

§ 37.3 (method of proportionate deduction); § 37.18 (marking ballot with improper instrument); § 38.4 (state law as an aid in interpreting voter intention); § 41.5 (use of auditors); § 45.4 (payments to candidates involved in alternatives to statutory election contests); § 45.5 (retroactive payments).

§ 60. Eighty-eighth Congress, 1963-64

§ 60.1 Odegard v Olson

On Feb. 7, 1963, the Speaker laid before the House a communication from the Clerk of the House, which contained contestant's notice of intention to contest the election held Nov. 6, 1962, in the Sixth Congressional District of Minnesota, contestee's answer thereto, and contestee's subsequent motion to dismiss the contest, with supporting brief. The Clerk's letter was read, and, together with the accompanying papers, referred on Feb. 7, to the Committee on House Administration and ordered printed as a House document.⁽¹⁹⁾

In his notice of contest, contestant alleged general irregularities on the part of election clerks and judges with respect to the count-

ing of ballots, and requested the House to order a recount. Contestant had received 76,962 votes to 77,310 votes for contestee, a margin of only 348 votes. Contestee in his answer included a motion to dismiss the contest for failure of contestant to specify particular grounds in his notice of contest, thereby depriving the House of jurisdiction under 2 USC § 201, which requires contestant to "specify particularly the grounds upon which he relied in the contest." Contestee claimed that contestant had further attempted to "cloud his valid election" by obtaining a restraining order from the state supreme court, which, after a court hearing, had been vacated, thereby permitting the secretary of state to issue to contestee his certificate of election. Contestee further requested the House to require contestant to submit a bill of particulars setting out specific precincts and specific instances of error, irregularity, and failure to conform to law.

In his subsequent motion to dismiss the contest, contestee claimed that the 40-day period for gathering evidence by contestant had expired and that no evidence had been obtained and forwarded to the Clerk as provided by 2 USC §§ 203, 223, and therefore that no contest existed. In his supporting

19. H. Doc. No. 62.

brief, contestee referred to evidence submitted by contestant to the Special Committee to Investigate Campaign Expenditures of the 87th Congress and printed as House Report No. 2570 of the 87th Congress, and referred to the Committee on House Administration of the 88th Congress without recommendation. Contestee claimed this was not proper evidence to be considered by the Committee on House Administration, as it had not been served on contestee or his counsel, and was in the form of unsworn allegations.

The Subcommittee on Elections held public hearings on Feb. 26, 1963, at which both parties and counsel were present. The central issue was the ordering of a recount, or of an investigation to justify a recount, by the committee. The Subcommittee on Elections found that contestant "had abandoned the statutory procedure which established a specified time within which to develop evidence. . . . [B]y majority vote, the subcommittee concluded that the petition submitted by Mr. Olson be sustained on the grounds that the contestant failed to comply with the statutes in that he did not take testimony as provided by law and that the time limit for taking such testimony

has now expired." The subcommittee thereby affirmed the ruling in *Gorman v Buckley* (6 Cannon's Precedents §162), in which the Committee on House Elections adopted contestee's motion to strike contestant's deposition from the record on the grounds that the testimony was not supplied to the House in time, and then dismissed the contest as not being a case that could be legally considered by the committee.

Four minority members of the Subcommittee on Elections filed additional views to accompany the subcommittee report to the full committee. Mr. Charles E. Chamberlain, of Michigan, Mr. Charles E. Goodell, of New York, Mr. Willard S. Curtin, of Pennsylvania, and Mr. Samuel L. Devine, of Ohio, agreed with the contestant that the subcommittee should follow the precedent set by the Subcommittee on Elections in the 85th Congress. In that instance, following the special election of Feb. 18, 1958, of Mr. Albert Quie by 602 votes over Mr. Eugene P. Foley, the defeated candidate wired the Subcommittee on Elections of the House Administration Committee requesting an examination and recount of the ballots. In their additional views, the minority members pointed out that:

The basis for this request was given as the closeness of the vote and allega-

tion that an unofficial and partial examination revealed several errors which were indicative that clerical errors and omissions had been made which, if corrected, could change the result of the election. In response the Elections Subcommittee sent a group comprised of three members and counsel to Minnesota on February 27, 1958, for the purpose of conducting a spot check of ballots in various precincts in the counties of the district.

This action was taken in the absence of a formal election contest. . . . It was taken on the basis of a telegram from the defeated candidate citing the closeness of the vote and alleging clerical errors. . . .

. . . The minority members of the committee are unanimous in their opinion that if a spot check of ballots was justified in the 1958 *Foley v. Quie* case, with a margin of 602 ballots out of 87,950, based upon the telegraphic request of the defeated Democratic candidate, then a spot check of ballots in the current case where the difference is less, 348 ballots out of 154,272, is more than justified.

These members in their additional views also pointed to the "confusion which may be created during the period surrounding a general election by the existence of two separate committees of the House having parallel and overlapping jurisdiction."

The report of the Subcommittee on Elections was printed for use by the full Committee on House Administration. The report was adopted by the full committee on

Nov. 20, 1963, but was not submitted to the House. Neither was any resolution dismissing the contest or declaring contestee entitled to his seat reported to the House from the Committee on House Administration.

Note: Syllabi for *Odegard v Olson* may be found herein at §5.2 (overlapping jurisdiction of committees); §25.5 (failure to produce evidence); §43.14 (failure of committee to submit report).

§ 61. Eighty-ninth Congress, 1965-66

§ 61.1 *Frankenberry v Ottinger*

On the organization of the House of Representatives of the 89th Congress on Jan. 4, 1965, Mr. James C. Cleveland, of New Hampshire, objected to the oath being administered to the Member-elect, Richard L. Ottinger, from the 25th Congressional District of New York, who was then asked by the Chair not to rise while other Members-elect and the Resident Commissioner-elect were sworn. Carl Albert, of Oklahoma, the Majority Leader, thereupon offered the following resolution (H. Res. 2):⁽²⁰⁾

Resolved, That the Speaker is hereby authorized and directed to administer

20. 111 CONG. REC. 20, 89th Cong. 1st Sess.