

IN SENATE OF THE UNITED STATES.

MAY 22, 1828.

MR. BERRIEN MADE THE FOLLOWING REPORT.

The Select Committee, to whom was referred the memorial of sundry citizens of New Jersey, touching the election of Ephraim Bateman, a Senator from that State,

REPORT:

That, by a reference to the proceedings of the Legislature of New Jersey, assembled in joint meeting on the 9th November, 1826, of which a duly certified copy has been exhibited by the memorialists, it appears,

That an election for a Senator, to represent the said State of New Jersey in the Congress of the United States, for six years from the fourth day of March, then next ensuing, was on that day held:

That Theodore Frelinghuysen, Ephraim Bateman, Thomas Chapman, and George K. Drake, were put in nomination for the said appointment:

That Ephraim Bateman was at that time a member of the said Legislature of New Jersey, Vice-President of the Council, and Chairman of the joint meeting:

That the names of Thomas Chapman, and George K. Drake, were, with leave, respectively withdrawn:

That the said Ephraim Bateman thereafter withdrew from the chair of the joint meeting, and, at his instance, William B. Ewing, Esq. was called to the same: and, on motion, the same was confirmed by the joint meeting:

That, after some discussion as to the manner of proceeding, the said Ephraim Bateman returned to the assembly room, and resumed the chair:

That the Secretary was thereupon directed to call the joint meeting, which being done, the members voting *viva voce*, it appeared that there were for Theodore Frelinghuysen twenty-eight votes, and for Ephraim Bateman twenty-nine votes, and that the said Ephraim Bateman voted for himself, and was accordingly declared to be duly appointed.

It moreover appears to the Committee, that in virtue of such election, and the commission of the Governor of New Jersey founded thereon, the said Ephraim Bateman now holds his seat in the Senate of the United States.

The memorialists object to the validity of this election, because the said Ephraim Bateman, being a member of the Legislative Council, Vice-President of the State, and Chairman of the joint meeting of the two houses of the Legislature, permitted himself to be nominated as a candidate for the office of Senator in the Congress of the United States; that he presided as chairman of the joint meeting during the said election; that, before the vote was taken, he made a motion that he should be excused from voting, because he was a candidate, and therefore interested; and, on the question being put on his said motion, voted that he should not be excused, the other members of the joint meeting being equally divided on the same; and that, on the vote for Senator for six years, the joint meeting, without the vote of the said Ephraim Bateman, being again equally divided, he the said Ephraim Bateman voted for himself.

The transcript of the proceedings of the Legislature of New Jersey, which has been exhibited to the Committee, does not show what motions were made and decided before the joint meeting proceeded to the election of a Senator; but it does show, that on proceeding to that election, the votes of the joint meeting were for Theodore Frelinghuysen twenty-eight, and for Ephraim Bateman twenty-nine, and that Ephraim Bateman voted for himself. The question, therefore, which is presented to the consideration of the Committee, is, whether this act invalidates the election?

On the preliminary point which is discussed in the argument forwarded in behalf of the memorialists, as well as in that submitted by the respondent, and which relates to the right of the Senate to look behind the commission granted by the Governor, the Committee cannot permit themselves to entertain a doubt.

The Senate is empowered by the constitution to judge of the elections, returns, and qualifications of its members, and cannot therefore be precluded by the commission emanating from the executive of a State, from any inquiry which is necessary to the exercise of that judgment. If this were not so, the Governor of a State, by an abuse of his trust, either from misapprehension or design, might assume to himself the appointing power in exclusion of the legislature.

The question, whether the election of the respondent is invalidated by the fact that he voted for himself, and that without such vote he had not a majority of the votes of the joint meeting by which he was declared to be elected, is then forced upon the attention of the Committee.

The following clauses of the Constitution of the United States, relate to the *manner of election*:

“The Senate of the United States shall be composed of two Senators from each State, who shall be chosen by the Legislature thereof.”

“The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

The Legislature of New Jersey has enacted the following provision:

“Senators of the United States, on the part of this State, shall be appointed by the Council and General Assembly, in joint meeting assembled, at the place where the Legislature shall then sit.”

It is manifest from the foregoing clauses, that Congress may prescribe the *mode* of electing Senators, and that in the absence of any provision by them, it is competent to the Legislatures of the several States to do so. It seems equally clear, that each State must possess the power of defining, by its organic law, the constituents of its own legislative department, of prescribing the qualifications of its members, and the limitations under which the trust confided to them shall be exercised; and that the interest of a member in any subject of legislative action, may be declared to constitute, as to that subject, a ground of disqualification to the exercise of his legislative functions, by such interested member. But no such provision exists. For aught that appears to the Committee, the respondent was a member of the Legislature of New Jersey, duly elected, and competent to the exercise of every legislative power not forbidden by its laws, among which the right to vote in the election of a Senator was one. The Committee have not considered the question of the propriety or delicacy of the act complained of by the memorialists, as coming within the scope of the reference made to them by the Senate. Nor have they felt themselves at liberty to apply to this question any abstract principles of right, or of that system of jurisprudence, which, however its principles may have become intermingled with our statutory regulations, or its rules of proceeding, may be seen to operate in the forms which are in use in our judicial tribunals, has no intrinsic validity in those tribunals, or in any other forum in the United States.

Contenting themselves with this brief view of the subject, it appears to the Committee that the facts set forth in the memorial referred to them, are not sufficient to invalidate the election of Ephraim Bateman, as a Senator of the State of New Jersey, in the Congress of the United States, under the election had in the joint meeting of the Assembly of that State, on the 9th day of November, 1826. They therefore recommend the following resolution:

*Resolved*, That the Select Committee raised on the remonstrance and petition of sundry citizens of the State of New Jersey, be discharged from the further consideration of the same.

## No. 1.

*Remonstrance of a number of the members of the Legislature of New Jersey, and of a number of citizens, against the legality of the election by the Legislature, of Ephraim Bateman, to the Senate of the United States.*

*To the Honorable the Senate of the United States.*

The remonstrance and petition of the undersigned citizens of the State of New Jersey,

**SHEWETH:**

That your petitioners, in common with a large portion of the freemen of New Jersey, are much dissatisfied with the election of a Senator of the United States for this State, from and after the fourth day of March next, for six years; and humbly submit to the Senate, that the alleged election of Ephraim Bateman to that office, is, and ought to be, declared by your honorable body, to be null and void, for the following reasons:

1. That the said Ephraim Bateman, being a member of the Legislative Council, Vice-President of the State, and Chairman of the joint meeting of the two Houses of the Legislature, to whom it belonged to elect a Senator, permitted himself to be nominated as a candidate for the said office. When the election came on, he presided as chairman of the joint meeting. Before the vote was taken, he, the said candidate, made a motion that he should be excused from voting, because he was a candidate, and therefore interested; but when the vote was taken on his said motion, he himself voted that he should *not* be excused, the other members of the joint meeting being equally divided; to wit, twenty-eight members voting in the affirmative, and twenty-eight in the negative.

2. On the vote for Senator for six years from the fourth day of March next, the joint meeting, without the vote of the said E. Bateman, were again equally divided, to wit: twenty-eight members voting for Theodore Frelinghuysen, and twenty-eight for the said Ephraim Bateman. But the said Bateman voted for himself, and thereby there were twenty-nine votes for him, and he as Chairman of the joint meeting, declared that he himself was duly elected. He afterwards presented to the Governor a certificate from the Clerk of the joint meeting, that he was elected; and the said Governor thereupon gave the said E. Bateman a commission, in the usual course of executive duty.

Your petitioners respectfully state, that there is no statute of the State of New Jersey, nor any rule of the said joint meeting, to warrant this proceeding, within their knowledge or belief; and they humbly submit to your honorable body, that it is repugnant to the fundamental principles of our free institutions, that the same man, at the same time, should be both *candidate* and *elector*. But that he should, as in this case, be elected to an office of such high dignity and importance by *his own vote*, without which he neither could nor would

have been elected—outrages every rule of law, of equity, and propriety, as your petitioners, with great deference to the Senate, allege and believe.

Your petitioners therefore object to the legality of the said election, and humbly pray that this their objection may be considered and decided on by your honorable body.

Your petitioners add to this their petition, sundry documents, verifying the facts above stated; that is to say,

1. An original protest, made and signed by a number of members of the said joint meeting at the time.
2. A copy of the minutes of the joint meeting in relation to said election.
3. Two of the public papers printed at the time, giving an account of these proceedings.

Your petitioners will take the liberty further to add, that in making this objection, they are not influenced by any hostility, private or political, against the individual claiming the office; but have been induced to present it to the Senate, from a principle of public duty, and a desire to promote the purity of elections, and the honor of the State.

The facts which they have stated, are well known to the claiming member, to be true, and are of public notoriety. Your petitioners therefore feel confident, that they will not be denied by that gentleman. If further proof is required, your petitioners will furnish it, as your honorable body may direct.

William Duryee,  
R. Voorhees,  
Joseph Bullock,  
J. J. Wilson,  
Samuel J. Bayard,  
Henry Clow,  
J. G. Ferguson,  
John L. Thompson,  
John Joline,  
John R. Thomson,  
John Gulick,  
Daniel C. Croxall,  
Samuel R. Hamilton,  
Charles M. Wells,

Robert Boggs,  
Aug. R. Taylor,  
John Neilson,  
Staats Van Duersen  
John Terhune,  
A. S. Neilson,  
James S. Nevins,  
Frederick Richmond,  
Charles Steadman,  
Peter Voorhees,  
Samuel Bayard,  
Ebenezer Stockton,  
Joseph H. Vancleve.

Samuel J. Bayard, of Somerset county, State of New Jersey, being duly sworn, deposeth and saith, that he saw the foregoing names subscribed by the several persons whose names are set unto the above-written remonstrance to the election of Ephraim Bateman, as Senator of the said State: that they are citizens of the said State, and resident therein.

SAMUEL J. BAYARD.

Sworn and subscribed at Trenton, the 21st February, 1827, before the subscriber, Chief Justice of the Supreme Court of Judicature of the State of New Jersey.

CHARLES EWING.

No. 2.

*Protest of Members of the Legislature of the State of New Jersey against the election of Ephraim Bateman.*

We, the undersigned, members of the Legislative Council and General Assembly of New Jersey, in joint meeting convened, being of opinion that no member of this joint meeting has a right to vote on any question in which his private interest is concerned, inasmuch as it is inconsistent with immemorial usage, and repugnant to the fundamental principle of the social compact, do hereby declare, that, in our judgments, Ephraim Bateman has not been duly appointed to the office of Senator of the United States, for six years, from the fourth day of March next, by this joint meeting, because the said Ephraim Bateman voted for himself for the said office, and thereby received a majority of the votes of the joint meeting, when, without his own vote, he would not have obtained such majority. We do, therefore, protest against the said proceedings and appointment.

ASSEMBLY ROOM, Nov. 10, 1826.

A. Howell,  
Charles Board,  
Silas Condit,

Stephen Day,  
William Stites,  
Anzi Dodd,  
Asa C. Dunham,  
John D. Jackson,  
Joseph Dickerson, Jr.  
Ephraim Marsh,

Thos. C. Ryerson,  
Jno. Moore White,  
Silas Cook,

*Members of Council,*

James S. Green,  
P. D. Vroom, Jr.  
John T. Woodhull,  
A. Robertson,  
Jos. Chandler,  
Hiram Munson,  
F. Van Blarcom,

*Members of Assembly,*

STATE OF NEW JERSEY, }  
Borough of Princeton, } ss.

James S. Green, of the said borough, being duly sworn, according to law, doth depose and say, that he subscribed the foregoing paper in the nature of a protest; that the names preceding his signature were subscribed when he signed the same; that he is acquainted with the handwriting of P. D. Vroom, John T. Woodhull, Asa C. Dunham, Anzi

Dodd, and Andrew Howell, and that he believes the names subscribed to the foregoing is in their true hand-writing; that the persons whose names are subscribed were members of the Legislative Council, or General Assembly, at the time the paper bears date; that the paper was drawn up, and is in the hand-writing of Amzi Dodd, member of the Assembly, from the county of Essex; and he believes it to be the original protest signed by the members.

JAMES S. GREEN.

Taken, subscribed, and sworn, before me, this 19th day of February, 1827. In testimony of which, I have hereunto affixed the seal of said borough, the day and year aforesaid.

R. VOORHEES, *Mayor*.

No. 3.

*Proceedings of the Joint Meeting of the Legislature of the State of New Jersey.*

IN JOINT MEETING, November 9, 1826.

*Election for Senator for six years from the 1th of March next.*

Theodore Frelinghuysen, Ephraim Bateman, (Vice-President,) Thomas Chapman, and George K. Drake, being on nomination, the names of Messrs. Chapman and Drake, with leave, were respectively withdrawn.

The Vice-President then withdrew from the chair, and, at his instance, William B. Ewing, Esquire, took the same.

Whereupon, a member of the joint meeting objected to the procedure, as being incorrect. After some desultory conversation, a motion was made that Dr. Ewing be chairman, which was carried nem con.

After several motions made on the manner of proceeding; and considerable altercation, attended with some warmth amongst the friends of the opposing candidates, the Vice-President returned to the Assembly room; whereupon, Mr. Ewing left the chair, and the Vice-President resumed the same.

The Secretary was then directed to call the joint meeting, which being performed, the result was as follows:

FOR MR. FRELINGHUYSEN:

Messrs. Board,	Howell,	Ryerson,
Condit,	Newbold,	Van Winkle,
McChesney.	White,	Van Blarcom.
Polhemus.	S. Cook.	Dodd.

Messrs. Stites,  
Day,  
McDowell,  
Woodhull,  
Lloyd,  
Green,

Stryker,  
Vroom,  
Dunham,  
*Speaker* (Drake)  
Dickerson,  
Marsh,

Jackson,  
Chandler,  
Munson,  
Robertson...28

FOR EPHRAIM BATEMAN.

Messrs. Clawson,  
Swain,  
Maxwell,  
*V. P.* (E. Bateman,)

Messrs. Mackey,  
Kinsey,  
Christie,  
J. Cook,  
Dunn,  
West,

Conover,  
Mott,  
Earle,  
Toy,  
Emlay,  
Lake,  
French,  
Bee,  
Humphreys,  
Archer,

Freas,  
Townsend,  
Capner,  
Clifford,  
Barton,  
Ewing,  
Foster,  
Secley,  
Armstrong...29

Whereupon, it appeared that Ephraim Bateman had a constitutional majority; he was accordingly declared to be duly appointed.

I, Daniel Coleman, Secretary of the Joint Meeting, certify the foregoing to be a true transcript from the minutes of the said Joint Meeting, held in the Assembly room, on the 9th day of November, 1826.

DAN'L. COLEMAN.

Samuel J. Bayard, of Somerset county, State of New Jersey, being duly sworn, deposes and saith, that the name of Daniel Coleman, subscribed to the above certificate, is the proper hand-writing of the said Daniel Coleman, who was Secretary of the Joint Meeting; and that the said Daniel Coleman subscribed his name in the presence of this deponent to the said certificate of the proceedings of the Joint Meeting of the Legislature of New Jersey, held on the ninth day of November, eighteen hundred and twenty-six.

SAMUEL J. BAYARD.

Sworn and subscribed, at Trenton, the 21st February, 1827, before the subscriber, Chief Justice of the Supreme Court of Judicature of the State of New Jersey.

CHARLES EWING.

No. 4.

*Letter from certain citizens of New Jersey, to the Hon. J. H. Eaton, relative to a remonstrance against the election of the Hon. E. Bateman, as Senator from New Jersey.*

PRINCETON, (N. J.) April 25, 1828.

To the Hon. JOHN H. EATON.

Sir: The subscribers, together with other their fellow citizens, addressed, during the last session of Congress, a remonstrance to the

