

MAINE STATE LEGISLATURE

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the derbies as far as I have been able to find out.

The SPEAKER pro tem: The Chair recognizes the gentleman from Waterville, Mr. Muskie.

Mr. MUSKIE: Mr. Speaker and Members of the House: Still standing on my principles, I bow to the inevitable and withdraw my motion so that we may proceed with other business. (Applause).

The SPEAKER pro tem: The gentleman from Waterville, Mr. Muskie, withdraws his motion for the indefinite postponement of Bill "An Act Relating to Fishing Contests on Inland Waters".

Mr. CAMPBELL (of Guilford): Mr. Speaker, I ask for a division.

The SPEAKER pro tem: The Chair will inform the gentleman that the motion to indefinitely postpone has been withdrawn and the procedure now will be the engrossment of the Bill.

Thereupon, the Bill was passed to be engrossed as amended by House Amendments "A", "B", "C", and "D" and sent to the Senate.

The SPEAKER pro tem: The Chair now lays before the House the 33rd matter of unfinished business, House Divided Reports of the Committee on Judiciary on Resolve Proposing an Amendment to the Constitution to Apportion the Number of Members of the House of Representatives to the Several Towns, H.P. 1567, L.D. 882, Majority Report "Ought to pass", Minority Report "A", "Ought to pass" in New Draft, H.P. 2086, L.D. 1556, Minority Report "B", "Ought not to pass" tabled on April 22nd by the gentleman from Rockland, Mr. Burgess, pending acceptance of any report.

The Chair recognizes the gentleman from Union, Mr. Payson.

Mr. PAYSON: Mr. Speaker and Members of the House: Unfortunately the committee which considered this bill consisted of ten lawyers. That's probably why you have three different reports.

I happen to be the signer of Minority report "A" "Ought to pass in New Draft." In order that I

might roughly explain the workings of this bill, I will call your attention to the fact that it was originally introduced as Legislative Document 882, which was reported from the Committee on Constitutional Revision and referred to the Committee on Judiciary. The Resolve changing the Constitution relating to the apportionment of the members of the House of Representatives. Generally speaking, the resolves simply changes the number of representatives of the House on the basis of population. Each county is entitled to the number of representatives that its population bears to the total population of the State. This, in itself, I am not opposed to, although I believe as the resolve is written it means that in the smaller counties the representatives from class towns will be representing a larger number of people than the representatives from the smaller towns in counties in which there is a large city. I do not object to that particularly. My contention is merely one that if you are going to have one branch of the Legislature represented truly and strictly by representatives on the basis of population, the other branch should be represented equally from each county on the basis of one or two senators. In this case, my redraft calls for two senators from each county. I know that, on the merits, such a proposal will meet with general support in counties such as Cumberland, Androscoggin and Penobscot. However, I do feel that the area basis of apportionment for representation in the Senate has met with approval in our Federal Congress and it also could serve well as a basis of representation in our State Legislature with the county as a unit. I believe it is proper in this case to put the county in that relationship as the State is in the Federal system. You may argue that the county should not be considered in that respect. I say to you that each one of us who is here knows that we are jealous of our prerogatives in each county and anxious to protect our

particular interests. If we had two senators from each county, I believe that the Senate would reflect not only popular opinion of all of the State but it would also serve to give the minority a voice in at least one branch of the Legislature. If you are going to keep members of the House in their numbers determined strictly by population then you are going to have some of the smaller counties which are not going to have an equal voice in either branch of the Legislature and they are going to be the minority which is going to be subjugated by the larger counties.

Originally our Constitution divided each county into districts and said that each district would be entitled to representation and specified that the districts as near as may be follow county lines. That has been done away with. Now our Senate and the representation in it is based upon population only. Any county with under 30,000 population is entitled to one senator; any county with 30,000 to 60,000 population, to two senators; from 60,000 to 120,000, to three senators; from 120,000 to 240,000, they are entitled to four senators. You can easily see that that is not representation truly and strictly on the basis of population; for instance, take the county of Hancock. In the 1940 census it had a population of 32,291 people and was entitled to two senators. Take my own county, the county of Knox. In the 1940 census we had a population of 27,078 people and were only entitled to one senator. In other words, the two senators from Hancock County, theoretically speaking, were representing each one 16,000 people, while the senator from Knox County was representing 27,000 people. So I do not believe that we can say truthfully that the Senate, today, is apportioned on the basis of population.

If this bill as originally drafted, relating to the apportionment of the House of Representatives, were enacted, its sponsors have said that it would not change the representa-

tion in this House only, as near as could be estimated in fairness to them, only in respect to four counties: Cumberland and Kennebec would each gain one representative, Knox and Washington counties would each lose one representative. That, I would submit, is only an estimate and it might well be that not only Knox and Washington would lose representatives but also perhaps Sagadahoc, Lincoln and Piscataquis, and perhaps Androscoggin or Aroostook might gain one. It is impossible to say now just what the end result would be.

I do believe that the federal system has worked well, as we know, and that the smaller states have been protected against the larger in the Senate where they have an equal representation. It is only fair and just that the smaller counties in this State should be represented on the same basis. I am perfectly willing and agreeable that the apportionment of the House of Representatives be made on the basis of population in so far as that can be done equitably but I do not say that this bill does it but I am willing to go along with it provided we can be protected in the upper branch of this Legislature.

Mr. Speaker, with that in mind, I move that the House accept the Minority report "Ought to pass in New Draft."

The SPEAKER pro tem: The Chair recognizes the gentleman from Portland, Mr. McGlaulin.

Mr. McGLAULIN: Mr. Speaker, I only want to take a moment to point out the utter absurdity of the proposition that the gentleman who just spoke has made. Notice this: At the present time, Lincoln County has three representatives; Franklin, four; Piscataquis, four; Sagadahoc, four; Waldo, four; Knox, five, a total of twenty-four. Cumberland has twenty-four. The population of those is more than the population of those six. That would give that bunch of counties with a population smaller than Portland, twelve senators to Port-

land's two and I want to point out further that apparently the only argument that the gentleman has for the position he takes is because the United States Senate happens to have two from each State.

Now, Cumberland County isn't represented according to population as the rest of the State is because Portland under the constitution is only entitled to seven. While if you take it according to population, Portland would be entitled to twelve. So, going by the population, Portland would have about the same representation according to population, I mean Portland has the population of seven counties. They would have two, while they would have fourteen. To me that looks utterly ridiculous. I am not arguing for the other people here but I want to point out that I don't think there is a thing in here. I want to point out the utter absurdity of the argument just put up.

The SPEAKER pro tem: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Chase.

Mr. CHASE: Mr. Speaker, I want to say first of all that the purpose of this proposed amendment is not to increase the representation of Cumberland County. Now, this resolve was presented by the Committee on Constitutional Revision and recommended to the Legislature that the matter of apportionment was urgent and that this amendment should be considered at this time. The bill was drawn by that committee, the language was carefully checked with the Attorney General's Department and the bill was referred in the customary manner to the Judiciary Committee. The members of the Judiciary Committee which signed the "Ought to pass" report on the bill which related only to the House of Representatives were Senator Barnes, Senator Ward, Senator Ela, Representatives Williams, McGlauffin, Silsby and Muskie.

Now, since the discussion on a bill which originally related only to the House of Representatives has turned on the question of rep-

resentation in the Senate, I want to point out two things.

Around 1933, in recognition of the very points which the gentleman from Union has made, the Constitution was amended to provide for county representation in the Senate. At that time, it was deemed necessary, in order to give the smaller counties larger representation in the Senate in proportion to their population to increase the size of the Senate and that was approved by the people of the State and it is my recollection that, even in Cumberland County where they were placed at a disadvantage, in recognition of the fairness and the need for giving the smaller counties adequate representation, they voted for it.

Now, the other objection and it is a very practical one to minority report "A" which brings in the question of representation in the Senate is this. The section which is added in regard to the Senate would reduce the size of the Senate from 33 to 32. This resolve, in order to pass this Legislature, has to command a two-thirds vote in both bodies. Now, it is reasonable to suppose that the gentleman's proposition that each county should have only two senators would win a two-thirds vote in a Senate which now has in its membership four from Cumberland County; three from Penobscot; three from York; three from Androscoggin; three Kennebec; and three from Aroostook. You would be, in effect, expecting those gentlemen there to legislate themselves out of office and I suggest that it will be necessary when and if the point is raised as to the basis of senatorial apportionment, it will be necessary to treat that as a unit and it will be impractical as a matter of practical legislation to pass an amendment which will, in effect, legislate them out of office and expect them to vote for it by a two-thirds vote.

Now, let us come back to the question of representation in the House of Representatives, which was the original purpose of this resolve. The Constitution now con-

tains two sections in regard to apportionment in the House of Representatives and they are inconsistent. Section 2 fixes the number of the House of Representatives at 151. Section 3, which was later adopted without amending section 2, contemplates that it is possible to increase the size of the House of Representatives to 200. It has never been done. It could only be done, as you can readily see, by enlarging the size of the chamber and, personally, I think and I think many here will agree quite regardless of the question of county representation that the House of Representatives is large enough so that in spite of the fact that the House could have been enlarged under section 3, it has never been done.

Section 2 provides that counties shall have their share in the House of Representatives in proportion to their population. And that condition will continue regardless of any action which you may take on this proposal.

This new resolve which replaces the present section 3 takes care of the question of apportionment within the county and the principle adopted throughout the amendment is to throw every advantage to the small towns and to the small counties. It starts with the proposition that in the computation of the number of representatives to which a county will be entitled, which runs into a figure of percentage and will come out with a decimal, all the decimal rights of the larger counties shall be carried down to the advantage of the smaller counties which is a definite advantage to them. If a county should be entitled, for example, to 15.9 representatives, under this amendment they would get 15 and no more and the .9 decimal would be carried down to build up a county which might be entitled to only 4.1. So that all the advantages that are possible are thrown in the direction of the smaller counties.

Now, within the county, itself, in order to give you an illustration, let us assume, to make the figures

easy, that the population of the State would be 900,000, it is estimated to be a little more, and that to make up for that take 150 as a base of representation. You get approximately no basis of apportionment in the State.

If you take a county which has a population of 90,000 and which contains within it three large towns having a population respectively of 14,000, 9,000 and 7,000, those towns receive their representatives on the basis of the population divided by the number of representatives and all of the excess, if it figures out that 6,000 people in a large town are entitled to one representative, then one representative is all that town gets until its population exceeds 12,000 whereupon, at that time, it would get two.

If you add up the population in those large towns which are entitled to one or more representatives and subtract that total from the population of the county, you get a balance in the county which is entitled to the remaining representative. In this particular county, whereas in the large towns 6,000 would be the base for one, it would bring the number down in the smaller town to 5454, and on that basis you would proceed to make up your class districts as nearly as you could do it, presumably by the approval of that county's delegation in the Legislature as nearly as you could do it, using whole towns and keeping them adjacent or contiguous if possible.

Now, to go to the other extreme to show you how this works to the advantage of the smaller county, we assume a county of 18,000 population as the smallest. This would be entitled to two per cent of 151 representatives which would be three representatives but by the credit of the fractions, the decimals, which are carried down to the smaller counties from the larger, it would get four representatives. And we assume a county of 18,000 population of 18,000 divided by four representatives would give you 4500 as a base number for apportionment.

So that you see that not only in the State but within the county all of these balances or excesses or fractions are carried down to the advantage of the small town.

Now, this amendment has been very carefully drawn, checked over by many of the ablest lawyers in the Legislature, and has been approved by the Attorney General. It is a little complicated to read. If it could be written in the form of a formula, it would be easy but you can't write a mathematical formula into the Constitution. The language has been checked thoroughly with two committees and with the Attorney General's office and that is the real proposition which is before you relating only to apportionment in the House of Representatives. It does not change in any way the Constitution in its present form as to the number to which a county is entitled except this: It is made sure that the smaller counties will be treated in the most favorable manner possible in computing the fractions in proportion.

Now, I hope, since it seems to me that Mr. Payson's proposal with respect to the Senate is an entirely hopeless task in the present Senate and that, if it has merit, it should be considered as a separate proposition presumably at another time, that the work which has been done in laying out the method of the apportionment of the House of Representatives will be adopted at this time.

In 1950 an apportionment has to be made of the House of Representatives. It will then be made on the basis of the population as determined by the Legislature, itself. In other words, the House takes the Senate. As a practical matter, they have used the census figures heretofore because the census will be taken in 1950 as it was in 1940.

I realize the lateness of the hour and the lateness in the session. If this original draft should be adopted and you would later accept the majority report of the committee, I call to your attention that you would

later vote on it as a constitutional amendment, which would require a two-thirds vote. If you have questions in your mind regarding the exact method in which this would work in your particular county, I would be very glad to go over those figures with you tonight or tomorrow.

I hope that the motion of the gentleman (Mr. Payson) will not prevail because it is bound to result in the defeat of the amendment on which so much work has been done because it is obvious that the Senate is not going to legislate a great number of senators out of office. If the motion does not prevail, I shall move the acceptance of the majority report and endeavor later to clear in the minds of anyone by actual figures the effect which this might have upon his own local situation.

The SPEAKER pro tem: The Chair recognizes the gentleman from Fairfield, Mr. Woodworth.

Mr. WOODWORTH: Mr. Speaker, I rise as a member of your Judiciary Committee to express my individual views. I signed the "Ought not to pass" report. There are two drafts of this bill. They differ in that the new draft relates to Senate apportionment. I have nothing to say about that. The two bills are alike in that they provide a mathematical method of apportioning the membership of the House of Representatives. They are also alike in that they provide a right of appeal to the Supreme Judicial Court in case the Legislature should not know enough mathematics to apply the formula. It is this second provision to which I object. The method of apportioning is something to which I have no particular objection. In the matter of an appeal to the Supreme Judicial Court, it seems to me that that is almost unprecedented and wholly unwarranted. Article 4 of the Constitution deals purely with legislative powers. Our government is divided into three branches: executive, legislative and judicial. Among the three, the legislative power is supreme except in so far

as it is limited by the Constitution. The only power that has ever existed to apportion membership in the Legislature is vested in the Legislature. Under this proposed bill that final right of saying who shall have the right to apportion is the Supreme Court.

In making this change, the sponsors of the bill have rendered this provision incompatible with other sections. For example, Section 3 of Part 3 of Article IV provides that the Legislature shall be the sole judge of the election and qualification of its members. Last fall on the occasion of the contest in Waterville, the Governor and Council inquired of the Supreme Judicial Court what were its rights in determining an election. The Supreme Court replied and said: "You have none because the Legislature decides those things."

I think the Legislature should continue to decide those matters. If the Legislature cannot handle the matter then we are going back very far indeed. I think the Legislature has always done it, that the Legislature should continue to do it and while this is no objection to the bill as a whole, it does seem to me that that second paragraph which gives the Supreme Judicial Court the right to decide such matters should be struck from the bill.

The gentleman from Cape Elizabeth (Mr. Chase) has already told you that there are two sections. Section 2 provides that there shall be 151 men and that they shall be apportioned according to the population of the counties. He has also told you in effect, when you add it all up, that section 3 is entirely superfluous. This amendment would change nothing. Your Legislature will be apportioned as it always has been. If you want to write this in, this amendment, with the second paragraph to which I object, you will have changed the wording; you will not have changed anything else. The actual facts will be accomplished as they have been done in the past.

I hope that if you do accept either draft of this bill that before it is finally enacted that second paragraph may be struck out because it truly has no place in a section of our Constitution, which deals solely and exclusively with legislative powers. The Legislature has been granted those powers and has exercised them from the foundation of the State and it should not now surrender them.

The SPEAKER pro tem: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Chase.

Mr. CHASE: Mr. Speaker, as to the remarks of the gentleman from Fairfield (Mr. Woodworth), and his objections to the provision that any city or town which has cause for complaint can go to court and ask the court if the apportionment has been made in a constitutional manner, I would suggest to the members who think that the first part which Mr. Woodworth seems unobjectionable, I would suggest that the appropriate manner of procedure would be when we come to it to adopt the majority report and to permit the gentleman to submit his proposition to the House in the form of an amendment so if the majority should approve, the majority could eliminate that section which does give the court the right to tell the Legislature that it should correct an error which the Legislature has made.

The SPEAKER pro tem: The Chair recognizes the gentleman from Union, Mr. Payson.

Mr. PAYSON: Mr. Speaker and Members of the House: I know it is getting late and I don't intend to take much time. I wish to say this. The gentleman from Cape Elizabeth, Mr. Chase, has said that it is ridiculous to expect the Senate to legislate themselves out of office. I can see no reason why that is any more ridiculous than it is to expect members of the House to legislate themselves out of office. Mr. McGlaflin has said that there was no other basis for such a proposition as I have suggested in my new draft other than the federal one. I will say it finds support at least in nine other states. Further than that, I

can see no reason why if it is in order to change the Constitution in regard to apportionment in the House of Representatives, it is not also in order to change the Senate at the same time.

If the Senate were to be truly representative as the House is now, it would have to be a body at least as large as this one. I believe my proposition has merit and I hope when the vote is taken you will support me.

The SPEAKER, pro tem: The question before the House is on the motion of the gentleman from Union, Mr. Payson, that the House accept minority report "A" "Ought to pass in New Draft."

The Chair recognizes the gentleman from Auburn, Mr. Williams.

Mr. WILLIAMS: Mr. Speaker and Members of the House: I rise merely to state that I am one of those who favors the majority "Ought to pass" report. Section 3 as it now exists in our Constitution provides that every town having 1500 inhabitants may elect one representative. I submit to you that that is impossible and a ridiculous proposition but the amendment as proposed could be applied fairly whether the population of this State were 500,000 or 5,000,000. You would merely divide your 151 into the population and proceed in the manner outlined by the gentleman from Cape Elizabeth, Mr. Chase. Therefore, I believe we would do well to vote "no" on this present proposal and to accept the majority "Ought to pass" report.

The SPEAKER, pro tem: The Chair recognizes the gentleman from Aurora, Mr. Silsby.

Mr. SILSBY: Mr. Speaker and Members of the House: I am not unmindful of the hour and I will not take time to try to enlarge upon what has been said here tonight. I just simply want to state that I have considered this matter very carefully and I shall go along with the gentleman from Cape Elizabeth, Mr. Chase.

The SPEAKER, pro tem: The question before the House is on the motion of the gentleman from

Union, Mr. Payson, that the House accept minority report "A", "Ought to pass in New Draft" on Resolve Proposing an Amendment to the Constitution to Apportion the Number of Members of the House of Representatives to the Several Towns, H.P. 1567, L. D. 882. The gentleman from Cape Elizabeth, Mr. Chase, has requested a division. All those in favor of the motion will kindly rise and remain standing until the monitors have made and returned the count.

Five having voted in the affirmative and sixty-nine having voted in the negative, the motion did not prevail.

On motion by the gentleman from Cape Elizabeth, Mr. Chase, the majority "Ought to pass" report was accepted and the Resolve was given its first reading under suspension of the rules.

The SPEAKER, pro tem: The gentleman from Cape Elizabeth, Mr. Chase, now moves that the rules be suspended and the Resolve given its second reading as this time.

The Chair recognizes the gentleman from Fairfield, Mr. Woodworth.

Mr. WOODWORTH: Mr. Speaker, I request that the resolve lie upon the table while I can prepare an amendment.

The SPEAKER, pro tem: The gentleman from Fairfield, Mr. Woodworth, moves that Resolve Proposing an Amendment to the Constitution to Apportion the Number of Members of the House of Representatives to the Small towns, H. P. 1567, L. D. 882, lie upon the table until later in this evening's session.

The Chair will inquire if the gentleman from Fairfield, Mr. Woodworth, would be satisfied with an assignment for second reading tomorrow morning?

Mr. WOODWORTH: Yes, Mr. Speaker, it is only a motion to strike out.

The SPEAKER, pro tem. The Chair understands that the gentleman from Fairfield, Mr. Woodworth, withdraws his motion to table and moves that this Resolve

be assigned for second reading at the hour of convening of the next legislative day. Is this the pleasure of the House?

The motion prevailed and the Resolve was assigned for second reading, tomorrow, May 7th.

The **SPEAKER** pro tem: The Chair now lays before the House the 34th matter of unfinished business, An Act to Create the Waterville Sewerage District, S.P. 584, L.D. 1258, tabled on April 26th by the gentleman from Waterville, Mr. Castonguay, pending passage to be enacted; and the Chair recognizes that gentleman.

Mr. **CASTONGUAY**: Mr. Speaker, I move that the House reconsider its action whereby it passed to be engrossed An Act to Create the Waterville Sewerage District for the purpose of offering two amendments.

The reason for the delay in offering these amendments is because we were waiting for an opinion from the Attorney General's office, which I was notified this afternoon, this morning rather, by Senator Hopkins, who presented the bill, that the amendments are ready to be presented.

Now, I would like to offer House Amendment "A" and House Amendment "A" to House Amendment "A" and move their adoption.

The **SPEAKER** pro tem: The Chair understands that the gentleman from Waterville, Mr. Castonguay, moves that under suspension of the rules, the House reconsider its action whereby An Act to Create the Waterville Sewerage District, being S.P. 584, L.D. 1258, was passed to be engrossed on April 19, 1949. Is this the pleasure of the House?

Thereupon, the motion prevailed.

The **SPEAKER** pro tem: The Chair understands that the gentleman from Waterville, Mr. Castonguay, now offers House Amendment "A" and moves its adoption. The Clerk will read the amendment.

The **CLERK** (reading):

HOUSE AMENDMENT "A" to S. P. 584, L.D. 1258, Bill "An Act to

Create the Waterville Sewerage District."

Amend said Bill by striking out all of the 1st sentence of section 2 thereof and inserting in place thereof the following:

'Upon acceptance of this act as hereinafter provided, title to all public drains and sewers in the city of Waterville shall pass to and vest in said district, and said district shall maintain and operate same. For the purpose of providing a system of sewers and drainage for the comfort, convenience and health of the inhabitants of said district, the said district is hereby authorized and empowered to acquire and hold real estate and personal estate necessary and convenient for the purposes aforesaid.'

Further amend said Bill by inserting before the last sentence of the 1st paragraph of section 4 thereof the following sentence:

'The commissioners of said district may purchase all maps, plans and files relating to sewers and drainage which are in the possession of the city of Waterville.'

Further amend said Bill by striking out all of the last sentence of section 5.

Further amend said Bill by adding after section 5 thereof, the following new sections:

'Sec. 5-A. Excavations and repair work, property to be left in good condition; liability for damages; closing of streets. Whenever said district shall enter, dig up or excavate any street, way or highway, or other land, within said district, for the purpose of laying pipes or conduits, constructing manholes or catch-basins, or for the purpose of taking up, repairing, extending or maintaining any sewer, drain, manhole, catch-basin or other structure, or for any other purpose, said street, highway, way or other land shall, at the completion of the work of said district, be returned to the condition said street, way, highway or other land was in prior to the work of said district, or to a condition equally as good, and said district shall be liable to any person,