uncertainty in state law. The committee noted that it had been the custom in Arkansas to accept write-in votes, that spaces had been provided on the ballots for write-in votes, and the House had always recognized the right of a voter to write in the name of his choice.

K. INSPECTION AND RECOUNT OF BALLOTS

§ 39. Generally

Recount by Stipulation of Parties

§ 39.1 By stipulation, the parties may agree to conduct a recount during an extension of time granted by the House for the taking of testimony.

In Moreland v Schuetz (§ 52.3, infra), a 1944 Illinois contest, the parties to an election contest agreed to conduct a recount in those wards where the vote had been questioned by contestant.

§ 39.2 The parties to an election contest may conduct their own recount, showing that one of the parties has received a majority of the votes cast, and this may be made the basis of a stipulation upon which the House may act.

In Sullivan v Miller (§ 52.5, infra), a 1943 Missouri contest, the parties, having been denied a joint application for recount by the House, agreed to conduct their own recount, the results of which showed that contestee had received a majority of all votes cast. The House agreed to a resolution dismissing the case, based on a stipulation of the parties to that effect.

Unsupervised Recount

§ 39.3 The contestant may not, of his own accord and without evidence, conduct a recount of ballots without supervision of the House.

In the 1949 Michigan contested election case of Stevens v Blackney (§ 55.3, infra), prior to presentation of the contest to the House, the contestant, on Feb. 10, 1949, applied to the Committee on House Administration to send its agents to a conduct recount. The committee, however, declined to do so on the ground that the probability of error should first be shown. The contestant then had a notary public of his own selection issue a subpena duces tecum to

the local election officials to obtain possession of the ballots and voting machines. The local officials refused to honor the subpena and the Subcommittee on Elections "sustained the action of the election official." In a letter from subcommittee Chairman Burr P. Harrison, of Virginia, to the local officials, it was stated:

> Precedents of the House of Representatives clearly establish that in a contested election case ballots should be inspected and preserved in strict conformity with State law so that their inviolability is unquestioned. No action should be taken by either contestant or contestee with reference to ballots that does not follow the law of the State.
>
> The official count of the ballots is presumed correct, and I am certain that this presumption will not be brought into question by any unauthorized recount which is made contrary to State law or under circumstances which do not give full protection to both contestant and contestee.

Recount Pursuant to State Law, With House Supervision

§ 39.4 Where state law permits, a party to an election may request an inspection and recount of all votes cast, to be conducted by bipartisan teams and to be supervised by representatives of a special House committee to investigate campaign expenditures.

In the 1958 Maine contested election case of Oliver v Hale (§ 57.3, infra), arising from the Sept. 10, 1956, election, the contestant asked for an inspection and recount as permitted by state law, of all votes cast, which was conducted under the supervision of five teams of two men each (with each party represented on each team) and with representatives of the "Special Committee to Investigate Campaign Expenditures of the House of Representatives." The report of this committee was submitted Dec. 22, 1956. The majority of the committee recommended that the Committee on House Administration of the 85th Congress immediately investigate the approximate 4,000 ballots in dispute and report to the House by Mar. 15, 1957. The minority contended that a committee of the 84th Congress should not "purport to dictate to the Committee on House Administration of the 85th Congress how it shall conduct its operations or when it shall file its report."

Significance of Number of Disputed Ballots

§ 39.5 A committee finding of balloting irregularities in an election contest will not provide a sufficient basis for overturning the election

where the disputed ballots are so few in number that, even if disregarded, they would not change the result of the election.

In Miller v Cooper (§ 48.3, infra), involving a 1936 contest in the 19th Congressional District of Ohio, the contestant alleged that certain irregularities and frauds had occurred in Mahoning County, but not in the other two counties of the district. The committee found some irregularities with respect to the destruction of ballots, tabulations of the votes cast, and the method of conducting the election in Mahoning County. The committee further found, however, that even if it should disregard entirely the ballots cast in Mahoning County, it would not affect enough votes to change the result of the election.

State Court Recount

§ 39.6 A committee on elections stated that it was not bound by the actions of a state court in supervising a recount; but the committee denied contestant's motion to suppress testimony obtained at a state inquiry where the contestant had initiated the state recount procedure and would be estopped from offering rebuttal testimony as to the result of the recount.

In Kent v Coyle (§ 46.1, infra), a partial recount was conducted by a state court pursuant to state law; but a committee on elections held that contestant had failed to sustain the burden of proof of fraud where a discrepancy between the official returns and the partial recount was inconclusive.

§ 40. Grounds

The precedents indicate that a recount will be ordered only when the contestant has satisfied his burden of proving that such recount would alter the result of the election,[12] based on evidence sufficient to raise at least a presumption of irregularity or fraud.[13] A mere suggestion of, or a speculative possibility of, error, is not sufficient for an election committee to order a recount.[14]

Justification for Recount

§ 40.1 An application for a recount of votes in an election contest must be based on evidence sufficient to raise at least a presumption of irregularity or fraud, and a re-

12. See §§ 40.5–40.7, infra.
13. See §§ 40.1, 40.4, infra.
14. See §§ 40.1, 40.2, infra.