82D CONGRESS
1st Session

SENATE

REPORT
No. 647

MARYLAND SENATORIAL ELECTION OF 1950

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

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1951

COMMITTEE ON RULES AND ADMINISTRATION

CARL HAYDEN, Arizona, *Chairman*

THEODORE FRANCIS GREEN, Rhode Island	KENNETH S. WHERRY, Nebraska
GUY M. GILLETTE, Iowa	HENRY CABOT LODGE, JR., Massachusetts
WILLIAM BENTON, Connecticut	WILLIAM E. JENNER, Indiana
EARLE C. CLEMENTS, Kentucky	ROBERT C. HENDRICKSON, New Jersey
MIKE MONRONEY, Oklahoma	MARGARET CHASE SMITH, Maine
THOMAS C. HENNINGS, JR., Missouri	JOSEPH R. McCARTHY, Wisconsin

DARRELL ST. CLAIRE, *Chief Clerk*
RUSSELL C. KIN[illegible], *Chief Counsel*

SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS

GUY M. GILLETTE, Iowa, *Chairman*

MIKE MONRONEY, Oklahoma	ROBERT C. HENDRICKSON, New Jersey
THOMAS C. HENNINGS, JR., Missouri	MARGARET CHASE SMITH, Maine

GRACE E. JOHNSON, *Chief Clerk*
EDWARD A. McDERMOTT, *Chief Counsel*
RALPH E. BECKER, *Assistant Counsel*

82D CONGRESS
1st Session

SENATE

REPORT
No. 647

MARYLAND SENATORIAL ELECTION OF 1950

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

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

REPORT

[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 nonresidents 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.

6. The pamphlet "Back to Good Old Dixie" was neither published nor paid for by the four Negro citizens listed as its sponsors. Use of the names of the four Negro leaders constituted nothing more than a false front for the publication of the pamphlet by the Butler campaign headquarters. 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.

C. OUTSIDE INFLUENCES

1. Almost all of the charges against the conduct of Senator John Marshall Butler's campaign can be attributed directly or indirectly to the acts and conduct of outside influences which were projected into the campaign.

2. Jon M. Jonkel, the campaign manager of John Marshall Butler, as a legal resident of the State of Illinois and not a legal resident of the State of Maryland, was an "outsider" in the campaign in violation of the election laws of Maryland. His appointment was originally recommended by the former executive head of the Washington Times-Herald.

3. Senator Joseph R. McCarthy, of Wisconsin, was actively interested in the campaign to the extent of making his staff available for work on research, pictures, composition, printing of the tabloid "From the Record." Members of his staff acted as couriers of funds between Washington and the Butler campaign headquarters in Baltimore. Evidence showed that some of the belatedly reported campaign funds were delivered through his office. His staff also was instrumental in materially assisting in the addressing, mailing, and planning of the picture post card phase of the campaign.

4. Associated in the tabloid project was the Washington Times-Herald through its then publisher, its then chief editorial writer, its then assistant managing editor, and other personnel of the paper. There is no specific proof of violation of any election laws by the Times-Herald newspaper unless the extremely low printing and composition charge that it made on the tabloid constitutes an indirect campaign contribution.

5. The substantial part of the campaign funds listed belatedly by manager Jonkel came from outside the State of Maryland. These were in large sums of money for the most part and in some cases in the maximum allowed by law. These funds, which manager Jonkel described as being "short-circuited" from the regular campaign treasurer, were used in a substantial amount to pay for the distribution of the tabloid "From the Record."

D. JOHN MARSHALL BUTLER

1. There is no specific evidence that candidate John Marshall Butler had full knowledge of the manner in which his campaign manager, Jon M. Jonkel, and others committed acts that have been challenged.

2. But the hearings established beyond any doubt that Senator Butler gave blanket authority to Jon M. Jonkel who, in fact, was his campaign manager and operated the campaign headquarters and the entire campaign in the manner that Jonkel should decide. It was a matter of the campaign manager and the campaign headquarters directing candidate Butler rather than candidate Butler directing the campaign manager and the campaign headquarters.

3. There is no specific evidence that Senator Butler had knowledge of the illegal manner in which his campaign manager handled the Butler campaign finances.

4. The record is clear that Senator Butler knew of plans for the publication of the tabloid "From the Record" and that he at least on one occasion 5 days before election saw a copy of the tabloid. Senator Butler has never disavowed the tabloid. Further, after taking his seat as Senator, the former chief editorial writer who supervised the preparation of the stories of the tabloid "From the Record" was appointed his administrative assistant.

5. Candidate Butler was fully aware of the outside influences in his campaign. He knew that his campaign manager was not a legal resident of the State of Maryland, although the Maryland law requires that a campaign manager be a legal resident of the State. As one of the prominent lawyers of Maryland, Senator Butler can be presumed to know the election laws of his State—particularly since he was a candidate in an election.

OBSERVATIONS, CONCLUSIONS, AND RECOMMENDATIONS

Much of the 1950 Maryland senatorial campaign was in the regular and traditional American political pattern. And like any vigorously fought election, it had good and bad features that stand out.

But the Maryland campaign was not just another campaign. It brought into sharp focus certain campaign tactics and practices that can best be characterized as one destructive of fundamental American principles. The subcommittee unreservedly denounces, condemns, and censures these tactics.

This investigation has developed ample evidence that in the Butler election there were two campaigns within one. One was the dignified "front street" campaign conducted by candidate Butler in his speaking coverage of the State and in which that group of responsible citizens of Maryland who differed with candidate Tydings on traditional, historic, and basic beliefs operated on a reasonable, efficient, and decent plane. The other was the despicable "back street" type of campaign, which usually, if exposed in time, backfires. The "back street" campaign conducted by non-Maryland outsiders was of a form and pattern designed to undermine and destroy the public faith and confidence in the basic American loyalty of a well-known figure. It followed a specific theme and course which has become, unfortunately, a means and weapon which strikes to destroy as suspiciously subversive, rather than simply to defeat an issue.

It might be an exaggeration to call this "back street" campaign a "big lie" campaign. But it certainly is no exaggeration to call it a "big doubt" campaign. In fact, the man who conceived and shaped the campaign along with other outside influences, the Butler campaign manager, Jon M. Jonkel, himself characterized the heart and theme of the campaign strategy as "exploiting the doubt."

Reference to the now infamous composite picture is hardly necessary with the universal condemnation that it has received as a result of the subcommittee's public hearings. It was even too odious for campaign manager Jonkel who told the subcommittee that he had disapproved of it. Even the members of the false front of Young

Democrats for Butler refused to defend it. The Butler campaign treasurer, Cornelius P. Mundy, characterized it as "stupid, puerile, and in bad taste." Only its creators upheld it.

While parts of the tabloid "From the Record" are well within the time-honored tradition of fair comment, other parts of the tabloid "From the Record" are subject to severe censure. One story in the tabloid charged former Senator Tydings and the Senate Armed Services Committee with holding up arms to Korea and another story with responsibility for the high casualty rate in Korea. There can be no question that these stories were designed to create and exploit doubt of the patriotism of former Senator Tydings. In effect, they questioned not only the patriotism of former Senator Tydings but of the 12 other Senator members of that committee. The implications of such tactics as a threat to our American principles should be obvious and frightening.

To a certain extent, any candidate for public office and any public officeholder must realize that he subjects himself to any and all kinds of attacks. More properly, it would be said that he subjects himself to every fair comment and criticism which can be made to his activities. And to be realistic, one must recognize that "fair comment" is so broad under our American freedom of speech and freedom of the press that it encompasses many abuses. Surely the fine line separating fair comment and libelous defamation in campaign material is not easily drawn.

But if the tabloid "From the Record" constitutes "fair comment" within the intent and meaning of the law, then surely the law must be changed and adequate statutes enacted which would afford candidates for public office protection against wrongful and unfounded attack upon their loyalty and patriotism.

If one candidate's campaign chooses to inject into an American election the poison of unfounded charges and doubts as to alleged subversive leanings, this tends to destroy not only the character of the candidate who is its target, but also eats away like acid at the very fabric of American life. The right of disagreement is an inherent American right and privilege. But to recklessly imply to those with whom you disagree the taint of subversive leanings will rob democracy of its priceless heritage of the right to make up its mind as it sees fit.

It is not a sufficient defense to say "let the people themselves judge the 'charges'." The fact is that the people themselves are not in possession of sufficient reliable information upon which to judge irresponsible accusations of disloyalty.

This subcommittee's condemnation of the tabloid "From the Record" is to be leveled more at the "outside influences" in the campaign and to his campaign organization than at candidate Butler himself. Surely candidate Butler erred in acts of omission, if not in acts of commission. In delegating complete authority to run his campaign to Jon Jonkel and to permit outsiders to take an active part in planning and urging upon them such a publication as "From the Record," we must conclude that candidate Butler was negligent in respect to certain implied responsibilities of a candidate for high public office.

Such negligence and obeisance cannot forever be a defense and a protective cloak against responsibility for the acts of agents. As a

prominent lawyer, Senator Butler must be fully cognizant of the import of the old saying under the law that "ignorance is no excuse." Surely studied ignorance cannot be permitted to be an excuse.

In delegating such complete and unequivocal power to conduct his campaign to his campaign manager Jon M. Jonkel, and through Jonkel to other outsiders, Senator Butler must accept some responsibility for acts alleged in his behalf by his agents. If these agents are to blame for censurable acts, then this delegation of authority to them by the candidate cannot excuse him from criticism.

As we have pointed out before, Senator Butler can escape the legal responsibility for these acts of his agents, but there was a moral responsibility for keeping that part of the campaign planned and executed by his official campaign organization and their associates above the low level of "exploiting the doubt" as to the loyalty and patriotism of former Senator Tydings.

In view of the foregoing, the subcommittee makes the following specific conclusions and recommendations:

1. The hearings very forcefully demonstrate the necessity for rules to be formulated on the procedures and standards for contesting the election of any Senator because of acts committed in the conduct of his campaign and for establishing standards or guideposts for what constitutes sufficient grounds for unseating a Senator.

The subcommittee strongly urges that the Rules Committee of the Senate adopt a rule of the Senate which will prescribe in unequivocal terms that the use of defamatory literature in a senatorial campaign will constitute good grounds for consideration by the Senate an action to declare such seat vacant.

2. Standards should be established by the Senate to definitely fix by law the responsibility on the part of a candidate for the campaign acts and conduct of his campaign manager and other authorized campaign aides.

3. Composite pictures such as that appearing in the tabloid "From the Record" which falsely or maliciously misrepresent facts and without justification create and exploit doubt about the loyalty to his country of an opposing candidate should be made illegal under the Federal election laws. The State of Maryland, as a result of our hearings, has taken the lead in this respect as far as State election laws are concerned.

The subcommittee recommends legislation outlawing all composite pictures in campaigns which would be designed to misrepresent or distort the facts regarding any candidate. In the drafting of such legislation, consideration should be given to all types of "composites," whether they be newspaper pictures, voice recordings, motion pictures, or any other means or medium of conveying a misrepresenting composite impression.

4. These hearings underscore the desirability of requiring individual contributions of $100 or more to campaign funds of candidates and political parties to report their own contributions. Contributions in all election campaigns for Federal office should be required to be reported by the contributor himself, as well as by the candidate and political party to a designated agency of the Federal Government.

5. The question of unseating a Senator for acts committed in a senatorial election should not be limited to the candidates in such elections. Any sitting Senator, regardless of whether he is a can-

didate in the election himself, should be subject to expulsion by action of the Senate, if it finds such Senator engaged in practices and behavior that make him, in the opinion of the Senate, unfit to hold the position of United States Senator.

6. Immediate studies should be undertaken to determine if practicable and legal means can be found to identify to what extent powerful national groups or combination of forces under cover of anonymity are invading State elections. If means can be found to identify these powerful national groups before elections, the voters could then act on the basis of such correct information.

7. The subcommittee is convinced from its findings in the Maryland case that extended studies of the Federal Corrupt Practices Act, looking to a revision thereof, should be made at the earliest possible moment. Such study should be made in all States where abuses of the election machinery has been noted.

Such studies should include means of enforcing the reporting of all campaign donations used in a candidate's behalf. They should include not only the donations to and expenditures by the candidate himself and his official campaign organization, but also all affiliated or supporting clubs or other organizations.

Since the limitations upon expenditures in the Federal Corrupt Practices Act were set in 1925, many new and informative means of communication have come into common use as well as tremendous increases in costs of campaigning in other well-established media.

Because of these necessary increased costs, the subcommittee feels that the formula for calculating the limits on donations and expenditures should be realistic and should reflect current costs and modern campaign techniques. Campaigns must always be limited to reasonable amounts and those amounts so set should be enforceable.

The present law, granting exemptions from the expenditure limits, on a large block of usual campaign expenditures, makes it almost impossible to determine with accuracy whether the legal limits have been violated.

8. We strongly urge that both major political parties take action to establish standards of fair campaigning and to officially condemn the use of unfounded charges of disloyalty or the use of any other campaign tactics which without foundation cast doubt upon the patriotism or loyalty of competing candidates. The subcommittee feels that a continuing committee of eminent members of both parties, working jointly for higher and cleaner standards of campaigning, can do as much as the enactment of laws to rid this Nation of abuses which are reaching alarming proportions.

9. The committee hearings and reports should be referred to the Department of Justice and other appropriate authorities for study and appropriate action.

SUMMARY OF THE RECORD

At the general election in the State of Maryland on November 7, 1950, John Marshall Butler, Republican candidate for United States Senator, defeated Senator Millard E. Tydings, Democrat, by a majority of 43,111 votes. Following this election, in mid-December 1950, Senator Tydings presented written and oral charges to the chairman of the United States Senate Subcommittee on Privileges and Elections