

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.⁽¹⁶⁾

This report was to be made at such time "as the committee considers practicable in that Congress to which the contestee is elected."⁽¹⁷⁾ 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.⁽¹⁸⁾

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

17. *Id.*

18. *Id.* (notes).

In General; Form of Report**§ 43.1 The committee report may be summary in form, and may provide for the disposition of more than one contest in the same report.**

In *Woodward v O'Brien* (§ 54.6, *infra*), a 1947 Illinois contest, the Committee on House Administration disposed of the contest in a summary report which also provided for the disposition of two other cases. The report recited that no testimony in behalf of the contestant had been taken during the required period, and recommended that notices of intention to contest the elections be dismissed.

§ 43.2 An elections committee report may summarily recommend that a contest be dismissed as lacking in merit.

In *Mankin v Davis* (§ 54.2, *infra*), a 1947 Georgia election contest in which the contestant disputed the method by which the contestee had been nominated in the primary election, the committee report indicated that the committee had held full hearings in the contest, and had given consideration to the contestee's brief, which had been filed more than 30 days after reception of a copy

of the contestant's brief, and the committee summarily recommended that the contest be dismissed "as lacking in merit." Accordingly, the contest was dismissed.

§ 43.3 The Committee on House Administration has submitted a final report on an election contest brought by a defeated primary candidate although there was no record of transmittal of the contest to the committee.

In the 1951 Georgia contested election of *Lowe v Davis* (§ 56.3, *infra*), there was no record of transmittal of the contest to the Committee on House Administration, nor did the House adopt a resolution referring the contest to the committee, but the committee nevertheless submitted a unanimous report indicating that the contestant, who had not been a candidate in the general election, had been defeated by the contestee in the primary election and that "the contestee had not been guilty of any acts in connection with that primary which would disqualify him for office."

Resolution Accompanying Report**§ 43.4 A member of an elections committee may submit**

a report on an election contest from the floor for printing in the Record, and then immediately call up an accompanying privileged resolution relating to the contest by unanimous consent.

In the 1943 Illinois election contest of *Moreland v Schuetz* (§ 52.3, *infra*), after submitting the election committee report that the contestant had not introduced sufficient evidence to warrant a complete recount, which he had requested, a Member on the election committee then by unanimous consent called up on the same day the resolution disposing of the contest.

The House agreed to the resolution.⁽¹⁹⁾

Timeliness of Report

§ 43.5 The rule that required the Committee on House Elections to submit their final reports within six months from the first day of the first regular session to which the contestee was elected was construed to be directory and not mandatory, so as not to prevent the consideration of an election contest reported after the six months had expired.

¹⁹. This procedure has been followed in almost every election contest.

In *Roy v Jenks* (§ 49.1, *infra*), a 1938 New Hampshire contest, a point of order was made against acceptance of a final report on an election contest by the House in that it was not timely, being in violation of former section 47 of Rule XI, which required the submission of such reports not later than six months from the first day of the first regular session of the Congress to which the contestee was elected. The Speaker overruled the point of order challenging the report, noting that a mandatory construction of that rule would be inconsistent with the constitutional right of the House to judge the election of its Members, and inconsistent with the statutory right of parties to collect testimony for a longer period.

§ 43.6 The Speaker ruled that a point of order could not be directed against reception by the House of an elections committee report that was not presented to the House until after the period required for its submission had expired.

As noted above, in *Roy v Jenks* (§ 49.1, *infra*), a 1938 New Hampshire contest, Speaker William B. Bankhead, of Alabama, overruled a point of order directed against

the late filing of an elections committee report; an appeal from this decision was laid on the table by a roll call vote.

Minority Reports

§ 43.7 By unanimous consent, the minority views of an elections committee may be filed subsequent to the filing of the majority final report.

In *Roy v Jenks* (§ 49.1, *infra*), a 1938 New Hampshire contest, the minority of the Committee on Elections was granted one week, by unanimous consent, to file its views.

§ 43.8 The minority views of an election committee, though filed subsequent to the views of the majority, were by unanimous consent printed to accompany the views of the majority.

In the 1932 Illinois election contest of *Kunz v Granata* (§ 46.2, *infra*), the report from the majority on the Committee of Elections No. 3 was submitted on Mar. 11, 1932, and the following day a member of the committee minority was given unanimous consent by the House to print the minority views to accompany the majority report.

§ 43.9 Dissenting members of a subcommittee on elections

have presented minority views and recommendations, together with a chronological chart of events, the rules of the Committee on Elections, and the laws governing contested elections.

In the 1949 Michigan contested election of *Stevens v Blackney* (§ 55.3, *infra*), the minority report took strong exception to the actions of the subcommittee and filed a minority report citing precedents of the House, court decisions and federal statutes.

Effect of Contestant's Withdrawal or Abandonment of Contest

§ 43.10 The report of an elections committee may recite the fact that contestant had withdrawn his notice of contest, and may include a resolution recommending that contestee be held entitled to his seat.

In *Smith v Polk* (§ 50.3, *infra*), a 1939 Ohio contest, a unanimous report of the Committee on Elections recited the fact that contestant had withdrawn the contest and recommended the following resolution:

Resolved, That the Honorable James G. Polk was duly elected as Representative from the Sixth Congressional

District of the State of Ohio to the Seventy-sixth Congress and is entitled to his seat.

§ 43.11 There have been instances in which an elections committee has failed to submit a final report, particularly in those cases where the House has been informed that the contestant has abandoned his contest.

In the 1937 Tennessee contested election case of Rutherford v Taylor (§ 49.2, *infra*), the Clerk transmitted a letter to the Speaker advising that the contestant had initiated an election contest on Dec. 4, 1936, by serving notice on the contestee, a returned Member, and had taken testimony on Jan. 27, 29, and again on Apr. 27, 1937, but that no further testimony had been adduced. The Clerk advised in the letter that the contest had abated. The Speaker referred the letter, along with copies of the notice and answer, to the Committee on Elections No. 1 and ordered the materials printed as a House document.⁽²⁰⁾

§ 43.12 A report of a committee on elections, containing its recommendations as to the

²⁰. See also *LaGuardia v Lanzetta* (§ 47.10, *infra*), a 1934 New York election contest.

disposition of the contest, may include a transcript of contestant's letter of withdrawal.

In the 1934 Mississippi election contest of Reese v Ellzey (§ 47.13, *infra*), the Committee on Elections report contained a letter from the contestant withdrawing from the contest, stating in part that "while so many matters of vital importance require the attention of the Congress, it would be unpatriotic on my part to attempt to occupy the time of Congress about a matter of such trivial importance to the welfare of our country."

Failure of Committee to Submit Report

§ 43.13 There have been instances in which an elections committee did not submit a report and the House did not dispose of a contest in which testimony had been taken by the parties and forwarded pursuant to statute.

In the 1934 Pennsylvania election contest of Felix v Muldowney (§ 47.7, *infra*), the Speaker laid before the House a letter from the Clerk transmitting the contest instituted by the contestant. That communication, containing also original testimony taken by the parties and other accompanying

papers, was referred to the Committee on Elections and ordered printed. The committee, however, did not submit a report relating to this election contest during the 73d Congress, and the House took no other action with respect to the contest.

§ 43.14 There have been instances in which the report of the Subcommittee on Elections has been printed and adopted by the full Committee on House Administration, but no further action taken on the election contest.

In the 1963 Minnesota election contest of Odegard v Olson (§ 60.1, *infra*), neither a resolution dismissing the contest or declaring the contestee entitled to his seat nor the report of the Subcommittee on Elections, was submitted by the Committee on House Administration to the House, although the full committee had adopted the subcommittee report finding that time for taking testimony had expired.

§ 44. Form of Resolutions

Form of Resolution Disposing of Contest

§ 44.1 In a resolution dismissing an election contest,

the House struck language declaring the contestee to be entitled to the seat, as such language is inappropriate in a procedural matter.

In the 1965 Mississippi election contest of Wheadon et al. v Abernethy et al. [The Five Mississippi Cases] (§ 61.2, *infra*), the House determined that the contestants who were not candidates in the official congressional election held in November 1964 (held under statutes which had not been set aside by a court of competent jurisdiction), lacked standing under the contested elections statute, 2 USC §§ 201 et seq. Accordingly, the House voted to dismiss the contests, based on its precedents. The resolution, however, further declared that the contestees, all sitting Members, were entitled to their seats. The resolution was amended to strike this language as inappropriate in a procedural matter.

§ 44.2 For form of resolution declaring contestant incompetent to initiate an election contest and dismissing his notice of contest, and barring future consideration by the House of subsequent petitions or papers relating to the case, see Miller v Kirwan (§ 51.1, *infra*).