

# *Election Contests*

## A. IN GENERAL

### **§ 1. Constitutional Provisions; Historical Background**

This chapter sets forth the substantive and procedural aspects of an election contest brought to determine the right to a seat in the House. Emphasis is placed on contests initiated by defeated candidates, known as contestants. In the style of an election contest, the contestant's name is always given first.

The format of this chapter differs in some respects from other chapters in this work. Following each precedent is a brief note identifying the election contest involved and a reference to the complete account of the contest. A comprehensive review of each contest will be found in the last division of this chapter (§§ 46 et seq.).

An appendix to this chapter has been included to cover election contests during the 65th through the 71st Congresses (1917–1931). It was thought necessary to include these cases even though outside the normal scope of these volumes, because no substantial cov-

erage now exists of election contests during that period.<sup>(1)</sup>

Election contests are to be distinguished from proceedings by the House to exclude or expel a Member, and from suits brought by an elector of the Member's district.<sup>(2)</sup>

Under section 4 of article I of the United States Constitution, the times, places, and manner of holding elections for Representatives shall be prescribed in each state by the legislature thereof but the Congress may at any time by law make or alter such regulations. As noted elsewhere in this work (see Chapter 8, *supra*), Congress has designated the date pursuant to that provision on which

1. For election contests considered prior to the 72d Congress, see, in addition to the appendix to this chapter, 1 Hinds' Precedents §§ 634–844, 2 Hinds' Precedents §§ 845–1135, 6 Cannon's Precedents §§ 90–189, 7 Cannon's Precedents §§ 1721, 1722.
2. Exclusion or expulsion proceedings, see Ch. 12, *infra*. Memorials and other alternatives to statutory election contests are briefly treated in § 17, *infra*. See also Ch. 8, *supra*, which includes a discussion of elections and election regulations.

the elections for Representatives are to be held. Congress also by statute requires that all votes for Representatives in Congress be by written or printed ballot, or by voting machine, the use of which has been duly authorized by the state law (2 USC §§7, 9).

Under section 5 of article I of the Constitution, it is provided: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . ."

Recently, in *Roudebush v. Hartke*, 405 U.S. 15 (1972), the Court characterized the question of title to a seat in Congress as a "nonjustifiable political question."<sup>(3)</sup>

The extent to which a violation of the Corrupt Practices Act, 2 USC §§241–256 (repealed), provided grounds for an election contest is discussed herein<sup>(4)</sup> but the

3. Congress has always regarded itself as the final judge of elections. For example, the Committee on House Administration, in a report dated May 24, 1972 (H. Rept. No. 92–1090), stated: "It is the committee's feeling that once the final returns in any election have been ascertained, the determination of the right of an individual to a seat in the House of Representatives is in the sole and exclusive jurisdiction of the House of Representatives under [section 5 of article I, Constitution of United States]."

4. See §10, *infra*.

limitations on campaign expenditures set forth in that statute are treated elsewhere in this work.<sup>(5)</sup>

## § 2. Contested Election Laws

Contests for seats in the House of Representatives are governed by the Federal Contested Elections Act. This statute (2 USC §§381–396) sets forth the procedure by which a defeated candidate may have his claim to a seat adjudicated by the House. The act provides for the filing of notice of contest and other proceedings (§§20–26, *infra*), for the taking of testimony of witnesses (§§27–31, *infra*), and for a hearing on the depositions and other papers (§§32, 33, *infra*) that have been filed with the Clerk (§6, *infra*). The contest is heard by the Committee on House Administration (§5, *infra*). Acting upon committee reports, the House, by privileged resolution, then disposes of the case by declaring one of the parties to be entitled to the seat (§44, *infra*).

The act (Public Law 91–138) provides as follows:

5. See Ch. 8, *supra*. The Corrupt Practices Act has been replaced by the Federal Election Campaign Act of 1971, 2 USC §§431 et seq.