

1868 Georgia Constitution

PREAMBLE

We, the people of Georgia, in order to form a permanent government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this constitution for the State of Georgia.

ARTICLE I

DECLARATION OF FUNDAMENTAL PRINCIPLES

Section 1. Protection to person and property is the paramount duty of government, and shall be impartial and complete. .

Section 2. All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges, and immunities guaranteed in this section.

Section 3. No person shall be deprived of life, liberty, or property, except by due process of law.

Section 4. There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof.

Section 5. The right of the people to appeal to the courts, to petition government on all matters, and peaceably to assemble for the consideration of any matter, shall never be impaired.

Section 6. Perfect freedom of religious sentiment shall be, and the same is hereby secured, and no inhabitant of this State shall ever be molested in person or property, or prohibited from holding any public office or trust, on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the people.

Section 7. Every person charged with an offense against the laws shall have the privilege and benefit of counsel, shall be furnished, on demand, with a copy of the accusation and a list of the witnesses on whose testimony the charge against him is founded, shall have 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.

Section 8. No person shall be put in jeopardy of life or liberty more than once for the same offense, save on his or her own motion for a new trial after conviction, or in case of mistrial

Section 9. Freedom of speech and freedom of the press are inherent elements of political liberty. But while every citizen may freely speak, or write, or print on any subject, he shall be responsible for the abuse of the liberty.

Section 10. 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, particularly describing the place or places to be searched, and the person or things to be seized.

Section 11. The social status of the citizen shall never be the subject of legislation.

Section 12. No person shall be molested for his opinions, or be subject to any civil or political incapacity, or acquire any civil or political advantage in consequence of such opinions.

Section 13. The writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety may require it.

Section 14. A well-regulated militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the general assembly shall have power to prescribe by law the manner in which arms may be borne.

Section 15. The punishment of all frauds shall be provided by law.

Section 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, nor shall any person be abused in being arrested, whilst under arrest, or in prison.

Section 17. The power of the courts to punish for contempt shall be limited by legislative acts.

Section 18. There shall be no imprisonment for debt.

Section 19. In all prosecutions or indictments for libel the truth may be given in evidence, and the jury shall have the right to determine the law and the facts.

Section 20. Private ways may be granted upon just compensation being paid by the applicant.

Section 21. All penalties shall be proportioned to the nature of the offense.

Section 22. Whipping, as a punishment for crime, is prohibited.

Section 23. No lottery shall be authorized, or sale of lottery-ticket allowed, in this State, and adequate penalties for such sale shall be provided by law.

Section 24. No conviction shall work corruption of blood, and no conviction of treason shall work a general forfeiture of estate longer than during the life of the person attained.

Section 25. Treason against the State of Georgia shall consist only in levying war against the State, or the United States, or adhering to the enemies thereof, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Section 26. Laws shall have a general operation, and no general law, affecting private rights, shall be varied, in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract is capable of such free consent.

Section 27. The power of taxation over the whole State shall be exercised by the general assembly only to raise revenue for the support of government, to pay the public debt, to provide a general school-fund, for common defence and for public improvement; and taxation on property shall be ad valorem only, and uniform on all species of property taxed.

Section 28. The general assembly may grant the power of taxation to county authorities and municipal corporations, to be exercised within their several territorial limits.

Section 29. No poll-tax shall be levied except for educational purposes and such tax shall not exceed one dollar annually on each poll.

Section 30. Mechanics and laborers shall have liens upon the property of their employers for labor performed or material furnished, and the legislature shall provide for the summary enforcement of the same.

Section 31. 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 persons, being of one department, shall exercise any power properly attached to either of the others, except in cases herein expressly provided.

Section 32. Legislative acts in violation of this constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them.

Section 33. The State of Georgia shall ever remain a member of the American Union; the people thereof are a part of the American nation; every citizen thereof owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State, in contravention or subversion thereof, shall ever have any binding force.

ARTICLE II

FRANCHISE AND ELECTIONS

Section 1. In all elections by the people the electors shall vote by ballot.

Section 2. Every male person born in the United States and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old or upward, who shall have resided in this State six months next preceding the election, and shall have resided thirty days in the county in which he offers to vote, and shall have paid all taxes which may have been required of him, and which he may have had an opportunity of paying, agreeably to law, for the year next preceding the election (except as hereinafter provided), shall be deemed an elector; and every male citizen of the United States, of the age aforesaid (except as hereinafter provided), who may be a resident of the State at the time of the adoption of this constitution shall be deemed an elector, and shall have all the rights of an elector, as aforesaid: Provided, That no soldier, sailor, or marine in the military or naval service of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath:

“I do swear that I have not given or received, nor do I expect to give or receive, any money, treat, or other thing of value, by which my vote, or any vote, is affected, or expected to be affected at this election, nor have I given or promised any reward, or made any threat, by which to prevent any person from voting at this election.”

Section 3. No person convicted of felony or larceny before any court of this State, or of or in the United States, shall be eligible to any office or appointment of honor or trust within this State, unless he shall have been pardoned.

Section 4. No person who is the holder of any public moneys shall be eligible to any office in this State until the same is accounted for and paid into the treasury.

Section 5. No person who, after the adoption of this constitution, being a resident of this State, shall engage in a duel in this State, or elsewhere, or shall send or accept a challenge, or be aider or abetter to such duel, shall vote or hold office in this State, and every such person shall also be subject to such punishment as the law may prescribe.

Section 6. The general assembly may provide, from time to time, for the registration of all electors, but the following classes of persons shall not be permitted to register, vote, or hold office: 1st. Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the penitentiary, or bribery; 2d. Idiots or insane persons.

Section 7. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest for five days before an election, during the election, and two days subsequent thereto.

Section 8. The sale of intoxicating liquors on days of election is prohibited.

Section 9. Returns of election for all civil officers elected by the people, who are to be commissioned by the governor, and also for the members of the general assembly, shall be made to the secretary of state, unless otherwise provided by law.

Section 10. The general assembly shall enact all laws giving adequate protection to electors before, during, and subsequent to elections.

Section 11. The election of governor, members of Congress, and of the general assembly, after the year 1868, shall commence on the Tuesday after the first Monday in November, unless otherwise provided by law.

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 1. One. The legislative power shall be vested in a general assembly, which shall consist of a senate and house of representatives, and, until, otherwise directed, the members thereof, after the first election, shall be elected, and the returns of the election made, as now prescribed by law.

Two. The members of the senate shall be elected for four years, except that the members elected at the first election from the twenty-two senatorial districts numbered in this constitution with odd numbers, shall only hold their office for two years. The members of the house of representatives shall be elected for two years. The election for members of the general assembly shall begin on Tuesday after the first Monday in November of every second year, except the first election, which shall be within sixty days after the adjournment of this convention; but the general assembly may by law change the time of election, and the members shall hold until their successors are elected and qualified.

Three. The first meeting of the general assembly shall be within ninety days after the adjournment of this convention, after which it shall meet annually on the second Wednesday in January, or on such other day as the general assembly may prescribe. 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 presence of its absent members as each house may provide. No session of the general assembly after the second under this constitution, shall continue longer than forty days, unless prolonged by a vote of two-thirds of each branch thereof.

Four. No person holding a military commission, or other appointment or offices, having any emolument or compensation annexed thereto, under this State or the United States, or either of them, except justices of the peace and officers of the militia, nor any defaulter for public money, or for any legal taxes required of him, shall have a seat in either house; nor shall any senator or representative, after his qualification as such, be elected by the general assembly, or appointed by the governor, either with or without the advice and consent of the senate, to any office or appointment, having any emolument annexed thereto, during the time for which he shall have been elected.

Five. The seat of a member of either house shall be vacated on his removal from the district from which he was elected.

Section 2. One. There shall be forty-four senatorial districts in this State, composed each of three contiguous counties, from each of which districts one senator shall be chosen. Until otherwise arranged, as hereinafter provided, the said districts shall be constituted as follows:

The first district, of Chatham, Bryan, and Effingham

The second district, of Liberty, Tatnall, and McIntosh.

The Third district, of Wayne, Pierce, and Appling.

The fourth district, of Glynn, Camden, and Charlton.

The fifth district, of Coffee, Ware, and Clinch.

The sixth district, of Echols, Lowndes, and Berrien.

The seventh district, of Brooks, Thomas, and Colquitt.

The eighth district, of Decatur, Mitchell, and Miller.

The ninth district, of Early, Calhoun, and Baker.

The tenth district, of Dougherty, Lee, and Worth.

The eleventh district, of Clay, Randolph, and Terrell.

The twelfth district, of Stewart, Webster, and Quitman.

The thirteenth district, of Sumter, Schley, and Macon.

The fourteenth district, of Dooly, Wilcox, and Pulaski.

The fifteenth district, of Montgomery, Telfair, and Irwin.

The sixteenth district, of Laurens, Johnson, and Emanuel.

The seventeenth district, of Bullock, Scriven, and Burke.

The eighteenth district, of Richmond, Glasscock, and Jefferson.

The nineteenth district, of Taliaferro, Warren, and Greene.

The twentieth district, of Baldwin, Hancock, and Washington.

The twenty-first district, of Twiggs, Wilkinson, and Jones.

The twenty-second district, of Bibb, Monroe, and Pike.

The twenty-third district, of Houston, Crawford, and Taylor.

The twenty-fourth district, of Marion, Chattahoochee, and Muscogee.

The twenty-fifth district, of Harris, Upson, and Talbot.

The twenty-sixth district, of Spalding, Butts, and Fayette.

The twenty-seventh district, of Newton, Walton, and Clarke.

The twenty-eighth district, of Jasper, Putnam, and Morgan.

The twenty-ninth district, of Wilkes, Lincoln, and Columbia.

The thirtieth district, of Oglethorpe, Madison, and Albert.

The thirty-first district, of Hart, Franklin, and Habersham.

The thirty-second district, of White, Lumpkin, and Dawson.

The thirty-third district, of Hall, Banks, and Jackson.

The thirty-fourth district, of Gwinnett, DeKalb, and Henry.

The thirty-fifth district, of Clayton, Fulton, and Cobb.

The thirty-sixth district, of Meriwether, Coweta, and Campbell.

The thirty-seventh district, of Troup, Heard, and Carroll.

The thirty-eighth district, of Haralson, Polk, and Paulding.

The thirty-ninth district, of Cherokee, Milton, and Forsyth.

The fortieth district, of Union, Towns, and Rabun.

The forty-first district, of Fannin, Gilmer, and Pickens.

The forty-second district, of Bartow, Floyd, and Chattooga.

The forty-third district, of Murray, Whitfield, and Gordon.

The forty-fourth district, of Walker, Dade, and Catoosa.

If a new county be established it shall be added to a district which it adjoins, and from which the larger portion of its territory is taken. The senatorial districts may be changed by the general assembly, but only at the first session after the publication of each census by the United States Government, and their number shall not be increased.

Two. The senators shall be citizens of the United States, who have attained the age of twenty-five years, and who, after the first election under this constitution, shall have been citizens of this State for two years, and for one year resident of the district from which elected.

Three. The presiding officer of the senate shall be styled the president of the senate, and shall be elected, viva voce from the senators.

Four. The senate shall have the sole power to try impeachments. When sitting for that purpose the members shall be on oath or affirmation, and shall be presided over by one of the judges of the supreme court, selected for that purpose by a viva voce vote of the senate; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgments in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit within this State; but the party convicted, shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

Section 3. One. The house of representatives shall consist of one hundred and seventy-five representatives, apportioned as follows: to the six largest counties, to wit, Chatham, Richmond, Fulton, Bibb, Houston, and Burke, three representatives each; to the thirty-one next largest, to wit, Bartow, Columbia, Cobb, Coweta, Clarke, Decatur, Dougherty, Floyd, Gwinnett, Greene, Hancock, Harris, Jefferson, Lee, Muscogee, Monroe, Meriwether, Morgan, Macon, Newton, Oglethorpe, Pulaski, Randolph, Sumter, Stewart, Troup, Thomas, Talbot, Washington, Wilkes, and Warren, two representatives each; and to the remaining ninety-five counties, one representative each.

Two. The above apportionment may be changed by the General Assembly after each census by the United States Government, but in no event shall the aggregate number of representatives be increased.

Three. The representatives shall be citizens of the United States who have attained the age of twenty-one years, and who, after the first election under this constitution, shall have been citizens of this State for one year, and for six months resident of the counties from which elected.

Four. The presiding officer of the house of representatives shall be styled the speaker of the house of representatives, and shall be elected viva voce from the body.

Five. The house of representatives shall have the sole power to impeach all persons who shall have been or may be in office.

Six. 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 4. One. Each house shall be the judge of the election, returns, and qualifications of its 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.

Two. 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 members for anything said or done in either house, or who shall assault any member going to or returning therefrom, or who shall rescue or attempt to rescue any person arrested by order of either house.

Three. The members of both houses shall be free from arrest during their attendance on the general assembly, and in going to or returning therefrom, except for treason, felony, larceny, 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.

Four. Each house shall keep a journal of its proceedings, and publish it 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 journal. The original journal shall be preserved, after publication, in the office of the secretary of State, but there shall be no other record thereof.

Five. Every bill, before it shall pass, shall be read three times, and on three separate 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.

Six. All acts shall be signed by the president of the senate and the speaker of the house of representatives; and no bill, ordinance or resolution, intended to have the effect of a law which shall have been rejected by either house, shall be again proposed during the same session, under the same or any other title, without the consent of two-thirds of the house by which the same was rejected.

Seven. 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 either or both of them.

Eight. The officers of the two houses, other than the president and speaker, shall be secretary of the senate, and clerk of the house, and an assistant for each; a journalizing clerk, two engrossing and two enrolling clerks for each house, and the number shall not be increased except by a vote of the house. And their pay, as well as their pay and mileage of the members, shall be fixed by law.

Nine. Whenever the constitution requires a vote of two-thirds of either or both houses for the passing of an act or resolution, the yeas and nays on the passage thereof shall be entered on the journal and all votes on confirmations, or refusals to confirm nominations to office by the governor, shall be by yeas and nays, and the yeas and nays shall be recorded on the journal.

Ten. Every senator, or representative, before taking his seat, shall take an oath, or affirmation, to support the Constitution of the United States, and of this State; that he has not practiced any unlawful means, directly or indirectly, to procure his election, and that he has not given, or offered, or promised, or caused to be given, or offered, or promised, to any person, any money, treat, or thing of value, with intent to affect any vote, or to prevent any person voting at the election at which he was elected.

Section 5. One. The General Assembly shall have power to make all laws and ordinances, consistent with this constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State.

Two. The general assembly may alter the boundaries of, or lay off and establish new counties, or abolish counties, attaching the territory thereof to contiguous counties; but no new county shall be established except by a vote of two-thirds of each house; nor shall any county be abolished except by a vote of two-thirds of each house, and after the qualified voters of the county shall, at an election held for the purpose, so decide.

Section 6. One. No money shall be drawn from the treasury 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, and, also, with the laws passed by each session of the General Assembly.

Two. 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 each branch of the General Assembly, nor, by any vote, to a sectarian, corporation or association.

Three. No law or section of the code shall be amended or repealed by mere reference to its title, or to the number of the section in the code, but the amending or repealing act shall distinctly and fully describe the law to be amended or repealed, as well as the alteration to be made; but this clause shall be construed as directory only to the general assembly.

Four. No law shall be passed by which a citizen shall be compelled against his consent, directly or indirectly, to become a stockholder in, or contribute to, any railroad or work of public improvement, except in the case of the inhabitants of a corporate town or city. In such cases, the general assembly may permit the corporate authorities to take such stock, or make such contribution, or engage in such work, after a majority of the qualified voters of such town or city, voting at an election held for the purpose, shall have voted in favor of the same; but not otherwise.

Five. The General Assembly shall have no power to grant corporate powers and privileges to private companies, except to banking, insurance, railroad, canal, navigation, mining, express, lumber, manufacturing, and telegraph companies; nor to make or change, election precincts; nor to establish bridges or ferries; nor to change names or legitimate children; but it shall prescribe, by law, the manner in which such powers shall be exercised by the courts. But no charter for any bank shall be granted or extended, and no act passed authorizing the suspension of specie payments by any bank, except by a vote of two-thirds of the general assembly. The General Assembly shall pass no law making the State a stock holder in any corporate company; nor shall the credit of the state be granted or loaned to aid any company without a provision that the whole property of the company shall be bound for the security of the State, prior to any other debt or lien, except to laborers; nor to any company in which there is not already an equal amount invested by private persons; nor for any other object than a work of public improvements. No provision in this constitution for a two-thirds vote of both houses of the General Assembly shall be construed to waive the necessity for the signature of the governor, as in any other cases, except in the case of the two-thirds vote required to override the vote.

ARTICLE IV

EXECUTIVE DEPARTMENT

Section 1. One. The executive power shall be vested in a governor, who shall hold his office during the term

of four years, and until such time as a successor shall be chosen and qualified. He shall have a competent salary, established by law, which shall not be increased or diminished during the period for which he shall have been elected; nor shall he receive within that period any other emolument from the United States, or either of them, or from any foreign power.

Two. After the first election, the governor shall be elected quadrennially, by the persons qualified to vote for members of the general assembly, on the Tuesday after the first Monday in November, 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 same manner as is prescribed for the election of members of the general assembly. The returns for every election of governor, after the first, 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 his excellency 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 senate to the house of representatives. The members of each branch of the general assembly shall convene in the representative hall, and the president of the senate and the speaker of the house of representatives shall open and publish the returns in the presence of the general assembly; and the person having the majority of the whole number of votes given 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.

Three. No person shall be eligible to the office of governor who shall not have been a citizen of the United States fifteen years, and a citizen of this State six years, and who shall not have attained the age of thirty years.

Four. In case of the 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 powers of the government until the removal of the disability or the election and qualification of a governor. The general assembly shall have power to provide by law for filling unexpired terms by a special election.

Five. 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 ability preserve, protect, and defend, the Constitution thereof, and the Constitution of the United States of America.

Section 2. One. The governor shall be commander-in chief of the army and navy of this State, and of the militia thereof.

Two. He shall have power to grant reprieves and pardons, to commute penalties, and to remit any part of a sentence for offenses against the State, except in cases of impeachment.

Three. He shall issue writs of election to fill all vacancies that happen in the senate of house of representatives, and shall have power to convoke the general assembly on extraordinary occasions, and shall give them, from time to time, information of the state of commonwealth, and recommend to their consideration such measures as he may deem necessary and expedient.

Four. When an 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.

Five. A person once rejected by the senate shall not be reappointed by the governor to the same office during the same session, or the recess thereafter.

Six. 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 (Sunday 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.

Seven. 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.

Eight. 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 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.

Nine. 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 that now in use shall be the great seal of the State until otherwise provided by law.

Ten. The governor shall have power to appoint his own secretaries, not exceeding two in number, unless more shall be authorized by the general assembly.

ARTICLE V

JUDICIAL DEPARTMENT

Section 1. The judicial powers of this State shall be vested in a supreme court, superior courts, courts of ordinary, justices of the peace, commissioned notaries public, and such other courts as have been or may be established by law.

Section 2. One. The supreme court shall consist of three judges, two of whom shall constitute a quorum. When a majority of the judges are disqualified from deciding any case, by interest or otherwise, the governor shall designate certain judges of the superior courts to sit in their stead. At the first appointment of judges of the supreme court under this constitution, one shall be appointed for four years, one for eight years, and one for twelve years; but all subsequent appointments, except to fill unexpired terms, shall be for the term of twelve years.

Two. The supreme court shall have no original jurisdiction, but shall be a court alone for the trial and

correction of errors from the superior courts and from the city courts of Savannah and Augusta, and such other like courts as may be here after established in other cities; and shall sit at the seat of government at such time in each year as shall be prescribed by law, for the trial and determination of writs of error from said superior and city courts. The days on which the cases from the several circuits and city courts shall be taken up by the court shall be fixed by law.

Three. The supreme court shall dispose of every case at the first or second term after such writ of error is brought; and in case the plaintiff in error shall not be prepared at the first term to prosecute the case, unless prevented by providential cause it shall be stricken from the docket, and the judgment below shall stand affirmed. In any case the court may, in its discretion, withhold its judgment until the next term after the same is argued.

Four. When only two judges sit in any case, and they disagree, the judgment below shall stand affirmed.

Section 3. One. There shall be a judge of the superior courts for each judicial circuit. He may act in other circuits when authorized by law. At the first appointment of such judges under this constitution, one-half of the number (as near as may be) shall be appointed for four years and the other half for eight years; but all subsequent appointments, except to fill unexpired terms, shall be for the term of eight years.

Two. The superior courts shall have exclusive jurisdiction in cases of divorce; in criminal cases, where the offender is subjected to loss of life or confinement in the penitentiary; in cases respecting titles to land and equity cases, except as herein after provided; but the general assembly shall have power to merge the common law and equity jurisdiction of said courts. Said courts shall have jurisdiction in all other civil cases, except as hereinafter provided. They shall have appellate jurisdiction in all such cases as may be provided by law; they shall have power to correct errors in inferior judicatories, by writ of certiorari, which shall only issue on the sanction of the judge; and to issue writs of mandamus, prohibition, scire facias, and all other writs that may be necessary for carrying their powers fully into effect, and shall have such other powers as shall be conferred on them by law.

Three. There shall be no appeal from one jury in the superior courts to another, but the court may grant new trials on legal grounds. The court shall render judgment without the verdict of a jury in all civil cases founded on contracts, where an issuable defense is not filed on oath.

Four. The superior courts shall sit in each county not less than twice in each year, at such times as have been or may be appointed by law.

Section 4. One. Until the general assembly shall other wise direct, there shall be a district judge and a district attorney for each senatorial district in this State.

Two. The district judge shall have jurisdiction to hear and determine all offenses not punishable with death or imprisonment in the penitentiary; and it shall be the duty of the district attorney to represent the State in all cases before the district judge.

Three. The district judge shall sit at stated times, not less then once in each month in each county in his district for the trial of offenses, and at such other times as the general assembly may direct.

Four. Offences shall be tried before the district judge on a written accusation founded on affidavit; said accusation shall plainly set forth the offense charged, and shall contain the name of the accuser and be signed by the district attorney.

Five. There shall be no jury-trial before the district judge except when demanded by the accused, in which case the jury shall consist of seven.

Six. Such civil jurisdiction may be conferred on the district judges as the General Assembly may direct.

Seventh. The district judges and attorneys shall hold their offices for a period of four years, and shall receive for their services such stated compensation in their respective districts as may be provided by law, but in no event shall their compensation be in anywise dependent on fines, forfeitures, or costs.

Section 5. One. The powers of a court of ordinary and of probate shall be vested in an ordinary for each county, from whose decision there may be an appeal to the superior court, under regulations prescribed by law.

Two. The courts of ordinary shall have such powers in relation to roads, bridges, ferries, public buildings, paupers; county officers, county funds and taxes, and other matters, as shall be conferred on them by law.

Three. The ordinary shall hold his office for the term of four years, and until his successor is elected and qualified.

Section 6. One. There shall be in each district one justice of the peace, whose official term, except when elected to fill an unexpired term, shall be four years.

Two. The justices of the peace shall have jurisdiction, except as hereinafter provided, in all civil cases where the principal sum claimed does not exceed one hundred dollars, and may sit at any time for the trial of such cases; but in cases where the sum is more than fifty dollars, there may be an appeal to the superior court, under such regulations as may be prescribed by law.

Three. There shall be no appeal to a jury from the decision of a justice of the peace, except as provided in the foregoing paragraph.

Four. Notaries public may be appointed and commissioned by the governor, not to exceed one for each militia district, for a term of four years, and shall be ex-officio justices of the peace.

Section 7. One. There shall be an attorney-general of the State, whose official term, except when appointed to fill an unexpired term, shall be four years.

Two. It shall be the duty of the attorney-general to act as the legal adviser of the executive department, to represent the State in all civil and criminal cases in the supreme and superior courts when required by the governor, and to perform such other services as shall be required of him by law.

Section 8. One. There shall be a solicitor-general for each judicial circuit, whose official term, except when appointed to fill an unexpired term, shall be four years.

Two. It shall be the duty of the solicitor-general to represent the State in all cases in the superior courts of his circuit, and in all cases taken up from his circuit to the supreme court, and to perform such other services as shall be required of him by law.

Section 9. One. The judges of the supreme and the superior courts, the attorney-general, solicitors-general, and the district judges and attorneys, shall be appointed by the governor, with the advice and consent of the senate, and shall be removable by the governor on the address of two-thirds of each branch of the general assembly, or by impeachment and conviction thereon.

Two. Justices of the peace shall be elected by the legal voters in their respective districts, and shall be commissioned by the governor. They shall be removable on conviction for malpractice in office.

Section 10. One. The judges of the supreme and superior courts and the attorney and solicitors-general shall have, out of the State treasury, adequate and honorable salaries on the specie basis, which shall not be increased or diminished during their continuance in office. The District judges and district attorneys shall receive out of the treasuries of the several counties of their districts, adequate compensation, on the specie basis, which shall not be increased or diminished during their term of office; but said judges shall not receive any other perquisites or emoluments whatever from parties or others on account of any duty required of them.

Two. The general assembly shall provide for the equitable apportionment of the compensation of the district judges and attorneys between the counties composing their districts, and shall require the moneys arising from fines and forfeitures in the district courts to be paid into the treasuries thereof.

Three. No person shall be judge of the supreme or superior courts, or attorney-general, unless at the time of his appointment he shall have attained the age of thirty years, and shall have been a citizen of this State three years, and have practiced law for seven years.

Section 11. No total divorce shall be granted except on the concurrent verdicts of two juries. When a divorce is granted, the jury rendering the final verdict shall determine the rights and disabilities of the parties, subject to the revision of the court.

Section 12. One. Divorce cases shall be tried in the county where the defendant resides, if a resident of this State.

Two. Criminal cases shall be tried in the county where the crime was committed, except cases in the superior courts when the presiding judge is satisfied that an impartial jury cannot be obtained in such county.

Three. Cases respecting titles to land shall be tried in the county where the land lies, except where a single tract is divided by a county line, in which case the superior court of either county shall have jurisdiction.

Four. Equity cases shall be tried in the county where a defendant resides against whom substantial relief is prayed.

Five. Suits against joint obligers, joint promisors, co-partners, or joint trespassers, residing in different counties, may be tried in either county.

Six. Suits against the maker and indorser of promissory notes, or of her like instruments, residing in different counties, shall be tried in the county where the maker resides.

Seven. All other cases shall be tried in the county where the defendant resides.

Section 13. One. The right of trial by jury, except where it is otherwise provided in this constitution, shall remain inviolate.

Two. The General Assembly shall provide by law for the selection of upright and intelligent persons to serve as jurors. There shall be no distinction between the classes of persons who compose grand and petit juries. Jurors shall receive adequate compensation for their services, to be prescribed by law.

Section 14. The courts heretofore existing in this State styled inferior courts are abolished, and their unfinished business, and the duties of the justices thereof, are transferred to such tribunals as the general assembly may designate.

Section 15. The general assembly shall have power to provide for the creation of county commissioners in such counties as may require them, and to define their duties.

Section 16. All courts not specially mentioned by name in the first section of this article may be abolished in any county, at the discretion of the general assembly, and the county courts now existing in Georgia are hereby abolished.

Section 17. One. No court or officer shall have, nor shall the general assembly give, jurisdiction or authority to try or give judgment on or enforce any debt, the consideration of which was a slave or slaves, or the hire thereof.

Two. All contracts made and not executed during the late rebellion, with the intention and for the purpose of aiding and encouraging said rebellion, or where it was the purpose and intention of any one of the parties to such contract to aid or encourage such rebellion, and that fact was known to the other party, whether said contract was made by any person or corporation with the State or Confederate States, or by a corporation with a natural person, or between two or more natural persons, are hereby declared to have been and to be illegal, and all bonds, deeds, promissory notes, bills, or other evidences of debt, made or executed by the parties to such contract or either of them, in connection with such illegal contract, or as the consideration therefor or in furtherance thereof, are hereby declared null and void, and shall be so held in all courts in this State when attempt shall be made to enforce any such contract or give validity to any such obligation or evidence of debt. And in all cases when the defendant or any one interested in the event of the suit will make a plea, supported by his or her affidavit, that he or she has reason to believe that the obligation or evidence of indebtedness upon which the suit is predicated, or some part thereof, has been given or used for the illegal purpose aforesaid, the burden of proof shall be upon the plaintiff to satisfy the court and jury that the bond, deed, note, bill, or other evidence, of indebtedness upon which said suit is brought, is or are not, nor is any part thereof, founded upon or in any way connected with any such illegal contract, and has not been used in aid of the rebellion, and the date of such bond, deed, note, bill, or other evidence of indebtedness, shall not be evidence that it has or has not, since its date, been issued, transferred, or used in aid of the rebellion.

ARTICLE VI

EDUCATION

One. The general assembly, at its first session after the adoption of this constitution, shall provide a thorough system of general education, to be forever free to all children of the State, the expense of which shall be provided for by taxation or otherwise.

Two. The office of State school commissioner is hereby created. He shall be appointed by the governor with the consent of the senate, and shall hold his office for the same term as the governor. The general assembly shall provide for the said commissioner a competent salary and necessary clerks. He shall keep his office at the seat of government.

Three. The poll-tax allowed by this constitution, any educational fund now belonging to this State, except the endowment of and debt due to the State university, or that may hereafter be obtained in any way, a special tax on shows and exhibitions, and on the sale of spirituous and malt liquors, which the general assembly is

hereby authorized to assess, and the proceeds from the commutation for militia service, are hereby set apart and devoted to the support of common schools. And if the provisions herein made shall, at any time, prove insufficient, the general assembly shall have power to levy such general tax upon the property of the State as may be necessary for the support of said school system. And there shall be established, as soon as practicable, one or more common schools in each school-district in this State.

ARTICLE VII

HOMESTEAD AND EXEMPTION

Section 1. One. Each head of a family, or guardian, or trustee of a family of minor children, shall be entitled to a homestead of realty to the value of \$2,000.00 in specie, and personal property to the value of \$1,000.00 in specie, both to be valued at the time they are set apart. And no court or ministerial officer in this State shall ever have jurisdiction or authority to enforce any judgment, decree, or execution against said property so set apart, including such improvements as may be made thereon, from time to time, except for taxes, money borrowed and expended in the improvement of the homestead, or for the purchase-money of the same, and for labor done thereon, or material furnished therefor, or removal of encumbrances thereon. And it shall be the duty of the general assembly, as early as practicable, to provide, by law, for the setting apart and valuation of said property, and to enact laws for the full and complete protection and security of the same to the sole use and benefit of said families as aforesaid.

Two. All property of the wife, in her possession at the time of her marriage, and all property given to, inherited, or acquired by her, shall remain her separate property, and not liable for the debts of the husband.

ARTICLE VIII

MILITIA

Section 1. The militia shall consist of all able-bodied male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or this State; and shall be organized, officered, armed, equipped, and trained in such manner as may be provided by law; subject to the paramount authority of Congress over this subject.

Section 2. Volunteer companies of cavalry, infantry, or artillery may be formed in such manner, and with such restrictions, as may be provided by law.

Section 3. No person conscientiously opposed to bearing arms shall be compelled to do militia duty, but such person shall pay an equivalent for exemption; the amount to be prescribed by law and appropriated to the common-school fund.

ARTICLE IX

COUNTY OFFICERS

One. The county officers recognized as existing by the laws of this State, and not abolished by this constitution, shall, where not otherwise provided for in this constitution, be elected by the qualified voters of their respective counties or districts, and shall hold their office for two years. They shall be removable on conviction for malpractice in office, or on the address of two-thirds of the senate.

ARTICLE X

SEAT OF GOVERNMENT

One. The seat of government of this State, from and after the date of the ratification of this constitution, shall be in the city of Atlanta, and the general assembly shall provide for the erection of a new capitol, and such other buildings as the public welfare may require.

Two. The general assembly shall have power to provide for the temporary removal of the seal of government in case of invasion, pestilence, or other emergency.

ARTICLE XI

THE LAWS OF GENERAL OPERATION IN FORCE IN THIS STATE ARE

One. As the supreme law, the Constitution of the United States, the laws of the United States in pursuance thereof, and all treaties made under the authority of the United States.

Two. As next in authority thereto, this constitution.

Three. In subordination to the foregoing, all acts passed by any legislative body, sitting in this State as such, since the 19th day of January, 1861, including that body of laws known as the code of Georgia, and the acts amendatory thereof, or passed, since that time, which said code and acts are embodied in the printed book known as "Irwin's Code;" and also so much of the common and statute laws of England, and of the statute laws of Georgia. as were in force in this State on the 19th day of December, 1860, as are not superseded by said Code, though not embodied therein, except so much of the several statutes, code, and laws as may be inconsistent with the supreme law herein recognized, or may have been passed in aid of the late rebellion against the United States, or may be obsolete, or may refer to persons held in slavery, which excepted laws are inoperative and void; and any future general assembly shall be competent to alter or repeal (if not herein prohibited) any portion of the laws declared to be of force in this third specification of this clause of this article; and if in any of said laws herein declared of force the word "Confederate" occurs before the word "States," such law is hereby amended by substituting the word "United" for the word "Confederate."

Four. Local and private acts passed for the benefit of counties, cities, towns, corporations, and private persons, not inconsistent with the supreme law, nor with this constitution, and which have not expired or been repealed, shall have the force of statute law, subject to judicial decision as to their validity when passed, and to any limitation imposed by their own terms.

Five. All rights, privileges, and immunities which may have vested in, or accrued to, any person or persons, or corporations, in his, her, or their right, or in any fiduciary capacity, under any act of any legislative body sitting in this State as such, or of any decree, judgment, or order of any court, sitting in this State, under the laws then of force and operation therein, and recognized by the people as a court of competent jurisdiction, since the 19th day of January, 1861, shall be held inviolate by all the courts of this State, unless attacked for fraud, or unless otherwise declared invalid by, or according to, this constitution.

Six. The records, dockets, books, papers, and proceedings of any court or office existing in this State by the laws thereof on the 19th of January, 1861, or purporting to exist by said laws, and recognized and generally obeyed by the people, as such, since the said time, and before the several courts and officers provided for by this constitution shall have gone into actual operation, shall be transferred to the several courts and offices of the same name or functions by this constitution provided for, and shall have force and be executed, perfected, and performed therein, and thereby, as follows, and not otherwise, to wit:

Final judgments, decrees, proceedings, and acts fully executed and performed, or not requiring performance or execution, shall have full force and effect as though no interruption had taken place in the legal succession of said courts and offices, except as herein otherwise provided. Proceedings not final, and judgments and decrees not fully executed or performed, shall proceed and be performed in such cases, and such cases only, as this constitution, or the laws made in pursuance thereof, confer jurisdiction and authority over the causes of actions on which said cases, judgments, decrees, or proceedings, civil or criminal, are founded: Provided, That all said judgments, decrees, and proceedings shall be subject to be set aside, or reversed, or vacated by proceedings in the several courts having custody of the records, as though they were the judgments of said courts, and shall be subject always to be explained as to the meaning of the word dollar or dollars, as used in the same, and no motion for a new trial, bill or review, or other proceeding, to vacate any judgment, order, or decree, made since the 19th of January, 1861, by any of said courts, for fraud, illegality, or error of laws, shall be denied, by reason of the same not having been moved in time; provided said motion or application is made in twelve months from the adoption of this constitution.

Seven. The books, papers, and proceedings of the inferior courts shall be transferred to, and remain in, the control of the ordinaries, who shall perform the duties of said courts until otherwise provided by law. The books, papers, and proceedings of the county courts, and the unfinished business thereof, shall be transferred to the superior courts, and the same shall be finished and performed by the said superior courts and the officers thereof, in such cases, and in such cases only, as the said courts are, by this constitution or the laws made in pursuance thereof, granted jurisdiction over the subject matter or debts on which said cases and judgments, civil or criminal, are founded.

Eight. The cases pending and the judgments had and made in the city courts of Savannah and Augusta, and in the various justices' courts in this State, shall be finished and the judgments performed by the city courts, and officers and justices provided by this constitution in such cases, and such only, as by this constitution jurisdiction is given to said courts and officers over the causes of action on which they are founded.

Nine. The judgments and proceedings of courts and acts of officers within their jurisdiction, as provided by law, shall be valid notwithstanding the judges of said courts or the said officers were appointed by the military authorities of the United States, and any of said judgments, or acts, or proceedings made or done under or by virtue of, or in accordance with, the orders of said military authorities, duly made, are as valid as if done under a law of this State.

Ten. These several acts of confirmation shall not be construed to divest any vested right, nor to make any criminal otherwise not criminal, but they shall be construed as acts of peace and to prevent injustice: Provided, That nothing in this constitution shall be so construed as to make valid any acts done by, or before any such de facto officer, which would, by legalizing such acts, render that criminal which was not criminal when done, or cause any act not legally criminal when done to become criminal by giving validity to such act after it was done; but all such acts shall be held by the courts to be null and void.

Eleven. Should this Constitution be ratified by the people, and Congress accept the same with any qualifications or conditions, the government herein provided for, and the officers, elected shall nevertheless exist and continue in the exercise of their several functions, as the government of this State, so far as the same may be consistent with the action of the United States in the premises.

Twelve. The ordinances of this convention on the subject of the first election, and the first General Assembly, shall have the force of laws, until they expire by their own limitations, and all other ordinances of a mere legislative character shall have the force of laws, until otherwise provided by the General Assembly.

ARTICLE XII

AMENDMENTS TO THE CONSTITUTION

One. This constitution may be amended by a two thirds vote of two successive legislatures, and by a submission of the amendment to the qualified voter for final ratification. But the General Assembly shall not call a convention of the people in the election of delegates to which any person qualified to vote by this constitution shall be disqualified. And the representation in said convention shall be based on population. Nor shall the right of suffrage ever be taken from any person qualified by this constitution to vote.

Josiah R. Parrott, President.

P. M. Sheibley, Secretary.

AMENDMENTS TO THE 1868 CONSTITUTION

The act of Congress, approved June 25, 1868, admitting the State of Georgia to representation in Congress, amended and abridged the first subdivision of section seventeen of article five, which in the original constitution read as follows:

One. No court in this state shall have jurisdiction to try or determine any suit against any resident of this State upon any contract or agreement made or implied, or upon any contract made in renewal of any debt existing prior to the 1st day of June, 1865; nor shall any court or ministerial officer of this State have authority to enforce any judgment, execution, or decree rendered or issued upon any contract or agreement made or implied, or upon any contract in renewal of a debt existing prior to the 1st day of June, 1865, except in the following cases:

“1. In suits against trustees, where the trust property is in the hands of the trustee, or has been invested by him in other specie effects now in his hands, and in suits by the vendor of real estate against the vendee, where not more than one-third of the purchase money has been paid, and the vendee is in possession of the land or specific effects for which he has sold it, and he refuses to deliver the land or said effects to the vendor. In such cases the courts and officers may entertain jurisdiction and enforce judgments against said trust-property or land or effects.

“2. In suits for the benefit of minors by trustees appointed before the 1st day of June, 1865.

“3. In suits against corporations in their corporate capacity, but not so as to enforce the debt against the stockholders or officers thereof in their individual capacity.

“4. In suits by charitable or literary institutions for money loaned, property (other than slaves) sold, or services rendered by such institutions.

“5. In suits on debts due for mechanical or manual labor when the suit is by the mechanic or laborer.

“6. In cases when the debt is set up by way of defence, and the debt set up exceeds any debt due by defendant to plaintiff of which the courts are denied jurisdiction.

“7. In all other cases in which the General Assembly shall, by law, give the said courts and officers jurisdiction: Provided, That no court or officer shall have, nor shall the General Assembly give, jurisdiction or authority to try or give judgment on or enforce any debt, the consideration of which was a slave or slaves, or the hire thereof.”

The Act of Congress approved June 25, 1868, admitting the State of Georgia, to representation in Congress, declared null and void a third subdivision of section seventeen of the fifth article, which in the original constitution read as follows

“Three. It shall be in the power of the General Assembly to assess and collect upon all debts, judgments, or causes of action when due, founded on any contract made or implied before the 1st day of June, 1865, in the hands of any one in his own right, or as trustee, agent, or attorney of another, on or after the 1st day of January, 1868, a tax of not exceeding twenty-five per cent., to be paid by the creditor on pain of the forfeiture of the debt, but chargeable by him as to one-half thereof against the debtor, and collectible with the debt: Provided, That this tax shall not be collected if the debt or cause of action be abandoned or settled without legal process, or, if in judgment, be settled without levy and sale: And provided further, That this tax shall not be levied so long as the courts of this State shall not have jurisdiction of such debts or causes of action.”

By an amendment proposed in an Act approved on the 25th day of February, 1875, and in an act approved on the 27th day of February, 1877, and ratified by the people at an election held on the 1st day of May, 1877, the sixth section of the third article, was amended by adding thereto a clause, as follows:

“Neither the General Assembly nor any other authority or officer of this State, shall ever have power to pay or recognize as legal, or in any sense valid or binding upon the State, any direct bonds, gold bonds, or currency bonds, or the State’s alleged guaranty or indorsement of any railroad bonds, or any other bonds, guaranties or indorsements heretofore declared to be illegal, fraudulent or void, by act or resolution of the Legislature of the State, or that may be declared illegal, fraudulent or void by act or resolution of the Legislature originating this amendment, viz: the State gold bonds issued under the act of October 17, 1870, in aid of the Brunswick and Albany Railroad Company; the currency bonds issued under the act of August 27, 1870; the quarterly gold bonds issued under the act of September 15, 1870, which are enumerated in the act of August 23, 1872; the indorsement of the State upon the bonds of the Brunswick and Albany Railroad Company, made under the act of March 18, 1869; the indorsement of the State upon the bonds of Cartersville and Van Wert Railroad Company, and of the Cherokee Railroad Company; the indorsement of the State upon the bonds of the Bainbridge, Cuthbert and Columbus Railroad Company; and all other bonds, guaranties, or indorsements, declared illegal, fraudulent, or void, as herein provided. Nor shall any General Assembly ever have power to provide for the reindorsement of such railroad bonds, or to place the State’s guaranty upon the same, or to provide for the indorsement or guaranty by the State of any new bonds issued in lieu of, or to pay off, or retire such railroad bonds by any railroad company, or to issue bonds of the State to such railroad companies or persons in payment, or in lieu of such indorsed bonds, or other bonds herein declared illegal; or to lend the aid of the State by any act, resolution, or law, to such railroad companies, or to other incorporated companies, or persons, acquiring or succeeding to the rights and franchises of said companies; or to buy the railroads of such companies; or to submit the question of the liability of the State upon any of the bonds, or indorsements upon bonds, or other guaranty herein declared illegal, fraudulent and void, or upon any claim for money advanced upon said bonds, indorsements, or guaranties, or expended by said companies or other person, in and about the construction of said railroads, to the decision of any court, tribunal, or person whatever; or to pay, assume or secure, directly or indirectly, by any act, resolution or law, any money advanced, or claimed to have been advanced, on the bonds, indorsements or guaranties herein declared invalid.”