

STATE OF MAINE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Thursday
January 9, 2003

Senate called to order by President Beverly C. Daggett of Kennebec County.

Prayer by Chaplain Scott Dow, Augusta Mental Health Institute in Augusta.

CHAPLAIN DOW: We address You this morning, O Holy One, in various ways and with several different understandings, hoping You will pardon our mistakes and trusting You will honor the intent of our hearts. In the quietness of this moment, we pause in our activities to ask for Your energy. We pause in our tensions to ask for Your peace. We pause in our grief and pain to ask for Your comfort. We pause in our fears to ask for Your love which overcomes all fear. We face daunting challenges, praying that by calling on Your wisdom we may be undaunted. We face unsettled times, praying that by calling on Your grace we may be at peace. We pray for our constituents, for the leadership in our legislature, and for the new administration in our state. We pray that Your wisdom be granted to those within our judicial system. We pray that the leaders of nations will forgo their addictions to power and seek the ways of a just peace for all humanity. We pray these things with all the faith we can muster. Amen.

Reading of the Journal of Wednesday, January 8, 2003.

Out of order and under suspension of the Rules, on motion by Senator **TREAT** of Kennebec, the following Joint Order:

S.P. 19

ORDERED, the House concurring, that when the House and Senate adjourn, they do so until Tuesday, January 14, 2003, at 10:00 in the morning.

READ and PASSED.

Ordered sent down forthwith for concurrence.

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Amend the Membership of the Revenue Forecasting Committee"
H.P. 10 L.D. 3

Comes from the House, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed.

REFERRED to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** and ordered printed, in concurrence.

Bill "An Act to Extend the Time to Pay a Premium to the Insured"
H.P. 9 L.D. 2

Bill "An Act to Amend the Law Pertaining to Notice of Nonrenewal of an Automobile Insurance Policy"

H.P. 12 L.D. 5

Come from the House, **REFERRED** to the Committee on **BANKING AND INSURANCE** and ordered printed.

REFERRED to the Committee on **BANKING AND INSURANCE** and ordered printed, in concurrence.

Bill "An Act to Change the Membership of the Board of Trustees of the Maine School of Science and Mathematics"

H.P. 15 L.D. 8

Comes from the House, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed.

REFERRED to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed, in concurrence.

Bill "An Act to Protect the Waters of the Saco River"

H.P. 11 L.D. 4

Comes from the House, **REFERRED** to the Committee on **INLAND FISHERIES AND WILDLIFE** and ordered printed.

REFERRED to the Committee on **INLAND FISHERIES AND WILDLIFE** and ordered printed, in concurrence.

Bill "An Act to Amend the Child Labor Laws"

H.P. 13 L.D. 6

Comes from the House, **REFERRED** to the Committee on **LABOR** and ordered printed.

REFERRED to the Committee on **LABOR** and ordered printed, in concurrence.

Bill "An Act to Increase the Property Tax Exemption for Veterans"

H.P. 8 L.D. 1

Comes from the House, **REFERRED** to the Committee on **TAXATION** and ordered printed.

REFERRED to the Committee on **TAXATION** and ordered printed, in concurrence.

Bill "An Act to Address Funding of the North Jay Water District" (EMERGENCY)

H.P. 14 L.D. 7

Comes from the House, **REFERRED** to the Committee on **UTILITIES AND ENERGY** and ordered printed.

REFERRED to the Committee on **UTILITIES AND ENERGY** and ordered printed, in concurrence.

Off Record Remarks

COMMUNICATIONS

The Following Communication:

H.P. 5

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002**

December 5, 2002

Honorable Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, ME 04333

Dear Clerk MacFarland:

Pursuant to my authority under Article IV, Part Third, Section 1-A of the Constitution of the State of Maine, I hereby appoint the following members of the House to serve on the Apportionment Commission:

Rep. Matthew Dunlap of Old Town
Rep. David G. Lemoine of Old Orchard Beach
Rep. Rosita Gagne-Friel of Buckfield

Should you have any questions about these appointments, please feel free to contact me.

Sincerely,

S/Patrick Colwell
Speaker of the House

Comes from the House, **READ** and **ORDERED PLACED ON FILE**.

READ and **ORDERED PLACED ON FILE**, in concurrence.

The Following Communication:

H.P. 6

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
HOUSE REPUBLICAN OFFICE
AUGUSTA, MAINE 04333-0002**

December 20, 2002

Millicent M. MacFarland
Clerk of the House
2 State House Station
Augusta, Maine 04333-0002

Dear Clerk MacFarland:

This is to notify you that pursuant to my authority under Article IV, Part Third, Section 1-A, of the Constitution of the State of Maine, I am appointing the following House members from the Republican Party to serve on the Apportionment Commission:

Representative Roderick Carr of Lincoln
Representative Joshua Tardy of Newport

Representative Jonathan Courtney of Sanford

Please contact me if you have any questions or concerns.

Sincerely,

S/Joe Bruno
House Republican Leader

Comes from the House, **READ** and **ORDERED PLACED ON FILE**.

READ and **ORDERED PLACED ON FILE**, in concurrence.

The Following Communication:

H.P. 7

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002**

TO: Millicent M. MacFarland
Clerk of the House

FROM: S/Patrick Colwell
Speaker of the House

DATE: January 2, 2003

RE: Committee Appointments
121st Legislature

Pursuant to my authority under House Rule 201.1(I)(a), I have made the following appointments to the various Joint Standing Committees.

Agriculture, Conservation and Forestry

Linda Rogers McKee, Chair (D-Wayne)
Jacqueline A. Lundeen (D-Mars Hill)
Raymond G. Pineau (D-Jay)
John F. Piotti (D-Unity)
Nancy E. Smith (D-Monmouth)
Roderick W. Carr (R-Lincoln)*
Ken Honey (R-Boothbay)
Eugene L. Churchill (R-Orland)
Kenneth C. Fletcher (R-Winslow)
John Eder (G-Portland)

Appropriations and Financial Affairs

Joseph C. Brannigan, Chair (D-Portland)
Richard H. Mailhot (D-Lewiston)
Scott W. Cowger (D-Hallowell)
Benjamin F. Dudley (D-Portland)
Sean Faircloth (D-Bangor)
Hannah Pingree (D-North Haven)
Richard W. Rosen (R-Bucksport)*
S. Peter Mills (R-Cornville)
H. Sawin Millett, Jr. (R-Waterford)
Julie Ann O'Brien (R-Augusta)

Banking and Insurance

Christopher P. O'Neil, Chair (D-Saco)
Marilyn E. Canavan (D-Waterville)
Joseph C. Perry (D-Bangor)

Bonita J. Breault (D-Buxton)
Anne C. Perry (D-Calais)
Kevin J. Glynn (R-South Portland)*
Florence T. Young (R-Limestone)
Lois A. Snowe-Mello (R-Poland)
Michael A. Vaughan (R-Durham)
Richard G. Woodbury (U-Yarmouth)

Business and Economic Development

Nancy B. Sullivan, Chair (D-Biddeford)
Lillian LaFontaine O'Brien (D-Lewiston)
Guy J. Duprey, Jr. (D-Medway)
Edward Pellon (D-Machias)
Nancy E. Smith (D-Monmouth)
Susan M. Austin (R-Gray)*
Robert A. Berube (R-Lisbon)
Lawrence E. Jacobsen (R-Waterboro)
Christopher Rector (R-Thomaston)
William T. Rogers, Jr. (R-Brewer)

Criminal Justice

George H. Bunker, Jr., Chair (D-Kossuth Township)
Patricia A. Blanchette (D-Bangor)
Stan Gerzofsky (D-Brunswick)
Paul J. Lessard (D-Topsham)
Carol A. Grose (D-Woolwich)
Lois A. Snowe-Mello (R-Poland)*
Christian D. Greeley (R-Levant)
Louis B. Maietta, Jr. (R-South Portland)
Richard M. Sykes (R-Harrison)
John W. Churchill (R-Washburn)

Education and Cultural Affairs

Glenn A. Cummings, Chair (D-Portland)
Rosita Gagne-Friel (D-Buckfield)
Jacqueline R. Norton (D-Bangor)
Jonathan Thomas (D-Orono)
Edward D. Finch (D-Fairfield)
Jeremy Fischer (D-Presque Isle)
Thomas W. Murphy, Jr. (R-Kennebunk)*
Mary Black Andrews (R-York)
Mary Ellen Ledwin (R-Holden)
Gerald M. Davis (R-Falmouth)

Health and Human Services

Thomas J. Kane, Chair (D-Saco)
Edward R. Dugay (D-Cherryfield)
Marie Laverriere-Boucher (D-Biddeford)
Margaret M. Craven (D-Lewiston)
William M. Earle (D-Damariscotta)
William R. Walcott (D-Lewiston)
Thomas F. Shields (R-Auburn)*
Darlene J. Curley (R-Scarborough)
James J. Campbell, Sr. (R-Newfield)
Sarah O. Lewin (R-Eliot)

Inland Fisheries and Wildlife

Matthew Dunlap, Chair (D-Old Town)
Monica McGlocklin (D-Embden)
Raymond G. Pineau (D-Jay)
Thomas R. Watson (D-Bath)
Walter A. Wheeler, Sr. (D-Kittery)
Raymond Wotton (D-Littleton)
A. David Trahan (R-Waldoboro)*

Ken Honey (R-Boothbay)
James H. Tobin, Jr. (R-Dexter)
Earl E. Richardson (R-Greenville)

Judiciary

William S. Norbert, Chair (D-Portland)
Thomas D. Bull (D-Freeport)
Deborah L. Simpson (D-Auburn)
Philip R. Bennett, Jr. (D-Caribou)
Stan Gerzofsky (D-Brunswick)
Janet T. Mills (D-Farmington)
Roger L. Sherman (R-Hodgdon)*
Roderick W. Carr (R-Lincoln)
Brian M. Duprey (R-Hampden)
Joan Bryant-Deschenes (R-Turner)
Donna M. Loring (Penobscot Nation)

Labor

William J. Smith, Chair (D-Van Buren)
Deborah J. Hutton (D-Bowdoinham)
Paul R. Hatch (D-Skowhegan)
John L. Patrick (D-Rumford)
Thomas R. Watson (D-Bath)
Russell P. Treadwell (R-Carmel)*
Philip A. Cressey, Jr. (R-Baldwin)
Robert W. Nutting (R-Oakland)
Theodore H. Heidrich (R-Oxford)
Troy D. Jackson (U-Fort Kent)

Legal and Veterans Affairs

Joseph E. Clark, Chair (D-Millinocket)
John L. Patrick (D-Rumford)
Patricia A. Blanchette (D-Bangor)
Marilyn E. Canavan (D-Waterville)
Rodney C. Jennings (D-Leeds)
Roger A. Landry (D-Sanford)
Gary W. Moore (R-Standish)*
Kevin J. Glynn (R-South Portland)
Richard B. Brown (R-South Berwick)
Randy E. Hotham (R-Dixfield)

Marine Resources

Thomas D. Bull, Chair (D-Freeport)
Nancy B. Sullivan (D-Biddeford)
Walter E. Ash, Jr. (D-Belfast)
Edward R. Dugay (D-Cherryfield)
Leila J. Percy (D-Phippsburg)
Kevin M. Muse (R-Fryeburg)*
Deborah K. McNeil (R-Rockland)
Jeff Kaelin (R-Winterport)
Leonard Earl Bierman (R-Sorrento)
Stephen Bowen (R-Rockport)
Frederick J. Moore III (Passamaquoddy Tribe)

Natural Resources

Theodore Koffman, Chair (D-Bar Harbor)
Joanne T. Twomey (D-Biddeford)
Deborah J. Hutton (D-Bowdoinham)
Elaine Makas (D-Lewiston)
Thomas B. Saviello (D-Wilton)
Judd D. Thompson (D-China)
Robert A. Daigle (R-Arundel)*
David L. Tobin (R-Windham)
Henry L. Joy (R-Crystal)

James D. Annis (R-Dover-Foxcroft)

State and Local Government

Janet L. McLaughlin, Chair (D-Cape Elizabeth)
George H. Bunker, Jr. (D-Kossuth Township)
Christopher R. Barstow (D-Gorham)
Susanne P. Ketterer (D-Madison)
Edward J. Suslovic (D-Portland)
Anita Peavey-Haskell (R-Greenbush)*
Robert H. Crosthwaite (R-Ellsworth)
Stephen Bowen (R-Rockport)
Oscar C. Stone (R-Berwick)
Gary E. Sukeforth (U-Union)

Taxation

David G. Lemoine, Chair (D-Old Orchard Beach)
Joseph C. Perry (D-Bangor)
Bernard E. McGowan (D-Pittsfield)
Deborah L. Simpson (D-Auburn)
Arthur L. Lerman (D-Augusta)
Edward J. Suslovic (D-Portland)
Harold A. Clough (R-Scarborough)*
Jonathan T. E. Courtney (R-Sanford)
Earle L. McCormick (R-West Gardiner)
Joshua A. Tardy (R-Newport)

Transportation

Ronald E. Usher, Chair (D-Westbrook)
Boyd P. Marley (D-Portland)
Rosaire "Ross" Paradis, Jr. (D-Frenchville)
Lisa T. Marraché (D-Waterville)
Sonya G. Sampson (D-Auburn)
Terrence P. McKenney (R-Cumberland)*
Ronald F. Collins (R-Wells)
Deborah K. McNeil (R-Rockland)
Arlan R. Jodrey (R-Bethel)
William P. Browne (R-Vassalboro)

Utilities and Energy

Lawrence Bliss, Chair (D-South Portland)
Herbert Adams (D-Portland)
Albion D. Goodwin (D-Pembroke)
Peter L. Rines (D-Wiscasset)
Jacqueline A. Lundeen (D-Mars Hill)
Donald P. Berry, Sr. (R-Belmont)*
Philip A. Cressey, Jr. (R-Baldwin)
Kenneth C. Fletcher (R-Winslow)
Stanley A. Moody (R-Manchester)
Maitland E. Richardson (R-Skowhegan)

*Ranking Republican Member

Comes from the House, **READ** and **ORDERED PLACED ON FILE**.

READ and **ORDERED PLACED ON FILE**, in concurrence.

Off Record Remarks

ORDERS

Joint Order

On motion by Senator **LaFOUNTAIN** of York, the following Joint Order:

S.P. 18

ORDERED, the House concurring, that the Joint Rules be amended by striking out all of Joint Rule 108.

READ and PASSED.

Ordered sent down forthwith for concurrence.

Joint Resolution

On motion by Senator **ROTUNDO** of Androscoggin (Cosponsored by Representatives: WALCOTT of Lewiston, MAKAS of Lewiston, Senators: DOUGLASS of Androscoggin, STRIMLING of Cumberland, Representatives: CRAVEN of Lewiston, MAILHOT of Lewiston, LAFONTAINE O'BRIEN of Lewiston, BLANCHETTE of Bangor), the following Joint Resolution:

S.P. 17

**JOINT RESOLUTION EXPRESSING THE SENSE OF
THE LEGISLATURE REGARDING THE RALLY IN LEWISTON
BY A WHITE SUPREMACIST GROUP**

WHEREAS, on January 11, 2003, the World Church of the Creator, a white supremacist group that promulgates hate, will hold a rally in Lewiston for the stated purpose of protesting Lewiston's growing Somali population; and

WHEREAS, this planned rally, which is permissible due to America's long-cherished commitment to freedom of expression, has galvanized many citizens of the great State of Maine to hold a counterrally to support the best ideals of our State and our Nation, including that with the right of free speech comes the right for all people to live with respect, dignity, peace and safety; and

WHEREAS, the people of the State of Maine, those native and those from immigrant heritage themselves, best exemplify the values of the American people by their support of civil rights for all of Maine's people, by continually rededicating themselves to the principles of equal justice and human dignity and by remaining vigilant against hate, bigotry and tyranny in all forms; and

WHEREAS, We, the Members of the One Hundred and Twenty-first Legislature, now assembled in the First Regular Session, respect and represent the spectrum of all Maine people; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-first Legislature, now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to express our solidarity in the belief that hate and bigotry have no place in the great State of Maine, but rather we want all our citizens to live with the ideals of American democracy and to enjoy our freedoms, rights and privileges; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the municipal officials of the City of Lewiston so that it is clear that Maine is firmly supportive of Lewiston's role in promoting the rights of its citizens to live in dignity, peace and prosperity.

READ.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame Chair, men and women of the Senate. 25 years ago my husband and I moved to Maine because we were attracted to the quality of life here. We chose Maine to live and to raise our family. We were also attracted by the caring communities that we saw throughout this state. Maine is a safe place because our communities are strong. Neighbors might not always agree with neighbors, but they care about each other's well-being and they respect

each other's right to live in dignity and to live in peace. This Saturday, Maine will witness its first official event by a group of white supremacist that promulgate hate and is coming to Maine to build membership in hopes of becoming more active in this state. While it is the right of this group to assemble peacefully and to exercise its First Amendment right to free speech, the message of this group is so abhorrent to the values of civility, inclusiveness, and justice that have made this state great, that I would ask you to join with me to pass this resolution that is before you. This resolution affirms the fundamental rights of all people whom we represent in this legislature to live with respect and dignity and without fear. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING:** Thank you, Madame Chair. I rise in support of this resolution. I am a co-sponsor of it. I believe it is really important that all of us in this room and across this state recognize that this is not an issue about Lewiston, this is an issue about the State of Maine. I would encourage everybody, as part of this, to attend the pro-diversity rally that will be happening at the same time as this other rally at Bates College. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, men and women of the Senate, I rise in support of this resolution. I represent part of Lewiston. I also represent Auburn. We have had an influx of Somali residents. I am very pleased to tell you that in Auburn and Lewiston we have been the welcomers of many different peoples. When I first ran for this body in 1998, I was surprised at one door by someone answering in a language I couldn't understand. This happened to be in Auburn, in not necessarily one of the traditional Franco communities. Thinking that I should bring out my rusty French, I brought out my French, but that wasn't the language. It turned out that there were a small number of Polish families who had come here to Maine to live. Several have become citizens. I really think that was one of the crowning moments of my door-to-door campaign, to discover those families and see how they had become part of our community.

In just this last campaign, as I was going door-to-door in another section of Auburn, I came across a dozen or more Somali families who happened to live near one another, who knows for what reason. My general observation was that they are participating in the schools. They are making our place, the place that we live here in Maine, a better place by bringing variety and diversity through their ethnic background and their religion. They are contributing to our society in the same way that many of our ancestors had. I am here, generally, to say welcome. This resolution was needed because there are those who are attempting to inspire hate, which I think we need to condemn. But more than that, we need to embrace what is good and positive in the people who come here to live. It's part of the growth of our economy, which we so badly need. I urge every member of this body to stand in support and to say welcome to those who would wish to come here. Thank you.

ADOPTED.

Ordered sent down forthwith for concurrence.

Senate at Ease.

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication:

S.C. 14

**121ST LEGISLATURE
SENATE COMMITTEE ON
SENATORIAL VOTE**

December 16, 2002

Senator Beverly Daggett
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Daggett:

In accordance with Senate Order 10 passed December 4, 2002, the Committee on Senatorial Vote has met to determine the outcome of the election held November 5, 2002, in Senate District 16.

The Committee was presented with the vote totals from the recounts held November 18, 19, and 25, 2002, as follows:

Christopher G.L. Hall 8,893
Leslie T. Fossel 8,884
Disputed Ballots 44
Jefferson Challenged Ballots 4

After deliberation the Committee proceeded to vote on the 44 disputed ballots and the following votes were added to the recount totals:

Christopher G. L. Hall 18 votes
Leslie T. Fossel 20 votes
No Votes 6

The Committee unanimously agreed that the final vote was:

Christopher G. L. Hall 8,911
Leslie T. Fossel 8,904

And further agreed that Christopher Hall is determined the winner.

During this recount an issue arose regarding precedents, which may have been set in past Senate Recounts. Therefore as a guide to the future and because of the importance we attach to this process being fair, open and transparent we have attached a full Report of the Committee complete with a copy of the Secretary of State's official dispute sheet, a ballot-by-ballot description of said dispute, the rationale of the majority, and the final outcome for each vote taken.

Signed:

S/Senator Betheda Edmonds, Chair

S/Senator Paul Davis Sr.

S/Senator Kenneth Gagnon

S/Senator Carol Weston

S/Senator Neria Douglass

S/Senator Arthur Mayo, III

S/Senator Bruce Bryant

READ and with accompanying papers **ORDERED PLACED ON FILE.**

ORDERS

Senate Order

On motion by Senator **EDMONDS** of Cumberland, the following Senate Order:
S.O. 16

WHEREAS, the Standing Committee on Senatorial Vote has met and unanimously determined that Christopher G.L. Hall has been elected by a plurality of votes resulting from a General Election on November 5, 2002 and subsequent recount, now, therefore, be it **ORDERED**, that Christopher G.L. Hall be seated as the duly elected Senator of Senate District 16.

READ.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Edmonds.

Senator **EDMONDS:** Thank you, Madame President, men and women of the Senate. I first want to thank everyone for their participation in this committee. It was a good committee. People served well and I was pleased to be chair. I just want to state, clearly and unequivocally, that we carefully, and I mean carefully, examined every ballot and fairly looked at the voter's intent. I think it was very, very clear that Christopher Hall won this election. In fact, our committee voted unanimously that he had, in fact, won this election. I hope all of the members will understand that this, albeit perhaps not your wish, was, in fact, the fact and join me in supporting this. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much, Madame Chair, my colleagues in the Maine State Senate. Greetings. I would applaud the fine work that the chair of our committee did. She did it fairly and she did the work well. However, I do have some remarks.

As I'm sure that you all can recall, and if you can't we're in trouble, that I stood here on December 4th and told you about my concerns regarding the election in Senate District 16. I'm sure that you recall that I and my good friend, the Senator from Franklin, Senator Woodcock, offered what we felt were practical solutions to the issue at hand. First we proposed that the ballots be brought into this chamber and be examined by all of us. I suggested that we put a projector up, and as a Committee of the Whole, have each of us stand up and vote for which candidate we felt won that ballot.

As a result of being on this committee, I have seen nothing that has changed my mind and I don't believe the final report would have been any different. I think we should have done that.

We then proceeded to ask the committee for an impartial body, such as the State Supreme Court, to intervene and issue an advisory opinion to us with their interpretation as to how the ballots went and who won based on law and precedent. I understand this is something that was done up until the early 1990's.

Finally, we asked for a committee of 3 Republicans and 3 Democrats and to have them choose another member to serve as the chair. As you no doubt remember, all of these ideas were rejected on a party line vote, each and every one of them.

In the ensuing days, everywhere that I went people asked me about this issue. Not just the media and not just here in the marble halls of the State Capital, but back in the little village I live in, Sangerville. In the restaurant and in the barbershop, where I need to go as soon as I can, I was asked about this. I was asked questions about this process. I was asked why the committee was made up the way it was. Why certain people weren't allowed to serve. Why the potential Senator voted on it. I was asked if I felt this process was fair.

I must tell you, my friends, after considering this, I feel now, right now, this session, is the time for us to have reform. In this coming session, we surely will have an opportunity to reform the election process in a manner that could remove any appearance of partisanship. I think, and I know, that the public feels that partisanship played a part in some of this. I would like to think that there wasn't. I believe that all of you, all of you good men and women in this chamber and the good men and women across our state, want fairness in this process.

So I call upon you, Madame President, and I call upon the entire membership of this body to work with me and the others, to achieve some meaningful reform of this process so we don't have to go through this again, like we have twice in the last year. I want to be clear, and if I didn't know it, Madame President, I surely know it today, that the majority has a right to the spoils. There is no question about that. The majority has the rights, the advantage of how things are set up. They have the rights to the offices, they have the rights to the spoils. There is no question about that. I honor that. I accept that. They have the rights to how legislation is passed and on and on. However, Madame President, when it comes to counting the votes, no one, and I repeat, no one should have the advantage. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, men and women of the Senate, we are here because the voters gave their intentions on their ballots. I think it's important to remember that what occurred in the race in Senate District 16 was about what the voters did, each and every one of them that voted. This is not, and was not, a proceeding about who would control this chamber. It was about what those ballots told us. I think it is important to look at our laws and remember that the reason we have secrecy of the ballot is so that no one can demand that we vote in a certain way. The reason that we protect those ballots by bringing them over to the State Police is so that no one can mark them and change the outcome that the voters have determined.

I want to just tell you a little about my service on this committee. Each of the parties was permitted to go over and look at the ballots, which we did, at the State Police facility. They were kept under lock and key. There was a State Police Officer there. We were allowed to take notes, but only in a purple pen, so that nothing would get marked on those ballots. We were only allowed to look at them one at a time. For 2 hours we looked at the 44 ballots that were in question. I believe my friends who were on the committee from the Republican side did the same. Whether they took as long, I'm not sure. Those ballots had a number of different, sort of comical, votes on them. There was a vote for Bart Simpson, a vote for Bob Dole, a vote for 'anyone else,' and several other fictitious characters. They all pertained to different offices than the one that was at issue. But I am here to tell you that if you looked at those ballots and consistently did one thing, which is to look at them, and say either, 'I will not count any of the challenged ballots;' in which case Chris Hall was the winner, or 'I will count every one of the challenged ballots;' in which case Chris Hall was the winner, or 'I will count only those that are in pen; in which case Chris Hall was the winner, or 'I will count only those in pen and those that had a box that was scribbled out and then another box which was checked' and very clearly done in a manner that many of us would understand when we were writing a paper or looking at something and wanted to delete something that we didn't want. Just X it out and check what we want or insert what we want. If you counted all of those, with the other category or only that category alone, Chris Hall won. If you counted only those ballots where the individual didn't check the box but checked to the right of the box, near either the Republican or Democratic party indicator, and not in the box as was instructed on the ballots, Chris Hall won.

So I think it's important for the members of this body and the people of the State of Maine to know that when we examined these ballots, it was very clear that Chris Hall won. That was the unanimous vote of the committee. That was the will of the people.

It is true that it was a very narrow, narrow, victory, but I want to just read to you from our law about determination of choice possible. This is from the 21 Maine Revised Statutes, Annotated, section 696, subsection 4. 'If a voter marks the voter's ballot in a manner that differs from the instructions at the top of the ballot, but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned must be counted. A mark made on or in the voting indicator that differs from the instructions at the top of the ballot, but clearly indicates the voter's choice, is not a distinguishing mark.'

Any way you look at it, these votes, by a very narrow margin, and by the voters themselves, determined that Chris Hall was the winner. It was not this committee. What we did was to look at those ballots to determine what the voter intended, and in compliance with our laws, that is what we did. I hope you will vote in support of this measure.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you, Madame President, men and women of the Senate. I, too, hope that you will support the order that is before us. I think there is very little to add here except that I do wish to respond briefly to some of the comments that were made by the Senator from Piscataquis, Senator Davis.

The process that was followed here is not a process that was suddenly dreamed up at the last minute after the election that we had in November. It's a process that has been followed since the early days of the Senate, going back to the early 1800's, and used continuously, where the Senate does, in fact, determine its own membership through a committee of 7 persons. We followed a process that has worked, that has been used, whether it is a Republican Senate or a Democratic Senate, whether the balance of the Senate was in play or whether the balance of the Senate was not in play. We simply followed the process that has been in place for many, many years. I think that if you take the time to read the voluminous report that the committee put together, and if you were in the room at the time when the committee went through their deliberations, you will realize that their goal was to count every vote. They heeded what the statutes said, that they did, in deed, count every vote that fairly fell within that statute. The openness of that process, the fairness of that process, and the clear legality of that process in terms of following the rules resulted in a unanimous report from

that committee. That is the report that this order now implements. I ask that you support it as the unanimous report from that committee so that we can move on and do what really needs to happen in this Senate, which is to focus on representing the people of this state who have such serious needs right now. We need to get the Senate seated and onto business. Your vote today will do that.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I, too, served on the committee. I had not been involved with the recount prior to that. I didn't spend much time over in the gas and oil fumes of the State Police garage. In fact, I was actually more worried about what we would be seeing and smelling once we got into the Crime Lab later on. But I did have the pleasure of serving on this committee and I would agree with the good Senator from Piscataquis, Senator Davis, that there are probably some changes that need to be made. I'm not sure if it goes to the level of reform.

Throughout this whole process I have been adamant that the process that we follow be historical, not a time for creating a new process to deal with this specific situation, that we follow precedent, we follow the law, and we follow the Constitution. If we found that it did not serve us, or did not serve to our satisfaction, afterwards we should take a look at what it should be for the future.

I went through 44 of those ballots, and with my experience in serving as a Warden for many years in my city of Waterville, I had no difficulty going through 42 of the 44 ballots and determining what the voter intent was. It was quite clear to me, understanding what the law was, what the Constitution was. The 2 that I had difficulty with, interestingly, wouldn't have made a difference either way. They were in the same category. One was for one candidate and one was for the other. What I had difficulty with was not the intent of the voter but what actually occurred afterwards. I have put in a bill to try to deal with that issue. I didn't know whether or not they were spoiled ballots or not. Obviously, if a ballot is spoiled, that means that the voter got another ballot and you would not want to give that person 2 votes. But I had difficulty with 2 of the ballots and I felt that the procedure that is currently being used, and what is expected of the Wardens, even though we're going to have more detailed training in the future, needed to be tightened up a little bit. The Secretary of State can do that and help with the legislation by making sure we understand, not necessarily what the intent of the voter was, but what the actions of the election officials were when those ballots were marked in some way.

So I would agree with the good Senator from Piscataquis, Senator Davis, that there are some adjustments to be made. I think that we can help reaffirm what the process is and make sure that both sides have greater direction during the recount and limiting the number of ballots that have to come to us. I think that some of them we didn't have to see at all. So if we can at least reaffirm either; what the current election laws are, or what the elections laws should be with some adjustments, it would help in the recount process and we wouldn't have to be put in this position very often, again in the future.

I hope that you will join me in voting for this unanimous committee report. Thank you, Madame President.

Senator **DAVIS** of Piscataquis requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President, fellow members of the Senate. Good morning. I will be voting against seating the conditionally seated Senator from Lincoln this morning. I regret having to come to this point, but the fundamental reason is that I do not know, after all of this time, who actually won this election. I believe that the Senate has failed in doing a thorough review of the election returns, all of them. I don't believe that the committee failed as badly as I believe the Senate failed. All the options were available to us. All the options were available to this Senate to review that election. We didn't look at all the ballots in that election. We didn't look at the 165 ballots that were challenged and disputed originally, in that election. We didn't look at the 48 ballots that were available, the 44 plus the 4 challenged ballots from election night. Instead we charged a committee with a narrow focus, a very narrow charge of only looking at 44 ballots. In my view, having reviewed the report, we did not even follow in that process the statute or legal precedent or even the precedent of the Senate as established a few months earlier. For that simple reason, I don't know, myself, who is duly elected. I wish I had that resolution, but I don't and so I cannot vote to make the seating permanent. I would say that I don't think that we're operating under paralysis. I think that we have a full Senate of 35 members. We can continue to operate and function very appropriately, dealing with the issues at hand. But this issue remains unresolved in my mind and I know it remains unresolved for a large number of Maine people who

feel that the process was not complete and thorough and in keeping with the spirit of Maine law or our precedent. Thank you.

On motion by Senator **TREAT** of Kennebec, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#9)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CARPENTER, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, LAFOUNTAIN, MARTIN, MAYO, MITCHELL, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, TURNER, WOODCOCK, THE PRESIDENT – BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, DAVIS, GILMAN, LEMONT, NASS, SAVAGE, SAWYER, SHOREY, WESTON, YOUNGBLOOD

24 Senators having voted in the affirmative and 11 Senators having voted in the negative, **PASSED**.

Off Record Remarks

On motion by Senator **TREAT** of Kennebec, **ADJOURNED**, pursuant to the Joint Order, to Tuesday, January 14, 2003, at 10:00 in the morning.