

Resolved, That Benjamin B. Blackburn was duly elected as Representative from the Fourth Congressional District of the State of Georgia to the Ninetieth Congress and is entitled to his seat.

A motion to reconsider was laid on the table.⁽²⁾

§ 63. Ninety-first Congress, 1969–70

§ 63.1 Lowe v Thompson

On Apr. 23, 1969, Mr. Watkins M. Abbitt, of Virginia, submitted the unanimous report of the Committee on House Administration (H. Rept. No. 91–157) on House Resolution 364, dismissing the contested election case of Wyman C. Lowe v Fletcher Thompson from the Fifth Congressional District of Georgia. Mr. Thompson, the Republican nominee, was re-elected to the office of Representative from the district in the general election held on Nov. 5, 1968. His Democratic opponent was Charles L. Weltner. The result of the election was officially certified in accordance with the laws of Georgia. His credentials having been presented to the Clerk of the House, Mr. Thompson appeared, took the oath of office, and was seated on Jan. 3, 1969.⁽³⁾

2. *Id.* at p. 18292.

3. 115 CONG. REC. 15, 91st Cong. 1st Sess.

Regarding the election contest, the committee report states:

The contest of Mr. Thompson's election was initiated by Mr. Lowe, an unsuccessful candidate in the Democratic primary, by service upon the Member on December 18, 1968, of a notice of contest pursuant to the Federal contested election law, Revised Statute, title I, chapter 8, section 105; title 2, United States Code, section 201, claiming that contestee's election was null and void and that his seat should be declared vacant. The ground of the contest asserted in the notice of contest are then that the general election was invalid because the Democratic candidate, Mr. Weltner, had not been lawfully nominated or that there are such grounds as to raise grave doubts that he had been lawfully nominated. Mr. Weltner won the nomination from Mr. Lowe, his only opponent, in the Democratic primary election on September 11, 1968. Contestant claims that Mr. Weltner's victory in the primary election was the result of certain specified "malconduct, fraud, and/or irregularity" on the part of poll officers in 40 of the 155 precincts of the Fifth District. There is no allegation of wrongful conduct on Mr. Weltner's part or any attribution to him of the alleged misconduct of the poll officers. Nor is it contended that contestee engaged in any wrongful conduct in the general election. The sole basis for attacking contestee's election is the alleged invalidity of his Democratic opponent's nomination.

In submitting the committee report, Mr. Abbitt made the following remarks,⁽⁴⁾ which further summarize the election contest:

4. 115 CONG. REC. 10040, 10041, 91st Cong. 1st Sess., Apr. 23, 1969.

MR. ABBITT: Mr. Speaker, only one election contest evolved from the 1968 general election and that was in the Fifth Congressional District of the State of Georgia. For the third time in recent years Wyman C. Lowe has initiated a contest.⁵ In 1951 and again in 1967 the House dismissed contests brought by Mr. Lowe on the basis that he lacked standing to bring a contest under the contested-election statute. That is the basis for recommending dismissal of the current contest. In none of the contests was Mr. Lowe a candidate in the general election for the congressional seat.

Fletcher Thompson, the Republican nominee, was reelected to the office of Representative from the Fifth Congressional District of Georgia in the general election held on November 5, 1968. His Democratic opponent was Charles L. Weltner. The result of the election was officially certified in accordance with the laws of Georgia. His credentials having been presented to the Clerk of the House, Mr. Thompson appeared, took the oath of office, and was seated on January 3, 1969.

The contest of Mr. Thompson's election was initiated by Mr. Lowe, an unsuccessful candidate in the Democratic primary, by service upon the Member on December 18, 1968, of a notice of contest pursuant to the Federal contested election law claiming that the contestee's election was null and void and that his seat should be declared vacant. The grounds of the contest asserted in the notice of contest are that

the general election was invalid because the Democratic candidate Mr. Weltner had not been lawfully nominated or that there are such grounds as to raise grave doubts that he had been lawfully nominated. Mr. Weltner won the nomination from Mr. Lowe, his only opponent, in the Democratic primary election on September 11, 1968. Contestant claims that Mr. Weltner's victory in the primary election was the result of certain specified "malconduct, fraud and/or irregularity" on the part of poll officers in 40 of the 155 precincts of the fifth district. There is no allegation of wrongful conduct on Mr. Weltner's part or any attribution to him of the alleged misconduct of the poll officers. Nor is it contended that contestee engaged in any wrongful conduct in the general election. The sole basis for attacking contestee's election is the alleged invalidity of his Democratic opponent's nomination.

The record before the committee reveals that contestant brought an action against Mr. Weltner in the superior court of Fulton County, Ga., to set aside his nomination under the Georgia Election Code. This suit was dismissed on September 20, 1968. On appeal to the Georgia Court of Appeals, the lower court's ruling was affirmed and a subsequent petition for certiorari filed with the Supreme Court of Georgia was denied.

The contest came before the Subcommittee on Elections on contestee's request that the notice of contest be dismissed for failure to state a cause of action. Having considered the oral arguments of the parties and the brief filed by contestant, the committee concludes that contestant has no standing to bring the contest and that the notice

5. See *Lowe v Davis*, 1948 (§54.1, supra); *Lowe v Davis*, 1951 (§56.3, supra); and *Lowe v Thompson*, 1967 (§62.1, supra).

of contest does not state grounds sufficient to change the result of the general election. Contestant, an unsuccessful candidate in the Democratic primary, was not a candidate for the Fifth Congressional District seat in the general election and does not claim any right to the seat. There are a number of recent precedents from 1941 to 1967 involving contests brought by persons who were not candidates in the general election indicating that the House of Representatives regards such persons as lacking standing to bring an election contest under the statute. [Citing *Miller v Kirwan* (§51, supra); *McEvoy v Peterson* (§52.2, supra); *Woodward v O'Brien* (§54.6, supra); *Lowe v Davis* (§56.3); *Frankenberry v Ottinger* (§61.1, supra); and *Five Mississippi Cases of 1965* (§61.2, supra).]

The committee ultimately concluded:

The committee, after careful consideration of the notice of contest, the oral arguments, and the brief filed by contestant, concludes that contestant Wyman C. Lowe, not being a candidate in the general election, has no standing to bring a contest under the contested election law and that he has failed to state sufficient grounds to change the result of said election. It is recommended that House Resolution 364 be adopted dismissing the contested election case.

The House agreed to House Resolution 364,⁽⁶⁾ which provided:⁽⁷⁾

6. 115 CONG. REC. 10041, 91st Cong. 1st Sess., Apr. 23, 1969.

7. *Id.* at p. 10040.

Resolved, That the election contest of Wyman C. Lowe, contestant against Fletcher Thompson, contestee, Fifth Congressional District of the State of Georgia, be dismissed.

A motion to reconsider was laid on the table.

Note: Syllabi for *Lowe v Thompson* may be found herein at §19.1 (contestants as candidates in general election).

§ 64. Ninety-second Congress, 1971-72

§ 64.1 Tunno v Veysey

On Nov. 9, 1971, Mr. Watkins W. Abbitt, of Virginia, from the Committee on House Administration, submitted the committee report, House Report No. 626, on the contested election case of *David A. Tunno v Victor V. Veysey* from the 38th Congressional District of California. Mr. Veysey was certified on Dec. 17, 1970, by the secretary of the State of California as elected to the office of U.S. Representative in Congress from the district at the general election held on Nov. 3, 1970. The credentials of Mr. Veysey were presented to the House of Representatives and he appeared, took the oath of office, and was seated without objection, on Jan. 21, 1971.⁽⁸⁾

8. 117 CONG. REC. 13, 92d Cong. 1st Sess.