

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

# FIFTY-FIRST LEGISLATURE.

---

SENATE.

No. 9.

---

---

The Committee on Senatorial Votes, to which was referred the remonstrance of William E. Hadlock against the right of John Moore (from the 14th Senatorial District) to a seat in the Senate, and claiming that he himself was duly elected thereto, respectfully submit the following

## REPORT:

The material matters set forth by the contestant in his memorial, are—

1st. In the city of Ellsworth, the ward meeting for ward one, was notified, warned, called and held out of the ward, and in ward two, against the provisions of the constitution and statutes of the State.

2d. In ward five of said city there was no constitutional return from said ward ever made; that this ward meeting was adjourned before any record of the votes or any return was made; that said record and return, if any were made, were so made long after the meeting adjourned, and the return was never sealed up at all in open ward meeting, or any where else.

3d. There was no meeting of the aldermen of said city of Ellsworth on the day after the election, as the constitution and statutes of the State require.

For the reasons set forth in the several allegations, the contestant claims—

1st. That the vote of ward one should be rejected.

2d. That the vote of ward five should be rejected.

3d. That the whole vote of the city of Ellsworth should be rejected.

The evidence before your Committee fully and clearly proved the several statements in the memorial.

The sitting member substantially admitted all the allegations as true, at any rate, did not deny them, or either of them.

It was further proved, that after the returns were in possession of the city clerk, and while in his office, they were open to inspection of persons desiring to see them.

Your Committee find in article 1st of the amendments to the constitution, which is the supreme law of the State, a concise and unmistakable rule by which to decide the points presented. As to how, when, by whom, to whom, and within what time returns of votes in the wards of cities shall be made, and also relating to the duties of municipal officers in regard thereto, the language of the constitution is mandatory.

Touching the place where ward meetings may be held, the constitution provides that "the electors resident in any city may at any meeting duly notified and holden for the choice of any civil officer for whom they have been required heretofore to vote in town meeting, vote for such officer in their respective wards." There can be no mistake in the meaning of this. When the town of Ellsworth accepted their city charter, and ceased to hold town meetings, they had permission to hold ward meetings, and the electors in the several wards were permitted to vote in meetings duly notified and held in their respective wards; and there is no permission for them to vote elsewhere.

So your Committee decide that the meeting for ward one, in the city of Ellsworth, notified to be held in ward two, and which was so held, was neither duly notified nor legally held.

Your Committee deem it unnecessary to consider separately the proceedings of ward five, since it is apparent that if the returns of all the wards of the city had been made to the city clerk as required, the failure on the part of the municipal officers to perform the duties required by the constitution of them, would render the vote of the entire city illegal.

Touching then the duty of the aldermen, the constitution is as follows: "And the aldermen of any city shall be in session within twenty-four hours after the close of the polls in such meetings, and in the presence of the city clerk, shall open, examine and compare the copies from the list of votes given in the several wards, of which the city clerk shall make a record."

It appears not only that the aldermen did not meet within the required time, but that they never met for the purpose of opening, examining and comparing the returns; and that there never was such an examination of the returns as is required by the constitution.

Your Committee are therefore forced to the conclusion that the entire vote of the city of Ellsworth should be rejected. In this case it is not alleged that there was any fraud. It is not alleged that the result of the voting would have been different if the proceedings in the wards and in the city clerk's office had been legal.

The question that naturally arises is, can the aldermen of a city by negligence or misconduct, in not meeting and examining returns as required by the constitution, disfranchise for one year the voters of the city?

Your Committee are of the opinion they may. This view is sustained in the case of *Farley vs. Cilley*—House Doc. No. 14, 1833—from which we quote:

“The Constitution is not responsible for the acts of officers made by these very electors. It prescribes the modes of effecting an election, by following which all disputes and uncertainty will be avoided. Individuals will have no cause to complain. The right of suffrage will be clear because it is certain.” On the other hand, if we disregard the provisions of the Constitution upon that subject, and waive all informalities and irregularities, “The Legislature will be able to do but little more than sit as a tribunal to settle cases of contested elections, and our Constitution will have nothing left but a local habitation and name. It is believed to be better that one town should suffer for the faults of the officers, than that confusion, dispute, and encouragement to wily, ambitious politicians should be introduced into our representative meetings throughout the State, which we fear would be done by sanctioning this practice.

“If the rights of electors are not sufficiently protected against the misconduct of Selectmen by the relation in which they stand to the citizens, by the right the electors have of choosing them annually, and by penalties already provided, it remains for the Legislature to provide other means of protection, but, as the Committee claim, not to disregard salutary provisions of the Constitution respecting elections.”

Your Committee reach the following result of the vote in 14th Senatorial District:

Whole number of ballots for Senators .....	4,494
Necessary to a choice .....	2,248
Sylvanus T. Hinks has.....	2,375

William E. Hadlock has.....	2,335
Hosea B. Wardwell has.....	2,082
John Moore has.....	2,130
John Merrill has.....	2
Ezra Wardwell has.....	1

Sylvanus T. Hinks and William E. Hadlock, having received a majority of all the votes for Senators in the 14th Senatorial District are elected.

We submit the following resolve.

Per order,

J. B. FOSTER,  
F. R. WEBBER.

## STATE OF MAINE.

RESOLVE declaring the election of William E. Hadlock.

*Resolved*, That William E. Hadlock, having been duly  
2 elected as senator from the fourteenth senatorial dis-  
3 trict, is entitled to his seat in the senate, in place of  
4 John Moore, the sitting member.

## REMONSTRANCE

*of William E. Hadlock against the right of John Moore to a seat in the State Senate of 1872.*

---

*To the Senate of Maine:*

The undersigned respectfully represents that he was a candidate for the State Senate of 1872, from the Hancock Senatorial District; that as such he was voted for in all the towns; that John Moore, the opposing candidate, appeared to have a majority of the votes returned, and therefore obtained the certificate, and is now the sitting member; that your memorialist proposes to contest his right to a seat and to claim that he himself is duly elected thereto, on the following grounds:

1. In Ward One in the city of Ellsworth, said Moore had 164 votes, and the undersigned 113; that said ward meeting was notified, warned, called and held out of the ward and in Ward Two, against the provisions of the Constitution and Statutes of the State, and therefore the votes of said ward should be rejected.

2. In Ward Five of said city, said Moore had 174 votes, and the undersigned 49; that there was no constitutional return from said Ward Five ever made; that the ward meeting was adjourned before any record of the votes or any return was made; that said record and return, if any ever were made, were so made long after the meeting adjourned, and the return was never sealed up at all in open ward meeting or anywhere else, and therefore the votes of said ward should be rejected.

3. Because there was no meeting of the aldermen of said city of Ellsworth on the day after the election, as the Constitution and Statutes of the State require, and so there was no constitutional or legal return from the city of Ellsworth, and the whole vote of said city ought to be rejected.

WILLIAM E. HADLOCK.

AUGUSTA, January 3, 1872.

*To George W. Newbegin, Constable of the City of Ellsworth :*

You are required in the name of the State of Maine, to notify and warn the inhabitants of Ward One, in the said City of Ellsworth, qualified to vote for Representatives, to assemble at the Common Council Room, in Hancock Hall, on Monday, the eleventh day of September, A. D., 1871, at nine o'clock in the forenoon, to give in their votes for Governor, two Senators, Sheriff, County Commissioner, Clerk of Courts, and Representative to represent them in the Legislature of the State.

The Polls will close at four o'clock, P. M. The Aldermen will be in session at their Room on the three secular days next preceding said day of Election, from two until five o'clock in the afternoon, for the purpose of correcting list of voters.

Dated at Ellsworth, the thirty-first day of August, A. D. 1871.

JOS. T. GRANT,	} <i>Aldermen.</i>
L. D. JORDAN,	
CHARLES W. WASGATT,	

C. G. PECK, *Mayor.*

A true copy—Attest :

E. F. ROBINSON, *Clerk.*

---

ELLSWORTH, Sept. 1, 1871.

Pursuant to the within Warrant to me directed, I have notified and warned the inhabitants of Ward One, in the City of Ellsworth, qualified as therein expressed, to assemble at said time and place, and for the purposes therein named, by posting an attested copy of said Warrant at the Post Office in said Ward, being a public and conspicuous place in said Ward and City, on the first day of September, being seven days before the meeting.

GEO. W. NEWBEGIN,  
*Constable of the city of Ellsworth.*

A true Copy—Attest :

E. F. ROBINSON, *Clerk.*

---

WARD MEETING.

September 11, 1871.

At a legal meeting of the inhabitants of Ward One of the City of Ellsworth, held at the Common Council Room in Hancock Hall, Sept. 11, 1871, at nine o'clock, in the forenoon, the meeting was

SENATORIAL VOTES.

7

called to order by Albert M. Hopkins, the Warden of said Ward, who read the warrant and the officer's return, and then called upon the inhabitants of said Ward, qualified to vote, to bring in their votes for Governor, two Senators, County Treasurer, County Commissioner, Sheriff, and for Representative to the State Legislature. Thereupon the Polls were opened and kept open until four o'clock, P. M., and the votes received, sorted, counted and declared, and attested to in open Ward Meeting by the Warden and Clerk, as follows :

• *For Governor.*

Whole number of Ballots .....	282
Sidney Perham had .....	155
Charles P. Kimball had .....	127

*For Sheriff.*

Whole number of Votes .....	281
R. F. Campbell had .....	95
A. B. Spurling had .....	95
L. B. Wyman had .....	91

*For Clerk of Courts.*

Whole number of Votes .....	276
H. B. Saunders had .....	118
I. Y. Murch had .....	158

*For County Commissioner.*

Whole number of Votes .....	278
Daniel Deasy had .....	165
G. E. Simpson had .....	113

*For Treasurer.*

Whole number of Votes .....	281
Charles W. Tilden had .....	163
E. H. Greely had .....	118

*For Senators.*

William E. Hadlock had .....	113
Sylvanus T. Hinks had .....	162
Hosea B. Wardwell had .....	118
John Moore had .....	164



*Representative to Legislature.*

Whole number of Votes .....	281
H. M. Hall had.....	95
J. B. Redman had.....	99
John F. Whitecomb had.....	87

A. M. HOPKINS, *Warden Ward One.*

A true Copy—Attest:

E. F. ROBINSON, *Clerk Ward One.*

I, Edward F. Robinson, of the City of Ellsworth, in the County of Hancock, and State of Maine, Clerk of Ward One in said city, on oath hereby state, that at the annual election for Governor and State and County officers, held on the second Monday of September, A. D. 1871, the number of votes, and the names of the persons voted for in said Ward One, were as follows:

*For Governor.*

One hundred and fifty-five votes returned to the City Clerk for Sidney Perham, were cast for Sidney Perham.

One hundred and twenty-seven votes returned for Charles P. Kimball were cast for Charles P. Kimball.

*For Sheriff.*

Ninety-five votes returned for R. F. Campbell were cast for Robert F. Campbell.

Ninety-five votes returned for A. B. Spurling were cast for Andrew B. Spurling.

Ninety-one votes returned for L. B. Wyman were cast for Levi B. Wyman.

*For Clerk of Courts.*

One hundred and eighteen votes returned for H. B. Saunders were cast for Hutson B. Saunders.

One hundred and fifty-eight votes returned for I. Y. Murch were cast for Isaac Y. Murch.

*For County Commissioners.*

One hundred and sixty-five votes returned for Daniel Deasey were cast for Daniel Deasy.

One hundred and thirteen votes returned for G. E. Simpson were cast for Gilbert E. Simpson.

SENATORIAL VOTES.

9

*For Treasurer.*

One hundred and sixty-three votes returned for Charles W. Tilden were cast for Charles W. Tilden.

One hundred and eighteen votes returned for E. H. Greeley were cast for Everard H. Greeley.

*For Senators.*

One hundred and thirteen votes returned for William E. Hadlock were cast for William E. Hadlock.

One hundred and sixty-two votes returned for Sylvanus T. Hincks were cast for Sylvanus T. Hinks.

One hundred and eighteen votes returned for Hosea B. Wardwell were cast for Hosea B. Wardwell.

One hundred and sixty-four votes returned for John Moore were cast for John Moore

*For Representative to Legislature.*

Ninety-five votes returned for H. M. Hall were cast for Henry M. Hall.

Ninety-nine votes returned for J. B. Redman were cast for John B. Redman.

Eighty-seven votes returned for John F. Whitcomb were cast for John F. Whitcomb.

In making the record and the return of said votes I took the names and the number of votes from the warden as he gave them, and where he gave the initials I so wrote them down. I supposed it was legal and sufficient to give the initials instead of the christian names in full, and I did so accordingly in the cases above specified; but the names of the above candidates were printed in full on the ballots cast, and I hereby correct the record of the votes as aforesaid, according to the facts.

E. F. ROBINSON, *Clerk Ward One.*

---

STATE OF MAINE, HANCOCK SS.

September 30, 1871.

Subscribed and sworn to before me.

ARNO WISWELL, *Justice of the Peace.*

I, Edward F. Robinson, Clerk of Ward One in the city of Ellsworth, depose and say that the above is a true copy of the record and the amendment of the record.

E. F. ROBINSON.

HANCOCK ss.

ELLSWORTH, Nov. 4, 1871.

Personally appeared before me the above named Edward F. Robinson and signed the above deposition and made oath to its truth.

GEORGE P. DUTTON, *Justice of the Peace.*

A true copy of record of votes given for Senators in Ward Five, city of Ellsworth, September 11, 1871 :

For Sylvanus T. Hincks, one hundred twenty-six votes . . . . .	126
For William E. Haldock, forty-nine votes . . . . .	49
For Hosea B. Wardwell, ninety-eight votes . . . . .	98
For John Moor, one hundred seventy-four votes . . . . .	174

ISAAC H. THOMAS, *Clerk pro tempore.*

HANCOCK ss.

ELLSWORTH, January 10, 1872.

Subscribed and sworn to before me.

H. B. SAUNDERS, *Justice of the Peace.*

The following is a true copy of the returns for Senators made by the Ward Clerks at the September election, Sept. 11, 1871 :

*Ward No. 1.*

Wm. E. Hadlock had ballots . . . . .	113
Sylvanus T. Hincks had ballots . . . . .	162
Hosea B. Wardwell had ballots . . . . .	118
John Moor had ballots . . . . .	164

SENATORIAL VOTES.

11

*Ward No. 2.*

Whole number of votes cast.....	363
Hosea B. Wardwell had votes.....	61
John Moor had votes.....	97
Sylvanus T. Hincks had votes.....	121
William E. Hadlock had votes.....	84

*Ward No. 3.*

Sylvanus T. Hincks had votes.....	70
John Moor had votes.....	98
Hosea B. Wardwell had votes.....	51
William E. Hadlock had votes.....	23

*Ward No. 4.*

Hosea B. Wardwell had votes.....	49
John Moor had votes.....	80
William E. Hadlock had votes.....	19
Sylvanus T. Hincks had votes.....	50

*Ward No. 5.*

Sylvanus T. Hincks had votes.....	126
William E. Hadlock had votes.....	49
Hosea B. Wardwell had votes.....	98
John Moor had votes.....	174

WM. O. McDONALD, *City Clerk.*

HANCOCK SS.

ELLSWORTH, January 9, 1872.

Personally appeared the above named Wm. O. McDonald and made oath the foregoing is a true copy of the votes cast for Senators in the several wards of the city of Ellsworth on the 11th day of September, A. D. 1871.

Before me,

J. D. HOPKINS,

*Justice of the Peace.*

*Testimony of Albert M. Hopkins.*

I am warden of Ward One. Ward meetings are in the brick school-house. I found that the meeting was called to be held at Hancock Hall. I met a number of voters coming down from the brick school-house. The clerk was not present. Afterward found clerk in ward-room on Pine street. Some of the voters went away. Hancock Hall is in Ward Two. Some of the persons who applied to vote in Ward Two, came and made application to vote in Ward One.

The returns were sealed up in open ward meeting. Cannot say when it was declared. The clerk of Ward Two came out of the ward-room without making up returns. Was not furnished with blanks. Saw the returns on Wednesday following. I went down to the City Rooms and City Clerk was making up returns. This was on Thursday, and only one Alderman was present.

*Testimony of John D. Hopkins.*

Resident of Ward One, voted in Ward Two. Persons were in wrong rooms and there was considerable confusion. A man by the name of Higgings voted in Ward Two and resided in Ward One. The returns were not made up at nine o'clock A. M. The clerk of the City told me so.

*Testimony of I. H. Thomas.*

Resident of Ward Five. I was clerk *pro tem*. After the vote was declared the meeting was adjourned. One warden was present. I made up the returns myself, but did not seal them. I made them up after adjournment. I was in the Aldermen's room Wednesday morning and saw the returns. They were *not* sealed. No general return had been made up. The City Clerk told me so. The chairman of the Board of Aldermen was in Bangor.

*Testimony of L. A. Joy.*

Mr. Thomas gave me the returns of Ward Five, on Tuesday. The returns were not sealed. The room of the Common Council is in Ward Two.

*Albert M. Hopkins, re-called.*

I had a conversation with Mr. Joy. He said he followed Mr. Grant in calling the meeting. Mr. Grant, at the time, said that the call was illegal, but at the same time signed it when it was presented. Two of the September elections out of three, have been held outside of the brick school-house.

ALMORE KENNEDY.



STATE OF MAINE.

---

IN SENATE, January 22, 1872.

Reported by Mr. FOSTER of Penobscot, and on motion of Mr. HINKS of Hancock, laid on the table and ordered to be printed, with the accompanying evidence.

SAMUEL W. LANE, *Secretary.*