pressed the hope that the fifth would be the last.[2]

§ 19. Parties

The Federal Contested Elections Act uses the term "candidate" with reference to those persons who may initiate a suit under the statute.[3] This term is defined as referring to an individual (1) whose name is printed on the official ballot for election to the House, or (2) who seeks election to the House by write-in votes, provided he is qualified and eligible to receive such votes, and provided write-in voting for such office is permitted.[4]

Under the prior contested elections statute,[5] the phrase "any person" was used with reference to those authorized to file notice of intention to contest an election.

However, even under this legislation, a person who had not been a candidate in the general election was deemed incompetent to institute a contest in the House, though he had been a candidate in the primary election.[6]

An election involving the Delegate to the House of Representatives from the District of Columbia is governed by the Federal Contested Elections Act, as is one involving the Resident Commissioner to the Congress [from Puerto Rico].[7]

Contestants as Candidates in General Election

§ 19.1 Where the contestant was not a candidate in the general election, but merely in the party primary, the election committee will recommend dismissal of the contest on the basis of the contestant's lack of standing.

In the 1969 Georgia election contest of Lowe v Thompson (§ 63.1, infra), the election committee considered the notice of contest, brief of the contestant, oral argument, and precedents of the House, and recommended dismissal of the fourth contested election case brought by the contestant in 20 years, for lack of standing. The contestant, who did not allege any fraud or wrongdoing on the part of the contestee, was not a candidate in the general election, having lost his own party's primary.

2. See also Lowe v Davis (§ 54.1, infra), Lowe v Davis (§ 56.3, infra), and Lowe v Thompson (§§ 62.1, 63.1, infra), contests brought by the same individual.
3. 2 USC § 382 (a).
4. 2 USC § 381 (b).
5. See former 2 USC § 201.
6. See § 19.1, infra.
7. 2 USC § 25 (note); 2 USC § 381(a).

Similarly, in the 1967 contest between the same parties (§ 62.1, infra), the committee on elections had declared that there was no precedent for depriving a member of his seat solely on the basis of the irregularity of the nomination of his opponent in the general election, and concluded that Mr. Lowe, not being a candidate in the general election, had no standing to bring a contest under the contested election law.

§ 19.2 The House has adopted a resolution providing that one who was not a candidate in an election for a seat in the House was not competent to contest the election.

In the 1965 New York contested election case of Frankenberry v Ottinger (§ 61.1, infra), by a vote of 245 yeas to 102 nays, the House agreed to a resolution that dismissed the contest and held the contestant, who had not been a candidate in the election, not to be competent to bring a contested election contest under 2 USC §§ 201 et seq. During debate, proponents of the resolution cited the 1941 Ohio contested election of Miller v Kirwan (§ 51, infra), and *In re Voorhis*, 291 F 673 (S.D. N.Y. 1923) in support of their position. In the former, the House had similarly found a no candidate not to be competent to bring an election contest; and in the latter, the court had held that questions as to the application of the contested election statute are justiciable by the House and the House alone.

§ 19.3 Contestants who have not been candidates at the election have no standing to invoke the contested election statute.

In the 1965 Mississippi election contest of Wheadon et al. v Abernethy et al. [The Five Mississippi Cases] (§ 61.2, infra), the election committee report recommended dismissal of five election contests in which the contestants had not been candidates in the general election of November 1964 for Members of the U.S. House of Representatives.

The contestants alleged that large numbers of Negroes had been excluded from the electoral process through intimidation and violence, with the result that the free will of the voters had not been expressed. The desired relief was to have the House unseat the contestees and vacate the elections.

The contestants had been selected at an unofficial "election," which was held without any authority of law in the state.

The House followed its precedents in dismissing the contests because the contestants lacked standing under 2 USC §§ 201 et seq.

§ 19.4 A person who was a candidate in the primary election, but not in the general election won by contestee, is not competent to institute a contest in the House.

In Miller v Kirwan (§ 51.1, infra), a 1941 Ohio contest, the House dismissed a contest initiated by a person who had been a candidate for the Democratic nomination from the 19th Congressional District of Ohio in the primary election, but not in the ensuing general election, on the ground that the contestant was incompetent to initiate the contest.

§ 19.5 A contestant who had been a candidate in the primary election but who had not been a candidate in the general election instituted a contest under the statute governing contested election cases.

In the 1951 Georgia contested election case of Lowe v Davis (§ 56.3, infra), the contestant, who had been a candidate in the party primary, but not in the general election, challenged the contestee, who had prevailed in both the primary and the general election. The Committee on House Administration ultimately recommended dismissal of the contest for failure to take testimony within the time prescribed and the House agreed to a resolution dismissing the contest.

§ 19.6 To entitle a person to bring a contest under the statute, he must have been a candidate for the seat in the House during the general election in question.

See In re Plunkett (§ 53.2, infra), wherein the Chairman of the Committee on the Judiciary advised the Members of the House to ignore proceedings contesting the 1944 elections of 79 Members of the House from states having poll taxes.