

MAINE STATE LEGISLATURE

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FIFTY-FIRST LEGISLATURE.

SENATE.

No. 5.

REPORT OF THE COMMITTEE ON SENATORIAL VOTES.

THIRTEENTH SENATORIAL DISTRICT.

The Committee on Senatorial Votes ask leave to submit the following additional report, it being in relation to the Thirteenth Senatorial District, (Waldo County.)

Your Committee find the returns from many of the towns in this district very irregular and informal, but their action was unanimous, and they arrived at the same conclusions that the Honorable Governor and Council did, in regard to all the towns in this district but five, viz: Knox, Lincolnville, Monroe, Searsport and Swanville. In regard to the town of Lincolnville, your committee were unanimously of the opinion that if the vote was allowed to be counted, that 380 was the proper number instead of 401; that neither the Senatorial votes, nor the aggregate votes of any other two opposing candidates called for a larger number of ballots than 380, but the Committee had grave doubts as to the propriety of allowing it to be counted, for it will readily be seen upon inspection that in the body of the return there is no mention of Town, County or Senatorial district. And the endorsement which is the only thing that gives it any show of validity makes no mention of Senatorial district or County. And there are no marks upon it indicating that it was ever sealed. But finally the Committee concluded to give the voters the benefit of the doubt, and allowed the return to be counted at 380. The result, had this return been thrown out, would be, that William H. McLellan would have a majority of thirty over all the objections raised by the minority of your Committee. In the four remaining towns, about which there is a question in the Committee, the majority following the precedents of the Governor and Council in the cases of the towns of Montville and Stockton, and of your whole Committee in the case of Lincolnville (which reasonable and proper precedent or rule is that when a return shows upon its face that it is erroneous, that it is right and proper for the Committee to correct that error if it can

be done by the light afforded by the return itself,) find that the return of the whole number of ballots from the town of Knox was larger than the number of votes cast for separate candidates warrant, and 203 was taken as the true return instead of 208. And following substantially the same precedents, upon the theory which had some influence in the last case, viz: that the whole number of ballots put down at the head of the return were for candidates who had more votes than the Senatorial candidates, and having been thus taken were continued through the whole list regardless of the number of votes actually cast for the other candidates. Your Committee struck one ballot from the whole number returned from the town of Monroe, two from the whole number returned from the town of Searsport, and two from the whole number returned from the town of Swanville. In the return of the *votes* from the town of Freedom we find this entry: "Blanks ten," which were evidently counted to make up the whole number of ballots, and your Committee have reluctantly allowed them to be counted. And your Committee find the whole number of ballots and votes thrown in this district to be as follows:

Whole number of ballots.....	6,199
Necessary for a choice.....	3,100
Crawford S. Fletcher has.....	3,263 votes.
William H. McLellan.....	3,103
Thomas W. Vose.....	2,582
Nehemiah Smart.....	3,000
Thomas J. Vose.....	175
William H. McLean.....	103
W. H. Rust.....	1
Dolly Bodge.....	1
Blanks.....	11
Scattering.....	5

And Crawford S. Fletcher and William H. McLellan having a majority of all the ballots cast are elected.

(Signed)

J. B. FOSTER.
 ALMORE KENNEDY.
 D. K. CHASE.
 F. R. WEBBER.
 CALEB A. CHAPLIN.
 HENRY SPAULDING.

IN SENATE, January 16, 1871

Submitted by Mr. CHAPLIN of Cumberland, and on motion of Mr. HINKS of Hancock, laid on the table and ordered to be printed.

SAMUEL W. LANE, *Secretary.*

MINORITY REPORT.

The undersigned, a minority of the Committee on Senatorial votes, dissents from the action and conclusion of the majority of of said Committee in reference to the Thirteenth Senatorial District, and asks leave to present his reasons for such dissent, first stating, what he understands to be the meaning of the terms "ballot" and "vote," when applied to the election of Senators, and what is requisite to constitute a legal election of a Senator. Every separate slip of paper rightfully put into the ballot box, containing the name of one or more persons eligible to the office of Senator, and voted for as such, is a *ballot*, and each separate name on such slip of paper, is a *vote* for the person whose name it is. Thus it will be seen that in districts entitled to but one Senator, the whole number of ballots and the whole number of votes, must necessarily be the same, for each and every separate vote must be on a separate slip of paper. But in districts entitled to more than one senator, the whole number of ballots and the whole number of votes cast, are usually essentially different. If in such districts every person who votes for senator, votes for as many different persons as his district is entitled to senators, (or to state it more plainly) if he votes for *all* the candidates for senators on his ticket, or for as many different persons as there are candidates on his ticket, then in that case, the sum of all the votes cast for all the candidates divided by the number of senators to which the district is entitled, will be the whole number of ballots. And it will be seen that this rule will give the *smallest possible* number of ballots by which a given number of votes can be obtained for it is based on the supposition that there were no "scratched" tickets and that every man voted for all the candidates, or for as many different persons as there were candidates on his ticket, which is rarely, if ever the case in cities and large towns. But if one candidate's name is erased from the ticket and no other substituted, and the remainder put into the ballot box it is a ballot still. And if the names of all the candidates but one be erased and no other substituted, and that one alone put into the ballot box, it is a ballot and to be counted as such. Therefore it is *possible* although not probable, that even in districts entitled to four senators, the whole number of ballots and the whole number of votes *may be* the

same. This rule will give the *largest* possible number of ballots for a given number of votes, for every ballot must contain at least one vote, and is based on the supposition that every voter erased every name but one on his ballot and substituted no others. Now the range is between these two extremes according as the tickets are more or less "scratched." And the undersigned unhesitatingly affirms that where more than one senator is voted for at the same time, it is utterly impossible to ascertain from the votes alone, the number of ballots on which said votes were cast, and the only possible way to *correctly* determine the number of ballots cast for senators in such districts, is by actual count of the number of slips of paper put into the ballot box, containing at least the name of one person, eligible to the office of senator, and voted for as such. And the law requires the municipal officers to so count the ballots and make return thereof to the Secretary of State, with the number of votes for each person. And if the whole number of votes cast in the district for one person, be a majority of *all* the ballots so counted and returned, he is elected; otherwise he is not.

The undersigned further states that he believes a committee of the Senate, is unauthorized in the absence of any evidence of fraud or mistake or even suspected fraud, to reject returns of municipal officers of the number of ballots, and "cipher out" from the number of votes, a different number, unless it is apparent upon the face of the return that is incorrect. To do so is trifling with the sacred right of suffrage and the purity of the ballot box. Now the whole question in this case turns on the single point of how many ballots were cast in this district for senators. William H. McLellan has 3,103 votes as counted by the Governor and Council. That is settled. No one asked to have it more, no one wishes to make it less. There is no controversy on that point. And so with all the candidates, there is no disagreement as to the number of *votes* each received.

The whole number of ballots cast in the districts, as counted by the Governor and Council, is 6230. Necessary for a choice 3116; showing that William H. McLellan had thirteen (13) less than a majority. Now if the number of ballots be reduced twenty-six (26) it will have the same effect on his case as adding thirteen (13) to his number of votes. Your committee has reduced the number of ballots thirty-one (31) as will be seen by their report. To wit: twenty-one (21) from Linconville, five (5) from Knox,

one (1) from Monroe, two (2) from Searsport and two (2) from Swanville. The return from Lincolnville also contains the return of votes for Governor and county officers. The whole number of ballots returned for senators, from this town is four hundred and one (401), which is twenty-one (21) more than the number returned for any other officer, cast at the same election, which indicates a probable mistake in the number of ballots returned for senators. The undersigned waived his objection, to rejecting the number returned and assented to the reduction, at the same time seriously doubting the propriety of making the change. The returns of the other towns, Knox, Monroe, Searsport and Swanville, are all in proper form and properly signed, numbers of ballots and votes written in words, except in that from Swanville, the number of ballots is put down in figures. The undersigned can see no cause whatever for not accepting them as true; and he objects to each and every reduction from the number of ballots as therein written. In the returns from the towns of Montville and Stockton, it is evident that the whole number of votes is put in for the whole number of ballots, and the Governor and Council took one-half the number of votes for the whole number of ballots. Your committee has done the same, to which the undersigned does not object, (two being the number of Senators to which this district is entitled) for he knows of no other way of even approximating the true number of ballots by the number of votes. But as before shown this rule gives only the smallest number possible, the true number may be much larger.

For the reasons herein stated, the undersigned dissents from the conclusions of your Committee and asks leave to present the following report:

Thirteenth Senatorial District, Waldo County, entitled to two Senators.

Whole number of ballots.....	6,209
Necessary for a choice.....	3,105
Crawford S. Fletcher has.....	3,263 votes.
William H. McLellan.....	3,103 "
Nehemiah Smart.....	3,000 "
Thomas W. Vose.....	2,461 "
Thomas J. Vose.....	175 "
T. W. Vose.....	121 "
William H. McLean.....	103 "
Scattering.....	2 "

And Crawford S. Fletcher having a majority of the ballots cast is elected. No other person having a majority there is one vacancy, and Nehemiah Smart and William H. McLellan are the constitutional candidates.

Respectfully submitted,

S. T. HINKS.

IN SENATE, January 16, 1872.

Presented by Mr. HINKS of Hancock, as an amendment by substitution for the majority report, and on his motion laid on the table and ordered to be printed.

SAMUEL W. LANE, *Secretary.*

SUPPLEMENTARY STATEMENT OF MAJORITY OF COMMITTEE ON SENATORIAL VOTES.

The majority of your Committee, as the minority have gone so fully into the principles that should govern in counting Senatorial votes, wish to say, that there is a marked distinction between the return of the whole number of ballots and the return of the number of votes, in this, that the statement in regard to the whole number of ballots is not sacred, but the statement in a return as to the number of votes a candidate receives is sacred. To prove this proposition, your Committee need only to cite you to the returns in this very case and to your own experience in such matters. As previously stated in the cases of Montville and Stockton, the Governor and Council laid violent hands upon the statements in regard to the whole number of ballots and cut them down one half. Your whole Committee rejected twenty-one from the same statement, in the return from the town of Lincolnville, without objection, and your own experience tells you that such occurrences are frequent.

But whoever heard of the attempt to reconcile a return by tampering with the statement in regard to the number of votes each candidate receives, except in the cases of Freedom and Monroe, above cited, where the attempt is made to even up the returns with blanks. Now keeping in view what has already been stated, as to the manner of obtaining the whole number of ballots, and

how liable this number when once obtained is to run through the whole list, and your Committee say that the statement of the whole number of ballots in a return hardly raises a presumption of its own correctness, however formal the return may be. But the minority say that the error must be apparent; so it must, but this is mere matter of opinion. The Governor and Council, with propriety, rejected the returns of ballots from Montville and Stockton, the error being over three hundred in each case, but they allowed that from Lincolnville, where the error was but twenty-one, which your whole Committee thought best to correct, and this difference of opinion might be extended indefinitely.

And your Committee claim that where an error in the number of ballots is apparent to *them*, whether it is "one hundred," "fifty," or "one," it is not only proper, but it is their duty, to correct that error. Now in applying these principles to the return from the town of Searsport, the whole number of ballots returned were two hundred and eighty-two, whereas the sum of the votes for the two highest opposing candidates were only two hundred and eighty, which is the number taken by your Committee, and there were no scattering votes, and we consider this a very liberal rule, for in general the sum of the highest on the majority side added to the lowest on the minority, where there are no scattering, is the best approximation that can be made.

In the return from the town of Monroe, we took the highest and lowest, and threw out the blank. The returns from these two towns were formal enough, so were the returns from Montville and Stockton. The argument of the minority applies to the returns of these two towns, because they are formal and the error small; the correction amounts to but three ballots and does not affect the result.

But the argument of the minority does not apply to Knox and Swanville. The returns from Knox were sent here without the whole number of ballots being put in, and the Senatorial return was sent back for the town officers to "cipher out" what the whole number of ballots ought to be, long after the election, as the writings on the face of the return shows. The general return from that town, in the office of the Secretary of State, has no statement of the whole number of ballots in it now. The ballots for Governor in this town were two hundred and one (201.)

The return from Swanville has nothing to show the whole number of ballots but figures made with a lead pencil, and your Com-

mittee say that it would be preposterous to suppose for a moment that these lead pencil marks were a certified copy of a town record. The other return in the Secretary's office has not so much as the lead pencil marks in it. These are the facts apparent upon the record in regard to the two last named towns. Notwithstanding, the minority of your Committee can see no informality about them, and the real point at issue between the majority and the minority of your Committee, and the one which decides this whole question for all, depends upon the returns of these two last named towns is, whether your Committee are to be bound by the "cyphering" of somebody else long after the election, or whether they have a right to "cypher out" of these informal and irregular returns the true number of ballots themselves without violating the sanctity of the returns or destroying the purity of the ballot box? An affirmative answer to this question elects William H. McLellan; a negative one deprives him of his seat to which the majority of your Committee believe he is justly entitled.

IN SENATE, January 16, 1872.

Submitted by Mr. CHAPLIN of Cumberland, and ordered to be printed.

SAMUEL W. LANE, *Secretary*.