

SENATOR FROM NEW MEXICO

REPORT

OF THE

COMMITTEE ON

RULES AND ADMINISTRATION

UNITED STATES SENATE

EIGHTY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 333

(82d Cong., 2d sess.)

and

S. Res. 106 and S. Res. 137

(83d Cong., 1st sess.)

RELATIVE TO

THE NEW MEXICO SENATORIAL ELECTION OF 1952



MARCH 16 (legislative day, MARCH 1), 1954.—Ordered to be printed, with illustrations

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MARCH 16 (legislative day, MARCH 1), 1954.—Ordered to be printed, with illustrations

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

REPORT

[To accompany S. Res. 220]

The Committee on Rules and Administration, having received from its Subcommittee on Privileges and Elections its report on the 1952 election of a United States Senator from the State of New Mexico, after considering and adopting same, reports it to the Senate with an accompanying resolution, and recommends that the resolution, as submitted, be agreed to by the Senate.

The report of the Subcommittee on Privileges and Elections, as adopted by the Committee on Rules and Administration, follows:

MARCH 11, 1954.

Mr. Barrett, from the Subcommittee on Privileges and Elections, submitted the following report:

THE NATURE OF THE CONTEST

1. Investigation conducted under constitutional authority

The investigation into the 1952 election of the United States Senator from New Mexico was conducted under authority of the United States Constitution, article I, section 5, of the Constitution, which provides:

Each House shall be the judge of the election, returns, and qualifications of its own Members * * *.

In the performance of this duty the Senate exercises a judicial rather than a legislative power. As in the exercise of its legislative functions, the machinery by which the Senate informs itself is the committee. To implement this constitutional mandate, the Committee on Rules

and Administration was given jurisdiction over "contested elections." The Rules Committee has delegated this function to its Subcommittee on Privileges and Elections.

2. The function of the Subcommittee on Privileges and Elections

In the matter of contested elections it is the duty of the Subcommittee on Privileges and Elections to marshal the facts concerning the election, determine the applicable law, and to record its findings of fact and law for the use of the Senate in deciding the contest. Primarily the committee is a fact-finding agency of the Senate armed with the full power of the Senate to determine the necessary facts.

3. The initiation of election contests

The Senate has never adopted specific rules for contesting the election of its Members. Although other methods have been used, the most recent cases have been initiated by the filing of a petition of contest. The Privileges and Elections Committee has as a matter of precedent considered all petitions filed by defeated candidates and other responsible persons. The present contest was initiated by the filing of a petition by contestant Patrick J. Hurley.¹ However, under the Reorganization Act of 1946 the committee has jurisdiction and power to investigate any matter in connection with Federal elections and election contests upon its own motion.

¹ The chronology of the contest is contained in the last section of the report and contains a full discussion of the petition of the contestant and other aspects of the case.

GENERAL FINDINGS AND CONCLUSIONS

An election must authoritatively express the will of the people. This can be accomplished only by an electoral system which clearly identifies those who are qualified to vote, establishes conditions under which the voter can freely express his choice, and creates standards to accurately record the results of the election. Although the system is important, the exercise of the electoral franchise depends not alone upon procedures but equally upon its honest and efficient administration. *The investigation into the New Mexico senatorial election of 1952 revealed the deplorable spectacle of the exploitation and breakdown of an electoral system through irresponsible and ineffective administration.*

The degree to which free choice is exercised within a government is the measure of freedom of the people of that government. This is the very principle upon which American government is founded. Our Declaration of Independence proclaimed that governments derive “* * * their just powers from the consent of the governed * * *.” The consent of the governed is obtained through elections. When an election is held under such conditions that the citizen cannot freely vote his choice then that election has failed, for the free will of the people has not been expressed.

Secrecy of the ballot is a universal standard for free elections and is synonymous with freedom of choice. Secrecy of the ballot is guaranteed to the people of New Mexico by their constitution. This guaranty is implemented by numerous mandatory statutes. The New Mexico Supreme Court has on numerous occasions proclaimed itself the protector of the secret ballot. The committee found, however, that those responsible for the enforcement of those statutes have been derelict in their duty. *At least 55,000 New Mexico citizens were deprived of their constitutional right to a secret ballot.*

The members of this committee were profoundly shocked to discover American citizens in this enlightened era forced to vote under such archaic conditions. The committee could find no parallel in fact or in law. The facts described in this report are the evils which the advocates of the “Australian ballot system” fought so valiantly to overcome in 19th century America. It is a notorious fact that whenever a corrupt political machine sets out to control a State it first seeks to pervert in some fashion the secrecy of the ballot. This is the most flagrant form of coercion and intimidation of voters.

To the world the United States has pledged itself to freedom for all peoples everywhere. In the Berlin Conference of February 1954, our Secretary of State and the foreign ministers of other free nations demanded free elections for the German people including specifically, secrecy of the ballot. How can we demand free elections and the secrecy of the ballot for other nations and tolerate such conditions within the confines of our own Nation? It is well to note that it was in our time that the dictators Mussolini, Hitler, and Stalin used as their main tool to acquire total power, the complete elimination of the

secret ballot thereby destroying all freedom of choice, the basic factor which is essential to liberty and freedom.

If there were no other violations of law, on this issue alone the committee would be forced to recommend to the Senate that the senatorial election be set aside for failing to express the free will of the people.

One of the most widespread and unconscionable violations of laws was the failure of election officials to protect the rights of the illiterate, blind, and physically handicapped voters. These people form a special class to whom the law gives added protection in situations where they cannot protect themselves. Assistance to voters necessarily violates the secrecy of the ballot. Voter-assistance laws must, therefore, be strictly administered to prevent coercion and intimidation. The laws of New Mexico relating to voter assistance create the most stringent safeguards. Election officials, however, failed to follow these laws and in numerous cases permitted unauthorized persons to assist voters to their obvious detriment. Evidence in the files of the committee shows at least 4,000 suspect cases and indicates the number could reach as high as 6,000. In making their decision the committee was strongly impressed by the volume of evidence depicting the violations of the rights of these humble people.

Evidence of fraudulently altered ballots, in the nature of sworn testimony, sworn affidavits, and signed statements, was secured in 33 precincts where 17,325 persons cast their ballots. The committee is forced to conclude that the ballots in these precincts are thus tainted with fraud. A dark cloud of suspicion has been cast by the venal and corrupt upon the integrity of the ballots cast by honest voters.

To be able to vote a person must be legally qualified by the laws of the State. The registration laws must be strictly enforced to encourage full participation by the citizens and to readily determine the qualifications of those who present themselves to vote on election day. The committee found the registration laws in New Mexico were grossly violated. *The registration system is so loose and ineffective that it is an invitation to fraud and dishonesty in elections.* In the counties investigated by the committee local political machines dominated the registration of voters. Several hundred clear cases of persons voting who were not registered were found and the registrations of several hundred more were protested. The records were so conflicting that in many cases it was impossible to determine whether a voter should or should not have voted in the election. The records in some counties were a mass of confusion—were misfiled and mutilated. Local political machines dominate the registration of voters. Political workers were paid by some local political leaders for each voter registration that they submitted. *Aliens registered and voted.* It is impossible in most counties to purge from the registration lists the voters who have died. In most counties investigated, no purge of unqualified voters had ever been made. In some cases persons recorded as voting could not be found, while others of these claimed they had not voted.

The committee recommends that the Legislature of the State of New Mexico take immediate steps to place the registration system on a non-partisan basis and to determine definite responsibility for its administration. The entire registration system should immediately be purged. Death records and other court records should be coordinated and maintained in such a manner as to make them available for use

in purging unqualified voters. Until these particular measures are consummated the probative value of the registration system will continue to be a major factor in casting suspicion and doubt upon all of New Mexico's elections.

The general conduct of the election on the precinct basis gave ample evidence of the need for greater and more effective supervision. In many precincts party chairmen dominated the conduct of the election. Campaigning was permitted within the polling places and a general state of disorder existed. Precincts examined revealed numerous violations of the election laws. Pollbooks were not signed. Ballot numbers were not placed in registration books and pollbooks as required by law. In many precincts it was obvious that registration books were never consulted. Voter assistance laws were flagrantly violated. *Over 7,000 unused ballots were missing in violation of the law.* The committee is impressed with the fact that under the rules of the recount unanimously approved by the subcommittee, *3,330 ballots were invalidated as cast in violation of the law; and that over 9,000 ballots were protested by the parties.*

County and State officials made no effort to determine the eligibility of voters living on United States Government military reservations. *As a result, in Bernalillo County alone over 1,900 voters, some of whom undoubtedly are qualified, are in a state of suspense as to their rights.*

In Dona Ana, Lincoln, and Otero Counties a district court judge illegally and prematurely burned the ballots, having full knowledge of the pending Senate contest. *As a result of this illegal act over 13,000 ballots cast by honest voters have been placed in a state of suspicion.*

THE RECOMMENDATIONS OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS OF THE COMMITTEE ON RULES AND ADMINISTRATION TO THE UNITED STATES SENATE

The flagrant violation of the constitutional rights of over 55,000 New Mexico citizens to a secret ballot; the complete disregard of the voter-assistance laws affecting over 4,000 voters; the fraudulent alteration of ballots cast by honest citizens affecting over 17,000 votes; the invalidation of 3,330 votes in the recount; the indeterminable status of over 1,900 citizens residing on military reservations; the illegal and premature destruction of over 13,000 ballots; the political domination of the registration system; and the general misconduct of the election make it impossible to distinguish the free and honest vote. These ballots cannot in good conscience and justice be counted. The disenfranchisement of thousands of honest citizens by the irresponsible, fraudulent, and ineffective administration of the election is appalling. The committee is compelled to the conclusion that the November 4, 1952, senatorial election did not express the free will of the people of New Mexico.

Based upon these indisputable facts the committee has no recourse other than to recommend that no Member of the Senate was elected from the State of New Mexico in the 1952 general election.

Senator FRANK A. BARRETT, Wyoming,
Chairman.
Senator CHARLES E. POTTER, Michigan.

Senator THOMAS C. HENNINGS, Jr., Missouri, dissenting.