

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and First Legislature*

OF THE

STATE OF MAINE

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standing until the monitors have made and returned the count.

A division of the House was had. Thirty-four having voted in the affirmative and eighty-one having voted in the negative, the motion to reconsider did not prevail.

Thereupon, the Bill was passed to be engrossed as amended by Senate Amendment "B" and by House Amendments "A," "B," and "D" in non-concurrence and sent up for concurrence.

### Finally Passed Constitutional Amendment

Resolve Proposing an Amendment to the Constitution Forbidding Discrimination Against Any Person (S. P. 527) (L. D. 1448)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER pro tem: The Chair recognizes the gentleman from Strong, Mr. Smith.

Mr. SMITH: Mr. Speaker, this item one, Constitutional Amendment, will require a two-thirds vote of the House, and I want to go on record for the matter of the record as being opposed to this particular item because it is already in the Federal Constitution. And because as far as my knowledge of the State of Maine goes, there has never been nor is there now any practice of discrimination as far as religion is concerned, or as far as ancestry, or sex, or race. I have always enjoyed living in the State of Maine because of that. And I feel today if we go to tampering with a problem or an issue that is not a problem, we will be creating problems rather than solving them. Therefore, I want the record to record that I shall be in opposition to this item.

The SPEAKER pro tem: The Chair recognizes the gentleman from Houlton, Mr. Berman.

Mr. BERMAN: Mr. Speaker, I hope the House will go along with this Constitutional Amendment. Now this House by roll call voted 125 to 4 to go along with the Amendment, and I am very glad that the gentleman from Strong says that this is going to require two-thirds. We had 125 for it on the first roll call.

Now this very eminent Commission composed of the Chairman Fred Scribner, former Speakers of the House, John Ward and George Varney, who was also president of the Senate; Senator Robert Marden; Representative Edwin Smith, Judge John P. Carey among others came up with a very comprehensive report which has not yet been made public, and they felt there was a need for this Constitutional Amendment in the State of Maine. Now if these eminent gentlemen feel that there was need for this Constitutional Amendment in the State of Maine, I certainly think that this House this afternoon should go along with the original roll call of 125 to 4.

The SPEAKER pro tem: The Chair recognizes the gentleman from Winterport, Mr. Easton.

Mr. EASTON: Mr. Speaker, I was one of those who voted in favor of this Constitutional Amendment, but I had not had a chance at that time to study it. I believed and still do in the tremendous abilities, legal and otherwise, of those who made this study and sponsored this legislation. I rise to ask a question or two of anyone who would care to answer such a question. Number one, recalling that the Senate Amendment eliminates the language which specifies the type of discrimination, i.e., race, religion, sex, or ancestry which is forbidden, remembering this, I am curious to know what the term discrimination really would mean. Without discrimination by reason of say sex, or any other limiting factor, we perhaps are thrown to the dictionary definition of the word which means to be particular. I just don't understand what it means. I don't understand what the words civil rights mean. Someone has said rather jokingly this would mean all rights except those which are military. Well, that doesn't help me very much.

A couple more questions. Would the adoption of this amendment for example, eliminate our so-called literacy requirement for voting? Are we not thus discriminating against illiterates in the exercise of their civil rights or franchise? I don't know. There is a boarding house or some such thing nearby

the Augusta House. There is a sign on it that says something about boarding house for gentle females or something. Is the proprietor of this boarding house discriminating against males in the exercise of her civil rights of renting? I don't know. I would appreciate some enlightenment.

The SPEAKER pro tem: The Chair recognizes the gentleman from Bar Harbor, Mr. Smith.

Mr. SMITH: Mr. Speaker, in answer to the question of the gentleman from Winterport, Mr. Easton, I suggest that an enumeration of civil rights set forth in the Declaration of Rights in our own Constitution and also in our Federal Constitution. In my view, it is most important that in this crucial period in our national history for the State of Maine to go on record in favor of this proposed amendment. The gentleman from Winterport has referred to the last several words in the bill, L. D. 1448, race, religion, sex or ancestry. They have been removed, and I am not sure that he understands that those last few words have been removed. This is a statement of a fundamental principle to guarantee civil rights even as they are guaranteed in the Federal Constitution. This is a particularly sensitive period in our national history. There should be no hesitation on the part of this House and this Legislature to go on record in favoring a Constitutional Amendment or a fundamental law, and pass this Resolution even as we have passed it twice before in this House.

The SPEAKER pro tem: The Chair recognizes the gentleman from Brewer, Mr. MacLeod.

Mr. MacLEOD: Mr. Speaker, if my memory serves me correctly, this came out of the Committee on Constitutional Amendments, eight to seven, "Ought not to pass." And I have yet to hear from a member of the Committee that must have signed the "Ought not to pass" Report. I would like to hear from one of those people to explain why.

The SPEAKER pro tem: The question before the House is the final passage of the Resolve Proposing an Amendment to the Constitution Forbidding Discrimination

Against Any Person, Senate Paper 527, Legislative Document 1448.

The Chair recognizes the gentleman from Strong, Mr. Smith.

Mr. SMITH: Mr. Speaker, I was one of those eight members on that committee that signed it out "Ought not to pass." And I have been consistently standing up for that report. At the committee hearing, it is true that we heard that these gentlemen that the gentleman from Houlton, Mr. Berman, has spoken of that had made such a report and recommended that this be done. However, to bear out that there wasn't too much to back up the need for that, I would ask the gentleman from Houlton, Mr. Berman, to cite if he would specific cases in the State of Maine where any such existence, such a reason for having this in here has ever existed. And before our committee, I cannot remember that any of those instances were ever cited spelling out the time and the place and, therefore, some of us felt that it was an unnecessary piece of legislation to put before the people.

The SPEAKER pro tem: The Chair recognizes the gentleman from Bar Harbor, Mr. Smith.

Mr. SMITH: Mr. Speaker, I would like to point out to the gentleman from Strong that when the Federal Constitution was adopted and fundamental rights were set forth in the Constitution, many, many problems did not then exist. They were anticipated. They were anticipated by the founders of our Constitution and this Legislature should be far-seeing enough and basic in its thinking so that it now must and should anticipate problems; and this is merely a reiteration of the basic truths which are in our state and also in our State and Federal Constitutions.

The SPEAKER pro tem: The Chair recognizes the gentleman from Houlton, Mr. Berman.

Mr. BERMAN: Mr. Speaker, in response to the inquiries made by my good friend from Brewer, Mr. MacLeod, and my good friend and colleague on the committee, Mr. Smith, as to what transpired, I would say this with regard to this eight to seven report. This committee, of which ten members of this

House should have been proud to be a part, was really quite ill-attended at times. We were dealing with fundamental rights, and I will say very frankly, at no time can I remember when all fifteen members of the committee were present. So this eight to seven report, I submit very frankly and very candidly, is quite meaningless. Because this means that the committee clerk takes his little document around and says to the various members of the committee, would you sign Report A or would you sign Report B.

Now some of us have worked very hard and I hope very faithfully on this committee, and we have given it a great deal of serious thought. So in answer to the question from the gentleman from Strong, who also served on this committee as to whether a need for this exists, I have in my hand a fifty-two page report none of which I am going to read unless the gentleman requests that I read it, and it is the report on the Maine Advisory Committee to the United States Civil Rights Commission, from testimony taken at Portland, Maine on March 25, 1963. Now these proceedings have been available, and who are the type of gentlemen that came down and testified in behalf of this sort of thing? Well, I will tell you one and I think he is an extremely high type gentleman and that is President Robert Strider of Colby College, and I have this document which I would be glad to show any member of this House.

The SPEAKER pro tem: The Chair recognizes the gentleman from Perham, Mr. Bragdon.

Mr. BRAGDON: Mr. Speaker, I would pose a question to the Chair if I am in order, and I would because a lot of time has elapsed since this report of this Legislative Committee has come before this House, this eight to seven report. If I am in order, I would request that the Clerk provide us with the report as it came from the committee with the names of the signers.

The SPEAKER pro tem: Is it the pleasure of the House that the Clerk read the report?

The motion prevailed.

(Thereupon, the Divided Report was read by the Clerk as requested

by the gentleman from Perham, Mr. Bragdon.)

Mr. Berman of Houlton was granted permission to address the House a third time.

Mr. BERMAN: Mr. Speaker, Members of the House: I am very happy that the honorable member from Perham, Mr. Bragdon, has asked who signed which report. Eight members signed the Majority "Ought not to pass" Report. Senator Porteous is now in favor of the bill. Senator Farris is now in favor of the bill. Representative Pease voted for the bill when it came to the House. Representative Dennett voted for the bill, Representative Watkins voted for the bill. Representative Viles voted for the bill, and Representative Smith of Strong, so I suggest to the members of the House that if this report had come out today, it would be fourteen to one "Ought to pass," and possibly fifteen to nothing "Ought to pass."

The SPEAKER pro tem: The Chair recognizes the gentleman from Wiscasset, Mr. Pease.

Mr. PEASE: I beg leave Mr. Speaker and Members of the House, to correct the record that has just been made. At the time of the committee hearings, I believe I attended every committee hearing, first. Secondly, at no time have I voted in favor of this bill. It is my recollection that it was I that made the motion to indefinitely postpone the bill and all accompanying papers when it arrived at the House from the other body. I was absent on Friday and was unable then to vote on it. At this time I shall not vote for the resolve, neither am I in favor of it.

At the time of the committee hearings and perhaps to ease the tension just a little, I might suggest that the gentleman from Houlton, Mr. Berman has made allusion to the very capable gentlemen who served on the Constitutional Commission for drafting such a very fine Resolve. I suggest to you that we found it necessary, or the Committee's seven members who reported "Ought to pass," found it necessary to do some amending to take out specifically among other things, the word sex. I suggest to you that although these are very capable gen-

tlemen, sometime they as well as you and I may overlook things. It had to be called to the attention of the commission present at the hearing of the fact that what might happen for example at Bowdoin College if this part of the Constitutional Amendment were left in and a qualified young lady presented herself for admission. I think this would hold true in many other situations.

At the public hearing, I requested a definition of the term 'civil rights,' to find out what rights were not now protected by our Constitution. If you are familiar with Article I, the Declaration of Rights of our Constitution, you will note that in Section I all men are created equally, free and independent, etc. Section III gives the right of all men to worship Almighty God according to the dictates of their own conscience. Section IV gives the right of freedom of speech and freedom to write as you desire certainly within due bounds. Section V, the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and you can go on down through the several twenty-four sections of the first Article of the Constitution of the State of Maine, two or three of which relate to criminal rights or rights in criminal matters. All the rest relate to civil rights or rights in civil matters.

I suggest to you that no justification was shown at any time by any one to the committee as a whole when it heard this bill, that this piece of legislation or this Resolve proposing a Constitutional Amendment was necessary. We presently have a similarly worded Constitutional provision in our Federal Constitution which although not directly applicable to certain instances, I believe that it is completely covered by Article I of our present Constitution. Those are my reasons for not having in the past supported this and for not intending to support it today.

The SPEAKER pro tem: The Chair recognizes the gentleman from Perham, Mr. Bragdon.

Mr. BRAGDON: Mr. Speaker, I would request that, I believe, a

ruling from the Chair with regard to the remarks of the gentleman from Houlton, Mr. Berman, in his reference to the position, or the changed position, of Senate members. I recognize that all the House members on that committee are here and perfectly capable of defending themselves, and I suggest that his remarks be stricken from the record.

The SPEAKER pro tem: The remarks are not out of order.

The Chair recognizes the gentleman from Portland, Mr. Cottrell.

Mr. COTTRELL: Mr. Speaker, Ladies and Gentlemen of the House: I was a signer of the "Ought to pass" report, after we were assured that there was going to be a little change in the language. Of course that eliminated the word "sex," and that was the first time that sex ever had a chance to get into our Constitution. Sex didn't get into the Federal Constitution until, I believe, it was 1918 when they passed the amendment to permit citizens to vote regardless of sex. And I think another thing that disturbs some of us was the fact that one of our elder, honorable counselors of the law, a gentleman by the name of Adams from Lewiston, mentioned the fact that if it was too specific in some instances it might prevent a citizen or a testator in making his will from leaving as a grant of money, for instance, to a boys' Episcopal school; and with that committee amendment I know it was the source and the cause for other members of the committee in changing their attitude towards this amendment.

The SPEAKER pro tem: The question now before the House is the final passage of Senate Paper 527, Legislative Document 1448, Resolve Proposing an Amendment to the Constitution Forbidding Discrimination Against Any Person. This being a Constitutional Amendment requires the affirmative vote of two-thirds of the members of the House. All those in favor of the final passage of this Resolve will rise and remain standing until the monitors have made and returned the count.

Thereupon, a division of the House was had. Eighty-seven voted

in favor of same and thirty-five against, and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

The SPEAKER pro tem: For what purpose does the gentleman arise?

Mr. RANKIN of Southport: Mr. Speaker, I move that when the vote is taken, it be taken by the yeas and nays.

The SPEAKER pro tem: The gentleman from Southport, Mr. Rankin, asks that the vote be taken by the yeas and nays. All those in favor will rise.

An insufficient number arose.

The SPEAKER pro tem: Obviously less than one-fifth having arisen, the roll call will not be taken.

#### Passed to Be Enacted

An Act to Incorporate the Town of Waldoboro School District (H. P. 548) (L. D. 764)

An Act Authorizing Forest Commissioner to Permit and Regulate Dredging in Great Ponds (H. P. 1015) (L. D. 1469)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

#### Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

MAJORITY AND MINORITY REPORTS — Joint Select Committee on Railroad Passenger Service (S. P. 196)

Tabled — June 14, by Mr. Minsky of Bangor.

Pending — Motion of Mr. Albair of Caribou to Accept Majority Report.

The SPEAKER pro tem: The Chair recognizes the gentleman from Bangor, Mr. Ewer.

Mr. EWER: Mr. Speaker and Ladies and Gentlemen of the House: I ask you not to become dismayed ahead of time because I do not intend to read all of this pile of matter that I have here. This matter of railway transportation in Maine has been a vital one to me personally for a good many years

from my long experience in the railroad game. I was involved in all the hearings which led to the final abandonment of passenger train service in Maine. With Senator Whittaker I have been very much interested in the possibilities of getting some restoration of service.

The report of the majority of the committee, the special committee to investigate this matter, had one inaccuracy in it that I think perhaps it arose from a misunderstanding on their part. They stated in the Majority "Ought not to pass" Report that the Public Utilities Commission and the Supreme Court of Maine had both decided against the necessity for any continuation of passenger service. This was not so. The Public Utilities Commission agreed that there was a necessity. They also agreed that the railroads for financial reasons could not be forced to maintain the amount of service that had been previously offered. So they set up a system whereby the Maine Central was to make two round trips a day, with conventional equipment, between Portland and Bangor, with one of the trips running through to Vanceboro and the Bangor and Aroostook would maintain one round trip a day between Northern Maine Junction and Caribou. This was done, and the Maine Central Railroad protested this order of the Commission and took it to the Supreme Court. The Supreme Court, after its decision, decided unanimously that the position of the Public Utilities Commission was not the correct one and ordered the Commission to vacate their previous decision and immediately permit abandonment of all passenger train service.

I would like to read a few short sentences from the various reports of the Public Utilities Commission. The first one from the discussion based upon the petition of July 8, 1959, on Hearing number 3481, page 13, the Commission said, "The evidence here shows that many people still prefer rail passenger service for one reason or another. Notwithstanding the amount of alternative service available, many people refuse to fly, either can't or don't like to drive, and find busses