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No. 80430-3

BY RONALD R. CARPENTER

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CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

**FUTUREWISE and SERVICE EMPLOYEES INTERNATIONAL
UNION HEALTHCARE 775NW,**

Appellants,

v.

SAM REED,

Respondent.

APPELLANTS' STATEMENT OF ADDITIONAL AUTHORITY

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**FILED AS ATTACHMENT
TO E-MAIL**

Appellants cite as additional authority *The Journal of the Washington State Constitutional Convention, 1889 (Rosenow 1999)*, including specifically the excerpts attached hereto.

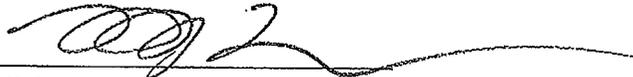
The excerpts show the framers of the State Constitution debating the majority bill passage requirement of article II, section 22.

In addition there was a significant debate over article III, section 12, which establishes the governor's veto and the votes that should be required to override a veto. Some framers sought to eliminate the veto altogether while others sought to weaken it by reducing the votes necessary to override a veto. One proposed amendment sought to render the veto "advisory" by making the votes necessary for veto override the same simple majority required for bill passage. Another sought to reduce the governor's power by require only a 3/5 vote to override, rather than a 2/3 vote. *Id.* at 572-573.

Ultimately, the amendments were defeated in favor of requiring a 2/3 supermajority to override a veto. It was argued that "the veto power was one of the fundamental principals of government". *Id.* at 573.

Respectfully submitted this 4th day of September, 2007

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DECLARATION OF SERVICE

I, Knoll Lowney, hereby declare that on I caused/will cause this document to be delivered on the respondent and amicus in this matter as follows:

- 1) By e-mail on September 4th, 2007. 

Stated under oath this 4th day of September, 2007, in Seattle Washington.

THE JOURNAL OF THE
WASHINGTON STATE
CONSTITUTIONAL CONVENTION
1889

with Analytical Index

by

Quentin Shipley Smith

Edited by
Beverly Paulik Rosenow

William S. Hein & Co., Inc.
Buffalo, New York
1999

Section 17

Present Language of the Constitution:

FREEDOM OF DEBATE. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

Original language same as present.²⁰

Text as given in report of committee, August 5:

Same as final (p. 241)

Section 18

Present Language of the Constitution:

STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

Original language same as present.²⁰

Text as given in report of committee, August 5:

Same as final (p. 241)

Section 19

Present Language of the Constitution:

BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

Original language same as present.²¹

Text as given in report of committee, August 5:

Same as final (p. 241)

29. Free Speech: Wis., Const. (1848), Art. 4, sec. 16. [Identical.]

30. Style of Laws: Wash., Const. (1878), Art. 4, sec. 1. [Identical.] Wis., Const. (1848), Art. 4, sec. 17. [Similar.] No law to be enacted except by Bill: Ore., Const. (1857), Art. 4, sec. 1; Cal., Const. (1879), Art. 4, sec. 15; Wis., Const. (1848), Art. 4, sec. 17. [Identical.] Cal., Const. (1879), Art. 4, sec. 15, and Wis., Const. (1848), Art. 4, sec. 17, identical with Ore.).

31. Only One Subject in Bill: Wis., Const. (1848), Art. 4, sec. 18; Cal., Const. (1879), Art. 4, sec. 24. [Similar.]

Section 20

Present Language of the Constitution:

ORIGIN AND AMENDMENTS OF BILLS. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

Original language same as present.²²

Text as given in report of committee, August 5:

Same as final (p. 242)

Section 21

Present Language of the Constitution:

YEAS AND NAYS. The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

Original language same as present.²³

Text as given in report of committee, August 5:

Same as final (p. 242)

Section 22

Present Language of the Constitution:

PASSAGE OF BILLS. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

Original language same as present.²⁴

32. Either House May Amend: Wis., Const. (1848), Art. 4, sec. 19 ("Wash. Const. (1878), Art. 4, sec. 21, identical.) [Identical except Wash. uses "in" where Wis. uses "by."]

33. Yeas and Nays: Wis., Const. (1848), Art. 4, sec. 20. [Identical except that Wis. adds the phrase "on any question."] U.S., Const., Art. 1, sec. 5. [Similar.]

34. Yeas and Nays in Passage of Bill: Wash., Const. (1878), Art. 4, sec. 16; Cal., Const. (1879), Art. 4, sec. 15. [Similar.] Penn., Const. (1873), Art. 3, sec. 4. [Identical.]

Text as given in report of committee, August 5:

Some as final. (p. 242)

Consideration by committee of the whole, August 8:³⁵

Motion: Stiles moved to prevent a bill being introduced within the last ten days of the session.

Action: Motion lost 24 to 12. Stiles raised a point of order that a quorum was not present. The chair said a quorum was not necessary in committee of the whole.

Motion: Turner moved that the words "majority vote" be stricken.

Action: Motion lost.

Motion: Power moved to insert a provision that a majority of those present could pass a bill.

Action: Motion lost.

Section 23

Present Language of the Constitution:

COMPENSATION OF MEMBERS. Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of the meeting of the legislature, on the most usual route. (As to compensation of members this section is repealed by the 20th Amendment. See Art. 23 for compensation of state officers.)

Original language same as present.³⁶

Text as given in report of committee, August 5:

Same as final. (p. 242)

Consideration by committee of the whole, August 8:³⁷

Motion: Sharpstein moved to pay (Ledger says three hundred dollars; Times says two hundred dollars) for each regular

³⁵ Times, Ledger, August 9, 1889.

³⁶ Compensation of Members: Wis., Const. (1848), Art. 4, sec. 21. [Identical.] Diverse: Wash., Const. (1878), Art. 4, sec. 22. [Identical.]

³⁷ Times, Ledger, August 9, 1889.

session plus ten cents per mile coming and going, and five dollars a day for special sessions, or called meetings, plus mileage.

Action: Motion lost.

Motion: Power moved to increase the per diem to eight dollars.

Motion: Sharpstein moved to amend to four dollars.

Action: Both motions lost.

Motion: Power moved that the Legislature be authorized to increase or decrease the per diem.

Action: Motion lost.

Motion: Govey moved a substitute allowing the Legislature to fix the salary.

Action: Motion lost.

Final action by Convention, August 9:

Motion: Suksdorf moved to insert "eight" for "five."

Motion: Sharpstein moved to amend by inserting "four" instead of "five."

Action: Sharpstein's motion lost, and a vote was taken on Suksdorf's motion which lost 50 to 4. (p. 307)

Voting for: Dyer, Glascock, Suksdorf, Turner. Absent and not voting: Allen, Browne, Buchanan, Conneys, Daltam, Dickey, Dunbar, Gray, Hungate, Jamieson, Jeffs, Kellogg, McCroskey, McDonald, Neece, Power, Shoudy, Stevenson, E. H. Sullivan, and Willison.

Section 24

Present Language of the Constitution:

LOTTERIES AND DIVORCE. The legislature shall never authorize any lottery or grant any divorce.

Original language same as present.³⁸

Text as given in report of committee August 5:

Same as final. (p. 242)

³⁸ Lottery: Wis., Const. (1848), Art. 4, sec. 24. [Identical.] Divorce: Wash., Const. (1878), Art. 4, sec. 22. [Identical.] (1873) adds "the sale of lottery tickets shall be by law."

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: 17

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

18. Governor May Remit Fines, etc: Ore. Const. (1857), Art. 6, sec. 14 (Hill Prop. Wash. Const., Art. 5, sec. 12, identical with Ore.). [Identical.]

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 hereinafore 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, Govey, and E. H. Sullivan wanted

¹⁹ Duties of Governor in regard to enactment of laws: Ill. 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. (1878), Art. 7, sec. 7. [Similar Veto of Individual Sections.] Ill. Prop. Wash. Const., Art. 5, sec. 15. [Almost identical; Ore. did not add this clause until 1920.]

²⁰ Reviewer, July 26; Times, Ledger, July 27; Argus, August 1; Standard, August 2, 1893.

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. Govey 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. Saksdorf 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: Griffiths 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. Goodman 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: Govey 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, Griffiths, Hicks, Hungate, Jeffs, Jones, Kinneer, Manly, McElroy, R. S. More, Newton, J. M. Reed, P. C. Sullivan, Tibbets, Warner, Weir, Willison. Not voting: Browne, Govey, 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)

Voting against: Allen, Clothier, Comegys, Crowley, Durie, Fairweather, Godman, Griffiths, Henry, Hicks, Hungate, Jeffs, Jones, Kinneer, Manly, McElroy, McReavey, Mires, R. S. More, J. M. Reed, Sharpstein, Severson, Sturdevant, E. H. Sullivan, P. C. Sullivan, Tibbets, Van Name, Warner, Weir, Weisenburger, West, Willison and Winsor. Not voting: Browne, Govey, Kellogg, Newton, and Shoudy. On leave: Glascock and Morgans.

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)

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Voting for: Allen, Blalock, Cosgrove, Crowley, Dickey, Dunbar, Dyer, Eldridge, Eshelman, Fay, Govey, Gray, Hayton, Henry, Jeffs, Jones, Joy, Kellogg, Lillis, Lindsay, Newton, Power, J. M. Reed, Shoudy, Shiles, Saksdorf, E. H. Sullivan, P. C. Sullivan, Tibbets, Warner, and Winsor. Not voting: Browne. On leave: Glascock and Morgans.

Discussion as follows:²¹

For: Shiles 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 Shiles 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)

Voting for: Berry, Blalock, Clothier, Durie, Godman, Griffiths, Jeffs, Kinneer, Manly, McCroskey, McElroy, Mires, J. E. Moore, R. S. More, Neace, Prosser, Schooley, Tibbets, Turner, Van Name. Not voting: McReavey, and T. M. Reed. On leave: Browne, Cosgrove, Glascock, Morgans, Newton and Travis.

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

²¹ Kovser, July 27, 1889.
²² *Ibid.*

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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:²³

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:²⁴

Against: Griffiths 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, Govey, E. H. Sullivan, and Allen also debated the motion but does not give their positions.

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.

23. *Ibid.*

24. *Ibid.*

Original language same as present.²⁵

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:²⁶

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 26:²⁷

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 13 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.

25. Vacancies Filled by Appointment; Hill, Prop. Wash. Const., Art. 5, sec. 16. [Identical.]

26. Salary of Governor: Varies in all constitutions which specifically provide the amount of the salary.

27. Review, July 27, 1898.