratic candidates for the United States House of Representatives from the Fourth Congressional District of Louisiana in the general election held on November 7, 2006 against incumbent Republican James O. McCrery (“Contestee”). The other participants in the Congressional race were Artis R. Cash, Sr. and Chester T. Kelley. The returns as certified by the Secretary of State of Louisiana were:

Jim McCrery 77,078 57%
 Artis R. Cash, Sr. 22,757 17%
 Patti Cox 17,788 13%
 Chester T. Kelley 16,649 12%

Contestee, based on the certified returns, was declared the winner of the Fourth Congressional District seat on November 20, 2006.

BASIS OF CONTEST

In the Notice of Contest, Contestant alleges that Contestee was not, when elected on November 7, 2006, an inhabitant of the state of Louisiana within the meaning of the Qualification clause, Article 1 2, cl. 2, of the United States Constitution.² Therefore Contestant claims that Contestee is not qualified to serve as a Representative to the Congress from the state of Louisiana. Contestant does not challenge the accuracy of the returns or allege any irregularity in the election.

The essence of Contestant’s claim is that Contestee did not maintain a sufficient physical presence in Louisiana to qualify him as an inhabitant of the state for the purposes of the Qualifications clause. Contestant alleges that Contestee had no home apartment, habitation or other place of abode in the state on Election Day. According to Contestant, Contestee sold his home in Louisiana in July 2004 and subsequent to that date did not have a Louisiana residence. On his statement of candidacy filed with the Louisiana Secretary of State, Contestee listed his domicile as 10855 Longfellow Trace, Shreveport, Louisiana. Based on a phone call that a Dr. Kirkikis purportedly had with one of the owners of that property, Contestant claims that Contestee did not “live” at that address.

¹2 U.S.C. §§ 381–96.

²No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

Contestant further claims without any documentary support that the apartment that Contestee now leases in Louisiana was only leased after the date of the election. These allegations, if proven to be true, Contestant claims, would be sufficient to demonstrate that Contestee is not qualified to hold the office of Representative to the Congress from the state of Louisiana.

RESPONSE BY CONTESTEE

Contestee filed a formal answer and motion to dismiss in response to the Notice of Contest with the Clerk of the House of Representatives on January 18, 2007. Contestee answers that he fully satisfied the inhabitancy requirement of the Qualification Clause. He provided an affidavit from the owner of the property attesting to the fact that he maintained a residence at 10855 Longfellow Trace, Shreveport, Louisiana continually from September 2004 until November 2006. He further provided a lease for an apartment that he currently maintains with a term that began on November 4, 2006 and runs through May 31, 2007.

NATURE OF PROCEEDING

The Committee finds that this contest should not have been brought before the House under the FCEA and should be dismissed.

Under the precedents of the House, a challenge to the qualifications of a Member is not treated as an election contest. The question before the House under the Qualification clause is not whether the Member was duly elected but whether the Member notwithstanding election is constitutionally qualified to hold the office. Deschler's Precedents of the U.S. House of Representatives: (Deschler's) expressly references the distinction:

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.³

Deschler's set forth the procedures under which a challenge to the qualifications of a Member-elect is typically brought:

Alleged failure to meet qualifications is raised, usually by another Member-elect, before the House rises en masse to take the oath of office. [footnote omitted] If a challenge is made, the Speaker requests the challenged Member-elect to stand aside. The Member elect whose qualifications are in doubt may then be authorized to take the oath of office pursuant to a resolution so providing, which resolution may either declare him entitled to the seat, or refer the question of his final right to committee. [footnote omitted] The House may also refuse to permit him to take the oath, and may refer the question of his qualifications and his right to take the oath to committee. [footnote omitted] If the House finds that a Member-elect has not met the qualifications for membership, or has failed to remove disqualifications, a new election must be held. An opposing candidate with the next highest number of votes cannot claim the right to the seat.

³ Deschler's Precedents, supra at Chapter 9, §9, p. 362.

It is important to note that a successful challenge to the qualifications of a Member elect does not result in the seating of the opposing candidate with the highest number of voters. This is a critical fact in evaluating claims under the FCEA. An essential element of an election contest under the FCEA is that the contestant claims a right to the office. An individual who cannot claim a right to the office does not have standing to bring an action under the FCEA. In such circumstances a contest is properly dismissed.

The Committee finds that, as a general matter, challenges to the qualifications of a member-elect to serve in the Congress are not a proper subject for a contest brought under FCEA. Nothing in Contestant's Notice of Contest persuades the Committee to re-consider its understanding of the FCEA. Consequently, the Committee concludes that Contestant's arguments regarding Contestee's qualifications to serve in Congress do not constitute grounds sufficient to change the result of the election and, therefore, recommends that this election contest be dismissed.

The Committee also notes that there is no reason to believe, based on evidence that was presented in this contest, that Contestee was not an inhabitant of the state of Louisiana when he was elected. Indeed, the evidence submitted by the contestee suggests that he was in fact an inhabitant, but because that question is not properly before the Committee, the Committee makes no formal finding in that regard.

CONCLUSION

For the reasons discussed above, the Committee therefore concludes that this contest should be dismissed.

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