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MR. H. W. WADE, of Hunt, thought 200 copies would be enough.

MR. BROWN argued that 400 copies would leave them an over-plus number to send to their constituents. His motion was carried.

MR. COOK, from the Committee on Printing, reported that they had, in accordance with a resolution from the Convention, contracted for the publication of the daily Journal, and had awarded the contract to J. D. Logan for five copies to be supplied to each member, at a total cost of \$11.25 a day.

On motion of Mr. Mills the report was adopted.

MR. MILLS presented a resolution providing that the Constitutional Convention, having reduced their salaries three-eighths of the original amount paid to legislators, and having promised their constituents the most rigid retrenchment, go on record as believing that the salaries of all State officers should be similarly reduced. The resolution would have advised the reduction of the Governor's salary from \$5,000 to \$3,125, that of Supreme Court judges from \$4,500 to \$2,812.50, and others in like proportion.

MR. FLOURNOY moved to refer the resolution to the Committee on Agriculture and Stock-raising.

MR. MARTIN, of Navarro, moved as a substitute that it be referred to the Committee on Executive Department, and his motion carried.

#### FOURTEENTH DAY

TUESDAY, SEPTEMBER 21, 1875<sup>21</sup>

##### *Postponement of Election*

Upon the motion of Mr. Brown, Mr. West read the majority report of the special committee on the resolution to postpone the election of December, 1875, to a future date.<sup>22</sup> The report is as follows: "HON. E. B. PICKETT, *Chairman of the Convention*:

"The undersigned, constituting a majority of the select committee to whom was referred a resolution, and also a proposed ordinance providing for the postponement of the election for members of the Legislature and other officers, to be held according to

<sup>21</sup>The proceedings for this day were taken from the *State Gazette* (Austin), September 22, 1875

<sup>22</sup>The majority and minority reports are printed in full because of the great interest created in the Convention and among the people of the State, also because of the importance of the constitutional problems involved

the existing laws of the State, on the first Tuesday of December, 1875, beg leave to make the following report:

"They have carefully considered the subject and have availed themselves of all sources of information that were accessible to them.

"In the matter under consideration, they have arrived at the conclusion that this Convention has the power, and that it is their duty to the people of the State to postpone said election, and the assembling of the Legislature in January next.

"That most of the changes recommended will be adopted by this body and accepted by the people of the State, there is no doubt.

"While then this body, in the plain discharge of its duty, is in the act of thoroughly reforming and reorganizing this branch of the Government, it seems to the majority of the committee, not only to be proper, but to constitute an important part of the duty enjoined on them by their election, to postpone for the present, the meeting of the Legislature, when its assembling in January next could have no other effect than the creating of confusion, conflict, embarrassment, and add greatly to the expense of the people of the State, without any corresponding benefit to be derived from their assembling together.

"It is to be presumed that the Legislature that passed the joint resolution providing for taking the popular vote as to the assembling of the present Convention, would have provided a mode of obviating the difficulties and embarrassments attending an election in December, to the convening of the Legislature in January next.

"But it was a subject practically beyond legislative control, for it was impossible for that body to foresee and in advance determine at what period this body would end its labors, or on what day it would submit its work to the people. No action could be taken by them, because it was a matter for which they could not provide. It was a subject intimately connected with that of the submission of the present work of the present Convention to the people, a duty which specially devolves upon the Convention. If they believe the election in December next presents an obstruction, or greatly embarrasses the people, and will in some measure tend to prevent them from passing fairly and fully upon the merits of the instrument submitted, it is within the scope of their authority, and clearly within the line of their duty, to take all the steps necessary and proper to enable the will of the people to be freely and fairly ascertained.

"The direct expenses of the State arising from ordering the election, issuing proper notices, preparing, printing and distributing instructions and forms to the different officers of the State charged with due execution of the election laws, together with the expense entailed on registration, will not fall short of \$30,000, and may

greatly exceed that amount. The mileage and per diem of the Legislature may add and probably will reach the sum of \$100,000; that of the three last Legislatures exceeded that sum. The other contingent expenses will probably reach the sum of \$30,000.

"This expense and loss of time to the voters of the State would not fall short of \$150,000. In addition to this it must be borne in mind that there is practically no limitation on the power of the Legislature to create a public debt, and but little limitation on their power to appropriate public money, we may safely assume that other expenses incurred by them will increase the estimate of expenses before made, and that the total expense to the people and the State of this unnecessary and useless election and assembly of the Legislature will exceed \$300,000. Furthermore, under the Act of Congress of 26th of July, 1866, providing that the Legislature of each State, which is chosen next preceding the expiration of the term for which any United States Senator from such state is chosen, was elected, shall on the second Monday after they meet, elect a United States Senator, it becomes the duty of the Legislature which meets on the second Monday in January next to elect a United States Senator. If prior to the 4th of March, 1877, a new Legislature should assemble, organized under the provisions of the Constitution that may be framed by this Convention, it would also be beyond all doubt a Legislature chosen next preceding the expiration of the time for which one of the United States Senators from Texas was elected, and it would also be their duty under the Act of Congress to elect a United States Senator.

"If they did not exercise the power a very serious question would arise as to whether the Legislature that met in January, 1875, was the proper body to elect a United States Senator. If the Legislature, organized under the provisions of the Constitution framed by this body, should elect a United States Senator, then it would result that there would be two persons both elected, claiming at the same time to be duly elected to the Senate of the United States.

"By refusing to postpone the election of December next, we become directly responsible to the people for all the expenses incurred and all the other evil consequences resulting from this state of affairs.

"Again, if the Convention should work harmoniously together, there is no reason why they may not complete their work and have a Constitution ready for submission to the people by the first of November next. The Convention of 1845, whose duties were very arduous, involving as it did a change from an independent republic to a State in the Union, sat only fifty-three days. If, then, we can within sixty days complete our work, there is no good reason why it

should not be submitted to the people on the first Monday in January. This would give them sixty days to consider, and the Convention of 1845 did not give as much as sixty days' notice. That Constitution was framed on the 27th day of August, 1845, and ratified by the people on the second Monday in October, 1845. The Convention of 1866 submitted their work to the people with notice of only sixty days. Since then the means of communication throughout the State have greatly increased, and now within sixty days information can be conveyed throughout the State as fully as it could be done in ninety days in 1845 or 1866. If, then, in accordance with affirmed precedents in this State, this body should complete its work within sixty days and submit it for the acceptance or rejection of the people in January next, as we believe can be done, and probably will be done, we would have the spectacle of a Legislature assembled at a cost of thousands of dollars, to our already tax-burdened people to accomplish nothing whose official existence, if the Constitution was submitted to the people on the first Monday in January, and on that day accepted by them, would end on the day it commenced. By virtue of the power which this Convention has to regulate the time, manner, and conditions on which its work shall be submitted to the people, we believe it can prevent the occurrence of such a state of things. It is a power incidental to and growing out of the express and unqualified grant of power to them from the people to frame and provide for putting in operation the Constitution. Its exercise is necessary in order that the people may be able at the least possible expense and without embarrassment from other matters growing out of the assembling of the Legislature to vote fully and fairly on the merits of the instrument submitted to them.

"The undersigned have examined the subject in its various aspects, and the ordinance which they herewith submit, makes provision so that in case the proposed Constitution is rejected, elections for members of the Fifteenth Legislature and other State, district, and county officers may be ordered by the Governor. It also provides for the continuation in office of the present incumbents until their successors are elected and qualified.

"Should there arise any great unforeseen public emergency before the Constitution is voted upon, the Governor, under the provisions of the ordinance reported, would have the power by his proclamation to convene the Fourteenth Legislature in extra session.

"The majority of the committee cannot see how or in what manner any conflict of authority or serious convenience or injury to the public interest, can result from the passage of the ordinance contemplated, nor have they any reason to apprehend any conflict from any quarter. On the contrary, they believe it will be the duty of every officer of the State, from the highest to the lowest, to cooperate

earnestly and cheerfully with the Convention, in saving this heavy and worse than useless expense to the State, and in preventing all the inconvenience, conflict, embarrassment, and confusion which will be certain to flow from the election in December next.

"It is to be regretted that the committee are not of one mind on this important matter. But the power of the Convention to pass the ordinance in question appears so well founded and so clear, and the duty of exercising that power so imperative that they do not hesitate to recommend the adoption of the accompanying ordinance, which they have prepared as a substitute for the resolutions and ordinance that were referred to them.

"Respectfully submitted

"CHARLES DEMORSE,

"F. S. STOCKDALE,

"C. S. WEST,

"JOHN HENRY BROWN."

"While I did not participate in the preparation of the ordinance and report on the subject, I concur with the majority of the committee in their conclusions.

"J. H. REAGAN."

On motion of Mr. Stockdale, Judge Ballinger read the minority report:

#### *Minority Report*

The minority set forth that they were unable to recognize, on the part of the Convention, any rightful authority to put in force the ordinance recommended by the committee. The Convention was elected by the people of the State under a law of the last Legislature, its purpose being specified in the language: "that a Convention to frame a new Constitution for the State of Texas shall assemble on the first Monday in September for the purpose of framing a new Constitution." The power vested in the Convention is limited to framing, planning, devising, and forming a Constitution and to submitting the same to the people of the State for adoption or rejection. The members signing the minority report thought it not merely a political duty, but the Convention was legally and indispensably bound under the Constitution to the course of action indicated. The Convention of itself had no power to establish a Constitution or any part thereof. Whenever a Convention decided to submit a Constitution to the people, it had no power of sovereignty left, either executive, legislative, or judicial. Where,

then, did the Convention get the power to put in force a measure like the one recommended by the majority report, which required submission to the people and adoption by them before it had any binding force? The friends of the plan for postponing the election in December had set forth the economy of the plan. The Legislature had, in view of all things, refused to postpone the election. It might be that they thought they would be depriving the people of their legal officers and prolonging the terms of those already occupying them. If the Constitution were not ratified it would, in effect, prolong their offices two years longer. It was claimed that this would be no greater expense or occasion no greater result than inconvenience. Whatever might be the result, the minority believed that cognizance of it was no part of the duty of the Convention. If the Convention could suspend a general election and prolong the terms of officers, they did not see what the Convention could not do. It could suspend all the functions of the legislative, executive, and judicial officers of the Government.

The minority report was signed by Judge W. P. Ballinger and Mr. J. L. Henry.

MR DOHONEY moved that the majority and minority reports and the resolution recommended by the majority be postponed, and made the special order for the next day at 10 o'clock, but afterwards, on the suggestion of Mr. Waelder, it was made the special order for the second day, and 400 copies of both reports were printed.

After the reading of the reports of the committee on postponement of the election the remainder of the day was consumed with the introduction of resolutions, which were referred to the various committees.<sup>23</sup>

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<sup>23</sup>A majority of the leading papers of the State took the side of the majority report and favored postponement of the December election. The *Houston Telegraph*, September 22, dissented and praised the minority report, saying the minority had the legal side of the controversy. See the *Galveston News*, September 25; *State Gazette*, September 23, and the *San Antonio Herald*, September 25, 1875. The last named paper admitted that the majority were without legal ground, but said they were right and the people would applaud their work for economy.