

Part 4 – From Territory to Statehood: When Lincoln Stalled, But Could Not Stop, Wisconsin Statehood

BY HON. HANNAH C. DUGAN

The most contentious amendment, offered by an Illinois representative, launched an existential debate generally about statehood and specifically about the fate of the proposed “Wisconsin.”

This article, focusing on Congress’s consideration of the Wisconsin-statehood bill, is the fourth and final in a short series honoring the 175th anniversary of Wisconsin’s admission as the 30th state in the United States on May 29, 1848.

“Wisconsin” was on the cusp of creation.¹ For six decades, residents wrestled with and wrangled about governance, first as a “western territory” and then as the “Wisconsin Territory,” always following the strictures of the Northwest Ordinance of 1787. In the years 1846-1848, the territory’s constitutional conventioners designed – not once but twice – a state government and constitution as congressionally authorized under the 1846 Enabling Act. After declining the first proposed constitution, the electorate voted in March 1848 for the second, less progressive and more conventional, state government design; it passed with less controversy and greater expediency.

A month before the March 1848 ratification vote, the territory’s congressional delegate, John H. Tweedy,² traveled to Washington, D.C., and submitted the bill for admission. The submission of the bill triggered the various procedural steps necessary for congressional ratification of the proposed “Wisconsin” as the 30th state.³ The petition for statehood portended that congressional debate essentially would be procedural (or at least uncontroversial) and presumably limited to a few already appended land-grant resolutions. After all, the 1846 Enabling Act specified Wisconsin’s geographic boundaries, and the two constitutional conventions and two popular votes thoroughly vetted the government’s structure and principles.

However, such would not be the case. When the committee of the whole

convened, the members faced unexpected floor amendments. The most contentious amendment, offered by an Illinois representative, launched an existential debate generally about statehood and specifically about the fate of the proposed “Wisconsin.” Then, after several days of debate leading to the House’s affirming ratification vote, a motion for reconsideration by another Illinois representative temporarily stalled statehood.

The Troublesome Amendment to “Trim” the Voter-Ratified Boundaries of “Wisconsin”

In April 1848, the United States consisted of 29 states: 13 states derived from the



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Articles of Confederation, 12 ratified under the U.S. Constitution, and four ratified under both the strictures of the Northwest Ordinance of 1787 and the statehood provisions of the U.S. Constitution. Wisconsin would be the fifth and last state carved from the “western territory,” even though swaths of land parcels (currently part of eastern Minnesota) had not been included in any state’s boundaries. Wisconsin Territory voters had ratified boundaries consistent with the 1846 Enabling Act; they had complied with the other “rules” of the Ordinance.

However, Wisconsin statehood was put into constitutional crosshairs by Robert Smith, an Illinois representative elected as an “Independent Democrat.” During the floor debate of the statehood bill, Smith proposed his surprise amendment: he sought to trim Wisconsin’s northwest boundary to essentially exclude the St. Croix Valley.⁴ The proposed

Resource Information

- Arthur J. Dodge, *Wisconsin's Admission as a State: The History of the Enabling and Admission Acts in the XXIXth and XXXth Congresses* (the Milwaukee Sentinel & the St. Paul Pioneer Press 1898).
- Library of Congress, *Primary Documents in American History: Northwest Ordinance* <https://www.loc.gov/rr/program//bib/ourdocs/northwest.html> (archived from the original on Dec. 11, 2019). Retrieved 6 May 2023.
- Milo M. Quaife, *The Attainment of Statehood* (Madison, State Historical Society of Wisconsin, 1928).
- U.S. Congress, *The Congressional Globe, Volume 18: Thirtieth Congress, First Session* (1848), <https://digital.library.unt.edu/ark:/67531/metadc30771/hits/> (last visited Sept. 29, 2023).
- University of Wisconsin Law School, State Democracy Research Initiative, <https://50constitutions.org/wi> (last visited Sept. 30, 2023).
- Frederic L. Paxson, *A Constitution of Democracy - Wisconsin, 1847*, Mississippi Valley Historical Rev., Vol. 2, No. 1 (June 1915), <https://www.jstor.org/stable/1889103> (visited July 1, 2023). **WL**

amendment was countered with two legal points: 1) whether such amendment was possible given that the Wisconsin Territory’s electorate had ratified its

(second) constitution to include the bill’s specific boundaries and 2) whether the Enabling Act that defined the boundaries for the territory could be ignored or even altered after the fact. Would a border alteration require remanding the statehood petition for a new vote by the territory’s electorate under the Ordinance and the Act, or could Congress alter the boundaries sua sponte?

However, two more significant issues overlay the debate about the specific boundaries of the proposed state: 1) the authorities and requirements of the Ordinance versus the subsequent authorities to admit states under the U.S. Constitution,⁵ and 2) unclear consequences under the Ordinance or the Constitution if Congress did not admit “Wisconsin.” Debating legislators speculated: If “Wisconsin” were not admitted under the Ordinance, would its statehood default and depend upon the admission under the Constitution – thereby abandoning the Ordinance’s guaranteed civil and religious liberties and public land protections?

During the heated debate, the representatives posed a thornier question: If “Wisconsin” were not admitted to the United States – as proposed under the Ordinance – would it remain a territory

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ad infinitum? More pointedly it was asked that if "Wisconsin" could or would not be admitted under the bill as drafted, could "Wisconsin" potentially function as its own "independent empire"? Further, could "Wisconsin" as a perpetual territory or as an "independent power" merely swallow up the remaining western territory land by default or by claim?

To wit, at debate was the governance of what is today most of northeast Minnesota.⁶ If the amendment to alter the Wisconsin Territory were allowed without returning the proposal to the electorate, could the western border be altered to snatch all the "remaining" land? The potential size of the proposed state was the overriding concern of objecting delegates. If "Wisconsin" could or should subsume the remaining western territory, its land grant would be nearly twice as large as any other state and Wisconsin would be larger than each of the other 29 states.

Articles in the 'From Territory to Statehood' Legal History Series

This four-part series honors the 175th anniversary of Wisconsin's admission as the 30th state in the United States on May 29, 1848.

- **Part 1 – From Territory to Statehood: The Creation of Wisconsin**, 96 Wis. Law. 39 (June 2023). This article discussed the Northwest Ordinance of 1787, the petition establishing the Wisconsin Territory, and the referendum authorizing the initiation of the process for Wisconsin Statehood. 96 Wis. Law. 39 (June 2023).
- **Part 2 – From Territory to Statehood: The 1846 Enactment of Wisconsin's 'Enabling Act'**, 96 Wis. Law. 49 (July/Aug. 2023). This article discussed passage of the Enabling Act.
- **Part 3 – From Territory to Statehood: A Tale of Two Constitutions**, 96 Wis. Law. 47 (Sept. 2023). This article discussed the two-year process and two drafted constitutions sent for voter ratification of a state schemata and governing document.
- **Part 4 – From Territory to Statehood: When Lincoln Stalled, But Could Not Stop, Wisconsin Statehood**, 96 Wis. Law. 43 (Dec. 2023). **WL**

In the end, Smith's amendment failed. The bill's other pending amendments and resolutions were decided.⁷ The

approved bill was readied to be sent to the Senate, when Abraham Lincoln arose.



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Another Illinois Representative Delays “Wisconsin” Statehood

Abraham Lincoln, who was a member of the Whig party, called for a motion to reconsider.⁸ As recorded in the Congressional Globe on May 11, 1848, he soon made clear that he did not seek to offer an amendment or a controversy or to even switch any of the votes. Rather, he sought to give himself an opportunity to comment on specific colleagues’ expressed opinions during the debates on public land policies. Lincoln acknowledged that the public land grants and pricing “did not look to persons east of the mountains as it did to those who lived among the public lands.” He favorably reviewed the “reserve” grants of federal lands to the states and territories as both a means for internal improvements and a means to enhance the value of the unsold land. Lincoln discussed the policies related to types of public land allocations and specifically about the variations in price per acre – noting the price deviations were to Wisconsin’s detriment.

In a lengthy speech, Lincoln’s remarks were recorded that:

“[T]he Senate during the present session had passed a bill making appropriations of land ... for the benefit of the state in which he resided – the state of Illinois When that bill came here for the action of the House – it had been received and was now before the committee on public lands – he desired much to see it passed as it was if it could be put in no more favorable for the state of Illinois [that when the bill was before the House] if any member from a section of the Union in which these lands did not lie, whose interest might be less than that which he felt should propose a reduction of the price of the reserved sections [of land] to \$1.25 [per acre] he would be much obliged.”

He noted, with a tinge of irony, that “some gentlemen ... had constitutional scruples about giving money for [internal improvements] but would not hesitate to give land”; he was not one who supported such principles. Having spoken his mind, his policy positions, and his pitch for votes for cheaper public land grants for Illinois in the future, Lincoln accomplished his goals before the assembly. Lincoln withdrew his motion for reconsideration and sat down.

Epilogue

On May 27, 1848, President James K. Polk signed the bill admitting Wisconsin into the United States. On June 7, 1848, Nelson Dewey became the first governor of Wisconsin. On July 4, 1848, the 30-star flag became the official flag of the United States and remained so for three years until the admission of California in 1851. In 1863, the Wisconsin Legislature adopted an official design for Wisconsin’s state flag, at the request of Civil War field regiments.

The Wisconsin Constitution is the fifth oldest in the U.S.⁹ It has never been revised or reformed; no constitutional convention has been held in 176 years. Despite 148 amendments, the state constitution still holds at its core the DNA of the Northwest Ordinance of 1787. The idea of Wisconsin rests on its early commitment to civil rights and religious liberties, to habeas corpus and trial by jury, to public lands held in public trust, and dedicated to education. As at its creation then so today. A governmental structure and legal framework – that at its creation and so also today – continues to move the Badger State Forward. **WL**

ENDNOTES

¹The authority and procedures for western-territory statehood were codified in the Northwest Territory Act of 1787.

²Tweedy was a Yale-educated lawyer from Milwaukee and a member of the Whig party.

³Tweedy provided notice in Congress on Feb. 21, 1848, of the intention to introduce a (second) bill for Wisconsin’s admission. On March 13, 1848, the voters of the territory approved the new constitution. On March 16, 1848, President James K. Polk, via a special message, submitted the Wisconsin Constitution to Congress with accompanying documents. On March 20, 1848, Tweedy introduced the bill; on April 13, 1848, the Committee on Territories favorably reported it out, read it first and second times, and referred it to the House Committee of the Whole. On May 9, 1848, the chair called the bill for consideration; on May 11, 1848, the bill was read a third time and, after debate during several days, it passed. The Senate acted and on May 19, 1848, the bill was concurred, per admission acts of 30 H.R. 397 and 9 Stat. 233, respectively. On May 29, 1848, President Polk approved the bill for statehood.

⁴This proposed shrinking of Wisconsin’s western border came on the heels of another proposal to clip Wisconsin’s southern border so that the port city of Chicago would be in Illinois. The additional alteration of land boundaries also came on the heels of the “Toledo Wars” land grab, which resulted in slicing from Wisconsin’s northern border to satisfy Ohio’s interest and prevent Wisconsin from becoming too large. Congress moved Ohio north by pushing Michigan north to extend to both sides of the lake to encompass what is now the Upper Peninsula of Michigan. See footnote three

in Hon. Hannah C. Dugan, *Part 2 – From Territory to Statehood: The 1846 Enactment of Wisconsin’s ‘Enabling Act’*, 96 Wis. Law. 49 (July/Aug. 2023).

⁵Under the Ordinance, only three to five states could be formed from the “western territories.” “Wisconsin” would be the fifth and final state so formed. Also under the Ordinance, states had to be formed pursuant to specific criteria; such criteria were different from those outlined in the U.S. Constitution. Most notably, a state formed under the Ordinance could not permit slavery. And yet, as delegates commented on the floor debate, some states under the Ordinance ignored the Ordinance’s provision. One example was Ohio, which, after admission under the Ordinance, permitted slavery.

⁶Minnesota became a territory in 1849 and achieved statehood in 1858.

⁷Other resolutions addressed an 1838 land grant to make a canal along the Rock River (not completed) and the purchase of some reserved sections at a loss, the grant of land for internal improvements, residuals of five percent to the state from sales of public lands by the federal government, improvements and a canal along the Fox River, and directions to the clerks of courts and the judiciary respectively to transfer records and to initiate their terms. The House resolved that Wisconsin would have three representatives.

⁸Lincoln served one term in the House of Representatives (1847-1849) and was assigned to the Committee on Post Offices and Post Road and the Committee on Expenditures in the War Department. See his entire Congressional statement at <https://tinyurl.com/3dbjmxpz>.

⁹The only older state constitutions are from Massachusetts (1780), New Hampshire (1793), Vermont (1793), and Maine (1820). **WL**