



“Equality Before the Law”: Thoughts on the Origin of Nebraska’s State Motto

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Article Summary: Nebraska gained statehood in 1867 only after agreeing to accept Congress’s demand that it remove a “whites only” voting restriction from its state constitution. The state motto “Equality Before the Law” reflected Nebraska’s willingness to extend suffrage to black Americans.

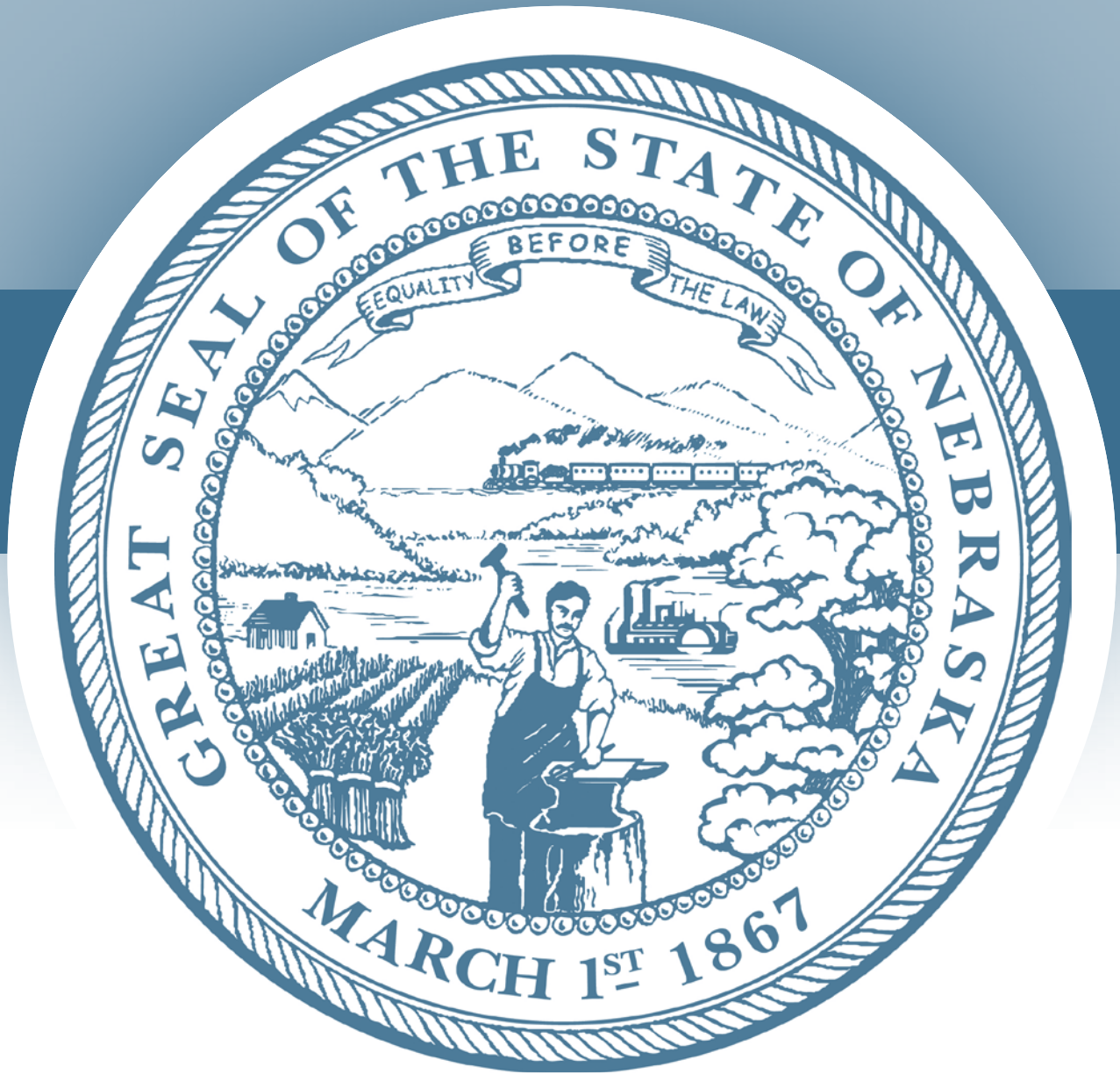
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The Nebraska State Seal, featuring the state motto, "Equality Before the Law."

“EQUALITY BEFORE THE LAW”:

Thoughts on the Origin of Nebraska’s State Motto

BY JAMES E. POTTER

“Equality Before the Law,” Nebraska’s state motto, is unique among the fifty states. Only Wyoming’s motto, “Equal Rights,” expresses a similar idea. Both mottos date from the post-Civil War years of the 1860s and both relate to the granting of political and civil rights previously denied to certain Americans: most black men, free or slave, and women of whatever racial background.¹

On June 14, 1867, Governor David Butler signed H.R. 41, “An Act to Provide for Procuring a Seal for the State of Nebraska.” Isaac Wiles, a member of the Nebraska House of Representatives from Plattsmouth, Cass County, introduced the act as provided by section thirteen of article three of the 1866 state constitution, which required a “Great Seal of the State of Nebraska” for use by the governor in the transaction of official business. H.R. 41 specified the seal’s design and the motto that was to appear thereon: “Equality Before the Law.”²

The state motto is inscribed near the north entrance to the State Capitol.
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Shortly before his death on January 20, 1921, Wiles recalled the genesis of the motto. He had proposed two alternative phrases, one being “Equality Before the Law” and the other “Equal Rights for All.” Before introducing the bill, he consulted with Elmer S. Dundy, later famous as the presiding judge in the Standing Bear trial and formerly an associate justice of the Nebraska Supreme Court. Dundy preferred the former phrase. Accordingly, “Equality Before the Law” was adopted as the motto that appears on the Great Seal, the state flag, and on the

east and west pylons flanking the north entrance to the state capitol building.³

Wiles also said that the motto did not refer to slavery or to granting equal rights to both black and white Nebraskans. Addison E. Sheldon of the Nebraska State Historical Society later wrote, “His impression was distinct that it originated from the early controversies over land locations in the Missouri River counties and was inspired by the frontier sentiment in favor of giving every man an equal chance to secure a home on the public domain.”⁴

Considering the political issues dominating Nebraska and national politics in 1866 and 1867 and a statement Wiles made in 1892, it is clear that the ninety-year-old man's memory deceived him in the 1920s when he reflected on his reasons for proposing "Equality Before the Law" as the state motto. Fewer than four months before the motto's adoption, Congress had forced the Nebraska legislature to remove a "whites only" voting restriction from the state constitution as a condition for approving Nebraska's statehood (at the time, only men were afforded voting rights). When the legislature agreed to Congress's "fundamental condition" during a special session in February 1867, Wiles was among its members. The legislature's decision was certainly a concession to "Equality Before the Law" as it applied to male suffrage. Nebraska was subsequently admitted as the thirty-seventh state on March 1, 1867.

Little more than a year before the motto was adopted by the state legislature, Nebraska Republicans gathered in Plattsmouth on April 12, 1866, to nominate candidates for a special June 2 election to choose a state governor, a secretary of state, and state legislators. If the voters adopted the constitution being submitted at the same election, the machinery for a state government would be in place pending approval of Nebraska's admission by Congress and the president.

In addition to passing several resolutions outlining why they believed statehood would benefit Nebraska, the delegates to the April 12, 1866, convention adopted a final resolution proclaiming the Republicans' guiding philosophy: "Resolved, that the party which has triumphantly sustained and vindicated the government of the United States and carried it safely through four years of sanguinary war, waged by the enemies of civil and religious liberty, owes it to itself, to its cherished principles, and to humanity to secure liberty and *equality before the law* to all men" (emphasis added).⁵

Although Isaac Wiles is not mentioned in news accounts as being a delegate to the April convention, he may well have attended the event, which not only represented his political affiliation but which was also held in his hometown. If he did not attend, he no doubt read the convention resolutions, which were widely published in the territorial newspapers.

A week after the Republican convention, Nebraska Democrats assembled in Nebraska City. Their convention resolutions were very different from those of the Republicans. The Democrats remained silent about Nebraska statehood. They

A Black President?

As a condition of statehood, Congress forced Nebraska to grant the vote to black men. On February 15, 1867, the *Omaha Weekly Herald* reported the statehood bill's passage, and voiced a complaint:

"It will be seen by late telegrams that the bill for the admission of Nebraska, under the conditions contained in the Boutwell amendment, has passed both houses of Congress by a two-thirds vote over the veto of the president. The vote in the senate stood 31 to 9 and in the house of representatives, 122 to 44.

"Let the state legislature assemble and accept 'the conditions precedent' imposed by Congress if it dare. But remember that, before the people of Nebraska, every individual member of the legislature must answer for having declared that Congress, and not the people of Nebraska, has supreme power in determining the qualifications of electors in this state.

"Remember that every member of that legislature who votes to accept the condition imposed by Congress votes to deny the right of the people of Nebraska to regulate their own affairs, votes to make a negro not only an elector but an electee, makes the negro eligible to the presidency of the United States, *while no foreigner is eligible to that high position!*

"Germans, Irishmen, Scandinavians and adopted countrymen generally, we call your attention to this plain and defined attempt to exalt the African above you and your children."

endorsed President Andrew Johnson's conservative, "states rights" reconstruction policy and a statement attributed to him: "This is, and shall be a government of white men for white men."⁶

Both conventions were reacting to a political firestorm created by Johnson's battle with Congress over the terms for bringing the former rebel states back into the Union. The president and most Democrats favored a lenient policy toward the South, which many Republicans (particularly those known as "Radical Republicans") thought likely to

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insure white political supremacy and the continued denial of civil rights to emancipated slaves. When Johnson in March 1866 vetoed a civil rights act that defined blacks as U.S. citizens and affirmed their right to enjoy “full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens,” the Radical Republicans were outraged. Although Congress passed the civil rights bill over the president’s veto, the Republican majority concluded that only a constitutional amendment would guarantee rights and security for the freedmen.⁷

On June 13, 1866, Congress approved a joint resolution presenting the Fourteenth Amendment to the states for ratification. Ratification of the amendment by the former rebel states would be a prerequisite for the readmission of their senators and representatives to Congress. The amendment defined all native-born or naturalized persons (including freed slaves) as citizens. It also included the “due process” clause, and prohibited states from denying to any person “the equal protection of the laws.”⁸

During the same session Congress passed an act admitting Nebraska to the Union, which President Johnson killed by his pocket veto after Congress adjourned on July 28. Consequently Nebraska remained a territory, and both parties had to nominate candidates for the territorial legislature, for territorial delegate to Congress, and for other territorial offices, which they did at party conventions held that fall. It seemed certain that statehood would be achieved during the next session of Congress, so both parties also named candidates for the state legislature and for Nebraska’s pending seat in Congress. (Two U.S. Senators had already been chosen at a session of the “state” legislature that convened on July 4, 1866, following approval of the state constitution at the June 2 election.)⁹

With the exception of naming different nominees for territorial delegate and congressman (the latter to take office upon statehood), the Republicans on September 6 chose the same men to run for both the territorial and state legislatures. As its platform, the party endorsed the pending Fourteenth Amendment, which was also the Republican platform nationally. The Nebraska party newspapers published the amendment in each issue prior to the October 9 election.¹⁰

Isaac Wiles was nominated for and won election to the Nebraska House of Representatives from Cass County. He served in the twelfth and final session of the territorial legislature, which met in January 1867, as well as in the two special state

legislative sessions that convened on February 20 and May 16, respectively. Because Governor Alvin Saunders was absent when the twelfth legislature convened, Territorial Secretary and Acting Governor Algernon S. Paddock delivered the message. He took the opportunity to question the wisdom of requiring the former Confederate states to ratify the Fourteenth Amendment as a condition for their readmission. Paddock believed that adoption of the amendment “threatens to perpetuate hatreds, strife, and discord.” Nevertheless, the legislature passed a resolution favoring the Fourteenth Amendment and promising to ratify it when Nebraska was granted statehood. Because the Republicans had a legislative majority and the same Republicans would sit in the forthcoming state legislature, this was no idle promise.¹¹


Following Nebraska’s admission on March 1, 1867, Governor Butler called the state legislature into session on May 16 to enact general laws for the new state government. Among the measures the governor presented for legislative action was ratification of the Fourteenth Amendment. By extending citizenship to all native born or naturalized persons and prohibiting “the denial of the equal protection of the laws to any such person,” said the governor, the amendment “accepts fully, and forever vindicates by the solemn pledge of a nation, the idea that was the corner stone of American Independence.”¹²

On June 15, 1867, the day after the governor signed the bill adopting the state seal and its motto, the legislature ratified the Fourteenth Amendment, making Nebraska the twenty-fourth state to do so. The vote marked the first time Nebraska had joined her sister states in the constitutional amendment process. The amendment became part of the U.S. Constitution when South Carolina ratified it on July 9, 1868, signaling its approval by the required three-fourths majority of all the states.¹³

Nebraska historian Albert Watkins suggested that Isaac Wiles likely drew his idea for the motto from the old legal maxim, “All men are equal before the natural law.” The battles between Congress and the president over reconstruction and civil rights for freedmen and the maxim’s incorporation in the Fourteenth Amendment as “equal protection of the laws,” however, gave it new relevance and moved it to the forefront of national politics. The Nebraska Republicans had articulated a succinct version of this maxim in their 1866 resolutions.¹⁴

Nebraska was the first and only state to grant suffrage to black men under a specific mandate imposed by Congress. The subsequent ratification of

the Fifteenth Amendment to the U.S. Constitution in 1870 prohibited the denial of the elective franchise in any state on the grounds of race, color, or previous condition of servitude. The amendment did not, however, prevent the later disenfranchisement of African Americans in most of the Southern states through the use of literacy or property qualifications.¹⁵

In 1920 when Isaac Wiles recalled his role in the adoption of the state motto and said it was inspired by sentiments favoring an equal right to claim public land, he had evidently forgotten both the context in which Nebraska statehood was achieved and a statement he made in 1892 about the motto's genesis. On May 25 and 26, 1892, Nebraskans who had participated in the transition from territory to state in 1867 gathered at the capitol building in Lincoln to observe statehood's silver anniversary and offer their recollections. When it came his time to speak, "Mr. Wiles told how he had the honor to introduce the bill which defined the design on the great seal of Nebraska, and that in his mind, the words 'Equality Before the Law,' which are made a part of the seal . . . meant, and should be made to include and guarantee to the women, *the right of suffrage*."¹⁶ Without a doubt, the motto adopted in 1867 recognized Nebraska's important contribution in the struggle to grant black Americans a basic civil right. 

⁷ McPherson, *Ordeal by Fire*, 515-16.

⁸ *Ibid.*, 516.

⁹ The "state" officers elected on June 2, 1866, held terms that would not expire until 1869, so those individuals could take office without another election when statehood was finally achieved.

¹⁰ See, for example, the *Daily Republican* (Omaha), Sept. 12 – Oct. 29, 1866.

¹¹ J. Sterling Morton, succeeded by Albert Watkins, *Illustrated History of Nebraska* (Lincoln: Jacob North & Co., 1905), 1:554, 558.

¹² John G. W. Lewis, ed., *Messages and Proclamations of the Governors of Nebraska, 1854-1941* (Lincoln: Nebraska State Historical Society, 1941), 1:274.

¹³ Internet search engines will locate several websites providing information about constitutional amendments and their dates of ratification by the several states.

¹⁴ Watkins, "Genesis of the Great Seal."

¹⁵ McPherson, *Ordeal by Fire*, 545-46.

¹⁶ *Nebraska State Historical Society Publications* 5 (1893): 171-72, (emphasis added). Wiles also recognized the injustice of denying women the right to vote, and he lived just long enough to see women enfranchised by ratification of the Nineteenth Amendment on Aug. 18, 1920.

NOTES

¹ A list of state mottos (with translations if not in English) appears on the Wikipedia website. Before the Civil War free black men could vote only in certain of the New England states. James M. McPherson, *Ordeal by Fire: The Civil War and Reconstruction* (New York: McGraw Hill, 1982), 81. Wyoming Territory in 1869 granted women the right to vote, hold office, and own property.

² The 1875 Nebraska Constitution assigned custody and use of the seal to the Secretary of State.

³ Albert Watkins, "Genesis of the Great Seal of Nebraska," *Nebraska History and Record of Pioneer Days* 3 (Jan.-Mar. 1920): 2-3. The "Equality" inscriptions on the pylon of the capitol appears in connection with a revised design for a Great Seal of Nebraska that was never adopted. Orville H. Zabel, "History in Stone: The Story in Sculpture on the Exterior of the Nebraska State Capitol," *Nebraska History* 62 (Fall 1981): 312-13.

⁴ Addison E. Sheldon, "Nebraska State Flag and Seal," *Nebraska History and Record of Pioneer Days* 3 (Jan.-Mar. 1920): 3.

⁵ *Nebraska Republican* (Omaha), Apr. 20, 1866. The Plattsmouth *Nebraska Herald*, Apr. 25, 1866, rendered the "equality" reference as "to secure liberty and civil rights to all men under general law." The more elegant phrase, "equality before the law," appears in all other published versions of the resolutions and may represent an editorial adjustment of the original draft. Both versions express the same concept.

⁶ *Nebraska Advertiser* (Brownville), Apr. 26, 1866.