UNITED STATES SENATE

ELECTION, EXPULSION AND CENSURE CASES

1793–1990

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Daniel F. Steck v. Smith W. Brookhart

(1881–1950) (1869–1944)

Iowa

Election Case
January 8, 1925 to April 12, 1926

Issues
Recount of disputed ballots; incumbent unseated

Result: Brookhart unseated and Steck seated

Chronology:
Petition received: Jan. 8, 1925
Referred to committee: Mar. 10, 1925
Committee report: Mar. 29, 1926
Senate vote: April 12, 1926

Background

Smith W. Brookhart, an Iowa progressive Republican, first entered the Senate in 1922 to fill an unexpired term. Running for the full term in 1924, incumbent Brookhart narrowly triumphed over the Democratic challenger, Daniel F. Steck. During the confusing campaign, the Republican State Central Committee withdrew its support for Brookhart after he refused to back the Coolidge presidential ticket, although he did not actually endorse the Progressive party's presidential candidate, Senator Robert M. La Follette. One Republican organization went so far as to distribute sample ballots showing an "x" in the Republican column with another "x" beside Daniel Steck's name in the Democratic column to encourage regular Republicans to vote for Steck. When it became clear that the winning margin would be very small, both Republican and Democratic state chairmen requested a recount. Completed in late November, the recount showed Brookhart the winner by a plurality of less than 800 votes, and he was declared elected.

After the 1924 election, Senate Republicans retaliated against their insurgent colleagues, excluding from their party conference Brookhart, La Follette, and two other progressive Republicans who had failed to support the Coolidge campaign. The party also stripped these senators of their committee appointments.

Then, in January 1925 before the beginning of the new Congress, Daniel Steck served notice that he would challenge Brookhart's seating in March. The Iowa Republican State Central Committee also contested the election, declaring that Brookhart was not a member of the Republican party.

Statement of the Case

When the Sixty-ninth Congress convened on March 4, 1925, Brookhart was seated without incident. Six days later, on March 10, the Senate referred the election challenge to the Committee on Privileges and Elections.

Steck charged illegalities at the polls. According to his complaint, thousands of ballots were unlawfully counted for Brookhart, while many of his own were thrown out or fraudulently altered.

The Iowa Republicans took a different approach in their challenge, insisting that Brookhart had pretended to be a party member until after the deadline for removal of names from the ballot. Then, for the remainder of the campaign, he toured the state supporting the principles and the candidates of the La Follette Progressive party. The Iowa committee argued that state Republicans had in good faith voted for a person they assumed was a regular party member. On this basis Iowa Republicans asked for Brookhart's removal from office and the seating of Democrat Daniel Steck.

Response of the Senate

On May 16, 1925, before the committee could begin its work, the committee chairman, Selden P. Spencer (R-MO), died, and Richard P. Ernst (R-KY) assumed the chair. A subcommittee made up of two Republicans and two Democrats finally met to commence the investigation on July 20, 1925.

According to an agreement reached with the attorneys for Brookhart and Steck, the committee had all of the more than 900,000 ballots transported from Iowa to Washington for a recount, which was carried out during the summer and fall of 1925. Among the disputed ballots were a number on which the voters had apparently attempted to copy exactly a sample ballot that had been prominently featured in local newspapers, showing an arrow pointing to the box marked for Daniel Steck. Since the arrows constituted an extraneous mark that was illegal under Iowa law, these ballots had been excluded from the original count. Each was examined during the recount in an effort to ascertain what the true intent of the voter had been. Where it seemed clear the voter had meant to vote for Steck, the vote was counted for him.

Upon completion of the recount, the majority of the committee on March 29 issued a report finding that, in a four-person race, Daniel Steck had received a plurality of 1,420 votes. Stating that its only objective had been to decide which candidate had won a plurality, the committee's report declared that Smith Brookhart had not been elected and that Steck should be seated. Although the committee acknowledged that some ballots arrived in Washington with broken seals and that there were some discrepancies between the number of names on the polling lists and the number of ballots received, it stood by its determination that Steck had won.

In a minority report, one committee member, Hubert D. Stephens (D-MS), vigorously protested that the ballots had not been properly examined and secured in Iowa before being sent to Washington; that some 3,500 fewer ballots were received than the number of people on record as voting; that the majority refused to count for Brookhart some 1,300 straight Republican ballots, even though they were properly marked according to Iowa law. The committee refused to count these ballots for Brookhart because voters had also

marked individual candidates in the Republican column but had failed to place a mark beside Brookhart's name. Stephens therefore concluded: without a recount Brookhart had carried the election; in those counties where ballots corresponded with names on the polling lists, Brookhart had a majority; and in a count of the legal ballots before the Senate, Brookhart had a majority.

The Senate debate on the subject consumed seven days. The many speeches focused on Iowa state election laws and the manner in which ballots were marked in the state. Walter George (D-GA) supported Steck's claim with the pronouncement that when there is "a naked conflict arising between the ballots and numbers of names on the poll lists, the ballots are always the higher and better evidence." When the committee majority contended that they were not constrained by Iowa election law, Brookhart's supporters maintained that there was no precedent for the Senate overruling state election laws in reviewing contested elections.

Meanwhile, Iowa supporters of Steck had been lobbying senators, including Brookhart's state Republican colleague, long-time incumbent Albert B. Cummins, to vote against the senator. On April 12, 1926, in a 45 to 41 vote that crossed party lines, the Senate unseated Smith Brookhart and replaced him with Democrat Daniel Steck. Neither Brookhart nor Cummins voted on the resolution.

Conclusion

On April 28, the Senate awarded $15,000 to Steck and $10,000 to Brookhart in compensation for their expenses in the case.

The forces behind the unusual decision to unseat an incumbent in favor of a contestant are somewhat clarified by a speech that George Norris (R-NE), Brookhart's fellow insurgent Republican, delivered just three months after Brookhart's removal. In reference to another contest, Norris discussed the Brookhart case and said that no one had questioned the legitimacy of Brookhart's nomination but that his independent spirit had offended party regulars. Iowa Republicans who supported Steck brought their complaint to Washington and enlisted high-level Republicans in the executive branch, the Republican national chairman, and Republican senators to cajole and threaten members to vote against Brookhart. Norris concluded: "The result was that this powerful partisan political combination brought about by Republican leaders nullified the voice of the voters of Iowa, threw out a Republican, and put in a Democrat."

Daniel Steck remained in the Senate until 1931. In 1933 he became an assistant to the United States attorney general, a post he held until three years before his death in 1950.

Smith Brookhart, turned out of the Senate by the manipulations of his own party, was soon vindicated. Returning to Iowa, he immediately ran in the June 1926 Republican primary for the state's other Senate seat and defeated his former colleague Albert Cummins. When Cummins died in late July,

Brookhart did not run in the special election to fill the remaining few months of the term but concentrated on winning the general election for the full term. He returned to the Senate in March 1927 and served until 1933. He then became a foreign trade advisor in the Agricultural Adjustment Administration before returning to the practice of law. Smith Brookhart died in 1944.

Sources

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