THE JOURNAL OF THE
WASHINGTON STATE
CONSTITUTIONAL CONVENTION
1889

with Analytical Index

by

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Edited by
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Analytical Index, Articles III-IV (pp. 559-629)

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Buffalo, New York
1999
ARTICLE III THE EXECUTIVE

A move was made to eliminate the Lieutenant Governor as an elective officer for reasons of economy. It failed, as the majority believed that a man who might become Governor should be elected.

A similar effort to drop the office of Commissioner of Public Lands was defeated because of the argument that state-owned lands were so valuable they would need special attention.

Four-year terms were given to all officers instead of to only the Governor and Lieutenant Governor as the report of the committee recommended.

A determined attempt was made to reduce the Governor's check on the Legislature by trying to lower the number of votes necessary to override a veto from two-thirds to three-fifths. When this failed, an effort was made to establish it at a two-thirds vote of all members instead of two-thirds of those present. However, those preferring the strong traditional veto power prevailed.

Qualifications for office-holding were lowered considerably by the Convention from those suggested by the report of the committee.

The Committee for the Executive Department was appointed July 9. (p. 19)

Members: Weir, chairman; Fairweather, Hicks, Clothier, and Hungate.

Section 1

Present Language of the Constitution:

EXECUTIVE DEPARTMENT. The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state at the same time and place of voting as for the members of the legislature.

Original language as present.¹

Proposition submitted to Convention by Suksdorf, July 11:

¹Executive Department Consists of Whom: Hill, Prop. Wash. Const., Art. 5, sec. 1; Wash., Const. (1878), Art. 9, sec. 1; Colo., Const. (1876), Art. 4, sec. 1. [Very similar; except that Wash. adds “other officers.”]
To have an elective state statistician with the same term as Governor. (p. 54)

Proposition submitted to Convention by Weir, July 12:

Same as final except for minor wording. (p. 79)

Text as given in report of committee, July 23:

Same as final except for minor wording. (p. 130)

Consideration by committee of the whole, July 25:

Motion: Sharpstein moved to strike out Lieutenant Governor.

Action: Motion lost 38 to 31.

All papers agree on this vote except Standard which gives it as 35 to 21.

Discussion as follows:

For: Godman attacked the character of the men who held this office by calling them political manipulators. McElroy said that he did not want to see the Legislature become an employment bureau and he agreed with Dunbar and Eshelman that the office was superfluous. The Times reports that Browne also thought this office unnecessary while the other papers record Browne as opposed to the motion.

Against: Weir said a Lieutenant Governor was needed to supervise the many state institutions which would be necessary. Browne, Dyer, and Buchanan said that if the Senate speaker was taken to the Governor’s office it would remove from the floor an elected representative. Gowey and Lillis thought the people should elect for the office a man who might become Governor. Cosgrove opposed striking. According to the Times, J. Z. Moore pointed out that a Vice President had been provided for by the first constitutional convention of the United States and he thought that that body compared favorably with this one.

Motion: Mires moved to amend by offering a substitute which

left out the offices of Lieutenant Governor, Commissioner of Public Lands, and Auditor, and authorized the Legislature to create all necessary offices.

**Action:** Motion lost.

**Motion:** Sharpstein moved to strike out the office of Commissioner of Public Lands.

**Action:** Motion lost.

**Discussion as follows:**

The two following motions, Buchanan’s and Gowey’s, were brought up during the discussion of this motion so the comments were closely interrelated and have been separated as best possible.

**For:** Sharpstein favored a board composed of state officers to perform these duties. Eldridge and Godman did not see why the office was being argued over when there had been no policy yet made regarding the state lands themselves. Gowey thought the Secretary of State could perform these duties.

**Against:** Bowen and Weir said that this office was important because of the amount and value of the state-owned lands. Prosser and Lillis asserted that there were millions of dollars involved in these lands and thought this called for able management. Blalock favored the committee report without amendment. Cosgrove thought that to eliminate this office would be false economy.

**Motion:** Buchanan moved to substitute to provide a Board of Land Commissioners similar to that of Wisconsin and composed of the Governor, Treasurer, and Attorney General.

The Times reports that it was the Lieutenant Governor instead of the Governor.

**Action:** Motion lost with only Buchanan voting in its favor.

**Discussion as follows:**

**Against:** Weir said that the Wisconsin board had only to sell the lands and apply the proceeds, while in Washington the land and its treatment were to be so varied that a
separate department with a responsible head would be better than a board. Stiles did not think the Constitution was a proper place to provide for boards. Bowen thought there should be an executive head to carry out any such board's decisions. He proposed that the officers named in Buchanan's motion be an advisory board but withdrew the proposition as out of order. Gowey and Prosser also opposed this substitute.

**Motion**: Gowey moved to make the Secretary of State ex officio commissioner.

**Action**: Motion lost.

The *Times* records it received twelve votes.

**Discussion as follows**:

**For**: Gowey said the Secretary of State could easily handle these additional duties.

**Against**: Kinnear did not think the Secretary of State could properly carry out these additional duties. Weir also spoke against the motion.

**Motion**: Mires moved to strike the office of Auditor.

**Action**: Motion lost 31 to 31.

Final action by Convention, July 26:

**Motion**: Durie moved to strike the office of Lieutenant Governor.

**Action**: Motion lost 40 to 30. (p. 180)


**On leave**: Morgans and Glascock.

**Section 2**

**Present Language of the Constitution:**

**GOVERNOR, TERM OF OFFICE.** The supreme ex-
ecutive power of this state shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

Original language same as present.³

Proposition submitted to Convention by Weir, July 12:

Same as final. (p. 79)

Text as given in report of committee, July 23:

Same as final. (p. 131)

Consideration by committee of the whole, July 25:⁴

Motion: Sharpstein moved to change the Governor’s term from four years to two.

Action: Motion lost.

Section 3

Present Language of the Constitution:

OTHER EXECUTIVE OFFICERS, TERMS OF OFFICE.
The lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands, shall hold their offices for four years respectively, and until their successors are elected and qualified.

Original language same as present.⁵

Proposition submitted to Convention by Weir, July 12:

That the Lieutenant Governor, Superintendent of Public Instruction, and Commissioner of Public Lands have two-year terms and the other officers four-year terms. (p. 79)

Text as given in report of committee, July 25:

That the Lieutenant Governor have a four-year term and the other officers two-year terms. (p. 131)

3. Governor: Ore., Const. (1857), Art. 5, sec. 1; Wash., Const. (1878), Art. 7, sec. 1; Hill, Prop. Wash. Const., Art. 5, sec. 4. [Similar; Wash. drops the limitations on number of terms of office.]
5. Other Officers: Hill, Prop. Wash. Const., Art. 5, sec. 2; Wash., Const. (1878), Art. 9, sec. 1; Ore., Const. (1857), Art. 6, sec. 1; Wis., Const. (1848), Art. 6, sec. 1; Cal., Const. (1879), Art. 5, sec. 17. [Similar. Most constitutions provide for these officers. The details vary greatly.]
Consideration by committee of the whole, July 25:

**Motion:** Crowley moved to make the term for all officers four years.

**Action:** Motion carried.

Final action by Convention, July 26:

Decision of committee of the whole 47 to 22. (p. 177)

**Voting against:** Berry, Clothier, Durie, Griffitts, Hayton, Hicks, Hungate, Jeffs, McElroy, McReavey, Mires, R. S. More, Newton, J. M. Reed, Sharpstein, Stevenson, Tibbetts, Travis, Warner, West, Willison, and Hoyt. **Not voting:** Browne, Gowey, Gray, and Shoudy. **Absent:** Glascock and Morgans.

Section 4

**Present Language of the Constitution:**

RETURNS OF ELECTIONS, CANVASS, ETC. The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in vote for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be determined by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election until otherwise provided by law.

Original language same as present.\textsuperscript{7}

Text as given in report of committee, July 23:

Same as final except that it named only the Governor and Lieutenant Governor instead of "the officers." (p. 131)

Consideration by committee of the whole, July 25:\textsuperscript{8}

\textbf{Query}: Stiles asked if contests weren’t decided through the courts.

\textbf{Answer}: Weir said that these partisan contests should be determined by the Legislature.

\textbf{Motion}: Lillis moved to strike the last sentence.

\textbf{Action}: Motion lost 25 to 18.

\textbf{Discussion as follows}:

\textbf{For}: Lillis thought state officers should have a fixed date to enter terms of office.

\textbf{Against}: Weir thought that the Committee on Schedules should fix the dates for starting all these terms.

Final action by Convention, July 26:

\textbf{Motion}: Lillis moved to substitute “officers named in the first section” for “Lieutenant Governor and Governor.”

\textbf{Action}: Motion carried. (p. 180)

\textbf{Motion}: Griffitts moved to substitute “such officers” for “Lieutenant Governor and Governor” near the end of the section.

\textbf{Action}: Motion carried. (p. 185)

Section 5

\section*{Present Language of the Constitution:

\textbf{GENERAL DUTIES OF GOVERNOR.} The governor

\textsuperscript{7} Returns on Election of Executive Officers: Hill, Prop. Wash. Const., Art. 5, sec. 3. [Identical.] Ore., Const. (1857), Art. 5, sec. 4; Wash., Const. (1878), Art. 7, sec. 3. [Similar.] Certificate of Election: Hill, Prop. Wash. Const., Art. 5, sec. 3; Ore., Const. (1857), Art. 5, sec. 6; Wash., Const. (1878), Art. 7, sec. 3 (Similar in form). [Identical except that Wash. applies the authority of “all officers.”]

\textsuperscript{8} Review, July 26, 1889.
may require information in writing from the officers of the
state upon any subject relating to the duties of their respec­
tive offices, and shall see that the laws are faithfully ex­
cuted.

Original language same as present.¹⁹

Text as given in report of committee, July 23:
Same as final. (p. 131)

Section 6

Present Language of the Constitution:

MESSAGES. He shall communicate at every session
by message to the legislature the condition of the affairs of
the state, and recommend such measures as he shall deem
expedient for their action.

Original language same as present.¹⁰

Text as given in report of committee, July 23:
Same as final except for minor wording. (p. 131)

Section 7

Present Language of the Constitution:

EXTRA LEGISLATIVE SESSIONS. He may, on ex­
traordinary occasions, convene the legislature by proclama­
tion, in which shall be stated the purposes for which the
legislature is convened.

Original language same as present.¹¹

Text as given in report of committee, July 23:

"He may on extraordinary occasions convene the Legislature
by proclamation, and shall state to both houses when
assembled the purposes for which they are convened." (p. 132)

Consideration by committee of the whole, July 25:¹²

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ccept that Wash. substitutes “State” for “executive department.”]
   [Identical except for slight change of words.]
Motion: Griffitts moved a reconsideration of Section 7.

Action: Reconsideration ordered.

Motion: Griffitts moved to strike out all after “state” and to substitute therefor “In the call therefor the purpose for which the Legislature is convened.”

Action: Motion carried.

Motion: Dyer moved to amend by adding “and shall have no power when so convened to act upon any other matter not so stated in the proclamation.”

Action: Motion lost.

Discussion as follows:

For: Dyer thought that this was a provision common to the majority of constitutions. He said it would help curb excessive legislation.

Against: Turner said it would be a restriction on the representatives of the people. J. Z. Moore pointed out that important matters might come up between the date of the Governor’s call and the meeting of the Legislature. Weir was also opposed.

Motion: Shoudy moved to amend by adding “and all their acts shall be as valid as if transacted in regular session.” He said that courts had sometimes held that only matter stated in the call was legally acted upon.

Action: Motion lost.

Motion: Buchanan moved to substitute “the Governor” for “he.”

Action: Motion lost.

Final action by Convention, July 26:

Motion: Godman moved to substitute “in which shall be stated” for “and shall state in the call thereof.”

Action: Motion carried. (p. 181)

Section 8

Present Language of the Constitution:

COMMANDER-IN-CHIEF. He shall be commander-in-
chief of the military in the state except when they shall be called into the service of the United States.

Original language same as present. 13

Text as given in report of committee, July 23:

Same as final. (p. 132)

Deleted Section

Text as given in report of committee, July 23:

"In case of disagreement between the two houses in respect to the time of adjournment, he shall have power to adjourn the Legislature to such time as he may think proper, but not beyond the regular meetings thereof." (Section 8, p. 132)

Consideration by committee of the whole, July 25: 14

Motion: Griffitts moved to strike the section.

Action: Motion carried.

Discussion as follows:

For: Griffitts thought this section gave the Governor too much power when used in conjunction with the smaller house. Buchanan said he wanted no Cromwells in the state and so favored the amendment.

The Review states that Weir, Dunbar, Godman, Dyer, Stiles and Durie also debated this motion, but does not give their positions.

Section 9

Present Language of the Constitution:

PARDONING POWER. The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

Original language same as present. 15

Wash., Const. (1878), Art. 8, sec. 5. [Similar.]
Text as given in report of committee, July 23:

Same as final. (Section 10, p. 132)

Consideration by committee of the whole, July 25: 16

Motion: Gowey moved to substitute by making the Secretary of State and the Attorney General a Governor's Council to act with him on pardons.

Action: Motion lost.
The Times states it received three votes.

Discussion as follows:

For: Gowey said that the older states were instituting boards of pardons.

Against: Cosgrove opposed political machinery to deal with criminals. He said that the section already permitted the Legislature to experiment and this prerogative would be eliminated under the amendment. Turner and Weir stressed the idea that the pardoning power should be placed in a single person who then would be responsible and be more likely not to abuse this power.

Section 10

Present Language of the Constitution:

VACANCY IN OFFICE OF GOVERNOR. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor; and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of the governor shall devolve upon the secretary of state. In addition to the line of succession to the office and duties of governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor and in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of governor to qualify at the time provided by law, the duties of the office

shall devolve upon the person regularly elected to and qualified for the office of lieutenant governor, who shall act as governor until the disability be removed, or a governor be elected; and in case of the death, disability, failure or refusal of both the governor and the lieutenant governor elect to qualify, the duties of the governor shall devolve upon the secretary of state; and in addition to the line of succession to the office and duties of governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. Any person succeeding to the office of governor as in this section provided, shall perform the duties of such office only until the disability be removed, or a governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of governor for the remainder of the unexpired term. [1909 p 642 § 1. Approved November, 1910.]

Original language:

In case of the removal, resignation, death, or disability of the Governor, the duties of the office shall devolve upon the Lieutenant Governor, and in case of a vacancy in both the offices of Governor and Lieutenant Governor, the duties of Governor shall devolve upon the Secretary of State, who shall act as Governor until the disability be removed or a Governor be elected.

Text as given in report of committee, July 23:

Same as final. (Section 11, p. 132)

17. Lieutenant-Governor Shall Act as Governor: Wash., Const. (1878), Art. 7, sec. 6; Hill, Prop. Wash. Const., Art. 5, sec. 12. [Similar, although they do not provide for Lieutenant-Governor. The idea of the office of the Lieutenant-Governor probably came from Cal. or Wis.]
Section 11

Present Language of the Constitution:

REMISSION OF FINES AND FORFEITURES. The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted and the reasons for the remission.

Original language same as present. 18

Text as given in report of committee, July 23:

Same as final. (Section 12, p. 132)

Section 12

Present Language of the Constitution:

VETO POWER. Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall be presented to him, it shall become a law without his signature, unless the general adjournment shall prevent its return, in which case it shall become a law unless the governor, within ten days next after

the adjournment, Sundays excepted, shall file such bill with his objections thereto, in the office of secretary of state, who shall lay the same before the legislature at its next session in like manner as if it had been returned by the governor. If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the section, or sections; item or items to which he objects and the reasons therefor, and the section or sections, item or items so objected to, shall not take effect unless passed over the governor’s objection, as hereinbefore provided.

Original language same as present.¹⁹

Proposition submitted to Convention by Power, July 12:

That the Governor be given no veto power. (p. 77)

Text as given in report of committee, July 23:

Same as final except that it added that the Governor shall not be eligible to the office of United States Senator or any other office during the term for which he was elected. (p. 132)

Consideration by committee of the whole, July 26:²⁰

Motion: Power moved to change two-thirds to three-fifths of the members present to be able to override a veto.

Action: Motion lost 41 to 30.

Motion: Browne moved to change two-thirds to a majority.

Action: Motion lost 49 to 18.

Discussion as follows applying to both motions:

For: Jones thought the experience of Congress showed the wisdom of reducing the number necessary to override a veto. Power, Jones, Gowey, and E. H. Sullivan wanted

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¹⁹. Duties of Governor in Regard to Enactment of Laws: Hill, Prop. Wash. Const., Art. 5, sec. 15. [Identical except for slight changes in minor words.] Ore., Const. (1857), Art. 5, sec. 15; Cal., Const. (1879), Art. 4, sec. 16; Wis., Const. (1848), Art. 5, sec. 10; Wash., Const. (1879), Art. 7, sec. 7. [Similar. Veto of Individual Sections.] Hill, Prop. Wash. Const., Art. 5, sec. 15. [Almost identical; Ore. did not add this clause until 1920.]

²⁰. Review, July 26; Times, Ledger, July 27; Argus, August 1; Standard, August 2, 1889.
no veto power at all as they believed it gave the Governor too much legislative control. E. H. Sullivan cited the example of Ohio, which had neither the veto nor the Governor’s signature on her bills. He thought the three branches of government should be kept distinct in function. Dyer alluded to the ill results of an unbridled use of the veto. He said when parties were evenly balanced, a few men could control all legislatures by a pact with the Governor. But neither he nor P. C. Sullivan wished to abolish it entirely. Warner said there was too little time at the end of the session for proper consideration of bills by the Governor. Crowley said the veto power was a relic of monarchy and wanted to limit it. Cosgrove thought the Legislature should take on its own responsibilities and not shift them to the Governor, while Stiles favored a majority vote to override a veto since he thought the veto power should be used only in an advisory fashion. Gowey again referred to Ohio as an example. Henry and Lillis said a majority provision would not remove the veto entirely as it would make the Legislature think the matter over, and they were in favor of this. Suksdorf favored abolishing the veto entirely as did Browne who thought checks on the Legislature should be made by the Constitution and not by the Governor. Dunbar also spoke in favor of the three-fifths amendment.

**Against:** Griffitts thought the Convention should follow the established paths. Turner cited the French Revolution as one example of taking all checks from the executive and he stated that the veto power was one of the fundamental principles of government. Weir explained that the committee thought what was good enough for Congress would be good enough for the state. Godman thought a regular “old-fashioned presidential kind of veto” was a good check in the government. Prosser, Buchanan, J. Z. Moore, and Kinnear also spoke in favor of retaining the veto power.

**Motion:** Schooley moved to amend so as to allow the Governor ten days in which to consider a bill during the session and twenty days after adjournment.

The Ledger reports the motion was to change from five to
ten days the time for signing bills and from ten to twenty days the time for an act to become law on the failure to receive the Governor's signature.

**Action:** Motion lost.

**Motion:** Turner moved to strike the clause making the Governor ineligible for United States Senator during his term.

**Motion:** Gowey moved to amend this motion by striking the whole sentence to which Turner referred and thus to include other offices. Turner accepted the amendment.

**Action:** Motion as amended carried 29 to 26.

**Discussion as follows:**

**For:** Turner explained that the United States Constitution fully fixes the qualifications for U. S. Senators. Bowen said that the clause was superfluous.

Final action by Convention, July 26:

Decision of committee of the whole to strike the Governor's ineligibility to office of Senator accepted 48 to 21. (p. 177)

**Voting against:** Clothier, Comegys, Crowley, Fairweather, Griffitts, Hicks, Hungate, Jeffs, Jones, Kinnear, Manly, McElroy, R. S. More, Newton, J. M. Reed, P. C. Sullivan, Tibeetts, Warner, Weir, Willison. **Not voting:** Browne, Gowey, and Kellogg. **On leave:** Glascock and Morgans.

Decision of the committee of the whole to strike out ineligibility to other offices accepted 35 to 33. (p. 178)


**Motion:** Dyer moved to reduce the size of the vote to override a veto from two-thirds to three-fifths.

**Action:** Motion lost 42 to 31. (p. 181)

Discussion as follows: 21

For: Stiles said he found new evidence to sustain his vote of the day before to limit the veto power. He said twenty-five states had begun with no veto or a simple majority to override. Eleven had had no veto for several years. He concluded by saying that the result at that time was that nine states had no veto or needed only a simple majority to override.

Against: Turner said that these facts argued against Stiles rather than for him. He pointed out that the tendency was to come to a veto.

Motion: Godman moved to strike the word “present.” This would have made a two-thirds vote of all members necessary to pass over a veto.

Action: Motion lost 46 to 20. (p. 185)


Discussion as follows: 22

For: Godman thought it was dangerous to leave the word “present” in since that would allow a mere two-thirds of a majority to override a veto. In answer to Buchanan’s objection, Godman thought that the Legislature would have enough power to compel attendance.

Against: Buchanan thought it was dangerous to allow

22. Ibid.
one-third of the Legislature to prevent action by merely absenting themselves or refusing to vote.

**Motion:** Weisenburger moved to restrict the item to appropriation bills.

**Action:** Motion lost. (p. 185)

**Discussion as follows:**

- **For:** Weisenburger thought this power was dangerous when used on other than appropriations bills. Stiles supported the motion.
- **Against:** Lillis opposed.

**Motion:** Turner moved to restrict the Governor’s power of vetoing separate sections to the actual time when the Legislature was in session.

**Action:** Motion lost.

**Discussion as follows:**

- **Against:** Griffitts thought that this would hold the temptation to insert improper sections into appropriations bills at the very end of the session so the Governor couldn’t veto them. Weir agreed and also opposed.

The Review states that Buchanan, J. M. Reed, Gowey, E. H. Sullivan, and Allen also debated the motion but does not give their positions.

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**Section 13**

**Present Language of the Constitution:**

**VACANCY IN APPOINTIVE OFFICE.** When, during a recess of the legislature, a vacancy shall happen in any office, the appointment to which is vested in the legislature, or when at any time a vacancy shall have occurred in any other state office, for the filling of which vacancy no provision is made elsewhere in this Constitution, the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

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23. Ibid.
24. Ibid.
Original language same as present.  
Text as given in report of committee, July 23:
   Same as final. (p. 133)

Section 14

Present Language of the Constitution:
   (This section stricken by the 20th Amendment; see Article 28; section 1.)

Original language:
   SALARY. The governor shall receive an annual salary of four thousand dollars, which may be increased by law, but shall never exceed six thousand dollars per annum.

Text as given in report of committee, July 23:
   Same as final except that it begins "He" instead of "the governor."

Consideration by committee of the whole, July 26:

Motion: Sharpstein moved to substitute three thousand dollars for four thousand dollars.
   Action: Motion lost 37 to 26.

Motion: Turner moved to strike "but shall never exceed six thousand dollars."
   Action: Motion lost 18 ayes, and noes not counted.

Motion: Dyer moved to change six thousand dollars to eight thousand dollars.
   Action: Motion lost.

Motion: Warner moved to change six thousand dollars to four thousand dollars.
   Action: Ruled out as nugatory.

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26. Salary of Governor: Varies in all constitutions which specifically provide the amount of the salary.
Motion: McElroy moved to strike all but the annual salary of four thousand dollars.

Action: Motion lost.

Final action by Convention, July 26:

Motion: Turner moved to strike out all after the words "increased by law." This would have removed the maximum limit for salary.

Action: Motion lost 47 to 21. (p. 183)


Motion: Sharpstein moved to change four thousand dollars to three thousand dollars.

Action: Motion lost 46 to 21. (p. 184)


Deleted Section

Text as given in report of committee, July 23:

"He (the Governor) shall issue writs of election to fill such vacancies as may have occurred in the legislative assembly." (p. 133)

Consideration by committee of the whole, July 26: 28

Motion: Griffitts moved to strike the entire section.

Action: Motion carried.

Final action by Convention, July 26:

Decision of committee of the whole accepted. (p. 178)

Section 15

Present Language of the Constitution:

COMMISSIONS, HOW ISSUED. All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state.

Original language same as present.²⁹

Text as given in report of committee, July 23:

Same as final except that it added that the Governor would forfeit his office and any further office if he accepted bribes or used his position to bribe or threaten the Legislature. (Section 17, p. 133)

Consideration by committee of the whole, July 26:³⁰

Motion: It was moved to strike out all after the word “state,” so that the entire forfeiture clause would be eliminated.

Action: Motion carried.

The Review credits Dunbar with this motion, while the Post-Intelligencer cites Turner.

Motion: Stiles moved to strike the rest of the section.

Action: Motion lost 30 to 23.

Discussion as follows:

Against: Griffitts thought that the section could do no harm and that it might prove useful to determine certificates at the first election.

Final action by Convention, July 26:

Decision of committee of the whole accepted. (p. 178)

Section 16

Present Language of the Constitution:

LIEUTENANT GOVERNOR, DUTIES AND SALARY.

The lieutenant governor shall be presiding officer of the state

²⁹. Governor Issues Commissions: Ore., Const. (1857), Art. 5, sec. 8 (Hill, Prop. Wash. Const., Art. 5, sec. 18; Ind., Const. (1851), Art. 15, sec. 6, identical with Ore.). [Identical.]
senate, and shall discharge such other duties as may be prescribed by law. He shall receive an annual salary of one thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.\(^{31}\)

Text as given in report of committee, July 23:

Same as final except that it set fifteen hundred dollars for salary. (p. 134)

Consideration by committee of the whole, July 26:\(^ {32}\)

**Motion:** Gowey moved to substitute one thousand dollars for fifteen hundred dollars.

**Action:** Motion lost.

**Motion:** McReavey proposed to pay the Lieutenant Governor a per diem rate which should never exceed three thousand dollars per annum while acting as presiding officer of the Senate.

**Action:** Motion lost.

**Motion:** Sharpstein moved to amend so that the salary would be five hundred dollars.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Sharpstein thought that five hundred dollars would be enough for just presiding over the Senate.

**Against:** Weir said that fifteen hundred dollars was a reasonable sum. Dunbar stated that he was opposed to a Lieutenant Governor but if there was to be one, enough salary should be offered to attract a good man.

**Motion:** Dunbar moved to strike the clause restricting the

\(^{31}\) Lieutenant Governor Presides Over Senate: Cal., Const. (1879), Art. 5, sec. 15; Wis., Const. (1848), Art. 5, sec. 8. [Similar in this extent only.]

\(^{32}\) Review, July 27, 1889.
Legislature from increasing the salary over three thousand dollars.

**Action:** Motion lost.

Final action by Convention, July 26:

**Motion:** Clothier moved to amend to add that the Lieutenant Governor shall vote only when the Senate is equally divided.

**Action:** Motion lost. (p. 181)

**Motion:** McReavey moved to make the pay per diem while presiding over the Senate. This payment could be in salary form but not to exceed two thousand dollars.

**Action:** Motion lost 42 to 27. (p. 181)

**Voting for:** Berry, Blalock, Clothier, Comegys, Cosgrove, Durie, Fay, Godman, Griffitts, Henry, Hungate, Kellogg, McReavey, Mires, Neace, Newton, J. M. Reed, Sharpstein, Sohns, Stevenson, Stiles, Travis, Van Name, Warner, West, Willison, and Winsor. **Not voting:** Browne, Gray, McCroskey, McDonald. **On leave:** Morgans and Glascock.

**Motion:** Gowey moved to insert one thousand dollars for fifteen hundred dollars.

**Action:** Motion carried 39 to 31. (p. 182)


Section 17

**Present Language of the Constitution:**

SECRETARY OF STATE, DUTIES AND SALARY. The secretary of state shall keep a record of the official acts of the legislature, and executive department of the state, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall per-
form such other duties as shall be assigned him by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.33

Text as given in report of committee, July 23:

Same as final except that it modified “record” with the adjective “fair” and used “legislative assembly” instead of “Legislature.”

Consideration by committee of the whole, July 26:34

Motion: Buchanan moved to change “fair” to “correct” so that the Secretary of State would be required to keep a correct record. E. H. Sullivan suggested “true.”

Motion: Dunbar moved to amend so as to strike “fair” entirely.

Action: Dunbar’s motion was adopted.

Final action by Convention, July 26:

Motion: Stiles moved to add that the Secretary of State be Commissioner of Public Printing and procure work by contract. (p. 184)

Action: Motion lost.

Discussion as follows:35

For: Dyer favored the motion because it was the closest to the public printer that he favored.

Against: J. Z. Moore said that the matter was covered in the legislative report.

33. Duties of Secretary of State: Hill, Prop. Wash. Const., Art. 5, sec. 19; Cal., Const. (1879), Art. 5, sec. 18. [Identical except that Wash. drops the word “fair” from the Hill Constitution and the word “correct” from the Cal. Const.] Ore., Const. (1857), Art. 6, sec. 2. [Similar.]
Section 18

Present Language of the Constitution:

SEAL. There shall be a seal of the state kept by the secretary of state for official purposes, which shall be called, "The Seal of the State of Washington."

Original language same as present.36

Text as given in report of committee, July 23:

Same as final. (p. 134)

Final action by Convention, July 26:

Motion: Dyer moved to insert "Great" before "Seal" so that it would read "The Great Seal of the State of Washington."

Action: Motion lost. (p. 179)

Section 19

Present Language of the Constitution:

STATE TREASURER, DUTIES AND SALARY. The treasurer shall perform such duties as shall be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed four thousand dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.37

Text as given in report of committee, July 23:

Same as final except that it set the salary at twenty-five hundred dollars. (p. 134)

Consideration by committee of the whole, July 26:38

Motion: Dunbar moved to strike twenty-five hundred dollars and insert "two thousand dollars."

Action: Motion carried 27 to 24.

37. Duties of State Treasurer: Ore., Const. (1857), Art. 6, sec. 4 (Hill, Prop. Wash. Const., Art. 5, sec. 21, identical with Ore.). [Identical.] Wash., Const. (1879), Art. 9, sec. 3. [Similar.]
Final action by Convention, July 26:

Decision of committee of the whole (on Section 21) accepted 37 to 34. (p. 178)


Section 20

Present Language of the Constitution:

STATE AUDITOR, DUTIES AND SALARY. The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.39

Text as given in report of committee, July 23:

Same as final except for minor wording. (Section 22, p. 135)

Consideration by committee of the whole, July 26:40

Motion: Dunbar moved to substitute twenty-five hundred dollars for two thousand dollars.

Action: Motion lost by 20 ayes and noes not counted.

Final action by Convention, July 26:

Motion: T. M. Reed moved to change “two” to “three” and “three” to “four.” (Section 22)

Action: Motion lost 60 to 7. (p. 183)


Motion: Gowey moved to put "twenty-five hundred" for "three thousand."

Action: Motion lost. (p. 183)

Section 21

Present Language of the Constitution:

ATTORNEY GENERAL, DUTIES AND SALARY. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed thirty-five hundred dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.41

Text as given in report of committee, July 23:

Same as final. (Section 23, p. 135)

Section 22

Present Language of the Constitution:

SUPERINTENDENT OF PUBLIC INSTRUCTION, DUTIES AND SALARY. The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum. (As to salary this section is repealed by 20th Amendment. See Article 28, Section 1.)

Original language same as present.42


42. Duties of Superintendent of Public Instruction: Wash., Const. (1878), Art. 9, sec. 3. [Similar in part.]
Text as given in report of committee, July 23:

Same as final except it gave a salary of eighteen hundred dollars with a maximum of twenty-five hundred dollars. (Section 24, p. 135)

Consideration by committee of the whole, July 26:\footnote{43}

\textbf{Motion}: Prosser moved to substitute twenty-five hundred dollars for eighteen hundred dollars and four thousand dollars for twenty-five hundred dollars.

\textbf{Action}: Motion carried 35 to 30.

\textbf{Discussion as follows}:

\textbf{For}: Prosser thought any man qualified to run the state schools should be treated with liberality. Godman agreed with him. J. Z. Moore read and endorsed a letter from Professor Turner of Spokane Falls arguing that the Superintendent of School’s salary should be equal to the Secretary of State’s. Dickey thought that the committee report must be mistaken since the cities of Seattle, Spokane, and Tacoma pay their school superintendents two thousand dollars per year. He said the whole state shouldn’t pay less. Lillis favored the increase and stressed the importance of this officer.

\textbf{Against}: Buchanan said that eighteen hundred dollars per year was six dollars per day and he thought this sufficient. Griffitts and Durie opposed the motion and Weir defended the committee report.

\textbf{Motion}: Travis moved to go back to two thousand dollars and thirty-five hundred dollars.

\textbf{Action}: Motion not seconded.

\textbf{Motion}: Buchanan moved to strike the restriction on future increases.

\textbf{Action}: Motion lost.

Final action by Convention, July 26:

Decision of committee of the whole (on Section 24) accepted 36 to 34. (p. 179)

\footnote{43. Post Intelligencer, Review, July 27, 1889.}

Section 23

Present Language of the Constitution:

COMMISSIONER OF PUBLIC LANDS—COMPENSA-
TION. The commissioner of public lands shall perform such
duties and receive such compensation as the legislature may
may direct.

Original language same as present.\(^{44}\)

Text as given in report of committee, July 23:

Same as final. (Section 25, p. 135)

Consideration by committee of the whole, July 26:\(^{45}\)

Motion: Weir moved to create a Board of Commissioners and
to fix the salary of the Commissioners.

Action: Motion not seconded.

Section 24

Present Language of the Constitution:

RECORDS, WHERE KEPT, ETC. The governor, sec-
retary of state, treasurer, auditor, superintendent of public
instruction, commissioner of public lands and attorney general
shall severally keep the public records, books and papers
relating to their respective offices, at the seat of govern-
ment, at which place also the governor, secretary of state,
treasurer and auditor shall reside.

Original language same as present.\(^{46}\)

\(^{44}\) Duties of Land Commissioners: Seems to be original.

\(^{45}\) Review, July 27, 1889.

Text as given in report of committee, July 23:

Same as final except that it omitted the Superintendent of Public Instruction and the Commissioner of Public Lands in the first of the section and it left out the Governor in stating the residence of certain officers. (Section 26, p. 135)

Consideration by committee of the whole, July 26:47

**Motion:** Dyer moved that the Governor should also reside at the seat of government.

**Action:** Motion carried.

**Motion:** Bowen moved to add the Commissioner of Public Lands to the list of officers who shall keep records at the seat of government.

**Action:** Motion carried.

**Motion:** Godman moved to strike the entire section as he thought it was legislative.

**Action:** Motion lost.

**Motion:** Schooley moved that the Superintendent of Public Schools should keep records at the capitol.

**Action:** Motion carried 26 to 24.

**Motion:** Suksdorf moved that all state officers reside and keep records at the capitol.

**Action:** Motion withdrawn.

**Discussion as follows:**

**Against:** Turner pointed out that this would include judges of the Supreme Court. Griffitts and Gowey also opposed.

**Motion:** Henry offered a substitute rearranging the section.

**Action:** Motion lost.

**Motion:** Durie moved to strike the section.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Godman thought the section was purely legislative.

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Against: Griffitts and Dyer opposed. Warner thought the Governor, Secretary of State, and Treasurer should always live at the capitol.

Motion: Tibbetts moved to strike all the amendments made except the one requiring the Governor to live at the capitol.

Action: Motion lost.

Motion: E. H. Sullivan moved a substitute for the entire section which provided that the Governor, Secretary of State, and Treasurer reside at the capitol.

Motion: Power moved to amend by adding "and keep their offices thereat." Sullivan accepted the amendment.

Action: Motion lost.

Final action by Convention, July 26:

Decision of committee of the whole (on Section 26) accepted.

(p. 179)

Section 25

Present Language of the Constitution:

QUALIFICATIONS, COMPENSATION, OFFICES WHICH MAY BE ABOLISHED. No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands. [1955 p 1861, Senate Joint Resolution No. 6. Approved November 6, 1956.]

Original language:48

No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office, and the State Treasurer shall be ineligible for the term suc-

48. Eligibility to State Office: Wis., Const. (1848), Art. 5, sec. 2; Ill., Const. (1870), Art. 7, sec. 6; Colo., Const. (1876), Art. 7, sec. 6. [Similar in part.] Treasurer Ineligible for Second Term: Wash., Const. (1878), Art. 9, sec. 4; Neb., Const. (1875), Art. 5, sec. 3. [Similar.] Certain Offices May Be Abolished: Cal., Const. (1879), Art. 5, sec. 19. [Similar with regard to surveyor-general.]
ceeding that for which he was elected. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The Legislature may in its discretion abolish the office of the Lieutenant Governor, Auditor and Commissioner of Public Lands.

Text as given in report of committee, July 23:

"No person, except a citizen of the United States and a resident of the state or territory at least two years shall be eligible to hold any state office. No person shall be eligible to hold the office of Governor or Lieutenant Governor unless he be at least thirty-five years old, and shall have resided in the state or territory at least five years preceding his election to such office. No person shall be eligible to hold the office of State Treasurer more than two consecutive terms. The compensation of state officers shall not be increased or diminished during the term for which they shall have been elected." (Section 27, p. 135)

Consideration by committee of the whole, July 26:

Motion: E. H. Sullivan moved to strike "at least thirty-five" and add "a qualified elector."

Action: It is not clear what happened to this motion, or if it was merely a proposal not made formally into a motion.

Motion: Sharpstein moved to add as a substitute for the section as follows: "No person, except a qualified elector of this state, shall be eligible to hold any state office, and no person shall be eligible to hold the office of State Treasurer more than two consecutive terms. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected."

Action: Motion carried.

Final action by Convention, July 26:

Decision of committee of the whole (on Section 27) accepted. (p. 179)

Motion: J. Z. Moore moved to amend to make the Governor and Treasurer ineligible for the succeeding term.

Motion: Dunbar moved to amend the amendment by striking our "Governor."

Action: Dunbar's motion carried; a vote on Moore's motion as amended carried 62 to 9. (p. 180)


Motion: Stiles moved to insert "citizen of the United States" in the first line.

Action: Motion carried. (p. 182)

Motion: Godman moved to add that the Legislature may abolish the offices of Lieutenant Governor, Auditor, and Commissioner of Public Lands.

Action: Motion carried 37 to 32. (p. 182)


Motion: Suksdorf moved that no other state officer should hold office for more than two terms in succession.

Action: Motion (to amend Section 27) lost. (p. 186)

Passage of Article

Article on Executive approved by Convention, July 29, by a vote of 58 to 7. (p. 189)


Absent: Berry, Browne, Dallam, Lillis, McReavey, Morgans, Weir, and Willison.
ARTICLE IV THE JUDICIARY

The judiciary article of the Washington Constitution was borrowed largely from William Lair Hill’s Proposed Constitution which appeared in the Morning Oregonian, July 4, 1889. Hill in turn had based his article on the California system. The Spokane Falls Review reported that the Judiciary Committee had endorsed the California system from beginning to end, and the Seattle Times commented editorially that the committee “had done well in modeling the judicial system of Washington upon that of California. Almost all attorneys who have given the matter thought, pronounce it far superior to the old term courts.”

The Convention had made only a bare beginning when delegate Trusten P. Dyer of Seattle said in a newspaper interview that the Committee on Judiciary was the most important of all the committees. Another delegate to the Convention, Theodore L. Stiles, who became a Supreme Court Judge, years later wrote that the article on the judiciary was among the finest work of the Convention.

The keen interest and pride in this article may be explained in part by the fact that the composition of the Convention was slightly top-heavy with lawyers. Of the seventy-five delegates, twenty-two were classified as lawyers. The committee membership itself numbered thirteen, twelve of whom were lawyers. The article they produced, introducing a new court system into the area, was well received. The superior courts absorbed the functions of the old probate and district courts and the circuit court system was abolished.

The most important issues discussed in committee of the whole were: (1) whether to have a Supreme Court bench composed of three or five members; (2) whether Superior Court judges should hold office for a term of four or six years; (3) whether minority representation would assert itself in the election of the judiciary; (4) whether the Legislature should be allowed to increase the

1. Morning Oregonian [Portland, Oregon], July 4; Spokane Falls Review, July 13; Seattle Times, July 18, 1889.
2. Times, Seattle Post Intelligencer, July 8, 1889.
number of Supreme Court judges; and (5) what the salaries of the judiciary were to be.

The issue of salaries was a recurrent one, arising later in the articles on executive and legislative branches. The salaries provided in the article on judiciary were neither high nor stringent in comparison with those of other states, and the fee system was almost entirely abolished. Satisfaction with the salary scale was not complete, however. A letter to the editor of the Tacoma Daily Ledger signed by a Knight of Labor protested that the high salaries provided in the Constitution would bankrupt the state. The Walla Walla Weekly Statesman had earlier charged that the only reason for the high salaries was that the delegates intended to seek these offices, and the Washington Standard asserted that salaries for state officers should be made to more closely correspond to those of the laboring class.4

It was chiefly the lawyers who debated the limitation on the judge's duty in instructing juries as expressed in Section 16. It has since been said that the section prevents judges from exercising effective control over the conduct of trials.5

The Committee on Judicial Department was appointed July 9. (p. 19)

Members: Turner, chairman; Dunbar, Gowey, Stiles, Godman, Sturdevant, Griffitts, Mires, Sharpstein, Jones, Kinnear, Weisenburger, and Crowley.

Section 1

Present Language of the Constitution:

JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Original language same as present.6

Text as given in report of committee, July 16:

Same as final. (p. 99)

Consideration by committee of the whole, July 18:

**Motion:** J. Z. Moore moved to strike the words following "justices of the peace."

**Action:** Motion withdrawn.

**Discussion as follows:**

**For:** Moore thought the Convention should frame a Constitution which would stand the test of time. He was opposed to probate courts and did not wish to have the Legislature have the power to create them.

**Against:** J. M. Reed and E. H. Sullivan took issue with the motion. The latter claimed that Section 12 could be amended to meet this objection. Crowley feared that striking the last clause would prevent the establishment of police courts.

**Motion:** Suksdorf moved to change the name "Superior" to "District."

**Action:** Motion lost.

**Discussion as follows:**

**For:** Suksdorf said that superior and supreme were synonymous and the people were used to the name District.

**Against:** Dyer stated that the United States courts would be called district courts, and to name the state courts the same would cause confusion. Turner informed the Convention that superior and supreme were not synonymous, the one being in the comparative, the other in the superlative. He and Griffitts explained that since the proposed courts would be different from district courts, it would be inconsistent to call them the same. Moreover, since they were adopting the California system, the same names should be used.

Section 2

Present Language of the Constitution:

SUPREME COURT. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court.

Original language same as present. 8

Proposition submitted to Convention by Buchanan, July 12:

Called for three members on the Supreme Court to be increased to five and given ten-year terms when the state had a population of one million. (p. 67)

Text as given in majority report of committee, July 16:

Same as final except that it provided for three judges and did not include the provision that the Legislature may provide for separate departments of the court. (p. 99)

Text as given in minority report of committee, July 16:

Provided for five judges. Signed by Griffitts, Crowley, Sturdevant, Stiles, Dunbar, and Gowey. (p. 106)

Consideration by committee of the whole, July 18: 9

Motion: Griffitts moved to substitute providing for five judges and to strike the clause allowing the Legislature to increase the number of judges.

Action: Motion carried, 44 ayes, noes not counted.

Discussion as follows:

For: Hoyt and Dunbar argued that a smaller court could

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8. Supreme Court Consists of Whom: Hill, Prop. Wash. Const., Art. 6, sec. 2. [Similar in part.] Wash., Const. (1878), Art. 8, sec. 4. [Identical.] Separate Departments: Cal., Const. (1879), Art. 6, sec. 2. [Similar in part.]

be more easily controlled by the corporations than a larger one and also that many important questions would be coming up in the next few years. Dyer said it would expedite business. P. C. Sullivan thought quantity would give quality. Dunbar added that the judges were now behind six months as an illustration of the present need for more members of the bench. Sturdevant supported five because of the important decisions which he felt would come up in the immediate future, decisions which would be the basis for the state’s jurisprudence, but he opposed restricting the number of judges to five. J. Z. Moore believed it was important to give the judiciary a good start and so favored the larger number. Prosser pointed out the diversity of question which would arise before the court and favored five as having a broader knowledge. Crowley felt a smaller court was liable to form a one-man power. Browne desired the larger number even if it became necessary to cut salaries. Griffitts said that he had talked to more than one hundred men, and outside of members of the bar he had not found a single man who favored three judges only. He stated further that it was false economy to save at the price of inefficiency, delay, and chances of a one-man power on the court. Stiles said the small number of territorial judges had made some poor decisions; he preferred a larger bench for the state court. E. H. Sullivan, Allen, and Willison also favored five.

Against: Kinnear said it would be too expensive to increase the number of judges. Turner thought quality was more important than quantity, and said further that a bench of five could move no faster than a bench of three since the entire court hears all arguments. Buchanan believed that judges were not the kind of men to be influenced. Sharpstein said that three judges were certainly sufficient for the present population of the state and when more were needed they could be provided for by the Legislature.

Motion: Browne moved to amend by adding: “The Legislature may increase the number of judges of the Supreme Court from time to time.”

Action: Motion carried.
Motion: Turner moved to add "and may provide for separate departments of said courts," stating that this would facilitate the work.

Action: Motion carried.

Final action by Convention, July 22:

Decision of committee of the whole accepted. (p. 127)

The Seattle Times took the Convention sharply to task for providing for five judges. It previously had praised the Judiciary Committee report in this respect because three judges were all that were presently needed and their number could be increased as need arose. The Times stated that economy was a very proper consideration for the delegates.

The Seattle Post-Intelligencer feared the prospect of allowing the Legislature to increase the number of judges, feeling this could permit a packed court. "It is a dangerous thing to place it within the power of any party to override the Constitution, and that the Constitution can be overridden when the Legislature has the power to increase the number of judges of the Supreme Court at will is too plain to be disputed."

Section 3

Present Language of the Constitution:

**ELECTION AND TERMS OF SUPREME JUDGES.** The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected, unless some other time be provided by the legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this Constitution and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary

10. Times, July 20, 1889.
11. Times, July 18, 1889.
of state, and filed in his office. The judge having the shortest term to serve not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court, first elected, shall commence as soon as the state shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law.

Original language same as present.13

Proposition submitted to Convention by Buchanan, July 12:

That the judges be appointed by the Governor with two-thirds consent of the Senate. They were to have six-year alternate terms and the Governor would nominate the Chief Justice at the first meeting. (p. 67)

Text as given in report of committee, July 16:

Same as final except, aside from minor wording; it did not contain “unless some other time be provided” in the first sentence or where the sessions were to be held. (p. 100)

Consideration by committee of the whole, July 19:14

13. Supreme Court Election: Cal., Const. (1879), Art. 6, sec. 3; Hill, Prop. Wash. Const., Art. 6, sec. 3. [ Portions identical; portions similar. Other portions probably original.]

Motion: Griffitts moved to amend so the section would read that two judges would hold office for terms of three years, two for five years, and one for seven years.

Action: Motion left pending when section referred back to committee for amendment.

Motion: Warner moved to amend after “so that” in line four as follows: “two shall hold office for terms of three years, three for terms of five years, and at such election each elector shall vote for three of such judges and no more.”

Action: Motion lost.

The Times reports vote as 43 to 23, while the Globe says it was 44 to 24.

The object of this motion was to secure a minority representation on the bench for the Democratic party. At a caucus the evening of July 17, the party had determined to take this stand. The arguments in the committee of the whole were strictly along party lines. The territorial newspapers reflected this same divided attitude. The Chehalis Nugget favored minority representation and chided the Republicans in an article reprinted from the Tacoma News, while the Vancouver Independent advocated the opposite side: “When the democracy of Texas and South Carolina accept minority representation will be soon time enough for Washington to do it. The Republicans have won by hard work and they propose to keep what they have.”

Discussion as follows:

For: Browne said that the substitute would divest politics from the bench. Sharpstein agreed with this. Godman believed it was a question of principle—to protect the minority. Griffitts stated that it was a matter of protecting individuals from aggressions of majorities. Suksdorf thought that minorities were entitled to a voice in government, while Eshelman said that he would vote for the substitute because he was a Democrat and that he expected all Republicans to vote against it for the same reason.

Against: Dyer stated that political parties should be responsible for the judiciary as much as any other office. That this substitute would restrict suffrage rights was
Dunbar’s idea, while Turner said that it introduced politics into the court. Kinnear agreed that the bench should be utterly nonpartisan. E. H. Sullivan opposed minority representation because he said it began on the principle that judges are corrupt; moreover, to the party in power belong the fruits of success. Sturdevant, Weir, Lillis, Coey, and Minor expressed themselves in favor of majority rule. Crowley said that judges cease to be politicians when they get on the bench. Gowey thought the substitute was contrary to American institutions and said states which had adopted minority representation were sorry for having done so.

**Motion:** Buchanan moved a substitute for Sections 2 and 3 which provided that the Chief Justice and two associates be appointed by the Governor with the consent of the Legislature and that the number of judges be increased to four when the population reached one million.

**Action:** Motion lost by a decided vote.

**Motion:** J. Z. Moore moved a substitute dividing the Supreme Court into two districts, one east and one west of the mountains. Each district would elect two judges and the state at large would elect one judge who would be Chief Justice.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Moore said that under this proposed system the voters would know their men better.

**Against:** Turner disagreed as he believed all voters should have a voice on all men.

**Motion:** Sullivan moved to pass Section 3 and move to Section 4. This would have left Griffitts’ motion pending.

The Globe reports that E. H. Sullivan made this motion. The motion was then ruled out of order by the chair, and Sullivan appealed from this decision and was sustained. The Standard reports that P. C. Sullivan made this motion, that it was voted upon and lost 33 to 20. The paper stated that Suksdorf moved that the committee rise and report a recommendation that the Convention
recommit Section 3 to the Committee on Judicial Department. This motion carried.

The section was sent back to committee.

Text of report as returned by committee, July 19:

Same as final except it omitted “unless some other time be provided by the Legislature” from the first sentence. (p. 118)

Reconsideration by committee of the whole, July 19:15

Motion: Browne moved to amend to provide that elections for the judiciary should be held every six years in April. He said that this would remove the judiciary from politics.

Action: Motion lost.

The Daily Oregon Statesman reported that Browne’s motion was warmly supported by the Democrats, who claimed they wanted to remove any such election from politics. Republicans were just as strongly opposed on the plea that the cost of a special election would be too great and wouldn’t do any good anyway.

“His measure would have been accorded the hearty support of all the minority, but it entirely destroyed the principle of rotation in office and it was defeated by more than party vote,” stated the Walla Walla Weekly Statesman.

Motion: Warner moved to add to the first sentence the words “unless otherwise provided for by the Legislature.”

Action: Motion carried.

Discussion as follows:

For: Turner, Kinnear, and Sharpstein agreed that the future wealth of the state might allow separate elections; they felt that the Legislature shouldn’t have its hands tied.

Against: Gowey thought that the people could change by amendment if they wanted. Sturdevant, Dyer, and Lind­sley didn’t want the Legislature to meddle with the court under any circumstances. Comegys feared that

this amendment might be interpreted to allow the appointment of judges.

**Motion:** Shoudy moved to strike the words, “until otherwise provided by law” in the last sentence.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Shoudy wanted to insure that the Supreme Court would always sit at the seat of government.

**Against:** Turner thought it might sometimes be advantageous to have the court sit elsewhere.

Final action by Convention, July 22:

Decision of the committee of the whole accepted. (p. 127)

**Section 3(a)**

**Present Language of the Constitution:**

**RETIREMENT OF SUPREME COURT AND SUPERIOR COURT JUDGES.** A judge of the supreme court or the superior court shall retire from judicial office at the end of the calendar year in which he attains the age of seventy-five years. The legislature may, from time to time, fix a lesser age for mandatory retirement, not earlier than the end of the calendar year in which any such judge attains the age of seventy years, as the legislature deems proper. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to, or at the time of, approval and ratification of this provision. Notwithstanding the limitations of this section, the legislature may by general law authorize or require the retirement of judges for physical or mental disability, or any cause rendering judges incapable of performing their judicial duties. [1951 p. 960, House Joint Resolution No. 6. Approved November 4, 1952.]

(This section added by 25th amendment.)

**Section 4**

**Present Language of the Constitution:**

**JURISDICTION.** The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus
as to all state officers, and appellate jurisdiction in all actions
and proceedings, excepting that its appellate jurisdiction shall
not extend to civil actions at law for the recovery of money
or personal property when the original amount in controversy,
or the value of the property does not exceed the sum of two
hundred dollars ($200) unless the action involves the legality
of a tax, impost, assessment, toll, municipal fine, or the validity
of a statute. The supreme court shall also have power to issue
writs of mandamus, review, prohibition, habeas corpus, cer­
tiorari and all other writs necessary and proper to the complete
exercise of its appellate and revisory jurisdiction. Each of the
judges shall have power to issue writs of habeas corpus to any
part of the state upon petition by or on behalf of any person
held in actual custody, and may make such writs returnable
before himself, or before the supreme court, or before any
superior court of the state or any judge thereof.

Original language same as present.\textsuperscript{16}

Text as given in report of committee, July 16:

Same as final except for minor wording. (p.100)

Consideration by committee of the whole, July 19:\textsuperscript{17}

\textbf{Motion}: Crowley moved to change “other cases” in the first
sentence to “actions and proceedings.”

\textbf{Action}: Motion carried.

Although the Review reports that this motion lost by a
decided vote, the Times records that it carried. This
agrees with the final text.

\textbf{Motion}: J. Z. Moore moved to remove the money limit for civil
appeals.

\textbf{Action}: Motion lost.

\textbf{Discussion as follows}:

\textbf{For}: Allen said that if a person is entitled to justice in
one court he is entitled to it in all courts. Godman thought

\textsuperscript{16}\textbf{Jurisdiction Supreme Court}: Cal., Const. (1879), Art. 6, sec. 4; Hill, Prop.
Wash. Const., Art. 6, sec. 4. [Portions identical; portions similar. Other
portions probably original.]

\textsuperscript{17}\textbf{Times}, July 19; Ledger, Review, Globe, Post Intelligencer, July 20, 1889.
that the right of the citizen to appeal to the highest tribunal should not be abridged.

Against: Dunbar argued that rich men and corporations could oppress the poor simply by appealing and making litigation so expensive poor men would stop trying for their rights in court. Browne agreed that the poor man would be left out of court altogether if this motion passed. Turner said that the clause was in the interests of justice and should be allowed to stand. Browne would have preferred a five hundred dollar limit, while E. H. Sullivan favored a one hundred dollar limit.

Motion: Hoyt moved to strike the section and substitute: “The Supreme Court shall have jurisdiction in all cases prescribed by law.”

Action: Motion lost.

Discussion as follows:

For: Hoyt argued that the task of establishing the court’s jurisdiction was a legislative function and should not be included in the Constitution. T. M. Reed supported him.

Against: Kinnear, Moore, and Godman said that to establish the court’s jurisdiction was a proper duty of the Convention. Turner pointed out that almost every other constitution in the country defined its courts’ jurisdictions. Stiles and Kinnear believed the substitute would leave a period between the acceptance of the Constitution and legislative action when there would be no jurisdiction for the court.

Motion: Dyer moved to increase two hundred dollars to three hundred dollars.

Action: Motion lost.

Motion: E. H. Sullivan moved to amend by inserting the word “ordinance” after the words “municipal fine.”

Action: Motion lost.

Motion: Durie moved to strike the words “municipal fine” and to insert “municipal ordinance.”

Action: Motion lost.
Final action by Convention, July 22:

**Motion**: Cosgrove moved to amend to give the Supreme Court appellate jurisdiction in cases involving one hundred dollars or more, instead of limiting the amount to two hundred dollars.

**Action**: Motion withdrawn.

**Discussion as follows**:18

Against: Turner objected, saying litigants could appeal from justice to Superior Courts, and such extra work shouldn't be saddled on the Supreme Court.

**Motion**: Allen moved to strike the entire clause limiting the appellate jurisdiction of the Supreme Court.

**Action**: Motion lost. (p. 128)

**Motion**: Gowey moved to strike the appellate jurisdiction clause and to provide in its stead that the Supreme Court have such appellate jurisdiction "as may be prescribed by law."

**Action**: Motion lost. (p. 129)

**Secton 5**

**Present Language of the Constitution**:

**SUPERIOR COURT—ELECTION OF JUDGES, TERMS OF, ETC.** There shall be in each of the organized counties of this state a superior court for which at least one judge shall be elected by the qualified electors of the county at the general state election: Provided, That until otherwise directed by the legislature one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clarke, Skamania, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Island,

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ARTICLE IV

§ 5

Kitsap, San Juan and Clallam; and one judge for the counties of Whatcom, Skagit and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so distributed and assigned by law or in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this Constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this Constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Original language same as present.¹⁹

Text as given in report of committee, July 16:

Same as final except that it provided for six-year terms which were to begin on the first Monday in January, and also provided that the first election was to be held at the first general election under the Constitution. (p. 101)

¹⁹ Superior Courts—Sessions—Tenure: Cal., Const. (1879), Art. 6, sec. 6; Hill, Prop. Wash. Const., Art. 6, sec. 5. [Portions identical; portions similar; portions probably original. Portions now obsolete due to statutes.]
Text as given in minority report of committee submitted by Mires, Griffitts, Stiles, Godman, and Kinnear, July 16:

Set the term of office for Superior Judges at four years. (p. 106)

Consideration by committee of the whole, July 19:

Motion: Godman moved to fix the term at four years.

Action: Motion carried 36 to 34.

Discussion as follows:

For: Godman said that if a judge did a proper job he could trust the people for re-election; moreover, if a judge was honest he could not be corrupted. Stiles thought that in the formative period of the state a shorter term would be better, as the state would be enabled to make use of new men who moved into the state. Warner saw it as a means of getting rid of unfitted men sooner. Griffitts, according to the Review, favored a four-year term since the probate business was just being put into the superior courts “and he did not wish to commit himself to that experiment for more than four years in the hands of only one judge.” Comegys also spoke in favor of a four-year term.

Against: Turner said that twenty-nine states had six-year terms or more, while only eight had a four-year term. He thought, “if judges are to truckle to public opinion it certainly is better to let them truckle only once in six years instead of once in four years,” the Review reported. Dyer said that a six-year term would take the election out of the presidential year and help to remove the judiciary from politics. Jones believed it would remove the courts from the sway of popular excitement. Dunbar urged that it was a necessity for a judge to be independent in his office and there was no real need for restriction, while Buchanan wanted to place the bench as far removed from public clamor and out of reach of attack as possible. Weisenburger and Gowey also spoke in favor of a six-year term.

Motion: Power moved to amend to change the apportionment so that Island and Kitsap counties would be interchanged and Jefferson, Kitsap, San Juan and Clallam would be in one judicial district and Whatcom, Skagit, Island and Snohomish in another. Powers explained that these divisions were natural as they were of contingent counties and that the modes of communications were better between these counties than in the old arrangement. Dickey, Weisenburger, and Schooley favored this.

Motion: Eldridge moved to amend Power’s amendment by inserting both Island and Kitsap counties in the district with Jefferson, San Juan and Clallam. This was supported by Jones and Weir.

Action: Motion as amended carried.

Motion: Buchanan moved to amend by providing for the election of judges in an off-year.

Action: Motion lost.

Motion: P. C. Sullivan moved to substitute the word “directed” for “provided” in the third line.

Action: Motion carried.

Motion: Durie moved to amend so that King County could have two judges.

Action: Motion lost, ayes 21, noes not counted.

Discussion as follows:

For: Dyer pointed out the large population of King County, and said the probate business alone was more than one judge could handle. Hoyt stated that the judges were much overworked and this amounted to a denial of justice. He complained that the large criminal case load in King County had crowded out the civil cases and he indicated that he would rather have the county pay two-thirds or three-fourths of the judiciary cost than be without enough judges. Kinnear also stressed the need for two judges.

Against: Weir feared the reaction of the people to the piling up of such extra expense. He reminded the group
that a judge could be called from other counties. Stiles suggested that the commissioner could also help. Weisenburger stated that there would be no more United States business in the court once the territory became a state and one judge would be sufficient. Dunbar and Turner thought it would lead to similar demands from other counties.

**Motion:** Bowen moved to have the election of judges at the same time as the vote for the constitution.

**Action:** Motion carried.

While the Globe records the failure of this motion by a vote of 28 to 27, the Ledger records its passage.

**Motion:** Eshelman moved to have Kittitas and Yakima counties given one judge.

**Action:** Motion lost.

Although the Times says the motion carried, this report is in conflict with the final section.

Final action by Convention, July 22:

**Motion:** Turner asked for a separate vote on the amendment changing the terms of the superior judges from six to four years.

**Action:** The Convention accepted the decision of the committee of the whole 45 to 14. (p. 127)

**Voting against:** Coey, Gowey, Jones, Lindsley, Manly, Minor, J. Z. Moore, Morgans, Neace, Prosser, T. M. Reed, Sturdevant, Turner, and Weisenburger.

Section 6

Present Language of the Constitution:

**JURISDICTION OF SUPERIOR COURTS.** The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts
to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices’ and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [1951 p. 962, Sub. House Joint Resolution No. 13. Approved November 4, 1952.]

Original language: 21

The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The Superior

21. Jurisdiction of Superior Courts: Cal., Const. (1879), Art. 6, sec. 5; Hill, Prop. Wash. Const., Art. 6, sec. 6, identical with Cal.). [Identical except for a few word changes.]
Court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

Text as given in report of committee, July 16:

Same as final. (p. 102)

Consideration by committee of the whole, July 19:22

Motion: P. C. Sullivan moved to strike “conferring on these Superior Courts jurisdiction in cases where municipal fines are concerned.”

Action: Motion lost.

Motion: Stiles moved to insert words “by law” after the words “in all cases of misdemeanor not otherwise provided for.”

Action: Motion carried.

Motion: Griffitts moved to add “and the Superior Courts shall have jurisdiction co-extensive with their respective counties.”

Action: Motion lost by a large vote.

Discussion as follows:

Against: Hoyt opposed it, saying it would prevent process from running out of the county. Gowey read a later clause which stated that process is statewide. Turner said the amendment was unnecessary.

Motion: Sharpstein moved to strike “exclusive of interest” in the third line.

Action: Motion carried.

Motion: Buchanan moved to change the word “demand” to “claim.”

Action: Motion lost.

Section 7

Present Language of the Constitution:

**EXCHANGE OF JUDGES — JUDGE PRO TEMPORE.**

The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.

Original language same as present. 23

Text as given in report of committee, July 16:

Same as final. (p. 102)

Consideration by committee of the whole, July 19: 24

Motion: Hoyt moved to strike the last sentence saying this was arbitration, not trial by court.

Action: Motion lost by a great count.

Section 8

Present Language of the Constitution:

**ABSENCE OF JUDICIAL OFFICER.** Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his

23. Judges May Hold Court in Any County: Cal., Const. (1879), Art. 6, sec. 8 (Hill, Prop. Wash. Const., Art. 6, sec. 7, identical with Cal.). [Identical.]

Pro Tempore Judges: Cal., Const. (1879), Art. 6, sec. 8. [Identical except that Wash. requires selection of pro tempore judge to be approved by court.]

office: Provided, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

Original language same as present.25

Text as given in report of committee, July 16:

Same as final. (p. 102)

Section 9

Present Language of the Constitution:

REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

Original language same as present.26

Text as given in report of committee, July 16:

Same as final except that it used the words “any judge of the Supreme Court or judge of the Superior Court” instead of “any judge of any court of record.” Also it did not include the accused’s privileges of being served with the charges and being heard in his own defense. (p. 103)

Consideration by committee of the whole, July 19:27

25. Leave of Absence of Judges: Cal., Const. (1879), Art. 6, sec. 9 (Hill, Prop. Wash. Const., Art. 6, sec. 8, identical with Cal.). [Identical with the exception of the proviso, which seems to be original.]
26. Removal of Judges: Cal., Const. (1879), Art. 6, sec. 10; Hill, Prop. Wash. Const., Art. 6, sec. 8; Wis., Const. (1848), Art. 7, sec. 13. [Similar.]
Motion: Eldridge moved to add the provision concerned with the accused’s privileges.

Action: Motion carried.

Motion: Gowey moved to amend the first sentence to read “any judge of any court of record, the Attorney General, or the Prosecuting Attorney, etc.”

Action: Motion carried.

Final action by Convention, July 22:

Decision of committee of the whole accepted. (p. 127)

Section 10

Present Language of the Constitution:

JUSTICES OF THE PEACE. The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed one thousand dollars, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use. [1951 p. 962, Sub. House Joint Resolution No. 13. Approved November 4, 1952.]

Original language:28

The Legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, that such jurisdiction granted by the Legislature shall not trench upon the jurisdiction of Superior or other courts of record, except

28. Justice of Peace: Cal., Const. (1879), Art. 6, sec. 11; Hill, Prop. Wash. Const., Art. 6, sec. 8. [Similar.]
that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities and towns having more than five thousand inhabitants the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.

Text as given in report of committee, July 16:

Same as final except that it did not include the provision that justices of the peace may be police judges in incorporated towns or cities. (p. 103)

Consideration by committee of the whole, July 19: 29

Motion: Weisenburger moved to amend by giving concurrent jurisdiction with the Superior Court to justices where the amount involved did not exceed two hundred dollars. He argued that this would furnish a chance for a review and second trial in these cases.

Action: Motion lost.

Discussion as follows:

Against: Crowley opposed, saying that he favored abolishing the court entirely and Turner remarked that there was no justice dealt by that court. E. H. Sullivan expressed a desire to reduce rather than increase the justice court's jurisdiction.

Motion: Stiles moved to strike out "shall receive no fees for their own use."

Action: Motion lost 21 to 16.

Final action by Convention, July 22: 30

Motion: Turner moved to insert the provision concerning police judges.

Action: Motion carried. (p. 137)

At least two territorial newspapers commented favorably upon this section. The Chehalis Nugget's position was that every official

in the state from the Governor down to the justice of the peace should be salaried.31

The Seattle Post Intelligencer commented that with the passing of this section "the palmy days of the justice of the peace in Washington will be gone forever. He is to be stripped of all the fees upon which he at present waxes fat, and must be contented with a beggarly salary fixed by law. Indeed, the feeling of the delegates seemed to be such that they would evidently have abolished the office of the justice of the peace if they did not think them absolutely necessary in some cases."32

Section 11

Present Language of the Constitution:

COURTS OF RECORD. The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

Original language same as present.33

Text as given in report of committee, July 16:

Same as final. (p. 103)

Section 12

Present Language of the Constitution:

INFERIOR COURTS. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

Original language same as present.34

Text as given in report of committee, July 16:

Same as final. (p. 103)

32. Post Intelligencer, July 23, 1889.
33. Courts of Record: Hill, Prop. Wash. Const., Art. 6, sec. 11. [Identical except for slight change.]
Section 13

Present Language of the Constitution:

**SALARIES OF JUDICIAL OFFICES—HOW PAID, ETC.**

No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall severally at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Original language same as present. 

Text as given in report of committee, July 16:

Same as final. (p. 103)

Consideration by committee of the whole, July 19:

**Motion:** Suksdorf moved to strike portion which stated that counties shall pay one-half of superior court judges' salaries. He felt that if the state paid the entire salary it would come from one fund and be easier to account for.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Power favored the motion; he said that the taxpayer paid for all anyway. Browne, Moore, Shoudy, and Gower also supported the motion.

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35. Compensation of Judicial Officers: Hill, Prop. Wash. Const., Art. 6, sec. 13. [Identical except for slight change.] Cal., Const. (1879), Art. 6, sec. 15. [Similar in part.]

Against: Turner said it would lead to all counties wanting a judge if the expense were removed from them; moreover, he wanted to follow the California system. Kinnear, T. M. Reed, and E. H. Sullivan also opposed the motion.

Section 14

Present Language of the Constitution:

**SALARIES OF SUPREME AND SUPERIOR COURT JUDGES.** Each of the judges of the supreme court shall receive an annual salary of four thousand dollars ($4,000); each of the superior court judges shall receive an annual salary of three thousand dollars ($3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of judges herein provided.

Original language same as present.\(^{37}\)

Text as given in report of committee, July 16:

Same as final except that it put the Supreme Court salary at five thousand dollars and the Superior Court salary at thirty-six hundred dollars. (p. 104)

Consideration by committee of the whole, July 19:\(^{38}\)

**Motion:** Willison moved to have the salary of both courts fixed and paid by the state. Salaries were not to exceed three thousand dollars for the Supreme Court nor two thousand dollars for the Superior Court.

**Action:** Motion lost.

**Motion:** Weir moved to amend so that the question of salaries be left to the Legislature.

**Action:** Motion lost.

**Discussion as follows:**

**For:** Weir said that good men would come for three thousand dollars. Hoyt thought the question of salaries was one for the Legislature.

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\(^{37}\) Salaries of Judges: Amounts vary in most state constitutions where fixed by the Constitution itself.

\(^{38}\) Ledger, Globe, Review, July 20, 1889.
Against: Minor believed that the first judges would have no salaries if the motion prevailed. Dunbar thought that judges should know what compensation they were to receive and said that they couldn’t get the best men for a small amount. Dyer supported him in this belief that the Convention should be liberal. Stiles objected to the substitute as not fixing a fair compensation and to the amendment as leaving the salary question in the dark. He did not want to see the spectacle of a judicial lobby scheming to get higher salaries.

Motion: Dyer moved that the Supreme Court salary be four thousand dollars, the Superior Court salary three thousand dollars, and that the Legislature be given the power to increase it when necessary.

Action: Motion carried with 53 favoring.

Discussion as follows:

For: Hoyt endorsed the motion. Warner said that three judges had done the work for the territory and twelve were provided to carry a lighter load for the state so these salaries were sufficient. He wanted to make the tax burden as light as possible for the people. Buchanan said that good legal minds could be found for four thousand dollars and he was not willing to go a cent higher.

Against: Turner cited states which paid higher salaries and had the best legal minds on the bench. Godman stated that poor salaries were poor economy. Skilled labor came high, he said, and since the state wanted good men it should be willing to pay for them. Griffitts favored five thousand dollars since he thought judges should be able to live in comfort and keep away from temptation.

Motion: Hicks moved to make salaries of Supreme Court judges four thousand dollars, and that of the Chief Justice five thousand dollars.

Action: Motion lost.

Motion: Suksdorf moved to make salaries of Supreme Court judges thirty-six hundred dollars.

Action: Motion lost.
**Motion:** Durie moved to amend so that salaries of judges would not be increased or decreased during their term of office.

**Action:** Motion lost.

Final action by Convention, July 22:

Decision of committee of the whole accepted. (p. 127)

The question of providing for salaries in the Constitution raised sharp criticism from the press. “The only way to have a judiciary above criticism, as to capability, is to pay salaries commensurate with the talent required,” stated the Seattle Times, and in a later editorial took the Convention to task for creating a salaried Lieutenant Governor and paying the Supreme and Superior Court judges so poorly by comparison.39

The Tacoma Morning Globe was wary of establishing salaries at all in the Constitution. The Washington Standard said judges’ salaries should be more in line with laborers’ wages and hoped the Convention would not follow the lead of the Judiciary Committee in establishing high salaries for other officers. The Standard later charged Turner and his associates with being personally interested in the judgeships themselves and thus wanting high salaries.40

**Section 15**

**Present Language of the Constitution:**

**INELIGIBILITY OF JUDGES.** The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office, or employment, during the term for which they shall have been elected.

Original language same as present.41

Text as given in report of committee, July 16:

Same as final. (p. 104)

**Section 16**

**Present Language of the Constitution:**

**CHARGING JURIES.** Judges shall not charge juries

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40. Globe, July 31; Standard, July 19, 26, 1889.
with respect to matters of fact, nor comment thereon, but shall declare the law.

Original language same as present.\footnote{Charge to July: Hill, Prop. Wash. Const., Art. 6, sec. 15. [Identical except that Wash. adds words "or comment on."] Cal., Const. (1879), Art. 6, sec. 19. [Similar.]} Text as given in report of committee, July 16:

Same as final. (p. 104)

Consideration by committee of the whole, July 20:\footnote{Ledger, Daily Oregon Statesman [Salem], Times, Review, July 21; Spokane Falls Northwest Tribune, July 26, 1889.}

\textbf{Motion:} Suksdorf moved to strike the phrase "nor comment thereon."

\textbf{Motion:} Dyer moved to amend Suksdorf's amendment so that judges could not instruct juries in regard to matter of fact, but could state the testimony and declare the law. Suksdorf accepted this amendment.

\textbf{Action:} Motion lost, 10 ayes, noes not counted.

\textbf{Discussion as follows:}

\textbf{For:} Turner felt it was necessary to refer to the facts in order to make the law clear to the jury. Buchanan urged that judges ought to be allowed to protect juries from lawyers who confused them. J. Z. Moore thought the judge should be an active factor. Suksdorf said the amendment was in the interest of the people who paid the costs of litigation. Hoyt and Jones also spoke in favor of it.

\textbf{Against:} Godman opposed the motion because he thought it was useless. Dunbar feared that the jury would follow the judge's lead, and E. H. Sullivan said the jury should be the sole judge of facts. Crowley and Kinnear thought the functions of judge and jury should be kept separate and distinct. Dyer pointed out that the jury system began as a protection from judges who tried to carry out the corrupt desires of English kings. P. C. Sullivan and Griffitts were also opposed to the motion.

\textbf{Motion:} Stiles moved to put "disputed" before "matters."

\textbf{Action:} Motion lost.
ARTICLE IV
§§ 17-19

Section 17

Present Language of the Constitution:

ELIGIBILITY OF JUDGES. No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

Original language same as present. 44

Text as given in report of committee, July 16:

Same as final. (p. 104)

Consideration by committee of the whole, July 20: 45

Motion: Buchanan moved to add “and a citizen thereof for two years.”

Action: Motion lost.

Motion: Power moved to add “and a qualified elector.”

Action: Motion lost.

Section 18

Present Language of the Constitution:

SUPREME COURT REPORTER. The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

Original language same as present. 46

Text as given in report of committee, July 16:

Same as final. (p. 104)

Section 19

Present Language of the Constitution:

JUDGES MAY NOT PRACTICE LAW. No judge of a

44. Eligibility to Judgeship: Hill, Prop. Wash. Const., Art. 6, sec. 18. [Identical.]
Cal., Const. (1879), Art. 6, sec. 23. [Similar.]
45. Ledger, Times, July 21, 1889.
court of record shall practice law in any court of this state during his continuance in office.

Original language same as present.\textsuperscript{47}

Text as given in report of committee, July 16:

Same as final. (p. 104)

Section 20

Present Language of the Constitution:

**DECISIONS, WHEN TO BE MADE.** Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; Provided, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a rehearing.

Original language same as present.\textsuperscript{48}

Text as given in report of committee, July 16:

Same as final. (p. 104)

Section 21

Present Language of the Constitution:

**PUBLICATION OF OPINIONS.** The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

Original language same as present.\textsuperscript{49}

Text as given in report of committee, July 16:

Same as final. (p. 104)

\textsuperscript{47} Judges Shall Not Practice Law: Cal., Const. (1879), Art. 6, sec. 22 (Hill, Prop. Wash. Const., Art. 6, sec. 17, identical with Cal.). [Identical.]


\textsuperscript{49} Publication of Opinion, Supreme Court: Cal., Const. (1879), Art. 6, sec. 16 (Hill, Prop. Wash. Const., Art. 6, sec. 26, identical with Cal.). [Identical except Wash. adds "by salary only."
Section 22

Present Language of the Constitution:

CLERK OF THE SUPREME COURT. The judges of the supreme court shall appoint a clerk of that court who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court, and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

Original language same as present.\(^50\)

Text as given in report of committee, July 16:

Same as final except it did not say the pay was to be by salary only. (p. 104)

Consideration by committee of the whole, July 20:\(^51\)

Motion: Henry moved to strike out the provision that the Legislature may provide for the election of the Supreme Court clerk.

Action: Motion lost.

Discussion as follows:

For: Henry said that the clerk's duties were confidential and so close to the court that he should be appointed by the court. Henry stressed the close working relationship which must exist between a judge and his clerk.

Motion: Lindsley moved to add "by salary only."

Action: Motion carried.

Deleted Section

Text as given in report of committee, July 16:

"In any case in the Supreme Court in which a judge is disqualified the remaining judges shall choose some disinterested member of the Supreme Court bar to participate with them in the hearing and decision of the case; who shall be sworn to

\(^50\). Clerk Supreme Court: Hill, Prop. Wash. Const., Art. 6, sec. 20. [Identical except Wash. adds "by salary only."]

\(^51\). Ledger, Review, Times, July 21, 1889.
try to decide the case according to law, and the decision rendered by the court thus constituted shall stand as other decisions in said court.” (Section 23, p. 105)

Consideration by committee of the whole, July 20:

Motion: Weisenburger moved to strike out the section.

Action: Motion carried.

Discussion as follows:

For: Turner supported the motion because he felt this section was unnecessary now that there were five judges provided for.

Final action by Convention, July 22:

Decision of committee of the whole accepted. (p. 127)

Section 23

Present Language of the Constitution:

COURT COMMISSIONERS. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

Original language same as present.

Text as given in report of committee, July 16:

Same as final. (Section 24, p. 105)

Section 24

Present Language of the Constitution:

RULES FOR SUPERIOR COURTS. The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

53. Court Commissioner: Cal., Const. (1879), Art. 7, sec. 14; Wis., Const. (1848), Art. 7, sec. 23; Minn., Const. (1857), Art. 6, sec. 15. [Similar.]
Original language same as present.\textsuperscript{54}
Text as given in report of committee, July 16:
Same as final. (Section 25, p. 105)

Section 25

Present Language of the Constitution:

REPORTS OF SUPERIOR COURT JUDGES. Superior judges, shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall on or before the first day of January in each year report in writing to the governor such defects and omissions in the laws as they may believe to exist.

Original language same as present.\textsuperscript{55}
Report of committee, July 16, did not include this section.
Consideration by committee of the whole, July 20:\textsuperscript{56}

\textbf{Motion:} P. C. Sullivan moved to add a new section. The text of the section was the same as adopted except that it contained "such defects in laws and Constitution" and ended with "together with the appropriate forms of bills to cure such defects and omissions."

\textbf{Motion:} Gowey moved to strike the word "Constitution."

\textbf{Action:} Motion carried.

\textbf{Motion:} Griffitts moved to strike the last sentence as he believed the courts should not have legislative power. He said that judges would be required to pass upon the validity of these very bills.

\textbf{Action:} Motion carried.

\textbf{Action:} Sullivan's motion, as amended, carried.

Discussion as follows:

\textbf{For:} Turner spoke in favor of the section, saying that it

\textsuperscript{54} Rules of Court: Seems to be original.
\textsuperscript{55} Superior Judges to Report to Supreme Court Judges: Colo., Const. (1876), Art. 6, sec. 27; Ill., Const. (1870), Art. 6, sec. 15. [Similar.]
\textsuperscript{56} Ledger, Times, Review, July 21, 1889.
was a good way to remedy defects in the state laws. Gowey also approved.

**Against:** Power and Dunbar thought that the Legislature should attend to this.

Final action by Convention, July 22:

Decision of committee of the whole accepted. (p. 127)

**Proposed Sections**

Before going on to consider Section 26, other sections were suggested: 57

**Motion:** Prosser moved for the creation of a Board of Arbitration.

**Action:** Motion lost.

**Motion:** E. H. Sullivan moved to add a new section stating: "No cases shall be referred without the consent of all parties involved."

**Action:** Motion failed badly.

**Motion:** Godman moved to modify this section to read that no cases should be referred except by consent of all the parties.

**Action:** Motion lost.

**Discussion as follows:**

**Against:** Turner said that referees could not be appointed anyway unless certain necessary facts were missing and therefore saw no necessity for this section. Sharpstein and Stiles thought this should be left to the Legislature.

**Motion:** McElroy moved to add a new section requiring Superior Courts to sit at county seats.

**Action:** Motion lost.

**Section 26**

**Present Language of the Constitution:**

**CLERK OF THE SUPERIOR COURT.** The county clerk shall be by virtue of his office, clerk of the superior court.

57. Review, Times, July 21; Tribune, July 26, 1889.
Article IV

§§ 27-28

Original language same as present.\textsuperscript{58}

Text as given in report of committee, July 16:
Same as final. (p. 105)

Section 27

Present Language of the Constitution:

STYLE OF PROCESS. The style of all process shall be, "The State of Washington," and all prosecutions shall be conducted in its name and by its authority.

Original language same as present.\textsuperscript{59}

Text as given in report of committee, July 16:
Same as final. (p. 105)

Section 28

Present Language of the Constitution:

OATH OF JUDGES. Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

Original language same as present.\textsuperscript{60}

Text as given in report of committee, July 16:
Same as final. (p. 105)

Passage of Article

Article on Judiciary approved by Convention, July 24, by a vote of 67 to 6. (p. 137)


\textsuperscript{58} Clerk Superior Court: Cal., Const. (1879), Art. 6, sec. 14 (Hill, Prop. Wash. Const., Art. 6, sec. 21, identical with Cal.). [Similar.]

\textsuperscript{59} Style of Process: Cal., Const. (1879), Art. 6, sec. 20. [Identical.]

\textsuperscript{60} Oaths of Judges: Hill, Prop. Wash. Const., Art. 6, sec. 27; Ore., Const. (1857), Art. 6, sec. 21. [Similar.]