

The U.S. Constitution & West Virginia Statehood

It is often forgotten today that when - 163 years ago this coming January 1 - Abraham Lincoln signed the bill creating the State of West Virginia, he did so in the face of serious clamoring that the state's creation was unconstitutional. Fortunately however, Lincoln fully understood the constitutional questions that were being thrown at him. Almost totally self-educated, he was nonetheless thoroughly familiar with the U. S. Constitution - having cited it again and again, not only in court, but before audiences throughout the mid-west and in New York and New England.

West Virginia was one of three states admitted to the Union during the Civil War. Kansas came in in January 1861 and Nevada in October 1864. The admissions of Kansas and Nevada followed the usual constitutional process. But West Virginia's story is unique.

In the 1860's the people in what is now West Virginia were very different from those who lived east of the mountains in the Old Dominion.

- They had not - for the most part - come over the mountains from east Virginia but had drifted down the Ohio River from Pennsylvania, Maryland and New York.
- Most of them did not own slaves, and were completely out of touch or sympathy with the people of east Virginia.

In 1860 there were over 490,000 slaves in eastern Virginia, approximately 30% of the population of that area. In what became West Virginia there were only 18,500 slaves, making up 4% of the total population.

This figure itself is somewhat misleading because most of the slaves in western Virginia lived in what is now our Eastern Panhandle. And, as we shall see, the Eastern Panhandle came into the State as the result of practical and military decisions.

The folks who lived here had small physical contact with east Virginia. It took seven days to go from Cabell County on the Ohio River to the state capital at Richmond. It was easier to get to New Orleans by river than to travel overland to Richmond.

The westerners felt - and with good reason - that they had been ill-treated by their government. One of their main gripes was representation in the Virginia General Assembly. The basis for representation was population. Slaves were counted in determining an area's population, - even though they could not vote - which added to eastern Virginia's enormous edge in seats in the Assembly.

But, although slaves were counted in determining population for seats in the General Assembly, the Virginia constitution also provided that no slave under the age of 12 was subject to taxation and no slave over the age of 12 could be assessed at more than \$300. However, healthy slaves of any age generally sold for several times this amount.

Meanwhile, every sheep, cow, and mule in western Virginia was assessed at full value. So, while the farmers of western Virginia were taxed on all their property, the eastern planter, whose wealth consisted principally of slaves, was exempted from bearing a fair and equitable proportion of the burdens of government.

All of this time the people of western Virginia were discriminated against in internal improvements. In the 1850's the state of Virginia borrowed Fifty MILLION dollars for improvements: roads, institutions, canals, and railways. The only money from this bond issue that was spent in what is now West Virginia was Twenty-Five THOUSAND dollars to build a

"Lunatic Asylum West of the Alleghenies" at Weston. (You might call that "adding insult to injury.")

But the people of western Virginia were forced to "grin and bear it" for there was little they could do. The United States Constitution prohibited - as it still does - the creation of one state out of another, without the consent of the "mother" state.

The Civil War changed all this.

When South Carolina seceded from the Union on December 20, 1860, and was joined by six other states in forming the Southern Confederacy, it was by no means certain Virginia would join them.

Taking a sort of "wait and see" attitude, Virginia's legislature called a convention to consider what to do about remaining in the Union. The convention met at the Capitol in Richmond on February 13. At first the body leaned heavily toward remaining in the Union. But when President Lincoln issued a call for the states to provide 75,000 troops to put down the rebellion, the convention adopted an ordinance of secession from the Federal Union by a vote of 88 to 55. 32 of the 55 votes against secession came from what is now West Virginia.

The ordinance was to be submitted to a vote of the people on May 23, but it was expected to pass.

Feelings ran high in those troubled times. One of the votes in favor of secession had been cast by L.S. Hall of Wetzel County who had been sent to Richmond to vote AGAINST secession. When he returned to the west after voting FOR secession, the local newspaper editorialized: "Judas Iscariot betrayed his master and has never been forgiven since. But if an election were held in Wetzel County today, Judas would beat L.S. Hall by 200 votes."

The anti-secessionist forces from northwestern Virginia began to move immediately. A series of mass meetings popped up in the Trans-Allegheny to protest secession from the Union. Fired up by these meetings the Wheeling *Intelligencer* - western Virginia's leading newspaper - issued a call for a convention to meet in Wheeling on May 13, 1861.

Delegates from 26 counties in western Virginia met on that day in what is now known as the First Wheeling Convention. After some debate the delegates agreed to wait until the results of the May 23 election on the Virginia secession ordinance were announced. If the people of Virginia ratified the secession ordinance - as they were expected to do - the counties of northwestern Virginia would choose delegates for another general convention.

Sure enough, on May 23 Virginians voted in favor of the ordinance of Secession.

At that same time there was a good deal of jockeying for military control of western Virginia.

Virginia - now *Confederate* Virginia - sent a regiment of troops under Col. George A. Porterfield to raise troops for the Confederacy. Porterfield advanced to Grafton, rail center of the Trans-Allegheny

Benjamin Franklin Kelley, a man with the appearance and disposition of a Billy Goat, was in command of the first (West) Virginia Infantry. Kelley moved out from Wheeling toward Grafton with his regiment.

Porterfield retreated from Grafton 15 miles south to Philippi and there, on June 3, 1861, Kelley and his Union troops attacked Porterfield's Confederate Army in the First Land Battle of the Civil War.

No one was killed and only 17 were wounded, including Kelley. Kelley survived (although his recovery did not improve his disposition). But his victory at Philippi gave the Union forces in northwest Virginia a tremendous boost.

Matters now turned back to politics. Under terms laid down by the First Wheeling Convention, an election was held for delegates to the Second Wheeling Convention, which met on June 11, 1861, with about 100 delegates attending from 34 counties. The convention faced the question of what to do about Virginia's secession. It chose to "restore" the Government of Virginia to the Union.

The Convention adopted a Declaration of Rights, which declared that all of the Virginia state offices had been vacated because the government of Virginia had decided to unite with the Confederacy. The position of the Convention was that the ordinance of secession was a nullity - *a state couldn't secede from the Union!* Therefore, Virginia was still in the Union. But. . . since Virginia's officeholders *CLAIMED* it had left the Union, no government existed in Virginia that was recognized by the Constitution of the United States. Therefore, it was the duty of the loyal people of Virginia to erect a government to protect themselves.)

So . . . the Convention declared that IT - the Second Wheeling Convention - was now the General Assembly of the Commonwealth of Virginia. It elected a Governor - Francis H. Pierpont of Fairmont - two Senators, and three Congressmen.

Pierpont then wired President Lincoln - signing the telegram as "Governor of Virginia" - and offered to raise troops for the Union. The two Senators and 3 Congressmen left for Washington to claim their seats in the Congress.

Lincoln, who had been kept up to date on what was happening in Wheeling and who was happy to get fighting men from anywhere, accepted the offer of troops in a telegram addressed to "Francis H. Pierpont, Governor of Virginia." Lincoln also instructed Congress that "these loyal citizens, this government is bound to recognize, and protect as being Virginia."

Meanwhile, when the congressional delegation which had been elected in Wheeling - *Loyal Virginians* they called themselves - presented themselves to Congress, there was no one else claiming the seats of Virginia. The loyal Virginians' credentials looked good, so they were seated.

Virginia - or a state purporting to *BE* Virginia - was back in the Union with the recognition of two of the three branches of the federal government.

Meanwhile the Restored Government of Virginia was having a difficult time. Pierpont's office was without furniture or money. He had only a pen, a bottle of ink, and a quire of paper. (25 sheets of paper.)

Pierpont sent for Peter G. VanWinkle, a Parkersburg lawyer, and the two of them went to Wheeling's Merchants' and Mechanics' Bank. They asked the cashier to send for the cashier of the Northwestern Bank of Virginia. With the four men together in a closed room, Pierpont explained the new state's need for money.

He minced no words. He asked the bankers to lend the state \$10,000 - \$5,000 from each bank. "If our government succeeds you will get your money back in 60 or 90 days," he told the two bankers. "If it goes down, your money isn't worth a cent anyway." (This is language that even today's bankers would understand.)

Pierpont and Van Winkle left the room with the money.

Now came the constitutional slight of hand. Those people in western Virginia who wanted to form a new state went to the General Assembly of the Restored or Loyal Government of Virginia

meeting in Wheeling and requested consent of that body to form a new state out of the western part of the parent state.

The Loyal Legislature, after some lively debate, approved.

So technically the Commonwealth of Virginia gave the constitutionally-required permission for its western counties to form a new state!

Then, in November 1861, after the west had been cleared of Rebel forces, the Constitutional Convention for the new state met in Wheeling.

The Convention faced a number of thorny problems.

First, they had to define the limits of the new state. They agreed to cross the Alleghenies and include five counties from the upper end of the Shenandoah Valley in order to protect the B&O Railroad. Remember, when this planning was taking place, it looked as if Virginia and the South might make a going thing of secession. So, the delegates reasoned, if Virginia was to be in a foreign country, the North wanted the Baltimore and Ohio Railroad to travel wholly within friendly territory. Therefore, the new state would include those counties through which the B&O passed, along with those counties adjacent which were necessary to tie the B&O to the new state. Today we call this The Eastern Panhandle.

(Incidentally, this is how I, a native of Grant County, happened to grow up a *WEST* Virginian, not a Virginian. [There IS a God!])

Then there was the controversy over naming the state. Delegate James Henry Brown of Kanawha County supported naming the state Kanawha, pointing out that such states as Kentucky, Tennessee, Illinois, Missouri, Kansas, Arkansas, and Mississippi were named for their leading rivers. An argument against Kanawha was made by Waitman T. Willey of Morgantown, who said "no one knows how to pronounce or spell it." (Being from a county with the name *Monongalia*, Willey certainly knew what he was talking about!)

There was still another objection: there was a Kanawha County, a Kanawha River, and a post office of Kanawha Court House. There would be confusion. Mr. Brown pointed out that there was a New York state, a New York County, and a New York City, with no confusion because of names.

Then Delegate Harman Sinsel, a mechanic from Taylor county, came forth with an eloquent speech in which he said the name "West Virginia" reminded him of the VIRGIN QUEEN, ELIZABETH I, AND THE VIRGIN MARY.

This was too much for Brown. He responded that the virginity of Elizabeth of England was not necessarily above question, and matters approach the fist-fight phase.

Finally, the chair called the roll and delegates were told to answer by giving the name they favored for the new state. The vote was West Virginia 20; Kanawha 9; Western Virginia 2; and Augusta 1. And so, "West Virginia it was, for better or worse.

(I, for one, have always thought it was for the worse, a bad choice that leads to confusion even today. Most of us have been told by someone - after learning we are from West Virginia - that "they have a cousin living in Richmond?" The late L. T. Anderson of the Charleston newspapers once opined that Richmond was populated solely by cousins of folks who lived elsewhere.)

Anyway . . . having named the new state, the delegates then hammered out a constitution and applied to Congress for admission to the Union. After much debate the Senate voted 23 to 17 to admit the new state. The vote in the House of Representatives was 96 to 55 in favor of admission. The matter now rested with the President.

Characteristically, the President refused to be hurried. Shortly before the close of 1862, three political leaders from the Restored Government of Virginia called on the President. They were Senator Waitman T. Willey, Congressman John G. Blair, and Congressman William G. Brown. Lincoln promised a decision by January 1.

According to an old story, Congressman Blair called at the White House on the morning of January 1, 1863, and found the front door locked. It being quite cold and security being practically non-existent, he crawled through an unlocked window and when he hit the floor he was confronted by President Lincoln, standing before him in his carpet slippers. The President said, "Mr. Blair, I have a New Year's Gift for you." It was a signed copy of the bill creating West Virginia.

Constitutional scholars will argue until the cows come home whether Lincoln and the Congress and the Supreme Court tortured the Constitution to allow the admission of West Virginia to the Union.

But the truth, as I see it, is that our founding fathers here in the Trans-Allegheny managed to pull off a brilliant maneuver that *technically* (and, after all, the law is all about technicalities) satisfied all of the requirements of the United States Constitution for the admission of a new state.

I think what really irritates many of West Virginia's detractors about our admission to the Union is that it was just SO DAMNABLY CLEVER. Moreover – although our detractors never mention this - it was also the fair and moral thing to do. Lincoln himself summed it up best in two separate statements. He said:

We can scarcely dispense with the aid of West Virginia in this struggle; and much less can we afford to have her against us in the Congress and in the field. Her brave and good men regard her admission into the Union as a matter of life and death. They have been true to the union under very severe trials. . . . We cannot fully retain their confidence and cooperation if we seem to break faith with them."

Then he added:

"It is said the admission of West Virginia is secession, and tolerated only because it is our secession. Well, if we can call it by that name, there is still difference enough between secession against the Constitution, and secession in favor of the Constitution."

In 1867 a suit was brought by the State of Virginia for the return of Jefferson and Berkeley Counties on the ground that they were illegally taken into West Virginia, since *the majority of their voters were in the Confederate Army and could not vote!* (This seems to me to be hardly a persuasive argument to make to the U.S. Supreme Court two years after the end of the Civil War.)

Virginia argued, too, that the counties of Jefferson and Berkeley were not in West Virginia when Lincoln issued his proclamation forming the state. (Myla and I have an 1864 map of West Virginia hanging on the wall of our family room that does not include Jefferson and Berkeley Counties within the boundaries of the state.)

However, in 1871, the Supreme Court of the United States ruled in favor of West Virginia, stating that what Congress and the President did under the circumstances was legal. Thus, it ended any (SERIOUS) doubt about the legality of the creation of the state.

Abraham Lincoln, described by Elton Trueblood as the *Theologian of American Anguish*, was also a very savvy prairie politician. In signing the bill creating the State of West Virginia -both his savvy political instincts and his deep sense of humanity came into play.

We West Virginians are still are still deeply in his debt.

.oOo.