



## Wisconsin's Constitutional Conventions

### ACHIEVING STATEHOOD

Whoever said it would be easy to become a state? The Northwest Ordinance of 1787 established the criteria under which a territory could achieve full statehood: a territory with at least 60,000 inhabitants could, after passing its own constitution, apply to become a state. By 1845, the territory that would become Wisconsin easily surpassed the population requirement, with around 155,000 inhabitants. Passing the Wisconsin Constitution, however, would prove more difficult.

### FIRST CONSTITUTIONAL CONVENTION

**Delegates.** In October 1846, Wisconsin territory Governor Henry Dodge convened the first meeting of delegates who were to draft the Wisconsin Constitution. Democrats made up a large majority of the group gathered: of 121 delegates, 103 were Democrats and 18 were Whigs. Within the Democratic Party, however, there were vast ideological differences. Many of the Democratic delegates, known as the “Barnburners,” were socially progressive and wanted the new constitution to encompass sweeping social and economic reforms. However, a vocal minority, known as the “Hunkers,” was more conservative, and determined to keep the more controversial economic and social reforms out of the constitution. The stage was set for a showdown.

**Progressive social and economic agenda.** Much of the Wisconsin Constitution drafted at the first constitutional convention was noncontroversial. The Wisconsin delegation based its bill of rights on the federal Bill of Rights, but added provisions to ban slavery in Wisconsin and to afford

immigrants in the state the same property rights enjoyed by U.S. citizens. Further, the Wisconsin Constitution featured a relatively weak executive branch, with its governor elected to two-year terms, and a relatively weak legislature that was subject to an executive veto of the laws it passed. The legislature could override a veto with a two-thirds vote in each house—a compromise that mirrors the federal system. After some debate, the Barnburners successfully added a provision that called for state judges to be elected by the people and not appointed by either the governor or the legislature. Other, more contentious issues lay ahead.

### *Anti-banking, pro-consumer articles.*

At the time Wisconsin was poised to become a state, many of the more progressive-minded delegates feared that the more well-established eastern states would exert undue influence on the state’s business and economic affairs. The eastern states had capital, strong markets, and well-established manufacturers upon which territories like Wisconsin depended. To minimize the potential influence of the eastern states and capitalist ventures in general, the Barnburners proposed that the constitution include sweeping consumer protections. The most controversial of these was an anti-banking article.

The anti-banking article prohibited the legislature from creating or approving any bank in Wisconsin, banned the business of banking, and called for all paper money to be quickly phased out of use in the state.

The Barnburners believed that an economy based on silver and gold offered the most secure economy for consumers and placed the legislature beyond the potentially corrupting influence of the banking industry. The Whigs and Hunkers vehemently disagreed, and although the anti-banking articles passed by a 79–27 vote, efforts to water down the proposal began to surface almost immediately. None of the efforts passed, but

---

***In March 1848, Wisconsin voters approved the second proposed Wisconsin Constitution, 72–28 percent. Wisconsin became the thirtieth state in the Union on May 19, 1848.***

---

by the time the proposed constitution was sent for voter approval, the anti-banking article had lost much favor, even within the Democratic Party.

**Homestead exemption.** Next on the Barnburners’ agenda was a provision designed to protect consumers from losing everything to creditors in the event of bankruptcy or other financial trouble. A homestead exemption would protect up to \$1,000 of equity in a family’s home from the reach of creditors. Despite strong opposition from delegates who believed that a homestead exemption would violate contract law and give refuge to “scoundrels” who sought to defraud creditors, the homestead exemption article passed by a vote of 68–27.

**Married women’s property rights.** Closely aligned with the homestead exemption was an article that would allow a married woman to hold and control her own property, and to protect her property from her

husband's creditors. Opponents cited the same fears that the provision would violate contract law, harm creditors, and encourage fraud. In addition, opponents argued that allowing married women to hold and control property would violate the sanctity of a husband's primacy in marriage and debase women by subjecting them to the male domain of commerce. Despite these arguments, the married women's property article passed by a vote of 58–37.

***African American voting rights.*** The question of whether African Americans living in Wisconsin should be allowed to vote stirred much controversy among the delegates. Even among the Barnburners, the issue was contentious, with only some of the most progressive delegates advocating suffrage for African Americans. Opponents of suffrage for this population were vocal and insisted that putting an article in the constitution allowing African Americans to vote would doom the constitution to failure when put to a popular vote.

After much debate, a delegate proposed a compromise: an article allowing African Americans to vote in Wisconsin would be submitted to a popular vote separately from the rest of the proposed constitution. In the closest vote held at the constitutional convention, the compromise passed, 53–46.

***The people of Wisconsin vote.*** In December 1846, the constitutional convention concluded, and the proposed constitution was submitted to a popular vote. If ratified by the people, the constitution would become the law of the land and Wisconsin could become a full state. Over the next few months, proponents of the constitution campaigned hard for passage. Despite their efforts, in April 1847, the people rejected the proposed constitution, 59–41 percent. The separate article on suffrage for African Americans fared even worse, losing 66–34 percent.

## SECOND CONSTITUTIONAL CONVENTION

***Delegates.*** In October 1847, Wisconsin territory Governor Dodge called together a second constitutional convention. The delegates this time were fewer in number and more evenly split among party lines: 43 Democrats, 25 Whigs, and 3 independents.

***Areas of controversy and defeat of first constitution.*** The delegates agreed that most of the articles of the proposed constitution were supported by the people and acknowledged that the articles that had generated the most controversy during the first constitutional convention were responsible, in large part, for the defeat of the constitution. Thus the delegates at the second constitutional convention took a hard look at the anti-banking article, the homestead exemption, married women's property rights, and the issue of suffrage for African Americans.

***Anti-banking, pro-consumer articles.*** A majority of the delegates to the second constitutional convention favored at least some sort of banking system in Wisconsin that did not rely entirely on silver and gold. The delegates could not agree, however, on the details of what kind of banking would be allowed or what would be a proper amount of oversight of the banks. After more than a month of discussion, the delegates agreed on a compromise: at the time the constitution was put to a popular vote, a separate ballot would ask the people to vote "bank" or "no bank." If the popular vote supported "bank," then the legislature could enact regulatory banking laws, but no banking law would go into effect until it was ratified by voters in a referendum.

***Homestead exemption.*** The homestead exemption, another Barnburner favorite, lost some favor by the time the second constitutional convention convened. Rather than write a specific dollar amount into the constitution, a majority of the delegates favored an article that required the legislature to

draft a homestead exemption but left the details to the legislators. In the end, the second constitution contained an article that required the legislature to protect the "necessary comforts of life" by exempting them from seizure by creditors.

***Married women's property rights.*** Many delegates perceived this as an issue so divisive that, if included in the second constitution, voters would ensure that this document also failed. The second constitution contained no provisions regarding property rights for married women.

***African American voting rights.*** Despite its lopsided defeat at the hands of voters the previous year, many Barnburners continued to press for suffrage for African Americans. After much debate, the delegates passed a compromise that would authorize the legislature to allow African Americans to vote, subject to a popular referendum.

***The people of Wisconsin vote again.*** In February 1848, the second constitutional convention concluded, and again a proposed constitution was sent forth for public approval or rejection. Unlike after the first constitutional convention, when some of the delegates publicly denounced their own work, the delegates to the second constitutional convention were proud of the document and actively sought its ratification. There was a general sense that the second constitutional convention had ironed out the wrinkles that plagued the first. Wisconsin voters approved the proposed Wisconsin Constitution, 72–28 percent, in March 1848. On May 19, 1848, Wisconsin became the thirtieth state in the Union. Since then, the Wisconsin Constitution has been amended over 100 times, but the original constitution is still in use.

---

By Peggy Hurley, Legislative Attorney  
Published by the LRB, Madison WI  
<http://www.legis.state.wi.us/lrb/GW>  
No. 23, September 2007

# Governing Wisconsin: "Wisconsin's Constitutional Conventions"

## Study Questions

1	Describe the difference between the "Hunkers" and the "Barnburners."	
2	When the second draft of the constitution was proposed in 1848, what change did it make from the first draft regarding banking laws?	
3	Why would the Barnburners prefer elected judges and the Hunkers prefer appointed judges?	
4	How would you characterize the general difference between the proposed constitution of 1846 and the 1848 proposal?	
5	If the first proposed constitution had been adopted in 1846, what effect would the non-banking clause have had on Wisconsin's economy?	
6	Does the constitution of 1848 serve the state well?	

# Governing Wisconsin: "Wisconsin's Constitutional Conventions"

## Study Questions in the Cognitive Domain

1	Describe the difference between the “Hunkers” and the “Barnburners.”	Barnburners were social progressives who promoted sweeping social and economic reforms. Hunkers made up a conservative faction that preferred a constitution that did not attempt to change social norms.	Cognition
2	When the second draft of the constitution was proposed in 1848, what change did it make from the first draft regarding banking laws?	In 1846, the first proposed constitution outlawed banking. But, in 1848, the second proposed constitution allowed the people to vote on whether the state would allow banks.	Comprehension
3	Why would the Barnburners prefer elected judges and the Hunkers prefer appointed judges?	Elected judges are chosen directly by the people, while appointed judges may tend to be more conservative or elitist.	Application
4	How would you characterize the general difference between the proposed constitution of 1846 and the 1848 proposal?	The second proposal is generally more conservative, with less protection for civil rights, and exhibits less fear of the eastern establishment.	Analysis
5	If the first proposed constitution had been adopted in 1846, what effect would the non-banking clause have had on Wisconsin’s economy?	The economy would have remained partly cash-based and partly barter-based, and would have developed slowly. It is likely the constitution would have been amended to permit banking.	Synthesis
6	Does the constitution of 1848 serve the state well?	Yes. Although it has been amended many times, the core of the document is intact and provides for a stable, yet responsive, state government.	Evaluation