

SENATE....No. 4.

Commonwealth of Massachusetts.

The Special Joint Committee to whom were referred the Returns of Votes for Governor and Lieutenant-Governor,

REPORT:

That after careful examination of the returns from the several towns and cities in the Commonwealth, they find them to be correct, except as is hereinafter specified; and the whole number of ballots for Governor, as reported in the returns, to be 138,450

That, of the votes returned for Governor—

John H. Clifford has	62,233
Henry W. Bishop has	38,763
Horace Mann has	36,740
David Henshaw had	357
Edward A. Vose has	148
And all others have	195

Making an aggregate of votes of 138,436

And showing a difference between the whole number of ballots and the whole number of votes, of 14

As many cases were found in which the whole number of ballots, reported from a town, exceeds the aggregate of the votes stated in the return to have been given for the several

candidates, this excess of 14 in the total would be greater than it appears, were it not that in one instance that will be mentioned, through an apparent error of addition, the whole number of ballots is stated as one hundred *less* than the votes given.

These differences appear to arise, in general, from a conflict between the language of the constitution and a law of the Commonwealth, as that law is construed, (Revised Stat. chap. 4, § 13,) involving a distinction between ballots and votes.

The constitution provides that in case of an election by a majority of all the *votes* returned, the choice shall be declared and published.

The law provides that no person shall be declared to be elected who shall not have received a majority of the whole number of *ballots*; and that blank pieces of paper shall not be counted as ballots; from which it seems to be inferred, in practice, that pieces of paper which are not blank are to be counted as ballots, if deposited, though they may not purport to be votes for Governor, or may be incomplete as such.

In conformity to the rule prescribed by the constitution, to which the Committee adhere, the number of votes being	138,436
There are necessary for a choice,	69,219
If they should adopt the rule of the statute, as it is practically applied, by receiving that as a ballot which cannot be regarded as a vote, the whole number of ballots being	138,450
There would be necessary for a choice,	69,226

At present, it is clearly of no importance which mode shall be adopted; but it is equally clear that, under other circumstances, (since a single vote has determined an election,) any doubt on this subject might lead to serious consequences. Great embarrassment may, therefore, be prevented, if all doubt should be removed by a legislative enactment, giving to the word "ballot" such meaning as the constitution requires that it should bear in its present application.

No person having received the number of votes necessary for a choice, John H. Clifford, Henry W. Bishop, Horace Mann,

and (since the lamented death of the Hon. David Henshaw, of which the Committee have heard) Edward A. Vose, are the four persons who had the highest number of votes, if there can be any substitute in case of the decease of one of the four.

The Committee do not consider it necessary to enumerate the cases in which the whole number of ballots reported has been found to differ from the aggregate of votes given; but in the return from the town of Swansea, in the county of Bristol, the whole number of ballots is reported to be 117; while the whole number of votes is 217, showing a probable error in addition of 100 votes or ballots. In the return from Pittsfield, there is a similar difference of 20 votes.

In one instance, a vote for electors of President was counted as a "ballot" for Governor.

In the return of the town of Sharon in the county of Norfolk, the whole number of ballots received is not stated, and the return is, therefore, rejected.

There were several cases in which the returns came unsealed, having been inadvertently inclosed with other papers in sealed envelopes, which were necessarily opened before they reached the Committee. In all such cases the remedy has been applied which was provided by an act of the last session. The Secretary of State has given notice to the respective town officers, and transcripts from the records having been furnished, and found to agree with the unsealed returns, the returns have been received.

The Committee further report, that they find the whole number of *ballots* for Lieutenant-Governor to be, as reported, 137,662.

That of the votes for Lieutenant-Governor—

Elisha Huntington has	56,836
Amasa Walker	"	32,708
James D. Thompson	"	47,040
Bradford L. Wales	"	232
And all others have	642
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Making the whole number of votes	137,458
And, therefore, necessary for a choice,	68,730

Under the same rule of the constitution which the Committee have applied to the votes for Governor for the reasons stated.

No person having received the number of votes necessary for a choice, Elisha Huntington, Amasa Walker, James D. Thompson, and Bradford L. Wales, are the four persons who had the highest number of votes. There were 297 votes given in the county of Bristol, for Amasa Walker, of West Brookfield, and some others of similar character. But there is probably no person who answers to the description, and the votes were no doubt intended for Amasa Walker of North Brookfield. But the Committee did not feel authorized to assign them to him.

In the return from Falmouth, in the county of Barnstable, the whole number of ballots is not stated; and the same defect is found in the return from the town of Sharon in the county of Norfolk: for which reason both returns are rejected.

In the return from Chelmsford, in the county of Middlesex, the whole number of ballots exceeds the aggregate of votes by 23; and several other cases of smaller differences have been found, to which the same remarks apply as are made in reference to similar cases in the votes for Governor.

In South Reading, 113 votes appear to have been given for James D. Thompson; but they were rejected from the return because they were stated only in figures, although the votes for the other candidates were written in letters, as well as in figures.

The returns from the towns of Heath, in the county of Franklin, and from Belchertown, in the county of Hampshire, which had been received unsealed, were finally rejected; although measures had been taken to remedy the defect in conformity with the late statute. The second return from Heath does not agree with the first, by four votes for James D. Thompson; and the town officers do not appear to have made oath to the second return from Belchertown.

All which is respectfully submitted.

By order of the Committee,

THOS. G. CARY, *Chairman.*

January 7th, 1853.