
SUPREME JUDICIAL COURT

DOCKET NO. OJ-17-1

BEFORE THE JUSTICES OF THE SUPREME JUDICIAL COURT

IN THE MATTER OF REQUEST FOR OPINION OF THE JUSTICES

REPLY BRIEF OF THE MAINE STATE SENATE

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I. INTRODUCTION

A solemn occasion has been presented on the facts before us.¹ The briefs filed with this Court on March 3, 2017, by the Proponents of the Ranked Choice Voting Act (“RCVA” or “Act”) have established certain points reassuring the live gravity of the questions propounded.² First, there appears to be general agreement that, as enacted, the Act is incomplete. While statutorily describing the concept of voting by ranked choice or, as the Proponents put, by “preference”, the Act on its face does not establish the process for determining votes in any “round”³, other than, arguably, the first round. Whether implementation can be done by statute or by constitutional amendment and how it should be framed remain in dispute. Identifying the constitutional infirmities in the RCVA will assist the Senate in deliberating on and passing any such implementing legislation or recommending

¹ A solemn occasion arises “when the questions are of a serious and immediate nature, and the situation presents an unusual exigency.” *Opinion of the Justices*, 2004 ME 54, ¶ 3, 850 A.2d 1145, 1147 (citation omitted).

² While the Proponents contend that the Justices categorically refuse to opine on questions involving enacted laws, the Justices have given such opinions on multiple previous occasions. *See, e.g., Opinion of the Justices*, Me. Sup. Jud. Ct. Docket No. OJ-98-1 (July 31, 1998), http://courts.maine.gov/opinions_orders/opinions/documents/OJ98_1.htm (finding a solemn occasion and providing an opinion relating to a newly enacted statute regarding taxes); *Opinion of the Justices*, 460 A.2d 1341 (Me. 1982) (finding a solemn occasion and answering questions relating to the constitutionality of an enacted citizens initiative).

³ 21-A M.R.S. § 723-A(1)(J).

any necessary constitutional amendment. The need for the Senate to consider appropriations, as set forth more fully in the Senate’s principal brief also remains.⁴

Second, the questions propounded to the Justices present an unusual exigency. “[S]uch an exigency . . . exists when the body making the inquiry, having some action in view, has serious doubts as to its power and authority to take such action under the Constitution or under existing statutes.” *In re Opinion of the Justices*, 2002 ME 169, ¶ 6, 815 A.2d 791, 794. As discussed below, the Senate is constitutionally tasked to “determine who is elected to the office of Senator by a *plurality* of votes” in each district. Me. Const. art. IV, pt. 2, § 5 (emphasis added). This poses a very real conflict for the Senate in carrying out its constitutional duties.

Third, the Act would impose duties and responsibilities on the Secretary of State which are not authorized by Article IV, Part First, Section 5 of the Maine Constitution nor in any other part thereof. Conversely, the enlargement of the Secretary’s electoral responsibilities diminishes the responsibilities that Article IV, Part First, Section 5 assigns to local governments and their elected and appointed officials.

⁴ The Justices have previously provided an opinion indicating “the members of the Maine Senate ... have told us that they need our opinion in order to undertake their responsibilities. We take them at their word that an opinion ... would assist and inform the Senate... in their deliberations.” *Opinion of the Justices*, 2004 ME 54, ¶ 7, 850 A.2d 1145.

Finally, the Proponents assert that constitutional authority for the Act resides in the words “vote” and “plurality”—that these words possess elastic and mutable qualities which accommodate the introduction, by statute, of an entirely new voting system. This contention directly implicates the Senate’s constitutional duty and obligation, following an election, to decide who is lawfully entitled to membership in the Senate.

II. DISCUSSION

A. IMPLEMENTATION OF THE RCVA REQUIRES A CONSTITUTIONAL AMENDMENT.

Upon reviewing the briefs of the Proponents, it appears that to fully implement the Act, a constitutional amendment will be required. The rationale for this assertion is set forth in the initial brief of the Attorney General.⁵ In order to appropriately implement the Act, the Senate seeks guidance from this Court. Should the Court conclude an omission from the Act could be filled statutorily, the Senate requests guidance on its form and substance. *See generally, Opinion of the Justices*, 2004 ME 54, ¶ 7, 850 A.2d 1145.

B. THE SENATE HAS SERIOUS DOUBTS RELATING TO ITS POWER AND AUTHORITY TO TAKE ACTION IN SEATING ITS OWN MEMBERS.

The Maine Constitution provides that candidates chosen by the Electors prevail if they obtain a *plurality* of the votes. Me. Const., art. IV, Pt. 2, § 3

⁵ *See Brief of the Attorney General*, at 2.

(incorporating by reference art. IV, Pt. 1, § 5). Following each election, the Senate is constitutionally required to seat members “elected by a *plurality* of the votes to be Senator in each district.” *Id.* at art. IV, Pt. 2, § 5 (emphasis added). The Senate’s determination is in addition to its more general right to “be the judge of the elections and qualifications of its members...” *Id.* at art. IV, Pt. 3, § 3. This means that the Senate has a constitutional duty to interpret and apply the word “plurality” as the standard by which it is to fulfill its seating duties under Article IV, Part Second, Section 5 as well as Article IV, Part Third, Section 3.

As a co-equal branch of State government and subject to applicable standards of justiciability and judicial review, the Senate is empowered and, at times, required to interpret the Maine Constitution. The RCVA, however, is intended to create circumstances in which a candidate who garners a plurality in the first round may ultimately lose to a candidate who, in the second or later rounds, garners a greater aggregate of first and lower rankings of preferences.⁶

While the Senate takes no position on the desirability or beneficial effects of the RCVA electoral system, it is a virtual certainty that, following the 2018 elections, candidates who prevailed in the first round and candidates in the same districts in the second or later rounds will present themselves to the Senate for seating, thus presenting the Senate with the obligation to determine which candidate has

⁶ See, e.g., *Brief of Attorney General*, 7-9.

obtained a plurality of the votes within the meaning of Article IV, Part Second, Section 5 and, as well, within the meaning of Article IV, Part First, Section 5.⁷ This situation would result in a constitutional crisis of the first order.

Partisan passions always lie more or less beneath the surface. As if our own times were not example enough, the political crisis over the 1879 elections amply and dramatically illustrates this reality.⁸ Antidotes to the emergence of these passions lie in respect for the rule of law which is critically reinforced for the clarity of political and electoral procedures. Those same materials equally demonstrate that recourse to guidance from this Court pursuant to Article VI, Section 3 and this Court's repeated acceptance of jurisdiction under that provision, together with the physical and moral courage of Joshua L. Chamberlain, caused the crisis to abate peaceably. Waiting until the many issues generated by implementation of the Ranked Choice System have crystallized into actual elections are at issue and, perhaps, the control of the Senate by one party or the other shall hang in the balance would expose the Senate and, potentially, the

⁷ Before the Senate is presented with this determination, presumably the Governor will have summoned candidates that the Governor had decided "appear to be elected" in accordance with Article IV, Part Second, Section 4. However the Governor may have made that determination, it will not be binding on the Senate. *See, e.g., Opinion of Justices*, 70 Me. 570, 586 (1880) (declaring 1871 Revised Statutes, ch. 2, § 25 unconstitutional); 1869 Laws of Maine, ch. 67 (*see* Appendix 1).

⁸ *See Brief of Maine House Republican Caucus and Maine Heritage Policy Center* at 15-24 ("Caucus Brief"); *Committee Brief* at 21-24. To the extent that the Proponents contend that the change from a majority to plurality standard was prompted by the 1879 election crisis, that point lies only for the office of Governor. By 1879, elections for the House of Representatives and the Senate were governed by a plurality standard. Also, well before 1879 election crisis, elected constitutional offices of Judge of Probate, Register of Probate, Sheriff, and Municipal Judge were determined by a plurality standard. *See* 1857 Maine Const. Amendments, Arts. IX, §§ 7-9.

Judiciary, itself, to the most searing partisan passions. Article VI, Section 3 empowers this Court to provide guidance and clarity well in advance of any circumstance in which power may hang in the balance. The Senate respectfully urges that certain challenge posed by its eventual application of the standards in Article IV, Part Second, Section 5, at this time, present this Court with a solemn occasion within the meaning of Article VI, Section 3.

C. THE RCVA CANNOT BE RECONCILED WITH THE CONSTITUTION’S ELECTION PROCEDURES

As noted, the Proponents argue for expansive and admittedly novel interpretation of the words “vote” and “plurality.”⁹ This historical and legal fact prompts two conclusions: First, that the framers of the Maine Constitution used the word “vote” to mean the choice by an Elector that was complete and entire upon casting.¹⁰ Second, that the procedures established in Article IV, Part First, Section 5 were based on that meaning and relied upon it for the electoral standards and processes it imposed. The provenance of this provision supports this conclusion.

This fundamental electoral provision was derived from the 1780 Massachusetts Constitution. *cf.*, Me. Const., art. IV, Pt. 1, § 5; 1780 Massachusetts

⁹ See *e.g.*, *Brief of Marshall Tinkle, Esq.*, at 23 (noting “alternative voting systems were not anyone’s radar screen” when plurality standards adopted).

¹⁰ Since 1820 the Electors have gone to the polls and cast votes in which they *make a choice* for one candidate over other candidates for the same office. This choice between alternatives has been the functional definition of what it means to cast a vote.

Constitution, Pt. 2, ch. I, § 2; art. II, Pt. 2, ch. II, § 1; art. III.¹¹ (See Appendix 2). Moreover, by the time Maine separated from Massachusetts; its citizens had had nearly 40 years with annual elections held under the authority of the 1780 Massachusetts Constitution. See *Id.* at Pt. 2, ch. I, § 2; art. I, Pt. 2, ch. I, § 3; art. I, Pt. 2, ch. II, § I; art. II.

Both Constitutions placed responsibility for elections squarely at the local level but this was no *carte blanche*. Both Constitutions imposed specific duties on local election officials and, throughout, required that their discharge of these duties be open and public. Perhaps by omission, the 1780 Massachusetts Constitution did not expressly require the Senate election results to be publicly declared. See *Id.* at Pt. 2, ch. I, § 2, art. I. The Maine Constitution differed by deliberately requiring, for Representative, Senator, and Governor, that local election officials “declare [the votes] in open town meeting.” 1820 Me. Const. art. IV, Pt. 1, § 5; art. IV, Pt. 2, § 3; art. V, Pt. 1, § 3.

The purposes of these detailed procedures and responsibilities, exercised openly at the local level by designated and accountable officials are self evident. Yet, in the wake of the 1879 election crisis, this Court made their purposes plain. These constitutionally imposed procedures were intended to ensure the integrity of

¹¹ The 1780 Massachusetts Constitution was, for the most part, written by John Adams. John Adams, P. Smith (ed. 1962) at 438-444. The Committee draft on the 1780 Constitution included these electoral provisions. John Adams, Revolutionary Writings 1775-1783, G. Wood, (ed. 2010) at 249-277. (Appendix 3)

the electoral process. *See Opinion of Justices*, 70 Me. 560, 561 (1879); *Opinion of Justices*, 70 Me. 570, 598 (1880). Thus, when the Proponents urge that the Constitution requires a liberal construction (*see, e.g., League Brief* at 7, 20, citing *Allen v. Quinn*, 459 A.2d 1098, 1102-1103 (Me. 1983)), it is these self evident and judicially construed purposes that require such construction. Under the Act, at some point, either at the outset or in successive “rounds”, the sorting, counting, and, declaring of votes must recede from public view. Whether the objectives of Ranked Choice Voting warrant this consequence is beside the point; by its plain procedures and purposes, the Maine Constitution forbids it.

**D. ARTICLE IX, SECTION 12 DOES NOT PROVIDE
AUTHORITY FOR THE ENACTMENT OF THE RCVA OR
STATUTORY AMENDMENTS THERETO.**

The Proponents have identified Article IX, Section 12 of the Maine Constitution as authority for the Act. They have not, however, placed it any particular context. The context for this provision strongly indicates that assertions it authorizes broad legislative authority are unfounded.

Nothing in the history or structure of Article IX, Section 12 suggests that it was intended to invest the Legislature with broad authority to enact laws governing election procedures. It has never been judicially construed.¹² The entire provision

¹² M. Tinkle, The Maine Constitution, *supra* at 164.

consists of one sentence which authorizes the Legislature to enact laws governing the division of towns into voting districts. Me. Const. art. IX, § 12.

It appears, therefore, to be a successor to the original proviso which gave the Legislature statutory authority regarding “classes” of towns and plantations. 1820 Me. Const., art. IV, Pt. 1, § 5.

Post-adoption practice is not an unerring guide to interpretation, but it has been employed to interpret constitutional clauses. *See National Labor Relations Board v. Canning*, ___ U.S. ___, 134 S. Ct. 2550, 2559-2560 (2014) (and cases cited therein). Where Article IX, Section 12 is concerned, the Senate is unaware of any statutory scheme enacted after this provision was adopted that purported to eliminate or override any either the Constitution’s mandate that elections be held under the aegis of local governments and that local officials fulfill particular, specified electoral duties.

When the electoral crisis of 1879 arose, a comprehensive election statute was in place. *See* 1871 Laws Maine, ch. 4, §§ 1-96 (Appendix 4). In the ensuing crisis, the Justices construed one section of it. *See Opinion of the Justices*, 70 Me. at 565. The statutory election regime set forth at Chapter 4 of the 1871 Revised Statutes is comprehensive. It imposes more detailed duties on local election officials and provides civil and criminal punishments for negligent or intentional disregard of those duties. Nowhere, however, does it purport to eliminate or

replace any of the processes, standards, or requirements set forth in the Constitution. *Id., passim.*

Yet another post-adoption indicator is the constitutional amendment providing for voting machines. If Article IX, Section 12 invested the Legislature with broad lawmaking authority, it seems likely that it would have included the power to authorize the use of voting machines. Yet, it is apparent that the Legislature concluded that it lacked this power, as it reported out a constitutional amendment authorizing this innovation which, after initially rejected by the voters, was adopted and incorporated into the Constitution as Article II, Section 5. (eff. Oct. 8, 1935, Amend. LIX). That the Legislature sought this authority is of particular interest inasmuch as only 15 years earlier, it had amended Article IX, Section 12. (eff. Oct. 1, 1920, Amend. XLVI). Placed in its proper context, therefore, Article IX, Section 12 did not provide the Legislature with broad statutory authority. However it might apply in other contexts, it is not authority for the dramatic revision of the procedures and responsibilities that the Constitution assigns under Article IV, Part First, Section 5.¹³

Therefore, Article IX, Section 12 is not authority for the Act or any statutory amendment to implement it.

¹³ This conclusion is consistent with the Attorney General's observation that "every time Maine has made a major change in the election process, it has been done by constitutional amendment." *Attorney General's Brief* at 2, n. 1.

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APPENDIX TO REPLY BRIEF OF THE MAINE STATE SENATE

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ACTS AND RESOLVES

Section 4 of this Act declared unconstitutional as violating the authority of the House and Senate to decide on the membership of each. Opinion of Justices, 70 Me. 570, 586 (1880)

FORTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE.

1869.

Published by the Secretary of State, agreeably to Resolves of June 28, 1820,
February 26, 1840, and March 16, 1842.

AUGUSTA:
SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1869.

Chapter 67.

An act to regulate the organization of the legislature.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECT. 1. It shall be the duty of the secretary of state, on or before the day preceding the meeting of the legislature annually to furnish to the secretary of the preceding senate a certified roll, under the seal of the state, of the names and residences of senators elect as appears by the report of the governor and council; and to the clerk of the preceding house of representatives a certified roll, under the seal of the state, of the names and residences of the representatives elect as appears by the report of the governor and council, and also to report the vacancies if any exist.

Secretary of state to furnish secretary of senate and clerk of house with certified lists of members elect.

SECT. 2. It shall be the duty of the secretary of the preceding senate at the time and place appointed for the meeting of the legislature to call the senators elect present to order, and from the certified roll furnished him as aforesaid call the names of senators elect, and if a quorum respond, he shall preside until the qualification of the senators elect and a president is elected; if no quorum appear he shall preside and the senators elect present shall adjourn from day to day but transact no business except to go into convention to fill vacancies until a quorum appear, and are qualified and a president is elected. And it shall be the duty of the clerk of the preceding house of representatives in like manner to call the representatives elect present to order and preside until the qualification of the representatives elect and election of speaker; if no quorum appear he shall preside and the representatives elect present shall adjourn from day to day, until a quorum appear, and are qualified and a speaker is elected.

Duty of secretary of senate at organization.

Duty of clerk of house of representatives at organization.

SECT. 3. In case of vacancy in the office of secretary of the preceding senate, or of clerk of the preceding house of representatives, or absence or inability of either to perform the duties proscribed in the preceding section, the same shall be performed by the assistant.

In case of vacancy of secretary or clerk, assistants to act.

SECT. 4. No person shall be allowed to vote or take part in the organization of either branch of the legislature as a member unless his name appears upon the certified roll of that branch of the legislature in which he claims to act.

Only those whose names are on the certified lists to take part in organization.

SECT. 5. This act shall take effect when approved.

Approved March 12, 1880.

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Constitution of Massachusetts

1780

PREAMBLE

The end of the institution, maintenance, and administration of government is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life; and whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other, and of forming a new constitution of civil government for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish the following declaration of rights and frame of government as the constitution of the commonwealth of Massachusetts.

PART THE FIRST

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Art. II. It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship.

Art. III. As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of the public instructions in piety, religion, and morality: Therefore, To promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies-politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subject an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, That the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall at all times have the exclusive right and electing their public teachers and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship and of public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid toward the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any sect or denomination to another shall ever be established by law.

Art. IV. The people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

Art. V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are the substitutes and agents, and are at all times accountable to them.

Art. VI. No man nor corporation or association of men have any other title to obtain advantages, or particular and exclusive privileges distinct from those of the community, than what rises from the consideration of services rendered to the public, and this title being in nature neither hereditary nor transmissible to children or descendants or relations by blood; the idea of a man born a magistrate, lawgiver, or judge is absurd and unnatural.

Art. VII. Government is instituted for the common good, for the protection, safety, prosperity, and happiness of the people, and not for the profit, honor, or private interest of any one man, family, or class of men; therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government, and to reform, alter, or totally change the same when their protection, safety, prosperity, and happiness require it.

Art. VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Art. IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

Art. X. Every individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to expense of this protection; to give his personal service, or an equivalent, when necessary; but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their

constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Art. XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws.

Art. XII. No subject shall be held to answer for any crimes or no offence until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself; and every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Art. XIII. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Art. XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

Art. XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

Art. XVI. The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this commonwealth.

Art. XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority and be governed by it.

Art. XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives; and they have a right to require of their lawgivers and magistrates an exact and constant observation of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

Art. XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Art. XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

Art. XXI. The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court of place whatsoever.

Art. XXII. The legislature ought frequently to assemble for address of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Art. XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

Art. XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Art. XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Art. XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Art. XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not be made but by the civil magistrate, in a manner ordained by the legislature.

Art. XXVIII. No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

Art. XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, tht the judges of the supreme judicial court should hold their offices as long as they behave themselves well, and that they should have honorable salaries ascertained and established by standing laws.

Art. XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.

PART THE SECOND

The Frame of Government

The people inhabiting the territory formerly called the province of Massachusetts Bay do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign, and independent body-politic or State, by the name of the commonwealth of Massachusetts.

CHAPTER I.--THE LEGISLATIVE POWER

Section I.--The General Court

Article I. The department of legislation shall be formed by two branches, a senate and house of representatives; each of which shall have a negative on the other.

The legislative body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled the *General Court of Massachusetts*.

Art. II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated, who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve; but if, after such reconsideration, two-thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall have the force of law; but in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the said bill or resolve shall be entered upon the public records of the commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of law.

Art. III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes, and things whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon; to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

Art. IV. And further, full power and authority are hereby given and granted to the said general court from time to time, to make, ordain, and establish all manner of

wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without, so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said commonwealth, the election, and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth, for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

CHAPTER I

Section 2.--Senate

Article I. There shall be annually elected, by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons to be councillors and senators, for the year ensuing their election; to be chosen by the inhabitants of the districts into which the commonwealth may from time to time be divided by the general court for that purpose; and the general court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the commonwealth the limits of each district, and the number of councillors and senators to be chosen therein: *Provided*, That the number of such

districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

And the several counties in this commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of councillors and senators, (except that the counties of Dukes County and Nantucket shall form one district for that purpose,) and shall elect the following number for councillors and senators, viz: . . . [39 senators]

Art. II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz: There shall be a meetin on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday n April, for the purpose of electing persons to be senators and councillors; and at such meetings every male inhabitant of twenty-one year of age and upwards, having a freehold estate of thevalue of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning themeaning of the word "inhabitant," in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation where he dwellethor hath his home.

The selectmen of the several towns shall preside at such meetings impartially, and shall receive the votes of all the inhabitants of such towns, present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk, who shall make a fair record, in presence of the selectment, and in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the commonwealth, for the time being, with a superscription expressing the purport of the contents thereof, and delivered by the town clerk of such towns to the sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May, annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May; and the sheriff of eaach county shall deliver all such certificates, by him received, into the secretary's office seventeen days before the said last Wednesday in May.

And the inhabitants of the plantations unincorporated, qualifed as this constitution provides, who are or shall beempowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for councillors and senators, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be

held annually, on the same first Monday in April, at such place in the plantations, respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns by this constitution. And all other persons living in places unincorporated, (qualified as aforesaid,) who shall be assessed to the support of government by assessors of an adjacent town, shall have the privilege of giving in their votes for councillors and senators in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

Art. III. And that there may be a due convention of senators, on the last Wednesday in May, annually, the governor, with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters to attend on that day, and take their seats accordingly: *Provided, nevertheless,* That for the first year the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

Art. IV. The senate shall be the final judge of the elections, returns, and qualifications of their own members, as pointed out in the constitution; and shall, on the said last Wednesday in May, annually, determine and declare who are elected by each district to be senators by a majority of votes; and in case there shall not be the full number of senators returned, elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for, and out of these shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the State or otherwise, shall be supplied as soon as may after such vacancies shall happen.

Art. V. *Provided, nevertheless,* That no person shall be capable of being elected as a senator [who is not seized in his own right of a freehold within this commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and] who has not been an inhabitant of this commonwealth for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district for which he shall be chosen.

Art. VI. The senate shall have power to adjourn themselves; provided such adjournments do not exceed two days at a time.

Art. VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings.

Art. VIII. The senate shall be a court, with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and maladministration in their offices; but, previous to the trial of every impeachment, the members of the senate shall, respectively, be sworn truly and impartially to try and determine the charge in question, according to the evidence. Their judgment, however, shall not extend further than to removal from office, and disqualification to hold or enjoy any place of honor, trust, or profit under this commonwealth; but the part so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land.

Art. IX. Not less than sixteen members of the senate shall constitute a quorum for doing business.

CHAPTER I.

Section 3.--House of Representatives

Article I. There shall be, in the legislature of this commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Art. II. And in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty ratable polls, may elect one representative; every corporate town containing three hundred and seventy-five ratable polls, may elect two representatives; every corporate town containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls the mean increasing number for every additional representative.

Provided, nevertheless, That each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

And the house of representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members of the same, agreeably to this constitution.

The expenses of travelling to the general assembly and returning home, once in every session, and no more, shall be paid by the government out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave.

Art. III. Every member of the house of representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Art. IV. Every male person being twenty-one years of age, and resident in any particular town in this commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.

Art. V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

Art. VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them shall be heard and tried by the senate.

Art. VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Art. VIII. The house of representatives shall have power to adjourn themselves; provided such adjournments shall not exceed two days at a time.

Art. IX. Not less than sixty members of the house of representatives shall constitute a quorum for doing business.

Art. X. The house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as point out in the constitution; shall choose their own speaker, appoint their own officers, and settle the rules and order of proceeding in their own house. They shall have authority to punish by imprisonment every

person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in its presence; or who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for anything said or done in the house; or who shall assault any of them therefor; or who shall assault or arrest any witness, or other person, ordered to attend the house, in his way in going or returning; or who shall rescue any person arrested by the order of the house.

And no member of the house of representatives shall be arrested, or held to bail on mesne process, during his going unto, returning from, or his attending the general assembly.

Art. XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases; *Provided*, That no imprisonment, on the warrant or order of the governor, council, senate, or house of representatives, for either of the above-described offences, be for a term exceeding thirty days.

And the senate and house of representatives may try and determine all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may, respectively, think best.

CHAPTER II.--EXECUTIVE POWER

Section I.--Governor

Article I. There shall be a supreme executive magistrate, who shall be styled "The governor of the commonwealth of Massachusetts;" and whose title shall be "His Excellency."

Art. II. The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; and unless he shall, at the same time, be seized, in his own right, of a freehold, within the commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the Christian religion.

Art. III. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April, annually, give in their votes for a governor to the selectmen, who shall preside at such meetings; and the town clerk, in the

presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made, to the office of the secretary of the commonwealth, seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons, who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.

Art. IV. The governor shall authority, from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

Art. V. The governor, with advice of council, shall have full power and authority, during the session of the general court, to adjourn or prorogue the same at any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the State.

And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.

Art. VI. In cases of disagreement between the two houses, with regard to the necessity, expediency, or time of adjournment or prorogation, the governor, with

advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Art. VII. The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself or by any commander, or other officer or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by force of arms, as by sea as by land, within or within the limits of this commonwealth; and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, and ammunititon, and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this commonwealth; and that the governor be intrusted with all these and other powers incident to the offices of captain-general and commander-in-chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land, and not otherwise.

Provided, That the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafater to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State to which they cannot otherwise conveniently have access.

Art. VIII. The power of pardoning offences, except such as persons may be convicted of before the senate, by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter or pardon, granted by the governor, with the advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Art. IX. All judicial officers, the attorney-general, the solicitor-general, all sheriffs, coroners, and registers of probate, shall be nominated and appointed by the governor,

by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

Art. X. The captains and subalterns of the militia shall be elected by the written votes of the train-band and alarm-list of their respective companies, of twenty years of age and upwards; the field-officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected, in like manner, by the field-officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor the officers elected.

The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

And if the electors of brigadiers, field-officers, captains, or subalterns shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with the advice of council, shall appoint suitable persons to fill such offices.

And no officer, duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court-martial, pursuant to the laws of the commonwealth for the time being.

The commanding officers of regiments shall appoint their adjutants and quartermasters; the brigadiers, their brigade-majors; and the major-generals, their aids; and the governor shall appoint the adjutant-general.

The governor, with the advice of council, shall appoint all officers of the Continental Army, whom, by the Confederation of the United States, it is provided that this commonwealth shall appoint, as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments, and companies, made in pursuance of the militia-laws now in force, shall be considered as the proper divisions of the militia in this commonwealth, until the same shall be altered in pursuance of some future law.

Art. XI. No moneys shall be issued out of the treasury of this commonwealth and disposed of, except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon, but by

warrant under the hand of the governor for the time being, with the advice and consent of the council for the necessary defence and support of the commonwealth, and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

Art. XII. All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon, with their appendages, and small-arms with their accoutrements, and of all other public property whatever under their care, respectively; distinguishing the quantity, number, quality, and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, dispatches, and intelligences of a public nature, which shall be directed to them respectively.

Art. XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court, by a dependence on them for his support; that he should, in all cases, act with freedom for the benefit of the public; that he should not have his attention necessarily diverted from that object to his private concerns; and that he should maintain the dignity of the commonwealth in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws; and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the general court shall judge proper.

CHAPTER II.

Section 2.--Lieutenant-Governor

Article I. There shall be annually elected a lieutenant-governor of the commonwealth of Massachusetts, whose title shall be "His Honor;" and who shall be qualified, in point of religion, property, and residence in the commonwealth, in the same manner with the governor; and the day and manner of his election, and the qualification of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner; and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.

Art. II. The governor, and in his absence the lieutenant-governor, shall be president of the council; but shall have no voice in council; and the lieutenant-governor shall always be a member of the council, except when the chair of the governor shall be vacant.

Art. III. Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant-governor, for the time being, shall, during such vacancy perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities which, by this constitution, the governor is vested with, when personally present.

CHAPTER II.

Section 3.--Council, and the Manner of Settling Elections by the Legislature

Article I. There shall be a council, for advising the governor in the executive part of the government, to consist of nine persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at this discretion, to assemble and call together; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land.

Art. II. Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.

Art. III. The councillors, in the civil arrangements of the commonwealth, shall have rank next after the lieutenant-governor.

Art. IV. Not more than two councillors shall be chosen out of any one district in this commonwealth.

Art. V. The resolutions and advice of the council shall be recorded in a register and signed by the members present; and this record may be called for, at any time, by either house of the legislature; and any member of the council may insert his opinion, contrary to the resolution of the majority.

Art. VI. Whenever the office of the governor and lieutenant-governor shall be vacant by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do and execute all and every such acts, matters, and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Art. VII. And whereas the elections appointed to be made by this constitution on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same shall be completed. And the order of elections shall be as follows: The vacancies in the senate, if any, shall first be filled up; the governor and lieutenant-governor shall then be elected, provided there should be no choice of them by the people; and afterwardss the two houses shall proceed to the election of the council.

CHAPTER II.

Section 4.--Secretary, Treasurer, Commissary, etc.

Article I. The secretary, treasurer, and receiver-general, and the commissary-general, notaries public, and naval officers, shall be chosen annually, by joint ballot of the senators and representatives, in one room. And, that the citizens of this commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver-general more than five years successively.

Art. II. The records of the commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable; and he shall attend the governor and council, the senate and house of representatives in person or by his deputies, as they shall respectively require.

CHAPTER III.

Judiciary Power.

Article I. The tenure that all commission officers shall by law have in their offices shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: *Provided, nevertheless,* The governor, with consent of the council, may remove them upon the address of both houses of the legislature.

Art. II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court upon important questions of law, and upon solemn occasions.

Art. III. In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the commonwealth.

Art. IV. The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the legislature shall, from time to time, hereafter, appoint such times and places; until which appointments the said courts shall be holden at the times and places which the respective judges shall direct.

Art. V. All causes of marriage, divorce, and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council until the legislature shall, by law, make other provision.

CHAPTER IV.

Delegates to Congress

The delegates of this commonwealth to the Congress of the United States shall, some time in the month of June, annually, be elected by the joint ballot of the senate and house of representatives assembled together in one room; to serve in Congress for one year, to commence on the first Monday in November, then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the

commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

CHAPTER V.--THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE, ETC.

Section 1.--The University

Article I. Whereas our wise and pious ancestors, so early as the year [1636], laid the foundation of Harvard College, in which university many persons of great prominence have, by the blessing of God, been initiated in those arts and sciences which qualified them for the public employments, both in church and State; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other other United States of America, it is declared, that the president and fellows of Harvard College, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and enjoy all the powers, authorities, rights, liberties, privileges, immunities, and franchises which they now have, or are entitled to have, hold, use, exercise, and enjoy; and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Art. II. and whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies, and conveyances heretofore made, either to Harvard College in Cambridge, in New England, or to the president and fellows of Harvard College, or to the said college, by some other description, under several charters successively, it is declared, that all the said gifts, grants, devises, legacies, and conveyances are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

Art. III. And whereas by an act of the general court of the colony of Massachusetts Bay, passed in the year [1642], the governor and deputy governor for the time being, and all the magistrates of that jurisdiction, were, with the President, and a number of the clergy, is the said act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy governor, and magistrates, it is declared that the governor, lieutenant-governor, council, and senate of this commonwealth are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury and

Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining, to the overseers of Harvard College: *Provided*, that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of the Massachusetts Bay.

CHAPTER V.

Section 2.--The Encouragement of Literature, etc.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools, and grammar-schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, and good humor, and all social affections and generous sentiments, among the people.

CHAPTER VI.

Oaths and Subscriptions; Incompatibility of and Exclusion from Offices; Pecuniary Qualifications; Commissions; Writs; Confirmation of Laws; Habeas Corpus; The Enacting Style; Continuance of Officers; Provision for a Future Revisal of the Constitution, etc.

Article I. Any person chosen governor, lieutenant-governor, councillor, senator, or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz:

"I, A.B., do declare that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the constitution, as one qualification for the office or place to which I am elected."

And the governor, lieutenant-governor, and councillors shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives, first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards, before the governor and council for the time being.

And every person chosen to either of the places or offices aforesaid, as also any persons appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration and oaths or affirmations, viz:

"I, A.B., do truly and sincerely acknowledge, profess, testify, and declare that the commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent State, and I do swear that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever; and that I do renounce and abjure all allegiance, subjection, and obedience to the King, Queen, or government of Great Britain, (as the case may be,) and every other foreign power whatsoever; and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, superiority, preeminence, authority, dispensing or other power, in any matter, civil, ecclesiastical, or spiritual, within this commonwealth; except the authority and power which is or may be vested by their constituents in the Congress of the United States; and I do further testify and declare that no man, or body of men, hath, or can have, any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation, and abjuration heartily and truly, according to the common meaning and acceptance of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever: So help me, God."

"I, A.B., do solemnly swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as -----, according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution and the laws of the commonwealth: So help me, God."

Provided always, That when any person, chosen and appointed as aforesaid, shall be of the denomination of people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words, "I do swear," "and abjure," "oath or," "and abjuration," in the first oath; and in the second oath, the words, "swear and," and in each of them the words, "So help me, God;" subjoining instead thereof, "This I do under the pains and penalties of perjury."

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and councillors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons and in such manner as from time to time shall be prescribed by the legislature.

Art. II. No governor, lieutenant-governor, or judge of the supreme judicial court shall hold any other office or place, under the authority of this commonwealth, except such as by the constitution they are admitted to hold, saving that the judges of the said court may hold the office of the justices of the peace through the State; nor shall they hold any other place or office, or receive any pension or salary from any other State, or government, or power, whatever.

No person shall be capable of holding or exercising at the same time, within this State, more than one of the following offices, viz: judge of probate, sheriff, register of probate, or register of deeds; and never more than any two offices, which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the State at large, or of the people of any county, military offices, and the offices of justices of the peace excepted, shall be held by one person.

No person holding the office of judge of the supreme judicial court, secretary, attorney-general, solicitor-general, treasurer or receiver-general, judge of probate, commissary-general, president, professor, or instructor of Harvard College, sheriff, clerk of the house of representatives, register of probate, register of deeds, clerk of the supreme judicial court, clerk of the inferior court of common pleas, or officer of the customs, including in this description naval officers, shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

And the same rule shall take place in case any judge of the said supreme judicial court or judge of probate shall accept a seat in council, or any councillor shall accept of either of those offices or places.

And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this commonwealth, who shall in the due course of law have been convicted of bribery or corruption in obtaining an election or appointment.

Art. III. In all cases where sums or money are mentioned in this constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce; and it shall in the power of the legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices as the circumstances of the commonwealth shall require.

Art. IV. All commissions shall be in the name of the commonwealth of Massachusetts, signed by the governor, and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto.

Art. V. All writs, issuing of the clerk's office in any of the courts of law, shall be in the name of the commonwealth of Massachusetts; they shall be under the seal of the court from when they issue; they shall bear test of the first justice of the court to which they shall be returned who is not a party, and be signed by the clerk of such court.

Art. VI. All the laws which have heretofore been adopted, used, and approved in the province, colony, or State of Massachusetts Bay, and usually practiced on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature, such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Art. VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this commonwealth, in the most free, easy, cheap, expeditious, and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months.

Art. VIII. The enacting style, in making and passing all acts, statutes, and laws, shall be, "*Be it enacted by the senate and house of representatives in general court assembled, and by authority of the same.*"

Art. IX. To the end there may be no failure of justice or danger arise to the commonwealth from a change in the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts Bay, in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise, and enjoy all the powers and authority to them granted or committed until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies, and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments, and authority, until the general court, and the supreme and

executive officers under this constitution, are designated and invested with their respective trusts, powers, and authority.

Art. X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the general court which shall be in the year of our Lord [1795] shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution in order to amendments.

And if it shall appear, by the returns made, that two-thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office, to the several towns to elect delegates to meet in convention for the purpose aforesaid.

And said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

Art. XI. This form of government shall be enrolled on parchment and deposited in the secretary's office, and be a part of the laws of the land, and printed copies thereof shall be prefixed to the book containing the laws of this commonwealth in all future editions of the said laws.

JAMES BOWDOIN, *President*

Samuel Barrett, *Secretary*

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JOHN ADAMS

REVOLUTIONARY WRITINGS
1775-1783

Gordon Wood, editor



THE LIBRARY OF AMERICA

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*The Report of a Constitution or Form of
Government for the Commonwealth
of Massachusetts*

Agreed upon by the Committee—to be laid before the Convention of DELEGATES, assembled at CAMBRIDGE, on the First Day of *September*, A.D. 1779; and continued by Adjournment to the Twenty-eighth Day of *October* following. To the Honorable the Convention of Delegates from the several Towns in the State of MASSACHUSETTS, appointed for the forming a new Constitution of Government for the said State.

GENTLEMEN,
YOUR Committee, in Pursuance of your Instructions, have prepared the Draught of a new Constitution of Government for this State; and now make Report of it: which is respectfully laid before you, in the following Pages, for your Consideration and Correction.

In the Name of the Committee,
JAMES BOWDOIN, Chairman.

A Constitution or Form of Government for
the Commonwealth of MASSACHUSETTS.

P R E A M B L E .

THE end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquility, their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, happiness and prosperity.

THE body politic is formed by a voluntary association of individuals: It is a social compact, by which the whole people covenant with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a

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 GOD, His providential government of the world, and of a fu-
 ture state of rewards and punishment, being the only true
 foundation of morality, the legislature hath therefore a right,
 and ought, to provide at the expence of the subject, if neces-
 sary, a suitable support for the public worship of GOD, and of
 the teachers of religion and morals; and to enjoin upon all the
 subjects an attendance upon their instructions, at stated times
 and seasons: Provided there be any such teacher, on whose
 ministry they can conscientiously and conveniently attend.

ALL monies, paid by the subject to the support of public
 worship, and of the instructors in religion and morals, shall,
 if he requires it, be uniformly applied to the support of the
 teacher or teachers of his own religious denomination, if there
 be such, whose ministry he attends upon: otherwise it may
 be paid to the teacher or teachers of the parish or precinct
 where he usually resides.

IV. THE people of this commonwealth have the sole and ex-
 clusive right of governing themselves, as a free, sovereign, and
 independent state; and do, and forever hereafter shall, exercise
 and enjoy every power, jurisdiction, and right, which are not,
 or may not hereafter, be by them expresly delegated to the
 United States of America, in Congress assembled.

V. ALL power residing originally in the people, and being
 derived from them, the several magistrates and officers of gov-
 ernment, vested with authority, whether legislative, executive
 or judicial, are their substitutes and agents, and are at all times
 accountable to them.

VI. NO man, nor corporation or association of men, have
 any other title to obtain advantages, or particular and exclusive
 privileges, distinct from those of the community, than what
 arises from the consideration of services rendered to the pub-
 lic; and this title being in nature neither hereditary, nor trans-
 missible to children, or descendents, or relations by blood, the
 idea of a man born a magistrate, law-giver, or judge, is absurd
 and unnatural.

VII. GOVERNMENT is instituted for the common good; for
 the protection, safety, prosperity and happiness of the people;
 and not for the profit, honor, or private interest of any one man,
 family, or class of men: Therefore the people alone have an in-

contestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII. IN order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as may be delineated in their frame of government; to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections.

IX. ALL elections ought to be free; and all the male inhabitants of this commonwealth, having sufficient qualifications, have an equal right to elect officers, and to be elected for public employments.

X. EACH individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expence of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people: In fine, the people of this commonwealth are not controulable by any other laws, than those to which their constitutional representative body have given their consent.

XI. EVERY subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character: He ought to obtain right and justice freely, and without being obliged to purchase it; compleatly, and without any denial; promptly, and without delay; conformably to the laws.

XII. NO subject shall be held to answer for any crime or offence, untill the same is fully and plainly, substantially and formally, described to him: He cannot be compelled to accuse himself, or to furnish evidence against himself; and every subject shall have a right to be fully heard in his defence, by himself or his council, at his election; to meet the witnesses against him face to face, to produce all proofs that may be favourable to him; to require a speedy and public trial by an impartial jury of the country, without whose unanimous consent, or his own voluntary confession, he cannot finally be declared guilty, or sentenced to loss of life, liberty or property.

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XIII. IN criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty and property of the citizen.

XIV. NO subject of the commonwealth shall be arrested, imprisoned, despoiled, or deprived of his property, immunities or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty or estate, but by the judgment of his peers or the law of the land.

XV. EVERY man has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right; if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest or seizure; and no warrant ought to be issued but in cases and with the formalities prescribed by the laws.

XVI. IN all controversies concerning property, and in all suits between two or more persons, the parties have a right to a trial by a jury; and this method of procedure shall be held sacred; unless, in causes arising on the high-seas, and such as relate to mariners wages, the legislature shall hereafter find it necessary to alter it.

XVII. THE people have a right to the freedom of speaking, writing and publishing their sentiments: The liberty of the press therefore ought not to be restrained.

XVIII. THE people have a right to keep and to bear arms for the common defence. And as in time of peace standing armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XIX. A FREQUENT recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government: The people ought, consequently, to have a particular attention to all those principles, in

the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

XX. THE people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and the grievances they suffer.

XXI. THE power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for: and there shall be no suspension of any law for the private interest, advantage, or emolument, of any one man or class of men.

XXII. THE freedom of deliberation, speech and debate in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXIII. THE legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws as the common good may require.

XXIV. No subsidy, charge, tax, impost or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

XXV. LAWS made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXVI. No man ought in any case or in any time, to be declared guilty of treason or felony by any act of the legislature.

XXVII. No magistrate or court of law shall demand excessive bail, or sureties, impose excessive fines, or inflict cruel or unusual punishments.

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XXVIII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made, but by the civil magistrate in a manner ordained by the legislature.

XXIX. No person can in any case be subjected to law martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXXI. The judicial department of the State ought to be separate from, and independent of, the legislative and executive powers.

CHAPTER II.

The Frame of Government.

THE people inhabiting the territory heretofore called the Province of Massachusetts-Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body-politic or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

In the government of the Commonwealth of Massachusetts, the legislative, executive, and judicial power, shall be placed in separate departments, to the end that it might be a government of laws and not of men.

SECTION I.

ART. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives; each of which shall have a negative on the other.

THEY shall assemble once, on the last Wednesday in May, and at such other times as they shall judge necessary, every

year; and shall be stiled, THE GENERAL COURT OF MASSACHUSETTS.

AND the first magistrate shall have a negative upon all the laws—that he may have power to preserve the independence of the executive and judicial departments.

II. THE General Court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and making out of execution thereupon: To which courts and judicatories, are hereby given and granted full power and authority from time to time to administer oaths or affirmations, for the better discovery of truth in any matter in controversy or depending before them.

III. AND further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth; such officers excepted, the election and constitution of whom are not hereafter in this Form of Government otherwise provided for; and to set forth the several duties, powers and limits of the several civil and military officers of this Commonwealth, and the forms of such oaths as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this Constitution;

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and also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon the persons of all the inhabitants of and residents within the said Commonwealth, and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the Governor of this Commonwealth for the time being, with the advice and consent of the Council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same; and to dispose of matters and things whereby they may be religiously, peaceably, and civilly governed, protected, and defended.

AND that public assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at the least.

SECTION II.
SENATE.

I. THERE shall be annually elected by the freeholders and other inhabitants of this Commonwealth, qualified as in this Constitution is provided, forty persons to be Counsellors and Senators for the year ensuing their election, to be chosen in and by the inhabitants of the districts into which the Commonwealth may from time to time be divided by the General Court for that purpose: And the General Court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the Commonwealth, the limits of each district, and the number of Counsellors and Senators to be chosen therein; provided that the number of such districts shall be never more than sixteen nor less than ten.

AND the several counties in this Commonwealth shall, until the General Court shall determine it necessary to alter said districts, be districts for the choice of Counsellors and Senators (except that the counties of Dukes-County and Nantucket shall form one district for that purpose) and shall elect the following number for Counsellors and Senators, viz.

Suffolk	6	York	2
Essex	6	Dukes County } and Nantucket }	1
Middlesex	5	Worcester	5
Hampshire	4	Cumberland	1
Plymouth	3	Lincoln	1
Barnstable	1	Berkshire	2
Bristol	3		

II. THE Senate shall be the first branch of the legislature; and the Senators shall be chosen in the following manner, viz. There shall be a meeting on the first Monday in April annually, forever, of the inhabitants of all the towns in the several counties of this Commonwealth, to be called by the Selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be Senators and Counsellors: And at such meetings every male person of twenty-one years of age and upwards, resident in such towns one year next preceeding the annual election of Senators, having a freehold estate within the Commonwealth, of the annual income of three pounds, or other real or personal estate of the value of sixty pounds, shall have a right to give in his vote for the Senators for the district.

THE Selectmen of the several towns shall preside at such meetings, and shall be under oath, as well as the Town-Clerk, to preside impartially, according to their best skill and judgment; and to make a just and true return.

THE Selectmen shall receive the votes of all the inhabitants of such towns qualified to vote for Senators, and shall sort and count them in open town-meeting, and in presence of the Town-Clerk, who shall make a fair record, in presence of the Selectmen, and in open town-meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the Selectmen and the Town-Clerk, and shall be sealed up, directed to the Secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the Town-Clerk of such towns, to the Sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May annually; or it shall be delivered into the Secretary's office seventeen days at least

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before the said last Wednesday in May; and the Sheriff of each county shall deliver all such certificates by him received into the Secretary's office seventeen days before the said last Wednesday in May.

AND the inhabitants of plantations unincorporated, qualified as this Constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for Counsellors and Senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation-meetings for that purpose shall be held annually on the same first Monday in April, at such place in the plantations respectively, as the Assessors thereof shall direct; which Assessors shall have like authority for notifying the electors, collecting and returning the votes, as the Selectmen and Town-Clerks have in their several Towns by this Constitution. And all other persons living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the Assessors of an adjacent town, shall have the privilege of giving in their votes for Counsellors and Senators, in the town where they shall be assessed, and be notified of the place of meeting by the Selectmen of the town where they shall be assessed for that purpose accordingly.

III. AND that there may be a due convention of Senators on the last Wednesday in May annually, the Governor, with five of the Council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day and take their seats accordingly: Provided nevertheless, that for the first year the said returned copies shall be examined by the President and five of the Council of the former Constitution of Government; and the said President shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

IV. THE Senate, however, shall be the final judge of the elections, returns and qualifications of their own members; and shall, on the said last Wednesday in May annually, determine and declare who are elected by each district, to be Senators by a majority of votes: And in case there shall not appear to be the

SECTION III.

House of Representatives.

I. THERE shall be in the legislature of this Commonwealth, a representation of the people, annually elected, and founded in equality.

II. AND in order to provide for a representation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town, containing one hundred and fifty rateable polls, may elect one Representative: Every corporate town, containing three hundred and seventy-five rateable polls, may elect two Representatives: Every corporate town, containing six hundred rateable polls, may elect three Representatives; and proceeding in that manner, making two hundred and twenty-five rateable polls the mean increasing number for every additional Representative.

AND forever hereafter the least number of rateable polls necessary to entitle a corporate town to elect one Representative, when increased by the addition of a number equal to half the said least number shall be the mean increasing number of rateable polls for every additional Representative any corporate town may elect.

AND to prevent hereafter the House of Representatives from becoming unweildy, and incapable of debating, and deliberating by the great additions it would continually receive from the increasing settlement, and population of this Commonwealth, no corporate town shall, from and after the Year of our Lord one thousand seven hundred and ninety, be entitled to elect one Representative, unless it shall contain two hundred rateable polls; nor to elect two Representatives unless it shall contain five hundred rateable polls; nor to elect three Representatives unless it shall contain eight hundred rateable polls; and so proceeding in that manner, making by the aforesaid rule three hundred rateable polls the mean increasing number for every additional Representative. And every tenth year, from and after the said year of our Lord one thousand seven hundred and ninety, and until such time as the number of Representatives, which may be elected for this Commonwealth, shall not exceed the number of two hundred, the least number of rateable polls, which at that time any corporate town must

contain to entitle it to elect one Representative: shall be increased by the addition of fifty; and the least number aforesaid, thus increased by the said addition, shall be the number of rateable polls any corporate town must contain to entitle it to elect one Representative: and the number of Representatives any corporate town may elect shall be regulated accordingly by the rules aforesaid.

THE freeholders and other inhabitants of this Commonwealth, qualified to vote for Representatives, living in corporate towns, which severally shall contain a less number of rateable polls than is necessary to entitle them respectively to elect one Representative, shall, nevertheless, have a right to associate with some town or towns adjoining, for the election of Representatives; and in such cases the voters thus united, shall have a right to elect the same number of Representatives as they would have done were they inhabitants of one corporate town; which Representatives may be elected out of either of the associated towns indifferently: And the legislature shall from time to time determine what towns shall thus associate, the manner of the association, and the method and manner of calling and conducting the meetings of the associated towns for the election of Representatives.

III. THE members of the House of Representatives shall be chosen by written votes; and no person shall be qualified, or eligible, to be a member of the said House, unless he be of the christian religion, and for one year at least next preceeding his election shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds within the town or towns he shall be chosen to represent; and he shall cease to represent the said town or towns, immediately on his ceasing to be a freeholder within the same.

IV. EVERY male person, being twenty-one years of age, and resident in any particular town in this Commonwealth for the space of one year next preceeding, having a freehold estate within the same town, of the annual income of three pounds, or other estate, real, or personal or mixt, of the value of sixty pounds, shall have a right to vote in the choice of a Representative or Representatives for the said town, or for the towns united as aforesaid.

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V. THE members of the house of Representatives shall be
chosen annually in the month of May, ten days at least before
the last Wednesday of that month, from among the wisest,
most prudent, and virtuous of the freeholders.

VI. THE house of Representatives shall be the Grand In-
quest of this Commonwealth; and all impeachments made by
them, shall be heard, and tried by the Senate.

VII. ALL money-bills shall originate in the house of Repre-
sentatives; but the Senate may propose or concur with amend-
ments, as on other bills.

VIII. THE house of Representatives shall have power to ad-
journ themselves; provided such adjournment shall not exceed
two days at a time.

IX. NOT less than sixty members of the house of Repre-
sentatives, shall constitute a quorum for doing business.

X. THE house of Representatives shall chuse their own
Speaker, appoint their own officers, and settle the rules and
orders of proceeding in their own house: They shall have au-
thority to punish by imprisonment, every person who shall be
guilty of disrespect to the house, in its presence, by any dis-
orderly, or contemptuous behaviour; or by threatening or ill-
treating any of its members; or, in a word, by obstructing its
deliberations; every person guilty of a breach of its privileges,
in making arrests for debts, or by assaulting one of its members
during his attendance at any session, or on the road, whether
he be going to the house or returning home; in assaulting any
one of its officers, or in disturbing him in the execution of any
order, or procedure of the House; in assaulting or troubling
any witness or other person, ordered to attend the House, in
his way in going or returning, or in rescuing any person ar-
rested by order of the House.

XI. THE Senate shall have the same powers in the like cases;
and the Governor and Council shall have the same authority to
punish in like cases. Provided that no imprisonment on the
warrant or order of the Governor, Council, Senate, or House
of Representatives, for either of the above-described offences,
be for a term exceeding thirty days.

CHAPTER III.

Executive Power.

SECTION I.

Governor.

Art. I. THERE shall be a supreme executive Magistrate, who shall be stiled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose Title shall be —HIS EXCELLENCY.

II. THE Governor shall be chosen annually; and no person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceeding; and unless he shall at the same time be seized in his own right of a Freehold within the Commonwealth, of the value of One Thousand Pounds; and unless he shall be of the Christian Religion.

III. THOSE persons, who shall be qualified to vote for Senators and Representatives within the several towns of this Commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a Governor to the Selectmen, who shall preside at such meetings; and the Town-Clerk, in the presence and with the assistance of the Selectmen, shall, in open town-meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting, and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the Selectmen, and transmit the same to the Sheriff of the county thirty days at least before the last Wednesday in May; or shall cause returns of the same to be made to the office of the Secretary of the Commonwealth seven days at least before the said day, who shall lay the same before the Senate and the House of Representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of votes through the Commonwealth, the choice shall be by them declared and published: But if no person shall have a majority of votes, the House of Representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have

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been voted for, but if otherwise, out of the number voted for; and make return to the Senate of the two persons so elected; on which, the Senate shall proceed, by ballot, to elect one, who shall be declared Governor.

IV. THE person chosen Governor, and accepting the trust, shall, in the presence of the two Houses, and before he proceed to execute the duties of his office, make and subscribe the following declaration, and take the following oaths, to be administered by the President of the Senate: viz.—

I, A. B. being declared duly elected Governor of the Commonwealth of Massachusetts, do now declare, that I believe and profess the christian religion, from a firm persuasion of its truth; and that I am seized and possessed in my own right of the property required by law, as one qualification for that office.

I, A. B. do solemnly swear, that I bear faith and true allegiance to the Commonwealth of Massachusetts; that I will faithfully and impartially discharge and perform all the duties incumbent on me as a Governor of this Commonwealth, according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution; and that I will not attempt or consent to a violation thereof. So help me GOD.

V. THE Governor shall have authority from time to time, at his discretion, to assemble and call together the Counsellors of this Commonwealth for the time being; and the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth according to law.

VI. THE Governor, with advice of Council, shall have full power and authority, in the recess of the General Court, to prorogue the same from time to time, not exceeding ninety days in any one recess of the said Court; and during the Session of the said Court, to adjourn or prorogue it to any time the two Houses shall desire, and to dissolve the same at their request, or on the Wednesday next preceeding the last Wednesday in May; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same.

VII. IN cases of disagreement between the two Houses, with regard to the time of adjournment or prorogation, the Governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, as he shall determine the public good shall require.

VIII. THE Governor of this Commonwealth for the time being, shall be the commander in chief of the army, and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any chief commander, or other officer or officers, to be appointed by him from time to time, to train, instruct, exercise, and govern, the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, expulse, repel, resist, and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth; and also to kill, slay, destroy, and conquer, by all fitting ways, enterprizes, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner attempt, or enterprize the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law-martial in time of war, invasion, or rebellion, as occasion shall necessarily require; and also from time to time to erect forts, and to fortify any place or places within the said Commonwealth, and the same to furnish with all necessary ammunition, provisions, and stores of war, for offence or defence; and to commit from time to time the custody and government of the same, to such person or persons as to him shall seem meet: and in times of emergency the said forts and fortifications to demolish at his discretion; and to take and surprize, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and in fine, that the Governor be intrusted with all other powers incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land.

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the Governor may, in time of war, or when the safety of the Commonwealth for the time being shall require, put in warlike posture, by sea and land; and may, by his authority, or by any chief commander appointed by him from time to time, govern, the militia and the forces of the Commonwealth, and put in warlike posture, and conduct them, and may, by his authority, compel, resist, and pursue, and, within or without the Commonwealth, also to kill, slay, destroy, seize, and means whatsoever persons as shall, at any time, attempt, or enterprize the taking, or the molestation, or annoyance of this Commonwealth, or of any person, or of the army and navy, or of any vessel, or of any law-martial in time of war, or when the safety of the Commonwealth shall necessarily require; and to fortify any town, or place, or fort, or castle, or to commit from time to time, to such persons as he shall think meet, and in times of war, or when the safety of the Commonwealth shall require, to demolish at his pleasure, by all ways and means whatsoever, any town, or place, or persons, with their houses, and goods, as shall, in a hostile manner, be invading, or attempting to invade the Commonwealth; and that the Governor may, by his authority, appoint, and remove, to the offices of Major-General, and Lieutenant-General, and Admiral, to the regulations of the Con-

PROVIDED, that the said Governor shall not, at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; nor grant commissions for exercising the law-martial upon any of the inhabitants of this Commonwealth, without the advice and consent of the Council of the same.

IX. THE power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of Council: But no charter of pardon, granted by the Governor, with advice of the Council, before conviction, shall avail the party pleading the same notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

X. ALL judicial officers, the Attorney-General, the Solicitor-General, all Sheriffs, Coroners, Registers of Probate, and Registers of Maritime Courts, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council; and every such nomination shall be made by the Governor, and made at least seven days prior to such appointment.

XI. ALL officers of the militia shall be appointed by the Governor, with the advice and consent of the Council; he first nominating them seven days at least before the appointment.

XII. ALL monies shall be issued out of the treasury of this Commonwealth, and disposed of by warrant under the hand of the Governor for the time being, with the advice and consent of the Council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.

XIII. ALL public Boards, the Commissary-General, all superintending Officers of public magazines and stores, belonging to this Commonwealth, and all commanding Officers of forts and garrisons within the same, shall once in every three Months officially, and without requisition, and at other times, when required by the Governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their

appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality, and kind of each, as particularly as may be; together with the condition of such forts and garrisons: and the said commanding Officers shall exhibit to the Governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbour or harbours, adjacent.

AND the said Boards, and all public Officers, shall communicate to the Governor, as soon as may be after receiving the same, all letters, dispatches, and intelligences, of a public nature, which shall be directed to them respectively.

XIV. AND to prevent an undue influence in this Commonwealth, which the first magistrate thereof may acquire, by the long possession of the important powers and trusts of that office; as also to stimulate others to qualify themselves for the service of the public in the highest stations, no man shall be eligible as Governor of this Commonwealth, more than five years in any seven years.

XV. As the public good requires, that the Governor should not be under the undue influence of any of the members of the General Court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its Chief Magistrate—it is necessary, that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the General Court, after the commencement of this Constitution, to establish such salary by law accordingly.

PERMANENT and honorable salaries shall also be established by law for the Justices of the Superior Court.

AND if it shall be found, that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged as the General Court shall judge proper.

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SECTION II.

LIEUTENANT-GOVERNOR, and the ascertaining the Value of the Money mentioned in this Constitution, as Qualifications to Office, &c.

I. THERE shall be annually elected a Lieutenant-Governor of the Commonwealth of Massachusetts, whose title shall be—**HIS HONOR**—and who shall be qualified, in point of religion, property, and residence in the Commonwealth, in the same manner with the Governor. He shall be chosen on the same day, in the same manner, and by the same persons. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: And if no one person shall be found to have a majority of votes, the vacancy shall be filled by the Senate and House of Representatives, in the same manner as the Governor is to be elected, in case no one person has a majority of the votes of the people to be Governor.

II. THE Lieutenant-Governor shall always be, ex officio, a member, and, in the absence of the Governor, President, of the Council.

III. WHENEVER the chair of the Governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the Lieutenant-Governor, for the time being, shall, during such vacancy, have and exercise all the powers and authorities, which by this Constitution the Governor is vested with, when personally present.

IV. THE respective values, assigned by the several articles of this Constitution, to the property necessary to qualify the subjects of this Commonwealth to be electors, and also to be elected into several offices, for the holding of which such qualifications are required, shall always be computed in silver at the rate of six shillings and eight pence per ounce.

V. AND it shall be in the power of the legislature from time to time, to increase such qualifications of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

SECTION III.

Council, and the Manner of settling Elections by the Legislature; Oaths to be taken, &c.

I. THERE shall be a Council for advising the Governor in the executive part of government, to consist of nine persons besides the Lieutenant-Governor, whom the Governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the Governor, with the said Counsellors, or five of them at least, shall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

II. NINE Counsellors shall, out of the persons returned for Counsellors and Senators, be annually chosen, on the last Wednesday in May, by the joint ballot of the Senators and Representatives assembled in one room. The seats of the persons, thus elected into the Council, and accepting the trust shall be vacated in the Senate; and in this manner the number of Senators shall be reduced to thirty one.

III. THE Counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the Lieutenant-Governor.

IV. NOT more than two Counsellors shall be chosen out of any one county of this Commonwealth.

V. THE resolutions and advice of the Council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either House of the legislature; and any member of the Council may insert his opinion contrary to the resolution of the majority.

VI. WHENEVER the office of the Governor and Lieutenant-Governor shall be vacant, by reason of death, absence, or otherwise, then the Council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute, all and every such acts, matters and things, as the Governor or the Lieutenant-Governor might or could, by virtue of this Constitution, do or execute, if they, or either of them, were personally present.

VII. AND whereas the elections appointed to be made by this Constitution, on the last Wednesday in May annually, by

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the two Houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed. And the order of elections shall be as follows, the vacancies in the Senate, if any, shall first be filled up, the Governor and Lieutenant-Governor shall then be elected; provided there should be no choice of them by the people: and afterwards the two Houses shall proceed to the election of the Council.

VIII. THE Lieutenant-Governor, Counsellors, Senators, and Members of the House of Representatives, shall, before they enter on the execution of their respective offices, make and subscribe the same declaration, and take the same oath, (*mutatis mutandis*) which the Governor is directed by this Constitution to make, subscribe and take.

AND every person, appointed to any civil or military office of this Commonwealth, shall, previous to his entering on the execution of his office, make and subscribe the following declaration, (*mutatis mutandis*) viz.—

I, A. B. being appointed do now declare, that I believe and profess the christian religion, from a firm persuasion of the truth thereof.

AND he shall likewise take an oath of the form following, (*mutatis mutandis*) viz.—

I, A. B. do solemnly swear, that I will bear faith, and true allegiance to the Commonwealth of Massachusetts; that I will faithfully and impartially discharge, and perform all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the rules and regulations of the Constitution; and that I will not attempt, or consent to, a violation thereof. So help me GOD.

PROVIDED notwithstanding, that any person, so appointed, who has conscientious scruples relative to taking oaths, may be admitted to make solemn affirmation, under the pains and penalties of perjury, to the truth of the matters, contained in the form of the said oath, instead of taking the same.

Governor and Council may, if necessary, renew such commissions, or appoint another person, as shall most conduce to the well-being of the Commonwealth.

V. THE Judges of Probate of Wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the legislature shall, from time to time, hereafter appoint such times and places: until which appointments, the said courts shall be holden at the times and places, which the respective Judges shall direct.

VI. ALL causes of marriage, divorce and alimony, shall be determined by the Senate; and all appeals from the Judges of Probate shall be heard, and determined, by the Governor and Council, until the legislature shall, by law, make other provision.

CHAPTER V.

Delegates to Congress, Commissions, Writs, Indictments, &c. Confirmation of Laws,—Habeas Corpus,—and enacting Style.

Art. I. THE delegates of this Commonwealth to the Congress of the United States of America, shall, on the second Wednesday of November, if the General Court be then sitting, or on the second Wednesday of the Session next after, be elected annually, by the joint ballot of the Senate, and House of Representatives, assembled together in one room. They shall have commissions under the hand of the Governor, and under the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

II. ALL commissions shall be in the name of the Commonwealth of Massachusetts, signed by the Governor, and attested by the Secretary, or his Deputy; and have the great seal of the Commonwealth affixed thereto.

III. ALL writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts. They shall be under the seal of the court, from whence they issue. They shall bear test of the Chief Justice, or first, or senior Justice of the court, to which they shall be returnable, and be signed by the clerk of such court.

IV. ALL indictments, presentments, and informations, shall conclude, "against the peace of the Commonwealth and the dignity of the same."

V. ALL the statute-laws of the Province, Colony, or State, of Massachusetts-Bay, the common law, and all such parts of the English or British statutes, as have been adopted, used and approved in the said Province, Colony, or State, and usually practiced on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights, and liberties, contained in this Constitution.

VI. THE privilege and benefit of the writ of Habeas Corpus shall be enjoyed in this Commonwealth, in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the Legislature, except upon the most urgent and pressing occasions, and for a short and limited time.

VII. THE enacting Style, in making and passing all acts, statutes and laws, shall be—"Be it enacted by his Excellency the Governor, the Senate, and House of Representatives, in General Court assembled, and by the Authority of the same."—Or, "By his Honor the Lieutenant-Governor," &c. or, "The Honorable the Council," &c. as the case may be.

CHAPTER VI.

The University at Cambridge, and Encouragement of Literature, &c.

SECTION I.

The University.

Art. I. WHEREAS our wise and pious ancestors, so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard-College, in which University many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in Church and State: And whereas the encouragement of Arts and Sciences, and all good literature, tends to the honor of GOD, the advantage of the christian religion, and the great benefit of this, and the other United States of America—It is declared, That the PRESIDENT and FELLOWS of HARVARD-COLLEGE, in their corporate ca-

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II. AND wh persons, gifts goods, chattl either to Harv to the Presid said College, ters successive grants, devise confirmed ur College, and cording to th donors, grant

III. AND w Colony of M sand six hund Governor; for jurisdiction, v Clergy, in the Harvard-Coll stitution of C Successors to istrates: IT IS Governor, Ce and shall be di of Harvard-C Ministers of Cambridge, V Dorchester, n are, vested wi any way appe PROVIDED, th the Legislatu

capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and enjoy all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, for ever.

II. AND whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattles, legacies and conveyances, heretofore made, either to Harvard-College in Cambridge, in New-England, or to the President and Fellows of Harvard-College, or to the said College, by some other description, under several Charters successively: IT IS DECLARED, That all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard-College, and to their Successors, in the capacity aforesaid, according to the true intent, and meaning of the donor or donors, grantor or grantors, divisor or devisors.

III. AND whereas by an act of the General Court of the Colony of Massachusetts-Bay, passed in the year one thousand six hundred and forty two, the Governor and Deputy-Governor, for the time being, and all the magistrates of that jurisdiction, were with the President, and a number of the Clergy, in the said act described, constituted the Overseers of Harvard-College: And it being necessary, in this new Constitution of Government, to ascertain who shall be deemed Successors to the said Governor, Deputy-Governor, and Magistrates: IT IS DECLARED, That the Governor, Lieutenant-Governor, Council and Senate of this Commonwealth, are, and shall be deemed, their Successors; who, with the President of Harvard-College, for the time being, together with the Ministers of the congregational churches, in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard College; PROVIDED, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such

alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the Republic of Letters, in as full a manner as might have been done by the Legislature of the Province of the Massachusetts-Bay.

SECTION II.

The Encouragement of Literature, &c.

WISDOM, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislators and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools, and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humour, and all social affections, and generous sentiments among the people.

CHAPTER VII. and last.

Continuance of Officers, &c.

To the end there may be no failure of justice, or danger arise to the Commonwealth from a change of the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts-Bay, in New-England, and all other officers of the said government and people at the time this Constitution shall take effect, shall have, hold, use, exercise, and enjoy all the powers and authority to them granted or committed, until other persons shall be appointed in their stead: And all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers, shall continue in full force, in the enjoyment and exercise

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of all their trusts, employments and authority, until the General Court, and the supreme and executive officers, under this Constitution, are designated, and invested with their respective trusts, powers and authority.

ERRATA.

Page 249. 8th Line of the Preamble, read, *Prosperity and Happiness.*

In Lieu of the first full Paragraph on Page 250, substitute the following.

“WE, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the Great Legislator of the Universe, in affording us, in the course of His providence, an opportunity of entering into an original, explicit and solemn compact with each other, deliberately and peaceably, without fraud, violence, or surprize; and of forming a new Constitution of Civil Government for ourselves and posterity; and devoutly imploring His direction in so interesting a design, DO agree upon, ordain and establish, the following *Declaration of Rights*, and *Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

PAG. 250, Chap. I, Art. I. l. 1. Read “All men are born free and equal,” omitting the words “equally and independent.”

Art. 2. l. 1. Read, “It is the Right as well as the Duty.” l. 5. Read, “in the manner and season most agreeable.”

PAG. 255. Chap. II. Next under the 1st Section, insert the Contents of it, viz.—The Legislature, or General Court.

PAG. 260. For Art. VII. read VI. for VIII. r. VII. and for IX. r. VIII.

PAG. 270. l. 16 from bot. for “County,” read “District.”

November 1, 1779

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED JANUARY 25, 1871;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN APPENDIX.

BY AUTHORITY OF THE LEGISLATURE.



PORTLAND:
PUBLISHED BY BAILEY & NOYES.

CHAP. 4. tion had been taken by the assessors chosen by said town or plantation.

Such assessors to be paid by the county commissioners. 1863, c. 118, § 7. 1870, c. 121, § 15.

Plantations may be reorganized. 1870, c. 121, § 16.

SEC. 60. The assessors appointed under the preceding section, shall be paid from the county treasury a reasonable compensation for their services, to be determined by the county commissioners, and any sum so paid shall be added to the county tax apportioned to such town or plantation, and shall be collected and paid into the treasury in the same manner as county taxes are.

SEC. 61. Plantations organized upon the application of three or more inhabitants thereof, may at any time be reorganized under the provisions of this chapter.

NOTE.—For provisions relating to elections in plantations, See c. 4, §§ 78 to 77. Schools, c. 11, §§ 5, 66, 67, 68. Highways, c. 18, §§ 80, 78.

CHAPTER 4.

ELECTIONS.

LISTS OF VOTERS.

- SEC. 1. Assessors to make lists of voters where the selectmen are not assessors.
2. Selectmen to prepare corrected lists by the eleventh of August, annually.
3. Special meetings to correct the lists. Notice to be given.
4. Lists to be deposited with town clerk and posted by the twentieth of August.
5. Names not to be added or stricken out, except as provided. Names may be added at regular session on evidence.
6. Duties of selectmen respecting papers of naturalization.
- 7, 8, 9. When selectmen shall meet to correct lists.
10. Notice of such meetings to be given in warrant for calling town meetings.
11. Lists of electors of town officers to be made by twentieth of February, annually.
12. Selectmen to be in session to correct lists.
13. Check list of voters to be kept for choice of town officers by the clerk or moderator.
14. Penalty if clerk or moderator neglect or refuse to use check list.
15. These provisions applicable to cities.
16. List of voters resident in wards, to be posted in cities having more than one thousand voters, and list of voters removing from one ward to another.

NOTIFYING MEETINGS, PROCEEDINGS AT ELECTIONS, AND RETURNS.

17. Meetings for general elections, how called.
18. When such meeting shall be opened.
19. Officers presiding empowered as moderators.
20. When selectmen pro tempore may be chosen.
21. Who shall preside at such choice.
22. Duties and powers of selectmen pro tempore.
23. What votes shall be offered on one list.

CHAP. 4.

24. Citizens set off from one town to another, how and where allowed to vote.
25. Check list required, rules prescribed, and one ballot box only allowed.
26. Check lists to be preserved by clerks of towns, and to furnish certified copies.
27. Ballot boxes, how constructed and used. Votes, how received and duties of officers, and penalties in certain cases.
28. Penalty for not using check list and proper ballot boxes.
29. Votes to be on white paper without marks.
30. When no choice for representative is effected, meeting to be adjourned one week, and from week to week.
31. Meetings for choice of certain officers and for determining questions submitted to the people.
32. How the result of ballotings shall be ascertained.
33. Clerk to transmit returns of votes to secretary of state.
34. If the return is not received, secretary to notify county attorney. His duty.
35. New certificates to be returned in case of loss.
36. How such certificates are to be authenticated.
37. How to be sealed and returned.
38. Of filling vacancies in towns not classed, for representatives.

ELECTIONS IN CITIES.

39. Electors in cities to meet in wards. Warden to preside.
40. Warden pro tempore may be chosen.
41. Regulations for voters on islands in Portland.
42. Proceedings at their meetings. How their votes shall be returned.
43. When representatives may be voted for on separate ticket in cities.
44. When no choice of representative, new meetings to be called within two weeks. Vacancy to be filled.
45. When aldermen shall be in session to correct lists of voters.
46. Three aldermen to be a quorum. Notices of sessions to be given in warrant. Polls to be closed at four o'clock.

REPRESENTATIVE DISTRICTS.

- 47, 48. If no choice is effected or vacancy happens, what further proceedings.
49. Of notices in contested elections, and depositions in such cases.
50. Voters residing in unincorporated places may vote in adjacent town on certain conditions.

PENAL PROVISIONS AND REGULATIONS AFFECTING PURITY OF ELECTIONS.

51. General provisions in case of willful neglect or misconduct of selectmen and certain other officers.
52. Penalty for willful neglect of municipal officers to issue warrants. How recovered.
53. Penalty for willful neglect of warning officers. To be recovered by indictment.
54. Penalty for willful neglect of proper officers to deposit with clerk and post up lists of voters.
55. Penalty for willful neglect of selectmen to keep and use check list or to reject illegal votes.
56. Penalties in two foregoing sections, how recoverable.
57. Penalty for municipal officer striking from the list the name of any voter without notice. How recovered.
58. Penalty for altering, erasing or mutilating any name on list, or fraudulently voting in the name of another.

CHAP. 4.

59. Penalty for neglect to supply lost return.
60. Penalty for making false certificates in such cases.
61. Penalty for neglect in persons entrusted with returns.
62. County attorney's duty when notified of failure of any return.
63. Liability of town officers modified.
64. Punishment for misconduct of any person at elections.
65. Forfeiture by military officers parading their men on days of election.
66. Penalties of the two preceding sections, how recovered.
67. Punishment for bribery and corruption at elections.
68. Punishment for electors voting where they have no legal right.
69. Betting on elections prohibited and punished.
70. Mayor or treasurer to sue for penalty.
71. Any party who has paid such bet may recover it back.
72. Conveyances of real estate for such purposes void. Value of such estate may be recovered by the town.

PLANTATIONS.

73. Check list to be prepared, posted up and corrected.
74. Meeting to be held on second Monday of September. How called.
75. Votes, how received. List of persons voted for, and list of voters, and of persons actually voting, to be returned to secretary of state.
76. Votes so thrown to be received and allowed in elections same as votes thrown in towns.
77. If it do not appear by the returns that the plantation has been duly organized and the provisions of section 75 have been complied with, the votes of the plantation shall be rejected. The secretary of state to furnish blanks.

CHOICE OF ELECTORS OF PRESIDENT AND VICE PRESIDENT.

78. Electors of president and vice president. How many shall be chosen. Meetings for their choice, when and how called. All the names to be on one ballot.
79. Proceedings at the meeting. Votes how returned. Secretary of state to send messenger for each return not received. Governor and council to examine and count the votes. Secretary of state to notify persons elected.
80. Expense of sending for returns to be paid by state and added to state tax of delinquent towns.
81. When no choice of a majority of electors is made, governor to assemble legislature.
82. Meeting of the electors. Vacancies how filled.
83. Proceedings at such meeting.
84. Compensation of electors.
85. Secretary to furnish blanks.
86. Duty of town officers.
87. Soldiers allowed to vote for president and vice president.
88. Elections, how conducted.
89. Certain officers, where allowed to vote.
90. Supervisors, ballot box, qualification of voters.
91. Voters challenged, to be put under oath. Poll list to be kept.
92. Names of voters to be checked. Votes, how declared and returned.
93. May vote for governor, senators, representatives, county officers and representatives to congress.

- SEC. 94. Election, how held and conducted.
- 95. Secretary of state to prepare blank poll lists.
- 96. Governor and council authorized to correct errors and frauds in returns of votes of soldiers.

CHAP. 4.

LISTS OF VOTERS.

SEC. 1. In every town, where the selectmen are not the assessors, the assessors on or before the first day of August in each year, shall prepare a list of the persons they judge to be constitutionally qualified to vote therein in the election of governor, senators, and representatives, and deliver it to the selectmen for their information.

Assessors to prepare lists of voters and deliver to the selectmen.
R. S. c. 4, § 1.

SEC. 2. The selectmen of every town, on or before the eleventh day of August in each year, shall prepare a corrected list of persons qualified as aforesaid.

Selectmen to prepare a corrected list.
R. S. c. 4, § 2.

SEC. 3. In every town, having by the census of the United States, then last taken, more than three thousand inhabitants, the selectmen shall be in open session to receive evidence of the qualifications of persons claiming the right to vote in any such election, and for correcting said list, for a reasonable time, on not exceeding two days, between the eleventh and eighteenth days of August in each year, giving previous notice of the time and place of each session, as their town meetings are notified.

Meetings of selectmen to correct lists, notice of such meetings.
R. S. c. 4, § 3.

SEC. 4. On or before the twentieth day of August annually, the selectmen shall deposit in the office of the town clerk, an alphabetical list of voters thus prepared and revised, and post up a similar list in one or more public places in the town.

Lists to be deposited with clerk and posted.
R. S. c. 4, § 4.
See §§ 54, 60.

SEC. 5. After such lists are thus prepared, deposited with the clerk, and posted up, the selectmen shall not add thereto, nor strike therefrom, the name of any person, except in open session on one of the days prescribed by law for receiving evidence of the qualifications of voters; nor shall they strike from said list the name of any person residing in the town, without notice first given to him that his right to vote is questioned, and an opportunity for a hearing on one of such days. But at any regular session for receiving such evidence, the selectmen shall place on the list of voters, the name of every person known by, or proved to them to be so qualified, whether he applies therefor or not.

Names not to be added or stricken out except as provided.
R. S. c. 4, § 5.
See §§ 57, 68.

Names may be added at regular sessions on evidence.

SEC. 6. When a person of foreign birth exhibits papers of naturalization, issued to him in due form by a court having jurisdiction, to the selectmen of his town, if satisfied of their genuineness, and that such person is entitled to vote, they shall approve such papers by a written endorsement thereon, with the date thereof, signed by

Selectmen, duties respecting papers of naturalization.
R. S. c. 4, § 6.

CHAP. 4. one of them; register in a book kept for that purpose the name of the person, the date of the papers, the date of approval, and the name of the court by which they were issued; cause the name of such person to be entered on the list of voters; and continue his name on the successive lists so long as he continues to reside there and is in other respects qualified to vote. If they are of opinion, that such papers are not genuine, or were not issued to the person presenting them, or that he is not for other cause a legal voter, they shall not approve them or perform the other acts required; but he shall not, by their refusal to approve his papers, or to enter his name, be deprived of his right to vote, upon satisfactory proof of it.

1872
 No names shall be entered on the lists of voters in towns having one thousand or more registered voters, except on the three secular days preceding the election. 1881, c. 50, § 1. Same subject. R. S. c. 4, § 8.

SEC. 7. In all towns having one thousand or more registered voters, the municipal officers thereof shall receive applications of persons claiming a right to vote, on the three secular days next preceding the day of election, and no application shall be received after the hour of five of the clock, afternoon, on the secular day next preceding said day of election; and no name shall be added to the list of voters on the day of election by certificate or otherwise.

SEC. 8. In every town containing more than five hundred and less than one thousand voters, the selectmen shall be in open session on one or more secular days next preceding such election, for the purpose aforesaid.

Same subject. R. S. c. 4, § 9.

SEC. 9. In every town containing less than five hundred legal voters, the selectmen shall be in session on the day of any such election to receive and decide on such applications, at some convenient place, for so long a time immediately preceding the opening of the polls, as they think necessary, and shall hear and determine any such application at any time before the polls are closed.

Notice of such meetings. R. S. c. 4, § 10. 8 Me. 805.

SEC. 10. The selectmen shall order notice of the time and place of all their sessions, required or authorized in the three preceding sections, to be given in the warrant for calling the town meetings.

Lists of electors of town officers. R. S. c. 4, § 11. See §§ 54, 58. 8 Me. 280.

SEC. 11. The selectmen shall make out a correct and alphabetical list of the inhabitants in their towns qualified to vote in the choice of town officers, and deposit it in the office of the town clerk, and post up a copy thereof in one or more public places in such town, on or before the twentieth day of February annually.

Meetings to correct lists. Time and manner of holding such meetings. 1887, c. 84, § 12.

SEC. 12. They shall be in session at some convenient time and place, by them notified in the warrant for calling the meeting in such town, on the secular day next preceding the day of annual election of town officers in the month of March, or on the morning of the day of election, to hear and decide upon the applications of persons claiming to have their names entered upon said list; and such session, when held on a secular day preceding the day of election, shall continue at least three hours, and when held on the day of election,

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shall continue until the election of town officers required by law to be elected by ballot, shall have been completed.

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SEC. 13. The town clerk shall have the list of voters provided for by the eleventh and twelfth sections, at every town meeting held for the choice of town officers required by law to be chosen by ballot, and it shall be kept and used as a check list at the polls by said clerk or moderator at such meeting, in the same manner, as is prescribed for selectmen or assessors by section twenty-five; if it shall be demanded by one-third of the voters present.

Check list of voters to be kept for choice of town officers. 1858, c. 7, § 1. See § 26.

SEC. 14. If the town clerk or moderator presiding at such meeting willfully neglects or refuses to comply with the requirements of the preceding section, he shall forfeit not less than fifty nor more than one hundred dollars, to be recovered in an action of debt in the name and for the use of the town where the offence is committed, to be commenced and prosecuted to final judgment by the treasurer at the request of any legal voter in said town.

Penalty if clerk or moderator neglects or refuses. 1858, c. 7, § 2. See §§ 28, 30.

SEC. 15. The aldermen and assessors of the cities shall prepare lists of the qualified voters in the wards thereof for the elections of governor, representatives to congress, and electors of president and vice president, and for the annual city elections, in the same manner as selectmen and assessors are required to prepare them for towns, the aldermen performing the duties of selectmen; and the wardens shall be governed by said lists.

These provisions applicable to cities. R. S. c. 4, § 18. See §§ 45, 46.

SEC. 16. In all cities having more than one thousand legal voters therein, it shall be the duty of the aldermen thereof to post up in some public place in each ward, a true printed or written list of the legal voters resident in said ward, at least seven days previous to the day of any election. No qualified elector who has removed his residence from one ward to another in any city, within the thirty days next preceding any election, shall vote at such election in the ward to which he has removed, but his name may be placed on the check list of the ward from which he has removed, and he may vote therein.

Lists of voters, residents, to be posted in cities having more than 1000 voters. 1801, c. 54.

Voting in wards regulated. 1850, c. 105.

NOTIFYING MEETINGS, PROCEEDINGS AT ELECTIONS, AND RETURNS.

SEC. 17. The selectmen of every town, by their warrant, shall cause the inhabitants thereof, qualified according to the constitution, to be notified and warned seven days at least before the second Monday of September annually, to meet at some suitable place designated in said warrant to give in their votes for governor, senators, and representatives, as the constitution requires; and such meeting shall be warned in the manner legally established for warning other town meetings therein.

Call of meeting for election of state officers. R. S. c. 4, § 14.

SEC. 18. No such meeting shall be opened before ten o'clock in the forenoon on the day of the election, unless the number of voters

Meeting when opened. R. S. c. 4, § 15.

CHAP. 4. in such town exceeds five hundred; if it does, an earlier and suitable time in the day may be appointed by the selectmen. In all elections for the choice of state officers and of electors of president and vice president of the United States, in towns and plantations having more than five hundred and less than five thousand inhabitants, if the time is not otherwise fixed by law, the polls shall be kept open until five o'clock in the afternoon and then be closed.

Sec. 19. The selectmen or other officers, authorized and required by the constitution and laws to preside at any such meeting, shall have all the powers of moderators of town meetings, as provided in chapter three; and they shall refuse the vote of any person not qualified to vote.

Sec. 20. If a majority of the selectmen is absent from any such meeting duly warned, or being present, neglect or refuse to act as such and to do all the duties required of them, the voters at such meeting may choose so many selectmen pro tempore, as are necessary to constitute or to complete the number competent to do the duties.

Sec. 21. During the choice of such selectmen pro tempore any selectman present may act as moderator; if no selectmen are present, or if those present neglect or refuse to act as such, the town clerk shall preside; and the person so acting or presiding shall have all the powers and discharge the duties of moderator.

Sec. 22. The selectmen pro tempore accepting the trust, shall be sworn faithfully to discharge the duties of the said office, so far as relates to such meeting and election; and in making a record and return of the votes, as the constitution or laws require, and in all matters incidental to the trust shall have the powers of permanent selectmen, and be subject to the same duties and liabilities.

Sec. 23. At every meeting for the choice of governor, senators, representatives, and other public officers requiring the like qualifications in the electors, the selectmen or other officer presiding shall require the electors to give in their votes for the officer or officers to be chosen, on one list or ballot, or so many of such officers, as the voter determines to vote for; designating the intended office of each person voted for.

Sec. 24. In all cases where any portion of territory has been or may be set off from one town and annexed to another, the inhabitants of the territory so set off, otherwise qualified, may vote for representative to congress, senators or representative to the state legislature, in the town to which they are annexed, if said town is within the limits of the congressional, senatorial or representative district, as the case may be, to which they previously belonged. And if the town to which they are annexed lies in a congressional, senatorial, or representative district other than the one to which they previously

in certain towns to be kept open till 5 P. M. 1861, c. 40.

Officers presiding have powers of moderator. R. S. c. 4, § 16.

Selectmen absent, others may be chosen. R. S. c. 4, § 17.

Who shall preside. R. S. c. 4, § 18.

Duties and powers of selectmen, pro tempore. R. S. c. 4, § 19.

What votes shall be on one list. R. S. c. 4, § 20. 1868, c. 194.

May vote where annexed, if within the district to which they previously belonged. 1864, c. 249, § 1.

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belonged, such inhabitants shall have the right to vote for representa- tive to congress, senators or representative to the state legislature, as the case may be, in the town from which they were set off, until the next congressional, senatorial or representative apportionment shall have been made.

Sec. 25. The selectmen or other officers presiding at any elec- tion shall keep and use the check list herein required at the polls during the election of any such officers, and have and use suitable ballot boxes to be furnished at the expense of the town, and no votes shall be received unless delivered by the voter in person, nor until the presiding officer or officers have had opportunity to be satisfied of his identity and shall find his name on the list and mark it and ascertain that his vote is single, nor shall more than one ballot box be used for receiving votes at any election at any one time.

Sec. 26. The clerks of towns shall preserve the check lists used at the September elections, for one year thereafter without alteration, and shall furnish to any person an exact and certified copy thereof within twenty days after demand and the payment or tender of the legal charges therefor, under the penalty provided in section fifty-one.

Sec. 27. The ballot boxes used at elections, shall be covered at the top with only a slide opening, and such slide shall not be opened till the name of the person offering his vote, is found and checked on the list, and then shall be shut until another voter presents himself, and his name is found and checked, and if the presiding officer or officers do not comply with these requirements, they shall be subject to the penalties provided in the preceding section.

Sec. 28. Any penalty provided for in this chapter, if the treas- urer refuses or neglects for ten days, after written request of any voter to commence a suit therefor, may be recovered by said voter in a suit in his own name, to the same uses as if recovered by said treasurer.

Sec. 29. No ballot shall be received at any election of state or town officers, unless in writing or printing upon clean white paper without any distinguishing mark or figures thereon, besides the name of the person voted for, and the offices to be filled, but no vote shall be rejected on this account, after it is received into the ballot box.

Sec. 30. When at a town meeting held for the election of repre- sentatives to the state legislature, in a town not classed with other towns as a representative district, by reason of two or more persons having an equal number of votes, a choice is not effected of any or all the representatives to which the town is entitled, the meeting shall be adjourned to the same day of the week following, and to the same hour and place at which the first meeting was called; and at such

CHAP. 4.
If not, then in the town where set off from.

Check list required.

Rules prescribed. 1868, c. 180, § 1. See §§ 53, 68.

One ballot box only allowed.

Check lists to be preserved by clerks of towns and to furnish certified copies. 1864, c. 286, § 1. See § 18.

Ballot boxes how construct- ed and used. 1864, c. 283, § 2.

Votes how received.

Officers, duties of.

Penalties in certain cases. 1864, c. 283, § 8. 1860, c. 45, § 1.

Votes to be on white paper without marks. R. S. c. 4, § 22. See §§ 35, 68. 64 Me. 602.

When no choice of rep- resentative is effected, meet- ing shall be ad- journed one week, and from week to week. R. S. c. 4, § 20.

CHAP. 4. adjourned meeting, the voters shall give in their votes for so many representatives as are necessary to make up the number to which said town is entitled; and like adjournments shall be had until the full number is elected.

Meetings for choice of certain officers, and determining certain questions.
R. S. c. 4, § 24.

SEC. 31. All town meetings, required to be held for the election of county treasurer, of register of deeds, or of representatives to congress, or of electors of president and vice president of the United States, or for the determination of questions expressly submitted to the people by the legislature, as to calling, notifying and conducting them shall be subject to the regulations made in this chapter for the election of governor, senators, and representatives, unless otherwise provided by law.

Result of balloting, how ascertained.
R. S. c. 4, § 25.

SEC. 32. In order to determine the result of any election by ballot, the number of persons who voted at such election, shall first be ascertained by counting the whole number of separate ballots given in, which shall be distinctly stated, recorded, and returned. Blank pieces of paper and votes for persons not eligible to the office shall not be counted as votes, but the number of such blanks and the number and names on ballots for persons not eligible shall be recorded and return made thereof. In case of representatives to congress, and to the state legislature, registers of deeds, county and state officers, except where a different rule is prescribed in the constitution, the person or persons, not exceeding the number to be voted for at any one time for any such office, having the highest number of votes given at such election shall be declared to be elected. If by reason of two or more of the persons having the highest number of votes, receiving an equal number, the election of the requisite number of officers cannot be declared, without declaring more than the requisite number elected, no one of those having an equal number of votes shall be declared to be elected. In all other cases no person shall be deemed or declared to be elected, who has not received a majority of the whole number of votes counted as aforesaid; and if a number greater than is required to be chosen receive a majority of the whole number of votes so given, the number so required, of those who have the greatest excess in votes over such majority, shall be declared to be elected. If the number to be elected cannot be so completed by reason of any two or more of such persons having received an equal number of votes, the persons having such equal numbers shall be declared not elected.

[See Amendment of Constitution, Arts. VII & IX.]

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Clerk to transmit returns of votes to secretary of state.
R. S. c. 4, § 20.

SEC. 33. The clerk of each town shall deliver or cause to be delivered at the office of the secretary of state, the returns of votes given in his town, for governor, senators, representatives to the legislature, representatives to congress, electors of president and vice president of the United States, and for county officers, within thirty days next succeeding any meeting for their election, or shall deposit them, post paid, in some post office, directed to the secretary of state,

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within fourteen days after such meeting, to be transmitted by mail; and shall also forward, as soon as practicable, to such office a statement attested by him of the number of votes for said several officers, given at such election in his town, which shall be opened and filed by the secretary, and kept for the examination of the public.

Sec. 34. If any such return is not received by the secretary of state within thirty days next after such meeting, he shall forthwith notify the county attorney of the county in which such town is situated, who shall give immediate notice thereof to the clerk of such town, and unless he receives satisfactory evidence, that said clerk has complied with the requirements of the preceding section, he shall prosecute for the penalty hereinafter provided.

Sec. 35. When any such original return is in any way lost or destroyed, the selectmen and clerk of such town, on receiving information of such loss or destruction, shall forthwith cause a copy of the record of the meeting, at which such vote was given, to be made with their certificate upon the same sheet, that it is a true copy of the record, that it truly exhibits the names of all persons voted for for the offices designated, and the number of votes given for each at such meeting, and that said copy contains all the facts stated in the original return.

Sec. 36. The selectmen and town clerk, who were present at the meeting and signed the original return, shall sign the certificate mentioned in the preceding section, designating their office against their names as in the original return, and make oath that said copy and certificate are true, before some justice of the peace of the county, who shall make certificate of such oath on the same paper.

Sec. 37. Such copy and certificates shall then be sealed up, and directed to the secretary of state, with the nature of the contents written on the outside; and the clerk of such town shall cause the same to be delivered into the office of the secretary of state, as soon as may be.

Sec. 38. When the selectmen of any town, not classed with others as a representative district, by any means have knowledge that the seat of a representative thereof has been vacated by death, resignation, or otherwise, they shall forthwith issue their warrant, giving at least seven days notice, for a meeting of the electors of said town to fill such vacancy; and at such meeting the like proceedings shall be had, as at any meeting held on the second Monday in September for the like purpose.

ELECTIONS IN CITIES.

Sec. 39. For all the purposes mentioned in sections seventeen and thirty-one, the inhabitants of cities shall meet as the constitution requires, in ward meetings, to be notified and warned, as town meet-

County attorney, to be notified if return is not received. His duty. R. S. c. 4, § 27.

Loss of returns, how supplied. R. S. c. 4, § 28. Sec §§ 60, 68.

Oath to be made to copy of record. R. S. c. 4, § 29. Sec §§ 60, 61, 64.

Certificates how sealed and returned. R. S. c. 4, § 80. Sec §§ 60, 60, 68.

Vacancies how filled in towns not classed for representatives. R. S. c. 4, § 81. Sec §§ 44, 47.

Electors in cities to meet in wards. R. S. c. 4, § 82.

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Warden to
preside.

Warden pro
tempore may
be chosen.
R. S. c. 4, § 84.

Regulations
for voters on
islands in
Portland.
R. S. c. 4, § 85.

Proceedings
in meeting.

How the votes
shall be re-
turned.
R. S. c. 4, § 86.

In cities,
names of rep-
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on same lists
as other offi-
cers.
R. S. c. 4, § 87.
86 Me. 512.

If no choice,
further meet-
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R. S. c. 4, § 88.

Vacancies by
death, resig-
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filled.
See §§ 88, 47.

Aldermen of
cities when to
be in session
to correct lists
of voters.
R. S. c. 4, § 89.
See § 16.

ings for similar purposes are. The warden shall preside; the clerk shall make such record as the constitution requires; and the city constables shall preserve order.

SEC. 40. If the warden is absent from any such meeting, or refuses or neglects to preside, a warden pro tempore shall be chosen, and during such choice the ward clerk shall preside; and the warden pro tempore accepting the trust, shall be duly sworn, and have the power and perform the duties of warden of such meeting, and be liable to like penalties.

SEC. 41. The qualified electors of the ward composed of the islands within the city of Portland, may meet as provided in the thirty-ninth section, and also for the choice of city officers, on either of said islands, which a majority of such electors designate at any meeting legally held for the purpose.

SEC. 42. The warden thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count, and declare them in open meeting and in the presence of the clerk, who shall make a list of the persons voted for with the number of votes for each person against his name, and the offices respectively, and in open ward meeting and in the presence of the warden, shall make a fair record thereof; a fair copy of this list shall be attested by the warden and clerk, sealed up in open meeting, and delivered to the clerk of ward number one in said Portland within eighteen hours after closing the polls, and the votes thus thrown shall be deemed as thrown in and belonging to the last mentioned ward.

SEC. 43. In voting for representatives to the state legislature in the wards of a city, the names shall be on the same ballot with the other officers, to be chosen at the meeting by voters of like qualifications, unless the board of aldermen in their warrant notifying the meeting require a separate ballot or ballots, which they may do.

SEC. 44. When a choice of any such representative is not effected, the aldermen shall call new meetings of the wards for the purpose, to be held at the same time, within two weeks after any former meeting; and the like proceedings shall be had at such meetings, as at the first, until a choice is effected; and when the aldermen of any city by any means have knowledge that the seat of a representative therein has been vacated by death, resignation, or otherwise, they shall call meetings of the wards for the purpose of filling such vacancy; and like proceedings shall be had at such meetings as at other meetings for the election of representatives.

SEC. 45. In cities containing one thousand and more qualified voters, the aldermen shall be in session on each of not less than three secular days next preceding any day of election when a list of voters is required, at some central and convenient place, to receive evidence of the qualifications of voters whose names are not on the lists; and

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on satisfactory evidence produced at such session they shall enter the name of the person qualified on the list for the proper ward. And no application shall be received after the hour of five o'clock afternoon, on the secular day next preceding said day of election, and no names shall be added to the lists of voters on the day of election by certificate or otherwise. In cities containing a less number of voters, the aldermen shall hold, prior to the day of election, the same number of sessions for receiving such evidence, as selectmen of towns having a similar number of inhabitants are required to hold.

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No names to be added on day of election. 1801, c. 50, § 1.

Sec. 46. For the purposes of the preceding section, three aldermen shall be a quorum. Notice of the times and places of all sessions, required by the preceding section, shall be given in the warrant for calling the ward meetings. In all elections in cities, the polls shall be open until four o'clock afternoon, and then be closed.

Three aldermen to be a quorum. R. S. c. 4, § 40. 1870, c. 185, § 1.

Notice of sessions to be given in warrant.

Polls to be closed at four o'clock.

REPRESENTATIVE DISTRICTS.

Sec. 47. When the selectmen of the oldest town in a district are duly notified, or otherwise satisfied that at the last meeting of the district for the election of a representative, no choice was effected, or that the seat of their representative has been vacated, they shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day of election to fill such vacancy, and notify the selectmen of the other towns accordingly.

Vacancies how filled. R. S. c. 4, § 44. See §§ 38, 41.

Sec. 48. The selectmen of the several towns shall call meetings upon the day appointed, and proceedings shall then be had, as required by the constitution and laws for the election of representatives on the second Monday of September.

Same subject. R. S. c. 4, § 43.

CONTESTED ELECTIONS

Sec. 49. When any person intends to contest, before the house of representatives, the right of any person to his seat therein, he shall present his petition to said house within five days after the organization thereof, stating the grounds upon which he proposes to contest the seat of the person claiming to hold the same. Depositions may be taken in the manner authorized by the provisions of chapter one hundred and seven in cases of contested senatorial elections.

Time of presenting, and contents of petitions in contested elections in house of representatives. 1863, c. 140.

Deposition, how to be taken in certain cases. 1804, c. 208.

VOTERS IN UNINCORPORATED PLACES AND ISLANDS.

Sec. 50. All qualified electors living on islands adjacent to the main land along the coast of this state and within the jurisdiction thereof, but not incorporated with any town, and all such electors living in other unorganized places in this state may furnish lists of their polls and estates to the assessors of any adjacent town, on or before the first day of April annually, and said assessors shall assess state and county taxes upon all such persons, and they shall be collected in the same manner and by the same officers as if such electors

Electors on islands and unincorporated places, where may vote.

See constitution, Art. 4, Part 2, § 8.

May furnish lists of polls &c.

When to furnish.

CHAP. 4. Tax to be assessed. 1864, c. 270, § 1. Electors assessed may vote.

Penalty for neglect of duties, required of selectmen. R. S. c. 4, § 48. 10 Mc. 100.

Penalty for neglect of municipal officers to issue warrants for meetings for choice of officers. R. S. c. 4, § 40. Sec § 68. Penalty how recovered, and by whom.

Penalty for neglect of constable to summon voters. R. S. c. 4, § 50. Sec § 68. Penalty for willful neglect to be recovered by indictment.

Penalty for neglect to deposit and post lists. R. S. c. 4, § 51.

Penalty for neglect to keep check lists, or to reject illegal votes. R. S. c. 4, § 62. 1870, c. 64. Sec § 68.

Penalties, how

were inhabitants of such town. And such electors so presenting their polls and estates shall be allowed to vote in such town in all elections for governor, senators, representatives and county officers.

PENAL PROVISIONS AND REGULATIONS AFFECTING PURITY OF ELECTIONS.

SEC. 51. If any selectman, or other town, city, or plantation officer, or any such officer chosen pro tempore, willfully neglects or refuses to perform any of the duties required of him, or willfully does, authorizes, or permits to be done, any thing prohibited by the constitution or by the provisions of this chapter, he shall for each offence, forfeit not less than fifty, nor more than five hundred dollars, and be imprisoned in jail not more than nine, nor less than three months, except where otherwise expressly provided in this chapter.

SEC. 52. If the aldermen of cities, selectmen of towns, or assessors of plantations neglect to issue their warrant as required by law for a meeting for the choice of state or county officers, representatives to the legislature, or to congress, or of electors of president and vice president of the United States, they shall each forfeit fifty dollars to their city, town, or plantation, to be recovered in action of debt by the treasurer thereof, or by any citizen thereof when said treasurer is a member of the delinquent board.

SEC. 53. If any constable or other person legally required to summon the voters of a city, town, or plantation to assemble at any meeting for the choice of any officers mentioned in the preceding section, neglect to do so, or to make due return of the warrant therefor, he shall forfeit twenty-five dollars to his city, town, or plantation for each offence, to be recovered as provided in the preceding section; but if he willfully neglects or refuses to do so, he shall forfeit not less than fifty, nor more than two hundred dollars, half to the state and half to the prosecutor, to be recovered by indictment.

SEC. 54. If the selectmen of a town or assessors of a plantation willfully neglect to deposit a list of the voters with the town or plantation clerk, and to post up such lists, as are hereinbefore required, they shall each forfeit not less than fifty, nor more than one hundred dollars; and for each day's neglect after the twentieth day of August, and until the election then next ensuing, they shall each forfeit thirty dollars.

SEC. 55. If such selectman or assessors willfully neglect or refuse to keep and use a check list, as provided in section twenty-five, or willfully receive any vote prohibited by section twenty-nine, or willfully and fraudulently receive the vote of any person not qualified to be an elector, as provided by the constitution, they shall each forfeit not less than fifty nor more than one hundred dollars.

SEC. 56. The penalties in the two preceding sections may be

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recovered in an action of debt, in the name and to the use of the town or plantation, where the offence is committed, to be commenced and prosecuted to final judgment at the request of any voter therein, by the treasurer, unless he is one of the delinquent officers, and in that case, by one of the constables.

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recoverable.
R. S. c. 4, § 53.

SEC. 57. If any municipal officer strikes from the list of voters, after it is prepared and posted, the name of any person residing in the town without the notice and opportunity for hearing provided in section five, he shall forfeit not less than twenty, nor more than one hundred dollars, to be recovered in an action on the case by the person whose name was struck out.

Penalty for municipal officer striking names from list without notice.
R. S. c. 4, § 54.

SEC. 58. If any person wrongfully alters, erases, or mutilates any name on a list of voters, or fraudulently votes in the name of another, or under an assumed name, he shall forfeit the sum named in the preceding section, half to the use of the prosecutor, and half to the state, and be imprisoned not more than six months in jail.

Penalty for altering, erasing or mutilating names on check list, and for voting in the name of another.
R. S. c. 4, § 55.

SEC. 59. If any selectman or other officer of a city, town, or plantation, or any such officer chosen pro tempore, willfully neglects or refuses to perform the duties required by sections thirty-five, thirty-six and thirty-seven, on notice of the loss and destruction of any return therein described, he shall forfeit not less than one hundred, nor more than five hundred dollars.

Penalty for neglect to supply lost return.
R. S. c. 4, § 56.

SEC. 60. Any such selectman or other officer, permanent or pro tempore, who in such case makes a false certificate and makes oath to its truth, shall suffer the punishment provided against the crime of perjury, and be disqualified from holding any office under the constitution and laws of this state for ten years.

Penalty for making false certificate.
R. S. c. 4, § 57.

SEC. 61. If a person, to whom the returns of votes of any city, town, or plantation, for governor, senators, or representatives in congress, are entrusted by the clerk thereof to be forwarded to the office of the secretary of state, willfully neglects to use all proper means for their delivery within the time required, he shall forfeit not less than one hundred, nor more than five hundred dollars, or be imprisoned in jail not less than two, nor more than six months.

Penalty for neglect of persons to whom returns are entrusted to deliver them.
R. S. c. 4, § 58.

SEC. 62. Every county attorney, who receives from the secretary of state a certificate that the return of the votes of any town, city, or plantation in his county, for governor, senators, or representatives in congress, has not been duly received at the secretary's office, shall immediately ascertain, so far as he can, by the default of what officer or person such neglect happened, and demand of him, if he finds such default willful or caused by culpable negligence, the sum thereby forfeited; and if it is not immediately paid he shall prosecute such delinquent according to law.

County attorneys to prosecute for willful negligence in not delivering returns.
R. S. c. 4, § 59.

SEC. 63. In no case, except as in sections fifty-two and fifty-three, shall any officer of a city, town or plantation, incur any pun-

Liability of town officers limited.

CHAP. 4.

Neglect to be deemed willful, unless contrary is shown. R. S. c. 4, § 60.

ishment or penalty, or be liable in damages by reason of his official acts or neglects, unless they are unreasonable, corrupt, or willfully oppressive; but the neglect to prepare the list of voters; to deposit it in the town clerk's office; to post it up, as required herein; to call town, city, or plantation meetings for elections; to cause returns of votes, or copies thereof to be delivered into the office of the secretary of state, as required by the constitution and laws; or to make the records by law required, shall be deemed willful and unreasonable, unless the contrary is shown.

Punishment for misconduct of electors. R. S. c. 4, § 61. 66 Me. 512.

SEC. 64. At any meeting for the election of any public officer, where a list of voters is necessary, if any person willfully votes before the presiding officer has had opportunity to find his name on said list, or knowing that it is not on it, or willfully gives any false answer or statement to the selectmen or other officers when previously preparing such list, or presiding at such meeting, in order that his name may be entered on such list or his vote received; or casts more than one vote at one balloting; or is disorderly at such meeting, he shall forfeit, for each offence, not exceeding one hundred, nor less than ten dollars.

Penalty of militia officers for military parades on days of election. R. S. c. 4, § 62.

SEC. 65. If any officer of the militia parades his men, or exercises any military command on a day of election of a public officer, as described in section one hundred and two of chapter ten and not thereby excepted, or except in time of war or public danger, he shall for each offence forfeit not less than ten, nor more than three hundred dollars.

Penalties in two preceding sections, how recovered. R. S. c. 4, § 63.

SEC. 66. The penalties, provided in the two preceding sections, may be recovered by indictment, half to the use of the state, and half to the use of the prosecutor.

Punishment for bribery and corruption at elections. R. S. c. 4, § 64.

SEC. 67. If any person by bribery, menace, willful falsehood, or other corrupt means, directly or indirectly attempts to influence any voter of this state in giving his vote or ballot, or to induce him to withhold it, or disturbs or hinders him in the free exercise of the right of suffrage, at any election held under the provisions of the constitution or of this chapter, he shall be fined not more than five hundred dollars, or imprisoned not less than one year, and be ineligible to any office in this state for ten years.

Punishment for knowingly voting where not entitled. R. S. c. 4, § 65. 1870, c. 115, § 1.

SEC. 68. If a person, at an election of state and county or municipal officers, or of electors of president and vice president, knowingly votes in any city, town, or plantation, where he has no legal right to vote, he shall be punished by imprisonment in the county jail not less than three months, nor more than one year.

Betting on elections prohibited and punished. Wager forfeited. How recovered. R. S. c. 4, § 66.

SEC. 69. No person shall make any bet or wager upon the result of any election of persons to be voted for in this state for any office or place, in money or in any kind of property, real or personal, under penalty of forfeiting the money or property so bet or wagored, to the city, town or plantation in which he resides, or if he does not reside

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in this state, then to the city, town or plantation in which the bet or wager is made, to be recovered in an action on the case.

Sec. 70. The mayor of the city, or the treasurer of the town or plantation entitled to such forfeiture shall forthwith proceed to sue for and recover it, as soon as they have proper evidence of such betting or wagering.

Sec. 71. Any party to such bet or wager, who has paid over or conveyed to the winning party the money or property so bet or wagered, may recover it, or its value, in an action on the case.

Sec. 72. All conveyances, by deed or otherwise, of any interest in real estate, made by reason of any such bet or wager, are absolutely void; the person making them, shall forfeit the full value of the interest so conveyed, to the city, town or plantation entitled to the forfeiture for such betting or wagering, to be recovered as aforesaid.

PLANTATIONS.

Sec. 73. The assessors of each plantation shall annually on or before the eleventh day of August, prepare a list of such inhabitants within its limits, as they judge to be constitutionally qualified to vote in the election of governor, senators and representatives to the legislature; deposit it in the office of the plantation clerk; and post it up and correct it in the manner required in case of towns.

Sec. 74. They shall call a meeting of such voters, to be held on the second Monday of September annually, at some convenient and central place in the plantation, for the election of governor, senators, and representatives in the state legislature, by a warrant in due form by them signed, in which the time, place, and purposes of the meeting shall be set forth; and notice shall be given by posting up a copy thereof in one or more public places in the plantation at least seven days before the day of meeting. Similar notice shall be given of all meetings for choice of representatives to the legislature, or to congress, of any state and county officers, and of electors of president and vice president.

Sec. 75. Such assessors shall preside impartially at all such meetings; receive the votes of all qualified voters present, sort, count, and declare them in open plantation meeting and in presence of the clerk, who shall form a list of the persons voted for, with the number of votes for each person written out in words against his name, and make a full record thereof in presence of the assessors and in open plantation meeting. The clerk shall make out fair copies of the list of voters so posted up as corrected, and of the names of all voters on said list who were actually present and voted at said election, which shall be attested by the assessors and the clerk in open plantation meeting, and he shall cause the record of said votes to be delivered, within the time required by the constitution and the laws, to the proper person appointed to receive them, and the copy of the list of

Mayor or treasurer to sue for penalty. R. S. c. 4, § 67.

Money paid for bet or wager recoverable back. R. S. c. 4, § 68.

Conveyances for such purposes void; value forfeited to the town. R. S. c. 4, § 69.

List of voters prepared, posted and corrected. R. S. c. 4, § 73.

State officers, meetings to be called for their choice. R. S. c. 4, § 74.

Votes how received. R. S. c. 4, § 75.

List of votes and voters to be returned to secretary of state.

CHAP. 4. voters and of the names of the persons actually present, and voting at the election, to be transmitted to the secretary of state with the record of votes aforesaid.

Votes to be allowed in elections, same as in towns.
R. S. c. 4, § 70.

Votes to be rejected on failure to comply with legal provisions.
R. S. c. 4, § 77.
1870, c. 121, § 17.

Secretary of state to furnish blanks.

SEC. 76. The votes so thrown shall be received and allowed for electors of president and vice president of the United States, for governor, senators, and representatives to the legislature, and to congress, and for county officers, the same as votes thrown in any town in said county.

SEC. 77. If it does not appear by the return of the list of voters so posted up, and of the names of the voters on said list, who were actually present and voted at such election, and by the return of its organization duly signed and made to the office of the secretary of state within the time required by law, that the plantation has been duly organized and that the provisions of section seventy-five have been fully complied with, the votes of such plantation shall be rejected, and not counted for any of said officers. The secretary of state shall furnish to the clerks of such plantations suitable blanks for the returns herein required.

CHOICE OF ELECTORS OF PRESIDENT AND VICE PRESIDENT.

Electors of president to be chosen.
R. S. c. 4, § 79.

Meetings for their choice, when and how called.

All names on one ballot.

Votes how received and returned.
R. S. c. 4, § 80.

Governor and council to count votes.

Secretary to send for returns.

Governor and council shall examine and count votes.
1864, c. 278, § 7.

Notice to persons elected.
1864, c. 278, § 8.

SEC. 78. In each year, when the election of president and vice president of the United States is to take place, there shall be chosen from the inhabitants of this state, as many electors of president and vice president as this state is then entitled to; and on Tuesday next after the first Monday in November of such year, the people of this state qualified to vote for senators in its legislature, shall assemble in town, plantation, city or ward meeting, to be notified, held, and regulated as prescribed by the constitution and laws for the election of such senators; and each voter shall bring in on a single ballot the names of so many of said electors, as he determines to vote for.

SEC. 79. The votes shall be sorted, counted, declared, and recorded; and the returns of the number of ballots, and of the votes given for each elector, shall be made as the constitution and laws require respecting the election of such senators, to the secretary of state on or before the second Thursday after such meeting; and on the third Thursday after such meeting, the governor and council shall be in session, and open, examine, and count the returns of votes so made, and the secretary of state shall forthwith send a messenger to every city and town from which a return has not been received at his office; and the governor and council shall again meet on the Thursday next before the first Wednesday in December, and shall examine and count all the votes received from the several cities, towns and plantations, and also the votes of citizens in the military service returned into the secretary's office under the provisions of the law in that behalf; and they shall forthwith send a certificate of his election to each elector

who has received the greatest number of all the votes returned to said office, not exceeding the number to be chosen. CHAP. 4.

SEC. 80. The expense of each messenger sent as required in the preceding section shall be audited and allowed by the governor and council, and paid out of the state treasury; and unless they think the officers of any delinquent town have fully performed their duties in making the required returns, the amount so paid shall be added to the next state tax assessed on such town; but if the same messenger is sent to two or more towns in the same route, the amount to be paid by each of them, shall be apportioned by the governor and council according to their relative distances and the expense of traveling.

The expense of sending for returns to be paid by state, and added to state tax of delinquent towns.
R. S. c. 4, § 81.

SEC. 81. If it appears on such examination, that there has not been a choice of a majority of the whole number of electors, the governor, by proclamation, shall call the legislature together forthwith; and the legislature by joint ballot of the senators and representatives assembled in one room shall choose as many electors, as are necessary to complete the number to which this state is then entitled.

When no choice of majority of electors is made, governor to assemble legislature.
R. S. c. 4, § 82.

SEC. 82. The electors so chosen shall convene in the senate chamber at Augusta, on Tuesday preceding the first Wednesday of December next after their election, at two of the clock in the afternoon; and if any elector so chosen, by reason of death or for any other cause, is not present, the electors then present, by a majority of votes, shall forthwith elect the requisite number of persons suitably qualified to supply such deficiency.

Meeting of electors.
Vacancies, how filled.
R. S. c. 4, § 83.

SEC. 83. Said electors, on said first Wednesday of December, shall vote by ballot for one person for president, and one person for vice president of the United States; one of whom, at least, shall not be an inhabitant of this state; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; they shall make and subscribe three certificates of all the votes by them given, each of which shall contain two distinct lists, one of the votes given for president, and the other of the votes given for vice president; they shall seal them up and certify on each certificate, that a list of votes of the State of Maine for president and vice president of the United States is contained therein. They or a majority of them shall, under their hands, appoint a person to take charge of one of said certificates, and deliver it at the seat of government of the United States, to the president of the senate of the United States, before the first Wednesday of January then next; they shall forthwith forward, by the post-office another of said certificates, directed to the president of the same senate, at the same seat of government; and they shall forthwith cause the other certificate to be delivered to the judge of the district court of the United States for the district of Maine.

Their proceedings.
R. S. c. 4, § 84.

CHAP. 4. Their compensation. R. S. c. 4, § 85. Secretary to furnish blanks. R. S. c. 4, § 86.

Town officers to proceed as in other meetings. R. S. c. 4, § 87.

Citizens absent in military service of U. S. or of this state, may vote for president and vice president of the U. S. 1804, c. 278, § 1. Polls shall be opened where soldiers may be found, &c., out of the state, &c. 1804, c. 278, § 3.

Vote how taken.

Who shall act as supervisors.

Supervisors shall be sworn.

SEC. 84. The electors shall receive such compensation for their travel and attendance as the members of the legislature.

SEC. 85. The secretary of state shall procure blank returns of the proper form for such cities, towns, and plantations, and furnish them to the several clerks thereof at least thirty days before the day for the election of electors as aforesaid.

SEC. 86. All laws in force in relation to the duties of city, town, and plantation officers, and of voters in the election of governor, senators, and representatives to the legislature, and to the penalties incurred for their violation, shall, as far as applicable, apply and be in force in regard to the meetings to be held for the election of such electors, and to the returns thereof to be made.

SOLDIERS AUTHORIZED TO VOTE.

SEC. 87. All citizens of this state absent therefrom in the military service of the United States or of this state, and not in the regular army of the United States, shall be allowed to vote for electors of president and vice president of the United States in all elections of those officers.

SEC. 88. On the day of election a poll shall be opened at every place without this state where a regiment, battalion, battery, company, or detachment of not less than twenty soldiers from the State of Maine, may be found or stationed, and every citizen of said state, of the age of twenty-one years, in such military service, shall be entitled to vote as aforesaid; and he shall be considered as voting in the city, town, plantation and county in this state where he resided when he entered the service. The vote shall be taken by regiments, when it can conveniently be done; when not so convenient, any detachment or part of a regiment not less than twenty in number, and any battery or part thereof, numbering twenty or more, shall be entitled to vote wherever they may be. The three ranking officers of such regiment, battalion, battery, company or part of either, as the case may be, acting as such on the day of election, shall be supervisors of elections. If no officers, then three non-commissioned officers according to their seniority, shall be such supervisors. If any officer or non-commissioned officer shall neglect or refuse to act, the next in rank shall take his place. In case there are no officers or non-commissioned officers present, or if they, or either of them, refuse to act, the electors present, not less than twenty, may choose by written ballot enough of their own number, not exceeding three, to fill vacancies, and the persons so chosen shall be supervisors. All supervisors shall be first sworn to support the constitution of the United States and of this state, and faithfully and impartially to perform the duties of supervisors of elections. Each is authorized to administer the necessary oath to the others; and certificates thereof shall be

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annexed to the lists of votes by them to be made and returned into the office of the secretary of this state as hereinafter provided. The polls shall be opened and closed at such hours as the supervisors, or a majority of them shall direct; *provided however*, that due notice and sufficient time shall be given for all voters in the regiment, battalion, battery, detachment, company, or part of either, as the case may be, to vote.

CHAP. 4.

SEC. 89. Regimental and field officers shall be entitled to vote with their respective commands. When not in actual command, such officers, and also all general and staff officers, and all surgeons, assistant surgeons, and chaplains, shall be entitled to vote at any place where polls are opened.

Proviso.

Certain officers where may vote. 1864, c. 278, § 2.

SEC. 90. The supervisors of elections shall prepare a ballot-box or other suitable receptacle for the ballots. Upon one side of every ballot shall be printed or written the name of the county and also of the city, town or plantation of this state in which is the residence of the person proposing to vote. Upon the other side shall be the names of so many electors for president and vice president of the United States as such person may determine to vote for. And before receiving any vote, the supervisors, or a majority of them, must be satisfied of the age and citizenship of the person claiming to vote, and that he has in fact a residence in the city, town or plantation, and county which are printed or written on the vote offered by him.

Supervisors shall prepare ballot boxes. 1864, c. 278, § 4. Ballots how prepared.

Qualification of voters.

SEC. 91. If his right to vote is challenged, they may require him to make true answers, upon oath, to all interrogatories touching his age; citizenship, residence, and right to vote, and shall hear any other evidence offered by him, or by those who challenge his right. They shall keep correct poll-lists of the names of all persons allowed to vote, and of their respective places of residence in this state, and also of the number of the regiment and company, or battery, to which they belong; and the names of voters shall be entered on such lists by counties; which lists shall be certified by them or a majority of them to be correct, and that such residence is in accordance with the indorsement of the residence of each voter on his vote.

If challenged, may be put upon oath. 1864, c. 278, § 5.

Shall keep correct poll lists.

SEC. 92. They shall check the name of every person before he is allowed to vote, and the check-mark shall be plainly made against his name on the poll-lists. They shall sort, count and publicly declare the votes at the head of their respective commands on the day of the election, unless prevented by the public enemy; and in that case, as soon thereafter as may be; and the same day of said declaration, they shall form a list of the persons voted for, with the number of votes for each person against his name, and shall sign and seal up such list and cause the same, together with the poll-lists

Shall check names of voters. 1864, c. 278, § 6.

Sort, count and declare votes.

CHAP. 4. aforesaid, to be delivered into the office of the secretary of state aforesaid on or before the Thursday next before the first Wednesday of December in each year when a presidential election shall occur.

Citizens absent in military service of U. S. or of this state, allowed to vote for governor, senators, representatives, county officers and representatives to congress.
1864, c. 278, § 9.

SEC. 93. All citizens of this state absent therefrom in the military service of the United States or of this state, and not in the regular army of the United States, being otherwise qualified electors, shall be allowed to vote for governor, senators and representatives to the state legislature, county officers and representatives to congress on the day designated by law for the election of such officers. Each shall be considered as voting in the city, town, plantation and representative district where he resided when he entered said service.

Elections, how held.
1864, c. 278, § 10.

SEC. 94. The elections for this purpose shall be held and conducted in the same manner and under the same regulations as those provided for allowing citizens absent from this state in the military service to vote for electors of president and vice president of the United States, and returns thereof shall be made in the same manner to the office of the secretary of state. All such citizens shall present but one ballot, upon which shall be printed the names of all candidates voted for, and the offices which they are intended to fill, and one poll list and one return of votes only shall be necessary.

Secretary of state to prepare poll lists, &c.
1864, c. 278, § 17.

SEC. 95. The secretary of state shall seasonably prepare and cause to be delivered to each regiment and battery without this state, a sufficient number of blank poll-lists, and forms for returns of votes in conformity with the provisions hereof, and with the tenth article of amendment of the constitution; and said amendment of the constitution and sections eighty-seven to ninety-six inclusive, of this chapter shall be printed in each poll list so delivered.

Governor and council may correct errors in returns of votes from soldiers.
1864, c. 278, § 10.
Returns not to be rejected for informality.

SEC. 96. The governor and council are authorized and empowered to correct errors and frauds, if any, in all returns of votes from soldiers in the army for county officers. But no informality, merely, shall authorize the rejection of such return, if it appears on its face, or otherwise, that the provisions of the constitution, and of this chapter, were in fact substantially complied with.