

# 1861 Georgia Constitution

## ARTICLE I

### DECLARATION OF FUNDAMENTAL PRINCIPLES

1. The fundamental principles of Free Government cannot be too well understood, nor too often recurred to.
2. God has ordained that men shall live under government; but as the forms and administration of civil government are in human, and therefore, fallible hands, they may be altered, or modified whenever the safety or happiness of the governed requires it. No government should be changed for light or transient causes; nor unless upon reasonable assurance that a better will be established.
3. Protection to person and property is the duty of Government; and a Government which knowingly and persistently denies, or withholds from the governed such protection, when within its power, releases from the obligation of obedience.
4. No citizen shall be deprived of life, liberty or property, except by due process of law; and of life or liberty, only by the judgment of his peers.
5. The writ of "Habeas Corpus" shall not be suspended unless in case of rebellion or invasion, the public safety may require it.
6. The right of the people to keep and bear arms shall not be infringed.
7. No religious test shall be required for the tenure of any office; and no religion shall be established by law; and no citizen shall be deprived of any right or privilege by reason of his religious belief.
8. Freedom of thought and opinion, freedom of speech, and freedom of the press, are inherent elements of political liberty. But while every citizen may freely speak, write and print, on any subject, he shall be responsible for the abuse of the liberty.
9. The right of the people to appeal to the courts; to petition Government on all matters of legitimate cognizance; and peaceably to assemble for the consideration of any matter of public concern shall never be impaired.
10. For every right, there should be provided a remedy; and every citizen ought to obtain justice without purchase, without denial, and without delay conformably to the laws of the land.
11. Every person charged with an offence against the laws of the State shall have the privilege and benefit of counsel.

Shall be furnished, on demand, with a copy of the accusation, and with a list of the witnesses against him:

Shall have a compulsory process to obtain the attendance of his own witnesses:

Shall be confronted with the witnesses testifying against him; and

Shall have a public and speedy trial by an impartial jury.

12. No person shall be put in jeopardy of life or liberty more than once for the same offence.
13. No conviction shall work corruption of blood, or general forfeiture of estate.
14. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.
15. The powers of the courts to punish for contempt shall be limited by Legislative Acts.
16. A faithful execution of the laws is essential to good order; and good order in society is essential to liberty.
17. Legislative Acts in violation of the fundamental law are void; and the Judiciary shall so declare them.
18. Ex post facto laws, and laws impairing the obligation of contracts, and retroactive legislation injuriously affecting the right of the citizen, are prohibited.
19. Laws should have a general operation; and no general law shall be varied in a particular case by special Legislation; except with consent of all persons to be affected thereby.
20. The right of taxation can be granted only by the people; and shall be exercised only to raise revenue for the support of Government, to pay the public debt; to provide for the common defence, and for such other purposes as are specified in the grant of powers.
21. In cases of necessity, private ways may be granted upon just compensation being first paid; and with this exception, private property shall not be taken except for public use; and then, only upon just compensation; such compensation, except in cases of pressing necessity, to be first provided and paid.
22. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place or places to be searched, and the persons and things to be seized.
23. Martial law shall not be declared, except in cases of extreme necessity.
24. Large standing armies, in time of peace, are dangerous to liberty.
25. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner prescribed by law.
26. The person of a debtor shall not be detained in prison after delivering bona fide all his estate for the use of his creditors.
27. The enumeration of rights herein contained shall not be construed to deny to the people any inherent rights which they have hitherto enjoyed.
28. This declaration is a part of this Constitution, and shall never be violated on any pretence whatever.

## ARTICLE II

## SECTION I

1. The Legislative, Executive and Judicial departments, shall be distinct; and each department shall be confided to a separate body of magistracy. No person or collection of person being of one department, shall exercise any power properly attached to either of the others; except in cases herein expressly provided.
2. The Legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.
3. The meeting of the General Assembly shall be annual, and on the first Wednesday in November, until such day of meeting shall be altered by law. A majority of each House shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and compel the attendance of their members in such manner as each House shall prescribe. No session of the General Assembly shall continue for more than forty days, unless the same shall be done by a vote of two-thirds of each branch thereof.
4. The compensation of the members and officers of the General Assembly shall be fixed by law, at the first session subsequent to the adoption of this Constitution: and the same shall not be increased so as to affect the compensation of the members or officers of the Assembly by which the increase is adopted.
5. No person holding any military commission or other appointment, having any emolument or compensation annexed thereto, under this State or the Confederate States, or either of them, (except Justices of the Inferior Court, Justices of the Peace and officers of the militia,) nor any defaulter for public money, or for legal taxes required of him, shall have a seat in either branch of the General Assembly; nor shall any Senator or Representative, after his qualification as such, be elected to any office or appointment by the General Assembly having any emoluments or compensation annexed thereto, during the time for which he shall have been elected.
6. No person convicted of any felony before any Court of this State, or of the Confederate States, shall be eligible to any office or appointment of honor, profit or trust, within this State.
7. No person who is a collector or holder of public money, shall be eligible to any office in this State, until the same is accounted for and paid into the Treasury.

## SECTION II

1. The Senate shall consist of forty-four members, one to be chosen from each senatorial district, which district shall be composed of three contiguous counties. If a new county is established it shall be added to a district which it adjoins until there shall be another arrangement of the senatorial districts. The senatorial districts shall not be changed except when a new census shall have been taken.
2. No person shall be a Senator who shall not have attained to the age of twenty-five years, and be a citizen of the Confederate States, and have been for three years an inhabitant of this State, and for one year a resident of the district from which he is chosen.
3. The presiding officer shall be styled the President of the Senate, and shall be elected viva voce from their own body.
4. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than removal from office and

disqualification to hold and enjoy any office of honor, profit or trust within this State; but the convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

### SECTION III

1. The House of Representatives shall be composed as follows: The thirty-seven counties having the largest representative population shall have two Representatives each. Every other county shall have one Representative. The designation of the counties having two Representatives shall be made by the General Assembly immediately after the taking of each census.
2. No person shall be a Representative who shall not have attained to the age of twenty-one years, and be a citizen of the Confederate States, and have been for three years an inhabitant of this State, and for one year a resident of the county which he represents.
3. The presiding officer of the House of Representatives shall be styled the Speaker, and shall be elected viva voce from their own body.
4. They shall have the sole power to impeach all persons who have been or may be in office.
5. All bills for raising revenue, or appropriating money, shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as in other bills.

### SECTION IV

1. Each house shall be the judge of the election, returns, and qualifications of its own members; and shall have power to punish them for disorderly behavior or misconduct, by censure, fine, imprisonment or expulsion; but no member shall be expelled except by a vote of two-thirds of the House from which he is expelled.
2. Each House may punish, by imprisonment not extending beyond the session, any person not a member, who shall be guilty of a contempt, by any disorderly behavior in its presence; or who, during the session, shall threaten injury to the person or estate of any member, for anything said or done in either House; or who shall assault any member thereof; or who shall assault or arrest any witness going to or returning therefrom; or who shall rescue, or attempt to rescue, any person arrested by order of either House.
3. The members of both Houses shall be free from arrest, during their attendance on the General Assembly, and in going to and returning therefrom, except for treason, felony, or breach of the peace. And no member shall be liable to answer, in any other place, for anything spoken in debate in either House.
4. Each House shall keep a journal of its proceedings, and publish them immediately after its adjournment. The yeas and nays of the members on any question, shall, at the desire of one-fifth of the members present, be entered on the journals. The original journals shall be preserved (after publication) in the office of the Secretary of State; but there shall be no other record thereof.
5. Every bill, before it shall pass, shall be read three times and on three separate and distinct days in each House, unless in cases of actual invasion or insurrection. Nor shall any law or ordinance pass which refers to more than one subject matter, or contains matter different from what is expressed in the title thereof.
6. All Acts shall be signed by the President of the Senate and the Speaker of the House of Representatives;

and no bill, or ordinance, or resolution intended to have the effect of law which shall have been rejected by either House, shall be again proposed under the same or any other title, without the consent of two-thirds of the House by which the same was rejected.

7. Neither House shall adjourn for more than three days, nor to any other place, without the consent of the other; and in case of disagreement between the two Houses, on a question of adjournment, the Governor may adjourn them.

8. Every Senator and Representative, before taking his seat, shall take an oath or affirmation to support the Constitution of the Confederate States and of this State; and also, that he hath not practiced any unlawful means, either directly or indirectly, to procure his election. And every person convicted of having given or offered a bribe, shall be disqualified from serving as a member of either House for the term for which he was elected.

9. Whenever this Constitution requires an Act to be passed by two-thirds of both Houses, the yeas and nays on the passage thereof shall be entered on the journals of each.

## SECTION V

1. The General Assembly shall have power to make all laws and ordinances, consistent with this Constitution and not repugnant to the Constitution of the Confederate States, which they shall deem necessary and proper for the welfare of the State.

2. They may alter the boundaries of counties, and lay off and establish new counties; but every bill to establish a new county shall be passed by at least two-thirds of the members present in each branch of the General Assembly.

3. They shall provide for the taking of a census or enumeration of the people of this State, at regular decades of years, commencing at such times as they may prescribe.

4. The General Assembly shall have power to appropriate money for the promotion of learning and science, and to provide for the education of the people.

5. The General Assembly shall have power by a vote of two-thirds of each branch, to grant pardons in cases of final conviction for treason, and to pardon or commute in cases of final conviction for murder.

## SECTION VI

1. The General Assembly shall have no power to grant corporate powers and privileges to private companies, except to banking, insurance, railroad, canal, plank road, navigation, mining, express, lumber, and telegraph companies; nor to make or change election precincts; nor to establish bridges and ferries; nor to change names, or legitimate children; but shall by law prescribe the manner in which such power shall be exercised by the Courts. But no bank charter shall be granted or extended, and no Act passed authorizing the suspension of specie payment by any chartered bank, except by a vote of two-thirds of each branch of the General Assembly.

2. No money shall be drawn from the Treasury of this State, except by appropriation made by law; and a regular statement and account of the receipt and expenditure of all public money shall be published from time to time.

3. No vote, resolution, law or order shall pass, granting a donation or gratuity in favor of any person, except by the concurrence of two-thirds of the General Assembly.

4. No law shall be passed by which a citizen shall be compelled, directly or indirectly, to become a stockholder in, or contribute to a railroad or other work of internal improvement, without his consent; except the inhabitants of a corporate town or city. This provision shall not be construed to deny the power of taxation for the purpose of making levees or dams to prevent the overflow of rivers.

## SECTION VII

1. The importation or introduction of negroes from any foreign country, other than the slave-holding States or Territories of the United States of America, is forever prohibited.

2. The General Assembly may prohibit the introduction of negroes from any State; but they shall have no power to prevent immigrants from bringing their slaves with them.

3. The General Assembly shall have no power to pass laws for the emancipation of slaves.

4. Any person who shall maliciously kill or maim a slave, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person.

## ARTICLE III

### SECTION I

1. The executive power shall be vested in a Governor, who shall hold his office during the term of two years, and until such time as a successor shall be chosen and qualified. He shall have a competent salary fixed by law, which shall not be increased or diminished during the period for which he shall have been elected; neither shall he receive, within that period, any other emolument from the Confederate States, or either of them, or from any foreign power.

2. The Governor shall be elected by the persons qualified to vote for members of the General Assembly, on the first Wednesday in October, in the year of our Lord 1861; and on the first Wednesday in October in every second year thereafter, until such time be altered by law; which election shall be held at the places of holding general elections, in the several counties of this State, in the manner prescribed for the election of members of the General Assembly. The returns for every election of Governor shall be sealed up by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives; and transmitted to the Governor, or the person exercising the duties of Governor for the time being; who shall, without opening the said returns, cause the same to be laid before the Senate, on the day after the two houses shall have been organized; and they shall be transmitted by the State to the House of Representatives. The members of each branch of the General Assembly shall convene in the Representative Chamber, and the President of the Senate, and the Speaker of the House of Representatives, shall open and publish the returns in presence of the General Assembly; and the person having the majority of the whole number of votes given in, shall be declared duly elected Governor of this State; but if no person have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the Legislature to elect, the General Assembly shall immediately elect a Governor *viva voce*; and in all cases of election of a Governor by the General Assembly, a majority of the votes of the members present shall be necessary for a choice. Contested elections shall be

determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

3. No person shall be eligible to the office of Governor who shall not have been a citizen of the Confederate States twelve years, and an inhabitant of this State six years, and who hath not attained the age of thirty years.

4. In case of death, resignation, or disability of the Governor, the President of the Senate shall exercise the executive powers of the government until such disability be removed, or a successor is elected and qualified. And in case of the death, resignation, or disability of the President of the Senate, the Speaker of the House of Representatives shall exercise the executive power of the government until the removal of the disability or the election and qualification of a Governor.

5. The Governor shall, before he enters on the duties of his office, take the following oath or affirmation: "I do solemnly swear or affirm (as the case may be), that I will faithfully execute the office of Governor of the State of Georgia; and will, to the best of my abilities, preserve, protect and defend the constitution thereof. "

## SECTION II

1. The Governor shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof.

2. He shall have power to grant reprieves for offences against the State, except in cases of impeachment, and to grant pardons, or to remit any part of a sentence, in all cases after conviction, except for treason or murder, in which cases he may respite the execution, and make report thereof to the next General Assembly.

3. He shall issue writs of elections to fill vacancies that happen in the Senate or House of Representatives, and shall have power to convene the General Assembly on extraordinary occasions; and shall give them, from time to time, information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.

4. When any office shall become vacant by death, resignation, or otherwise, the Governor shall have power to fill such vacancy unless otherwise provided by law; and persons so appointed shall continue in office until a successor is appointed agreeably to the mode pointed out by this Constitution, or by law in pursuance thereof.

5. A person rejected by the Senate shall not be reappointed by the Governor to the same office during the same session or the recess thereafter.

6. The Governor shall have the revision of all bills passed by both Houses, before the same shall become laws, but two-thirds of each House may pass a law notwithstanding his dissent; and if any bill should not be returned by the Governor within five days (Sundays excepted) after it has been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return. He may approve any appropriation and disapprove any other appropriation in the same bill, and the latter shall not be effectual unless passed by two-thirds of each House.

7. Every vote, resolution, or order, to which the concurrence of both Houses may be necessary, except on a question of election or adjournment, shall be presented to the Governor; and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of each House, according to the rules and limitations prescribed in case of a bill.

8. There shall be a Secretary of State, a Comptroller General, a Treasurer, and Surveyor-General, elected by the General Assembly, and they shall hold their offices for the like period as the Governor, and shall have

a competent salary, which shall not be increased or diminished, during the period for which they shall have been elected. The General Assembly may at any time consolidate any two of these offices, and require all the duties to be discharged by one officer.

9. The great seal of the State shall be deposited in the office of the Secretary of State, and shall not be affixed to any instrument of writing, but by order of the Governor or General Assembly; and the General Assembly shall, at their first session, after the rising of this convention, by law cause the great seal to be altered.

10. The Governor shall have power to appoint his own Secretaries, not exceeding two in number.

## ARTICLE IV

### SECTION I

1. The Judicial powers of this State shall be vested in a Supreme Court for the correction of errors, a Superior, Inferior, Ordinary and Justices' Courts, and in such other courts as have been or may be established by law.

2. The Supreme Court shall consist of three Judges, who shall be appointed by the Governor with the advice and consent of two-thirds of the Senate, for such term of years as shall be prescribed by law, and shall continue in office until their successors shall be appointed and qualified, removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.

3. The said court shall have no original jurisdiction but shall be a court alone for the trial and correction of errors in law and equity from the Superior Courts of the several circuits, and shall sit at least once a year, at a time prescribed by law, in each of one or more judicial districts, designated by the General Assembly for that purpose, at such point in each district as shall by the General Assembly be ordained, for the trial and determination of writs of error from the several Superior Courts included in such judicial districts.

4. The said Court shall dispose of and finally determine every case on the docket of such Court at the first or second term after such writ of error brought; and in case the plaintiff in error shall not be prepared at the first term of such Court after error brought, to prosecute the case, unless precluded by some providential cause from such prosecution, it shall be stricken from the docket, and the judgment below shall stand affirmed.

### SECTION II

1. The Judges of the Superior Courts shall be appointed in the same manner as Judges of the Supreme Court from the circuits in which they are to serve, for the term of four years, and shall continue in office until their successors shall be appointed and qualified, removable by the Governor on the address of two-thirds of each branch of the General Assembly, or by impeachment and conviction thereon.

2. The Superior Court shall have exclusive jurisdiction in all cases of divorce, both total and partial; but no total divorce shall be granted, except on the concurrent verdicts of two special juries. In each divorce case, the Court shall regulate the rights and disabilities of the parties.

3. The Superior Court shall also have exclusive jurisdiction in all criminal cases, except as relates to people of color, fines for neglect of duty, contempts of Court; violations of road laws, and obstructions of water

courses, jurisdiction of which shall be vested in such judicature or tribunal as shall be or may have been pointed out by law; and except in all other minor offences committed by free white persons, and which do not subject the offender or offenders to loss of life, limb or member, or to confinement in the penitentiary; in all such cases, Corporation Courts, such as now exist, or may hereafter be constituted, in any incorporated city, or town, may be vested with jurisdiction, under such rules and regulations as the Legislature may hereafter by law direct.

4. All criminal cases shall be tried in the county where the crime was committed, except in cases where a jury cannot be obtained.

5. The Superior Court shall have exclusive jurisdiction in all cases respecting titles to land, which shall be tried in the county where the land lies. And also in all equity causes which shall be tried in the county where one or more of the defendants reside, against whom substantial relief is prayed.

6. It shall have appellate jurisdiction in all such cases as may be provided by law.

7. It shall have power to correct errors in inferior judicatories by writ of certiorari, and to grant new trials in the Superior Court on proper and legal grounds.

8. It shall have power to issue writs of mandamus, prohibition, scire facias, and all other writs which may be necessary for carrying its powers fully into effect.

9. The Superior and Inferior Courts shall have concurrent jurisdiction in all other civil causes; which shall be tried in the county where the defendant resides.

10. In cases of joint obligors, or joint promisors or copartners, or joint trespassers residing in different counties, the suit may be brought in either county.

11. In case of a maker and indorser or indorsers of promissory notes residing in different counties in this State, the same may be sued in the county where the maker resides.

12. The Superior and Inferior Courts shall sit in each county twice in every year, at such stated times as have been or may be appointed by the General Assembly.

### SECTION 3

1. The judges shall have salaries adequate to their services fixed by law, which shall not be diminished during their continuance in office; but shall not receive any other perquisites or emoluments whatever, from parties or others, on account of any duty required of them.

2. There shall be a State's Attorney and Solicitors appointed in the same manner as the Judges of the Supreme Court and commissioned by the Governor; who shall hold their offices for the term of four years, or until their successors shall be appointed and qualified, unless removed by sentences on impeachment, or by the Governor, on the address of two-thirds of each branch of the General Assembly. They shall have salaries adequate to their services fixed by law, which shall not be diminished during their continuance in office.

3. The Justices of the Inferior Courts shall be elected in each county by the persons entitled to vote for members of the General Assembly.

4. The Justices of the Peace shall be elected in each district by the persons entitled to vote for members of

the General Assembly.

5. The powers of a Court of Ordinary and of Probate shall be vested in an Ordinary for each county, from whose decisions there may be an appeal to the Superior Court, under regulations prescribed by law. The ordinary shall be ex officio clerk of said Court, and may appoint a deputy-clerk. The ordinary, as clerk, or his deputy, may issue citations and grant temporary letters of administration, to hold until permanent letters are granted; and said ordinary, as clerk, or his deputy, may grant marriage licenses. The ordinaries in and for the respective counties shall be elected, as other county officers are, on the first Wednesday in January, 1864, and every fourth year thereafter, and shall be commissioned by the Governor for the term of four years. In case of any vacancy of said office of ordinary, from any cause, the same shall be filled by election, as is provided in relation to other county officers, and until the same is filled, the clerk of the Superior Court for the time being shall act as clerk of said Court of Ordinary.

## ARTICLE V

1. The electors of members of the General Assembly shall be free white male citizens of this State; and shall have attained the age of twenty-one years; and have paid all taxes which may have been required of them, and which they have had an opportunity of paying, agreeably to law, for the year preceding the election; and shall have resided six months within the district or county.

2. All elections, by the General Assembly, shall be viva voce and when the Senate and House of Representatives unite for the purpose of electing, they shall meet in the Representative chamber, and the President of the Senate shall in such case preside, and declare the person or persons elected.

3. In all elections by the people, the electors shall vote by ballot, until the General Assembly shall otherwise direct.

4. All civil officers shall continue in the exercise of the duties of their several offices, during the periods for which they were appointed, or until they shall be superseded by appointments made in conformity with this Constitution; and all laws now in force shall continue to operate, so far as they are compatible with this Constitution, until they shall expire, be altered or repealed; and it shall be the duty of the General Assembly to pass all necessary laws and regulations for carrying this Constitution into full effect.

5. All militia and county officers shall be elected by the people in such manner as the General Assembly may by law direct.

6. This Constitution shall be amended only by a Convention of the people called for that purpose.

7. This Constitution shall not take effect until the same is ratified by the people. And to this end, there shall be an election held at all the places of public election in this State, on the first Tuesday in July, 1861, when all the citizens of this State entitled to vote for Governor, shall cast their ballots either for "Ratification" or "No Ratification." The election shall be conducted in the same manner as general elections, and the return shall be made to the Governor. If a majority of the votes cast shall be for Ratification, the Governor shall by proclamation, declare this Constitution adopted by the people. But if for No Ratification, that fact shall be proclaimed by the Governor, and this Constitution shall have no effect whatever.

Done in Convention of the Delegates of the people of the State of Georgia, at Savannah, on the 23rd of March, in the year of our Lord, eighteen hundred and sixty-one.