

DECLARING HERBERT R. O'CONNOR TO BE A DULY ELECTED SENATOR FROM THE STATE OF MARYLAND

MAY 13 (legislative day, MAY 10). 1948.—Ordered to be printed

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

REPORT

[To accompany S. Res. 234]

The Committee on Rules and Administration, to whom was referred the petition of D. John Markey, contesting the election of Herbert R. O'Connor as Senator from Maryland for the term beginning January 3, 1947, having considered the same, has adopted the report of its Subcommittee on Privileges and Elections as follows:

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS, TO THE COMMITTEE ON RULES AND ADMINISTRATION, RE MARKEY AGAINST O'CONNOR

Your Subcommittee on Privileges and Elections, to which have been referred the various petitions of D. John Markey, contesting the election on November 5, 1946, of Herbert R. O'Connor, for a seat in the United States Senate representing the State of Maryland, has had the matter under continuous consideration and respectfully reports as follows:

D. John Markey was the candidate for the above office on the Republican ticket and Herbert R. O'Connor, then Governor of the State of Maryland, was the candidate thereon on the Democratic ticket. The secretary of state of the State of Maryland certified to the United States Senate that of the 472,232 votes cast for United States Senator, D. John Markey (contestant) received 235,000 and Herbert R. O'Connor (incumbent) received 237,232.

Thereupon, Herbert R. O'Connor was administered the oath as a United States Senator from the State of Maryland on January 4, 1947, and is now serving in that capacity.

On November 30, 1946, contestant served formal notice on the incumbent of his intention to contest the reported election; a copy thereof was sent to the Secretary of the United States Senate. On December 10, 1946, contestant filed with the Special Committee to Investigate Campaign Expenditures (1946) his preliminary sworn petition alleging "that there were errors and irregularities in said election affecting the results which, if corrected, would show that petitioner received a majority of the votes cast." In view of the fact that "the laws of Maryland make no provision for a recount of votes cast in a general election for United States Senator," contestant requested "the Senate to employ its power and:

★

authority for the purpose of effecting a fair and lawful recount of all ballots cast at said election."

Subsequently, on December 31, 1946, after the recount of votes cast on the voting machines in Baltimore City and Montgomery County (as hereinafter reported), contestant filed with the Secretary of the United States Senate his formal sworn petition, setting forth the general grounds of his contest and praying the United States "Senate to employ its full power and authority for the purpose of effecting a fair and lawful recount of all ballots cast at said election."

Said petition was referred to your Committee on Rules and Administration on January 6, 1947. A full text thereof appears in the appendix as exhibit 1.

Subsequently, on February 18, 1947, during the course of the test recount of five counties (as hereinafter reported) contestant filed a supplemental sworn petition with your Committee on Rules and Administration, praying that a fair and lawful recount of all paper ballots cast at said election throughout the State be ordered "forthwith."

Incumbent's only petition was thereafter filed with your Committee on Rules and Administration on April 10, 1947, "with respect to" contestant's petitions of December 31, 1946, and February 18, 1947. After referring to a prospective report of the subcommittee staff on the subject of irregularities observed during the recount, the petition continued:

"Your petitioner confidently expects that while such report may show technical noncompliance on the part of some officials with some of the provisions of the election laws, it will conclusively show that the contestant Markey did not suffer any prejudice thereby and that there was no fraud or intentional noncompliance on the part of such officials or anyone else in connection with this election."

Incumbent's petition closed with the prayer that, inter alia, "no further action be taken by this committee on the petition of the contestant Markey; that a State-wide recount be had of all ballots" until the committee completed its review of the ballots protested to date during the five-county recount (hereinafter reported)

Thereupon, April 15, 1947, contestant filed a supplemental unsworn petition by way of answer to incumbent's petition, and again urged the committee to proceed immediately with the recount of all of the remaining paper ballots cast in the State.

The consideration of this contest initially by the special committee and since January 18, 1947, by your subcommittee has resolved itself into four phases: First, the examination of all of the voting machines used in the State of Maryland and verification of the votes cast thereon; second, the conduct of a test recount of 5 counties using paper ballots; third, the conduct of the recount of the 17 remaining counties using paper ballots; and, fourth, the investigation of apparent irregularities for the purpose of determining the existence of fraud. Your subcommittee, therefore, has divided its report into four parts and will discuss each one under its respective heading.

I. THE EXAMINATION OF ALL OF THE VOTING MACHINES USED IN THE STATE OF MARYLAND AND VERIFICATION OF THE VOTES CAST THEREON

Contestant's petition of December 10, 1946, referred to a decision of the Board of Supervisors of Elections of Baltimore City to clear the machines on December 16, 1946, and stressed the necessity for an immediate investigation and verification of the figures shown thereon before the board's proposed action might be consummated.

The special committee, having first ascertained that the laws of the State of Maryland did not, in fact, provide for a recount as desired by contestant, forthwith dispatched investigators to make a verification check of all voting machines used in that election in the State of Maryland. Voting by machine is confined to Baltimore City and Montgomery County, where approximately 47 percent of the entire vote of the State is cast.

The voting-machine tabulations, comprising 943 machines, representing 28 wards and 471 precincts located in Baltimore City as well as 148 voting machines in Montgomery County, which were used in the 1946 contested election, were checked by the committee investigators in the presence of representatives of contestant and incumbent and an official of the board of supervisors of elections.

The verification check commenced on December 13, 1946, and completed on December 19, 1946, disclosed 8 discrepancies involving 416 votes in Baltimore City, and 1 discrepancy involving 10 votes in Montgomery County. The 9 discrepancies erroneously accredited incumbent with a total of 426 votes, which, when corrected, reduced his purported majority at that time from 2,232 to 1,806.

None of these errors, however, were found to have occurred on machines which had been carelessly sealed or involved circumstances from which the inference of fraud might be drawn.

II. THE CONDUCT OF A TEST RECOUNT OF FIVE COUNTIES USING PAPER BALLOTS

At its meeting on December 31, 1946, the special committee ordered contestant to furnish an affidavit containing a list of five counties in the State of Maryland using paper ballots, wherein it was alleged that the greatest number of irregularities and discrepancies occurred, in the order of their importance. The sworn list supplied by contestant on January 9, 1947, listed the following counties in the order named: (1) Anne Arundel, (2) Prince Georges, (3) Baltimore, (4) St. Marys, and (5) Howard. Thereafter, at the request of counsel for the parties, your subcommittee authorized the substitution of Cecil County for Baltimore County.

The committee planned to recount all of the ballots in each of those counties for the purpose of testing the truth or falsity of the charges made by the contestant; and, if in the opinion of the committee, the changes, if any, in the committee's recount from the totals previously reported, substantially reduced the lead of incumbent, a State-wide recount would be considered. On the other hand, if no substantial change resulted, a further recount in other counties would be abandoned.

In furtherance of these plans, counsel for contestant and incumbent, together with committee representatives, met in Washington and agreed upon general procedure for the conduct of the recount.

Before the commencement of the five-county recount, and, in anticipation of the expiration of the special committee on January 31, 1947, and, in consequence of contestant's petition of December 31, 1946, having been referred to the Committee on Rules and Administration in accordance with the provisions of the Legislative Reorganization Act, the special committee transferred its files in this contest to the Committee on Rules and Administration, which, in turn, assigned them to this Subcommittee on Privileges and Elections. The special committee's report on its activities in connection with this subject appears in the appendix as exhibit 2.

Your subcommittee thereupon reviewed and concurred in the actions of the special committee with reference to its decision to proceed with the five-county recount.

Your subcommittee, fully realizing the seriousness and implications of a recount of this character and finding only meager precedent as a guide, of necessity gave considerable thought to its organization and procedure in an effort to provide every possible security for the integrity of the undertaking, and in order to meet the requirements of accuracy and impartiality. The recount was organized and conducted within the framework of the stipulation of the parties themselves, the full text of which appears in the appendix as exhibit 3.

A. CHALLENGERS' REVIEW OF BALLOTS

The five-county recount, comprising 28,048 and 31,291 reported votes for contestant and incumbent, respectively, commenced on January 21, 1947. All stages, including challengers, counsel, and subcommittee reviews, were concluded on May 28, 1947.

This phase of the review took place in the post office at Annapolis, Md. (for Anne Arundel County ballots), the courthouse at Upper Marlboro (for Prince Georges County ballots), while, St. Marys, Howard, and Cecil County ballots were challenged and reviewed by counsel for the parties in the post office at Baltimore, Md. The subcommittee review of these ballots was held in the Senate Office Building, Washington, D. C.

Impounded ballots and all relevant election data were checked and received from respective supervisors of elections in the presence of respective counsel and subcommittee investigators with careful observations being made and recorded of their condition and storage. They were then transported to the designated recounting station under escort of subcommittee investigators, where they were later checked by the recount units.

The recount unit consisted of a table staffed by two challengers, paid by the subcommittee, who were appointed by and represented incumbent and contestant, respectively. The number of recount units varied depending on the availability of working space and qualified personnel. Unit supervision was provided by a subcommittee investigator and the over-all supervisor was a chief investigator designated by the subcommittee.

4 DECLARING HERBERT R. O'CONNOR A DULY ELECTED SENATOR

The challengers were carefully instructed in the procedure determined in advance by, and in pursuance of, the stipulation mutually agreed upon by both parties. Instruction was progressively altered or augmented as experience and expediency dictated and the various tabulation forms especially prepared for this recount were also modified from time to time in the interest of efficiency.

Before ballot boxes were opened they were carefully checked for the condition of their seals and any apparent irregularities. All relevant records and data were similarly checked and compared. Both challengers and their respective counsel were requested to make observations which were noted by a subcommittee investigator and tabulated.

The ballot boxes were then opened and the ballots recounted and carefully tabulated, precinct by precinct. After each ballot was unfolded and reviewed, it was placed in the appropriate one of the five boxes conveniently located on the recount unit table and labeled: (1) "Conceded to Markey", (2) "Conceded to O'Connor", (3) "Protested by Markey", (4) "Protested by O'Connor", and (5) "Not Voted Senatorially".

When a ballot was conceded to either contestant or incumbent, a stroke mark was made upon a tally sheet kept by each challenger. The ballots, on the validity of which both challengers did not agree without reservation, were "protested" by placing a circle in red indelible pencil around the item on the ballot which clouded its validity. At the conclusion of the count of each precinct, all ballots in the above-named boxes were checked to verify each challenger's tally record.

The challengers and counsel, in protesting or conceding ballots, endeavored to follow the Maryland election laws and the rulings thereunder. However, many ballots were protested because of the divergence of opinion concerning the interpretation and applicability of the law in relation to the various markings on the ballots.

The supervising subcommittee investigator recorded each precinct's count on the record provided therefor, with both challengers initialing all entries. The conceded ballots were replaced and locked in their respective ballot boxes, while protested ballots were cataloged and packaged, locked and secured under subcommittee guards. At the conclusion of the challenger review, 12,990 ballots remained protested and required counsel review.

B. COUNSEL REVIEW OF 12,990 PROTESTED BALLOTS

The 12,990 remaining protested ballots from the 5 counties were next reviewed by counsel for contestant and incumbent with definite instructions to reduce the number of protested ballots to a minimum in order to facilitate the task of the subcommittee in the final review. The subcommittee had granted counsel the privilege of participating in the recount for the sole purpose of encouraging the reduction of the number of protested ballots as much as possible by general agreement of parties.

This screening took place in the Baltimore and Anne Arundel post offices under the close surveillance and supervision of subcommittee investigators and guards, and ran concurrently, whenever the counsel for incumbent and contestant could meet, with the initial screening conducted by the challengers.

The procedures followed during counsel review and the tabulation forms used were quite similar to those employed in the challenger review. The ballots previously protested were reviewed singly, precinct by precinct. They were either conceded to one of the parties or protested when counsel could not agree on their validity. The intense, yet commendable loyalty of counsel to the cause of their respective clients, coupled with their natural affinity to disagreement on the correct legal interpretation of the laws applying to the ballots in question, understandably delayed the ultimate conclusion of this review.

On April 24, 1947, counsel, after conceding 6,366 of the 12,990 ballots previously protested by the challengers, completed their review of the ballots in the 5-county recount.

C. SUBCOMMITTEE REVIEW OF 6,624 PROTESTED BALLOTS

The remaining 6,624 protested ballots were separated by subcommittee investigators into categories, depending on the grounds for the respective protests. Each of the categorized ballots was again inspected by counsel and an agreement was reached that each ballot was correctly classified and tabulated in preparation for final subcommittee review.

Counsel, at the request of the subcommittee, submitted detailed briefs on the interpretation and application of the laws of Maryland, and consequent rulings, in their relation to the categories of protests. Subsequently, the subcommittee

met on May 19, 1947, and heard oral arguments of counsel for the parties in elaboration of their briefs.

Subsequently, on May 20, 21, 22, 23, and 26, 1947, your subcommittee met and carefully examined each of the 6,624 protested ballots from the 5 counties, which had been separated into 19 categories, some of which had been subdivided, so as to involve in all 33 classifications. The subcommittee examined each ballot in each of the classifications and, in so doing, reached the following conclusions regarding the validity of the ballots in the respective categories in the light of a strict interpretation of the Maryland election laws, interpretations by the courts and the State's attorneys general, and the briefs of the parties:

Category 1—Ink

The subcommittee was unanimous in its conclusion that any ballot marked in ink or any ballot on which an ink mark appears on the face of the ballot should be rejected. The subcommittee thus concluded that all ballots falling in categories 1 (ink), 17 (ink dot in box with X), 18 (ink elsewhere on the ballot) should be rejected. Section 68, article 33, of the Maryland Code provides that the voter shall "prepare his ballot by marking with an indelible pencil after the name of every person or persons for whom he intends to vote and to the right thereof, in the blank space provided therefor, a cross." Further, *Duwall v. Miller* (94 Md. 697), held that the provision of the law with respect to the use of indelible pencil was "mandatory." The only exception to the foregoing conclusion of the subcommittee is where an ink mark on the ballot appears on the back of the ballot. In the latter case, the subcommittee concluded that such a ballot is valid. This latter conclusion is consistent with the decision in the case of *Coulehan v. White* (95 Md. 703), in which the court held that an ink blot on the back of the ballot did not invalidate the ballot.

Category 2A—A check mark

The subcommittee concluded that a ballot marked with a check mark either in the senatorial box or not in the senatorial box was invalid and should not be counted. The basis for the subcommittee's conclusion in this instance is the language of section 73 of article 33 of the Maryland Code which provides "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." *Coulehan v. White* (95 Md. 703), held a check mark to be an identifying mark and rejected ballots containing such markings. Further, the Instructions of the Attorney General, 1946 (p. 268), specifically illustrate a check mark as a mark which has been held improper and which should cause the rejection of the whole ballot. The brief filed in behalf of the contestant (p. 18), and the brief filed in behalf of incumbent (p. 11), both agree that a check mark invalidates the ballot although the incumbent's brief "questions the realism of any such ruling."

Category 2B—A check mark and a line crossing the check mark

The subcommittee concluded that all ballots containing a mark as described above should be rejected. The subcommittee based its conclusion on a strict construction of section 73 of article 33 of the Maryland Code, namely, that "if there shall be any mark on the ballot other than the cross mark in the square opposite the name of the candidate * * * such ballot shall not be counted." The Instructions of the Attorney General, 1946 (pp. 267-268), also repeats the language of the above-quoted statute and directs election officials to "follow strictly * * * the instructions given below as to what ballots shall be rejected." [Italics supplied.]

Category 2C—A check mark over which a complete cross mark has been placed

The subcommittee concluded that all ballots containing a mark as above described should be rejected. The conclusion of the subcommittee in this instance is supported by the decision in *Coulehan v. White* (95 Md. 703), wherein it was held that a ballot containing a mark which was made with more lines than are necessary for a cross in the form of a star should be rejected for the reason that the marks so used might readily be adopted for the purposes of identification. The Instructions of the Attorney General, 1946 (p. 268), also illustrates a star marking as a mark which has been held improper and which should cause the rejection of the whole ballot. The subcommittee in its conclusion again applied the language of section 73 of article 33 of the Maryland Code, namely, that "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted."

Category 3—X ou side of box

This category involves those ballots in which the X mark appears outside the candidate's box or in the square opposite a blank line reserved for a voter to write in the name of a person not printed on the ballot. The subcommittee concluded in this instance that any ballot marked as above described should be rejected. The conclusion of the subcommittee with respect to ballots falling within this category is consistent with the instructions of the attorney general (p. 268) which recites "any mark on the ballot which is entirely outside of any square or any mark in a square before which no name appears should cause the rejection of the whole ballot." The brief filed by counsel for incumbent (p. 13) recites in effect that the foregoing "has been the consistent ruling of the State law department" and further, while the brief expresses "grave doubts as to the realism" of such ruling, states "we believe it has been the general practice of Maryland election judges to reject such ballots." The instruction of the attorney general is without question predicated on the provision of section 73, article 33, of the Maryland Code, namely "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The brief filed in behalf of the contestant (pp. 20 and 21) cites *Duwall v. Miller* (94 Md. 697), as a decision supporting the conclusion that ballots in this category be rejected, and the brief filed in behalf of incumbent (p. 13) admits there is language in *Duwall v. Miller*, "which would suggest that such ballots should be rejected." The contestant's brief also cites (p. 21) Four Opinions of the Attorney General 53, and Twenty-three Opinions of the Attorney General 212. With respect to the latter citation, the contestant's brief recites: "In Twenty-three Opinions of the Attorney General of Maryland, when incumbent was attorney general of Maryland, supervisors of elections of Montgomery County were advised on September 9, 1938, as follows:

"Confirming telephone message of last night, it is our opinion that where there is one improper and illegal X mark on a ballot, the entire ballot must be rejected * * *. (See p. 324 of the Election Laws, 1938 edition.)"

Category 4—Smudges, erasures, corrections

The subcommittee concluded that any ballot on the face of which there appears a smudge, erasure, or correction is invalidated. The subcommittee's conclusion in this respect is supported by the decision in *Coulehan v. White* (95 Md. 703), in which the court held that blurred lines in square as if cross was rubbed and made over, or wet pencil mark rubbed with hand and cross made over was sufficient to cause the rejection of the ballot. The court in that decision also rejected ballots where the voter had voted for six councilmen and then rubbed out the cross for one of the councilmen leaving five the proper number to be voted for. In both instances the court considered that the action of the voter might be done or readily used for purposes of identification. Further, the Instructions of the Attorney General, 1946 (p. 268), recites "the judges should also reject any ballots on which a cross mark has been made and then rubbed out, leaving a blur in the square."

*Category 5A—Single line in box with candidate's name**Category 5B—Single line in blank box*

The subcommittee concluded that a single line appearing in box with candidate's name, in blank box or anywhere on the ballot invalidates the ballot. The subcommittee in this conclusion is again applying the language of section 73, article 33, of the Maryland Code which recites "if there shall be any mark on the ballot other than the cross mark opposite the name of the candidate * * * such ballot shall not be counted." In discussing this category the brief filed in behalf of incumbent (pp. 15 and 16) agrees that where such a single line appears in the senatorial box that such ballot cannot be counted because of a clear failure to comply with the law. The brief, however, argues in favor of the validity of a ballot where such single line appears elsewhere on the ballot, and concludes by stating: "We recognize that there is an explicit ruling of the attorney general to the contrary, but it is apparent that this ruling has not been actually applied by the judges of elections of either party." The brief filed in behalf of the contestant (pp. 23 and 24) cites *Coulehan v. White* (95 Md. 703), in which ballots which contained "a long pale pencil mark running about 2 inches across the page, apparently a slip of the pencil" was rejected by the court "because the marks could be used as means of identification, and we cannot say they were not."

Category 6—Incomplete cross (namely, where two lines do not in fact intersect to make a cross)

The subcommittee concluded that any ballot containing a mark as above described anywhere on the ballot should be rejected. The conclusion of the subcommittee with respect to ballots falling in this category is again consistent with its previous announced position, namely, to strictly apply the language of section 73 of article 33 of the Maryland Code as follows: "If there shall be any mark on the ballot other than the cross mark opposite the name of the candidate * * * such ballot shall not be counted." The logic of the subcommittee's conclusion is emphasized by the following: There would seem to be little difference between a marking of a check mark on the ballot and a marking where two lines do not in fact intersect to make a cross. In the case of *Coulehan v. White* (95 Md. 703), the court held that a ballot marked with a mark somewhat in the form of a check mark was invalid, and held valid a ballot marked with a cross, one leg of which was shorter than the other.

Further, the Instructions of the Attorney General, 1946 (p. 268), state that "no ballot shall be rejected solely because any part or portion of the cross mark extends beyond the square, if the point of intersection of the cross mark is within the square. A cross clearly requires an intersection of two lines and if the two lines do not intersect a mark other than a cross is formed which in the subcommittee's judgment requires the strict application of the provisions of section 73, article 33, of the Maryland Code, hereinabove quoted.

The brief filed in behalf of the contestant (p. 26) cites Eight Opinions of the Attorney General 170 on this point, the last paragraph of which reads as follows: "It seems obvious to me that, if one line does not cross the other, the two lines do not result in a 'cross mark' and, therefore, if such mark appears anywhere on the ballot, the whole ballot should be rejected."

Category 7—Stars

- A. Star where three separate lines intersect at substantially the same angles with respect to each other
- B. Star where two of the lines intersecting the third line are closer together
- C. Star made up of three or more lines but which do not follow any consistent pattern as described in 7A and 7B

The subcommittee concluded that a ballot marked as above described and which falls into either category 7A, 7B, or 7C should be rejected. The subcommittee's conclusion is based on a consistent and strict application of the language of section 73, article 33, of the Maryland Code previously referred to, namely, "if there shall be any mark on the ballot other than a cross mark in the square opposite the name of a candidate * * * such ballot shall not be counted."

The ballots so marked as to fall in category 7A have been held to be invalid in the case of *Coulehan v. White* (95 Md. 703), in which the court held that a ballot was invalid "where the mark although wholly within the square, is made with more lines than are necessary for a cross in the form of a star thus . . ." The court held that "the marks so used might readily be adopted for the purpose of identification."

Further, the Instructions of the Attorney General, 1946 (p. 268), illustrates a star marking as a mark "which has been held improper and which should cause the rejection of the whole ballot."

The subcommittee did not by its conclusion determine to invalidate any ballot on which there appeared a cross mark obviously and without question made by a split pencil point, or any ballot on which the voter was obviously and without question simply undertaking to make the two lines of the cross more distinct. The markings described in categories 7A, 7B, and 7C each involve separate third lines, and the subcommittee is of the opinion that a strict application of section 73 of article 33 of the Maryland Code, compels the conclusion that any ballots falling into these categories should be considered invalid.

Category 8—Distinguishing marks

- A. In blank box
- B. Outside of box
- C. In box with X
- D. On leg of cross
- E. Elsewhere on ballot

Category 8 includes various marks other than a cross or in addition to a cross and this category has been divided into five classifications as noted above.

The subcommittee with respect to this category considered all five classifications on the same basis and strictly applied section 73, article 33, of the Maryland

Code, namely, "If there shall be any mark on the ballot other than a cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The subcommittee therefore concluded that *any mark* on the face of the ballot other than a cross whether it appeared in a blank box, outside of the box, in the box with an X, on the leg of the cross or elsewhere on the ballot was sufficient to cause the rejection of such ballot.

In *Coulehan v. White* (95 Md. 703), the court held that "where there is a dot in the square with the cross mark, the dot apparently made with the pencil thus [X.]" such ballot containing such a mark should be rejected "as the mark is so placed on the ballots as to be a ready means of identification." While the foregoing citation is not distinctly applicable to various markings classified under category 8, nevertheless the subcommittee can see no difference, for example, from the case where the dot or other mark appears in the box with an X or where the dot or other mark appears alone elsewhere on the ballot. In the same case (95 Md. 703) the court held that "a long *pale* pencil mark running about 2 inches across page, *apparently a slip of pencil*" was sufficient to cause rejection of the ballot "because the marks could be used as means of identification, and we cannot say they were not."

Category 9—Poorly made cross

The ballots classified in this category were, as recited in the brief filed in behalf of incumbent (p. 19), such that they "were challenged primarily on the theory that they deviated so far from the normal appearance of the cross mark that they amounted to a means of identification."

The subcommittee cannot in its opinion with respect to this category do anything except reiterate its consistent position, namely, that "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." The subcommittee recognizes that nervousness, inexperience, and age to a measure affect the voter's marking of his or her ballot, but it is also mindful of the requirements of the Maryland law as above noted.

Category 10—Double lines

A. *Wide (double lines intersecting third line are wide apart)*

B. *Medium (the double lines intersecting third line are spaced closer together)*

C. *Narrow (the double lines intersecting a third are spaced very close together)*

The subcommittee concluded that ballots falling in category 10A, 10B, and 10C should be rejected. This conclusion is consistent with the subcommittee's conclusions with respect to category 7A, 7B, and 7C (star category). The opinion as expressed with respect to category 7 ballots applies equally with respect to this category. The subcommittee is aware of the fact that the court in *Coulehan v. White* (95 Md. 703), had before it the precise ballot classified in category 10A but did not pass upon it for the reason that the ballots of that type for each candidate in that case were equal in number. The subcommittee however is of the opinion that logic compels the conclusion that the court would have applied the same reasoning it employed in rejecting ballots marked with stars. The subcommittee again emphasizes as it did with respect to category 7 that the language of section 73, article, 33, of the Maryland Code is the basis for its conclusion.

The subcommittee further repeats its opinion as expressed in its discussion of category 7, namely, that the subcommittee by its conclusion with respect to category 10 does not intend to invalidate any ballot on which there appeared a cross mark obviously and without question made by a split pencil or any ballot on which the voter was obviously and without question simply undertaking to make the two lines of the cross mark distinct. The markings in categories 10A, 10B, and 10C each involve separate third lines and the subcommittee is of the opinion that a strict application of section 73 of article 33 of the Maryland Code compels the conclusion that any ballots falling into these categories should be considered invalid.

Category 11—Connectors

A. *Heavy (heavy line connecting two ends of a cross).*

B. *Medium (medium line connecting two ends of a cross).*

C. *Light (light line connecting two ends of a cross).*

D. *Incomplete (line connecting one end of the cross and the side of the cross).*

The subcommittee concluded that all ballots marked as above described and falling into categories 11A, 11B, 11C, and 11D should be rejected. The subcommittee's determination with respect to classifications 11B and 11C was tentative

because many of the ballots challenged by counsel and placed in category 11B and 11C were marked with an extremely light connecting line some of which appeared to be almost unnoticeable at first glance. The subcommittee, however, has applied the language of section 73 of article 33 of the Maryland Code strictly in its examination of the challenged ballots and its tentative decision, therefore, with respect to those ballots falling in categories 11B and 11C is the result of the strictest application of section 73. The opinion expressed by the majority of the subcommittee was to the effect that for reason of consistency if the "connector" was discernible, however light, it should be considered in the same manner as "connectors" falling within category 11A and rejected.

The subcommittee in its conclusion with respect to the ballots falling in this category is consistent with its conclusions with respect to ballots falling in categories 7 and 10, both of which involve a third line or more than the two lines necessary to make a normal cross. The subcommittee therefore has applied the same reasoning with respect to the ballots in category 11 as that employed in categories 7 and 10 and believes its conclusions to be consistent with a strict application of the language of section 73 of article 33 of the Maryland Code, namely, "if there shall be any mark on the ballot other than a cross mark in the square opposite the name of a candidate * * * such ballot shall not be counted."

Category 12—Incorrect initials

The subcommittee made no determination with respect to those ballots falling in category 12 inasmuch as its conclusion with respect to such ballots must necessarily be based on factual information as to the incorrectness of the initials on the ballot. The number of such ballots falling in category 12 was verified, however, and the subcommittee's decision with respect to category 12 will be made when the factual information with respect to the initials appearing on such challenged ballots has been thoroughly analyzed.

Category 13—No initials

The conclusion of the subcommittee with respect to ballots which were not initialed by the judge of election is that such ballots should be rejected.

The language of the statute upon which the subcommittee bases its conclusion is found in section 73, article 33, of the Maryland Code which provides that the judges "shall reject any ballots which are deceitfully folded together and any ballots which do not have endorsed thereon the name or *initial* of the judge who held the ballot."

Counsel for both incumbent and the contestant are in agreement on this conclusion. The brief filed in behalf of incumbent (on p. 22) in discussing ballots in this category recites: "We are satisfied that the statute itself as construed by the court of appeals plainly requires the rejection of such ballots."

The contestant's brief (p. 31) cites *Hammond v. Burton* (Daily Record, Oct. 15, 1946), and recites that the court held in that case that election officials could not ignore the "peremptory requirements" that all uninitialed ballots must be rejected.

The Instructions of the Attorney General, 1946 (p. 268), state: "No ballot without the endorsement of the initials of the election judge, shall be delivered by the election judge to the voter, nor shall any ballot without such endorsement be received from any voter or be deposited in the ballot box. If any such ballot is found in the box, it should not be counted (sec. 73)."

The subcommittee is cognizant of the decision in *Coulehan v. White* (95 Md. 703), in which the election judge in a certain ward wrote his initials upon the coupon or stub attached to the ballot and not upon the back of the ballot and such coupon or stub was detached from the ballot when it was returned by the voter to the judge to be placed in the ballot box. The mistake of the judge in initialing the coupon or stub was made with respect to each ballot in the ward and the court held that such ballots were valid. The court, however, held where only some of the ballots found in the box of a ward or precinct are without the initials of the election judge, the presumption is that such ballots were not officially given out and they are to be rejected.

Category 14—Imprints or impressions

- A. Matching
- B. Not matching

The subcommittee concluded that where the X mark matches with the impression and was caused by reason of the voter having folded his ballot while voting such ballot shall be considered valid.

10 DECLARING HERBERT R. O'CONNOR A DULY ELECTED SENATOR.

The subcommittee's determination in this instance is in effect that such impression is, as its name implies, an impression as distinguished from a mark and is not therefore a mark within the meaning of section 73 of article 33 of the Maryland Code, which provides "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate * * * such ballot shall not be counted." No ballots were placed in class 14B and hence the subcommittee was not called upon to consider the import of category 14B. It should be noted that the brief filed in behalf of incumbent (p. 23) and the brief filed in behalf of the contestant (p. 35) both agree with the conclusion of the subcommittee as hereinabove stated.

Category 15—Words written on ballot

The subcommittee concluded that words written on the ballot such as "Yes," "No," "Kilroy" invalidated the ballot.

Section 73, article 33, of the Maryland Code, recognizes that a voter may write in on the ballot the name or names of any candidate for whom he desires to vote as provided in section 57, article 33, of the Maryland Code, and the conclusion of the subcommittee as above stated must not be regarded as denying the voter the right which is his under section 57.

Section 73 of article 33 of the Maryland Code provides "if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate or other than the name or names of any candidate written by the voter on the ballot as provided in section 57, such ballot shall not be counted."

Words such as "Yes," "No," "Kilroy" in the opinion of the subcommittee constitute a mark other than a cross mark in the square opposite the name of a candidate and could not, of course, be considered the name of a write-in candidate.

The briefs filed by counsel for incumbent (p. 23) and the contestant (p. 36) both agree with the subcommittee's conclusion in this instance.

Category 16—Dot in box with X

The subcommittee concluded that a ballot containing a dot in the box with an X mark should be rejected.

The conclusion of the subcommittee is supported by the decision in the case of *Coulehahn v. White* (95 Md. 703), wherein the court held that "where there is a dot in the square with the cross mark, dot apparently made with pencil, thus , "such ballot should be rejected" as the mark is so placed on the ballots as to be a ready means of identification."

Further, the Instructions of the Attorney General, 1946 (p. 268), illustrate a dot in a box with an X as being a mark "which has been held improper and which should cause the rejection of the whole ballot."

The brief filed in behalf of the contestant (p. 36) states "a light indistinct dot inadvertently made when the voter let his pencil point rest on the paper is not sufficient to disqualify a ballot."

The brief filed in behalf of incumbent (pp. 23, 23, and 25) states "the rejection of dot ballots is so unreasonable that counsel in this case have, by mutual consent, agreed that all of such ballots should be counted. Before such an understanding was arrived at, however, some ballots which fall into this category were challenged, and toward the end of the count, particularly during the count of the ballots in Cecil County, hairsplitting distinctions were drawn between so-called dot ballots and ballots which contained marks in addition to the X. In many cases, the marks challenged by counsel were merely overgrown dots." The brief continues a discussion of this category and concludes "we think they should all be counted."

The subcommittee, in reaching its conclusion that a ballot should be rejected if it contains a dot whether heavy or light in the box with an X, was confronted with the choice of making hairsplitting distinctions or adhering rigidly and strictly to the language of section 73, article 33, of the Maryland Code, namely, "if there shall be any mark on the ballot other than a cross mark in the square opposite the name of a candidate * * * such ballot shall not be counted." The subcommittee chose the latter.

Category 17—Ink dot in box with X

The subcommittee concluded that any ballot on which there appears an ink dot in the box with the X should be rejected.

The conclusion of the subcommittee in this instance is consistent with its conclusion with respect to ballots falling in category 1 and category 16, and the

remarks submitted with respect to categories 1 and 16 are applicable to this category. The brief filed in behalf of incumbent (p. 25) and the brief filed in behalf of the contestant, both agree with the conclusion of the subcommittee with respect to this category.

Category 18—Ink elsewhere on the ballot

The subcommittee concluded that any ballot containing ink anywhere on the face of the ballot should be rejected.

The conclusion of the subcommittee with respect to ballots falling in this category is consistent with its conclusions with respect to ballots falling in category 1 and the reasons stated for rejecting ballots in category 1 apply equally to category 18.

The one exception to the above conclusion is, as previously stated, where an ink mark or blot appears on the back of the ballot. In that case the subcommittee concluded that such a ballot is valid and this conclusion is consistent with the decision of the court in *Coulehan v. White* (95 Md. 703).

Category 19—Miscellaneous

The ballots placed in category 19 were each examined by the subcommittee and the subcommittee applied the conclusions hereinabove stated in its determination as to invalidity or validity of each ballot. It should be noted, however, that the large majority of the ballots placed in this category contained multiple errors which could not justify their segregation into any one of the foregoing 18 categories.

Your subcommittee arrived at a decision on each ballot and each of the categories without any reference whatever to the result it would have upon the fortunes of contestant or incumbent. It did not examine or consider the totals until every ballot had been disposed of under a consistent application of the Maryland law. Subsequently, on June 25, 1947, your committee concurred in the conclusions of the subcommittee with respect to its rulings regarding the above categories.

The final tabulation of the conceded ballots at various stages of the five-county recount, and at the close of subcommittee review (as of May 26, 1947) is as follows:

Tabulation, as of May 26, 1947, of all ballots cast, and conceded in the 5-county recount

County	Reported vote		Challengers' review		Counsel review of 12,990 ballots		Subcommittee review of 6,624 ballots		Total of all conceded ballots	
			Conceded to—		Conceded to—		Conceded to—			
	Markey	O'Conor	Markey	O'Conor	Markey	O'Conor	Markey	O'Conor	Markey	O'Conor
Anne Arundel.....	10,364	8,396	8,931	7,153	1,132	866	7	9	10,070	8,028
Prince Georges.....	9,909	12,642	7,766	9,964	1,280	1,479	1	0	9,047	11,443
St. Marys.....	2,172	2,519	2,034	2,330	92	106	0	2	2,126	2,438
Howard.....	2,913	3,398	2,330	2,632	323	415	2	3	2,655	3,050
Cecil.....	3,690	4,336	2,929	3,268	305	368	51	53	3,285	3,689
Total.....	29,048	31,291	23,990	25,347	3,132	3,234	61	67	27,183	28,648

RECAPITULATION (5 COUNTIES)

Incumbent's majority of reported vote.....	2,243
Incumbent's majority of recounted vote.....	1,465
Incumbent's net reduction (5 counties).....	1,778

¹ This figure does not include ballots which were later conceded under a mutual counsel stipulation dated June 24, 1947 (Markey, 407; O'Conor, 468), as well as "incorrect initial" ballots later conceded by counsel and subcommittee (Markey, 105; O'Conor, 77). Incumbent's final net reduction in 5 counties was 745.

III. THE CONDUCT OF THE RECOUNT IN THE 17 REMAINING COUNTIES USING PAPER BALLOTS

As the result of the continuation in the five-county recount of the trend established by the recount of the machine votes in Baltimore City and Montgomery County—thus reducing incumbent's majority from 2,232 to 1,028—the subcom-

mittee directed a recount of the votes cast in the remaining 17 counties. This recount was commenced on June 2, 1947.

Six subcommittee checkers were appointed to work at recount tables so as to relieve subcommittee investigators for other duties. The procedure in recounting the ballots was almost identical with that followed in the five-county recount. As more recount units were established, a tabulator was employed to maintain supervision over, and to check and record, the work performed at the recount tables.

All of the 17 county ballots, comprising 101,597 reported votes for contestant and 87,960 reported votes for incumbent, were transported under subcommittee guards to, and reviewed at, the Central Post Office in Baltimore, Md.

At one point, a few days after the start of this recount, a check revealed that a few ballots per box were being placed in the wrong receptacles at the recount tables, which, if persisted in, might have affected the results of the recount. These errors were immediately rectified and all apparent loopholes for mistakes were plugged by changing the rules to the extent of (a) requiring ballots to be folded or unstrung by checkers in presence of both challengers; (b) forbidding challengers to separate ballots into stacks by party affiliation before reviewing; (c) requiring challengers of both parties to furnish replacements during their absences, however temporary, from the recount tables in order that interests of the parties might not suffer while ballots were exposed; (d) instructing checkers to make tabulation entries only in the presence and with the approval of both challengers; and (e) making it mandatory that at the conclusion of the count of each ballot box, all ballots be opened, counted, and checked for party affiliation, with contestant's challengers checking incumbent's ballots, and vice versa.

The 19 categories that the subcommittee established in the course of its five-county review, formed the basis for recounting by the challengers and respective counsel.

Challengers were instructed to note the district, precinct, and the category of protest on each protested ballot.

Baltimore County, the largest county in the State, was the first of the 17 to be recounted. Since the incumbent's majority had been substantially reduced, the challengers, in the exercise of their intense loyalty to their respective principals, began to make flagrant and sometimes frivolous protests of a great number of ballots. In the case of some precincts as many as 90 percent of the total ballots reviewed were protested by the recount units.

The subcommittee's inquiry developed that most of those protests were in connection with light lines and dots commonly falling into category 11 and its various subdivisions. Thereafter, on the insistence of the subcommittee, counsel for the parties stipulated and agreed on June 24, 1947, as follows (eliminating the formal parts):

"It is stipulated by and between the parties as follows:

"1. All ballots as to which the only questioned mark is a light connector shall be treated as valid ballots for all purposes of this recount. In distinguishing 'light' and 'heavy' connectors, the test shall be whether the extra or connecting line of the cross is as heavy as the other lines of the cross.

"2. All ballots as to which the only questioned mark is a light pencil dot or dots shall be treated as valid ballots for all purposes of this recount. All pencil dots shall be deemed "light pencil dots" unless constituting a mark other than a point resembling a period or decimal.

"3. All ballots as to which the only questioned mark is an extra line so close to and parallel to a line of the cross as to have been evidently made by the voter in an effort to improve the cross shall be treated as valid ballots for all purposes of this recount. For the purpose of illustrating this type of mark counsel refers to category 10C.

"It is intended that this stipulation shall apply not only hereafter but to all ballots heretofore protested; and for the purpose of applying this stipulation, counsel shall review all ballots heretofore protested and placed in categories 8, 10C, 11, 16, and 19. Those ballots which are hereby stipulated to be valid shall be treated as valid for all purposes of this recount.

"Nothing in this stipulation shall preclude either party from contending that ballots marked with heavy connectors or with double lines of any character or with dots, dashes, or other marks other than a point resembling a period or decimal should be treated as valid for all purposes of this recount."

The result of the stipulation was a very substantial reduction in the flagrant protesting; though, because of the contentiousness of some of the personnel growing out of their understandably intense loyalty to their principals, excessive protesting persisted.

On August 13, 1947, the challengers completed their initial screening of the 17-county ballots. The counsel completed their review of ballots on October 19, 1947, with the exception of the questionable "initial ballots." Twenty-eight thousand six hundred and twelve ballots remained protested after counsel review, which had to undergo a final review by the subcommittee.

SUBCOMMITTEE REVIEW OF REMAINING 28,612 BALLOTS

The subcommittee met on November 17, 1947, to commence its examination of the balance of the paper ballots cast, on the validity of which counsel could not agree. Those ballots consisted of 28,612 as follows:

Protested for causes related to discrepancies in the initialling of ballots by judges of election.....	9, 155
Protested for other causes.....	19, 457

Your subcommittee was of the opinion that the number of protested ballots in the category of "initial discrepancies" could be materially reduced and, therefore, urged counsel to reexamine them in the light of the pertinent evidence produced by subcommittee investigators. As a result thereof, counsel reviewed again and conceded 2,372 originally protested for bearing single or penciled initials, and 2,556 originally protested for bearing incorrect initials, thus leaving only 4,227 in those categories and a total of 23,684 for final committee review.

The subcommittee met thereafter again on November 18, 20, 24, 25, 26, and December 1, 2, 3, and 18, 1947, and carefully examined each of the 23,684 ballots, using as a basis for its determination as to their validity, the category rulings which it made in the course of the five-county recount and the stipulation of June 24, 1947, both of which appear hereinabove.

Again your committee arrived at its decisions on each ballot and each category without reference whatever to the affect on the final results of the recount. The Senate minority, as well as the majority, was represented at each session of the subcommittee and actively participated in its determinations.

On January 7, 1948, the subcommittee met again for the purpose of ruling on the last of a number of miscellaneous protested ballots, each of which was examined and ruled upon in accordance with the established pattern.

At the conclusion of the latter meeting, final results of the recount were announced to the press and the public, to the effect that the incumbent had maintained a 1,624-vote majority. The final summary of recount figures appears in the appendix as exhibit 4.

IV. THE INVESTIGATION OF APPARENT IRREGULARITIES FOR THE PURPOSE OF DETERMINING THE EXISTENCE OF FRAUD

Contestant in his original and subsequent petitions alleged the existence of certain conditions which he desired investigated on the theory that an investigation would reveal such evidence of fraud as to affect the results of the election.

In addition, during the progress of the recount, it became apparent that there were numerous instances of failure on the part of election officials to observe the directory provisions of the laws of Maryland with regard to the conduct of the election. As counsel for contestant and incumbent examined ballot boxes, ballots, and election records during the recount, they noted the irregularities observed. Committee investigators prepared a tabulation of their notations, which appears in the appendix as exhibit 5.

The information thus assembled formed a partial basis for contestant's allegations.

However, as the recount progressed, counsel for contestant redefined their "views with respect to irregularities claimed" in their letter-brief of December 20, 1947. Subsequently, on April 26, 1948, in the course of final oral arguments of respective counsel before the subcommittee in executive session, counsel for contestant clearly restated their position as follows: "It is our position that the committee should accept the reported vote in all counties of the State except Prince Georges County and in all the wards of Baltimore City, except the fourth and the tenth wards. That will greatly simplify the problem of the committee and will limit its consideration of the subject of irregularities to Prince Georges County and the fourth and tenth wards of Baltimore City."

Contestant thereby abandoned all other charges and allegations for the reason that, as they frankly conceded in the above letter-brief, they "failed to develop them and pin-point them sufficiently to their satisfaction to warrant their making such a contention before the committee" (paraphrased).

14 DECLARING HERBERT R. O'CONNOR A DULY ELECTED SENATOR

Your subcommittee, therefore, confines its report under this head to a consideration of the remaining charges.

RE PRINCE GEORGES COUNTY

- 1. It is charged that members of the election boards were appointed, and the election machinery was dominated by the incumbent, thus creating at least the opportunity for fraud in the election*

The laws of the State of Maryland provide in detail (see par. 7 of contestant's petition of December 31, 1947, exhibit 1) the manner of appointment of election officials and require that the board of supervisors of elections shall appoint an equal number of Democratic and Republican judges and clerks of election for each of the election precincts. The evidence shows that the required number of Republican officials were appointed in accordance with the law on the recommendations of the Republican State Central Committee and the Republican member of the board of supervisors of elections, without change.

The mere showing that incumbent, by virtue of his official position, was directly or indirectly responsible for the appointment of election officials and, therefore, may have been in a position to exercise a dominant influence over them, is not of itself evidence of any fraud or irregularity. The presumption of regularity and legality in the conduct of public officials cannot be overthrown except by actual proof of some fraud on their part.

Subcommittee investigators interviewed numerous election officials of Prince Georges County and were unable to substantiate this charge.

- 2. It is charged that of the 60,000 ballots originally received from the printer by the board of supervisors of elections, approximately 1,100 remain unaccounted for, thus leaving the inference that they may have been illegally and fraudulently used*

The laws of the State of Maryland do not impose upon the board a duty to make a final accounting for such unused ballots.

As a result of this omission, coupled with a liberal interpretation of section 60 of the Maryland Election Laws, which contemplates the destruction of the surplus ballots within 10 days after the election, very few of the county boards of supervisors of elections have made any effort to preserve the unused and surplus ballots intact. That general prevailing condition is borne out by reference to analogous records in Allegany, Washington, and Wicomico Counties, concerning which contestant has made no complaint. Whereas, in Prince Georges County with approximately 22,000 senatorial votes cast, there were 1,156 unused ballots not accounted for; in Allegany County, with approximately 22,000 senatorial votes cast, there were 4,577 unused ballots not accounted for; and in Washington County, with approximately 19,000 senatorial votes cast, there were 2,930 not accounted for; and in Wicomico, with approximately 8,000 such votes cast, there were 1,748 unaccounted for.

As a result of that generally loose condition, it has not been possible in the very nature of things to pinpoint the exact cause for these deficiencies. There is, however, no proof tending to show fraudulent and illegal use of those ballots for which there is no accounting.

- 3. It is charged that more ballots were found in the ballot boxes than the number of voters' names on the respective poll books*

The tabulation of irregularities (exhibit 5) discloses that (a) in the ballot boxes of 16 polling places there were 48 ballots in excess of the number of voters' names recorded on the poll books, and that (b) in the ballot boxes of 17 polling places there were 76 less ballots than the number of such names recorded in the respective poll books. Contestant has not maintained a complaint regarding the latter category.

The above tabulation indicates that similar discrepancies were noted in some of the counties about which contestant does not complain. For example, in Washington County there is an excess of 28 ballots at 16 polling places; in Somerset County, an excess of 21 at 5 places; in Frederick County, an excess of 25 at 7 places; in Baltimore County, an excess of 21 in 17 places; in Howard County, an excess of 23 in 9 places; and in Anne Arundel County, an excess of 22 in 7 places.

In Prince Georges County there were 10 excess ballots at each of 2 polling places, and the remaining 28 excess ballots were found in 14 other polling places, neither one of which had more than 4. Except for the 2 places showing an excess of 10 each, the record of Prince Georges County in this regard is not out of proportion

with the experience of the above-named counties concerning which contestant has not maintained a consistent complaint.

Counsel for contestant in his letter of December 20, 1947, frankly conceded with reference to this charge, that "some discrepancies might have been due to carelessness and standing alone would be insufficient in [their] opinion to invalidate the ballot boxes."

Obviously it is not possible to determine for whom the excess ballots were cast.

The mere fact of the existence of excess ballots, in and of itself, does not prove or tend to prove any fraud. The record does not disclose any other proof that will overcome the presumption of regularity and legality in the voting procedure or the validity of the ballots cast.

4. *It is charged that in a number of ballot boxes there were so-called "impression ballots" which, in addition to bearing penciled X marks in the squares opposite the candidates, bore impressions indicating that other ballots were fraudulently marked while superimposed thereon*

During the course of the five-county recount of the ballots in the State, only 105 so-called impression ballots were observed and protested by counsel. There were 102 from Cecil County, two from St. Marys, and one from Howard. No Prince Georges County ballots were so protested. The subcommittee, after a careful examination of these ballots, concluded that in regard to the ballots of Cecil County, the impression, in each case, was apparently the result of the voter marking his ballot while it was folded. The subcommittee observed no indications of fraud. In the remaining few instances the questionable ballots were rejected for other reasons.

On April 15, 1947, before the subcommittee review, one of the counsel for contestant filed an affidavit stating in substance that during the Prince Georges County recount he had observed about 75 ballots which bore impressions without realizing the possible implications. In consequence thereof, subcommittee investigators reexamined over 10,000 of the Prince Georges County ballots for such impressions. After the last screening of the ballots there remained only 44 ballots which seemed to bear miscellaneous impressions—28 of which bore impressions on the reverse side, thus indicating that the ballots were marked legitimately while folded. Others bore impressions so vague as to leave doubts as to their existence. They were of such various sizes and shapes and in such various positions on the ballots as to defy separation into categories or definite patterns which might provide clues to fraudulent conduct if any occurred in connection therewith.

Except for the mere impressions themselves, there appears to be no proof of fraud or any evidence as to how, why, when, or by whom they were made.

5. *It is charged that the clerk of the Circuit Court of Prince Georges County, a Democrat, administered his duties under the State Declaration of Intentions Act, in an irregular and partisan manner, thus clouding the validity of the balloting by an undetermined number of declarants under the act*

Section 31 of the Maryland Election Laws requires that all persons who "remove into" the State of Maryland and who desire to vote therein, shall "indicate their intent to become citizens and residents" of the State at least 1 year before the first election in which they desire to participate, by "causing" their names to be entered in a suitable record book provided for that purpose by the clerk of the circuit court.

The investigation disclosed that between October 21 and November 5, 1945, at least 1 year before the 1946 election, the clerk accumulated approximately 2,500 such declarations of intent. Some of these declarations were taken in a lawful manner at the office of the clerk; some others were received in an apparently lawful manner by the clerk and his authorized deputies at times and places publicly announced in the press for that purpose; and an undetermined number were solicited or received on behalf of the clerk by Democratic political workers in an atmosphere which was obviously inconsistent with the nonpartisan intent and spirit of the law.

It is estimated that only about 25 or 30 percent of the 2,500 declarants actually voted in the 1946 election. Naturally, it is impossible to determine the beneficiaries of their ballots.

The investigation further disclosed that some of the declarations, though actually submitted to the clerk on or before November 5, 1945, in satisfaction of the statutory 1-year requirement, were not entered by the clerk in the permanent record until some time within the 1-year period. Contestant has contended that

such declarations did not become legally effective until the date of their actual entry. This contention, if accepted, would result in disfranchising many voters who had fully declared their intentions on forms supplied by the clerk in accordance with his instructions.

In the absence of contrary proof, it must be assumed that declarants in good faith sought to comply with the Declaration of Intentions Act, in that they did all that could be expected of them to "cause" their names to be entered in due time and manner, and were not wilfully parties to any irregularities growing out of the overzealous partisan activities of the clerk. Under such circumstances they should not be penalized by disfranchisement for the failure of a public official, or his agents, to perform his duties in accordance with the intent and spirit of the law.

6. It is finally charged that in Prince Georges County there was a general widespread and flagrant disregard of the election laws as to warrant the rejection of the entire vote of the county

This charge is based, in a large measure, on the tabulation of irregularities (exhibit 5) noted by counsel for both parties during the course of the recount.

Of 3,500 irregularities noted, 228 were found in Prince Georges County, 531 were found in Baltimore County, 286 in Dorchester County, 214 in Frederick County, 476 in Washington County, and 251 in Wicomico County. In many of the other counties, as well as some of those named, the number of such irregularities was greater in proportion to the vote cast than those cast in Prince Georges County. Contestant, however, has not maintained a complaint regarding the other counties.

Counsel, in their letter-brief of December 20, 1947, frankly conceded that not "one of these particular irregularities would be sufficient to invalidate all ballots in a ballot box but in the aggregate and collectively they constitute significant factors" when coupled with the other charges herein discussed.

Your subcommittee has hereinbefore reported its conclusions with reference to the other charges (items 1-5, above). There remains only this rather broad charge which implies that the same given irregularities pervade most of the precincts of the county. The irregularities cited in support of the contestant's contention significantly differ in different precincts. No one irregularity pervades all the voting places in the county and no one precinct is charged with every type of irregularity. There is no consistency of irregularities throughout even a substantial area of the county such as will support the charge.

Proof that fraud and illegal voting involved substantially every precinct in the county would, of course, require a complete disregard of the election in the county in its entirety. There is, however, no such evidence in the record to sustain any such theory.

Your subcommittee now directs attention to the remaining charges and allegations with reference to—

FOURTH AND TENTH WARDS, BALTIMORE CITY

1. It is charged that in the fourth and tenth wards there was such a high proportion of voting by persons not qualified to do so, as to justify rejection of the entire vote cast therein

A house-to-house survey was conducted by subcommittee investigators through a substantial area of both wards in order to develop a logical basis for the determination of the true extent of the charge.

In the fourth ward the survey covered 1,630 voters out of the 1,974 persons registered and actually recorded as voting, and disclosed that over 550 of such voters had not resided at their registration addresses in the fourth ward for at least 6 months prior to the date of the election.

In the tenth ward a similar survey, covering 900 voters out of 2,908 persons registered and recorded as voting, disclosed that over 175 of such voters had not resided at their registration addresses since at least 6 months prior to the election.

The investigation further revealed that, in some instances, the registration addresses shown on the registration records of persons voting in that election were vacant lots; however, it was found that registrations from such addresses as were checked were apparently lawfully made but that the buildings at those addresses were subsequently demolished and vacant or parking lots remained.

In view of the fact that there appears to be substantial foundation in the laws of Maryland for a person, once lawfully registered, to continue to vote in the precinct of his original registration even after removal from that precinct to another precinct, so long as his registration is not lawfully canceled in accordance with the detailed procedure set forth in section 26 of the election laws, of which

contestant and his supporters failed to avail themselves, it remained only to determine whether the persons voting were, as a matter of fact, the persons actually registered.

After a careful handwriting comparison of the voting authority cards which were signed on election day by the voters involved, with their original permanent registration forms, signed by them when they registered, your subcommittee concluded that in every instance, except one, wherein a possible disparity was noted, the signatures appeared to be identical and consequently the charge was not sustained.

In concluding part IV of its report, your subcommittee observes that several of the charges made by the contestant in his various petitions have not been discussed in this report for the reason that they would have no substantial bearing on the results. Some of these charges may involve the violation of Federal statutes, in which event it would be a matter for the consideration of the appropriate law enforcement agencies.

CONCLUSION

Your subcommittee, after having conducted a recount of all of the votes cast in the State, and after having examined into all of the charges of irregularities and fraud meriting consideration, conclude that Herbert R. O'Connor was duly elected United States Senator from the State of Maryland.

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

Resolved, That Herbert R. O'Connor is hereby declared to be a duly elected Senator of the United States from the State of Maryland for the term of 6 years, commencing on the 3d day of January 1947, and is entitled to be seated as such."

Respectfully submitted.

WILLIAM E. JENNER, *Chairman.*
JOHN W. BRICKER.
FRANCIS J. MYERS.

APPENDIX

EXHIBIT No. 1

To the Senate of the United States:

D. John Markey, hereinafter sometimes called petitioner, files this his contest for a seat in the Senate of the United States as Senator of Maryland and contests the seat claimed by Herbert R. O'Connor, hereinafter sometimes called the claimant, for the term beginning January 3, 1947, and as grounds for such contest respectfully shows to this honorable body:

1. Petitioner is a resident of Walkersville, Frederick County, Md., and is a citizen of the State of Maryland and of the United States. Petitioner was nominated at the primary election held in June 1946, as the Republican candidate for United States Senator from Maryland for the term beginning January 3, 1947, and the claimant, having defeated Senator George L. Radcliffe, was nominated as the Democratic candidate for such office and term.

2. At the general election in Maryland held November 5, 1946, petitioner was reported to have received 235,000 votes and the claimant O'Connor was reported to have received 237,232 votes, that is to say, of a total vote of 472,232 O'Connor received a reported majority of 2,232 votes, namely, less than one-half of 1 percent.

3. Petitioner served a formal notice dated November 30, 1946, on the claimant of the intention to contest his reported election and a copy of such notice was forwarded to the Senate and to the Special Senate Committee To Investigate Senatorial Campaign Expenditures and for Other Purposes. Petitioner avers that in fact there were cast at the general election several thousand more votes for petitioner than were cast for the claimant for said office of United States Senator for the State of Maryland and that there were errors and irregularities in said election affecting the result, which, if corrected, would show that this petitioner received a majority of the votes cast in the election for said office. Petitioner avers that upon a fair and lawful recount of the ballots cast at the election this petitioner would be decided to be the duly and lawfully elected Senator from Maryland