

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

The PRESIDENT: A roll call has been requested. Under the Constitution, 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 Quinn, that the Senate accept the Ought to Pass Report "B" of the Committee on Bill, "An Act Prohibiting the Use of Certain Nonrefundable Beverage Containers". A "Yes" vote will be in favor of Accepting the Ought to Pass Report "B" of the Committee; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Bernard, Berry, Chick, Dunn, Fortier, Graham, Greeley, Hichens, Hoffses, Kellam, Moore, Quinn, and President MacLeod.

NAYS: Senators Anderson, Carswell, Clifford, Conley, Danton, Johnson, Katz, Marcotte, Martin, Minkowsky, Peabody, Schulten, Sewall, Shute, Tanous, and Violette.

ABSENT: Senators Harding, Levine and Wyman.

A roll call was had. Thirteen Senators having voted in the affirmative, and sixteen Senators having voted in the negative, with three Senators absent, the motion to Accept the Ought to Pass Report "B" of the Committee did not prevail.

Thereupon, the Ought Not to Pass Report "A" of the Committee was Accepted in concurrence.

The President laid before the Senate the second tabled and specially assigned matter:

Bill, "An Act Permitting Agreements Among Units for Cooperative Educational Purposes." (H. P. 1285) (L. D. 1684)

Tabled — April 28, 1971 by Senator Harding of Aroostook.

Pending — Passage to be Engrossed.

Thereupon, the bill was Passed to be Engrossed in concurrence.

The President laid before the Senate the third tabled and specially assigned matter:

Bill, "An Act Relating to the Laws of the Maine Industrial Building Authority." (S. P. 496) (L. D. 1372)

Tabled — April 28, 1971 by Senator Conley of Cumberland.

Pending — Passage to be Engrossed.

On motion by Mr. Sewall of Penobscot, retabled and specially assigned for May 4, 1971, pending Passage to be Engrossed.

The President laid before the Senate the fourth tabled and specially assigned matter:

Bill, "An Act Relating to Criminal Trespass in Buildings and on Premises." (S. P. 532) (L. D. 1568)

Tabled — April 28, 1971 by Senator Kellam of Cumberland.

Pending — Enactment.

Thereupon, the bill was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the fifth tabled and specially assigned matter:

Bill, "An Act to Appropriate Moneys for the Expenditures of State Government and for Other Purposes for the Fiscal Years Ending June 30, 1972 and June 30, 1973." (S. P. 533) (L. D. 1577)

Tabled — April 28, 1971 by Senator Sewall of Penobscot.

Pending — Enactment.

On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.

The President laid before the Senate the sixth tabled and specially assigned matter:

SENATE REPORTS from the Majority of the Committee on Judiciary on Bill, "An Act Relating to the Form of Ballots of General Elections." (IB 2) considered the petitions and asks leave to report that 380 petitions were filed with the Secretary of State on February 20, 1971 at 1:00 p.m., that 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 37,633 electors and the invalid signatures of 8,301 electors. Twenty-three petitions were found to be invalid and 357 petitions were found to be valid.

The Committee further reports that the petitions contain a sufficient number of signatures which are valid and that said bill is properly initiated before the Legislature under the provisions of Article IV, Part Third, Section 18 of the Constitution.

The Minority of the same Committee on the same subject matter reported that of the petitions submitted, 119 containing 32,059 signatures consisting of two or more petitions bound together, only one petition among each respective group was signed and verified by a petitioner. We believe this renders invalid the other respective petitions in each respective group of the 119 which were not signed and verified by one of the petitioners. This would render invalid over 30,000 of the signatures submitted. Therefore, the minimum number of signatures required by Article IV, Part 3, Section 17 of the Constitution of Maine was not complied with.

Tabled — April 29, 1971 by Senator Berry of Cumberland.

Pending — Acceptance of Either Report.

Mr. Tanous of Penobscot then moved that the Senate Accept the Majority Report of the Committee.

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

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: I rise to oppose the motion of the Senator from Penobscot, Senator Tanous. Further, I would like to present the Senate with some information.

The Minority Report of the Committee raises certain points, namely, that 119 of the petitions contained over 30,000 signatures, consisting of one or more petitions bound together, and only one petition amongst several groups were signed and verified by the peti-

tioner. Now, it was the belief of the members signing the Minority Report that this procedure may be invalid, and that in fact, if they were invalid, this would mean that if would render invalid as many as 30,000 signatures submitted.

In view of this, and in order to get this answered, the Senator from Aroostook, Senator Floyd Harding, discussed with members of the Judiciary Committee the matter propounding questions to the Supreme Judicial Court to answer the objections or the questions raised in their report. Yesterday Senator Harding did consult the Attorney General with regard to drafting up the questions that he thought should be propounded to the Court and answered, also assistance in drafting them, and also in presenting an order to this body propounding those questions to the Court.

I have a letter here, addressed to me, because the Senator from Aroostook, Senator Harding, had to be away on legal business today, and the letter reads as follows: "Dear Senator Violette:

"Deputy Attorney General George West and I talked with Senator Floyd Harding on April 29, 1971 relative to questions to be presented for consideration to the Supreme Judicial Court concerning the above matter. Senator Harding asked that we advise you that we are working on the draft of the questions and order, and we would expect to have that draft in your hands next Tuesday.

"We will also, as is usual in such case, prepare a non-advocatory memorandum of law for the assistance of the Supreme Judicial Court.

Sincerely yours,
Jon R. Doyle"

Now, I think that these are questions that are important enough to be submitted, and I would hope that somebody would table this matter until next Tuesday so that we can have a look at these questions and the proposed draft or the order for consideration by the Senate. I would certainly hope that the matter would be tabled until that time.

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

Mr. CONLEY of Cumberland: Mr. President, I move that this matter lie on the table until next Tuesday.

The PRESIDENT: The Senator from Cumberland, Senator Conley, moves that the Initiated Bill Report No. 2 be tabled and specially assigned for Tuesday next.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President, I request a division on the tabling motion.

The PRESIDENT: A division has been requested. As many Senators as are in favor of the motion of the Senator from Cumberland, Senator Conley, that this matter be tabled until Tuesday next will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President, I request a roll call.

The PRESIDENT: 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 pending question before the Senate is the motion of the Senator from Cumberland, Senator Conley, that Initiated Bill No. 2, the Judiciary Committee Report be tabled and specially assigned for Tuesday next, pending acceptance of either report. A "Yes" vote will be in favor of the motion to table; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Bernard, Carswell, Clifford, Conley, Danton Fortier, Graham, Kellam, Marcotte, Martin Minkowsky and Violette.

NAYS: Senators Anderson, Berry, Chick, Dunn, Greeley, Hichens, Hoffses, Johnson, Katz, Moore, Peabody, Quinn, Schulten,

Sewall, Shute, Tanous, and President MacLeod.

ABSENT: Senators Harding, Levine and Wyman.

A roll call was had. Twelve Senators having voted in the affirmative, and seventeen Senators having voted in the negative, with three Senators absent, the tabling motion did not prevail.

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

Mr. TANOUS of Penobscot: Mr. President and Members of the Senate: At this moment now I feel remiss in my obligations to you for not having spoken on this matter before Senator Conley from Cumberland stood up to make a motion to table this matter until next Tuesday. It might have made your decision a little easier on the tabling motion if I had perhaps.

You know, as I stand here and look around this august body, and I use the word "august" as Senator Hoffses from Knox has often used it, and I am wondering if he means we are going to be here until next August. He may well mean that.

In all seriousness, this body is represented by two major political parties in the State of Maine, and when I get done speaking here today there may well be three representative parties in this body, and I may be a member of one.

To many of you the particular issue before us is a political issue, so to speak, it is a partisan issue. I fully recognize that the Democrats are opposed to removing the big "X" at the bottom of the ballot, so to speak, they are opposed to ballot reform, so to speak. And I am fully cognizant that the Republicans feel that politically removing this box would be to their benefit. I am in between here. I am Chairman of the Judiciary Committee and I am a State Senator representing District 27. But in a larger sense, I suppose all of us here should represent the interests of the State of Maine ahead of any other interests which we may have, either personal or partisan.

When I get done I hope that the Minority Floor Leader, Senator Violette from Aroostook, and his party will join me in my senti-

ments, and I hope that Senator Berry, the Majority Floor Leader from Cumberland, will also join me in my sentiments.

You know, you can sit here so long and feel the partisan winds blow across your face. I sit here and see Senator Conley from Cumberland waving his head "No." I am not trying to grandstand it, Senator Conley, I am just trying to speak my heart on this matter. I apologize for that remark to the Chair. But you know, you sit here and you think about partisan politics, and you look up at the Chair and see the American Flag on your left and you see the State of Maine Flag on your right, and you see a member of the cloth representing the people of the state before us and, you know, you suddenly realize that there is something greater than the barriers of a political party in our state, and that is the ultimate right perhaps of the people. And when you are talking about an initiated referendum as we have before us today, and as we did have on another issue some time ago, this is what is at stake here, the rights of the people. And this is what we should be concerned with.

We should be concerned with whether we should use dilatory tactics to abridge the rights of the people that have been granted to them under the Constitution of the State of Maine, and this is foremost in my mind. This is why I don't feel that partisan politics ought to play a part when you are talking about the rights of the people as granted to them by the Constitution of the State of Maine. This particular right, in my opinion, should override the barriers of either political party.

Now, what we have been asked to do in voting on this particular bill today is not changing any of our political advantages as a party, so to speak. All we are asked to do is approve a report of a committee, as we have done in other instances. We have been asked to send a question to the people to determine whether the will of the people will accept a particular change. Now, it matters not whether it be an income tax repeal question. It matters not whether

it is a removal of the big box at the top of the ballot, or ballot reform, so to speak. The issue is unimportant as to the content of the particular referendum. What is most important and what is primary, or should be primary, in our minds is the rights of the people, the rights of the people as granted to them by the founding fathers of our Constitution. And this is the important thing.

So I ask and I plead with both political parties to override the barriers of your party and move this thing along. Let's not try to impede this, to be obstructionists and use dilatory tactics to delay this matter, to delay the rights of the people. Let's move it along.

Now, there has been mention of going to the Law Court on certain questions. Briefly, I would like to cover the work of the Judiciary Committee on this particular bill, on this Initiated Referendum No. 2. We have had this before our Committee since sometime in the area of March 1st. Actually we have had it two months. The first part of April we had a public hearing on this bill, at which time the petitions were brought up before our Committee for examination, and we had an evening session last Tuesday night at which we inspected these and had an opportunity to look at and examine the petitions and signatures. They were examined at length. We didn't get done until approximately a quarter of 11:00 or 11:00 o'clock that evening. I want you to know that your Judiciary Committee is really doing their homework.

Well, we had an opportunity to look at these petitions. This, incidentally, is the third examination that these petitions were given. They were given this same examination at the local level by your town clerks, they were given an even more close inspection, I believe, by the Secretary of State's office, and we again examined them at liberty the other night in the Judiciary room in executive session. We had quite a few discussions. There were questions of law that were brought up by Senator Harding of Aroostook and other members of the Committee. Fortunately, there was some research

work that had been done in this area, and I have the cases before me, the statutory references, and each and every legal question that was raised at this executive session has been answered either by the Supreme Court of the State of Maine or by statute. The questions that were raised, I will repeat, have already been answered.

To my understanding, the questions that are being prepared at this time are similar in nature to what I believe to already have been answered. Perhaps they have come up with different questions. But we did have a discussion about sending valid questions to the Law Court, and I have no objections to this. If any member of the Committee or Legislature can come forth with a valid, legal question which has merit and which has not been answered heretofore by the Supreme Court of the State of Maine or by statutory provision, I assured my members of the Committee that I would lead the way to have the questions resolved by the Supreme Court.

Now, this was last Tuesday evening, and this is Friday afternoon. The legislative process must work along or else we will be here until August. I see no harm in accepting the Majority Report of the Committee at this time. I see no harm in sending this matter along to the other body to be approved, because this particular question still has to go to a public hearing. And here we are, the first week of May starts tomorrow, some committees are winding up their business, and it is imperative to move this legislative process along so that we can adjourn sometime within this calendar year.

If, after this process through the legislative halls has been completed, or during that period of time, any member of either party can come up with some good valid questions, I assure you that the leadership of both parties will join hands in seeing that these questions are sent to the Supreme Court to be resolved and answered. So I say that nobody's rights are going to be abridged, estopped or abated. I merely ask you to join in a greater cause, to move along the legislative process and to grant the people of the State of Maine

their rights as granted to them under the Constitution. Thank you.

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

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: I am not part of the Judiciary Committee, I wasn't here when the report came out, and I have not had much to do with what questions are being prepared, but I do want to say a few words, and I hope I am not misunderstood.

I must say that I personally have never been that much excited over what happens to the big box ballot or what doesn't happen to it. I recall in my part of the State that we used to get beat pretty frequently, and we used to say — well, I am not going to say the first words we used, but "those straight Republican ballots kill us." That wasn't too many years ago, so I guess what we had to do was go out and work that much harder to overcome that obstacle, and we are now licking a few people here and there. Nothing spectacular yet, but we are electing more legislators and more county officials, and I don't know what the big box has to do with it or has not had to do with it. Some of us just like to think that we have been doing more work than other people have, and that may be why we have been a little more successful along the line, not only in Aroostook but perhaps in other areas as well. I have never been that bothered with it.

I have no quarrel with the opinions expressed by my good friend, the Senator from Penobscot, Senator Tanous. He and I were brought up together and we have always been good friends. But I must say that I very deeply resent the arguments being used that anything that our party does here in this legislature with regard to these questions are only being done because we want to drag our heels, because we are being dilatory and disrespectful or insensitive to the rights of Maine people to be heard on questions that they have an interest in.

Neither I nor my party in any way, shape or manner want to impede the ability of our people

to be heard on any questions that they ask for. I submit to you that we are being placed here today in a position where, if we do raise questions which we think are legitimate — and on the floor of the Senate here every day we see divided reports and different opinions on both sides being expressed, and the Senate voting on these questions. Some of them are of a partisan nature and some of them are not, and we generally vote the way we feel eventually, whether they are party matters or not, and I know that I, as Minority Leader of my party, don't feel that when the ball bounces against me that I am going to start casting questions in the direction of my opposition as to what their motives are. If I expect them to feel that my motives are sincere when I argue legislation, I am willing to give them the benefit of that doubt too and say that they are as sincere as I am.

Now, on our request to have these questions propounded to the Court, which we think may be legitimate questions, if the Majority Party here wants to refuse us the opportunity to propound those questions, it is their privilege to so vote, but I do very, very strenuously object to the idea that in our requesting that these questions be propounded we are trying to thwart the will of the voters of Maine. I object to it and I reject it.

We still have several weeks in this legislative session to act, and I am sure that the request that we are making in no sense would prevent the legislature from acting in due time with the initiated referendum. I feel there are serious questions that ought to be answered and we think it should be done before the legislature gets through with it. This is all that we ask. It may well be that if those questions were propounded and they were answered that the questions would be found to be objectionable and the Court would say that the petitions were right. If they are, all well and good. Fine, then let them go.

I also want to make just one other brief remark, because we are being placed in a position here of obstructionism. I think I was

the only one in my party here in this Legislature that knew or had an idea when the so-called big box referendum was submitted with signatures of people that it didn't only do that. It doesn't only say we are going to do away with the big box; it substitutes a completely new ballot form, and I would like to know how many people who signed their signatures knew also that that was what they were signing. I would dare say that perhaps not ten percent of them knew that was what they were signing, if in fact that many, and that the answer might well have been different on the number of signatures if they had known that they were losing their right and privilege to vote for candidates of their party as parties, regardless of the big box, so to speak. And I think there is a tremendous amount of good in allowing our voters to see candidates not only as individuals but as party members.

So, that is all I have to say, Mr. President and Members of the Senate. We can proceed in the voting here. But very, very seriously, it does pain me very greatly to be cast here today in the roll of obstructionist because I know that the situation does not warrant it, and we certainly don't accept it.

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

Mr. TANOUS of Penobscot: Mr. President and Members of the Senate: I don't know as to whether or not my words a few moments ago in any way accused my good friend, Senator Violette from Aroostook, of being an obstructionist. I certainly didn't intend that. It is difficult sometimes to express what you want to say in words.

But I do want to reiterate and reaffirm my pledge to Senator Violette and the members of his party that we don't have to wait for these questions to be prepared by you at this moment to have them available here today in order to have the questions resolved by the law court. This matter can be moved along in the legislative halls, and your questions can be prepared. And as I have said, if the questions

are valid and have not been answered, and they are meritorious questions, I have been promised by the leadership of my party that they would definitely in no way prevent these matters from being sent to the Supreme Court by legislative order to be answered. This can be done at any time. It need not be done before acceptance of the report. This legislative body can overturn any report if it so desires, at any time. So that we are not going to, or at least I don't feel that I personally will renege on my word that I have given to you. I merely ask that this matter be moved along while your questions are being prepared. Then we can get together with you and if the questions are valid and they haven't been answered, then certainly I have pledged, as I said, that this matter will be sent to the Law Court for determination. Thank you.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Aroostook, Senator Violette.

Mr. VIOLETTE of Aroostook. Mr. President, if a division has not been requested, I so request.

The PRESIDENT: A division has been requested. As many Senators as are in favor of accepting the Majority Report of the Committee on Judiciary will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Seventeen Senators having voted in the affirmative, and twelve Senators having voted in the negative, the Majority Report of the Committee on Judiciary was accepted.

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

Mr. BERRY of Cumberland: Mr. President, having voted on the prevailing side, I move we reconsider our action whereby we accepted the Majority Report, and I hope you vote against my motion.

The PRESIDENT: The Senator from Cumberland, Senator Berry, moves that the Senate reconsider its action whereby it accepted the Majority Report of the Committee on Judiciary on Bill, "An Act Relating to the Form of Ballots of

General Elections." As many Senators as are in favor of the motion to reconsider will please say "Yes"; those opposed "No."

A viva voce vote being taken, the motion to reconsider did not prevail.

Thereupon, on motion by Mr. Berry of Cumberland, Initiated Bill No. 2 was Referred to the Committee on Election Laws, with 3,000 copies Ordered Printed, and the petitions ordered placed on File with the Secretary of State.

Sent down for concurrence.

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

Mr. BERRY of Cumberland: Mr. President, having voted on the prevailing side, I now move reconsideration of the motion, and I hope you vote against it.

The PRESIDENT: The Senator from Cumberland, Senator Berry, moves that the Senate reconsider its action whereby this Bill was referred to the Committee on Election Laws with 3,000 copies ordered printed and sent down for concurrence. As many Senators as are in favor of the motion of the Senator from Cumberland, Senator Berry, that the Senate reconsider its action will please say "Yes"; those opposed "No."

A viva voce vote being taken, the motion to reconsider did not prevail.

The President laid before the Senate the seventh tabled and specially assigned matter:

Bill, "An Act Relating to the Retail Sale of Wine in Department Stores." (H. P. 1171) (L. D. 1630)

Tabled — April 29, 1971 by Senator Berry of Cumberland.

Pending — Passage to be Engrossed.

Mr. Shute of Franklin then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A," Filing No. S-131, was Read and Adopted the Bill as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the eighth tabled and specially assigned matter:

Bill, "An Act Creating an Advisory Commission for the Study of Public Support for Post-Secondary