

MAINE STATE LEGISLATURE

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121ST LEGISLATURE
SENATE COMMITTEE ON
SENATORIAL VOTE

December 16, 2002

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Senator Beverly Daggett
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Daggett:

In accordance with Senate Order 10 passed December 4, 2002, the Committee on Senatorial Vote has met to determine the outcome of the election held November 5, 2002, in Senate District 16.

The Committee was presented with the vote totals from the recounts held November 18, 19, and 25, 2002, as follows:

Christopher G.L. Hall 8,893

Leslie T. Fossel 8,884

Disputed Ballots 44

Jefferson Challenged Ballots 4

After deliberation the Committee proceeded to vote on the 44 disputed ballots and the following votes were added to the recount totals:

Christopher G. L. Hall 18 votes

Leslie T. Fossel 20 votes

No Votes 6

SC0014

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12/16/02
Senatorial Vote Committee

The Committee unanimously agreed that the final vote was:

Christopher G. L. Hall 8,911
Leslie T. Fossel 8,904

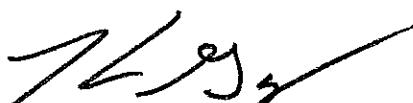
And further agreed that Chris Hall is determined the winner.

During this recount an issue arose regarding precedents, which may have been set in past Senate Recounts. Therefore as a guide to the future and because of the importance we attach to this process being fair, open and transparent we have attached a full Report of the Committee complete with a copy of the Secretary of State's official dispute sheet, a ballot-by-ballot description of said dispute, the rationale of the majority, and the final outcome for each vote taken.

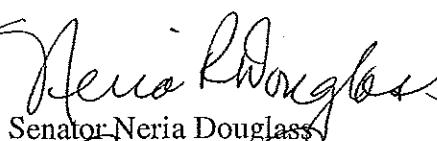
Signed,


Senator Betheda Edmonds, Chair

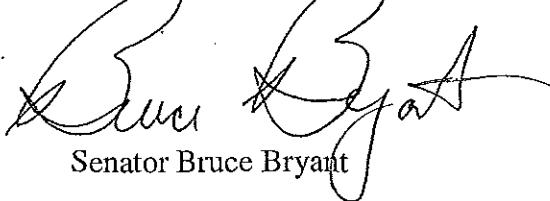

Senator Paul Davis Sr.


Senator Kenneth Gagnon


Senator Carol Weston


Senator Neria Douglass


Senator Arthur Mayo, III


Senator Bruce Bryant

Report of the Committee on Senatorial Vote

The Maine Constitution provides in Article IV Part Second, Section 5 that "The Senate shall on the first Wednesday of December, biennially determine who is elected by a plurality of the votes to be Senator in each district." On December 4, 2002, Christopher Hall was seated as the apparent winner based on the fact that by the count supplied by municipal officials and sent to the Senate by the Secretary of State he had won a plurality of the vote. However, Mr. Hall was seated provisionally, because a recount initiated by his opponent Leslie Fossel had not been completed.

When terminated by the parties, the recount left Mr. Hall ahead by nine votes, but there were forty-four disputed ballots and four other ballots, which had not been counted on Election Day because the municipal official was not certain the voters met the residency requirements. M.R.S.A. Title 21-A, § 737-A. Recount, §§ 10 Appeals provides:

10. Appeals. For all elections, except for the Senate and the House of Representatives, if there are enough challenged or disputed ballots to affect the result of an election, the Secretary of State shall forward the ballots and related records for that election to the clerk of the Supreme Judicial Court. The Supreme Judicial Court shall determine the result of the election pursuant to the procedures adopted by court rule. The decision of the Supreme Judicial Court is final and must be certified to the Governor by the Chief Justice. For all elections to the Senate and the House of Representatives, each House shall establish procedures for recount appeals.

Pursuant to the Constitution and consistent with M.R.S.A. Title 21-A the Maine Senate on December 4, 2002, referred the election in Senate District 16 to this Committee. Senator Betheda Edmonds, Chair, called the Committee to order. The roll was called and ranking Republican Senator Paul Davis, Sr., Senator Kenneth Gagnon, Senator Neria Douglass, Senator Bruce Bryant, Senator Arthur Mayo, III, and Senator Carol Weston were all present representing the entire membership of the Committee. Senator Davis moved that the ballots be released to the public and the motion was seconded. Chair Edmonds asked the attorneys for the two candidates to respond to the motion and Attorney Hull speaking for Hall and Attorney Lechner for Fossel each told the Committee that their client would like to see the disputed ballots be made public. In addition, attorney Lechner argued that pursuant to the Maine Constitution, the Senate had the authority to make the ballots public.

Then Chair Edmonds asked Ms. Flynn from the Secretary of State's office what law governed this question and Ms. Flynn pointed out that Maine law expressly provides that the ballots themselves are not public records.

Chair Edmonds then called on Ms. Phyllis Gardiner of the Attorney General's office for her opinion of the law. Ms. Gardiner opined that while it can be argued that both the Constitution and M.R.S.A. Title 21-A leave the way open for the Senate a whole to establish procedures, which would make the disputed ballots public, that absent authorization from the Senate, the Committee did not seem to be authorized to do so. Based upon this advice, the motion by Senator Davis failed 3-4 (Roll Call #2).

Senator Davis then moved that the Committee send the disputed ballots to the Maine Supreme Judicial Court for an advisory opinion. The motion was seconded and discussed. It was pointed out that the matter had already been sent to the Court and the Court said it was the Senate's question to decide and that subsequent to that the Senate as a whole rejected the idea, sending it back to the Supreme Judicial Court when it rejected a motion made by Senator Davis before the full Senate. The Committee did not request comments from the attorneys representing the candidates with regard to this issue. The motion failed by a vote of 3 to 4 (Roll Call #3).

Senator Douglass moved that the Constitution of the State of Maine, M.R.S.A. 21-A, relevant case law from the Maine Supreme Judicial Court, and the precedents of the Maine Senate govern the Committee. The motion passed by unanimous vote (Roll Call #4).

Senator Gagnon moved that the Committee adopt procedures. The motion provided that the ballots would be taken up one at a time and decided by recorded vote. The procedures required the Secretary of State's office to describe each ballot and the flaws which caused it to be challenged; the Chair would be allowed to add to the description, then the ranking Republican Senator Davis, and then any member of the Committee until a clear understanding was reached as to the issue the flaws raised. The motion also provided that the attorneys for each candidate would be given fifteen minutes at the outset and then two minutes before consideration of each ballot. Senator Gagnon's motion was seconded and adopted by unanimous vote (Roll Call #5).

After listening to the arguments and accepting submissions from the representatives of Mr. Hall and Mr. Fossel, the Committee proceeded to consider the disputed ballots in the order in which it was disputed during the candidate's recount. The Committee deliberated on each ballot and the findings are detailed below.

Ballot ¹	Description and Determination	Fossel	Hall	No Vote
1 (A2-1)	<p>This ballot had the squares entirely marked in for all votes cast. Also, this ballot had the first two letters of Mr. Fossel's name marked over. There was no mark in the Hall box. The majority of the Committee decided that the voter clearly intended to vote for Fossel and that the marking out of the first two letters of Fossel's name did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" These marks outside the box do not, on their own, manifest any intent to make a distinguishing mark on this ballot or act in a fraudulent manner. The Maine Supreme Judicial Court has held that " a ballot should not be rejected on the ground of fraudulent marking when its appearance is consistent with any honest action or intention of the voter." Murray v. Waite, 113 Me. 485, 491, 94A, 943, 946 (1915) These marks are consistent with a voter just emphasizing his or her support of Fossel.</p> <p>Ballot counted for Fossel. Decided by a vote of 7 - 0</p>	1		

¹ First number is the order in which the committee took up the ballot, the alpha number in parentheses is the number given by the Secretary of State when the ballot was challenged during the recount.

2(A15-1)	<p>This ballot had the word "Independent" written at the top in pencil. The ballot was properly marked in pencil for Hall. There was an X across the entire ballot in red ink (as used by election clerks) and in red ink at the top was the word "unique." The majority of the Committee decided that the clerk had improperly excluded the vote because of the incorrect determination that the word "Independent" constituted a distinguishing mark. The majority decided this mark did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> The majority concluded that the word "Independent" does not on its own manifest any intent to make a distinguishing mark on this ballot or act in a fraudulent manner. The Maine Supreme Judicial Court has held that "a ballot should not be rejected on the ground of fraudulent marking when its appearance is consistent with any honest action or intention of the voter." Murray v. Waite, 113 Me. 485, 491, 94A. 943, 946 (1915). The majority concluded that these marks are consistent with a voter just stating his political view or political party and the Supreme Judicial Court has found that voters making marks which indicate party affiliation do not disqualify a ballot. Opinion of the Justices (1965) 161 Me. 32, 206 A.2d 541.</p> <p>Ballot counted for Hall. Decided by a vote of 4-3</p>	1	
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3(A27-1)	<p>On this ballot the voter consistently indicated a preference by putting an X near the party identification of the candidate instead of in the box next to the candidate's name. The voter marked in this manner by Democrat near Hall's name. The Hall X was lighter than the others. The attorney representing Fossel argued that the X proximate to Hall was in pencil while the remainder of the ballot was in ink. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote reads at paragraph 2. <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i></p> <p>The majority decided the clear intent of the voter was to vote for Hall, and that the method of voting did not constitute distinguishing marks or evidence of other fraudulent conduct. The Supreme Judicial Court has found that marks that are made outside the box do not disqualify a ballot. Opinion of the Justices (1965) 161 Me. 32, 206 A.2d 541.</p> <p>Ballot Counted for Hall Decided by a vote of 4-3</p>		1	
4(A42-1)	<p>This was a ballot clearly marked for Hall but marked void on the back. Also, according to the Official Secretary of State Description, this ballot was folded, taped shut and included with the group of absentee envelopes. The Majority of the Committee decided that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of void together with the segregation of the ballot and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Hall would be to allow the voter to vote twice.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>		1	
5(A50-3)	<p>The voter marked this ballot by making a diagonal line as opposed to an X or a ✓ in the box next to Fossel's name. The method of voting was consistent down the ballot. The majority decided the intent of the voter was to vote for Fossel and that the method of voting did not constitute distinguishing marks.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		

6(B23-1)	<p>This ballot was marked with a ✓ for Fossel but there was also a light line in the Hall box. The vote consistently used ✓'s throughout the ballot. The majority decided the intent of the voter was to vote for Fossel and that the stray line did not constitute a distinguishing mark. See Opinion of the Justices (1965) 161 Me. 32, 206 A.2d 541.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		
7(B30-1)	<p>This ballot had a clear ✓ in the box next to Hall's name. In the box next to Fossel's name was a ✓ which had been scribbled over or crossed out. The attorney for Mr. Fossel declared that in a recount conducted by the Senate in 2002, ballots such as this one were not counted. An effort was made to verify this in the official record. Senator Douglas argued that in any case this was an issue of fact and not law and should be decided by examining the ballot and deciding if a reasonable person could glean the voter's intent. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote reads at paragraph 2. <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i></p> <p>The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Fossel and vote for Hall.</p> <p>Ballot Counted for Hall. Decided by a vote of 4-3</p>	1		

8(B49-1)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	
9(B49-2)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	

10(B49-4)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	
11(B49-5)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	

12(B49-7)	<p>This ballot was clearly marked for Hall but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1	
13(B49-8)	<p>This ballot was clearly marked for Hall but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1	

14(C5-1)	<p>The voter consistently used an X in the box to indicate voter choice. There was an X in the box next to Hall there was no X in the box next to Fossel. The X in the box next to Hall was not as dark as most of the other X's on the ballot. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote reads at paragraph 2. <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i></p> <p>The majority decided that the clear intent of this voter was to vote for Hall.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1	
15(C21-1)	<p>On this ballot the voter consistently indicated a preference by putting a ✓ near the party identification of the candidate instead of in the box next to the candidate's name. The voter marked in this manner by Republican near Fossel's name. This vote had a similar defect to ballot 3, which was counted for Hall. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Determination of Choice Possible reads <i>If a voter marks the voter's ballot in a manner that differs from the instructions at the top of the ballot but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned must be counted.</i> The majority decided the clear intent of the voter was to vote for Fossel, and that the method of voting did not constitute distinguishing marks. The Supreme Judicial Court has found that marks which are made outside the boxes do not disqualify a ballot. Opinion of the Justices (1965) 161 Me. 32, 206 A.2d 541.</p> <p>Ballot Counted for Fossel Decided by a vote of 7-0</p>	1	
16(C35-1)	<p>The voter indicated the choice of Fossel with a T in the box next to his name. There were write in candidates lower on the ballot who were disqualified. The majority decided these write-ins did not constitute a distinguishing mark. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote. Which reads at paragraph B, <i>If a voter writes in a write-in space a fictitious name, the name of a deceased person or the name of a person from outside the state who could not be a candidate for office, the vote for that office may not be counted. A name written in this manner is not a distinguishing mark.</i> The majority found no distinguishing mark and counted the vote for Fossel.</p> <p>Ballot Counted for Fossel Decided by a vote of 7-0</p>	1	

17(C37-1)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	
18(C37-2)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	

19(C37-3)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1	
20(C37-4)	<p>This ballot was clearly marked for Hall but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1	

21(D12-1)	<p>This ballot had a clear X in the box next to Hall's name. In the box next to Fossel's name was an X which had been scribbled over or crossed out. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Fossel and vote for Hall. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Hall. Decided by a vote of 6-1</p>		1
22(D17-1)	<p>On this ballot the voter consistently indicated a preference by putting a ✓ near the party identification of the candidate instead of in the box next to the candidate's name. The voter marked in this manner by Republican near Fossel's name. This is similar to ballot 3, which was counted for Hall. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The majority decided the clear intent of the voter was to vote for Fossel, and that the method of voting did not constitute distinguishing marks. The Supreme Judicial Court has found that marks which are made outside the boxes do not disqualify a ballot. Opinion of the Justices (1965) 161 Me. 32, 206 A.2d 541.</p> <p>Ballot Counted for Fossel. Decided by a vote of 7-0</p>	1	

23(D32-1)	<p>This ballot had a clear X in the box next to Hall's name. In the box next to Fossel's name was an X, which had been scribbled over or crossed out. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Fossel and vote for Hall. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Hall. Decided by a vote of 7-0</p>		1	
24(D47-1)	<p>The voter indicated the choice of Fossel with a ✓ in the box next to his name. There was a write-in candidate lower on the ballot that was disqualified. The majority decided this write-in did not constitute a distinguishing mark. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote. Which reads at paragraph B, <i>If a voter writes in a write-in space a fictitious name, the name of a deceased person or the name of a person from outside the state who could not be a candidate for office, the vote for that office may not be counted. A name written in this manner is not a distinguishing mark.</i> The majority found no distinguishing mark and counted the vote for Fossel.</p> <p>Ballot Counted for Fossel. Decided by a vote of 7-0</p>	1		

25(E16-2)	<p>This ballot had a clear ✓ in the box next to Hall's name. In the box next to Fossel's name was ✓ which had been crossed out with an X. The voter consistently used ✓'s in the box next to the candidates' names on the entire ballot. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i></p> <p>The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Fossel and vote for Hall. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Hall. Decided by a vote of 7-0</p>		1	
26(E45-1)	<p>The voter consistently marked the ballot with an X in the box next to the candidate's name. The X next to Fossel's name was darker than the other X's. Just as on ballot 14 (C-5-1) the majority counted a vote for Hall which was somewhat lighter, the majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> In this instance the majority decided that the clear intent of this voter was to vote for Fossel.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		

27(E48-1)	<p>The voter indicated the choice of Fossel with an X in the box next to his name. Lower on the ballot there was a disqualified write-in for "Anyone else." The majority decided this write-in did not constitute a distinguishing mark. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote. Which reads at paragraph B, <i>If a voter writes in a write-in space a fictitious name, the name of a deceased person or the name of a person from outside the state who could not be a candidate for office, the vote for that office may not be counted. A name written in this manner is not a distinguishing mark.</i> The majority found no distinguishing mark and counted the vote for Fossel.</p> <p>Ballot Counted for Fossel. Decided by a vote of 7-0</p>	1		
28(F11-1)	<p>This ballot had a clear X in the box next to Hall's name. In the box next to Fossel's name was an X, which had been crossed out. The voter consistently used X's in the box next to the candidates' names on the entire ballot. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Fossel and vote for Hall. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Hall. Decided by a vote of 6-1</p>	1		

29(F16-1)	<p>This voter consistently used ✓'s in the box to indicate choice. There is a clear ✓ in the box next to Hall's name. The voter also consistently crossed out the candidates he or she did not vote for. The voter crossed out Fossel's name. The majority of the Committee decided that the voter made clear the intent to vote for Hall and that the crossing out other names did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>"</p> <p>The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had crossed out the names of candidates. The Court counted the vote for the candidate whose name was not crossed out. There is no manifestation of any intent to make a distinguishing mark on this ballot. In addition, the Supreme Judicial Court in Opinion of the Justices (1965) 161 Me. 32, held that an unnecessary additional mark intended to emphasize the voter's choice does not constitute a distinguishing mark.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1	
30(F23-1)	<p>The voter indicated the choice of Hall with an X in the box next to his name. Lower on the ballot there was a disqualified write-in for "Pete." The majority decided this write-in did not constitute a distinguishing mark. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote. Which reads at paragraph B, <i>If a voter writes in a write-in space a fictitious name, the name of a deceased person or the name of a person from outside the state who could not be a candidate for office, the vote for that office may not be counted. A name written in this manner is not a distinguishing mark.</i> The attorney for Fossel argued that "Pete" constitutes neither a fictitious name, the name of a deceased person or the name of a person from outside the state who could not be a candidate for office. The majority found no distinguishing mark and counted the vote for Hall.</p> <p>Ballot Counted for Hall. Decided by a vote of 4-3</p>	1	

31(F38-2)	<p>This ballot was clearly marked for Fossel but it was marked consistently in ink. The clerk had marked in red pencil that it was an invalid ballot. The majority found no reason to believe that this ballot had been a spoiled ballot and that the voter had been given a replacement ballot. Instead it appeared clear to the majority that the clerk disqualified the ballot because it was marked in pen instead of pencil. The intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		
32(G11-2)	<p>This voter marked his ballot by putting ✓'s to the left of the candidate's name. This was consistent. There is a ✓ next to the name Hall. At the top of the ballot in red ink is the word "void." The back of the ballot had been used as a counting sheet and had red marks arranged in groups of five. The majority found no evidence that the ballot was a spoiled ballot that was replaced. It was not found segregated in the box from the municipality when opened by the Secretary of State and the fact that it was used as a counting sheet suggests that it was among the regular ballots when counting began. Absent evidence that this voter was given another chance to vote, the majority then looked to intent and it was clear to the majority that the voter intended to vote for Hall. The majority went on to find the manner in which the voter marked the ballot did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. <i>"A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void."</i> There is no manifestation of any intent to make a distinguishing mark on this ballot. The majority found that the clerk erred when it "voided" the ballot because the voter did not mark in the squares.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>	1		

33(G13-1)	<p>This voter began marking the ballot with an X in the square for Pingree but as the voter worked down the ballot some of the X's were just left of the square. There is an X just left of the square next to Hall's name. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot on which the voter had not marked within the space which was designated for voting and court applying this law determined that the intent could still be determined and the vote was counted. The majority decided the clear intent of the voter was to vote for Hall. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Hall. Decided by a vote of 7-0</p>	1	
34(G15-1)	<p>This voter consistently used a ✓ in the box to indicate choice. In two instances the voter made a ✓ in a box, then erased it and put a check in the box below it. This was done with Collins/Pingree and the clerk circled it in red and wrote in red "do not count." The voter did it again in the state Senate race where the voter put a ✓ in the Fossel box, then erased it and put a ✓ in the Hall box. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§2 Invalid vote reads at paragraph B. <i>If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of Republican Primary: House District #151 in 1994, the voter erased an X and then put an X in the other candidate's box. The court counted the vote of the candidate with the clear X giving no weight to the erased X. The majority decided in a like manner that the clear intent of the voter was to vote for Hall. The minority concluded that the ✓ in the Fossel box was visible enough to render it impossible to determine the voter's intent.</p> <p>Ballot Counted for Hall. Decided by a vote of 4-3</p>	1	

35(G49-1)	<p>This ballot had a clear X in the box next to Fossel's name. In the box next to Hall's name was an X, which had been crossed out. The voter consistently used X's in the box next to the candidates' names on the entire ballot. The majority of the Committee relied upon M.R.S.A. Title 21-A § 696, §§4 Invalid vote reads <i>Invalid vote. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.</i> The Supreme Judicial Court in the Matter of 1998 General Election, County Commissioner, District 3, Somerset County, applied this standard to a ballot where the voter had filled in the arrow next to both names and then crossed out the name of one of the candidates. The Court counted the vote for the candidate whose name was not crossed out. The majority decided the clear intent of the voter was to cross out Hall and vote for Fossel. The attorney for Fossel argued that this ballot, like B30-1 represented an over vote and that the Senate held such ballots to be over votes in the March 2002 proceedings. The majority found nothing in the record to support the claim and Senator Douglass argued that it was an issue of fact, not law, and the Committee needed to make a determination based on the facts in this instance.</p> <p>Ballot Counted for Fossel. Decided by a vote of 7-0</p>	1	
36(H16-1)	<p>The voter put a clear ✓ in the box next to Hall's name. There was a light pencil mark in the Fossel box. The voter used ✓'s elsewhere on the ballot to indicate choice. The majority found that this was similar to B23-1 that was counted for Fossel. In this case the intent of the voter was clearly to vote for Hall and that the light mark in Fossel's box did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The minority concluded that voter intent could not be determined where there were marks inside each candidate's box.</p> <p>Ballot counted for Hall. Decided by a vote of 4-3</p>	1	

37(H17-2)	<p>This ballot was clearly marked for Hall but it was marked consistently in red ink. The majority found that the intent of the voter was clear and the majority applied M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. “<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>” There is no manifestation of any intent to make a distinguishing mark on this ballot. The most plausible reason the voter used a pen is because one was left in the booth not that there was any unlawful intent. The majority decided the ink did not constitute a distinguishing mark.</p> <p>Ballot counted for Hall. Decided by a vote of 7-0</p>		1
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38(H18-1)	<p>This is a ballot from the Town of Damariscotta. The voter consistently marked with ✓'s in the box next to the candidate's name. The voter had a ✓ in the box next to Fossel's name. In the U.S. Senate race the voter made a mistake marking Pingree and then crossing it out and marking Collins. The ballot was not completed. It was marked void on the back and when first taken out of the box of ballots by the Secretary of State it had been in an envelope stamped void. The Majority of the Committee decided, consistent with Ballot 14(C5-1) which had was marked for Hall, that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of void together with the segregation of the ballot in an envelope marked "void" and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Fossel would be to allow the voter to vote twice.</p> <p>This decision is reinforced by the fact that Mr. Hall's attorney provided the Committee with an affidavit from Beverly Zahner, Registrar of Voters for the Town of Damariscotta. A copy of that affidavit is attached to this report. In it Zahner swears that in the November 2002 election there were five instances in which there were spoiled ballots and the voters were given replacement ballots. Three were issued to absentee voters and the spoiled ballots were marked spoiled or void and secured together with a rubber band. The remaining two were spoiled on election day and those were put in a manila envelope and marked void ballots. This is clearly one of the latter two ballots.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>		1
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39(H18-2)	<p>This is a ballot from the Town of Damariscotta. The voter consistently marked with X's in the box next to the candidate's name. The voter had an X in the box next to Fossel's name. The ballot was not completed. It was marked void on the front and back and when first taken out of the box of ballots by the Secretary of State it had been in an envelope stamped void. The Majority of the Committee decided, consistent with Ballot 14(C5-1) which had was marked for Hall, that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of void together with the segregation of the ballot in an envelope marked "void" and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Fossel would be to allow the voter to vote twice.</p> <p>This decision is reinforced by the fact that Mr. Hall's attorney provided the Committee with an affidavit from Beverly Zahner, Registrar of Voters for the Town of Damariscotta. A copy of that affidavit is attached to this report. In it Zahner swears that in the November 2002 election there were five instances in which there were spoiled ballots and the voters were given replacement ballots. Three were issued to absentee voters and the spoiled ballots were marked spoiled or void and secured together with a rubber band. The remaining two were spoiled on election day and those were put in a manila envelope and marked "void ballots." This is clearly one of the three ballots spoiled by absentee voters voting before election day.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>			1
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40(H19-1)	<p>This is a ballot from the Town of Damariscotta. The voter consistently marked with X's in the box next to the candidate's name. The voter had an X in the box next to Hall's name. The ballot was not completed. It was marked void on the front and back and when first taken out of the box of ballots by the Secretary of State it was secured together with two other ballots by a rubber band. The Majority of the Committee decided, consistent with Ballot 14(C5-1) which had was marked for Hall, that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of spoiled together with the segregation of the ballot in an envelope marked "void" and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Hall would be to allow the voter to vote twice.</p> <p>This decision is reinforced by the fact that Mr. Hall's attorney provided the Committee with an affidavit from Beverly Zahner, Registrar of Voters for the Town of Damariscotta. A copy of that affidavit is attached to this report. In it Zahner swears that in the November 2002 election there were five instances in which there were spoiled ballots and the voters were given replacement ballots. Three were issued to absentee voters and the spoiled ballots were marked spoiled or void and secured together with a rubber band. The remaining two were spoiled on election day and those were put in a manila envelope and marked "void ballots." This is clearly one of the latter two ballots.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>		1
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41(H19-2)	<p>This is a ballot from the Town of Damariscotta. The voter consistently marked with X's in the box next to the candidate's name. The voter had a X in the box next to Fossel's name. The ballot had a big X over Carter's name. It was marked "Spoiled" on the back and when first taken out of the box of ballots by the Secretary of it was secured together with two other ballots by a rubber band. The Majority of the Committee decided, consistent with Ballot 14(C5-1) which had was marked for Hall, that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of void together with the segregation of the ballot in an envelope marked "void" and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Fossel would be to allow the voter to vote twice.</p> <p>This decision is reinforced by the fact that Mr. Hall's attorney provided the Committee with an affidavit from Beverly Zahner, Registrar of Voters for the Town of Damariscotta. A copy of that affidavit is attached to this report. In it Zahner swears that in the November 2002 election there were five instances in which there were spoiled ballots and the voters were given replacement ballots. Three were issued to absentee voters and the spoiled ballots were marked spoiled or void and secured together with a rubber band. The remaining two were spoiled on election day and those were put in a manila envelope and marked "void ballots." This is clearly one of the latter two ballots.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>		1
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42(H19-3)	<p>This is a ballot from the Town of Damariscotta. The voter consistently marked with X's in the box next to the candidate's name. The voter had an X in the box next to Fossel's name. The ballot was not completed. It was marked "Void" on the back and when first taken out of the box of ballots by the Secretary of it was secured together with two other ballots by a rubber band. The Majority of the Committee decided, consistent with Ballot 14(C5-1) which had been marked for Hall, that even though the Clerk had not followed the precise procedures provided for marking a spoiled ballot, that the designation of void together with the segregation of the ballot in an envelope marked "void" and the fact that the voter did not fill out the entire ballot, taken together made it clear to the Committee that this voter had been given a replacement ballot consistent with Maine law and to count this vote for Fossel would be to allow the voter to vote twice.</p> <p>This decision is reinforced by the fact that Mr. Hall's attorney provided the Committee with an affidavit from Beverly Zahner, Registrar of Voters for the Town of Damariscotta. A copy of that affidavit is attached to this report. In it Zahner swears that in the November 2002 election there were five instances in which there were spoiled ballots and the voters were given replacement ballots. Three were issued to absentee voters and the spoiled ballots were marked spoiled or void and secured together with a rubber band. The remaining two were spoiled on election day and those were put in a manila envelope and marked void ballots. This is clearly one of the latter two ballots.</p> <p>Ballot not counted for either candidate.</p> <p>Decided by a vote of 7-0</p>			1
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43(H37-1)	<p>This voter marked his ballot by putting X's in the box next to the candidate's name. There is an X next to the name Fossel. The ballot is marked "void" in red ink. The voter voted for two candidates for Governor. The majority found no evidence that the ballot was a spoiled ballot that was replaced. It was not found segregated in the box from the municipality when opened by the Secretary of State and the fact that the ballot had two votes for Governor suggests the word void refers to that mistake. Absent evidence that this voter was given another chance to vote, the majority then looked to intent and it was clear to the majority that the voter intended to vote for Fossel. The majority went on to find the manner in which the voter marked the ballot did not constitute a distinguishing mark as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" There is no manifestation of any intent to make a distinguishing mark on this ballot. The majority found that the clerk erred when he or she wrote, "void" on the ballot and decided this was a vote for Fossel.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		
44(H43-1)	<p>This voter indicated his or her choice by putting a ✓ in the box next to the candidate's name and also writing in the same person's name in the space set aside for write-ins. This was done consistently. The voter voted in this manner for Fossel. The majority found no ambiguity of intent and found that these write-in names did not constitute distinguishing marks as provided in M.R.S.A. Title 21-A § 696, §§5 Void Ballots which reads at paragraph A. "<i>A ballot on which a voter has clearly manifested an intention to make a distinguishing mark or to mark the ballot in a manner inconsistent with an honest purpose or to act in a fraudulent manner is void.</i>" In addition, the Supreme Judicial Court in Opinion of the Justices (1965) 161 Me. 32, held that an unnecessary additional mark intended to emphasize the voter's choice does not constitute a distinguishing mark. There is no manifestation of any intent to make a distinguishing mark on this ballot. The majority voted to count this ballot for Fossel.</p> <p>Ballot counted for Fossel. Decided by a vote of 7-0</p>	1		
	Totals	20	18	6

When these totals are added to the totals from the ballots agreed upon by the parties during the recount process, the majority finds that the total for each candidate as follows:

Fossil.....	8904
Hall.....	8911

It was moved by Senator Douglass and seconded that based on these findings, the Committee on Senatorial Vote declares that Christopher Hall is the winner.

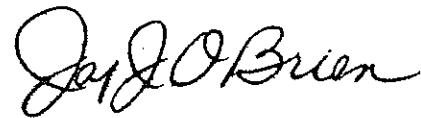
Senator Davis stated that he would support the motion but he wanted it noted for the record that he had expressed reservations on including ballot A-15-1 a ballot with "Independent" written across the top. He was also troubled that the Committee had not followed the precedent he believes was set by the Brennan - Vamvakias Committee by including ballots which the majority at this time believed were scratched out for one candidate and voted for the other.

After noting these reservations the Committee voted unanimously to pass the motion that declared Christopher Hall the winner in Senate District 16 and recommended that the Maine Senate should permanently seat Christopher Hall of Lincoln County as the Senator representing Senate District 16.

IN THE SENATE CHAMBER

January 9, 2003

READ AND WITH ACCOMPANYING PAPERS ORDERED PLACED
ON FILE



SECRETARY OF THE SENATE