

CONTEST AND PROTEST IN CONNECTION WITH THE ELECTION OF
UNITED STATES SENATOR FROM THE STATE OF TEXAS, 1922

FEBRUARY 2, 1925.—Ordered to be printed

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

UNANIMOUS REPORT

[Pursuant to S. Res. 97]

The Committee on Privileges and Elections have acted in connection with the contest and protest relating to the primary and general election of 1922 in the State of Texas for United States Senator, under Senate Resolution 97, Sixty-eighth Congress, first session, adopted January 3, 1924, which reads as follows:

Whereas charges of excessive and illegal expenditures of money and of unlawful practices have been made in connection with the primary nomination and the election of a Senator from the State of Texas, which election was held on the 7th day of November, 1922; 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 counter charges, if any, of excessive and illegal expenditures of money and of unlawful practices in connection with the said election of a Senator from the State of Texas, including the proceedings for the nomination of candidates at the primary heretofore held, and to take possession of the ballots, poll lists, registration lists, tally lists, 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 lists, registration lists, tally lists, 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 counter charges 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 25 cents per one hundred words), 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.

PETITION, PROTEST, AND ANSWER

George E. B. Peddy (contestant) filed with the Senate February 22, 1923, a petition contesting the election of Earle B. Mayfield, (contestee) as Senator from Texas in the general election of November 7, 1922, and a protest boht against the election and the qualification of the contestee. A first and second supplemental petition were filed by the contestant and an answer was filed by the contestee.

The charges alleged by the contestant were:

1. That illegal votes were counted for Mr. Mayfield and that legal votes were not counted for contestant.
2. That undue advantage and illegal discrimination in favor of contestee was such as to invalidate his election.
3. That the primary elections, both the first primary election and the second, or "run-off," primary election were illegally controlled by secret influences, by fraud, by excessive use of money, and by lawlessness in the interests of contestee and against the rights of contestant.
4. That there was a general conspiracy between the Knights of the Ku Klux Klan and the contestee of a character and result that invalidated the election of contestee.
5. That contestee was disqualified for membership in the Senate of the United States largely because of the alleged "illegal practices that were directly or indirectly connected with his election."
6. Contestant asked for a recount and recanvass of the votes cast at the general election and claimed in his first supplemental petition that he, contestant, was entitled to the office.

The second supplemental petition is in the nature of a reply to the answer filed by the contestee and restates generally the allegations of the original petition and protest.

The answer of the contestant recites the general facts leading up to and incident to the two primaries and to the general election, and refers to the laws of the State of Texas in connection both with the primary and general elections so far as they were applicable to the charges of the contestant and generally makes answer to the allegations of contestee by such statement of facts, but in addition

denies generally "all the allegations made against him in said contest and made concerning the irregularity and illegality of his nomination and election, and says that such allegations are untrue, and specifically denies" the several charges made by contestant, and prays that the contest be "disallowed and dismissed."

RECORD OF CASE

The result of the recount and the testimony taken in the case and the briefs filed by the attorneys for contestant and contestee are all printed in Parts 1 to 5, inclusive. The result of the recount is set out in Part 1-A. All of this printed record is made a part of this report and submitted to the Senate. The hearings were had before a subcommittee consisting of Senators Spencer (chairman), Watson, Ernst, King, Neely, and began on May 8, 1924, and concluded on May 18, 1924.

EVIDENCE

The contestee introduced but two witnesses—Mr. Van Valkenburg (p. 530) and Mr. Brown Harwood (p. 547) of the record.

RECOUNT

The ballots were gathered in the State of Texas through the office of the Sergeant at Arms and were transmitted in sealed pouches by the Post Office Department under lock and key, with every safeguard against possible tampering. The recount, conducted in the Senate Office Building, was begun on February 18, 1924, and was completed on April 8, 1924. The official return from the State of Texas as taken from the county clerks' records shows the following result:

Mayfield.....	266,307
Peddy.....	132,529
Total.....	398,836

The total number of votes which were brought to Washington were 367,513, of which 28,318 were no votes. The result of the recount of these ballots showed that—

Mayfield received.....	221,596
Peddy received.....	117,599

There were many irregularities and discrepancies and clear violations of law in connection with the casting of the ballots, as, for example, the laws of Texas provide that the ballots shall be signed by the judge of election.

- 30,209 Mayfield ballots were not thus signed.
- 14,609 Peddy ballots were not thus signed.

The law provides that the ballots shall be numbered.

- 1,723 Mayfield ballots were not numbered.
- 1,021 Peddy ballots were not numbered.

The law provides that the ballots that are cast shall be stamped "voted."

187,387 Mayfield ballots were not thus marked.

92,192 Peddy ballots were not thus marked.

These are illustrations of the irregularities, discrepancies and violations of law, but no one of them, nor all of them together, in the judgment of your committee, either did or ought to change the result.

LITIGATION TO KEEP MAYFIELD'S NAME OFF THE BALLOT

There was in the State of Texas protracted litigation to prevent the printing of Mayfield's name upon the official ballot. This grew out of proceedings filed in the trial court alleging that in the primary election Mayfield had spent more than was allowed by law; and under the provisions of Texas law, where a candidate in the primary elections is found to have spent more than the amount (\$10,000) allowed as a maximum in the first and second primaries together, his name should not appear upon the official ballot.

The trial court in the first case found that an unlawful amount of money had thus been expended by Mayfield and issued an injunction preventing the name of Mayfield appearing on the ballot.

The appellate courts finally decided that, because the county attorney did not appear in the case originally, it was improperly brought, and dismissed the proceedings. Another injunction was obtained from a trial court restraining the placing of Mayfield's name upon the ballot, which came before the Civil Court of Appeals and was dissolved at 11.45 o'clock on Saturday night, November 4, 1922—but three days before the election.

The motion for rehearing was overruled on Sunday, November 5, 1922. It is contended that such action on Sunday was invalid. Immediately a writ of error was filed by the contestant which took the case to the Supreme Court. The Supreme Court at once considered the case in acknowledged violation of the statutes, which prohibited such immediate consideration of the matter, and defended their action on the ground that if they had followed the admittedly regular course of procedure and law of Texas, requiring a certain number of days to elapse before decision, the result would have been that because the election was so near, not to definitely and immediately act on the injunction and determine the litigation would have in effect decided the merits of the case, adversely to contestant, when all that was actually before the court was a temporary injunction. If the temporary injunction had been allowed to stand, as would have been the case if the appellate courts had waited the prescribed time before rendering a decision, evidently the name of Mayfield could not have been printed on any ballot in the State of Texas, and that was the main question in the case. The election was so near that summary action was taken in violation of established procedure and law.

The appellate courts of Texas believed that Mayfield's name ought to be printed on the ballot, and therefore, irrespective of the rules in regard to time, they passed upon the question, and their decision

was telegraphed to every county, with the result that, except in about 50 counties, Mayfield's name appeared upon the official ballot.

Your committee agree that under the exigencies of the case in regard to time, the appellate court was justified in acting as pre-emptorily as it did.

PEDDY'S NAME NOT ON THE BALLOT

The name of Peddy was not printed upon a single ballot cast at the general election. The law of Texas provides that candidates for the United States Senate at the general election shall be selected at a preceding primary election. This is an exception to the general rule in Texas that allows any party casting less than 100,000 votes and as many as 10,000 votes to nominate candidates "for State, district, and county offices at a convention."

The Republican Party is not able, because of the small number of its adherents in many counties, to hold primary elections generally throughout the State for any office that requires a general State vote, and have always nominated by convention, and hitherto candidates for United States Senator of the Republican Party have also been nominated by convention and without objection.

In the election of 1922, however, the attorney general ruled on request of the secretary of state of Texas for advice in the matter, that the name of Peddy could not be put upon the official ballot, because he was not nominated at a primary.

The Republican Party of Texas had its convention regularly held in 1922 and nominated Dr. E. P. Wilmot, of Austin, Tex., as its candidate for United States Senator. Thereafter Doctor Wilmot declined, and the Republican State executive committee regularly nominated Peddy to fill the vacancy. There is no dispute about the regularity of Peddy's substitution. The State statute hereinabove referred to and first applied in this case, however, prohibited the printing of any candidate's name on the ticket at the general election who had not been nominated at a primary.

Your committee is of the opinion that the State had the authority to enact such a provision, and the mere fact that it had not been enforced before did not prevent its enforcement if the State authorities saw fit to enforce it as they did in the election of 1922.

PRIMARY ELECTIONS

The contestant complained of the law and practice in Texas which prevented any member of a party from voting at a primary election who had not voted, if he voted at all, for the regular party ticket at the last preceding general election.

It was claimed by the contestant that except for this rule Mayfield would not have been nominated at the primary. Similar regulations are in force in other States, and your committee has no doubt as to the power of a party or of a State to make such regulations if they see fit so to do.

KU KLUX KLAN

The contestant alleged that there was a general conspiracy between the Knights of the Ku Klux Klan and the contestee in order to bring about the election of the contestee and that pursuant to

this conspiracy unlawful sums of money were spent in favor of contestee and that the Knights of the Ku Klux Klan, a corporation, were prohibited by law from contributing to or interfering in their corporate capacity with elections and also that intimidation was resorted to in the interest of the contestee.

The evidence does not, in the opinion of your committee, show that excessive and unlawful amounts of money were spent, and certainly not with the knowledge or consent of Senator Mayfield, nor do they find from the evidence that there was any such lawlessness or conspiracy in connection with the Ku Klux Klan or otherwise as would in their judgment warrant the sustaining of the contest.

The evidence does show that there were acts tending to intimidate voters in different parts of Texas. Such acts were in connection with the primary election and had most to do with local offices, and had little, if anything, to do with the election of a Senator.

Undoubtedly there were, particularly in the primary election, and in the general election as well, acts of omission and commission in violation of express statutes, and some of them doubtless were intended to unlawfully produce a desired result in the election, but the evidence from the beginning to the end of it does not show either a knowledge or a consent of Senator Mayfield in these matters, nor are they of a character or extent which in the judgment of your committee warrant either the sustaining of the contest or the protest against the seating of Senator Mayfield.

Your committee therefore unanimously recommend that the contest in this case be dismissed and the protests against the seating of Senator Mayfield be overruled.

