

DOCUMENTS

WASHINGTON'S FIRST CONSTITUTION, 1878

Those who have read the proceedings of the convention at Walla Walla, which framed the constitution, will recall that the questions of prohibition and woman suffrage were submitted as separate articles to be voted upon at the same general election at which the constitution itself was to be adopted or rejected.

At that same election there was rather a bitter contest between Thomas H. Brents (Republican) and N. T. Caton (Democrat) for Delegate to Congress. There was great interest in the question of prospective statehood but in the election itself greatest interest centered in the delegateship.

The election took place on November 4, 1878, and about that time the *Daily Intelligencer* of Seattle published a table showing the population of Washington Territory by counties as follows:

Chehalis	720	Pacific	1,411
Clallam	420	San Juan	700
Clarke	4,288	*Skamania	274
Columbia	5,820	Snohomish	1,042
*Cowlitz	1,893	*Stevens	1,360
*Island	616	Thurston	2,971
Jefferson	1,677	Wahkiakum	698
Kitsap	1,548	Walla Walla	5,791
King	5,943	Whatcom	2,155
Klickitat	1,999	Whitman	3,709
Lewis	1,806	Yakima	1,711
Mason	520		
Pierce	2,801	Total	51,833

*Estimated from census of 1877.

Looking back through forty years, it seems that the population was rather slender to sustain the ambitions for statehood. The proposed area was great enough. In addition to Washington Territory, the three northern counties, or "panhandle" of Idaho, were to have been included. Those people in Idaho were even more interested than were those of Washington. The *Democratic Press* of Port Townsend, said on December 26, 1878: "The total vote of Idaho Territory at the recent election was 5,939, against 4,958 in 1876—a gain of 971, the principal portion of which is in the northern counties which are nearly unanimously petitioning to be set off to Washington Territory." The *Seattle Intelligencer* of November 25, 1878, copied from the *Teller* of Lewiston, Idaho: "There were a few who seemed wholly indifferent upon the question, but at this time we cannot learn of 25 votes cast against the Constitution in the three counties. Shoshone county

cast but one vote against it. Mt. Idaho, the largest precinct in Idaho county, cast but two votes against it. Lewiston, the largest precinct in Nez Perce county, cast but four votes against it. The northern precincts of this county did nearly as well."

Soon after the election it seems to have become generally known that the Constitution had been adopted and that the separate articles had been rejected. The *Seattle Intelligencer* and the *Port Townsend Democratic Press* published the vote on the Constitution only for neighboring counties. Each published editorials on the adoption of the Constitution and a favorable comment by the *San Francisco Bulletin*. Each gave the official vote by counties for Delegate to Congress. The following record of the official vote on the Constitution is obtained from the *Portland Oregonian* of December 2, 1878:

Name of County	For Constitution	Against Constitution
Chehalis	91	42
Clallam	105	8
Clarke	386	330
Columbia	426	513
Cowlitz	115	207
Island	164	1
Jefferson	332	30
King	1,284	30
Kitsap	198	35
Klickitat	229	101
Lewis	230	78
Mason	54	49
Pacific	158	93
Pierce	230	339
Skamania	17	47
Snohomish	308	20
San Juan	167	20
Stevens
Thurston	459	118
Wahkiakum	62	28
Walla Walla	89	847
Whatcom	432	89
Whitman	746	116
Yakima	210	90
Total	6,462	3,231
Majority for	3,231	

On November 16, 1878, the *Seattle Intelligencer* closed an editorial on "Our Constitution" as follows: "Whether we are admitted this year, next year, or at some future time, we believe this Constitution will keep, and that the people of the Territory will not incur the expense of forming another."

One of the most prominent members of the Walla Walla convention was Col. C. H. Larrabee who spent the winter of 1878-1879 in Washington City. He wrote a letter to the *Seattle Intelligencer* which was copied in the *Port Townsend Democratic Press* of January 9, 1879, saying that Washington Territory could not hope for statehood until 1881 or 1882. It was hard to explain, he said, the unprecedented majority for the Republican candidate for Delegate to Congress.

On October 6, 1879, Governor Elisha P. Ferry closed his message to the Territorial Legislature by referring to the proposed railroads, to agriculture, manufacturing, commerce, climate. "And," said he, "if to those natural advantages we present a system of just laws, wisely and impartially administered, finance honestly and economically conducted, a common school and university system, adequate for the education of the rising generation, we will retain those who are now here or may hereafter come, and will soon be fully prepared to enter upon the honors, duties and responsibilities of statehood."

JOHN T. CONDON.

CONSTITUTION

PREAMBLE

WE THE PEOPLE, grateful to the Supreme Ruler of the Universe for our freedom, in order to secure and perpetuate its blessings, form a more independent and perfect government, establish justice, insure tranquility, provide for the common defense and promote the general welfare, do ordain and establish this Constitution for the State of Washington.

ARTICLE I

BOUNDARIES

THE BOUNDARIES of the State of Washington shall be as follows:

Commencing one marine league west from the mouth of the middle of the north ship-channel of the Columbia River; thence along the northern boundary of the State of Oregon, up said river, to where the forty-sixth parallel of north latitude intersects the same near the mouth of the Walla Walla River; thence, east along said parallel to where it intersects the middle of the main channel of Snake River, thence, southerly, along said channel of Snake River, to where it intersects the forty-fifth parallel of north latitude; thence, east along said parallel, to where it intersects the meridian thirty-seven degrees and thirty minutes west;¹ thence, north along said meridian, to where it intersects the crest of the Bitter Root range of mountains; thence, northwesterly, along the crest of said mountains, to where it intersects the thirty-ninth meridian west;² thence, north, along said meridian to the boundary line of the British Possessions; thence, westerly along the line of the British Possessions to a point one marine league west from the mouth of the middle channel of the Straits of Juan de Fuca; thence southerly, a distance of one marine league west from the east shore of the Pacific Ocean, to the place of beginning—including all

¹ "West of Washington" being 114° and 30' west of Greenwich.

² "West of Washington" being 116° west of Greenwich.

islands and parts of islands within said boundaries, within the jurisdiction of the United States.

ARTICLE II
EMINENT DOMAIN

SECTION 1. The State shall have concurrent jurisdiction on all rivers bordering on the State, so far as such rivers shall form a common boundary to the State and any other State or Territory, now or hereafter to be formed and bounded by the same.

SEC. 2. The title to all lands or other property, which has accrued to the Territory of Washington, by gift, grant, purchase, forfeiture or otherwise, shall vest in the State.

SEC. 3. The People of the State, in their Rights of Sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the State.³

ARTICLE III⁴
DISTRIBUTION OF POWERS

SECTION 1. The Government of the state shall be divided into three separate and distinct departments, to wit: the Legislative, the Executive and the Judicial.

SEC. 2. No person, or collection of persons, holding any position in, or exercising any authority under, one of these departments, shall hold any office in, or exercise any authority whatever, under either of the others, except such as may be expressly provided for in this Constitution.

ARTICLE IV
SUFFRAGE AND ELECTIONS

SECTION 1. Every male person, over the age of twenty-one years, belonging to either of the following classes, who shall have resided in the State for six months next preceding any election, shall be deemed a qualified elector at such election.

1st—Citizens of the United States.

2nd—Persons of foreign birth, who shall have declared their intentions to become citizens, conformably to the laws of the United States on the subject of naturalization, six months before offering to vote.⁵

3rd—Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

³ This statement not found in our present Constitution but the principle of law involved is in force in this State at this time.

⁴ The idea of a complete and distinct separation of governmental powers seems to be expressed in Art. III much more strongly than found a place in the present Constitution.

⁵ Under this provision persons were entitled to vote and to hold many State offices, who were not citizens of the United States.

The Legislature may prescribe additional qualifications for electors of municipal and school-district elections.

SEC. 2. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while in the civil or military service of the State, or of the United States; nor while a student at any institution of learning, nor while kept at public expense in any poorhouse or other asylum, nor while confined in prison.

SEC. 3. Voters shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

SEC. 4. No person, except a qualified elector, shall be elected or appointed to any civil office in the State.

SEC. 5. The general election shall be held biennially on the Tuesday next succeeding the first Monday of November.

SEC. 6. All elections by the people shall be by ballot, and a plurality of votes shall elect, in all cases except where the person who shall receive them shall be ineligible; in which case the person receiving the next highest number of votes, and who is eligible, shall be declared elected. Elections, by persons in their representative capacity, shall be *viva voce*, and a majority shall be necessary to an election.

SEC. 7. No idiot or insane person shall be entitled to the privileges of an elector.

SEC. 8. Laws shall be passed, excluding from the right of suffrage, all persons who have been or may be convicted of bribery, perjury, or of any infamous crime; and depriving every person who shall make, or become, directly or indirectly, interested in any bet or wager depending upon the result of any election, of the right to vote at such election.

SEC. 9. The Legislature shall pass laws to preserve the purity of elections, and to guard against the abuse of the elective franchise, and shall, for that purpose, have the power to pass laws of registration.

ARTICLE V *

DECLARATION OF RIGHT

SECTION 1. All political power is inherent in the People, and all free governments are founded on their authority.

SEC. 2. The people of this State have the sole right to alter or abolish this Constitution and form of government, whenever they deem

* A similar declaration of rights is found in Art. I of our present Constitution.

it necessary to their safety and happiness; *provided*, such change be not repugnant to the Constitution of the United States.

SEC. 3. All persons are by nature free, and equally entitled to certain natural rights; among which are, those of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining happiness. To secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

SEC. 4. All persons have a natural and indefensible right to worship God according to the dictates of their own consciences.

No person shall be compelled to attend, erect or support any place of worship, against his consent; and no preference shall be given by law to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office; nor shall any person incompetent to be a witness on account of his opinions on matters of religion; but nothing herein shall be construed to dispense with oaths or affirmations; but the liberty of conscience hereby secured shall not be construed so as to excuse acts of licentiousness, or practices inconsistent with the peace or safety of the State.

SEC. 5. No person shall be deprived of life, liberty or property without due process of law, or be denied the equal protection of the law.

SEC. 6. No person, on account of sex, shall be disqualified to enter upon and pursue any of the lawful business avocations or professions of life.

SEC. 7. Every person may freely speak, write and publish his opinions on all subjects, being responsible for the abuse of that liberty; and no law shall be passed to restrain or abridge the liberty of speech or the press. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it appears that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party accused shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 8. No person shall be held to answer for a criminal offense without due process of law; and no person, for the same offense shall be put twice in jeopardy of punishment, nor again be put upon trial for the same offense after having been once acquitted by a jury, nor shall be compelled, in any criminal cause, to be a witness against himself. All persons shall, before conviction, be bailable by sufficient sureties, except for murder in the first degree and treason, where the proof is evident or the presumption great; and the privilege of the

writ of *habeas corpus* shall not be suspended unless when, in case of rebellion or invasion, the public safety may require. The right of trial by jury of twelve persons shall remain inviolate in all criminal causes. A jury in civil causes, in all Courts, may consist of less than twelve persons, as may be prescribed by law; and the concurrence of three-fourths of the whole number of the jury shall be sufficient for a verdict; *provided* that the right may be waived by the parties, in such manner as may be provided by law.

Hereafter a grand jury shall consist of seven persons, any five of whom, concurring, may find an indictment; *provided*, the Legislature may change, regulate, abolish or re-establish the grand jury system.⁷

SEC. 9. Every person in the State shall be entitled to a certain remedy in the law, for all wrongs and injuries which he may receive in his person, character or property; justice shall be administered to all, freely and without purchase; completely and without denial; promptly and without delay; and all Courts shall be open to the public.

SEC. 10. The right of the people to be secure in their persons, papers, houses and effects, against unreasonable seizure and search shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation in writing, describing, as nearly as may be, the place to be searched, and the person or thing to be seized.

SEC. 11. There shall never be, in this State, involuntary servitude, save as a punishment for crime, whereof the party shall have been duly convicted.

SEC. 12. No person shall be imprisoned for debt except in case of fraud in contracting the same, or of an absconding debtor having means legally applicable to the payment of his debts or some parts thereof.

SEC. 13. In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to have a copy thereof; to testify in his own behalf; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial, by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 14. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, or making any irrevocable grant

⁷ This was a forerunner of practical abolition of the grand jury system as a regular thing which occurs in Art. I, Sec. 26, present Constitution.

of special privileges, franchises or immunities, shall ever be passed by the Legislature.

SEC. 15. Private property shall not be taken or damaged for public use without just compensation; and no person's particular services shall be required without just payment therefor.

SEC. 16. The rights of the people to peacefully assemble and consult for the common good, and to petition for the redress of grievances, shall never be restrained or abridged.

SEC. 17. The military shall always be in strict subordination to the civil power.

SEC. 18. All laws in relation to the possession, enjoyment and descent of property, shall be alike applicable to resident aliens and citizens.

SEC. 19. The right of the people to keep and bear arms shall not be infringed; but this shall not be so construed as to justify the carrying of concealed weapons.

SEC. 20. All elections shall be free and open; and no power, civil or military, shall interfere to prevent the free exercise of the right of suffrage.

SEC. 21. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid or comfort; and no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his own confession in open Court.

SEC. 22. No person shall be transported out of the State for any offense committed within the same; and no conviction shall work a corruption of blood or forfeiture of estate.

SEC. 23. All lands within the State are declared to be allodial; and feudal tenures, with all their incidents, are prohibited. Leases and grants for agricultural lands for a longer term than fifteen years, in which rent or services of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land hereafter made, are declared to be void.⁸

SEC. 24. No law shall be passed, granting to any citizen or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SEC. 25. The operation of the laws shall never be suspended, except by the authority of the Legislature.

SEC. 26. The enumeration in this Constitution of certain rights, shall not be construed to deny, impair or disparage others retained by the people.

⁸ An attempt to stop long leases of agricultural lands and to prevent absentee landlordism not found in present Constitution.

ARTICLE VI

LEGISLATIVE

SECTION 1. The Legislative power of this State shall be vested in two distinct branches; the one to be styled the Senate, and the other the House of Representatives; and both together, the Legislature of the State of Washington.

The style of all laws shall be: "Be it enacted by the Legislature of the State of Washington."

SEC. 2. The number of the members of the House of Representatives shall never be less than eighteen nor more than sixty. The Senate shall consist of one-third the number of members of the House of Representatives.

SEC. 3. The Legislature shall provide by law for an enumeration of the inhabitants of the State, in the year one thousand eight hundred and eighty-five, and at the end of every ten years thereafter; and at its first session after such enumeration, and after each enumeration made by authority of the United States, the Legislature shall apportion and district anew the members of the Senate and House of Representatives, according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy.

SEC. 4. Elections for members of the Legislature shall be held biennially. When vacancies occur in either House, the Governor shall issue writs of election to fill such vacancies.

SEC. 5. Senators shall be elected for the term of four years, and members of the House of Representatives for the term of two years; *provided*, that the members of both Houses first elected shall hold their offices until the time fixed for the meeting of the second Legislature, but no longer.

SEC. 6. No person shall be a member of the Legislature who shall not be a qualified elector of the district for which he is chosen, and who shall not, for at least twelve months next preceding his election, have resided therein; *provided*, that any person who at the time of the adoption of this Constitution is a qualified elector in the county or district for which he shall be chosen, shall be eligible to the first Legislature.

SEC. 7. The first Legislature shall divide the State into at least ten legislative districts in each of which one Senator and three Representatives shall be elected at the general election then next ensuing; and the districts shall be of convenient contiguous territory, to be bounded by county, precinct or ward lines; and the number may be increased, but shall never exceed twenty. The Legislative districts

shall be numbered in regular series, and the Senators chosen by the odd-numbered districts shall go out of office at the expiration of the second year; and the Senators chosen by the even-numbered districts shall go out of office at the expiration of the fourth year; and thereafter the Senators shall be chosen for the term of four years.

Representatives shall hold their office for the term of two years. In all elections of Representatives, after such division, each qualified elector may cast as many votes for one candidate as there are Representatives to be elected in the district, or he may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be elected. But the legislature may at any time after the year 1890, adopt the system known as the preferential system, in the election of Representatives, and enact such laws as will be necessary to carry it into effect. The terms of office of Senators and Representatives, elected at any time subsequent to the first election, shall commence at the end of the term of those in office at the time.

SEC. 8. Each member of the legislature, as a compensation for his services, shall receive four dollars for each day's attendance, and ten cents for each mile necessarily traveled in going to or returning from the seat of government, and shall not receive any other compensation, perquisite, or allowance whatsoever. No session of the Legislature, except the first, shall exceed forty days. The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the service shall have been rendered, or the contract entered into; nor shall the compensation or mileage of any public officer be increased or diminished during his term of office.

SEC. 9. There shall be biennial sessions of the legislature. Each House shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may prescribe.

SEC. 10. Each House shall have power to determine its rules of proceeding, and punish its members or other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribes, or private solicitations, and—with the concurrence of two-thirds of all the members elected—to expel a member, but not a second time for the same cause; and shall have all other powers necessary for a coordinate branch of the legislature. A member expelled for corruption, shall not thereafter be eligible to either branch of the same legisla-

ture; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

SEC. 11. The Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members as President.

SEC. 12. Each House shall keep a journal of its proceedings; and may, in its discretion, from time to time, publish the same. The doors of each House shall be kept open, except when the public welfare shall require secrecy. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 13. Members of the legislature shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest, during their attendance at any session of the legislature, and in going to and returning from the same; and no member shall be liable in any criminal action or criminal prosecution whatever for words spoken in debate.

SEC. 14. No act of the legislature shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble of the act) the legislature shall, by a vote of two-thirds of the members elected, otherwise direct. No bill, except the general appropriation bill, for the expenses of the government, introduced in either House after the expiration of the first thirty days of the session, shall become a law, unless the same shall have been recommended by the Governor by special message; and no bill except one so recommended, shall be considered or become a law, unless referred to a committee, returned therefrom, and printed for the use of the members.

SEC. 15. No bill, except for general appropriations, shall be passed, containing more than one subject, which shall be expressed in the title; but if any subject shall be embraced in any act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

SEC. 16. Every bill (except one recommended by the Governor as aforesaid, and except a general revision of the statutes) shall be read at length at least once in each House; all substantial amendments thereto shall be printed for the use of the members before final vote on the bill; and no bill shall become a law unless a majority of all the members elected to each House shall vote in its favor, nor unless, on its final passage, the vote be taken by ayes and noes, and entered on the journal.

SEC. 17. No law shall be revised or amended by reference to its

title alone, but as much thereof as is revised or extended shall be re-enacted and published at length as amended. The legislature shall not pass local or special laws in any of the following cases, viz: for laying out, opening, altering, or working roads or highways; vacating roads, town plats, streets, alleys and public grounds; regulating county or precinct affairs; regulating the practice in courts of justice; regulating the jurisdictions of Justices of the Peace, police magistrates and constables; changing the rules of evidence in any trial or inquiry; providing for change of venue in civil or criminal causes; declaring any person of age; the protection of game or shell-fish; limitation of civil actions, or giving effect to informal or invalid deeds; summoning or empaneling jurors; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or toll-bridges; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentage or allowance of public officers; changing the law of descent; granting to any corporation, association or individual, any special or exclusive privilege, immunity or franchise whatever; allowing the redemption of real estate sold for taxes or under the final process of any court.

SEC. 18. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the legislature, the title of which shall be publicly read immediately before signing; and the fact of signing shall be entered on the journal.

SEC. 19. The legislature shall prescribe by law the number, duties and compensation of the officers and employees of each House, and no payment shall be made to any officer or employee, who does not discharge his duties in person.

SEC. 20. The legislature shall provide by law that all stationery required for the use of the State; and all printing and binding authorized and required by them to be done for their use or for the State, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price. No member or officer of any department of the government shall be in any way interested in any such contract.

SEC. 21. Any bill may originate in either House of the legislature, and a bill passed by one House may be amended by the other.

[To be continued]