

MAINE STATE LEGISLATURE

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SEVENTY-THIRD LEGISLATURE

HOUSE.

No. 168

STATE OF MAINE.

MAJORITY REPORT.

To the Honorable House of Representatives of the Seventy-third Legislature:

The majority of the Committee on Elections, to which was referred the remonstrance of Winfield S. Brown against the right of Lafayette B. Waldron to a seat in this House of Representatives, beg leave to make their report as follows:

It was agreed between the parties that the undisputed votes for Mr. Waldron were Dexter 308 and Garland 96, or a total of 404 not in dispute. In like manner it was agreed that Mr. Brown had received 319 undisputed votes in Dexter and 92 in Garland, or in all 411.

No questions were in dispute except the legal counting of the original ballots, all of which were produced. The undisputed ballots were returned to the municipal officers. The disputed ballots are now in the possession of the committee. They have been marked upon the back Nos. 1 to 25, both inclusive, in Dexter, and Nos. 1 to 11, both inclusive, in Garland.

The contestant claimed that No. 2 and No. 5 in Garland and No. 3, No. 11, No. 17, No. 18, No. 19, No. 20 and No. 21 in Dexter, severally for Mr. Waldron, and by like reasoning No. 1 in Garland and No. 1, No. 12, No. 16, No. 22 and No. 24 in Dexter, severally for Mr. Brown, should be rejected as having distinguishing marks. The alleged distinguishing marks were as follows: No. 2, Garland, with the Republican column properly marked contained a sticker for County Commissioner in the Democratic column; No. 5, Garland, with the Republican column properly marked, had a cross to the right of the name of Waldron in the Republican space; No. 3, Dexter, was the same as No. 2 in Garland; No. 11, Dexter, same as last described ballot; No. 17, Dexter, had the Republican column properly marked, but a sticker for Waldron appeared in the party square; No. 18, Dexter, had the Republican column properly marked, but with a sticker for Waldron in the Representative space in the Democratic column; No. 19, Dexter, had the Republican column properly marked, but with a sticker for Waldron in the space for Sheriff in the Democratic column; No. 20, Dexter, the same as No. 18; No. 21, Dexter, also the same as No. 18; No. 1, Garland, had the Republican column properly marked with a sticker for Brown properly placed on and over the name of Waldron, but with an additional sticker for Brown properly placed on and over the Republican candidate for Sheriff; No. 1, Dexter, had the Democratic column properly marked and a portion of a sticker for Brown over the name of Waldron in the Republican column; No. 12, Dexter, had the Democratic column properly marked, but with a sticker for Sheriff in the Republican column; No. 16, Dexter, had the Republican column properly marked with a sticker for Brown properly placed on and over the name of Waldron, an additional sticker for Brown in the Republican party square and a cross after the name of Brown in the Democratic Representative square; No. 22, Dexter, had the Republican column properly marked, but with two

stickers for Brown both properly placed on and over the name of Waldron; No. 24, Dexter, had the Republican column properly marked, with a sticker for Brown properly placed on and over the name of Waldron, but with a sticker for Sheriff in the Democratic column.

We are unable to believe that these irregularities would be held to be distinguishing marks, even in states containing stringent provisions requiring the rejection of ballots with distinguishing marks. In this case we are bound under the statute to count all these votes. It is provided by Sec. 43 of Chap. 6 of the Revised Statutes that no ballot shall be received at any election of state or town officers unless in writing or printing upon clean, white paper without any distinguishing mark or figures thereon besides the official endorsement, the names of the persons to be voted for and the offices to be filled, but no vote shall be rejected on this account after it has been received into the ballot box. Prior to 1903 this statute did not contain the phrase, "besides the official endorsement." When the Legislature of 1903 added this phrase it plainly and clearly intended to make the statute applicable to the present system of voting. We are obliged, therefore, to follow the mandate of the statute that such votes shall not be rejected after they have been received into the ballot box. We decide, therefore, that Nos. 2 and 5 in Garland and Nos. 3, 11, 17, 18, 19, 20 and 21 in Dexter should be counted for Mr. Waldron, bringing his vote up to 413. We further decide that No. 1 in Garland and Nos. 1, 12, 16, 22 and 24 in Dexter should all be counted for Mr. Brown, bringing his vote up to 417.

The contestant claimed that No. 7 in Garland for himself and Nos. 8, 9, 10 and 11, also in Garland, for Mr. Waldron should be rejected because of the admitted fact that in each case the ballot having been cast by assisted voters, the ballot clerks had simply put their respective signatures upon the back of each ballot and had omitted to write or stamp an assistance

certificate over their signatures. It was contended by counsel for Mr. Waldron that this provision of statute is directory and not mandatory and that voters were to be deprived of their ballots by their own acts and not by the omission of duty by election officers. In his closing argument, counsel for the contestant admitted that these ballots should be counted unless they could be classed as ballots with distinguishing marks. We have counted them thus raising Mr. Brown's vote to 418 and Mr. Waldron's vote to 417.

When the case had finished it appeared that No. 2 in Dexter for Brown and Nos. 4, 5, 6, 7 and 8, all in Dexter for Waldron, had been laid aside without any express reason. In each case the stickers used were somewhat longer than the representative space on the ballot and overlapped. As the statute requires simply that stickers should be placed on and over the names, there was no reason why these ballots should not be counted. We have counted them and by so doing raise the vote of Mr. Brown to 419 and the vote of Mr. Waldron to 422.

The foregoing count leaves still undecided Nos. 3, 4 and 6 in Garland, all claimed by Mr. Waldron, and Nos. 9, 10, 13, 14, 15, 23 and 25 in Dexter, all claimed by Mr. Brown. Allowing all claims, the total vote for Mr. Waldron would be 425 and for Mr. Brown 426. Nos. 3, 4 and 6 in Garland and Nos. 10, 13, 14, 15, 23 and 25 in Dexter all rest upon the legal rules as to erasures and stickers. No. 9 is in a class by itself. We have applied the rules held by the supreme court to be the sole legal rules of counting ballots under our present voting system. In *Waterman vs. Cunningham*, 89 Me. 298, the court held that the intention of the voter is not to be considered and that in erasing or using stickers, the plain and specific directions of the statutes must be followed, otherwise such ballots are to be considered defective and not to be counted. We find this to be the uniform rule of construction under the secret ballot system. Courts have uniformly held that to recognize attempts to erase or

attempts to use stickers or any search of any kind for the supposed intention of the voters would open the door to dangerous and uncertain rules of counting, and that the only safe rule is to follow the imperative requirement of the statute irrespective of intention or supposed equities. We believe this, in the long run, to be the fairer and safer rule for all candidates. It has been applied in the past in this House to support contentions of candidates of the Democratic party when the Republican party has been in the ascendant. We feel that it is our duty to follow the plain mandates of the statutes and that we have no right to adopt a construction of the statute different from that given to it by the supreme court of our state.

We have adopted the rule that to constitute an erasure the line should be drawn through the word enough to substantially strike it out, not every letter necessarily, but enough of it so that what is left would not constitute the legal name of a candidate.

In No. 3 in Garland, the voter made a cross in the Republican square and therefore voted for all the names in that column not legally erased. The ballot shows an additional cross in the representative space in that column. One leg of the cross comes down through the blank space between the word "Lafayette" and the initial "B," starting above the name and terminating below. The other leg starts above the word "Lafayette," runs through the first letter "e" in Lafayette and then proceeds downward, crossing the other leg below the name. It erases and touches nothing but the first e and possibly the bottom of the first "t" in Lafayette. It leaves the name on the ballot "Lafaytte B. Waldron." If Mr. Waldron's name had been so spelled by any voter, it would have undoubtedly been a good vote for Lafayette B. Waldron. A vote for L. B. Waldron would undoubtedly have been good. This voter left all of Mr. Waldron's name but one letter. We believe that in any court this would not constitute the erasure of a name signed to a note or any other legal instru-

ment. The voter did not erase the name, as what was left was sufficient to constitute a name. It was not clearly an intention to erase. Counting boards, as the supreme court has held, have nothing to do with attempts or with intention. We therefore decide that this voter did not erase the name of Mr. Waldron and that the vote should be counted, bringing Mr. Waldron's vote up to 423.

In No. 4, Garland, the voter drew a pencil line through the letters "Lafay," thence above the rest of Mr. Waldron's name and downward through a part of the word "Dexter" writing no name underneath and using no sticker. The erasure leaves only a partial name. Enough of the name was obliterated to destroy it as a name. This we decide to be a legal erasure and the ballot should not be counted.

In Garland No. 6, the voter used a sticker bearing Mr. Waldron's name. The vote is properly marked in the Democratic square. The sticker was placed on and over the name of Mr. Brown in such a way as to show the letters "Winfiel." Under the statute the sticker must be put "on and over" the name. We believe this means that the printed name must be so covered that not enough of it be left to constitute a name. The letters "Winfiel" of the printed name that showed, could not by any possibility constitute a legal name and we therefore find that this sticker was legally placed on and over the name. We count this vote for Mr. Waldron, making his total 424. There are no more votes to be added for Mr. Waldron.

In Dexter No. 10, the voter properly marked the Democratic square. Some irregular marks are made in the Republican column and over the names of their candidates, all of which we hold to be immaterial. In the space for representative in the Democratic column we find a cross that may have been intended by the voter for an erasure. But following the rule we have laid down, we decide that the voter did not erase

the name as the statute requires and the vote should be counted for Mr. Brown, making his total vote 420.

In Dexter No. 13, the voter made a cross properly in the Democratic square. A sticker for Waldron was placed in the representative space in the Democratic column under the name of Winfield S. Brown. This voter clearly intended to vote for Waldron. He attempted to follow the statute, but failed. He did not place the sticker on and over the name of Brown. He placed his sticker under the name. For this reason and because of the fact that as the ballot stands he has voted for two candidates for representative and it is impossible to determine his choice, we are unable to count the ballot for either candidate.

In Dexter No. 14, the voter made a cross properly in the Republican square. He placed a sticker for Mr. Brown above the name of Lafayette B. Waldron, leaving all of the name of Mr. Waldron clearly and plainly visible. This vote is the reverse of Dexter No. 13 and should be rejected for the same reasons. It is impossible to determine the voter's choice. He clearly failed to put his sticker on and over the name of Waldron.

In Dexter No. 15, the voter drew a pencil line starting at the last letter of "e" in Lafayette, thence running through the letter "a" in representative and ending above with a flourish. Another line starts in the same "e" and runs up and above the last of the name. He pencilled out nothing but the last "e" in Lafayette, leaving Mr. Waldron a full, clear, legal name. This is the description of the ballot as presented to the committee. At the time of making this report the ballot shows a line drawn through the entire word "Lafayette" but this has occurred inadvertently in some way unknown to the committee in the examination of the ballot, since the arguments were finished. It has happened by accident. As presented to the committee there was no pencil line of any kind touching any part of the name of Lafayette B. Waldron, except a line just touching the last "e" in Lafayette and the top of the middle initial "B." This

voter evidently attempted to erase. It is quite clear that he intended an erasure. He wrote the name of W. S. Brown underneath the name of Lafayette B. Waldron. It is clear that his pencil line, having erased nothing except one letter and a portion of the initial "B" in the candidate's name, failed to erase the name of Mr. Waldron. As the ballot stood when presented to us, the voter had voted for two candidates and it was impossible to determine his choice. The law does not permit us to recognize his attempt to erase or his intention. He failed to obey the statute.

In Dexter No. 23, the voter marked a cross in the Republican square. In voting for representative he used a sticker for Mr. Brown. This sticker was so placed that it covers up a portion of the name "Waldron." We find that it has obliterated so much of the name of Mr. Waldron that what is left ought not to be considered as a recognizable legal name. We therefore decide to count this ballot for Mr. Brown, raising his vote to 421.

In Dexter No. 25, the voter made a cross properly in the Republican square. He used a sticker for Brown, placing it on and over the name of Lafayette B. Waldron in such a manner that one familiar with the fact that the printed name of Mr. Waldron was underneath could perhaps recognize it as his name and yet it is clear that enough of Mr. Waldron's name has been obliterated so that it would not be recognizable as a legal name. We therefore decide that it should be counted for Mr. Brown, raising his vote to 422.

In Dexter No. 9, the voter made a cross in the Democratic square, erasing nearly all the names in that column except that of Mr. Brown. The Socialist column contained no printed candidates except for Governor. The voter also made a cross in the Socialist square. It was argued by counsel for Mr. Brown that this should be counted as a legal vote for the Socialist candidate for governor and for the Democratic candidate for representative. We grant that such was the intention of the voter.

We have nothing to do with intentions. We decide that this voter did not follow the statute in his marking. When he had made his cross in one party square he had voted. When he marked another square, he had voted twice and neither vote could count. He should have voted for the Socialist candidate for governor in the Democratic column or have voted for Brown by placing his name in the Socialist column. Under our statute, all voting must be done in one column. The statute says that the voter may place such mark within the square above the name of the party group or ticket, in which case he shall be deemed to have voted for all the persons named in the group, under such party designation. The voter is then permitted, under the statute, to arrange his voting in that particular group to suit himself. In that group and in no other, he may erase and fill in. He may use stickers or he may simply erase, but throughout the statute the expression is used, "such party group or ticket." The word "group" is in the singular number. In every sentence in the statute the word "group" refers to the group where the cross has been made at the top. The statute is plain that the voter must confine all his voting to the one group having his cross at the top. In the case of *Waterman vs. Cunningham*, already referred to, it was held that the voter must find a statute to authorize his method of marking. We submit that the meaning of the statute is plain that voting in two squares destroys the legality of either ballot if crosses are found at the tops of the two columns.

We cannot tell in which column this man made his first cross. If in the Socialist square, then the law permitted him to vote for Brown only in that column. If he so marked his cross in the Socialist square, it was legally equivalent to saying that he declined to vote for representative. He could legally do nothing in the Democratic column, for that would not answer the expression "such group" found in the statute. If, on the other

hand, he made his first cross in the Democratic square, he had then voted for Brown, but when he put a cross in the Socialist square, it was legally equivalent to saying that he declined to vote for representative for no candidate for representative has any name in the column. Whichever way it is viewed, this voter has given us no chance to say whether he voted for Brown or whether he declined to vote for anyone for representative. It is a familiar rule throughout the state that all ballots containing crosses in two squares should be rejected. We therefore decline to count this vote.

Upon the review, therefore, of the whole case, we decide that Winfield S. Brown, the contestant, received 422 lawful votes; that Lafayette B. Waldron, the sitting member, received 424 lawful votes and is therefore entitled to the seat which he now holds.

J. MERRILL LORD,
GEORGE R. HADLOCK,
FRANK A. EMERY,
A. J. FULTON.

MINORITY REPORT.

To the Honorable House of Representatives:

The undersigned members of the special committee on elections respectfully report that they have considered the case of Winfield S. Brown of Dexter, contestant of the seat now occupied by Lafayette B. Waldron of said Dexter, have listened to all witnesses presented in said case, and carefully examined all the ballots thrown in the towns of Dexter and Garland which make up the representative class now represented by the sitting member.

We find that if votes containing distinguishing marks are counted, the total vote is as follows:

Brown425

Waldron423

Our count differs from that made by the other members of the committee in the following particulars:

We do not count for Mr. Waldron vote marked No. 3 in Garland in which his name is erased from the ticket by a cross. This vote was counted for Mr. Waldron by the other members of the committee.

We count for Mr. Brown the following votes:

No. 15 Dexter. This is a vote with a Republican X. Name of Mr. Waldron erased, and the name of W. S. Brown written below it. This vote was not counted by the other members of the committee.

We count vote No. 9 in Dexter for Mr. Brown. This vote contains a cross in the Democratic column and a cross in the Socialist column; but the names of all the candidates in the Democratic column except that of Mr. Brown are erased. No candidate except for governor appears in the Socialist column. This vote was not counted by the other members of the committee.

There are 6 votes in which stickers do not entirely cover the name of the opposing candidate. Three of these, No. 14 Dexter, No. 23 Dexter and No. 25 Dexter are for Brown; and three of them, No. 6 Garland, No. 7 Dexter and No. 8 Dexter are for Waldron. We have counted all these votes for the candidate whose name appears on the sticker. The other members of the committee counted the three Waldron votes for him. They also counted No. 23 and No. 25 Dexter for Brown; but they did not count No. 14 Dexter for Brown.

We believe that all these six votes should be counted; but if any of them are not counted, we believe none of them should be.

We therefore respectfully report that Winfield S. Brown is elected from the representative class comprising Dexter and Garland and is entitled to a seat in this house.

Respectfully submitted.

HENRY F. BRAUN,
CHARLES A. LYNCH,
CHARLES W. GALLAGHER.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,
Augusta, February 13, 1907.

Tabled pending acceptance of either report, by Mr. HADLOCK of Cranberry Isles, and ordered printed and Wednesday, February 20, assigned for further consideration.

E. M. THOMPSON, *Clerk.*