

By Mr. Businger of Brookline, petition of John A. Businger that provision be made for a judicial remedy for contesting the results of elections. Election Laws.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT PROVIDING A JUDICIAL REMEDY FOR CONTESTING THE RESULTS OF ELECTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 54 of the General Laws is amended by
2 striking out section 118, as appearing in the Tercentenary Edition,
3 and inserting in its place the following section: —

4 *Section 118.* The copies of the records of votes for presidential
5 electors shall, in any event, be opened and examined by the gover-
6 nor and council. Unless a contest has been commenced under
7 section one hundred thirty-seven A, the several persons, to the
8 number of electors required to be chosen, who have received the
9 highest number of votes, shall be deemed to be elected; and the
10 governor shall thereupon issue a certificate of election to every
11 such person.

1 SECTION 2. Sections one hundred and nineteen and one
2 hundred and twenty of said chapter fifty-four, and the preceding
3 caption, are repealed.

1 SECTION 3. Section 134 of said chapter 54 is amended by
2 striking out the second and third sentences, as appearing in section
3 24 of chapter 411 of the acts of 1943, and inserting in their place the
4 following sentences: — The envelopes or containers and ballots
5 shall be subject to the order of the body to which such person

6 claims to be elected, if a statute, charter, or constitutional provi-
7 sion confers jurisdiction on that body to judge the elections, re-
8 turns, and qualifications of its own members, or of any court
9 having jurisdiction thereof. Such body or court may require the
10 clerk to produce such envelopes or containers and ballots, and the
11 body may recount the ballots and amend any record or copy
12 thereof in relation to such office.

1 SECTION 4. Said chapter 54 is amended by inserting after
2 section 137 following caption and section: —

3 CONTESTS OF ELECTIONS

4 *Section 137A. Contests*

5 (a) *Definitions.* As used in this section:

6 (1) "Election" means a primary, preliminary election, or elec-
7 tion for any nomination, office, or political party position, or on
8 any question submitted to the voters.

9 (2) "Unsuccessful party" means a person who receives votes at
10 an election but is not apparently nominated or elected, or a politi-
11 cal committee organized in whole or in part to promote a position
12 which does not prevail on a question submitted to the voters.

13 (b) *Jurisdiction.* The supreme judicial court and the superior
14 court department of the trial court shall have jurisdiction to hear
15 and decide contests of elections under this section.

16 (c) *Commencement; parties.* The attorney general or any un-
17 successful party may initiate a contest of an election by commenc-
18 ing a civil action against:

19 (1) the person apparently nominated or elected and any unsuc-
20 cessful parties other than the plaintiff; but with respect to a ques-
21 tion submitted to the voters, the political committees, if any,
22 organized to promote the opposing position on the question; and

23 (2) in addition, the state secretary for a state election and the city
24 or town clerk for a city or town election.

25 (d) *Time.* The action must be commenced not later than the
26 sixth day after a primary or preliminary election, and not later than
27 the tenth day after a general election. If a recount petition is filed
28 under section one hundred thirty-five with respect to the relevant

29 office or question, the time shall be extended until the second day
30 after the completion or discontinuance of the recount for a primary
31 or preliminary election, and the tenth day after the completion or
32 discontinuance of the recount for a general election. The court on its
33 own motion shall advance any action under this section for speedy
34 trial under section fifty-nine D of chapter two hundred thirty-one.

35 (e) *Decision.* If the court finds that a mechanical failure or
36 violation of law affected the result of the election or prevents that
37 result from being determined with reasonable certainty or that a
38 candidate apparently elected lacks the requisite qualifications to
39 hold the office, the court may make whatever order justice re-
40 quires. In particular, the court may:

41 (1) order the records of the election corrected; or

42 (2) order a different person declared elected or the result of a
43 question submitted to the voters reversed, if the result of the
44 election has already been declared; or

45 (3) set aside the election in whole or in part and order a new
46 election to be held, if the court concludes that the result of the
47 election cannot be determined with reasonable certainty.

48 (f) *Recount necessary.* The failure to obtain a recount under
49 section one hundred thirty-five shall bar any ground of contest
50 under this section for which the recount could have provided an
51 efficacious remedy.

52 (g) *Legislative decisions.* This section applies even to offices as
53 to which a statute, charter or constitutional provision confers
54 jurisdiction on a legislative body to judge the returns, elections,
55 and qualifications of its own members. But no proceedings or
56 decisions under this section shall interfere in any way with such
57 legislative proceedings or decisions.

1 SECTION 5. Section thirty-three of chapter fifty-five of the
2 General Laws is repealed.

1 SECTION 6. Said chapter 55 is amended by striking out sec-
2 tion 42, as appearing in section 1 of chapter 151 of the acts of 1975,
3 and inserting in its place the following section: —

4 Section 42. The clerk of the court wherein any person is con-
5 victed of a violation of any provision of law relating to corrupt

6 practices in elections, shall, within ten days after conviction, for-
7 ward to the clerk of the city or town where the defendant resides a
8 certified copy of the record of the conviction, and the name of such
9 person shall forthwith be stricken from the roll of registered voters
10 of the city or town for a period of three years.