

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Fifth

Legislature

OF THE

STATE OF MAINE

1971

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Wednesday, March 31, 1971
Senate called to order by the President.

Prayer by Monsignor Thomas M. Nelligan of Augusta.

Reading of the Journal of yesterday.

Out of order and under suspension of the rules, the Senate voted to take up the following:

Divided Report

The Majority of the Committee on Judiciary on, Bill, "An Act Repealing the Maine Income Tax Law." (I. B. 1) (L. D. 1536) considered the petitions and asks leave to report that 814 petitions were filed with the Secretary of State on February 18, 1971 at 11:00 a.m., containing 41,348 signatures; that 801 petitions are in the form required by Article IV, Part Third, Section 18 and Section 20 of the Constitution and that said petitions contain the valid signatures of 36,775 electors; that the Committee found 13 invalid petitions and also found 4,573 invalid signatures.

The Committee further reports that the petitions and signatures contained therein are valid and sufficient in number and that said bill is properly initiated for the Legislature under the provisions of Article IV, Part Third, Section 18 of the Constitution, and that said bill be referred to the Committee on Taxation.

Signed:

Senators:

TANOUS of Penobscot
QUINN of Penobscot

Representatives:

HENLEY of Norway
PAGE of Fryeburg
WHITE of Guilford
BAKER of Orrington
LUND of Augusta
CARRIER of Westbrook
HEWES

of Cape Elizabeth
WHEELER of Portland

The Minority of the same Committee on the same subject matter reported that they do not have sufficient knowledge and information upon which to form a belief as to the validity and sufficiency of the signatures on the petition.

Signed:

Senator:

HARDING of Aroostook
Representatives:

KELLEY of Caribou
ORESTIS of Lewiston

Which reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Harding.

Mr. HARDING of Aroostook: Mr. President and Members of the Senate: As one of the signators of the Minority Report, I think it is appropriate that I explain to the Senate the basis of that report.

First of all, I do want to say that every member of the committee, and I am sure every member of this legislature, wants the people of Maine to vote on any issue on which the required number of signatures have been gathered on initiative or a referendum. There should be no question on that particular point.

On these petitions, however, that were submitted, I do understand from the Secretary of State and from the Attorney General that a review of them had been made. They had been checked out to see what on the face of them might be invalid. And I would concur that the Secretary of State and the Attorney General had fulfilled their responsibilities in this regard. However, on any matter which we are going to ask the people of Maine to vote upon, I believe that they should know and be assured that the public has had a chance to investigate the matter, to look over the petitions to make sure that the law had been complied with.

Now, as far as the Judiciary Committee is concerned, I speak for myself, and I think this is true with all other members of the Committee, I had not had the opportunity to examine a single one of these petitions prior to the hearing. It was only after the hearing that we were permitted to examine these petitions.

It seemed to me that the public has a right to believe that the Judiciary Committee, as a committee of this legislature, did examine these petitions, and also that they made them available to the public to examine. So my

position on the Judiciary Committee was that we ought to have these petitions duplicated and have them available, these duplicated signatures on the petitions, available in some room in this state house so that every member of this legislature, if he desired to do so, could go and check over the signatures and the petitions from his area. If there were found by that fact, or by the press printing the names of the circulators and the signators, then the committee could consider those irregularities. But it troubles me very deeply that even this very small thing to protect the public, this very small measure, was not taken. I think this sets a very bad precedent for this legislature. So this is why we signed this Minority Report. I would tell this body here that we do strongly suspect that these petitions are valid, that they do have enough signatures, and that they were properly circulated. I do say we strongly suspect; but no member of the committee had sufficient information, however, to form that belief, in my opinion, to certify it to this legislature, and this is the basis of the Minority Report which we have signed.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: I note from the distribution of the signers of the two reports that this is a non-partisan matter, and I notice that Senator Harding went out of his way to say that he does not expect there is any problem with the signatures.

I would point out to the Senator and all those who do wish to inspect the petitions that these petitions will be on file in the Secretary of State's office, and they are available for inspection by those who wish.

Now, as to the position of the members of the committee and the members of the legislature on the actual validity of the petitions themselves, which means the signatures on the petitions, I would point out to you what is printed on each petition. It says that the verifying petitioner, amongst other things, must verify that the signatures of all petitioners are original

and authentic and make oath accordingly. Now, every one of these petitions has been sworn to by the circulator that these are the facts.

Then the town clerk takes the petition and this is what happens: each town or city clerk must personally sign a certificate appended to the petition specifying that each name on the petition appeared on the voting list of his town or city as qualified to vote for governor. Now this is done by two people, there is an oath involved, and certainly this is adequate reliance to place upon the validity of the petition, so it seems to me we can be assured that these petitions and the signatures are in order.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS of Penobscot: Mr. President and Members of the Senate: I want to thank my friend, Senator Berry from Cumberland, for defending the Majority Report of the Judiciary Committee. I think that perhaps he misunderstood me when he asked me if I was going to stand up to say something about the matter, and perhaps that is why he did get up.

I do want to speak in behalf of what the Judiciary Committee did as well as pertaining to the remarks made by Senator Harding from Aroostook, also a member of the Judiciary Committee.

Now, when this particular initiated referendum was sent to the Judiciary Committee to determine the validity of the signatures and the number of petitions, and also to determine if there was a sufficient number of signatures as required by the constitution, to determine the validity of these signatures, and to report back to the Senate, I immediately held an executive committee meeting of the Judiciary Committee. We discussed this particular initiated referendum which was sent to our committee, and I received a unanimous vote from the Judiciary Committee to authorize the Secretary of State's Office to examine the various petitions, to examine the signatures on these petitions, and to report back to the Judiciary Committee the total number of petitions that had been filed and

the total number of valid petitions. We also asked them to report back to us the total number of signatures filed, as well as the total apparent number of valid signatures. Now, this was a unanimous vote of the Judiciary Committee, and this letter was forwarded, signed by myself as Chairman, to Joseph Edgar, our Secretary of State, and we asked him to perform this task for us.

Now, his department is well trained and has done this time and time again, examining ballots and petitions, and we felt that he and his department would certainly have the necessary time that would be necessary to tabulate these various petitions, to examine them, and then to report back to the Judiciary Committee. This was done. And after the report was submitted by Mr. Edgar at the public hearing of the Judiciary Committee, it wasn't until then that all of a sudden there were objections made to the procedure which we had unanimously agreed to follow. They were no requests prior to this time to examine these petitions or the signatures. All of these requests came after we had had the public hearing, during or after the public hearing. I had had one request the evening before the public hearing for examination of these petitions.

Now it is my feeling that while these petitions are in the hands of the Judiciary Committee, under our custody and control in order that we may examine them, that only the members of the committee shall be authorized to examine the petitions. We are charged with preserving and protecting the rights of the people of the State of Maine.

An initiated referendum is the last right that the people of the State of Maine have to question the acts and doings of the legislature. This is the last avenue open to them. And I feel, as Chairman of the Judiciary Committee, as a member of the Senate and as a citizen of the State, that we should bend over backwards to protect this last right that the people of the State of Maine have; that we should not unduly or in any way attempt to abort the Constitution of the State of Maine. If we do,

especially in this particular instance, this particular initiated referendum, if we attempt in any way to abort the intentions of the constitution, to try to squash the rights of the people, to try to delay it by extensive examination of the petitions without sufficient reason, it is my feeling that the people of the State of Maine, when this referendum does reach them to vote upon the same, that they will let us know their answer as to how they feel the legislature should act.

Let us not anger the public by trying to take away from them their last visible right of questioning the acts and doings of this legislature. So I ask all of you to support the report of the Judiciary Committee and vote to accept the Majority Report. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Harding.

Mr. HARDING of Aroostook: Mr. President and Members of the Senate: I agree wholeheartedly that if these petitions are submitted and they are correct that they should be submitted to the people, so there is no quarrel which I would have with the Senator from Penobscot, Senator Tanous.

I would tell the members though of one particular problem which has not been investigated, which nobody has even attempted to find an answer to. For example, these petitions have to be, as the Senator from Cumberland, Senator Berry, has mentioned, whoever circulates them has to sign under oath that he knows that those were the signatures of the persons who signed the petitions. It is not enough for him, under the Supreme Court rulings, to say "Joe told me the signature is correct." He must know of his own personal knowledge that this is the signature.

As an example of the cursory examination that we made, in one city 1,561 signatures were certified to be the originals by one circulator. This committee didn't even ask that circulator if in fact she was familiar with these signatures. These signatures were gathered by using over 200, I think it was 232, different petitions that this circulator had used to gather these signatures. So it isn't a question

of thwarting the will. If the fact is that these signatures are here, and the circulator did not know that those were the original signatures, then we do not have a valid petition before us. And my only suggestion to this Senate is that we have certain responsibilities, not only to the ten per cent that signed the petitions, but to the other ninety per cent that did not sign the petitions. They have certain rights also.

My suggestion to you is that this Judiciary Committee, which committee I respect very much, did not exercise its responsibilities as I feel that it should in investigating this matter so that this legislature could really say to the people of Maine "These are valid. They are valid signatures, this is a proper initiative, and you will vote on it." This is all that I ask, that we assure ourselves on that point, and I feel that we have not done so. And I would move that the Senate accept the Minority Report of the Committee, and this would enable us in a very short time to duplicate these signatures to make them available so that the press and the public will have a chance to look at them. It seems to me this is little enough, and this will take probably a couple of days.

The PRESIDENT: The Senator from Aroostook, Senator Harding, moves that the Senate accept the Minority Report of the Committee on Judiciary on Initiated Bill, "An Act Repealing the 'Maine Income Tax Law.'"

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ of Kennebec: Mr. President and Members of the Senate: My presumption is and will continue to be that these signatures are valid, and I will not participate in any charade that seeks to actually review the entire petition process.

I will not support any shenanigans such as putting out alternate questions before the voters, and I will not support any artificial posture that gives any voters the impression that the Maine Legislature is wiggling and trying to dodge the obvious desire of the people for an opportunity to vote on the income tax. Consequently,

I will vote against the motion to accept the Minority Report, and I request a roll call.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Aroostook, Senator Violette.

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: I would concur with the remarks made by the Senator from Aroostook, Senator Harding.

Without in any way trying to take a position that this matter should not go out to the people or make any attempt to thwart the will of the people to vote on this, I think that some opportunity should have been given to responsible parties, parties who are interested, to examine these petitions. We allow this as a matter of course on nomination papers which are filed for candidates. Responsible parties are given the opportunity to look at them. And the responsibility of the Secretary of State in checking out these names that are on nomination papers, and such as are on this initiated referendum certainly remain within a limited scope. I expressed to the Chairman of the Judiciary Committee prior to the hearing, I mean just very calmly, I hope, expressed to him my views that some opportunity should be given to responsible people, certainly to members of the legislature, to look at these petitions, to examine them, without in any way wishing to impede the will of the people. I am somewhat sorry that this opportunity was not accorded to us.

I would support the motion of the Senator from Aroostook, Senator Harding, hopefully and calmly, without in any way impeding the progress of this r e f e r e n d u m through this legislature, that we ought to have the opportunity, we should have had the opportunity, to look at them prior to reporting out this report.

The PRESIDENT: The Chair would like to make clear the motion that is before the body. The motion is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought to Pass Report of the Committee. The Chair was in error

when it stated the motion of the Senator from Aroostook, Senator Harding. That motion would have to be disposed of before the motion of the Senator from Aroostook would take precedence.

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY of Cumberland: Mr. President and Members of the Senate: I honestly feel that we are certainly involved in a very, very serious matter as to the initiation of a petition referendum to the public.

I think the good Senator from Aroostook, Senator Harding, clearly stated that the other ninety per cent of the population which had not signed the petitions certainly deserved to be protected.

Now, it wasn't too long ago, in fact, back in the last general election, when a candidate seeking to run for governor had also filed petitions before the Secretary of State's office that were accepted and allegedly proven valid. Yet, upon public inspection, after dossiers were circulated throughout many of our cities, we found out that many of these people had never signed these petitions.

I can't help but concur with the Senator from Aroostook, Senator Harding, that I believe we should protect the rights - we are talking about \$61 million worth of services for the people of the State of Maine, and I think we should be very, very careful and scrutinize these petitions to make sure that they are truly valid before we give just a blanket O.K. on the reception of these things and sending the thing back out to referendum.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS of Penobscot: Mr. President and Members of the Senate: I rise again to answer the last three speakers.

First of all, as to the position of the Senator from Cumberland, Senator Conley, those of you who were here at the last session will remember that he had a particular bill before the Legal Affairs Committee sending a particular question to the people of Portland at that time. I think the majority of the Senators were against sending

this question to the people of Portland because they felt that the question was not necessary to be sent to the people of Portland, and Senator Conley at that time strongly spoke in favor of sending the question to the people. Let the people decide. Well, I think the moral is the same in this particular instance. The people have used one of the constitutional provisions provided for them, and that is the right of petition to question the acts and doings of the legislature.

Now it matters not what the contents of our acts and doings were, the principle involved here is the fact that they have the right. Now, are we afraid, are we saying in fact that the ten per cent that did petition the legislature, that by their mere petitioning - and let's say that if they were not sufficient - are we now saying that we are taking away the rights of ninety per cent of the people, as Senator Harding and Senator Violette from Aroostook have proposed? I say that we are not. I say that we are granting one hundred per cent of our citizens the right to vote on what appears to be a valid question presented to us.

Furthermore, Senator Harding of Aroostook and Senator Violette of Aroostook are both attorneys, and I remind them that in the rules of evidence when anything is presented on its face value, and it appears to be valid in every respect, that the same is valid evidence, and shall stand until somebody has rebutted the presumption of validity. And there is a presumption of validity. Once these petitions have been submitted in proper form, and have met the requirements of law, then they are valid on the face of them. And until we receive evidence contrary to this, then these remain valid petitions. Now, do they suggest as attorneys that we seek out and ferret out some irregularities where there are none apparent?

We had a public hearing and we asked the people of the State of Maine to attend this public hearing and tell the Judiciary Committee and the legislature whether there are irregularities or were irregularities in getting the signatures on these petitions. I submit

to you that two people appeared at this particular hearing to tell us of rumors of possible irregularities from rumors that they had heard. We checked out both of these rumors and both of them proved to be invalid. Now these were the only two areas where we had heard about irregularities and they were both checked out. I have heard of no other irregularities.

To fulfill the will of Senator Harding of Aroostook to really investigate each and every signature on the 40,000 odd signatures presented to us, if we are to ask every single individual to appear before our committee, then we as a committee would be wilfully depriving the people of the State of Maine of their right granted to them under the constitution. And I say that we would be aborting the intent of the constitution, we would be depriving the people of this state of their right granted to them by our forefathers if we were to fulfill his will. And how long would it take us to examine 40,000 people, to subpoena them before us? Six months perhaps, and we would by delay, by devious means, thwart the intent of the constitution; we would deprive the people of their rights. And I humbly pray to each and every one of you that we never resort to this on this particular issue or any other, because we are here to serve the people and not to use devious means not to serve them. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE of Franklin: Mr. President and Members of the Senate: I rise at this time to take issue with some of the remarks that have been made by the Senator from Cumberland, Senator Conley, regarding the petitions and the third - party effort by the candidate who opposed Governor Curtis last year. These were not ruled invalid.

You will recall that there is a provision in Title 21 which permits a person to challenge the nomination petitions of a person running in a primary election or, in this instance, a third - party candidate. These petitions were presented

within the time limit to the Secretary of State. They were examined and were deemed valid by the men of the Attorney General's Department. They were examined by the Chairman of the Democratic Committee and those associated with him, the petitions were duplicated by the committee and examined by members of the committee, and a handwriting expert was employed to check out some of the signatures, all of which was done in the confines of the Deputy Secretary of State's office.

After checking these petitions, through effective communication between the Chairman of the Democratic Party and the third - party challenger, the third - party challenger withdrew from the race. As a result of his withdrawal there was no third - party candidacy, and the ballots were printed with the two candidates, the two major candidates, on the ballot.

So I would like to correct any misimpression, any wrong impression, which Senator Conley may have left with you.

I suggest, Mr. President and Members of the Senate, that this may be purely a dress rehearsal for another initiative which is coming before us shortly.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Report of the Committee on Judiciary on Bill, "An Act Repealing the 'Maine Income Tax Law.'" Initiated Bill No. 1. A roll call has been requested.

In order for the Chair to order a roll call, it requires the affirmative vote of one - fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted? Obviously more than one - fifth having arisen, a roll call is ordered.

The Chair will state the question once more. The pending question before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Report of the Committee on Judiciary on Bill,

“An Act Repealing the Maine Income Tax Law.” A “Yes” vote will be in favor of accepting the Majority Report; a “No” vote will be opposed.

The secretary will call the roll.

ROLL CALL

YEAS: Senators Anderson, Bernard, Berry, Chick, Danton, Dunn, Fortier, Greeley, Hichens, Hoffses, Johnson, Katz, Levine, Martin, Moore, Peabody, Quinn, Schulten, Sewall, Shute, Tanous, Wyman and President MacLeod.

NAYS: Senators Carswell, Clifford, Conley, Graham, Harding, KeBam, Marcotte, Minkowsky and Violette.

A roll call was had. Twenty-three Senators having voted in the affirmative, and nine Senators having voted in the negative, the Majority Report of the Committee was Accepted.

Thereupon, on motion by Mr. Berry of Cumberland, the petitions were ordered placed on file with the Secretary of State and the Bill Referred to the Committee on Taxation with 3,000 copies Ordered Printed.

Under suspension of the rules, sent down forthwith for concurrence.

Out of order and under the suspension of the rules, the Senate voted to take up the following:

**Papers From the House
House Papers**

Resolve, for Laying of the County Taxes for the Years Nineteen Hundred and Seventy - one and Nineteen Hundred and Seventy - two. (H. P. 1233) (L. D. 1520)

Comes from the House, referred to the Committee on County Government and Ordered Printed.

Which was referred to the Committee on County Government and Ordered Printed in concurrence.

Non-concurrent Matter

Bill, “An Act Relating to Ice Fishing in the Allagash Waterway.” (S. P. 176) (L. D. 528)

In the Senate March 25, 1971, the Majority Ought to Pass report Read and Accepted and subsequently the Bill was Passed to be Engrossed.

Comes from the House, the Minority Ought Not to Pass report

Read and Accepted, in non - concurrence.

On motion by Mr. Hoffses of Knox, the Senate voted to Recede and Concur.

Non-concurrent Matter

Bill, “An Act Concerning Minimum Salaries for Teachers.” (S. P. 516) (L. D. 1401)

In the Senate March 24, 1971, The Minority Ought to Pass in New Draft report (S. P. 517) (L. D. 1402) Read and Accepted and subsequently the Bill, in New Draft, was Passed to be Engrossed.

Comes from the House, the Majority Ought to Pass in New Draft report (S. P. 516) (L. D. 1401) Read and Accepted and subsequently the Bill, in new Draft, was Passed to be Engrossed, in non - concurrence.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ of Kennebec: Mr. President and Members of the Senate: I would like very briefly to clarify the position the Senate took.

The Senate the other day effectively took all mention of a step program and teachers' salaries out of existing law. The two paragraphs that remained in the report that the Senate accepted are part of existing law, and it is that part I want to explain to you so you will understand. The very brief bill that the Senate accepted was existing law just reproduced on the Minority Report.

Mr. President, I move that the Senate insist.

The PRESIDENT: The Senator from Kennebec, Senator Katz, moves that the Senate insist. Is this the pleasure of the Senate?

The motion prevailed.

House Papers

Bills and Resolution today received from the House requiring Reference to Committees were acted upon in concurrence, except for the following:

Bill, “An Act to Authorize a Food Stamp Program in Somerset County.” (H. P. 1087) (L. D. 1476)

Comes from the House referred to the Committee on County Government and Ordered Printed.

On motion by Mr. Minkowsky of Androscoggin, referred to the Com-