

## THE 35<sup>th</sup> STAR

Born of the Civil War, West Virginia became the thirty-fifth state under conditions unique in our nation's history. As some saw it, West Virginia seceded from Virginia after Virginia seceded from the Union. Questions arose as to the constitutionality of the process, and even as to whether the new state would be dissolved once the crisis of war was over and Virginia rejoined the Union.

As you view this exhibit please take time to consider the issues that fueled the statehood sentiment, the efforts and challenges of the individuals involved, and the gravity of the times in which these events occurred. Consider as well the requirement, in Article IV, Section 3 of the US Constitution, that no state may be divided without giving its consent.

### Cast Your Vote

After you have weighed the information in the exhibit and drawn your own conclusion, please vote for or against separation from Virginia and the formation of West Virginia, based on your understanding of the constitutionality of the process. Simply place one of the ballots provided in the voting slot located at the Statehood kiosk. Votes will be counted when the display period has ended.

### Take One

Please take a brochure along with you during the exhibit. It will guide you through each section and may be taken with you when you leave.

## DIVERGENCE

1730-1860

Virginians settled first on the Atlantic coast, establishing themselves at Jamestown in 1607. Virginia society matured in the coastal and lower Piedmont regions, with settlers from Virginia and northern states crossing the mountains in significant numbers beginning in the mid-1700s. Eastern and western Virginia differed in critical matters of geography and economics, including the relative absence of slavery and plantation-style agriculture in the west. These differences translated into pressing political issues as the west grew in population. Virginia tried to resolve sectional differences by holding two constitutional conventions.

The 1829-30 Constitutional Convention, the most illustrious gathering in Virginia history, was a disappointing failure in its attempt to resolve most issues between East and West.

The convention brought together Virginia's greatest minds, providing a last chance for public service for the aging Revolutionary War generation. The painting to the left by George Catlin shows James Madison addressing the chair, occupied at the time by James Monroe. Also present were John Marshall, future president John Tyler, and other distinguished leaders. Unfortunately, the results were less impressive than the membership. Control shifted to conservatives, bent on protecting existing privileges. Westerners, who had clamored for the convention, failed to gain the reforms they desired provoking cries for the creation of a separate state. One writer in a Wheeling newspaper in 1830 called for separation from Virginia "peaceably if we can, forcibly if we must."

The influence of the west grew as the region increased in population and industry. A final "Reform Convention" of 1850-51 brought the west significant gains, including majority representation in the Virginia House of Delegates. Virginia chose its first western governor, Joseph Johnson of Harrison County, in 1850. Significant inequalities remained, particularly in the allocation of the tax burden and in public investment in "internal improvements," but it appeared that Virginia was making progress toward accommodating western needs.

## CIVIL WAR 1861-1863

The Civil War altered the political equation in Virginia and throughout the nation. Following Fort Sumter, the Old Dominion opted to join other Southern states in leaving the Union. Northwestern Virginians rejected this course, voting against secession and then moving to establish a Reorganized or Restored Government of Virginia, based in Wheeling, that would remain loyal to the Union. Military action early in the war reinforced the emerging status quo, establishing Union control of the western counties while leaving the east within the Confederacy.

*“If the State of Virginia secedes from the Union, as sure as there is a God in Heaven, northwestern Virginia will secede from the State of Virginia!” Judge John J. Jackson*

Western counties disagreed with eastern government on many points before the Civil War, and some were willing to push matters to their ultimate conclusion when the opportunity arose. A core of two dozen northwestern counties, plus Morgan and Berkeley, voted against Virginia’s secession from the Union in 1861, and it was this area that took charge of the new state movement.

The US Custom House at Wheeling was the meeting place for the Second Wheeling Convention and served as the capitol of Reorganized Virginia, 1861-1863. The building, now restored as West Virginia Independence Hall, later provided offices for West Virginia’s first governor, Arthur I. Boreman.

*“This part of Virginia naturally belongs to the West; they are now in no way connected with eastern Virginia.” Colonel Rutherford B. Hayes, July 31, 1861*

The most significant military action in western Virginia occurred in the early months of the Civil War, with Union forces establishing general control of the Trans-Allegheny region by the end of 1861.

The Battle of Philippi, in Barbour County, in June 1861, saw Union forces drive Confederates away from important railroad centers such as Grafton, helping to ensure Union control over the Baltimore and Ohio Railroad line.

Farther south, the Union Army occupied the Kanawha Valley after battles at places such as Scary Creek and Charleston and pushed Confederate forces back into the western Virginia mountains.

The war brought important national figures to the region, including future presidents Rutherford B. Hayes and William McKinley, Confederate General Robert E. Lee and others. Hayes believed that the Union strategy had succeeded by mid-summer, observing that western Virginia had been cut off from the Confederate east, but Southern challenges continued for at least two more years.

The gravest Confederate threat to Union control was the Jones-Imboden raid, which slashed deeply into western Virginia in the spring of 1863. The raiders were opposed by General Benjamin F. Kelley and other Union commanders and gained no permanent foothold. But in cutting their way as far north as Morgantown the rebels dramatically proved in the words of General John D. Imboden, that the region was “not under the exclusive control of the Washington and Wheeling despotisms.”

The State of Virginia was now divided in fact as well as in sentiment. Two governments, one at Wheeling and one at Richmond, professed to represent the people of Virginia. The stage was set for the creation of the new state.

## BIRTH OF WV

Statehood sentiment grew rapidly in divided Virginia. Military separation offered the opportunity to act on old grievances, and it was clear that the Reorganized Government of Virginia, manned entirely by western leaders, would give the necessary constitutional consent to the creation of a new state from territory of the old. Western Virginia voted for Virginia's dismemberment in October 1861, and elected delegates to a constitutional convention to create a constitution for the new state. The convention met in 1861-62 and again in 1863. The name "West Virginia" was chosen by the constitutional convention over other suggestions, "Kanawha," "Western Virginia," "Allegheny," "New Virginia," and "Augusta." Leaders maneuvered the necessary legislation through Congress and President Lincoln concurred, although with misgivings.

West Virginia became the 35<sup>th</sup> state on June 20, 1863, and, as a Northern state, continued to pursue the war against the Confederacy.

*"New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the Jurisdiction of any other State; nor any state be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress."*

- U.S. Constitution, Article IV, Section 3

The Constitution is clear upon the matter of formation of new states from old, unequivocally requiring the consent of the original state. But the circumstances surrounding West Virginia's birth were anything but simple, and they remain unique in American history.

The constitutional question boiled down to whether the Reorganized Government at Wheeling had authority to give Virginia's consent to dismemberment at a time when the Richmond government had declared the state outside the Union. In such a situation, who actually was empowered to speak for Virginians?

*"It is said that the admission of West Virginia, is secession, and tolerated only because it is our secession. Well, if we call it by that name, there is still difference enough between secession against the Constitution, and secession in favor of the Constitution."* – Abraham Lincoln, December 1862

Once the statehood bill had passed Congress, it required the approval of the executive branch. President Abraham Lincoln received the legislation on December 15, 1862 and asked his cabinet to debate the issue on December 23.

Lincoln found his cabinet evenly split. Attorney General Edward Bates, Secretary of the Navy Gideon Welles and Postmaster General Montgomery Blair opposed West Virginia statehood. All felt that the Reorganized Government was provisional, and lacking the necessary constitutional authority to provide Virginia's consent to the creation of West Virginia. Secretary of State William H. Seward, Secretary of the Treasury Salmon P. Chase and Secretary of War Edwin M. Stanton argued in favor of statehood.

Lincoln himself agonized over the statehood question, fearful of creating future precedents under the abnormal conditions of wartime. He was also firmly convinced the North would lose the war if the Union lost the border states. He signed the legislation on December 31, under pressure from Senator Waitman T. Willey, Governor Francis H. Pierpont and others. "I believe the admission of West Virginia into the Union is expedient," the beleaguered president concluded.

*"... West Virginia is, today, one of the United States, entitled to the same rights and immunities as, and upon an equal footing with, the other States of the Union."* - Arthur I. Boreman, First Governor of the State of West Virginia, June 20, 1863

## STATEHOOD

## US Supreme Court Decides on the Statehood of West Virginia

The final questions of West Virginia statehood were not settled until after the Civil War. Boundaries had been debated for years and became final when the US Supreme Court ruled in 1871 in the case *Virginia v. West Virginia* that the statehood bill passed by Congress in 1863 had already given consent to the contingency of Berkeley and Jefferson counties joining West Virginia and no further assent was needed. In accepting West Virginia as a party to the lawsuit, the Supreme Court implicitly accepted the creation of West Virginia as a state.

### Final Boundaries

When John Carlile called for immediate statehood at the First Wheeling Convention in May 1861, his proposed “West Virginia” included 32 counties. In the August 1861 session of the Second Wheeling Convention, Carlile and others proposed the creation of a slightly larger “State of Kanawha” to include 39 counties. In early December the Boundaries Committee of the First Constitutional Convention startled everyone by adding 32 more counties to the Kanawha group, claiming much of present-day Virginia. But by December 13, 1861, the Convention voted to include the 39 proposed “Kanawha” counties, plus Pocahontas, Greenbrier, Monroe, Mercer, and McDowell, with voters in Jefferson, Berkeley, Frederick, Morgan, Hampshire, Hardy, and Pendleton to decide for themselves. All but Frederick voted to become part of West Virginia, although voting irregularities occurred in some counties.

### The Debate

West Virginia statehood became an accomplished fact when the new state was created by the US executive and legislative branches in 1862-63. The existence of the state was accepted after being challenged in the US Supreme Court, although the court never ruled specifically on the constitutionality of the process. The question of whether Virginia had in fact consented, as required by Article IV, Section 3 of the US Constitution continues to provide fodder for debate.

West Virginia is a Mid-Atlantic state, which stretches farther north than Pittsburgh and farther south than Richmond. It remains poised between North and South, with two panhandles and its own sectional differences. Both may be regarded as ironic reflections of the circumstances surrounding the birth of West Virginia.