

United States Senate

MEMORANDUM

June 1 —
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March 78, 1949

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REPORT CONCERNING PROTESTS OF TEXAS'

PRIMARY ELECTION OF 1948

Honorable Lyndon B. Johnson was elected United States Senator from Texas in the General Election of 1948, and on presenting his certificate of election at the convening of the 81st Congress, took the oath of office and assumed his seat in the United States Senate for a full six year term. He received 807,266 votes to 387,258 votes for his opponent in the General Election, a majority of more than two to one. No contest of such election has been presented and no question has been raised with respect to the conduct and regularity of the election.

The only matter before the Committee concerning Senator Johnson relates to the Second Primary election of the Democratic Party held in Texas on August 28, 1948, in which Johnson defeated his opponent, former Governor Coke Stevenson, by a narrow margin. Stevenson charged irregularities in counting and returning votes in five counties of South Texas, claiming that, as a result thereof, he was wrongfully deprived of several hundred votes. Johnson claimed that he was wrongfully deprived of several thousand votes as the result of irregularities in a large number of other counties. The Committee fully investigated the charges made by Stevenson and impounded the ballots in the five counties named by him, with the

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exception of one county where they had been destroyed.^{1/} No investigation was made by the Committee of the charges presented by Johnson, and his request that all ballots, particularly those in a number of named counties, be impounded, was not complied with.

The laws of Texas governing party primary elections provide that the several County Executive Committees of the political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. Stevenson appeared before the State Executive Committee and presented his charges. The Committee heard all the charges, and pursuant to its statutory function and duty certified to the State Convention that Johnson had received a majority of the votes in the Primary Election. The State Convention of the Democratic Party convened on the day following the meeting of the Executive Committee, received its report, and referred it to the convention's Committee on Party Nominations. The Convention adopted

^{1/} No particular significance is to be given to the destruction of the ballots (done by a long-employed court house janitor), as such occurred in other counties and was for the purpose of making the ballot boxes available for the ensuing General Election, and was not an unusual occurrence.

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the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name, as such nominee, to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a re-canvass, reject all illegal votes, and ascertain and declare the result. Stevenson did not pursue the remedy plainly provided by State law and frequently resorted to in other instances. Instead, he selected a United States District Court in Fort Worth, Texas, in which to file a suit in equity seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. Both the Court of Appeals of the Fifth Circuit and the Supreme Court held that the District Court was without jurisdiction, and by direction of the Court of Appeals

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the suit was dismissed.^{2/}

Having presented his contest and having obtained an adverse decision from the State Executive Committee and the State Convention of his party, and having declined to present his case to a court of competent jurisdiction, Stevenson then submitted his case to the electorate by appeals to the voters to vote in the General Election for Johnson's opponent, the nominee of the opposition party. Having again lost, he now asks the Senate to conduct an investigation of the party primary election in Texas to the limited extent of the conduct of the election in the five South Texas Counties.

If it be assumed, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it must be obvious that Stevenson himself has frustrated the proper conduct of such an inquiry in the instant case. If

^{2/} The Presiding Judge of one of the District Courts of Travis County had been appointed to the Bench by Stevenson when Governor. Both Stevenson and Johnson resided in the Western District of Texas. The U. S. District Judge of that district was available, as was a Judge of the Northern District and two of the Southern District, and all more easily accessible than the one from whom the injunction was obtained. The latter, according to press reports, signed the temporary restraining order during the early morning hours, on his farm near the Louisiana border. These facts are not mentioned for the purpose of indicating a pre-conceived opinion of the Judge, but to indicate the evaluation of the merits of the case by Stevenson and his attorneys, all of whom were able lawyers and prominent members of the State Bar.

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illegal votes were cast and improper returns made in the Primary Election in Texas, in order to determine whether such had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to go into the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in added votes for Stevenson.^{3/} Therefore, in order to arrive at a correct determination of the results of the election, it would be necessary to have a full re-count of all the ballots and a check of all returns. This might have been accomplished if the Committee had impounded all ballot boxes and returns, as requested by Johnson or by Court order if Stevenson had filed a contest in a district court of Travis County, as provided by State law. Johnson being the winning candidate could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas, have now been destroyed pursuant to the provisions of State law.

^{3/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some _____ illegal votes were cast and counted in that county, of which Stevenson obtained a majority of _____ of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. It was also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

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In justice to all parties, it should be stated that the charges presented by Stevenson were fully investigated by agents of this Committee. They secured written statements from the witnesses to whom they were referred by Stevenson's attorneys. Much of the data secured was either violently partisan in character, rumor, speculation or pure hearsay. The charges have been investigated by Grand Juries in the three counties principally complained about by Stevenson. If the charges were true it would follow that the criminal laws were violated and indictments would have been returned. No indictments were returned by any of the Grand Juries. On the contrary, their reports showed, in substance, that the election in those counties was conducted legally, fairly and impartially and that the election officials were diligent in the performance of their duties. The charges, if true, would also have indicated a violation of Federal law. The Department of Justice, through the FBI, has investigated the charges. Had evidence existed to establish the truth of the charges it would have been presented to a Federal Grand Jury, and, if sufficient, indictments would have been returned. Therefore, on the basis of the above, as well as on the basis of a consideration of the data before it, this Committee concludes that there has been a failure to make out a prima facie case of fraud or other illegality, and that further investigation is not warranted. But even if we were warranted in holding that the charges brought

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by Stevenson deserve further investigation, such would be fruitless unless we could ascertain whether and to what extent Stevenson himself was the beneficiary of fraud and irregularity, and what the result would have been if all votes illegally or irregularly cast and returned for each candidate were eliminated.

That further proceedings are not justified is conclusively established by Senate precedent. In the very recent case of Heflin vs. Bankhead involving alleged irregularities and illegalities in the conduct of a party primary, the following principles were affirmed:

"We have not deemed it a matter of sufficient importance to present (the argument made by Heflin) for the reason that the action of the electorate of Alabama in the general election eliminates from consideration the question of the legality of the primary.

"In our opinion the legality of the primary is not a proper matter for the consideration of the Senate of the United States. If it were * * * the action of the people in the general election has foreclosed consideration of it. For the fraud and corruption of the successful candidate in the election the Senate may go into the primary, as was done in Smith's case and Vare's case. Here the alleged infirmity is in the action of the party committee, not in Bankhead." h/

h/ See report of Heflin vs. Bankhead, (Hays 481). It has been asserted on good authority, and strenuously argued, that the Senate is authorized to determine the only Constitutional qualifications of its members (i.e. age, citizenship and residence) and that the electorate determines their mental, moral and other qualifications. See Warren, "The Making of the Constitution"; The Federalist (Hamilton) LX: On this theory the Senate has inquired into the actual election only, and refused to inquire into party nomination, whether by Primary Election or otherwise. See The Case of Stephenson, Senate Doc. 1036, 62nd Congress; Newberry vs. United States, 256 U. S. 232. In cases where it did make inquiries into the conduct of party nominations, such as the Smith and Vare cases, it did so only for the purpose of determining whether the elected candidate was himself guilty of fraud or corruption in obtaining party nomination. This position is strongly reaffirmed in the more recent case of Heflin vs. Bankhead (Hays. 470).

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That precedent is particularly controlling here. The electorate of Texas in the General Election overwhelmingly "eliminate(d) from consideration the question of the legality of the Primary."^{5/} There is no evidence that Johnson had any connection with or knowledge of any irregularities in the Primary Election. Nor do any of the protests on file with the Committee contain any factual allegations tending to connect him in any manner with the conduct of the Primary Election.

It is recommended that the protests be dismissed and that no further proceedings be taken in respect thereof.

^{5/} Johnson received the largest majority of any of the thirty-two Senators who took their seats at the convening of the 81st Congress. This vote was given him by the electorate of Texas, notwithstanding that his opponent in the Primary had made an issue of the charges now before the Committee and had endorsed Johnson's opponent in the General Election, the nominee of the opposition party.

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The laws of Texas governing party primary elections provide that the several County Executive Committees of the political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. Stevenson appeared before the State Executive Committee and presented his charges. The Committee heard all the charges, and pursuant to its statutory function and duly certified to the State Convention that Johnson had received a majority of the votes in the Primary Election. The State Convention of

^{1/} No significance is to be given to the destruction of the ballots, as such occurred in other counties and was for the purpose of making the ballot boxes available for holding the General Election, and was not in violation of law. *an unusual occurrence.*

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the Democratic Party convened on the day following the meeting of the Executive Committee, received its report, ^{and} ~~which was~~ ^{it} referred to the convention's Committee on Party Nominations. The Convention adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name, as such nominee, to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capital. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result. Stevenson did not pursue the remedy plainly provided by State law and frequently [?]resorted to in other instances. Instead, he selected a United States District Court in Fort Worth, Texas, in which to

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file a suit in equity seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. Both the ^{U.S.} Supreme Court and ^{U.S.} Court of Appeals of the Fifth Circuit held that the ^{U.S.} District Court was without jurisdiction, ^{dissolved the injunction} and ^{2/} by direction of the Court of Appeals the suit was dismissed.

Having presented his contest and having obtained an adverse decision from the State Executive Committee and the State Convention of his party, and having declined to present his case to a court of competent jurisdiction, Stevenson then submitted his case to the electorate by appeals to the voters to vote in the General Election for Johnson's opponent, the nominee of the opposition party. Having again lost, he now asks the Senate to conduct an investigation of the party primary election in Texas to the limited extent of the conduct of the election in the five South Texas Counties.

2/ The Presiding Judge of one of the District Courts of Travis County had been appointed to the Bench by Stevenson when Governor. Both Stevenson and Johnson resided in the Western District of Texas. The U. S. District Judge of that district was available, as was a Judge of the Northern District and two of the Southern District, and all more easily accessible than the one from whom the injunction was obtained. The latter, according to press reports, signed the temporary restraining order during the early morning hours, on his farm near the Louisiana border. These facts are not mentioned for the purpose of indicating a pre-conceived opinion of the Judge, but to indicate the evaluation of the merits of the case by Stevenson and his attorneys, all of whom were able lawyers and prominent members of the State Bar.

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If it be assumed, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by state law, it must be obvious that such inquiry would be ineffectual in the instant case. If illegal votes were cast and improper returns made in the Primary Election in Texas, in order to determine whether such had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary to go into the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in added votes for Stevenson.^{3/} As a matter of fact, the margin of votes between the two candidates was so slight as that the result might be affected by honest mistakes and clerical errors. Therefore, in order to arrive at a correct determination of the results of the election, it would be necessary to have a full re-count of all the ballots and to check all returns. This might have been accomplished if

^{3/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some _____ illegal votes were cast and counted in that county, of which Stevenson obtained a majority of _____ of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2000 illegal votes, represented by prostitutes who had been run out of the county and names taken from tombstones.

It was also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand votes more than were legally cast for him.

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or by court order if Stevenson had filed a contest in a district court of Travis county, as provided by state law. Johnson being the winning candidate, could not invoke the jurisdiction and powers of the court for the purpose of effecting
the Committee had ~~acted promptly to impound~~ all ballot boxes and returns, *a recount*
as requested by Johnson. *ballots* Practically all of them, in all the 254 counties *or impounding of the ballots.*
of Texas, have now been destroyed pursuant to the provisions of State law.

In justice to all parties, it should be stated that the charges presented by Stevenson were fully investigated by agents of this Committee. They secured written statements from the witnesses to whom they were referred by Stevenson's attorneys. They have made written reports of their findings. The charges have been investigated by Grand Juries in three of the counties involved. If the charges were true it would follow that the criminal laws were violated and indictments should be returned. No indictments were returned by any of the Grand Juries. Their reports showed, in substance, that the election was conducted legally, fairly and impartially and that the election officials were diligent in the performance of their duties. (The charges would indicate a violation of Federal Law. The Department of Justice, through the FBI, has investigated the charges, and we are confident that had evidence existed to establish the truth of the charges it would have been presented to a Federal Grand Jury, and, if sufficient, ~~an~~ indictment ^{would} have been returned.) Therefore, the Committee is justified in stating that an examination of all factual specifications and evidence presented to the Committee fail to make out a prima

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facie case of fraud or illegalities. But if we were warranted in holding that the charges brought by Stevenson deserve further investigation, such would be fruitless unless we could ascertain whether Stevenson was the beneficiary of fraud and irregularity, and what the result would be if all votes illegally or irregularly cast and returned for each candidate were eliminated.

It is traditional that the Senate will not inquire into a party nomination except to determine whether an elected member of the Senate was guilty of such conduct in securing the nomination as to render him unfit for a seat in the United States Senate.^{4/} Not only is there no evidence that Johnson had any connection with or guilty knowledge of the alleged irregularities, but the record contains no factual allegations tending to connect him in any manner with the conduct of the Primary Election in the five South Texas counties involved.

It is recommended that the protests be dismissed and that no further proceedings be taken in respect thereof.

^{4/} It has been asserted on good authority, and strenuously argued, that the Senate is authorized to determine the Constitutional qualifications of its members (i.e. age, citizenship and residence) and that the electorate determines their mental, moral and other qualifications. See Warren, "The Making of the Constitution"; The Federalist

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(Hamilton) LX. On this theory the Senate inquired into the actual election only, and refused to inquire into party nomination, whether by Primary Election or otherwise. See The Case of Stephenson, Senate Doc. 1036, 62nd Congress; Newberry vs. United States, 256 U. S. 232. In cases where it did make inquiries into the conduct of party nominations, such as the Smith and Vare cases, it did so only for the purpose of determining whether the elected candidate was himself guilty of fraud or corruption in obtaining party nomination, as made clear in the case of Heflin vs. Bankhead (Hays, 470).

Processing Note:

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Robert Mar

Digitization Technician

REPORT OF
THE SENATE SUBCOMMITTEE ON
PRIVILEGES AND ELECTIONS
TO THE
COMMITTEE ON RULES AND ADMINISTRATION
RE TEXAS SECOND PRIMARY

June 21, 1949

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CITATIONS TO THE CIVIL STATUTES OF THE
STATE OF TEXAS
(ALL CITATIONS ARE TO CHAPTER XIII - NOMINATIONS -
UNLESS OTHERWISE INDICATED)

<u>Nature of Article</u>	<u>Article No.</u>
Senatorial Contests governed by law regulating contests for State officers.....	3067 (Chap. 9)
State laws apply to Senatorial primaries.....	3088 (Chap. 12)
Nomination at primary.....	3090 (Chap. 12)
All State election laws apply to Senatorial primaries.....	3091 (Chap. 12)
Second primary.....	3094 (Chap. 12)
Conduct of Election.....	3095 (Chap. 12)
Officers of primary.....	3104 (3089)
Political party may prescribe qualifications of members.....	3107
Primary committee.....	3115 (3103)
County executive committees.....	3118 (3107-9)
Time for returns by judge in party primary elections.....	3123 (3121)
Returns of election.....	3124 (3122)
Canvass of result.....	3125 (3123-25)*
Tabulated statement.....	3127 (3126-7)
Boxes and ballots returned.....	3128 (3129)*
Objections to nomination; jurisdiction of district court; procedure.....	3130 (3131)*
Place for State convention.....	3136 (3137)
State committee to canvass.....	3137 (3138)
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<u>Nature of Article</u>	<u>Article No.</u>
State convention.....	3139 (3140)
Mandamus.....	3142 (3143)
Powers of district court where fraud or illegality charged.....	3148 (3149)*
District court to certify findings; filing record in appellate court.....	3150 (3151-2)*
By district court.....	3152 (3154-57)*
Appeal from district court.....	3153 (3158)

* Reference to cumulative supplement.

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES
AND ELECTIONS. TO THE COMMITTEE ON RULES
AND ADMINISTRATION. RE TEXAS SECOND PRIMARY

Introduction

Your Subcommittee on Privileges and Elections has the following matters before it with respect to the second or so-called "run-off" Democratic primary held August 28, 1948, for the selection of the Democratic nominee for a seat in the United States Senate representing the State of Texas:

1. A petition filed on January 5, 1949 by a Texas "Citizens' Committee"^{1/} requesting that no Democratic nominee for United States Senator [from Texas] be seated.

2. A communication filed under date of October 18, 1948 by Honorable Coke R. Stevenson ("Stevenson"), the defeated candidate for the Democratic nomination for United States Senator from Texas in the run-off primary, alleging election frauds and irregularities in certain counties in Texas.

3. A communication filed under date of October 25, 1948 by Honorable Lyndon B. Johnson ("Johnson"), the successful candidate for the Democratic nomination for United States Senator from Texas in the run-off primary, alleging election frauds and irregularities in numerous counties throughout Texas.

Your Subcommittee has had these matters under consideration and now respectfully reports as follows:

The Junior Senator from Texas, Honorable Lyndon B. Johnson was elected a Senator for a full six-year term in the November 1948 General Election, receiving 809,420

^{1/} The "Citizens' Committee" called itself the "Citizens' Committee Against Political Fraud," P. O. Box 1271 - State Headquarters, San Antonio 6, Texas.

votes to his opponent's 389,190 votes. When the 81st Congress convened, Johnson presented his certificate of election from the State of Texas, took the oath of office and was thereupon seated.

It will be observed from the foregoing that the only matters pending are charges made with respect to the "run-off" primary. No charges with respect to the conduct of the General Election have been made either to the Senate or directly to the Senate Subcommittee on Privileges and Elections ("Sub-Committee").^{2/} There is, therefore, no contest pending before the Senate with respect to the General Election in which Johnson was the victor.

NATURE OF ALLEGATIONS

The petitions of the "Citizens' Committee" alleged, in substance, that at the time of the run-off primary, and as a consequence of the manner in which it was conducted, the Republican form of Government guaranteed to the State of Texas by Article IV, Section 4, of the Constitution of the United States, was abridged and nullified. It was also alleged, in effect, that an unnamed candidate or candidates engaged in "insurrection or rebellion against the (United States and gave) aid or comfort to the enemies thereof. . ." These allegations were entirely unsupported.

In his communication forwarded to the Subcommittee under date of October 18, 1948, Stevenson charged generally that various election frauds and other irregularities had occurred in the run-off primary in certain counties in Texas. Stevenson requested the Committee to investigate. An investigation was made.

^{2/} Subcommittee of the Senate Committee on Rules and Administration.

Johnson, the successful candidate for the Democratic nomination in the run-off primary, charged generally, in his communication filed with the Subcommittee under date of October 25, 1948, that various election frauds and irregularities had taken place in the run-off primary in numerous counties throughout Texas. Johnson requested that all the ballots cast in the run-off primary in all the counties of Texas be impounded by the Subcommittee so that in the event a complete recount of said ballots was deemed necessary and ordered, they would be available for that purpose. Johnson's charges were not investigated and his request was not acceded to.

CONDUCT OF THE PARTY PRIMARY IN TEXAS

Inasmuch as no charges have been made with respect to the conduct of the General Election but only with respect to the run-off primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

The Civil Statutes of the State of Texas provide that a political party desiring to nominate a candidate for United States Senator shall nominate or select such candidate for United States Senator at a general primary election to be held throughout the State.^{3/} The statutes also provide that:

"No person shall be declared the nominee for any political party for United States Senator unless he has * * * received a majority of all the votes cast at said primary for all the candidates for that party for United States Senator. If at the first primary election no candidate receives a majority of the vote * * * the State Executive Committee or State Chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between

^{3/} 50 Civil Statutes of the State of Texas Art. 3090.
(Hereinafter cited as "Texas Stat.")

the two candidates receiving the largest number of votes at the first primary election."^{4/}

The first Democratic primary was duly held but none of the candidates for the nomination received a majority of the votes cast. The two candidates receiving the largest number of votes were Johnson and Stevenson. Accordingly, pursuant to the requirements of the Texas law, as set forth above, a second or run-off primary was held at which the voting was restricted to a choice between Johnson and Stevenson.

Under Texas law the canvassing of the votes and the ultimate selection of the party nominee is determined in the following manner.

The respective County Executive Committees^{5/} are convened to receive the election returns from the precinct election judges,^{6/} to canvass the results^{7/} and to forward the tabulated statements of votes to the Chairman of the State Executive Committee.^{8/}

The State Executive Committee^{9/} canvasses the returns as certified by the various County chairmen and prepares a tabulated statement showing the number of votes received by each candidate in each County. The tabulation

^{4/} 50 Texas Stat. 3094.

^{5/} A County Executive Committee is composed of "a county chairman, and one member from each election precinct in such county * * *." 50 Texas Stat. 3118.

^{6/} 50 Texas Stat. 3124 (3122).

^{7/} 50 Texas Stat. 3125 (3123-5).

^{8/} 50 Texas Stat. 3127 (3126-7).

^{9/} The State Executive Committee consists of a Chairman, Vice-Chairman and sixty-two members, two from each senatorial district of the State. 50 Texas Stat. 3139 (3140).

is presented to the State Committee for its approval or disapproval, and, if approved, for certification by the Chairman thereof.^{10/} The State Chairman thereafter presents the tabulated statement to the Chairman of the State Convention duly convened, for the approval or disapproval of the Convention.^{11/} Upon approval by the Convention it has the duty to

"declare s the candidate who received a majority of all votes cast for such office the nominee of the party for such office"

and the Chairman and the Secretary of the State Convention certify the nominee to the Secretary of State for the State of Texas.^{12/} The Secretary of State in turn certifies the nominee to the various election officials as the party candidate for Senator and his name is placed on the official ballot for use in the general election. This procedure was fully adhered to in connection with the run-off primary.

It is thus seen that elaborate and detailed statutory provisions, including provision of extensive machinery to ensure the correctness of the tabulation of votes, not only govern the conduct of the primary, but also fix the powers and duties of party officials. It is important to note that the State Convention has both the power and the duty to canvass the returns and declare who shall be the party nominee. The name of no person may appear on an election ballot unless he is declared by the State Convention to be the party nominee and certified as such to the Secretary of State.

But while the powers of the party with respect to the selection of nominees are indeed great, the rights of

^{10/} 50 Texas Stat. 3137 (3138).

^{11/} Ibid.

^{12/} 50 Texas Stat. 3138 (3139).

prospective nominees are appropriately safeguarded both by established party procedures and by statutory provision for contests.

Under established party procedures contenders for party nominations are accorded the right to appear before and be heard by the State Executive Committee as well as the Committee on Party Nominations of the State Convention. Further, debate on the Convention floor is also permitted.

In addition to the foregoing, under applicable Texas statutes, provision is made for contests by defeated candidates before the State District Courts. ^{13/} In cases

"where fraud or illegality is charged, if such charges of fraud or illegality be supported by some evidence, or by affidavit of reputable persons, and the ends of justice seem to require it, the Court shall have authority to unseal and re-open the ballot boxes to determine controverted issues, and the Court may recount, or under its direction cause to be recounted, the ballots cast in any or all precincts of the county to determine the true result of such election." ^{14/}

An appeal from the decision of the District Court may be taken, by either party to the contest, to the Court of Civil Appeals for the particular Supreme Judicial district, "which appeal shall be advanced upon the docket of said Court and shall have precedence over all other cases." ^{15/}

It is thus seen that any disappointed prospective nominee, for cause shown that he is aggrieved, has a complete remedy in the State courts. Thus complete protection is

^{13/} 50 Texas Stat. (Sup.) 3130 (3131) provides that "The District Court shall have original and exclusive jurisdiction of all contests for nominations growing out of primary elections. Any candidate desiring to contest the declared result of any primary election in which he was a candidate shall file his suit in the District Court."

^{14/} 50 Texas Stat. (Sup.) 3148 (3149).

^{15/} 50 Texas Stat. (Sup.) 3153 (3158).

afforded against any arbitrary use of power by party officials.

Having examined State party and statutory machinery with respect to party primaries, we will now give attention to what actually transpired thereunder.

The run-off primary early developed into a close contest, and during its course various allegations were publicly made by both candidates to the general effect that irregularities in the primary had been widespread.

After the ballots had been cast the County Executive Committees were duly convened, received the returns from the precinct election judges, canvassed the results and forwarded them to the Chairman of the State Executive Committee. Both the State Executive Committee and the State Convention were assembled in Fort Worth, Texas. The former received the tabulations from the County Executive Committees and prepared to make a preliminary canvass thereof through a duly appointed and properly authorized Subcommittee.

On September 13, 1948 both Johnson and Stevenson were heard by the Subcommittee of the State Executive Committee and also by the full Committee. The public charges and countercharges then became a matter of record before and the official business of the party officials.

Stevenson's charges were principally concerned with the fact that Johnson had received large majorities in a limited number of counties. Johnson, for his part, charged widespread irregularities throughout the state, including numerous specified counties, of which Stevenson was the beneficiary.

Both candidates were represented by counsel, and the full facts as known to the parties were presented in

detail, argued at length and considered fully.

After the hearings of the parties the full State Executive Committee decided the issues in Johnson's favor, completed the canvass of the votes, found that Johnson had received a majority thereof, and determined him to be the duly elected nominee of the Democratic party. Accordingly, it certified Johnson to the State Convention as the nominee of the Democratic Party for United States Senator from Texas.

The State Convention of the Democratic Party convened on September 14, 1948, the day following the meeting of the Executive Committee, received the Committee's report and immediately referred it to the Convention's Committee on Party Nominations. In view of the contest before the State Executive Committee, Stevenson was invited to appear before and be heard by the Convention's thirty-one man Committee on Party Nominations. He declined to do so.

The Committee on Party Nominations reported to the State Convention that Johnson had received a majority of the votes cast and should be certified as the party nominee. The State Convention received the report in open assembly, approved the same and declared Johnson to be the duly elected nominee of the Democratic party as its candidate for the office of United States Senator. Thereupon the Chairman and Secretary of the State Convention certified his name as such nominee to the Secretary of State of the State of Texas for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with the laws of Texas.

As we have previously noted, only the unsuccessful candidate for the party nomination has the right to

contest the nomination of his successful opponent before the appropriate State District Court, which, in Texas, is a court of general jurisdiction. We have also seen that where fraud or illegality is charged in such a suit, the Court has authority to impound and open ballot boxes, recount the ballots, reject all illegal votes, and ascertain and declare the true results of the election.

The defeated candidate, as we have seen, contested the nomination before the State Executive Committee where, as already noted, he was unsuccessful. Further, as we have also seen, he did not exercise the right accorded to him to appear before the Committee on Party Nominations of the State Convention. Further, he refrained from filing a suit in the State District Court to obtain a judicial determination. Had he done so he could have had a decision from a court with full power to deal with, and make a final and binding disposition of, the controversy.

Johnson, on the other hand, as the successful candidate, had no standing to obtain a judicial determination of the issues. Unable to originate a contest he was similarly precluded from having the ballot boxes throughout the State impounded.

Further, the State primary laws provide that ballot boxes after being used in primary elections shall be returned with the ballots cast to the county clerk, and unless there is a contest for a nomination, they shall be unlocked and the contents destroyed at the expiration of sixty days after such primary election, provided, that the District judge by an order may defer the destruction of the contents of such ballot boxes for a period of not exceeding twelve (12) months after such primary election.^{16/}

^{16/} 50 Texas Stat. (Sup.) 3128 (3129).

Stevenson took no steps under State law to contest the nomination of Johnson and hence no steps to have the ballot boxes impounded as provided thereunder. Consequently, pursuant to the requirements of Texas law, virtually all the ballots cast in the primary have long since been destroyed.

Instead of pursuing the remedy which he had available under Texas law, Stevenson filed a suit in equity in a United States District Court at Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election.

LITIGATION IN FEDERAL COURTS OVER NOMINATION

The above referred to suit by Stevenson was commenced on September 15, 1948 in the District Court of the United States for the Northern District of Texas (Fort Worth Division) against Johnson and Tom L. Tyson and Vann M. Kennedy.^{17/} Stevenson charged in substance that numerous election irregularities and illegalities had occurred and as a result thereof he was deprived of the Democratic nomination. He asked the Court for the following:

1. An injunction to prevent officers of the Democratic Party in Texas from certifying the name of Johnson as Democratic nominee for United States Senator as a result of the primary election.
2. An injunction to prevent Johnson's name as such nominee from being placed on the official ballot for the general election to be held on November 2, 1948.
3. Cancellation of the certificate if already made.
4. A declaration that Stevenson was the true

^{17/} Tom L. Tyson was Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, and Vann M. Kennedy was Secretary of said Convention.

nominee.

Immediately following the presentation of the complaint, Judge Davidson forthwith endorsed thereon a temporary restraining order.

On September 7, 1948, Stevenson amended his original complaint and added as defendants Paul H. Brown, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery.^{18/} Upon the filing of the amended complaint an amended enlarged temporary restraining order was also issued. The restraining order was made returnable on September 21, 1948 at Fort Worth, Texas.

Thereafter, Johnson filed a motion to dismiss the complaint for want of jurisdiction and, on September 21, 1948, a hearing on the application for a temporary injunction took place. On September 22, 1948, the temporary injunction was continued in effect.

On September 24, 1948, Johnson lodged an appeal before Honorable Joseph C. Hutcheson, Jr., Circuit Judge of the United States Court of Appeals, 5th Circuit, seeking an order "setting aside and staying the temporary injunction order issued by the Court below, pending the determination of this appeal." Judge Hutcheson denied the motion "without prejudice to the right to present the motion to the (full) Court."

On September 29, 1948, Johnson filed a motion for a stay of the temporary restraining order theretofore issued, which motion was addressed to the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States and Supervising Justice for the 5th Circuit. On the same day

^{18/} Brown was Secretary of State of the State of Texas. Kraft, Faulk and Montgomery were County Judge, County Clerk and Sheriff, respectively, of Tarrant County, Texas. These last three individuals were added as defendants, inasmuch as they constituted the members of the Election Board of Tarrant County and were alleged to be properly representative of all the Election Board Members of the 253 other counties of the State.

Justice Black issued an order providing "that the temporary injunction issued by the United States District Court for the Northern District of Texas (Fort Worth Division) on September 23, 1948, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al, Civil Number 1640, be and the same hereby is stayed and that the said temporary injunction is and shall be of no force and effect until further order of the Supreme Court." Thereafter, on October 2, 1948, Coke R. Stevenson filed a motion with the Supreme Court of the United States requesting that the order of Mr. Justice Black of September 29, 1948, be vacated. On October 5, 1948, the Supreme Court issued an order denying the above-mentioned motion and dismissed the proceedings.

Meanwhile, the Court of Appeals for the 5th Circuit proceeded with a consideration on the merits of Johnson's appeal from the District Court's decision and, on October 7, 1948, in a unanimous decision, held that the District Court was without jurisdiction to consider the cause. It stated in part that:

"We are of opinion . . . that there is here no case for interference by a Federal court of equity in a Senatorial primary; that the injunction ought not to have been granted; and that the motion to dismiss ought now to be sustained . . .

"The order of injunction is set aside and the cause is remanded with direction to dismiss the petition."^{19/}

Subsequently, Stevenson filed a petition for certiorari with the Supreme Court of the United States. On January 31, 1949, such petition was denied.^{20/}

Thus the litigation in the Federal Courts was decided in Johnson's favor.

^{19/} Stevenson v. Johnson, et al., 170 F. (2d) 108, 111.

^{20/} 17 L.W. 3227.

NATURE AND EXTENT OF THE SENATE'S POWERS AND CIRCUMSTANCES
UNDER WHICH THEY ARE EXERCISED

Having summarized the history as well as the significant considerations affecting the controversy, there remains for consideration the question of what action in the premises, if any, is now called for. In this connection and at the outset, it will be useful briefly to summarize the nature and extent of the Senate's powers and the circumstances under which, in the past, so far as here relevant, they have been exercised.

The Constitution of the United States provides that:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *."^{21/}

With respect to the qualifications of Senators, the Constitution provides that:

"No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen."^{22/}

The Federal Convention refused to establish qualifications for members other than those set forth above. It also refused to give Congress power to establish qualifications. In view of these facts it has been seriously contended that the Senate, under Article I, Section 5, Clause 1 of the Constitution, is restricted to a determination of whether a Senator has the qualifications required by

^{21/} Constitution, Art. I, Sec. 5, Clause 1. The exact words of this provision were agreed upon in the Federal Convention without debate on August 10, 1787. Madison, Debates in the Federal Convention of 1787 (Int. Ed. 1920) 378.

^{22/} Constitution, Art. I, Section 3, Clause 3.

Article I, Section 3, Clause 3. Thus Warren has said: ^{23/}

"Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its members, other than those qualifications established by the Constitution itself, viz., age citizenship and residence."

This position is given some support by Hamilton's exposition of the Constitution in the Federalist, wherein he stated: ^{24/}

"[The] authority [of the national government] would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution, and are unalterable by the legislature."

It is unnecessary to do more than advert to the constitutional question, however, because in a long line of cases the Senate has repeatedly considered matters in Senate contests not concerned with either age, citizenship or residence. ^{25/}

We will proceed therefore on the assumption for present purposes that the Senate has power to inquire fully into the "elections * * * of its own members," unfettered by Article I, Section 3, Clause 3.

Another question as to the Senate's power is

^{23/} Warren, The Making of the Constitution 1928. See also Warren 420-421, 423-425; 33 Va. L.R. 328, 329; 324-326.

^{24/} The Federalist, No. LX (By Hamilton).

^{25/} Further, there are no cases in which either State or Federal courts have interfered with the exercise of the Congressional power under Article I, Sec. 5, Clause 1. State Courts have expressly refused to do so. Election of United States Senator, 12 Fla. 686, 688-689 (1869); State of Florida vs. Crawford, 28 Fla. 441, 479-480 (1891); Sutherland vs. Miller, 79 W. Va. 796, 808 (1917). In Barry vs. United States ex rel. Cunningham, 29 U.S. 597 (1929), the Supreme Court expressly stated that the Senate, though a legislative body, has a judicial power under Article I, Section 5, Clause 1.

apparent at the threshold of our inquiry, namely, is a primary an "election" within the meaning of Article I, Sec. 5, Clause 1?

It will be remembered that Article I, Section 3, Clause 1 of the Constitution, prior to the XVII Amendment, governed the election of Senators and provided that:

"The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof * * *."

The XVII Amendment, effective May 31, 1913, superseded this provision by providing that

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof * * *."

It was not until after 1913, therefore, that Senators were elected directly by the people and hence not until that time that primaries came to have particular significance in this connection.

It is nevertheless interesting to note, however, that prior to 1913 the Senate held that a state primary (Wisconsin) for the nomination of candidates for election to a State legislature, even though provided for by State statute, was not part of the election for United States Senator because the duty of election was vested solely in the legislature. Hence irregularities in a primary could not affect the validity of the election of a Senator by the State legislature.^{26/}

In 1921, eight years after the effectiveness of the XVII Amendment, Justice McReynolds (speaking in this respect for himself and three other Justices) in *Newberry vs. United States*,^{27/} a case concerning the Newberry

^{26/} The case of *Stephenson, Webb and Pierce*, Compilation of Senate Election Cases (1913), Senate Doc. No. 1036, 62nd Cong. 3d Session.

^{27/} 256 U.S. 232, 250 (1921).

Senate contest, stated that primaries

"are in no sense elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified elections. * * * the two things are radically different."

More recent cases appear to have abandoned this general view,^{28/} although none of them is concerned with any of the aspects of Senate contests.

Since 1913 the Senate has dealt, from time to time, with various charges regarding primaries. In *Chilton v. Sutherland*^{29/} allegations with regard to a West Virginia primary and the ensuing general election were made by the defeated candidate Chilton. The allegations with respect to the primary were investigated in connection with the investigation of the general election. In *Ford v. Newberry*^{30/} the Senate conducted a recount of all the ballots cast in the Michigan general election and also investigated various aspects of the primary. As noted above, however, Justice McReynolds and three other Justices concluded that primaries were "in no sense elections for an office." In *Peddy v. Mayfield*^{31/} (Texas); *Stock v. Brookhart*^{32/} (Iowa), and *Johnson v. Scholl*^{33/} (Minnesota) various aspects of primaries were considered but only in connection with an investigation of the respective general elections. Thus it seems to have

^{28/} *Nixon vs. Herndon*, 273 U.S. 536, 541 (1927); *Nixon vs. Condon*, 286 U.S. 73 (1932); *Smith vs. Allwright*, 321 U.S. 649 (1944), expressly overruling *Gravey vs. Townsend*, 295 U.S. 45 (1935). See also *United States v. Classic*, 313 U.S. 299, 313-320 (1941), and *Rice vs. Elmore*, 165 F. (2d) 387 (C.C.A. 4th, 1947), *Certiorari denied*, 333 U.S. 875 (1948).

^{29/} Hays, *Compilation of Senate Election Cases, 1913-1940*, Senate Doc. 147, 76 Congress, 3d Session, 44. (Cited hereafter as "Hays.").

^{30/} Hays, 99.

^{31/} Hays, 200.

^{32/} Hays, 216.

^{33/} Hays, 256.

been the practice of the Senate to inquire into primaries only in connection with contests involving the general election.

In the Smith^{34/} case (Illinois) and the Vare^{35/} case (Pennsylvania), however, the Senate was concerned almost exclusively with primary matters, and it has been stated that:

"One of the most significant features of the work of this select Committee [i.e. the investigating committee] and of the Senate's action upon its reports in the Smith and Vare cases is the Senate's practical acceptance of that view that the primary is a part of the election."^{36/}

But as the case of Heflin v. Bankhead^{37/} (Alabama) clearly shows, the Senate did not decide in the Smith and Vare cases that it would regard all aspects of primaries as being within its cognizance and appropriate for decision. In this case Bankhead was the Democratic nominee who defeated Heflin in the general election by some 50,000 votes. Heflin contested the election on various grounds relating both to the Democratic primary and the general election, including particularly that he had

"been defrauded of the right to run in the regular Democratic primary held in the State of Alabama on the 12th day of August 1930 * * *."^{38/}

Heflin's contention as to the illegality of the primary, in the words of the Committee:

"[grew] out of the fact that a resolution of the State Democratic Committee, calling the primary, fixed as one of the qualifications for candidates a test of party loyalty in the preceding election

^{34/} Hays, 289 (Decided in 1928).

^{35/} Hays, 318 (Decided in 1929).

^{36/} Haynes, The Senate of the United States (1938), V. 1, p. 150, n. 2.

^{37/} Hays, 470.

^{38/} Hays, 472.

but did not fix this test for voters in that primary. * * * It is admitted that * * * the Committee had the power to fix the qualifications for candidates * * * but it is contended that these qualifications became automatically the qualifications for voters and that the attempt to fix qualifications for voters differing from those fixed for candidates was beyond the power of the Committee and resulted in invalidating the whole primary."^{39/}

In considering Heflin's contention the Committee stated:

"It may be well to direct attention at this point to the fact that whatever the powers of Congress, since the adoption of the seventeenth amendment, may be to regulate primaries in which nominations for the United States Senate are made, that there is no Congressional legislation attempting to exercise this power at this time.

"No intention has been shown by any Federal legislation, since the original corrupt practices act was declared invalid in the Newberry case, to exercise jurisdiction over state primaries. The legality of the Alabama primary in question must, therefore, be determined in the light of the Alabama statutes and general principles of law as declared in judicial decisions."^{40/}

In this connection it will be recalled that Stevenson failed to avail himself of the clear remedy which he had under Texas law to contest the nomination of Johnson.

The role of the Senate in connection with a primary is stated in Heflin v. Bankhead^{41/} as follows:

"We have not deemed it a matter of sufficient importance to present /the argument made by Heflin for the reason that the action of the electorate of Alabama in the general election eliminates from consideration the question of the legality of the primary.

"In our opinion the legality of the primary is not a proper matter for the consideration of the Senate of the United States. If it were * * * the action of the people in the general election has foreclosed consideration of it. For the fraud and corruption of the successful candidate in the election the Senate may go into the primary, as was done in Smith's case and Vare's case. Here the alleged infirmity is in the action of the party committee, not in Bankhead.

Thus while the Senate cannot be judicially restrained from examining into any and every aspect of the

^{39/} Hays, 476. The minority views of the Subcommittee were approved by a majority of the full Committee and accepted by the Senate by a vote of 64 to 18.

^{40/} Hays, 478.

^{41/} Hays, 481.

conduct of a primary election if it determines to do so, the rule governing its function in connection with primaries, consistent both with the constitutional source of its power and with its precedents of over 160 years, is that it will investigate and take appropriate action in connection with a primary election only when it is affirmatively shown that the nomination was secured by the fraud and corruption of the successful candidate.

The foregoing view is not only consistent with the Senate's precedents, but is also consistent with applicable judicial decisions.^{42/} As pointed out by the Senate in Heflin v. Bankhead^{43/}

"In Johnson v. Dosland (103 Minn. 147) the court said:

"The Contestee's name went on the official ballot under order of the court and the sanction of the law, and the authorities do not support the suggestion that the election may be overturned and electors disfranchised long after the election is past and the result thereof acted upon by those interested for irregularities, or even fraud, in nominating conventions or primary nominating elections.

"Contests for nominations as party candidates for public office must be settled before the general election, and when not, those whose names go upon the official ballots as the regular nominees are entitled to all benefits therefrom whether they, perchance, could have been in contest proceedings ousted of the right or not. The question recently came before the Supreme Court of Wisconsin, and was there determined in harmony with this view. (State v. Bunnell, 110 N.W. 177; State v. Goff, 129 Wis. 668, 109 N.W. 638, L.R.A., N.S. 916 * * *)."

"The basic principle upon which the foregoing authorities are grounded, and which is patently and fundamentally sound, is that the will of the people must prevail and cannot be set aside by reason of technical objections relating to the way the candidates name got on the ticket. * * *."

Having thus ascertained the rule to be applied we now turn to its application to the case before us.

^{42/} It is, of course, likely that the formulation of the Senate's precedents were influenced by the principles evolved by the courts in either resolving or refusing to take jurisdiction in election controversies, coming before them.

^{43/} Hays, 480.

ACTION BY SUBCOMMITTEE

As heretofore noted, subsequent to the victory of Johnson in the General Election, the "Citizens' Committee" forwarded a petition to us the printed portion of which is as follows:

- "1. Under the provisions of Article 1, of Amendments to the Constitution of the United States, we, the undersigned, citizens of the State of Texas, do humbly petition the members of the United States Senate to investigate and publicly divulge the actions and policies of the candidates for nomination for United States Senator in the Democratic Run-Off Primary Election in Texas held on 28 August, 1948, in which election the guarantee to the citizens of this state of a free and unmolested form of government, as set out in Section 4, of Article IV, of the Constitution of the United States, was abridged and nullified in this State, and,
- "2. We, the undersigned, citizens of the State of Texas, do further humbly petition, under Section 3, of Article XIV, of the Constitution of the United States, that no Democratic nominee for United States Senator be seated until and after the investigation petitioned above shall be complete."

Article IV, Section 4 of the Constitution, referred to in paragraph (1) of the Petition as the basis for the requested investigation, provides that:

"The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Looking to the substance of the allegations in paragraph (1) of the Petition, we find the petitioners charging, in effect, that at the time of the run-off primary, and as a consequence of the manner in which it

was conducted, the Republican Form of Government in the State of Texas was "abridged and nullified", and, possibly,, that the State of Texas needed Federal protection against domestic violence. No evidence of any kind in support of these sweeping allegations has ever been submitted to us.

But in any event, and at the outset, important and obvious questions as to whether the Petition sets forth any grounds on which any relief could be granted are presented. Does the Constitutional guarantee to a State of a Republican Form of Government embrace any aspects of a primary election for United States Senator conducted under the laws of a State which apart from the events in such primary is conceded to have a "Republican Form of Government"? Can Federal action be taken under this Article at the request of private citizens in the face of the Constitutional requirement of an "Application of the Legislature, or of the Executive (when the Legislature cannot be convened)"? We think the answers are clearly in the negative. But whatever the answers may be, unsupported allegations to the effect that the State of Texas did not, at the time of the primary, have a Republican Form of Government (and possibly that Federal action was necessary to protect against domestic violence) are not entitled to serious consideration. As stated in another case:

"The State of Texas [was and] is in full possession of its faculties as a member of the Union, and its legislature, executive and judicial departments [were and] are peacefully operating by the orderly and settled method prescribed by its fundamental law." 44/

44/ Taylor v. Beckham, 178 U. S. 578, 579 (1899).

Article XIV (Amendment), Section 3 of the Constitution, referred to in paragraph (2) of the Petition as the basis for not seating any Democratic nominee for United States Senator until the completion of the investigation requested in paragraph (1), provides, in material part, that:

"No person shall be a Senator * * * in Congress * * *, who, having previously taken an oath, as a member of Congress, * * * to support the Constitution of the United States, 45/ shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof * * *."

An allegation to the effect that any candidate in the run-off primary engaged in "insurrection or rebellion against the United States or gave aid or comfort to the enemies thereof * * *" surpasses the credence of the Subcommittee. This allegation is also not entitled to serious consideration.

Accordingly, the petitions need not be considered further.

Following the receipt of the defeated candidate's charges the Subcommittee sent investigators to Texas. No evidence has been disclosed which would either support his allegations or personally connect any candidate with any election fraud or irregularities.

The material before the Committee consists of an exceptionally large amount of personal opinion, rumor, speculation and hearsay. Some carelessness on the part of election officials was noted, but nothing of a character such as could possibly vitiate the results of a state-wide primary and subsequent general election.

45/ Johnson as a former member of the House of Representatives of the United States has previously taken such an oath; Stevenson has not.

In this connection it is noted that the Senate, in Bankhead v. Heflin, quoted with approval from various judicial decisions, as follows: ^{46/}

"In Whippley v. McKune (12 Calif. 352, 362) the court said:

"'Indeed, as the returns are prima facie evidence of the fact they impart, and as the returned candidate * * * especially after being commissioned * * * is prima facie entitled to the office, the contestant must show that the election was not only conducted irregularly, but that in consequence of irregularities the declared result was different from what it would have otherwise been.'

"In Farrington v. Turner (55 Mich. 27, 18 N.W. 544) the Court said:

"'The principle, as I understand to have been established by this Court, and also by the great weight of authority, is that an election is not to be set aside and declared void because of an irregularity which does not affect the result, that the wills of electors, plainly expressed in the form prescribed by law, can not be defeated by the negligence, mistake, or fraud of the officers appointed to register the result of an election.'

"In Wood v. Sykes (61 Miss. 649, 662), the Court said:

"'The cardinal rules controlling such cases are these: Where the charge is fraud the burden is always upon the contestant to show both fraud and injury to himself in the conduct of the canvass, and that in truth and in fact he received the greatest number of legal votes. Until he has approved (sic) proved both of these he can never recover. Unless he has received a majority of the legal votes he has no right to bring a suit, and he can complain of no sort of irregularity or fraud save when he affirmatively shows that he was thereby damaged * * *. But always his obligation is to prove that he was really elected by a plurality or majority of legal votes. Unless by the whole proof he has done so, his case must be dismissed or decided against him * * *.'

"In order to set aside an election there must be not only proof of irregularities and errors, but, in addition thereto, it must be shown that such irregularities or errors did affect the result * * *. Unless it be affirmatively shown that they did affect the result, they are to be disregarded, and the result of the election stands."

^{46/} Hays, 490.

Assuming for present purposes that irregularities had taken place in the run-off primary, could such irregularities affect the result of the election as declared by duly empowered Texas officials adhering to the requirements of Texas law?

If we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it is apparent that the defeated candidate himself, by not filing a contest in the State Courts of Texas and thus preserving the ballots cast in the primary, has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Subcommittee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. Therefore, in order for the Subcommittee to arrive at its own determination as to the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Subcommittee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the officially certified party nominee, could not under Texas law invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. The Subcommittee is informed that all or virtually all of the ballots in the 254 counties of Texas have now been destroyed pursuant to the provisions of State law and a re-count hence impossible.

No action has been taken on Johnson's allegations and, in view of the foregoing, no action is required.

SUMMARY

1. The Junior Senator from Texas, Honorable Lyndon B. Johnson ("Johnson") was elected a Senator from the State of Texas in the November 1948 General Election receiving 809,420 votes to his opponent's 389,190 votes.
2. No charges of any kind with respect to the conduct of the General Election have been made. There is, therefore, no contest with respect to the General Election in which Johnson was the victor.
3. When the Senate convened in January 1949, Johnson presented his certificate of election from the State of Texas and was thereupon seated.
4. Subsequent to the run-off primary election in Texas, in which Johnson was found by the State Executive Committee, the Committee on Party Nominations of the State Democratic Convention and finally by the State Democratic Convention to have received a majority of the votes cast and hence declared to be the Democratic nominee, both the Honorable Coke Stevenson ("Stevenson"), the defeated candidate in the run-off primary, and Johnson, made various charges of irregularities in said run-off primary.
5. Subsequent to Johnson's victory in the General Election a group of petitions were filed by an organization calling itself a "Citizens' Committee Against Political Fraud".
6. The allegations of the Citizens' Committee, while not entirely clear, appear in substance to be that as a

result of the conduct of the run-off primary, the State of Texas was deprived of a Republican Form of Government within the meaning of Article IV, Section 4 of the Constitution of the United States, and that it needed Federal intervention to protect against domestic violence, as provided by the same Article. It asked an investigation on those grounds. It also asked, on the basis of Article XIV, Section 3, of the Constitution, which provides in substance that no person shall be a Senator if having taken an oath to support the Constitution shall engage in insurrection or rebellion against the United States or give aid or comfort to its enemies, that no Democratic nominee be seated until after the completion of the requested investigation.

7. Stevenson charged generally that various election frauds and other irregularities had occurred in the run-off primary in certain counties in Texas. He asked for an investigation which was held.
8. Johnson, the successful candidate for the Democratic nomination in the run-off primary, charged that various election frauds and other irregularities had taken place in the run-off primary in numerous counties throughout Texas. He requested that all the ballot boxes throughout the State be impounded so that in the event a complete recount of the ballots was deemed necessary and was ordered they would be available for that purpose. Johnson's charges were not investigated and his request to impound the ballots was not granted.
9. Under Texas law the County Executive Committees canvass the returns and forward the results to the State Executive

Committee. The State Executive Committee thereupon canvasses the returns and submits its results to the State Convention for its approval or disapproval.

Under Texas law the State Convention has the power and the duty to determine the candidate receiving a majority of the votes, to declare him to be the party nominee, and to certify him to the Secretary of State for appearance on the ballot as the party candidate.

10. Stevenson and Johnson presented their respective charges to and were heard by a Subcommittee of the State Executive Committee as well as the full State Executive Committee. The issues were decided in Johnson's favor.
11. Stevenson was accorded the right to appear before the Committee on Party Nominations of the State Convention but he declined to do so. The Committee on Party Nominations reported to the State Convention that Johnson had received a majority of the votes and should be declared the party nominee.
12. The State Convention, in open assembly, received the results of the canvass of the State Executive Committee and the report of its Committee on Party nominations. It found that Johnson had received a majority of the votes cast and declared him to be the duly elected party nominee.
13. The Chairman and Secretary of the State Convention certified Johnson to the Secretary of State as the duly elected party nominee for United States Senator and his name was accordingly placed on the ballot.

14. The State law of Texas provides for a party nomination contest by a defeated candidate and vests exclusive jurisdiction to decide the same in the State District Courts, with provision for an expeditious appeal to the Courts of Civil Appeals. The decision is final and conclusive.
15. On allegations of fraud or illegality made in a contest the District Courts may impound and open all ballot boxes, recount the ballots, reject all illegal ballots and ascertain and declare the true results of the election.
16. If there is no contest filed, the laws of Texas provide that all ballots shall be destroyed sixty (60) days after the primary election.
17. Stevenson failed to contest the primary election in the State Courts under Texas law. Johnson was precluded by law from initiating a contest inasmuch as he was the victorious candidate.
18. Instead of filing a contest in the State Courts Stevenson sought an injunction from a Federal District Court. A temporary injunction was first granted by the District Court but subsequently dissolved on order of the Circuit Court of Appeals. Stevenson's petition for certiorari was denied by the Supreme Court.
19. As a result of the defeated candidate's failure to contest the results of the primary under State law, and Johnson's inability to do so, the ballots have been destroyed and no recount is now possible.

20. The charges made by Stevenson to the State Executive Committee were repeated by him in various public statements. As a result thereof, Grand Jury investigations were held in three Texas counties which had been the subject of the charges.
21. No fraud was found by any Grand Jury. One reported an unusual amount of personal opinions and political animosities; the second commended the election officials on the fairness with which the election was conducted and the third found that the overwhelming evidence showed that the election was conducted legally, fairly and impartially and that the election officials were diligent in their duties.
22. The precedents of the Senate show that whatever is the nature and scope of its powers regarding State primary elections, absent fraud or corruption on the part of the successful candidate, it has respected the rights of the States and has left the determination of the legality of State primaries to be made under State law. As the Senate stated in *Heflin v. Bankhead* (Hays, Compilation of Senate Election Cases, 481):

"In our opinion the legality of the primary is not a proper matter for the consideration of the United States Senate. If it were * * * the action of the people in the general election has foreclosed consideration of it."
23. The solicitude of Congress for the political rights of the States is further evidenced by the fact that Congress has refused to extend the Federal Corrupt Practices Act to party primaries. The definition of "election" in that Act is as follows:

"The term 'election' includes a general or special election, but does not include a primary election or convention of a political party."

Thus party primaries and political conventions have been entirely excluded from its scope.

24. In a contested election the contestant has the burden of showing that he received a plurality or majority of the legal votes. In *Heflin v. Bankhead*, supra, the Senate quoted with approval from other election contest cases as follows:

"* * * the contestant must show not only that the election was conducted irregularly but that in consequence of irregularities the declared result was different from what it would have otherwise been."

and

"Where the charge is fraud the burden is always upon the contestant to show both fraud and * * * that in truth and in fact he received the greatest number of legal votes. * * * But always his obligation is to prove that he was really elected by a plurality or majority of legal votes. Unless by the whole proof he has done so, his case must be dismissed or decided against him. * * *"

25. By failing to contest the run-off primary election under State law, Stevenson made it impossible to preserve the ballots, thus making a recount and compliance with the Senate's precedents similarly impossible.
26. The allegations of the "Citizens' Committee" are entirely unsupported and need not be further considered.
27. No evidence has been disclosed which would support Stevenson's allegations or personally connect any candidate with any fraud or irregularities.

CONCLUSIONS

After a study and consideration of the above matters the Subcommittee concludes:

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the victor.

2. No evidence has been disclosed which would establish Stevenson's allegations.

3. That Lyndon B. Johnson was duly elected and seated as United States Senator from the State of Texas.

Therefore your Subcommittee on Privileges and Elections recommends the adoption of the following resolution:

"Resolved, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on the 3rd day of January 1949, and is entitled to be seated as such."

Respectfully submitted,

Francis J. Myers, Chairman

Guy M. Gillette

William F. Knowland

(5)

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Complete Draft.

June 14

REPORT OF THE
SUB-COMMITTEE ON PRIVILEGES AND ELECTIONS
TO THE COMMITTEE ON RULES AND ADMINISTRATION

RE: STEVENSON VS. JOHNSON

Texas Second Primary

follow ~~Introduction~~ page 2 of ① - 6/15/49 Draft

The Junior Senator from Texas, Honorable Lyndon B.

Johnson ("Johnson") was elected a Senator for a full six year term in the November 1948 General Election, receiving ^{809,420}~~807,266~~ votes to his opponent's ^{389,190}~~387,258~~ votes, a ~~majority~~ of over 420,000 votes. When the 81st Congress convened, Johnson presented his credentials, took the oath of office and was thereupon seated.

It is particularly emphasized that ~~no~~ charges with respect to the conduct of the General Election have been made either to the Senate or directly to the Senate Sub-Committee on Privileges and Elections (Sub-committee)²~~2~~. There is, ^{therefore,} ~~in no sense~~ ~~therefore any~~ contest pending before the Senate with respect to the General Election in which Johnson was the ^{CLEAR} ~~clear~~ victor.

~~The only matters which are pending~~ ^{before the Sub-committee} are various charges ^{of fraud} and ~~irregularities~~ with respect to the conduct of the second or "run-off" primary held on August 28, 1948, in which Johnson defeated his opponent, the Honorable Coke Stevenson ("Stevenson") by a close margin for the Democratic nomination. Charges were made by both Johnson and Stevenson immediately after the holding of the run-off primary, continued intermittently for some time, and were pending before the Sub-committee when Johnson took oath of office.

The Charges NATURE OF ALLEGATIONS:
(Insert footnote p.2)

Under date of October 18, 1948, Stevenson, the defeated candidate for the Democratic nomination for United States Senator from Texas in the run-off primary, ^{forwarded} ~~ledged~~ a communication ^{to} with the Sub-committee in which he charged, generally, speaking, that various

election frauds and other irregularities had occurred in certain *Counties in Texas* specified South Texas Counties. Stevenson requested the ~~Sub~~ Committee to investigate these charges, and, ~~as indicated hereinafter, this~~ investigation was held.

Under date of October 25, 1948 Johnson, the successful candidate for the Democratic nomination in the run-off primary, *filed* a communication with the Sub-committee in which he charged, generally, speaking, that various election frauds and irregularities had taken place in ~~eleven (11) specified counties in the State of~~ *numerous counties throughout Texas.* Texas, as well as in numerous other ~~unnamed~~ counties. Johnson requested that all the ballots cast in the run-off primary in all the counties of Texas be impounded by the Sub-committee so that in the event a complete recount of said ballots was *deemed* necessary, *and ordered* they would be available for that purpose. Johnson's charges were not investigated and his request was not acceded to.

Conduct of the Party Primary in Texas

Inasmuch as no charges have been made with respect to the conduct of the General Election but only with respect to the run-off primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

Insert #1
② It is also to be noted that *forwarded to* there was anonymously filed with the Senate a group of petitions bearing the letterhead of an organization calling itself the "Citizens Committee Against Political Fraud." The petitions in substance charged that at the time of the runoff primary, and as a consequence of the manner in which it was conducted, the Republican form of Government guaranteed to the State of Texas by Article IV, Section 4, of the Constitution of the United States, was abridged and nullified. It was also charged, in effect, that an unnamed candidate or candidates engaged in "insurrection or rebellion against the (United States and gave) aid or comfort to the enemies thereof...." These charges are manifestly not worthy of credence, and accordingly the petitions are dismissed as clearly frivolous.

of the "Citizens Committee"

are entirely supported and need not be considered further.
- 2 -

The laws of Texas governing party primary elections provide that the several County Executive Committees of a political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and shall certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. This procedure was *fully adhered to* ~~scrupulously followed~~ in the Texas Primary *election.* ¶ On September 13, 1948 in Fort Worth, Texas, Stevenson appeared before the State Executive Committee and presented his charges. *of fraud and irregularities.* The Committee heard all the charges, *determined the same in Johnson's favor* and, pursuant to its statutory function ~~and duty~~, certified to the State Convention that Johnson had received a majority of the votes in the primary election. ¶ The State Convention of the Democratic Party convened on September 14, 1948, the day following the meeting of the Executive Committee, received its *the committee's* report, and immediately referred it to the Convention's Committee on Party Nominations. The Committee on Party Nominations recommended to the Convention that Johnson's name be certified as the Democratic nominee for United States Senator. The Convention *now* adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name as such nominee to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the

venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result.

Stevenson did not pursue the remedy provided by State law.^{3/} Instead, he filed a suit in equity in a United States District Court in Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. ~~We will now turn our attention to a consideration of the litigation engendered by the primary.~~

Litigation Over Nomination

The above referred to suit by Stevenson was commenced on September 15, 1948 in the District Court of the United States for the Northern District of Texas (Fort Worth Division) against Johnson and Tom L. Tyson and Vann M. Kennedy.^{4/} ~~Stevenson presented his complaint to the Honorable T. Whitfield Davidson, as United States District Judge for the Northern District of Texas, at a point outside the District, at 5:25 AM on September 15, 1948. Stevenson~~ charged in substance that numerous ^{election} irregularities had ^{occurred} ~~transpired~~ in certain South Texas counties and as a result thereof he was deprived of the Democratic nomination. He asked the Court for the following:

1. An injunction to prevent officers of the Democratic Party in Texas from certifying the name of Johnson as Democratic nominee for United States Senator as a result of the primary election.

^{3/} As the winning candidate Johnson was unable to avail himself of this remedy, inasmuch as he had no standing to contest his own election.

^{4/} Tom L. Tyson was Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, and Vann M. Kennedy was Secretary of said Convention.

2. An injunction to prevent Johnson's name as such nominee from being placed on the official ballot for the general election to be held on November 2, 1948.

3. Cancellation of the certificate if already made.

4. A declaration that Stevenson was the true nominee.

Immediately following the presentation of the complaint, Judge Davidson forthwith endorsed thereon a temporary restraining order, ~~as requested~~.

On September 17, 1948, Stevenson amended his original complaint and added as defendants Paul H. Brown, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery.^{5/} Upon the filing of the amended complaint an amended enlarged temporary restraining order was also issued. The restraining order was made returnable on September 21, 1948 at Fort Worth, Texas.

Thereafter, Johnson filed a motion to dismiss the complaint for want of jurisdiction and, on September 21, 1948, a hearing on the application for a temporary injunction took place. On September 22, 1948, the temporary injunction was continued in effect.

On September 24, 1948, Johnson lodged an appeal before Honorable Joseph C. Hutcheson, Jr., Circuit Judge of the United States Court of Appeals, 5th Circuit, seeking an order "setting aside and staying the temporary injunction order issued by the Court below, pending the determination of this appeal." Judge Hutcheson denied the motion "without prejudice to the right to present the motion to the (full) Court."

^{5/} Brown was Secretary of State of the State of Texas. Kraft, Faulk and Montgomery were County Judge, County Clerk and Sheriff, respectively, of Tarrant County, Texas. These last three individuals were added as defendants inasmuch as they constituted the members of the Election Board of Tarrant County and were alleged to be properly representative of all the Election Board Members of the 253 other counties of the State.

On September 29, 1948, Johnson filed a motion for a stay of the temporary restraining order theretofore issued, which motion was addressed to the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States and Supervising Justice for the 5th Circuit. On the same day Justice Black issued an order providing "that the temporary injunction issued by the United States District Court for the Northern District of Texas (Fort Worth Division) on September 23, 1948, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al., Civil Number 1640, be and the same hereby is stayed and that the said temporary injunction is and shall be of no force and effect until further order of the Supreme Court." Thereafter, on October 2, 1948, Coke R. Stevenson filed a motion with the Supreme Court of the United States requesting that the order of Mr. Justice Black of September 29, 1948, be vacated. On October 5, 1948, the Supreme Court issued an order denying the above mentioned motion and dismissed the proceedings.

Meanwhile, the Court of Appeals for the 5th Circuit proceeded with a consideration on the merits of Johnson's appeal from the District Court's decision and, on October 7, 1948, in a unanimous decision, held that the District Court was without jurisdiction to consider the cause. It stated in part that:

"We are of opinion ... that there is here no case for interference by a Federal court of equity in a Senatorial primary; that the injunction ought not to have been granted; and that the motion to dismiss ought now to be sustained

"The order of injunction is set aside and the cause is remanded with direction to dismiss the petition." 6/

Subsequently, Stevenson filed a petition for certiorari with the Supreme Court of the United States. On January 31, 1949, such petition was denied.

6/ 170 Fed. 2nd, 108, 111.

COPY

ACTION BY SUB*COMMITTEE

Following the receipt of ^{the various} ~~Stenhouse's~~ charges the Sub-Committee sent investigators to Texas. No evidence has been disclosed which would support ~~Stenhouse's~~ ^{these} Allegations.

Johnson has neither been charged, nor has any evidence been disclosed which would ^{personally} connect him, with any election fraud or irregularities.

Johnson's charges have never been investigated, and in view of the foregoing, an investigation is now unnecessary.

Insert # 2

Recount Now Impossible

If we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it ^{is apparent} ~~must be obvious~~ that the defeated candidate himself, by not filing a contest in the State Courts of Texas and thus preserving the ballots cast in the primary, has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Sub-Committee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. } eliminate underscoring
It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. ^{for the Sub-Committee to arrive at its own}
Therefore, in order to arrive ^{as to} at a correct determination of the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Sub-Committee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson,

7/ Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

officially certified party nominee
being the winning candidate, could not *under Texas law* invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. *The Sub-Committee is informed that* ~~the~~ *virtually* ~~Practically~~ all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law, and a recount is hence impossible.

Lack of Investigation of Johnson's Charges

As heretofore noted, your Sub-Committee has concluded that inasmuch as Stevenson's charges have not been sustained, Johnson's charges need not be considered. In any event, since Johnson's charges were not considered at the time when the supporting evidence, if any, was still in existence, consideration at this time would be fruitless.

CONCLUSIONS

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.

CONSIDERATION
2. That the ~~investigation~~ *of Stevenson's charges has failed*
the various representations of ~~no evidence has been disclosed which would support~~ *allegations.*

3. That Lyndon B. Johnson was duly elected United States Senator from the State of Texas. *and seated as*

Therefore your Sub-Committee on Privileges and Elections recommends the adoption of the following resolution:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on the 3rd day of January 1949, and is entitled to be seated as such."

Respectfully submitted,

Francis J. Meyers, Chairman

Guy M. Gillette

William F. Knowland

*Johnson has neither been charged
nor has any evidence been
disclosed which would personally
connect him with any
election fraud or irregularities.*

Draft
6/15/49
Remarks

(1)

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES
AND ELECTIONS, TO THE COMMITTEE ON RULES
AND ADMINISTRATION, RE ~~STEVENSON AGAINST~~
~~JOHNSON~~

Refer Second
Primary -

Your Subcommittee on Privileges and Elections has the following matters before it with respect to the second or "run-off" Democratic primary held August 28, 1948, for the selection of the Democratic nominee for a seat in the United States Senate representing the State of Texas:

1. A petition filed ^{on Jan. 5, 1949} ~~with the Senate~~ by a Texas "Citizens' Committee" ^{1/} requesting "that no Democratic nominee for United States Senator ~~[from Texas]~~ be seated ~~until after [an]~~ investigation." This petition was referred, by the President pro tempore of the United States Senate to the Committee on Rules and Administration and, subsequently, by such Committee, to the Subcommittee on Privileges and Elections.

2. ^{A communication filed} ~~Charges lodged directly with the Sub-~~ committee under date of October 18, 1948, by ^{Honorable} Coke R. Stevenson, the defeated candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary, ^{alleging} ~~These charges are prin-~~ cipally concerned with ~~alleged~~ election frauds and irregularities in certain ^{counties in} ~~specified south Texas counties.~~

1/ The "Citizens' Committee", ~~alleged to have been organized by Stevenson supporters,~~ called itself the "Citizens' Committee Against Political Fraud," P.O. Box 1271 - State Headquarters, San Antonio 6, Texas.

3. *a communication filed*
~~Charges lodged directly with the Sub-~~

~~committee~~ under date of October 25, 1948 by *Shivers*

Lyndon B. Johnson, the successful candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary,

~~These charges are principally concerned with~~

alleging
~~alleged~~ election frauds and irregularities in numerous ~~specified~~ counties throughout Texas.

Your Subcommittee has had these matters under ~~continuous~~ consideration and now respectfully reports as follows:

Lyndon B. Johnson was elected United States Senator from Texas on the Democratic ticket in the General Election of 1948, and on presenting his certificate of election at the convening of the 81st Congress, took the oath of office on January 3, 1949, assumed his seat in the United States Senate for a full six year term and is now serving in that capacity. He received 807,266 votes to 387,258 votes for his opponent in the General Election, a majority of more than 420,000 votes. No contest of such election has been presented and no question has been raised with respect to the conduct and regularity of said election.

As already noted, the only matters before the Committee relate only to the second or "run-off" primary election of the Democratic Party held in Texas on

August 28, 1948, in which Johnson defeated his opponent, Stevenson, by a narrow margin. The allegations made by the complainants may be summarized as follows:

The petition of the Citizens' Committee stated that:

- "1. Under the provisions of Article 1, of Amendments to the Constitution of the United States, we, the undersigned, citizens of the State of Texas, do humbly petition the members of the United States Senate to investigate and publicly divulge the actions and policies of the candidates for nomination for United States Senator in the Democratic Run-Off Primary Election in Texas held on 28 August, 1948, in which election the guarantee to the citizens of this state of a free and unmolested form of government, as set out in Section 4, of Article IV, of the Constitution of the United States, was abridged and nullified in this State, and
- "2. We, the undersigned, citizens of the State of Texas, do further humbly petition, under Section 3, of Article XIV, of the Constitution of the United States, that no Democratic nominee for United States Senator be seated until and after the investigation petitioned above shall be complete."

Stevenson charged irregularities in counting and returning votes in certain counties in South Texas, particularly Duval, Jim Wells and Zapata, claiming that, as a result thereof, he was wrongfully deprived of several hundred votes. He asked that the ballots in the named counties be impounded by the Subcommittee and that an investigation be made. The investigation requested by Stevenson was ordered and carried out.

Johnson claimed that he was wrongfully deprived of several thousand votes as the result of irregularities in a large number of other Texas counties, including Dallas, Galveston, Harris, Eastland, Wharton, Chambers and Clay Counties. He asked that all the ballots throughout the state be impounded so that they might be available for a complete recount if necessary. No investigation was made by the Committee of the charges presented by Johnson, and his request that all ballots, particularly those in the named counties, be impounded, was not complied with.

I. Conduct of Investigation of Stevenson's Charges

Immediately after Stevenson's request for an investigation was made the Subcommittee sent its investigators into Duval, Jim Wells, Zapata, Starr and Jim Hogg Counties. County and precinct officials were interviewed and specific information was sought as to where, in their opinion, irregularities may have transpired and, if so, of what nature. All leads were followed up. As might be expected much of the information obtained was opinion, hearsay, and of a partisan character. Some signed statements were obtained and the investigators prepared written reports of the results of their interviews.

II. Conduct of Investigation of Johnson's Charges

As previously noted, the charges made by Johnson were not then nor have they since been investigated by

the Subcommittee. In view of the conclusion, hereafter indicated, that Johnson was duly elected United States Senator from the State of Texas, no investigation is now necessary.

III. Conduct of Party Primaries in Texas

Inasmuch as no charges have been made with respect to the conduct of the General Election but only with respect to the "run-off" primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

The laws of Texas governing party primary elections provide that the several County Executive Committees of the political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. Stevenson appeared before the State Executive Committee and presented his charges. The Committee heard all the charges, and, pursuant to its statutory function and duty, certified to

the State Convention that Johnson had received a majority of the votes in the primary election. The State Convention of the Democratic Party convened on the day following the meeting of the Executive Committee, received its report, and referred it to the Convention's Committee on Party Nominations. The Convention adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name as such nominee to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result.

Stevenson did not pursue the remedy provided by State law. Instead, he filed a suit in equity in a

United States District Court in Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. Both the Court of Appeals^{2/} of the Fifth Circuit and the Supreme Court^{3/} held that the District Court was without jurisdiction, and by direction of the Court of Appeals the suit was dismissed.

Stevenson supported Johnson's opponent in the General Election but as already indicated, Johnson won the election by a margin of more than two to one.

IV. Results of Study of Petition of "Citizens' Committee"

Looking to the substance of the allegations in paragraph (1) of the Petition, we find the petitioners charging, in effect, that at the time of the run-off primary, and as a consequence of the manner in which it was conducted, the Republican Form of Government in the State of Texas, guaranteed by Article IV, Section 4 of the Constitution of the United States, was "abridged and nullified", and, possibly, that the State of Texas needed Federal protection against domestic violence. No evidence of any kind in support of these sweeping allegations has ever been submitted to us.

^{2/} Johnson. et al. v. Stevenson, 170 F.(2d) 108 (October 7, 1948).

^{3/} 17 L.W. 3227.

Article IV, Section 4 of the Constitution, referred to in paragraph (1) of the Petition as the basis for the requested investigation, provides that

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Entirely apart from the fact that no evidence in support of the allegations has been submitted, the text of Article IV, Section 4 reveals that, at the outset, important and obvious questions are presented as to whether the Petition sets forth any grounds on which relief can be granted. Does the Constitutional guarantee to a State of a Republican Form of Government embrace any aspects of a primary election for United States Senator conducted under the laws of a State which apart from the events in such primary is conceded to have a "Republican Form of Government"? Can Federal action be taken under this Article at the request of private citizens in the face of the Constitutional requirement of an "Application of the Legislature, or of the Executive (when the Legislature cannot be convened)?"

We think the answers to these questions are clearly in the negative. But whatever the answers may be, we regard allegations to the effect that the State of Texas did not, at the time of the primary, have a

Republican Form of Government and that Federal action was necessary to protect against domestic violence as being wholly frivolous. As stated in another case:

"The State of Texas [was and] is in full possession of its faculties as a member of the Union, and its legislature, executive and judicial departments [were and] are peacefully operating by the orderly and settled method prescribed by its fundamental law." 4/

Article XIV (Amendment), Section 3 of the Constitution, referred to in paragraph (2) of the Petition as the basis for not seating any Democratic nominee for United States Senator until the completion of the investigation requested in paragraph (1), provided, in material part, that:

"No person shall be a Senator * * * in Congress * * *, who, having previously taken an oath, as a member of Congress, * * * to support the Constitution of the United States, 5/shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof * * *."

An allegation to the effect that any candidate in the run-off primary engaged in "insurrection or rebellion against the [United States] or [gave] aid or comfort to the enemies thereof * * *" is manifestly not worthy of credence. This allegation is also clearly frivolous.

Accordingly, the petitions of the Citizens' Committee should be dismissed and it is so recommended.

4/ See Taylor v. Beckham, 178 U.S. 578, 579 (1899).

5/ Johnson as a former member of the House of Representatives of the United States has previously taken such an oath; Stevenson has not.

Attention will now be given to the charges made by Stevenson as to the conduct of the "run-off" primary. Inasmuch as charges made concern not a general election but rather the manner in which a political party selected its nominee, brief consideration will first be given to the nature and extent of the Senate's powers and the circumstances under which they have heretofore been exercised.

V. Nature and Extent of the Senate's Powers and Circumstances Under Which They Are Exercised

The Constitution of the United States provides that:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members
* * *." 6/

With respect to the qualifications of Senators, the Constitution provides that:

"No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen." 7/

The Federal Convention refused to establish qualifications for members other than those set forth above. It also refused to give Congress power to establish qualifications. In view of these facts, it has been contended that the Senate, under Article I, Section 5, Clause 1

6/ Constitution, Art. I, Sec. 5, Clause 1. The exact words of this provision were agreed upon in the Federal Convention without debate on August 10, 1787. Madison, Debates in the Federal Convention of 1787 (Int. Ed. 1920) 378.

7/ Constitution, Art. I, Section 3, Clause 3.

of the Constitution, is restricted to a determination of whether a Senator has the qualifications required by Article I, Section 3, Clause 3. Thus Warren has said:^{8/}

"Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its members, other than those qualifications established by the Constitution itself, viz., age, citizenship and residence."

This position is given some support by Hamilton's exposition of the Constitution in the Federalist, wherein^{9/} he stated:

"The authority of the national government would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution, and are unalterable by the legislature."

It is unnecessary to do more than advert to the constitutional question, however, because in a long line of cases the Senate has repeatedly considered matters in Senate contests not concerned with either age, citizenship

^{8/} Warren, The Making of the Constitution (1928). See also Warren, 420-421, 423-425; 33 Va. L.R. 328, 329; 324-326.

^{9/} The Federalist, No. LX (By Hamilton).

or residence.^{10/}

We will proceed therefore on the assumption for present purposes that the Senate has power to inquire fully into the "elections * * * of its own members", unfettered by Article I, Section 3, Clause 3.

Another question as to the Senate's power stands at the threshold of our inquiry, namely, is a primary an "election" within the meaning of Article I, Sec. 5, Clause 1?

It will be remembered that Article I, Section 3, Clause 1 of the Constitution, prior to the XVII Amendment, governed the election of Senators and provided that:

"The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof * * *."

The XVIIth amendment, effective May 31, 1913, superseded this provision by providing that

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof * * *."

It was not until after 1913, therefore, that Senators were elected directly by the people and hence not until that time that primaries came to have particular significance in this connection.

^{10/} Further, there are no cases in which either State or Federal courts have interfered with the exercise of the Congressional power under Article I, Sec. 5, Clause 1. State Courts have expressly refused to do so. Election of United States Senator, 12 Fla. 686, 688-689 (1869); State of Florida vs. Crawford, 28 Fla. 441, 479-480 (1891); Sutherland vs. Miller, 79 W. Va. 796, 808 (1917). In Barry vs. United States ex rel. Cunningham, 29 U.S. 597 (1929), the Supreme Court expressly stated that the Senate, though a legislative body, has a judicial power under Article I, Section 5, Clause 1.

It is interesting to note, however, that prior to 1913 the Senate held that a state primary (Wisconsin) for the nomination of candidates for election to a State legislature, even though provided for by State statute, was not part of the election for United States Senator because the duty of election was vested solely in the legislature. Hence, irregularities in a primary could not affect the validity of the election of a Senator by the State legislature. ^{11/}

From 1913 until 1926 the Senate dealt, from time to time, with various aspects of primaries but only as an incident to an investigation of a general election. ^{12/}

In 1926 the Senate commenced investigations in the Smith ^{13/} case and the Vare ^{14/} case. Here the

^{11/} The case of Stephenson, Webb and Pierce, Compilation of Senate Election Cases (1913), Senate Doc. No. 1036, 62nd Cong. 3d Session.

^{12/} See Chilton v. Sutherland (Hays, Compilation of Senate Election Cases, 1913-1940, Senate Doc. 147, 76th Congress, 3d Session 44 (Cited hereafter as "Hays"); Ford v. Newberry, Hays, 99; Peddy v. Mayfield, Hays 200; Steck v. Brookhart, Hays, 216; and Johnson v. Scholl, Hays, 256.

^{13/} Hays, 289 (Decided in 1928).

^{14/} Hays, 318 (Decided in 1929).

investigations were concerned only with the fraud and corruption of the successful candidates in the respective primaries.

Hence, it is apparent that the rule governing the exercise of the Senate's jurisdiction in connection with primaries, consistent both with the constitutional source of its power and with its precedents of over 160 years, is that, unless the investigation is a mere incident to an investigation of a general election, it will investigate and take appropriate action in connection with a primary election only when it is affirmatively shown that the nomination was secured by the fraud and corruption of the successful candidate.

This view is confirmed by the more recent case of Heflin v. Bankhead.^{15/} In this case Heflin contested the election on various grounds, including particularly that he had

"been defrauded of the right to run in the regular Democratic primary held in the State of Alabama on the 12th day of August 1930
* * *." ^{16/}

Heflin's contention as to the illegality of the primary, in the words of the Committee:

^{15/} Hays, 470.

^{16/} Hays, 472.

"[grey] out of the fact that a resolution of the State Democratic Committee, calling the primary, fixed as one of the qualifications for candidates a test of party loyalty in the preceding election but did not fix this test for voters in that primary. * * * It is admitted that * * * the Committee had the power to fix the qualifications for candidates * * * but it is contended that these qualifications became automatically the qualifications for voters and that the attempt to fix qualifications for voters differing from those fixed for candidates was beyond the power of the Committee and resulting in invalidating the whole primary." 17/

In considering Heflin's contention, the Committee stated:

"It may be well to direct attention at this point to the fact that whatever the powers of Congress, since the adoption of the seventeenth amendment, may be to regulate primaries in which nominations for the United States Senate are made, that there is no Congressional legislation attempting to exercise this power at this time.

"No intention has been shown by any Federal legislation, since the original corrupt practices act was declared invalid in the Newberry case, to exercise jurisdiction over state primaries. The legality of the Alabama primary in question must, therefore, be determined in the light of the Alabama statutes and general principles of law as declared in judicial decisions." 18/

The role of the Senate in connection with a primary was stated by the Committee to be as follows:

"We have not deemed it a matter of sufficient importance to present [the argument made by Heflin] for the reason that the action of the electorate of Alabama in the general election eliminates from consideration the question of the legality of the primary.

17/ Hays, 476. (The minority views of the Subcommittee were approved by a majority of the full Committee and accepted by the Senate by a vote of 64 to 18).

18/ Hays, 478.

"In our opinion the legality of the primary is not a proper matter for the consideration of the Senate of the United States. If it were * * * the action of the people in the general election has foreclosed consideration of it. For the fraud and corruption of the successful candidate in the election the Senate may go into the primary, as was done in Smith's case and Vare's case. Here the alleged infirmity is in the action of the party committee, not in Bankhead." 19/

The foregoing view is also consistent with applicable judicial decisions ^{20/} cited by the Committee. ^{21/} It pointed out that

"In Johnson v. Dosland (103 Minn. 147) the court said:

"The Contestee's name went on the official ballot under order of the court and the sanction of the law, and the authorities do not support the suggestion that the election may be overturned and electors disfranchised long after the election is past and the result thereof acted upon by those interested for irregularities, or even fraud, in nominating conventions or primary nominating elections.

"Contests for nominations as party candidates for public office must be settled before the general election, and when not, those whose names go upon the official ballots as the regular nominees are entitled to all benefits therefrom whether they, perchance, could have been in contest proceedings ousted of the right or not. The question recently came before the Supreme Court of Wisconsin, and was there determined in harmony with this view. (State v. Bunnell, 110 N.W. 177; State v. Goff, 129 Wis. 668, 109 N.W. 638, 9 L.R.A., N.S. 916 * * *)."

^{19/} Hays, 481.

^{20/} It is, of course, likely that the formulation of the Senate's precedents were influenced by the principles evolved by the courts in either resolving or refusing to take jurisdiction in election controversies, coming before them.

^{21/} Hays, 480.

"The basic principle upon which the foregoing authorities are grounded, and which is patently and fundamentally sound, is that the will of the people must prevail and cannot be set aside by reason of technical objections relating to the way the candidates name got on the ticket * * *."

Having thus ascertained the rule to be applied we now turn to its application to the case before us.

VI. Results of Investigation Requested by Stevenson

The scope of the investigation of Stevenson's allegations has previously been indicated. Not a single shred of evidence has been presented to the Committee, or discovered by the Committee's investigators, which would suggest that Johnson was in any way connected with any election irregularities occurring in the "run-off" primary.

Further, the evidence before the Committee consists of an exceptionally large amount of personal opinion, rumor, speculation and hearsay, all violently partisan in character. Some laxness on the part of election officials was noted. For example, some ballot boxes were insecurely fastened while others were locked but had the keys attached to the box. In at least one case election records were lost as a result of careless handling. But none of the irregularities were such as could possibly vitiate the results of a state-wide primary and subsequent general election.

The conclusions of your Committee are buttressed by the findings of three grand juries called to consider the same charges made to the Committee which were also publicly made during the campaign throughout the State of Texas. As a result thereof, and at various dates subsequent to the run-off primary, grand juries were convened in Duval, Jim Wells and Zapata Counties for the purpose of investigating the conduct of the run-off primary in said counties.

Extensive investigations were made, many witnesses were called, and voluminous testimony was taken. No fraud was found by any of the grand juries and no indictments were returned.

On the contrary, we are advised that the investigation of one Grand Jury, while revealing only minor irregularities of the kind referred to above, also revealed an unusual amount of personal opinions and political animosity. Another Grand Jury commended the election officials on the fairness with which the election was conducted. The third Grand Jury found that the overwhelming evidence showed that the election was conducted legally, fairly and impartially, and that the election officials were diligent and zealous in their duties.

The Committee's conclusion is also supported by the investigations made by the Department of Justice of various complaints made to it with respect to the

conduct of the election. We have communicated with the Department for the purpose of ascertaining the nature of its investigations and the results thereof. The Department advised that, as the agency charged with the enforcement of Federal laws, it investigated all complaints received with a view to determining whether any Federal laws were violated; that all complainants were interviewed and all data obtained were carefully analyzed, both by the appropriate United States Attorneys in Washington and by the Criminal Division of the Department; and that no basis was found warranting the taking of any prosecutive action.

Under the circumstances your Committee has concluded that further investigation of Stevenson's charges is entirely unwarranted.

But even if we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it must be obvious that Stevenson himself has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Committee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and

Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. ^{22/} Therefore, in order to arrive at a correct determination of the results of the election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Committee had impounded all ballot boxes and returns, as requested by Johnson or by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the winning candidate, could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law.

^{22/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

VII. Lack of Investigation of Johnson's Charges

As heretofore noted, your Committee has concluded that inasmuch as Stevenson's charges have not been sustained no investigation of Johnson's charges need be made. In any event, since Johnson's charges were not investigated at the time when the supporting evidence, if any, was still in existence, an investigation at this time would be fruitless.

CONCLUSIONS

1. That study of the petition of the "Citizens' Committee" reveals that it is entirely frivolous and need not be considered further.

2. That the investigation of Stevenson's charges has failed to support the same, only minor irregularities which could not possibly vitiate a state-wide primary and subsequent general election having been discovered.

3. That further investigation is unwarranted.

4. That Lyndon B. Johnson was duly elected United States Senator from the State of Texas.

Therefore your Subcommittee on Privileges and Elections recommends the adoption of the following resolution:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on

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the 3rd day of January 1949, and is entitled to be seated as such".

Respectfully submitted,

Francis J. Meyers, Chairman

Guy M. Gillette

William F. Knowland

REPORT OF THE
SUB-COMMITTEE ON PRIVILEGES AND ELECTIONS
TO THE COMMITTEE ON RULES AND ADMINISTRATION
RE: STEVENSON VS. JOHNSON

Introduction

The Junior Senator from Texas, Honorable Lyndon B. Johnson ("Johnson") was elected a Senator for a full six year term in the November 1948 General Election, receiving 807,266 votes to his opponent's 387,258 votes, a majority of over 420,000 votes. When the 81st Congress convened, Johnson presented his credentials, took the oath of office and was thereupon seated.

It is particularly emphasized that no charges with respect to the conduct of the General Election have been made either to the Senate or directly to the Senate Sub-Committee on Privileges and Elections (Sub-committee")^{1/} There is in no sense therefore any contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.

The only matters which are pending are various charges of irregularities with respect to the conduct of the second or "run-off" primary held on August 28, 1948, in which Johnson defeated his opponent, the Honorable Coke Stevenson ("Stevenson") by a close margin for the Democratic nomination. Charges were made by both Johnson and Stevenson immediately after the holding of the run-off primary, continued intermittently for some time, and were pending before the Sub-committee when Johnson took oath of office.

The Charges

Under date of October 18, 1948, Stevenson, the defeated candidate for the Democratic nomination for United States Senator from Texas in the run-off primary, lodged a communication with the Sub-committee in which he charged, generally speaking, that various

^{1/} Sub-Committee of the Senate Committee on Rules and Administration.

election frauds and other irregularities had occurred in certain specified South Texas Counties. Stevenson requested the Sub-committee to investigate these charges and, as indicated hereinafter, this investigation was held.

Under date of October 25, 1948 Johnson, the successful candidate for the Democratic nomination in the run-off primary, lodged a communication with the Sub-committee in which he charged, generally speaking, that various election frauds and irregularities had taken place in eleven (11) specified counties in the State of Texas, as well as in numerous other unnamed counties. Johnson requested that all the ballots cast in the run-off primary in all the counties of Texas be impounded by the Sub-committee so that in the event a complete recount of said ballots was necessary, they would be available for that purpose.^{2/} Johnson's charges were not investigated and his request was not acceded to.

Conduct of the Party Primary in Texas

Inasmuch as no charges have been made with respect to the conduct of the General Election but only with respect to the run-off primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

^{2/} It is also to be noted that there was anonymously filed with the Senate a group of petitions bearing the letterhead of an organization calling itself the "Citizens Committee Against Political Fraud." The petitions in substance charged that at the time of the runoff primary, and as a consequence of the manner in which it was conducted, the Republican form of Government guaranteed to the State of Texas by Article IV, Section 4, of the Constitution of the United States, was abridged and nullified. It was also charged, in effect, that an unnamed candidate or candidates engaged in "insurrection or rebellion against the (United States and gave) aid or comfort to the enemies thereof...." These charges are manifestly not worthy of credence, and accordingly the petitions are dismissed as clearly frivolous.

The laws of Texas governing party primary elections provide that the several County Executive Committees of a political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and shall certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. This procedure was scrupulously followed in the Texas Primary. On September 13, 1948 in Fort Worth, Texas, Stevenson appeared before the State Executive Committee and presented his charges. The Committee heard all the charges, and, pursuant to its statutory function and duty, certified to the State Convention that Johnson had received a majority of the votes in the primary election. The State Convention of the Democratic Party convened on September 14, 1948, the day following the meeting of the Executive Committee, received its report, and immediately referred it to the Convention's Committee on Party Nominations. The Committee on Party Nominations recommended to the Convention that Johnson's name be certified as the Democratic nominee for United States Senator. The Convention adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name as such nominee to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the

venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result.

Stevenson did not pursue the remedy provided by State law.^{3/} Instead, he filed a suit in equity in a United States District Court in Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. We will now turn our attention to a consideration of the litigation engendered by the primary.

Litigation Over Nomination

The above referred to suit by Stevenson was commenced on September 15, 1948 in the District Court of the United States for the Northern District of Texas (Fort Worth Division) against Johnson and Tom L. Tyson and Vann M. Kennedy.^{4/} Stevenson presented his complaint to the Honorable T. Whitfield Davidson, as United States District Judge for the Northern District of Texas, at a point outside the District, at 6:25 AM on September 15, 1948. Stevenson charged in substance that numerous irregularities had transpired in certain South Texas counties and as a result thereof he was deprived of the Democratic nomination. He asked the Court for the following:

1. An injunction to prevent officers of the Democratic Party in Texas from certifying the name of Johnson as Democratic nominee for United States Senator as a result of the primary election.

^{3/} As the winning candidate Johnson was unable to avail himself of this remedy, inasmuch as he had no standing to contest his own election.

^{4/} Tom L. Tyson was Chairman of the Democratic State Convention held at Fort Worth, Texas, on September 14, 1948, and Vann M. Kenedy was Secretary of said Convention.

2. An injunction to prevent Johnson's name as such nominee from being placed on the official ballot for the general election to be held on November 2, 1948.

3. Cancellation of the certificate if already made.

4. A declaration that Stevenson was the true nominee.

Immediately following the presentation of the complaint, Judge Davidson forthwith endorsed thereon a temporary restraining order as requested.

On September 17, 1948, Stevenson amended his original complaint and added as defendants Paul H. Brown, Clarence O. Kraft, Melvin Faulk, and Sully Montgomery.^{5/} Upon the filing of the amended complaint an amended enlarged temporary restraining order was also issued. The restraining order was made returnable on September 21, 1948 at Fort Worth, Texas.

Thereafter, Johnson filed a motion to dismiss the complaint for want of jurisdiction and, on September 21, 1948, a hearing on the application for a temporary injunction took place. On September 22, 1948, the temporary injunction was continued in effect.

On September 24, 1948, Johnson lodged an appeal before Honorable Joseph C. Hutcheson, Jr., Circuit Judge of the United States Court of Appeals, 5th Circuit, seeking an order "setting aside and staying the temporary injunction order issued by the Court below, pending the determination of this appeal." Judge Hutcheson denied the motion "without prejudice to the right to present the motion to the (full) Court."

^{5/} Brown was Secretary of State of the State of Texas. Kraft, Faulk and Montgomery were County Judge, County Clerk and Sheriff, respectively, of Tarrant County, Texas. These last three individuals were added as defendants inasmuch as they constituted the members of the Election Board of Tarrant County and were alleged to be properly representative of all the Election Board Members of the 253 other counties of the State.

On September 29, 1948, Johnson filed a motion for a stay of the temporary restraining order theretofore issued, which motion was addressed to the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States and Supervising Justice for the 5th Circuit. On the same day Justice Black issued an order providing "that the temporary injunction issued by the United States District Court for the Northern District of Texas (Fort Worth Division) on September 23, 1948, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al., Civil Number 1640, be and the same hereby is stayed and that the said temporary injunction is and shall be of no force and effect until further order of the Supreme Court." Thereafter, on October 2, 1948, Coke R. Stevenson filed a motion with the Supreme Court of the United States requesting that the order of Mr. Justice Black of September 29, 1948, be vacated. On October 5, 1948, the Supreme Court issued an order denying the above mentioned motion and dismissed the proceedings.

Meanwhile, the Court of Appeals for the 5th Circuit proceeded with a consideration on the merits of Johnson's appeal from the District Court's decision and, on October 7, 1948, in a unanimous decision, held that the District Court was without jurisdiction to consider the cause. It stated in part that:

"We are of opinion ... that there is here no case for interference by a Federal court of equity in a Senatorial primary; that the injunction ought not to have been granted; and that the motion to dismiss ought now to be sustained

"The order of injunction is set aside and the cause is remanded with direction to dismiss the petition." 6/

Subsequently, Stevenson filed a petition for certiorari with the Supreme Court of the United States. On January 31, 1949, such petition was denied.

6/ 170 Fed. 2nd, 108, 111.

Investigation by Sub-Committee of Stevenson's Charges

Immediately after Stevenson's request for an investigation was made, the Sub-committee sent its investigators into ^{TEXAS.} Duval, Jim Wells, ~~Wells, Zapata, Starr and Jim Hogg Counties.~~ All complaining witnesses, as well as County and Precinct election officials, were interviewed and specific information was sought as to where, in their opinion, irregularities may have transpired and, if so, of what nature. All leads were followed up. As might be expected, much of the information obtained was opinion, hearsay, and of a violently partisan character. Some signed statements were obtained by the investigators, and they prepared written reports of the results of their interviews.

As previously noted, the charges made by Johnson were not then nor have they since been investigated by the Sub-committee. In view of the conclusion hereafter indicated that Johnson was duly elected United States Senator from the State of Texas, no investigation of his charges ~~is not necessary.~~ ^{was made}

Results of Investigation Requested by Stevenson

The scope of the investigation of Stevenson's allegation has previously been indicated. Not a shred of evidence has been presented to the Committee or discovered by the Committee's investigators which would suggest that Johnson was in any way connected with any election irregularities occurring in the run-off primary. The investigation disclosed, however, some laxness on the part of some election officials. For example, some ballot boxes were insecurely fastened while others, though locked, had the keys attached to the boxes themselves. In at least one case election records were lost as a result of careless handling by the local officials charged with their custody and protection.

None of the irregularities were such as could possibly vitiate the results of a State-wide primary and subsequent election. There is no evidence of any kind whatsoever which would connect Johnson directly or indirectly with any of the aforementioned irregularities. In this

connection it should be borne in mind that under its precedents uniformly applied in the past, the Senate has investigated primary elections only when it has been affirmatively shown that the nomination was secured by the fraud and corruption of the successful candidate.^{7/}

The conclusions of your Sub-Committee are buttressed by the findings of three grand juries called to consider the same charges made to the Sub-Committee which were also publicly made during the campaign in the General Election throughout the State of Texas. As a result thereof, and at various dates subsequent to the run-off primary, grand juries were convened in Duval, Jim Wells and Zapata Counties for the purpose of investigating the conduct of the run-off primary in said counties.

Extensive investigations were made, many witnesses were called, and voluminous testimony was taken. No fraud was found by any of the grand juries and no indictments were returned.

On the contrary, we are advised that the investigation of one Grand Jury, while revealing only minor irregularities of the kind referred to above, also revealed an unusual amount of personal opinions and political animosity. Another Grand Jury commended the election officials on the fairness with which the election was conducted. The third Grand Jury found that the overwhelming evidence showed that the election was conducted legally, fairly and impartially, and that the election officials were diligent and zealous in their duties.

Under the circumstances your Sub-Committee has concluded that further investigation of Stevenson's charges is entirely unwarranted.

pick up ^{It} ~~But even if~~ we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside

^{7/} Hafflin v. Bankhead, Hays, Compilation of Senate Election Cases, 1913-1940, Senate Doc. 147, 76th Congress, 3rd Session, 470.

RECOUNT NOW IMPOSSIBLE
(Pick up para p. 8)

decisions of duly constituted party officials as authorized by State

law, it must be obvious that ^{The defeated candidate} ~~Stevenson~~ himself has frustrated the proper conduct of such an inquiry in the instant case. If, unknown ^{by not filing a contest in the state} to the Sub-Committee, illegal votes were actually cast and improper ^{Courts of Texas} returns actually made in the run-off primary in Texas, in order to ^{and thus} determine whether such conduct had the effect of changing the result ^{preserving the} of the race between Johnson and Stevenson it would be necessary to ^{ballots cast in the primary,} eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. ⁷⁴ Therefore, in order to arrive at a correct determination of the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Sub-Committee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the winning candidate, could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law.

75/ Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

Lack of Investigation of Johnson's Charges

As heretofore noted, your Sub-Committee has concluded that inasmuch as Stevenson's charges have not been sustained ~~no investigation~~ *not be considered.* Johnson's charges need ~~be made.~~ *considered* In any event, since Johnson's charges were not ~~investigated~~ at the time when the supporting evidence, if any, was still in existence, ~~an investigation~~ *consideration* at this time would ~~not~~ be fruitless.

CONCLUSIONS

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.
2. That the investigation of Stevenson's charges has failed to support the same, ~~only when investigation which could not possibly vitiate a state-wide primary and subsequent general election having been discovered.~~

~~3. That further investigation is warranted.~~

3. *k.* That Lyndon B. Johnson was duly elected United States Senator from the State of Texas.

Therefore your Sub-Committee on Privileges and Elections recommends the adoption of the following resolution:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on the 3rd day of January 1949, and is entitled to be seated as such."

Respectfully submitted,

Francis J. Meyers, Chairman

Guy M. Gillette

William F. Knowland

Recount Near Impossible

If we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it must be obvious that the defeated candidate himself, by not filing a contest in the State Courts of Texas and thus preserving the ballots cast in the primary, has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Sub-Committee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson.^{1/} Therefore, in order to arrive at a correct determination of the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Sub-Committee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson,

^{1/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

being the winning candidate, could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law.

Lack of Investigation of Johnson's Charges

As heretofore noted, your Sub-Committee has concluded that inasmuch as Stevenson's charges have not been sustained, Johnson's charges need not be considered. In any event, since Johnson's charges were not considered at the time when the supporting evidence, if any, was still in existence, consideration at this time would be fruitless.

CONCLUSIONS

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.
2. That the investigation of Stevenson's charges has failed to support the same.
3. That Lyndon B. Johnson was duly elected United States Senator from the State of Texas.

Therefore your Sub-Committee on Privileges and Elections recommends the adoption of the following resolutions:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on the 3rd day of January 1949, and is entitled to be seated as such."

Respectfully submitted,

Francis J. Meyers, Chairman

Guy M. Gillette

William F. Knowland

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Investigation by Sub-Committee of Stevenson's Charges

Immediately after Stevenson's request for an investigation was made, the Sub-committee sent its investigators into Duval, Jim Wells, Zapata, Starr and Jim Hogg Counties. All complaining witnesses, as well as County and Precinct election officials, were interviewed and specific information was sought as to where, in their opinion, irregularities may have transpired and, if so, of what nature. All leads were followed up. As might be expected, much of the information obtained was opinion, hearsay, and of a violently partisan character. Some signed statements were obtained by the investigators, and they prepared written reports of the results of their interviews.

As previously noted, the charges made by Johnson were not then nor have they since been investigated by the Sub-committee. In view of the conclusion hereafter indicated that Johnson was duly elected United States Senator from the State of Texas, no investigation of his charges is now necessary.

Results of Investigation Requested by Stevenson

The scope of the investigation of Stevenson's allegation has previously been indicated. Not a shred of evidence has been presented to the Committee or discovered by the Committee's investigators which would suggest that Johnson was in any way connected with any election irregularities occurring in the run-off primary. The investigation disclosed, however, some laxness on the part of some election officials. For example, some ballot boxes were insecurely fastened while others, though locked, had the keys attached to the boxes themselves. In at least one case election records were lost as a result of careless handling by the local officials charged with their custody and protection.

None of the irregularities were such as could possibly vitiate the results of a State-wide primary and subsequent election. There is no evidence of any kind whatsoever which would connect Johnson directly or indirectly with any of the aforementioned irregularities. In this

connection it should be borne in mind that under its precedents uniformly applied in the past, the Senate has investigated primary elections only when it has been affirmatively shown that the nomination was secured by the fraud and corruption of the successful candidate.^{1/}

The conclusions of your Sub-Committee are buttressed by the findings of three grand juries called to consider the same charges made to the Sub-Committee which were also publicly made during the campaign in the General Election throughout the State of Texas. As a result thereof, and at various dates subsequent to the run-off primary, grand juries were convened in Duval, Jim Wells and Zapata Counties for the purpose of investigating the conduct of the run-off primary in said counties.

Extensive investigations were made, many witnesses were called, and voluminous testimony was taken. No fraud was found by any of the grand juries and no indictments were returned.

On the contrary, we are advised that the investigation of one Grand Jury, while revealing only minor irregularities of the kind referred to above, also revealed an unusual amount of personal opinions and political animosity. Another Grand Jury commended the election officials on the fairness with which the election was conducted. The third Grand Jury found that the overwhelming evidence showed that the election was conducted legally, fairly and impartially, and that the election officials were diligent and zealous in their duties.

Under the circumstances your Sub-Committee has concluded that further investigation of Stevenson's charges is entirely unwarranted.

But even if we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside

^{1/} Heflin v. Bankhead, Hays, Compilation of Senate Election Cases, 1913-1940, Senate Doc. 147, 76th Congress, 3rd Session, 470.

decisions of duly constituted party officials as authorized by State law, it must be obvious that Stevenson himself has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Sub-Committee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson.^{8/} Therefore, in order to arrive at a correct determination of the results of the primary election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Sub-Committee had impounded all ballot boxes and returns, as requested by Johnson. It might also have been accomplished by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the winning candidate, could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law.

^{8/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

Lack of Investigation of Johnson's Charges

As heretofore noted, your Sub-Committee has concluded that inasmuch as Stevenson's charges have not been sustained no investigation of Johnson's charges need be made. In any event, since Johnson's charges were not investigated at the time when the supporting evidence, if any, was still in existence, an investigation at this time would no doubt be fruitless.

CONCLUSIONS

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.
2. That the investigation of Stevenson's charges has failed to support the same, only minor irregularities which could not possibly vitiate a state-wide primary and subsequent general election having been discovered.
3. That further investigation is unwarranted.
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As heretofore noted, your Sub-Committee has concluded that inasmuch as ^{the complaints} ~~Stevenson's~~ charges have not been sustained ~~no investigation~~ ^{not be considered} of Johnson's charges need ~~be made~~. In any event, since Johnson's charges were not investigated at the time when the supporting evidence, if any, was still in existence, an investigation at this time would ~~be~~ be fruitless.

CONCLUSIONS

1. There is no contest pending before the Senate with respect to the General Election in which Johnson was the clear victor.

2. That the investigation of ^{the} ~~Stevenson's~~ charges ^{made relative to the charges} has failed to support the same, only minor irregularities which could not possibly vitiate a state-wide primary and subsequent general election having been discovered.

3. ~~That further investigation is unwarranted.~~

4. That Lyndon B. Johnson was duly elected United States Senator from the State of Texas.

Therefore your Sub-Committee on Privileges and Elections recommends the adoption of the following resolution:

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Respectfully submitted,

Francis J. Meyers, Chairman

Guy M. Gillette

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**REPORT OF THE SUBCOMMITTEE ON PRIVILEGES
AND ELECTIONS, TO THE COMMITTEE ON RULES
AND ADMINISTRATION, RE STEVENSON AGAINST
JOHNSON**

Your Subcommittee on Privileges and Elections has the following matters before it with respect to the second or "run-off" Democratic primary held August 28, 1948, for the selection of the Democratic nominee for a seat in the United States Senate representing the State of Texas:

1. A petition filed with the Senate by a Texas "Citizens' Committee"^{1/} requesting "that no Democratic nominee for United States Senator [from Texas] be seated until after [an] investigation." This petition was referred, by the President pro tempore of the United States Senate to the Committee on Rules and Administration and, subsequently, by such Committee, to the Subcommittee on Privileges and Elections.

2. Charges lodged directly with the Subcommittee under date of October 18, 1948, by Coke R. Stevenson, the defeated candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary. These charges are principally concerned with alleged election frauds and irregularities in certain specified south Texas counties.

^{1/} The "Citizens' Committee", alleged to have been organized by Stevenson supporters, called itself the "Citizens' Committee Against Political Fraud, P.O. Box 1271 - State Headquarters, San Antonio 6, Texas.

3. Charges lodged directly with the Subcommittee under date of October 25, 1948 by Lyndon B. Johnson, the successful candidate for the Democratic nomination for United States Senator from Texas in the "run-off" primary. These charges are principally concerned with alleged election frauds and irregularities in numerous specified counties throughout Texas.

Your Subcommittee has had these matters under continuous consideration and now respectfully reports as follows:

Lyndon B. Johnson was elected United States Senator from Texas on the Democratic ticket in the General Election of 1948, and on presenting his certificate of election at the convening of the 81st Congress, took the oath of office on January 3, 1949, assumed his seat in the United States Senate for a full six year term and is now serving in that capacity. He received 807,266 votes to 387,258 votes for his opponent in the General Election, a majority of more than 420,000 votes. No contest of such election has been presented and no question has been raised with respect to the conduct and regularity of said election.

As already noted, the only matters before the Committee relate only to the second or "run-off" primary election of the Democratic Party held in Texas on

August 28, 1948, in which Johnson defeated his opponent, Stevenson, by a narrow margin. The allegations made by the complainants may be summarized as follows:

The petition of the Citizens' Committee stated that:

- "1. Under the provisions of Article 1, of Amendments to the Constitution of the United States, we, the undersigned, citizens of the State of Texas, do humbly petition the members of the United States Senate to investigate and publicly divulge the actions and policies of the candidates for nomination for United States Senator in the Democratic Run-Off Primary Election in Texas held on 28 August, 1948, in which election the guarantee to the citizens of this state of a free and unmolested form of government, as set out in Section 4, of Article IV, of the Constitution of the United States, was abridged and nullified in this State, and
- "2. We, the undersigned, citizens of the State of Texas, do further humbly petition, under Section 3, of Article XIV, of the Constitution of the United States, that no Democratic nominee for United States Senator be seated until and after the investigation petitioned above shall be complete."

Stevenson charged irregularities in counting and returning votes in certain counties in South Texas, particularly Duval, Jim Wells and Zapata, claiming that, as a result thereof, he was wrongfully deprived of several hundred votes. He asked that the ballots in the named counties be impounded by the Subcommittee and that an investigation be made. The investigation requested by Stevenson was ordered and carried out.

Johnson claimed that he was wrongfully deprived of several thousand votes as the result of irregularities in a large number of other Texas counties, including Dallas, Galveston, Harris, Eastland, Wharton, Chambers and Clay Counties. He asked that all the ballots throughout the state be impounded so that they might be available for a complete recount if necessary. No investigation was made by the Committee of the charges presented by Johnson, and his request that all ballots, particularly those in the named counties, be impounded, was not complied with.

I. Conduct of Investigation of Stevenson's Charges

Immediately after Stevenson's request for an investigation was made the Subcommittee sent its investigators into Duval, Jim Wells, Zapata, Starr and Jim Hogg Counties. County and precinct officials were interviewed and specific information was sought as to where, in their opinion, irregularities may have transpired and, if so, of what nature. All leads were followed up. As might be expected much of the information obtained was opinion, hearsay, and of a partisan character. Some signed statements were obtained and the investigators prepared written reports of the results of their interviews.

II. Conduct of Investigation of Johnson's Charges

As previously noted, the charges made by Johnson were not then nor have they since been investigated by

the Subcommittee. In view of the conclusion, hereafter indicated, that Johnson was duly elected United States Senator from the State of Texas, no investigation is now necessary.

III. Conduct of Party Primaries in Texas

Inasmuch as no charges have been made with respect to the conduct of the General Election but only with respect to the "run-off" primary, it is desirable briefly to describe the manner in which the laws of Texas require party primaries to be conducted and to indicate what actually transpired thereunder.

The laws of Texas governing party primary elections provide that the several County Executive Committees of the political party shall meet at stated times, shall canvass the returns as made by the election officials of the several voting precincts of the county, and certify the returns to the State Executive Committee of the party; that the State Executive Committee shall meet at a stated time, shall canvass the returns as certified by the County Executive Committees, and shall certify the result to the State Convention of the party for its approval or disapproval. Stevenson appeared before the State Executive Committee and presented his charges. The Committee heard all the charges, and, pursuant to its statutory function and duty, certified to

the State Convention that Johnson had received a majority of the votes in the primary election. The State Convention of the Democratic Party convened on the day following the meeting of the Executive Committee, received its report, and referred it to the Convention's Committee on Party Nominations. The Convention adopted the report of that committee, and declared Johnson to be the nominee of the Democratic Party of Texas as its candidate for the office of United States Senator from Texas. The party officers certified his name as such nominee to the Secretary of State of the State of Texas, for inclusion on the official ballot to be voted in the ensuing General Election, all in accordance with state law.

The laws of Texas further provide that the results of a party primary election may be contested by the losing candidate by suit in a District Court, which, in Texas, is a court of general jurisdiction. In the case of a contest of a statewide race, the venue of the contest is fixed in any of the three District Courts of Travis County, the seat of the State Capitol. In such a suit the court has authority to impound and open ballot boxes, make a recanvass, reject all illegal votes, and ascertain and declare the result.

Stevenson did not pursue the remedy provided by State law. Instead, he filed a suit in equity in a

United States District Court in Fort Worth, Texas, seeking to enjoin the election officials of the State from placing Johnson's name on the official ballot to be voted in the General Election. Both the Court of Appeals^{2/} of the Fifth Circuit and the Supreme Court^{3/} held that the District Court was without jurisdiction, and by direction of the Court of Appeals the suit was dismissed.

Stevenson supported Johnson's opponent in the General Election but as already indicated, Johnson won the election by a margin of more than two to one.

IV. Results of Study of Petition of "Citizens' Committee"

Looking to the substance of the allegations in paragraph (1) of the Petition, we find the petitioners charging, in effect, that at the time of the run-off primary, and as a consequence of the manner in which it was conducted, the Republican Form of Government in the State of Texas, guaranteed by Article IV, Section 4 of the Constitution of the United States, was "abridged and nullified", and, possibly, that the State of Texas needed Federal protection against domestic violence. No evidence of any kind in support of these sweeping allegations has ever been submitted to us.

^{2/} Johnson, et al. v. Stevenson, 170 F.(2d) 108 (October 7, 1948).

^{3/} 17 L.W. 3227.

Article IV, Section 4 of the Constitution, referred to in paragraph (1) of the Petition as the basis for the requested investigation, provides that

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Entirely apart from the fact that no evidence in support of the allegations has been submitted, the text of Article IV, Section 4 reveals that, at the outset, important and obvious questions are presented as to whether the Petition sets forth any grounds on which relief can be granted. Does the Constitutional guarantee to a State of a Republican Form of Government embrace any aspects of a primary election for United States Senator conducted under the laws of a State which apart from the events in such primary is conceded to have a "Republican Form of Government"? Can Federal action be taken under this Article at the request of private citizens in the face of the Constitutional requirement of an "Application of the Legislature, or of the Executive (when the Legislature cannot be convened)?"

We think the answers to these questions are clearly in the negative. But whatever the answers may be, we regard allegations to the effect that the State of Texas did not, at the time of the primary, have a

Republican Form of Government and that Federal action was necessary to protect against domestic violence as being wholly frivolous. As stated in another case:

"The State of Texas [was and] is in full possession of its faculties as a member of the Union, and its legislature, executive and judicial departments [were and] are peacefully operating by the orderly and settled method prescribed by its fundamental law." 4/

Article XIV (Amendment), Section 3 of the Constitution, referred to in paragraph (2) of the Petition as the basis for not seating any Democratic nominee for United States Senator until the completion of the investigation requested in paragraph (1), provided, in material part, that:

"No person shall be a Senator * * * in Congress * * *, who, having previously taken an oath, as a member of Congress, * * * to support the Constitution of the United States, 5/ shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof * * *."

An allegation to the effect that any candidate in the run-off primary engaged in "insurrection or rebellion against the [United States] or [gave] aid or comfort to the enemies thereof * * *" is manifestly not worthy of credence. This allegation is also clearly frivolous.

Accordingly, the petitions of the Citizens' Committee should be dismissed and it is so recommended.

4/ See Taylor v. Beckham, 178 U.S. 578, 579 (1899).

5/ Johnson as a former member of the House of Representatives of the United States has previously taken such an oath; Stevenson has not.

Attention will now be given to the charges made by Stevenson as to the conduct of the "run-off" primary. Inasmuch as charges made concern not a general election but rather the manner in which a political party selected its nominee, brief consideration will first be given to the nature and extent of the Senate's powers and the circumstances under which they have heretofore been exercised.

V. Nature and Extent of the Senate's Powers and Circumstances Under Which They Are Exercised

The Constitution of the United States provides that:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members
* * *." 6/

With respect to the qualifications of Senators, the Constitution provides that:

"No Person shall be a Senator who shall not have attained to the Age of thirty years, and been nine years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen." 7/

The Federal Convention refused to establish qualifications for members other than those set forth above. It also refused to give Congress power to establish qualifications. In view of these facts, it has been contended that the Senate, under Article I, Section 5, Clause 1

6/ Constitution, Art. I, Sec. 5, Clause 1. The exact words of this provision were agreed upon in the Federal Convention without debate on August 10, 1787. Madison, Debates in the Federal Convention of 1787 (Int. Ed. 1920) 378.

7/ Constitution, Art. I, Section 3, Clause 3.

of the Constitution, is restricted to a determination of whether a Senator has the qualifications required by Article I, Section 3, Clause 3. Thus Warren has said:^{8/}

"Such action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress, either to the House or to the Senate, the right to establish any qualifications for its members, other than those qualifications established by the Constitution itself, viz., age, citizenship and residence."

This position is given some support by Hamilton's exposition of the Constitution in the Federalist, wherein he stated:^{9/}

"The authority of the national government would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution, and are unalterable by the legislature."

It is unnecessary to do more than advert to the constitutional question, however, because in a long line of cases the Senate has repeatedly considered matters in Senate contests not concerned with either age, citizenship

^{8/} Warren, The Making of the Constitution (1928). See also Warren, 420-421, 423-425; 33 Va. L.R. 328, 329; 324-326.

^{9/} The Federalist, No. LX (By Hamilton).

10/
or residence.

We will proceed therefore on the assumption for present purposes that the Senate has power to inquire fully into the "elections * * * of its own members", unfettered by Article I, Section 3, Clause 3.

Another question as to the Senate's power stands at the threshold of our inquiry, namely, is a primary an "election" within the meaning of Article I, Sec. 5, Clause 1?

It will be remembered that Article I, Section 3, Clause 1 of the Constitution, prior to the XVII Amendment, governed the election of Senators and provided that:

"The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof * * *."

The XVIIth amendment, effective May 31, 1913, superseded this provision by providing that

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof * * *."

It was not until after 1913, therefore, that Senators were elected directly by the people and hence not until that time that primaries came to have particular significance in this connection.

10/ Further, there are no cases in which either State or Federal courts have interfered with the exercise of the Congressional power under Article I, Sec. 5, Clause 1. State Courts have expressly refused to do so. Election of United States Senator, 12 Fla. 686, 688-689 (1869); State of Florida vs. Crawford, 28 Fla. 441, 479-480 (1891); Sutherland vs. Miller, 79 W. Va. 796, 808 (1917). In Barry vs. United States ex rel. Cunningham, 29 U.S. 597 (1929), the Supreme Court expressly stated that the Senate, though a legislative body, has a judicial power under Article I, Section 5, Clause 1.

It is interesting to note, however, that prior to 1913 the Senate held that a state primary (Wisconsin) for the nomination of candidates for election to a State legislature, even though provided for by State statute, was not part of the election for United States Senator because the duty of election was vested solely in the legislature. Hence, irregularities in a primary could not affect the validity of the election of a Senator by the State legislature. ^{11/}

From 1913 until 1926 the Senate dealt, from time to time, with various aspects of primaries but only as an incident to an investigation of a general election. ^{12/}

In 1926 the Senate commenced investigations in the Smith ^{13/} case and the Vare ^{14/} case. Here the

^{11/} The case of Stephenson, Webb and Pierce, Compilation of Senate Election Cases (1913), Senate Doc. No. 1036, 62nd Cong. 3d Session.

^{12/} See Chilton v. Sutherland (Hays, Compilation of Senate Election Cases, 1913-1940, Senate Doc. 147, 76th Congress, 3d Session 44 (Cited hereafter as "Hays"); Ford v. Hawberry, Hays, 99; Paddy v. Mayfield, Hays 200; Steak v. Brookhart, Hays, 216; and Johnson v. Schell, Hays, 256.

^{13/} Hays, 289 (Decided in 1928).

^{14/} Hays, 318 (Decided in 1929).

investigations were concerned only with the fraud and corruption of the successful candidates in the respective primaries.

Hence, it is apparent that the rule governing the exercise of the Senate's jurisdiction in connection with primaries, consistent both with the constitutional source of its power and with its precedents of over 160 years, is that, unless the investigation is a mere incident to an investigation of a general election, it will investigate and take appropriate action in connection with a primary election only when it is affirmatively shown that the nomination was secured by the fraud and corruption of the successful candidate.

This view is confirmed by the more recent case of Heflin v. Bankhead.^{15/} In this case Heflin contested the election on various grounds, including particularly that he had

"been defrauded of the right to run in the regular Democratic primary held in the State of Alabama on the 12th day of August 1930
" " " " "^{16/}

Heflin's contention as to the illegality of the primary, in the words of the Committee:

^{15/} Hays, 470.

^{16/} Hays, 472.

"[Grew] out of the fact that a resolution of the State Democratic Committee, calling the primary, fixed as one of the qualifications for candidates a test of party loyalty in the preceding election but did not fix this test for voters in that primary. * * * It is admitted that * * * the Committee had the power to fix the qualifications for candidates * * * but it is contended that these qualifications became automatically the qualifications for voters and that the attempt to fix qualifications for voters differing from those fixed for candidates was beyond the power of the Committee and resulting in invalidating the whole primary." 17/

In considering Heflin's contention, the Committee stated:

"It may be well to direct attention at this point to the fact that whatever the powers of Congress, since the adoption of the seventeenth amendment, may be to regulate primaries in which nominations for the United States Senate are made, that there is no Congressional legislation attempting to exercise this power at this time.

"No intention has been shown by any Federal legislation, since the original corrupt practices act was declared invalid in the Newberry case, to exercise jurisdiction over state primaries. The legality of the Alabama primary in question must, therefore, be determined in the light of the Alabama statutes and general principles of law as declared in judicial decisions." 18/

The role of the Senate in connection with a primary was stated by the Committee to be as follows:

"We have not deemed it a matter of sufficient importance to present [the argument made by Heflin] for the reason that the action of the electorate of Alabama in the general election eliminates from consideration the question of the legality of the primary.

17/ Hays, 476. (The minority views of the Subcommittee were approved by a majority of the full Committee and accepted by the Senate by a vote of 64 to 18).

18/ Hays, 478.

"In our opinion the legality of the primary is not a proper matter for the consideration of the Senate of the United States. If it were * * * the action of the people in the general election has foreclosed consideration of it. For the fraud and corruption of the successful candidate in the election the Senate may go into the primary, as was done in Smith's case and Vane's case. Here the alleged infirmity is in the action of the party committee, not in Bankhead." 19/

The foregoing view is also consistent with applicable judicial decisions ^{20/} cited by the Committee. ^{21/} It pointed out that

"In Johnson v. Dosland (103 Minn. 147) the court said:

"The Contestee's name went on the official ballot under order of the court and the sanction of the law, and the authorities do not support the suggestion that the election may be overturned and electors disfranchised long after the election is past and the result thereof acted upon by those interested for irregularities, or even fraud, in nominating conventions or primary nominating elections.

"Contests for nominations as party candidates for public office must be settled before the general election, and when not, those whose names go upon the official ballots as the regular nominees are entitled to all benefits therefrom whether they, perchance, could have been in contest proceedings ousted of the right or not. The question recently came before the Supreme Court of Wisconsin, and was there determined in harmony with this view. (State v. Bunnell, 110 N.W. 177; State v. Goff, 129 Wis. 668, 109 N.W. 638, 9 L.R.A., N.S. 916 * * *)."

19/ Hays, 481.

20/ It is, of course, likely that the formulation of the Senate's precedents were influenced by the principles evolved by the courts in either resolving or refusing to take jurisdiction in election controversies, coming before them.

21/ Hays, 480.

"The basic principle upon which the foregoing authorities are grounded, and which is patently and fundamentally sound, is that the will of the people must prevail and cannot be set aside by reason of technical objections relating to the way the candidates name got on the ticket " " "."

Having thus ascertained the rule to be applied we now turn to its application to the case before us.

VI. Results of Investigation Requested by Stevenson

The scope of the investigation of Stevenson's allegations has previously been indicated. Not a single shred of evidence has been presented to the Committee, or discovered by the Committee's investigators, which would suggest that Johnson was in any way connected with any election irregularities occurring in the "run-off" primary.

Further, the evidence before the Committee consists of an exceptionally large amount of personal opinion, rumor, speculation and hearsay, all violently partisan in character. Some laxness on the part of election officials was noted. For example, some ballot boxes were insecurely fastened while others were locked but had the keys attached to the box. In at least one case election records were lost as a result of careless handling. But none of the irregularities were such as could possibly vitiate the results of a state-wide primary and subsequent general election.

The conclusions of your Committee are buttressed by the findings of three grand juries called to consider the same charges made to the Committee which were also publicly made during the campaign throughout the State of Texas. As a result thereof, and at various dates subsequent to the run-off primary, grand juries were convened in Duval, Jim Wells and Zapata Counties for the purpose of investigating the conduct of the run-off primary in said counties.

Extensive investigations were made, many witnesses were called, and voluminous testimony was taken. No fraud was found by any of the grand juries and no indictments were returned.

On the contrary, we are advised that the investigation of one Grand Jury, while revealing only minor irregularities of the kind referred to above, also revealed an unusual amount of personal opinions and political animosity. Another Grand Jury commended the election officials on the fairness with which the election was conducted. The third Grand Jury found that the overwhelming evidence showed that the election was conducted legally, fairly and impartially, and that the election officials were diligent and zealous in their duties.

The Committee's conclusion is also supported by the investigations made by the Department of Justice of various complaints made to it with respect to the

conduct of the election. We have communicated with the Department for the purpose of ascertaining the nature of its investigations and the results thereof. The Department advised that, as the agency charged with the enforcement of Federal laws, it investigated all complaints received with a view to determining whether any Federal laws were violated; that all complainants were interviewed and all data obtained were carefully analysed, both by the appropriate United States Attorneys in Washington and by the Criminal Division of the Department; and that no basis was found warranting the taking of any prosecutive action.

Under the circumstances your Committee has concluded that further investigation of Stevenson's charges is entirely unwarranted.

But even if we were to assume, contrary to precedent, that the Senate should properly inquire into the results of a nominating primary election conducted by a political party, and should set aside decisions of duly constituted party officials as authorized by State law, it must be obvious that Stevenson himself has frustrated the proper conduct of such an inquiry in the instant case. If, unknown to the Committee, illegal votes were actually cast and improper returns actually made in the run-off primary in Texas, in order to determine whether such conduct had the effect of changing the result of the race between Johnson and

Stevenson it would be necessary to eliminate all illegal votes and all votes improperly counted and returned for each candidate. It would be necessary, among other things, to examine the ballots and returns in those counties where Johnson claimed illegalities and irregularities resulting in large numbers of added votes for Stevenson. ^{22/} Therefore, in order to arrive at a correct determination of the results of the election, it would be necessary to have a full re-count of all the ballots and a check of all returns.

This might have been accomplished if the Committee had impounded all ballot boxes and returns, as requested by Johnson or by Court order if Stevenson had filed a contest in a Texas district court, as provided by State law. Johnson, being the winning candidate, could not invoke the jurisdiction and powers of the Court for the purpose of effecting a recount or impounding of the ballots. Practically all of the ballots in all the 254 counties of Texas have now been destroyed pursuant to the provisions of State law.

^{22/} Johnson claimed that a contest in a local race in one county resulted in a court decree establishing that some 1,736 illegal votes were cast and counted in that county, of which Stevenson obtained a majority of 466 of such illegal votes. In another county, in which Stevenson received a majority of two to one, a Grand Jury investigation disclosed that there were some 2,000 illegal votes, cast in the names of prostitutes who had been run out of the county and in the names of deceased persons taken from tombstones. Johnson also charged that illegalities and irregularities in many other counties resulted in giving Stevenson several thousand more votes than were legally cast for him.

VII. Lack of Investigation of Johnson's Charges

As heretofore noted, your Committee has concluded that inasmuch as Stevenson's charges have not been sustained no investigation of Johnson's charges need be made. In any event, since Johnson's charges were not investigated at the time when the supporting evidence, if any, was still in existence, an investigation at this time would be fruitless.

CONCLUSIONS

1. That study of the petition of the "Citizens' Committee" reveals that it is entirely frivolous and need not be considered further.

2. That the investigation of Stevenson's charges has failed to support the same, only minor irregularities which could not possibly vitiate a state-wide primary and subsequent general election having been discovered.

3. That further investigation is unwarranted.

4. That Lyndon B. Johnson was duly elected United States Senator from the State of Texas.

Therefore your Subcommittee on Privileges and Elections recommends the adoption of the following resolution:

"RESOLVED, That Lyndon B. Johnson is hereby declared to be a duly elected Senator of the United States from the State of Texas for the term of 6 years, commencing on

7 the 3rd day of January 1949, and is entitled to be seated as such".

Respectfully submitted,

Francis J. Moyers, Chairman

Guy M. Gillette

William F. Knowland

United States Senate

MEMORANDUM

John—

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Turner Smith

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PAUL R. EATON, CHIEF CLERK

United States Senate

COMMITTEE ON RULES AND ADMINISTRATION

EVENTS PERTAINING TO THE JOHNSON-STEVENSON CAMPAIGN FOR SENATORIAL ELECTION.

1. Date and nature of action by State Democratic Executive Committee and published vote of the Committee, if announced. 13th
29-28
2. Date and action of State Democratic Convention and the official vote of the Convention, if available. summary - 14
3. For a double check against our records - - the official announced vote of the Second Primary; and the official returns of the General Election.
4. Date and legal nature of the Court action instituted by Stevenson in the Federal District Court of Texas.
5. The exact name of the State Court and/or any State Agency before whom Stevenson could have brought an election contest and/or petition for recount.
6. Date and nature of court order granted by Federal District Court.
7. Date and nature of appeal taken by Johnson from such order - - and whether at that point direct to the United States Supreme Court or to Circuit Court of Appeals or where simultaneous appeals filed.
8. The exact nature, and date if possible, of any Appellate Court ruling which followed the temporary restraining order granted by the Federal District Court.

At this point I would like to establish chronologically the exact developments in the various Federal Courts, and fix the dates in each instance if possible so as to accurately identify legally the exact nature of the Appellate Court rulings and distinguish between the three separate rulings by the Federal Appellate Courts, that is, the two official actions taken in the case by the Supreme Court, Mr. Justice Black acting for the Court in one instance, and the ruling by the Circuit Court of Appeals - - and the nature of any appeal by either side from the ruling of the Circuit Court of Appeals.

* * * * *

The data in the Subcommittee files do not fully set out the various developments outlined above and before any of these matters are incorporated in a final and formal Report by the Rules Committee itself, I would like to get the exact dates in all instances, if possible, and also the appropriate legal terminology concerning the

various Court developments. In addition to the various developments with regard to the complaints lodged with the Subcommittee and its action pursuant thereto, I would like for the report to cover fully the subject of the chronological developments, both within the Party and within the Courts, from the date of the ~~first~~ canvass of the Second Primary returns and the action of the State Executive Committee in connection therewith.

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Counsel

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