

# MAINE STATE LEGISLATURE

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# DOCUMENTS

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# THE LEGISLATURE

OF THE

# STATE OF MAINE,

DURING ITS SESSIONS

**A. D. 1842.**

*AUGUSTA:*

SMITH & Co., PRINTERS TO THE STATE.

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1842.

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**TWENTY-SECOND LEGISLATURE.**

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**NO. 2.]**

**[HOUSE.**

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**R E P O R T**

OF THE

**COMMITTEE ON ELECTIONS.**

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[WM. R. SMITH & Co.....Printers to the State.]



## **R E P O R T .**

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THE Committee on Elections, to which were referred the certificates of election of John J. Perry, Noah Prince and Samuel Gibson, who severally claim a seat in the House of Representatives, from the towns of Oxford, Buckfield, and Denmark, in the county of Oxford, having had that subject under consideration, ask leave to

### **R E P O R T :**

That they have examined the principles involved in these cases, with a view to arrive at a result, authorized by the constitution of this State, and consistent with the rights of the claimants. These principles being indetical, your committee deem it unnecessary to give each case a separate examination. No one of these towns contains a sufficient number of inhabitants to entitle it to a Representative. And it did not appear to your committee, that there was any illegality in the proceedings of these towns at the time of the alleged election of these claimants.

The resolves of the Legislature of this State for apportioning the Representatives among the several

cities, towns, plantations, and classes, at the third apportionment, passed April 2d, 1841, make no provision for the representation of these towns in the House of Representatives for the year 1842. If therefore, these claimants are entitled to seats in this House, they must be admitted not only without the sanction, but in defiance of these resolves.

If these resolves are constitutional in respect to these towns, your committee are clearly of the opinion that these claimants are not entitled to seats in this House.

Are then, these resolves touching these towns constitutional?

The people of this State have established a Constitution, for the government of themselves and their Representatives. Whatever power the Legislature possesses, respecting the right of suffrage, is derived from that instrument. The constitution, art. 2, sec. 1, wisely secures the right of suffrage to every elector of this State. This right existed prior to the establishment of the constitution, and lies at the foundation of all free governments. Whenever the Legislature abrogates or suspends the electoral right of the humblest elector, its acts may, indeed, have the imposing forms of law, but they are nothing short of substantial tyranny. To deprive any elector of this State, without his consent, of the right of being represented in the House of Representatives, is to take from him, and bestow upon

another, a portion of the sovereignty of the State; to impair the right of petition—separate taxation and representation, and prostitute the sacred purposes of government, to the unhallowed objects of party ascendancy.

The constitution, art. 4, part 1st, sec. 3d, provides “that, whenever any town or towns, plantation or plantations, not entitled to elect a Representative, shall determine against a classification with any other town or plantation, the Legislature may, at each apportionment of Representatives, on the application of such town or plantation, authorize it to elect a Representative, for such portion of time, and such periods, as shall be equal to its portion of representation.”

Before the Legislature can, under this provision of the Constitution, grant separate representation, two things must be done by the town or plantation:

1st. A corporate determination of said town or plantation, against a classification with any other town or plantation.

2d. An application of such town or plantation, in its corporate capacity, to the Legislature for separate representation.

Nor is the Legislature *imperatively bound* to grant separate representation, when both these provisions have been complied with. The language of the Constitution is, “the Legislature *may*, on the application of such town or plantation, authorize it to

elect a Representative," &c. Where the rights of no other town or plantation are involved, the right of the Legislature to refuse, is as clear as its right to grant separate representation. This construction of this provision of the Constitution corresponds with the construction given it by the framers of that instrument. The original draft of the Constitution provided "that the Legislature *"shall,"* upon the application of such town or plantation, authorize it to elect a Representative," thereby making it the imperative duty of the Legislature to grant separate representation. But the word *"shall"* was stricken out, and the word *"may"* inserted, for the very purpose of giving the Legislature power, to do justice to the towns and plantations not applying for separate representation. If one town should apply for separate representation, and another town, that could not be conveniently classed with any other towns than with that applying, should neglect to apply, the Legislature may refuse to grant separate representation, and class these towns.

During the debate in the Convention, on this amendment, it was remarked, "that in forming classes the Legislature might give one town a right to send a Representative according to its population, and class the others." And the whole tenor of this debate seems to have proceeded, with a general understanding that, if the Legislature upon any general apportionment, should grant separate represen-



tation, to any town or plantation, applying therefor, it would be its solemn duty, to class those towns that may not have determined against a classification. The Constitution itself is explicit on this point. Sec. 3d, art. 4, part 1st, provides “that towns and plantations duly organized, not having fifteen hundred inhabitants, *shall* be classed as conveniently as may be, into districts containing that number, and so as not to divide towns, and each such district may elect a Representative.” By what authority, then, can the Legislature refuse to class such towns and plantations? Every town in this State has a positive, absolute and constitutional right to be represented in the House of Representatives every year. Towns may, indeed, voluntarily waive this right for an equivalent, but your committee cannot find that the Legislature has any power, discretionary or absolute, to extort this right from them, nor that one town applying for separate representation can force separate representation upon another town. The positive and absolute right of every town in this State to annual representation in the House of Representatives, cannot be abrogated by the qualified right of another town to separate representation.

If the corporate action of one town can authorize the Legislature to impose separate representation upon another, then do the qualified electors of the small towns in this State enjoy the right of suffrage by a most precarious tenure.

Your Committee cannot acknowledge nor perceive the correctness of the position, that separate representation may be sometimes constitutionally assigned, without the corporate request of a town or plantation, as the result of a necessity arising from the existence of peculiar and uncontrollable circumstances, believing as they do, that the power, given to the Legislature, to assign separate representation, in any event, is merely potential, and not imperative, and that in no event can that power be constitutionally exercised, when, by its exercise, it would take from any one town or plantation, against its consent, for any period of time, the right of representation in the popular branch of the Legislature.

Your Committee cannot but believe, that a different conclusion would directly contravene, and virtually nullify the principle and the right, recognized and secured to the people, individually and collectively, by art. 1, sec. 22, of the Constitution of this State, wherein it is declared that "no tax or duty shall be imposed without the consent of the people, or of their Representatives in the Legislature."

Without entering into an examination of the question whether the Legislature of 1841, had a right, under the Constitution, to make any apportionment of Representatives, without first submitting to the people the question, "whether the number of Representatives shall be increased or diminished," your Committee also believe there is much force in

the position, that, that Legislature had no right to grant separate representation. Because that apportionment could not continue but one year, and, consequently, the towns admitted to separate representation, would during the continuance of that apportionment, have an undue proportion of representation in the House of Representatives, for which they could render no equivalent.

Entertaining these views of the constitutional principles involved in this question—and it appearing to your Committee that the towns of Oxford, Buckfield and Denmark, did not determine against a classification with any other town or plantation, your Committee cannot but arrive at the conclusion, that that portion of the apportionment Resolves of 1841, operating a disfranchisement of the qualified electors of these towns, is in contravention of the letter and spirit of the Constitution, subversive of the objects for which it was formed, and an infringement of one of the dearest rights of freemen.

Though fully impressed with the correctness of this conclusion, your Committee have been unable to discover any constitutional provision, whereby this House can redress the wrong, and restore to these towns their constitutional rights.

The Constitution makes this House the judge of the election and qualification of its members—but it also establishes the maximum number of Representatives at two hundred. And this number hav-

ing been already attained, your Committee cannot satisfy themselves that this House has any right to increase it.

The evil must depend for its correction, upon the amending hand of a people, that will never fail to avenge every legislative violation of their constitutional rights, through the appropriate and effective power of the ballot box.

Your committee, therefore, report the following resolve, which is herewith submitted.

J. G. DICKERSON,  
WM. FRYE,  
RANDALL SKILLIN,  
HIRAM CHAPMAN.

## STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }  
January 17, 1842. }

RESOLVED, That John J. Perry, Noah Prince,  
2 and Samuel Gibson, not having been legally  
3 elected Representatives, from the towns of Ox-  
4 ford, Buckfield, and Denmark, in the County of  
5 Oxford, respectively, are not entitled to seats in  
6 this House.



STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 19, 1842. }

ORDERED, That 300 copies of the foregoing Report and Resolve be printed for the use of House.

[Extract from the Journal.]

WM. T. JOHNSON, *Clerk.*