

Aug. 6, 1965.⁽¹⁶⁾ In 1966, the act was upheld as constitutional by the U.S. Supreme Court.⁽¹⁷⁾

§ 7. Time and Place; Procedure

Article I, section 4, clause 1 of the Constitution vests in the states the power to prescribe the times, places, and manner of holding elections for Senators and Representatives but allows Congress preemptive authority to su-

16. On Aug. 6, 1965, the Senate stood in recess in order to receive the President of the United States. When the Senate reassembled, there was ordered to be printed in the *Congressional Record* the proceedings conducted at noon on the same day, when the President had delivered a message in the Rotunda of the Capitol and then retired to the President's Room in the Capitol in order to sign into law the Voting Rights Act of 1965. 111 CONG. REC. 19649, 19650, 89th Cong. 1st Sess. For the Voting Rights Act of 1965, see Pub. L. No. 89-110, 79 Stat. 437. For codification see 42 USC §§1971 et seq.

17. In upholding the validity of the 1965 Voting Rights Act in *Katzenbach v Morgan*, 384 U.S. 641 (1966), the Supreme Court cited congressional materials in finding a rational basis for the act. See 111 CONG. REC. 10676, 10680 (May 20, 1965), 15671 (July 9, 1965), 89th Cong. 1st Sess.

persede or change any such state regulation.⁽¹⁸⁾ Although Congress has enacted extensive legislation to protect the right to vote and to secure the process against fraud, bribery and illegal conduct,⁽¹⁹⁾ the actual mechanism for conducting congressional elections has been left largely to the states. And in judging the elections of their Members, the House and the Senate defer in great part to state law regarding elections and to state court opinions construing such election laws.⁽²⁰⁾

The place where elections shall be held is for the states to determine, qualified only by the requirement that Representatives must be chosen in congressional districts which comply with statutory and constitutional requirements.⁽¹⁾

Poll facilities and functions of state officials at polling places are a matter of state regulation, but the House and Senate must often

18. See *United States v Mumford*, 16 F 223 (Cir. Ct. Va. 1883). For a general discussion of the delineation of power over the regulation of elections, see § 5, supra.

19. For legislation protecting the right to vote, see § 6, supra. See §§ 10-14, infra, as to federal regulation of campaign practices.

20. See § 7.1, infra.

1. For districting requirements, see §§ 3, 4, supra.

examine such state laws in order to determine the validity of the elections of their respective Members.⁽²⁾ Unintentional maladministration of elections and erroneous conduct by state election officials at the polls do not usually invalidate elections;⁽³⁾ but where the conduct of election officials or of candidates and their agents constitutes fraud or illegal control of election machinery, the House or Senate may void an election and exclude a Member-elect, or expel a Member charged with such conduct.⁽⁴⁾ And Congress has the power not only to enact laws providing for the enforcement of state provisions ensuring election regularity,⁽⁵⁾ but also to establish

2. See U.S. Const. art. I, §5, clause 1, vesting in the House and the Senate the exclusive authority to judge the elections and returns of their Members.

3. See §§ 7.6, 7.7, *infra*.

Neither the due process clause of the Constitution nor the requirement that Representatives be chosen by the people guarantees a federal remedy for unintentional errors in the administration of an election, where a petitioner has failed to properly file for a fair and accurate state remedy which is available. *Powell v Power*, 436 F2d 84 (2d Cir. 1970).

4. See § 7.8, *infra*.

5. See *In re Coy*, 127 U.S. 731 (1888); *United States v Gale*, 109 U.S. 65 (1883); *Ex parte Clarke*, 100 U.S. 399

federal systems for the supervision of voting and election registration procedures.⁽⁶⁾

The states may set general requirements for the placing of a candidate's name on the ballot where such requirements do not amount to qualifications in addition to those prescribed by the Constitution for Senators and Representatives.⁽⁷⁾

Primaries to nominate candidates for congressional election are regulated by state law, and both the House and Senate construe individual state statutes to determine whether a Member-elect is entitled to his seat where allegedly not nominated in compliance with state law.⁽⁸⁾

The authority of Congress to supersede state election laws ex-

(1880); *Ex parte Siebold*, 100 U.S. 371 (1880).

6. See *Ex parte Yarbrough*, 110 U.S. 651 (1884); *Ex parte Siebold*, 100 U.S. 371 (1880).

For a summary of recent federal voting rights legislation establishing supervisory federal election officials, see § 6, *supra*.

7. A state may, for example, require a filing fee for a candidate. *Fowler v Adams*, 315 F Supp 592 (D. Fla. 1970), appeal dismissed, 400 U.S. 986. For the qualifications of Members-elect to the House and Senate, and the lack of state power to add to those requirements, see Ch. 7, *supra*.

8. See §§ 7.3–7.5, *infra*.

tends to primaries, since they are an integral part of the election process.⁽⁹⁾

State Authority to Prescribe Election Regulations

§ 7.1 Congress, in judging the elections of its Members, will follow state law as to the time, place and manner of holding elections, in the absence of a controlling federal law.⁽¹⁰⁾

On Jan. 20, 1934, a committee on elections submitted House Resolution 231 and Report 334, declaring null and void an election and denying the seat to either of two contestants, one with a certificate of election from the governor and one with a certificate of election from a citizens' committee.

The resolution read as follows:

Resolved, That there was no valid election for Representative in the House of Representatives of the Seventy-third Congress from the Sixth

9. See *United States v Classic*, 313 U.S. 299 (1941); *United States v Wurzbach*, 280 U.S. 396 (1930). Authority to the contrary, *Newberry v United States*, 256 U.S. 232 (1921), was overruled by the decisions above.
10. For state authority generally, see U.S. Const. art. I, §4, clause 1, discussed in §5, *supra*.

Congressional District of the State of Louisiana on the 5th day of December, or the 27th day of December 1933, and that neither Mrs. Bolivar E. Kemp nor J. Y. Sanders, Jr., is entitled to a seat therein; and be it further

Resolved, That the Speaker communicate to the Governor of the State of Louisiana that there is a vacancy in the representation of the State in the Sixth Congressional District thereof.⁽¹¹⁾

The committee had determined (see Report 334), after examining the relevant state law, that: the election to fill the vacancy, held pursuant to the governor's proclamation, was invalid because held prior to expiration of the preliminary time period required by state law; although the election was invalid, a party committee could not itself nominate a candidate and hold an election to choose him as a Representative to Congress.

After debate,⁽¹²⁾ the House adopted the resolution declaring the election null and void.⁽¹³⁾

Primary Nominations

§ 7.2 On the recommendation of a committee, the House re-

11. 78 CONG. REC. 1035, 73d Cong. 2d Sess. On Jan. 3, 1934, the House had denied the right to be sworn to either contestant and had referred the matter to the Elections Committee. 78 CONG. REC. 11, 12, 73d Cong. 2d Sess.
12. 78 CONG. REC. 1108-11, 73d Cong. 2d Sess., Jan. 22, 1934; 78 CONG. REC. 1510-21, 73d Cong. 2d Sess., Jan. 29 1934.
13. 78 CONG. REC. 1521, 73d Cong. 2d Sess., Jan. 29, 1934.

fused to deprive a properly nominated Member of his seat for irregularity in the nomination of his opponent.

On June 14, 1967, the Committee on House Administration submitted Report No. 365 to accompany House Resolution 541, denying the petition of a citizen that the seat of Mr. Fletcher Thompson, of Georgia, be vacated, based upon the nomination of his opponent in alleged contradiction of state law.⁽¹⁴⁾

The House considered the resolution on July 11, 1967. Mr. Robert T. Ashmore, of South Carolina, summarized the background of the election contest and urged the adoption of the resolution, since no precedent existed for depriving a seated Member of his seat for the irregular or illegal nomination of his opponent. Mr. Charles E. Goodell, of New York, stated that a Georgia court had dismissed a petition urging that Mr. Thompson's opponent be enjoined from entering the race because of his allegedly illegal nomination.⁽¹⁵⁾

The House then agreed to the resolution dismissing the election contest and denying the petition.⁽¹⁶⁾

14. 113 CONG. REC. 15848, 90th Cong. 1st Sess.

15. 113 CONG. REC. 18290, 18291, 90th Cong. 1st Sess.

16. *Id.* at p. 18291.

§ 7.3 Where state law requires the nomination of candidates by direct primary elections called by party committees, but permits such committees to themselves nominate candidates where the party has no nominee for any position named in the call of the committee, the nomination of a candidate by a committee which had not first called a primary election is invalid.

On Jan. 20, 1934, a committee on elections submitted a report and resolution recommending that the House declare an election null and void, because the regular election had been held at an improper time and because the contestant had been elected and certified by a party committee in contravention of Louisiana law.⁽¹⁷⁾ The House adopted the resolution on Jan. 29, 1934, thereby determining that the nomination of a candidate by a party committee which had not first called a primary election was invalid, state law requiring nomination of party candidates in direct primary elections, but allowing committees to themselves nominate candidates where the party "shall have no nominee . . . for any position

17. 78 CONG. REC. 1035, 73d Cong. 2d Sess. (H. Res. 231 and H. REPT. NO. 334).

named in the call of the committee.”

The resolution read as follows:

Resolved, That there was no valid election for Representative in the House of Representatives of the Seventy-third Congress from the Sixth Congressional District of the State of Louisiana on the 5th day of December, or the 27th day of December 1933, and that neither Mrs. Bolivar E. Kemp nor J. Y. Sanders, Jr., is entitled to a seat therein; and be it further

Resolved, That the Speaker communicate to the Governor of the State of Louisiana that there is a vacancy in the representation of that State in the Sixth Congressional District thereof.⁽¹⁸⁾

§ 7.4 The House refused to overturn an election in a state with a “county unit” primary election system, where less populous counties were entitled to a disproportionately large electoral vote for nominees.

On Apr. 27, 1948, the House adopted without debate House Resolution 553, dismissing the Georgia election contest of *Lowe v Davis*:

Resolved, That the election contest of Wyman C. Lowe, contestee, against James C. Davis, contestee, Fifth Con-

18. 78 CONG. REC. 1521, 73d Cong. 2d Sess. For debate on the resolution, see 78 CONG. REC. 1108–11, Jan. 22, 1934; 78 CONG. REC. 1510–21, Jan. 29, 1934.

gressional District of Georgia, be dismissed and that the said James C. Davis is entitled to his seat as a Representative of said District and State.⁽¹⁹⁾

Parliamentarian’s Note: The House thereby refused to invalidate the Georgia “county unit” system for primaries, requiring use of county electoral votes rather than popular votes for choosing nominees. Under the system each candidate was required to receive a majority of county unit votes for nomination, and unit votes were allotted in favor of less populous counties rather than strictly by population.⁽²⁰⁾

§ 7.5 Where a Senator was elected to a full six-year term by a “write-in” vote, following the death of his predecessor at a time too late for a new nominating primary, he announced his resignation to permit nomination of a candidate in a regular primary election in which he would be a candidate.

On Mar. 6, 1956,⁽¹⁾ Senator James Strom Thurmond, of South

19. 94 CONG. REC. 4902, 80th Cong. 2d Sess.

20. See the elections committee report in the case, H. REPT. NO. 1823, 80th Cong. 2d Sess. The Supreme Court later invalidated the use of the “county unit” system. *Gray v Sanders*, 372 U.S. 368 (1963).

1. 102 CONG. REC. 3991, 84th Cong. 2d Sess.

Carolina, inserted in the Record an announcement he had made in his home state on the subject of his resignation from the Senate. He had been elected by a "write-in" vote at a general election held two months after the death of his predecessor in the Senate. He had pledged to the people of his state that he would resign after election to the Senate by a write-in vote to permit the nomination of a Senator in a regular primary election. Mr. Thurmond announced his candidacy for the unexpired term created by the vacancy.

Conduct of Poll Officials

§ 7.6 Statutory functions of election and poll officials are directory in nature, and errors in election administration at the polls, absent fraud, do not normally invalidate ballots or elections.

In ruling on election contests, House election committees have followed the general rule that violations by state poll and election officials of their functions under state statutes do not vitiate ballots or void elections, in the absence of fraud, since laws prescribing the duties of the officials are directory in nature.⁽²⁾ Commit-

2. Laws directing the manner in which ballots are to be marked are manda-

tees have determined that failure to provide at the polls proper instruments to mark ballots do not invalidate ballots;⁽³⁾ that failure of precinct or poll clerks to initial ballots is not a crucial error;⁽⁴⁾ that distribution of stickers at polling places to be used on ballots is allowable, where state law is uncertain as to sticker votes but the state executive and judiciary permit their use;⁽⁵⁾ and that violation of state laws regarding poll procedure and disposition of absentee ballots, envelopes and applications is not fatal to the validity of the absentee ballots.⁽⁶⁾

Voting Facilities

§ 7.7 The Senate refused to void an election where in various counties no voting booths were provided, where there were no officials present to aid incapacitated voters, and where question-

tory and noncompliance therewith may invalidate ballots (see §8.11, *infra*).

3. Report No. 513, submitted June 13, 1961, 87th Cong. 1st Sess.; see 107 CONG. REC. 10186.
4. *Id.*
5. Report No. 1172, submitted Sept. 8, 1959, 86th Cong. 1st Sess.; see 105 CONG. REC. 18610.
6. Report No. 2482, submitted Aug. 6, 1958, 85th Cong. 2d Sess.; see 104 CONG. REC. 16481.

able ballots were destroyed by court order.⁽⁷⁾

On Mar. 23, 1954, the Senate rejected the following resolution, reported from the Subcommittee on Privileges and Elections of the Committee on Rules and Administration:

Resolved, That it is the judgment of the Senate in the November 4, 1952, general election, in and for the State of New Mexico, no person was elected as a Member of the Senate from that state, and that a vacancy exists in the representation of that state in the Senate.

The Secretary of the Senate is directed to submit a copy of this resolution to the Governor of the State of New Mexico.⁽⁸⁾

The resolution was predicated on the failure of New Mexico election authorities to provide voting secrecy by providing booths in all counties, the absence of officials to help blind and incapacitated persons in voting, and the destruction of ballots by court order.⁽⁹⁾

In urging the rejection of the resolution, Senator Walter F.

7. For House decisions on the validity of ballots, see § 8.11, *infra*.

8. 100 CONG. REC. 3732, 3733, 83d Cong. 2d Sess.

9. For debate on the resolution and remarks describing the errors and irregularities in the New Mexico election, see 100 CONG. REC. 3696-732, 83d Cong. 2d Sess.

George, of Georgia, cited the rule laid down by the Senate in judging past elections of its Members:

It will be noted that, according to this statement of the rule, the irregularity or error does not of itself create a situation where it must be shown that the result was not affected. In order to set aside an election there must be not only proof of irregularities and errors, but, in addition thereto, it must be shown that such irregularities or errors did affect the result.⁽¹⁰⁾

Illegal Control of Election Machinery

§ 7.8 In the 77th Congress, the Senate failed to expel, by the necessary two-thirds vote, a Senator whose election had been challenged on various grounds, including his alleged illegal control of election procedure.

On Jan. 3, 1941, at the convening of the 77th Congress, Mr. William Langer, of North Dakota, took the oath of office, despite charges from the citizens of the state recommending that he be denied a congressional seat because of campaign fraud and of conduct involving moral turpitude.⁽¹¹⁾

The petition against Mr. Langer alleged, among other charges, con-

10. *Id.* at p. 3731.

11. 87 CONG. REC. 3, 4, 77th Cong. 1st Sess.

trol of election machinery, casting of illegal election ballots, and destruction of legal election ballots.⁽¹²⁾

After determining that a two-thirds vote was necessary for expulsion,⁽¹³⁾ the Senate voted not to expel Senator Langer.⁽¹⁴⁾

§ 8. Ballots; Recounts

The content, form, and disposition of ballots used in congressional elections are generally regulated by state law. The only federal requirement is that such ballots be written or printed, unless the state has authorized the use of voting machines.⁽¹⁵⁾ Federal courts do not normally interfere with a state's prerogative to establish standards for ballots and voting machines.⁽¹⁶⁾

12. 88 CONG. REC. 2077-81, 77th Cong. 2d Sess., Mar. 9, 1942.

13. *Id.* at p. 3064.

14. *Id.* at p. 3065. See §§6.3-6.5, *supra*, for instances in which election results were challenged for control of election machinery so as to deny voting rights.

15. 2 USC §9.

16. See *Voorhes v Dempsey*, 231 F Supp 975 (D. Conn. 1964), *aff'd*, 379 U.S. 648 (state requirement of party lever on voting machines did not violate the 14th amendment where candidate listing and voter choice not impaired); *Voltaggio v Caputo*, 210 F

In judging election contests, the House must on occasion gain access to the ballots cast and determine whether they were properly included within or omitted from the official count taken by state authorities. House committees investigating contests, or investigating election irregularities or fraud, may be granted authority to impound or otherwise obtain ballots within the custody of state officials.⁽¹⁷⁾

In judging the validity of ballots, the House (or its committee) relies on state statutes regarding ballots and on state court opinions construing those laws. The general rule is that laws regulating the conduct of voters and the casting of votes are mandatory in nature and violations thereof invali-

Supp 237 (D. N.J. 1962), appeal dismissed, 371 U.S. 232 (statute directing manner of listing names on ballot not violative of the 14th amendment; prohibiting independent candidate from having slogan printed beneath name not violative of the U.S. Constitution); *Smith v Blackwell*, 115 F2d 186 (4th Cir. 1940) (federal court lacked power to set up election machinery by order or to require certain form of ballot); *Peterson v Sears*, 238 F Supp 12 (D. Iowa 1964) (federal court lacked jurisdiction to enjoin county auditors from unlocking voting machines).

17. See §§8.9, 8.10 for impoundment of ballot boxes and their contents.