

# SENATOR FROM IOWA

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## REPORT

OF THE

## COMMITTEE ON PRIVILEGES AND ELECTIONS

PURSUANT TO S. RES. 21

AUTHORIZING THE INVESTIGATION OF ALLEGED  
UNLAWFUL PRACTICES IN THE ELECTION  
OF A SENATOR FROM IOWA

TOGETHER WITH

## MINORITY VIEWS



MARCH 27 (calendar day, MARCH 29), 1926.—Ordered to be printed

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SENATOR FROM IOWA

Mr. CARAWAY, from the Committee on Privileges and Elections, submitted the following

REPORT

[Pursuant to S. Res. 21]

[References are to pages in printed hearings]

Your Committee on Privileges and Elections, empowered under Senate Resolution No. 21 to inquire into the contest of Daniel F. Steck, contestant, against Smith W. Brookhart, incumbent, as to which was duly elected and is entitled to a seat as Senator in the Senate of the United States from the State of Iowa, respectfully submits the following report:

After a full review and careful consideration of the pleadings, testimony, and exhibits therein presented, and after hearing the Hon. Smith W. Brookhart in his own behalf, the committee find and declare that the said Smith W. Brookhart was not elected a Senator from the State of Iowa in the general election held therefor in said State on the 4th day of November, 1924, and is not entitled, therefore, to a seat in the Senate of the United States as a Senator from said State, but that at said election the Hon. Daniel F. Steck was elected a Senator of the United States in said election and is entitled to a seat in the Senate as a Senator from said State.

In submitting this report, your committee bases its conclusion on the following facts:

I

(a) The complaint, or petition, of the said Daniel F. Steck alleges in substance that many ballots were cast for him and should have been so counted, but were, by the election officers, rejected for various reasons.

(b) That many votes cast for the said Steck were, in fact, counted for the said Smith W. Brookhart.

(c) That many votes that were illegal were counted for the said Smith W. Brookhart.

(d) That many votes cast by those not qualified to vote at said election were cast for the said Brookhart, and that the said Steck received a plurality of all the votes cast for Senator of the United States from the State of Iowa at said election.

## II

To this petition, or complaint, the Hon. Smith W. Brookhart filed an answer, or response, and likewise pleadings, which might be considered as a cross-complaint, or petition, in which he denied each and every allegation of the petition of the contestant, except—

(a) The holding of said election; and

(b) His (Brookhart's) being awarded a certificate therefor.

On his own part he alleges irregularities, incompetent votes, and the counting for Steck of votes that should have been counted for himself, and alleges that he received a very much larger plurality than that which was, by the canvassing board, so certified.

## III

Luther A. Brewer filed a contest, but took no further steps in this matter.

## IV

The Republican State Central Committee of Iowa filed a petition, alleging, among other things:

(a) That the Hon. Smith W. Brookhart was not elected a Senator of the United States from the State of Iowa and was not entitled to a seat in the Senate of the United States as such Senator.

(b) That the said Smith W. Brookhart obtained his votes under a fraudulent representation that he was a Republican, when in fact he was not.

To this, many exhibits were annexed.

## V

To this petition, the Hon. Smith W. Brookhart filed a denial and also a demurrer.

Under stipulation an agreement was entered into under which all the votes cast in said election were brought to Washington and recounted. (Record, p. 53-54.)

The form of the subpoena for the ballots appears in the stipulation found on page 57 of the record.

Afterwards, counsel for contestant and incumbent agreed to waive certain provisions of their stipulation as to the presence of representatives of each in the taking up of the ballots from the county auditors. (See affidavits of Parsons, Pendency, and Thayer, marked, respectively, "Ex. A," "Ex. B," "Ex. D.")

Contestant and incumbent likewise agreed as to the method to be pursued in the recounting of said ballots and how objections should be presented. (Record, p. 3.)

For the convenience of the Senate the instructions given to the supervisors, as they appear on page 2 of the hearings are here embodied in full. It will be borne in mind that this was at the meeting

of the subcommittee held on the 20th day of July, 1925, and that there were present the attorneys representing respectively the contestant and the incumbent. The following occurred at that meeting:

Mr. THAYER. Mr. Chairman, the counters who have been engaged in this case are now assembled. As acting chairman of the committee, you will administer the oath to them. The form of the oath is the first matter in the line of procedure. The second is headed "Influence of attorneys," and is as follows:

"During the process of the count no counsel should speak to the counters in regard to the count until the work sheet is finished."

That is this sheet. I will explain that procedure when we get downstairs. This continues:

"When this is done any suggestion should be made to the assistant supervisors."

Mr. Cook and Mr. Pandy.

"Since the counters are sworn officers the same as jurymen, counsel will have no right to influence them."

### "3. PROCEDURE OF COUNSEL

"When the work sheet is finished, should any of the counsel disagree, they then call the assistant supervisors.

"If they agree, then that becomes the work sheet that goes to the tabulator.

"If the assistant supervisors disagree, they should then call the chief supervisor.

"His decision is final and the work sheet then goes to the tabulator."

The attorneys still have a right to take exceptions, and ballots objected to will be segregated and put in a locked mail sack. This proceeds:

### "4. WORK-SHEET PROCEDURE

"Teams, when agreeing, pass report to the judges for O. K."

These two supervisors.

"Then on to the chief supervisor."

That makes three O. K.'s, so we will know the report is correct.

"Upon his O. K. then to the tabulator.

"When teams disagree, appeal to the judges"—

Which means in this instance the supervisors.

"If the supervisors agree, pass work sheet to the chief supervisor.

"Or upon his decision, which is final, pass work sheet to the tabulator."

Of course, all kinds of questions may be asked as the work proceeds, but that is the general outline of the procedure.

If there is anything that is not clear, I would be glad indeed to answer a question regarding it.

Mr. MITCHELL. I have just this suggestion: If the Marion County situation is to be disposed of, and any of the ballots are disputed, just what record are we to make of that, in view of the fact that it is desired that they go back?

Mr. THAYER. In that case they do not need them until about October, consequently we will be through long before they need them. You could leave that particular case to the subcommittee, or the committee itself, so far as that is concerned, and let them decide as to that particular county.

Mr. MITCHELL. It might be that photographs could be taken and some agreement could be reached.

Senator ERNST. They will not go back as long as the attorneys think they should not go. We would rather have them delayed than to have any question.

Mr. PARSONS. May I ask Mr. Mitchell if he has any specific objection to the Marion County ballots outside of what would naturally arise as to any other ballots?

Mr. MITCHELL. I know of none, but you see in Marion County there are two contests.

Mr. PARSONS. I understand that.

Mr. MITCHELL. But we can probably agree as to the conditions and make a record and submit it.

Senator ERNST. If that is entirely satisfactory to both sides, it is agreeable to the committee.

We have here about 30 or 40 counters ready to start to work, and some of the gentlemen who are familiar with the facts seem to think it will not take as long

to make the count as it did in the Texas case. I had thought it would take longer because the ballots are so largely in excess of the number cast in Texas in number. How many are there in this case?

Mr. THAYER. As near as we can estimate, about 740,000 to 760,000; somewhere along there.

Senator ERNST. How many were there in the Texas contest?

Mr. THAYER. There were 340,000; but there were more complications arising in that contest. This is just a straight count.

Senator ERNST. I take it that all of you want the count expedited just as much as possible. Is not that the desire?

Mr. MITCHELL. Yes, Senator.

Mr. PARSONS. Certainly.

Senator ERNST. That is our desire also, and when the present force has been thoroughly broken in, if it is found they are not proceeding fast enough, we will add to the number of counters.

While it is hard to look so far forward, as we near the end of the count, I will communicate with counsel and try to have you agree upon the hearing, so as not to interfere with your court duties. I will try to do that just as soon as it appears that the end of the count is in sight.

Mr. PARSONS. My thought in coming down at this time is this, that certain questions will arise with regard to different ballots, but they will all classify themselves into about half a dozen lists, not more than that. I thought that we would stay here at least until most of the questions had arisen, so that arrangements could be made to take our exceptions to all of that class of ballots.

Senator ERNST. You can advise your supervisors as to what objections you would want them to make, and counsel on the other side can take a similar course.

Mr. PARSONS. Yes, that is true.

Senator ERNST. I think that would be very helpful all around.

Mr. PARSONS. I think so.

Senator ERNST. Mr. Brown, I suppose that appeals to you also?

Mr. BROWN. That appeals to me, Mr. Chairman.

Senator ERNST. If I can be of any service to you in any way, I will be glad to have you call on me.

Mr. PARSONS. It so happens that our code went into effect two weeks before this election was held, so that there are not any intervening acts of the legislature which will have to be laid before the committee.

Senator ERNST. I suppose that we can get all the laws and the code from the library. The main thing is for the lawyers on both sides to indicate what they want segregated.

Mr. PARSONS. I brought down with me several copies of the Official Register. We publish in our State semiannually what is called the "Official Register." That sets out the vote in detail and by precinct. It is printed. If any more are needed, Mr. Mitchell and I can send them back. They are State publications. The whole vote is tabulated.

Senator ERNST. Suppose you leave that here.

Mr. PARSONS. I gave one to Colonel Thayer this morning.

Senator ERNST. Colonel Thayer, you had better preserve that.

Mr. PARSONS. That has the vote of every precinct in the State for Senator, and, of course, for President.

Senator ERNST. You can check up the count to a certain extent with that?

Mr. PARSONS. Absolutely. You have the absolute official count right there, printed.

Mr. THAYER. Then we have it forwarded by the several county auditors.

Senator ERNST. Over their signatures?

Mr. THAYER. Oh, yes; the returns from each county, including the machine count.

Now, if there are no further questions, I suggest that we go downstairs and that the chairman administer the oath to the counters.

(The subcommittee thereupon proceeded to the counting room in the Senate Office Building, where the acting chairman administered to the counters the following oath:)

"You and each of you do solemnly swear that you will conduct the recount of ballots in the Iowa senatorial contest arising out of the election of November 4, 1924, to the best of your ability and will honestly and faithfully examine the ballots and other election paraphernalia submitted to you and make true and accurate returns in entire accordance with the facts as they appear to you on the ballots and other paraphernalia. So help you God."

The committee reserved its decision with reference to the demurrer and heard testimony and examined exhibits offered by the Republican State Central Committee of Iowa.

It likewise heard testimony and examined exhibits in the contest of Hon. Daniel F. Steck.

It also heard the statement of the incumbent, the Hon. Smith W. Brookhart.

The testimony heard and exhibits offered by the Republican State Central Committee of Iowa are important only as they may aid in disclosing the intent of certain voters and furnish an explanation as to marks on certain ballots. These will be referred to hereafter.

Under the stipulations of contestant and incumbent with reference to the recounting of the ballots about which they agreed, and the segregation of those ballots about which there was disagreement, there will be later a more extended discussion.

Under the stipulations referred to above, all the ballots were recounted. As to those about which an agreement could not be reached by the supervisors, counsel for the contestant, J. M. Parsons, and counsel for the incumbent, J. G. Mitchell, asked the subcommittee to grant a continuance so that they might further examine the ballots and, if possible, reduce the number of the contested ballots to the fewest number possible.

To facilitate and oblige counsel in this matter, the subcommittee adjourned on the 4th day of December, 1925, to the 6th day of January, 1926, at which latter date the subcommittee learned that the number of votes conceded contestant was 449,107, and that the number of votes claimed by him, but contested by the incumbent, was 1,063; that the number of votes conceded to the incumbent was 443,831, and that there were claimed by the incumbent and contested by the contestant 6,268 votes.

These contested ballots by stipulations appearing in the record were divided into groups from 1 to 16, inclusive. It was agreed, however, that all the votes appearing under class 1, were "No votes;" that is, that these votes had not been cast for either contestant or incumbent. (Record, pp. 198-205.)

Upon the 6th day of January, 1926, pursuant to call, the subcommittee met, and contestant, through his counsel, J. M. Parsons and William F. Zumbrunn, and the incumbent, by his counsel, J. G. Mitchell, and the brother of the incumbent, Thomas Brookhart, appeared.

This meeting was to hear the argument of counsel, at which meeting the tabulations and stipulations were presented, and counsel were heard.

For convenience we herein copy pages 191 and 192 of record.

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS,  
*Washington, D. C., Wednesday, January 6, 1926.*

The subcommittee met, pursuant to call, at 10 o'clock a. m. in the room of the Committee on Privileges and Elections, Capitol Building, Hon. Richard P. Ernst, chairman, presiding.

Present: Senators Ernst (chairman), Watson, Caraway, and George.

Present also: Mr. J. G. Mitchell, representing Senator Smith W. Brookhart; Mr. J. M. Parsons and Mr. W. F. Zumbrunn, representing Mr. Daniel F. Steck, the contestant.

The CHAIRMAN. Gentlemen, we are ready to proceed.

