

Chapter 221 – The Kansas Free Staters Draft A Constitution At Topeka Excluding Black Residents



Dates:
October 23 –
November 11,
1855

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- The Free Staters Meet At Their Topeka Convention
 - The Topeka Constitution Is Approved Including A “Black Exclusion” Clause

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The Free Staters Meet At Their Topeka Convention

On September 19, 1855, the Free State Party in Kansas decide to try to pre-empt their Pro-Slavery opponents by quickly writing and passing their own constitution, and being first to apply to Congress for admission to the Union.

They start the process on October 23 at a Constitutional Convention, held in the town of Topeka, sixty mile southwest from Leavenworth, on the Missouri River.

A total of 37 delegates answer the roll call. They are predominantly Northerners by birth and Democrats by political affiliation. Most are farmers or lawyers, and under forty years of age.

Profile Of Topeka Delegates

Birthplace	#
Ohio Valley	21
South	12
New England	4
Age	
Under 30	9
30-39	16
40-49	7
50-59	4
60+	1
Occupation	
Farmers	15
Lawyers	11
Physicians	3
Merchants	3
Clergymen	2
Journalists	1
Indian Affairs Agent	1
Saddler	1

Party Affiliation	
Democrats	21
Whigs	10
Republicans	4
Independents	2

The controversial James Henry Lane is chosen to preside over the convention, and the final document will bear many of his beliefs. Another major figure is Charles Robinson, whose July 4, 1855 speech rallied the anti-slavery forces to meet in August and form the Free State Party.

They are joined by John Wakefield, who lost the rigged election for Congressional representative, and other men like Joel Goodin, Colonel Mark Delahay, Marcus Parrott and Orville Brown, who will help shape the Topeka Constitution.

Some Key Figures At The Free State Convention In Topeka (Fall 1855)

Name	Residence	Occupation	Birthplace	Age	Politics
James Henry Lane	Lawrence	Lawyer	KY	33	Democrat
Charles Robinson	Lawrence	Indian agent	Mass	37	Independent
John Wakefield	Elysian Plains	Lawyer	SC	59	Whig
Joel K. Goodin	Clear Lake	Law/Farmer	Ohio	31	Democrat
Marcus J. Parrott	Leavenworth	Lawyer	SC	26	Democrat
Col. Mark Delahay	Leavenworth	Law/Editor	Maryland	37	Democrat
Orville Brown	Osawatomie	Farmer	NY	44	Whig
William Graham	Prairie City	Physician	Ireland	39	Democrat
Amory Hunting	Manhattan	Physician	Mass	61	Republican
Robert Klotz	Pawnee	Merchant	Penn	35	Democrat
John Thompson	Silver Lake	Saddler	Penn	55	Democrat

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The Topeka Constitution Is Approved Including A “Black Exclusion” Clause

The convention proves to be highly contentious and lasts for sixteen straight days.

In many ways it is a microcosm of the conflicting views regarding slavery, and blacks in general, that prevails in the North and West.

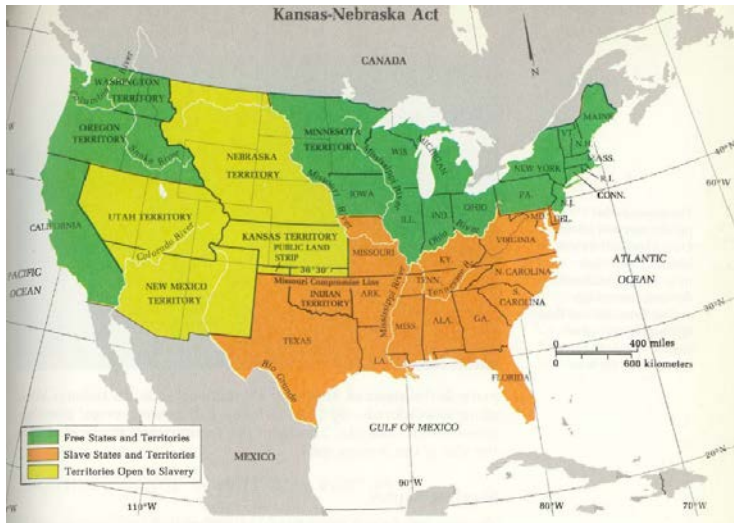
On one hand there are the supporters of James Henry Lane, a blatant racist, who wants to secure Kansas for white men by excluding all blacks from residing in its borders.

On the other, the backers of Charles Robinson, some hard core abolitionists, others simply opposed to seeing the further spread of slavery.

They are also a mix of Democrats and Whigs, so party politics come into play.

One contentious issue right away focuses on whether to support reinstatement of the 36’30” boundary line settled in the 1820 Missouri Compromise. Despite the fact that this would assure Kansas of Free State

status, a motion is narrowly defeated by a 15-17 margin, a reflection of the number of loyal “pop sov” Democrats and Southerners who are present.



Map Showing That 90% Of Kansas Falls North Of The 36'30" Line

A second proposal originates with the “Lane faction,” calling for a flat-out ban on all blacks – slave or free – from entering or residing within the borders of the new state.

This proposal – known as the “Black Exclusion Clause” – forces each delegate to decide whether their opposition to the spread of slavery is driven by racist aversion to all Africans or by genuine moral empathy for their plight.

The true Abolitionists at the convention – such as Charles Robinson – are appalled by the notion that Free Blacks would be denied entrance into Kansas. Lane’s anti-black racists are likewise appalled by the prospect of any Africans living in their midst. Between the two extremes are the moderates, not on a crusade, but simply wanting to contain the problems with slavery where they belong, in the South.

After much back and forth, a compromise is reached whereby the “Black Exclusion Clause” will be kept separate from the main body of the Constitution, but still offered up to a popular vote alongside it.

When all done, the final Topeka Constitution is an elaborate affair, mirroring prior frameworks, including a familiarly crafted Preamble:

We, the people of the Territory of Kansas, by our delegates in Convention assembled at Topeka..having the right of admission into the Union as one of the United States of America, consistent with the Federal Constitution, and by virtue of the treaty of cession by France to the United States of the Province of Louisiana, in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free and independent State, by the name and style of the State of Kansas....

It is followed by twenty-seven separate Articles covering the gamut from a Bill of Rights to the structure and duties of the proposed branches of government, electoral procedures (with a six month residency requirement), provisions for public institutions, taxing and finances, and so forth.

The subject of slavery is addressed in Article 1. Section 6 declares that Kansas will be a Free State.

Sec. 6. There shall be no slavery in this state, nor involuntary servitude, unless for the punishment of crime.

Section 21 prohibits owners from bringing their slaves into the state under the guise of renaming them “indentured servants.”

Sec. 21. No indenture of any negro or mulatto, made and executed out of the bounds of the State, shall be valid within the State.

With their Constitution now written, the Free State Party calls for ratification vote on December 15, 1855.