

## L. DISPOSITION OF CONTESTS; RESOLUTIONS

**§ 42. Generally*****Disposal By House Resolution***

**§ 42.1 Election contests, if not resolved on motion or other prior proceedings, are generally disposed of by House resolution following debate on the floor of the House.**

The disposition of election contests by resolution, after debate thereon, is a procedure that has been uniformly followed in nearly all contests that have been brought before the House since the 1930's. See §46.2, *infra*.

***Resolution Disposing of Contest as Privileged***

**§ 42.2 A privileged resolution is the procedure to declare contestee to have been elected and entitled to a seat.**

In *Gormley v Goss* (§47.9, *infra*), a 1934 Connecticut contest, a House resolution was called up as privileged; it was agreed to by voice vote and without debate. It provided:

*Resolved*, that Edward W. Goss was elected a Representative in the Seventy-third Congress from the Fifth Congressional District in the State of Connecticut and is entitled to a seat as such.

**§ 42.3 A resolution disposing of an election contest is privileged and may be called up at any time.**

In *McAndrews v Britten* (§47.12, *infra*), a 1934 Illinois contest, a resolution disposing of an election contest was offered for the immediate consideration of the House. When a Member sought time to debate the resolution, it was withdrawn, and unanimous consent was sought that it be considered the following day after disposition of business on the Speaker's table. The Speaker, Henry T. Rainey, of Illinois, observed that such a request was not necessary, as the resolution was privileged and could be called up at any time.

**§ 42.4 A resolution disposing of an election contest is privileged, though offered in the House from the floor and not reported by an elections committee.**

In *Miller v Kirwan* (§51.1, *infra*), a 1941 Ohio contest, a resolution declaring a contestant incompetent to institute a contest, and dismissing the contest, was called up from the floor as a question of the privilege of the House, although it was not reported by

an elections committee. [See also *Frankenberry v Ottinger*, §61.1, *infra*.]

**§ 42.5 A House resolution, accompanied by a committee report on an election contest, may be called up as privileged and agreed to by voice vote and without debate.**

In the 1934 California election contest of *Chandler v Burnham* (§47.4, *infra*), the election committee report contradicting the contestant's contentions was submitted to the House by a committee member on Apr. 19, 1934, and this same Member called up as privileged on May 15, 1934, a resolution, which was agreed to by voice vote and without debate, specifying that the contestee was elected and entitled to the seat.

***Participation of Parties; Debate on Resolution Disposing of Contest***

**§ 42.6 The parties to an election contest are sometimes permitted to be present at, or participate in, the debate in the House on the merits of the contest.**

In *Roy v Jenks* (§49.1, *infra*), a 1938 New Hampshire contest, the contestee, the seated Member, took the floor to plead his case during debate in the House on a

resolution to seat the contestant, and a Member who called the attention of the House to the presence of the contestant in the gallery was ruled out of order. [Under Rule XXXII, *House Rules and Manual* §919 (1973), contestants have the privilege of the floor, but not of debate.]<sup>(15)</sup>

**§ 42.7 A contestee, as sitting Member, may be permitted to participate in the debate on the resolution disposing of the contest.**

In the 1932 Illinois election contest of *Kunz v Granata* (§46.2, *infra*), during debate on the committee report, the spokesman for the minority view yielded for debate to the contestee, the sitting Member, who argued in his own behalf. Ultimately the House adopted a resolution that the contestant, not the sitting Member, was entitled to the seat and he thereafter appeared at the bar of

15. In the Five Mississippi Cases of 1965 (§61.2, *infra*), it was pointed out to the contestees that, if they were to enter into debate, the contestants might also seek recognition [contestants have floor privileges under Rule XXXII of the House]. Therefore, the Mississippi Members did not enter into debate although they did insert their remarks in the Record in explanation of their position. 111 CONG. REC. 24285, 24286, 89th Cong. 1st Sess., Sept. 17, 1965.

the House and took the oath of office.

**§ 42.8 A Member supporting the recommendation of the committee majority in an election contest is entitled to close debate.**

In *Kunz v Granata* (§46.2, *infra*), a 1932 Illinois contest, the Speaker, John N. Garner, of Texas, ruled that the side supporting the seating of the contestant—the committee majority—rather than the Member intending to offer a motion to recommit, was entitled to close debate.

*Extension of Time for Debate on Resolution Disposing of Contest*

**§ 42.9 The time for debate on a privileged resolution disposing of an election contest may, by unanimous consent, be extended for additional time, with such time to be equally divided between a majority and a minority member of the Committee on Elections, with the previous question to be considered as ordered at the conclusion thereof.**

In the 1938 New Hampshire election contest of *Roy v Jenks* (§49.1, *infra*), a spokesman for the majority report on the election

contest obtained unanimous consent for an extension of time to two and one-half hours for debate. The additional time was divided equally between the spokesman for the majority view and the spokesman for the minority view. The previous question was considered as ordered at the conclusion of debate. A motion to recommit the resolution was agreed to by the House.

*Disposal by Stipulation of Parties*

**§ 42.10 An election contest may be disposed of by way of dismissal pursuant to a stipulation of the parties to that effect.**

In *Sullivan v Miller* (§52.5, *infra*), a 1943 Missouri contest, the parties conducted their own recount of votes, which affirmed that contestee had received a majority of the votes cast. The parties then stipulated to the dismissal of the contest, which stipulation was communicated to the committee and set forth in its report recommending dismissal. The House agreed to the committee report.

*Disposal by Resolution Declaring Seat Vacant*

**§ 42.11 Declaring a vacancy in a seat is one of the options**

**available to the House of Representatives and is generally exercised when the House decides that the contestant, while he has failed to justify his claim to the seat, has succeeded in so impeaching the returns that the House believes that the only alternative available to determine the will of the electorate is to hold a new election.**

In the 1971 California election contest of Tunno v Veysey (§64.1, *infra*), the elections committee, construing the Federal Contested Elections Act [2 USC §§381 et seq.], stated that the relief sought by the contestant, that the seat be declared vacant, was not proper under the circumstances. The contestant was limited to claiming the seat in question and offering proof to substantiate that claim.

**§ 42.12 The House may, by resolution, declare two elections held to fill a vacancy in the House to be invalid, declare neither contestant entitled to a seat, and require the Speaker to inform the Governor of the existing vacancy.**

In the 1934 Kemp, Sanders investigation (§47.14, *infra*), arising from a Louisiana special election,

the Speaker upheld the propriety of that clause in the resolution which required the Speaker to notify the Governor of Louisiana of the action taken by the House in declaring the seat vacant.

***Demand for Division on Resolution Disposing of Contest***

**§ 42.13 The defeat of a substitute resolution declaring contestee to have been elected does not preclude a demand for a division of the question on a resolution declaring contestant entitled to a seat and declaring contestee not so entitled.**

In Kunz v Granata (§46.2, *infra*), a 1932 Illinois contest, a demand was made for a division of the question for purposes of the vote on a resolution, the first part of which declared the contestee to have been defeated and the second part of which declared the contestant to have been elected. This demand followed the defeat of a substitute resolution that declared the contestee to have been elected. A point of order was raised against the request for a division on the ground that the House had just voted on the “reverse of this proposition.” The Speaker overruled the point of order and the question was divided.

**§ 42.14 A Member may demand a division of two propositions in a resolution disposing of an election contest, the first declaring contestee not entitled to a seat and the second declaring contestant so entitled.**

In the 1938 New Hampshire election contest of Roy v Jenks (§49.1, *infra*), following three hours of debate on the election committee report in which the contestee, a sitting Member, participated, the previous question was ordered and a Member demanded a division of two propositions in the resolution. Accordingly, on the first proposition the House voted that the contestee, the sitting Member, was not entitled to the seat and, on the second proposition, that the contestant was entitled to the seat.

***Resolutions Admitting Neither Contestant to a Seat***

**§ 42.15 A resolution may take the form of a declaration that the prima facie as well as the final rights of the contestants be referred to a committee on elections, and, until such committee shall have reported and the House decided such questions, that neither contestant be admitted to a seat.**

In the 1934 Kemp, Sanders investigation (§47.14, *infra*), both parties presented certificates of election at the date of convening of the second session of the 73d (Congress. A Member from Louisiana thereupon offered a resolution from the floor that neither of the contestants be admitted to a seat until the elections committee reported and the House decided on the question. Ultimately, neither party was found to have been validly elected, and the House authorized the Speaker to notify the Governor of the vacancy.

**§ 42.16 A privileged resolution declaring contestant entitled to a seat in the House may be recommitted to the Committee on Elections with instructions that the committee obtain further testimony from voters who cast certain disputed ballots.**

In Roy v Jenks (§49.1, *infra*), a 1938 New Hampshire contest, the House adopted a motion to recommit with instructions a privileged resolution declaring a contestant entitled to a seat in the House. The instructions provided for the taking of additional evidence, and that either the whole committee or a subcommittee could investigate, administer oaths, and issue subpoenas.

***Substitute Resolutions***

**§ 42.17 A resolution disposing of an election contest is privileged, and a Member may not offer a substitute therefore unless the Member controlling the time for debate yields for that purpose or unless the previous question is voted down.**

In the 1934 Illinois election contest of *McAndrews v Britten* (§47.12, *infra*), a Member, Homer C. Parker, of Georgia, sought unanimous consent that a resolution disposing of the election contest be considered after the close of business on the Speaker's table. The Speaker informed the Member that such a request was not necessary, as the resolution was privileged and could be called up at any time.

When the resolution was offered by Mr. Parker, another Member, Adolph J. Sabath, of Illinois, immediately sought recognition to offer a "substitute" for the resolution, but the Member refused to yield for that purpose and was recognized by the Speaker pro tempore for one hour. Mr. Sabath then asked for unanimous consent that his "substitute" be read for the information of the House, to which request Mr. Ralph R. Eltse, of California, objected. Mr. Parker

then yielded a few minutes of his time to Mr. Sabath, who read the "substitute" resolution. The previous question was then ordered, and no further action was taken on Mr. Sabath's resolution.

**§ 42.18 The House has rejected a substitute resolution providing that the contest be re-committed to the Committee on House Administration with instructions (1) to allow contestant to inspect all ballots and other pertinent papers; and (2) to permit contestant to take additional testimony after such inspection.**

In the 1949 Michigan contested election of *Stevens v Blackney* (§55.3, *infra*), after the House had refused to allow a contestant a recount because contestant had failed to produce evidence overcoming the presumption that there had been a fair election, although a recount of only seven of the 207 precincts had reduced contestee's plurality from 1,217 votes to 784 votes. The House had under consideration a resolution seating the contestee, when the Member handling the resolution yielded for an amendment which would have sent the case back to the Committee on House Administration. The substitute resolution was rejected by voice vote and the

original resolution was then agreed to without debate and by voice vote, thus seating the contestee.

***Failure to Take Action on Reported Resolutions***

**§ 42.19 There have been instances in which the House has failed to take action on resolutions reported from an elections committee declaring contestee entitled to his seat.**

In the 1940 Tennessee election contest of Neal v Kefauver (§ 50.1, *infra*), the election committee report disclosed that it had dismissed the contest because of the contestant's failure to take evidence, file briefs, and appear in person. At the same time the committee submitted the committee report it also reported a resolution to the House declaring the contestee to be entitled to the seat. The House did not take any action on the resolution during the 76th (Congress, however. The contestee was a returned Member of Congress, already sworn and in office.

**§ 42.20 There have been instances in which the House has not called up a resolution disposing of an election contest.**

In the 1934 Illinois election contest of Weber v Simpson (§ 47.16, *infra*), the committee report concluded that the contestant had failed to "overcome the prima facie case made by the election returns upon which a certificate of election was given to the contestee." The committee submitted a resolution that the contestee was entitled to his seat, but the resolution was not called up.

**§ 43. Committee Reports**

Under the House rules, until the 94th Congress, the Committee on House Administration was required to make a final report to the House in each contested election case.<sup>(16)</sup>

This report was to be made at such time "as the committee considers practicable in that Congress to which the contestee is elected."<sup>(17)</sup> Prior to the adoption of this language, the rule required submission of final reports not later than six months from the first day of the first regular session of the Congress. Such rules have been construed as directory rather than mandatory.<sup>(18)</sup>

16. Rule XI clause 25, *House Rules and Manual* § 733 (1973).

17. *Id.*

18. *Id.* (notes).