



SEATING
UNSEATING
AND CENSURING
MEMBERS OF THE
WISCONSIN LEGISLATURE
1842-1955

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A NOTE ON Recall Elections in Wisconsin

Only one recall election has ever been held in Wisconsin under the authority of Article XIII and section 6.245. In 1932 state Senator Otto Mueller (25th Dist.) was the object of a recall movement. Mueller, however, was returned to office in the recall election of Sept. 20, 1932, by a vote of 14,160 to 8,541 for Roland Kannenberg. The unsuccessful movement to unseat Mueller was part of a larger Progressive Republican plan to recall state legislators who opposed the tax bill submitted by Governor Philip La Follette. Recall petitions were circulated also, but never filed, against Senators Bernhard Gettelman, Eugene Clifford and William D. Carroll.

SEATING, UNSEATING AND CENSURING MEMBERS OF THE
WISCONSIN LEGISLATURE, 1842-1955Introduction

Under the framework of American government, each house of the legislature alone may pass upon the qualifications of its members. This right to act as a final judge in the seating of members is an inherent power of the legislature and essential for its self-preservation.¹ In exercising the right to screen members, the legislature is pursuing a public end--to make sure that its members are qualified to represent the public interest. The reasoning behind this principle is well stated in a case before the U.S. House of Representatives: "In the judgment of your committee, the power of the House to expel or punish by censure a Member for misconduct is... sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed upon them."²

Each house of the legislature exercises the power to determine the qualification of members through 2 distinct processes. In seating members the house may review election returns and qualifications of opposing candidates in an election contest, or the house may vacate a seat upon discovering that a member has disqualified himself by, for example, accepting an incompatible office.

A second process for unseating a member is by expulsion for misconduct. This power is considered more extreme and in many states requires a 2/3 vote of members of the house in contrast to the simple majority required in contesting the right to a seat. The 2 processes also differ as to purpose: an election contest pertains to the need for uniformity in the matter of qualifications; and expulsion pertains to the need to preserve the dignity and promote the efficiency of the legislature.

In cases which are not considered so extreme as to merit outright expulsion, the legislative house may discipline a member by censuring him for contempt. This action may be invoked for violation of house rules such as absence without leave and misconduct which may include intemperate speech on the floor of the house as well as misbehavior out of the house chambers. Censuring a member frequently requires only a majority vote of the house.

The power of the legislative house to unseat members is absolute and the individual legislator has no legal remedy. The reasoning behind this is that the right of an individual to hold public office is offset when by so doing, the public interest might be placed in jeopardy.³

¹Mason, Paul, Mason's Manual of Legislative Procedure, 1953, pp.399-408.

²Cannon's Precedents of the House of Representatives, 1936, Vol. VI, section 398.

³"It is not better that ten traitors should be members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But, in the former it would strike at the vitals of the nation; in the latter it might, though deeply lamented, only be the calamity of an individual." Hind's Precedents of the House of Representatives 1907, Vol. II, section 1264, p.818.

While legislators during session generally enjoy some degree of immunity from arrest and legal processes, the legislative houses themselves may hold members accountable for their actions and punish accordingly.

The Authority of the Wisconsin Legislative Houses to Contest the Right to a Seat

The authority of each house of the state legislature in Wisconsin to judge the qualifications of its members is set forth in the Wisconsin Constitution, Art. IV, sec. 7:

"Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide."

A number of court decisions as well as Attorney General's opinions have been handed down holding that this section of the Constitution gives each legislative house sole right to seat members. In *Falvey and Kilbourne vs. Massing*, 7 Wis. 630 (1859), it was held that "The supreme court has no appellate jurisdiction from, or supervisory powers over, the proceedings of the legislature, in a matter within the constitutional jurisdiction of that body." The issue was met squarely by the Supreme Court in another case involving an identical provision in section 5 of Article I of the U.S. Constitution. The court said that by section 5, Article I, the power to determine the right of office is vested exclusively in the House of Representatives. "Hence we cannot go behind the returns and investigate and correct frauds and mistakes and adjudge which of the candidates was elected... The jurisdiction conferred by this section is exclusive and the pretended judicial determination as to the right of a party to a seat in the legislature is null." (*State ex rel McDiss vs. Board of State Canvassers*, 36 Wis 498 (1874))⁴

In *State ex rel Barber vs Circuit Court*, 178 Wis 468 (1922), it was held that the court could not even determine the eligibility of a candidate to run for office. The Wisconsin Supreme Court dismissed the argument that Mr. Barber having been convicted of adultery and sentenced to one year in the state prison was ineligible to have his name on the ballot under section 3, Article XIII of the Constitution, barring convicted felons from holding public office. Instead the court declared that a candidate is not required by statute to be eligible for office to get his name on the ballot. The question of eligibility.

⁴See also 26 OAG 3 (1937) when the Attorney General advised that the recount proceedings as certified by judgment of the circuit court for Waupaca County does not serve as prima facie evidence to set aside the certificate of election issued by the county board of canvassers. "The Assembly is the sole judge and the courts have no jurisdiction in the matter." In answer to the question if legislators can succeed themselves if they pass a law increasing the salary of the office of members of the legislature, the Attorney General again repeated that the legislature is the "final judge of elections and qualifications of its own members by virtue of sec. 7, Art. IV, Wisconsin Constitution, and from determination of each house respectively in seating of its members there may be no appeal to or review by any court or other tribunal." 18 OAG 266. (1929)

said the court, becomes a judicial question after the election when the elected candidate is seeking title to the office.⁵

A situation which developed in 1914 reaffirmed the principle that while the removal of a legislator from office creates a vacancy, no special election can be called to fill the vacancy until the legislative body actually declares that the vacancy exists. The case involved George H. Weissleder who was elected state senator from the 6th senatorial district and who allegedly moved and took up his residence in the 5th district. In 3 OAG 760 (1914) the Attorney General advised that the senate was the proper body to determine whether a vacancy existed and the Governor should not assume the prerogative of calling a special election to fill an undeclared vacancy. If a person were elected to fill an assumed vacancy, the senate would have the power to pass upon his credentials and refuse to recognize the right of the newly-elected senator to a seat.

In case of a tie vote between candidates for the state legislature, the respective legislative body should determine which of the candidates is legally elected. (1904 OAG 92). This is true even when the board of canvassers has issued no certificate of election. In 1904 OAG, 117 the Attorney General reasoned that if no one has the right to office because the county canvassing board refused to issue a certificate of election, then the county canvassing board has the power to deprive the people of representation in the legislature. While a certificate of election is evidence of an election, it does not constitute an election.

The procedure of the legislature is not subject to judicial review either. As the court said in McDonald vs. the State, 80 Wis 407, 1891:

"The courts will take judicial notice of the contents of the journals of the two houses of the legislature far enough to determine whether an act published as a law was actually passed in accordance with constitutional requirements; but they will not inquire whether the two houses have or have not complied strictly with their own rules in their procedure upon the bill between its introduction and final passage."

Furthermore no legislature can by its acts bind future legislatures in this matter, nor do legislative bodies have to observe statutory procedure for contesting elections. Any statutory procedure should be regarded as a convenient rule but does not preclude the exercise of the constitutional right of the legislative body itself to initiate investigations as to the right to a seat. (1 OAG 259, 1912-13)

The Authority to Expel and Punish for Contempt

The authority of either house of the legislature to expel or punish for contempt is very comprehensive too. The Wisconsin Constitution

⁵The proper procedure for the court in cases of violation of the state corrupt practices laws by a member-elect is set forth in section 12.24 (2) Wisconsin Statutes. If a member-elect has been found guilty of violation, the court is directed only to transmit a certificate setting forth such adjudication of guilt to the presiding officer of the legislative body. The house then may in its judgment act. See: 30 OAG 358 (1914)

in Art. IV, sec. 8 reads:

"Punish for contempt. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause."

In Falvey, 7 Wis 630, quoted previously, the court said in relationship to this section:

"It is competent for the legislature to investigate the alleged bribery of any of its members or of members of a previous legislature, and it may compel the attendance of witnesses and inflict punishment upon them for contempt. There is no appellate or supervisory jurisdiction over legislative proceedings in such matters. When the legislature has power to institute an investigation the manner of conducting it rests in its discretion. It seems that the rules which prevail in courts as to answering questions which tend to criminate a witness have no application to a legislative investigation. At any rate, he must answer if he thereby gains immunity from prosecution."⁶

But while the legislative houses have the right to expel and censure a member, the Attorney General advised that it should not suspend him. 4 OAG 84 (1915)

"There seems to be good reason why this power should not be exercised by a legislative body. It is not only the defendant that is interested in the matter but the people of his district and if the member who represents a certain district is suspended from exercising any of the functions of a member then the people of that district are not represented in your body and they cannot elect a man to fill the vacancy for the reason that there is no vacancy. It is different when the member is expelled. In that case a vacancy will exist and it can be filled by the people of the district. On the other hand, if a member is censured by your body it will not deprive the people of his district of a representative for the reason that he can still exercise his functions as an assemblyman."

Grounds for Unseating a Legislator

While it would be impossible to enumerate all the causes for which a seat may be vacated, some of the constitutional provisions might be mentioned.

The qualifications for the office of legislator are set forth in Art. IV, section 6 of the Wisconsin Constitution:

"No person shall be eligible to the legislature who shall not have resided one year within the state, and be a qualified elector in the district which he may be chosen to represent."

⁶Taken from the Wisconsin Annotations, 1950, Art. IV, s. 8, p.29.

In 10 OAG 660 (1921) the Attorney General declared that legislators may vacate their offices by ceasing to reside within the district for which they were elected.

Persons who have been convicted of a felony are declared ineligible for office by Art. XIII, sec. 3, Wisconsin Constitution:

"No person convicted of any infamous crime in any court within the United States and no persons being a defaulter to the United States or to this state or to any county or town therein or to any state or territory within the United States shall be eligible to any office of trust, profit or honor in this state."

A legislator becomes ineligible when he holds an incompatible office such as an official position with the federal government or an office created during the legislative term for which he was elected. The following constitutional provisions provide:

Art. IV, sec. 12. "No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected."

Art. IV, sec. 13. "No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature, be elected to congress, or be appointed to any office, civil or military under the government of the United States, his acceptance thereof shall vacate his seat."⁷

Many statutory provisions may be found relating to the eligibility to hold public office. One of these is section 17.03 providing that public office may be vacated by any one of the following events: death of the incumbent; resignation; removal; moving from the state or district (except in the case of annexation); conviction for treason; felony or crime punishable by imprisonment for at least one year; decision of a competent tribunal declaring election void or adjudging him insane; neglect or refusal to take oath or file bond if necessary.

Procedure for Contesting Elections

In 1853 the legislature passed a law spelling out the procedure by which one candidate may contest the right of his opponent to a seat in the legislature. (Chapter 41, Laws of 1853) However, as noted previously, this procedure does not restrict either house of the legislature itself from reviewing the qualifications of its members. In fact the authority of either house of the legislature to pass upon its

⁷In the case, Otto Pulhman, contestant vs. David Taylor, contestee (1869), the senate committee on the Judiciary concluded that the constitutional prohibition in Art. 7, sec. 10 (relating to the incompatibility of the office of circuit court judge with any other public office) did not bar a judge from running for the legislature. Rather the prohibition was directed to holding 2 offices at the same time. See Wis. Senate Journal, 1869, pp.133-34.

membership may be regarded as a continuing power and the question of election and qualifications of members is never finally decided, in the sense that a decision is conclusive upon the house.⁸

When the procedure for contesting an election has not been properly followed, the legislative house may in its discretion refuse to recognize the existence of a contest. This happened in 1919 in the case of David Love, contestant vs. Louis A. Arnold, contestee. The legislature dismissed the case because Mr. Love had failed to have his depositions certified and witnessed as required in section 13.17, Wisconsin Statutes.

The Procedure to Seat Members

The seating procedure of the houses is set forth in the statutes and the house rules. The Constitution prescribes only that the members of the legislature take an oath to support the U.S. and Wisconsin Constitutions. (Art. IV, sec. 28)

At the opening of each session of the legislature the Secretary of State submits to each house of the legislature a list of members-elect as certified by the county board of canvassers. Then the new members of each house take the oath of office. No business may be transacted until the house is organized and the oaths of office administered. Senate and Assembly rules 13 provide that contestants for seats shall have the privilege of the house until their respective cases are disposed of, the privilege extending only so far as access to the chamber during the time occupied in settling the contest. Practice varies and in at least 4 cases the members-elect were given the oath of office and temporarily seated even though their seats were in contest at the time.⁹

An election contest can be brought to the attention of the legislative house in at least 2 ways: the county canvassing board may certify 2 candidates for one office so that the house may decide which one to seat, or the canvassing board may certify one candidate and the contestant may file his notice to contest. The provisions for filing notice are set forth in section 13.16, Wisconsin Statutes.

"Any person wishing to contest the election of any senator or member of the assembly shall, within thirty days after the decision of the board of canvassers, serve a notice in writing on the person whose election he intends to contest, stating briefly that his election will be contested and the cause of such contest; and shall file a copy thereof in the office of the secretary of state at least ten days

⁸In the case of expulsion, however, no member may be expelled a second time for the same cause, Wisconsin Constitution, Art. IV, sec. 7.

⁹Wisconsin Legislative Reference Library, Chronology of Events in the Contested Election of Charles Lentz as Member of the Assembly from First Assembly District of Dodge County, Dec. 1940. See also letter dated Jan. 2, 1935 from Howard F. Ohm, Chief, Legislative Reference Library to Assembly Chief Clerk, John J. Slocum. Contained clippings on contested elections at the Legislative Reference Library.

before the day fixed by law for the meeting of the legislature. If any contestant fails to so file a copy of such notice, he shall not be entitled to any mileage or salary in case payment has been made therefor for the sitting member."

Section 13.17, Wisconsin Statutes, provides the procedure by which testimony in a contested election may be taken.

"Testimony in election contests. (1) After the service of the notice required by section 13.16 either party may proceed to take the depositions of witnesses before any judge, court commissioner or justice of the peace in the district where the contest is pending, upon giving ten days' notice in writing to the opposite party of the time and place at which and the officer before whom such depositions will be taken; but no deposition shall be taken after the last Monday preceding the day fixed by law for the meeting of the legislature, except in case of sickness or unavoidable absence of witnesses.

(2) The officer before whom such depositions are taken shall carefully envelope and seal up the same, indorse on the envelope the names of the contestant and contestee, and direct the depositions so indorsed to the presiding officer of the branch of the legislature by which the contest is to be determined.

(3) The depositions so taken may be used and read in evidence by either party upon the hearing of such contest, and no other depositions than those so taken shall be used or heard, nor shall such branch of the legislature, by its committees or otherwise, hear or seek to procure other testimony, but shall proceed forthwith to determine the contest upon the depositions so furnished."

Each house usually refers the matter of contested elections to a standing committee, such as the judiciary committee, for investigation and recommendation. Such a committee may in its discretion gather additional evidence and issue subpoenas for witnesses. (1 OAG 261, 1912-13)

Cases of Election Contests in Wisconsin

Since statehood at least 51 election contests have been considered by the Wisconsin legislature. In only 9 of the 51 cases was the incumbent unseated by the contestant. The contest was undetermined in 4 cases which arose in 1854, 1859, 1871 and 1903 respectively. A senator in 1854 failed to gain access to a seat when his term was cut short due to a reapportionment. In 1859 a resolution introduced to unseat an assemblyman upon the grounds of incompatibility of office was withdrawn by the author before the legislature acted upon it. In 1871, 2 senatorial seats were vacated when the senators from the 20th and 26th districts accepted federal posts as postmasters. In these cases, the senate refused to officially recognize that the vacancies existed and therefore the positions could not be filled by special election. When the people in the area held unauthorized elections, the senate refused to seat their candidates. In the assembly in 1903 a special election was called in a contested election case because the evidence consisting of defective ballots had been destroyed.

Most of the 51 election contests have been based upon the grounds that ballots were improperly counted in the original count or recount proceedings. There have been 29 of these cases. Other contested elections were based on the following grounds: 6 for incompatibility of office, 3 for nonresidence in districts, one for violation of corrupt practices act, one for fraud and bribery, one for disloyalty to the federal government by virtue of his membership in the Socialist Party. One member claimed a seat on the basis that he had not served out his term. Two members claimed seats on the basis that they held valid election certificates, and in 7 cases the grounds for contest is unknown. A brief resume' of each contested election case may be found at the end of this study.

Cases of Expulsion and Censuring

As far as can be determined, there have been 11 instances in which resolutions were introduced into the legislature providing for expulsion or censuring of legislators. In 2 cases the legislator was actually expelled, in one case suspended and in 4 cases censured. A table showing the 11 cases providing for expulsion or censuring appears at the end of this study.

One of the most tragic instances occurred in the territorial legislature in 1842 when Charles C. P. Arndt from Green Bay was shot and killed by James R. Vineyard from Grant County, a fellow member of the council (as the senate was then called). In an altercation over the appointment of a sheriff, Arndt allegedly struck Vineyard who was sitting at his desk in the house chamber, when Vineyard drew his pistol and shot Arndt. Vineyard sent in his resignation to the council but this was rejected and he was expelled. He was brought to trial before a court at Monroe, Green County, and acquitted upon the grounds of self defense. Afterwards Vineyard was re-elected to the legislature from Grant County and when he moved from the state, he was elected to the California legislature.¹⁰

The second case of outright expulsion happened in 1917 when Senator Frank Raguse, Socialist from the 8th district, Milwaukee, was expelled for refusing to retract and to apologize for statements made on the floor of the senate which were considered disloyal. This occurred just before World War I when public sentiment for and against war with Germany had grown to a high pitch. Part of the speech for which Senator Raguse was expelled is quoted below:

"I would like to inquire from the senator from the fourth, what he meant the other day when this resolution (providing for the printing and distributing of President Wilson's message urging a declaration of war against Germany) was being discussed when he said that he would spend a million dollars for patriotism. Did he mean that he would blow up another Maine? As I understand it, the Maine was blown up from the inside for the purpose of creating so-called patriotism. It seems that patriotism can only be created in two ways--by the destruction of property or the destruction of lives. I had a brother in the Spanish American war

¹⁰For an account of the Arndt-Vineyard shooting affair see: Holmes, Frederick, Wisconsin Stability, Progress, Beauty, 1946, Vol. 1, pp.269-270.

that came back with fever and I remember that after the war the president (William McKinley) was walking up and down on velvet carpets in his palace, surrounded by silks and satins, while some poor fellow who lost his leg in that war was out in the woods cutting down a tree to make himself a wooden leg.... How can a man have any patriotism when he has not got any land, for I claim that unless a man owns land he has not got any country, and I am one of them who don't own no land. Eighty-five per cent of the people in this country have got no land and what we ought to do to make patriotism is to find some way to get them some land."¹¹

Resolution 19, S., 1917, censuring Raguse for contempt, disorderly behavior, and conduct unbecoming to a senator of Wisconsin and providing for his expulsion was adopted by a vote 30 to 3.

In the Eaton case, 1905, the senate censured Barney A. Eaton, senator from the 7th district, Milwaukee and suspended him for unbecoming conduct and failure to clear himself of pending charges of bribery. A resolution to expel Senator Eaton failed to pass with the required 2/3 majority and therefore was amended to provide for suspension for a period from April 25, 1905 to January 6, 1906. The charges were brought before the senate shortly after Eaton's acquittal by the circuit court of Milwaukee on one of 3 indictments for having accepted money for his vote in 1901 against a bill to regulate the practice of barbering. The other 2 indictments involved receiving bribes of \$25 and \$75 for opposing the barbering bill.

The senate committee on judiciary reported the following findings in the Eaton case. At the beginning of the session, the caucus committee had suggested to Eaton that he should clear himself in court before he take part in the proceedings of the senate. After several weeks elapsed, Senator Eaton was brought to trial in Milwaukee on the first indictment and received an acquittal. Claiming that he had fulfilled his agreement with his colleagues, Senator Eaton returned and took his seat. The other indictments were untried and were adjourned until after the legislative session upon Eaton's plea of legislative privilege. The report of the committee on judiciary noted that newspaper reports of the trial carried the impression that in the testimony, Senator Eaton not only confessed wrongdoing on his part but implicated a number of his colleagues. Resolution No. 32, S., 1905, providing for suspension, carried by a vote of 23 ayes, 5 noes, and 5 absent or not voting.¹²

On 4 occasions in 1838, 1858 and 1941, the legislature adopted resolutions censuring members. In the territorial legislature of 1838 Representative Alexander W. McGregor from Dubuque County was censured in the following resolution by a vote of 12 yeas to 9 noes:

"Whereas, Alexander W. McGregor, late a member of this House, from the county of Dubuque, was arraigned before

¹¹Wis. Senate Journal, 1917, pp.597-98.

¹²For the report of the judiciary committee see Senate Journal, 1905, v. 1, p.801-812.

the bar of this House, on the affidavit of John Wilson, charging him with having taken a bribe in his official character of legislator; and whereas the said McGregor plead innocence of said charge, and occupied much of the time of this House in introducing testimony to that effect, none of which was satisfactory; and whereas, the House postponed a decision upon this case til this session, that the said McGregor might have ample time to make his defence, and to prove his innocence; and whereas, pending the resolution offered by the committee selected to investigate said charge, said McGregor has resigned his seat in this House; Therefore,

"Resolved, That, in the opinion of this House, the said Alexander W. McGregor stands charged before this House and the people of this Territory, of the offenses of receiving a bribe, extortion, and corruption, and is unworthy and undeserving of its confidence."¹³

The senate of 1858 adopted Resolution No. 114, S., censuring Senator William Chappell from the 14th district on the following counts:

1. For his part in the wrongful abstraction and withholding of a senate bill which had been passed by the 1857 senate. (vote: 17 ayes; 10 noes)
2. Offering a bribe to La Rue P. Anderson to prevent him from testifying before a joint committee investigating frauds in connection with lands granted to the state for railroad construction. (vote: 16 ayes; 11 noes)
3. Trying to induce a witness, Martin Stuefer, to change his testimony offered before a committee to investigate the Chappell charges. (vote: 22 ayes; 5 noes)
4. Receiving bonds from the La Crosse and Milwaukee Railroad Company as a consideration for his vote. (vote: 23 ayes; 5 noes)
5. Guilty of contempt for his attempts to suppress legislative action. (vote: 18 ayes; 10 noes)

The last clause of the resolution providing that Chappell was no longer worthy to hold a seat in the senate received a vote of 17 ayes to 11 noes which was just under the 2/3 majority vote required to expel.¹⁴

The assembly in 1858 adopted a resolution censuring 10 assemblymen for refusing to appear when there was a call of the house.

In 1941 the senate adopted Resolution No. 35, S., by a 19 to 11 vote which censured 6 Progressive and one Republican senators for

¹³Assembly Journal, 1838, Territory of Wisconsin, p.43,44.

¹⁴Wis. Senate Journal, 1858, Vol. 2. See pages 1209-24 for report of select committee to investigate the charges against Chappell; communication from Chappell answering charges on pages 1353-58; and vote on Resolution 14, S., 1858, on pp. 1369-70.

contempt of the senate. This action was taken when these 7 senators refused to vote on a bill; (Bill No. 481, S.) and in violation of senate rules walked out of the senate chamber during a roll call on the measure. The bill created an interim "little Dies" committee to investigate alleged unAmerican and subversive activities in industry. The censured senators were: Allen J. Busby, Republican, 8th senatorial district; John E. Cashman, Progressive, 1st senatorial district; Kenneth L. Greenquist, Progressive, 21st senatorial district; George Hampel, Progressive, 6th senatorial district; and Fred Risser, Progressive, 26th senatorial district.¹⁵

¹⁵Wis. Senate Journal, 1941, p.2030-31, 2036-37, 2052-59.

THE OUTCOME AND GROUNDS FOR CONTESTED ELECTIONS IN THE WISCONSIN LEGISLATURE
1849-1955

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUND
1943	Milw. 6th, Assembly	<u>Phillip Markey</u>	Cleveland M. Colbert	Questioned recount by the Milw. Co. Bd. of Election Comm. certifying Markey instead of Colbert (AJ1943, pp. 43-4, 344-8, 390)
1941	La Crosse 1st, Assembly	<u>Edward Krause</u>	Oliver H. Fritz	Krause had been declared winner on first counts and certified. In recount involving some absentee ballots, Fritz was declared winner but circuit court overruled the recount results and no certificate of election was ever given Fritz (AJ1941, p. 8. See also clippings "Contested Elections")
1939	Milw. 3rd, Assembly	<u>Arthur J. Balzer</u>	William Luebke, Jr.	In recount, it was found that Balzer had not received a majority of votes but that it was a tie vote and the Milw. Co. Bd. of Election cast by lot to break the tie (AJ1939 pp. 58-60, 1573, 1597-8)
1939	Racine 3rd, Assembly	<u>Martin H. Herzog</u>	Saverts Aiello	No specific charge mentioned (AJ1939 p. 3-4)
1937	Waupaca, Assembly	<u>Alvin A. Handrich</u>	Edwin E. Russell	Circuit court cancelled Handrich's certificate of election and ordered certification of Russell. Court did not have jurisdiction to do this. (AJ1937 pp. I, 6-7, 14-19)
1933	3rd Senate	<u>Walter Polakowski</u>	William M. Langen	Langen charged that Sen. Polakowski did not reside in 3rd senatorial district. Senate laid on table. (SJ1933 pp. 6-8)
1931	6th Senate	<u>Thomas M. Duncan</u>	Otto H. Tetzlaff	Tetzlaff charged that in the 1928 election Duncan was not a resident of the 6th. Senate dismissed case on the basis that 2 years had elapsed and no claims or evidence had been presented. (SJ1931, pp. 62-4, 262, 663-66, 701-2)
1919	Milw. 17th, Assembly	<u>Frank B. Metcalf</u>	Edward C. Werner	Werner charged that Metcalfe was disqualified because he was a member of the Socialist Party and therefore disloyal to the U.S. Government. Assembly ruled that evidence was insufficient. (AJ1919 pp. 21-47, 178-91)

Source: Wisconsin Legislative Journals

Note: Underscored name indicates who was seated

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUND
1919	Manitowoc 1st, Assembly	<u>John Lorfeld</u>	George A. Rathsack	Rathsack claimed that according to recount proceedings, he was duly elected and that the certificate of election given Lorfeld was void. Assembly determined that Lorfeld had received majority of 2 votes. (AJ1919 pp. 7, 9-14, 16-21, 178, 190)
1919	7th Senate	<u>Louis A. Arnold</u>	David Love	Case dismissed because depositions as required in procedure to contest 13.17 Wis. Stats. had not been certified or witnessed. (SJ1919 pp. 534-5, 535-8, 608)
1917	Dodge 1st, Assembly	Charles L. Lintz	<u>Edmund J. Labuwi</u>	Labuwi charged that the board of canvassers were prejudiced and there count illegal. On recount Labuwi received majority of votes and was seated. (AJ1917 pp. 7, 138-141)
1915	6th Senate	<u>G. H. Weissleder</u>		Sen. Weissleder stated that his seat in the senate was being challenged in the circuit court on the grounds that he was not a resident of the 6th. Explained that due to an illness in the family he had been temporarily residing elsewhere but still maintained his residence in the 6th district. Senate confirmed his right to the seat. (AJ1915 p. 5)
1913	Milw. 17th, Assembly	<u>John Paulu</u>	Frank B. Metcalfe	Metcalfe charged that Paulu had violated the corrupt practices act when he circulated campaign literature without the name and address of author or publisher. Assembly dismissed charge. (AJ1913 pp. 63-73, 315, 350)
1913	Lincoln, Assembly	<u>John O'Day</u>	Ralph H. Clark	Clark charged that ballots were improperly counted. Upon recount O'Day was declared elected. (AJ1913 pp. 6, 119, 149, 185, 194)
1911	Trempealeau, Assembly	<u>Peter Nelton</u>	K. K. Hagestad	Hagestad charged that there had been irregularities in the canvass and election. After recount Nelton was declared elected. (AJ1911 pp. 6-7, 101)
1907	Green, Assembly	<u>Fred Ties</u>	Willis Ludlow	Ludlow charged that ballots were improperly counted. Upon recount Ties was declared elected. (AJ1907 pp. 5-8, 124)
1905	Ozaukee, Assembly	<u>Peter L. Pierron</u>	Michael G. Bohan	Bohan charged that ballots were improperly counted. While the Assembly committee found some irregularities, Pierron still had received the majority of votes and was thus entitled to his seat. (AJ1905 pp. 6-8, 447-48, 481)

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUND
1903	Racine 2nd Assembly	<u>Edward F. Rakow</u>	John H. Kamper	Kamper charged that ballots were improperly counted and that the board of canvassers had not accounted for defective ballots. Assembly ruled that since the defective ballots had been destroyed without objection that a special election be held. Rakow was elected at the special election. (AJ1903 pp. 7-9, 166-7, 323)
1901	Marathon 1st, Assembly	<u>Alfred Cook</u>	Gilbert E. Vandercook	Vandercook charged that there had been some irregularities. Cook was declared duly elected and entitled to the seat. (AJ1901 pp. 146-9)
1893	Crawford, Assembly	<u>James O. Davidson</u>	James Fisher, Jr.	Fisher charged that there was fraud and bribery involved in the election. (AJ1893 pp. 126-8)
1893	Milw. 10th, Assembly	Theodore Prochnow	<u>Peter G. Rodemacher</u>	Rodemacher charged that 7 votes cast for another candidate should have been counted for him. (AJ1893 pp. 164-178)
1887	Richland, Assembly	<u>G. E. Tate</u>	Isaac McCann	McCann claimed to have a valid election certificate but withdrew from contest 2-3-88. (AJ1887 pp. 6-7, 39)
1883 **	Door, Assembly	<u>Chris Leonhardt</u>	George O. Spear	Spear charged that defective ballots were improperly counted. (AJ1883 pp. 107, 162-3)
1879	Dodge 3rd, Assembly	<u>James Davidson</u>	Henry W. Hildebrant	Hildebrant withdrew from contest and therefore Davidson was declared lawfully elected. (AJ1879 p. 132)
1879	Milw. 11th, Assembly	<u>William W. Johnson</u>	Michael J. Eagan	Three ballots which had been erased and marked Eagan were declared defective and not counted, and this resulted in a tie vote. Whereupon the Governor called a special election at which Johnson received a majority of votes. Eagan charged that the defective ballots should have been counted and that the Governor had no authority to call a special election. (AJ1879 pp. 132-4, 176)
1879	Milw. 1st, Assembly	<u>E.C. Wall</u>	William P. McLaren	McLaren charged that ballots had been improperly counted but withdrew from contest 12-24-79. (AJ1879 pp. 165-6)
1877	Milw. 8th, Assembly	Peter <u>Salentine</u>	<u>Henry Fink</u>	Fink charged that ballots had been improperly counted. (AJ1877, pp. 104-7, 148-9)
1877	Jefferson 3rd Assembly	<u>A. Scheuber</u>		Resolution introduced into the assembly providing for an investigation to ascertain whether Scheuber is a postmaster and therefore his opponent Lyman Goodhue is entitled to his seat. No further action recorded and Scheuber continued as a member of the assembly. (AJ1877 p. 179)

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUNDS
1876	4th Senate	<u>James Henry Tate</u>	Reuben May	May claimed that he received majority of votes. (SJ 1876, pp. 110, 144)
1872	Winnebago 3rd Assembly	<u>Nelson F. Beckwith</u>	R. J. Judd	Judd claimed that he received a majority vote because 21 illegal votes had been cast and counted for Beckwith (AJ1872 pp. 284, 362-4, 374)
1871	20th Senate 26th Senate	H.S. Town R.E. Davis	J. Boyd Levi B. Vilas	Senators Town and Davis accepted positions as postmasters but the senate had not yet declared their seats vacant. The Governor refused under these circumstances to call a special election until a vacancy was declared so the people in the area held their own ad hoc elections. The senate ruled that the 20th and 26th senatorial district seats were vacant, but indefinitely postponed resolution to seat Boyd and Vilas. (SJ1871 pp. 237-46, 253-5)
1870	Adams, Assembly	<u>Solon W. Pierce</u>	O. B. Lapham	Lapham claimed he received the majority vote. (AJ1870 pp. 103-4)
1869	1st Senate	<u>David Taylor</u>	Otto Puhlman	Puhlman claimed that he received the majority vote because Taylor being a circuit judge at the time ran illegally. (SJ1869 pp. 133-7, 156)
1869	13th Senate	<u>Hamilton H. Grey</u>	Absolom A. Townsend	Townsend claimed that he received the majority votes. (SJ1869 pp. 155, 203)
1865	Marathon & Wood, Assem.	H. W. Remington	M. J. <u>McRaith</u>	McRaith claimed that he received the majority vote.
1865	Douglas, La Point, Ash- land, Polk, Burnett, Dallas Assembly	Amos S. Gray	<u>Albert C. Stuntz</u>	Stuntz charged that the votes for Ashland County were not counted into the totals when they should have been. (AJ1865 pp. 77-8)
1864	Waukesha 1st Assembly	<u>William Costigan</u>	J. M. Cady	Cady charged that there was some illegality in voting. (AJ1864 pp. 233-4, 291)
1862	8th Senate	<u>Herman S. Thrope</u>	Orton S. Head	No specific charge mentioned. (SJ1862, p. 48)
1862	Iowa Assembly	Alexander Campell	Robert <u>Wilson</u>	Wilson charged improper counting of votes. (AJ1862 pp. 10, 14-19)

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUND
1861	Sheboygan 3rd, Assembly	C. W. Humphrey	<u>William F. Mitchell</u>	Mitchell claimed that the ballots were improperly counted and that the certificate of election issued to Humphrey was not conclusive and final. (AJ1861 pp. 115-6, 126-30, 196-200)
1860	Washington Assembly	<u>Matthias Altenhofen</u>	Mitchell L. Delaney	Delaney charged that Altenhofen was not eligible since he was acting deputy postmaster when elected. (AJ1860 pp. 241-45, 358-9)
1860	Outagamie, Assembly	<u>Daniel C. Jenne</u>	Milo Coles	No specific charge mentioned. (AJ1860 pp. 41-2, 68)
1859	Sheboygan 1st Assembly	<u>William N. Shafter</u>	A. L. Crocker	No specific charge mentioned. (AJ1859 pp. 53-4)
1859	Waukesha 3rd Assembly	A. E. Elmore		Resolution introduced providing for an investigation to ascertain whether Elmore holds an office under the federal government. Resolution was withdrawn. (AJ1859 pp. 661, 689)
1859	La Pointe, St. Croix, Polk, Burnett, Douglas, Assem.	Moses S. Gibson	<u>Markus W. McCracken</u>	No specific charge mentioned but the committee on privileges and elections noted the territory of the district was large, greater than some of the states and that it is difficult to find suitable men to conduct elections properly. (AJ1859 pp. 8-9, 54-7)
1858	14th Senate	<u>William Chappell</u>	William T. Butler	At the outset neither Chappell nor Butler were seated in the senate because of a dispute about the counties included in the 14th district. Upon the determination of the territory in the district, Chappell was declared entitled to the seat and Butler was permitted to gather information to contest if he so desired. (SJ1858 pp. 71-5, 80)
1857	Waupaca Assembly	<u>Benjamin F. Phillips</u>	E. P. Perry	No specific charge mentioned. Resolution adopted that Perry had not complied with the statutory procedure to contest an election and his petition was rejected. (AJ1857 pp. 142-4, 172-5)
1856	Oconto, Outagamie, Shawano, Waupaca, Assembly	<u>Lewis Bestedo</u>	William Brunquest	Both claimed election certificates. Committee on elections reported that Brunquest's certificate was not a district canvass as required by law. (AJ1856 pp. 60-62)

DATE	DISTRICT	CONTESTEE	CONTESTANT	GROUND
1854	18th Senate	J. R. Briggs, Jr.		Briggs claimed that he was elected for a 2-year term in the senate and that he was entitled to a seat for 2 years regardless of a reapportionment which caused his term to expire after one year. Committee on judiciary noted that after a new apportionment, such readjustments are unavoidable and necessary to carry out the principle of vacating seats. (SJ1854 pp. 29-30, 38-40, 42-6, 53)
1854	Oconto, Outagamie, Waupaca, Assembly	John B. Jacobs	<u>David</u> <u>Scott</u>	Scott charged that the votes were improperly counted and that the returns from Waupaca had been rejected. (AJ1854, pp. 37-9)

CASES CONSIDERED BY THE WISCONSIN LEGISLATURE PROVIDING FOR EXPELLING OR
CENSURING OF MEMBERS 1838-1955

DATE	LEGISLATORS INVOLVED	KIND OF ACTION	GROUND FOR ACTION
1838	Alexander W. McGregor, Representative, Dubuque County	Censure-Adopted	Taking a bribe as a legislator (HRJ1838 p. 43-4)
1842	James R. Vineyard, Councilman, Grant County	Expel-Adopted	Shooting and killing Charles Arndt, a fellow legislator. (CJ1840-41 pp. 311-13)
1858	William Chappell, Senator, 14th District	Censure-Adopted	Obstructing legislation, tampering with witnesses and bribery.-(SJ1858 pp. 1209-24, 1353-58, 1369-70)
1858	Edgar Conklin, Assemblyman, Brown County	Censure-Withdrawn	Refusal to appear when there was a call of the house. (AJ1858 pp. 685, 689)
1858	10 assemblymen: Burdick, Easton, Irish, Stark, Alling, Bemis, Berg, Corson, Catzhausen and Roberts	Censure-Adopted	Refusal to appear when there was a call of the house. (AJ1858 p. 1742)
1905	All assemblymen who failed to respond at the morning's session	Censure-Indef. postponed	(AJ1905 p. 1707)
1905	Barney A. Eaton, Senator, 7th District	Expel-failed Censure-Adopted	Unbecoming conduct and failure to clear himself of charges of bribery. (SJ1905 pp. 801-14, 862-4)
1917	Frank Raguse, Senator, 8th District	Expel-Adopted	Refusal to retract statements made on the floor of the senate which were considered disloyal. (SJ1917 pp. 567-8, 598-604)
1921	6 assemblymen: Atcherson, Cook, Fifield, Smith, Summerville and Verkuilen	Censure-Indef. postponed	Refusal to vote on certain issues before the house whereby for want of a quorum, the house was forced to adjourn. (AJ1921 p. 1744)
1937	Emil Costello, Assemblyman, Kenosha County, 2nd District	Censure-Rejected	For absence without leave for 12 days between April 9 through May 17, 1937. (AJ1937 pp. 1589-90, 1633)
1941	7 senators: Busby, Cashman, Connors, Greenquist, Hampel, Nelson and Risser	Censure-Adopted	Refusal to vote for a bill and walking out of the senate chamber during roll call. (SJ1941 pp. 2030-1, 2036-7, 2052-9)