

WILLIAM S. MESSERVY.

FEBRUARY 6, 1851.

Laid upon the table, and ordered to be printed.

Mr. STRONG, from the Committee of Elections, made the following

REPORT:

The Committee of Elections, to whom were referred the credentials of William S. Messervy, esq., and his application to be admitted to a seat in the House of Representatives as a delegate from the Territory of New Mexico, upon an equal footing with the delegates from the other organized Territories of the United States, respectfully submit the following report:

By the treaty of Guadalupe Hidalgo, which transferred to the United States the sovereignty of the country now known as the Territory of New Mexico, the political organization which had previously existed there was extinguished, and the inhabitants were left without any form of government recognised by our constitution and laws. It was, doubtless, supposed that Congress would, without delay, organize there a Territorial government, of a similar character with those which have heretofore been formed for other portions of our unorganized territory. Owing to causes to which it is unnecessary now to refer, this expected action of Congress was long delayed, and the resident population of the country were left to suffer all the evils and embarrassments which attend a disorganized state of society and the absence of a regular government. Tired of waiting for the unsolicited action of Congress, and with a view to remedy these evils, a large number of the citizens assembled at Santa Fe, on the 21st day of August, A. D. 1849, to consult upon the propriety of organizing a suitable Territorial government. At this meeting it was resolved to recommend to the inhabitants of the country the election of delegates to a general convention, the object of which should be "to concert such plans and adopt such measures as might be most effectual for the attainment of good civil government." In furtherance of this resolution, (as has heretofore been stated by your committee in a former report,) Lieut. Colonel B. L. Beall, then the acting military commandant at Santa Fe, issued a proclamation to the citizens of New Mexico, recommending to them to assemble in mass meetings in their different counties, and at designated places, on the 10th day of September, 1849, for the purpose of electing delegates to a general convention to be held at Santa Fe on the 24th day of September then next ensuing. The proclamation averred the object of the convention to be "the concert of such plans, and the adoption of such measures, as might be most effectual to the attainment of a good civil government, and the appointment of a delegate to go to Washington to

enforce its suggestions and to urge the early action of Congress in its behalf." In conformity with the recommendations of this proclamation, elections were held, and the persons elected met in convention at Santa Fe on the 24th day of September, A. D. 1849, and on the same day elected Hugh N. Smith, esq., to be a delegate to represent the interests of the Territory of New Mexico in the Congress of the United States. The convention then proceeded to prepare a plan to be submitted to Congress, as the basis upon which they desired the civil government of New Mexico to be formed, and forwarded the same by Mr. Smith, with instructions to urge upon Congress to give to the country a Territorial government, embracing the provisions contained in the plan by them recommended. Mr. Smith received a commission as a delegate, signed by the president of the convention, and attested by its secretary. Thus elected and instructed, and with this commission, Mr. Smith presented himself at the first session of this Congress, and asked to be admitted to a seat as a delegate. The House, however, on the 19th day of July, A. D. 1850, refused to accord to him the seat which he claimed. While these proceedings were pending, and long before any decision upon the application of Mr. Smith had been made, on the 25th day of May, A. D. 1850, another convention was assembled at Santa Fe. This convention formed a constitution for a *State* government. The preamble of the constitution declares that the people of New Mexico did "ordain and establish the following constitution," and did mutually agree with each other to form themselves into a free and independent State, named New Mexico. The tenth section of the schedule attached to this constitution provided that the military and civil governor of the Territory should be requested, immediately on the adjournment of the convention, to issue writs of election to the prefects of the several counties, requiring them to cause an election to be held on the 20th day of June, A. D. 1850; the electors to vote for or against this constitution, for a governor and lieutenant governor, a representative in the Congress of the United States, and senators and representatives to the legislature. The same section of the schedule made provision for the manner in which the votes should be counted, and directed that the returns should be forwarded to the secretary of the Territory, who should transmit them to the legislature on the first day of their session. The eleventh section of the schedule directed that the governor elect, or the lieutenant-governor acting as such, should certify the returns of votes for or against the adoption of the constitution, and should send them to the Secretary of State of the United States within thirty days from the day of election. The twelfth section is as follows:

"It shall be, and is hereby made, the duty of the governor, or lieutenant governor acting as such, if it appears from the returns of the votes for and against this constitution that it has been adopted by the people, immediately to cause a fair copy of the same, together with a fair digest of the votes given for and against the constitution, to be forwarded to the President of the United States, to be laid before the Congress of the United States."

On the 28th day of May, A. D. 1850, John Munroe, styling himself "civil and military governor of the Territory of New Mexico," issued his proclamation (a copy of which is appended to this report,) reciting the proceedings of the convention and directing an election to be held in accordance with the provisions of the tenth section of the schedule of the

constitution, on the 20th day of June, A. D. 1850. The proclamation contained the following proviso: "It being provided and understood that the election of all officers in this election can only be valid by the adoption of the constitution by the people, and otherwise null and void; and that all action of the governor, lieutenant governor, and of the legislature, shall remain inoperative until New Mexico be admitted as a State under said constitution, except such acts as may be necessary for the primary steps of organization and the presentation of said constitution properly before the Congress of the United States. The present government shall remain in full force until by the action of Congress another shall be substituted."

An election was accordingly held, and six thousand seven hundred and seventy-one votes were given in favor of, and thirty-nine votes against the adoption of the constitution. At the same time Henry Connelly was elected governor, Manuel Alvarez lieutenant governor, and William S. Messervy a representative in Congress, he having received four thousand nine hundred and thirty-four votes, and Hugh N. Smith three thousand four hundred and seventy-four votes, for that office. The legislature met and elected two persons to represent the State in the Senate of the United States.

Thus elected, Mr. Messervy claims to be admitted to a seat in the House of Representatives, as a delegate from the Territory of New Mexico, on the same footing with the delegates from the Territories heretofore organized under the laws of the United States. He presents the following as his credentials:

UNITED STATES OF AMERICA, *State of New Mexico.*

I, Manuel Alvarez, Governor of the State of New Mexico, do hereby certify that William S. Messervy was, on the 20th day of June, A. D. eighteen hundred and fifty, duly elected by the qualified voters of the State of New Mexico to represent said State in the thirty-first Congress of the United States.

In testimony whereof, I have hereunto set my hand, and affixed my private seal, there being no seal for the State. Done in the city [L. s.] of Santa Fe, this 9th day of July, A. D. eighteen hundred and fifty.

MANUEL ALVAREZ.

By the governor:

LEWIS D. SHEETZ,

Secretary of State.

A similar certificate is also presented, signed by a certain Donaciano Vigil, who calls himself Secretary of the Territory of New Mexico.

The foregoing are all the facts which relate to the application of Mr. Messervy, and in the opinion of your committee they show not merely that he has no rightful claim to the seat which he asks, but that it would be highly inexpedient to admit him.

It may be observed that the application for admission as a *Territorial* delegate is directly in conflict with Mr. Messervy's credentials. It is an attempt to change the character in which he was sent. The constituency which elected him sought to obtain a State, not a *Territorial* form of government. In transmitting their constitution they sought for the admission of New Mexico into the Union as a State, and for the reception of Mr.

Messrs as the constitutional representative of the people of a State in the Union. By no action of theirs did they authorize him to act in an inferior or any other capacity than as such a representative. Nothing which they have done can be construed into the expression of a desire that the person whom they sent should sit on the floor of the House until the admission of New Mexico into the Union. On the contrary, it may fairly be inferred that the choice which they made of a State form of government negatives the wish to have merely a Territorial delegate here. It is not easy to perceive how the House can with any propriety aid the applicant thus to throw off the authority conferred upon him by the people who sent him, and assume another with which he was never invested.

But leaving this consideration, and conceding for the present that he was elected and sent to act as a Territorial delegate, your committee are of opinion that his admission would be impolitic, and a dangerous precedent. It would be a departure from all the established usages of the government. It need not be said that the House of Representatives is now and ever has been composed exclusively of members elected under the constitution and laws of the United States, and in accordance with the provisions of that constitution and those laws. During its entire existence of more than sixty years no person elected in any other mode, or sent from any constituency unknown to the constitution and laws, has been admitted to a seat. Territorial delegates have indeed been admitted, and it is true that they are not mentioned in the constitution. But they have in every instance been admitted under an unvarying rule. In every case the delegate has been chosen under laws enacted by Congress, and from a Territorial government subordinate to and emanating from the constitution and laws of the United States. The celebrated ordinance of July 13, 1787, made the first provision for the election and admission of a Territorial delegate. It provided that the legislature of the Territory northwest of the Ohio might elect by joint ballot a delegate to Congress, who should have a seat in the House of Representatives during the existence of the Territorial government, with the privilege of debating, though not of voting. That ordinance was contemporaneous in its passage with the formation of the federal constitution, and was recognised by it. It was also affirmed by an act of the first Congress, and a delegate thus elected was permitted to hold his seat. In accordance with this precedent, as other Territorial governments have been formed, and became entitled under their organic law to legislative assemblies, Congress has uniformly provided by law for the election of a delegate with similar privileges. In some instances the law has provided that the delegate should be elected by the Territorial legislature, and in others by the people included under the government. But in every case the delegate admitted has been chosen under laws previously enacted by Congress, and from a government subordinate to and emanating from the constitution and laws of the United States. So uniform has been this usage, and so well understood, that by the act of Congress of March 3, A. D. 1817, the term of office and the privileges of such delegates were expressly defined. That act, however, speaks only of delegates from temporary governments then established, or which might thereafter be created, and which were or might be thereafter authorized by act of Congress to send delegates. No provision was made for any other. It was not contemplated that there could be any other. It may, therefore, safely be averred that the basis upon which rests the admission of a Territorial delegate, if

not constitutional, is fundamental. There have been political organizations in parts of the unorganized territory of the United States, but none such have been permitted to enjoy representation here. The case of Almon W. Babbitt, who claimed to be admitted as a delegate from Deseret during the last session of this Congress, is in most respects similar to this. In that case a State government had been formed, and Mr. Babbitt had been elected by the legislature, but this House refused to admit him to a seat. The case of Hugh N. Smith, already mentioned, affords another instance of the adherence of the House to the unbroken usage of past years. If it be regarded as a question of expediency, both his case and Mr. Babbitt's in many aspects presented stronger claims than the one now under consideration. The one was elected by a convention—the other by the people in mass. In both these cases, appealing strongly, as they did, to the discretion of the House, no departure was permitted from former practice. Precedents so numerous, usage so unbroken, extending through all our past history, should have controlling influence in the exercise of the discretion of the House. Unlike all who have been admitted as Territorial delegates, Mr. Messervy founds his application upon neither the constitution nor laws of the United States. His election was not subordinate to, but in disregard of them—in hostility even to the Territorial government subsequently formed by Congress.

The argument in favor of the applicant is, that the resident population of New Mexico should be represented. As already observed, it is neither the theory nor the practice of our government that any individuals living under no political organization should enjoy either complete or partial representation. The admission of such a principle would be eminently dangerous. Your committee, however, do not propose to discuss the evils which would inevitably follow the establishment of such a precedent. They have already done this in a report heretofore submitted to the House, which received its sanction. It should, however, be remembered that the supposed necessity which was averred to exist in the case of Mr. Babbitt and Mr. Smith has no existence in this case. Provision has already been made by law for a Territorial delegate. The act of Congress of September 9, A. D. 1850, provided for the establishment of a Territorial government over New Mexico. The fourteenth section of that act authorized the election of a Territorial delegate, and provided that the first election should be held at such time and places, and be conducted in such manner, as the Territorial governor should appoint and direct, and that at all subsequent elections the times, manner, and places should be prescribed by law. True, the provisions of that act were suspended until the boundary between the United States and the State of Texas should be adjusted; but that boundary having been determined, the act is now in force. There is, therefore, at this day provision made by law for Territorial representation of New Mexico. It necessarily negatives both the legality and expediency of any other. Mr. Messervy has no pretensions to having been elected under this organic law; but, on the contrary, his credentials are in antagonism to it. Were he admitted to the seat which he claims, there would be no legal impediment to the admission of another delegate from the Territory of New Mexico. It may be, indeed, that no such delegate will appear during this Congress; and should such be the case, your committee are unable to perceive that any serious evils would result either to New Mexico or to the country at large. Certainly no such

overruling necessity is shown to exist as should induce the House to disregard a uniform usage of more than sixty years, and establish a precedent which may lead to unending confusion in the future.

Your committee unanimously recommend the adoption of the following resolution:

Resolved, That William S. Messervy, esq., be not admitted to a seat in the House as a delegate from the Territory of New Mexico.

PROCLAMATION.

Whereas the people of New Mexico, by their delegates in convention assembled, did, on the 25th day of May, frame a State constitution for the Territory of New Mexico, and request the present civil and military governor of this Territory to issue a proclamation for elections, for the purpose of submitting the same to the people, and for the purpose of electing such officers as are provided to be so elected in said constitution :

Therefore, I, John Monroe, civil and military governor of the Territory of New Mexico, do hereby direct that the qualified electors shall assemble at the precincts of their respective counties on Thursday, the 20th day of June next, between the rising and setting of the sun, to vote on a separate ballot *for or against* the constitution as framed by the convention, the same to be deposited in a separate box; and on another separate ballot, to be deposited in a separate box, for governor, lieutenant governor, representatives to Congress, and for senators and representatives to a State legislature, to convene at the capitol on Monday, the first day of July next. It being provided and understood that the election of all officers in this election can only be valid by the adoption of the constitution by the people, and otherwise null and void; and that all action of the governor, lieutenant governor, and of the legislature, shall remain inoperative until New Mexico be admitted as a State under said constitution, except such acts as may be necessary for the primary steps of organization, and the presentation of said constitution properly before the Congress of the United States.

The present government shall remain in full force until by the action of Congress another shall be substituted.

The election shall be conducted in manner and form as prescribed in the statute laws now in force in this Territory, except that the prefects are hereby directed forthwith, upon the receipt of this proclamation, to divide their respective counties into convenient election precincts, and to appoint three discreet persons in each precinct as judges of election, who shall appoint two clerks of their respective precincts.

The prefects, with the assistance of the prefects' clerks, shall, within six days after the election, count up all the votes in the returns of the several precincts of their counties, and shall immediately issue certificates of election under their hands to the persons having the highest number of votes for representatives to the State legislature.

They shall also make a fair abstract of the returns from the several precincts of their respective counties, of all the votes for and against the constitution, for governor, lieutenant governor, representatives to Congress, and State senators, and despatch the same immediately, certified under

their hands, to the Secretary of the Territory, who shall issue certificates of election to the persons having the highest number of votes for members of the State senate, and shall lay such returns before the two houses of the legislature upon the first day of their session, and immediately upon their being organized.

The number of representatives and senators for the respective counties and districts for the State legislature shall be the same as prescribed for the Territorial legislature in the statute laws of this Territory now in force.

When any county officer whose duty it may be to sum up or make returns of votes or certificates of election shall be a candidate for any office, the senior alcalde of such county shall be required to aid in counting up said votes, and shall, in place of such officer being a candidate, sign all certificates of elections as hereinbefore prescribed.

Given under my hand at the government house, city of Santa Fe, this 28th day of May, A. D. 1850.

JOHN MUNROE,
Civil and Military Governor Territory of New Mexico.

