

MARYLAND SENATORIAL ELECTION OF 1950

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REPORT  
OF THE  
COMMITTEE ON RULES AND ADMINISTRATION  
UNITED STATES SENATE  
EIGHTY-SECOND CONGRESS  
FIRST SESSION  
PURSUANT TO

S. Res. 250

(81st Cong. 2d Sess.)

RELATIVE TO THE DUTIES IMPOSED UPON THE  
COMMITTEE BY SUBSECTION (O) (1) (D) OF  
RULE XXV OF THE STANDING RULES OF THE  
SENATE ON SENATORIAL CAMPAIGN  
EXPENDITURES

TOGETHER WITH THE  
INDIVIDUAL VIEWS OF MR. McCARTHY



AUGUST 20 (legislative day, AUGUST 1), 1951.—Ordered to be printed

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Mr. HAYDEN, from the Committee on Rules and Administration, submitted the following

### R E P O R T

[Pursuant to S. Res. 250]

The Committee on Rules and Administration, having received from the Subcommittee on Privileges and Elections its report of the special hearing subcommittee on the 1950 election of a United States Senator for the State of Maryland, after considering and adopting the same, reports it to the Senate.

A hearing subcommittee of the Subcommittee on Privileges and Elections consisting of the Senator from Oklahoma, Mr. Monroney, chairman; the Senator from Missouri, Mr. Hennings; the Senator from New Jersey, Mr. Hendrickson; and the Senator from Maine, Mrs. Smith, was appointed to investigate and hold hearings on complaints made with respect to the 1950 Maryland senatorial general election. The four Senators submitted their report to the full Subcommittee on Privileges and Elections, which report was unanimously adopted and favorably reported to the Committee on Rules and Administration. The report as finally adopted is as follows:

#### I. BASIC QUESTIONS

The character of the complaints is essentially threefold:

- (1) The alleged defamatory nature of the campaign of John Marshall Butler for United States Senator;
- (2) The financial irregularities involved in the campaign;
- (3) The nature and extent of activities and influence of non-residents of Maryland in the senatorial campaign.

Because of the inherent right under our system of government of each State to choose its representatives in Congress, this subcommittee believes that the Senate in the exercise of its constitutional right to be the judge of the qualifications of its Members must guard against usurping such right of each State and must require the strongest and most substantial evidence before unseating a Senator and nullifying the action of the electorate of a State.

To proceed on any other basis would certainly establish a precedent which would make of the Senate, ad infinitum, the arbiter of every election dispute in every State of the Union in all succeeding national elections where senatorial seats are at stake.

The principal question for the subcommittee to decide on the basis of the facts developed and evidence adduced in its investigation and hearings is whether there are sufficient reasons to recommend that the Rules Committee determine to start de novo proceedings to unseat Senator John Marshall Butler.

While the complaints filed with the subcommittee do not raise the issue of an election contest, the subcommittee does not wish to avoid meeting the basic question or to escape its responsibility of determining whether or not there are sufficient grounds to justify a recommendation that Senator Butler be unseated.

The basic issue is essentially one of what constitutes improper conduct on the part of the candidate or his official agents in a campaign for election to the United States Senate and to what degree such improper conduct transgresses the legal and moral responsibilities of a candidate or his agents in order to justify declaring a seat vacant.

Our answer, as respects John Marshall Butler, is that the facts developed from the evidence before this subcommittee are not sufficient in our judgment to recommend the unseating of Senator Butler.

This is not to say that we approve or condone certain acts and conduct in his campaign. To the contrary, we vigorously denounce such acts and conduct and recommend a study looking to the adoption of rules by the Senate which will make acts of defamation, slander, and libel sufficient grounds for presentment to the Senate for the purpose of declaring a Senate seat vacant.

The distinction we draw is between the past and the future. It is the hope of this subcommittee that, while we do not believe as a matter of fairness that an example should be made of Senator John Marshall Butler and establish a precedent in this case, we may set a course of conduct for future campaigns by which all must abide and, having been put on notice, suffer the consequences for their wrongful acts.

The question of improper campaign conduct as a basis for unseating has through the years been unmet and unanswered. And because it has been unmet and unanswered, the acts and conduct of the Maryland campaign and in many other States throughout the years have been condoned. That is not the exclusive fault of any candidate or any campaign manager. Rather it is the fault of the entire Senate itself—not just the present Senate, but, as well, all preceding Senates.

The only rule presently in effect in the United States Senate which defines standards relating to the right of a Member elected on the face of the returns whose right to a seat is challenged is derived from the Constitution of the United States and is as follows (art. I, sec. 5):

Each house shall be the judge of the elections, returns, and qualifications of its own members \* \* \*

There are no other statutory enactments, rules, standards of ethics, or laws undertaking to define the right of the Senate to deny a seat to any duly elected candidate.

Thus no specific standards of improper campaign conducts or acts have been set up as guideposts. Only the provisions of the Federal Corrupt Practices Act exist and these deal principally with the financial phase of campaigning. Since no standards exist, it would be grossly unfair now to formulate those standards "after the fact" for retroactive application and unseat Senator Butler on the basis of those "after the fact" formulated standards.

To do so would have the effect of enacting a law and applying it retroactively. That is in violation of the spirit, if not the letter, of the Constitution relating to ex post facto laws.

Due to the absence of any specific rule by the Senate on the distinction between fair comment and political defamation in the conduct of a campaign to determine whether the campaign acts constitute grounds for unseating a Senator, the information developed by the subcommittee is not deemed sufficient for recommending action for unseating Senator John Marshall Butler.

The defamation issue before this subcommittee is a novel one on the question of unseating. In the past the issues have usually been with respect to ballot frauds or excessive expenditures. They have not involved publicity efforts aimed at damaging the reputation of the rival candidate and at creating and exploiting doubts about the loyalty to his country of an opposing candidate. Such campaign methods and tactics are destroying our system of free elections and undermine the very foundation of our Government.

These methods should be subject to constant and critical review by the Senate, and the power of the Senate should be invoked to unseat any who by their campaign conduct demonstrate their unfitness to sit in the United States Senate.

But in the absence of any law or rules under which to deal effectively with the problem, no action for unseating based upon a campaign of defamation should, in our judgment, be taken until rules or standards are provided by which candidates can guide their conduct in campaigns.

In respect to the second matter complained of, namely the financial irregularities, there is no conclusive evidence before this subcommittee that the candidate Butler resorted to or made use of excessive expenditures of money to corrupt large segments of the electorate which we find in precedents relating to the fitness of a Senator in cases where the Senate has undertaken to pass upon the qualifications for membership.

If the financial irregularities in the Maryland elections of 1950 fall within the four corners of the Federal Corrupt Practices Act, these statutes provide appropriate penalties for violation—but beyond doubt the Federal Corrupt Practices Act does not provide that the failure to properly report contributions and expenditures in the manner disclosed by the evidence in the Maryland case is justifiable grounds for withdrawing the privilege of a Senate seat.

## II. FINDINGS

The findings of the subcommittee fall into four categories of (1) finances, (2) literature, (3) outside influences, and (4) Senator John Marshall Butler. The categories overlap and must be considered in the interwoven relationship that they have to each other.

### A. FINANCES

1. As a result of the investigation and hearings of this subcommittee, Jon M. Jonkel, the campaign manager of Senator Butler, has been indicted, plead guilty to, and has been sentenced for, violation of the Maryland election laws for failure to properly report contributions and expenditures in the Butler campaign.

2. Not only were substantial sums of contributions and expenditures not properly reported to Maryland authorities as required by law, but also a proper accounting was not made to the Secretary of the Senate as required by the Federal Corrupt Practices Act.

3. The reports of campaign treasurer Mundy and the record of expenditures by campaign manager Jonkel by the evidence before this subcommittee exceed \$75,000. Under the Federal Corrupt Practices Act, the limit for the State of Maryland is \$14,166.96. Certain exemptions are provided for in the Federal law for personal, travel, or subsistence expenses; for stationery, postage, writing, or printing (other than for use on billboards or in newspapers); for distributing letters, circulars, or posters; and for telegraph and telephone services.

4. The subcommittee has been unable to determine whether these exemptions would lower this amount reported to the legal limit provided by law for the expenditures of the candidate's official campaign organization. It is referring its hearings and files to the Department of Justice for study and such action it deems appropriate.

#### B. LITERATURE

1. It is not possible to gage the effect of the tabloid "From the Record" on the outcome of the election. However, it is clear that it did have some effect. But it was not of dominant influence on the voters nor did the election turn on it alone. There were other potent factors including the State-wide feeling against the sales tax, the Republican trend in Maryland and the Nation as a whole and other factors that cannot be measured for exact effect, but which together gave candidate Butler a margin of 43,000 votes.

The tabloid "From the Record" contains misleading half truths, misrepresentations, and false innuendos that maliciously and without foundation attack the loyalty and patriotism not only of former Senator Millard Tydings, who won the Distinguished Service Cross for battlefield heroism in World War I, but also the entire membership of the Senate Armed Services Committee in 1950.

2. Its preparation, publication, and distribution were the result of a combination of forces, including Senator Butler's own campaign organization.

3. The tabloid, disregarding simple decency and common honesty, was designed to create and exploit doubts about the loyalty of former Senator Tydings.

4. It could never have been the intention of the framers of the first amendment to the Constitution to allow, under the guise of freedom of the press, the publication of any portrayal, whether in picture form or otherwise, of the character of the composite picture as it appeared in the tabloid "From the Record". It was a shocking abuse of the spirit and intent of the first amendment to the Constitution.

5. The tabloid "From the Record" was neither published nor in fact paid for by the Young Democrats for Butler. Their alleged sponsorship for this publication was nothing more than a false front organization for the publication of the tabloid by the Butler campaign headquarters and outsiders associated with it. In the judgment of the subcommittee, this is a violation of the Federal and State laws requiring persons responsible for such publications to list the organizations and its officers.

