
SENATOR FROM MICHIGAN.

SEPTEMBER 26 (calendar day, SEPTEMBER 29), 1921.—Ordered to be printed.

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

REPORT.

[Pursuant to S. Res. 11.]

The Committee on Privileges and Elections of the Senate of the United States on the election contest brought by Henry Ford, contestant, against Truman H. Newberry, United States Senator from the State of Michigan, contestee, and on the investigation of the primary and general election of 1918 in the State of Michigan for United States Senator from Michigan report as follows:

The resolution adopted by the Senate on December 3, 1919, under which this investigation has proceeded, reads as follows:

Whereas charges and countercharges of excessive and illegal expenditures of money and of unlawful practices have been made in connection with the primary nomination and election of a Senator from the State of Michigan, which election was held on the 5th day of November, 1918: Therefore be it

Resolved, That the Committee on Privileges and Elections, or any subcommittee thereof, be, and it is hereby, authorized and directed to investigate the said charges and countercharges of excessive and illegal expenditures of money and of unlawful practices in connection with the said election of a Senator from the State of Michigan, including the proceedings for the nomination of candidates at the primary theretofore held, and to take possession of the ballots, poll books, tally sheets, and all other documents and records relating to the said primary nomination and election; and the Sergeant at Arms of the Senate, and his deputies and assistants, be, and they are hereby, instructed to carry out the directions of the said Committee on Privileges and Elections, or any subcommittee thereof in that behalf; and that the said Committee on Privileges and Elections, or any subcommittee thereof, be, and it is hereby, directed to proceed with all convenient speed to take all necessary steps for the preservation of the said ballots, poll books, tally sheets, and other documents, and to recount the said ballots, and to take and preserve all evidence as to the various matters alleged in the said charges and countercharges and any answers hereafter filed, and of any alleged fraud, irregularity, and excessive or illegal expenditures of money, and of any unlawful practices in the said election and primary, and as to the intimidation of voters, or other facts affecting the result of said election.

Resolved further, That the Committee on Privileges and Elections, or any subcommittee thereof, be authorized to sit during the sessions of the Senate and during any

recess of the Senate or of the Congress, and to hold its sessions at such place or places as it shall deem most convenient for the purposes of the investigation; and to have full power to subpoena parties and witnesses, and to require the production of all papers, books, and documents, and other evidence relating to the said investigation, and to employ clerks and other necessary assistants and stenographers at a cost not to exceed \$1 per printed page, to take and make a record of all evidence taken and received by the committee, and to keep a record of its proceedings; and to have such evidence, records, and other matter required by the committee printed.

Resolved further. That the Sergeant at Arms of the Senate and his deputies and assistants are hereby required to attend the said Committee on Privileges and Elections, or any subcommittee thereof, and to execute its directions; that the chairman or any member of the committee be, and is hereby, empowered to administer oaths; that each of the parties to the said contest be entitled to representatives and attorneys at the recount and the taking of evidence; that all disputed ballots and records be preserved so that final action may be had thereon by the full committee and the Senate; that the committee may appoint subcommittees of one or more members to represent the committee at the various places in the making of the recount and the taking of evidence, and the committee may appoint such supervisors of the recount as it may deem best; and that the committee may adopt and enforce such rules and regulations for the conduct of the recount and the taking of evidence as it may deem wise, not inconsistent with this resolution; and that the committee shall report to the Senate as early as may be, and from time to time, if it deems best, submit all the testimony and the result of the recount and of the investigation.

Resolved further. That the expenses incurred in the carrying out of these resolutions shall be paid from the contingent fund of the Senate upon vouchers ordered by the committee, or any subcommittee thereof, and approved by the chairman of the committee.

The investigation was conducted by a subcommittee, consisting of Senators Watson (chairman), Spencer (acting chairman), Edge, Pomerene, and Wolcott. After the resignation of Senator Wolcott from the Senate, and after the hearings were ended, Senator Ashurst was appointed to the Committee on Privileges and Elections and became also a member of the subcommittee.

The findings and recommendations of the subcommittee were approved by the committee and constitute this report.

CHRONOLOGY.

On August 27, 1918, Truman H. Newberry was a candidate on the Republican ticket in the primary election to select a Republican candidate for United States Senator from the State of Michigan.

Henry Ford was a candidate on the Republican ticket at this primary election for the Republican nomination, and at the same time he was a candidate on the Democratic ticket for the Democratic nomination as candidate for United States Senator.

The primary election resulted in the selection of Truman H. Newberry as the Republican nominee for United States Senator and Henry Ford as the Democratic nominee.

At the general election, held on November 5, 1918, Truman H. Newberry was declared elected United States Senator from the State of Michigan; he presented his credentials in due form to the Senate, took the oath of office as a Senator on May 19, 1919, and entered immediately upon the discharge of the duties of the office to which he had been declared elected.

On January 6, 1919, and again on May 20, 1919, there was filed in the Senate of the United States and referred to the Committee on Privileges and Elections, the petition of Henry Ford, contesting the

election of Truman H. Newberry as a Senator from the State of Michigan, asking—

For a recount of the ballots for the office of United States Senator, cast at the election in Michigan held November 5, 1918, and for other relief.

The contestant asked:

- (a) For a recount of the ballots.
- (b) For—

An investigation of the unlawful uses by said Truman H. Newberry, and in his behalf by his agents and representatives, of large sums of money to influence the primary and election.

Alleged undue influence and intimidation of voters at the said election, and further asked:

That said Truman H. Newberry be declared not elected, and also disqualified, and not entitled to a seat, because of the aforesaid violations of law; and that petitioner (Henry Ford) may be declared elected and entitled to said seat.

Under this action of the Senate, above set out, the committee had to do with—

- (a) The general election of November 5, 1918.
- (b) The primary election of August 27, 1918, and the expenditure of money incident thereto.
- (c) The qualifications of Truman H. Newberry to retain his seat in the Senate.

No countercharges were presented against the contestant for the consideration of your committee.

GENERAL ELECTION.

The contestant (Henry Ford) alleged in regard to the election—

(a) That there are about 2,200 election precincts or districts in Michigan, and that nearly all of the election boards were composed wholly of Republicans, and great numbers of them were wholly composed of intense partisans of Mr. Newberry, and that only in a comparatively few of them were there at the said election any challengers or others acting in behalf of the Democratic candidates, and that every opportunity existed for election officials who were so inclined to miscount the ballots in favor of Mr. Newberry.

(b) That a large number of ballots were unlawfully counted for said Newberry which in fact and in truth were cast for Henry Ford, namely, at least 10,000.

(c) That large numbers of ballots lawfully cast for petitioner were not counted for him, but were unlawfully rejected by the various precinct election boards when making the counts, and they were not returned for petitioner, as in truth they ought to have been, namely, at least 10,000.

(d) That in many election precincts or districts the count by the election officers and boards was illegal, in favor of Newberry, false and fraudulent, and in violation of the election laws governing the count.

(e) Many of the ballots marked and cast for petitioner were counted and returned for the said Truman H. Newberry.

(f) In many precincts (particularly in the Upper Peninsula of Michigan) the provisions of law enacted to protect the sanctity and secrecy of the ballots and to promote a true and honest vote and count were flagrantly violated, and many important and vital irregularities and departures from such provision occurred, thus vitiating under the law the vote of such precincts—as, for instance, the marking of ballots for voters by an unauthorized third person, the exposure of ballots by the voters, the overseeing of the voting by mine bosses and superintendents and the like, all of which were conducted in the interests of said Truman H. Newberry, and the votes of such precincts should be rejected and thrown out.

(g) That many ballots in many precincts duly marked and cast for petitioner were rejected by the respective election boards and not counted at all.

(h) That many ballots bearing unlawful distinguishing marks were illegally and unlawfully counted for the said Truman H. Newberry.

(i) Many ballots duly marked and cast for your petitioner were wholly rejected and thrown out by many election boards on the unlawful and fraudulent pretext that they were not duly and properly marked for the petitioner, whereas in fact they were so marked and cast.

(j) Many ballots duly and properly marked and cast for the petitioner were rejected and thrown out by many election boards on the unlawful and fraudulent pretext that they bore distinguishing marks, whereas in fact they did not bear any unlawful distinguishing marks and ought to have been counted for your petitioner.

(k) Many ballots duly and lawfully marked and cast for petitioner were erroneously thrown out and not counted for petitioner by many of the said election boards under erroneous interpretations of their duties.

(l) Many ballots for said Truman H. Newberry were corruptly and unlawfully procured to be cast and counted for him by the unlawful use of money on his behalf.

(m) Large sums of money were unlawfully expended by and in behalf of said Truman H. Newberry to influence said election and cause votes to be cast for him that otherwise would not have been so cast.

(n) Large numbers of lawful voters were intimidated and prevented from voting at the said election by partisans and supporters of said Newberry who otherwise would have voted at the election and cast their votes for the petitioner, to wit, 5,000 of such voters.

(o) Large numbers of lawful voters, employees of certain large corporations, were intimidated and unlawfully coerced by employers and their representatives into voting for said Newberry against their wills and preferences who otherwise would have cast their ballots for the petitioner.

(p) In a number of the counties the respective boards of county canvassers made and reported their canvasses without having or examining the poll books and tally sheets nor in any way verifying the number of original votes as cast or the number of voters voting at the respective precincts.

(q) That careful investigation by petitioner's direction has been made by reliable men since the election to ascertain, as far as may be, the detailed facts pertaining to the above statements and as to the conduct of counting in said election and from such investigations and from other information reaching the petitioner and his representatives he avers the foregoing statements to be true, and he particularly specifies the following counties and election districts therein as the counties and districts where such irregularities, miscounting, and frauds were more flagrantly committed, namely,

Kent,	Clare,	Isabella,	Newaygo,
Bay,	Dickinson,	Jackson,	Oakland,
Kalamazoo,	Eaton,	Kalkaska,	Oceana,
Wayne,	Emmet,	Keweenaw,	Osceola,
Saginaw,	Genesee,	Lapeer,	Ottawa,
Allegan,	Gladwin,	Lenawee,	Sanilac,
Antrim,	Gogebic,	Macomb,	St. Clair,
Baraga,	Gratiot,	Marquette,	St. Joseph,
Barry,	Hillsdale,	Mason,	Tuscola,
Benzie,	Houghton,	Mecosta,	Van Buren,
Berrien,	Huron,	Midland,	Washtenaw,
Calhoun,	Ingham,	Monroe,	Wexford,
Cass,	Ionia,	Montcalm,	
Charlevoix,	Iosco,	Montmorency,	
Chippewa,	Iron,	Muskegon,	

and that such irregularities and miscounts occurred in a more modified degree in nearly all the other counties of the State, and that mistakes, unfavorable to petitioner and in favor of the said Truman H. Newberry, occurred in all of the counties.

(r) That upon a fair and lawful recount of the ballots cast at said election your petitioner would be decided to be duly and lawfully elected Senator from Michigan.

(s) That upon such a fair and lawful recount, and due allowances being made for such frauds, intimidations, and prevention of votes, petitioner would be decided and declared by your honorable body to have been duly and lawfully elected Senator from Michigan.

RECOUNT OF THE BALLOTS.

The subcommittee caused the ballots cast at the said general election (with the exception of a few precincts where the ballots had been destroyed, in all of which cases by agreement of counsel the State official count was accepted as correct) to be gathered together

and brought to Washington where they were recounted in accordance with the rules agreed upon by counsel, and with the result fully set out in part 7 of the printed hearings had before the subcommittee.

The recount was commenced on January 4, 1921, and was concluded on February 2, 1921.

The total vote cast for the contestee (Truman H. Newberry) and for the contestant (Henry Ford), according to the official returns of the State of Michigan, was 432,541, of which Truman H. Newberry received 220,054 and Henry Ford received 212,487. This gave to Mr. Newberry a plurality of 7,567 votes.

Upon the recount a total of 429,836 ballots were examined, and the result of the recount (including the returns in the few precincts where the ballots were not available, and where, by agreement of counsel, the official count was accepted) gave to Mr. Newberry 217,085 and to Mr. Ford 212,751. Mr. Newberry's plurality was 4,334.

There were in Michigan at the said general election, 2,320 voting districts or precincts. In one of these (Turin, No. 2, Marquette County) no election was held.

The result of the recount shows conclusively that Truman H. Newberry was legally elected United States Senator, and there is no evidence to sustain any of the charges of the contestant with regard to the general election, as hereinbefore set out.

These charges were definitely made under oath and were vigorously insisted upon by contestant through his counsel before the recount of the ballots, and were all capable of specific proof if they were true.

All the submitted evidence was carefully examined, and at great expense of time and money, all the ballots (429,836 in number) were reexamined, and with the result that every such charge of illegal voting or counting, or of fraudulent returns or bribery or intimidation was not alone unproven in fact, but was so manifestly unsupported by evidence as to produce the irresistible conclusion that these charges were the result of a reckless attempt to make some impression by the seriousness of the charges when it must have been known that they were entirely unfounded.

In fact, so totally failing is the proof to sustain any of the said charges of the contestant with regard to the general election, that there is not to be found even a reference to such charges in the briefs filed by the contestant.

No claim is made in the briefs of contestant that Henry Ford is entitled to a seat in the United States Senate.

No claim has ever been made at any time that an excessive amount of money was used at the general election, or that there was any improper use of money at the general election. The evidence does not give any support to sustain any charge of fraud, or illegality, bribery, or intimidation of voters in connection with the general election.

PRIMARY ELECTION.

The charge is made that there was an unlawful use by Truman H. Newberry, "and in his behalf by his supporters, agents, and representatives," of large sums of money to influence the primary and the election.

An investigation of both the primary and the general election has been made with a detail and perseverance and to an extent almost inconceivable. In the Federal court of the United States at Grand Rapids, Mich., at the instance of the Department of Justice of the United States, Truman H. Newberry and 134 other men were, in the fall of 1919, indicted on a charge of conspiring to have Truman H. Newberry pay and expend, or cause to be paid and expended, more than \$3,750, the charge itself being a charge of conspiracy in violation of section 8 of the act of Congress approved June 25, 1910 (c. 392, 36 Stat., 822-824), as amended by act of Congress of August 19, 1911 (c. 33, 37 Stat., 25-29).

As a result of this trial Truman H. Newberry and 16 others were convicted of conspiracy. On appeal to the Supreme Court of the United States the conviction was set aside, and the case was reversed.

The record of this trial at Grand Rapids shows that every detail of expenditure, of conduct, and of plan in the campaign, and every activity in behalf of Mr. Truman H. Newberry in connection with both the primary and the general election was most minutely inquired into and carefully examined.

More than 4,800 pages of typewritten testimony were taken at the Grand Rapids trial. This testimony was all before your committee in the present hearings, and so much of this testimony as either side desired has been incorporated in the printed hearings of the committee. At the request of contestant the testimony and statements of 75 witnesses examined at Grand Rapids were inserted, and at the request of contestee the testimony and statements of 5 witnesses examined at Grand Rapids were inserted.

In addition, the bill of exceptions presented to the Supreme Court of the United States in the Grand Rapids case, consisting of 956 printed pages, and which contains a summary of the testimony of over 300 witnesses who were heard at the Grand Rapids trial, has been printed and made a part of the testimony in the present investigation.

Forty-four witnesses were examined under oath by the committee in this hearing.

The inevitable conclusion of all the testimony is that there is no evidence whatever to sustain the charge of improper use of money at the primary or the general election.

There was expended in the primary election in the interest of Truman H. Newberry approximately \$195,000, which was largely contributed by John S. Newberry, a brother, and other relatives and friends of Truman H. Newberry. Such contributions were not solicited by Truman H. Newberry, nor was the fact that they were given, or were to be given, or used, known to him.

Truman H. Newberry was absent from the State of Michigan continuously during the entire campaign and until long after the election had been held. He took no part whatever either in the financial or other features of the primary campaign or its direction or control. Nor did he take any part in the general election.

Mr. Newberry was during all that time actively engaged in the service of the United States as a naval officer in New York.

He was kept fully informed from time to time as to the progress of the campaign in Michigan, but he had no knowledge of the financial

management of the campaign; he did not know the amount of money being expended, nor by whom contributions were made, nor the purposes for which the money was used.

From his general knowledge of the character of the campaign that was being conducted in Michigan, and the extent of publicity given to his candidacy through the newspapers, it is presumed that he had a general idea that a large sum of money was necessarily being spent.

The evidence shows conclusively that the financial cost of the campaign was voluntarily borne by relatives and friends of Truman H. Newberry and was entirely without solicitation or knowledge upon his part.

The amount of money spent at the primary was large—too large—but there was no concealment whatever with regard to it, and it was spent entirely for legal and proper purposes. On September 6, and within the time prescribed by the laws of the State of Michigan, a full report, so far as it was then known, of the contributions and expenditures was filed and made public. It showed contributions of \$178,856, and expenditures, \$176,568.08, divided as follows:

For advertising and other publicity.....	\$147, 860. 16
Office expenses, including rent, furniture, light, and clerk hire.....	9, 070. 13
Telephone, telegraph, and other charges.....	1, 514. 14
Traveling expenses.....	9, 104. 52
Copying of election registers and canvassing the voters.....	4, 875. 38
Salaries and compensation not otherwise charged.....	4, 143. 75
Total.....	176, 568. 08

Later on some bills, which had been delayed in presentation, mainly for advertising, amounting to between ten and fifteen thousand dollars, were presented and were paid by the Newberry campaign committee, but the fact that approximately \$195,000 was used in the primary was frankly and freely admitted and nothing in the testimony has materially changed this admission.

Whether the amount was approximately \$195,000, as was fully reported or openly acknowledged, or whether there were some few thousand dollars in excess of that amount, as contestant alleges, is immaterial. It is, in either event, a larger sum than ought to have been expended.

It is significant that though under the law of Michigan it is expressly provided that any "voter" is empowered to "make complaint in writing that a statement does not conform to law or to the truth," and upon such a complaint being made the officer authorized to issue a certificate of nomination is required to at once act in the matter (Sec. 3834), no such complaint was ever made by any voter in the State of Michigan complaining in any way of the statement as filed by the Newberry campaign committee, nor were the provisions of Michigan law which severely regulated every step of the primary campaign, including the report of receipts and expenditures in such campaign, ever invoked in the courts of the State of Michigan.

Your committee condemns the use of such a large sum of money in any primary campaign, but in the instant case there is not the slightest foundation upon which to connect Truman H. Newberry with its solicitation, its acquisition, or its use, nor to condemn him because of the amount. While the aggregate was large, it was not spent for

any purposes that were in themselves illegal or improper, and its use was wholly managed by a campaign committee entirely free both in its selection and its action from Truman H. Newberry.

It is but fair to state that the evidence discloses a situation in regard to this primary which perhaps has no parallel in American history.

Henry Ford, who is the contestant here, and who was the opponent of Truman H. Newberry at the primary as well as the general election, was running at the primary election on the Democratic ticket for nomination for United States Senator on that ticket, and at the same time, in the same primary, he was running as a Republican on the Republican ticket for the Republican nomination for United States Senator.

Mr. Ford had back of him and his candidacy the tremendous power of the expressed approval of the then President of the United States, and according to Mr. Ford's own statement (record, pp. 637, 640) he had been drafted, and "he ran at the suggestion of the President."

The name of Henry Ford, because of his industrial relationship in connection with the automobile industry, was a familiar household name throughout the State of Michigan. Practically every hamlet in the State of Michigan had an agency of the corporation which bears his name and which in the public mind was identified with himself.

The name of Truman H. Newberry was practically unknown throughout the State, although he had been Assistant Secretary of the Navy, and for a very short time, the Secretary of the Navy of the United States.

The evidence shows that Mr. Newberry was himself out of the State of Michigan during the entire primary campaign. He was unable, therefore, to personally address or meet with the people. His constant service during this time in the Navy of the United States was not of such public interest as of itself to be either widely or constantly commented upon in the public press, particularly when so much more important war news was filling the columns of the daily press and eagerly read by the American people.

In these circumstances the friends of Truman H. Newberry regarded it as imperatively necessary to conduct a campaign of publicity and advertising of the very widest character, in order to present as fully as possible to every voter in the State of Michigan the claims of Truman H. Newberry to the office for which he was a candidate.

The evidence discloses that a most comprehensive and far-reaching campaign of publicity was vigorously conducted in a thorough and systematic manner through the newspapers of the State of Michigan. (Record, p. 639.)

That, with the exception of a few Democratic newspapers, advertising was placed in practically every newspaper, daily, weekly, and monthly, published in the State of Michigan. (Record, pp. 350, 356.)

That a series of 13 advertising announcements, covering the entire 13 weeks of the primary campaign, were carried in upward of 500 papers and publications, going into every portion of the State. (Record, pp. 422, 639.)

In addition to this, a very general and systematic plan of publicity was carried on through correspondence; thousands and thousands of form letters being sent into every county in the State;

the names of persons to whom sent being alphabetically arranged and card indexed. (Record, p. 644.) This work necessitated the assistance of a large corps of clerks and helpers. The evidence discloses that at one time more than 50 stenographers alone were employed in the Newberry headquarters. (Record, p. 639.)

This program of publicity necessitated the expenditure of a large amount of money. More than 80 per cent of the money spent in the primary campaign was, according to the evidence, spent for advertising and other publicity.

The record discloses the fact that all these expenditures of money at the primary, of which complaint is so vigorously made here, were well known to the voters of the State of Michigan, and to the people of that State, even before the primary election took place. This was made an issue at the primary, precisely as it was made an issue at the general election. (Record, p. 645.)

The record shows that statements showing the amount of money spent in the primary were placarded "all over almost every fence and billboard in the State" and this expenditure was used generally as one of the reasons why Truman H. Newberry should not be elected. (Record, p. 645.) The majority of Mr. Newberry over Mr. Ford at the primary was 43,163.

QUALIFICATIONS OF TRUMAN H. NEWBERRY.

The Senate is jealous of its constitutional right to be "the judge of the elections, returns, and qualifications of its own Members."

No man, however qualified, can be admitted to a seat in the Senate who has not been legally elected in the State which he seeks to represent, and no man, on the other hand, however great his electoral majority may have been, can be either admitted or continued as a Member of the Senate whose conduct, either during the primary or general election, or subsequent thereto, is such as to show him unworthy to assume the high office to which, by virtue of his election, he has been chosen.

The interest of the State which he seeks to represent, and the welfare of the Nation alike, demand that each Senator shall be one concerning whom there is no proven charge of disloyalty, dishonesty, or of conduct which would reasonably make his presence in the United States Senate a menace to the country, either because of the example which his conduct has produced or because it is reasonable to assume from established facts that he is unworthy of that trust and confidence which of necessity must be reposed in every Member of the United States Senate.

Your committee has therefore given particular and careful consideration to the charges which were made by the contestant here against the junior Senator from the State of Michigan.

Two facts which are decisive of the present case stand out clearly in the record as entirely established:

First. That none of the money spent in the primary election, large as was the amount, was spent for corrupt, illegal, or improper purposes. It was spent without the knowledge or consent of Truman H. Newberry, for publicity, and for ordinary campaign purposes and

