

ard, Henderson, Hicks, Irion, Lumpkin, Mayfield and Scott—11.

So the section was adopted.

Mr. Cazneau moved to lay the report on the table. Lost.

Mr. Parker moved the engrossment.

Mr. Burroughs moved an adjournment to 4 o'clock, P. M.; and,

On motion of Mr. Howard, the Convention adjourned until half past 8 o'clock, to-morrow morning.

FRIDAY MORNING, Aug. 1, 1845.

The Convention met pursuant to adjournment—Prayer by the Chaplain.

Present—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young.

Quorum present—the journal of the preceding day was read and adopted.

Mr. Brown was excused from attendance on the Convention, in consequence of sickness.

Mr. Holland moved to reconsider the vote of yesterday, adopting the 4th section of the report of the committee on the Executive Department.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Bagby, Baylor, Caldwell, Cazneau, Clark, Darnell, Davis, Evans, Everts, Forbes, Gage, Horton, Holland, Hunter, Jones, Latimer of R. R., Love, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Power, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—35.

Noes—Messrs. Armstrong of R., Bache, Burroughs, Cunningham, Hemphill, Hicks, Hogg, Howard, Irion, Jewett, Kinney, Latimer of L., Lewis, Lumpkin, Lusk, Rains, Scott and Wright—18.

So the vote was reconsidered.

On motion of Mr. Ochiltree, the vote on the previous question to adopt the 4th section, was reconsidered.

Mr. Jones presented the following protest, against the adoption of the 3d section of the Executive Department, which was ordered to be spread upon the Journals :

CITY OF AUSTIN, July 31, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention :

The undersigned, one of the minority, in voting on the adoption of the 3d section of the Executive Department of the Constitution. with due deference to the opinion of the majority, begs leave to differ with them in opinion, for the following reasons :

That majorities ought to control; and although policy may in some instances justify a slight variation from the general rule, and a plurality control in local elections, that policy ought not to apply in elections for Chief Magistrate of the State. The section provides, that in elections for Governor, the candidate receiving the highest number of votes, shall be the Governor, &c.; under which provision, if there shall be more than two candidates, the presumption is strong, that none of them will receive a majority, in cases where much competition may prevail. It is not improbable, that one-fifth or one-tenth of the electors of the State may elect a Governor, who on account of his elevated station, (and the presumption that he will be the choice of a majority of the people,) is vested with power to grant reprieves and pardons, remit fines and forfeitures, and to have a controlling power in the Legislature, equal to two-thirds of the Legislative Department of the Government.

The undersigned believes, that in an independent State, the controlling power should be vested in the people, and they, or a majority of them, have the exclusive right to delegate that power; and that the aforesaid section is in direct violation of the well established principles of free Governments.

For the above reasons, and many others which might be urged, the undersigned protests against the adoption of the said section, and respectfully requests that this communication may be spread upon the journals of the Convention.

OLIVER JONES.

A communication was received from the Commissioner of the General Land Office, which, on motion of Mr. Davis, was referred to a select committee of seven members.

GENERAL LAND OFFICE, July 31, 1845,

*To the Hon. THOS. J. RUSK,
President of the Convention :*

Sir,— I have the honor to acknowledge the receipt of your note of yesterday, requesting me to make such suggestions as will enable the Convention to insert an article in the Constitution, that will cause the Legislature to take such action as will tend to facilitate the issuing of patents. In compliance with your request, I would respectfully propose the following modification of the present land system, which, if adopted, I am well convinced will fully attain the object desired by the Convention.

The territory now included within the limits of each county, should be created a land section. The sections thus created, should be divided according to territory, into four or more land districts, for each of which, the Commissioner of the General Land Office should have the power of appointing a draftsman and a surveyor, whose duty it shall be to examine the field notes of all surveys situated within the limits of their respective districts, and to correct all errors that they may discover in the same; to run divisional and connecting lines, compile maps, and do all other things that will tend to the perfecting of the land business of their respective districts, in accordance with the instructions of the Commissioner of the General Land Office. By this means, the field notes of all surveys will be returned in a correct situation for patenting; but at the present time, three of the clerks of the office are engaged in the investigation of errors, that prevent the issuing of patents, which errors, when discovered, are rectified only through means of a laborious and extensive correspondence.

I would also recommend that the following charges for patents in par money, should be substituted in lieu of those established by law at present, which are payable in promissory notes: it is conceived that they are sufficiently moderate not to prove onerous, or afford ground of complaint to any individual. The exhibit of expenses of the General Land Office, which I also submit, further shows, that this substitution, if adopted, will render that office a source of revenue, instead of a burthen to the Government, as it has been heretofore. I would further remark, that as the Land Office is now sustained by a revenue not procured through itself, the money expended for its support is unfairly appropriated, when we consider that those who obtain patents, are the only persons benefitted by that appropriation.

CHARGE FOR PATENTS.

For one league or more, - - -	\$10 00
For less than a league, and over one third, - - -	6 00
For one-third league, - - - -	4 00
For less than one-third league, - - -	3 00

These charges would make the average of about \$5 for each patent issued. About thirty patents per day are now issued, to the preclusion of other business; but about eighteen per day can be issued, and all other necessary business transacted: this would amount in a year to five thousand five hundred and eighty, which at the average charge for each, would produce the sum of \$27,900.

The expenses of the General Land Office at the present time, are as follows:

Salary of Commissioner, - - -	\$1,500 00
“ Chief Clerk, - - -	1,050 00
“ Spanish Clerk, - - -	1,050 00
Eight Assistant Clerks, \$850 each, - - -	6,800 00
For county maps and connecting surveys, - - -	1,000 00
Contingent expenses, - - - -	200 00
Stationery, - - - -	200 00
Patents, - - - - -	1,000 00
Surveying Land Scrip, - - -	500 00
	<hr/>
	\$14,300 00

This deducted from the above amount, leaves \$13,500; this amount would more than pay the expenses of the Draftsman and Surveyor proposed for each district. The three clerks who are now engaged in the investigation of erroneous field-notes, could, under the system herein proposed, be employed in making out patents, and as they could make about sixteen per day, this would produce the additional revenue of \$4,960.

Provision should also be made for the return of the field-notes of all surveys to the General Land Office within a reasonable length of time—say three or five years—and the holders of all land claims that have emanated from this Government, should be compelled either to have those claims surveyed and the field-notes returned to this office within a reasonable length of time, or in default of their doing so, they should forfeit such claims. If this measure should be adopted, the district officers proposed, could at the expiration of the time limited for the return of field-

notes, be dispensed with, and the citizens of the country could with certainty obtain their patents on their arrival at the General Land Office.

I am with consideration of the highest respect,
Your obedient servant.

THOMAS W. WARD.

Mr. Darnell moved to reconsider the vote adopting the section to exempt Ministers of the Gospel from working on roads, &c.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Baylor, Bagby, Burroughs, Cunningham, Darnell, Everts, Irion, Lumpkin and Scott—10.

Noes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Bache, Caldwell, Cazneau, Cuney, Clark, Davis, Evans, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Rains, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—44.

So the motion to reconsider was lost.

Mr. Lewis gave notice, that he would at some future day, move a reconsideration of the vote, by which the 15th section of the Executive Department of the Government was adopted.

On motion of Mr. Van Zandt, the report of the committee on the Executive Department, was taken up.

Mr. Young moved to strike out all after the word "age" in the 4th section.

As a substitute for Mr. Young's motion, Mr. Horton moved to strike out "four" before the word "years," and insert "three" in the original report.

Mr. Henderson moved to recommit the report to the committee on the Executive Department. Lost.

On motion of Mr. Ochiltree, a call of the Convention was made.

On motion, the call was suspended.

The ayes and noes being called on the adoption of Mr. Horton's substitute, were as follows:

Ayes—Messrs. Armstrong of J., Baylor, Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Holland, Jewett, Kinney, Latimer of R. R., Lewis, Love, Lusk, McGowan, McNeill, Miller, Parker, Scott, Smyth, Standefer, Tarrant, Ochiltree and White—33.

Noes—Messrs. President Rusk, Anderson, Armstrong of R

Bache, Clark, Cunningham, Evans, Everts, Hicks, Howard, Hunter, Irion, Jones, Latimer of L., Lumpkin, Lipscomb, Navarro, Power, Rains, Runnels, Van Zandt, Wright and Young—23.

So the substitute was adopted.

Mr. Van Zandt offered the following amendment to the 4th section, as a substitute for Mr. Horton's amendment :

"Shall be a citizen of the United States, and of this State, and shall have resided within the same five years preceding his election, or shall be a citizen of this State at the time of the adoption of this Constitution."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Burroughs, Clark, Davis, Evans, Everts, Hunter, McNeill, Navarro, Power, Runnels, Scott, Van Zandt, White and Young—15.

Noes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Caldwell, Cazneau, Cuney, Cunningham, Darnell, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Parker, Rains, Smyth, Standefer, Tarrant, Ochiltree and Wright—41.

So the substitute was rejected.

A division of Mr. Horton's motion to strike out "four" and insert "three," being called for, the question on striking out was taken.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Baylor, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Holland, Hunter, Irion, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Runnels, Scott, Smyth, Standefer, Ochiltree, White and Young—39.

Noes—Messrs. Armstrong of R., Bagby, Bache, Clark, Cunningham, Hicks, Howard, Jewett, Jones, Latimer of L., Latimer of R. R., Navarro, Power, Rains, Tarrant, Van Zandt and Wright—17.

So the word "four" was stricken out.

Various motions were made to fill the blank with "five," "six," "ten," "fifteen," and "twenty."

Mr. Lipscomb moved to adjourn until 8 o'clock to-morrow morning. Lost.

Mr. Lipscomb moved to adjourn till 4 o'clock, P. M. **Lost.**

Mr. Henderson moved to fill the blank with "nineteen."

Upon which the ayes and noes were called, and stood as follows :

Ayes—Messrs. Anderson, Evans, Henderson, Howard and Tarrant—5.

Noes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lipscomb, Lusk, Lumpkin, McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White, Wright and Young—51.

So the motion was lost.

Mr. Hunter moved to fill the blank with "six." **Lost.**

Mr. Cunningham moved to fill the blank with "five."

Upon which the ayes and noes were called, and stood as follows :

Ayes—Messrs. Armstrong of R., Clark, Cunningham, Evans, Hicks, Hunter, Irion, Kinney, Navarro, Ochiltree, Van Zandt and Wright—12.

Noes—Messrs. President Rusk, Anderson, Armstrong of J., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Holland, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, White and Young—44.

Lost.

The question then recurred upon filling the blank with the word "three" before "years" in the seventh line of the 4th section.

Upon which the ayes and noes were called, and stood as follows :

Ayes—Messrs. President Rusk, Anderson, Armstrong of J., Baylor, Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Holland, Jewett, Jones, Kinney, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and White—43.

Noes—Messrs. Armstrong of R., Bache, Clark, Evans, Everts,

Hicks, Hunter, Irion, Latimer of L., Navarro, Van Zandt, Wright and Young—13.

Carried.

Mr. Rusk offered the following amendment to the 4th section:

“Provided, this section shall not be so construed as to prevent any person who may be a citizen of Texas at the adoption of this Constitution, from being eligible to the office of Governor.”

Mr. Lusk moved the previous question:

Mr. White moved to adjourn until 4 o'clock, P. M. Lost.

The question, shall the main question be now put? was carried.

The main question being the adoption of the section without the amendment, was put and carried.

Mr. Howard offered the following as an additional section:

“No member of this Convention shall be eligible to the office of Governor, Lieut. Governor, Judge, Secretary of State, Treasurer, or Attorney General, at the first election or appointment under this Constitution.

Mr. Love offered the following as a substitute for the additional section offered by Mr. Howard:

“No member of this Convention shall be eligible to fill any office created by this Constitution, for one year after its adoption by the people.”

Which was accepted by Mr. Howard.

Mr. Rusk moved to refer the bill and amendments to a special committee of three. Lost.

Mr. Wright moved the previous question, which was carried.

The main question being the engrossment of the bill, the question was put and carried.

On motion, the Convention adjourned until 4 o'clock, P. M.

4 O'CLOCK, P. M.

The Convention met pursuant to adjournment—roll called—quorum present.

On motion of Mr. Gage, the report of the committee on “General Provisions” was taken up.

Mr. Lewis moved that the Convention resolve itself into a Committee of the Whole. Lost.

In 1st section, Mr. Mayfield moved to strike out all that portion of the path or affirmation, that requires members of the Legislature, and all officers, to swear that they have not fought a duel, nor acted as second, &c.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President Rusk, Armstrong of J., Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Hemphill, Irion, Jones, Kinney, Love, Mayfield, Navarro, Power, Runnels, Tarrant—18.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Bache, Cunningham, Davis, Evans, Everts, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Rains, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White, Wright and Young—37.

Motion lost.

In the same section, 7th line, Mr. Evans moved to strike out the words "being a citizen of this State." Lost.

Mr. Cunningham moved to insert after the word "officers" in section 1st, first line, the words "of this State." Lost.

Mr. Hemphill moved to insert in same section, tenth line, after the word "offending," "nor have I committed any other high crimes."

Mr. Anderson moved to amend by inserting "peccadillos."—Lost.

Mr. Young moved the previous question.

The question, shall the main question be now taken? was put and carried.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Bagby, Bache, Burroughs, Clark, Cunningham, Cuney, Davis, Evans, Everts, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Kinney, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, McNeill, Miller, Parker, Rains, Smyth, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—37.

Noes—Messrs. President Rusk, Armstrong of J., Baylor, Caldwell, Cazneau, Darnell, Hemphill, Irion, Jewett, Jones, Love, Lusk, Mayfield, Navarro, Power, Runnels, Scott and Standefer—18. Carried.

The main question being the adoption of the section, the question was put and carried.

In section 2d, fourth line, Mr. Runnels moved to strike out "confession in open court," and insert the words "voluntary confession." Lost, and section adopted.

On motion of Mr. Anderson, the words "or misdemeanors" was stricken from the third line of the 4th section.

On motion of Mr. Davis, the words "serving on juries," were inserted in the first line of the 4th section, after the word "office."

Mr. Burroughs moved to strike out all of the 4th section down to the word "misdemeanor" in third line.

Lost, and section adopted.

Mr. Cazneau moved to strike out the section between the 4th and fifth, which excludes from office all persons engaged in fighting a duel.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President Rusk, Armstrong of J., Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Hemphill, Irion, Jones, Kinney, Love, Mayfield, Miller, Navarro, Power and Runnels—18.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Bache, Cunningham, Davis, Evans, Everts, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Parker, Rains, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White, Wright and Young—36.

Lost.

Mr. Jones moved to strike out the word "either," before the words "within the State," and the words "or out of it," after the word "State" in third line of 4th section.

Mr. Everts moved to amend the amendment of Mr. Jones, by striking out the words "either within" in third line, and insert the words "or who shall leave this State with an intention to fight a duel, and who shall actually so fight out of the State."

Mr. Davis moved the previous question.

The question, shall the main question be now taken? was put.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Baylor, Bagby, Bache, Burroughs, Davis, Evans, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Navarro, Parker, Rains, Scott, Standefer, Ochiltree, Van Zandt, White, Wright and Young—35.

Noes—Messrs. President Rusk, Armstrong of J., Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Everts, Hemphill, Irion, Jones, Kinney, Love, Mayfield, Miller, Power, Runnels, Smyth and Tarrant—20. Carried.

The main question was the adoption of the section, which was carried.

In the 5th section, Mr. Love moved to strike out the words "by ballot," in first line, and insert "*viva voce.*"

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Bache, Barrroughs, Caldwell, Cazneau, Cunningham, Cuney, Evans, Forbes, Henderson, Jones, Love, Lipscomb, Mayfield, Miller, Power, Tarrant, White and Wright—21.

Noes—Messrs. President Rusk, Baylor, Bagby, Clark, Darnell, Davis, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, McNeill, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, Van Zandt and Young—35.

So the motion was lost.

Mr. Howard moved to strike out after the word "ballot" in the first line, the words "until the Legislature shall otherwise direct."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President Rusk, Bagby, Clark, Darnell, Davis, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Kinney, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McNeill, Navarro, Rains, Van Zandt and Young—26.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bache, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Evans, Forbes, Henderson, Jewett, Jones, Love, Lipscomb, Mayfield, McGowan, Miller, Parker, Power, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White and Wright—29.

So the motion was lost.

The section was then adopted by the Convention.

Mr. Mayfield moved to lay the report on the table. Lost.

Mr. Ochiltree moved to insert in 6th section, third line, after the words "two years," "and no appropriation for private or individual purposes, shall be made, without the concurrence of two-thirds of both Houses of the Legislature."

Adopted.

In same section, Mr. Mayfield moved to strike out the words "nor shall any appropriation be made for a longer term than two years."

On motion of Mr. Evans, the Convention adjourned until half past 8 o'clock, to-morrow morning.

Journals of the Convention, Assembled at the City of Austin on the Fourth of July, 1845, for the Purpose of Framing a Constitution for the State of Texas. - Link Page

Previous	July 31, 1845	136a
--------------------------	-------------------------------	----------------------

Next	Aug 2, 1845	154
----------------------	-----------------------------	---------------------

[Return to Electronic Index Page](#)