

Condensed reports about the following cases are found in Hays, Compilation of Senate Election Cases from 1913 to 1940, Senate Document 147, 76th Cong., 3rd Session (quoted "Hays").

(1) Ford v. Newberry (Michigan), Hays 99.

The Senate ordered a recount of all the ballots. Senate Resolution 415, 57 Cong. Rec. 1607, Senate Resolution 11, 58 Cong. Rec. 62. The typical text of these resolutions authorized the Committee on Privileges and Elections (now Committee on Rules and Administration) to investigate, etc., etc. and to take possession of ballots, ballot boxes and several other listed things. The recount showed that Newberry had a plurality, though lower than officially stated. Since Ford feared that the ballots would be destroyed, he went to the federal court and obtained injunctions. The text of the Michigan statute then enacted in the text of the injunctions is found in 57 Cong. Rec. 2812-2813.

(2) Mayfield (Texas). Contested (Paddy), Hays 200.

See Senate Report 973, 68th Cong., 2nd Sess. Irregularities were found, but on both sides, and "none of them did or ought to change the result." All the ballots



(of the general election) were recounted in Washington. The Texas Appellate Court deviated from statutory requirements in order to help Mayfield to get his name on the ballot.

(3) Bursum v. Bratton (New Mexico), Hays 206.

See Senate Report 724, 69th Cong., 1st Sess.. A recount was not ordered since the allegations showed that Bratton would have a plurality anyhow.

(4) Steck v. Brockhart (Iowa), Hays 216.

This was a successful contest and also an exception in so far as the vote was not partisan. The Senate deliberately disregarded Iowa election laws (as to the marking of ballots) in order to reflect the obvious intention of the voters regardless of technicalities of the election law. See Senate Report 498, 69th Cong., 1st Sess.

(5) Vare (Pennsylvania), Hays, 318.

A recount was ordered, but finally made only of two counties (Philadelphia and Pittsburgh). Also after the recount Vare had clearly a plurality. He was not seated because of excessive campaign expenditures. See Senate Report 47, 71st Cong., 2nd Sess. (recommending the seating). The recount was ordered by Senate Resolution 195, 69th Cong., 1st Sess., and Senate Resolution 324, 69th Cong., 2nd Sess.



- (6) Heflin v. Bankhead (Alabama), Hays 470.

A recount was ordered, but Bankhead retained clearly a majority. See Senate Report 568, Parts I and II, 72nd Cong., 1st Sess. The recount was ordered by Senate Resolution 426, 71st Cong., 3rd Sess. (always the same text as to taking possession of ballots, etc.).

- (7) Willis v. Van Nuys (Indiana), Hays 735.

A recount was denied since the allegations were called insufficient. Senate Report 281, 76th Cong., 1st Sess.

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#### C O U R T C A S E S

In Newberry v. United States, 256 U.S. 232 (1921), Justice McReynolds (at 250) added as one reason for reversal that primaries are not elections and that the two things are radically different. However, this is certainly not the viewpoint of the Supreme Court any more. See Nixon v. Herndon, 273 U. S. 536, 541 (1927), Nixon v. Condon, 286 U.S. 73 (1932), and Smith v. Allwright, 321 U.S. 649 (1944), overruling Grovey v. Townsend, 295 U.S. 45 (1935), all four cases dealing with Texas primaries. See further, United States v. Classic, 313 U.S. 299, 313-320 (1941), and Rice v. Elmore, 165 F. (2d) 387 (C.C.A. 4th, 1947), cert. denied, 333 U.S. 875 (1948). In Smith v. Allwright, supra, at 660, the Supreme



Court said that the Classic case erased the doubt as to whether or not the primaries were a part of elections, subject to federal control, which doubt had remained unanswered since the case of Hawberry v. United States.

In the Vare case the Senate had difficulties in getting the ballot boxes from certain counties in Pennsylvania. Thereupon the Senate Committee asked for the help of the courts in order to get them. All courts held that this did not present a justiciable controversy. However, the case of Reed v. County Commissioners, 277 U.S. 376, 388-389 (1928), used very strong language in stating that the Senate itself possessed all the powers (to get the ballot boxes, to summon witnesses, to get the evidence, etc., etc.) necessary for the exercise of the constitutional power and that the Senate was independent in this respect from the House of Representatives and the Executive and Judicial branches of the government.

Another case connected with the Vare case was Barry v. United States, ex rel Cunningham, 279 U.S. 597 (1929), in which it was held that the Senate had the power to enforce the appearance of an unwilling witness.