

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1860.

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SIEVENS & SAYWARD, PRINTERS TO THE STATE.

1860.

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# THIRTY-NINTH LEGISLATURE.

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HOUSE.

No. 3.

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## MINORITY REPORT

OF THE

## COMMITTEE ON ELECTIONS.

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The undersigned, a minority of the Committee on Elections, to which was referred the certificate of the election of George L. Cleaves, claiming to hold a seat in this House, as representative from the District composed of the town of Bridgton, and the remonstrance of Alvin Davis and 13 others against the right of said George L. Cleaves to hold said seat having had the same under consideration, and being unable to agree with the majority of the said committee, asks leave to

### REPORT.

It appeared in evidence before the Committee that George L. Cleaves was elected as representative at a meeting holden at said Bridgton on the second Monday of September, A. D. 1859, for the choice of Governor, Senators and County Officers, and that the following is a true copy of the warrant by which said meeting was notified and warned :

To JOHN KILBORN, Jr., constable of the town of Bridgton, in the county of Cumberland,

*Greeting :*

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of said town of Bridgton qualified under the provision of the constitution and laws of the state, to

vote for state officers and county officers, to meet and assemble at the town house in said town, on the second Monday of September next, it being the twelfth day of said month, at one o'clock, P. M., to give in their votes

For a governor of said state for the next political year ;

For four senators for the second senatorial district in the next legislature of the state ;

For a county attorney for Cumberland county ;

For county treasurer for Cumberland county ;

For a county commissioner for Cumberland county.

The selectmen will be in session at the town house, on Saturday preceding the election, at nine o'clock, A. M., and at the same place on the day of election, at ten o'clock, A. M., to hear and decide on the application of persons claiming the right to vote at said election, and for the purpose of correcting the list of voters.

Dated at Bridgton, August 31st, A. D. 1859.

LUTHER BILLINGS, } *Selectmen of*  
JOHN KILBORN, } *Bridgton.*

The return of the Constable on the foregoing warrant shows that he posted up an attested copy thereof at the post office in said town, on the 31st day of August, A. D. 1859, and does not show that he gave any other notice.

L. M. Burnham, whose deposition was before the committee, testifies that the foregoing is a true copy of the original warrant used at the election and recorded in the town records; that no other warrant has ever come to his hands, and that at the time he signed the certificate of the election of George L. Cleaves, he was not aware that there was no article in the warrant for the election of a Representative to the State Legislature.

It appeared that a copy of a warrant bearing date August 19, A. D. 1859, was published in the Bridgton Reporter, a newspaper printed in the town of Bridgton, but that, it being defective, was recalled by the selectmen, and the foregoing warrant issued in its stead. It did not appear that the town had appointed any other than the statute mode for calling meetings or that the second warrant was ever published in said newspaper, and the legal and necessary presumption is, that the town had never appointed any other mode.

Art. 3, Sec. 5, of the Constitution of Maine, requires that meetings for the choice of representatives shall be warned in due course of law by the selectmen, seven days at least before the election.

Chap. 4, Sec. 14, of the Revised Statutes, provides that such meetings shall be warned in the manner legally established for warning other town meetings; and by Sec. 5, Chap. 3, it is provided that the business to be acted upon at town meetings shall be stated in distinct articles in the warrant, and that no other business matter or thing shall be there acted upon.

The decisions of the Supreme Court, which is the interpreter of the Constitution and the laws, have been uniform that any violation of or departure from the requirements of the Constitution invalidates all proceedings attempted to be had under it. The justices of that court have never considered any of the requirements of the Constitution of little importance, as *simply directory*, or that they can be violated or disregarded with impunity. They have also decided that any want of compliance with the provisions and requirements of the statutes in the warrant calling a meeting, or in the officer's return thereon, will render void all proceedings had at such meeting.

In view of the foregoing requirements of the Constitution and laws, and of the decisions of the Supreme Court in analogous cases, the undersigned cannot but come to the conclusion that the election of George L. Cleaves was void, there having been no article in the warrant for the meeting at which he was elected for the choice of a Representative to the Legislature; that it is not only necessary that the inhabitants should have the legal right to elect, but that they should exercise that right in a legal way; that the requirement of the constitution prescribing the way in which the right of franchise shall be exercised is equally peremptory with that prescribing the time; that an election of representative held on the second Monday in December would be equally as valid as one held at a meeting not called in conformity with the requirements of the Constitution and that consequently there is a vacancy in the representative District composed of the town of Bridgton.

All of which is respectfully submitted.

ALVAH BLACK.

STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, Jan. 24, 1860.

Laid on the table, on motion of Mr. Woodbury of Sweden, and  
350 copies ordered to be printed for the use of the Legislature.

CHARLES A. MILLER, *Clerk.*