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THE MAINE SENATE
131st Legislature

Testimony of Senator Richard A. Bennett

LD 78, “RESOLUTION, Proposing an Amendment to Article X of the Constitution of Maine Regarding the Publication of Maine Indian Treaty Obligations”

LD 578, “RESOLUTION, Proposing an Amendment to the Constitution of Maine Concerning the Publication of Maine Indian Treaty Obligations”

7 March 2023

Good Afternoon Senator Carney, Representative Moonen and honorable members of the Joint Standing Committee on Judiciary. I am Senator Rick Bennett of Oxford, and I have the honor of serving the people of 14 communities in Western Maine in the State Senate. I am here to speak in favor of LD 78, “RESOLUTION, Proposing an Amendment to Article X of the Constitution of Maine Regarding the Publication of Maine Indian Treaty Obligations” and to present LD 578.

First, I would ask that the committee move “ought not to pass” on my bill, LD 578. I am pleased that Speaker Talbot Ross has put forward the same legislation, and I happily defer to her bill as the one that moves forward.

This resolution proposes a constitutional amendment to require that the text of Article X, Section 5 of the Constitution of Maine, which pertains to Maine Indian treaty obligations, be included in any printed copies of the Constitution included with the laws of the State. Bizarrely, this section has been omitted since a constitutional amendment was ratified in 1875. Speaker Talbot Ross and I agree – in accordance with common sense and respect for the rule of law – that that practice should cease. Unhappily, this change itself demands the dramatic act of amending our Constitution.

Not much is known about why Maine voters decided to prevent the printing of Section 5. In fact, many citizens are not aware that when they obtain a printed copy of the Maine State Constitution, they do not, in fact, have a full copy. Indeed, the “go-to” version of our Constitution that we in the Legislature invariably turn to – that in the Legislative Register does not include this section. Some contend the suppression of Section 5 was to ensure that Maine’s obligations to the Tribes are forgotten or that the long, sad history of our mistreatment of the Tribes are ignored. This may certainly be true.

The redacted section is the text of the 1816 Act of Separation, the Massachusetts law that allowed the District of Maine to become an independent state. The text includes a section obligating Maine to “assume and perform all the duties of (Massachusetts) towards the Indians within said District of Maine, whether the same arise from treaties or otherwise.”

As the Portland Press Herald noted in 2015, it “directs Maine to set aside land valued at \$30,000 for tribal use, at a time when undeveloped land in Maine sold for 3 to 4 cents an acre.

“Maine reneged on the treaty duties both before and after publication of Section 5 was prohibited. The land was apparently never set aside, even though Maine had received \$30,000 in compensation from Massachusetts. The state also looted the Passamaquoddy tribe’s trust fund, which had been established by Massachusetts in accordance with a 1794 treaty.”¹

I ask the committee to help right this wrong and allow the people of Maine to vote on once again including Section 5 on the printed versions of the Maine Constitution. Mainers deserve to be able to read the document in its entirety and to confront our history fully.

I urge you to vote Ought to Pass on LD 78. Thank you for your consideration.

Article X, Section 5 remains in force despite its omission from the constitution. It reads in full:

Fifth. The new state shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this commonwealth, towards the Indians within said district of Maine, whether the same arise from treaties, or otherwise; and for this purpose shall obtain the assent of said Indians, and their release to this commonwealth of claims and stipulations arising under the treaty at present existing between the said commonwealth and said Indians; and as an indemnification to such new state, therefor, this commonwealth when such arrangements shall be completed, and the said duties and obligations assumed, shall pay to said new state, the value of thirty thousand dollars, in manner following, viz: the said commissioners shall set off by metes and bounds, so much of any part of the land within the said district, falling to this commonwealth, in the division of the public lands, hereinafter provided for, as in their estimation shall be of the value of thirty thousand dollars; and this commonwealth shall, thereupon, assign the same to the said new state, or in lieu thereof, may pay the sum of thirty thousand dollars at its election; which election of the said commonwealth, shall be made within one year from the time that notice of the doings of the commissioners, on this subject, shall be made known to the governor and council; and if not made within that time, the election shall be with the new state.

¹ <https://www.pressherald.com/2015/06/18/potential-cost-kills-referendum-on-redacted-parts-of-maine-constitution/>