

Our conclusion after participation on this committee: we cannot recommend an invalidation.

We have been made aware of election errors, omissions and irregularities but we have not been persuaded that fraud has been perpetrated. There is no actionable criminal fraud.

Subsequent to a legal recount, sustained by the Supreme Court which ordered a certificate of election, no new evidence has been developed suggesting actionable fraud. And in the absence of any prosecution of fraud on the part of the county officials who have thoroughly studied all aspects of the situation and in the absence of any overweening evidence presented to the Committee of fraud, we are convinced that no further action by the Senate is justifiable.

We reject the proposal for either an election or a referendum on the basis that no subsequent election or referendum can create the same participating body politic as participated last November. An election for all twelve candidates would be fairest yet that gives voters who did not vote at all in November, and voters who in November did not vote for either candidates Fayette or Smith the chance to reconsider their November action. This puts them at an advantage over voters in other counties who today could wish a chance to reconsider their senatorial vote of last November.

Further, a new election or referendum could open the affair to further litigation brought by a citizen or citizens, former election officials or any other candidates.

A referendum for which there is no precedent would not be legally binding.

We feel since it is constitutionally incumbent upon the Senate to decide and the Senate *will decide* eventually, the decision can and should be made now by the Senate.

We recommend the results of the recount be affirmed and that the certificates of election issued for the November 7, 1972 general election stand.

/s/ Fred Westphal  
/s/ Graham S. Newell"

Thereupon, pending any action to be taken on these reports by the Senate, Senators Soule and Branon offered a resolution which was read and is as follows:

S. R. 7. Senate resolution relating to an advisory referendum in the town of Essex.

*Whereas*, Senate Resolution 6 established a committee to investigate the senatorial election in Chittenden County, and

*Whereas*, pursuant to that resolution the committee met and took testimony from the candidates, their representatives, the Attorney General, the Secretary of State, the Chittenden County Sheriff, the Chittenden County State's Attorney, the Chairman of the Recount Committee, the attorney for



committee: we cannot recom-

ors, omissions and irregularities  
s been perpetrated. There is no

by the Supreme Court which  
lence has been developed sug-  
e of any prosecution of fraud  
oroughly studied all aspects of  
weening evidence presented to  
that no further action by the

ion or a referendum on the basis  
n create the same participating  
n election for all twelve candi-  
did not vote at all in November,  
or either candidates Fayette or  
er action. This puts them at an  
today could wish a chance to  
ber.

could open the affair to further  
former election officials or any

precedent would not be legally

nbnent upon the Senate to decide  
ecision can and should be made

nt be affirmed and that the certi-  
, 1972 general election stand.

red Westphal  
raham S. Newell"

taken on these reports by the  
a resolution which was read and

an advisory referendum in the

ed a committee to investigate the  
nd

he committee met and took testi-  
tives, the Attorney General, the  
Sheriff, the Chittenden County  
unt Committee, the attorney for

the town of Essex, the printer of the county ballots, and certain officials of the town of Essex, and

*Whereas*, the testimony, while conflicting, showed evidence of irregularities reflecting adversely on the integrity of the ballots in the town of Essex, yet showed no proof of actionable fraud in the election in that town, and

*Whereas*, the Senate is unable to determine from the evidence presented relative to voting in the town of Essex on the election and qualification of two candidates for the office of state senator from Chittenden County, *now therefore be it*

*Resolved by the Senate:*

That an advisory referendum shall be held to provide advice and assistance to the Senate in exercising its authority under section 19 of Chapter II of the Vermont Constitution by which the Senate shall decide on the election and qualifications of its members, *and be it further*

*Resolved:* That the advisory referendum be between only Senator Frederick P. Smith, winner of the recount completed in Chittenden County on December 13, 1972 and former Senator Frederick J. Fayette who petitioned the Senate on January 3, 1973 to disregard the results of that recount, *and be it further*

*Resolved:* That the advisory referendum be conducted only in the town of Essex in order to dispel the doubts cast upon the votes in that town and to provide advice to the Senate on the choice of candidates among the voters of that town, *and be it further*

*Resolved:* That the number of votes received by each candidate in the advisory referendum conducted in the town of Essex shall be added to the number of votes received on November 7 by each candidate in the remainder of Chittenden County excluding the town of Essex, as reported in the report of the recount committee filed with Superior Judge Robert W. Larrow on December 14, 1972, and that the candidate receiving the greatest total vote shall be accepted by the Senate as the duly elected Senator from Chittenden County and shall take his seat forthwith, *and be it further*

*Resolved:* That Senator Frederick P. Smith shall retain his seat in the Senate pending the outcome of the advisory referendum, *and be it further*

*Resolved:* That the advisory referendum shall be conducted by the Secretary of State who may utilize the services of the election officials in the town of Essex, *and be it further*

*Resolved:* That the committee appointed by the Senate pursuant to Senate Resolution 6 shall supervise the election and shall have two members of that committee, one from each political party, present at each polling place in the town of Essex, and shall have at least two members of that committee, one from each political party, present during the counting of all votes cast, and that the committee shall certify the results of the advisory referendum to the Senate forthwith, *and be it further*



*Resolved:* That the advisory referendum shall be held on February 3, 1973.

Thereupon, the pending question, Shall the resolution be adopted? was decided in the negative on a roll call, Yeas 7, Nays 21.

Prior to the calling of the roll, Senator F. Smith requested and was granted leave to be excused from voting on this resolution and any other matters relating to the Report of the special election committee pursuant to Senate Rules 69 and 71.

Senator Soule, having demanded the yeas and nays, they were taken and are as follows:

#### ROLL CALL

*Those Senators who voted in the affirmative were:* Branon, Crowley, Daniels, Niquette, O'Brien, Sorrell, Soule.

*Those Senators who voted in the negative were:* Alden, Bedford, Bloomer, \*Boylan, Buckley, Cooley, Doyle, Gannett, Gibb, Harwood, Jones, Morse, Newell, Ogden, Orzel, Partridge, Purdy, Shea, \*Smallwood, D. Smith, Westphal.

*Those Senators absent or not voting were:* Janeway (presiding), F. Smith (excused).

\*Senator Boylan explained his vote thus:

"Mr. President:

In voting on this resolution I am torn between long outstanding friendship with the challenger for this Senate Seat and what seems to be just and right. I have listened to the Committee reports with no evidence of fraud indicated. Having participated in many local and statewide elections, I am aware that there have been errors and careless handling of ballots in many of the cities and towns throughout the state. I suspect even in this recent election there have been similar irregularities to those in Essex Junction in many other areas of the state. On the basis of the evidence, I must, therefore, vote in opposition to this resolution. My vote is 'No'."

\*Senator Smallwood explained his vote thus:

"Mr. President:

I vote 'No' on the ground that I favor a special county-wide runoff election between Senator Smith and Mr. Fayette to resolve the issue of the Senate seating challenge in Chittenden County."

Thereupon, Senator Westphal moved that the Senate deny the Petition submitted by Frederick J. Fayette of South Burlington relating to the general election held on November 7, 1972, pertaining to senatorial seats in Chittenden County, and filed with the Senate on January 3, 1973,

Which was agreed to on a roll call, Yeas 20, Nays 8.

Senator Westphal, having demanded the yeas and nays, they were taken and are as follows:



be held on February 3,

resolution be adopted? was 21.

Smith requested and was resolution and any other on committee pursuant to

nays, they were taken and

were: Branon, Crowley,

ere were: Alden, Bedford, ett, Gibb, Harwood, Jones, ea, \*Smallwood, D. Smith,

Janeway (presiding), F.

en long outstanding friend- what seems to be just and with no evidence of fraud d statewide elections, I am ndling of ballots in many of t even in this recent election ssex Junction in many other ; I must, therefore, vote in IS:

ocial county-wide runoff elec- esolve the issue of the Senate

the Senate deny the Petition ington relating to the general to senatorial seats in Chitten- ry 3, 1973,

0, Nays 8.

reas and nays, they were taken

#### ROLL CALL

*Those Senators who voted in the affirmative were:* Bedford, Bloomer, Boylan, Buckley, Cooley, Doyle, Gannett, Gibb, Harwood, Jones, Morse, Newell, Ogden, Orzel, Partridge, Purdy, Shea, Smallwood, D. Smith, Westphal.

*Those Senators who voted in the negative were:* Alden, Branon, Crowley, Daniels, Niquette, O'Brien, Sorrell, Soule.

*Those Senators absent or not voting were:* Janeway (presiding), F. Smith (excused).

Thereupon, Senator Niquette moved that the Senate affirm the election of Frederick P. Smith as a Senator from Chittenden County for the 1973 biennial session of the General Assembly,

Which was agreed to.

#### JOINT RESOLUTION ADOPTED IN CONCURRENCE

Joint resolution originating in the House of the following title was read and adopted in concurrence, and is as follows:

J. R. H. 10. Joint resolution relating to weekend adjournment.

*Resolved by the Senate and House of Representatives:*

That when the two Houses adjourn on Friday, January 12, 1973, it be to meet again on Tuesday, January 16, 1973, at ten o'clock in the forenoon.

#### MESSAGE FROM THE HOUSE

A message was received from the House of Representatives by Mr. Giuliani their Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate the House has on its part adopted a Joint resolution entitled:

J. R. H. 8. Joint resolution ratifying a joint resolution of the Congress of the United States of America, entitled, "Joint resolution proposing an amendment to the Constitution of the United States."

In the adoption of which the concurrence of the Senate is requested.

#### JOINT RESOLUTION COMMITTED

Joint resolution originating in the House of the following title was read the first time and is as follows:

J. R. H. 8. Joint resolution ratifying a joint resolution of the Congress of the United States of America, entitled "Joint resolution proposing an amendment to the Constitution of the United States".