

14 STATES,
22 SENATORS,
59 REPRESENTATIVES,
&
THE WRITING OF THE ESTABLISHMENT CLAUSE:
AN ANALYSIS OF THE ORIGINAL INTENT

by

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Abstract

This rhetorical history study attempts to refocus the narrow debate on the concept of the “Separation of Church and State.” Most scholars and popular organizations primarily focus their determination of the original intent of the Establishment Clause on the views of James Madison, Thomas Jefferson, and Virginia. However, according to the United States Constitution it takes three-fourths of the states and two-thirds of Congress to ratify an amendment. As a result, most arguments on this topic center on an extremely small minority of evidence: one of fourteen states, and only one of eighty-one members of Congress to determine the Founders’ original intent. This study reverses this trend and consults evidence from all the states involved as well as the records of Congress. Since comparable documents are vital to understanding history, all the state constitutions, state bills of rights, and state proposed amendments to the Federal Constitution are consulted as evidence at the beginning of this study. Additionally, every reference of religion in the above documents are individually presented in order to alleviate concerns of potential evidence manipulation. Further, the debates in Congress and the multiple drafts of the Establishment Clause are evaluated in the process of determining the Founders’ original intent. Throughout the study, several useful tables have been constructed in order to facilitate the processing and evaluation of such a large base of evidence. The results of this study indicate a lack of evidence for the contemporary view that the Founders’ intent was to create a total separation between church and state. From the specific religious concerns voiced in the state ratification debates of the Constitution, what religious limits were written into state constitutions/bills of rights, and the amendments that states proposed concerning religion; it becomes evident that the Founders’ intention was only to prevent a particular Christian denomination from becoming the established “National American Church.”

Table of Contents

List of Figures	x
List of Tables	xi
Acknowledgements.....	xiii
Dedication.....	xiv
CHAPTER 1 - Constitutional Illiteracy	1
The Dangers of Ignorance.....	1
The Establishment Clause.....	7
CHAPTER 2 - Gaps in the Debate of the Establishment Clause.....	14
The Gap of Misrepresenting Evidence	14
The Gap of Little to No Analysis of Primary Documents	18
The Gaps in Evidence	20
The Political Reality in 1790	20
Should Evidence Before or After Ratification Be Used?	22
The Unbalanced Argument.....	28
Current Rhetorical Trends	30
Consolidate and Reorganize	32
CHAPTER 3 - Deciding on Evidence	34
The Four Criteria	34
The Initial List of Evidence	36
Debates in the House of Representatives.....	37
Debates in the Senate	37
Ratification Debates in the States	38
States' Proposed Amendments	38
States' Bills of Rights	39
State Constitutions	39
State Ratification Debates of the Federal Constitution.....	40
Debates of the Federal Constitutional Convention	40
The Excluded Evidence	41

Wrap-Up and Secondary Sources	42
CHAPTER 4 - Analysis of State Constitutions, Declaration of Rights, and State Proposed	
Amendments	44
Connecticut	47
Connecticut Declaration of Rights (1776)	47
Connecticut Colonial Charter (1662).....	49
Summary of Evidence from Connecticut.....	50
Delaware	51
Constitution of Delaware (1776)	51
Delaware Declaration of Rights (1776)	53
Summary of Evidence from Delaware.....	54
Georgia.....	55
Constitution of Georgia (1789).....	55
Summary of Evidence from Georgia	56
Maryland.....	57
Maryland Frame of Government in the Constitution (1776)	57
Maryland Declaration of Rights in the Constitution (1776).....	58
Maryland Proposed Federal Amendment	60
Summary of Evidence from Maryland	61
Massachusetts	62
Massachusetts Frame of Government/Constitution (1776)	62
Massachusetts Declaration of Rights (1776)	66
Massachusetts Proposed Federal Amendment.....	68
Summary of Evidence from Massachusetts	69
New Hampshire	70
New Hampshire Constitution (1784).....	70
New Hampshire Bill of Rights (1784).....	71
New Hampshire Proposed Federal Amendment.....	73
Summary of Evidence from New Hampshire	74
New Jersey	75
New Jersey Constitution (1776).....	75

Summary of Evidence from New Jersey	76
New York.....	77
New York Constitution (1777)	77
New York Proposed Federal Amendment	80
Summary of Evidence from New York	81
North Carolina	82
North Carolina Constitution (1777)	82
North Carolina Declaration of Rights (1777)	83
North Carolina Proposed Federal Amendment	84
Summary of Evidence from North Carolina	85
Pennsylvania	86
Pennsylvania	86
Pennsylvania Constitution (1776).....	86
Pennsylvania Declaration of Rights (1776)	88
Pennsylvania Proposed Federal Amendment.....	89
Summary of Evidence from Pennsylvania.....	90
Rhode Island	91
Rhode Island Colonial Charter (1663).....	91
Rhode Island Proposed Federal Amendment.....	93
Summary of Evidence from Rhode Island	93
South Carolina	94
South Carolina Constitution (1778)	94
South Carolina Proposed Federal Amendment.....	98
Summary of Evidence from South Carolina	99
Vermont	100
Vermont Constitution (1786).....	100
Vermont Declaration of Rights (1786)	103
Summary of Evidence from Vermont.....	104
Virginia	105
Virginia Constitution (1776).....	105
Virginia Declaration of Rights (1776)	105

Virginia Proposed Federal Amendment.....	106
Summary of Evidence from Virginia.....	106
Summary of all Fourteen States.....	107
CHAPTER 5 - Initial Evaluations of Potential Interpretations.....	110
Political Thought to Political Voting.....	110
Interpretations of the Establishment Clause.....	110
The Mathematics Behind Voting.....	114
The United States Congress – House of Representatives.....	114
The United States Congress – U.S. Senate.....	115
The States of the United States of America.....	116
Let’s Take a Vote	116
Foundation 1: Total Separation and No Support for Religion.....	117
The States.....	119
The United States Senate.....	120
House of Representatives.....	121
Foundation 2: Allowing Government to Support Religion.....	123
Foundation 3: No National Religion Declared or Legalized.....	125
CHAPTER 6 - A Close Look at the Establishment Clause.....	126
Section 1: “Congress shall make no law . . .”.....	126
Section 2: ” . . . an establishment of religion.”.....	130
Why the Bill of Rights was Created.....	130
Illuminating the Problem: The State Ratifying Conventions.....	134
Connecticut.....	135
Massachusetts.....	136
North Carolina.....	137
Pennsylvania.....	140
Virginia.....	140
Five-State Summary.....	142
What did the Words “Religion” and “Establishment” Mean in 1789?.....	144
Establishment.....	145
Religion.....	148

Section 3: ” . . . respecting . . . ”	150
Final Reality Checks on the Analysis	153
Proposed Amendments	154
Actions in Congress	156
House of Representatives.....	156
Senate	160
Summary	162
CHAPTER 7 - Conclusion.....	165
The Evidence	165
Ramifications for Rhetorical Scholarship.....	167
Final Thoughts	168
Appendix A - Connecticut	179
Connecticut Declaration of Rights (1776)	179
Charter of Connecticut (1662)	180
Appendix B - Delaware	185
Constitution of Delaware (1776)	185
Delaware Declaration of Rights (1776)	191
Appendix C - Georgia.....	193
Constitution of Georgia (1789).....	193
Appendix D - Maryland	197
Constitution of Maryland (1776)	197
Appendix E - Massachusetts.....	208
Constitution of Massachusetts (1780).....	208
Appendix F - New Hampshire	223
Constitution of New Hampshire (1784).....	223
Appendix G - New Jersey	235
Constitution of New Jersey (1776)	235
Appendix H - New York.....	239
Constitution of New York (1777)	239
Appendix I - North Carolina	249
Constitution of North Carolina (1776).....	249

Appendix J - Pennsylvania.....	255
Constitution of Pennsylvania (1776)	255
Appendix K - Rhode Island	263
Charter of Rhode Island and Providence Plantations (1663).....	263
Appendix L - South Carolina.....	270
Constitution of South Carolina (1778).....	270
Appendix M - Vermont.....	277
Constitution of Vermont (1786).....	277
Appendix N - Virginia	286
Constitution of Virginia (1776).....	286

List of Figures

Figure 1: Illustration of Meaning/Intention vs. Interpretation	27
Figure 2: How the Four Criteria of Selection Operate Together	36
Figure 3: Bull’s Eye Illustration for the Selection of Evidence.....	42

List of Tables

Table 1-1: First Amendment Text and Clause References	8
Table 1-2: Supreme Court Cases Primarily Involving the Establishment Clause by Decade	9
Table 2-1: Examples of the “Unbalanced Argument” in Various Sources.....	28
Table 2-2: Which Collection of Evidence Will Carry More Weight?	30
Table 4-1: Summary Table of Church-State Relations from All Fourteen States	108
Table 5-1: General Interpretations of the Establishment Clause by Separationists and Accommodationists.....	114
Table 5-2: Constitutional Allocations, by State, for the House of Representatives	114
Table 5-3: Mathematics for Ratification in the House of Representatives.....	115
Table 5-4: Mathematics for Ratification in the United States Senate.....	115
Table 5-5: Mathematics for Ratification Among the States	116
Table 5-6: Potential Vote Count Against Ratifying Belief 1: “Total Separation”	118
Table 5-7: Potential Contrasting Evidence in States Mandating “No Mandatory Support”.....	124
Table 6-1: All the Versions of the First Amendment Considered by Congress	127
Table 6-2: States Guaranteeing Freedom of Conscience, Exercise, or Both	129
Table 6-3: Summary of Evidence from State Ratifying Conventions	134
Table 6-4: Summary of Concerns and/or Criticisms of the Constitution during State Ratifying Conventions	143
Table 6-5: 1700’s Dictionary Definitions of Key Words in the Establishment Clause.....	145
Table 6-6: All References of a Form of the word “Establish” in State Constitutions and Declarations of Rights.....	147
Table 6-7: Reactive Stipulations Limiting Religion by States Associated with the Experiences with Parliament and the Church of England	152
Table 6-8: All State Proposed Amendments Analyzed for Confirming or Disconfirming the Proposed Original Intent	155
Table 6-9: Comparison of House Drafts of the Religious Clauses and the Three Essential Elements of the Proposed Original Intent.....	157

Table 6-10: House Debates with Commentary on August 15, 1789.	159
Table 6-11: Comparison of Senate Drafts of the Religious Clauses and the Three Essential Elements of the Proposed Original Intent	161
Table 6-12: Senate Versions with “Religion” Replaced with Definition	162

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Dedication

This thesis is dedicated to my Heavenly Father. He blessed me with a mind to think, a dedication to find the truth, and the passion for history. It is only through His blessing that this project was conceived, researched, and completed. Any success derived from this project is not from my efforts, but only through His blessing.

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CHAPTER 1 - Constitutional Illiteracy

The Dangers of Ignorance

The Constitution of the United States . . . is one of the foundational pillars of American society and the longest continuously enacted Constitution in the history of the world.¹ It not only provides a framework of *civil government*; but more importantly, it ensures the *civility of government*. Because of the Constitution . . .

you may own a gun if you wish

you can listen to the news reports you choose; not just what may be given

you can elect the people you want in government

you can petition the government with grievances . . . and win

you can attend that church, the one down the street, or not attend any

But, most important of all . . .

you are protected from tyrannical government . . . unless you allow it.

The United States Constitution by way of the American Revolution provides you these rights. They may have come without effort in the twenty-first century, but in the eighteenth century they came with a high price. A rag-tag bunch of colonists – with a dream of freedom and new ideas about government – fought against the most powerful nation on earth for nine years in order to enable us to enjoy what our Constitution provides. The freedom and security contained within this document, often taken for granted by Americans, is enjoyed by relatively few people on earth. This emerging sentiment of apathy towards our Constitutional guarantees of freedom is a potential pitfall for the future of American Democracy.

One of the most profound and sobering aspects of our Constitution is what was alluded to above, the concept that “We the People” are protected from being ruled by a government of tyranny, unless “We the people” allow it. How can Americans allow such a turn of events or a

¹ University of Houston. "Who Wrote the Constitution?" in University of Houston [database online]. Houston, Texas [cited 2010]. Available from

http://www.digitalhistory.uh.edu/learning_history/constitution/constitution_menu.cfm.

significant change in our government? One way, and it requires no work on a citizens part (which is potentially the problem)², is becoming constitutionally illiterate as a society. In other words, a majority America does not know what the very document that provides our freedoms actually says.

The *Washington Times* reported a 2003 survey, taken by students and administrators at 339 College and Universities across the United States. It revealed that only one-third of participants could correctly state that freedom of religion and the press are guaranteed by the Bill of Rights.^{3,4} Similarly, a different survey reported that 39% of Americans are not able to name any of the five freedoms guaranteed by the First Amendment, including such societal bedrocks as: the freedom of religion, speech, press, assembly, and the ability to petition the government.⁵ Additionally, over the past twelve years that this survey has been taken, an average of less than 18% could list the freedom of religion as even being contained in the First Amendment.⁶ These statistics paint a picture of Americans taking for granted precious freedoms that have been earned and defended by previous generations.

If Americans *do* know what is written in the Constitution caution still needs to be taken. This is because a second method that can cultivate the tyranny of government (again requiring no work on a citizen's part)⁷, is being guilty of not understanding what the words they know actually mean or what the Founding Fathers meant when they wrote the Constitution. Put another way, Americans as a society can be potentially led astray by people skewing the meaning

² A lack of knowledge requires no effort. However, acquiring knowledge does require effort. More specifically, to know and remember what is in the Constitution take effort on the part of every American.

³ The Bill of Rights is comprised of the first ten amendments to the Constitution. This is where most of the specific rights we enjoy everyday are enumerated. The main and original text of the Constitution just describes how the government is to be set-up and run.

⁴ Unknown. "First Amendment Survey Finds Knowledge Lacking." *The Washington Times*, November 20, 2003, 2003, <http://www.washingtontimes.com/news/2003/nov/20/20031120-104904-8883r/> (accessed March 3, 2010).

⁵ *State of the First Amendment 2009*. Nashville, TN: First Amendment Center, 2009, <http://www.firstamendmentcenter.org/pdf/SOFA2009.analysis.tables.pdf> (accessed March 3, 2010).

⁶ *State of the First Amendment 2009*. (accessed March 3, 2010).

⁷ It is necessary to put effort, time, and research into understanding our founding documents. Just reading them may not be enough.

of the Constitution because they do not understand what the text actually means. Thus, it may open the door for tyranny to enter.

It is out of a desire to counter the above possibilities that this study has been undertaken. However, it would be virtually impossible in one study to cover the original intentions of the entire Constitution. Therefore, in this study only one small part of the constitution will be analyzed via a rhetorical history in order to determine its original intent. More specifically, the Establishment Clause in the First Amendment, which deals with the subject of religion and government, and its historical context, will be analyzed to determine the Founders original meaning. But before delving into the particulars of this part of the Constitution, there is benefit to continue looking at the constitutional illiteracy that is creeping into American society and the potential harmful effects.

Before labeling the previously stated possibilities of tyrannical government as “scare tactics,” “fear-mongering,” or “over-stating the case” a few additional pieces of evidence should be considered. First, a 2006 survey conducted by the Annenberg Public Policy Center at the University of Pennsylvania had these disconcerting revelations about American’s knowledge of the Constitution versus the vernacular. Participants were asked if they could name any of the three branches of government (legislative, executive, and judicial); one-third could not name any and only one-third could name all three.⁸ This means they were not able to connect the constitutional words “legislative,” “executive,” and “judicial” with Congress, the President, and the Supreme Court. Further, the survey also revealed that only a small majority of Americans, 53%, thought that the President must actually follow a ruling by the Supreme Court.⁹ That translates to 47% believing that the Judicial branch does not have any authority over the other branches. It is concerning to think about the potential threat to freedom if a President did not submit to the Supreme Court, or more pointedly, that Americans feel the President does not need to submit to Supreme Court. One bedrock American concept that prevents tyranny is the idea of

⁸ Unknown. "Constitution Day: For Many Americans, it's Time for the Basics " in University of Pennsylvania's Annenberg Public Policy Center [database online]. Philadelphia, PA [cited 2010]. Available from <http://www.annenbergpublicpolicycenter.org/NewsDetails.aspx?myId=61>.

⁹ Unknown. "Only 53%-58% of Americans Say President must Follow a Supreme Court Ruling." in University of Pennsylvania's Annenberg Public Policy Center [database online]. Philadelphia, PA [cited 2010]. Available from <http://www.annenbergpublicpolicycenter.org/NewsDetails.aspx?myId=15>.

“checks and balances” between the branches of government. In the above case this idea would become virtually nonexistent. The following are several examples when it has been absolutely vital to the maintenance of freedom for the Supreme Court to have authority over the executive branch.

During the Korean War, President Truman, to avoid a union strike at the nation’s steel mills seized all privately owned steel production facilities in the United States. The action was challenged on constitutional grounds and subsequently the Supreme Court ruled it unconstitutional for the President to seize private property in such a fashion. President Truman accordingly ordered the return of all facilities back to their owners.¹⁰ Could you imagine just for a minute if he ignored the Supreme Court ruling? It would have set a precedent that the President could manipulate Constitutional authority and arbitrarily take a citizen’s private property in times of “national emergency.” As many other nations have in their constitutions, there is no “emergency powers clause” in the US Constitution.

Another example from American history is President Nixon and the Watergate tapes. Here President Nixon attempted to claim absolute immunity from judicial processes and choose not to release the tapes to prosecutors. This of course would have been a dangerous precedent against freedom. Imagine a President never being able to be challenged by due legal process in matters where a crime has thought to have been committed? The power of the Presidency would be nearly absolute. However, the Supreme Court ordered him to release the tapes in a unanimous decision and he complied because of the constitutional authority of the Supreme Court.¹¹ It is important to note that both of these Presidents rationalized their actions as being constitutional.

Several of our Founding Fathers also recognized the potential and reality of people attempting to interpret the Constitution errantly; sometimes purposefully, sometimes out of ignorance. James Madison, known as the “Father of the Constitution and the Bill of Rights” wrote the following in a letter to Andrew Stevenson in 1826.

¹⁰ Young, James V. *Landmark Constitutional Law Decisions*. New York: University Press of America, 1993, pp. 232-235.

¹¹ Young, 312-314

If the instrument [the Constitution] be interpreted by criticisms which lose sight of the intention of the parties to it, in the fascinating pursuit of objects of public advantage or conveniency, the purest motives can be no security against innovations materially changing the features of the government.¹²

“Materially changing the features of the government” . . . here Madison recognizes, after seeing the Constitution in operation for over 35 years, the potential for manipulation to result in fundamentally changing our government. He, of all people, having been in two out of the three branches of the federal government, realized how static words on paper can be misconstrued or twisted to suit people’s intentions. Again, the distortion may not always be a malicious act, but as Madison writes for seemingly “public advantage” or “conveniency.” Additionally, the first part of his sentence is significant in how Madison refers to the danger of losing sight of the original meaning or intention of the parties that wrote the Constitution. In his view, the anchor of “original intention” is paramount in preventing the loss of the freedoms and the concept of government guaranteed by our Constitution. In knowing and understanding the original intent of the Constitution people are empowered to prevent its manipulation.

Gouverneur Morris, a great contributor at the Federal Constitutional Convention and later a U.S. Senator, made similar comments on how government leaders may try and mold the meaning of the Constitution to meet their purposes. Writing to Timothy Pickering just before Christmas in 1814 he stated:

. . . Having sworn to exercise the powers granted [by the Constitution], according to their true intent and meaning, they will, when they [Congress] feel a desire to go farther, avoid the shame, if not the guilt, of perjury, by swearing the true intent and meaning, to be, according to their comprehension, that which suits their purpose.¹³

Morris distinctly states that members of Congress will, when they desire more power or authority than originally given by the Constitution, commit “perjury” – through means of declaring and attaching erroneous meanings to the Constitution – in order to accomplish their own purposes. It is paramount for citizens to not only know what is stated in the Constitution but also what the authors intended and *did not intend* by their words. By understanding the Constitution, citizens can take a stand and prevent government leaders from manipulating for their own purposes the

¹² *The Records of the Federal Convention of 1787*, edited by Max Farrand. Vol. 3. New Haven, Connecticut: Yale University Press, 1911. p. 473

¹³ Elliot, Jonathan. *Elliot's Debates*. 2nd ed. Philadelphia: J.B. Lippincott Company, 1831, vol 1. pg 506-507.

very words that protect us. If there are mistakes in the Constitution or if there are better means of exercising the duties of government, the Constitution has the vehicle of change written within itself. Manipulation or committing “perjury” of its original intent is not necessary, those wishing to alter the Constitution may do so by proposing an amendment. It has been accomplished 27 times in our history and it is the mechanism through which significant change is supposed to proceed. If the change is truly beneficial, as most amendments have been, then it will be ratified. This concept was instituted as a means to prevent radical and quick change in government . . . to prevent the seizure and retaining of undue power.

Because of the great potential for misrepresenting the text or the intent of the Constitution, it becomes necessary to reassert the preeminence of Constitutional history continually. An understanding of history enables us, as citizens, to ensure honesty in our leaders’ justifications for their actions and prevents the “hijacking” of the foundations of free government. As an illustration, consider how someone would need to navigate over long distances using a compass and map to ensure that they arrive at their desired destination.

First, a person would have to look at a map and determine their starting location and where they eventually want to arrive. For simplicity’s sake, let’s say their destination is 10 miles away; straight north, through a forest from their starting position. So, looking down at their compass this person would have to figure out which way is north by seeing where the arrow is pointing. Then they would face the same way as the arrow and head out toward the desired destination. At this point the person has a decision to make. Either they can put the compass away and not get it out again for the rest of the trip or they can keep it out and keep looking to determine if they are still heading north. Putting the compass away might be rationalized because the person has already determined which way is north and consequently they would know how to get to the destination. All they would have to do is to continually walk straight. Of course, this is impossible to do accurately for 10 miles. The hiker must continually look at their compass over those 10 miles to ensure they are still going in the right direction. Otherwise, since no one can walk in a completely straight line through a forest, a hiker would eventually veer off course and never arrive at their desired destination unless they were unimaginably lucky.

The concept of using a compass to reach a destination mirrors the need to keep verifying assertions about the Constitution history. Over the past 220 years of constitutional history it would also follow that a “historical compass” should be consulted continuously? The records

and documents pertaining to the Constitution's creation and ratification can often paint a clear picture of what different sections were intended to mean or how they were to function. The process of continually verifying people's interpretation of the Constitution with its original intent ensures that America as a whole does not get "lost" and find out one day that the government has slowly changed over time and the freedoms that are currently enjoyed have been lost. As will be shown in the following section and has been alluded to already there may be a section of the Constitution that is need of a "constitutional compass" check. The potential misinterpretation deals with our freedom of religion and how government and religion should interact with one another. More specifically, the text with which this great contemporary debate swirls around is two clauses contained in the First Amendment.

The Establishment Clause

The Bill of Rights was ratified as part of the Constitution during the first Congress in December of 1791. This included 10 different amendments; primarily, focused on individual rights and making final delineations towards limiting the federal government. The first of these amendments stands out from the other nine amendments due to the varied, numerous, and foundational freedoms it protects. The First Amendment as it was ratified is as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.¹⁴

As is easily seen, it specifically guarantees the freedoms of religion, speech, press, assembly, and petition. Due to the incorporation of five separate rights within the First Amendment, the necessity often arises to reference only a specific part of the amendment. Constitutional scholars, historians, lawyers, etc. have therefore named different parts of the amendment for the right or clause being referenced. The following are the short references to the different clauses in the First Amendment.

¹⁴ First Amendment from the United States Constitution, 1791.

Table 1-1: First Amendment Text and Clause References

Clause	"Nickname"
. . . make no law respecting an establishment of religion,	Establishment Clause
or prohibiting the free exercise of;	Free Exercise Clause
or abridging the freedom of speech,	Freedom of Speech
or of the press;	Freedom of the Press
or the right of the people peaceably to assemble,	Freedom of Assembly
and to petition the Government for a redress of grievances.	Freedom to Petition

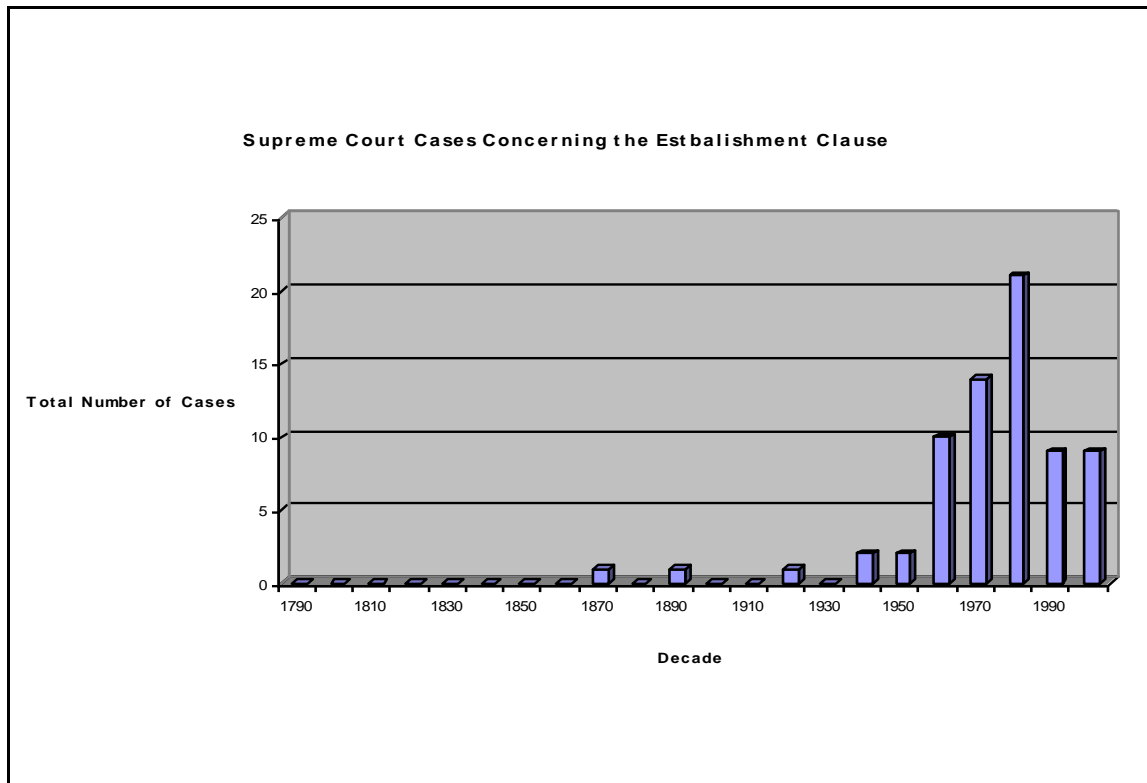
Many of you may recognize the “Freedom” references, but not necessarily the references to the “Clauses.” The Establishment Clause and the Free Exercise Clause help form the basis for the guarantee of freedom of religion in the United States. It may be possible that many Americans have never read or been aware of the Establishment clause per se because of events that have unfolded in the past 60 years or so. What may be much more familiar is the phrase “the separation of church and state.” This phrase often replaces the reference to the Establishment Clause. In fact, a survey taken in 2002 found the 69% of Americans mistakenly thought that this phrase was actually in the Constitution.¹⁵ As you can see from the text above and if you happen to read the rest of the Constitution; you will find that this phrase is not located anywhere in the Constitution.¹⁶

For the first approximately 150 years there was little to no controversy surrounding the Establishment Clause. This is evidenced by the lack of Supreme Court cases heard in regards to this portion of the Constitution. However, starting in the late 1940s a trend of conflict suddenly began swirling around how religion and government should interact based on the Establishment Clause. This trend is evidenced by the sudden and dramatic spike of Supreme Court cases being heard and that is still on-going today. The table below illustrates this trend in Supreme Court cases by enumerating all the cases with the Establishment Clause as its primary constitutional issue, by decade.

¹⁵ Whitehead, John W., and Casey Mattox. "Thomas Jefferson and the Wall of Separation between Church and State." in The Rutherford Institute [database online]. Charlottesville, VA [cited 2009]. Available from <http://www.rutherford.org/oldspeak/articles/religion/oldspeak-dreisbach2.asp>.

¹⁶ In put location in appendix of the Constitution

Table 1-2: Supreme Court Cases Primarily Involving the Establishment Clause by Decade¹⁷



As can readily be seen, in the last 60 years, Supreme Court cases dealing with the Establishment clause have grown exponentially. As the table illustrates, in the first three-quarters of American history there were fewer than five disputes significant enough to warrant the intervention of the Supreme Court. If you compare that with the most recent quarter of American History, which has seen over 70 Supreme Court cases, it becomes evident that there is an incredible amount of contemporary debate over the subject of religion and government. At these points of intense Constitutional debate, it is appropriate and necessary to take time to look at our “Constitutional Compass” to re-establish the original intent of the Founders. In other words, to go back and look again at how and why the Founders came to write such a clause in the First Amendment. This understanding is vital to productive and accurate adjudication of

¹⁷ First Amendment Center. "Establishment Clause Supreme Court Cases." in First Amendment Center [database online]. Washington, D.C. [cited 2009]. Available from http://www.firstamendmentcenter.org/faclibrary/libraryreligion.aspx?topic=establishment_clause_supreme_court_cases_topic&subheading=n

these constitutional issues as well as to educate a new generation of American citizens on the meaning of Constitution.

This trend of Supreme Court Cases began with the first instance of popularizing what would become the phrase (that is now more recognized than the literal text of the Establishment Clause), “the separation of church and state.” In the 1947 Supreme Court case, *Everson vs. Board of Education*, the phrase “separation of church and state” was re-introduced into American thought and established as a judicial precedent. It had been previously absent as a phrase for 145 years. The court majority in the case reached back to a single personal letter written in 1802 by then President Thomas Jefferson to the Danberry Baptist Association. In his letter, Jefferson authors the beginning phraseology of “the separation of church and state.”¹⁸ It is from these two points that the phrase “the separation of church and state” has emerged and now encapsulates what the Establishment Clause states in minds of a majority of Americans.

When the text of the Constitution is supplanted by phrases that do not include words from the actual text, there should be concern for the integrity of the original intent and meaning. That is not to say that this phrase does not accurately assert in simpler terms what the Establishment Clause means. It very well might. However, again, it is necessary every so often to verify the accuracy of such phrases . . . especially in the middle of such an intense period of debate. For what assurance can be taken in a constitution, if the meaning is constantly changing or vast latitude is permitted in its interpretation? There is very little true and permanent guarantee of anything in such a government. This is especially true for a constitution such as in America where government’s authority stems from “the people” not the government itself. If the Constitution is not anchored in history/original intent, but allowed to be freely interpreted by the different entities of government itself; then, there is no real limit to the powers government can assume. It is similar to entrusting a wolf to guard a hen house.

Currently, there are heated debates across the United States concerning the Constitutional interpretation of the relationship between religion and government. As previously seen, the conflict is of such volume and significance that the Supreme Court is hearing more and more cases concerning the Establishment Clause. Among litigants and scholars, there seems to be two

¹⁸ *The Founders' Constitution*. Edited by Phillip B. Kurland and Ralph Lerner. Chicago: The University Chicago Press, 1987, p. 96.

camps emerging in this debate. On one side, there are groups often referred to as “nonpreferentialists” or “accommodationists.” These groups are associated with believing the Establishment Clause does not strictly separate government and religion. Rather, they believe the Founders recognized the value to society of religion and accordingly allowed government to support it as long as it does not show preference between religious sects. Thereby, the Constitution only prevents the establishment of a national church such as Great Britain had previously created.¹⁹ The contrasting group in the debate, often referred to as “separationists,” assert that the Founders desired a strict separation between religion and government. Consequently, government should not be supportive of religion in any manner and that Congress has no specific powers allowing them to do so. Further, they believe that the Founders’ idea concerning freedom of religion to be solely as an individual right and subsequently government should play no role. As a result of these ideals, “separationists” feel that the Establishment Clause limits government significantly more than simply establishing a national church.²⁰

Interestingly, but not surprisingly, both groups claim to have the true historical intent of the Founding Fathers. What is surprising and paradoxical is that many times they claim the exact same Founding Fathers. Take for instance two opposing advocacy groups such as *Americans United for Separation of Church and State* and *The Heritage Foundation*. Both groups claim that Thomas Jefferson and James Madison support their view of the Establishment Clause.²¹ Of course, it is not possible for one individual to support both sides of the debate. An individual can only support one side at a time.

¹⁹ Lambert, Frank. *The Founding Fathers and the Place of Religion in America*. Princeton: Princeton University Press, 2003, p. 6; Levy, Leonard W. *The Establishment Clause*. New York: MacMillan Publishing Company, 1986, p. xii

²⁰ Lambert, 7; Levy, 93.

²¹ Americans United for Separation of Church and State. "what God has Put Asunder: James Madison Quotes on Church and State." in Americans United for Separation of Church and State [database online]. Washington, DC [cited 2010]. Available from <http://www.au.org/resources/history/old-docs/what-god-has-put-asunder.pdf>.

Americans United for Separation of Church and State. "With Sovereign Reverence: Thomas Jefferson Quotes on Religious Liberty." in Americans United for Separation of Church and State [database online]. Washington, DC [cited 2010]. Available from <http://www.au.org/resources/history/old-docs/with-sovereign-reverence.pdf>.

Loconte, Joseph. "James Madison on Religious Liberty." in The Heritage Foundation [database online]. Washington, DC [cited 2010]. Available from <http://www.heritage.org/Research/Reports/2001/03/James-Madison-and-Religious-Liberty>.

This often repeated paradox of evidence demands further historical review and personal study by Americans. Americans need to be able to discern the true intent of the Founding Fathers and not get lost among the loud, conflicting, and inaccurate voices. This is one of the catalysts for conducting this study of the original intent of the Establishment Clause. With this in mind, the primary evidence consulted in this analysis will not be bogged down in arguments of individual Founders' views. Rather, the argument will be predicated on documents and resources that represent more than just one Founding Father such as state constitutions and actual legislative debates on the issue of religion. After all, one individual did not contemplate, write, debate, and ratify the Establishment Clause; many individuals and legislative bodies took that action.

Another catalyst inspiring this study is the tendency for arguments on both sides to be battles between "two line quotes" with little substance surrounding them. The reader is often left with a desire for more and suspicious of being led astray because of partially and narrowly quoted primary texts. This study will be different and provide not only commentary but also complete primary documents that contribute to determining original intent. No more hiding and manipulating quotations.

Next, this study has an objective of attempting to reverse several gaps in the arguments that exists in virtually every scholar's, politician's, lawyer's, and advocacy group's analysis on both sides of the issue. Most of their evidence is *interpretive* in nature. They substantially rely on documents *after* the First Amendment was ratified. The stronger evidence lies *before* ratification because those pieces of evidence formulate *meaning*. After the debating and drafting of the First Amendment occurred, the constraints on alternate interpretations or desires are no longer in place. The votes and necessary collective agreement of understanding have already occurred. It is vital to ensure we strive for an understanding of *meaning* not *interpretation*. I am not saying there is no value in primary documents post-ratification, but they are less weighty and represent a gap, in my estimation, of the evidence often used to determine the original meaning. This difference of *meaning* versus *interpretation* can be seen through the following situational description. When the Founding Fathers decided on an amendment to the constitution, all their

The Heritage Foundation. "The Mythical "Wall of Separation": How a Misused Metaphor Changed Church-State Law, Policy, and Discourse." in The Heritage Foundation [database online]. Washington, DC [cited 2010]. Available from <http://www.heritage.org/Research/Reports/2006/06/The-Mythical-Wall-of-Separation-How-a-Misused-Metaphor-Changed-Church-State-Law-Policy-and-Discourse>

prior experiences, beliefs, and the current circumstances came together for them to make the decision. Nothing after that point influenced them at all. After all, the future cannot influence the past. Therefore, the *meaning* of a decision or a ratified amendment lies what preceded it. Once the amendment was ratified people begin the *interpretation* process to decide how that written statement should be implemented.

The final reason for the necessity of this study is the pervasiveness of using what I call, *narrow* evidence. By this I mean that groups and individuals on both sides tend to spend most of their time on a narrow segment of early American political thought. For instance, they may only focus on one strand of political thought concerning the interaction government and religion. Early American society was not simple minded in nature. There were many differing opinions from multiple geographic locations. It becomes necessary to incorporate all those individual strands of thought in order to form what can be considered the original intent of the Framers. In order to ratify an amendment all of these political philosophies would have to have been considered.

In conclusion, this study will uniquely provide you with evidence that represents majority groups rather than an individual's opinion. Also, the evidence presented will be provided in context and complete texts will be available. Further, a goal is to use evidence that discovers meaning not determines an interpretation. The idea that is often lost is that actions taken after a decision did not influence the actual decision. Only events, circumstances, and experiences that occurred before a decision is a made can influence that decision. Therefore, we will only look at evidence that led to the decision to ratify the Establishment Clause. Last, the evidence collected and analyzed will be representative of the entire United States not just a small portion.

The next two chapters will illuminate the value of these concepts in understanding the original intent of the Establishment Clause. These chapters provide the background to both the fallacies in the current debate as well as which pieces of evidence are the most necessary to consider. The longest chapter in the study is Chapter 4. It packages the contents of the primary documents in a manner that facilitates the analysis in Chapters 5 and 6. By the end of this study, the question will be answered in an effective and efficient manner, "What was the original intent of the Founding Fathers for the Establishment Clause?"

CHAPTER 2 - Gaps in the Debate of the Establishment Clause

The research surrounding the debate on the Establishment Clause, by and large, includes one of the following types of gaps in how they present their evidence or make their argument.

- Misrepresentation of documents, quotations, and/or facts
- Providing accurate documents, quotations, and/or facts but offering little to no analysis to form coherent arguments
- Focusing on interpretation rather than meaning or intent
- Utilizing an unbalanced evidence to support their argument

This chapter will unpack these criticisms, demonstrate their usage in current debates, and illustrate how this study avoids them.

The Gap of Misrepresenting Evidence

I recommend reading the primary documents located in the appendix before reading further in this study. By reading those documents, a foundational knowledge will be developed that will enable a more thorough understanding of the Establishment Clause. Further, this reading will also act like a “primer” before entering the world of “expert” commentary. Additionally, there are two more reasons. First, after reading the documents a general opinion will be formed concerning how the Founding Fathers felt, an opinion not biased before hand by others. Second, a background of knowledge will be formed in order to grapple with the experts when they present their arguments because the same texts they are referencing are in that base of knowledge. Therefore, it enables a person to interact with the text more.

Constitutional history and understanding is not an extremely technical field and does not require extensive prior knowledge. Laymen can read and comprehend these documents. Some experts and groups would rather citizens remain ignorant of our founding documents in order to better ensure agreement with their version of history. This study breaks that mold. If a feel something surfaces that a quotation does not “sound right” or parts have been excluded, the resources to verify it exists.

The research for this study began with looking at primary documents before reading any commentaries. Armed with this knowledge and background, the world of commentary was then entered. Soon it became evident that it was much easier to see misrepresentations by commentators because of previously reading the documents they were using for their arguments. This is not to declare that the entirety of their work misrepresents the original documents. On the contrary, often commentators are very sound on their analysis and offer valuable insights. However, in their haste to substantiate their conclusions, many fall into the trap of not revealing the entirety of their evidence and hence misrepresentation occurs. This criticism does not fall on one side or the other. It happens on both sides of the debate. The following are two examples of these misrepresentation, one from the separationists and one from the accomodationists viewpoint.

Conrad Moehlman in his book, *The Wall of Separation between Church and State*, is building a case from state constitutions that the Founders were decidedly in favor of a separationist view of religion and government. In others words virtually total separation between the two. To that end, he quotes the New York state constitution of 1777, article XXXV in this manner . . .

That all such parts of the said common law and all such common statutes and all such common statutes and acts aforesaid or parts thereof as may be construed to establish or maintain any particular denomination of Christians or their ministers repugnant to this constitution, be and they are hereby abrogated and rejected.²²

Of, course there appears here very strong wording against the idea of any government support whatsoever for religion and specifically for Christianity. Further, the use of words such as “repugnant” and “rejected” seems pretty definitive. However, Moehlman does not quote the entire article XXXV from New York’s Constitution. The full text will defuse this very heated language and his desired effects may be less evident. Here is the full version of article XXXV with his quoted parts underlined for your ease of differentiating between the two and key parts he did not quoted bolded.

XXXV. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the

²² Moehlman, Conrad Henry. *The Wall of Separation between Church and State*. Boston: The Beacon Press, 1951. pp. 84-85, 114.

colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts, as are temporary, shall expire at the times limited for their duration, respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New York, and of the convention of the State of New York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this State; subject, nevertheless, to such alterations and provisions as the legislature of this State may, from time to time, make concerning the same.²³

As can be seen, Moehlman quotes less than 20% of Article XXXV and he never identifies three lines of text omitted right in the middle. Without spending too long analyzing this because it will be analyzed fully in Chapter 4, this article is not the “anti-religious” statement Moehlman hinted it was. This article is stating that all the laws in New York, prior to this point in the Revolutionary War, which were created by a royal authority, remain in effect. This was to ensure civil stability. Can you imagine if all of a sudden a new government took over and null and voided all laws of the previous government? It would throw the citizens into anarchy until new laws were written. Now it is true the exception in the article is to anything pertaining to a religious establishment. But, notice the emphasis that was left out in the middle of the quote. It is the language regarding allegiance and sovereignty to and of the King of Great Britain. This exception is focused on those religious establishments set up through royal authority and should not be construed as a statement against all religious and government interaction. Remember, New York is at war with England. Tensions are running high and not much of anything with royal auspices is viewed favorably. Further, if you would look at the entire 1777 Constitution of New York, especially *the first 2,300 words or so*, you would notice that one primary reason this document was written was to state England’s wrongs against the state of New York and declare a justifiable separation. In fact, part of those 2,300 words is quoting the entire Declaration of

²³ 1777 New York State Constitution, Article XXXV

Independence, which primarily is a list of grievances against the King of England. Lastly, since the conjunction “and” is utilized in the omitted section rather than “or”; it indicates that the two sections must be interpreted together rather than separate pieces. Therefore, Moehlman’s use of the above quote is misrepresenting the true intent of article XXXV.

A second example of mischaracterizing documents or passages is found in Robert Cord’s book, *Separation of Church and State*. Cord is building a case that the original intent of the Founders is one of only preventing a “national religion” from being established; just as England had with the Church of England. This view is pretty consistent with accomodationists’ argumentation. Cord proceeds to quote several proposed amendments from different states that eventually contributed to the framing of the Bill of Rights. Here is his passage as he states his first piece of evidence.

For example, the Maryland Ratifying Convention proposed an amendment stating, ‘That there be no national religion established by law; but that all persons be equally entitled to protection in their religious liberty.’²⁴

Cord’s quotation is correct, but he left unstated the significant fact that the Maryland Convention did not actually approve this measure. It was drafted, proposed, and voted on, but the motion was defeated. It was not officially included in the list of Maryland’s recommended amendments to the Federal Constitution. While there is value in including this proposed amendment, the fact it was not approved by a majority of delegates needs to be clearly stated as it detracts from its weight in the formation of the argument. Therefore, this proposed amendment was never officially sent to Congress for their consideration.

While these are only two specific misrepresentations, they are unfortunately typical of the distractions that characterize the contemporary debate over the Establishment Clause. That is why that this study provides entire documents in the appendixes and when discussing a particular excerpt of a document, the full section or article is presented. Laymen deserve to be able to verify from primary source materials from which people who are engaged in the debate are quoting. This is one primary purpose of this study. Lastly, if the conclusions that are drawn from the evidence are valid, then the evidence for which the conclusion is based should be offered freely, as it will only strengthen the conclusion.

²⁴ Cord, Robert L. *Separation of Church of State: Historical Fact and Current Fiction*. New York: Lambeth Press, 1982, pp. 6-7

The Gap of Little to No Analysis of Primary Documents

Misrepresented analyses should rightly be shunned, but accurate analysis should be highly sought. After having seen what effects misrepresenting documents, quotes, etc. can have on an argument, it must *not* follow that all that is necessary is presenting primary documents in isolation. Commentary is valuable and necessary because there are things that laymen do not either have the time to research or do not have the depth of background to readily synthesize to form conclusions. In fact, another criticism of the literature of the Establishment Clause debate is that often authors are not choosing to provide sufficient commentary to enable readers to make sense of source material.

For instance, in a comprehensive book by Neil Cogan, providing eighty-two pages of excerpts of primary documents, there is no commentary at all.²⁵ While Cogan's book is a tremendous asset and utilized by this study, it can present pitfalls to its reader. For instance, he provides the text of Massachusetts' proposed amendment to the Federal Constitution but nothing else. His title reads, "Massachusetts Minority, February 6, 1788."²⁶ Unbeknownst to the average reader, this means that the proposal was not agreed to by the majority of the convention and subsequently not sent directly to the first Congress for consideration. As we saw when an author attempted to use the Massachusetts' proposed amendment as strong evidence these lapses of commentary can lead to false conclusions. At times nuances among the documents is vitally important.

A similar book by Kurland and Lerner provides a total of 69 primary documents encompassing approximately 70 over-sized pages pertaining to the Establishment clause with no commentary at all.²⁷ Here again, readers are left to wonder why the author included these documents chosen specifically? Why were other documents excluded? Primary documents are essential to our understanding original intent but some rationale of selection/non-selection and pertinent facts need to be included in scholarly work. Why were some state constitutions included and not others in each of the books? Why were proposed amendments to the Federal Constitution included in Cogan's collection but not in Kurland's? Both books are seeking to

²⁵ *The Complete Bill of Rights*. Edited by Neil H. Cogan. Oxford: Oxford University Press, 1997, pp.1-82

²⁶ Cogan, 12.

²⁷ Kurland, pp.43-111.

provide their readers with primary documents pertaining to the formulation of the Bill of Rights, and specifically in our case the Religion Clauses in the First Amendment. With the political overtones and the inherent mistrust in the contemporary debate these questions are often quickly raised. Are the authors skewing the argument through either inclusion or exclusion of documents? This criticism is why you will find, in parts of this chapter and in Chapter Three, a rationale for the deliberate selection and exclusion of certain documents and evidence in the attempt to determine the original intent of the Establishment clause.

The second aspect of a lack of commentary in the literature is when scholars in their arguments provide readers, not as stand alone documents as Cogan's and Kurland's books do, but with excerpts from primary documentation. These excerpts attempted to be used as support for arguments falls short when only little commentary is offered. The authors seem to be content with having the document speak for itself. However, this can often detract from an author's argument. Many times readers are left wondering what exactly they were supposed to extract from the primary text, or worse yet, readers are left confused by certain language use in the excerpt. Perhaps Conrad Moehlman is the most guilty of this criticism. In his book he presents almost two continual pages of quoted text from three different sources and various sections from one in particular. Amazingly, there is no reference before or after these sections of specific text or point to be emphasized. The only commentary provided is one line between a quote from Thomas Paine and a section from the New York Constitution of 1777, "Let the state constitutions speak."²⁸ As a consequence, the reader is left with a text that they mostly likely are not familiar with and not sure exactly what Moehlman desired them to pull out of the text. Hence, his argument gets weakened by a lack of clarity in use of primary texts. If substantial text is to be quoted in an argument some form of commentary is necessary.

Therefore, this study will not give readers bulk texts for you to read and just leave it at that. Commentary will be provided and the more pertinent aspects of the quotes will be drawn out and synthesized to enable better understanding of the interpretation being offered. Where bulk text will be offered is in the appendices, but with the rationale of having a location for text that is free of commentary so that the readers can verify the conclusions formed in the body of this study.

²⁸ Moehlman, 73.

The Gaps in Evidence

There are two additional gaps in the literature connected with the Establishment Clause that have lead to skewed or potentially errant conclusions. The first and smaller fallacy is mistaking interpretations of the original intent for its meaning and intention. The second, like an elephant in the room, has been hiding in plain sight for several decades. It is the fact that most people have been determining original meaning of the Establishment Clause by relying on a severely limited number of individuals' comments rather than looking at many voices. However, before delving too deep into these two "gaps," the context that the Bill of Rights was forged within needs to be established.

The Political Reality in 1790

A popular misconception about the Bill of Rights and specifically the Establishment Clause is that it was written as part of the original Constitution. Accordingly, many people believe that they were conceived and approved through the Constitutional Convention and its ratification process. However, the Bill of Rights was actually proposed after the Constitution was ratified and therefore, it fell under the procedures of amending the Constitution found in Article V. As a consequence, the procedure by which our Founders chose to create these amendments requires that two-thirds of both houses of Congress need to agree on an amendment before it could be sent to the states for ratification. After being sent to the states, three-fourths of either the state legislatures or specially formed conventions on behalf of the states need to ratify the amendment before it actually becomes part of the Constitution. Of course, as the Framers intended, this process requires a widespread agreement across the nation with little room for controversy of any manner (wording, legalities, consequences, etc.).

James Madison, the architect of the Bill of Rights, several times lamented in personal letters he wrote during the First Congress, on the immense difficulty of the task of gaining such widespread support. He quickly understood that getting 2/3 of Congress to agree on an amendment was a daunting task. In a letter written to Thomas Jefferson a few weeks prior to submitting a proposed Bill of Rights to the House of Representatives, Madison identifies that he has to navigate both friend and foe alike to find success. He writes:

A Bill of rights, incorporated perhaps into the Constitution will be proposed, with a few other alterations most called for by the opponents of the Government and least objectionable to its friends.²⁹

It is the same political reality that exists today. In order to gain approval of an amendment, the merits have to be such to gain the support of opponents and not lose the support of friends. Rarely, will there ever be a time when 2/3 of the members of Congress could be considered friends of a specific issue. As further evidence, a letter written on June 11, 1789 a few days after introducing his proposed amendments, Madison writes to Pendleton:

Mr. Page tells me he has forwarded to you a copy of the amendments lately submitted to the H of Reps. They are restrained to the points on which least difficulty was apprehended. Nothing of a controvertible nature ought to be hazarded by those who are sincere in wishing for the approbation of 2/3 of each House, and 3/4 of the State Legislatures.³⁰

Here we see Madison revealing that the 13 amendments he submitted had been specifically crafted to avoid difficulties and not hazard ideas that were controversial in nature. In other words, they were written in a manner to maximize the likelihood of reaching an agreement among 2/3 of the diverse membership of Congress. Anything of a divisive and a nonessential nature was left out in hopes of achieving passage.

In addition to the two previous letters, a third letter written to Randolph on August 21, 1789, only three days before a House approved Bill of Rights was sent to the Senate for their consideration Madison pens:

My Dear Friend,

For a week past the subject of amendts. has exclusively occupied the H. of Reps. Its progress has been exceedingly wearisome not only on account of the diversity of opinions that was to be apprehended, but of the apparent views of some to defeat by delaying a plan short of their wishes, but likely to satisfy a great part of their companions in opposition throughout the Union. It has been absolutely necessary in order to effect anything, to abbreviate debate, and exclude every proposition of a doubtful & unimportant nature. . . . Two or three contentious additions would even now prostrate the whole project.³¹

²⁹ Schwartz, Bernard, and Edwin D. Webb. *The Roots of the Bill of Rights*. New York: Chelsea House Publishers, 1980, vol. 5, p. 1045.

³⁰ Schwartz, Bernard, and Edwin D. Webb. *The Roots of the Bill of Rights*. New York: Chelsea House Publishers, 1980, vol 5, p. 1048.

³¹ Schwartz, Bernard, and Edwin D. Webb. *The Roots of the Bill of Rights*. New York: Chelsea House Publishers, 1980, vol. 5, p. 1138.

Madison specifically states how the diverse opinions in the House were difficult to bring together for agreement concerning the amendments. Further, he also mentions how certain members would try to defeat the amendments if they did not meet their exact wishes on the subject. After experiencing these types of occurrences in the House off and on for several months, Madison confirms here his idea both contentious and unimportant issues would drag proposed amendments down to defeat. Further, Madison even with being so close to final passage by the House still expresses worry the entire effort may fail.

As can be gleaned from the letters above, in attempting to form a large consensus toward an amendment, often specific and personal views or desires have to be left to the wayside. In order to gain support from enough members of Congress, the language and wording is not written solely by the wishes of one individual or even several individuals in mind. It has to be written and composed with 2/3 of Congress and 3/4 of the states in mind. As evidence of the necessity of this fact, Congress considered approximately 20 different versions of the First Amendment before it finally decided on one particular version that could pass in both Houses. Some versions changed only one or two words at a time and even the changed words were similar in meaning. There has to be a fragile coalition formed in order to achieve enough support for an amendment. Therefore, when considering the original intent of the Establishment Clause, the necessity of forming a unified meaning/consensus on what was meant must be considered. In other words, a large group of Congressmen from diverse backgrounds must be brought together and agree on the problem, solution, and language of an amendment. If that consensus is not built and the meaning of the language is not clearly understood the amendment will be defeated.

Should Evidence Before or After Ratification Be Used?

Representative Fisher Ames provided insight on how Madison came to decide on what to incorporate into his proposed Bill of Rights. On June 11, 1789, Ames wrote a letter to Thomas Dwight which included the following:

Mr. Madison has introduced his long expected Amendments. They are the fruit of much labor and research. He has hunted up all the grievances and complaints of newspapers – all the articles of conventions – and small talk of their debates.³²

³² Cogan, 81.

From this excerpt, we can see that Madison performed some extensive research on what conversations had been occurring throughout the nation relating to concerns about the new Constitution. This research was collected in hopes of addressing the majority of those concerns through his soon-to-be proposed Bill of Rights. From newspapers to proposed amendments by the states (articles) to debates within state conventions and legislatures; Madison attempted to gain insight into the “pulse” of the nation.

In two letters later in life, when he was one of the few Founders’ still living, Madison was asked how to determine the original intent of the Constitution. These types questions were ushering a new era of Constitutional understanding. It signals the beginning of a time when the original framers no longer were a part of the government and could not readily provide insight into the Constitution’s original meaning. Conscientious people were trying to determine how to find the true original intent and so some asked this old sage his opinion. Here are two of his answers, the first excerpt begins just prior to the excerpt provided in Chapter One concerning the potential for corrupting original intent.

I cannot but highly approve the industry with which you have searched for a key to the sense of the Constitution, where alone the true one can be found; in the proceedings of the Convention, the contemporary expositions, and above all in the ratifying Conventions of the States. If the instrument be interpreted by criticisms which lose sight of the intention of the parties to it, in the fascinating pursuit of objects of public advantage or conveniency, the purest motives can be no security against innovations materially changing the features of the Government.

– James Madison to Andrew Stephenson, March 25, 1826³³

Here we see Madison advocating research into the debates of the Federal Convention, contemporary writings (during the convention period), and the ratifying conventions of the states. This would translate in our case to looking at the debates of Congress concerning the First Amendment, contemporary writings just prior and during the ratification process, and determining what states had to say about church-state relations.

The second letter written in December 1831 shows a slight variance on how to ascertain original intent, but remains very similar to the first. An excerpt is as follows:

Another error has been in ascribing to the intention of the Convention which formed the Constitution, an undue ascendancy in expounding it. Apart from the difficulty of verifying that intention it is clear, that if the meaning of the Constitution is to be sought out of itself, it is not in

³³ Farrand, vol III, p. 472.

the proceedings of the Body that proposed it, but in those State Conventions which gave it all the validity & authority it possesses.³⁴

Here Madison is of the same mindset of relying on state records and references to meaning because, as he states, the authority of the Constitution is derived from them and not from the Federal government itself. Further, it appears at first glance that Madison is recommending that the debates in the Convention not be analyzed to help determine original meaning. However, through his words of people having an “undue ascendancy in expounding it” we find that not quite to be the case. Ascendancy is not a word we use very often today but synonyms for it are superiority, dominance, and pre-eminence. Apparently, people were using the Convention debates as significantly more weighty of an argument than the state debates for understanding the Constitution. This seems to be what Madison places his objections against, especially in light of his letter from March 1826. So, in this later letter Madison recommends similarly the use of Convention notes (in proper proportion) and the meaning found from state conventions as means to determine original intent.

Interestingly, Madison did not mention seeking individuals’ opinions (including his own), contemporary viewpoints from the time period of the letters, or how the government has enacted the directives given by the Constitution since its ratification. However, many scholars at times do rely heavily on post-ratification evidence. Robert Boston, in *Why the Religious Right is So Wrong About Separation of Church and State*, writes an entire chapter devoted to this type of evidence entitled “The De Facto Protestant Establishment in 19th Century America.”³⁵ In the Chapter he uses evidence such as the Treaty of Tripoli (1797), the Northwest Ordinance (1785), State Supreme Court Cases, the Supreme Court Case of *Holy Trinity Church v. United States* (1892), and potential Constitutional amendments from the 1860s and 1960s to help prove his case for the intent of the Religious Clauses. Keep in mind as well that Boston also only spent one chapter on the entire history surrounding the formation of the Establishment Clause. The equal proportion of evidence between pre and post-ratification is problematic as we will soon discuss.

Many activist organizations also use post-ratification evidence almost exclusively. While they may not always be officially considered “scholarly” they often impact more citizens than a

³⁴ Farrand, vol III, p. 518.

³⁵ Boston, Robert. *Why the Religious Right is Wrong*. Buffalo, New York: Prometheus Books, 1993.

book written by a formal Constitutional scholar. For example, the *Americans United for the Separation of Church and State*, on their historical resources web-page supporting why the separationists' view of religious freedom was intended offers very few pieces of evidence before or during the ratification process. Those few pieces include one letter from George Washington, one piece of Virginia legislation, and six quotes from Madison and Jefferson. This is compared with the 22 excerpts from documents of Madison and Jefferson post-ratification. This is a 3:1 ratio in favor of post-ratification documents.³⁶ On the other side of the debate, the activist organization, *Wall Builders*, is very similar in their evidence collection except they rely less exclusively on Madison and Jefferson. On their historical documents web-page, they include excerpts of letters, Presidential Proclamations, government documents, etc. Of these documents 22 are post-ratification and only 11 pre-ratification. It becomes a 2:1 ratio; again, in favor of post-ratification documents.³⁷ Further, and even more concerning is that in their pre-ratification documents, neither group offers the Congressional debates on the Establishment Clause or the proposed religious freedom amendments from the states that helped frame the First Amendment.

The reason this study will select its primary evidence from Madison's pre-ratification writings rather than how many sources utilize post-ratification evidence is that we are seeking meaning and intent . . . not interpretation. This idea is in no way arguing that post-ratification evidence is not valid or important. Rather, the argument is that it should play a confirming role rather than a primary role in determining original intent of Constitution provisions.

As time continually moves forward, people's beliefs and ideas can and often evolve to some degree. Some of these evolutions are extremely small and some can be extremely large. However, in a document such the United States Constitution, where at a specific point in time a "snapshot" is taken; this potential evolutionary process ends until it is purposefully taken up again. The "snapshot" in time is either the original ratifying of the Constitution itself or the ratification of subsequent amendments. Just as Madison has suggested above and the preamble

³⁶ Americans United for Separation of Church and State. "Church-State History." in Americans United for Separation of Church and State [database online]. Washington, DC [cited 2010]. Available from <http://www.au.org/resources/history/>.

³⁷ Wall Builders. "Historical Documents." Aledo, TX [cited 2010]. Available from <http://www.wallbuilders.com/LIBissuesArticles.asp?cat=HD>.

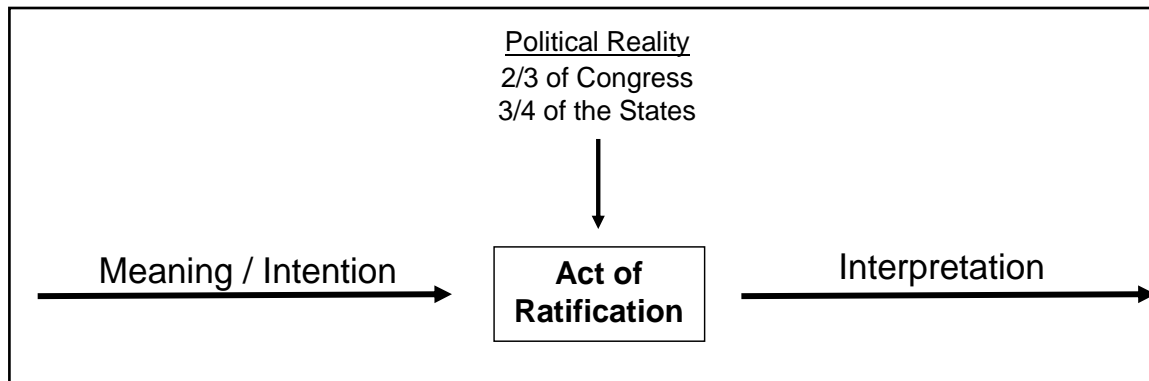
specifically states, the authority of the Constitution comes from the approval of the people. When the people, through their elected officials, ratified the Constitution and the various amendments, the meaning of the words at that time is what was being ratified and approved, not what people may interpret them to mean some time in the future. Unless another ratification vote takes place and establishes a new meaning to the words or establishes new words then the meaning needs to remain unchanged. Otherwise, you have a document that has floating meaning and does not truly protect anything because it can be easily re-interpreted to fit people's whims.

For illustration purposes, here are some contemporary non-Constitutional examples of how in certain instances items should not evolve into new meaning. First, if we were to interpret someone saying, "I would like to have some Coke." In the 1960s, it would have meant that the person was asking for a soft drink. However, in the 1980s that would have meant they were asking for cocaine. It would be unfair and errant if someone from the 1980s declared that the person who said this phrase in the 1960s was a drug addict. Similarly, if someone was described such as the following, "John Doe is gay." What does that mean? If it was written or spoken in the 1920s it would clearly mean that Mr. Doe was happy. The evidence gathered from multiple documents from the 1920 proves this meaning of the words. However, if it was said in 2010, it would mean that Mr. Doe is a homosexual. There is a definite difference in meaning. Again, it would be unfair and errant for someone in 2010 to declare that the person describing John Doe in the 1920s meant that Mr. Doe was a homosexual. These are just simple examples of word play. But, what happens if, on more complex issues, Americans forget the original meaning of parts of the Constitution?

Hypothetically speaking, what if in the 1920s an amendment to the Constitution was ratified so that a new qualification for President was included which read "the President had to be gay in words and deeds?" This of course, as previously mentioned, would have been ratified with the common understanding that the people were mandating a President to be of generally happy demeanor in his words and actions. But, now, would it be fair to say in 2010 with the changing meaning of words and society that this qualification now means that presidents must be homosexual in their words and actions? Of course not because in this stark contrast the meaning and intention at the time of ratification would determine how it is then interpreted in contemporary times. Otherwise, it would bear an entirely different meaning and necessitates totally different qualifications. What happens, though, if the difference is not stark in its

contrast? What if they are more subtle . . . or maybe there is some potential disagreement on what was originally meant by certain words? It is at this point that we find ourselves in our current debate on the Establishment Clause. However, the idea of focusing on evidence of the specific time period and prior to it is still just as pivotal as it would be in our illustration. The rationale provides the basis for protecting Constitutional authority and the certification of meaning through the ratification process to safeguard valued principles of government and sacred individual rights. The following diagram helps illustrate how this works.

Figure 1: Illustration of Meaning/Intention vs. Interpretation



In the middle section there is the “Act of Ratification,” cemented in time by the approval of one particular meaning by 2/3 of Congress and 3/4 of the states. Prior to this we have the arrow signifying meaning and intention. This is where we learn what was previously acceptable in America concerning church-state relations and how people felt at the time towards this issue. It is these types of evidence that help determine what the “ratifiers” would and would not have accepted as the meaning they approved. On the right side of “ratification,” stands the arrow representing the interpretational evidence. This is after the “snapshot” has been taken and approval has been granted. This illustrates that life and circumstances continue to change and occur but is after the meaning has been set into the First Amendment. This is the place where people start to fight on the interpretation of the static words of the Amendment. It is here where the people who were not totally satisfied with the ratified version can speak out and potentially try to modify the meaning of the words to better suit their views. Remember the quotes from chapter one from Morris and Madison telling posterity that people will attempt to change the original intent? This is why evidence collected pre-ratification and during ratification is more weighty of an argument than post-ratification. It is not that post-ratification interpretation is worthless. On the contrary, it can prove to be very valuable. But, when original intent is being

sought out, it must be remembered that anything post-ratification is simply interpreting what happened; not necessarily helping to understand what the consensus meaning was at the “snapshot” point of ratification. Therefore, this study will utilize documentary evidence from the pre-ratification side of the potential evidence as it provides the truest sense of original intent.

The Unbalanced Argument

Probably the greatest of the criticisms involving the evidence collection surrounding the Establishment Clause is the unbalanced focus on the state of Virginia and two individuals: Thomas Jefferson and James Madison. It is the pervasive use of this “weaker evidence” that this study looks to correct. The following table provides a numerical comparison of arguments from various sources that illustrate the use of unbalanced arguments in favor of this “triumvirate.”

Table 2-1: Examples of the “Unbalanced Argument” in Various Sources³⁸

Book	"Virginia - Jefferson - Madison" Triumvirate
How Does the Constitution Protect Religious Freedom	One Document in Appendix: James Madison's "Memorial and Remonstrance"
Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations	Two Documents in Appendix: Thomas Jefferson's "A Bill for Establishing Religious Freedom" and James Madison's "Memorial and Remonstrance"
Church-State Relationships in America	Three Documents in Appendix: Thomas Jefferson's "A Bill for Establishing Religious Freedom", "A Bill Establishing a Provision for Teachers of the Christian Religion", Virginia, 1784, and James Madison's "Memorial and Remonstrance"
Separation of Church and State	One Chapter on the general Historical factors leading to the Establishment Clause (14 pages) - One Chapter Solely on Madison and Jefferson (32 pages)
Why is the Religious Right Is Wrong About Separation of Church and State	Only one Chapter on "The Evolution of Church-State Separation in the United States" (25 pages) - Page Breakdown: 1+ on Pilgrims; 2 on Rodger Williams and Rhode Island; 3 on Other Colonies; 8+ Pages on Madison; 5 Pages on Jefferson; 2 Pages on Bill of Rights; 2+ on First Amendment; 2 Pages of Miscellaneous
The Founders' Constitution	69 Primary Documents Provided - 1/3 Deals with Madison, Jefferson, or Virginia in some Manner.

³⁸ *How does the Constitution Protect Religious Freedom?* Edited by Robert A. Goldwin and Art Kaufman.

Washington D.C: American Enterprise Institute for Public Policy Research, 1987, pp 169-175.

Davis, Derek. *Original Intent Chief Justice Rehnquist of the Course of American Church/State Relations*. Buffalo, New York: Prometheus Books, 1991, pp 171- 181.

Bradley, Gerard V. *Church-State Relationships in America*. New York: Greenwood Press, 1987, pp. 149 – 157.

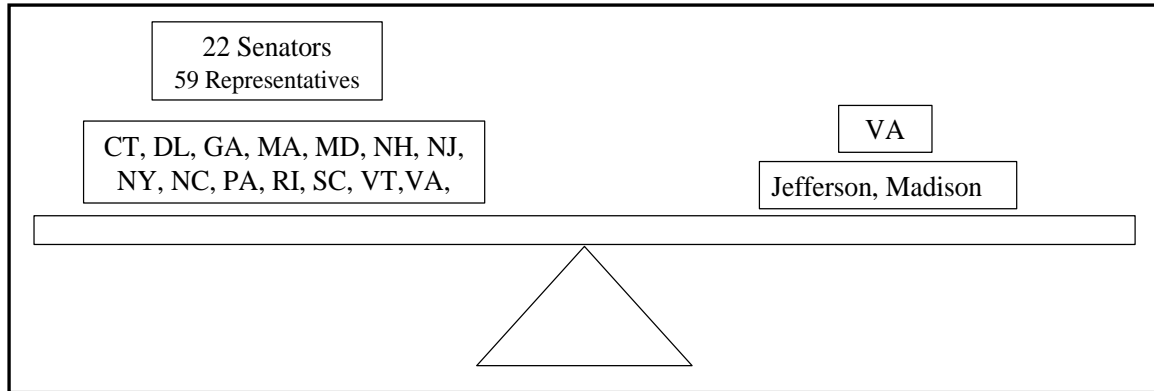
Cord, 2-47.; Boston, 49-74.; Kurland, 43-44.

As you can see in the first three rows, when authors do offer (very rarely) full primary texts in their appendixes, they are consistently in reference to Madison, Jefferson, or church-state relations in Virginia. Rows four and five offer examples of pages within books also being unbalanced in favor of this triumvirate. For instance in, *Separation of Church and State*, Robert Cord spends only 14 pages in analyzing the general factors creating the Establishment Clause. This includes looking at state constitutions, the debate in congress, and analyzing the literal wording of the Religious Clauses . . . indisputably important. However, he turns around in the next chapter and spends double the amount of pages on analyzing Madison and Jefferson as individuals. In addition, on the other side of the debate, Robert Boston, only spends one chapter really focused on the development of the Constitutional provisions on religion and in that chapter there is the consistently appearing “unbalanced argument.” From the “page-count” in the table, Boston spends approximately six pages on eleven states (although he really does not even mention many by name) in some manner attempting to provide a background on church-state relations. Amazingly, he spends 13 pages in the same chapter on Madison and Jefferson as individuals and with some references to Virginia.

Now, having looked quickly, two previous sections ago, at the political reality it took to achieve the ratification of the Bill of Rights . . . does it make sense to hinge determining the original intent of the Framers’ so heavily on Madison, Jefferson, and Virginia? After all Virginia only had ten Representatives and two Senators in the First Congress and Thomas Jefferson was not even in the country when the Constitutional Convention and Bill of Rights were written. He was in France.³⁹ Does it not make more sense to look at all the states and look at Congress as a whole in order to determine what the original intent of the Establishment Clause was historically? Why are we basing such a large portion of our evidence on such unbalanced and potentially misleading evidence? Let’s look at a visual aid on this point:

³⁹ Boston, 60.

Table 2-2: Which Collection of Evidence Will Carry More Weight?



Above is a simple see-saw that could be found on most any playground. On the right hand side we have the “Triumvirate of Evidence”: Virginia, Madison, and Jefferson. On the left-hand side the other 13 states as well as 2/3 of Representatives and Senators. Considering the fact that voting and representation are bedrocks of American constitutional government . . . which argument would appear more weighty? Of course looking at many states and many Congressmen rather than focusing on just one state and only one representative is a much more weighty of an argument. Further, as will be discussed further in Chapter 3, attention needs to not be focused on specific individuals but at documents that represent a larger portion of decision makers or the people. Just saying several individuals felt this way towards church-state relations does not get at a balanced argument either.

Citizens are getting a lop-sided and potentially distorted picture of what our Founders’ (all of them) felt about religion and government. This is perhaps the bedrock criticism that necessitated this study. The constitutional reality of needing such a geographic, political, religious, and cultural cross-section of America to pass an amendment demands a more comprehensive analysis of the parties that contributed to framing the Establishment Clause. In this study, the evidence considered in attempting to understand the original intent of the Establishment will be balanced in its approach and focus on representative documents rather than individual personal viewpoints.

Current Rhetorical Trends

In a one sentence summary, the field of communication/rhetoric has virtually nothing to offer at least in the past thirty to forty years towards analyzing the original intent of the

Establishment Clause of the First Amendment. This is surprising and unfortunate for an academic discipline trained in evaluating rhetoric. With the contemporary debate being conducted with such intensity it would make sense that rhetoricians should offer insight on the controversy of ten very powerful words. After searching a database comprised of 600 academic journals in communication and mass media only one article surfaced that was close to our topic. It was found in *Rhetoric & Public Affairs* in 1999. However, its focus was not on how the historical rhetoric surrounding the First Amendment sheds light on its meaning. The article focused on analyzing the Supreme Court's rhetoric via its decisions concerning the Establishment Clause.⁴⁰ Further, the article did not list another communication journal in its bibliography. Most likely because, as I found, there are none.

As a discipline, there needs to be more involvement in such a contemporary debate. This is a time to achieve even greater legitimacy for the discipline through practical scholarship that aids citizens grapple with the very foundations of our democracy. One of our goals in studying rhetoric and communication principles should be to offer the citizenry of this country tangible and practical assistance with their concerns. In these times, citizens are expressing concerns about our countries founding and what place government has in the lives of its citizens. However, we have chosen over the past several decades to focus more on rhetorical criticism than producing rhetorical history.⁴¹ The difference between the two being that the first attempts to bolster contemporary rhetorical theory from history while the later attempts the reconstruction of historical facts.⁴² As a consequence, we have lessened our contributions among the academic heavy-weights who continue to construct our nation's past from rhetorical artifacts. We have not taken full advantage of our training to contribute to the evaluation of the past in a manner different from historians and political scientists.

⁴⁰ Aune, James Arnt. "Three Justices in Search of Historical Truth: Romance and Tragedy in the Rhetoric of Establishment Clause Jurisprudence." *Rhetoric and Public Affairs* 2, no. 4 (1999): 573.

⁴¹ Baskerville, Barnet. "Must we all be "Rhetorical Critics"?" *The Quarterly Journal of Speech* 63, no. 2 (1977): 107.

Lucas, Stephen E. "The Schism in Rhetorical Scholarship." *The Quarterly Journal of Speech* 67, no. 1 (1981): 1.

⁴² Schiappa, Edward. "Neo-Sophistic Rhetorical Criticism Or the Historical Reconstruction of Sophistic Doctrines?" *Philosophy and Rhetoric* 23, no. 3 (1990): 192, 193.

In the trend of primarily training our students in the theory of rhetorical criticism rather than instilling the traditional concept that artifacts are cemented into history, the idea of rhetoricians being students of historical facts is being lost. Often we forget that traditionally, rhetorical critics were responsible for evaluating artifacts in light of their particular audience and occasion within history.⁴³ To lose sight of history is to lose sight of the true intention and audience dynamics of artifacts. Additionally, there is a loss of the ability to determine how the lessons gleaned from the artifact can be applied to contemporary consumers. This trend encourages the sort of distortions that were illustrated by the word plays from different time periods in the section, *Evidence Before or After Ratification*. As Herbert Wichelns declares multiple times in his pivotal 1925 essay, *The Literary Criticism of Oratory*, history is the foundational component of what we do as rhetorical critics. We all must be a student of history.⁴⁴ Rhetorical criticism has its place and these arguments are not meant to recommend that they need to be done away with. However, they need not be taught to the detriment of understanding how to construct rhetorical history, which seems to be the trend.⁴⁵

As additional evidence of the lack of rhetorical history on this subject, by necessity, the following had to be employed. The commentaries that have been consulted for this study are predominantly written by historians and politic scientists with an occasional lawyer thrown in for good measure. We, as a discipline, need to earn our way back into expert status among the evaluators of our American experience. When a rhetorical scholar enters the debate, armed with their tools of evaluation and an arm full of primary documents, people should pause in anticipation of the accurate and authoritative analysis soon to come. Our goal as a discipline should be that no historical analysis can be complete without incorporating the assessment of a scholar of rhetorical history.

Consolidate and Reorganize

In Chapter Two, the trends on evidence and method were outlined and discussed. In particular, significant criticisms were pointed out that have become pervasive in the current

⁴³ Lucas, 1-20.

⁴⁴ Wichelns, Herbert A. "The Literary Criticism of Oratory." In *Readings in Rhetorical Criticism*. Edited by Carl R. Burgchardt. State College, Pennsylvania: Strata Publishing, Inc., 2005, 4.

⁴⁵ Baskerville, 107-116; Lucas, 1-20.

debate on the Establishment Clause. This study's aim is to avoid these common errors and bring a more user friendly and accurate insight to this debate. As such, you will find in forthcoming chapters and appendixes provisions to prevent the same errors from creeping into the analysis.

1. To avoid mischaracterizing evidence . . .

Whole documents will be provided to enable readers the opportunity to ensure we do not distort our quotes.

2. To avoid providing little to no analysis of large portions of text

Analysis will be given for individual excerpts at the time they are inserted. It will appear either before or after the text is quoted. Plus, cross analysis of multiple documents will also be provided.

3. To avoid the weaker evidence of interpretation

The primary documents gathered for this analysis are from the meaning/intention part of the timeline. In short, they are documents from pre-ratification and during ratification.

4. To avoid unbalanced arguments

Primary documents have been selected from across the 14 states at the time of ratification. Further, in many cases they will represent more than just one individual's viewpoint.

These practices should provide a more balanced and accurate rhetorical history of what the original intent the "ratifiers" attached to the Establishment Clause than is accessible in many contemporary accounts.

CHAPTER 3 - Deciding on Evidence

The Four Criteria

The rationale governing what evidence is to be included in an analysis of the Establishment Clause is of utmost importance. There is so much potential evidence available (if you are willing to dig deep) that it is literally overwhelming. In fact, some scholars, and they have my admiration, attempt to include EVERYTHING. For instance, Anson Stokes, the author of the multivolume work *Church and State in the United States: Historical Development and Contemporary Problems of Religious Freedom under the Constitution*, begins his evidence with the Greeks, Romans, and Jesus Christ.⁴⁶ While arguably the most complete collection of evidence regarding church-state relations, it is basically unmanageable for a reader to comprehend in its entirety. It is great as a research tool for scholars focusing on particular instances of this subject, but its density and longevity prevents a decisive understanding of the intent of the Framers for readers.

With such a mountain of potential evidence able to be brought to bear on understanding the Constitution, how is the selection of evidence decided? For this study, the large mass of evidence will be chiseled down by four main criteria. Most of the criteria will sound familiar as it stems from the critiques detailed in the previous chapters. This set of criteria will be utilized to ensure this study does fall into those previously identified pitfalls. The process of decision making is purposefully placed in prominence to alleviate readers' fears of biased evidence collection in favor of one point of view. It helps establish the objectivity in the selection of evidence.

Further, there often is apprehension on how the historical texts are going to be analyzed. In this study, Schiappa's approach of historical reconstruction will be used primarily. It focuses on what the texts specifically state and does not speculate on what was omitted or how contemporary rhetorical criticism would understand the text.⁴⁷ In other words, this study focuses

⁴⁶ Stokes, Anson Phelps. *Church and State in the United States*. 1st ed. New York: Harper & Brothers Publishers, 1950.

⁴⁷ Schiappa, 193-195.

on understanding how the authors would have viewed this text . . . their original understanding is what is being sought.

With these two foundations of evidence, this study utilizes the following four criteria for evidence selection:

1) *Evidence must be from the pre-ratification time period rather than post-ratification*

This distinction is not attempting to argue that post-ratification evidence is not valuable in gaining insight. What is being argued is that it is weaker than pre-ratification evidence because of its interpretive nature. Further, post-ratification evidence should hold a confirming role rather than utilized to determine original intent. (Example: Debates of Congress on the meaning of the First Amendment carries more weight than Supreme Court Opinions on the meaning of the Establishment Clause⁴⁸)

2) *Evidence of a majority or group voice rather than one individual's position*

This distinction is not attempting to argue that individual opinions should be discounted, but that documents representing groups or majority opinions provide a more weighty argument. Remember, a “balanced argument” must be maintained. (A personal letter expressing views on religion and government written by a Founding Father is less weighty than state constitutions that were approved by a majority)

3) *Evidence being comparable and directly related to the Establishment Clause*

This distinction is suggesting that documents that also form a government structure and protect rights as with the Establishment Clause provide better insight than less comparable documents. (Example: A state level bill of rights is weightier than Madison's Memorial and Remonstrance since the Establishment Clause itself is part of a Bill of Rights.)

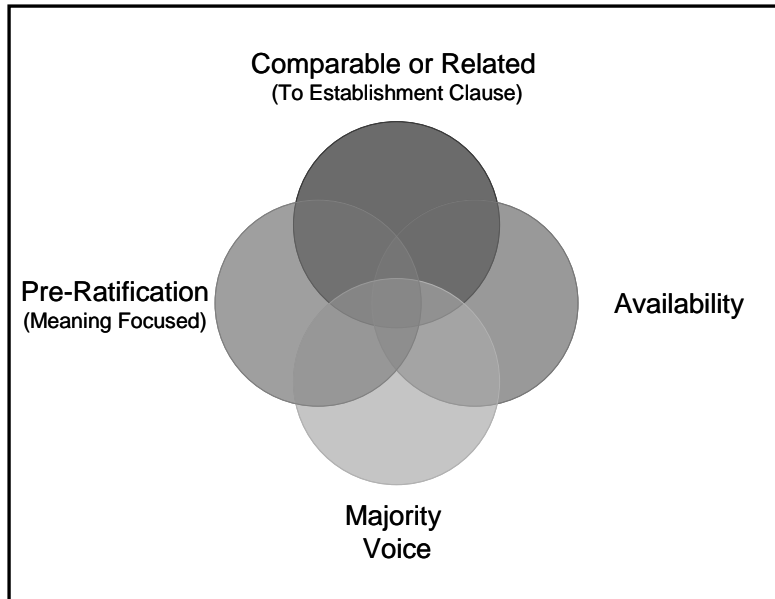
4) *Evidence must be available*

Unfortunately, not all our desired/ideal evidence will be available because of the record keeping ability and decisions on records made at the time. Therefore, we must at times work through gaps and less than ideal types of evidence.

⁴⁸ This is not intending to say that Supreme Court rulings should be ignored. On the contrary, they are the final authority on determining Constitutionality. However, when attempting to construct the original meaning of the Establishment Clause; Supreme Court Opinions can be out weighed as they very seldom address this question directly.

The four main criteria work together. With so much evidence available these criteria work together to help determine which documents are included and which are excluded for this focused study. The study is only accepting the strongest of evidence to draw its conclusions. Perhaps the best means of describing this concept is the Venn diagram below.

Figure 2: How the Four Criteria of Selection Operate Together



Potential documents for analysis easily fit into one or more of the criteria. However, the documents that make the final list for analysis are only the ones that end up at the point of overlap where they satisfy all four criteria. The evidence that can be placed in the center of the diagram, where all four circles overlap is the evidence desired for this study. This process helps ensure that the strongest evidence is included and weaker evidence is excluded or saved for a supplementary study.

The Initial List of Evidence

The following pieces of evidence are the principal historical documents that will provide the greatest insight on the original meaning of the Establishment Clause based on the above criteria. There is only one exception due to availability. However, it is worthy to list these non-available documents to inform readers' as to why such common sense documents are not found in the analysis. Therefore, in a very general order of importance here is the selected evidence:

1. Debates on the Establishment Clause in the House of Representatives
2. Debates on the Establishment Clause in the Senate

3. Debates on the Establishment Clause by the states during ratification
4. Proposed Amendments to the Federal Constitution from the states
5. Bills of Rights that states had adopted
6. State Constitutions
7. State Ratification Debates of the Federal Constitution
8. Debates of the Federal Constitutional Convention

Debates in the House of Representatives

This is a great place to begin a study on the Establishment Clause because this is where actually began. Representative James Madison proposed a Federal Bill of Rights initially during the first Congress in the House of Representatives on June 8, 1789. The basis for what would become the Establishment Clause was included. The House debates provide insight into what the original intention of the Framers' were as they wrestled with the meaning and the wording of the Religion Clauses. With the nine versions recorded and several debates, this evidence is vital to any analysis.

Selection Criteria

Pre-Ratification: Yes, by necessity debates occur prior to ratification.

Represent a Group or Majority: Yes – House approval is constitutionally necessary.

Comparable/Related: Yes – they are related directly to the ratification process.

Available: Yes.

Debates in the Senate

Once the House of Representatives approved final version of the Bill of Rights, they sent it to the Senate for consideration. Unfortunately, for the first three years that the Senate convened they met in secret. As a consequence, there are no debate records but there are motions, votes, and texts recorded in pursuance to the Constitutional directive. What we do have though is seven versions of the Establishment Clause for analysis of what the Senate may have been trying to achieve with this part of the First Amendment.

Selection Criteria

Pre-Ratification: Yes, by necessity debates occur prior to ratification.

Represent a Group or Majority: Yes – Senate approval is constitutionally necessary.

Comparable/Related: Yes – they are related directly to the ratification process.

Available: Yes, but only versions of the Establishment Clause; no actual debates.

Ratification Debates in the States

This is where the “gold standard” would lie. Having the records of fourteen different states debating the ratification of the Bill of Rights would provide invaluable clarity to the original meaning of the Establishment Clause. However, this piece of evidence falls short of the availability criteria. The records of the states pertaining to the actual ratification debates for the Federal Bill of Rights are virtually non-existent. Mostly what we are left with is a few general documents that shed no light into the minds of the different states on this issue. This evidence is listed because of the logical place it should hold in any discussion of the Establishment Clause.

Selection Criteria

Pre-Ratification: Yes, by necessity debates occur prior to ratification.

Represent a Group or Majority: Yes – represented elected officials of the population.

Comparable/Related: Yes – they are related directly to the ratification process.

Available: No.

States’ Proposed Amendments

When the original thirteen states debated the ratification of the Federal Constitution, the majority of them ratified the Constitution, but the proposed Amendments addressed their concerns. These proposed amendments were to be considered by the First Congress to be candidates for the official amendment process. There were eight such amendments recommended by various states pertaining to religious freedom. There also were two others that Maryland and Massachusetts debated, but these never won a majority approval in their state to be sent forward. These numerous proposed amendments addressing religious freedom provide excellent insight into what states wanted the Federal Constitution to say concerning religion and government. Many authors only discuss some of these amendments. Primarily, they include the ones that most benefit their perspective. However, here, all ten amendments will be provided for the readers’ benefit and in the interest of maintaining the integrity/objectivity of this study.

Selection Criteria

Pre-Ratification: Yes, All the proposed amendments were pre-ratification.

Represent a Group or Majority: Yes – Approved by majority or advocated by large

group.

Comparable/Related: Yes – They are the recommend Religious Clauses by the states.

Available: Yes.

States' Bills of Rights

Many Americans believe that the Federal Constitution's Bill of Rights was the first and only Bill of Rights in American history of any consequence. However, that is far from the truth. Virtually every state in the union had a state bill of rights either as a separate government document or as part of their state constitution. From these Bills of Rights insight can be gathered into what states felt should be protected or mandated in connection with the idea of religious freedom. Since our focus is analyzing part of a Bill of Rights, it logically follows that we should look at comparable documents such as these to gain perspective on what was the original meaning.

Selection Criteria

Pre-Ratification: Yes, all of the Bills of Rights were in effect pre-ratification.

Represent a Group or Majority: Yes – Approved by the majority of a state.

Comparable/Related: Yes – State Bills of Rights are comparable to Federal Bill of Rights.

Available: Yes.

State Constitutions

Since the Establishment Clause is part of the Federal Constitution, it follows that looking at state constitutions (as comparable documents) may provide knowledge into original intent. Many state constitutions, not including their "Bills of Rights" still have much to say concerning the freedom of religion and accordingly should be given appropriate consideration. Twelve states wrote constitutions after the Revolutionary War began. The two others, Connecticut and Rhode Island continued to organize their governments based on their Colonial Charters. As mentioned with the proposed amendments, authors will only quote some state constitutions or only parts of the constitutions because of emphasizing their point of view. This study provides some analysis on all the Constitutions plus provides the complete texts of them in the appendixes – with sections pertaining to religion in bold. Since every state has a vote in ratification then every state needs to be considered.

Selection Criteria

Pre-Ratification: Yes, many states wrote several Constitutions. For consistency, impartiality, and insight only those Constitutions in effect during ratification will be consulted.

Represent a Group or Majority: Yes – Constitutions are approved by a majority.

Comparable/Related: Yes – State Constitutions are comparable to Federal Constitutions.

Available: Yes.

State Ratification Debates of the Federal Constitution

While we do not have good records from the states on the ratification of the Bill of Rights we do have some debates on the ratification of the Federal Constitution. Within these debates religious freedom was debated. Further, these debates are also the deliberations from which the proposed amendments emerged. Therefore, they do provide valuable insight into what representative groups were thinking within several states.

Selection Criteria

Pre-Ratification: Yes.

Represent a Group or Majority: Yes – represents the mindsets of entire states.

Comparable/Related: Yes – they are related by discussing religious freedom in a Constitutional context.

Available: Yes, from most states.

Debates of the Federal Constitutional Convention

The debates from the Federal Constitutional Convention do not provide a great amount of evidence towards religious freedom. Most of the conversations referenced oaths of office and some general religious thoughts. Mostly, the topic was avoided during the Convention. However, a few pieces of evidence can be gleaned from these debates to help shed light on the original intent of the Establishment Clause.

Selection Criteria

Pre-Ratification: Yes.

Represent a Group or Majority: Yes – representative body from the majority of states.

Comparable/Related: Yes – they are related as they formed the Federal Constitution.

Available: Yes.

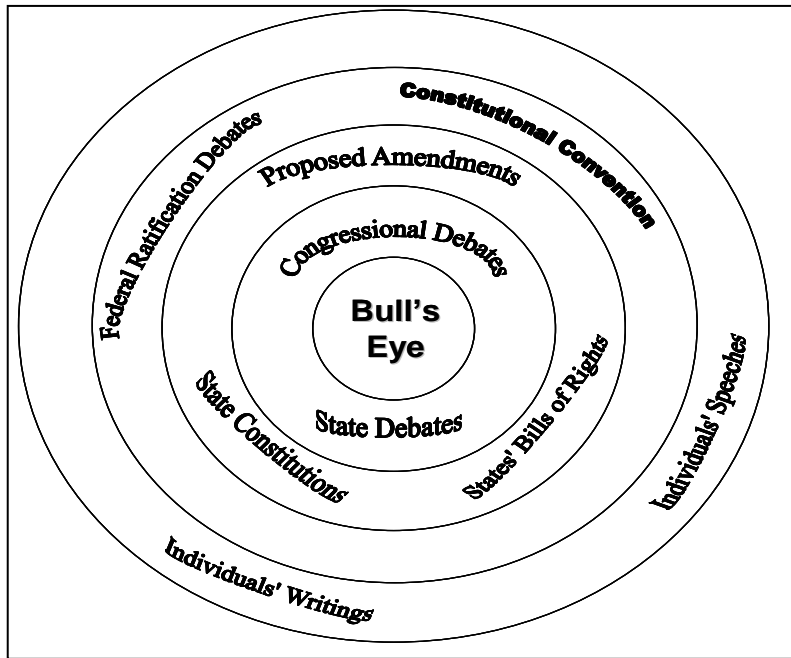
The Excluded Evidence

As mentioned before, there is some evidence excluded from this study. This is not because of it not being valuable but rather for the sake of drawing a line of limitation somewhere and/or that the potential evidence fails to meet our selection criteria. Subsequently, evidence that fails to meet our criteria is evaluated as being weaker than the above evidence. Accordingly, the excluded evidence has been assessed as less weighty. For instance, you will not find any references to individual letters in the analysis unless they pertain directly to the ratification process. The idea of presenting letters representing individual opinions on the general idea of church-state relations is virtually impossible and fails to meet the selection criteria. First, there are too many to be adequately analyzed unless that is the sole purpose of a study. Second, as referenced before, the current debate is full of arguments founded on this type of evidence and both sides claim victory via the same individuals. Third, they fail to meet the standard of representing a majority opinion or group.

Additionally, legislative acts of the various states are not included for much the same rationale. First, there are too many to present laws from fourteen different states unless done in a separate study. Second, they are not comparable documents. The Establishment Clause is part of a Constitution, not merely a law that was passed by a legislature. In general, as stated before, the evidence collected and described above offers a much more stringent and strong basis for determining the original intent rather than these types of evidence.

As a visual representation of how this study has weighted the evidence; a picture of a target is provided below with types of evidence listed in the rings. The concept is that the closer to the “Bull’s Eye” the stronger the evidence is for determining original intent.

Figure 3: Bull’s Eye Illustration for the Selection of Evidence



Wrap-Up and Secondary Sources

Secondary sources have been mentioned, conceptually, in a significant manner in Chapter Two. By secondary sources, I am referring to commentaries or resources that provide their own interpretation on the meaning of the Establishment Clause. Here in this section, their specific understandings of what the word “respecting” means or what effect Madison’s attempt to insert the word “national” has will not be discussed. Nor will how specific authors incorporate state constitutions or proposed amendments into their arguments to create their conclusions. These specifics will be mentioned throughout the analytical portions of this study as those topics are covered. However, as has been consistent throughout this work thus far, rest assured that both sides of the debate will be referenced. The following are a few examples illustrating this point.

The seemingly biggest “Titans” on both sides of the debate are Leonard Levy on the separationists’ side and Robert Cord articulating the accommodationists’ viewpoint. Both will be consulted in this study. Further, looking simply at a few titles you will find diversity of interpretation such as *The Wall of Separation between Church and State*, *Separation of Church and State: the Myth Revisited*, *Please Don’t Wish Me a Merry Christmas: A Critical History of the Separation Church and State*, and *Wrestling with God: The Courts Tortuous Treatment of*

Religion. However, the conclusions drawn in this study via the comprehensive list of evidence will not be entrapped by these authors' previous conclusions. Rather, their conclusions will be shown in either contrast or similarity to this study's conclusions or they will be utilized to provide valuable historical information.

In concluding this Chapter, the principal documents for evidence have been discussed and further rationalized as to why they have been selected. Prior to beginning the research for this study I was fortunate to have an idea placed in my thoughts. That idea was to read extensively primary documents pertaining to the Establishment Clause before reading any commentaries. This way I was familiar with what the "experts" would be discussing and I had an unbiased reading of what was written in these documents. At this point, just before we begin the analysis portion of this study, I recommend again that you do the same. Please, pause and take the time to read all the primary documents that are located in the appendixes. Not only will you then become a "mini-expert" yourself (because hardly anyone reads these entire documents themselves) but you will also be armed (as I was) to verify, if either the excerpts or whole documents presented are being evaluated fairly.

See you again, after you read the appendixes, in the first chapter of analysis. It marks the beginning of truly understanding the Establishment Clause!

CHAPTER 4 - Analysis of State Constitutions, Declaration of Rights, and State Proposed Amendments

This first chapter of analysis serves two critical purposes.

First, it provides *every* reference pertaining to religion and/or church-state relations within each state's constitution, declaration of rights, and if proposed, their recommendations for an amendment to the Federal Constitution. By providing every reference, regardless if it supports one side of the debate or another, ensures that the recurring manipulations and omissions of evidence is avoided. All evidence is presented because all evidence should be taken into account. Through this first step, the raw text can be organized and framed in a format where analysis, more directly linked to the Establishment Clause, is possible.

The second purpose, once the raw text has been processed and organized, is to look at the data and determine trends and patterns among states. From these trends of religious/political thought, certain interpretations of the Establishment Clause can be confirmed or denied as potential original meanings. As an analogy, if the original meaning of the Establishment Clause would be like carving a wooden statue from a log; this chapter's ending conclusions serve as the cuts that a chain-saw would make. A sculptor first has to carve out the very rough form of the statue through eliminating large pieces of excess log. Once this is completed then the sculptor can use a chisel to create the detailed features. In the case of this study, this chapter seeks to potentially eliminate claims of meaning that would clearly contradict the religious/political trends found in comparable state documents. If a potential meaning can be determined as being highly likely to receive enough votes against its ratification, then at this point, it can be eliminated as a possibility. It only takes 4 states, 21 Representatives, or 8 Senators not agreeing to support an amendment in order to be sufficient in preventing its ratification. Thus, this chapter may clear "the excess wood" hiding the true "details" of the meaning of the Establishment Clause. It is the next chapter when the "chisel" will be used and a more precise meaning can be revealed.

The following paragraphs outline the general process that will be followed in this chapter. During the first three-fourths of this chapter no analysis will be presented that is directly linked to the Establishment Clause. This more direct analysis will come after each state is considered

individually. Rather, the initial step is to take the large amount of documents, determine what they contain concerning church-state relations, and then organize that “raw” information into a usable format. As a result, the following will occur for each of the fourteen states.

1. A brief introduction will be provided on the state documents and circumstances.
2. Sections pertaining to religion and the *Framework of Government* will be presented⁴⁹
3. Commentary will be offered on each section.
4. Main points will be extracted and enumerated for each section presented.
5. Sections within the *Declaration of Rights* will be presented in a similar fashion
6. If necessary, a *Proposed Amendment* from the state will then be presented likewise
7. A summary of critical points, from all a state’s documents, will be then be provided

An example of a summary, alluded to in Step 7, is provided below.

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Delaware	a. No Preference of Religious Sects b. Christian Oath for Leaders	a. No Mandatory Attendance b. No Mandatory Support c. Freedom of Conscience/Exercise d. Any Christian has Equal Rights	_____

Within the four categorical titles in a summary, the word “equivalents” is used in two. This is because not every state has a definitive constitution or declaration of rights. However, they have what can be considered “equivalents.” For instance, Connecticut and Rhode Island did not write a traditional constitution as did the other states. They decided to keep their Royal Charters as a framework for government and as a guarantee of specific individual rights. As a result, Colonial Charters in these two states are considered as being equivalent to a constitution. Additionally, some states did not write a distinct and separate Bill or Declaration of Rights. They either attached it as a pseudo-preamble or embedded protections for individual rights into the text to their constitution. As a result, similar to colonial charters, when the nature of specific text becomes a guarantee of an individual right(s), it will be categorized as part of a Declaration/Bill of Rights. Therefore, some categorical liberty has been taken in attempting to categorize similar sections of texts. This liberty is taken only as a means of grouping pieces of text with similar purposes, meanings, and intentions together, so as to better incorporate their

⁴⁹ All citations for sources of primary texts are found in the appendix. Through headings and discussions, etc, it will be clear where a certain excerpt of text will originated. This does not apply to proposed amendments.

insight into the Establishment Clause. Again, these are only categorical adjustments, not meaning or intention adjustments.

As a general guideline, anything of a religious nature pertaining to the framework or function of government will be categorized as being part of a state constitution. Anything outlining an individual or collective “right” will be categorized as being part of a Declaration of Rights. These will hold true unless a state for instance, specifically lists an individual or collective right within a Frame of Government section rather than in a Declaration of Rights section. Additionally, whenever possible entire paragraphs, sections, or articles will be provided rather than one or two lines. This measure is taken to alleviate most concerns about quoting lines out of context. However, due to the consequence of then having to present larger portions of text, some of which will not pertain to religion, underlining will be utilized as a means of focus on certain portions of presented text. In short, when longer passages are presented for analysis, the portions most relevant to the study will be underlined to offer readers a focal point for the commentary that will follow.

Connecticut

Connecticut, as just mentioned, was one of only two states not to replace its Colonial Charter by writing a new constitution during the Revolutionary War. A formal constitution to replace the Charter was not adopted until 1818 and even then it only garnered enough support to be adopted with a tally of 13,918 votes for to 12,361 against.⁵⁰ However, you will see here excerpts not only from the Colonial Charter but also a very small “Declaration of Rights” passed in 1776. This declaration outlined a few individual rights, but primarily was created to declare the Colonial Charter still in effect. It did not establish a new frame of government nor outline a significant list of protected rights. Also of note, Connecticut did not propose a religiously oriented amendment to the Federal Constitution.

A legitimate criticism could be levied against the use of Connecticut’s Colonial Charter of 1662. Due to it being written over one hundred years before the ratification of the First Amendment, some may claim it as not being an accurate representation of the people of Connecticut’s views on church-state relations in the 1780s. However, the reaffirmation in 1776 of the charter decidedly reduces the weight of this criticism. Further, the fact that the Colonial Charter directed the apparatus of government; with full force and authority and consequently was the supreme law of Connecticut during the 1780s, the weight of this criticism lessens again. Additionally, with eleven states out of thirteen following the Continental Congress’ guidance to write entirely new frames of government (constitutions); the people of Connecticut had to be substantially satisfied with the Charter. Otherwise, they would have quickly written a replacement. Lastly, portions of the Declaration of Rights from 1776 do support the religious aspects related in the Colonial Charter. Thus, offering increased credibility to the Charter being representative of the people of Connecticut. In short, the potential criticism against the use of the Colonial Charter is understandable, but not valid in light of the historical circumstances.

Connecticut Declaration of Rights (1776)

The following is the preamble to the Declaration of 1776. This paragraph discusses, among other items, church-state relations. It is the only specific mention of religion in the five

⁵⁰ *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United State.* Edited by Perley Poore. 2nd ed. Washington, D.C.: Government Printing Office, 1878, vol. 1 pg. 258

paragraph document. This Declaration does provide insight into the political philosophy of church-state relations in Connecticut.

The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitution of Government whereby the Legislature depends on the free and annual Election of the People, they have the best Security for the Preservation of their civil and religious Rights and Liberties. And forasmuch as the free Fruition of such Liberties and Privileges Civility and Christianity call for, as is due to every Man in his Place and Proportion, without Impeachment and Infringement, hath ever been, and will be the Tranquility and Stability of Churches and Commonwealths; and the Denial thereof, the disturbance, if not the Ruin of both.

In the second half of the paragraph, a philosophy of mutual reliance and support between “Churches and Commonwealths” is expressed. First, it describes what people consider as “the best Security for the Preservation of their civil and religious Rights and Liberties. . . “ Which is, “the Tranquility and Stability of Churches and Commonwealths . . .” The preamble then subsequently declares that if “the Tranquility and Stability of Churches and Commonwealths” is denied, then the results are the disturbance or the ruin of both the Church and the Government. This establishes a philosophy that government’s and churches’ future existence is somewhat linked together. Fore, if a commonwealth is denied “Tranquility and Stability” then not only will that government be affected, but churches will experience a similar effect. This is true in the converse as well. Therefore, under this political philosophy it would be in the best interest of each entity to support the other to ensure its stability and to ensure its own success and/or survival. Under this political philosophy government support of religion would be permitted and even encouraged. Of course limitations would apply. This by no means constitutes a theocracy or a large “take-over” of either entity by the other. However, the evidence does point to some sort of mutual support that is necessary between the two. This philosophy was not unique to this document. It was pervasive in all the New England states (NH, MA, RI, and VT) at this time. The fact of how pervasive this philosophy was in New England helps to confirm and clarify the philosophy behind this convoluted section.

Several other points concerning religion are found in the preamble as well. In the first line, there is credit given to “the Providence of God” for allowing the people of Connecticut to be in a “free and independent” state that enables them to self-govern. There are two ways of viewing this phrase. First, it can be viewed as some scholars argue, that this type of credit was placed in documents more out of tradition rather than true belief in the intervention of God. Accordingly, this would have no weight as evidence to prove the people wanted religion and

government to interact. The second view is that the people did believe that “the Providence of God” did play a role in gaining the freedom that enabled them to form an “independent State.” Consequently, this view would hold that religion does play some role in forming government. Another insight the preamble provides is in the second and third underlined sentence. It states that the basis for determining what people’s “Liberties and Privileges” are comes from what “Civility and Christianity call for.” This leads to the conclusion that at least part of what entails liberty, at least in Connecticut, comes from principles found in Christianity.

Conclusions:

1. Some support between government and religion is necessary for their mutual existence.
2. God may or may not help form governments.
3. Liberties and privileges are at least partially determined by Christian principles.

Connecticut Colonial Charter (1662)

Christianity is also referenced, although only once in conjunction with government, in Connecticut’s Royal Charter of 1662. The following is an excerpt from the sixth paragraph of the Charter. The entire paragraph is not presented due to it containing several different subjects and it comprising over 800 words. Further, what is presented below is only part of one sentence. Due to seventeenth century grammar, this one sentence itself runs for over 250 words. What is presented here runs approximately 130 words and provides the necessary context for accurate analysis.

Imprisonment or other Punishment upon Offenders and Delinquents according to the Curse of other Corporations within this our Kingdom of England, and the same Laws, Fines, Mulcts and Executions, to alter, change, revoke, annul, release, or pardon under their Common Seal, as by the said General Assembly, or the major Part of them shall be thought fit, and for the directing, ruling and disposing of all other Matters and things, whereby Our said People Inhabitants there, may be so religiously, peaceably and civilly governed, as their good Life and orderly Conversation may win and invite the Natives of the Country to the Knowledge and Obedience of the only true GOD, and He Saviour of Mankind, and the Christian Faith, which in Our Royal Intentions, and the adventurers free Possession, is the only and principal End of this Plantation;

The passage above uses three adjectives to describe how the people of Connecticut ought to be governed: religiously, peaceably and civilly. The mention of government ruling in light of religion and civilly is noteworthy as they seem to be consistent with regard to both how the Declaration of Rights stated liberties were determined and the political philosophy that religion

and government should be mutually supportive. This passage even goes so far as to declare that the only “principal End of this Plantation” is to govern and live in such a manner that the local Indians will hopefully adopt the “Christian Faith.” This is a powerful statement concerning church-state relations. Declaring that the basis for forming a government is for the religious conversion of non-believers indicates a distinct belief of a relationship between government and religion.

Conclusions:

1. Principal end of Government was to Convert Indians to Christianity.
2. Government should govern “religiously.”

Summary of Evidence from Connecticut

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Connecticut	a. A Goal was to Convert Indians to Christianity b. Government should govern religiously	a. Government and Churches need to Mutually Support one Another b. Liberty is partially founded on Christian principles	_____

Delaware

Delaware had a more traditional approach than did Connecticut and replaced its colonial charter with a constitution.⁵¹ The constitution that the following three excerpts are taken from was adopted in 1776. Delaware did adopt a new constitution in 1792, but being that it was over two years after Delaware ratified the First Amendment it is not brought into consideration per the rationale in Chapter 3. Delaware also wrote a separate Declaration of Rights in 1776. The two sections pertaining to religion in that document are presented below as well. Delaware proposed no amendments to the Federal Constitution pertaining to religion.

Constitution of Delaware (1776)

The first excerpt is Article 22. Unlike the Federal Constitution, articles here do not refer to larger concepts. Rather, in Delaware's Constitution specific articles pertain primarily to one thought or detail. Article 22 outlines the specific oath and declaration required of government officials before they could hold office.

ART. 22. Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit:

" I, A B. will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act wittingly whereby the freedom thereof may be prejudiced."

And also make and subscribe the following declaration, to wit:

" I, A B. do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

And all officers shall also take an oath of office.

The oath does not contain any language of a religious nature. However, the Declaration certainly does. In fact, to hold public office in Delaware, you had to believe in the Christian Trinity and "acknowledge" that the Bible was divinely inspired. This inclusion indicates that the people of Delaware thought that being a Christian was important to hold the public trust.

Conclusion:

1. Delaware Required Government Officials to be Christian

⁵¹ Delaware's colonial charter was actually provided by William Penn rather than directly from the King of Great Britain.

Article 29 and 30 are linked together. Article 29 serves to speak primarily about clergy in government, but also references establishments of religion. Article 30 serves as an emphasis point for Article 29.

ART. 29. There shall be no establishment of any one religious sect in this State in preference to another; and no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this State, or of being a member of either of the branches of the legislature, while they continue in the exercise of the pastoral function.

ART. 30. No article of the declaration of rights and fundamental rules of this State, agreed to by this convention, nor the first, second, fifth, (except that part thereof that relates to the right of suffrage,) twenty-sixth, and twenty-ninth articles of this constitution, ought ever to be violated on any presence whatever. No other part of this constitution shall be altered, changed, or diminished without the consent of five parts in seven of the assembly, and seven members of the legislative council.

Article 29 clearly states that no religious sect should be established in preference to any other. This is a reaction against the discriminatory actions that resulted from the British model of establishing the Church of England in preference to all other Christian denominations. Further, Article 29 also states that members of the clergy were not allowed to hold office while they were serving in a “pastoral function.” The clergy being excluded from the legislature would certainly indicate limitations on church-state relations.

However, in light of Article 22 it does not indicate an anti-religious stance. This exclusion functions as a practical step to strengthen the protection against any sect being given preference over others. The exclusion of active clergy in a denomination from the sole body that could potentially establish a religious preference was purposeful as it deterred a denomination from gaining an “active” foothold in the legislature. Article 30 places an exclamation point on Article 29. It lists it as one of only five out of thirty articles to be mentioned as not being able to be infringed on in any manner. This suggests that religious tolerance was something the people of Delaware believed in very strongly.

Conclusion:

1. No preference of religious sects to be established.
2. Active clergy are not permitted to serve in the legislature.

Delaware Declaration of Rights (1776)

The Delaware Declaration of Rights is comprised of 23 sections. The second and third sections pertain to religious rights.

Sect. 2. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings; and that no man ought or of right can be compelled to attend any religious worship or maintain any ministry contrary to or against his own free will and consent, and that no authority can or ought to be vested in, or assumed by any power whatever that shall in any case interfere with, or in any manner controul the right of conscience in the free exercise of religious worship.

This section outlines several religious rights guaranteed in Delaware: the ability to worship Almighty God in a manner of your own choosing, no mandatory attendance of religious services, no mandatory economic support for religion, and the freedom of conscience/exercise of religion.⁵² These rights of individuals certainly place restrictions on how government can act towards and be support of religion. These specific limits can be found in many of the documents in this study. Some people would assess these as perhaps anti-religious in nature. However, in light of Article 22 of the state constitution it would be safe to assume that these were intended as a safeguard against previously enacted abuses by the British Parliament on behalf of the Church of England. These abuses and how they influenced American ideas of church-state relations will be discussed in great detail in Chapter 5.

Conclusions:

1. No mandatory attendance required at religious services.
2. No mandatory economic support for religion.
3. Freedom of conscience and exercise of religion.

Section 3 extends the concepts of the Religious Freedoms found in Section 2.

Sect. 3. That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society.

Here the people of Delaware declare that those who profess Christianity can not be denied equal rights. Again, more will be said and illustrated in the next chapter, but in England every non-

⁵² As an historical note, when support for religion is mentioned it usually refers to paying a clergy's salary, the up keep or building of a church, and similar items.

Church of England Christian denomination at some point in time lost certain rights. This section along with the Section 2 serves to recognize this history and ensures it will not be repeated in Delaware. However, Section 3 does place a limitation on the freedom of religion. Citizens can not simply claim a that a religious belief justifies disturbing “the peace, the happiness or safety of society.”

Conclusions:

1. All Christians have equal rights.
2. Religious freedom is not permitted to be arbitrarily asserted to justify all actions.

Summary of Evidence from Delaware

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Delaware	a. Christian Oath for Leaders b. No Preference of Religious Sects b. No Clergy in the Legislature	a. No Mandatory Attendance b. No Mandatory Support c. Freedom of Conscience/Exercise d. Any Christian has Equal Rights	_____

Georgia

The Georgia Constitution that was in effect during the ratification of the First Amendment was adopted in 1789 just prior to the beginning of creating a Federal Bill of Rights. Georgia did not write a separate state bill or declaration of rights. However, they did include several rights in Article IV that are normally found in a Declaration of Rights. Therefore, categorically this section will be listed under “State Declaration of Rights or Equivalent.” Similar to Connecticut and Delaware, Georgia did not submit any proposed amendments to the Federal Constitution regarding religion.

Constitution of Georgia (1789)

Only one section in the Constitution mentions religion in conjunction to the actual framework of government. That reference is located in Article I, Section 18.

Section 18. No clergyman of any denomination shall be a member of the General Assembly. The plain language of Section 18 leaves little need for extensive analysis. The people of Georgia did not desire to have any clergyman, of any denomination, as a member of the state legislature. Unfortunately, there is no additional text surrounding this statement to help illuminate a rationale as there was in the Delaware Constitution.

Conclusion:

1. Clergy are not permitted in the legislature.

Article IV, Section 5 outlines the protected or guaranteed rights concerning religion in the state of Delaware. This is the first of two passages that will be categorized as “rights” rather than part of the “framework of government.”

Section 5. All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own.

Again, Georgia constitutional language is short and to the point. They guarantee the right to freely exercise religion and they limit government from ordering mandatory support for other religious denominations contrary to a citizen’s belief.⁵³

⁵³ As an historical note, when support for religion is mentioned it usually refers to paying a clergy’s salary, up keep or building of a church, and similar items.

Conclusion:

1. Freedom of conscience and exercise are guaranteed.

The only other place that religion is briefly referred to is in the last paragraph of the Constitution.

Done at Augusta, in convention, the sixth day of May, in the year of our Lord one thousand seven hundred and eighty-nine and in the year of the Sovereignty and Independence of the United States the thirteenth.

In this passage, the Constitution mentions “in the year of our Lord.” Depending on how you view this statement determines its importance. Some would argue that it is a significant acknowledgement of God. Others would say that this phrase is only included in documents of this time period as a tradition and therefore is not an acknowledgment of God. This debate is for a different study, but as was promised all references to religion will be provided in the body of this study.

Conclusion:

1. No mandatory economic support of religion is permitted.

Summary of Evidence from Georgia

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Georgia	a. No Clergy in General Assembly	a. Free Exercise of Religion b. No Mandatory Support	_____

Maryland

Maryland is the first state, not chronologically, but that will be analyzed, that has a full Declaration of Rights. However, it is not as a separate document. Maryland decided to place its Declaration of Rights at the beginning of their Constitution. Therefore, the evidence collected will easily fit into the categories for the summary. Maryland also offered a proposed a religiously centered amendment to the Federal Constitution. However, it is considered a “Minority Amendment” due to it not being officially adopted. Without majority consent, it was not officially sent to Congress for their consideration and as a consequence carries less weight than other proposed amendments. In spite of this, there is some value for its consideration, as it provides a window into some thoughts of at least some citizens in Maryland.

Maryland Frame of Government in the Constitution (1776)

The Maryland Constitution does not mention religion in any manner until Article XXXVII which excludes certain people from becoming members of the General Assembly (legislature) or the Council of Maryland (advisors to the Governor).

XXXVII. That no Senator, Delegate of Assembly, or member of the Council, if he shall qualify as such, shall hold or execute any office of profit, or receive the profits of any office exercised by any other person, during the time for which he shall be elected; nor shall any Governor be capable of holding any other office of profit in this State, while he acts as such. And no person, holding a place of profit or receiving any part of the profits thereof, or receiving the profits or any part of the profits arising on any agency, for the supply of clothing or provisions for the Army or Navy, or holding any office under the United States, or any of them—or a minister, or preacher of the gospel, of any denomination—or any person, employed in the regular land service, or marine, of this or the United States—shall have a seat in the General Assembly or the Council of this State.

This article expressly excludes clergy from being able to “have a seat in the General Assembly or the Council of” Maryland. The other underline marks are utilized to emphasize that unlike other states many persons besides clergy were excluded from certain government offices as well. In addition to these individuals, Article XLV declares that “no field officer of the militia be eligible as a Senator, Delegate, or member of the Council.”

Conclusion:

1. No clergy are permitted to be seated in the General Assembly.

As was seen in Article XXXV of the Declaration of Rights, the Constitution of Maryland adheres to the principle of attaching a religious declaration to any oath of office.

LV. That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, take the following oath; to wit: " I, A. B., do swear, that I do not hold myself bound in allegiance to the King of Great Britain, and that I will be faithful, and bear true allegiance to the State of Maryland;" and shall also subscribe a declaration of his belief in the Christian religion.

Article LV is consistent with the desire of the people of Maryland to ensure their government officials are of the Christian religion. Also included is a specific reference to declare oneself not in allegiance to the King of Great Britain. This illustrates the natural and deep animosity during this time against England.

Conclusion:

1. Mandatory Declaration of Christianity for all public officials.

Maryland Declaration of Rights in the Constitution (1776)

Maryland's declaration of rights is an extensive document containing forty-two separate articles. Three of those forty-two articles pertain to religion. Unlike Georgia's references to religion, Maryland addresses the issues with a high level of detail and consideration. The first reference to religion is in Article XXXIII and addresses several aspects.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety- of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights: nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county; but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supersede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestrymen or churchwardens; and every encumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act, entitled "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.

As you have read, much of this Article specifies how the disestablishment of the Church of England will be handled in practical and specific terms. The underlined portions more fittingly apply to the focus of this study. In the first several lines, the people of Maryland declare that everyone has a duty to worship God as he sees fit and that everyone professing Christianity should be treated equally. This equality, as mentioned previously, stems from inequalities forced on many Christian denominations in England. Also, this article states that no one can be made to attend or support to any specific “ministry.” However, what is interesting is the specific power given to the legislature to “lay a general and equal tax, for the support of the Christian religion.” This specifically declared power of the legislature certainly indicates a political philosophy of government supporting Christianity in an equal and non-preferential manner. Limitations of this power, however, do come quickly in the next line by stating that the monies can be allocated by an individual to the entities they decide themselves. Lastly, in the beginning there is also a provision that prohibits the mistreatment of persons based on religion.

Conclusions:

1. Disestablishment of the Church of England.
2. Everyone has a duty to worship God and be treated equally.
3. No mandatory attendance for religion.
4. No mandatory support if against a citizen’s conscience.
5. Government can actively support Christianity.
6. Mistreatment of persons on account of religion is prohibited.

Most states, during the Colonial period specified oaths or declarations as prerequisites to hold office in their constitutions or frames of governments. Maryland decided to tackle this issue in Article XXXV of their Declaration of Rights.

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

This article states that specific details of oaths of office will be determined by the convention or the Legislature of Maryland. However, Article XXXV does stipulate that every oath of office

must be accompanied by “a declaration of a belief in the Christian religion.” Therefore, in Maryland, every public official had to be of the Christian faith.

Conclusion:

1. Mandatory Declaration of Christianity for all public officials.

The third and final article in the Declaration of Rights that references religion provides accommodation to certain sects of Christianity concerning oaths.

XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Duukers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm ; and to be of the same avail as an oath, in all such cases, as the affirmation of Quakers hath been allowed and accepted within this State, instead of an oath. And further, on such affirmation, warrants to search for stolen goods, or for the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and Quakers, Dunkers or Menonists ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses, in all criminal cases not capital.

As the article states, Quakers, Dunkers, and Menonists (now called Mennonites) believe that Christians cannot swear oaths according to the Bible. This was a recognized stance in Colonial times and Maryland makes a specific allowance by permitting these sects to “affirm” their intentions or commitments.

Conclusions:

1. Toleration for religious differences permitted.

Maryland Proposed Federal Amendment

Maryland’s amendment was not approved by a majority. However, it does provide a limited insight into what some people of Maryland felt should be added to the Federal Constitution.

That there be no national religion established by law, but that all persons shall be equally entitled to protection of their religious liberty.⁵⁴

⁵⁴ Cogan, 11.

Here the supporters of this proposed amendment seemed to desire two things. First, that no national religion be established by law. However, just as there is division on the Establishment Clause potentially there may be several interpretations of this language. However, it is clear that this proposal was focused on the national level and did not want to allow a government relationship with religion such as the Church of England had with the British Government. Second, this would guarantee that religious liberty would be protected.

Conclusions:

1. No nationally established religion.
2. Religious liberty for everyone.

Summary of Evidence from Maryland

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Maryland	a. No Clergy in General Assembly or Council b. Declaration of Christianity for Leaders	a. Duty of Everyone to Worship God b. Disestablished Church of England c. Everyone has a duty to worship God in their Manner d. No Mandatory Attendance e. Government can Support Religion Equally f. No Mistreatment based on Religion g. Declaration of Christianity for Leaders h. Religious Exemption for Oaths	Minority Amendment - Was not Sent to Congress a. No National Religion Established b. Religious Liberty for Everyone

Massachusetts

Massachusetts, just as Maryland, included a full declaration of rights in front of its frame of government all contained within one document. Additionally, Massachusetts attached a formal preamble as well. The preamble will be considered part of the frame of government/constitution for purposes of the summary categories at the end of the section. Lastly, there was a minority that crafted an amendment to the Federal Constitution that was proposed when Massachusetts deliberated the Federal Constitution which will be analyzed as well.

Massachusetts Frame of Government/Constitution (1776)

The Preamble is comprised of three separate paragraphs. The last paragraph has several religious references that are similar to sentiments conveyed in Connecticut's Colonial Charter.

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.

In this part of the Preamble the people of Massachusetts specifically acknowledge God (“the great Legislator”) as being responsible for their opportunity to form a government. Further, they also state that have sought His direction and guidance on how to design that government. Therefore, in the Preamble, Massachusetts is stating that their government was allowed to form by God's providence and in part God is credited with its design.

Conclusions:

1. God is invoked in part for the design of the Massachusetts government.

At this point the analysis will skip over the Declaration of Rights and continue on with the framework of government. The first reference to religion is found in Chapter II – Executive Power, Section I – Governor, Article II pertaining to the qualification for the office of governor.

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.

Among various other qualifications, this article states that the Governor of Massachusetts must “declare himself be of the Christian religion.” Similarly, Chapter II – Executive Power, Section II – Lieutenant-Governor, Article I provides qualifications for the 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.

The qualifications specified in this article declare that the Lieutenant-Governor is bound by the same qualifications as the Governor in religion, property, and residence. Therefore, the Lieutenant Governor must also “declare himself to be of the Christian religion.” What is interesting that nowhere in Chapter I – The Legislative Power is there a religious requirement for the legislature. However, the religious requirement for legislators is written in Chapter VI which will be discussed shortly.

Conclusions:

1. Senior executive branch officials must be Christians.

The Massachusetts Constitution has a unique feature to it. Included within its governing framework is the inclusion of Harvard University. In fact, the entirety of Chapter V pertains to the University with Section I, Articles I and III specifically referencing religion.

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 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.

In article I, the first several lines reflect that Harvard University, “by the blessing of God,” has qualified many persons for service “both in church and State” positions. This indicating that the government supported university was notably used to qualify people of prominence in religious capacities. Further, it declares that “the encouragement of arts and sciences, and all good literature, tend to the honor of God, the advantage of the Christian religion, and the great benefit of this” and other states. With this passage, the Constitution illustrates that public education at Harvard led to the honor of God and to the advantage of the Christian religion. Further, that Massachusetts and other states reap the benefits from this endeavor. Since Massachusetts supported Harvard it must follow that supporting the Christian religion was at least indirectly permissible.

In Article III, the governing structure for Harvard University includes references to religion.

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.

As you have read, six congregational ministers were expressly stated to be part of the supervisory committee that oversees the college. This indicates that religion was given some authority within the framework of government and that clergy were deliberately sought out to fill these supervisory positions within public education. It is also notable in light of these deliberate references to religion that they are not present at the non-university level in Section II of Chapter V. It could be argued that they are hinted at but there are no specific references.

Conclusions:

1. The publicly funded University of Harvard’s Educational Curriculum led to the honor of God and to the advantage of the Christian religion.

2. Clergy were given supervisory positions over public education at the University.

Part of Chapter VI establishes the oaths of various offices within the Massachusetts government. The following is an excerpt from Article I outlining the oath for more senior positions.

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.

Here again we see another state mandate that senior government officials make a declaration of Christianity before they assume their duties. Other offices had a different oath that did not include a mandate of Christianity. The only religious reference they had was at the end, persons had to state, "So help me God." These oaths are located following this portion of Article I and can be found in the appendix.

Conclusion:

1. All senior leaders of government must be Christians.

The last reference of religion in the Frame of Government/Constitution was a religious exemption for oaths similar to what Maryland had established. This is located just after the additional oaths mentioned above.

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 penalites of perjury."

This excerpt specifically identifies Quakers as not believing in swearing an oath and therefore declares that for them making an affirmation will suffice.

Conclusions:

1. Religious exemption for oaths.

Massachusetts Declaration of Rights (1776)

The Massachusetts Declaration of Rights included thirty articles outlining various rights to be protected and guaranteed. Three of these articles, Articles II, III, and XVIII, either apply directly to religion or reference it in some manner. Article II covers primarily the exercising of religion, but also touches on a person's duty towards religion.

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.

In this article, the people of Massachusetts declare that it is the right as well as the duty of all men in society to at certain times worship God. Declaring this as a duty is a not a trivial action and its significance will be outlined in more detail in Article III. The other part of this article offers protections for citizens not to be mistreated on account of their religious preferences of worship. This is another historical "prevention" for what occurred in connection with the Church of England.

Conclusions:

1. It is the duty of everyone to publicly worship God.
2. No mistreatment of anyone based on religion is allowed.

Article III is the largest article in the entire Declaration and perhaps has the most significance as identifying a political philosophy concerning church-state relations. Even though this excerpt is lengthy, no underlines will be utilized because of the importance and the sheer amount of different aspects of church-state relations and rights that are included.

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.

The first paragraph lays out a political philosophy of church-state relations. In summary, it declares that “the good order and preservation of civil government depend upon piety, religion, and morality.” Further, it states that these principles cannot effectively be “diffused” throughout a populace purely through secular means. They can only be taught via the vehicle of religion. Thus, government is dependant on religion. As a consequence, the Constitution empowers the Massachusetts state legislature with two specific means to support this philosophy. The legislature has the power to force the support of pubic religious worship and teaching as well as (in the second paragraph) to declare mandatory attendance at such activities. A limitation of these powers is included and states that mandatory attendance is only enforced if there are any denominations available that a citizen, in good conscience, could attend. In the fourth paragraph, more detail is given concerning the use of those monies collected for support. In short, it either can go to a designated denomination or to a pool at large in the precinct or parish of the individual. The last paragraph provides two aspects of religious freedom that other states have articulated as well. Massachusetts states that every Christian denomination is equal under the law and that no denomination will be established in preference to any other.

Conclusions:

1. It is the duty of everyone to worship God.
2. Civil government’s preservation depends on religion.
3. Government can support religious activities.
4. Mandatory attendance is authorized to be legislated – within limits of conscience.
5. Every Christian is equal under the law.
6. No establishment of preference for a denomination by law.

Article XVIII just briefly mentions religion but it reinforces the political philosophy of Article III.

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.

Entries for the word “piety” in two dictionaries from 1780 and 1785, identify two potential meanings. The primary meaning was a “discharge of duty to God” followed by a “duty to parents or those in superior relation.”⁵⁵ Finding the word piety in this list of qualities, with its primary dictionary meaning, parallels Article III’s political philosophy: that government depends on religion for its preservation. This passage uses a form of the word preservation found in Article III further drawing a link between the two passages. As a result this passage seems to reiterate the premises from Article III in regard to the role of religion and government.

Conclusion:

1. Civil government’s preservation depends on people’s duty to God.

Massachusetts Proposed Federal Amendment

Just as with Maryland’s proposed amendment, Massachusetts’ proposed amendment to the Federal Constitution was not adopted by the majority either. Subsequently, its strength of argument is lesser than other proposed amendments but still should be considered for analysis. It is not known exactly why this amendment did not receive majority support; although, it is almost a Bill of Rights in and of itself.

That the said Constitution be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms, or to raise standing armies, unless when necessary for the defence of the United States, or of some one or more of them; or to prevent the people from petitioning, in a peaceable and orderly manner, the federal legislature, for a redress of grievances; or to subject the people to unreasonable searches and seizures of their persons, papers, or possessions.⁵⁶

⁵⁵ Dictionary references for Piety

⁵⁶ Cogan, 12.

There are many rights included in this amendment. However, for the purposes of this study the significant right is protection of the rights of conscience from Congress.

Conclusion:

1. Congress cannot infringe the rights of conscience.

Summary of Evidence from Massachusetts

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Massachusetts	<ul style="list-style-type: none"> a. Declaration of Christianity for Leaders b. Education tends to honor God and advantages Christianity c. Clergy part of oversight of Harvard d. Religious Exemption for Oaths 	<ul style="list-style-type: none"> a. Duty of Everyone to Worship God b. No Mistreatment based on Religion c. Government depends on Religion d. Equal Mandatory Attendance Allowed e. Government can and should Support Religion f. Every Christian is Equal Under the Law g. No establishment of a Religious Sect in Preference to Others 	<ul style="list-style-type: none"> Minority Amendment - Was not Sent to Congress a. Congress cannot Infringe the Rights of Conscience

New Hampshire

The Constitution of New Hampshire that will be analyzed was adopted in 1784. The state did adopt another constitution in 1792, but will not be utilized because its adoption came two years after New Hampshire ratified the First Amendment.⁵⁷ The 1784 Constitution included a Bill of Rights attached to the beginning of the document followed by the more traditional frame of government/constitutional language. New Hampshire, when they deliberated the final version of the Federal Constitution, did propose an amendment concerning religion which will be discussed at the end of this section. However, the frame of government aspects of the document will be analyzed first.

New Hampshire Constitution (1784)

Religion is only referred in the framework of government in the form of qualifications for the President (equivalent to a Governor) and for the members of the United States Congress. Otherwise, no references are made. The governmental portion of this document is not annotated with articles, sections or similar conventions. The only organizational references are headings for various topics. The headings for the following excerpts are included to facilitate locating these sections in the full document in the appendix. The two sections presented below are not written in the Constitution together, but are shown together here for ease of analysis.

EXECUTIVE POWER. PRESIDENT

There shall be a supreme executive magistrate, who shall be stiled, The PRESIDENT Of The STATE Of NEW-HAMPSHIRE; and whose title shall be HIS EXCELLENCY.

The President 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 state for seven years next preceding, and unless he shall be of the age of thirty years; and unless he shall, at the same time, have an estate of the value of *five hundred pounds*, one half of which shall consist of a freehold, in his own right, within the state; and unless he shall be of the Protestant religion.

DELEGATES TO CONGRESS

The delegates of this state to the Congress of the United States, shall some time between the first Wednesday of June, and the first Wednesday of September annually, be elected by the senate and house of representatives in their separate branches; 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 president, and the great seal of the state; but may be recalled at any time

⁵⁷ *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. Edited by Perley Poore. 2nd ed. Washington, D.C.: Government Printing Office, 1878, vol. 2, 1294.

within the year, and others chosen and commissioned, in the same manner, in their stead: and they shall have the same qualifications, in all respects, as by this constitution are required for the president.

As is seen in the above paragraphs, the supreme executive office in New Hampshire required that the person be of the Protestant religion. Further, according to the section concerning the qualifications for Delegates to Congress they are required to have the same qualifications as the executive (President). Therefore, delegates to the federal Congress must be Protestant as well.

Conclusion:

1. The President (of New Hampshire) and members of Congress from New Hampshire must be of the Protestant religion.

New Hampshire Bill of Rights (1784)

Three of the thirty-eight articles in the Bill of Rights make reference to religion. The first two of these articles are similar in what aspect of religious freedom they address. Therefore, they are grouped together for analysis.

IV. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights Of Conscience.

V. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; 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, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship.

Articles IV and V both substantiate the right of people to have freedom of conscience to worship God in the manner they see fit. Article V takes this freedom, as do other states, and emphasizes that no mistreatment or a loss of liberty will be tolerated against people based on how they worship God. The last clause of Article V prohibits the abuse of Freedom of Conscience/Worship if it harms other people.

Conclusion:

1. Freedom of conscience/worship is protected.
2. No mistreatment or loss of liberties allowed based on religion.

Article VI of the Bill of Rights articulates the political philosophy of New Hampshire on church-state relations. It mirrors another New England states, Massachusetts and Connecticut.

VI. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion: therefore, to promote those important purposes, the people of this state have a right to impower, and do hereby fully impower the legislature to authorize from time to time, the several towns, parishes, bodies-corporate, or religious societies within this state, to make adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion and morality:

Provided notwithstanding, That the several towns, parishes, bodies-corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no portion of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of christians demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.

The beginning paragraph of Article VI outlines the foundations of New Hampshire's political philosophy of church-state relations. It states that evangelical principles give the best security to government. Further, that these principles are best propagated through a society via the public worship of God and the public instruction of morality and religion. Therefore, it is in the best interest of government to support the public worship of God and the public instruction of morality and religion. Consequently, this Article specifically empowers the Legislature to mandate the support of these activities. Additionally, this article states that local government shall always have the right to elect their public teachers and can decide what type of support is adequate. It further states that no one will be compelled to support a teacher of another religious denomination. Lastly, the third paragraph states that all Christians will be treated equally under the law and no law can establish one denomination in preference to any other.

Conclusions:

1. The security of government is dependent on religious principals.
2. Government can mandate religious support for religious activities.
3. All Christians are equal under the law.
4. No law can establish one denomination in preference to any other.

New Hampshire Proposed Federal Amendment

This will be the first considered amendment that is not a “minority amendment.” In other words, this proposed amendment was adopted by a majority and was sent to Congress for their consideration.

Congress shall make no Laws touching Religion, or to infringe the rights of Conscience⁵⁸

This proposed amendment contains to one restraint and one protection. The restraint is that Congress can pass “no Laws touching Religion.” This actually may be misleading to citizens in the twenty-first century. Religion in the 1700s did not have the same connotations as it has today. According to two different dictionaries from 1780 and 1785, there were two definitions of the word “religion.” The first, was a definition of “a virtue, as founded upon reverence of God and expectation of future rewards and punishments.”⁵⁹ The second, which is more applicable in this instance was “a system of divine faith and worship as opposite to others.”⁶⁰ Here we see a substantial difference in connotations between the centuries. New Hampshire was not necessarily looking to ban Congress from making any laws in relation to what we think of as religion today. Rather, they were looking to ban the possibility of Congress making laws dealing with faith and worship of God. This understanding eliminates a significant potential inconsistency between provisions in the Constitution and their proposed amendment. It is evident that the people of New Hampshire felt Christianity should play a role in government. Lastly, the protection comes in the second clause and states that Congress cannot infringe the rights of Conscience.

Conclusions:

1. Congress can make no laws touching religion.
2. Congress cannot infringe on the rights of conscience.

⁵⁸ Cogan, 12.

⁵⁹ Johnson, Samuel. *A Dictionary of the English Language: In which the Words are Deduced from their Originals*. Sixth ed. Vol. 2. London: J.F. Rivington, et. al., 1785, vol. 2, n487.

<http://www.archive.org/stream/dictionaryofengl02johnuoft#page/n3/mode/2up> (accessed March 26, 2010).

Sheridan, Thomas. *A General Dictionary of the English Language*. London: Dodsley, J; Dilly, C.; Wilke, J., 1780, <http://www.archive.org/stream/generaldictionary00sher#page/n5/mode/2up> (accessed March 26, 2010), 772.

⁶⁰ Johnson, vol. 2, n487.; Sheridan, 772.

Summary of Evidence from New Hampshire

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
New Hampshire	a. Some Senior Leaders have to be Protestant	a. Freedom of Conscience/Worship b. No Mistreatment based on Religion c. Government Security Depends on Religion d. Force Local/Private Support for Religion e. Christians Equal Under the Law f. No establishment of a Religious Sect in Preference to Others	a. Congress can make no laws touching religion b. Cannot infringe the Rights of Conscience

New Jersey

New Jersey did not compose a separate Declaration of Rights nor did they affix one to the beginning of their Constitution. New Jersey incorporated certain rights within the body of their Constitution. As a result, this study will extract those sections of the Constitution that, through subject and language, are indicative of a Bill of Rights and categorize them as such.

New Jersey Constitution (1776)

The first sections of the New Jersey Constitution that reference religion are the eighteenth and nineteenth. Those sections express ideas normally found in a Declaration or Bill of Rights.

XVIII. That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner, agreeable to the dictates of his own conscience; nor, under any presence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

Several religious freedoms are found in Section XVIII. First, it declares that no one can be deprived of the right to worship God. Additionally, it also prohibits mandatory attendance for religious services and mandatory support for religious activities that go against a person's conscience. As evidence has now shown, these rights were consistent with many other states.

Conclusions:

1. No mandatory attendance of religious services.
2. No mandatory support of religious activities if against a person's conscience.

The next section addresses the more pertinent issue for this study of establishing preferences concerning religion as well as the civil rights of Protestants.

XIX. That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.

The first line of Section XIX states clearly that no specific religious denomination is to be established in preference to any other denomination. This section also declares that no Protestant

can be denied their civil rights on account of their religious beliefs and are permitted to hold public office. This second two protected religious freedoms are another example of protections from the historical abuse of some Protestants by the Church of England and Parliament.

Conclusions:

1. No denomination is to established in preference to another.
2. No Protestant can be denied their civil rights on account of religion.

The next section is a unique emphasis to both Sections XVIII and XIX. It is the oath of office for members of the New Jersey legislature. It is found in the frame of government portion of the Constitution.

XXIII. That every person, who shall be elected as aforesaid to be a member of the Legislative Council, or House of Assembly, shall, previous to his taking his seat in Council or Assembly, take the following oath or affirmation, viz:

" I, A. B., do solemnly declare, that, as a member of the Legislative Council, [or Assembly, as the case may be,] of the Colony of New-Jersey, I will not assent to any law, vote or proceeding, which shall appear to me injurious to the public welfare of said Colony, nor that shall annul or repeal that part of the third section in the Charter of this Colony, which establishes, that the elections of members of the Legislative Council and Assembly shall be annual; nor that part of the twenty-second section in said Charter, respecting the trial by jury, nor that shall annul, repeal, or alter any part or parts of the eighteenth or nineteenth sections of the same."

As you have read, this oath specifically forces would-be legislators to pledge not to repeal or alter the eighteenth or nineteenth sections (which we just discussed) of the Constitution. Only four parts of this Constitution are listed in this oath and two of them pertain to religion. This is an emphasis and “underlining” of the importance and seriousness with which New Jersey felt concerning these particular religious freedoms.

Conclusion:

1. Oath of office ensures religious freedom is protected.

Summary of Evidence from New Jersey

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
New Jersey	a. Oath for Leaders declares that they cannot alter any parts of 18th or 19th Sections of Constitution. (Religious sections outlined next)	a. No Mandatory Attendance b. No Mandatory Support c. No Preference of Religious Sect d. Any Protestant has Civil Rights	_____

New York

New York, just as New Jersey, incorporated protections and guarantees of freedoms into the text of their constitution. Therefore, there are not two separate documents in this analysis. However, even with combing New York's constitution for language or subjects similar to a Bill of Rights, there is little to even categorize in this manner. Therefore, no conclusions will be organized under Declarations of Rights for New York. Interestingly though, New York was so pro-independence from England that they emphasized this point by including the full Declaration of Independence into their Constitution. However, since there are no definitive religious references in the Declaration, it will not be part of the analysis here. New York did propose an amendment to the Federal Constitution that concerns religious freedom and accordingly will be included in the analysis.

New York Constitution (1777)

Two sections of New York's Constitution deal with religious exemptions. The first section of the two happens to be the first section in the Constitution to mention religion. As a result, for expedience, this first section and the latter section will be analyzed together.

VIII. That every elector, before he is admitted to vote, shall, if required by the returning-officer or either of the inspectors, take an oath, or, if of the people called Quakers, an affirmation of allegiance to the State.

XL. And whereas it is of the utmost importance to the safety of every State that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it; this convention therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that the militia of this State, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this State being of the people called Quakers as, from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the State such sums of money, in lieu of their personal service, as the same; may, in the judgment of the legislature, be worth.(12) And that a proper magazine of warlike stores, proportionate to the number of inhabitants, be, forever hereafter, at the expense of this State, and by acts of the legislature, established, maintained, and continued in every county in this State.

Section VIII and Section XL make exemptions for Quakers as a result of their religious beliefs. In the first section, Quakers are permitted to make an affirmation rather than an oath. Section XL concerns the topic of defending the state and since Quakers are pacifists, through religious conviction, they are exempted from service in the militia.

Conclusion:

1. Religious exemptions granted for military service.

The next section of the Constitution may sound a little familiar to you. It is the thirty-fifth section and was mentioned earlier in Chapter 2 as a section that has been distorted by scholars before. Often it is carved up to use as evidence that New Yorkers were vehemently against all religion or as religion pertains to government. Presented below is the full text and again that mis-interpretation is not validated.

XXXV. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts, as are temporary, shall expire at the times limited for their duration, respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New York, and of the convention of the State of New York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this State; subject, nevertheless, to such alterations and provisions as the legislature of this State may, from time to time, make concerning the same.

The thirty-fifth section's purpose is really two fold. First, as a matter of civil order it declares that all the laws that were in effect before this constitution, are still in effect. Otherwise, some citizens may construe that if the English government is being removed then all the English laws are removed as well; since the English are no longer the recognized government. However, the crafters of the New York Constitution knew that some laws did not need to continue under the new government . . . particularly ones that were connected to the British Crown. Remember, this is a state that made the purposeful decision to include the entire Declaration of Independence, which is not a flattering document of English rule, into their Constitution. The underlined portions of the text amount to the disestablishment of the Church of England. The reference specifically mentioning the allegiance of denominations to the King of Great Britain leads to that conclusion. Although it appears that no preference of any denomination will be established in New York, even if there were no issues of allegiance to Great Britain within a denomination. This concept is supported by section XXXVIII.

Conclusions:

1. Disestablishment of the Church of England.
2. No denomination is to be established in preference to any other.

The following section is another section that first appears to be very anti-religious in nature. However, when looked at in light of the anti-English rhetoric of this Constitution, the specific language used, and historical context it lessens this initial impression.

XXXVIII. And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided*, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

The powerful words of the second and third lines pertain to past abuses by the Church of England and various Monarchies of Europe. The fact that “spiritual oppression and intolerance” are utilized in conjunction with “wicked priest and princes” leads to a conclusion of making remarks concerning the state-religions found all throughout Europe. There were and are no “princes” in America. Further, there is no lack of significance to the idea that much of the religious thought concerning church-state relations were in reaction to the abuses suffered through actions taken by the British Parliament on behalf of the Church of England. In fact, this concept is so significant to this topic that a large section of analysis and multiple primary documents from English law will be outlined in the next Chapter. They will specify the legalized abuses that non-conformist denominations suffered with while in England. New Yorkers and most everyone in the United States at this time would have agreed these types of abuses had “scourged mankind.” Without this historical basis, this section could clearly be construed to be very anti-religion and government. Chapter 6 will address this issue in depth, but these limitations on religion are not anti-religious in nature. They are designed to protect citizens from the corruption of religion for human gain.

On a more consistent note with other states, the second section of underlined text does ensure that freedom to exercise religion was guaranteed. Further, it also states that specific worship styles should never be held in preference to any other.

Conclusions:

1. Free exercise of religion is guaranteed.
2. No preference to religion or worship will be allowed.

The final section referencing religion deals with clergy and holding public office.

XXXIX. And whereas the ministers of the gospel are, by their profession, dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any presence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this State.

In Section XXXIX, New York excludes all clergy from holding any government office in the state. What is interesting is that they offer the rationale that clergy are already dedicated to their important profession and should not be diverted from its accomplishment.

Conclusion:

1. No clergy can hold a civil or military office.

New York Proposed Federal Amendment

The amendment proposed by New York states similar concepts to what they outlined in their Constitution.

That the People have an equal, natural right and unalienable right, freely and peaceably to Exercise their Religion according to the dictates of Conscience, and that no Religious Sect of Society ought to be favored or established by Law in Preference to others.⁶¹

This amendment guarantees the free exercise of religion and that no denomination is to be established by law in preference of others.

Conclusions:

1. Freedom to exercise religion.
2. No denomination is permitted to be established by law in preference to others.

⁶¹ Cogan, 12.

Summary of Evidence from New York

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
New York	a. Religious Exemption for Oaths/Military b. Disestablished Church of England c. No Preference of Religion based on Worship or Faith d. Free Exercise of Religion e. No Clergy in Civil or Military Office	_____	a. Freedom to Exercise Religion based on Conscience b. No Preference of Religious Sect Established by Law

North Carolina

The Constitution of North Carolina incorporates a Declaration of Rights as a prefix to its Constitution. In addition, North Carolina offered a religiously centered amendment to the Federal Constitution. All three components will be analyzed.

North Carolina Constitution (1777)

The first reference to religion in the Constitution is in Article XXI and addresses the same topic that ended New York's constitutional analysis.

XXXI. That no clergyman, or preacher of the gospels of any denomination, shall be capable of being a member of either the Senate, House of Commons, or Council of State, while he continues in the exercise of the pastoral function.

This Article should have a familiar ring to it. It declares that no "active" clergy of any denomination is permitted to be a member of the state legislature or the council; which advises the Governor. However, not only were clergy excluded from these particular offices. Articles twenty-five through thirty prohibit the following persons as well: receivers of public monies, treasurers, officers of the Army and Navy, contractors for the Army and Navy, Judges, Secretary of North Carolina, or the Attorney-General. Therefore, this is not solely aimed at clergy but at anyone who may have a reason to influence the legislature. Clergy, as can be seen in Article XXIV may have been excluded to help prevent a new preferential establishment of religion.

Conclusions:

1. No clergy as members of the state legislature or council.

This next article also deals with the offices of the state legislature, council, and every other office of government.

XXXII.(5) That no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

Article XXXII clearly states that people holding government office must be of the Protestant religion and that the Bible has divine authority. In the context of the late eighteenth century, this wording is generic enough in nature not to violate the following article that mandates no religious preferences; as possibly could be pointed out. Being Protestant and believing the Bible

to be of divine authority was compatible with every denomination of Christendom. Catholics would have been excluded by this article, but they were basically absent from the two Carolinas.⁶²

Conclusions:

1. Government officials had to be Protestant.

Below is Article XXXIV which outlines North Carolina's stance on the establishment of religion and several restrictions of government in relation to religion.

XXXIV. That there shall be no establishment of any one religious church or denomination in this State, in preference to any other; neither shall any person, on any presence whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, of has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship: -- Provided, That nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses, from legal trial and punishment.

As mentioned, the article begins with declaring that no denomination shall be established in preference to any other. Further, it states that no mandatory attendance or mandatory support be prescribed contrary to a person's faith. Lastly, the article guarantees the freedom of everyone to exercise their religious beliefs as long as they do not undermine the state.

Conclusions:

1. No establishment of a denomination in preference to others.
2. No mandatory attendance of religious activities outside a person's faith.
3. No mandatory support of religious activities outside a person's faith.
4. Freedom to exercise religious faith guaranteed.

North Carolina Declaration of Rights (1777)

While there were several statements concerning religion in the Constitution proper, there is only one reference to it in the Declaration of Rights. Further, many of the concepts mentioned

⁶² Newman, William M. and Peter L. Halvorson. *Atlas of American Religion the Denominational Era 1776-1990*. New York: Altamira Press, 2000, p. 23.

in the Constitution were normally found in state declarations of rights. What is found in the North Carolina Declaration of Rights is more of a catch-all phrase for religious freedom.

XIX. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

Here North Carolina offers the most general of guarantees of religious freedom: the right to worship God in the manner that you see fit.

Conclusion:

1. Everyone has the right to worship God.

North Carolina Proposed Federal Amendment

North Carolina's proposed amendment is one that will resurface almost word for word in several states. But, because of alphabetical analysis it will be seen here first.

That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right, to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favoured or established by law in preference to others.⁶³

This amendment states that religion and the duties associated with it can only be effective when offered to others by reason and conviction. It prohibits force or violence which alludes to again to practices found in England. Further it advocates the free exercise of religion and it would prohibit the establishment by law of any denomination in preference to others.

Conclusions:

1. Cannot use force or violence to convert people.
2. Free exercise of religion guaranteed.
3. No denomination can be established by law in preference to others.

⁶³ Cogan, 12.

Summary of Evidence from North Carolina

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
North Carolina	a. No Clergy in Civil Office while still holding a Pastoral Office b. Government Officials had to be Protestant c. No Establishment of one Religious Sect in Preference to Another d. No Mandatory Attendance e. No Mandatory Support f. Freedom to Exercise Religion	a. Freedom of Conscience regarding Worship of God	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law

Pennsylvania

The Constitution of Pennsylvania, adopted in 1776, begins with a preamble, followed by a declaration of rights, and ends with a frame of government. It is fair to note, that only a few months (March to September) after ratifying the First Amendment, Pennsylvania adopted a new constitution.⁶⁴ In light of this fact, certain aspects of the 1790 Constitution will be considered later in the analysis as potential mitigating circumstances on certain aspects of the Constitution of 1776. However, since the 1790 Constitution reaffirms many of the religious concepts and incorporates a “catch all” section; it still maintains the essential elements of church-state relations iterated in the Constitution of 1776. The “catch all” phrase in the 1790 Constitution is below.

Pennsylvania Constitution of 1790

Article VII

Sec. 3. The rights, privileges, immunities, and estates of religious societies and corporate bodies shall remain as if the constitution of this State had not been altered or amended.

This general, but comprehensively worded Section provides great latitude on what is transferred from the 1776 Constitution. Including: rights, privileges, immunities, and estates covers a significant amount of legal ground.

Lastly, Pennsylvania did submit a proposed amendment to the Federal Constitution for Congress to consider.

Pennsylvania Constitution (1776)

The Pennsylvania Constitution references religion right away in the Preamble. Perhaps it was the strong Quaker influence in Pennsylvania, after so much persecution, that placed this specific concept so quickly in the document.

. . . We, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do, by virtue of the authority vested in use by our constituents, ordain, declare, and establish, the following

⁶⁴ Poore, vol. 2, 1548.

Declaration of Rights and Frame of Government, to be the CONSTITUTION of this
commonwealth

This is paragraph is surprising. Normally, references such as protections against religious discrimination and prohibiting certain denominations from receiving preferential treatment are not in “preambles.” Most likely this is from the strong Quaker element in Pennsylvania that experienced a great amount of persecution for their beliefs. Irregardless, this is a great example of why entire documents need to be evaluated on issues such as these.

Conclusion:

1. No preference or discrimination on account of religion.

The next excerpt is from Section 10 of the Frame of Government. It contains guidance for members of the state House of Representatives. The following is the declaration potential representatives had to proclaim before they could be seated. This portion of the section follows an oath that did not mention religion.

Section 10. . . .

And each member, before he takes his seat, shall make and subscribe the following declaration, viz:

I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State.

This declaration is written in such a manner that only a Christian would be able to make it. It is even written in such a manner that Catholics could state the beliefs included. The reference to God may be generic in nature and be inclusive to many religions, but the mandatory acknowledgement of the Old and New Testament identifies this declaration as being Christian in nature. The last lines also indicate the intention of making this a general Christian religious declaration. The limiting of additional religious tests prevented any discrimination on a particular denomination of Christians as had occurred in England. In England, oaths or declarations were often written in such a manner that a person had to be a member of the Church of England to agree with all of its religious statements. Here those denominational statements are absent and are not permitted from being entered in any additional manner.

Conclusion:

1. Members of the House of Representatives had to be Christians.

The last reference to religion in Pennsylvania's Frame of Government is found in Section 45 and addresses the issue of religion's role in several aspects of society.

SECT. 45. Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed, under the laws and former constitution of this state.

Section 45 states that all entities formed "for the advancement of religion or learning" or for carrying out religious duties towards God, shall be encouraged and protected in their privileges. As a result, Pennsylvanians have stated that religion "shall be encouraged" in the mentioned areas of "pious and charitable purposes."

Conclusion:

1. Government can encourage Religion.

Pennsylvania Declaration of Rights (1776)

The Pennsylvania Declaration of Rights of 1776 is comprised of sixteen sections outlining specific protections and guarantees of individual rights. Only one, the second, pertains to religion.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.

Section II outlines five components of religious freedom. First it declares the general right that all men have a right to worship God. The next two deny government the authority to compel people to be subjected to mandatory attendance of worship services and mandatory support of worship contrary to their beliefs. The fourth right addressed is that no one who acknowledges the existence of God can be denied any civil right on account of their method of religious

worship. Lastly, the Declaration of Rights protects the freedom of conscience and free exercise of religion.

Conclusion:

1. All men have a right to worship God.
2. No mandatory attendance of religious activities of a different faith.
3. No mandatory support of religious activities of a different faith.
4. Cannot deprive a civil right based on religion.
5. Freedom of conscience and exercise of religion is protected.

Pennsylvania Proposed Federal Amendment

Pennsylvania's proposed amendment is not typical of what we have seen from other states. This amendment focuses primarily on keeping the federal government from infringing on state's rights in matter of religion. This is in contrast to focusing on protecting certain rights or guarding against certain actions.

The rights of conscience shall be held inviolable and neither the legislature, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitutions of the several states, which provide for the preservation of liberty in matters of religion.⁶⁵

This amendment is not one which would forbid the Federal Government from any interaction with religion, but it does prevent it from "trumping" state decisions in this area. Further, this amendment touches on only one aspect of religious freedom specifically, the rights of conscience. A distrust of national or federal governments was very prevalent during the Colonial period in every state, not just as it is manifested here in Pennsylvania.

Conclusions:

1. Federal government cannot exercise any authority over the state constitutions in matters of preserving religious liberty.

⁶⁵ Cogan, 12.

Summary of Evidence from Pennsylvania

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Pennsylvania	a. No Discrimination via Religion b. Christian Oath for Leaders c. Government shall Encourage Religion	a. Everyone has the Right to Worship God b. No Mandatory Attendance c. No Mandatory Support d. Cannot Deprive of Civil Right if the Person Believes in God e. Freedom of Conscience and Exercise is Protected	a. Federal Government cannot exercise any authority over the State Constitutions in Matters of Preserving Religious Liberty

Rhode Island

Rhode Island is the second of only two states to not write a constitution when the Continental Congress made the recommendation. As a result, Rhode Island's Colonial Charter was still effect when the First Amendment was ratified. It was not until 52 years after the ratification of the Bill of Rights, in 1842, that a constitution was adopted to supercede this Charter. Unlike Connecticut, Rhode Island did not add even a small declaration of rights to include additions to their Charter. Lastly, even though Rhode Island was one of the last states to ratify the Federal Constitution it did propose an amendment which will be analyzed at the end of this section.

Rhode Island Colonial Charter (1663)

As you saw reading Connecticut's Colonial Charter, at times the old style English spellings can be confusing. In order to maintain the authenticity of the document, no modern alterations have been made to help in this area. However, since the authors of such documents did not use articles, sections or even paragraphs very often, there are some modifications that have been added. In the long excerpt below, arbitrary paragraphs have been carved out of the document to help facilitate the absorption of the material. It is important to note, even when there is a break, signified by ". . ." no words were omitted. This is just an added modern signifier of separation. To restore the original manuscript, the succeeding paragraph would just have to be placed next to the last word in the preceding paragraph.

And whereas, in their humble addresse, they have freely declared, that it is much on their hearts (if they may be permitted), to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained, and . . .

. . . that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gossell principles, will give the best and greatest security to soveraignetye, and will lay in the hearts of men the strongest obligations to true loyaltye: Now know yee, that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd lovall and loveinge subjects, and to secure them in the free exercise and enjoyment of all their civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian faith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and lovall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhabitants of the same colonie cannot, in their private opinions, conforms to the publique exercise of religion, according to the litturgy, formes and ceremonyes of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and unifformitie established in this nation: Have therefore thought ffit, and doe hereby publish, graunt, ordeyne and declare, . . .

. . . That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freelye and fullye have and enjoye his and their owne judgments and consciences, in matters of religious concernments, throughout the tract of lince hereafter mentioned; they behaving themselves peaceable and quietlie, and not using this libertie to lycentiousnesse and profanenesse, nor to the civill injurie or outward disturbance of others; any lawe, statute, or clause, therein contayned, or to bee contayned, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding. And that they may bee in the better capacity to defend themselves, in their just rights and libertyes against all the enemies of the Christian ffaith, and others, in all respects, wee have further thought fit, and at the humble petition of the persons aforesayd are gratusly pleased to declare, That they shall have and enjoye the benefist of our late act of indempnity and ffree pardon, as the rest of our subjects in other our dominions and territoryes have; and to create and make them a bodye politique or corporate, with the powers and priviledges hereinafter mentioned.

In the first several lines of the second paragraph the Colonial Charter directs the full liberty of concernments. This reference is similar to the freedom of conscience. Next, language is offered similar to what was seen in Massachusetts, New Hampshire, and Connecticut stating a political philosophy that religion is the best security of free government. Connected to this philosophy is then a discussion concerning the loyalty established by religion and government's desire to support such loyalty. Specifically, it reads, "gospel principles . . . will lay in the hearts of men the strongest obligations to true loyalty: Now know bee, that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd lovall and loveinge subjects,. . ." To encourage such loyalty must result in the encouragement of the source of the loyalty: religion.

Additionally, this section guarantees the freedom to exercise religion and civil and religious rights. The last portion of underlined text in the second paragraph, states that the Church of England will not be the established church in this colony. Further, as such, no discrimination will result from non-membership. Lastly, the third paragraph declares that there will be no mistreatment of persons based on religion and that Christians are allowed to defend their granted religious freedoms.

Conclusions:

1. Protection of conscience is granted.
2. Government's security relies on religion.
3. Government desires to support religion in order to maintain security.
4. Freedom to exercise religion is guaranteed.
5. Disestablishment of the Church of England.

6. Freedom from discrimination based on membership in the Church of England.
7. No mistreatment of anyone based on religion.

Rhode Island Proposed Federal Amendment

Rhode Island’s proposed amendment mirrors the proposed amendment you read from North Carolina.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men, have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favoured or established by law in preference to others.⁶⁶

This amendment states that religion and the duties associated with it can only be effective when offered to others by reason and conviction. It prohibits force or violence which alludes to another practice conducted in England. Further it advocates the free exercise of religion and it would prohibit the establishment by law of any denomination in preference to others.

Conclusions:

1. Cannot use force or violence to convert people.
2. Free exercise of religion guaranteed.
3. No denomination can be established by law in preference to others.

Summary of Evidence from Rhode Island

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Rhode Island	a. Freedom of Conscience b. Government Depends on Religion to Maintain Security c. Government Desires to Support Religion in Order to Maintain Security c. Free Exercise of Religion d. Disestablishment of the Church of England e. Free from Discrimination based on Membership in Church of England f. No Mistreatment based on Religion	_____	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law

⁶⁶ Cogan, 12-13.

South Carolina

South Carolina has a similar situation as Pennsylvania. South Carolina's constitution that was in effect at the ratification of the First Amendment (January 1790) was succeeded by a new constitution six months later in June 1790.⁶⁷ Therefore, the same consideration given to Pennsylvania's 1790 Constitution will be given to South Carolina. This similar treatment of South Carolina is enabled the exact same "catch all" section in the South Carolina Constitution of 1790 as was in Pennsylvania's 1790 Constitution. The section from 1790 is presented below.

ARTICLE VIII

Sec. 2. The rights, privileges, immunities, and estates of both civil and religious societies, and of corporate bodies, shall remain as if the constitution of this State had not been altered or amended.

The largest discrepancy between the constitutions of 1778 and 1790 is that the very detailed establishment of Protestantism as the state church in South Carolina was not repeated in the 1790 Constitution. However, nowhere was it disestablished and with Article VIII, Section 2 above, the language may be understood that it was still at least partially in effect due to the first several words of the section: "rights, privileges, immunities." Especially critical would be the word "privileges." Protestantism being officially established carries with it many "privileges." But, due consideration of the 1790 Constitution will be taken in the analysis.

South Carolina did not write a separate declaration of rights nor did it attach one as a prefix to their Constitution. Individual rights are protected within the body of the document but due to the language and context of those protections they are categorized entirely in the summary under "State Constitution." Lastly, this state also proposed an amendment to the Federal Constitution but not one in the sense of all the other versions. Here South Carolina chose to offer a minor modification of the third section of the sixth article of the Federal Constitution dealing with religious oaths.

South Carolina Constitution (1778)

The twelfth article of the Constitution provides directives concerning the election and qualifications of members of the state Senate. Due to our focused interest in a particular qualification and the article being comprised of over 400 words; the excerpt below will only

⁶⁷ Poore, vol. 2, 1628.

present the section on qualifications and exclude most of the criteria governing elections. Only a few lines will remain of election material due to the need to ensure the proper context of the evidence presented.

XII. . . . in which case the governor and commander-in-chief for the time being may, by proclamation, with the advice and consent of the privy council, appoint a more secure and convenient place of meeting; and to continue for two years from the said last Monday in November; and that no person shall be eligible to a seat in the said senate unless he be of the Protestant religion, and hath attained the age of thirty years, and hath been a resident in this State at least five years. Not less than thirteen members shall be a quorum to do business but the president or any three members may adjourn from day to day. No person who resides in the parish or district for which he is elected shall take his seat in the senate, unless he possess a settled estate and freehold in his own right in the said parish or district of the value of two thousand pounds currency at least, clear of debt; and no non-resident shall be eligible to a seat in the said senate unless he is owner of a settled estate and freehold in his own right, in the parish or district where he is elected, of the value of seven thousand pounds currency at least, also clear of debt.

The underlined portion of the excerpt clearly states that any member of the Senate was required to be of the Protestant religion.

Conclusion:

1. Members of the Senate must be Protestant.

The following article, while its content is surely not been absent, it has not been written into the last two state constitutions that have been reviewed.

XXI. And whereas the ministers of the gospel are by their profession dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function, therefore no minister of the gospel or public preacher of any religious persuasion, while he continues in the exercise of his pastoral function, and for two years after, shall be eligible either as governor, lieutenant-governor, a member of the senate, house of representatives, or privy council in this State.

Article XXI states that an “active” member of the clergy is not permitted to hold any high level office within South Carolina. Further, as other states have declared, the rationale is that the people of South Carolina would rather have them be focused on their vital role of serving God.

Conclusion:

1. Clergy are excluded from holding high office.

Article XXVIII is the most quoted passage by scholars from this Constitution. It provides the details for the formal establishment of Protestantism as the state religion of South Carolina. It is

an exceptionally long passage but being so descriptive of church-state relations in this state it is included in its entirety.

XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges. To accomplish this desirable purpose without injury to the religious property of those societies of Christians which are by law already incorporated for the purpose of religious worship, and to put it fully into the power of every other society of Christian Protestants, either already formed or hereafter to be formed, to obtain the like incorporation, it is hereby constituted, appointed, and declared that the respective societies of the Church of England that are already formed in this State for the purpose of religious worship shall still continue incorporate and hold the religious property now in their possession. And that whenever fifteen or more male persons, not under twenty-one years of age, professing the Christian Protestant religion, and agreeing to unite themselves In a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned,) be, and be constituted a church, and be esteemed and regarded in law as of the established religion of the State, and on a petition to the legislature shall be entitled to be incorporated and to enjoy equal privileges. That every society of Christians so formed shall give themselves a name or denomination by which they shall be called and known in law, and all that associate with them for the purposes of worship shall be esteemed as belonging to the society so called. But that previous to the establishment and incorporation of the respective societies of every denomination as aforesaid, and in order to entitle them thereto, each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon presence of religion shall entitle them to be incorporated and esteemed as a church of the established religion of this State:

1st. That there is one eternal God, and a future state of rewards and punishments.

2d. That God is publicly to be worshipped.

3d. That the Christian religion is the true religion

4th. That the holy scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice.

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this State, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this State may forever enjoy the right of electing their own pastors or clergy, and at the same time that the State may have sufficient security for the due discharge of the pastoral office, by those who shall be admitted to be clergymen, no person shall officiate as minister of any established church who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz: "That he is determined by God's grace out of the holy scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation but that which he shall be persuaded may be concluded and proved from the scripture; that he will use both public and private admonitions, as well to the sick as to the whole within his cure, as need shall require and occasion shall be given, and that he will be diligent in prayers, and in reading of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace, and love among all people, and especially among those that are or shall be committed to

lids charge. [sic“] No person shall disturb or molest any religious assembly; nor shall use any reproachful, reviling, or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors, and that profession which otherwise they might be brought to assent to. To person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government of this State. No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely join in, or has not voluntarily engaged to support. But the churches, chapels, parsonages, globes, and all other property now belonging to any societies of the Church of England, or any other religious societies, shall remain and be secured to them forever. The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.

This article reveals much concerning church-state relations in South Carolina. The first two lines declare that anyone professing monotheism, the existence of heaven and hell, and that God is to be publicly worshipped will be tolerated within the state. The following lines declare the formal establishment of the Protestant faith as the state religion. The last part of the first paragraph is highlighted due to the fifth article specified that a group would have to be in accordance with before becoming an established church in South Carolina. It reads:

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

This article states that it is the “duty of every man,” within an established church, when “called” by the government of South Carolina to “bear witness to the truth.” In other words, the government can call churches to bear witness to Christianity publicly.

The following paragraph outlines several religious guarantees and protections. In the first several lines, the freedom of conscience is protected. After the oath for clergy, the constitution provides protection against various mistreatments on account of religion. Lastly, there is a guarantee that no individual shall be required to support a religious faith with which he disagrees.

Conclusions:

1. Protestantism is established as the state religion.
2. Churches have a duty when called on by government to bear witness to Christianity.
3. Freedom of conscience is protected.
4. No mistreatment allowed based on religion.
5. No mandatory support of religious worship except within one’s conscience.

South Carolina Proposed Federal Amendment

The text of Article VI, Section III of the Federal Constitution reads as follows:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

South Carolina's proposed amendment does not pertain to individual rights or freedom of religion directly. Nor does it offer something new to be added to the constitution. Rather it offers only to modify the wording of the religious test clause of the above section. The amendment reads:

Resolved, that the third section of the sixth article ought to be amended, by inserting the word "other" between the words "no" and "religious."⁶⁸

In clearer terms, the South Carolina amendment would have the Constitution then read as such:

. . . but no *other* religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The rationale for this addition is not clear. The notes of the South Carolina ratification debates do not provide any insight into the amendment. The addition of the word "other" would imply that there was another religious test in place. However, no such test was ever adopted or ratified. One possibility would be that South Carolina was attempting to ensure that their mandate of Protestant Senators would be protected since it was in effect prior to the Federal Constitution. While the rationale for this amendment may not be clear, it is included as part of the effort to bring light to all the references to religion in the specified types of documents that this study includes.

⁶⁸ Elliot, Jonathan. *Elliot Debates*. 2nd ed. Vol. 1. Philadelphia: J.B. Lippincott Company, 1831, p. 325.

Summary of Evidence from South Carolina

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
South Carolina	a. Members of the State Senate must be Protestant b. No Clergy in Civil Office while still holding a Pastoral Office c. Christianity is the Established Religion d. Churches have a Duty when Called on by Government, to Bear Witness to Christianity e. Freedom of Conscience f. No Mistreatment based of Religious Assemblies g. No Mandatory Support	_____	Article VI, Section III of Federal Constittion should read that "No <u>other</u> Religious Test shall ever be Requirred . . ."

Vermont

Vermont was not a state in the Union until just before the ratification votes of the states were taking place on the First Amendment. Therefore, Vermont had no Senators or Representatives in the Congress during the formulation of the First Amendment. However, it was able as a state to consider whether or not to vote for the ratification of the amendment. Additionally, Vermont did adopt a state constitution in 1777 and in 1786 in hopes of eventually achieving statehood. For this reason, Vermont is included in this study and of course the later constitution will be utilized for the analysis. Further, as a consequence of entering the Union after the ratification of the Federal Constitution, Vermont also did not have the privilege of proposing an amendment thereof. Consequently, none will be discussed in this section. What will be discussed is Vermont's 1786 Constitution which includes a preamble, a declaration of rights, and a frame of government. As an historical note, the land that became the state of Vermont, was claimed as part of three states: New Hampshire, New York, and Massachusetts.⁶⁹

Vermont Constitution (1786)

Religion is mentioned in both the preamble and the frame of government. The first mention in the preamble is unique to only Vermont, but provides a remarkable vehicle to gain insight into philosophies of church-state relations of this state.

And whereas the inhabitants of this State have (in consideration of protection only) heretofore acknowledged allegiance to the King of Great-Britain : and the said King has not only withdrawn that protection, but commenced and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them; employing therein not only the troops of Great-Britain, but foreign mercenaries, savages, and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British Parliament, with many more acts of tyranny, (more fully set forth in the Declaration of Congress) whereby all allegiance and fealty to the said King and his Successors are dissolved and at an end; and all power and authority derived from him ceased in the American Colonies. And whereas the Territory, which now comprehends the State of Vermont, did antecedently of right belong to the government of New-Hampshire, and the former Governor thereof, viz. his excellency Benning Wentworth, Esq. granted many charters of lands and corporations within this State to the present inhabitant and others. And whereas the late Lieutenant-Governor Colden, of New York, with others, did, in violation, of the tenth command, covet those very lands; and by a false representation, made to the Court of Great-Britain, (in the year 1764, that for the convenience of trade and administration of justice, the inhabitants were desirous of being annexed to that government) obtained jurisdiction of those very identical lands, *ex parte*, which ever was and is disagreeable to the inhabitants. And whereas the Legislature of New-York ever have, and still continue, to disown the good people of this State, in their landed property, which will appear in

⁶⁹ Poore, vol. 2, 1857.

the complaints hereafter inserted, and in the 36th section or their present Constitution, in which is established the Grants of Land made by that government.

In this excerpt from the preamble, the people of Vermont are justifying their rebellion against the British Crown. They list several items. For one example, they reference England's employment of foreign mercenaries to fight against the colonists. They also offer the Declaration of Independence as articulating the vast majority of their justifications for separation. However, they also list one interesting justification in the middle of this excerpt. The people of Vermont claim that their former Governor, appointed by the "Crown," violated the "tenth command" and coveted their land. The reference of the "tenth command" refers to the Tenth Commandment found in Exodus, Chapter 20, Verse 17 which states:

You shall not covet your neighbor's house. You shall not covet your neighbor's wife, or his manservant or maidservant, his ox or donkey, or anything that belongs to your neighbor."⁷⁰

A new government, having justified its separation or rebellion against the former government, based on a Biblical principle would then make it necessary for the new government to adhere to Biblical principles as well. For instance, the other nine commandments. Otherwise, listing a justification of a rebellion and then not adhering to it as the newly established government, would then justify rebellion against the new government. In short, through this justification in the preamble, it is revealed that the people of Vermont bound their state government to govern by Biblical standards of conduct.

Conclusion:

1. Government is bound to govern by Biblical standards of conduct.

The preamble makes two more references to religion. They are contained in the same paragraph and are presented below.

We the Representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government— confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society ; and being fully convinced, that it is our indispensable duty to establish such original principles of government as will best promote the general happiness of the

⁷⁰ *The NIV Study Bible: New International Version*, edited by Kenneth Barker. Grand Rapids, Michigan: Zondervan Publishing House, 1985, p. 116.

people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever; do, by virtue of authority vested in us by our constituents, ordain, declare and establish the following Declaration of Rights, and Frame of Government, to be the Constitution of this Commonwealth, and to remain in force therein forever unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall, by the same authority of the people, fairly delegated, as this Frame of Government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

The first underlined portion of the text makes a reference acknowledging God as having permitted the people of Vermont to create this new government. The actual words mentioning the formation of a government appear in the last two lines of underlining. The second religious concept brought up in the paragraph declares that all denominations will be treated equally; or in terms other states have used, without preference.

Conclusions:

1. Acknowledges God as permitting this government to be created.
2. All denominations will be treated equal – no preference given.

Within the Frame of Government, Section XII, dealing with the oath and declaration of office for State Representatives, is the first reference of religion.

XII. The representatives, having met, and chosen their speaker and clerk, shall each of them, before they proceed to business, take and subscribe, as well the oath or affirmation of allegiance herein after directed (except where they shall produce certificates of their having heretofore taken and subscribed the same) as the following oath or affirmation, viz.

You ----- do solemnly swear, (or affirm) that, as a member of this Assembly, you will not propose or assent to any bill, vote, or resolution, which shall appear to you injurious to the people; nor do nor consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges as declared by the Constitution of this State; but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. (In case of an oath) so help you God. (And in case of an affirmation) Under the pains and penalties of perjury.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz.

You do believe in one God, the Creator and Governor of the Universe, the rewarded of the good, and punisher of the wicked. And you do acknowledge the scriptures of the Old and New Testament to be given by divine inspiration; and own and profess the Protestant religion.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate, in this State.

The only mention of religion in the oath is the closing statement, “So help you God.” As previously stated, this potentially could be purely out of tradition or it could signify religious

sincerity. Considering the fact that only one other state included this reference in its oaths of office, the inclusion via tradition may be the weaker argument. However, the declaration for office is quite different. Just as many other declarations, this one mandates that State Representatives be of the Protestant religion.

Conclusions:

1. Some government officials must be Protestants.

Section XXXVIII provides guidance on how to ensure morality of the populace and the instruction of the youth in Vermont.

XXXVIII. Laws for the encouragement of virtue, and prevention of vice and immorality, ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town for the convenient instruction of youth ; and one or more grammar schools be incorporated, and properly supported in each county in this State. And all religious societies, or bodies of men, that may be hereafter united or incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

This section establishes the vehicle for the government of Vermont to encourage virtue and prevent immorality within its citizens. Additionally, that vehicle will be utilized to instruct the youth of the state. Based on the underlined portions of text, the government of Vermont “shall encourage” . . . “all religious societies, or bodies of men . . . for the advancement of religion and learning, or for other pious and charitable purposes.” Although not explicitly stated, Vermont seems to be of the persuasion, similar to its neighbors Massachusetts and New Hampshire that the best vehicle to ensure a moral populace was religion.

Conclusion:

1. Religious societies should be encouraged to instruct virtue and morality.

Vermont Declaration of Rights (1786)

There is only one section in the Vermont Declaration of Rights that deals with religious rights. However, this one section addresses multiple rights.

III. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the

dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can or ought to be vested in or assumed by any power whatsoever that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship: Nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

The majority of Section III outlines many rights that government cannot infringe upon. These include the right to worship God, the right not to be forced to attend certain religious services, and depriving people of civil rights based on religion. Further it also guarantees the free exercise of religion. However, what is especially interesting, is that after all of these restrictions the Constitution then encourages all denominations to adhere to a specific religious practice, observing the Sabbath or at least keep up some type of worship. This is the second example of the explicit pronouncement of the government encouraging religious practice within the Constitution as a whole.

Conclusion:

1. Everyone has a right to worship God.
2. No mandatory attendance at religious services against an individual's faith.
4. No mandatory support for religious activities against an individual's faith.
3. Cannot be deprived of civil rights based on religion.
4. Freedom to exercise religion is protected.
5. Government is encouraging the religious practices.

Summary of Evidence from Vermont

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Vermont	a. Government is bound by Biblical Standards of Conduct b. Acknowledges God as Permitting Government to be Created b. All Sects Equal and without Preference c. Protestant Oath for Leaders d. Religious Societies should be encouraged to instruct virtue and morality in schools and to youth	a. No Mandatory Attendance b. No Mandatory Support c. Cannot Deprive of Civil Right based on Religion d. Freedom to Exercise Religion e. Government encourages Christians to Observe Sabbath and Participate in Worship	

Virginia

Virginia, the state that everyone talks about in their unbalanced argument, will be finally discussed. Virginia attached its declaration of rights to the beginning of its Constitution and adopted them in 1776. There are two references total to religion in all parts of the Constitution. Additionally, Virginia did propose an amendment to the Federal Constitution which will be discussed at the end of the section.

Virginia Constitution (1776)

Unfortunately, the Virginia Constitution did not include numbered articles or sections in its frame of government portion. But, the following is the only paragraph referencing religion.

The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others, holding lucrative offices, and all ministers of the gospel, of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The last lines of this paragraph, concerning the appointment powers and general guidelines concerning the Assembly and Privy Council, prevent any Clergy from “being elected members” of the Assembly and advisory Council to the Governor.

Conclusion:

1. No Clergy are permitted to be members of the Assembly and Council.

Virginia Declaration of Rights (1776)

The Virginia Declaration of Rights contains sixteen articles only one of which referenced religion, Section 16.

SEC. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

This section specifies that the way people decide to worship God cannot be forced onto them by violence but rather by “reason and conviction.” Further, it states that all men are guaranteed the

“free exercise of religion.” Lastly, this section declares that it is everyone’s duty to “practice Christian forbearance, love, and charity towards each other.” This last line points to an expression of encouragement by government of Christian principles.

Conclusions:

1. Government cannot us force or violence to mandate the worship of God.
2. Free exercise of religion is guaranteed.
3. Government encourages citizens to practice Christian principles.

Virginia Proposed Federal Amendment

The amendment that Virginia proposed is partially taken from Section 16 above. But, its second half has some additional recommendations.

That religion, or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and therefore all men are equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.⁷¹

This amendment, just as Section 16, states that violence should not be utilized to mandate the worship of God. Further, it also protects the Freedoms of Free Exercise and Conscience. Lastly, it declares that no denomination will be established by law in preference to others.

Conclusions:

1. Government cannot us force or violence to mandate the worship of God.
2. Freedoms of free exercise and conscience.
3. No denomination is to established in preference to another.

Summary of Evidence from Virginia

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Virginia	a. No Clergy Allowed in State Legislature or Privy Council	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. Duty of Everyone to Practice Christian forbearance, love, charity	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law

⁷¹ Cogan, 13.

Summary of all Fourteen States

Great job. You have just read and digested more political thought on church-state relations from our Founding Fathers than 99% of Americans today. While it may not make you an expert, it definitely makes you a very educated citizen. You may not feel very educated because your mind is now working to process all this information and it may feel a little overwhelming. But, the fruit of laboring with each individual state will pay off shortly. All the state summaries that were formed, excerpt by excerpt, are going to be pulled together. This results in the consolidated table below. All the evidence from state constitutions, declarations of rights, and proposed amendments has been incorporated into this one table. This concise table of evidence will illuminate trends and patterns to help facilitate what the Founders would and would not have likely placed in the Federal Constitution and its attached Bill of Rights.

Table 4-1: Summary Table of Church-State Relations from All Fourteen States

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
Connecticut	a. A Goal was to Convert Indians to Christianity b. Government should govern religiously	a. Government and Churches need to Mutually Support one Another b. Liberty is partially founded on Christian principles	_____
Delaware	a. Christian Oath for Leaders b. No Preference of Religious Sects b. No Clergy in the Legislature	a. No Mandatory Attendance b. No Mandatory Support c. Freedom of Conscience/Exercise d. Any Christian has Equal Rights	_____
Georgia	a. No Clergy in General Assembly	a. Free Exercise of Religion b. No Mandatory Support	_____
Maryland	a. No Clergy in General Assembly or Council b. Declaration of Christianity for Leaders c. Religious Exemption for Oaths	a. Duty of Everyone to Worship God b. Disestablished Church of England c. Everyone has a duty to worship God in their Manner d. No Mandatory Attendance e. Government can Support Religion Equally f. No Mistreatment based on Religion g. Declaration of Christianity for Leaders h. Religious Exemption for Oaths	Minority Amendment - Was not Sent to Congress a. No National Religion Established b. Religious Liberty for Everyone
Massachusetts	a. Declaration of Christianity for Leaders b. Education tends to honor God and advantages Christianity c. Clergy part of oversight of Harvard d. Religious Exemption for Oaths	a. Duty of Everyone to Worship God b. No Mistreatment based on Religion c. Government depends on Religion d. Equal Mandatory Attendance Allowed e. Government can and should Support Religion f. Every Christian is Equal Under the Law g. No establishment of a Religious Sect in Preference to Others	Minority Amendment - Was not Sent to Congress a. Congress cannot Infringe the Rights of Conscience
New Hampshire	a. Some Senior Leaders have to be Protestant	a. Freedom of Conscience/Worship b. No Mistreatment based on Religion c. Government Security Depends on Religion d. Force Local/Private Support for Religion e. Christians Equal Under the Law f. No establishment of a Religious Sect in Preference to Others	a. Congress can make no laws touching religion b. Cannot infringe the Rights of Conscience
New Jersey	a. Oath for Leaders declares that they cannot alter any parts of 18th or 19th Sections of Constitution. (Religious sections outlined next)	a. No Mandatory Attendance b. No Mandatory Support c. No Preference of Religious Sect d. Any Protestant has Civil Rights	_____
New York	a. Religious Exemption for Oaths/Military b. Disestablished Church of England c. No Preference of Religion based on Worship or Faith d. Free Exercise of Religion e. No Clergy in Civil or Military Office	_____	a. Freedom to Exercise Religion based on Conscience b. No Preference of Religious Sect Established by Law

State	State Constitution or Equivalent	State Declaration of Rights or Equivalent	State Proposed Amendment
North Carolina	a. No Clergy in Civil Office while still holding a Pastoral Office b. Government Officials had to be Protestant c. No Establishmen of one Religious Sect in Preference to Another d. No Mandatory Attendance e. No Mandatory Support f. Freedom to Exercise Religion	a. Freedom of Conscience regarding Worship of God	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law
Pennsylvania	a. No Discrimination via Religion b. Christian Oath for Leaders c. Government shall Encourage Religion	a. Everyone has the Right to Worship God b. No Mandatory Attendance c. No Mandatory Support d. Cannot Deprive of Civil Right if the Person Believes in God e. Freedom of Conscience and Exercise is Protected	a. Federal Government cannot exercise any authority over the State Constitutions in Matters of Preserving Religious Liberty
Rhode Island	a. Freedom of Conscience b. Government Depends on Religion to Maintain Security c. Government Desires to Support Religion in Order to Maintain Security d. Free Exercise of Religion e. Disestablishment of England f. Free from Discrimination based on Membership in Church of England g. No Mistreatment based on Religion	_____	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law
South Carolina	a. Members of the State Senate must be Protestant b. No Clergy in Civil Office while still holding a Pastoral Office c. Protestantism is the Established Religion d. Churches have a Duty when Called on by Government, to Bear Witness to Christianity e. Freedom of Conscience f. No Mistreatment based of Religious Assemblies g. No Mandatory Support	_____	Article VI, Section III of Federal Constittion should read that "No <u>other</u> Religious Test shall ever be Required . . ."
Vermont	a. Government is bound by Biblical Standards of Conduct b. Acknowledges God as Permitting Government to be Created b. All Sects Equal and without Preference c. Protestant Oath for Leaders d. Religious Societies should be encouraged to instruct virtue and morality in schools and to youth	a. No Mandatory Attendance b. No Mandatory Support c. Cannot Deprive of Civil Right based on Religion d. Freedom to Exercise Religion e. Government encourages Christians to Observe Sabbath and Participate in Worship	
Virginia	a. No Clergy Allowed in State Legislature or Privy Council	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. Duty of Everyone to Practice Christian forbearance, love, charity	a. Cannot use Force or Violence to Convert People b. Free Exercise of Religion c. No Preference of Religious Sect Established by Law

CHAPTER 5 - Initial Evaluations of Potential Interpretations

Political Thought to Political Voting

Connected to the trends of political thought are likely voting trends. These are illuminated by the evidence accumulated in the consolidated table of state summaries. If people from a state thought a certain way about church-state relations there is a very reasonable assumption that they would elect like-minded people. This like mindedness is even a stronger connection when you consider that the same leaders who wrote these documents were more likely than other citizens to be eventually elected as representatives in the Federal Government. Thereby, they would have very likely cast votes based on evidence from these state documents. However, this study is not so arrogant to think of claiming to be able to determine all votes of the members of Congress or the states. Therefore, no attempt will be made to attach votes to certain or all members or all the states. The point is to display the need for a large consensus of support in the political reality of ratifying an amendment. But, what is reasonable to form are highly likely cases where generic votes could be shown to have very likely to occurred from a particular state. Remember, during the ratification of the First Amendment, only 8 votes in the Senate, 23 votes in the House of Representatives, or four votes from the states were necessary to stop ratification. In some cases, these “blocking” votes can be shown to have been likely to occur if the First Amendment was known to have certain meanings when it was being ratified. The details of these mathematics will be shown after the next section and will be calculated with the utmost care so as not make careless and inappropriate assumptions. However, the potential meanings from different scholars and organizations must be provided first in order to see if they are supported by the trends and patterns of the states.

Interpretations of the Establishment Clause

Across the volumes of commentaries written over the past half-century, the interpretations of the Establishment Clause have primarily shaken out into two distinct categories. As mentioned before, they are often referred to as “separationists” and “accommodationists.” The general differences on the interpretation of the Establishment Clause are characterized as “narrow” for accommodationists and for “broad” separationists. Accommodationists are described as “narrow” because primarily they only believe that the

Establishment Clause prevents an exclusive establishment of a national religion. Thus, no laws are permitted pertaining to that subject. The separationists are considered broad because they believe that the Establishment Clause prohibits Congress from making any laws relating to religion in any circumstance. A few examples from each group are provided below so as to allow you the ability to read their conclusions for yourself. But, first, with so many proposed amendments and state constitutional references to religion; the exact wording of the actual First Amendment may be a jumbled up in your mind. So, below is the ratified Federal Constitutional version with the Establishment Clause underlined.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Let's look briefly at some summary statements by scholars that offer separationist assessments of the original meaning of the Establishment Clause. No lengthy analysis will be offered at this point for any examples from either side. For now, just their "raw" conclusions are sufficient to be extracted.

Example 1:

Leonard Levy: *The Establishment Clause*

The phrasing was "Congress shall make no law respecting an establishment of religion nor prohibiting the free exercise thereof . . ." The meaning, I submit, was: Congress shall make no law concerning religion or abridging the free exercise thereof. . . . After the American Revolution seven of the fourteen states that comprised the Union in 1791 authorized establishments of religion by law. Not one state maintained a single or preferential establishment of religion. An establishment of religion meant to those who framed and ratified the First Amendment what it meant in those seven states, and in all seven it meant public support on a non-preferential basis that the Establishment Clause of the First Amendment sought to forbid.⁷²

Interpretation of Establishment Clause:

1. Congress can make no law concerning religion.
2. Government support to religion on a non-preferential basis is forbidden.

Example 2:

Conrad Moehlman: *The Wall of Separation between Church and State*

The Supreme Court of the United States and particularly Justice Rutledge were clearly right in adopting the "broader," the inclusive, meaning of the religious clause of the First Amendment both on Historical and on Religious grounds. The American tradition of the complete separation of church and state rests upon a solid rock foundation.⁷³

⁷² Levy, xv-xvi.

⁷³ Moehlman, 120.

Interpretation of Establishment Clause:

1. Complete separation of church and state.

Example 3:

Robert Boston: *Why the Religious Right is Wrong About Separation of Church and State*

My purpose then, is to call for a return to the bedrock principle – complete religious freedom for all through the total separation of church and state. This is my view, and I am not ashamed of it. Those who oppose separation, whose minds are closed to the value of Jefferson’s wonderful metaphor, would be well advised to stop reading here.⁷⁴

The First Amendment was carefully drafted to tell the government what it may not do in matters of religion. Today’s accommodationists, who assert that the amendment somehow grants government the right to give non-preferential aid to religion, stand on crumbling ground. The legislative history of the religion clauses proves exactly the opposite. The First Amendment is a command to government to keep its hands off religion – neither aiding nor hindering it – to the fullest extent possible.⁷⁵

Interpretation of Establishment Clause:

1. Total separation of church and state.
2. Government cannot aid or hinder religion to the fullest extent possible.

It can be seen that separationists have generally determined that the Establishment Clause has two meanings. First, that it creates a barrier between government and religion that either should not or cannot be crossed. Second, as a consequence Government cannot provide non-preferential aid to religion. As Conrad Moehlman specifically states this is a “broad” interpretation. Let’s see what the “narrow” interpretation looks like.

Example 1:

Robert Cord: *Separation of Church and State: Historical Fact and Current Fiction*

The documented public actions of the Framers of the First Amendment, including James Madison, and those of early Presidents and Congresses indicate that the constitutional doctrine of separation of Church and State to them meant that no national religion was to be instituted by the Federal Government; nor was any religion, religious sect, or religious tradition to be placed in a legally preferred position. It is not surprising then, that the non-discriminatory use by government of religious institutions – such as schools – to accomplish goals within the government’s authority was not considered by the Founding Fathers a violation of the Constitution.⁷⁶

⁷⁴ Boston, 11.

⁷⁵ Boston, 64-65.

⁷⁶ Cord, xiv.

Interpretation of Establishment Clause:

1. No national religion was to be instituted by the federal government.
2. Non-discriminatory support by government of religion was permissible.

Example: 2

Anson Stokes: *Church and State in the United States*

. . . and in the words of the First Amendment, which states that “Congress shall make no law respecting an establishment of religion . . .” These forbid a Church established by law, and thereby require the separation of Church and State. They do not prevent such informal types of co-operation between the two powers as are within the law in the interest of the public, but there can be no interlocking of institutional functions.⁷⁷

Interpretation of Establishment Clause:

1. Prohibits a legal connection.
2. Does not prevent informal co-operation.

Example: 3

Joseph Story: *Commentaries on the Constitution of the United States*

The real object of the amendment was not to countenance, much less advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government. It thus cuts off the means of religious persecution (the vice and pest of former ages), and of the subversion of the rights of conscience in matters of religion . . .⁷⁸

Interpretation of Establishment Clause:

1. Prevent a national ecclesiastical entity from being established.
2. Prevent religious persecution.

These three examples of a separationists’ view of the Establishment Clause provide the sense of “narrowness.” Separationists’ interpretations generally state that the Establishment Clause only prevents a national religion from being established and as such it does not specifically prevent all government support of religion.

Overall it seems the two groups have the following differences . . .

⁷⁷ Stokes, 27-28.

⁷⁸ Story, Joseph. *Commentaries on the Constitution of the United States*, edited by Melville M. Bigelow. Fifth ed. Vol. 2. Boston: Little, Brown, and Company, 1891, p. 632.

Table 5-1: General Interpretations of the Establishment Clause by Separationists and Accomodationists

Separationists	Accomodationists
Total Separation between Church and State - No Laws	No National Religion Declared and Legalized
Religious Support Forbidden or VERY Limited	Some Support of Religion is Permitted/Non-Preferential

The Mathematics Behind Voting

This section on the “Mathematics Behind Voting” discusses the mathematical reality of passing an amendment through both houses of Congress and being ratified by the states. Both Congress and the States had different circumstances that modify the normal calculations of two-thirds and three-fourths that respectively are required to ratify an amendment. These specific circumstances will be considered in this section so as to provide an accurate determination of the votes actually necessary to ratify an amendment.

The United States Congress – House of Representatives

The Constitution of the United States originally allocated a prescribed number of representatives to each state. These allocations were in the following manner.

Table 5-2: Constitutional Allocations, by State, for the House of Representatives

State	Representatives	State	Representatives
Connecticut	5	New York	6
Delaware	1	North Carolina	5
Georgia	3	Pennsylvania	8
Maryland	6	Rhode Island	1
Massachusetts	8	South Carolina	5
New Hampshire	3	Virginia	10
New Jersey	4	Total	65

However, Rhode Island and North Carolina did not ratify the Constitution prior to the First Amendment being sent to the states for ratification. As a consequence, they were not technically part of the new Union and accordingly were not able to send representatives to Congress. Therefore, instead of a total of 65 Representatives there were only 59. Using this modified total number of Representatives and calculating the necessary 2/3 approval mandated by the Constitution; the mathematics of ratifying an amendment are provided in the following table.

Table 5-3: Mathematics for Ratification in the House of Representatives

Total Number of Representatives	59
Necessary 2/3 Votes for Ratification	40
Necessary 1/3 to Block Ratification	21

These calculations state that for an amendment to pass in the House of Representatives it would take 40 votes to gain approval. Conversely, it would only take 21 Representatives voting against an amendment to block its ratification.

The United States Congress – U.S. Senate

The United States Senate’s allocation for representation has not changed since the original Constitution was signed. Every state has two Senators acting as their representatives. However, one significant change has occurred. At the time of ratification, Senators were chosen by the state Legislature rather than by popular vote as they are today. This procedural change to a popular vote was made with the ratification of the Seventeenth Amendment in 1913.⁷⁹ The fact that Senators were chosen by state legislatures increases the strength of state documents being indicators of potential voting trends. This notwithstanding, there would have been only 22 voting members of the U.S. Senate. With Rhode Island and North Carolina not part of the Union, only eleven states would have been represented in the Upper House. As a result, the following table outlines the necessary mathematics for ratification by the U.S. Senate for an amendment.

Table 5-4: Mathematics for Ratification in the United States Senate

Total Number of Senators	22
Necessary 2/3 Votes for Ratification	15
Necessary 1/3 to Block Ratification	8

These calculations establish that for an amendment to pass in the U.S. Senate it would take 15 votes to gain approval. Conversely, it would only take 8 Senators voting against an amendment to block its ratification.

⁷⁹ The Constitution of the United States of America Analysis and Interpretation Annotations of Cases Decided by the Supreme Court of the United States to June 29, 1992, edited by Johnny H. Killian, George A. Costello. Washington, D.C.: U.S. Government Printing Office, 1996, p.1965.

The States of the United States of America

The United States Constitution states that every state has a vote on whether or not they approve of an amendment. Further, it states that three-fourths of the states must approve an amendment before it is ratified and becomes part of the Constitution. Contrary to popular belief, there were actually fourteen, not thirteen, states in the Union when the First Amendment was considered for ratification. Vermont entered the Union after Congress has approved the Bill of Rights but before it was ratified by the states. As a consequence, Vermont had full voting privileges pertaining to amendments to the Constitution. The table below provides the mathematical calculations for ratification.

Table 5-5: Mathematics for Ratification Among the States

Total Number of States	14
Necessary 3/4 Votes for Ratification	11
Necessary 1/4 to Block Ratification	4

These calculations establish that for an amendment to be ratified by the states it would take 11 votes to gain approval. Conversely, it would only take 4 states voting against an amendment to block its ratification. The historical reality of the mathematics behind the ratification of the First Amendment plays a significant part in our calculations attempting to determine if certain interpretations of the Establishment Clause are likely to have been accepted.

Let's Take a Vote . . .

As stated earlier, Separationists and Accomodationists have four general beliefs about the Establishment Clause. On the separationist side, both aspects of their beliefs rest on a similar foundation . . . total separation in every respect. The accomodationists' two aspects do not fundamentally rest on the same foundation. Their first premise of the Establishment Clause only pertains to legalizing a national religion/church. This is fundamentally different then the second premise of government which would permit support to religion in a non-preferential manner. Therefore, in this section those three foundational points will be evaluated in the context of possible voting tallies in the Senate, House of Representatives, and among the states. The focus will be if the positions taken would likely have received enough votes to have been effectively *blocked* from ratification. If enough votes are not found likely to have blocked an amendment with a certain foundation/meaning then there is a greater possibility that it may be the accurate original meaning.

Foundation 1: Total Separation and No Support for Religion

This interpretation of the Establishment Clause faces the most significant challenge from the evidence gathered from state documents. As you recall, many states very overtly authorized many laws and provided for some sort of support for religion within their foundational documents. The table below is a summary of those various pieces that seem to run contrary to the interpretation of declaring a total separation and no support between church and state. Besides pieces of evidence, the table also provides potential/likely voting positions within the Senate, House, and the states. These assumptions are calculated with the intention of preventing as many votes as possible from potentially “blocking” an interpretation. For instance, any state, based on the evidence collected, that is assumed likely to have voted against ratification is only allowed to have a maximum of 50% or less of its representation in Congress count “solidly” against ratification. In other words, 1 out of 2 Senators would be counted or for example 4 out of 8 Representatives. This allows for the very real chance that persons who disagreed with the religious provisions in their state constitutions or felt the national level of government to be different to have been elected. Accordingly, they would have voted differently than what their state documents would indicate. Additionally, if the evidence is less/weaker in nature, potentially no Senators or only 1/3 of the representatives would be counted as likely to have voted against ratification. The ideal in this concept of potential vote counting would be to have enough specific records of all the Representatives and Senators to actually look at their writings and speeches in order to determine how they might have voted. Unfortunately, those extensive and precise records do not exist. That is why this study is resigned to base generic individual voting assumptions on majority supported documents from the states to be indicators of likely voting. This is also why every hurdle of assigning a negative vote is incorporated. Only overwhelming evidence would lead to declaring enough votes would have been cast to “block” the ratification of a certain interpretation.

Table 5-6: Potential Vote Count Against Ratifying Belief 1: “Total Separation”

Massachusetts	Potential Vote Count	Vermont	Potential Vote Count
1. Education tends to honor God and advantages Christianity 2. Clergy part of oversight of Harvard 3. Duty of Everyone to Worship God 4. Government depends on Religion 5. Equal Mandatory Attendance Allowed 6. Government can and should Support Religion	Senate Votes Against: 1 House Votes Against: 4 of 8 State Vote: Against	1. Government is bound by Biblical Standards of Conduct 2. Acknowledges God as Permitting Government to be Created 3. Protestant Oath for Leaders 4. Religious Societies should be encouraged to instruct virtue and morality in schools and to youth 5. Government encourages Christians to Observe Sabbath and Participate in Worship	Senate Votes Against: N/A House Votes Against: N/A State Vote: Against
Connecticut	Potential Vote Count	Maryland	Potential Vote Count
1. A Goal was to Convert Indians to Christianity 2. Government should govern religiously 3. Government and Churches need to Mutually Support one Another 4. Liberty is partially founded on Christian principles	Senate Votes Against: 1 House Votes Against: 2 of 5 State Vote: Against	1. Declaration of Christianity for Leaders (Constitution) 2. Duty of Everyone to Worship God 3. Everyone has a duty to worship God in their Manner 4. Government can Support Religion Equally 5. Declaration of Christianity for Leaders (Declaration)	Senate Votes Against: 1 House Votes Against: 3 of 6 State Vote: Against
New Hampshire	Potential Vote Count	South Carolina	Potential Vote Count
1. Some Senior Leaders have to be Protestant 2. Government Security Depends on Religion 3. Force Local/Private Support for Religion 4. Congress can make no laws touching Congress can make no laws touching a system of divine faith and worship	Senate Votes Against: 1 House Votes Against: 1 of 3 State Vote: Against	1. Members of the State Senate must be Protestant 2. Protestantism is the Established Religion 3. Churches have a Duty when Called on by Government, to Bear Witness to Christianity	Senate Votes Against: 1 House Votes Against: 2 of 5 State Vote: Against
Rhode Island	Potential Vote Count	Pennsylvania	Potential Vote Count
1. Government Depends on Religion to Maintain Security 2. Government Desires to Support Religion in Order to Maintain Security	Senate Votes Against: N/A House Votes Against: N/A State Vote: Against	1. Christian Oath for Leaders 2. Government shall Encourage Religion	Senate Votes Against: 1 House Votes Against: 3 of 8 State Vote: Unknown
Virginia	Potential Vote Count	Delaware	Potential Vote Count
1. Duty of Everyone to Practice Christian forbearance, love, charity	Senate Votes Against: Unknown House Votes Against: 3 of 10 State Vote: Unknown	1. Christian Oath for Leaders	Senate Votes Against: Unknown House Votes Against: Unknown State Vote: Unknown

The total votes that are considered to have been very likely cast against a “Total Separation/No Support” interpretation are as follows: 7 states, 6 Senators, and 19 Representatives. With these vote totals, initially only the states would likely have cast enough votes to have blocked ratification of the First Amendment with an understanding that it meant “no separation and no support at all” between government and religion. Further, with only four

votes needed to block ratification, and seven votes likely to have been cast, it appears that the idea that states would not have been likely to ratify such a provision is even more likely.

The States

The five New England states were evaluated to be against such an interpretation of the Establishment Clause primarily because they held a political philosophy that the success and security of free government depends on religion. Accordingly, they believed that free government needed to support an entity of such vital self-interest. This philosophy of free government's success depending on religion would not have stopped at the state level. If the federal or national government was a free one, as it was and is, then it too would have a vital interest in supporting religion. This is not in any manner arguing that these states would have fought for all the initiatives supporting religion at the state level to be introduced at the federal level. They would not have. Items like the mandatory attendance in Massachusetts, having the federal government force private support for religion as in New Hampshire, or incorporating religious oaths would not have been advocated or supported. But, to argue that states would have agreed to a total and comprehensive separation of church and state is not reasonable. Even as a general understanding, when the list of religious provisions are read for each of these states, there is an undeniable pervasive attitude that they felt religion should have a necessary role in government at all levels.

The other two non-New England states, Maryland and South Carolina, being listed as likely to be against this interpretation were substantiated by the following evidence. Maryland, apparently feeling so strongly about having religion play some sort of role in government, mandated twice that religious oaths must be taken by government officials. Further, they declared twice that it is the duty of people to worship God and further, they specifically stated that government can support religion. In South Carolina, they felt so strongly towards religion that they established the Protestant faith as the state religion. Further, the members of the state Senate were required to be Protestant and further, they allowed their legislature to call for churches to bear witness to Christianity when called upon. Again, this is not arguing that these states would have only accepted the federal government operating as they did toward religion. What is being argued is that with such a deeply rooted conviction of the benefits of religion as they relate to government it is highly improbable that these states would have agreed to an amendment forcing a total separation between the two . . . even at the national level.

Pennsylvania, Virginia, and Delaware were not listed as likely to vote against this possible meaning to the Establishment Clause. This is because the evidence was not nearly as strong as in the other states and therefore, they were not “committed” as against the would-be measure. However, this is not a statement that they would have supported the meaning, but rather it is not prudent to speculate how they may have voted on this issue. The other states not listed had either no specific counter evidence to this interpretation or had comparatively little evidence towards such a measure.

As one last note concerning states and their voting, even if three of the seven assumptions would have been incorrect, the four remaining states would have been sufficient to block this amendment. States blocking the ratification of an amendment actually did happen during the ratifying of the Bill of Rights. When the Bill of Rights was sent to the states for ratification, there were a total of twelve separate amendments. In this version, the now “First Amendment” was actually the “Third Amendment” at the time. Through the ratification process Pennsylvania and Delaware did not ratify the original first amendment and New Hampshire, New Jersey, and New York did not ratify the original second amendment that was proposed.⁸⁰ Hence, it is an historical fact that states did not ratify proposed amendments from Congress if they had disagreements or concerns. In conclusion, in light of the evidence, it seems highly probable that the states would not have ratified an amendment mandating a total separation between church and state.

The United States Senate

By the totals listed in the table, it would appear that this meaning of the Establishment Clause may have gained approval by Congress. However, that may not have actually been the case. In the Senate, for the same rationale as was articulated for the states, there likely would have been 6 “solid” votes against this amendment. There would not be 7 votes because Vermont was not a state at this time. The six votes, of course, would have been two votes shy of blocking this interpretation. However, if you consider that the evidence in five of those six states strongly shows support for religion and government, it is highly probable that at least one if not two of those remaining five Senators would have cast the last votes necessary to block the measure.⁸¹

⁸⁰ Schwartz, Bernard and Edwin D. Webb. *The Roots of the Bill of Rights*. Vol. 5. New York: Chelsea House Publishers, 1980, p. 1203.

⁸¹ Pennsylvania excluded for previously stated reasons.

If not, there still remained an additional 10 votes from DL, NJ, NY, NC, and VA. For this interpretation to pass, it would mean that not even one of these ten Senators would potentially be in favor of some government interaction with religion. Again, highly unlikely.

In total, besides the 6 “solid” votes, there then would be a total of 16 votes still available for deciding the fate of this measure. (Six plus sixteen equals the total number of twenty-two Senators that would have been present.) The remaining Senator from Pennsylvania can justly be excluded after already having one Senator from that state listed as voting against the measure. That brings the total of outstanding votes to 15 with six of those votes coming from states with strong convictions towards religion and government. Additionally, three states (DL, NC, and VA) have some evidence from their documents that incorporates some inclusion of religion. Therefore, it is assessed that it would be highly probable that two more votes out of the remaining 16; would have been cast against an amendment. Therefore, it would have been highly unlikely that the Senate would have approved an amendment mandating the total separation of government and religion.

House of Representatives

A very similar situation results in the House of Representatives. According to the table and the rationale outlined in the paragraphs on state voting, a total of 18 votes out of a possible 59 have a high probability of being cast against “total separation.” This vote total falls only 3 votes short of the 21 votes required to defeat an amendment. However, just as in the Senate, potential votes still need to be considered. A total of seven states in the table were counted as having some of their Representatives voting against this measure. Just as in the Senate, if you consider that five of those seven states (CT, MD, MA, NH, and SC) still have strong evidence towards religion; there are a total of 15 Representatives still possible from these states to vote against total separation. Therefore, it is not improbable at all three additional votes needed to block the ratification would come from this group of 15. The other two states that were assessed as part of the initial votes were Pennsylvania and Virginia. Since they have already been counted as casting votes against the measure, their remaining votes will not be allowed to contribute against the measure. Further, all of their votes have been “minority” votes representing a number that is consummate on the amount of evidence found from their state. In the case of Virginia, the 3 votes may surprise some people. However, there was a significant

movement in the state, led by Patrick Henry that would have preferred to see more religion and government interaction.⁸² These three votes represent that aspect of Virginia politics.

The four remaining states, Delaware, New Jersey, New York, and North Carolina combine for another potential 16 votes. It is possible that at least one or two Representatives, especially from Delaware or North Carolina, would likely have voted against this proposed measure. As a result, from the 15 votes remaining from states that strongly support religion and 16 votes from states that were not initially committed at all, 30 votes in total remain as potential “blockers.” In light of the evidence, it does seem highly probable that at least three or more votes from these potential 30 would have been cast against an amendment mandating the total separation of church and state. Hence, more than likely, this interpretation of the Establishment Clause would not have been passed by two-thirds of the House of Representatives.

Again, these conclusions are not based on arguing that these states would have only accepted the federal government operating in a similar manner to their state. What is being argued, is that in light of the evidence and the context of such a small number of votes needed to block an amendment, it is highly probable that a separationist interpretation would not have been ratified. The votes do not seem to be present. To provide additional weight to this argument, remember the two quotes from Representative James Madison at two different points in the ratification process from chapter 2.

In a letter written on June 11, 1789 a few days after introducing his proposed amendments, Madison writes to Pendleton:

Mr. Page tells me he has forwarded to you a copy of the amendments lately submitted to the H of Reps. They are restrained to the points on which least difficulty was apprehended. Nothing of a controvertible nature ought to be hazarded by those who are sincere in wishing for the approbation of 2/3 of each House, and 3/4 of the State Legislatures.⁸³

A second letter written to Randolph on August 21, 1789, only three days before the House approved Bill of Rights was sent to the Senate for their consideration Madison pens:

My Dear Friend,

For a week past the subject of amendts. has exclusively occupied the H. of Reps. Its progress has been exceedingly wearisome not only on account of the diversity of opinions that was to be apprehended, but of the apparent views of some to defeat by delaying a plan short of their wishes, but likely to satisfy a great part of their companions in opposition throughout the Union. It has been absolutely necessary in order to effect anything, to abbreviate debate, and exclude every

⁸² Levy, 54.

⁸³ Swartz, 1048.

proposition of a doubtful & unimportant nature. . . . Two or three contentious additions would even now prostrate the whole project.⁸⁴

In these two letters, Madison emphasizes that including anything controversial or of a doubtful nature would not be ratified. Something, such as an amendment mandating the total separation of church and state, that has just been shown very likely to have been controversial, does not stand up under the weight of the political reality of the ratification process.

Separationists, however, would be correct in pointing out that seven states did specifically make provisions against the mandatory support of religion. These potentially could be strong mitigating pieces of evidence towards an acceptance of their interpretation. Since this evidence would also pertain to the accommodationists' pretence that some support would be permitted; let's look at this evidence in the next section.

Foundation 2: Allowing Government to Support Religion

Seven states specifically included references in their governing documents prohibiting the mandatory support to religion, in some manner. This then could potentially mean that enough votes could be cast to block the ratification of the accommodationists' view that some support from government was permissible. However, among those seven states, some mitigating evidence does appear that would actually indicate that some support would actually be permitted. The table below outlines the states' listing no mandatory support and potential contrasting pieces of evidence within those same states.

⁸⁴ Swartz, 1138.

Table 5-7: Potential Contrasting Evidence in States Mandating “No Mandatory Support”

State	Potential Contrasting Evidence
Delaware	Christian Oath for Leaders
Georgia	None
New Jersey	None
North Carolina	Government Officials had to be Protestant
Pennsylvania	1. Christian Oath for Leaders 2. Government shall Encourage Religion
South Carolina	1. Members of the State Senate must be Protestant 2. Protestantism is the Established Religion 3. Churches have a Duty when Called on by Government, to Bear Witness to Christianity
Vermont	1. Protestant Oath for Leaders 2. Religious Societies should be encouraged to instruct virtue and morality in schools and to youth 3. Government encourages Christians to Observe Sabbath and Participate in Worship

Out of the seven states, only two have no potential specifically stated conflicts, Georgia and New Jersey. Pennsylvania and Vermont have specific instances where their governing documents specifically authorize the government to support or encourage religion in some manner. Consequently, they can not be counted as being against an accommodationist view or in favor of a separationist view. South Carolina has a formally established religion and consequently would support religion. That leaves only North Carolina and Delaware as potential advocates for no support to religion. However, both of those states did specify religious oaths for government officials. This would be evidence for at least minimal support for religion. Therefore, based on the mitigating evidence, that leaves only Georgia and New Jersey as the only states that could potentially block an accommodationist view point or support a separationist interpretation fully. Consequently, there is not a strong enough evidence base for a highly probable blocking of the accommodationists interpretation. In contrast, the evidence in many states in the previous section had multiple pieces of evidence indicating a contradiction of the

interpretation. Therefore, it is still possible that this accommodationists interpretation still could be part of the original meaning.

Foundation 3: No National Religion Declared or Legalized

This foundational premise, as accommodationists would state, relates to prohibiting any denomination or religion from being established in a similar manner to that of the Church of England in Great Britain. Potentially, the evidence of having several states with established religions/churches in place during ratification would be evidence against this possible interpretation. However, in light of well over four states not having an established religion in their own state; there is plenty of ability for these states to block a nationalized religion/church.

One trend that is very evident from the consolidated summary of all the states, is the great volume of statements made preventing one denomination to be placed in preference to another. In fact, eight references from seven states are made declaring no preference is to be given to any denomination. Further, four of those instances are specified in proposed amendments to the Federal Constitution. Additionally, in light of the fact that the First Amendment only references a prohibition against Congress; states with an established religion/church would not be overly concerned that it would effect the current establishment in their state. Thus, they most likely would not strongly oppose it. Therefore, as a result, it appears that the accommodationist interpretation of a prohibition of establishing a national religion/church very likely would not have met with enough opposition to have been blocked during the ratification process.

CHAPTER 6 - A Close Look at the Establishment Clause

Now that the much of the “raw data” has been collected and some general conclusions have been made; it’s time to “roll up your sleeves” and dive into the Establishment Clause itself. The Clause, and hence the chapter, will be divided into three sections for analysis.

Section 1: “Congress shall make no law . . .”

Section 2: “. . . an establishment of religion.”

Section 3: “. . . respecting . . .”

The reason that the parts of the Clause are taken out of order is because the word “respecting” refers to “an establishment of religion.” Therefore, the meaning of “an establishment of religion” must be determined before understanding what the ramifications are of the word “respecting.”

Section 1: “Congress shall make no law . . .”

Among authors, scholars, and lawyers there is not much debate over this phrase of the Establishment Clause. There is no word play used by one side or the other. There are no hidden meanings based on differences of word definitions from the 1700s to the 2000s. Everyone agrees that it means what it literally says . . . Congress is not allowed to pass any laws . . . in the area of whatever the disputed sections of the Clause are determined to mean.

The last chapter ended with articulating, in practical terms, the political reality that surrounded the First Amendment. While these first five words are not in contention by scholars today, they do illustrate once again the significance of political reality. Below is a table of all of the drafts of the First Amendment and/or Establishment Clause that Congress considered in 1789. Contained in this table is the evidence of the existing political reality that influenced the House of Representatives and the Senate to use the word “Congress” in its final version of the First Amendment. When you look down over this list of drafts, you will notice that ten out of the fourteen *different* versions include some form of the word “establish” in connection with

religion.⁸⁵ As you read the drafts, there is a parallel pattern of what is always, except once, included when a form of the word “establish” is inserted.

Table 6-1: All the Versions of the First Amendment Considered by Congress⁸⁶

House of Representative's Versions on the 1st Amendment	Notes on Version	Senate's Versions of the First Amendment	Notes on Version
The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall full and equal rights of conscience be in any manner, or on any pretext infringed.	<u>Author:</u> Madison (VA) <u>Date:</u> June 8, 1789 <u>Details:</u> Not voted on but Referred to “Committee of Eleven”	Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> House of Reps. <u>Date:</u> August 25, 1789 <u>Details:</u> Received from the Lower House for consideration
The people have certain rights which are retained by them when they enter society, Such are the rights of conscience in matters of religion; . . . of these rights therefore they shall not be deprived by the government of the united states	<u>Author:</u> Sherman (CT) <u>Date:</u> July 21-28, 1789 <u>Details:</u> No Vote . . . Not accepted by "Comitte of Eleven" - 6 other rights were included besides religion	Congress shall make no law establishing One Religious Sect or Society in preference to others, nor shall the rights of Conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost First Vote; Won Vote on Re-Consideration
No religion shall be established by law, nor shall the equal rights of conscience be infringed.	<u>Author:</u> Comm. of Eleven <u>Date:</u> July 28, 1789 <u>Details:</u> Final Report to Full House by Comm. Of Eleven	Motion to drop the entire amendment from considoration.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote
No <u>national</u> religion shall be established by law, nor shall the equal rights of conscience be infringed.	<u>Author:</u> Madison (VA) <u>Date:</u> August 15, 1789 <u>Details:</u> V. 3 was Challenged in Debate. Madison made a motion to add "national" but later withdrew the motion	Congress shall not make any law infringing the rights of conscience, or establishing any Religious Sect or Society.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote
That Congress shall make no laws touching religion, or infringing the rights of conscience.	<u>Author:</u> Livermore (NH) <u>Date:</u> August 15, 1789 <u>Details:</u> Won Vote 31-20; Also exact wording as NH's proposed amendment	Congress shall make no law establishing any particular denomination of religion in preference to another or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote
No state shall infringe the equal rights of conscience, no the freedom of speech or of the press, nor of the right to trial by jury in criminal cases.	<u>Author:</u> Unknown <u>Date:</u> August 17, 1789 <u>Details:</u> Lost Vote	Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> House of Reps. <u>Date:</u> September 3, 1789 <u>Details:</u> Senate Re-Considered Original House Version; Lost Vote
The equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any state.	<u>Author:</u> Livermore (NH) <u>Date:</u> August 17, 1789 <u>Details:</u> Won Vote; Just inverted V.6.	Congress shall make no law establishing Religion, or prohibiting the free exercise thereof.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Struck out last phrase of House Version; Won Vote
Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.	<u>Author:</u> Ames (MA) <u>Date:</u> August 20, 1789 <u>Details:</u> Won Vote	Congress shall make no law establishing article of faith or a mode of worship, or prohibiting the free exercise of Religion	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Won Vote; Sent to House Of Reps
Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> August 21, 1789 <u>Details:</u> Won Vote; Sent to Senate on the 24th or 25th		

⁸⁵ House Version 9 and Senate Versions 1 and 6 are all the same version; just considered at different times or by a different part of Congress. Versions with “establish” in the text . . . House Versions: 1, 3, 4, 8, & 9 and Senate Versions: 2, 4, 5, 7, 8,

As you have likely determined, a reference to the federal government is included in nine out of ten drafts including a form of the word “establish.” This reference comes twice in the form of the word “national” and seven times with the word “Congress.” The one exception is House Version 3 which will be looked at extensively later in this chapter, for separate reasons. For now, let it suffice to state that this draft, without a reference to the Federal Government, did not last but for only a short time before it was dismissed and replaced on the first day of debate. Further, Madison in those debates made a motion to include the word “national” to more specifically point to the intended meaning.⁸⁷

This link between the prohibition of establishing religion and the federal government is due to the political realities of the day. Whether or not the Establishment Clause had authority over the States or just the Federal Government would have been of great concern to many Congressmen and several states in particular. If the restrictions of establishing religion would apply at the state level, it would have consequently banned the existing religious establishments in six different states.⁸⁸ If it referenced the federal level, then those establishments would be safe from the prohibition or being trumped by a potential national establishment. Again, this is where political reality strikes. Even if somehow Congress would have passed an amendment to be sent to the states for ratification that prohibited states from having established religions it is virtually impossible to conceive that it would have been ratified. Remember, all it would take is for four of those six states to disapprove of the amendment to completely block its ratification. But, Congress understood these realities and worked within their limitations. Accordingly, even if they had wanted to form an amendment banning state establishments, which no evidence suggests that they would have, it is extremely improbable that they would have taken the effort of attempting such an apparently futile measure.

⁸⁶ House versions 1-5, 8-9: Cogan, 1-3. House Versions 6-7: Kurland, 93-94. Senate Versions: Cogan, 3-5.

⁸⁷ Annals of the House of Representatives. "Document 53: House of Representatives, Amendments to the Constitution." University of Chicago. http://press-pubs.uchicago.edu.er.lib.k-state.edu/founders/documents/amendI_religions53.html (accessed April 9, 2010).

⁸⁸ MA, NH, CT, MD, SC, GA

Pritchett, C. Herman. *The American Constitution*. Third ed. New York: McGraw-Hill Book Company, 1977, p. 401.

To augment this point of state versus federal level, lets quickly look at House Versions 6 and 7. These two versions are the only drafts to include a specific reference that the amendment would apply to the states. Notice what is and is not included in the text. There is no reference to establishing religion, but only the religious freedom of conscience is included. Further, version 7, which is just an inverted version 6 actually received enough votes in the House to pass. This successful draft applying to the states is most likely another manifestation of political reality. States would more than likely not have raised a great deal of opposition to an amendment prohibiting states from violating the freedom of conscience. If you remember the consolidated summary of state documents, eight states specifically guaranteed the freedom of conscience in some manner. Additionally, eight states also specifically guaranteed the free exercise of religion. Out of the eight states in either category, three were different. In other words, five states had both provisions and three states in each group of eight only had one provision. The table below illustrates this concept in more concrete terms.

Table 6-2: States Guaranteeing Freedom of Conscience, Exercise, or Both

States with Both Freedoms					
Freedom of Conscience	DL	NY	NC	PA	RI
Freedom to Exercise Religion	DL	NY	NC	PA	RI
States with One Freedom					
Freedom of Conscience	MA	NH	SC		
Freedom to Exercise Religion	GA	VT	VA		

Freedom of conscience means that people have the freedom to “let their conscience be there guide” when it comes to religion. In other words, it is more of a “mental” freedom. The freedom to exercise religion is focused more on the freedom of *acting* on those convictions of conscience. In practical terms, it protects different modes of worshiping God or actions that come from interpreting His commands. As an example, you have seen several exemptions for Quakers regarding affirming rather than swearing to an oath. This would be a tangible example of the protection of exercising religious beliefs. Consequently, there is not a great deal of difference between the two protections. It is the difference between being allowed to think freely and act freely. Although, there is some difference manifested between the two in the various drafts outlined above and within state documents. This apparent difference may possibly have been individual wording preference, nuances of word usage, or the desire to be expressly clear in those states that provided both protections.

Now, back to House Versions 6 and 7 . . . the only two drafts to have specifically applied to the states. They include the language of ensuring that every state cannot infringe the freedom of conscience. Eight states already have the guarantee either in place or proposed by an amendment already. Three different states include the freedom to exercise religion among their specified protections. It would be very conceivable that those three states would not object enough, to such a close meaning and intent, that they would reject an amendment all together. In other words, those three states mostly likely would not have blocked the ratification based on the difference between the words conscience and exercise. Therefore, it is highly probable that if “push came to shove” in voting for ratification that 11 out of 14 states would not have blocked the ratification. Why would they? They either already had protections in place for that freedom or they had protections for a freedom inherently similar. Remember, 11 votes is the minimum number needed for states to ratify an amendment.

Some of you may be saying, “But the final version does not even contain the reference to conscience.” That is correct. However, the final version does include the freedom to exercise religion. Since the freedom to exercise religion had the exact same support – eight states already having the freedom with three different states with conscience – the political reality argument still stands. In fact, it is actually strengthened because the concept of freedom to exercise religion was actually ratified. The political reality actually played out with a slightly different state count, but it was *ratified*. The point here is to demonstrate again that the ideas that were presented, debated, and subsequently attempted to be ratified had to have a legitimate chance to survive in political reality. The First Congress was too busy setting up basically an entirely new government. They did not have the luxury of large amounts of time to consider amendments that would not have a conceivable opportunity of ratification.

Section 2: .” . . an establishment of religion.”

Why the Bill of Rights was Created

During and after the ratification of the Federal Constitution, there was still a significant segment of the population that was extremely skeptical of and in some cases in open opposition toward the new government. Most of these concerns revolved around protections and guarantees of rights and liberties. North Carolina and Rhode Island had yet to even ratify the constitution. Most of this opposition and non-ratification by two states was in no small part due to a lack of a

Bill of Rights. Eventually this feeling of opposition grew size and voice that if left unchecked could potentially undermine the legitimacy of the newly ratified Constitution. The following passages are from letters that identify this potential threat to the new government. In November of 1788, Thomas Jefferson wrote to George Washington:

Sir,

. . . It is true that the minorities in most the accepting states have been very respectable, so much so as to render it prudent, were it not otherwise reasonable, to make some sacrifices to them. I am in hopes that the annexation of a bill of rights to the constitution will alone draw over so great a proportion of the minorities, as to leave little danger in the opposition of the residue; and that this annexation may be made by Congress and the assemblies, without call for a convention which might endanger the most valuable parts of the system.⁸⁹

In this letter, Jefferson states a hope that with a formulation and ratification of a bill of rights most of the opposition to the US Constitution will be satisfied. Accordingly, the attitude of the nation will then become overwhelmingly in support of the new government. What he expressly wants to avoid is another convention. Why should he wish to avoid another convention?

Representative Richard Lee of Virginia shared his reasons in a letter to then member of the Virginia House of Delegates and future US Representative, Leven Powell on March 29, 1789.

There will be little doubt that all the amendments tending to the greater security of civil Liberty will be obtained. The Voice of Congress is almost unanimous against a second convention, as leading directly to anarchy & the most fatal discord. From the moderation and wisdom which center in this body from every part of America, IU have no doubt that the most proper, and happy measures will be pursued, as well to conciliate the affections, as to promote the peace and prosperity of the People of U. States. All reasonable & proper amendments will be obtained, those tending to sap the foundations of United government will be discarded.⁹⁰

Representative Lee describes a very somber picture of the future of the United States if Congress did not acknowledge the growing opposition to the federal government. More specifically, he states that Congress needs to take the action of initiating amendments before a second convention occurs. However, Congress was not expedient in considering amendments and the pressure was beginning to boil over in May of 1789. On the 5th of May and pursuant to the provisions of the Constitution, the Virginia Legislature officially sent a request to Congress for a convention to be held by the states to discuss potential amendments.⁹¹ On the following day, the

⁸⁹ Schwartz, vol. 5, 991.

⁹⁰ *Creating the Bill of Rights: The Documentary Record from the First Federal Congress*, edited by Helen Veit, Kenneth Bowling and Charlene Bickford. London: Johns Hopkins University Press, 1991, p. 225.

⁹¹ Veit, 235.

New York state legislature also proposed that a convention be held by the states.⁹² Although pure conjecture, it is reasonable to assume then Representative James Madison (VA) was aware of these actions to be taken by Virginia and New York. Accordingly, in perhaps an attempt to buy some time, he declared on May 4th (the day prior to Virginia's request) his intent to propose amendments to the Constitution by the end of the month."⁹³ However, due to some parliamentary maneuvering, it actually was not until June 8th that Madison officially presented his proposed amendments.

The historical circumstances leading up to the Bill of Rights illustrates that it was forged as a set of solutions or provisions that addressed the mounting criticism of the Constitutions and new Government. If the Bill of Rights did serve as a solution to perceived flaws in the Constitution, then it would follow that the First Amendment and the Establishment Clause should have been in response to a particular issue or issues. Further, if that problem or contention could be identified, it would provide great insight into the "solution" the Establishment Clause provided. Accordingly, identifying the criticism that the Establishment Clause was designed to satisfy would significant lead to understanding the intent with which it was written.

As an example, the United States Army Field Artillery School at Fort Sill, Oklahoma purposefully teaches its students not to aim directly at an intended target but actually to the left of the desired target. On the surface this instruction seems to be confusing and perhaps misleading. Some people would possibly think the rationale is that the target might move. Accordingly, you would have a 50-50 chance of a target moving to either the left or the right and possibly the choice was made to always choose left. Others might say it is because of calculating for the wind blowing. Or perhaps American artillery shells are manufactured in such a manner that most of the detonation power explodes towards the right of point of detonation. As a result, you would want the round to land slightly to the left of the target. Unfortunately, none of these possible rationales are the issue that aiming to the left of a target was designed to solve. The reason they teach gunnery crews to aim slightly to the left is because artillery howitzers have a rifled barrel. This rifled barrel increases the range of artillery rounds and causes a round to rotate

⁹² Veit, 237.

⁹³ Schwartz, vol. 5, 1012.

clockwise . . . or in other terms, spin to the right. Given a target far enough away from the artillery, the spin will cause the round to land off target to the right. Just as if you would give a slight spin to a bowling ball, it will veer off in the direction of the spin. Therefore, to correct the problem of missing targets, the Artillery School teaches its gunners to aim to the left of a target. The further away a target is the more left you aim. Conversely the closer the target, the less left you aim.

In this example, it was not clear what the purpose was or what it exactly meant to aim left of a target. However, once you found out the specific problem it was solving it became much clearer on how and why it is necessary to apply the stipulation. Gaining insight to the Establishment Clause is similar. If the problem it was created to solve can be determined, then its purpose and meaning may be illuminated as well. The best source to reveal these problems while avoiding potential weaker evidence as mentioned in chapters two and three, the best method of selection of sources is to align with former President Madison's guidance from Chapter 2. This time instead of focusing on his warning of changing the government the focus will be on how he recommends to determine Constitutional original intent.

I cannot but highly approve the industry with which you have searched for a key to the sense of the Constitution, where alone the true one can be found; in the proceedings of the Convention, the contemporary expositions, and above all in the ratifying Conventions of the States. If the instrument be interpreted by criticisms which lose sight of the intention of the parties to it, in the fascinating pursuit of objects of public advantage or conveniency, the purest motives can be no security against innovations materially changing the features of the Government.

– James Madison to Andrew Stephenson, March 25, 1826⁹⁴

In this letter, former President Madison states that the Constitution should be interpreted in the context of the records of the convention, contemporary expositions, and most all the state ratifying conventions. While these are specific to the main body of the Constitution, the final recommendation can be utilized to great benefit for the Bill of Rights. Within the course of the debates in the state conventions they not only discussed meanings and merits of the document, but they also articulated concerns and flaws. Analyzing the religious concerns articulated in the state ratifying conventions will provide the best opportunity to illuminate the specific problems or flaws the First Amendment and the Establishment Clause were crafted to alleviate.

⁹⁴ Farrand, vol. III, 472.

Illuminating the Problem: The State Ratifying Conventions

The state conventions are a tremendous resource to determine the various concerns people had about the Federal Constitution. Unfortunately, state records are not always complete and in some cases they are nonexistent. However, in other cases, detailed records are available. The following table illustrates the various levels of completeness of records, the amount pertaining to religion, and some overview of their contents as compiled by Jonathan Elliot in his multivolume work, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*.

Table 6-3: Summary of Evidence from State Ratifying Conventions⁹⁵

State	Summary	State	Summary
Connecticut	Only Oliver Wolcott speaks extensively on religion.	New York	Many topics were debated but not religion.
Delaware	No records.	North Carolina	Relatively lively debate concerning religion took place.
Georgia	No records.	Pennsylvania	Only James Wilson speaks on religion.
Maryland	Maryland's records are limited to the recording of procedural occurrences.	Rhode Island	No records.
Massachusetts	Relatively lively debate concerning religion took place but almost solely focused on religious test section.	South Carolina	No substantial references to religious freedoms.
New Hampshire	Only one speech recorded on taxes	Vermont	Vermont Not a State Yet
New Jersey	No records.	Virginia	Relatively lively debate concerning religion took place.

As an additional general note, most of these discussions were primarily about religious tests for public office, due to the fact of Article VI, Section III of the Constitution specifically prohibits them. Of course, since it is already a stipulation written into the Constitution it would be

⁹⁵ Elliot, Jonathan. *Elliot's Debates*. 2nd ed. Vol. 2. Philadelphia: J.B. Lippincott Company, 1836.

———. *Elliot's Debates*. 2nd ed. Vol. 3. Philadelphia: J.B. Lippincott Company, 1836.

———. *Elliot's Debates*. 2nd ed. Vol. 4. Philadelphia: J.B. Lippincott Company, 1836.

———. *Elliot's Debates*. 2nd ed. Vol. 5. Philadelphia: J.B. Lippincott Company, 1836.

———. *Elliot Debates*. 2nd ed. Vol. 1. Philadelphia: J.B. Lippincott Company, 1831.

discussed the most. Therefore, the parts of the debates focusing purely on that issue will not be discussed here at any length as those issues were of a different nature than what the Establishment Clause was designed to address. Further, as the above table indicates that due to either the lack of records or the nature of the records that have been preserved, only pertinent excerpts of the debates in Connecticut, Massachusetts, North Carolina, Pennsylvania, and Virginia will be analyzed. The purpose of these excerpts is not to weigh the merits of the arguments presented but rather to extract the actual concerns that were being expressed. It is the concerns that will provide insight into our final analysis. These concerns come in two forms. One is of a person voicing the concern themselves. The other form is members of the conventions who do not agree with the concern, but attempt to nullify the concern; as would be expected in a debate. Through supporters of the Constitution addressing issues of a religious nature that are not inherently included in the Constitution, it reveals an opponent's criticism or flaws they were levying against the document. As a closing note, similar to previous chapters, the more relevant passages of text will be underlined for subsequent analysis. However, unlike Chapter 4 no summaries will be offered but after all references have been analyzed an overall five state summary and pattern analysis will be presented.

Connecticut

Oliver Wolcott spoke several times at Connecticut's ratifying convention. His last speech that was recorded spoke of religion and some concerns people had raised concerning the proposed Federal Constitution. The following is a paragraph excerpt from that speech.

I do not see the necessity of such a test as some gentlemen wish for. The Constitution enjoins an oath upon all the officers of the United States. This is a direct appeal to that God who is the avenger of perjury. Such an appeal to him is a full acknowledgment of his being and providence. An acknowledgment of these great truths is all that the gentleman contends for. For myself, I should be content either with or without that clause in the Constitution which excludes test laws. Knowledge and liberty are so prevalent in this country, that I do not believe that the United States would ever be disposed to establish one religious sect, and lay all others under legal disabilities. But as we know not what may take place hereafter, and any such test would be exceedingly injurious to the rights of free citizens, I cannot think it altogether superfluous to have added a clause, which secures us from the possibility of such oppression. I shall only add, that I give my assent to this Constitution, and am happy to see the states in a fair way to adopt a Constitution which will protect their rights and promote their welfare.⁹⁶

⁹⁶ Elliot, Jonathan. *Elliot's Debates*. 2nd ed. Vol. 2. Philadelphia: J.B. Lippincott Company, 1836, 202.

In this paragraph, Wolcott states a disbelief that the United States would ever establish one religious denomination in preference to all others because of its religious diversity. However, he apparently recognizes that it is a concern people have voiced; otherwise, he would not have addressed the issue. Further, he also stated that, “I cannot think it altogether superfluous to have added a clause, which secures us from the possibility of such oppression.” Here Wolcott recognizes that to alleviate such concerns a clause added to the Constitution may be appropriate and he identifies no harm to be foreseen to address such a concern.

Concern:

1. It was possible for one religious denomination to be established in preference over other denominations.

Solution:

1. Add a clause to the Constitution explicitly preventing an establishment.

Massachusetts

Massachusetts records do present a serious debate on religion. Most of it, however, is limited primarily to the merits of religious oaths or tests. For this study’s purposes, there is one speech by Rev. Mr. Backus that illuminates a significant rationale behind why some citizens were concerned about religious tests. It was not necessarily the religious test itself but what potential problem they wanted protections against.

Some serious minds discover a concern lest, if all religious tests should be excluded, the Congress here after establish Popery, or some other tyrannical way of worship. But it is most certain that no such way of worship can be established without any religious test.⁹⁷

The Rev. Mr. Backus’ statement references people’s concerns that “Popery [Catholicism], or some other tyrannical way of worship” would be established without the having the protections of a religious test. Members of the convention evidently wanted either a change to the constitution to allow religious tests or to provide another means of protection from a specific method of worship from potentially being established.

Concern:

⁹⁷ Elliot, vol. 2, 149.

1. Congress could establish Popery or another Religion

North Carolina

North Carolina had much more debate on the concerns of religious freedom outside the confines of religious tests debate. The first several excerpts come from a speech by Mr. Henry Abbot.

Some are afraid, Mr. Chairman, that should the Constitution be received, they would be deprived of the privilege of worshipping God according to their consciences, which would be taking from them a benefit they enjoy under the present constitution.⁹⁸

In this section, Mr. Abbot expresses the concern that the Federal Constitution may allow for the government to deprive the people of their right to Freedom of Conscience. Of course this would be because no express prohibition was included. The next excerpt also references Freedom of Conscience but offers a different rationale.

It is feared, by some people, that, by the power of making treaties, they might make a treaty engaging with foreign powers to adopt the Roman Catholic religion in the United States, which would prevent the people from worshipping God according to their own consciences.⁹⁹

In this portion of the speech, Mr. Abbot emphasizes that freedom of conscience is not expressly protected from a potential national religion being created via a treaty provision. Implied in this rationale is the understanding that a this type of arrangement would inherently mean preferential treatment of Catholicism at the expense of all other religious denominations. Hence, freedom of conscience would be denied through preference of a specific sect.

Concerns:

1. Catholicism may be established as a national religion via a treaty and consequently the freedom of conscience would be denied.

Mr. Iredell spoke after Mr. Abbot in defense of the Constitution and the concerns voiced in the previous excerpts. Again, this debate is not presented to decide the better argument, but to further expand the understanding of specific concerns about protecting religious freedom.

They [Congress] certainly have no authority to interfere in the establishment of any religion whatsoever; and I am astonished that any gentlemen should conceive they have. Is there any

⁹⁸ Elliot, Jonathan. *Elliot's Debates*. 2nd ed. Vol. 4. Philadelphia: J.B. Lippincott Company, 1836, 191.

⁹⁹ Elliot, vol. 2, 192.

powers given to Congress in matters of religion? Can they pass a single act to impair our religious liberties? If they could, it would be a just cause of alarm. If they could, sir, no man would have more honor against it than myself. Happily no sect here is superior to another. As long as this is the case we shall be free from those persecutions and distractions with which other countries have been torn. If any future Congress should pass an act which they are not authorized to pass, by the Constitution, and which people would not obey. Everyone would ask, “Who authorized this government to pass such an act? It is not warranted by the Constitution, and is barefaced usurpation.” The power to make treaties can never be supposed to include the right to establish a foreign religion among ourselves, though it might authorize a toleration of others.¹⁰⁰

In this excerpt from his speech, Mr. Iredell references in the very beginning that Congress has no express powers “to interfere in the establishment of religion.” Further, in the last highlighted portion he addresses concerns of establishing a foreign religion by treaty. Through these two instances, he validates the above extracted concern Mr. Abbot expressed. However, what may prove to be more critical is contained in the middle underlined section that describes the details of an established religion. It states that, “Happily no sect here [United States] is superior to another.” This reference provides insight that an establishment of religion in this instance refers to one sect by law in being in preference to another.

Concern:

1. Congress, in the future, can potentially establish a sect in preference to others.
2. Treaties may be a means of establishing one sect in preference to others.

After providing a lengthy argument, which will not be presented here but only in the appendix, Governor Johnston offered this summation sentence on July 30, 1788.

I hope therefore, that gentlemen will see there is no cause of fear that any one religion should be exclusively established.¹⁰¹

This sentence clearly states that a fear existed that one religion may be exclusively established.

Concern:

1. It is possible that one religion can be exclusively established.

¹⁰⁰ Elliot, vol. 2, 194.

¹⁰¹ Elliot, vol. 2, 199.

On the same day, Mr. Spencer had the following to say concerning rights and religion. This excerpt is not a verbatim recording of what Mr. Spencer said. Rather, at times the records only offer a summation of someone's speech.

Mr. Spencer was an advocate for securing every unalienable right, and that of worshipping God according to the dictates of conscience in particular. He therefore thought that no one particular religion should be established. Religious tests, said he, have been the foundation of persecutions in all countries.¹⁰²

Mr. Spencer, of course, vocalized that no one particular religion should be established because he considered it a violation of the unalienable right of worshipping God freely.

Concern:

1. No one religion should be established . . . it would violate the freedom of conscience.

The last speech of consequence expressing religious concerns about the proposed constitution was given still during the same day as the last two speeches, but was given by a Mr. Spaight.

As to the subject of religion, I thought what had been said would fully satisfy that gentleman and every other. No power is given to the general government to interfere with it at all. Any act of Congress on this subject would be usurpation.

No sect is preferred to another. Everyman has a right to worship the Supreme Being in the manner he thinks proper. No test is required. All men of equal capacity and integrity, are equally eligible to offices. Temporal violence might make mankind wicked, but never religious. A test would enable the prevailing sect to persecute the rest.¹⁰³

Mr. Spaight specifically addresses three potential concerns about religious freedom. No sect is preferred to another, everyone would be allowed the freedom of conscience, and no discrimination by a dominate sect would be permitted under the Constitution. Thus, he likely addressed three concerns that members of the convention had used to argue against the Constitution.

Concerns:

1. No preference of one sect over another prohibited.
2. Freedom of conscience is not guaranteed.

¹⁰² Elliot, vol. 2, 200.

¹⁰³ Elliot, vol. 2, 208.

Pennsylvania

The summary table above stated that Mr. James Wilson was the only member of the convention in Pennsylvania to speak about religion. The following is an excerpt from one of his speeches.

In the third place, we are told that there is no security for the rights of conscience. I ask the honorable gentleman, what part of this system puts it in the power of Congress to attack those rights? When there is no power to attack, it is idle to prepare the means of defence.¹⁰⁴

This excerpt illustrates apparent concerns in Pennsylvania about the rights of conscience.

Concern:

1. The Constitution does not specifically prohibit the government from infringing the freedom of conscience.

Virginia

From the Virginia ratifying convention three speeches stand out as illustrating most clearly the religious concerns of citizens about the Constitution. Two of these speeches are from James Madison and one is from Governor Randolph. The orators are supporters of the Constitution and consequently are attempting to alleviate the concerns of the opposition. The first speech is from Governor Randolph given on June 10th, 1788. Below are two excerpts from that speech. The second excerpt has approximately half a half paragraph between itself and the first excerpt. The omitted section pertains to the power of Congress.

Freedom of religion is said to be in danger. I will certainly say, I once thought that it was, and felt great repugnance to the Constitution for that reason. I am willing to acknowledge my apprehensions removed; and I will inform you by what process of reasoning I did remove them. . .

. . . . Although officers, &c, are to swear that they will support this constitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing. A man of ability and character, of any sect whatever, may be admitted to any office or public trust under the United States. I am a friend to many sects, because they keep one another in order. How many different sects are we composed of throughout the United States! How many different sects will be in Congress! We cannot enumerate the sects that may be in Congress! And there are now so many in the United States, that they will prevent the establishment of any one sect, in prejudice to the rest, and will forever opposed all attempts to infringe religious liberty.¹⁰⁵

¹⁰⁴ Elliot, vol. 2, 455.

¹⁰⁵ Elliot, Jonathan. *Elliot's Debates*. 2nd ed. Vol. 3. Philadelphia: J.B. Lippincott Company, 1836, 204.

In these passages, Gov. Randolph begins by stating that some people are arguing that the freedom of religion is in danger if the constitution were to be adopted. That is a very general statement, but he adds specifics in the second excerpt. Here he builds an argument focused on dispelling concerns about one religious “sect being established in prejudice to the rest.” Gov Randolph states that the oath of office and the existence of multiple religious sects in the United States should be enough protection from this preferential establishment and thus keep all sects on equal footing.

Concern:

1. Religious freedom in danger . . . specifically from one “sect being established in prejudice to the rest.”

The next excerpt is from a speech by James Madison given on the 12th of June 1788.

The honorable member has introduced the subject of religion. Religion is not guarded; there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state exempt the people from paying for the support of one particular sect, is such a sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects which pervades America, and which is the best and only security for religious liberty in any society; for where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment. I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular state. A particular state might concur in one religious project. But, the United States abound in such a variety of sects, that it is a strong security against religious persecution; and it is sufficient to authorize a conclusion, that no one sect will ever be able to outnumber or depress the rest.¹⁰⁶

Madison refers to one sect gaining preference over other sects multiple times in this passage. This confirms that a serious concern existed in Virginia that one sect might gain preference over other denominations. Otherwise, he would not have needed to go to such lengths to alleviate the concern. Further, Madison references the more specific fear within the larger concept is that without a bill of rights expressly prohibiting it; people thought their may exist means that the federal government could force citizens to *support* “a sect exclusively established by law.”

¹⁰⁶ Elliot, vol. 3, 330.

Concerns:

1. Constitution did not expressly prevent one sect from being established by law.
2. People may be forced to support an established religion.

Another speech by James Madison, given on the 16th of June 1788 included the following passage.

I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude that uniformity of government will produce that of religion. The subject is, for the honor of America, perfectly free and unshackled. The government had no jurisdiction over it; the least reflection will convince us there is no danger to be feared on this ground.¹⁰⁷

This excerpt points to members of the convention expressing fears that a “uniformity of religion” would be permissible under the original Constitution. Of course, Madison here speaks to ease those concerns.

Concern:

1. The Constitution would allow a uniformity of religion to be forced on the citizenry.

Five-State Summary

The following table is a consolidation from analyzing the five states individually that records show debates on religious freedom other than concerning religious tests.

¹⁰⁷ Elliot, vol. 3, 93.

Table 6-4: Summary of Concerns and/or Criticisms of the Constitution during State Ratifying Conventions

State	Summary of Concerns from all Excerpts
Connecticut	<p><u>Concern:</u> 1. It was possible for one religious denomination to be established in preference over other denominations.</p> <p><u>Solution:</u> 1. Add a clause to the Constitution explicitly preventing an establishment.</p>
Massachusetts	<p><u>Concern:</u> 1. Congress could establish Popery or another Religion</p>
North Carolina	<p><u>Concerns:</u> 1. Catholicism may be established as a national religion via a treaty and consequently the freedom of conscience would be denied. 2. Congress, in the future, can potentially establish a sect in preference to others. 3. Treaties may be a means of establishing one sect in preference to others. 4. It is possible that one religion can be exclusively established. 5. No one religion should be established . . . it would violate the freedom of conscience. 6. No preference of one sect over another prohibited. 7. Freedom of conscience is not guaranteed.</p>
Pennsylvania	<p><u>Concern:</u> 1. The Constitution does not specifically prohibit the government from infringing the freedom of conscience.</p>
Virginia	<p><u>Concerns:</u> 1. Religious freedom in danger . . . specifically from one “sect being established in prejudice to the rest.” 2. Constitution did not expressly prevent one sect from being established by law. 3. People may be forced to support an established religion. 4. The Constitution would allow a uniformity of religion to be forced on the citizenry.</p>

More than likely during the analysis of individual states, a pattern formed in your mind of what you were reading. Two different concerns emerged overwhelmingly from these state debates on the Constitution. First, among the five states there evidence was identified in eleven instances where a concern for an establishment of one religious sect in preference to all others was discussed. Second, concerns for the protection of the freedom of conscience were expressed four times in North Carolina and Pennsylvania. Nothing else was mentioned as a real concern outside these two topics besides, of course, of the nuances of religious tests. This strongly indicates that the intention for ratifying the Establishment Clause would have been two fold. First, it would be to eliminate the concern of one sect being established in preference to another and second, it would be to ensure that the freedom of conscience is explicitly protected. Interestingly, Oliver Wolcott of Connecticut actually recommended a clause be added to satisfy the first of these intentions.

To further strengthen these conclusions, four out of the five states proposed amendments that would have eliminated the concerns they articulated in the debates outlined above if the freedom of conscience and freedom of exercise are accepted as achieving fundamentally the same ends. Connecticut was the only state of the five not to propose an amendment to alleviate their concerns.

What did the Words “Religion” and “Establishment” Mean in 1789?

Unbelievably, many scholars think that the English language has not changed at all since 1789; as evidenced by some of their conclusions. While there are no drastic definitional changes to the words “religion” and “establishment” there have been connotation changes that do help clarify the Founders’ original intent. In order to understand what those connotations are, this study has referenced three dictionaries from 1780, 1785, and 1790 to determine how these words were understood over 200 years ago. The dictionaries published in 1780 and 1790 were compiled by the same individual, a man named Thomas Sheridan. The 1785 dictionary was compiled by a man named Samuel Johnson.

The table below displays all the definitions of the words “establish” and “religion.” Two differences need to be highlighted about dictionaries in the 1700s. First, they did not only provide the root word such as “establish” and they also offered either prefixes or suffixes that modify the words, but they are located in separate entries. For example, in the table there will be separate entries for both “establish” and “establishment.” The second difference that some dictionaries in the 1700s was that to prove that a definition was actual used they would offer examples from well-known literature to illustrate its usage. Johnson’s dictionary of 1785 provides this additional insight and consequently has a significant impact on this study.

Table 6-5: 1700’s Dictionary Definitions of Key Words in the Establishment Clause¹⁰⁸

Entry in Dictionary	Sheridan's 1780 Dictionary	Johnson's 1785 Dictionary	Sheridan's 1790 Dictionary
To establish	to settle firmly, to six unalterably; to found, to build firmly, to fix immoveably; to make settlement of any inheritance	1. To settle firmly; to fix unalterably 2. To settle in any privilege or possession; to confirm a. Literary Example: Soon after the rebellion broke out, the Presbyterian sect was established in all its forms by an ordinance of the Lords and Commons – Swift 3. To make firm; to ratify 4. To fix or settle in an opinion 5. To form a model 6. to found; to build firmly; to fix immoveably. A sense not in use. 7. To make a settlement of any inheritance	to settle firmly, to six unalterably; to found, to build firmly, to fix immoveably; to make settlement of any inheritance
Establishment	settlement, fixed state; settled regulation, form, model; condition of life, fortune, possession in land	1. Settlement; fixed state 2. Confirmation of something already done; ratification 3. Settled regulation; form; model of a government or family a. Lit Ex: Now come into that general reformation, and bring in that establishment by which all men should be contained in duty 4. Foundational; fundamental principal; settled law 5. Allowance, income, salary 6. Settled or find rest	settlement, fixed state; settled regulation, form, model; allowance, income, salary
Religion	virtue, as founded upon reverence to God, and expectation of future rewards and punishments; a system of divine faith & worship as opposite others	1. Virtue, as founded upon reverence of God and expectation of future rewards and punishments 2. A system of divine faith and worship, as opposite others a. Lit Ex #1: The Christian religion, rightly understood, is the deepest and choicest piece of philosophy that is – More b. Lit Ex #2: The doctrine of the gospel proposes to men such glorious rewards and such terrible punishments as no religion ever did, and gives us far greater assurance of their reality and certainty than ever the world had – Tillotson	virtue, as founded upon reverence to God, and expectation of future rewards and punishments; a system of divine faith & worship as opposite others

Establishment

The above table presents no significant departure from the general definition for “to establish” or “establishment” being to settle firmly, to found, or to fix. However, within its connotations some weighty evidence is presented that affects the understanding of the Founder’s original intent.

One of the concerns discovered from the state ratification debates was the potential of having one denomination established in preference to another. With that in mind, entry number two in Johnson’s 1785 dictionary stands out. It reads: “to settle in any privilege or possession; to confirm.” This then alludes to settle something in preference to others which is consistent with people’s concerns. Even more compelling is the literary example presented with this definition. It illustrates the term’s use in a religious instance which is how it is used in the Establishment

¹⁰⁸ Johnson, vol. 1, n713, vol. 2, n487; Sheridan (1780), 360, 772; Sheridan (1790), vol. 1, n452, vol. 2, n246.

Clause. The literary example reads: “Soon after the rebellion broke out, the Presbyterian sect was established in all its forms by an ordinance of the Lords and Commons. – Swift” If the “privilege” definition is incorporated into the example, it would read: “Soon after the rebellion broke out, the Presbyterian sect was settled firmly in privilege in all its forms by an ordinance of the Lords and Commons.” This literary example confirms the likelihood of the inherent attachment of being in privilege when “establish” is used in legislative action concerning religion.

The only other literary example/definition to reference religion was Johnson’s third definition of “establishment.” However, it only references a “reformation” and does not seem to align significantly to how the word was utilized in the discussions of forming the United States Government. Even though so far the evidence is strongly pointing towards the word “establishment” in the Clause does inherently imply privilege or in more familiar terms, “preference” more evidence is needed. To potentially substantiate this claim, it is necessary to refer back to all the documents from the states that were analyzed in chapter four. If the same connotation is found, it becomes much more certain that it is an accurate determination of what “establishment” in the Establishment Clause would have originally meant.

The following table was created in several steps. First, every instance of the various forms of “establishment” were collected from all the state documents except the proposed amendments. Then through analysis, the instances where the reference was to government were filtered out. This left only the references connected to religion and offers you the opportunity to read for yourself how the words are used in comparable documents. All forms of the word “establish” will be bolded and underlined and references to either privilege/preference will be underlined. Lastly, due to already having discussed the sections referenced in the table at length, only the minimum number of lines necessary will be presented in the table. The full references can be either found in Chapter 4 or in the Appendix.

Table 6-6: All References of a Form of the word “Establish” in State Constitutions and Declarations of Rights

Source	Excerpt Containing "Establishment"
Constitution of Delaware, 1776	ART. 29. There shall be no <u>establishment</u> of any one religious sect in this State <u>in preference to another</u>
Maryland Declaration of Rights ,1776	Article XXXIII. . . and every encumbent of the <u>church of England</u> , who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support <u>established</u> by the act, entitled "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year
Massachusetts Declaration of Rights, 1776	Article III. . . . 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 <u>no subordination of any sect or denomination</u> to another shall ever be <u>established</u> by law.
New Hampshire Bill of Rights, 1784	Article VI. And every denomination of christians demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and <u>no subordination of any one sect or denomination to another</u> , shall ever be <u>established</u> by law.
New Jersey Constitution, 1776	XIX. That there shall be no <u>establishment</u> of any one religious sect in this Province, <u>in preference to another</u> ;
New York Constitution, 1777	XXXV. . . . That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to <u>establish</u> or <u>maintain any particular denomination of Christians or their ministers</u> , or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, <u>the King of Great Britain</u> and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected
North Carolina Constitution, 1777	XXXIV. That there shall be no <u>establishment</u> of any one religious church or denomination in this State, <u>in preference to any other</u> ;
Pennsylvania Constitution, 1776	Preamble . . . deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to <u>establish</u> such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, <u>without partiality for, or prejudice against any particular class, sect, or denomination of men whatever</u> ,
Rhode Island Colonial Charter, 1663	. . . and because some of the people and inhabitants of the same colonie cannot, in their private opinions, conforms to the publique exercise of religion, according to the litturgy, formes and ceremonies of <u>the Church of England</u> , or take or subscribe the oaths and articles made and <u>established</u> in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and uniformitie established in this nation: Have therefore thought ffit, and doe hereby publish, graunt, ordeyne and declare, That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, <u>shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion</u> , and doe not actually disturb the civill peace of our sayd colony;
South Carolina Constitution, 1778 Excerpt A	XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. <u>The Christian Protestant religion</u> shall be deemed, and is hereby constituted and declared to be, the <u>established</u> religion of this State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, <u>shall enjoy equal religious and civil privileges</u> .
South Carolina Constitution, 1778 Excerpt B	And that whenever fifteen or more male persons, not under twenty-one years of age, <u>professing the Christian Protestant religion</u> , and agreeing to unite themselves In a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned,) be, and be constituted a church, and be esteemed and regarded in law as of the <u>established</u> religion of the State, and on a petition to the legislature <u>shall be entitled to be incorporated and to enjoy equal privileges</u> .
South Carolina Constitution, 1778 Excerpt C	But that previous to the <u>establishment</u> and incorporation of the respective societies of every denomination as aforesaid, and <u>in order to entitle them thereto</u> , each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement fir union of men upon presence of religion shall entitle them to be incorporated and esteemed as a church of the <u>established</u> religion of this State:

Ten states of the fourteen that were eligible to ratify the First Amendment had a reference to the word “establish” in connection to religion. Delaware, Massachusetts, New Hampshire, New Jersey, North Carolina, and Pennsylvania all included direct references to desiring non-preference in some form or another with “establish.” South Carolina also had references alluding to preference/privilege but were less obvious. Combining the ideas that the Protestant religion was to be established, other “religious societies” were to be tolerated, and the idea of entitlement comes with being established, would indicate that some form of privilege existed for Protestants. Therefore, South Carolina also attached this inherent meaning to the word “establishment.” The remaining three states, Maryland, New York, and Rhode Island all connect the Church of England with the word established. At this point in time no scholar challenges the idea that extreme privilege was granted to this particular denomination. However, if there are any challenges, they will be dispelled when the word “respecting” is analyzed. As a results, once again, when “establish” is used in these documents it has the attached meaning of privilege.

In conclusion, every use of a form of “establish” in reference to religion, indicates unanimously that the connotation of preferential status was linked together. Accordingly, it would be highly improbable that a different connotation would have been used in the Federal Constitution’s Bill of Rights. Moreover, with this understanding the Establishment Clause may now be understood in this manner

Congress shall make no law respecting *the founding in privilege* of religion,

Religion

The definitions of the word “religion” in all three dictionaries are basically identical. The first deals with virtue and rewards and punishments. This definition would not be applicable to the Establishment Clause. Although, as you might remember, the concept of “rewards and punishments” were included in several state declarations of office and would be very applicable in that regard. Consequently, that leaves the second definition: “A system of divine faith and worship, as opposite others.” If this definition is substituted into the Establishment Clause it would read as follows:

Congress shall make no laws respecting an establishment of a system of divine faith and worship, as opposite others.

As you read this version, the difference in connotation reveals itself and enables the original intent to be seen more clearly. Scholars of the separationist viewpoint have claimed that the combination of “no laws – respecting – religion” was meant to prevent anything of a religious nature to be legislated by Congress. However, in the late 1700’s this combination would have, by definition, been “no laws – respecting – a system – which focused on preventing legislation pertaining to a establishing a particular system of faith and worship.

A system faith and worship would involve a formal organization of doctrine and methods of worshipping God. As a consequence, there are two ways of looking at these potential systems. First, looking at a contemporary understanding, it might mean preventing a distinction of Christianity vs. Islam vs. Judaism vs. Hinduism. However, considering the fact that Islam and Hinduism were not yet seen in America and only approximately five Jewish synagogues existed in the United States in 1776; it is improbable that this is what would have been meant. More likely, it would have meant to prevent an establishment of “systems” such as Congregationalists vs. Presbyterians vs. Lutherans vs. Catholics, etc. It would then follow that a “system” would have referred to a particular denomination.

This conclusion makes sense in light of these facts.

1. People in various states were concerned about one denomination being in preference to all others and . . .
2. The word “establishment” inherently has a connotation of preference.

However, the preference to “what” needs to be pinpointed and with the word “religion” referring to a system . . . it is highly likely that the “what” would be a specific denomination. Therefore, in order to summarize what these dictionaries and state documents have revealed, a less convoluted Establishment Clause based on the above understandings would look similar to this:

Congress shall make no law respecting *the founding in privilege of a system of divine faith and worship.*

This, of course could be shortened to read:

Congress shall make no law respecting *the founding in privilege of a specific denomination.*

Section 3: .” . . respecting . . .”

If you remember, the word “respecting” is analyzed out of order because what it referred to had to be determined prior to understanding its original intent. No scholar or expert disagrees with its general definition of “regarding something” or “in relation to.” In fact, the definitions from our three dictionaries reveal no major significant or nuanced differences between the late 1700’s usage and our application today in connection with the Establishment Clause. The only differences would be several definitions by the early dictionaries that pertain to circumstances outside this study.

However, the phrase “no law” linked with “respecting” still necessitates understanding and analysis. Together they justifiably broaden the restriction of passing one lone law - limited to only officially establishing religion; because, it prohibits “any law in relation to” an establishment. Accordingly, there needs to be some determination of how broad the idea of “in relation to” reaches. Does it reach as far as Separationists advocate and prevent any laws concerning religion from being passed? Or is there a lesser restriction that was originally intended? After the conclusions of Chapter 5, stating that the Separationist stance is unlikely to have been the original intent . . . other parameters must be determined. If not, then more plausibility must be given to a separationist stand point.

The last section was ended with the following rewrite of the Establishment Clause. It incorporated what has been determined so far, as likely to have been the original intent.

Congress shall make no law respecting *the founding in privilege of a specific denomination.*

If this rewrite is accurate, then it would follow that there would be a prohibition on laws relating to privileging a specific denomination. Consequently, if this understanding of “respecting” is accurate, then some evidence should exist in our collection of documents. Otherwise, there is no foundation for this particular conjecture and the entire argument of what the original intent has been determined as being begins to unravel. However, there is an historical example of what privileging one particular denomination actually entailed. It was the establishment of the Church of England in preference to all other Christian denominations by the British Parliament. Of course, this preference is why many original colonists came to the New World in the first place. Further, we saw overt evidence against the establishment of the Church

of England in several states, including: Maryland, New York, and Rhode Island. But, there was a great deal more evidence.

Throughout the religious portions of the state constitutions, declarations of rights, and proposed amendments were items protecting citizens from a repetition of the abuses suffered under the Church of England's preferential status. However, you may not have realized them. Prior to this, the study only characterized them as not being as anti-religious as they potentially could seem on the surface. Once shown in historical context, you will see how extremely pinpoint on prohibiting abuses by the Church of England, an established denomination, they actually pertained. Consequently, they do not provide a basis for anti-religious sentiments in the Colonies but offer insight into what "respecting" originally meant.

Below is a table outlining these protections from state documents. Additionally, since they were the results of laws passed by Parliament or historical circumstances, as preferential treatment to the Church of England, what occurred in England is presented as well.

Table 6-7: Reactive Stipulations Limiting Religion by States Associated with the Experiences with Parliament and the Church of England¹⁰⁹

Stipulation by States	Previously Occurred in England
<p>Prohibited Mandatory Attendance 7 States - DL, MD, MA, NJ, NC, PA, VT</p>	<p><u>Act of Uniformity 1559</u> 1. Mandatory attendance at church every Sunday and holidays or 1 Shilling Fine <u>Religion Act of 1581</u> 1. Increased fine to 20 Pounds/month or Imprisoned until conformed 2. Fined people who celebrated Mass or Attended Mass <u>Act of Uniformity 1593</u> Imprisoned without bail if you 1. Did not attend church 2. Persuaded others not to attend church If you do not conform – eventually exiled from England</p>
<p>Prohibited Mandatory Support 7 States - DL, GA, NJ, NC, PA, SC, VT</p>	<p>The Church of England also had authority over the population on religious matters through a similar institution as Parliament. It was known as the Houses of Convocation. As an example, this entity could pass laws creating taxes to support the Church.</p>
<p>Prohibited Clergy from Holding Office 7 States - DL, GA, MD, NY, NC, SC, VA</p>	<p>Bishops and Abbots in the 1500s were members of the House of Lords in Parliament. Many times they actually constituted a majority of members. As such pro-denominational legislation could be enacted. The Church of England also had authority over the population on religious matters through a similar institution as Parliament. It was known as the Houses of Convocation. As an example, this entity could pass laws creating taxes to support the Church.</p>
<p>Prohibited Mistreatment/Loss of Civil Rights 7 States - MD, MA, NH, PA, RI, SC, VT</p>	<p><u>Corporation Act of 1661</u> 1. Could not be elected to any government job unless you had taken sacrament in the Church of England <u>Test Acts of 1673 & 1678</u> Had to be a member of the Ch. Of Eng. to be member of Parliament <u>Act of 1700</u> Against Catholics: 1. Had to take oath of Supremacy a. Penalties for not: could not purchase land or transfer inheritance except to Protestant Mistreatment Examples - Previously Listed: Fines, Imprisonment, or Exile for non-conforming</p>
<p>Guaranteed Freedom of Conscience 7 States - DL, NC, NH, NY, PA, RI, SC</p> <p>Guaranteed Freedom of Exercise 8 States - DL, GA, NY, NC, PA, RI, VT, VA</p>	<p><u>Act of Uniformity 1549</u> English Book of Common Prayer had to be used, excluded others 1. Third Offense – Imprisonment for Life <u>Act of Uniformity 1559</u> English Book of Common Prayer had to be used, excluded others <u>Act of Uniformity 1661</u> English Book of Common Prayer had to be used, excluded others All Clergy had to have Episcopal (Ch. Of Eng.) Ordination – Effected 2,000 Ministers <u>Religion Act of 1581</u> 1. Absent from Church fine increased to 20 Pounds/month or Imprisoned until conformed 2. Fined people who celebrated Mass or Attended Mass <u>Conventicle Act of 1664</u> No other religious services permitted except Church of England <u>Five Mile Act 1665</u> Forbid banned clergy from living within five miles of any incorporated town <u>Act of 1700</u> Against Catholics: Permanent imprisonment of all practicing Catholic priests and all Catholics who ran a school or instructed youth. 100 Pound reward for people who turned others in. <u>Schism Act of 1714</u> 1. Public and private school teachers had to get license from a Bishop of the Ch. of Eng. 2. Conform to the Ch. Of Eng. Liturgy 3. Take Sacrament Every Year in Ch. Of Eng.</p>

¹⁰⁹ Masterman, J. Howard B. *The Church of England*. New York: Dodge Publishing Co., 1912, 11.

As you can see, each one of these five protections or grantees by various states had roots in England. Not one was “created in a vacuum” as being inherently anti-religious. They were simply reactions against prior abuses by Parliament and the Church of England. While not all states are included in every instance, all fourteen states eligible to ratify the Federal Constitution is on the above list at least twice. Further, this is not an exhaustive list of abuses suffered by non-conformists under English Law. These are only examples to illustrate the connections between state stipulations and English Law or history.

Consequently, the above stipulations were they types of concepts the Founders’ meant when they included the word “respecting.” They and their forefathers were participants in a period of history that experienced a system of denominational privilege that mistreated religious dissenters. As a result, the word “respecting” in Establishment Clause originally meant anything “in relation to” the mistreatment seen historically committed by the Church of England. These would include: mandatory attendance, mandatory support, clergy directly guiding government, loss of civil rights by individuals, and violations of freedom of conscience and of religious exercise. Therefore, the following “rewrite” serves as the potential original intent of the Founding Fathers.

Congress shall make no law similar to mistreatments historically committed by the founding in privilege of a specific denomination.

Final Reality Checks on the Analysis

If the above rewrite of the Establishment Clause is to be accepted as accurate it must be remain viable through two different “reality checks.” Those “checks” involve the following circumstances:

1. Do the proposed amendments from the states mirror this understanding?
2. Do the actions of the First Congress mirror this understanding?

Further, the above rewrite will be referred to as the proposed original intent, rather than continuously stating its three major premises – preference – denomination – mistreatments – or

Medley, Dudley Julius. *A Student's Manual of English Constitutional History*. Third ed. London:

Simpkin, Marshall, Hamilton, Kent & Co., 1902, pp. 310, 596, 600, 606.

Williams, Alwyn. *The Church of England*. Third ed. London: Oxford University Press, 1961, 78.

writing it out in full. These premises are linked to the three original words from the clause – establishment – religion – respecting.

Proposed Amendments

As you have read, there were nine proposed amendments from various states recommending changes or additions to the Federal Constitution. These amendments offer a significant insight into what states and their citizens wanted in regards to religious language in the Constitution. Consequently, if the proposed original intent is in conflict with these proposed amendments it would then be invalidated. However, if these amendments substantiate that intent; the accuracy of the conclusion is further strengthened and more probable. Therefore, the following table provides all the proposed amendments as well as presents whether the three key aspects to the proposed original intent is confirmed or disconfirmed. Further, it also indicates if anything in the amendment would be in conflict with the proposed intent. If a part of the amendment neither confirms or disconfirms the proposed intent then the word “absent” is placed in order to recognize that the proposed amendment is silent on the issue.

Table 6-8: All State Proposed Amendments Analyzed for Confirming or Disconfirming the Proposed Original Intent¹¹⁰

State Amendment	"Establish" Create Preference	"Religion" System/Denomination	"Respecting" Prohibiting Mistreatment	Anything Against the Proposed Original Intent?
<u>New Hampshire</u> Congress shall make no Laws touching Religion, or to infringe the rights of Conscience	Absent	Referenced	Referenced	No
<u>New York</u> That the People have an equal, natural right and unalienable right, freely and peaceably to Exercise their Religion according to the dictates of Conscience, and that no Religious Sect of Society ought to be favored or established by Law in Preference to others.	Referenced	Referenced	Referenced	No
<u>North Carolina</u> That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right, to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favoured or established by law in preference to others.	Referenced	Referenced	Referenced	No
<u>Pennsylvania</u> The rights of conscience shall be held inviolable and neither the legislature, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitutions of the several states, which provide for the preservation of liberty in matters of religion.	Absent	Absent	Referenced	No
<u>Rhode Island</u> That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men, have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favoured or established by law in preference to others.	Referenced	Referenced	Referenced	No
<u>South Carolina</u> Resolved, that the third section of the sixth article ought to be amended, by inserting the word "other" between the words "no" and "religious".	Absent	Absent	Absent	No
<u>Virginia</u> That religion, or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and therefore all men are equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.	Referenced	Referenced	Referenced	No
<u>Maryland (Minority)</u> That there be no national religion established by law, but that all persons shall be equally entitled to protection of their religious liberty.	Referenced	Referenced	Referenced	No
<u>Massachusetts (Minority)</u> That the said Constitution be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms, or to raise standing armies, unless when necessary for the defence of the United States, or of some one or more of them; or to prevent the people from petitioning, in a peaceable and orderly manner, the federal legislature, for a redress of grievances; or to subject the people to unreasonable searches and seizures of their persons, papers, or possessions.	Absent	Absent	Referenced	No

From the last column in the comparison chart, it can be seen that no amendment includes anything that would be counter to the proposed original intent. Additionally, for identifying trends, South Carolina’s amendment can be somewhat dismissed, after this last point was made, due to its sole and detailed focus on the “no religious test” section, in Article VI of the Federal Constitution.

¹¹⁰ SC Amendment: Elliot, vol. 4, 325. All other texts: Cogan, 11-13.

In looking at trends, five out of the remaining eight amendments support all three main tenants of the proposed original intent. Those tenants being: a focus on a denomination, the preference of that denomination, and some sort of protection against potential governmental mistreatment. Of the three that did not incorporate all three aspects, two, Massachusetts and Pennsylvania proposed only protections against potential abuses through their language of “conscience.” Otherwise, their amendments remain silent on the issue of denomination and preference. However, Massachusetts in its Declaration of Rights did include language of no denominations in preference. The remaining state of New Hampshire recommends safeguards on mistreatment and references a denomination through “religion” being a *system* of faith and worship. Consequently, these amendments offer nothing in contradiction to the proposed intent and nineteen out of twenty-four categories specifically supported aspects of the proposed intent of the Establishment Clause. Therefore, the proposed intent of the Establishment Clause would have likely meant the intent of the states pursuing solutions to their religious concerns via amendment.

Actions in Congress

There are three components to looking at Congress for conformation of intent: two sets of drafts of the Establishment Clause and the debates that are recorded in the House of Representatives. The House of Representatives drafts and the debate will be analyzed together with the Senate drafts remaining separate.

House of Representatives

The drafts of the Establishment Clause/First Amendment in the House of Representatives need to be evaluated in order to determine what general principles they were attempting to incorporate. The following table presents the drafts along with whether or not they incorporate the three major premises in the proposed original intent – preference – denomination – mistreatment . If most of the drafts incorporate these three premises it increases the likelihood that the proposed intent is accurate. If evidence is presented in conflict of these premises then the accuracy would decrease; unless perhaps the draft failed to be adopted. Lastly, drafts which were adopted through a formal vote are indicated with a dark background behind their draft number.

Table 6-9: Comparison of House Drafts of the Religious Clauses and the Three Essential Elements of the Proposed Original Intent¹¹¹

Version	House of Representative's Versions on the 1st Amendment	Notes on Version	"Establish" Create/Preference	"Religion" System/Denomination	"Respecting" Prohibiting Mistreatment	Anything Against the Proposed Original Intent?
1	The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall full and equal rights of conscience be in any manner, or on any pretext infringed.	<u>Author:</u> Madison (VA) <u>Date:</u> June 8, 1789 <u>Details:</u> Not voted on but Referred to "Committee of Eleven"	Referenced	Referenced ("national system of faith and worship")	Referenced	No
2	The people have certain rights which are retained by them when they enter society, Such are the rights of conscience in matters of religion; . . . of these rights therefore they shall not be deprived by the government of the united states	<u>Author:</u> Sherman (CT) <u>Date:</u> July 21-28, 1789 <u>Details:</u> No Vote . . . Not accepted by "Comitte of Eleven" - 6 other rights were included besides religion	Absent	Absent	Referenced	No
3	No religion shall be established by law, nor shall the equal rights of conscience be infringed.	<u>Author:</u> Comm. of Eleven <u>Date:</u> July 28, 1789 <u>Details:</u> Final Report to Full House by Comm. Of Eleven	Referenced	Referenced	Referenced	No
4	No <u>national</u> religion shall be established by law, nor shall the equal rights of conscience be infringed.	<u>Author:</u> Madison (VA) <u>Date:</u> August 15, 1789 <u>Details:</u> V. 3 was Challenged in Debate. Madison made a motion to add "national" but later withdrew the motion	Referenced	Referenced	Referenced	No
5	That Congress shall make no laws touching religion, or infringing the rights of conscience.	<u>Author:</u> Livermore (NH) <u>Date:</u> August 15, 1789 <u>Details:</u> Won Vote 31-20; Also exact wording as NH's proposed amendment	Absent	Referenced	Referenced	No
6	No state shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right to trial by jury in criminal cases.	<u>Author:</u> Unknown <u>Date:</u> August 17, 1789 <u>Details:</u> Lost Vote	Absent	Absent	Referenced	No
7	The equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any state.	<u>Author:</u> Livermore (NH) <u>Date:</u> August 17, 1789 <u>Details:</u> Won Vote; Just inverted V.6.	Absent	Absent	Referenced	No
8	Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience.	<u>Author:</u> Ames (MA) <u>Date:</u> August 20, 1789 <u>Details:</u> Won Vote	Referenced	Referenced	Referenced	No
9	Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> August 21, 1789 <u>Details:</u> Won Vote; Sent to Senate on the 24th or 25th	Referenced	Referenced	Referenced	No

As depicted in the table above, there is substantial evidence that indicates that some form of the three major premises were the main substance desired to be included in this amendment. For example, four out of five adopted versions of the Religion Clauses support all three of the proposed intentions. Further, the one draft that was adopted with the create/preference premise absent (version 5) still focused on preventing Congress from interfering in matters of doctrinal and worship which are the basis of the different denominations. It just does not specifically

¹¹¹ House versions 1-5, 8-9: Cogan, 1-3. House Versions 6-7: Kurland, 93-94.

mention the creation aspect of a national religion. Additionally, and most important, the last column indicates that no draft contained any premises that would be counter to the proposed original intent . . . the Lower House was always focused in some combination on the three major premises. These facts indicate that, in general, the drafts of the religion portion of the First Amendment in the House of Representatives strengthen the probable accuracy of the proposed original intent.

To even further augment the review of the sentiments of the House of Representatives is the only major recorded debate on the subject. Due to the length and nuances involved in the debate the following table has been created. The first column comprises the actual text of the debate. The second column is a running commentary of what is being stated by different Representatives. It is recommended that you read through the text first and then go back and read the text along with the commentary. As has been advocated before; this allows you the freedom to experience the primary document first without commentary. The debates and commentary span one and a half pages.

Table 6-10: House Debates with Commentary on August 15, 1789. ¹¹²

Actual Debate Text	Commentary on Debate
<p>Mr. Sylvester (NY) had some doubts of the propriety of the mode of expression used in this paragraph. He apprehended that it was liable to a construction different from what had been made by the committee. He feared it might be thought to have a tendency to abolish religion altogether.</p>	<p>This comment may have been made, as alluded to before, in reference to no language being included to specify its limit to the federal government. Otherwise, it may have abolished several state level establishments of religion. Or he may have wanted to ensure to prevent a broad limit on religion and government.</p>
<p>Mr. Vining (DL) suggested the propriety of transposing the two members of the sentence.</p>	
<p>Mr. Gerry (MA) said it would read better if it was, that no religious doctrine shall be established by law.</p>	<p>Here, Mr. Gerry, is advocating lauage that would be more likely understood by citizens today. Doctrine would have been closely realted to "a system of faith."</p>
<p>Mr. Sherman (CT) thought the amendment altogether unnecessary, inasmuch as Congress had no authority whatever delegated to them by the Constitution to make religious establishments; he would, therefore, move to have it struck out.</p>	<p>This sentiment was very pervasive in the United States at the time. The feeling was that since no "express" power was given to the Federal Government there was no possibility for them to act on religion.</p>
<p>Mr. [Daniel] Carroll (MD) As the rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand; and as many sects have concurred in opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words. He thought it would tend more towards conciliating the minds of the people to the Government than almost any other amendment he had heard proposed. He would not contend with gentlemen about the phraseology, his object was to secure the substance in such a manner as to satisfy the wishes of the honest part of the community.</p>	<ol style="list-style-type: none"> 1. This provides another instance of voicing a concern and emphasizing that the Bill of Rights was designed to address certain concerns. 2. The concern here was about freedom of conscience. Further, it was linked with the fears of sects. This would indicate the possibility of these sects fearing an establishment of one particular sect in preference . . . to once again take away their freedom. 3. Mr. Carroll was not worried about how stylistically the goal of satisfying these concerns, but more that the "substance" was achieved. This augments the argument that a consensus meaning had to be agreed upon to pass in Congress. Further representatives seemingly are advocating for the continued freedom of all religious sects.
<p>Mr. Madison (VA) said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been required by some of the State Conventions, who seemed to entertain an opinion that under the clause of the Constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the Constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.</p>	<ol style="list-style-type: none"> 1. Madison felt the meaning was a) not to establish a religion - this is singular which implies further a single denomination. Additionally, in this era the distictions were not between Christianity, Islam, and Hinduism but primarily between denominations b) not enforce legal observation c) compel people to worship outside their conscience - both b & c sound similar to the establishment of the Church of England 2. His comments about phrasing coming from state conventions has two implications. 1) it strengthens the previous conclusions coming out of the states 2) those conclusions were overwhelmingly in reference to one denomination established in preference 3. Madison's last comment on the clarity of language combined with meeting the state's desires clearly indicates that the phrase "no religion shall be established by law" meant no one denomination legally established. Further, Madison specfically states that the language would have been clear to the Founders in 1789. This is the strongest confirmation yet that the proposed origina intent is accurate.
<p>Mr. Huntington (CT) said that he feared, with the gentleman first up on this subject, that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meetinghouses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers, or building of places of worship might be construed into a religious establishment.</p> <p>By the charter of Rhode Island, no religion could be established by law; he could give a history of the effects of such a regulation; indeed the people were now enjoying the blessed fruits of it. He hoped, therefore, the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not to patronize those who professed no religion at all.</p>	<ol style="list-style-type: none"> 1. Huntington's concurred with Madison's meaning. 2. The middle to end of his comments would indicate that states that had establishments of religion would indeed dislike the absence of specific language preventing this amendment from applying to the states. i.e. "Congress" 3. Interestingly, Huntington's last comments would not include support for ministers and places of worship as being part of a religious establishment. Accordingly, his definition must be even narrower of what constituted a religious establishment then what is proposed by this study. Further, he had agreed with Madison's meaning. That leaves open the potential for a Madison having a very narrow understanding of an establishment of religion as well. Lastly, this could potentially mean that equal support to all denominations would be permissible under the Establishment Clause. 4. By virtue of Mr. Huntington's references to Rhode Island, more weight is added to the Colonial Charter as evidence and not being too old to consider. 5. He emphasized that this amendment was not to "patronize those who professed no religion at all." This perhaps would be a recognition of the value of religion and consequently be evidence against a total separation of church and state.

¹¹² Annals of the House of Representatives. "Document 53: House of Representatives, Amendments to the Constitution." University of Chicago. http://press-pubs.uchicago.edu.er.lib.k-state.edu/founders/documents/amendI_religions53.html (accessed April 9, 2010).

Actual Debate Text	Commentary on Debate
<p><u>Mr. Livermore</u> (NH) was not satisfied with that amendment; but he did not wish them to dwell long on the subject. He thought it would be better if it was altered, and made to read in this manner, that Congress shall make no laws touching religion, or infringing the rights of conscience.</p>	<p>Mr. Livermore with much state loyalty introduces his state's exact proposed amendment and ultimately achieves its temporary adoption. The meaning of this amendment has already been discussed.</p>
<p><u>Mr. Gerry</u> (MA) did not like the term national, proposed by the gentleman from Virginia, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the conventions at the time they were considering the present Constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union; the honorable gentleman's motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done them by the title, because they were in favor of a Federal Government, and the others were in favor of a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made. Their names then ought not to have been distinguished by federalists and antifederalists, but rats and antirats.</p>	<p>The problem with the word national was that in the Colonial era, the word "national" implied a much stronger central government than the word "federal". Since most Americans at the time did not favor an extensively strong central government, the term federal government was used instead. If you want to read more about this occurrence during the Constitutional Convention read the happenings of May 30, 1787.</p>
<p><u>Mr. Madison</u> (VA) withdrew his motion, but observed that the words "no national religion shall be established by law," did not imply that the Government was a national one; the question was then taken on Livermore's motion, and passed in the affirmative, thirty-one for, and twenty against it.</p>	<p>Here Madison apparently, by the term national, was attempting to reference a religion/denomination that would be spread over the entire nation. He was not attempting to imply that the new government was a "national government" - referring to the commentary immediate above. This would imply being against a nation religion similar to the Church of England in Great Britain.</p>

Some specific points from the text/commentary need to be highlighted. First, there several instances where the debate confirms that the Bill of Rights was designed to address certain concerns being raised. Further, on two occasions in the debate it was implied a concern was denominational preference. Even more substantial in Madison's second speech he specifically stated that the amendment was specifically designed to prevent this concern from happening. This is a tremendous support towards substantiating the accuracy of the proposed original intent of the Establishment Clause. Additional notes include, the concern for the freedom of conscience was also raised and the possibility of an extremely narrow understanding of what constituted an establishment of religion potentially existed as well.

Therefore, based on what was being attempted to be included in the drafts and what occurred in the debate above, the evidence from the House of Representatives substantiates the proposed original intent of the Establishment Clause.

Senate

The Senate drafts present a clearer and more focused confirmation of the proposed intent of one in denomination being privileged. This is especially true when looked at with the understanding of how the words "establish" and "religion" were used in the late 1700's. Every single version they considered had all three essential elements of the contested parts of the Establishment Clause: preference – denomination - mistreatment. The following table re-

presents all the Senate drafts along with the same columns added to the House of Representatives' table.

Table 6-11: Comparison of Senate Drafts of the Religious Clauses and the Three Essential Elements of the Proposed Original Intent¹¹³

Version	Senate's Versions of the First Amendment	Notes on Version	"Establish" Create/Preference	"Religion" System/Denomination	"Respecting" No abuses	Anything Against the Proposed Original Intent?
1	Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> House of Reps. <u>Date:</u> August 25, 1789 <u>Details:</u> Received from the Lower House for consideration	Referenced	Referenced	Referenced	No
2	Congress shall make no law establishing One Religious Sect or Society in preference to others, nor shall the rights of Conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost First Vote; Won Vote on Re-Consideration	Referenced	Referenced	Referenced	No
3	Motion to drop the entire amendment from consideration.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote	_____	_____	_____	_____
4	Congress shall not make any law infringing the rights of conscience, or establishing any Religious Sect or Society.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote	Referenced	Referenced	Referenced	No
5	Congress shall make no law establishing any particular denomination of religion in preference to another or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Lost Vote	Referenced	Referenced	Referenced	No
6	Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed.	<u>Author:</u> House of Reps. <u>Date:</u> September 3, 1789 <u>Details:</u> Senate Re-Considered Original House Version; Lost Vote	Referenced	Referenced	Referenced	No
7	Congress shall make no law establishing Religion, or prohibiting the free exercise thereof.	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Struck out last phrase of House Version; Won Vote	Referenced	Referenced	Referenced	No
8	Congress shall make no law establishing article of faith or a mode of worship, or prohibiting the free exercise of Religion	<u>Author:</u> Unknown <u>Date:</u> September 3, 1789 <u>Details:</u> Won Vote; Sent to House Of Reps	Referenced	Referenced	Referenced	No

As shown above, the Senate versions were indeed all centered on the those three essential elements. Further, the last column indicates that no conflicting proposals to the original intent were presented. These facts strongly substantiate that the proposed original intent is more than likely accurate. However, certain scholars state as evidence for total separation, the fact that the Senate did not adopt the versions that spelled out more clearly denominational preference. Versions like 2, 4, and 5. However, those that advocate this line of argument did not consider the eighteenth century meanings of those words as this study has done. When understood in their true context, it becomes quite clear that the different versions most likely represent stylistic

¹¹³ Text of Senate Versions: Cogan, 3-5.

change; not modifications of intent or scope. This is even more likely when considering that most of them were presented and debated on the same day. As was seen in the House debates, debates on an amendment within the same day often revolved around style or phraseology, not often around substance. To further augment the stylistic interpretation, the following table is useful in comparing the different versions by substituting the word “religion” with its Colonial definition.

Table 6-12: Senate Versions with “Religion” Replaced with Definition

Version	Senate's Versions of the First Amendmenet	Senate's Versions - with Religion Definition - of the First Amendmenet
1	establishing <u>religion</u> .	establishing <u>a system of divine faith and worship as opposite others</u> .
2	establishing One <u>Religious Sect or Society</u> in preference to others	establishing One <u>Religious Sect or Society</u> in preference to others
4	establishing any <u>Religious Sect or Society</u> .	establishing any <u>Religious Sect or Society</u> .
5	establishing any <u>particular denomination of religion</u> in preference to another	establishing any particular denomination of <u>a system of divine faith and worship as opposite</u> others in preference to another
6	establishing <u>religion</u> .	establishing <u>a system of divine faith and worship as opposite others</u> .
7	establishing <u>Religion</u> .	establishing <u>a system of divine faith and worship as opposite others</u> .
8	establishing <u>articles of faith or a mode of worship</u> .	establishing articles of faith or a mode of worship.
Final	establishment of <u>religion</u> .	establishment of <u>a system of divine faith and worship as opposite others</u> .

After substituting the definition the versions are virtually identical (in the case of the last three versions which passed) or at least equivalent in all cases. Consequently, since the substance was not changing in any great manner then the understanding of stylistic changes occurring instead of substantive changes is confirmed. Therefore, after looking at all eight versions of the Establishment Clause/First Amendment in the United States Senate they confirm the accuracy of the proposed original intent.

Summary

In Chapter 6, a large amount of evidence was analyzed and synthesized to formulate a proposed original intent of the Establishment Clause. The following is the actual Establishment Clause followed by the rewrite that expresses the original intent in more contemporary language.

“Congress shall make no law respecting an establishment of religion”

“Congress shall make no law similar to mistreatments historically committed by the founding in privilege of a specific denomination.”

The above translation was accomplished within this chapter in the following manner:

1. It was determined that the reference to Congress/Federal Government was purposeful.
2. The Bill of Rights was created to address specific concerns within the United States.
3. The concerns needing to be addressed were . . .
 - a. Protections for the freedom of conscience need to be incorporated.
 - b. A desire to prevent one denomination in preference to others.
4. Then referencing three dictionaries from the late 1700's the language of the Establishment Clause became clearer.
 - a. "Establish" was found to have a distinct connotation to "preference" when used in conjunction with religion. This then was verified through all the state documents.
 - b. "Religion" was shown to have a meaning of "a system of divine faith and worship" which involves an organization. In a religious context a denomination, sect, or society.
5. Consequently, based on the voiced concerns of the states and understanding the language more accurately; the proposed original intent was created:
 - a. "Congress shall make no law respecting the founding in privilege of a system of divine faith and worship."
6. Next the scope of what "no law respecting" was determined
 - a. Two concepts were analyzed together.
 - 1) The limits on religion imposed by the states.
 - 2) The mistreatment of dissenters by the Church of England.
 - b. Finding a correlation between the two above concepts; the scope of "no law respecting" was determined to be focused on preventing historic or similar mistreatments from happening.
7. Combining all the above pieces of evidence together, it was proposed that the original intent of the Establishment Clause is:
 - a. "Congress shall make no law similar to mistreatments historically committed by the founding in privilege of a specific denomination."
8. Following this conclusion, two sets of "Reality Checks" were then utilized to test this proposed original intent.

a) Proposed amendments – which were in agreement

b) The actions of Congress – which were also in agreement

As a result of these eight steps, it can be stated with confidence that the proposed original intent is accurate. Consequently, the original intent, expressed in more contemporary terms, of our Founding Fathers is as follows.

“Congress shall make no law similar to mistreatments historically committed by
the founding in privilege of a specific denomination.”

CHAPTER 7 - Conclusion

The Evidence

This study concludes that the original intent of the Establishment Clause, in more modern terms is . . .

“Congress shall make no law *founding in privilege one specific Christian denomination or make laws similar to the mistreatments historically associated to having one denomination in privilege over others.*”

The evidence and process of how this conclusion was ascertained is as follows . . .

Chapter 4’s primary purpose was to present the evidence and organize it into a consumable format for analysis. It took the roughly 130 pages of state documents in the appendix, presented their religious portions, and then consolidated them into the two-page Table 4.1. It is this consolidation that provided the majority of evidence for the subsequent chapters of analysis.

An argument such as that made in Chapter 5, where an author attempts to gain tangibility within a gap in historical records is always risky. However, the purpose was to illustrate the practicality and the political reality of the ratifying situation. More specifically, Chapter 5 demonstrates the necessity of overwhelming consensus that is needed to ratify an amendment. Conversely, Chapter 5 also displays how easily a proposed amendment can be defeated. Chapter 5 employed a very conservative approach in evaluating the evidence. If the necessary and overwhelming majority of political thought of total separation between Church and State existed, then the evidence consolidated in Chapter 4 should have been unmistakable and obvious in its support. In contrast, the accomodationist viewpoints *had* enough evidence, even just from a superficial read in Chapter 4, to allow for the possibility of their accuracy.

Chapter 6 provided the direct analysis to determine the original intent of the Establishment Clause. First, the reality that the Bill of Rights was created in response to the concerns raised by many citizens was established. This then led to the understanding that the Bill of Rights should contain the solutions to these concerns. Consequently, if the religious concerns could be identified they would be a powerful clue to the true intent of the Establishment

Clause. Through the state ratifying conventions of the Federal Constitution there were two concerns identified:

1. The desire to have the freedom of conscience protected.
2. To prevent one denomination from being established in preference to others.

This then provided a solid indication of what the Religion Clauses would have been constructed to address.

From this point the idea of a denomination established in preference was looked at in the various state documents. It was found that:

1. 6 of 9 proposed state amendments to the Federal Constitution specifically included a phrase that prevented of one denomination being established in preference to others or language equivalent in meaning.¹¹⁴
2. Every time the word established was used in state documents it was in connection to the concept of establishing one denomination in preference to others.¹¹⁵
3. 9 different states either had the concept of no denomination in preference specifically included in their state constitutions, declarations of rights, or their proposed amendments.¹¹⁶
4. The Congressional versions of the First Amendment confirmed the concept of no-preference.¹¹⁷
5. The debates in the House of Representatives also supported the idea of no denomination in preference.¹¹⁸

Through this significant quantity of mutually supporting evidence, the final conclusion on the original intent of the Establishment Clause was determined to be accurate.

¹¹⁴ Please reference Table 6.8

¹¹⁵ Please reference Table 6.6

¹¹⁶ Please reference Table 4.1

¹¹⁷ Please reference Tables 6.9 and 6.11

¹¹⁸ Please reference Table 6.10

Ramifications for Rhetorical Scholarship

For the rhetorical critic, this study revitalizes and illustrates the necessity of being a “student of history” when analyzing historical artifacts as Herbert Wichelns pointed out in 1925.¹¹⁹ If the ten words of the Establishment Clause were to be analyzed without the historical framework, many errant meanings and interpretations would be concluded. This study has further demonstrated the absolute necessity of understanding the historical backdrop surrounding a rhetorical artifact in order to accurately determine its meaning and intention.

Second, this study illustrates the need of rhetoricians to study the great speeches and debates in history. Rhetoricians can offer analysis that differs from historians and political scientists through the unwavering and express devotion to understanding a single artifact. For example, often political scientists’ interest in the Establishment Clause is split. They focus on both original intent and contemporary policy debates. Consequently, the thoroughness in presenting the original intent suffers when trying to incorporate justifications for very specific policies. This attempt often leads to “proof-texting.” Historians, as they should, additionally focus on the large picture of history. They put historical artifacts in perspective and relate them to many other facts and historical happenings. Historians are writing history. Rhetoricians do not inherently write history but use history as a tool for understanding artifacts within history. According to Ernst Wrage’s 1947 article, *Public Address: A Study in Social and Intellectual History*, a rhetorician has the unique perspective of linking an artifact to its audience.¹²⁰ In this study, the linkage between citizens’ concerns evidenced through documents and debates (audience) were pivotal to determining an accurate meaning of the Establishment Clause (artifact). Thus, the benefit of this study is not limited to only the final conclusion, but also because it furthers Rhetoric’s reputation in illuminating history.

Lastly, this study also demonstrates the validity of what Barnet Baskerville and Stephen Lucas articulated in their 1977 and 1981 articles.¹²¹ Rhetorical history is still incredibly valuable and should not be totally eclipsed by critical theory.

¹¹⁹ Wichelns, 4.

¹²⁰ Wrage, Ernst J. "Public Address: A Study in Social and Intellectual History." In *Readings in Rhetorical Criticism*, edited by Carl Burghardt. Third ed. State College, PA: Strata Publishing, Inc., 1947, 30.

¹²¹ Baskerville, 107-116; Lucas, 1-20.

Final Thoughts

So what? What does this study and subsequently its determination of original intent mean? What are its ramifications? For American society, government and the legal system the ramifications are significant. It provides a much more definitive basis for constitutional interpretation and eliminates the potential constitutional barrier to all government aide to religion. In more specific terms, the most significant secondary conclusion of this study, beyond determining the original meaning is the following . . .

The Founding Fathers can not accurately be said to have desired a total separation between church and state via the Establishment Clause.

However, this does not mean that the idea of total separation will disappear quickly. Since there are other methods of interpreting of the Constitution besides “original intent,” the argument of total separation may be argued in different ways. But, the proponents of that interpretation can no longer, in good conscience, claim the Founding Fathers as supporting their argument. They must find their justifications elsewhere.

Specific policy ramifications and commentary on how the Supreme Court has interpreted the Establishment Clause are not found within this study. Those ramifications must be grappled with at another time and in another study. However, this study does provide the spring board for such endeavors. It provides the baseline of intent for the Establishment Clause as well as a solid and comprehensive foundation of evidence already formulated for the subsequent evaluation of individual policies and how the Supreme Court has handled the Establishment Clause.

One last area that this study affects is the education of American youth. Too often our textbooks express only the view of the triumvirate view of Madison, Jefferson, and Virginia. Additionally, the doctrine of total separation of between government and religion is espoused as well often without the balance of the doctrine of “no preference.”¹²² This offers a distorted view of our Founding Fathers and consequently influences the youth of America towards a belief that the Constitution prohibits the government from supporting religion. Of course, this will then

¹²² *Creating America: A History of the United States*, edited by Jesus Garcia, Donna Ogle, C. Frederick Risinger and Joyce Stevos. Teacher's Edition ed. United States of America: McDougal Littell, 2005.

Deverell, William and Deborah Gray White. *United States History: Beginings to 1877*. Teacher's Edition ed. New York: Holt, Rinehart and Winston, 2007.

have significant ramifications when these young men and women grow up and enter the political arena.

Rhetorical history in and of itself does not change what American youth are learning from their texts books per se as opposed from history and political science. Where the impact of rhetorical history lies is in the decision process before the books are written. It is the incorporation of historical, political, rhetorical, and other disciplinary subjects that together form an accurate picture of American history. Rhetorical history does play a more unique role in that aspect. In the actual teaching, it is always beneficial to expose students to primary texts which is a very “rhetorical” method. However, many other disciplines would claim the same

Regardless, of anything else, you can rest assured, not by the opinion of any commentator, but by your own reading of the weightiest evidence available, that the original intent of the Establishment Clause is

“Congress shall make no law *founding in privilege one specific Christian denomination or make laws similar to the mistreatments historically associated to having one denomination in privilege over others.*”

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Appendix A - Connecticut

*Connecticut Declaration of Rights (1776)*¹²³

An Act containing an Abstract and Declaration of the Rights and Privileges of the People of this State, and securing the same.

The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitution of Government whereby the Legislature depends on the free and annual Election of the People, they have the best Security for the Preservation of their civil and religious Rights and Liberties. And forasmuch as the free Fruition of such Liberties and Privileges Civility and Christianity call for, as is due to every Man in his Place and Proportion, without Impeachment and Infringement, hath ever been, and will be the Tranquility and Stability of Churches and Commonwealths; and the Denial thereof, the disturbance, if not the Ruin of both.

Paragraph I. *Be it enacted and declared by the Governor, and Council, and House of Representatives, in General Court assembled, That the ancient Form of Civil Government contained in the Charter from Charles the Second, King of England, and adopted by the People of this State, shall be and remain the Civil Constitution of this State, under the sole authority of the People thereof, independent of any King or Prince whatever. And that this Republic is, and shall forever be and remain, a free, sovereign and independent State, by the Name of the STATE Of CONNECTICUT.*

2. *And be it further enacted and declared, That no Man's Life shall be taken away: No Man's Honor or good Name shall be stained: No Man's Person shall be arrested, restrained, banished, dismembered, nor any Ways punished: No Man shall be deprived of his Wife or Children: No Man's Goods or Estate shall be taken away from him, nor any Ways indamaged under the Colour of Law, or Countenance of Authority; unless clearly warranted by the Laws of this State.*

3. *That all the free Inhabitants of this or any other of the United States of America, and Foreigners in Amity with this State, shall enjoy the same justice and Law within this State, which is general for the State, in all Cases proper for the Cognizance of the Civil Authority and Court of Judicature within the same, and that without Partiality or Delay.*

4. *And that no Man's Person shall be restrained, or imprisoned, by any authority whatsoever, before the Law hath sentenced him thereunto, if he can and will give sufficient Security, Bail, or Mainprize for his Appearance and good Behaviour in the mean Time, unless it be for Capital Crimes, Contempt in open Court, or in such Cases wherein some express Law doth allow of, or order the same.*

¹²³ Poore, Perley. "Constitution of Connecticut 1776." In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. Second ed. Vol. 1. Washington, D.C.: Government Printing Office, 1878,

<http://books.google.com/books?pg=PA257&dq=the%20federal%20and%20state%20constitutions%20colonial%20charters%20and%20other%20organic%20laws%20volume%202&cd=2&id=nn4FAAAQAAJ&output=ext> (accessed March 24, 2010).

*Charter of Connecticut (1662)*¹²⁴

CHARLES the Second, by the Grace of GOD, KING of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting.

Whereas by the several Navigations, Discoveries, and Successful Plantations of divers of Our loving Subjects of this Our Realm of England, several lands, Islands, Places, Colonies, and Plantations have been obtained and settled in that Part of the Continent of America called New-England, and thereby the Trade and Commerce there, bath been of late Years much increased: And whereas We have been informed by the hirable Petition of our Trusty and Well beloved John Winthrop, John Mason, Samuel Wyllys, Henry Clarke, Matthew Allyn, John Tapping, Nathan Gold, Richard Treat, Richard Lord, Henry Wolcott, John Talcott, Daniel Clarke, John Ogden, Thomas Wells, Obadiah Brewen, John Clerke, Anthony Hawkins, John Deming, and Matthew Camfeild, being Persons principally interested in Our Colony or Plantation of Connecticut, in NewEngland, that the same Colony, or the greatest part thereof, was Purchased and obtained for great and valuable Considerations, and some other Part thereof gained by Conquest, and with touch difficulty, and at the only Endeavors, Cadence, and Charges of theirs and their Associates, arced those under whom they Claim, Subdued, and Improved, and thereby become a considerable Enlargement and Addition of Our Dominions and Interest there. Now Know YE, That in consideration thereof, and in Regard the said Colony is remote from other the English Plantations in the places aforesaid, and to the End the Affairs and Business which shall from Time to Time happen or arise concerning the same, may be duly Ordered and Managed, we have thought fit, and at the humble Petition of the Persons aforesaid, and are graciously Pleased to create and make them a Body Politicly and Corporate, with the Powers and Privileges herein after mentioned; and accordingly Our Will and Pleasure is, and of our especial Grace, certain Knowledge, and meer Motion, We have ordained, constituted and declared, and by these presents, for Us, Our Heirs and Successors, Do ordain, constitute and declare, that they the said John Winthrop, John Mason, Samuel Wyllys, Henry Clarke, Matthew Allyn, John Tapping, Nathan Gold, Richard Treat, Richard lord, Henry Wolcott, John Talcott, Daniel Clarke, John Ogden, Thomas Wells, Obadiah Bowed, John Clerke, Anthony Hawkins, John Deming, and Matthew Camfeild, and all such others as now are, or hereafter shall be admitted and made free of the Company and Society of Our Colony of Connecticut, in America, shall from Time to Time, and for ever hereafter, be One Body Corporate and politique, in Fact and Name, by the Name of, Governor and Company of the English colony of Connecticut in New-England, in America;

And that by the same Name they and their Successors shall and may have perpetual Succession, and shall and may be Persons able and capable in the Law, to plead and be impleaded, to answer and to be answered unto, to defend and be defended in all and singular Suits, Causes, Quarrels, Matters, Actions, and Things, of what Kind or Nature soever; and also to have, take, possess, acquire, and purchase Lands, Tenements, or Hereditaments, or any Goods or Chattels, and the same to lease, grant, demise, alien, bargain, sell, and dispose of, as other Our liege People of this Our Realm of England, or any other Corporation or Body Politique within the same may lawfully do. And further, That the said Governor and Company, and their Successors shall and may forever hereafter have a common Seal, to serve and use for all Causes, Matters, Things, and affairs whatsoever, of them and their Successors, and the same Seal, to alter, change, break and make new from Time to Time, at their Wills and Pleasures, as they shall think fit. And further, We will and ordain, and by these Presents, forms, our Heirs and Successors, do declare and appoint, that for the better ordering and managing of the Affairs and Business of the said Company and their Successors, there shall be One Governor, One Deputy-Governor, and Twelve Assistants, to be from time to Time constituted, elected and chosen out of the Freemen of the said Company for the Time being, in such Manner and Form as hereafter in these Presents is expressed, which said Officers shall apply themselves to take Care for the best disposing and ordering of the general Business and all airs of and concerning the Land and Hereditaments herein after mentioned to- be granted, and the Plantation thereof, and the Government of the People thereof: And for the better Execution of Our Royal Pleasure herein, We do for Us, Our Heirs, and Successors, assign, name, constitute

¹²⁴ *Charter of Connecticut 1662*. National Humanities Institute, Bowie, Maryland, 1662,

<http://www.nhinet.org/ccs/docs/conn1662.htm> (accessed March 17, 2010).

and appoint the aforesaid John Winthrop to be the first and present Governor of the said Company, and the said John Mason, to be the Deputy-Governor, and the said Samuel Wyllys, Matthew Allyn, Nathan Gold, Henry Clerke, Richard Treat, John Ogden, John Tapping, John Talcott, Thomas Wells, Henry Wolcott, Richard Lord, and Daniel Clerke, to be the Twelve present assistants of the said Company, to continue in the said several Offices respectively, until the second Thursday which shall be in the Month of October now next coming. And further we Will, and by these Presents for Us, Our Heirs, and Successors, Do ordain and grant, That the Governor of the said Company for the Time being, or in his Absence by occasion of Sickness, or otherwise by his Leave or Permission, the Deputy-Governor for the Time being, shall and may from Time to Time upon all Occasions, give Order for the assembling of the said Company, and calling them together to consult and advise of the Business and Affairs of the said Company, and that for ever hereafter, twice in every Year, That is to say, On every Second Thursday in October, and on every Second Thursday in May, or oftener in case it shall be requisite; the Assistants, and Freemen of the said Company, or such of them (not exceeding Two Persons from each Place, Town, or City) who shall be from Time to Time "hereunto elected or deputed by the major Part of the Freemen of the respective Towns, Cities, and Places for which they shall be elected or deputed, shall have a General Meeting or Assembly, then and there to consult and advise in and about the Affairs and Business of the said Company: and that the Governor, or in his Absence the Deputy-Governor of the said Company for the Time being, and such of the Assistants and Freemen of the said Company as shall be so elected or deputed, and be present at such Meeting or Assembly, or the greatest Number of them, whereof the Governor or Deputy-Governor, and Six of the Assistants at least, to be Seven, shall be called the General Assembly, and shall have full Power and authority to alter-and change their Days and Times of Meeting, or General-Assemblies, for electing the Governor, Deputy-Governor, and Assistants, other Officers or any other Courts, Assemblies or Meetings, and to choose, nominate and appoint such and so many other Persons as they shall; and shall be willing to accept the same, to be Free of the said Company and Body Politique, and them into the same to admit; And to elect and constitute such Officers as they shall think fit and requisite for the ordering, managing and disposing of the Affairs of the said Governor and Company, and their Successors:

And we do hereby for Us, Our Heirs and Successors, establish and ordain, That once in the Year for ever hereafter, Namely, the said Second Thursday in May, the Governor, Deputy-Governor, and Assistants of the said Company, and other Officers of the said Company, or such of them as the said General Assembly shall thinly fit, shall be in the said General Court and Assembly to be held from that Day or Time, newly chosen for the Year ensuing, by such greater Part of the said Company for the Time being, then and there present; and if the Governor, Deputy-Governor, and Assistants by these Presents appointed, or such as hereafter be newly chosen into their Rooms, or any of them, or any other the Officers to be appointed for the said Company shall die, or be removed from his or their several Offices or Places before the said general Day of Election, whom We do hereby declare for any Misdemeanor or Default, to be removable by the Governor, Assistants, and Company, or such greater Part of them in any of the said public Courts to be assembled, as is aforesaid, that then and in every such Case, it shall and may be lawful to and for the Governor, Deputy-Governor, and Assistants, and Company aforesaid, or such greater Part of them so to be assembled, as is aforesaid, in any of their Assemblies, to proceed to a new Election of one or more of their Company, in the Room or Place, Rooms or Places of such Governor, Deputy-Governor, Assistant, or other Officer or Officers so dying or removed, according to their Discretions, and immediately upon and after such Election or Elections made of such Governor, Deputy-Governor, Assistant or Assistants,- or any other Officer of the said Company, in Manner and Form aforesaid, the Authority, Office and Power before given to the former Governor, Deputy-Governor, or other Officer and Officers so removed, in whose Stead and Place new shall be chosen, shall as to him and them, and every of them respectively, cease and determine.

Provided also, And Our Will and Pleasure is, That as well such as are by these Presents appointed to be the present Governor, Deputy-Governor, and Assistants of the said Company, as those that shall succeed them, and all other Officers to be appointed and chosen, as aforesaid, shall before they undertake the Execution of their said Offices and Places respectively, take their several and respective corporal Oaths for the due and faithful Performance of their Duties, in their several Offices and Places, before such Person or Persons as are by these Presents hereafter appointed to take and receive the same; That is to say, The said John Winthrop, who is herein before nominated and appointed the present Governor of the said Company, shall take the said Oath before One or more of the Masters of Our Court of Chancery for the Time being, unto which Master of Chancery, We do by these Presents give full Power and Authority to administer the Oath to the said John Winthrop accordingly: And the said John Mason, who is herein before nominated and appointed the present Deputy-Governor of the said Company, shall take Math before the said John Winthrop, or any Two of the Assistants of the said Company, unto whom We

do by these Presents give full Power and Authority to administer the said Oath to the said John Mason accordingly: And the said Saqnnel Wyllys, Henry Clerice, Matthew Allyn, John Tapping, Nathan Cold, Richard Treat, Richard Lord, Henry Wolcott, John Talcott, Daniel Clerke, John Ogden, and Thomas Wells, who are herein before nominated and appointed the present Assistants of the said Company, shall take the Oath before the said John Winthrop, and John Mason, or One of them, to whom We do hereby give full Power and Authority to administer the same accordingly.

And Our further Will and Pleasure is, that all and every Governor, or Deputy-Governor to be elected and chosen by Virtue of these Presents, shall take the said Oath before Two or more of the Assistants of the said Company for the Time being, unto whom We do by these Presents give full Power and Authority to give and administer the said Oath accordingly; and the said Assistants, and every of them, and all and every other Officer or Officers to be here after chosen from Time to Time, to take the said Oath before the Governor, or Deputy-Governor for the Time being, unto which Governor, or Deputy-Governor, We do by these Presents give full Power and Authority to administer the same accordingly. And further, Of Our more ample Grace, certain Knowledge, and meer Motion, We have given and granted, and by these presents for Us, Our Heirs and Successors, do give and grant unto the said Governor and Company of the English Colony of Connecticut, in New England, in America, and to every Inhabitant there, and to every Person and Persons trading thither, and to every such Person and Persons as are or shall be Free of the said Colony, full Power and Authority from Time to Time, and at all Times hereafter, to take Ship, Transport and carry away for and towards the Plantation and Defence of the said Colony, such of Our loving Subjects and Strangers, as shall or will willingly accompany them in, and to their said Colony and Plantation, except such Person and Persons as are or shall be therein restrained by Us, Our Heirs and Successors; and also to ship and transport all, and all Manner of Goods, Chattels, Merchandises, and other Things whatsoever that are or shall be useful or necessary for the Inhabitants of the said Colony, and may lawfully be transported thither; Nevertheless, not to be discharged of Payment to Us, our Heirs and Successors, of the Duties, Customs and Subsidies which are or ought to be paid or payable for the same.

And further, Our Will and Pleasure is, and We do for Us, Our Heirs and Successors, ordain, declare, and grant unto the said Governor and Company, and their Successors, That all, and every the Subjects of Us, Our Heirs, or Successors, which shall go to inhabit within the said Colony, and every of their Children, which shall happen to be born there, or on the Seas in going thither, or returning from thence, shall have and enjoy all Liberties and Immunities of free Did natural Subjects within any the Dominions of US, Our Heirs or Successors, to all Intents, Constructions and Purposes whatsoever, as if the they and every of them were born within the realm of England; And We do authorize and empower the Governor or in his Absence the Deputy governor for the Time being, to appoint Two or more of the said Assistants at any of their Courts or Assemblies to be held as aforesaid, to have Power and Authority to administer the Oath of Supremacy and Obedience to all and every Person or Persons which shall at any Time or Times hereafter go or pass into the said Colony of Connecticut, unto which said Assistants so to be appointed as aforesaid We do by these Presents give full Power and Authority to administer the said Oath accordingly. And We do further of Our especial Grace, certain Knowledge: and meer Motion, give, and grant unto the said Governor and Company of the English Colony of Connecticut, in New-England, in America, and their Successors, That it shall and may be lawful to and for the Governor, or Deputy-Governor, and such of the Assistants of the said Company for the Time being as shall be assembled in any of the General Courts aforesaid, or in any Courts to be especially summoned or assembled for that Purpose, or the greater part of them, whereof the Governor, or Deputy-Governor, and Six of the Assistants to be always Seven, to erect and make such Judicatories, for the hearing, and determining of all Actions, Causes, Matters, and Things happening within the said Colony, or Plantation, and which shall be in Dispute, and Depending there, as they shall think Fit, and Convenient, and also from Time to Time to Make, Ordain, and Establish all manner of wholesome, and reasonable Laws Statutes, Ordinances, Directions, and Instructions, not Contrary to the Laws of this Realm of England, as well for settling the Forms, and Ceremonies of Government, and Magistracy, fit and necessary for the said Plantation, and the Inhabitants there, as for Naming, and Stiling all Sorts of Officers, both Superior and Inferior, which they shall find Needful for the Government, and Plantation of the said Colony, and the distinguishing and setting forth of the several Duties, Powels, and Limits of every such Office and Place, and the Forms of such Oaths not being contrary to the Laws and Statutes of this Our Realm of England, to be administered for the Execution of the said several Offices and Places as also for the disposing and ordering of the Election of such of the said Officers as are to be annually chosen, and of such others as shall succeed in case of Death or Removal, and administring the said Oath to the newly-elected Officers, and granting necessary Commissions, and for Imposition of lawful Fines, Mulcts.

Imprisonment or other Punishment upon Offenders and Delinquents according to the Curse of other Corporations within this our Kingdom of England, and the same Laws, Fines, Mulcts and Executions, to alter, change, revoke, annul, release, or pardon under their Common Seal, as by the said General Assembly, or the major Part of them shall be thought fit, and for the directing, ruling and disposing of all other Matters and things, whereby Our said People Inhabitants there, may be so religiously, peaceably and civilly governed, as their good Life and orderly Conversation may win and invite the Natives of the Country to the Knowledge and Obedience of the only true GOD, and He Saviour of Mankind, and the Christian Faith, which in Our Royal Intentions, and the adventurers free Possession, is the only and principal End of this Plantation; willing, commanding and requiring, and by these Presents for Us, Our Heirs and Successors, ordaining and appointing, that all such Laws, Statutes and Ordinances, Instructions, Impositions and Directions as shall be so made by the Governor, Deputy-Governor, and Assistants as aforesaid, and published in Writing under their Common Seal, shall carefully and duly be observed, kept, performed, and put in Execution, according to the true Intent and Meaning of The same, and these Our Letters Patents, or the Duplicate, or Exemplification thereof, shall be to all and every such Officers, Superiors and Inferiors from Time to Time, for the putting of the same Orders, Laws, Statutes, Ordinances, Instructions, and Directions in due Execution, against Us, Our Heirs and Successors, a sufficient Warrant and Discharge.

And We do further for US, Our Heirs and Successors, give and grant unto the said Governor and Company, and their Successors, by these Presents, That it shall and may be lawful to, and for the Chief Commanders, Governors and Officers of the said Company for the Time being, who shall be resident in the Parts of New-England hereafter mentioned, and others inhabiting there, by their Leave, Admittance Appointment, or Direction, from Time to Time, and at All Times hereafter, for their special Defence and Safety, to Assemble, Martial-Array, and put in warlike Posture the Inhabitants of the said Colony, and to Commissionate, Impower, and Authorize such Person or Persons as they shall think fit, to lead and conduct the said Inhabitants, and to encounter, expulse, repel and resist by Force of Arms, as well by Sea as by Land, and also to kill, slay, and destroy by all fitting Ways' Enterprises, and Means whatsoever, all and every such Person or Persons as shall at any Time hereafter attempt or enterprise the Destruction, Invasion, Detriment, or Annoyance of the said Inhabitants or Plantation, and to use and exercise the Law Martial in such Cases only as Occasion shall require; and to take or surprize by all Ways and Means whatsoever, all and every such Person and Persons, with their Ships' Armour, Ammunition and other Goods of such as shall in such hostile Manner invade or attempt the defeating of the said Plantation, or the hurt of the said Company and Inhabitants, and upon just Causes to invade and destroy the Natives, or other Enemies of the said Colony. Nevertheless; Our Will and Pleasure is, and We do hereby declare unto all Christian Icings, Princes, and States, that if any Persons which shall hereafter lie of the said Company or Plantation, or any other by Appointment of the said Governor and Company for the Time being, shall at any Time or Times hereafter rob or spoil by Sea or by Land, and do any Hurt, Violence, or unlawful Hostility to any of the Subjects of Us, Our Heirs or Successors, or any of the Subjects of any Prince or State, being then in League with Us, Our Heirs or Successors, upon Complaint of such Injury done to any such Prince or State, or their Subjects, We, Our Heirs and Successors will make open Proclamation within any Parts of Our Realm of England fit for that Purpose, thin the Person or Persons committing any such Robbery or Spoil, shall within the Time limited by such Proclamation, make full Restitution or Satisfaction of all such Injuries Lone or committed, so as the Said Prince, or others so complaining may be fully satisfied and contented; and if the said Person or Persons who shall commit any such Robbery or Spoil shall not make Satisfaction accordingly, within such Time so to be limited, that then it shall and may be lawful for Us, Our Heirs and Successors, to put such Person or Persons out of (whir Allegiance and Protection; and that it shall and may be lawful and free for all Princes or others to prosecute with Hostility such Offenders, and every of them, their, and every of their Procurers, Aiders, Abettors and Counsellors in that Behalf.

Provided also, and Our express Will and Pleasure is, and We do by these Presents for Us, Our Heirs; and Successors, Ordain and Appoint, that these Presents shall not in any Manner hinder any of Our loving Subjects whatsoever to use and exercise the Trade of Fishing upon the Coast of New-England, in America, but they and every or any of them shall have full and free Power and Liberty, to continue, and use the said Trade of Fishing upon the said Coast, in any of the Seas thereunto adjoining, or any Arms of the Seas, or Salt Water Rivers where they have been accustomed to fish, and to build and set up on the. waste Land belonging to the said Colony of Connecticut, such Wharves, Stages, and Work-Houses as shall be necessary for the salting, drying, and keeping of their Fish to be taken, or gotten upon that Coast, any Thing in these Presents contained to the contrary notwithstanding. And Know Ye further, That We, of Our abundant Grace, certain Knowledge, and mere Motion, have given, granted, and

confirmed, and by these Presents for Us, our Heirs and Successors, do give, grant and confirm unto the said Governor and Company, and their Successors, all that Part of Our Dominions in New-England in America, bounded on the East by Narraganset-River, commonly called Narraganset-Bay, where the said River falleth into the Sea; and on the North by the Line of the If Massachusetts-Plantation; and on the South by the Sea; and in Longitude as the Line of the Massachusetts-Colony, running from East to West, That is to say, From the said Narraganset-Bay on the East, to the South Sea on the West Part, with the Islands thereunto adjoining, together with all firm Lands, Soils, Grounds, Havens, Ports, Rivers, Waters, Dishings, Mines, Minerals, precious Stones, Quarries, and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises, Preheminences, and Hereditaments whatsoever, within the said Tract, Bounds, Lands, and Islands aforesaid, or to them or any of them belonging. To have and to hold the same unto the said Governor and Company, their Successors and Assigns for ever, upon Trust, and for the Use and Benefit of Themselves and their Associates, Freemen of the said Colony, their Heirs and Assigns, to be holden of Its, Our Heirs and Successors, as of Our Manor of East-Greenwich, in free and common Soccage, and not in Capite, nor by Knights Service, yielding and paying therefore to Us, Our Heirs and Successors, only the Fifth Part of all the Ore of Gold add Silver which from Time to Time, and at all Times hereafter, shall be there gotten, had, or obtained, in Lieu of all Services, Duties, and Demands whatsoever, to be to Us, our Heirs, or Successors therefore, or thereout rendered, made, or paid.

And lastly, We do for Us, our Heirs and Successors, grant to the said Governor and Company, and their Successors, by these Presents, That these Our Letters Patents, shall be firm, good and effectual in the Law, to all Intents, Constructions, and Purposes whatsoever according to Our true Intent and Meaning herein before declared, as shall be construed, reputed and adjudged most favourable on the Behalf, and for the best Benefit, and Behoof of the said Governor and Company, and their Successors, although express Mention of the true Yearly Value or Certainty of the Premises, or of any of them, or of any other Gifts or Grants by Us, or by any of Our Progenitors, or Predecessors, heretofore made to the said Governor and Company of the English Colony of Connecticut, in New-England, in America, aforesaid, in these Presents is not made, or any Statute, Act, Ordinance, Provision, Proclamation, or Restriction heretofore had, made, enacted, ordained, or provided, or any other Matter, Cause, or Thing whatsoever, to the contrary thereof, in any wise notwithstanding. In Witness whereof, We have caused these Our Letters to be made Patents. Witness Ourselves at Westminster, the Three and Twentieth Day of April, in the Fourteenth Year of our Reign.

By Writ of Privy Seal,

HOWARD

Appendix B - Delaware

*Constitution of Delaware (1776)*¹²⁵

The Constitution, or System of Government, agreed to and resolved upon by the Representatives in full Convention of the Delaware State, formerly styled "The Government of the Counties of New Castle, Kent, and Sussex, upon Delaware," the said Representatives being chosen by the Freemen of the said State for that express Purpose.

ARTICLE 1. The government of the counties of New- Castle, Kent and Sussex, upon Delaware, shall hereafter in all public and other writings be called The Delaware State.

ART. 2. The Legislature shall be formed of two distinct branches; they shall meet once or oftener in every year, and shall be called, " The General Assembly of Delaware."

ART. 3. One of the branches of- the Legislature shall be called, " The House of Assembly," and shall consist of seven Representatives to be chosen for each county annually of such persons as are freeholders of the same.

ART. 4.4 The other branch shall be called " The council," and consist of nine members; three to be chosen for each county at the time of the first election of the assembly, who shall be freeholders of the county for which they are chosen, and be upwards of twenty-five years of age. At the end of one year after the general election, the councillor who had the smallest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by the freemen of each county choosing the same or another person at a new election in manner aforesaid. At the end of two years after the first general election, the councillor who stood second in number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And at the end of three years from the first general election, the councillor who had the greatest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And this rotation of a councillor being displaced at the end of three years in each county, and his office supplied by a new choice, shall be continued afterwards in due order annually forever, whereby, after the first general election, a councillor will remain in trust for three years from the time of his being elected, and a councillor will be displaced, and the same or another chosen in each county at every election.

ART. 5. The right of suffrage in the election of members for both houses shall remain as exercised by law at present; and each house shall choose its own speaker, appoint its own officers, judge of the qualifications and elections of its own members, settle its own rules of proceedings, and direct writs of election for supplying intermediate vacancies. They may also severally expel any of their own members for misbehavior, but not a second time in the same sessions for the same offence, if reelected; and they shall have all other powers necessary for the legislature of a free and independent State.

¹²⁵ *Constitution of Delaware 1776*. The Avalon Project, Yale Law School, 1776,
http://avalon.law.yale.edu/18th_century/de02.asp (accessed March 24, 2010).

ART. 6. All money-bills for the support of government shall originate in the house of assembly, and may be altered, amended, or rejected by the legislative council. All other bills and ordinances may take rise in the house of assembly or legislative council, and may be altered, amended, or rejected by either.

ART. 7. A president or chief magistrate shall be chosen by joint ballot of both houses' to be taken in the house of assembly, and the box examined by the speakers of each house in the presence of the other members, and in case the numbers for the two highest in votes should be equal, then the speaker of the council shall have an additional casting voice, and the appointment of the person who has the majority of votes shall be entered at large on the minutes and journals of each house, and a copy thereof on parchment, certified and signed by the speakers respectively, and sealed with the great seal of the State, which they are hereby authorized to affix, shall be delivered to the person so chosen president, who shall continue in that office three years, and until the sitting of the next general assembly and no longer, nor be eligible until the expiration of three years after he shall have been out of that office. An adequate but moderate salary shall be settled on him during his continuance in office. He may draw for such sums of money as shall be appropriated by the general assembly, and be accountable to them for the same; he may, by and with the advice of the privy council, lay embargoes or prohibit the exportation of any commodity for any time not exceeding thirty days in the recess of the general assembly; he shall have the power of granting pardons or reprieves, except where the prosecution shall be carried on by the house of assembly, or the law shall otherwise direct, in which cases no pardon or reprieve shall be granted, but by a resolve of the house of assembly, and may exercise all the other executive powers of government' limited and restrained as by this constitution is mentioned, and according to the laws of the State. And on his death, inability, or absence from the State, the speaker of the legislative council for the time being shall be vice-president, and in case of his death, inability, or absence from the State, the speaker of the house of assembly shall have the powers of a president, until a new nomination is made by the general assembly.

ART. 8. A privy council, consisting of four members, shall be chosen by ballot, two by the legislative council and two by the house of assembly: *Provided*, That no regular officer of the army or navy in the service and pay of the continent, or of this, or of any other State, shall be eligible; and a member of the legislative council or of the house of assembly being chosen of the privy council, and accepting thereof, shall thereby lose his seat. Three members shall be a quorum, and their advice and proceedings shall be entered of record, and signed by the members present, (to any part of which any member may enter his dissent,) to be laid before the general assembly when called for by them. Two members shall be removed by ballot, one by the legislative council and one by the house of assembly, at the end of two years, and those who remain the next year after, who shall severally be ineligible for the three next years. The vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections in the same manner; and this rotation of a privy councillor shall be continued afterwards in due order annually forever. The president may by summons convene the privy council at any time when the public exigencies may require, and at such place as he shall think most convenient, when and where they are to attend accordingly.

ART. 9. The president, with the advice and consent of the privy council, may embody the militia, and act as captain-general and commander-in-chief of them, and the other military force of this State, under the laws of the same.

ART. 10. Either house of the General assembly may adjourn themselves respectively. The president shall not prorogue, adjourn, or dissolve the general assembly, but he may, with the advice of the privy council, or on the application of a majority of either house, call them before the time they shall stand adjourned; and the two houses shall always sit at the same time and place, for which purpose immediately after every adjournment the speaker of the house of assembly shall give notice to the speaker of the other house of the time to which the house of assembly stands adjourned.

ART. 11. The Delegates for Delaware to the Congress of the United States of America shall be chosen annually, or superseded in the mean time, by joint ballot of both houses in the general assembly.

ART. 12. The president and general assembly shall by joint ballot appoint three justices of the supreme court for the State, one of whom shall be chief justice, and a judge of admiralty, and also four justices of the courts of common pleas and orphans' courts for each county, one of whom in each court shall be styled "*chief justice*," (and in case of division on the Ballot the president shall have an additional casting voice,) to be commissioned by the president under the great seal, who shall continue in office during good behavior; and during the time the justices of the said supreme court and courts of common pleas remain in office, they shall hold none other except in the militia. Any one of the justices of either of said courts shall have power, in case of the noncoming of his brethren, to open and adjourn the court. An adequate fixed but moderate salary shall be settled on them during their continuance in office. The president and privy council shall appoint the secretary, the attorney-general, registers for the probate of wills and granting letters of administration, registers in chancery, clerks of the courts of common pleas and orphans' courts, and clerks of the peace, who shall be commissioned as aforesaid, and remain in office during five years, if they behave themselves well; during which time the said registers in chancery and clerks shall not be justices of either of the said courts of which they are officers, but they shall have authority to sign all writs by them issued, and take recognizances of bail. The justices of the peace shall be nominated by the house of assembly; that is to say, they shall name twenty-four persons for each county, of whom the president, with the approbation of the privy council, shall appoint twelve, who shall be commissioned as aforesaid, and continue in office during seven years, if they behave themselves well; and in case of vacancies, or if the legislature shall think proper to increase the number, they shall be nominated and appointed in like manner. The members of the legislative and privy councils shall be justices of the peace for the whole State, during their continuance in trust; and the justices of the courts of common pleas shall be conservators of the peace in their respective counties.

ART. 13. The justices of the courts of common pleas and orphans courts shall have the power of holding inferior courts of chancery, as heretofore, unless the legislature shall otherwise direct.

ART. 14. The clerks of the supreme court shall be appointed by the chief justice thereof, and the recorders of deeds, by the justices of the courts of common pleas for each county severally, and commissioned by the president, under the great seal, and continue in office five years, if they behave themselves well.

ART. 15. The sheriffs and coroners of the respective counties shall be chosen annually, as heretofore; and any person, having served three years as sheriff, shall be ineligible for three years after; and the president and privy council shall have the appointment of such of the two candidates, returned for said offices of sheriff and coroner, as they shall think best qualified, in the same manner that the governor heretofore enjoyed this power.

ART. 16. The general assembly, by joint ballots shall appoint the generals and field-officers, and all other officers in the army or navy of this State; and the president may appoint, during pleasure, until otherwise directed by the legislature, all necessary civil officers not hereinbefore mentioned.

ART. 17. There shall be an appeal from the supreme court of Delaware, in matters of law and equity, to a court of seven persons, to consist of the president for the time being, who shall preside therein, and six others, to be appointed, three by the legislative council, and three by the house of assembly, who shall continue in office during good behavior, and be commissioned by the president, under the great seal; which court shall be styled the " court of appeals," and have all the authority and powers heretofore given by law in the last resort to the King in council, under the old government. The secretary shall be the clerk of this court; and vacancies therein occasioned by death or incapacity, shall be supplied by new elections, in manner . aforesaid.

ART. 18. The justices of the supreme court and courts of common pleas, the members of the privy council, the secretary, the trustees of the loan office, and clerks of the court of common pleas, during their continuance in office, and all persons concerned in any army or navy contracts, shall be ineligible to either house of assembly; and any member of either house accepting of any other of the offices herein before mentioned (excepting the office of a justice of the peace) shall have his seat thereby vacated, and a new election shall be ordered.

ART. 19. The legislative council and assembly shall have the power of making the great seal of this State, which shall be kept by the president, or, in his absence, by the vice-president, to be used by them as occasion may require. It shall be called "*The Great Seal of the Delaware State,*" and shall be affixed to all laws and commissions.

ART. 20. Commissions shall run in the name of "The Delaware State," and bear test by the president. Writs shall run in the same manner, and bear test in the name of the chief-justice, or justice first named in the commissions for the several courts, and be sealed with the public seals of such courts. Indictments shall conclude, "*Against the peace and dignity of the State.*"

ART. 21. In case of vacancy of the offices above directed to be filled by the president and general assembly, the president and privy council may appoint others in their stead until there shall be a new election.

ART. 22. Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit:

"I, A B. will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act wittingly whereby the freedom thereof may be prejudiced."

And also make and subscribe the following declaration, to wit:

"I, A B. do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

And all officers shall also take an oath of office.

ART. 23. The president, when he is out of office, and within eighteen months after, and all others offending against the State, either by maladministration, corruption, or other means, by which the safety of the Commonwealth may be endangered, within eighteen months after the offence committed, shall be impeachable by the house of assembly before the legislative council; such impeachment to be prosecuted by the attorney-general, or such other person or persons as the house of assembly may appoint, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or removed from office *pro tempore*, or subjected to such pains and penalties as the laws shall direct. And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the general assembly.

ART. 24. All acts of assembly in force in this State on the 15th day of May last (and not hereby altered, or contrary to the resolutions of Congress or of the late house of assembly of this State) shall so continue, until altered or repealed by the legislature of this State, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

ART. 25. The common law of England, as-well as so much of the statute law as has been heretofore adopted in practice in this State, shall remain in force, unless they shall be altered by a future law of the legislature; such parts only excepted as are repugnant to the rights and privileges contained in this constitution, and the declaration of rights, &c., agreed to by this convention.

ART. 26. No person hereafter imported into this State from Africa ought to be held in slavery under any presence whatever; and no negro, Indian, or mulatto slave ought to be brought into this State, for sale, from any part of the world.

ART. 27. The first election for the general assembly of this State shall be held on the List day of October next, at the court-houses in the several counties, in the manner heretofore used in the election of the assembly, except as to the choice of inspectors and assessors, where assessors have not been chosen on the 16th day of September, instant, which shall be made on the morning of the day of election, by the electors, inhabitants of the respective hundreds in each county. At which time the sheriffs and coroners, for the said counties respectively, are to be elected; and the present sheriffs of the counties of Newcastle and Kent may be rechosen to that office until the 1st day of October, A. D. 1779; and the present sheriff for the county of Sussex may be rechosen to that office until the 1st day of October, A. D. 1778, provided the freemen think proper to reelect them at every general election; and the present sheriffs and coroners, respectively, shall continue to exercise their offices as heretofore, until the sheriffs and coroners, to be elected on the said 21st day of October, shall be commissioned and sworn into office. The members of the legislative council and assembly shall meet, for transacting the business of the State, on the 28th day of October next, and continue in office until the 1st day of October, which will be in the year 1777; on which day, and on the 1st day of October in each year forever after, the legislative council, assembly, sheriffs, and coroners shall be chosen by ballot, in manner directed by the several laws of this State, for regulating elections of members of assembly and sheriffs and coroners; and the general assembly shall meet on the 20th day of the same month for the transacting the business of the State; and if any of the said 1st and 20th days of October should be Sunday, then, and in such case, the elections shall be held, and the general assembly meet, the next day following.

ART. 28. To prevent any violence or force being used at the said elections, no person shall come armed to any of them, and no muster of the militia shall be made on that day; nor shall any battalion or company give in their votes immediately succeeding each other, if any other voter, who offers to vote, objects thereto; nor shall any battalion or company, in the pay of the continent, or of this or any other State, be suffered to remain at the time and place of holding the said elections, nor within one mile of the said places respectively, for twenty-four hours before the opening said elections, nor within twenty-four hours after the same are closed, so as in any manner to impede the freely and conveniently carrying on the said election: *Provided always*, That every elector may, in a peaceable and orderly manner, give in his vote on the said day of election.

ART. 29. There shall be no establishment of any one religious sect in this State in preference to another; and no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this State, or of being a member of either of the branches of the legislature, while they continue in the exercise of the pastoral function.

ART. 30. No article of the declaration of rights and fundamental rules of this State, agreed to by this convention, nor the first, second, fifth, (except that part thereof that relates to the right of suffrage,) twenty-sixth, and twenty-ninth articles of this constitution, ought ever to be violated on any presence whatever. No other part of this constitution shall be altered, changed, or diminished without the consent of five parts in seven of the assembly, and seven members of the legislative council.

GEORGE READ, President.

Attest:

JAMES BOOTH, Secretary. - Friday, September 10, 1776.

*Delaware Declaration of Rights (1776)*¹²⁶

Section 1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

Sect. 2. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings; and that no man ought or of right can be compelled to attend any religious worship or maintain any ministry contrary to or against his own free will and consent, and that no authority can or ought to be vested in, or assumed by any power whatever that shall in any case interfere with, or in any manner controul the right of conscience in the free exercise of religious worship.

Sect. 3. That all persons professing the Christian religion ought forever to enjoy equal rights and privileges in this state, unless, under colour of religion, any man disturb the peace, the happiness or safety of society.

Sect. 4. That people of this state have the sole exclusive and inherent right of governing and regulating the internal police of the same.

Sect. 5. That persons intrusted with the Legislative and Executive Powers are the Trustees and Servants of the public, and as such accountable for their conduct; wherefore whenever the ends of government are perverted, and public liberty manifestly endangered by the Legislative singly, or a treacherous combination of both, the people may, and of right ought to establish a new, or reform the old government.

Sect. 6. That the right in the people to participate in the Legislature, is the foundation of liberty and of all free government, and for this end all elections ought to be free and frequent, and every freeman, having sufficient evidence of a permanent common interest with, and attachment to the community, hath a right of suffrage.

Sect. 7. That no power of suspending laws, or the execution of laws, ought to be exercised unless by the Legislature.

Sect. 8. That for redress of grievances, and for amending and strengthening of the laws, the Legislature ought to be frequently convened.

Sect. 9. That every man hath a right to petition the Legislature for the redress of grievances in a peaceable and orderly manner.

¹²⁶ "Delaware Declaration of Rights 1776." Chap. 4, In *The Founders' Constitution*. Vol. 5. Chicago: University of Chicago, 1952, http://press-pubs.uchicago.edu.er.lib.k-state.edu/founders/documents/bill_of_rightss4.html (accessed March 24, 2010).

Sect. 10. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him or applied to public uses without his own consent or that of his legal Representatives: Nor can any man that is conscientiously scrupulous of bearing arms in any case be justly compelled thereto if he will pay such equivalent.

Sect. 11. That retrospective laws, punishing offences committed before the existence of such laws, are oppressive and unjust, and ought not to be made.

Sect. 12. That every freeman for every injury done him in his goods, lands or person, by any other person, ought to have remedy by the course of the law of the land, and ought to have justice and right for the injury done to him freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

Sect. 13. That trial by jury of facts where they arise is one of the greatest securities of the lives, liberties and estates of the people.

Sect. 14. That in all prosecutions for criminal offences, every man hath a right to be informed of the accusation against him, to be allowed counsel, to be confronted with the accusers or witnesses, to examine evidence on oath in his favour, and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Sect. 15. That no man in the Courts of Common Law ought to be compelled to give evidence against himself.

Sect. 16. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sect. 17. That all warrants without oath to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend all persons suspected, without naming or describing the place or any person in special, are illegal and ought not to be granted.

Sect. 18. That a well regulated militia is the proper, natural and safe defence of a free government.

Sect. 19. That standing armies are dangerous to liberty, and ought not to be raised or kept up without the consent of the Legislature.

Sect. 20. That in all cases and at all times the military ought to be under strict subordination to and governed by the civil power.

Sect. 21. That no soldier ought to be quartered in any house in time of peace without the consent of the owner; and in time of war in such manner only as the Legislature shall direct.

Sect. 22. That the independency and uprightness of judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people.

Sect. 23. That the liberty of the press ought to be inviolably preserved.

Appendix C - Georgia

*Constitution of Georgia (1789)*¹²⁷

We, the underwritten delegates from the people, in convention met, do declare that the following articles shall form the constitution for the government of this State; and, by virtue of the powers in us vested for that purpose, do hereby ratify and confirm the same.

ARTICLE I.

Section 1. The legislative power shall be vested in two separate and distinct branches, to wit, a senate and house of representatives, to be styled "The General Assembly."

Section 2. The senate shall be elected on the first Monday in October in every third year, until such day of election be altered by law; and shall be composed of one member from each county, chosen by the electors thereof, and shall continue for the term of three years.

Section 3. No person shall be a member of the Senate who shall not have attained to the age of twenty-eight years, and who shall not have been nine years an inhabitant of the United States, and three years a citizen of this State; and shall be an inhabitant of that county for which he shall be elected, and have resided therein six months immediately preceding his election, and shall be possessed in his own right of two hundred and fifty acres of land, or some property to the amount of two hundred and fifty pounds.

Section 4. The senate shall elect, by ballot, a president out of their own body.

Section 5. The senate shall have solely the power to try all impeachments.

Section 6. The election of members for the house of representatives shall be annual, on the first Monday in October, until such day of election be altered by law, and shall be composed of members from each county, in the following proportions: Camden, two; Glynn, two; Liberty, four; Chatham, five; Effingham, two; Burke, four; Richmond, four; Wilkes, five; Washington, two; Green, two; and Franklin, two.

Section 7. No person shall be a member of the House of representatives who shall not have attained to the age of twenty-one years, and have been seven years a citizen of the United States, and two years an inhabitant of this State; and shall be an inhabitant of that county for which he shall be elected, and have resided therein three months immediately preceding his election; and shall be possessed in his own right of two hundred acres of land, or other property to the amount of one hundred and fifty pounds.

Section 8. The house of representatives shall choose their speaker and other officers.

Section 9. They shall have solely the power to impeach all persons who have been or may be in office.

Section 10. No person holding a military commission, or office of profit, under this or the United States, or either of

¹²⁷ "Georgia Constitution of 1789." Digital Library of Congress. <http://georgiainfo.galileo.usg.edu/con1789.htm> (accessed March 24, 2010).

them, (except justices of the peace and officers of the militia,) shall be allowed to take his seat as a member of either branch of the General Assembly; nor shall any senator or representative be elected to any office of profit which shall be created during his appointment.

Section 11. The meeting of the General Assembly shall be annual, on the first Monday in November, until such day of meeting be altered by law.

Section 12. One-third of the members of each branch shall have power to proceed to business; but a smaller number may adjourn from day to day, and compel the attendance of their members in such manner as each house may prescribe.

Section 13. Each house shall be judges of the elections, returns, and qualifications of its own members, with powers to expel or punish for disorderly behavior.

Section 14. No senator or representative shall be liable to be arrested during his attendance on the general assembly or for a reasonable time in going thereto or returning home, except it be for treason, felony or breach of the peace; nor shall any member be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

Section 15. The members of the senate and house of representatives shall take the following oath or affirmation: "I, AB, do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, or other unlawful means; and that I will give my vote on all questions that may come before me, as a senator, (or representative,) in such manner as, in my judgment will best promote the good of this State; and that I will bear true faith and allegiance to the same, and to the utmost of my power observe, support, and defend the constitution thereof."

Section 16. The General Assembly shall have power to make all laws and ordinances which they shall deem necessary and proper for the good of the State, which shall not be repugnant to this constitution.

Section 17. They shall have power to alter the boundaries of the present counties, and to lay off new ones, as well out of the counties already laid off, as out of the other territory belonging to the State. When a new county or counties shall be laid off, out of any of the present county or counties, such new county or counties shall have their representation apportioned out of the number of representatives of the county or counties out of which it or they shall be laid out; and when any new county shall be laid off in the vacant territory belonging to the State, such county shall have a number of representatives, not exceeding three, to be regulated and determined by the General Assembly. And no money shall be drawn out of the treasury, or from the public funds of this State, except by appropriations made by law.

Section 18. No clergyman of any denomination shall be a member of the General Assembly.

ARTICLE II.

Section 1. The executive power shall be vested in a governor, who shall hold his office during the term of two years, and shall be elected in the following manner:

Section 2. The house of representatives shall, on the second day of their making a house, in the first, and in every second year thereafter, vote by ballot for three persons; and shall make a list containing the names of the persons voted for, and of the number of votes for each person; which list the speaker shall sign in the presence of the house, and deliver it in person to the senate; and the senate shall, on the same day, proceed, by ballot, to elect one of the three persons having the highest number of votes; and the person having a majority of the votes of the senators present shall be the governor.

Section 3. No person shall be eligible to the office of governor who shall not have been a citizen of the United States twelve years, and an inhabitant of this State six years, and who hath not attained to the age of thirty years, and who does not possess five hundred acres of land, in his own right, within this State, and other species of property to the

amount of one thousand pounds sterling.

Section 4. In case of the death, resignation, or disability of the governor, the president of the senate shall exercise the executive powers of government until such disability be removed, or until the next meeting of the General Assembly.

Section 5. The governor shall, at stated times, receive for his service a compensation which shall neither be increased nor diminished during the period for which he shall be elected; neither shall he receive, within that period, any other emolument from the United States, or any of them, or from any foreign power. Before he enters on the execution of his office he shall take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will faithfully execute the office of governor of the State of Georgia, and will, to the best of my abilities, preserve, protect, and defend the said State, and cause justice to be executed in mercy therein, according to the constitution and law of the same."

Section 6. He shall be commander-in-chief in and over the State of Georgia. and of the militia thereof.

Section 7. He shall have power to grant reprieves for offenses against the State, except in cases of impeachment, and to grant pardons, in all cases after conviction, except for treason or murder, in which cases he may respite the execution, and make a report thereof to the next General Assembly, by whom a pardon may be granted.

Section 8. He shall issue writs of election to fill up vacancies that happen in the senate or house of representatives, and shall have power to convene the General Assembly on extraordinary occasions, and shall give them, from time to time, information of the state of the republic, and recommend to their consideration such measures as he may deem necessary and expedient.

Section 9. In case of a disagreement between the senate and house of representatives, with respect to the time to which the General Assembly shall adjourn, he may adjourn them to such time as he may think proper.

Section 10. He shall have the revision of all bills passed by both houses, before the same shall become laws; but two-thirds of both houses may pass a law, notwithstanding his dissent, and, if any bill should not be returned by the governor within five days after it hath been presented to him, the same shall be a law, unless the General Assembly, by their adjournment, shall prevent its return

Section 11. The great seal of the State shall be deposited in the office of the secretary, and it shall not be affixed to any instrument of writing without it be by order of the governor or General Assembly; and the General Assembly may direct the great seal to be altered.

ARTICLE III.

Section 1. A superior court shall be held in each county twice in every year; in which shall be tried, and brought to final decision, all causes, civil and criminal, except such as may be subject to a Federal court, and such as may, by law, be referred to inferior jurisdiction.

Section 2. The General Assembly shall point out the mode of correcting errors and appeals, which shall extend so far as to empower the judges to direct a new trial by jury within the county where the action originated, and which shall be final.

Section 3. Courts-martial shall be held as heretofore, subject to such regulations as the General Assembly may by law direct.

Section 4. All causes shall be tried in the county where the defendant resides except in cases of real estate, which shall be tried in the county where the estate lies, and in criminal cases which shall be tried in the county where the crime shall be committed.

Section 5. The judges of the superior court and attorney general shall have a competent salary established by law, which shall not be increased nor diminished during their continuance in office, and shall hold their commission during the term of three years.

ARTICLE IV.

Section 1. The electors of the members of both branches of the General Assembly shall be citizens and inhabitants of this State, and shall have attained to the age of twenty-one years, and have paid tax for the year preceding the election, and shall have resided six months within the county.

Section 2. All elections shall be by ballot, and the house of representatives, in all appointments of State officers, shall vote for three persons; and a list of the three persons having the highest number of votes shall be signed by the speaker, and sent to the Senate, which shall from such list determine, by a majority of their votes, the officer elected, except militia officers and the secretaries of the governor, who shall be appointed by the governor alone, under such regulations and restrictions as the General Assembly may prescribe. The General Assembly may vest the appointment of inferior officers in the governor, the courts of justice, or in such other manner as they may by law establish.

Section 3. Freedom of the press and trial by jury shall remain inviolate.

Section 4. All persons shall be entitled to the benefit of the writ of habeas corpus.

Section 5. All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own.

Section 6. Estates shall not be entailed; and when a person dies intestate, leaving a wife and children, the wife shall have a child's share, or her dower, at her option; if there be no wife, the estate shall be equally divided among the children and their legal representatives of the first degree. The distribution of all other intestate estates may be regulated by law.

Section 7. At the general election for members of assembly, in the year one thousand seven hundred and ninety-four, the electors in each county shall elect three persons to represent them in a convention, for the purpose of taking into consideration the alterations necessary to be made in this constitution, who shall meet at such time and place as the General Assembly may appoint; and if two-thirds of the whole number shall meet and concur, they shall proceed to agree on such alterations and amendments as they think proper, Provided, That after two-thirds shall have concurred to proceed to alterations and amendments, a majority shall determine on the particulars of such alterations and amendments.

Section 8. This constitution shall take effect, and be in full force, on the first Monday in October next, after the adoption of the same; and the executive shall be authorized to alter the time for the sitting of the superior courts, so that the same may not interfere with the annual elections in the respective counties, or the meeting of the first General Assembly.

Done at Augusta, in convention, the sixth day of May, in the year of our Lord one thousand seven hundred and eighty-nine and in the year of the Sovereignty and Independence of the United States the thirteenth.

Wm. Gibbons, President.

D. Longstreet, Secretary.

Appendix D - Maryland

*Constitution of Maryland (1776)*¹²⁸

A DECLARATION of RIGHTS, and the CONSTITUTION and FORM of GOVERNMENT agreed to by the Delegates of Maryland, in free and full Convention assembled.

A DECLARATION OF RIGHTS. &c.

THE parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the Colonies in all cases whatsoever, and, in pursuance of such claim, endeavoured, by force of arms, to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent States, and to assume government under the authority of me people;—Therefore we, the Delegates of Maryland, in free and full Convention assembled, taking into our most serious consideration the best means of establishing a good Constitution in this State, for the sure foundation and more permanent security thereof, declare,

I. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

II. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

III. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which, by experience, have been found applicable to their local and other circumstances, and of such others as have been since made in England, or Great Britain, and have been introduced, used and practised by the courts of law or equity; and also to acts of Assembly, in force on the first of June seventeen hundred and seventy-four, except such as may have since expired, or have been or may be altered by acts of Convention, or this Declaration of Rights—subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State: and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter, granted by his Majesty Charles I. to Caeilius Calvert, Baron of Baltimore.

IV. That all persons invested with the legislative or executive powers of government are the trustees of the public, and, as such, accountable for their conduct; wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right

¹²⁸ Poore, Perley. "Constitution of Maryland 1776." In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. 2nd ed. Vol. 2. Washington, D.C.: Government Printing Office, 1878,

http://books.google.com/books?id=XsY9AAAIAAJ&pg=PA1686&dq=the+federal+and+state+constitutions+colonial+charters+and+other+organic+laws+volume+3&output=text#_top (accessed March 24, 2010).

ought, to reform the old or establish a new government. The doctrine of non-resistance, against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

V. That the right in the people to participate in the Legislature is the best security of liberty, and the foundation of all free government; for this purpose, elections ought to be free and frequent, and every man, having property in, a common interest with, and an attachment to the community, ought to have a right of suffrage.

VI. That the legislative, executive and judicial powers of government, ought to be forever separate and distinct from each other.

VII. That no power of suspending laws, or the execution of laws, unless by or derived from the Legislature, ought to be exercised or allowed.

VIII. That freedom of speech and debates, or proceedings in the Legislature, ought not to be impeached in any other court or judicature.

IX. That a place for the meeting of the Legislature ought to be fixed, the most convenient to the members thereof, and to the depository of public records; and the Legislature ought not to be convened or held at any other place, but from evident necessity.

X. That, for redress of grievances, and for amending, strengthening and preserving the laws, the Legislature ought to be frequently convened.

XI. That every man hath a right to petition the Legislature, for the redress of grievances, in a peaceable and orderly manner.

XII. That no aid, charge, tax, fee, or fees, ought to be set, rated, or levied, under any pretence, without consent of the Legislature.

XIII. That the levying taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government; but every other person in the State ought to contribute his proportion of public taxes, for the support of government, according to his actual worth, in real or personal property, within the State: yet fines, duties, or taxes, may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.

XIV. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State: and no law, to inflict cruel and unusual pains and penalties, ought to be made in any case, or at any time hereafter.

XV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no *ex post facto* law ought to be made.

XVI. That no law, to attain particular persons of treason or felony, ought to be made in any case, or at any time hereafter.

XVII. That every freeman, for any injury done him in his person or property, ought to have remedy, by the course of the law of the land, and ought to have justice and right freely without sale, fully without any denial, and speedily without delay, according to the law of the land.

XVIII. That the trial of facts where they arise, is one of the greatest securities of the lives, liberties and estates of the people.

XIX. That, in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses, for and against him, on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

XX. That no man ought to be compelled to give evidence against himself, in a common court of law, or in any other court, but in such cases as have been usually practised in this State, or may hereafter be directed by the Legislature.

XXI. That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land.

XXII. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted, by the courts of law.

XXIII. That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants—to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special—are illegal, and ought not to be granted.

XXIV. That there ought to be no forfeiture of any part of the estate of any person, for any crime except murder, or treason against the State, and then only on conviction and attainder.

XXV. That a well-regulated militia is the proper and natural defence of a free government.

XXVI. That standing armies are dangerous to liberty, and ought not to be raised or kept up, without consent of the Legislature.

XXVII. That in all cases, and at all times, the military ought to be under strict subordination to and control of the civil power.

XXVIII. That no soldier ought to be quartered in any house, in time of peace, without the consent of the owner; and in time of war, in such manner only, as the Legislature shall direct.

XXIX. That no person, except regular soldiers, mariners, and marines in the service of this State, or militia when in actual service, ought in any case to *be* subject to or punishable by martial law.

XXX. That the independency and uprightness of Judges are essential to the impartial administration of justice, and a great security to the rights and liberties of the people; wherefore the Chancellor and Judges ought to hold commissions during good behaviour; and the said Chancellor and Judges shall be removed for misbehaviour, on conviction in a court of law, and may be removed by the Governor, upon the address of the General Assembly; *Provided*. That two-thirds of all the members of each House concur in such address. That salaries, liberal, but not profuse, ought to be secured to the Chancellor and the Judges, during the continuance of their commissions, in such manner, and at such times, as the Legislature shall hereafter direct, upon consideration of the circumstances of this State. No Chancellor or Judge ought to hold any other office, civil or military, or receive fees or perquisites of any kind.

XXXI. That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.

XXXII. That no person ought to hold, at the same time, more than one office of profit, nor ought any person, in public trust, to receive any present from any foreign prince or state, or from the United States, or any of them, without the approbation of this State.

XXXIII. That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him; all persons, professing the Christian religion, are equally entitled to protection in their religious liberty; wherefore no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety- of the State, or shall infringe the laws of morality, or injure others, in their natural, civil, or religious rights: nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any particular place of worship, or any particular ministry; yet the Legislature may, in their discretion, lay a general and equal tax, for the support of the Christian religion; leaving to each individual the power of appointing the payment over of the money, collected from him, to the support of any particular place of worship or minister, or for the benefit of the poor of his own denomination, or the poor in general of any particular county: but the churches, chapels, glebes, and all other property now belonging to the church of England, ought to remain to the church of England forever. And all acts of Assembly, lately passed, for collecting monies for building or repairing particular churches or chapels of ease, shall continue in force, and be executed, unless the Legislature shall, by act, supersede or repeal the same: but no county court shall assess any quantity of tobacco, or sum of money, hereafter, on the application of any vestrymen or church-wardens; and every incumbent of the church of England, who hath remained in his parish, and performed his duty, shall be entitled to receive the provision and support established by the act,

entitled "An act for the support of the clergy of the church of England, in this Province," till the November court of this present year, to be held for the county in which his parish shall lie, or partly lie, or for such time as he hath remained in his parish, and performed his duty.

XXXIV. That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order or denomination—and every gift or sale of goods, or chattels, to go in succession, or to take place after the death of the seller or donor, or to or for such support, use or benefit—and also every devise of goods or chattels to or for the support, use or benefit of any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, or denomination, without the leave of the Legislature, shall be void; except always any sale, gift, lease or devise of any quantity of land, not exceeding two acres, for a church, meeting, or other house of worship, and for a burying-ground, which shall be improved, enjoyed or used only for such purpose—or such sale, gift, lease, or devise, shall be void.

XXXV. That no other test or qualification ought to be required, on admission to any office of trust or profit, than such oath of support and fidelity to this State, and such oath of office, as shall be directed by this Convention, or the Legislature of this State, and a declaration of a belief in the Christian religion.

XXXVI. That the manner of administering an oath to any person, ought to be such, as those of the religious persuasion, profession, or denomination, of which such person is one, generally esteem the most effectual confirmation, by the attestation of the Divine Being. And that the people called Quakers, those called Duukers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm ; and to be of the same avail as an oath, in all such cases, as the affirmation of Quakers hath been allowed and accepted within this State, instead of an oath. And further, on such affirmation, warrants to search for stolen goods, or for the apprehension or commitment of offenders, ought to be granted, or security for the peace awarded, and Quakers, Dunkers or Menonists ought also, on their solemn affirmation as aforesaid, to be admitted as witnesses, in all criminal cases not capital.

XXXVII. That the city of Annapolis ought to have all its rights, privileges and benefits, agreeable to its Charter, and the acts of Assembly confirming and regulating the same, subject nevertheless to such alteration as may be made by this Convention, or any future Legislature.

XXXVIII. That the liberty of the press ought to be inviolably preserved.

XXXIX. That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce; and ought not to be suffered.

XL. That no title of nobility, or hereditary honours, ought to be granted in this State.

XLI. That the subsisting resolves of this and the several Conventions held for this Colony, ought to be in force as laws, unless altered by this Convention, or the Legislature of this State.

XLII. That this Declaration of Rights, or the Form of Government, to be established by this Convention, or any part or either of them, ought not to be altered, changed or abolished, by the Legislature of this State, but in such manner as this Convention shall prescribe and direct.

This Declaration of Rights was assented to, and passed, in Convention of the Delegates of the freemen of Maryland, begun and held at Annapolis, the 14th day of August, A. D. 1776.

By order of the Convention.

Mat. Tilghman, *President*.

THE CONSTITUTION, OR FORM OF GOVERNMENT. &t.ʹ.

I. That the Legislature consist of two distinct branches, a (Senate and House of Delegates, which shall be styled, *The General Assembly of Maryland*.

II. That the House of Delegates shall be chosen in the following manner: All freemen, above twenty-one years of age, having a freehold of fifty acres of land, in the county in which they offer to vote, and residing therein—and all freemen, having property in this State above the value of thirty pounds current money, and having resided in the county, in which they offer to vote, one whole year next preceding the election, shall have a right of suffrage, in

the election of Delegates for such county: and all freemen, so qualified, shall, on the first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year thereafter, assemble in the counties, in which they are respectively qualified to vote, at the court-house, in the said counties; or at such other place as the Legislature shall direct; and, when assembled, they shall proceed to elect, *viva voce*, four Delegates, for their respective counties, of the most wise, sensible, and discreet of the people, residents in the county where they are to be chosen, one whole year next preceding the election, above twenty-one years of age, and having, in the State, real or personal property above the value of five hundred pounds current money; and upon the final casting of the polls, the four persons who shall appear to have the greatest number of legal votes shall be declared and returned duly elected for their respective counties.

III. That the Sheriff of each county, or, in case of sickness, his Deputy (summoning two Justices of the county, who are required to attend, for the preservation of the peace) shall be the judges of the election, and may adjourn from day to day, if necessary, till the same be finished, so that the whole election shall be concluded in four days; and shall make his return thereof, under his hand, to the Chancellor of this State for the time being.

IV. That all persons qualified, by the charter of the city of Annapolis, to vote for Burgesses, shall, on the same first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year forever thereafter, elect, *viva voce*, by a majority of votes, two Delegates, qualified agreeable to the said charter; that the Mayor, Recorder, and Aldermen of the said city, or any three of them, be judges of the election, appoint the place in the said city for holding the same, and may adjourn from day to day, as aforesaid, and shall make return thereof, as aforesaid: but the inhabitants of the said city shall not be entitled to vote for Delegates for Anne-Anmdel county, unless they have a freehold of fifty acres of land in the county distinct from the city.

V. That all persons, inhabitants of Baltimore town, and having the same qualifications as electors in the county, shall, on the same first Monday in October, seventeen hundred and seventy-seven, and on the same day in every year forever thereafter, at such place in the said town as the Judges shall appoint, elect, *viva voce*, by a majority of votes, two Delegates, qualified as aforesaid: but if the said inhabitants of the town shall so decrease, as that a number of persons, having a right of suffrage therein, shall have been, for the space of seven years successively, less than one half the number of voters in some one county in this State, such town shall thenceforward cease to send two Delegates or Representatives to the House of Delegates, until the said town shall have one half of the number of voters in some one county in this State.

VI. That the Commissioners of the said town, or any three or more of them, for the time being, shall be judges of the said election, and may adjourn, as aforesaid, and shall make return thereof, as aforesaid: but the inhabitants of the said town shall not be entitled to vote for, or be elected, Delegates for Baltimore county: neither shall the inhabitants of Baltimore county, out of the limits of Baltimore town, be entitled to vote for, or be elected, Delegates for the said town.

VII. That on refusal, death, disqualification, resignation, or removal out of this State of any Delegate, or on his becoming Governor, or member of the Council, a warrant of election shall issue by the Speaker, for the election of another in his place; of which ten days' notice, at least, (excluding the day of notice, and the day of election) shall be given.

VIII. That not less than a majority of the Delegates, with their Speaker (to be chosen by them, by ballot) constitute a House, for the transaction of any business other than that of adjourning.

IX. That the House of Delegates shall judge of the elections and qualifications of Delegates.

X. That the House of Delegates may originate all money bills, propose bills to the Senate, or receive those offered by that body; and assent, dissent, or propose amendments; that they may inquire on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of this State; and may commit any person, for any crime, to the public jail, there to remain till he be discharged by due course of law. They may expel any member, for a great misdemeanor, but not a second time for the same cause. They may examine and pass all accounts of the State, relating either to the collection or expenditure of the revenue, or appoint auditors, to state and adjust the same. They may call for all public or official papers and records, and send for persons, whom they may judge necessary in the course of their inquiries, concerning affairs relating to the public interest; and may direct all office bonds (which shall be made payable to the State) to be sued for any breach of duty.

XI. That the Senate may be at full and perfect liberty to exercise their judgment in passing laws—and that they may not be compelled by the House of Delegates, either to reject a money bill, which the emergency of affairs

may require, or to assent to some other act of legislation, in their conscience and judgment injurious to the public welfare—the House of Delegates shall not, on any occasion, or under any pretence, annex to, or blend with a money bill, any matter, clause, or thing, not immediately relating to, and necessary for the imposing, assessing, levying, or applying the taxes or supplies, to be raised for the support of government, or the current expenses of the State: and to prevent altercation about such bills, it is declared, that no bill, imposing duties or customs for the mere regulation of commerce, or inflicting fines for the reformation of morals, or to enforce the execution of the laws, by which an incidental revenue may arise, shall be accounted a money bill: but every bill, assessing, levying, or applying taxes or supplies, for the support of government, or the current expenses of the State, or appropriating money in the treasury, shall be deemed a money bill.

XII. That the House of Delegates may punish, by imprisonment, any person who shall be guilty of a contempt in their view, by any disorderly or riotous behaviour, or by threats to, or abuse of their members, or by any obstruction to their proceedings. They may also punish, by imprisonment, any person who shall be guilty of a breach of privilege, by arresting on civil process, or by assaulting any of their members, during their sitting, or on their way to, or return from the House of Delegates, or by any assault of, or obstruction to their officers, in the execution of any order or process, or by assaulting or obstructing any witness, or any other person, attending on, or on their way to or from the House, or by rescuing any person committed by the House: and the Senate may exercise the same power, in similar cases.

XIII. That the Treasurers (one for the western, and another for the eastern shore) and the Commissioners of the Loan Office, may be appointed by the House of Delegates, during their pleasure; and in case of refusal, death, resignation, disqualification, or removal put of the State, of any of the said Commissioners or Treasurers, in the recess of the General Assembly, the governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the meeting of the next General Assembly.

XIV. That the Senate be chosen in the following manner: All persons, qualified as aforesaid to vote for county Delegates, shall, on the first day of September, 1781, and on the same day in every fifth year forever thereafter, elect, *viva voce*, by a majority of votes, two persons for their respective counties (qualified as aforesaid to be elected county Delegates) to be electors of the Senate: and the Sheriff of each county, or, in case of sickness, his Deputy (summoning two Justices of the county, who are required to attend, for the preservation of the peace.) shall hold and be judge of the said election, and make return thereof, as aforesaid. And all persons, qualified as aforesaid, to vote for Delegates for the city of Annapolis and Baltimore town, shall, on the same first Monday of September, 1781, and on the same day in every fifth year forever thereafter, elect, *viva voce*, by a majority of votes, one person for the said city and town respectively, qualified as aforesaid to be elected a Delegate for the said city and town respectively; the said election to be held in the same manner, as the election of Delegates for the said city and town; the right to elect the said elector, with respect to Baltimore town, to continue as long as I he right to elect Delegates for the said town.

XV. That the said electors of the Senate meet at (he city of Annapolis, or such other place as shall be appointed for convening the Legislature, on the third Monday in September, 1781. and on the same day in every fifth year forever thereafter, and they, or any twenty-four of them so met, shall proceed to elect, by ballot, either out of their own body, or the people at large, fifteen Senators (nine of whom to be residents on the western, and six to be residents on the eastern shore) men of the most wisdom, experience and virtue, above twenty-five years of age, residents of the State above three whole years next preceding the election, and having real and personal property above the value of one thousand pounds current money.

XVI. That the Senators shall be balloted for, at one and the same time, and out of the gentlemen residents of the western shore, who shall be proposed as Senators, the nine who shall, on striking the ballots, appear to have the greatest numbers in their favour, shall be accordingly declared and returned duly elected: and out of the gentlemen residents of the eastern shore, who shall be proposed as Senators, the six who shall, on striking the ballots, appear to have the greatest number in their favour, shall be accordingly declared and returned duly elected: and if two or more on the same shore shall have an equal number of ballots in their favour, by which the choice shall not be determined on the first ballot, then the electors shall again ballot, before they separate; in which they shall be confined to the persons who on the first ballot shall have an equal number: and they who shall have the greatest number in their favour on the second ballot, shall be accordingly declared and returned duly elected: and if the whole number should not thi(s be made up, because of an equal number, on the second ballot, still being in favour of two or more persons, then the election shall be determined by lot, between those who have equal numbers; which proceedings of the electors shall be certified under their hands, and returned to the Chancellor for the time being.

XVII. That the electors of Senators shall judge of the qualifications and elections of members of their body; and, on a contested election, shall admit to a seat, as an elector, such qualified person as shall appear to them to have the greatest number of legal votes in his favour.

XVIII. That the electors, immediately on their meeting, and before they proceed to the election of Senators, take such oath of support and fidelity to this State, as this Convention, or the Legislature, shall direct; and also an oath " to elect without favour, affection, partiality, or prejudice, such persons for Senators, as they, in their judgment and conscience, believe best qualified for the office."

XIX. That in case of refusal, death, resignation, disqualification, or removal out of this State, of any Senator, or on his becoming Governor, or a member of the Council, the Senate shall, immediately thereupon, or at their next meeting thereafter, elect by ballot (in the same manner as the electors are above directed to choose Senators) another person in his place, for the residue of the said term of five years.

XX. That not less than a majority of the Senate, with their President (to be chosen by them, by ballot) shall constitute a House, for the transacting any business, other than that of adjourning.

XXI. That the Senate shall judge of the elections and qualifications of Senators.

XXII. That the Senate may originate any other, except money bills, to which their assent or dissent only shall be given; and may receive any other bills from the House of Delegates, and assent, dissent, or propose amendments.

XXIII. That the General Assembly meet annually, on the first Monday of November, and if necessary, oftener.

XXIV. That each House shall appoint its own officers, and settle its own rules of proceeding.

XXV. That a person of wisdom, experience, and virtue, shall be chosen Governor, on the second Monday of November, seventeen hundred and seventy-seven, and on the second Monday in every year forever thereafter, by the joint ballot of both Houses (to be taken in each House respectively) deposited in a conference room; the boxes to be examined by a joint committee of both Houses, and the numbers severally reported, that the appointment may be entered; which mode of taking the joint ballot of both Houses shall be adopted in all cases. But if two or more shall have an equal number of ballots in their favour, by which the choice shall not be determined on the first ballot, then a second ballot shall be taken, which shall be confined to the persons who, on the first ballot, shall have had an equal number; and, if the ballots should again be equal between two or more persons, then the election of the Governor shall be determined by lot, between those who have equal numbers: and if the person chosen Governor shall die, resign, move out of the State, or refuse to act, (the General Assembly sitting) the Senate and House of Delegates shall, immediately thereupon, proceed to a new choice, in manner aforesaid.

XXVI. That the Senators and Delegates, on the second Tuesday of November, 1777, and annually on the second Tuesday of November forever thereafter, elect by joint ballot (in the same manner as Senators are directed to be chosen) five of the most sensible, discreet, and experienced men, above twenty-five years of age, residents in the State above three years next preceding the election, and having therein a freehold of lands and tenements, above the value of one thousand pounds current money, to be the Council to the Governor, whose proceedings shall be always entered on record, to any part whereof any member may enter his dissent; and their advice, if so required by the Governor, or any member of the Council, shall be given in writing, and signed by the members giving the same respectively: which proceedings of the Council shall be laid before the Senate, or House of Delegates, when called for by them or either of them. The Council may appoint their own Clerk, who shall take such oath of support and fidelity to this State, as this Convention, or the Legislature, shall direct; and of secrecy, in such matters as he shall be directed by the board to keep secret.

XXVII. That the Delegates to Congress, from this State, shall be chosen annually, or superseded in the mean time by the joint ballot of both Houses of Assembly; and that there be a rotation, in such manner, that at least two of the number be annually changed; and no person shall be capable of being a Delegate to Congress for more than three in any term of six years; and no person, who holds any office of profit in the gift of Congress, shall be eligible to sit in Congress; but if appointed to any such office, his seat shall be thereby vacated. That no person, unless above twenty-one years of age, and a resident in the State more than five years next preceding the election, and having real and personal estate in this State above the value of one thousand pounds current money, shall be eligible to sit in Congress.

XXVIII. That the Senators and Delegates, immediately on their annual meeting, and before they proceed to any business, and every person, hereafter elected a Senator or Delegate, before he acts as such, shall take an oath of support and fidelity to this State, as aforesaid; and before the election of a governor, or members of the Council, shall take an oath, "elect without favour, affection, partiality, or prejudice, such person as Governor, or member of the Council, as they, in their judgment and conscience, believe best qualified for the office."

XXIX. That the Senate and Delegates may adjourn themselves respectively: but if the two Houses should not agree on the same time, but adjourn to dim-rent days, then shall the Governor appoint and notify one of those days, or some day between, and the Assembly shall then meet and be held accordingly; and he shall, if necessary, by advice of the Council, call them before the time, to which they shall in any manner be adjourned, on giving not less than ten days' notice thereof; but the Governor shall not adjourn the Assembly, otherwise than as aforesaid, nor prorogue or dissolve it, at any time.

XXX. That no person, unless above twenty-five years of age, a resident in this State above five years next preceding the election— and having in the State real and personal property, above the value of five thousand pounds, current money, (one thousand pounds whereof, at least, to be freehold estate) shall be eligible as governor.

XXXI. That the governor shall not continue in that office longer than three years successively, nor be eligible as Governor, until the expiration of four years after he shall have been out of that office.

XXXII. That upon the death, resignation, or removal out of this State, of the Governor, the first named of the Council, for the time being, shall act as Governor, and qualify in the same manner; and shall immediately call a meeting of the General Assembly, giving not less than fourteen days' notice of the meeting, at which meeting, a Governor shall be appointed, in manner aforesaid, for the residue of the year.

XXXIII. That the Governor, by and with the advice and consent of the Council, may embody the militia; and, when embodied, shall alone have the direction thereof; and shall also have the direction of all the regular land and sea forces, under the laws of this State, (but he shall not command in person, unless advised thereto by the Council, and then, only so long as they shall approve thereof) ; and may alone exercise all other the executive powers of government, where the concurrence of the Council is not required, according to the laws of this State; and grant reprieves or pardons for any crime, except in such cases where the law shall otherwise direct; and may, during the recess of the General Assembly, lay embargoes, to prevent the departure of any shipping, or the exportation of any commodities, for any time not exceeding thirty days in any one year—summoning the General Assembly to meet within the time of the continuance of such embargo: and may also order and compel any vessel to ride quarantine, if such vessel, or the port from which she may have come, shall, on strong grounds, be suspected to be infected with the plague; but the Governor shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom of England or Great Britain.

XXXIV. That the members of (he Council, or any three or more -if them, when convened, shall constitute a board for the transacting of business; that the Governor, for the time being, shall preside in the Council, and be entitled to a vote, on all questions in which the Council shall be divided in opinion; and, in the absence of the Governor, (he first named of the Council shall preside; and as such, shall also vote, in all cases, where the other members disagree in their opinion.

XXXV. That, in case of refusal, death, resignation, disqualification, or removal out of the State, of any person chosen a member of the council, the members thereof, immediately thereupon, or at their next meeting thereafter, shall elect by ballot another person (qualified as aforesaid) in his place, for the residue of the year.

XXXVI. That the Council shall have power to make the Great Seal of this State, which shall be kept by the Chancellor for the time being, and affixed to all laws, commissions, grants, and other public testimonials, as has been heretofore practised in this State.

XXXVII. That no Senator, Delegate of Assembly, or member of the Council, if he shall qualify as such, shall hold or execute any office of profit, or receive the profits of any office exercised by any other person, during the time for which he shall be elected; nor shall any Governor be capable of holding any other office of profit in this State, while he acts as such. And no person, holding a place of profit or receiving any part of the profits thereof, or receiving the profits or any part of the profits arising on any agency, for the supply of clothing or provisions for the Army or Navy, or holding any office under the United States, or any of them—or a minister, or preacher of the gospel, of any denomination—or any person, employed in the regular land service, or marine, of this or the United States—shall have a seat in the General Assembly or the Council of this State.

XXXVIII. That every Governor, Senator, Delegate to Congress or Assembly, and member of the Council, before he acts as such, shall take an oath " that he will not receive, directly or indirectly, at any time, any part of the profits of any office, held by any other person during his acting in his office of Governor, Senator, Delegate to Congress or Assembly, or member of the Council, or the profits or any part of the profits arising on any agency for the supply of clothing or provisions for the Army or Navy."

XXXIX. That if any Senator, Delegate to Congress or Assembly, or member of the Council, shall hold or execute any office of profit, or receive, directly or indirectly, at any time, the profits or any part of the profits of any office exercised by any other person, during his acting as Senator, Delegate to Congress or Assembly, or member of the Council—his seat (on conviction, in a Court of law, by the oath of two credible witnesses) shall be void; and he shall suffer the punishment of wilful and corrupt perjury, or be banished this State forever, or disqualified forever from holding any office or place of trust or profit, as the Court may judge.

XL. That the Chancellor, all Judges, the Attorney-General. Clerks of the General Court, the Clerks of the County Courts, the Registers of the Land Office, and the Registers of Wills, shall hold their commissions during good behaviour, removable only for misbehaviour, on conviction in a Court of law.

XLI. That there be a Register of Wills appointed for each county, who shall be commissioned by the Governor, on the joint recommendation of the Senate and House of Delegates; and that, upon the death, resignation, disqualification, or removal out of the county of any Register of Wills, in the recess of the General Assembly, the Governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office, to hold the same until the meeting of the General Assembly.

XLII. That Sheriffs shall be elected in each county, by ballot, every third year; that is to say, two persons for the office of Sheriff for each county, the one of whom having the majority of votes, or if both have an equal number, either of them, at the discretion of the Governor, to be commissioned by the Governor for the said office; and having served for three years, such person shall be ineligible for the four years next succeeding; bond with security to be taken every year, as usual; and no Sheriff shall be qualified to act before the same is given. In case of death, refusal, resignation, disqualification, or removal out of the county before the expiration of the three years, the other person, chosen as aforesaid, shall be commissioned by the Governor to execute the said office, for the residue of the said three years, the said person giving bond and security as aforesaid: and in case of his death, refusal, resignation, disqualification, or removal out of the county, before the expiration of the said three years, the Governor, with the advice of the Council, may nominate and commission a fit and proper person to execute the said office for the residue of the said three years, the said person giving bond and security as aforesaid. The election shall be held at the same time and place appointed for the election of Delegates; and the Justices, there summoned to attend for the preservation of the peace, shall be judges thereof, and of the qualification of candidates, who shall appoint a Clerk, to take the ballots. All freemen above the age of twenty-one years, having a freehold of fifty acres of land in the county in which they offer to ballot, and residing therein—and all freemen above the age of twenty-one years, and having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to ballot one whole year next preceding the election—shall have a right of suffrage. No person to be eligible to the office of Sheriff for a county, but an inhabitant of the said county above the age of twenty-one years, and having real and personal property in the State above the value of one thousand pounds current money. The Justices aforesaid shall examine the ballots; and the two candidates properly qualified, having in each county the majority of legal ballots, shall be declared duly elected for the office of Sheriff for such county, and returned to the Governor and Council, with a certificate of the number of ballots for each of them.

XLIII That every person who shall offer to vote for Delegates, or for the election of the Senate, or for the Sheriff, shall (if required by any three persons qualified to vote) before he be permitted to poll, take such oath or affirmation of support and fidelity to this State, as this Convention or the Legislature shall direct.

XLIV. That a Justice of the Peace may be eligible as a Senator, Delegate, or member of the Council, and may continue to act as a Justice of the Peace.

XLV. That no field officer of the militia be eligible as a Senator, Delegate, or member of the Council.

XLVI. That all civil officers, hereafter to be appointed for the several counties of this State, shall have been residents of the county, respectively, for which they shall be appointed, six months next before their appointment; and shall continue residents of their county, respectively, during their continuance in office.

XLVII. That the Judges of the General Court, and Justices of the County Courts, may appoint the Clerks of their respective Courts; and in case of refusal, death, resignation, disqualification, or removal out of the State, or from their respective shores, of the Clerks of the General Court, or either of them, in the vacation of the said Court— and in case of the refusal, death, resignation, disqualification, or removal out of the county, of any of the said County Clerks, in the vacation of the County Court of which he is Clerk—the Governor, with the advice of the Council, may appoint and commission a fit and proper person to such vacant office respectively, to hold the same until the meeting of the next General Court, or County Court, as the case may be.

XLVIII. That the Governor, for the time being, with the advice and consent of the Council, may appoint the Chancellor, and all Judges and Justices, the Attorney-General, Naval Officers, officers in the regular land and sea service, officers of the militia. Registers of the Land Office, Surveyors, and all other civil officers of government (Assessors, Constables, and Overseers of the roads only excepted) and may also suspend or remove any civil officer who has not a commission, during good behaviour; and may suspend any militia officer, for one month: and may also suspend or remove any regular officer in the land or sea service: and the Governor may remove or suspend any militia officer, in pursuance of the judgment of a Court Martial.

XLIX. That all civil officers of the appointment of the Governor and Council, who do not hold commissions during good behaviour, shall be appointed annually in the third week of November. But if any of them shall be reappointed, they may continue to act, without any new commission or qualification; and every officer, though not reappointed, shall continue to act, until the person who shall be appointed and commissioned in his stead shall be qualified.

L. That the Governor, every member of the Council, and every Judge and Justice, before they act as such, shall respectively take an oath. "That he will not, through favour, affection or partiality vote for any person to office; and that he will vote for such person as, in his judgment and conscience, he believes most fit and best qualified for the office; and that he has not made, nor will make, any promise or engagement to give his vote or interest in favor of any person."

LI. That there be two Registers of the Land Office, one upon the western, and one upon the eastern shore: that short extracts of the grants and certificates of the land, on the western and eastern shores respectively, be made in separate books, at the public expense, and deposited in the offices of the said Registers, in such manner as shall hereafter be provided by the General Assembly.

LII. That every Chancellor, Judge. Register of Wills, Commissioner of the Loan Office. Attorney-General. Sheriff, Treasurer. Naval Officer, Register of the Land Office, Register of the Chancery Court, and every Clerk of the common law courts. Surveyor and Auditor of the public accounts, before he acts as such, shall take an oath " That he will not directly or indirectly receive any fee or reward, for doing his office of , but what is or shall be allowed by law; nor will, directly or indirectly, receive the profits or any part of the profits of any office held by any other person: and that he does not hold the same office in trust, or for the benefit of any other person."

LIII. That if any Governor, Chancellor, Judge. Register of Wills, Attorney-General, Register of the Land Office. Register of the Chancery Court, or any Clerk of the common law courts, Treasurer, Naval Officer, Sheriff, Surveyor or Auditor of public accounts, shall receive, directly or indirectly, at any time, the profits, or any part of the profits of any office, held by any other person, during his acting in the office to which he is appointed; his election, appointment and commission (on conviction in a court of law by oath of two credible witnesses) shall be void; and he shall suffer the punishment for wilful and corrupt perjury, or be banished this State forever, or disqualified forever from holding any office or place of trust or profit, as the court may adjudge.

LIV. That if any person shall give any bribe, present, or reward, or any promise, or any security for the payment or delivery of any money, or any other thing, to obtain or procure a vote to be Governor. Senator, Delegate to Congress or Assembly, member of the Council, or Judge, or to be appointed to any of the said offices, or to any office of profit or trust, now created or hereafter to be created in this State—the person giving, and the person receiving the same (on conviction in a court of law) shall be forever disqualified to hold any office of trust or profit in this State.

LV. That every person, appointed to any office of profit or trust, shall, before he enters on the execution thereof, take the following oath; to wit: " I, A. B., do swear, that I do not hold myself bound in allegiance to the King of Great Britain, and that I will be faithful, and bear true allegiance to the State of Maryland;" and shall also subscribe a declaration of his belief in the Christian religion.

LVI. That there be a Court of Appeals, composed of persons of integrity and sound judgment in the law, whose judgment shall be final and conclusive, in all cases of appeal, from the General Court. Court of Chancery, and Court of Admiralty: that one person of integrity and sound judgment in the law, be appointed Chancellor: that three persons of integrity and sound judgment in the law, be appointed judges of the Court now called the Provincial Court; and that the same Court be hereafter called and known by the name of *The General Court*; which Court shall sit on the western and eastern shores, for transacting and determining the business of the respective shores, at such times and places as the future Legislature of this State shall direct and appoint.

LVII. That the style of all laws run thus; "*Be it enacted by the General Assembly of Maryland:*" that all public commissions and grants run thus; "*The State of Maryland*" &c. and shall be signed by the Governor, and attested by the Chancellor, with the seal of the State annexed—except military commissions, which shall not be attested by the Chancellor, or have the seal of the State annexed: that all writs shall run in the same style, and be attested, sealed and signed as usual: that all indictments shall conclude, "*Against the peace, government, and dignity of the State.*"

LVIII. That all penalties and forfeitures, heretofore going to the King or proprietary, shall go to the State—save only such, as the General Assembly may abolish or otherwise provide for.

LIX. That this Form of Government, and the Declaration of Rights, and no part thereof, shall be altered, changed, or abolished, unless a bill so to alter, change or abolish the same shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly, after a new election of Delegates, in the first session after such new election ; provided that nothing in this form of government, which relates to the eastern shore particularly, shall at any time hereafter be altered, unless for the alteration and confirmation thereof at least two-thirds of all the members of each branch of the General Assembly shall concur.

LX. That every bill passed by the General Assembly, when engrossed, shall be presented by the Speaker of the House of Delegates, in the Senate, to the Governor for the time being, who shall sign the same, and thereto affix the Great Seal, in the presence of the members of both Houses: every law shall be recorded in the (General Court office of the western shore, and in due time printed, published, and certified under the Great Seal, to the several County Courts, in the same manner as hath been heretofore used in this State.

This Form of Government was assented to, and passed in Convention of the Delegates of the freemen of Maryland, begun and held at the city of Annapolis, the fourteenth of August, A. D. one thousand seven hundred and seventy-six.

By order of the Convention.

M. TILGHMAN, *President.*

Appendix E - Massachusetts

*Constitution of Massachusetts (1780)*¹²⁹

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.

¹²⁹ *Constitution of Massachusetts 1780*. National Humanities Institute, Bowie, Maryland, 1780,

<http://www.nhinet.org/ccs/docs/ma-1780.htm> (accessed March 24, 2010).

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.

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 inalienable 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 otherways 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, plaints, 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, qualified 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 traveling 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 voernor 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 foted 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 thesame at any time the two houses shall desire; and to dissolve the same on the day nex 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 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; 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 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, hat, 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 acceptation 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 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*

Appendix F - New Hampshire

*Constitution of New Hampshire (1784)*¹³⁰

Part I.—The Bill Of Rights

ARTICLE I

All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.

II. All men have certain natural, essential, and inherent rights; among which are—the enjoying and defending life and liberty— acquiring, possessing and protecting property—and in a word, of seeking and obtaining happiness.

III. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others; and, without such an equivalent, the surrender is void.

IV. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights Of Conscience.

V. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; 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, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship.

VI. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion: therefore, to promote those important purposes, the people of this state have a right to impower, and do hereby fully impower the legislature to authorize from time to time, the several towns, parishes, bodies-corporate, or religious societies within this state, to make adequate provision at their own expence, for the support and maintenance of public protestant teachers of piety, religion and morality:

Provided notwithstanding, That the several towns, parishes, bodies-corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no portion of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination.

And every denomination of christians demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.

VII. The people of this state, 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

¹³⁰ Poore, Perley. "Constitution of New Hampshire 1776." In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. 2nd ed. Vol. 2. Washington, D.C.: Government Printing Office, 1878,
<http://books.google.com/books?id=5qOHAAAAMAAJ&pg=PA2454&dq=the+federal+and+state+constitution+s+colonial+charters+and+other+organic+laws+volume+4&output=text> (accessed March 24, 2010).

pertaining thereto, which is not, or may not hereafter be by them expressly delegated to the United States of America in Congress assembled.

VIII. All power residing originally in and being derived from the people, all the magistrates and officers of government, are their substitutes and agents, and at all times accountable to them.

IX. No office or place whatsoever in government, shall be hereditary—the abilities and integrity requisite in all, not being transmissible to posterity or relations.

X. Government being instituted for the common benefit, protection, and security of the whole community, and not for the private interest or emolument of any one man, family or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government. The doctrine of non-resistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

XI. All elections ought to be free, and every inhabitant of the state having the proper qualifications, has equal right to elect, and be elected into office.

XII. Every member of the community has a right to be protected by it in the enjoyment of his life, liberty and property; he is therefore bound to contribute his share in the expence of such protection, and to yield his personal service when necessary, or an equivalent. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they or their representative body have given their consent.

XIII. No person who is conscientiously scrupulous about the lawfulness of bearing arms, shall be compelled thereto, provided he will pay an equivalent.

XIV. Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property or character, to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws.

XV. No subject shall be held to answer for any crime, or 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 himself; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, and counsel. 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.

XVI. No subject shall be liable to be tried, after an acquittal, for the same crime or offence.—Nor shall the legislature make any law that shall subject any person to a capital punishment, excepting for the government of the army and navy, and the militia in actual service, without trial by jury.

XVII. In criminal prosecutions, the trial of facts in the vicinity where they happen, is so essential to the security of the life, liberty and estate of the citizen, that no crime or offence ought to be tried in any other county than that in which it is committed; except in cases of general insurrection in any particular county, when it shall appear to the Judges of the Superior Court, that an impartial trial cannot be had in the county where the offence may be committed, and upon their report, the assembly shall think proper to direct the trial in the nearest county in which an impartial trial can be obtained.

XVIII. All penalties ought to be proportioned to the nature of the offence. No wise legislature will affix the same punishment to the crimes of theft, forgery and the like, which they do to those of murder and treason; where the same undistinguishing severity is exerted against all offences; the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do those of the lightest dye: For the same reason a multitude of sanguinary laws is both impolitic and unjust. The true design of all punishments being to reform, not to exterminate, mankind.

XIX. Every subject hath 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.

XX. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has been heretofore otherwise used and practiced, 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 think it necessary hereafter to alter it.

XXI. In order to reap the fullest advantage of the inestimable privilege of the trial by jury, great care ought to be taken that none but qualified persons should be appointed to serve; and such ought to be fully compensated for their travel, time and attendance.

XXII. The Liberty of the Press is essential to the security of freedom in a state; it ought, therefore, to be inviolably preserved.

XXIII. Retrospective laws are highly injurious, oppressive and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offences.

XXIV. A well regulated militia is the proper, natural, and sure defence of a state.

XXV. Standing armies are dangerous to liberty, and ought not to *be*, raised or kept up without the consent of the legislature.

XXVI. In all cases, and at all times, the military ought to be under strict subordination to, and governed by the civil power.

XXVII. No soldier in time of peace, shall 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.

XXVIII. No subsidy, charge, tax, impost or duty shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature, or authority Arrived from that body.

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

XXX. 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 action, complaint, or prosecution, in any other court or place whatsoever.

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

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

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

XXXIV. No person can in any case be subjected to law martial, or to any pains, or penalties, 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.

XXXV. 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 impartial 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, that the judges of the supreme (or superior) judicial court should hold their offices so long as they behave well; and that they should have honorable salaries, ascertained and established by standing laws.

XXXVI. Economy being a most essential virtue in all states, especially in a young one; no pension shall be granted, but in consideration of actual services, and such pensions ought to be granted with great caution, by the legislature, and never for more than one year at a time.

XXXVII. In the government of this state, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from and independent of each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

XXXVIII. A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard 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 government.

Part II.—The Form Of Government

The people inhabiting the territory formerly called the Province of New-Hampshire, 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 State Of New Hampshire.

THE GENERAL COURT.

The supreme legislative power within this state shall be vested in the senate and house of representatives, each of which shall have a negative on the other.

The senate and house shall assemble every year on the first Wednesday of June, and at such other times as they may judge necessary; and shall dissolve, and be dissolved, seven days next preceding the said first Wednesday of June; and shall be stiled THE GENERAL COURT OF NEW-HAMPSHIRE.

The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be holden in the name of the state, for the hearing, trying, and determining all manner of crimes, offences, pleas, processes, complaints, actions, causes, matters and things whatsoever, arising, or happening within this state, or between or concerning persons inhabiting or residing, or brought within the same, whether the same be criminal or civil, or whether the crimes be capital or not capital, and whether the said pleas be real, personal, or mixed; and for the awarding and issuing execution thereon. 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.

And farther, 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, ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant, or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, 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 this state; such officers excepted, the election and appointment of whom, are 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 state, 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 also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within the said state; and upon all estates within the same; to be issued and disposed of by warrant under the hand of the president of this state 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 this state, 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 heretofore been practiced; in order that such assessments may be made with equality, there shall be a valuation of the estates within the state taken anew once in every five years at least, and as much oftener as the general court shall order.

Senate

There shall be annually elected by the freeholders and other inhabitants of this state, qualified as in this constitution is provided, twelve persons to be senators for the year ensuing their election; to be chosen in and by the inhabitants of the districts, into which this state may from time to time be divided by the general court, for that purpose; and the general court in assigning the number to be elected by the respective districts, shall govern themselves by the proportion of public taxes paid by the said districts; and timely make known to the inhabitants of the state, the limits of each district, and the number of senators to be elected therein; provided the number of such districts shall never be more than ten, nor less than five.

And the several counties in this state, shall, until the general court shall order otherwise, be districts for the election of senators, and shall elect the following number, viz.

ROCKINGHAM, five. STRAFFORD, two. HILLSBOROUGH, two. CHESHIRE, two. Grafton, one.

The senate shall be the first branch of the legislature: and the senators shall be chosen in the following manner, viz. Every male inhabitant of each town and parish with town privileges in the several counties in this state, of twenty-one years of age and upwards, paying for himself a poll tax, shall have a right at the annual or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March; to vote in the town or parish wherein he dwells, for the senators in the county or district whereof he is a member.

And every person qualified as the constitution provides, shall be considered an inhabitant for the purpose of electing and being elected into any office or place within this state, in that town, parish and plantation where he dwelleth and hath his home.

The selectmen of the several towns and parishes aforesaid, shall, during the choice of senators, preside at such meetings impartially, and shall receive the votes of all the inhabitants of such towns and parishes present and qualified to vote for senators, and shall sort and count the same in the meeting, and in presence of the town-clerk, who shall make a fair record in presence of the selectmen, and in open meeting, of the name of every person voted for, and the number of votes against his name: and a fair copy of this record shall be attested by the selectmen and town-clerk, and shall be sealed up and directed to the secretary of the state, with a superscription expressing the purport thereof, and delivered by said clerk to the sheriff of the county in which such town or parish lies, thirty days at least, before the first Wednesday of June; and the sheriff of each county, or his deputy, shall deliver all such certificates by him received, into the secretary's office, seventeen days at least, before the first Wednesday of June.

And the inhabitants of plantations and places unincorporated, qualified as this constitution provides, who are or shall be required to assess taxes upon themselves towards the support of government, or shall be taxed therefor, shall have the same privilege of voting for senators in the plantations and places wherein they reside, as the inhabitants of the respective towns and parishes aforesaid have. And the meetings of such plantations and places for that purpose, shall be holden annually in the month of March, at such places respectively therein, 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, that there may be a due meeting of senators, on the first Wednesday of June, annually, the president and three of the council for the time being, shall as soon as may, examine the returned copies of such records; and fourteen days before the said first Wednesday of June, he shall issue his summons to such persons as appear to be chosen senators by a majority of votes, to attend and take their seats' on that day: *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 notify the persons elected, to attend and take their seats accordingly.

The senate shall be final judges of the elections, returns, and qualifications of their own members, as pointed out in this constitution, and shall on the said first Wednesday of June 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 full number 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 each 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 joint ballot the number of senators wanted for such district: and in this manner all such vacancies shall be filled up in

every district of the state, 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 be after such vacancies happen.

Provided nevertheless, That no person shall be capable of being elected a senator, who is not of the protestant religion, and seized of a freehold estate in his own right of the value of *two hundred pound x*, lying within this state, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election; and at the time thereof he shall be an inhabitant of the district for which he shall be chosen.

The senate shall have power to adjourn themselves, provided such adjournment do not exceed two days at a time.

The senate shall appoint their own officers, and determine their own rules of proceedings. And not less than seven members of the senate shall make a quorum for doing business; and when less than eight senators shall be present, the assent of five at least shall be necessary to render their acts and proceedings valid.

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

HOUSE OF REPRESENTATIVES

There shall be in the legislature of this state a representation of the people annually elected and founded upon principles of equality: and in order that such representation may be as equal as circumstances will admit, every town, parish or place intitled to town privileges, having one hundred and fifty rateable male polls, of twentyone years of age, and upwards, may elect one representative; if four hundred and fifty rateable polls, may elect two representatives; and so proceeding in that proportion, making three hundred such rateable polls the mean increasing number, for every additional representative.

Such towns, parishes or places as have less than one hundred and fifty rateable polls shall be classed by the general-assembly for the purpose of chusing a representative, and seasonably notified thereof. And in every class formed for the above-mentioned purpose, the first annual meeting shall be held in the town, parish, or place wherein most of the rateable polls reside; and afterwards in that which has the next highest number, and so on annually by rotation, through the several towns, parishes or places, forming the district.

Whenever any town, parish, or place intitled to town privileges as aforesaid, shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any other town, parish, or place very inconvenient, the general-assembly may upon application of a majority of the voters in such town, parish, or place, issue a writ for their electing and sending a representative to the general-court.

The members of the house of representatives shall be chosen annually in the month of March, and shall be the second branch of the legislature.

All persons qualified to vote in the election of senators shall be intitled to vote within the town, district, parish, or place where they dwell, in the choice of representatives. Every member of the house of representatives shall be chosen by ballot; and for two years at least next preceding his election, shall have been an inhabitant of this state, shall have an estate within the town, parish, or place which he may be chosen to represent, of the value of *one hundred pounds*, one half of which to be a freehold, whereof he is seized in his own right; shall be at the time of his election, an inhabitant of the town, parish, or place he may be chosen to represent; shall be of the protestant religion, and shall cease to represent such town, parish, or place immediately on his ceasing to be qualified as aforesaid.

The travel of each representative to the general-assembly, and returning home, once in every session, and no more, shall be at the expence of the state, and the wages for his attendance, at the expence of the town, parish, or places he represents; such members attending seasonably, and not departing without licence. All intermediate vacancies in the house of representatives, may be filled up from time to time, in the same manner as annual elections are made.

The house of representatives shall be the grand inquest of the state, and all impeachments made by them, shall be heard and tried by the senate.

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

The house of representatives shall have power to adjourn themselves, but no longer than two days at a time.

A majority of the members of the house of representatives shall be a quorum for doing business; but when less than two-thirds of the representatives elected shall be present, the assent of two-thirds of those members shall be necessary to render their acts and proceedings valid.

No member of the house of representatives or senate, shall be arrested or held to bail on mean process, during his going to, returning from, or attendance upon the court.

The house of representatives shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house. They shall have authority to punish by imprisonment, every person who shall be guilty of disrespect to the house in its presence, by any disorderly or contemptuous behaviour, or by threatening, or ill treating any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges in making arrests for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house, in assaulting any witness, or other person, ordered to attend by and during his attendance of the house, or in rescuing any person arrested by order of the house, knowing them to be such. The senate, president and council, shall have the same powers in like cases; provided that no imprisonment by either, for any offence, exceed ten days.

The journals of the proceedings of both houses of the general-court, shall be printed and published, immediately after every adjournment, or prorogation; and upon motion made by any one member, the yeas and nays upon any question, shall be taken and entered in the journals.

EXECUTIVE POWER. PRESIDENT

There shall be a supreme executive magistrate, who shall be stiled, The PRESIDENT Of The STATE Of NEW-HAMPSHIRE; and whose title shall be HIS EXCELLENCY.

The President 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 state for seven years next preceding, and unless he shall be of the age of thirty years; and unless he shall, at the same time, have an estate of the value of *five hundred pounds*, one half of which shall consist of a freehold, in his own right, within the state; and unless he shall be of the Protestant religion.

Those persons qualified to vote for senators and representatives, shall within the several towns, parishes or places, where they dwell, at a meeting to be called for that purpose, some day in the month of March annually, give in their votes for a president to the selectmen, who shall preside at such meeting, and the clerk in the presence and with the assistance of the selectmen, shall in open 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 said inhabitants, seal up a copy of said list attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the first Wednesday of June, or shall cause returns of the same to be made to the office of the secretary of the state, seventeen days at least, before said day, who shall lay the same before the senate and house of representatives on the first Wednesday of June, to be by them examined: and in case of an election by a majority of votes through the state, 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 the 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 of them who shall be declared president.

The president of the state shall preside in the senate, shall have a vote equal with any other member; and shall also have a casting vote in case of a tie.

The president 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 said court; and during the

session of said court, to adjourn or prorogue it to any time the two houses may desire, and to call it together sooner than the time to which it may be adjourned, or prorogued, if the welfare of the state should require the same.

In cases of disagreement between the two houses, with regard to the time of adjournment, or prorogation, the president, with advice of council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, at any one time, as he may determine the public good may require. And he shall dissolve the same seven days before the said first Wednesday of June. And in case of any infectious distemper prevailing in the place where the said court at any time is to convene, or any other cause whereby dangers may arise to the healths or lives of the members from their attendance, the president may direct the session to be holden at some other the most convenient place within the State.

The president of this state for the time being, shall be commander in chief of the army and navy, and 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, from time to time, to train, instruct, exercise and govern the militia and navy; and for the special defence and safety of this state 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 and without the limits of this state; and also to kill, slay, destroy, if necessary, and conquer by all fitting ways, enterprize and means, 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 state; 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, and also in rebellion, declared by the legislature to exist, as occasion shall necessarily require: 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 state: and in fine, the president hereby is entrusted with all other powers incident to the office 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; provided that the president 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 state, 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 in any case, without the advice and consent of the council.

The power of pardoning offences, except such as persons may be convicted of before the senate by impeachment of the house, shall be in the president by and with the advice of the council: but no charter of pardon granted by the president with advice of 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.

All judicial officers, the attorney-general, solicitor-general, all sheriffs, coroners, registers of probate, and all officers of the navy, and general and field-officers of the militia, shall be nominated and appointed by the president and council; and every such nomination shall be made at least seven days prior to such appointment, and no appointment shall take place, unless three of the council agree thereto. The captains and subalterns in the respective regiments shall be nominated and recommended by the field-officers to the president, who is to issue their commissions immediately on receipt of such recommendation.

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

The commanding officers of the regiments shall appoint their adjutants and quarter-masters; the brigadiers their brigade-majors, the major-generals their aids; the captains and subalterns their noncommissioned officers.

The president and council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this state shall appoint, as also all officers of forts and garrisons.

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

No monies shall be issued out of the treasury, of this state, and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurers' notes, or for the payment of interest arising thereon) but by warrant under the hand of the president for the time being, by and with the advice and consent of the council,

for the necessary support and defence of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this state, 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 president, 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 under their care respectively; distinguishing the quantity, and kind of each, as particularly as may be; together with the condition of such forts and garrisons: and the commanding officer shall exhibit to the president, when required by him, true and exact plans of such forts, and of the land and sea, or harbour or harbours adjacent.

The president and council shall be compensated for their services from time to time by such grants as the general court shall think reasonable.

Permanent and honorable salaries shall be established by law for the justices of the superior court.

Whenever the chair of the president shall be vacant, by reason of his death, absence from the state, or otherwise, the senior senator for the time being, shall, during such vacancy, have and exercise all the powers and authorities which by this constitution the president is vested with when personally present.

Council

Annually, on the first meeting of the general court, two members of the senate and three from the house of representatives, shall be chosen by joint ballot of both houses as a council, for advising the president in the executive part of government, whom the president for the time being, shall have full power and authority to convene from time to time, at his discretion, and the president with the counsellors, or three of them at least, shall and may from time to time hold and keep a council, for ordering and directing the affairs of the state according to the laws of the land.

The qualifications for counsellors, shall be the same as those required for senators. The members of the council shall not intermeddle with the making or trying impeachments, but shall themselves be impeachable by the house, and triable by the senate for mal-conduct.

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 enter his opinion contrary to the resolution of the majority.

And whereas the elections appointed to be made by this constitution on the first Wednesday of June 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 the elections shall be as follows: the vacancies in the senate, if any, shall be first filled up; the president shall then be elected, provided there should be no choice of him by the people: and afterwards the two houses shall proceed to the election of the council.

SECRETARY, TREASURER, COMMISSARY-GENERAL, &c.

The Secretary, treasurer, and commissary-general, shall be chosen by joint ballot of the senators and representatives assembled in one room.

The records of the state shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be answerable, and he shall attend the president and council, the senate and representatives, in person or by deputy, as they may require.

COUNTY-TREASURER, &c.

The County-treasurers, and registers of deeds shall be elected by the inhabitants of the several towns, in the several counties in the state, according to the method now practiced, and the present laws of the state: and before they enter upon the business of their offices, shall be respectively sworn faithfully to discharge the duties thereof, and shall severally give bond with sufficient sureties, in a reasonable sum for the use of the county, for the punctual performance of their respective trusts.

JUDICIARY POWER

The tenure, that all commission officers shall have by law in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices

during good behaviour, excepting those concerning whom there is a different provision made in this constitution: *Provided nevertheless*, the president, with consent of council, may remove them upon the address of both houses of the legislature.

Each branch of the legislature, as well as the president and council, shall have authority to require the opinions of the justices of the superior court upon important questions of law, and upon solemn occasions.

In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justices of the peace shall become void, at the expiration of five 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 state.

The judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on such fixed days, as the convenience of the people may 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:

All causes of marriage, divorce and alimony, and all appeals from the respective judges of probate, shall be heard and tried by the superior court, until the legislature shall, by law make other provision.

CLERKS OF COURTS

The clerks of the superior court of judicature, inferior courts of common pleas, and general sessions of the peace, shall be appointed by the respective courts during pleasure. And to prevent any fraud or unfairness in the entries and records of said courts, no such clerk shall be of counsel in any cause in the court of which he is clerk, nor shall he fill any writ in any civil action whatsoever.

DELEGATES TO CONGRESS

The delegates of this state to the Congress of the United States, shall some time between the first Wednesday of June, and the first Wednesday of September annually, be elected by the senate and house of representatives in their separate branches; 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 president, and the great seal of the state; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead: and they shall have the same qualifications, in all respects, as by this constitution are required for the president.

No person shall be capable of being a delegate to Congress, for more than three years in any term of six years; nor shall any person being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, or emolument of any kind.

ENCOURAGEMENT OF LITERATURE, &C

Knowledge, and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and the magistrates, in all future periods of this government to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people.

Oath And Subscriptions; Exclusion From Offices; Commissions; Writs; Confirmation Of Laws; Habeas Corpus; The Enacting Stile; Continuance or Officers; Provision For A Future Revision

OF THE CONSTITUTION, &C

Any person chosen president, counsellor, senator, or representative, military or civil officer, (town officers excepted,) accepting the trust, shall, before he proceeds to execute the duties of his office, make and subscribe the following declaration, viz.

I, A. B. do truly and sincerely acknowledge, profess, testify and declare, that the state of New-Hampshire is, and of right ought to be, a free, sovereign and independent state; and do swear that I will bear faith and true allegiance to the same, and that I will endeavor to defend it against all treacherous conspiracies and hostile attempts whatever: and I do further testify and declare, that no man or body of men, hath or can have, a right to absolve me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgement, profession, testimony, and declaration, honestly and truly, according to the common acceptance of the foregoing words, without any equivocation, mental evasion or secret reservation whatever.

So help me God.

I, A. B. do solemnly and sincerely 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, agreeably to the rules and regulations of this constitution, and the laws of the state of New-Hampshire.

So help me God.

Provided always, When any person chosen or appointed as aforesaid, shall be of the denomination called quakers, or shall be scrupulous of Swearing. and shall decline taking the said oaths, such shall take and subscribe them omitting the word "swear," and likewise the words "*So help me God*" subjoined instead thereof, *This I do •under the pains and penalties of perjury.*

And the oaths or affirmations shall be taken and subscribed by the president before the senior senator present, in the presence of the two houses of assembly; and by the senate and representatives first elected under this constitution, before the president 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.

All commissions shall be in the name of the state of New Hampshire, signed by the president, and attested by the secretary, or his deputy, and shall have the great seal of the state affixed thereto.

All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the state of New-Hampshire; shall be under the seal of the court whence they issue, and bear test of the chief, first, or senior justice of the court; but when such justice shall be interested, then the writ shall bear test of some other justice of the court, to which the same shall be returnable; and be signed by the clerk of such court.

All indictments, presentments and informations shall conclude against the peace and dignity of the state.

The estates of such persons as may destroy their own lives, shall not for that offence be forfeited, but descend or ascend in the same manner, as if such persons had died in a natural way. Nor shall any article which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in any wise forfeited on account of such misfortune.

All the laws which have heretofore been adopted, used and approved, in the province, colony, or state of New-Hampshire, and usually practiced on in the courts of law, shall remain and be in full force, until altered and repealed by the legislature; such parts thereof only excepted, as are repugnant to the rights and liberties contained in this constitution: Provided that nothing herein contained, when compared with the twenty-third article in the bill of rights, shall be construed to affect the laws already made respecting the persons or estates of absentees.

The privilege and benefit of the habeas corpus, shall be enjoyed in this state, 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 time not exceeding three months.

The enacting stile in making and passing acts, statutes and laws, shall be—*Be it enacted by the senate and house of representatives, in general court convened.*

No president or judge of the superior court, shall hold any office or place under the authority of this state, except such as by this constitution they are admitted to hold, saving that the Judges of the said court may hold the offices of justices of the peace throughout the state; nor shall they hold any place or office, or receive any pension or salary, from any other state, government, or power whatever.

No person shall be capable of exercising at the same time, more than one of the following offices within this state, viz. Judge of probate, sheriff, register of deeds; and never more than two offices of profit, which may be held by appointment of the president, or president and council, or senate and house of representatives, or superior or inferior courts; military offices, and offices of justices of the peace, excepted.

No person holding the office of judge of the superior court, secretary, treasurer of the state, judge of probate, attorney-general, commissary-general, judge of the maritime court, or judge of the court of admiralty, military officers receiving pay from the continent or this state, excepting officers of the militia occasionally called forth on an emergency; judge of the inferior court of common pleas, register of deeds, president, professor or instructor of any college, sheriff, or office of the customs, including naval-officers, shall at the same time have a seat in the senate or house of representatives, or council; 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, or council; and the place so vacated shall be filled up.

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

In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver, at *six shillings and eight pence* per ounce.

To the end that there may be no failure of justice or danger arise to this state from a change in the form of government, all civil and military officers, holding commissions under the government and people of New-Hampshire, and other officers of the said government and people, at the time this constitution shall take effect, shall hold, exercise and enjoy all the powers and authorities to them granted and committed, until other persons shall be appointed in their stead. All courts of law in the business of their respective departments, and the executive, and legislative bodies and persons, shall continue in full force, enjoyment and exercise of all their trusts and employments, until the general court, and the supreme and other executive officers under this constitution, are designated, and invested with their respective trusts, powers and authority.

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 books containing the laws of this state, in all future editions thereof.

To preserve an effectual adherence to the principles of the constitution, and to correct any violation thereof, as well as to make such alterations therein, as from experience may be found necessary, the general court shall at the expiration of seven years from the time this constitution shall take effect, issue precepts, or direct them to be issued from the secretary's office, to the several towns and incorporated places, to elect delegates to meet in convention for the purposes aforesaid: the said delegates to be chosen in the same manner, and proportioned as the representatives to the general assembly: provided that no alteration shall be made in this constitution before the same shall be laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present, and voting upon the question.

In Convention,

Held at Concord, The thirty-first day of October, 1788. The Returns from the several towns being examined, and it appearing that the foregoing Bill Of Rights And Form of Government, were approved of by the People: the same are hereby agreed on and established by the Delegates or The People, and declared to be the 'Civil

CONSTITUTION FOR THE STATE OF NEW-HAMPSHIRE, to take place on the first Wednesday of June. 1784; and that in the mean time the General Court under the present government, make all the necessary arrangements for introducing this Constitution, at that time, and in the manner therein described.

Nathaniel Folsom, *President*, P. T. J. M. Sewall, *Secretary*.

Appendix G - New Jersey

Constitution of New Jersey (1776¹³¹)

WHEREAS all the constitutional authority ever possessed by the kings of Great Britain over these colonies,⁽²⁾ or their other dominions, was, by compact, derived from the people, and held of them, for the common interest of the whole society; allegiance and protection are, in the nature of things, reciprocal ties; each equally depending upon the other, and liable to be dissolved by the others being refused or withdrawn. And whereas George the Third, king of Great Britain, has refused protection to the good people of these colonies; and, by assenting to sundry acts of the British parliament, attempted to subject them to the absolute dominion of that body; and has also made war upon them, in the most cruel and unnatural manner, for no other cause, than asserting their just rights—all civil authority under him is necessarily at an end, and a dissolution of government in each colony has consequently taken place.

And whereas, In the present deplorable situation of these colonies, exposed to the fury of a cruel and relentless enemy, some form of government is absolutely necessary, not only for the preservation of good order, but also the more effectually to unite the people, and enable them to exert their whole force in their own necessary defence: and as the honorable the continental congress, the supreme council of the American colonies, has advised such of the colonies as have not yet gone into measures, to adopt for themselves, respectively, such government as shall best conduce to their own happiness and safety, and the well-being of America in general: We, the representatives of the colony of New Jersey, having been elected by all the counties, in the freest manner, and in congress assembled, have, after mature deliberations, agreed upon a set of charter rights and the form of a Constitution, in manner following, viz.

I. That the government of this Province shall be vested in a Governor, Legislative Council, and General Assembly.

II. That the Legislative Council, and General Assembly, shall be chosen, for the first time, on the second Tuesday in August next; the members whereof shall be the same in number and qualifications as are herein after mentioned; and shall be and remain vested with all the powers and authority to be held by any future Legislative Council and Assembly of this Colony, until the second Tuesday in October, which shall be in the year of our Lord one thousand seven hundred and seventy-seven.

III. That on the second Tuesday in October yearly, and every year forever (with the privilege of adjourning from day to day as occasion may require) the counties shall severally choose one person, to be a member of the Legislative Council of this Colony, who shall be, and have been, for one whole year next before the election, an inhabitant and freeholder in the county in which he is chosen, and worth at least one thousand pounds proclamation money, of real and personal estate, within the same county; that, at the same time, each county shall also choose three members of Assembly; provided that no person shall be entitled to a seat in the said Assembly unless he be, and have been, for one whole year next before the election, an inhabitant of the county he is to represent, and worth five hundred pounds proclamation money, in real and personal estate, in the same county: that on the second Tuesday next after the day of election, the Council and Assembly shall separately meet; and that the consent of both Houses shall be necessary to every law; provided, that seven shall be a quorum of the Council, for doing business, and that no law shall pass, unless there be a majority of all the Representatives of each body personally present, and agreeing thereto. Provided always, that if a majority of the representatives of this Province, in Council and General Assembly convened, shall, at any time or times hereafter, judge it equitable and proper, to add to or diminish the number or proportion of the members of Assembly for any county or counties in this Colony, then, and in such case, the same may, on the principles of more equal representation, be lawfully done; anything in this Charter to the contrary notwithstanding: so that the whole number of Representatives in Assembly shall not, at any time, be less than thirty-nine.

¹³¹ "Constitution of New Jersey 1776." Avalon Project, Yale Law School.

http://avalon.law.yale.edu/18th_century/nj15.asp (accessed March 24, 2010).

IV. That all inhabitants of this Colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other public officers, that shall be elected by the people of the county at large.

V. That the Assembly, when met, shall have power to choose a Speaker, and other their officers; to be judges of the qualifications and elections of their own members; sit upon their own adjournments; prepare bills, to be passed into laws; and to empower their Speaker to convene them, whenever any extraordinary occurrence shall render it necessary.

VI. That the Council shall also have power to prepare bills to pass into laws, and have other like powers as the Assembly, and in all respects be a free and independent branch of the Legislature of this Colony; save only, that they shall not prepare or alter any money bill-which shall be the privilege of the Assembly; that the Council shall, from time to time, be convened by the Governor or Vice-President, but must be convened, at all times, when the Assembly sits; for which purpose the Speaker of the House of Assembly shall always, immediately after an adjournment, give notice to the Governor, or Vice-President, of the time and place to which the House is adjourned.

VII. That the Council and Assembly jointly, at their first meeting after each annual election, shall, by a majority of votes, elect some fit person within the Colony, to be Governor for one year, who shall be constant President of the Council, and have a casting vote in their proceedings; and that the Council themselves shall choose a Vice-President who shall act as such in the absence of the Governor.

VIII. That the Governor, or, in his absence, the Vice-President of the Council, shall have the supreme executive power, be Chancellor of the Colony, and act as captain-general and commander in chief of all the militias and other military force in this Colony; and that any three or more of the Council shall, at all times, be a privy-council, to consult them; and that the Governor be ordinary or surrogate general.

IX. That the Governor and Council, (seven whereof shall be a quorum) be the Court of Appeals, in the last resort, in all clauses of law, as heretofore; and that they possess the power of granting pardons to criminals, after condemnation, in all cases of treason, felony, or other offences.

X. That captains, and all other inferior officers of the militia, shall be chosen by the companies, in the respective counties; but field and general officers, by the Council and Assembly.

XI. That the Council and Assembly shall have power to make the (great Seal of this Colony, which shall be kept by the Governor, or, in his absence, by the Vice-President of the Council, to be used by them as occasion may require: and it shall be called, The Great Seal of the Colony of New-Jersey.

XII. That the Judges of the Supreme Court shall continue in office for seven years: the Judges of the Inferior Court of Common Pleas in the several counties, Justices of the Peace, Clerks of the Supreme Court, Clerks of the Inferior Court of Common Pleas and Quarter Sessions, the Attorney-General, and Provincial Secretary, shall continue in office for five years: and the Provincial Treasurer shall continue in office for one year; and that they shall be severally appointed by the Council and Assembly, in manner aforesaid, and commissioned by the Governor, or, in his absence, the Vice-President of the Council. Provided always, that the said officers, severally, shall be capable of being re-appointed, at the end of the terms severally before limited; and that any of the said officers shall be liable to be dismissed, when adjudged guilty of misbehaviour, by the Council, on an impeachment of the Assembly.

XIII. That the inhabitants of each county, qualified to vote as aforesaid' shall at the time and place of electing their Representatives, annually elect one Sheriff, and one or more Coroners; and that they may re-elect the same person to such offices, until he shall have served three years, but no longer; after which, three years must elapse before the same person is capable of being elected again. When the election is certified to the Governor, or Vice-President, under the hands of six freeholders of the county for which they were elected, they shall be immediately commissioned to serve in their respective offices.

XIV. That the townships, at their annual town meetings for electing other officers, shall choose constables for the districts respectively; and also three or more judicious freeholders of good character, to hear and finally determine all appeals, relative to unjust assessments, in cases of public taxation; which commissioners of appeal shall, for that purpose, sit at some suitable time or times, to be by them appointed, and made known to the people by advertisements.

XV. That the laws of the Colony shall begin in the following style, viz. " Be it enacted by the Council and General Assembly of this Colony, and it is hereby enacted by authority of the same: " that all commissions, granted by the Governor or Vice-President, shall run thus-" The Colony of New-Jersey to A. B. &c. greeting: " and that all writs shall likewise run in the name of the Colony: and that all indictments shall conclude in the following manner, viz. "Against the peace of this Colony, the government and dignity of the same.

XVI. That all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to.

XVII. That the estates of such persons as shall destroy their own lives, shall not, for that offence, be forfeited; but shall descend in the same manner, as they would have done, had such persons died in the natural way; nor shall any article, which may occasion accidentally the death of any one, be henceforth deemed, a deodand, or in anywise forfeited, on account of such misfortune.

XVIII. That no person shall ever, within this Colony, be deprived of the inestimable privilege of worshipping Almighty God in a manner, agreeable to the dictates of his own conscience; nor, under any presence whatever, be compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person, within this Colony, ever be obliged to pay tithes, taxes, or any other rates, for the purpose of building or repairing any other church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

XIX. That there shall be no establishment of any one religious sect in this Province, in preference to another; and that no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect. who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.

XX. That the legislative department of this government may, as much as possible, be preserved from all suspicion of corruption, none of the Judges of the Supreme or other Courts, Sheriffs, or any other person or persons possessed of any post of profit under the government, other than Justices of the Peace, shall be entitled to a seat in the Assembly: but that, on his being elected, and taking his seat, his office or post shall be considered as vacant.

XXI. That all the laws of this Province, contained in the edition lately published by Mr. Allinson, shall be and remain in full force, until altered by the Legislature of this Colony (such only excepted, as are incompatible with this Charter) and shall be, according as heretofore, regarded in all respects, by all civil officers, and others, the good people of this Province.

XXII. That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this Colony, shall still remain in force, until they shall be altered by a future law of the Legislature; such parts only excepted, as are repugnant to the rights and privileges contained in this Charter; and that the inestimable right of trial by jury shall remain confirmed as a part of the law of this Colony, without repeal, forever.

XXIII. That every person, who shall be elected as aforesaid to be a member of the Legislative Council, or House of Assembly, shall, previous to his taking his seat in Council or Assembly, take the following oath or affirmation, viz:

" I, A. B., do solemnly declare, that, as a member of the Legislative Council, [or Assembly, as the case may be,] of the Colony of New-Jersey, I will not assent to any law, vote or proceeding, which shall appear to me injurious to the public welfare of said Colony, nor that shall annul or repeal that part of the third section in the Charter of this Colony, which establishes, that the elections of members of the Legislative Council and Assembly shall be annual; nor that part of the twenty-second section in said Charter, respecting the trial by jury, nor that shall annul, repeal, or alter any part or parts of the eighteenth or nineteenth sections of the same."

And any person or persons, who shall be elected as aforesaid, is hereby empowered to administer to the said members the said oath or affirmation.

Provided always, and it is the true intent and meaning of this Congress, that if a reconciliation between Great-Britain and these Colonies should take place, and the latter be taken again under the protection and government of the crown of Britain, this Charter shall be null and void-otherwise to remain firm and inviolable.

In Provincial Congress, New Jersey,

Burlington. July 2, 1776.

By order of Congress.

SAMUEL TUCKER, Pres.

WILLIAM PATTERSON, Secretary.

Appendix H - New York

*Constitution of New York (1777)*¹³²

IN CONVENTION OF THE REPRESENTATIVES OF THIS STATE OF NEW YORK,

Kingston, 20th April, 1777.

Whereas the many tyrannical and oppressive usurpations of the King and Parliament of Great Britain on the rights and liberties of the people of the American colonies had reduced them to the necessity of introducing a government by congresses and committees, as temporary expedients, and to exist no longer than the grievances of the people should remain without redress; And whereas the congress of the colony of New York did, on the thirty-first day of May now last past, resolve as follows, viz:

"Whereas the present government of this colony, by congress and committees, was instituted while the former government, under the Crown of Great Britain, existed in full force, and was established for the sole purpose of opposing the usurpation of the British Parliament, and was intended to expire on a reconciliation with Great Britain, which it was then apprehended would soon take place, but is now considered as remote and uncertain;

"And whereas many and great inconveniences attend the said mode of government by congress and committees, as of necessity, in many instances, legislative, judicial, and executive powers have been vested therein, especially since the dissolution of the former government by the abdication of the late governor and the exclusion of this colony from the protection of the King of Great Britain;

"And whereas the Continental Congress did resolve as followeth, to wit:

"Whereas His Britannic Majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of Parliament, excluded the inhabitants of these united colonies from the protection of his Crown; and whereas no answers whatever to the humble petition of the colonies for redress of grievances and reconciliation with Great Britain has been, or is likely to be, given, but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction of the good people of these colonies; and whereas it appears absolutely irreconcilable to reason and good conscience for the people of these colonies now to take the oaths and affirmations necessary for the support of any government under the Crown of Great Britain, and it is necessary that the exercise of every kind of authority under the said Crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies for the preservation of internal peace, virtue, and good order, as well as for the defense of our lives, liberties, and properties, against the hostile invasions and cruel depredations of our enemies: Therefore,

"*Resolved*, That it be recommended to the respective assemblies and conventions of the United colonies, where no government sufficient to the exigencies of their affairs has been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.'

"And whereas doubts have arisen whether this congress are invested with sufficient power and authority to deliberate and determine on so important a subject as the necessity of erecting and constituting a new form of government and internal police, to the exclusion of all foreign jurisdiction, dominion, and control whatever; and whereas it appertains of right solely to the people of this colony to determine the said doubts: Therefore

"*Resolved*, That it be recommended to the electors in the several counties in this colony, by election, in the manner and form prescribed for the election of the present congress, either to authorize (in addition to the powers vested in this congress) their present deputies, or others in the stead of their present deputies, or either of them, to take into consideration the necessity and propriety of instituting such new government as in and by the said resolution of the Continental Congress is described and recommended; and if the majority of the counties, by their

¹³² "The Constitution of New York 1777." Avalon Project, Yale Law School.

http://avalon.law.yale.edu/18th_century/ny01.asp (accessed March 24, 2010).

deputies in provincial congress, shall be of opinion that such new government ought to be instituted and established, then to institute and establish such a government as they shall deem best calculated to secure the rights, liberties, and happiness of the good people of this colony; and to continue in force until a future peace with Great Britain shall render the same unnecessary; and

"*Resolved*, That the said elections in the several counties ought to be had on such day, and at such place or places, as by the committee of each county respectively shall be determined. And it is recommended to the said committees to fix such early days for the said elections as that all the deputies to be elected have sufficient time to repair to the city of New York by the second Monday in July next; on which day all the said deputies ought punctually to give their attendance.

"And whereas the object of the Foregoing resolutions is of the utmost importance to the good people of this colony:

"*Resolved*, That it be, and it is hereby, earnestly recommended to the committees, freeholders, and other electors in the different counties in this colony diligently to carry the same into execution."

And whereas the good people of the said colony, in pursuance of the said resolution, and reposing special trust and confidence in the members of this convention, have appointed, authorized, and empowered them for the purposes, and in the manner, and with the powers in and by the said resolve specified, declared, and mentioned.

And whereas the Delegates of the United American States, in general (Congress convened, did, on the fourth day of July now last past, solemnly publish and declare, in the words following; viz:

"When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are, life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to edect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes, and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations; pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

"He has refused his assent to laws, the most wholesome and necessary for the public good.

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

"He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

"He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

"He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

"He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

"He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

"He has affected to render the military independent of, and superior to, the civil power.

"He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

"For quartering large bodies of troops among us:

"For protecting them, by a mock trial, from punishment for any murders they should commit on the inhabitants of these States:

"For cutting off our trade with all parts of the world:

"For imposing taxes on us without our consent:

"For depriving us, in many cases, of the benefits of trial by jury:

"For transporting us beyond seas, to be tried for pretended offences:

"For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

"For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

"For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

"He has abdicated government here, by declaring us out of his protection, and waging war against us.

"He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

"He is at this time transporting large armies of foreign mercenaries to complete the work of death, desolation, and tyranny, already lies on with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

"He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their Lands.

"He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

"In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the

circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must therefore acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war; in peace, friends.

"We therefore, the Representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

And whereas this convention, having taken this declaration into their most serious consideration, did, on the ninth day of July last past, unanimously resolve that the reasons assigned by the Continental Congress for declaring the united colonies free and independent States are cogent and conclusive; and that while we lament the cruel necessity which has rendered that measure unavoidable, we approve the same, and will, at the risk of our lives and fortunes, join with the other colonies in supporting it

By virtue of which several acts, declarations, and proceedings mentioned and contained in the afore-cited resolves or resolutions of the general Congress of the United American States, and of the congresses or conventions of this State, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this State, most conducive of the happiness and safety of their constituents in particular, and of America in general.

I. This convention, therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that no authority shall, on any presence whatever, be exercised over the people or members of this State but such as shall be derived from and granted by them.

II. This convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that the supreme legislative power within this State shall be vested in two separate and distinct bodies of men; the one to be called the assembly of the State of New York, the other to be called the senate of the State of New York; who together shall form the legislature, and meet once at least in every year for the despatch of business.

III. And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained, that the governor for the time being, the chancellor, and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature; and for that purpose shall assemble themselves from time to time, when the legislature shall be convened; for which, nevertheless they shall not receive any salary or consideration, under any presence whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration; and if, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they return the same, together with their objections thereto in writing, to the senate or house of assembly (in which soever the same shall have originated) who shall enter the objection sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, two-thirds of the said senate or house of assembly 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 be a law.

And in order to prevent any unnecessary delays, be it further ordained, that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable; in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days.

IV. That the assembly shall consist of at least seventy members, to be annually chosen in the several counties, in the proportions following, viz:

For the city and county of New York, nine.
The city and county of Albany, ten.
The county of Dutchess, seven.
The county of Westchester, six.
The county of Ulster, six.
The county of Suffolk, five.
The county of Queens, four.
The county of Orange, four.
The county of Kings, two.
The county of Richmond, two.
Tryon County, [\(2\)](#) six.
Charlotte County, [\(3\)](#) four.
Cumberland County, [\(4\)](#) three.
Gloucester County, [\(5\)](#) two.

V. That as soon after the expiration of seven years (subsequent to the termination of the present war) as may be a census of the electors and inhabitants in this State be taken, under the direction of the legislature. [\(6\)](#) And if, on such census, it shall appear that the number of representatives in assembly from the said counties is not justly proportioned to the number of electors in the said counties respectively, that the legislature do adjust and apportion the same by that rule. And further, that once in ever seven years, after the taking of the said first census, a just account of the electors resident in each county shall be taken, and if it shall thereupon appear that the member of electors in any county shall have increased or diminished one or more seventieth parts of the whole number of electors, which, on the said first census, shall be found in this State, the number of representatives for such county shall be increased or diminished accordingly, that is to say, fine representative for every seventieth part as aforesaid. [\(7\)](#)

VI. And whereas an opinion hath long prevailed among divers of the good people of this State that voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people than voting *viva voce*: To the end, therefore, that a fair experiment be made, which of those two methods of voting is to be preferred --

Be it ordained, That as soon as may be after the termination of the present war between the United States of America and Great Britain, an act or acts be passed by the legislature of this State for causing all elections thereafter to be held in this State for senators and representatives in assembly to be by ballot, and directing the manner in which the same shall be conducted. [\(8\)](#) And whereas it is possible that, after all the care of the legislature in framing the said act or acts, certain inconveniences and mischiefs, unforeseen at this day, may be found to attend the said mode of electing by ballot:

It is further ordained, That if, after a full and fair experiment shall be made of voting by ballot aforesaid, the same shall be found less conducive to the safety or interest of the State than the method of voting *viva voce*, it shall be lawful and constitutional for the legislature to abolish the same, provided two-thirds of the members present in each house, respectively, shall concur therein. And further, that, during the continuance of the present war, and until the legislature of this State shall provide for the election of senators and representatives in assembly by ballot, the said election shall be made *viva voce*.

VII. That every male inhabitant of full age, who shall have personally resided within one of the counties of this State for six months immediately preceding the day of election, shall, at such election, be entitled to vote for representatives of the said county in assembly; if, during the time aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this State: *Provided always*, That every person who now is a freeman of the city of Albany, or who was made a freeman of the city of New York on or before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities, respectively, shall be entitled to vote for representatives in assembly within his said place of residence.

VIII. That every elector, before he is admitted to vote, shall, if required by the returning-officer or either of the inspectors, take an oath, or, if of the people called Quakers, an affirmation, of allegiance to the State.

IX. That the assembly, thus constituted, shall choose their own speaker, be judges of their own members, and enjoy the same privileges, and proceed in doing business in like manner as the assemblies of the colony of New York of right formerly did; and that a majority of the said members shall, from time to time, constitute a house, to proceed upon business.

X. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the senate of the State of New York shall consist of twenty-four freeholders to be chosen out of the body of the freeholders; and that they be chosen by the freeholders of this State, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon.

XI. That the members of the senate be elected for four years; and, immediately after the first election, they be divided by lot into four classes, six in each class, and numbered one, two, three, and four; that the seats of the members of the first class shall be vacated at the expiration of the first year, the second class the second year, and so on continually; to the end that the fourth part of the senate, as nearly as possible, may be annually chosen.

XII. That the election of senators shall be after this manner: That so much of this State as is now parcelled into counties be divided into four great districts; the southern district to comprehend the city and county of New York, Suffolk, Westchester, Kings, Queens, and Richmond Counties; the middle district to comprehend the counties of Dutchess, Ulster, and Orange; the western district, the city and county of Albany, and Tryon County; and the eastern district, the counties of Charlotte, Cumberland, and Gloucester. That the senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit: in the southern district, nine; in the middle district, six; in the western district, six; and in the eastern district, three. And be it ordained, that a census shall be taken, as soon as may be after the expiration of seven years from the termination of the present war, under the direction of the legislature; and if, on such census, it shall appear that the number of senators is not justly proportioned to the several districts, that the legislature adjust the proportion, as near as may be, to the number of freeholders, qualified as aforesaid, in each district.⁽⁹⁾ That when the number of electors, within any of the said districts, shall have increased one twenty-fourth part of the whole number of electors, which, by the said census, shall be found to be in this State, an additional senator shall be chosen by the electors of such district. That a majority of the number of senators to be chosen aforesaid shall be necessary to constitute a senate sufficient to proceed upon business; and that the senate shall, in like manner with the assembly, be the judges of its own members. And be it ordained, that it shall be in the power of the future legislatures of this State, for the convenience and advantage of the good people thereof, to divide the same into such further and other counties and districts as shall to them appear necessary.

XIII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that no member of this State shall be disfranchised, or deprived of any the rights or privileges secured to the subjects of this State by this constitution, unless by the law of the land, or the judgment of his peers.

XIV. That neither the assembly or the senate shall have the power to adjourn themselves, for any longer time than two days, without the mutual consent of both.

XV. That whenever the assembly and senate disagree, a conference shall be held, in the preference of both, and be managed by committees, to be by them respectively chosen by ballot. That the doors, both of the senate and assembly, shall at all times be kept open to all persons, except when the welfare of the State shall require their debates to be kept secret. And the journals of all their proceedings shall be kept in the manner heretofore accustomed by the general assembly of the colony of New York; and except such parts as they shall, as aforesaid, respectively determine not to make public be from day to day (if the business of the legislature will permit) published.

XVI. It is nevertheless provided, that the number of senators shall never exceed one hundred, nor the number of the assembly three hundred; but that whenever the number of senators shall amount to one hundred, or of the assembly to three hundred, then and in such case the legislature shall, from time to time thereafter, by laws for that purpose, apportion and distribute the said one hundred senators and three hundred representatives among the great districts and counties of this State, in proportion to the number of their respective electors; so that the representation of the good people of this State, both in the senate and assembly, shall forever remain proportionate and adequate.⁽¹⁰⁾

XVII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that the supreme executive power and authority of this State shall be vested in a

governor; and that stately, once in every three years, and as often as the seat of government shall become vacant, a wise and discreet freeholder of this State shall be, by ballot, elected governor, by the freeholders of this State, qualified, as before described, to elect senators; which elections shall be always held at the times and places of choosing representatives in assembly for each respective county; and that the person who hath the greatest number of votes within the said State shall be governor thereof.

XVIII. That the governor shall continue in office three years, and shall, by virtue of his office, be general and commander-in-chief of all the militia, and admiral of the navy of this State; that he shall have power to convene the assembly and senate on extraordinary occasions; to prorogue them from time to time, provided such prorogations shall not exceed sixty days in the space of any one year; and, at his discretion, to grant reprieves and pardons to persons convicted of crimes, other than treason or murder, in which he may suspend the execution of the sentence, until it shall be reported to the legislature at their subsequent meeting; and they shall either pardon or direct the execution of the criminal, or grant a further reprieve.

XIX. That it shall be the duty of the governor to inform the legislature, at every session, of the condition of the State, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; to correspond with the Continental Congress, and other States; to transact all necessary business with the officers of government, civil and military; to take care that the laws are faithfully executed to the best of his ability; and to expedite all such measures as may be resolved upon by the legislature.

XX. That a lieutenant-governor shall, at every election of a governor, and as often as the lieutenant-governor shall die, resign, or be removed from office, be elected in the same manner with the governor, to continue in office until the next election of a governor; and such lieutenant-governor shall, by virtue of his office, be president of the senate, and, upon an equal division, have a casting voice in their decisions, but not vote on any other occasion. And in case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the State, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor until another be chosen, or the governor absent or impeached shall return or lie acquitted: *Provided*, That where the governor shall, with the consent of the legislature, be out of the State, in time of war, at the head of a military force thereof, he shall still continue in his command of all the military force of this State both by sea and land.

XXI. That whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as president of the senate, the senators shall have power to elect one of their own members to the office of president of the senate, which he shall exercise *pro hac vice*. And if, during such vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the State, the president of the senate shall, in like manner as the lieutenant-governor, administer the government, until others shall be elected by the suffrage of the people, at the succeeding election.

XXII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the treasurer of this State shall be appointed by act of the legislature, to originate with the assembly: *Provided*, that he shall not be elected out of either branch of the legislature.

XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council for the appointment of the said officers, of which the governor for the time being, or the lieutenant-governor, or the president of the senate, when they shall respectively administer the government, shall be president and have a casting voice, but no other vote; and with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum. [\(11\)](#) And further, the said senators shall not be eligible to the said council for two years successively.

XXIV. That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behavior or until they shall have respectively attained the age of sixty years.

XXV. That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, excepting that of Delegate to the general Congress, upon special occasions; and that the first Judges of the county courts, in the several counties, shall not, at the same time, hold any other office, excepting that of Senator or

Delegate to the general Congress. But if the chancellor, or either of the said judges, be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

XXVI. That sheriffs and coroners be annually appointed; and that no person shall be capable of holding either of the said offices more than four years successively; nor the sheriff of holding any other office at the same time.

XXVII. *And be it further ordained*, That the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probate, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said marshal, registers, and clerks to continue in office during the pleasure of those by whom they are appointed as aforesaid.

And that all attorneys, solicitors, and counsellors at law hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practise, and be regulated by the rules and orders of the said courts.

XXVIII. *And be it further ordained*, That where, by this convention, the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: *Provided*, That new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

XXIX. That town clerks, supervisors, assessors, constables, and collectors, and all other officers, heretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the present or future acts of legislature.

That loan officers, county treasurers, and clerks of the supervisors, continue to be appointed in the manner directed by the present or future acts of the legislature.

XXX. That Delegates to represent this State in the general Congress of the United States of America be annually appointed as follows, to wit: The senate and assembly shall each openly nominate as many persons as shall be equal to the whole number of Delegates to be appointed; after which nomination they shall meet together, and those persons named in both lists shall be Delegates; and out of those persons whose names are not on both lists, one-half shall be chosen by the joint ballot of the senators and members of assembly so met together as aforesaid.

XXXI. That the style of all laws shall be as follows, to wit: "*Be it enacted by the people of the State of New York, represented in senate and assembly;*" and that all writs and other proceedings shall run in the name of "The people of the State of New York," and be tested in the name of the chancellor, or chief judge of the court from whence they shall issue.

XXXII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that a court shall be instituted for the trial of impeachments, and the correction of errors, under the regulations which shall be established by the legislature; and to consist of the president of the senate, for the time being, and the senators, chancellor, and judges of the supreme court, or the major part of them; except that when an impeachment shall be prosecuted against the chancellor, or either of the judges of the supreme court, the person so impeached shall be suspended from exercising his office until his acquittal; and, in like manner, when an appeal from a decree in equity shall be heard, the chancellor shall inform the court of the reasons of his decree, but shall not have a voice in the final sentence. And if the cause to be determined shall be brought up by writ of error, on a question of law, on a judgment in the supreme court, the judges of that court shall assign the reasons of such their judgment, but shall not have a voice for its affirmance or reversal.

XXXIII. That the power of impeaching all officers of the State, for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in assembly; but that it shall always be necessary that two third parts of the members present shall consent to and agree in such impeachment. That previous to the trial of every impeachment, the members of the said court shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence; and that no judgment of the said court shall be valid unless it be assented to by two third parts of the members then present; nor shall it extend farther than to removal from office, and disqualification to hold or enjoy any place of honor, trust, or profit under this State. But the party so convicted shall be, nevertheless, liable and subject to indictment, trial, judgment, and punishment, according to the laws of the land.

XXXIV. *And it is further ordained*, That in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions.

XXXV. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that such parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same. That such of the said acts, as are temporary, shall expire at the times limited for their duration, respectively. That all such parts of the said common law, and all such of the said statutes and acts aforesaid, or parts thereof, as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or prerogatives claimed or exercised by, the King of Great Britain and his predecessors, over the colony of New York and its inhabitants, or are repugnant to this constitution, be, and they hereby are, abrogated and rejected. And this convention doth further ordain, that the resolves or resolutions of the congresses of the colony of New York, and of the convention of the State of New York, now in force, and not repugnant to the government established by this constitution, shall be considered as making part of the laws of this State; subject, nevertheless, to such alterations and provisions as the legislature of this State may, from time to time, make concerning the same.

XXXVI. *And be it further ordained,* That all grants of lands within this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this constitution contained shall be construed to affect any grants of land within this State, made by the authority of the said King or his predecessors, or to annul any charters to bodies-politic by him or them, or any of them, made prior to that day. And that none of the said charters shall be adjudged to be void by reason of any non-user or misuser of any of their respective rights or privileges between the nineteenth day of April, in the year of our Lord one thousand seven hundred and seventy-five and the publication of this constitution. And further, that all such of the officers described in the said charters respectively as, by the terms of the said charters, were to be appointed by the governor of the colony of New York, with or without the advice and consent of the council of the said King, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this State, until otherwise directed by the legislature.

XXXVII. And whereas it is of great importance to the safety of this State that peace and amity with the Indians within the same be at all times supported and maintained; and whereas the frauds too often practiced towards the said Indians, in contracts made for their lands, have, in divers instances, been productive of dangerous discontents and animosities: Be it ordained, that no purchases or contracts for the sale of lands, made since the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, or which may hereafter be made with or of the said Indians, within the limits of this State, shall be binding on the said Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this State.

XXXVIII. And whereas we are required, by the benevolent principles of rational liberty, not only to expel civil tyranny, but also to guard against that spiritual oppression and intolerance wherewith the bigotry and ambition of weak and wicked priests and princes have scourged mankind, this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare, that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided,* That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

XXXIX. And whereas the ministers of the gospel are, by their profession, dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall, at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding, any civil or military office or place within this State.

XL. And whereas it is of the utmost importance to the safety of every State that it should always be in a condition of defence; and it is the duty of every man who enjoys the protection of society to be prepared and willing to defend it; this convention therefore, in the name and by the authority of the good people of this State, doth ordain, determine, and declare that the militia of this State, at all times hereafter, as well in peace as in war, shall be armed and disciplined, and in readiness for service. That all such of the inhabitants of this State being of the people called Quakers as, from scruples of conscience, may be averse to the bearing of arms, be therefrom excused by the legislature; and do pay to the State such sums of money, in lieu of their personal service, as the same; may, in the judgment of the legislature, be worth. [\(12\)](#) And that a proper magazine of warlike stores, proportionate to the number

of inhabitants, be, forever hereafter, at the expense of this State, and by acts of the legislature, established, maintained, and continued in every county in this State.

XLI. And this convention doth further ordain, determine, and declare, in the name and by the authority of the good people of this State, that trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever. And that no acts of attainder shall be passed by the legislature of this State for crimes, other than those committed before the termination of the present war; and that such acts shall not work a corruption of blood.[\(13\)](#) And further, that the legislature of this State shall, at no time hereafter, institute any new court or courts, but such as shall proceed according to the course of the common law.

XLII. And this convention doth further, in the name and by the authority of the good people of this State, ordain, determine, and declare that it shall be in the discretion of the legislature to naturalize all such persons, and in such manner, as they shall think proper: *Provided*, All such of the persons so to be by them naturalized, as being born in parts beyond sea, and out of the United States of America, shall come to settle in and become subjects of this State, shall take an oath of allegiance to this State, and abjure and renounce all allegiance and subjection to all and every foreign king, prince, potentate, and State in all matters, ecclesiastical as well as civil.[\(14\)](#)

By order.

LEONARD GANSEVOORT,
President pro tempore.

Appendix I - North Carolina

*Constitution of North Carolina (1776)*¹³³

A DECLARATION OF RIGHTS, &C.

- I. That all political power is vested in and derived from the people only.
- II. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.
- III. That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.
- IV. That the legislative, executive, and supreme judicial powers of government, ought to be forever separate and distinct from each other.
- V. That all powers of suspending laws, or the execution of laws, by any authority, without consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised.
- VI. That elections of members, to serve as Representatives in General Assembly, ought to be free.
- VII. That, in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.
- VIII. That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment.
- IX. That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used.
- X. That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.
- XI. That general warrants -- whereby an officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons, not named, whose offences are not particularly described, and supported by evidence -- are dangerous to liberty, and ought not to be granted.
- XII. That no freeman ought to be taken, imprisoned, or disseized of his freehold liberties or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the law of the land.
- XIII. That every freeman, restrained of his liberty, is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful; and that such remedy ought not to be denied or delayed.
- XIV. That in all controversies at law, respecting property, the ancient mode of trial, by jury, is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.
- XV. That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained.
- XVI. That the people of this State ought not to be taxed, or made subject to the payment of any impost or duty, without the consent of themselves, or their Representatives in General Assembly, freely given.

¹³³ "Constitution of North Carolina 1776." Avalon Project, Yale Law School.

http://avalon.law.yale.edu/18th_century/nc07.asp (accessed March 24, 2010).

XVII. That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

XVIII. That the people have a right to assemble together, to consult for their common good, to instruct their Representatives, and to apply to the Legislature, for redress of grievances.

XIX. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences.

XX. That, for redress of grievances, and for amending and strengthening the laws, elections ought to be often held.

XXI. That a frequent recurrence to fundamental principles is absolutely necessary, to preserve the blessings of liberty.

XXII. That no hereditary emoluments, privileges or honors ought to be granted or conferred in this State.

XXIII. That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be allowed.

XXIV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made.

XXV. The property of the soil, in a free government, being one of the essential rights of the collective body of the people, it is necessary, in order to avoid future disputes, that the limits of the State should be ascertained with precision; and as the former temporary line between North and South Carolina, was confirmed, and extended by Commissioners, appointed by the Legislatures of the two States, agreeable to the order of the late King George the Second, in Council, that line, and that only, should be esteemed the southern boundary of this State as follows: that is to say, beginning on the sea side, at a cedar stake, at or near the mouth of Little River (being the southern extremity of Brunswick county) and running from thence a northwest course, through the boundary house, which stands in thirty-three degrees fifty-six minutes, to thirty-five degrees north latitude; and from thence a west course so far as is mentioned in the Charter of King Charles the Second, to the late Proprietors of Carolina. Therefore all the territories, seas, waters, and harbours, with their appurtenances, lying between the line above described, and the southern line of the State of Virginia, which begins on the sea shore, in thirty-six degrees thirty minutes, north latitude, and from thence runs west, agreeable to the said Charter of King Charles, are the right and property of the people of this State, to be held by them in sovereignty; any partial line, without the consent of the Legislature of this State, at any time thereafter directed, or laid out, in anywise notwithstanding: -- Provided always, That this Declaration of Rights shall not prejudice any nation or nations of Indians, from enjoying such hunting-grounds as may have been, or hereafter shall be, secured to them by any former or future Legislature of this State: -- And provided also, That it shall not be construed so as to prevent the establishment of one or more governments westward of this State, by consent of the Legislature: -- And provided further, That nothing herein contained shall affect the titles or repossessions of individuals holding or claiming under the laws heretofore in force, or grants heretofore made by the late King George the Second, or his predecessors, or the late lords proprietors, or any of them.

THE CONSTITUTION, OR FORM OF GOVERNMENT, &c

WHEREAS allegiance and protection are, in their nature, reciprocal, and the one should of right be refused when the other is withdrawn:

And whereas George the Third, King of Great Britain, and late Sovereign of the British American Colonies, hath not only withdrawn from them his protection, but, by an act of the British Legislature, declared the inhabitants of these States out of the protection of the British crown, and all their property, found upon the high seas, liable to be seized and confiscated to the uses mentioned in the said act; and the said George the Third has also sent fleets and armies to prosecute a cruel war against them, for the purposed reducing the inhabitants of the said Colonies to a state of abject slavery; in consequence whereof, all government under the said King, within the said Colonies, hath ceased, and a total dissolution of government in many of them hath taken place.

And whereas the Continental Congress, having considered the premises, and other previous violation of the rights of the good people of America, have therefore declared, that the Thirteen United Colonies are, of right, wholly

absolved from all allegiance to the British crown or any other foreign jurisdiction whatsoever: and that the said Colonies now are, and forever shall be, free and independent States.

Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that government should be established in this State; therefore we, the Representatives of the freemen of North-Carolina, chosen and assembled in Congress, for the express purpose of framing a Constitution, under the authority of the people, most conducive to their happiness and prosperity, do declare, that a government for this State shall be established, in manner and form following, to wit:

I. (3) That the legislative authority shall be vested in two distinct branches both dependent on the people, to wit, a *Senate* and *House of Commons*.

II. (3) That the Senate shall be composed of Representatives annually chosen by ballot, one for each county in the State.

III. (3) That the House of Commons shall be composed of Representatives annually chosen by ballot, two for each county and one for each of the towns of Edentown, Newbern, Wilmington, Salisbury, Hillsborough and Halifax.

IV. That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated, *The General Assembly*.

V. (3) That each member of the Senate shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for the same time shall have possessed, and continue to possess in the county which he represents, not less than three hundred acres of land in fee.

VI. That each member of the House of Commons shall have usually resided in the county in which he is chosen for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life.

VII. (3) That all freemen, of the age of twenty-one years, who have been inhabitants of any one county within the State twelve months immediately preceding the day of any election and possessed of a freehold within the same county of fifty acres of land for six months next before, and at the day of election, shall be entitled to vote for a member of the Senate.

VIII. (3) That all freemen of the age of twenty-one Years, who have been inhabitants of any one county within this State twelve months immediately preceding the day of any election, and shall have paid public taxes shall be entitled to vote for members of the House of Commons for the county in which he resides.

IX. (3) That all persons possessed of a freehold in any town in this State, having a right of representation and also all freemen who have been inhabitants of any such town twelve months next before and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the House of Commons: -- Provided always, That this section shall not entitle any inhabitant of such town to vote for members of the House of Commons, for the county in which he may reside, nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.

X. That the Senate and House of Commons, when met, shall each have power to choose a speaker and other their officers; be judges of the qualifications and elections of their members; sit upon their own adjournments from day to day, and prepare bills, to be passed into laws. The two Houses shall direct writs of election for supplying intermediate vacancies; and shall also jointly, by ballot, adjourn themselves to any future day and place.

XI. That all bills shall be read three times in each House, before they pass into laws, and be signed by the Speakers of both Houses.

XII. That every person, who shall be chosen a member of the Senate or House of Commons, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take an oath to the State; and all officers shall also take an oath of office.

XIII. (4) That the General Assembly shall, by joint ballot of both houses, appoint Judges of the Supreme Courts of Law and Equity, Judges of Admiralty, and Attorney-General, who shall be commissioned by the Governor, and hold their offices during good behavior.

XIV. That the Senate and House of Commons shall have power to appoint the generals and field-officers of the militia, and all officers of the regular army of this State.

XV.(4) That the Senate and House of Commons, jointly at their first meeting after each annual election, shall by ballot elect a Governor for one year, who shall not be eligible to that office longer than three years, in six successive years. That no person, under thirty years of age, and who has not been a resident in this State above five years, and having, in the State, a freehold in lands and tenements above the value of one thousand pounds, shall be eligible as a Governor.

XIV. That the Senate and House of Commons, jointly, at their first meeting after each annual election, shall by ballot elect seven persons to be a Council of State for one year, who shall advise the Governor in the execution of his office; 2nd that four members shall be a quorum; their advice and proceedings shall be Altered in a journal, to be kept for that purpose only and signed, by the members present; to any part of which, any member present Nay enter his dissent. And such journal shall he laid before the General Assembly when called for by them.

XVII. That there shall be a seal of this State, which shall be kept by the Governor, and used by him, as occasion may require; and shall be called, *The Great Seal of the State of North Carolina*, and be affixed to all grants and commissions.

XVIII. The Governor, for the time being, shall be captain-general and commander in chief of the militia; and, in the recess of the General Assembly, shall have power, by and with the advice of the Council of State, to embody the militia for the public safety.

XIX.(4) That the Governor, for the tine beings shall have power to draw for and apply such sums of money as shall be voted by the general assembly, for the contingencies of government, and be accountable to them for the same. He also may, by and with the advice of the Council of State, lay embargoes, or prohibit the exportation of any commodity, for any term not exceeding thirty days, at any one time in the recess of the General Assmably; and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly, or the law shall otherwise direct; in which case he may in the recess grant a reprieve until the next sitting of the General Assembly; and may exercise all the other executive powers of government, limited and restrained as by this Constitution is mentioned, and according to the laws of the State. And on his death, inability, or absence from the State, the Speaker of the Senate for the time being -- (and in case of his death, inability, or absence from the State, the Speaker of the House of Commons) shall exercise the powers of government after such death, or during such absence or inability of the Governor (or Speaker of the Senate,) or until a new nomination is made by the General Assembly.

XX. That in every case where any officer, the right of whose appointment is by this Constitution vested in the General Assembly, shall, during their recess, die, or his office by other means become vacant, the Governor shall have power, with the advice of the Council of State, to fill up such vacancy, by granting a temporary commission, which shall expire at the end of the next session of the General Assembly

XXI. That the Governor, Judges of the Supreme Court of Law and Equity, Judges of Admiralty, and Attorney-General, shall have adequate salaries during their continuance in office.

XXII. That the General Assembly shall, by joint ballot of both Houses, annually appoint a Treasurer or Treasurers for this State.

XXIII. That the Governor, and other officers, offending against the State, by violating any part of this Constitution, mal-administration, or corruption, may be prosecuted, on the impeachment of the General Assembly, or presentment of the Grand Jury of any court of supreme jurisdiction in this State.

XXIV. That the General Assembly shall, by joint ballot of both Houses, triennially appoint a Secretary for this State.

XXV. That no persons, who heretofore have been, or hereafter may be, receivers of public the monies, shall have a seat in either House of General Assembly, or be eligible to any office in this State, until such person shall have fully accounted for and paid into the treasury all sums for which they may he accountable and liable.

XXVI. That no Treasurer shall have a seat, either in the Senate, House of Commons, or Council of State, during his continuance in that office, or before he shall have finally settled his accounts with the public, for all the monies which may be in his hands at the expiration of his office belonging to the State, and hath paid the same into the hands of the succeeding Treasurer.

XXVII. That no officer in the regular army or navy, in the service and pay of the United States, of this or any other State, nor any contractor or agent for supplying such army or navy with clothing or provisions, shall have a seat either in the Senate, House of Commons, or Council of State, or be eligible thereto: and any member of the Senate, House of Commons, or Council of State, being appointed to and accepting of such office, shall thereby vacate his seat.

XXVIII. That no member of the Council of State shall have a seat, either in the Senate, or House of Commons.

XXIX. That no Judge of the Supreme Court of Law or Equity, or Judge of Admiralty, shall have a seat in the Senate, House of Commons, or Council of State.

XXX. That no Secretary of this State, Attorney-General, or Clerk of any Court of Record, shall have a seat in the Senate, House of Commons, or Council of State.

XXXI. That no clergyman, or preacher of the gospels of any denomination, shall be capable of being a member of either the Senate, House of Commons, or Council of State, while he continues in the exercise of the pastoral function.

XXXII. (5) That no person, who shall deny the being of God or the truth of the Protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State.

XXXIII. That the Justices of the Peace, within their respective counties in this State, shall in future be recommended to the Governor for the time being, by the Representatives in General Assembly; and the Governor shall commission them accordingly: and the Justices, when so commissioned, shall hold their offices during good behaviour, and shall not be removed from office by the General Assembly, unless for misbehaviour, absence, or inability.

XXXIV. That there shall be no establishment of any one religious church or denomination in this State, in preference to any other; neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, of his own voluntary and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship: -- *Provided*, That nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses, from legal trial and punishment.

XXXV. That no person in the State shall hold more than one lucrative office, at any one time: -- *Provided*, That no appointment in the militia, or the office of a Justice of the Peace, shall be considered as a lucrative office.

XXXVI. That all commissions and grants shall run in the name of the State of North Carolina, and bear test, and be signed by the Governor. All writs shall run in the same manner and bear test, and be signed by the Clerks of the respective Courts. Indictments shall conclude, *Against the peace and dignity of the estate*.

XXXVII. (5) That the Delegates for this State, to the Continental Congress while necessary, shall be chosen annually by the General Assembly, by ballot; but may be superseded, in the mean time, in the same manner; and no person shall be electoral, to serve in that capacity, for more than three years successively.

XXXVIII. That there shall be a Sheriff, Coroner or Coroners, and Constables, in each county within this State.

XXXIX. That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide*, all his estate real and personal, for the use of his creditors in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences when the proof is evident or the presumption great.

XL. That every foreigner, who comes to settle in this State having first taken an oath of allegiance to the same, may purchase, or, by other means, acquire, hold, and transfer land, or other real estate; and after one year's residence, shall be deemed a free citizen.

XLI. That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged, and promoted, in one or more universities.

XLII. That no purchase of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

XLIII. That the future Legislature of this State shall regulate entails, in such a manner as to prevent perpetuities.

XLIV. That the Declaration of Rights is hereby declared to be part of the Constitution of this State, and ought never to be violated, on any presence whatsoever.

XLV. That any member of either House of General Assembly shall have liberty to dissent from, and protest against any act or resolve, which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journals.

XLVI. That neither House of the General Assembly shall proceed upon public business, unless a majority of all the members of such House are actually present: and that, upon a motion made and seconded, the yeas and nays, upon any question, shall be taken and entered on the journals; and that the journals of the proceedings of both Houses of the General Assembly shall be printed, and made public, immediately after their adjournment.

This Constitution is not intended to preclude the present Congress from making a temporary provision, for the well ordering of this State, until the General Assembly shall establish government, agreeable to the mode herein before described.

RICHARD CASWELL, *President*.

December the eighteenth, one thousand seven hundred and seventy-six, read the third time, and ratified in open Congress.

By order,

JAMES GREEN, *jun. secretary*.

Appendix J - Pennsylvania

*Constitution of Pennsylvania (1776)*¹³⁴

WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness. AND WHEREAS the inhabitants of this commonwealth have in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain; and the said king has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said king and his successors, are dissolved and at an end, and all power and authority derived from him ceased in these colonies. AND WHEREAS it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent States, and that just, permanent, and proper forms of government exist in every part of them, derived from and founded on the authority of the people only, agreeable to the directions of the honourable American Congress. We, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do, by virtue of the authority vested in use by our constituents, ordain, declare, and establish, the following Declaration of Rights and Frame of Government, to be the CONSTITUTION of this commonwealth, and to remain in force therein for ever, unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall by the same authority of the people, fairly delegated as this frame of government directs, be amended or improved for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OR STATE OF PENNSYLVANIA

I. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.

III. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

¹³⁴ "Constitution of Pennsylvania 1776." Avalon Project, Yale Law School.

http://avalon.law.yale.edu/18th_century/pa08.asp (accessed March 24, 2010).

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or soft of men, who are a part only of that community, And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VII. That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office.

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure, and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred.

XII. That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

XIV. That a frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality are absolutely necessary to preserve the blessings of liberty, and keep a government free: The people ought therefore to pay particular attention to these points in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislatures and magistrates, in the making and executing such laws as are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance.

PLAN OR FRAME OF GOVERNMENT FOR THE COMMONWEALTH OR STATE OF PENNSYLVANIA

SECTION 1. The commonwealth or state of Pennsylvania shall be governed hereafter by an assembly of the representatives of the freemen of the same, and a president and council, in manner and form following-

SECT. 2. The supreme legislative power shall be vested in a house of representatives of the freemen of the commonwealth or state of Pennsylvania.

SECT. 3. The supreme executive power shall be vested in a president and council.

SECT. 4. Courts of justice shall be established in the city of Philadelphia, and in every county of this state.

SECT. 5. The freemen of this commonwealth and their sons shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the general assembly shall by law direct, preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed.

SECT. 6. Every freemen of the full age of twenty-one Years, having resided in this state for the space of one whole Year next before the day of election for representatives, and paid public taxes during that time, shall enjoy the right of an elector: Provided always, that sons of freeholders of the age of twenty-one years shall be intitled to vote although they have not paid taxes.

SECT. 7. The house of representatives of the freemen of this commonwealth shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every city and county of this commonwealth respectively. And no person shall be elected unless he has resided in the city or county for which he shall be chosen two years immediately before the said election; nor shall any member, while he continues such, hold any other office, except in the militia.

SECT. 8. No person shall be capable of being elected a member to serve in the house of representatives of the freemen of this commonwealth more than four years in seven.

SECT. 9. The members of the house of representatives shall be chosen annually by ballot, by the freemen of the commonwealth, on the second Tuesday in October forever, (except this present year,) and shall meet on the fourth Monday of the same month, and shall be stiled, The general assembly of the representatives of the freemen of Pennsylvania, and shall have power to choose their speaker, the treasurer of the state, and their other officers; sit on their own adjournments; prepare bills and enact them into laws; judge of the elections and qualifications of their own members; they may expel a member, but not a second time for the same cause; they may administer oaths or affirmations on examination of witnesses; redress grievances; impeach state criminals; grant charters of incorporation; constitute towns, boroughs, cities, and counties; and shall have all other powers necessary for the legislature of a free state or commonwealth: But they shall have no power to add to, alter, abolish, or infringe any part of this constitution.

SECT. 10. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall each of them before they proceed to business take and subscribe, as well the oath or affirmation of fidelity and allegiance hereinafter directed, as the following oath or affirmation, viz:

I do swear (or affirm) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to be injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state; but will in all things conduct myself as a faithful honest representative and guardian of the people, according to the best of only judgment and abilities.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz:

I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State.

SECT. 11. Delegates to represent this state in congress shall be chosen by ballot by the future general assembly at their first meeting, and annually forever afterwards, as long as such representation shall be necessary. Any delegate may be superseded at any time, by the general assembly appointing another in his stead. No man shall sit in congress longer than two years successively, nor be capable of reelection for three Years afterwards: and no person

who holds any office in the gift of the congress shall hereafter be elected to represent this commonwealth in congress.

SECT. 12. If any city or cities, county or counties shall neglect or refuse to elect and send representatives to the general assembly, two-thirds of the members from the cities or counties that do elect and send representatives, provided they be a majority of the cities and counties of the whole state, when met, shall have all the powers of the general assembly, as fully and amply as if the whole were present.

SECT. 13. The doors of the house in which the representatives of the freemen of this state shall sit in general assembly, shall be and remain open for the admission of all persons who behave decently, except only when the welfare of this state may require the doors to be shut.

SECT. 14. The votes and proceedings of the general assembly shall be printed weekly during their sitting, with the yeas and nays, on any question, vote or resolution, where any two members require it except when the vote is taken by ballot; and when the yeas and nays are so taken every member shall have a right to insert the reasons of his vote upon the minutes, if he desires it.

SECT. 15. To the end that laws before they are enacted may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all- bills of public nature shall be printed for the consideration of the people, before they are read in general assembly the last time for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws until the next session of assembly; and for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.

SECT. 16. The stile of the laws of this commonwealth shall be, " Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same." And the general assembly shall affix their seal to every bill, as soon as it is enacted into a law, which seal shall be kept by the assembly, and shall be called, The seal of the laws of Pennsylvania, and shall not be used for any other purpose.

SECT. 17. The city of Philadelphia and each county of this commonwealth respectively, shall on the first Tuesday of November in this present year, and on the second Tuesday of October annually for the two next succeeding years, viz. the year one thousand seven hundred and seventy-seven, and the year one thousand seven hundred and seventy-eight, choose six persons to represent them in general assembly. But as representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land; therefore the general assembly shall cause complete lists of the taxable inhabitants in the city and each county in the commonwealth respectively, to be taken and returned to them, on or before the last meeting of the assembly elected in the year one thousand seven hundred and seventy-eight, who shall appoint a representation to each, in proportion to the number of taxables in such returns; which representation shall continue for the next seven years afterwards at the end of which, a new return of the taxable inhabitants shall be made, and a representation agreeable thereto appointed by the said assembly, and so on septennially forever. The wages of-the representatives in general assembly, and all other state charges shall be paid out of the state treasury.

SECT. 18. In order that the freemen of this commonwealth may enjoy the benefit of election as equally as may be until the representation shall commence as directed in the foregoing section, each county at its own choice may be divided into districts, hold elections therein, and elect their representatives in the county, and their other elective officers, as shall be hereafter regulated by the general assembly of this state. And no inhabitant of this state shall have more than one annual vote at the general election for representatives in assembly.

SECT. 19. For the present the supreme. executive council of this state shall consist of twelve persons chosen in the following manner: The freemen of the city of Philadelphia, and of the counties of Philadelphia, Chester, and Bucks, respectively, shall choose by ballot one person for the city, and one for each county aforesaid to serve for three years and no longer, at the time and place for electing representatives in general assembly. The freemen of the counties of Lancaster, York, Cumberland, and Berks, shall, in like manner elect one person for each county respectively, to serve as counsellors for two years and no longer. And the counties of Northampton, Bedford, Northumberland and Westmoreland, respectively, shall, in like manner, elect one person for each county, to serve as counsellors for one year, and no longer. And at the expiration of the time for which each counsellor was chosen to serve, the freemen of the city of Philadelphia, and of the several counties in this state, respectively, shall elect one person to serve as counsellor for three years and no longer; and so on every third year forever. By this mode of

election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the council a number of persons acquainted with the proceedings of the foregoing Years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented. All vacancies in the council that may happen by death, resignation, or otherwise, shall be filled at the next general election for representatives in general assembly, unless a particular election for that purpose shall be sooner appointed by the president and council. No member of the general assembly or delegate in congress, shall be chosen a member of the council. The president and vice-president shall be chosen annually by the joint ballot of the general assembly and council, of the members of the council. Any person having served as a counsellor for three successive years, shall be incapable of holding that office for four years afterwards. Every member of the council shall be a justice of the peace for the whole commonwealth, by virtue of his office.

In case new additional counties shall hereafter be erected in this state, such county or counties shall elect a counsellor, and such county or counties shall be annexed to the next neighbouring counties, and shall take rotation with such counties.

The council shall meet annually, at the same time and place with the general assembly.

The treasurer of the state, trustees of the loan office, naval officers, collectors of customs or excise, judge of the admiralty, attornies general, sheriffs, and prothonotaries, shall not be capable of a seat in the general assembly, executive council, or continental congress.

SECT. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, judge of the admiralty, attorney general and all other officers, civil and military, except such as are chosen by the general assembly or the people, agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled in the time and manner directed by law or this constitution. They are to correspond with other states, and transact business with the officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges, to hear and determine on impeachments, taking to their assistance for advice only, the justices of the supreme court. And shall have power to grant pardons and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder, shall have power to grant reprieves, but not to pardon, until the end of the next sessions of assembly; but there shall be no remission or mitigation of punishments on impeachments, except by act of the legislature; they are also to take care that the laws be faithfully executed; they are to expedite the execution of such measures as may be resolved upon by the general assembly; and they may draw upon the treasury for such sums as shall be appropriated by the house: They may also lay embargoes, or prohibit the exportation of any commodity, for any time, not exceeding thirty days, in the recess of the house only: They may grant such licences, as shall be directed by law, and shall have power to call together the general assembly when necessary, before the day to which they shall stand adjourned. The president shall be commander in chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. The president and council shall have a secretary, and keep fair books of their proceedings, wherein any counsellor may enter his dissent, with his reasons in support of it.

SECT. 21. All commissions shall be in the name, and by the authority of the freemen of the commonwealth of Pennsylvania, sealed with the state seal, signed by the president or vice-president, and attested by the secretary; which seal shall be kept by the council.

SECT. 22. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office, or after his resignation or removal for mal-administration: All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

SECT. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for misbehaviour at any time by the general assembly; they shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor to hold any other office civil or military, nor to take or receive fees or perquisites of any kind.

SECT. 24. The supreme court, and the several courts of common pleas of this commonwealth, shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to the perpetuating testimony, obtaining evidence from places not within this state, and the care of the persons and estates of those who are non compotes mentis, and such other powers as may be found necessary by future general assemblies, not inconsistent with this constitution.

SECT. 25. Trials shall be by jury as heretofore: And it is recommended to the legislature of this state, to provide by law against every corruption or partiality in the choice, return, or appointment of juries.

SECT. 26. Courts of sessions, common pleas, and orphans courts shall be held quarterly in each city and county; and the legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the state. All courts shall be open, and justice shall be impartially administered without corruption or unnecessary delay: All their officers shall be paid an adequate but moderate compensation for their services: And if any officer shall take greater or other fees than the law allows him, either directly or indirectly, it shall ever after disqualify him from holding any office in this state.

SECT. 27. All prosecutions shall commence in the name and by the authority of the freemen of the commonwealth of Pennsylvania; and all indictments shall conclude with these words, "Against the peace and dignity of the same." The style of all process hereafter in this state shall be, The commonwealth of Pennsylvania.

SECT. 28. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering Up, bona fide, all his estate real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or presumption great.

SECT. 29. Excessive bail shall not be exacted for bailable offences: And all fines shall be moderate.

SECT. 30. Justices of the peace shall be elected by the freeholders of each city and county respectively, that is to say, two or more persons may be chosen for each ward, township, or district, as the law shall hereafter direct: And their names shall be returned to the president in council, who shall commissionate one or more of them for each ward, township, or district so returning, for seven years, removable for misconduct by the general assembly. But if any city or county, ward, township, or district in this commonwealth, shall hereafter incline to change the manner of appointing their justices of the peace as settled in this article, the general assembly may make laws to regulate the same, agreeable to the desire of a majority of the freeholders of the city or county, ward, township, or district so applying. No justice of the peace shall sit in the general assembly unless he first resigns his commission; nor shall he be allowed to take any fees, nor any salary or allowance, except such as the future legislature may grant.

SECT. 31. Sheriffs and coroners shall be elected annually in each city and county, by the freemen; that is to say, two persons for each office, one of whom for each, is to be commissioned by the President in council. No person shall continue in the office of sheriff more than three successive years, or be capable of being again elected during four years afterwards. The election shall be held at the same time and place appointed for the election of representatives: And the commissioners and assessors, and other officers chosen by the people, shall also be then and there elected, as has been usual heretofore, until altered or otherwise regulated by the future legislature of this state.

SECT. 32. All elections, whether by the people or in general assembly, shall be by ballot, free and voluntary: And any elector, who shall receive any gift or reward for his vote, in meat, drink, monies, or otherwise, shall forfeit his right to elect for that time, and suffer such other penalties as future laws shall direct. And any person who shall directly or indirectly give, promise, or bestow any such rewards to be elected, shall be thereby rendered incapable to serve for the ensuing year.

SECT. 33. All fees, licence money, fines and forfeitures heretofore granted, or paid to the governor, or his deputies for the support of government, shall hereafter be paid into the public treasury, unless altered or abolished by the future legislature.

SECT. 34. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each city and county: The officers to be appointed by the general assembly, removable at their pleasure, and to be commissioned by the president in council.

SECT. 35. The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SECT. 36. As every freeman to preserve his independence, (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in establishing offices of profit, the usual effects of which are dependence and servility unbecoming freemen, in the possessors and expectants; faction, contention, corruption, and disorder among the people. But if any man is called into public service; to the prejudice of his-private affairs, he has a right to a reasonable compensation: And

whenever an office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

SECT. 37. The future legislature of this state, shall regulate intails in such a manner as to prevent perpetuities.

SECT. 38. The penal laws as heretofore used shall be reformed by the legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.

SECT. 39. To deter more effectually from the commission of crimes by continued visible punishments of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons: And all persons at proper times shall be admitted to see the prisoners at their labour.

SECT. 40. Every officer, whether judicial, executive or military, in authority under this commonwealth, shall take the following oath or affirmation of allegiance, and general oath of office before he enters on the execution of his office.

THE OATH OR AFFIRMATION OF ALLEGIANCE

I do swear (or affirm) that I will be true and faithful to the commonwealth of Pennsylvania: And that I will not directly or indirectly do any act or thing prejudicial or injurious to the constitution or government thereof, as established by the-convention. -

THE OATH OR AFFIRMATION OF OFFICE

I-do swear (or affirm) that I will faithfully execute the office of for the of-and will do equal right and justice to all men, to the best of my judgment and abilities, according to law.

SECT. 41. NO public tax, custom or contribution shall be imposed upon, or paid by the people of this state, except by a law for that purpose: And before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECT. 42. Every foreigner of good character who comes to settle in this state, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected a representative until after two years residence.

SECT. 43. The inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed; and in like manner to fish in all boatable waters, and others not private property

SECT. 44. A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices: And all useful learning shall be duly encouraged and promoted In one or more universities.

SECT. 45. Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed, under the laws and former constitution of this state.

SECT. 46. The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any presence whatever.

SECT. 47. In order that the freedom of the commonwealth may be preserved inviolate forever, there shall be chosen by ballot by the freemen in each city and county respectively, on the second Tuesday in October, in the Year one thousand seven hundred and eighty-three, and on the second Tuesday in October, in every seventh year thereafter, two persons in each city and county of this state, to be called the COUNCIL OF CENSORS; who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall

agree: And whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are intitled to by the constitution: They are also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election and no longer: The said council of censors shall also have power to call a convention, to meet within too years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people: But the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

Passed in Convention the 28th day of September, 1776, and signed by their order.

BENJ. FRANKLIN, Prest.

Appendix K - Rhode Island

*Charter of Rhode Island and Providence Plantations (1663)*¹³⁵

CHARLES THE SECOND, by the grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c., to all to whome these presents shall come, greeting: Whereas wee have been informed, by the humble petition of our trustie and well beloved subject, John Clarke, on the behalf of Benjamine Arnold, William Brenton, William Codington, Nicholas Easton, William Boulston, John Porter, John Smith, Samuell Gorton, John Weeks, Roger Williams, Thomas Olnie, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, Samuell Wildbore, William Ffield, James Barker, Richard Tew, Thomas Harris, and William Dyre, and the rest of the purchasers and ffree inhabitants of our island, called Rhode-Island, and the rest of the colonie of Providence Plantations, in the Narragansett Bay, in New-England, in America, that they, pursueing, with peaceable and loyall minces, their sober, serious and religious intentions, of goalie edifieing themselves, and one another, in the holie Christian ffaith and worshipp as they were perswaded; together with the gaineing over and conversione of the poore ignorant Indian natives, in those partes of America, to the sincere professione and obedienc of the same ffaith and worship, did, not onlie by the consent and good encouragement of our royall progenitors, transport themselves out of this kingdome of England into America, but alsoe, since their arrivall there, after their first settlement amongst other our subjects in those parts, Nor the avoideing of discorde, and those manic evils which were likely to ensue upon some of those oure subjects not beinge able to beare, in these remote parties, their different apprehensiones in religious concernements, and in pursueance of the afforesayd ends, did once againe leave their desireable stationies and habitationes, and with excessive labour and travell, hazard and charge, did transplamt themselves into the middest of the Indian natives, who, as wee are informed, are the most potent princes and people of all that country; where, by the good Providence of God, from whome the Plantationes have taken their name, upon their labour and industrie, they have not onlie byn preserved to admiration, but have increased and prospered, and are seized and possessed, by purchase and consent of the said natives, to their ffull content, of such lands, islands, rivers, harbours and roades, as are verie convenient, both for plantationes and alsoe for buildings of shippes, suplye of pypestaves, and other merchandise; and which lyes verie commodious, in manic respects, for commerce, and to accommodate oure southern plantationes, and may much advance the trade of this oure realme, and greatlie enlarge the territories thereof; they haveinge, by neare neighbourhoode to and friendlie societie with the greate bodie of the Narragansett Indians, given them encouragement, of their owne accorde, to subject themselves, their people and lances, unto us; whereby, as is hoped, there may, in due tyme, by the blessing of God upon their endeavours, bee layd a sure foundation of happinesse to all America:

And whereas, in their humble addresse, they have freely declared, that it is much on their hearts (if they may be permitted), to hold forth a livlie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernements; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyaltie: Now know yee, that wee beinge willinge to encourage the hopefull undertakeinge of oure sayd lovall and loveinge subjects, and to secure them in the free exercise and enjoyment of all their civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian faith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and lovall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhabitants of the same colonie cannot, in their private opinions, conforms to the publike exercise of religion, according to the litturgy, formes and ceremonyes of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) yee noe breach of the unitie and unifformitie established in this nation: Have therefore thought ffit, and doe hereby publish, graunt, ordeyne and declare, That our royall will and pleasure is, that noe person within the sayd colonie, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter,

¹³⁵ "Charter of Rhode Island and Providence Plantations." The Avalon Project, Yale Law School.

http://avalon.law.yale.edu/17th_century/ri04.asp (accessed March 24, 2010).

freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concerns, throughout the tract of land hereafter mentioned; they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury or outward disturbance of others; any law, statute, or clause, therein contained, or to be contained, usage or custom of this realm, to the contrary hereof, in any wise, notwithstanding. And that they may be in the better capacity to defend themselves, in their just rights and liberties against all the enemies of the Christian faith, and others, in all respects, we have further thought fit, and at the humble petition of the persons aforesaid are graciously pleased to declare, That they shall have and enjoy the benefit of our late act of indemnity and free pardon, as the rest of our subjects in other our dominions and territories have; and to create and make them a body politic or corporate, with the powers and privileges hereinafter mentioned.

And accordingly our will and pleasure is, and of our especial grace, certain knowledge, and mere motion, we have ordeyned, constituted and declared, and by these presents, for us, our heirs and successors, do ordeyne, constitute and declare, That they, the said William Brenton, William Codrington, Nicholas Easton, Benedict Arnold, William Boulston, John Porter, Samuel Gorton, John Smith, John Weekes, Roger Williams, Thomas Olney, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, William Dyre, Samuel Wildbore, Richard Tew, William Field, Thomas Harris, James Barker, Rainsborrow, - Williams, and John Nicksonj and all such others as now are, or hereafter shall be admitted and made free of the company and society of our colony of Providence Plantations, in the Narragansett Bay, in New England, shall be, from time to time, and forever hereafter, a body corporate and politic, in fact and name, by the name of The Governor and Company of the English Colony of Rhode-Island and Providence Plantations, in New-England, in America; and that, by the same name, they and their successors shall and may have perpetual succession, and shall and may be persons able and capable, in the law, to sue and be sued, to plead and be impleaded, to answer and be answered unto, to defend and to be defended, in all and singular suits, causes, quarrels, matters, actions and things, of what kind or nature soever; and also to have, take, possess, acquire and purchase lands, tenements or hereditaments, or any goods or chattels, and the same to lease, grant, demise, alien, bargain, sell and dispose of, at their own will and pleasure, as other our liege people of this our realm of England, or any corporation or body politic within the same, may be lawfully do: And further, that they the said Governor and Company, and their successors, shall and may, forever hereafter, have a common scale, to serve and use for all matters, causes, things and affairs, whatsoever, of them and their successors; and the same scale to alter, change, break, and make new, from time to time, at their will and pleasure, as they shall think best.

And farther, we will and ordeyne, and by these presents, for us, our heirs and successors, do declare and appoint that, for the better ordering and managing of the affairs and business of the said Company, and their successors, there shall be one Governour, one Deputy-Governour and ten Assistants, to be from time to time, constituted, elected and chosen, out of the freemen of the said Company, for the time being, in such manner and form as is hereafter in these presents expressed; which said officers shall apply themselves to take care for the best disposing and orderings of the general business and affairs of, and concerning the lands and hereditaments hereinafter mentioned, to be granted, and the plantation thereof and the government of the people there. And for the better execution of our royal pleasure herein, we do, for us, our heirs and successors, assign, name, constitute and appoint the aforesaid Benedict Arnold to be the first and present Governor of the said Company, and the said William Brenton, to be the Deputy-Governor, and the said William Boulston, John Porter, Roger Williams, Thomas Olney, John Smith, John Greene, John Cogeshall, James Barker, William Field, and Joseph Clarke, to be the ten present Assistants of the said Company, to continue in the said several offices, respectively, until the first Wednesday which shall be in the month of May now next coming. And farther, we will, and by these presents, for us, our heirs and successors, do ordeyne and grant, that the Governor of the said Company, for the time being, or, in his absence, by occasion of sickness, or otherwise, by his leave and permission, the Deputy-Governor, for the time being, shall and may, from time to time, upon all occasions, give order for the assembling of the said Company and calling them together, to consult and advise of the business and affairs of the said Company.

And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener, in case it shall be requisite, the Assistants, and such of the freemen of the Company, not exceeding six persons for Newport, four persons for each of the respective townes of Providence, Portsmouth and Warwick, and two persons for each other place, town or city, who shall be, from time to time, thereunto elected or deputed by the major part of the freemen of the respective townes or places for which they shall be so elected or deputed, shall have a general meeting or Assembly then and there to consult,

advise and determine, in and about the affaires and businesse of the said Company and Plantations. And farther, wee doe, of our especiall grace, certayne knowledge, and meere motion, give and graunt unto the sayd Governour and Company of the English Colonie of Rhode-Island and Providence Plantations, in New-England, in America, and their successours, that the Governour, or, in his absence, or, by his permission, the Deputy-Governour of the sayd Company, for the tyme beinge, the Assistants, and such of the Freemen of the sayd Company as shall bee soe as aforesayd elected or deputed, or soe many of them as shall bee present aft such meetinge or assemblye, as aBoresayde, shall bee called the Generall Assemblye; and that they, or the greatest parte of them present, whereof the Governour or Deputy-Governour, and sixe of the Assistants, at least to bee seven, shall have, and have hereby given and graunted unto them, ffull power authority, Prom tyme tyme, and at all tymes hereafter, to apoynt, alter and change, such dayes, tymes and places of meetinge and Generall Assemblye, as they shall thinke ffitt; and to choose, nominate, and apoynt, such and soe manye other persons as they shall thinke ffitt, and shall be willing to accept the same, to bee Free of the sayd Company and body politique, and them into the same to admits; and to elect and constitute such offices and officers, and to graunt such needfull commissions, as they shall thinke Ott and requisite, ffor the ordering, managing and dispatching of the affaires of the sayd Governour and Company, and their successours; and from tyme to tyme, to make, ordeyne, constitute or repeal, such lawes statutes, orders and ordinances, fformes and ceremonies of government and magistracye as to them shall seeme meete for the good nad wellfare of the sayd Company, and ffor the government and ordering of the lances and hereditaments, hereinafter mentioned to be graunted, and of the people that doe, or aft any tyme hereafter shall, inhabitt or bee within the same; soe as such lawes, ordinances and constitutions, soe made, bee not contrary and repugnant unto, butt, as neare as may bee, agreeable to the lawes of this our realme of England, considering the nature and constitutions of the place and people there; and alsoe to apoynt, order and direct, erect and settle, such places and courts of jurisdiction, ffor the heareinge and deterrillinge of all actions, cases, matters and things, happening within the sayd collonie and plantations, and which shall be in dispute, and depending there, as they shall thinke ffit; and alsoe to distinguish and sett forth the severall names and titles, duties, powers and limitts, of each court, office and officer, superior and inferior; and alsoe to contrive and apoynt such formes of oaths and attestations, not repugnant, but, as neare as may bee, agreeable, as aforesayd, to the lawes and statutes of this oure realme, as are conveniente and requisite, with respect to the due administration of justice, and due execution and discharge of all offices and places of trust by the persons that shall bee therein concerned; and alsoe to regulate and order the wave and manner of all elections to offices and places of trust, and to prescribe, limits and distinguish the numbers and bounces of all places, townes or cities, within the limitts and bounds herein after mentioned, and not herein particularlie named, who have, and shall have, the power of electing and sending of ffreemen to the sayd Generall Assemblye; and alsoe to order, direct and authorize the imposing of lawfull and reasonable Dynes, mulcts, imprisonments, and executing other punishments pecuniary and corporal, upon offenders and delinquents, according to the course of other corporations within this oure kingdom of England; and agayne to alter, revoke, annull or pardon, under their common scale or otherwyse, such Dynes, mulcts, imprisonments, sentences, judgments and condemnations, as shall bee thought Bitt; and to direct, rule, order and dispose of, all other matters and things, and particularly that which relates to the makinge of purchases of the native Indians, as to them shall seeme meete; wherebv oure sayd people and inhabitants, in the sayd Plantationes, may be soe religiously, peaceably and civilly governed, as that, by their good life and orderlie conversations, they may win and invite the native Indians of the cuntrye to the knowledge and obedience of the onlie true God, and Saviour of mankinde; willing, commanding and requireing, and by these presents, for us, oure heires and successours, ordeyneing and apoynting, that all such [awes, statutes, orders and ordinances, instructions, impositions and directiones, as shall bee soe made by the Governour, deputye-Governour, Assistants and Freemen. Or such number of them as aforesayd, and published in writinge, under their common scale, shall bee carefully and duely observed, kept, performed and putt in execution, accordinge to the true intent and meaning of the same.

And these our letters patent, or the duplicate or exemplificationon thereof, shall bee to all and everie such officer, superiour or inferiour, From tyme to tyme, for the putting of the same orders, lawes, statutes, ordinances, instructions and directions, in due execution, against us, oure heires and successours, a sufficient warrant and discharge. And further, our will and pleasure is, and wee doe hereby, for US, oure heires and successours, establish and ordeyne, that yearelie, once in the yeare, forever hereafter, namely, the aforesayd Wednesday in May, and at the towne of Newport, or elsewhere, if urgent occasion doe require, the Governour, Deputy-Governour and Assistants of the sayd Company, and other officers of the sayd Company, or such of them as the Generall Assemblye shall thinke Bitt, shall bee, in the sayd Generall Court or Assemblye to bee held from that daye or tyme, newly chosen for the year ensuring, by such greater part of the sayd Company, for the tyme beinge, as shall bee then and there present; and if itt shall happen that the present Governour, Deputy-Governour and Assistants, bv these presents apoynted, or any such as shall hereafter be newly chosen into their roomes, or any of them, or any other the officers of the sayd

Company, shall die or bee removed From his or their severall offices or places, before the sayd generall day of election, (whom wee doe hereby declare, for any misdemeanour or default, to be removeable by the Governour, Assistants and Company, or such greater parte of them, in any of the sayd publique courts, to bee assembled as aforesayd), that then, and in every such case, it shall and may bee lawfull to and ffor the sayd Governour, Deputy-Governour, Assistants and Company aforesayde, or such greater parte of them, soe to bee assembled as is aforesayde, in any their assemblies, to proceede to a new election of one or more of their Company, in the roome or place, roomes or places, of such officer or officers, soe dyeinge or removed, according to their discretiones; and immediately upon and after such elections or elections made of such Governour, Deputy-Governour or Assistants, or any other officer of the sayd Company, in manner and forme aforesayde, the authoritie, office and power, before given to the fformer Governour, Deputy-Governour, and other officer and officers, soe removed, in whose steade and place new shall be chosen, shall, as to him and them, and every of them, respectively, cease and determine:

Provided, allwayes, and our will and pleasure is, that as well such as are by these presents apoynted to bee the present Governour, Deputy-Governour and Assistants, of the sayd Company, as those that shall succede them, and all other officers to bee apoynted and chosen as aforesayde, shall, before the undertakeinge the execution of the sayd offices and places respectively, give their solemn engagement, by oath, or otherwise, for the due and faythfull perfonance of their duties in their severall offices and places, before such person or persons as are by these presents hereafter apoynted to take and receive the same, that is to say: the sayd Benedict Arnold, whoa is hereinbefore nominated and apoynted the present Governour of the sayd Company, shall give the aforesayd engagement before William Brenton, or any two of the sayd Assistants of the sayd Company; unto whome, wee doe by these presenter give Bull power and authority to require and receive the same; and the sayd William Brenton, whoe is hereby before nominated and apoynted the present DeputyGovernour of the sayd Company, shall give the aforesaved engagement before the sayd Benedict Arnold, or any two of the Assistants of the sayd Company; unto whome wee doe by these presents give ffull power and authority to require and receive the same; and the sayd William Boulston, John Porter, Roger Williams, Thomas Olneye, John Smith, John Greene, John Cogeshall, James Barker, William Ffeild, and Joseph Clarke, whoe are hereinbefore nominated apoynted the present Assistants of the sayd Company, shall give the sayd engagement to their offices and places respectively belonging, before the sayd Benedict Arnold and William Brenton, or one of them; to whome, respectively wee doe hereby give dull power and authority to require, administer or receive the same: and further, our will and pleasure is. that all and every other future Governour or Deputy-Governour, to bee elected and chosen by vertue of these presents, shall give the sayd engagement before two or more of the sayd Assistants of the sayd Company ffor the tyme being; unto whome wee doe by these presents give full power and authority to require, administer or receive the same; and the sayd Assistants, and every of them, and all and every other officer or officers to bee hereafter elected and chosen by vertue of these presents, from tyme to tyme, shall give the like engagements, to their offices and places respectively belonging bofere the Governour or Deputy-Governour for the tyme being; unto which sayd Governour, or Deputy-Governour, wee doe by these presents give full power and authority to require, administer or receive the same accordingly.

And wee doe likewise, for vs, oure heires and successours, give and graunt vnto the sayd Governour and Company and their successours by these presents, that, for the more peaceable and orderly Government of the sayd Plantations, it shall and may bee lawfull ffor the Governour, Deputy-Governour, Assistants, and all other officers and ministers of the sayd Company, in the administration of justice, and exercise of government, in the sayd Plantations, to vse, exercise, and putt in execution, such methods, rules, orders and directions, not being contrary or repugnant to the laws and statutes of this oure realme, as have byn heretofore given, vsed and accustomed, in such cases respectively, to be putt in practice, untill att the next or some other Generall Assembly, special provision shall be made and ordeyned in the cases aforesayd. And wee doe further, for vs. oure heroes and successours, give and graunt vnto the sayd Governour and Company, and their successours, by these presents, that itt shall and may bee lawfull to and for the sayd Governour, or in his absence, the Deputy-Governour, and majour parte of the sayd Assistants, for the tyme being, aft any tyme when the sayd Generall Assembly is not sitting, to nominate, apoynt and constitute, such and soe many commanders, governours, and military officers, as to them shall seeme requisite, for the leading, conductinge and travneing vpp the inhabitants of the sayd Plantations in martiall afiaires, and for the defence and safeguard of the sayd Plantations; and that itt shall and may bee lawfull to and for all and every such commander, governour and military officer, that shall bee soe as aforesayd, or by the Governour. or, in his absence, the Deputy-Governour, and six of the sayd Assistants, and majour parte of the Freemen of the sayd Company present att any Generall Assemblies, nominated, apoynted and constituted accordinge to the tenor of his and their respective commissions and directions, to assemble, exercise in arms, martiall array, and putt in warlyke posture, the inhabitants of the sayd collonie, For their speciall defence and safety; and to lead and conduct the sayd inhabitants,

and to encounter, expulse, expell and resist, by force of armes, as well by sea as by lance; and alsoe to kill, slay and destroy, by all fitting wayes, enterprises and meaner, whatsoever, all and every such person or persons as shall, aft any tyme hereafter, attempt or enterprize the destruction, invasion, detriment or annoyance of the sayd inhabitants or Plantations; and to vse and exercise the lawe martiall in such cases only as occasion shall necessarily require; and to take or surprise, by all wayes and meanes whatsoever, all and every such person and persons, with their shipp or shippes, armor, ammunition or other goods of such persons, as shall, in hostile manner, invade or attempt the defeating of the sayd Plantations, or the hurt of the said Company and inhabitants; and vpon just causes, to invade and destroy the native Indians, or other enemyes of the sayd Collony. Neverthelessse, our will and pleasure is, and wee doe hereby declare to the rest of oure Collonies in New England, that itt shall not bee lawefull ffor this our sayd Collony of Rhode-Island and Providence Plantations, in America, in New-England, to invade the natives inhabiting within the bounces and limitts of their sayd Collonies without the knowledge and consent of the said other Collonies. And itt is hereby declared, that itt shall not bee lawfull to or ffor the rest of the Collonies to invade or molest the native Indians, or any other inhabitants, inhabiting within the bounds and lymitts hereafter mentioned (they having subjected themselves vnto vs. and being by vs taken into our speciall protection), without the knowledge and consent of the Governour and Company of our Collony of Rhode-Island and Providence Plantations.

Alsoe our will and pleasure is, and wee doe hereby declare unto all Christian Kings, Princes and States, that if any person, which shall hereafter bee of the sayd Company or Plantations, or any other, by apoyntment of the sayd Governour and Company for the tyme beinge, shall at any tyme or tymes hereafter, rob or spoyle, by sea or land, or do any hurt, unlawfull hostility to any of the subjects of vs, oure heires or successours, or any of the subjects of any Prince or State, beinge then in league with vs, oure heires, or successours, vpon complaint of such injury done to any such Prince or State, or their subjects, wee, our hearer and successours, will make open proclamation within any parts of oure realme of England, ffitt ffor that purpose, that the person or persons committing any such robbery or spoyle shall, within the tyme lymitted by such proclamation, make full restitution or satisfaction of all such injuries, done or committed, soe as the sayd Prince, or others soe complaineinge, may bee fully satisfied and contented; and if the sayd person or persons whoe shall commits any such robbery or spoyle shall not make satvsfaction, accordingly, within such tyme, soe to bee lymitted, that then wee, oure heires and successours, will putt such person or persons out of oure allegiance and protection; and that then itt shall and may bee lawefull and Tree ffor all Princes or others to prosecute, with hostility, such offenders, and every of them, their and every of their procurers, adders, abettors and counsellors, in that behalfe; Provided alsoe, and oure expresse will and pleasure is, and wee doe, by these presents, For vs. our heirs and successours, ordeyne and apoynt, that these presents shall not, in any manner, hinder any of oure lovinge subjects, whatsoever, ffrom vseing and exercising the trade of ffishing vpon the coast of New-England, in America; butt that they, and every or any of them, shall have ffull and ffree power and liberty to continue and vse the trade of ffishing vpon the sayd coast, in an of the seas thereunto adjoyninge, or-any armes of the seas, or salt water, rivers and creeks, where they have been accustomed to ffish; and to build and to sett vpon the waste land, belonginge to the sayd Collony and Plantations, such wharfes, stages and worke-houses as shall be necessary for the salting, drying and keepeing of their dish, to be taken or gotten vpon that coast. And fforther, for the encouragement of the inhabitants of our sayd Collony of Providence Plantations to sett vpon the businesse of takeing whales, itt shall bee lawefull For them, or any of them, having struck whale, dubertus, or other greate ffish, itt or them, to pursue vnto any parte of that coaste, and into any bay, river, cove, creeke or shoare, belonging thereto, and itt or them, vpon sayd coaste, or in the said bay, river, cove, creeke or shoare, belonging thereto, to kill and order for the best advantage, without molestation, they makeing noe wilfull waste or spoyle, any thinge in these presents conteyned, or any other matter or thing, to the contrary notwithstanding. And further alsoe, wee are gratiously pleased, and doe hereby declare, that if any of the inhabitants of oure sayd Collony doe sett vpon the plantings of vineyards (the soyle and clymate both seemeing naturally to coneur to the production of wyne), or bee industrious in the discovery of ffishing banks, in or about the sayd Collony, wee will, ffrom tyme to tyme, give and allow all due and fitting encouragement therein, as to others in cases of tyke nature. And further, of oure more ample grace, certayne knowledge, and meere motion, wee have given and graunted,. and by these presents, ffor vs. oure heires and successours, doe Five and graunt vnto the sayd Governour and Company of the English Collony of Rhode-Island and Providence Plantations, in the Narragansett Bay, in New-England in America, and to every inhabitant there, and to every person and persons trading thither, and to every such person or persons as are or shall bee Tree of the sayd Collony, full power and authority, from tyme to tyme, and aft all tymes hereafter, to take, shipp, transport and carry away, out of any of our realmes and dominions for and towards the plantation and defence of the sayd Collony, such and soe many of oure loveing subjects and strangers as shalt or will willingly accompany them in and to their sayd Collony and Plantation; except such person or persons as are or shall be therein restrained by vs. oureheires and successours, or any law or statute of this realme: and also to shipp and transport all and all manner of

goods, chattels, merchandises, and other things whatsoever, that are or shall bee vsefull or necessary ffor the sayd Plantations, and defence thereof, and vsually transported, and nott prohibited by any lawe or statute of this our realme; yielding and paying vnto vs. our heires and successours, such the ruties, customes and subsidies, as are or ought to bee payd or payable for the same.

And fforther, our will and pleasure is, and wee doe, For us, our heires and successours, ordeyn, declare and graunt, vnto the sayd Governour and Company, and their successours, that all and every the subjects of vs. our heires and successours, which are already planted and settled within our sayd Collony of Providence Plantations, or which shall hereafter Roe to inhabit within the sayd Collony' and all and every of their children, which have byn borne there, or which shall happen hereafter to bee borne there, or on the sea, goeing thither, or retourneing from thence, shall have and enjoye all libertyes and immunityes of fires and naturall subjects within any the dominions of vs. our heires or successours, to all intents, constructions and purposes, whatsoever, as if they, and every of them, were borne within the realme of England. And fforther, know ye, that wee, of our more abundant grace, certain knowledge and meere motion, have given, graunted and confirmed, and, by these presents, for vs. our heires and successours, doe give, graunt and confirms, vnto the sayd Governour and Company, and their successours, all that parte of Our dominiones in New-England, in America, conteyneing the Nahantick and Nanhyganset Bay, and cuntryes and partes adjacent, bounded on the west, or westerly, to the middle or channel of a river there, commonly called and known by the name of Pawcatuck, alias Pawcawtuck river, and soe along the sayd river, as the greater or middle streame thereof reacheth or lyes vpp into the north cuntrye, northward, unto the head thereof, and from thence, by a streight lyne drawn due north, vntill itt meete with the south lyne of the Massachusetts Collonie; and on the north, or northerly, by the aforesayd south or southerly lyne of the Massachusettes Collony or Plantation, and extending towards the east, or eastwardly, three English miles to the east and north-east of the most eastern and north-eastern parts of the aforesayd Narragansett Bay, as the sayd bay lyeth or extendeth itself from the ocean on the south, or southwardly, vnto the mouth of the river which runneth towards the towne of Providence, and from thence along the eastwardly side or banke of the sayd river (higher called by the name of Seacunck river), vp to the ffalls called Patuckett ffalls, being the most westwardly lyne of Plymouth Collony, and soe from the sayd Balls, in a streight lyne, due north, untill itt meete with the aforesayd line of the Massachusetts Collony; and bounded on the south by the ocean: and, in particular, the lands belonging to the townes of Providence, Pawtuxet, Warwicke; Misquammacok, alias Pawcatuck, and the rest vpon the maine land in the tract aforesayd, together with Rhode-Island, Blocke-Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering vpon the coast of the tract aforesayd (Ffisher's Island only excepted), together with all firme lands, soyles, grounds, havens. ports rivers, waters, ffishings, mines royall, and all other mynes, mineralls, precious stones, quarries, woods, wood-grounds, rocks' slates, and all and singular other commodities, jurisdictions, royalties, priviledges, franchises, preheminenes and hereditaments, whatsoever, within the sayd tract, bounds, lances, and islands, aforesayd, or to them or any of them belonging, or in any wise appertaining: to have and to hold the same, Into the sayd Governour and Company, and their successours, forever, vpon trust, for the vse and benefit of themselves and their associates, ffreemen of the sayd Collony, their heires and assignas, to be holden of vs. our heires and successours, as of the Mannor of East-Greenwich, in our county of Kent, in free and comon soccage, and not in capite, nor by knight service; Wilding and paying therefor, to vs. our heires and successours, only the Fifth part of all the oare of Fold and silver which, from tyme to tyme, and att all tymes hereafter, shall bee there gotten, had or obtained, in lieu and satisfaction of all services, duties, Dynes, forfeitures, made or to be made, claimes and demands, whatsoever, to bee to vs. our heires or successours, therefor or thereout rendered, made or paid; any graunt, or clause in a late graunt, to the Governour and Company of Connecticut Colony, in America, to the contrary thereof in any wise notwithstanding; the aforesavd Pawcatuck river haven byn yielded, after much debate, for the fixed and certain bounces betweene these our sayd Colonies, by the agents thereof; w hoe have alsoe agreed, that the sayd Pawcatuck river shall bee alsoe called alias Norrogansett or Narrogansett river; and to prevent future disputes, that otherwise might arise thereby, forever hereafter shall bee construed, deemed and taken to bee the Narragansett river in our late Irrupt to Connecticut (colony mentioned as the easterly bounds of that Colony. And further, our will and pleasure is, that in all matters of publike controversy which may fall out betweene our Colony of Providence Plantations, and the rest of our Colonies in New-England, lit shall and may bee lawfull to and for the Governour and Company of the sayd Colony of Providence Plantations to make their appeales therein to vs. our heirs and successours. for redresse in such cases, within this our realme of England: and that itt shall bee lawfull to and for the inhabitants of the sayd Colony of Providence Plantations, without let or molestation, to passe and repasse with freedome, into and thorough the rest of the English Collonies, vpon their lawfull and civill occasions, and to converse, and hold commerce and trade, wit: such of the inhabitants of our other English Collonies as shall bee willing to admits them thereunto, they behavieing themselves peaceably among them; any act, clause or sentence, in any of the sayd Collonies provided, or

that shall bee provided, to the contrary in anywise notwithstanding. And lastly, wee doe, for vs. our heires and successours, ordeyne and graunt vnto the sayd Governor and Company, and their successours, and by these presents, that these our letters patent shall be firme, good, effectuall and available in all things in the lawe, to all intents, constructions and purposes whatsoever, according to our true intent and meaning hereinbefore declared; and shall bee construed, reputed and adjudged in all cases most favorably on the behalfe, and for the benefit and behoofe, of the sayd Governor and Company, and their successours; although empress mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or graunts by vs. or by any of our progenitors or predecessors, heretofore made to the sayd Governor and Company of the English Colony of Rhode-Island and Providence Plantations, in the Narragansett Bay, New-England, in America, in these presents is not made, or any statute, act, ordinance, provision. proclamation or restriction, heretofore had, made, enacted ordeyned or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in anywise notwithstanding; In witnes whereof, wee have caused these our letters to bee made patent. Witnes our Selfe att Westminster, the eighth day of July, in the Fifteenth yeare of our reigne.

By the King:

HOWARD.

Appendix L - South Carolina

*Constitution of South Carolina (1778)*¹³⁶

An Act for establishing the constitution of the State of South Carolina.

Whereas the constitution or form of government agreed to and resolved upon by the freemen of this country, met in congress, the twenty-sixth day of March, one thousand seven hundred and seventy-six, was temporary only, and suited to the situation of their public affairs at that period, looking forward to an accommodation with Great Britain, an event then desired; and whereas the United Colonies of America have been since constituted independent States, and the political connection heretofore subsisting between them and Great Britain entirely dissolved by the declaration of the honorable the Continental Congress, dated the fourth day of July, one thousand seven hundred and seventy-six, for the many great and weighty reasons therein particularly set forth: It therefore becomes absolutely necessary to frame a constitution suitable to that great event.

Be it therefore constituted and enacted, by his excellency Rawlins Lowndes, esq., president and commander-in-chief in and over the State of South Carolina, by the honorable the legislative council and general assembly, and by the authority of the same:

That the following articles, agreed upon by the freemen of this State, now met in general assembly, be deemed and held the constitution and form of government of the said State, unless altered by the legislative authority thereof, which constitution or form of government shall immediately take place and be in force from the passing of this act, excepting such parts as are hereafter mentioned and specified.

I. That the style of this country be hereafter the State of South Carolina.

II. That the legislative authority be vested in a general assembly, to consist of two distinct bodies, a senate and house of representatives, but that the legislature of this State, as established by the constitution or form of government passed the twenty-sixth of March, one thousand and seven hundred and seventy-six, shall continue and be in full force until the twenty-ninth day of November ensuing.

III. That as soon as may be after the first meeting of the senate and house of representatives, and at every first meeting of the senate and house of representatives thereafter, to be elected by virtue of this constitution, they shall jointly in the house of representatives choose by ballot from among themselves or from the people at large a governor and commander-in-chief, a lieutenant-governor, both to continue for two years, and a privy council, all of the Protestant religion, and till such choice shall be made the former president or governor and commander-in-chief, and vice-president or lieutenant-governor, as the case may be, and privy council, shall continue to act as such.

IV. That a member of the senate or house of representatives, being chosen and acting as governor and commander-in-chief or lieutenant-governor, shall vacate his seat, and another person shall be elected in his room.

V. That every person who shall be elected governor and commander-in-chief of the State, or lieutenant-governor, or a member of the privy council, shall be qualified as forthwith; that is to say, the governor and lieutenant-governor shall have been residents in this State for ten years, and the members of the privy council five years, preceding their said election, and shall have in this State a settled plantation or freehold in their and each of their own right of the value of at least ten thousand pounds currency, clear of debt, and on being elected they shall respectively take an oath of qualification in the house of representatives.

VI. That no future governor and commander-in-chief who shall serve for two years shall be eligible to serve in the said office after the expiration of the said term until the full end and term of four Years.

VII. That no person in this State shall hold the office of governor thereof, or lieutenant-governor, and any other office or commission, civil or military, (except in the militia,) either in this or any other State, or under the authority of the Continental Congress, at one and the same time.

¹³⁶ "Constitution of South Carolina." National Humanities Institute. <http://www.nhinet.org/ccs/docs/sc-1778.htm>

(accessed March 24, 2010).

VIII. That in case of the impeachment of the governor and commander-in-chief, or his removal from office, death, resignation, or absence from the State, the lieutenant-governor shall succeed to his office, and the privy council shall choose out of their own body a lieutenant-governor of the State. And in case of the impeachment of the lieutenant-governor, or his removal from office death, resignation, or absence from the State, one of the privy council to be chosen by themselves, shall succeed to his office until a nomination to those offices respectively, by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent was appointed.

IX. That the privy council shall consist of the lieutenant-governor for the time being, and eight other members, five of whom shall be a quorum to be chosen as before directed; four to serve for two years, and four for one year, and at the expiration of one year four others shall be chosen in the room of the last four, to serve for two years, and all future members of the privy council shall thenceforward be elected to serve two years, whereby there will be a new election every Year for half the privy council, and a constant rotation established; but no member of the privy council who shall serve for two years shall be eligible to serve therein after the expiration of the said term until the full end and term of four years: Provided always, That no officer of the army or navy in the service of the continent or this State, nor judge of any of the courts of law, shall be eligible, nor shall the father, son, or brother to the governor for the time being be elected in the privy council during his administration. A member of the senate and house of representatives being chosen of the privy council, shall not thereby lose his seat in the senate or house of representatives, unless he be elected lieutenant-governor, in which case he shall, and another person shall be chosen in his stead. The privy council is to advise the governor and commander-in-chief when required, but he shall not be bound to consult them unless directed by law. If a member of the privy council shall die or depart this State during the recess of the general assembly, the privy council shall choose another to act in his room, until a nomination by the senate and house of representatives shall take place. The clerk of the privy council shall keep a regular journal of all their proceedings, in which shall be entered the yeas and nays on every question, and the opinion, with the reasons at large, of any member who desires it; which journal shall be laid before the legislature when required by either house.

X. That in case of the absence from the seat of government or sickness of the governor and lieutenant-governor, any one of the privy council may be empowered by the governor, under his hand and seal, to act in his room, but such appointment shall not vacate his seat in the senate, house of representatives, or privy council.

XI. That the executive authority be vested in the governor and commander-in-chief, in manner herein mentioned

XII. That each parish and district throughout this State shall on the last Monday in November next and the day followings and on the same days of every succeeding year thereafter, elect by ballot one member of the senate, except the district of Saint Philip and Saint Michael's parishes, Charleston, which shall elect two members; and except also the district between Broad and Saluda Rivers, in three divisions, viz: the Lower district, the Little River district, and the Upper or Spartan district, each of which said divisions shall elect one member; and except the parishes of Saint Matthew and Orange, which shall elect one member; and also except the parishes of Prince George and All Saints, which shall elect one member; and the election of senators for such parishes, respectively, shall, until otherwise altered by the legislature, be at the parish of Prince George for the said parish and the parish of All Saints, and at the parish of Saint Matthew for that parish and the parish of Orange; to meet on the first Monday in January then next, at the seat of government, unless the casualties of war or contagious disorders should render it unsafe to meet there, in which case the governor and commander-in-chief for the time being may, by proclamation, with the advice and consent of the privy council, appoint a more secure and convenient place of meeting; and to continue for two years from the said last Monday in November; and that no person shall be eligible to a seat in the said senate unless he be of the Protestant religion, and hath attained the age of thirty years, and hath been a resident in this State at least five years. Not less than thirteen members shall be a quorum to do business but the president or any three members may adjourn from day to day. No person who resides in the parish or district for which he is elected shall take his seat in the senate, unless he possess a settled estate and freehold in his own right in the said parish or district of the value of two thousand pounds currency at least, clear of debt; and no non-resident shall be eligible to a seat in the said senate unless he is owner of a settled estate and freehold in his own right, in the parish or district where he is elected, of the value of seven thousand pounds currency at least, also clear of debt.

XIII. That on the last Monday in November next and the day following, and on the same days of every second year thereafter, members of the house of representatives shall be chosen, to meet on the first Monday in January then next, at the seat of Government, unless the casualties of war or contagious disorders should render it unsafe to meet

there, in which case the governor and commander-in-chief for the time being may, by proclamation, with the advice and consent of the privy council, appoint a more secure-and convenient place of meeting, and to continue for two years from the said last Monday in November. Each parish and district within this State shall send members to the general assembly in the following proportions; that is to say, the parish of Saint Philip and Saint Michael's, Charleston, thirty members; the parish of Christ Church, six members; the parish of Saint John's, in Berkely County, six members; the parish of Saint Andrew, six members; the parish of Saint George, Dorchester, six members; the parish of Saint James, Goose Creek, six members; the parish of Saint Thomas and Saint Dennis, six members; the parish of Saint Paul, six members; the parish of Saint Bartholomew, six members; the parish of Saint Helena, six members; the parish of Saint James, Santee, six members; the parish of Prince George, Winyaw, four members; the parish of All Saints, two members; the parish of Prince Frederick, six members; the parish of Saint John, in Colleton County, six members; the parish of Saint Peter, six members; the parish of Prince William, six members; the parish of Saint Stephen, six members; the district to the eastward of Wateree River, ten members; the district of Ninety-six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda Rivers, in three divisions, viz: the lower district, four members; the Little River district, four members; the Upper or Spartan district, four members; the district between Broad and Catawba Rivers, ten members; the district called the New Acquisition, ten members; the parish of Saint Matthew, three members; the parish of Orange, three members; the parish of Saint David, six members; the district between the Savannah River and the North Fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the present or any future election act or acts, and where there are no churches or church-wardens in a district or parish, the house of representatives, at some convenient time before their expiration, shall appoint places of election and persons to receive votes and make returns. The qualification of electors shall be that every free white man, and no other person, who acknowledges the being of a God, and believes in a future state of rewards and punishments, and who has attained to the age of one and twenty years, and hath been a resident and an inhabitant in this State for the space of one whole year before the day appointed for the election he offers to give his vote at, and hath a freehold at least of fifty acres of land, or a town lot, and hath been legally seized and possessed of the same at least six months previous to such election, or hath paid a tax the preceding year, or was taxable the present year, at least six months previous to the said election, in a sum equal to the tax on fifty acres of land, to the support of this government, shall be deemed a person qualified to vote for, and shall be capable of electing, a representative or representatives to serve as a member or members in the senate and house of representatives, for the parish or district where he actually is a resident, or in any other parish or district in this State where he hath the like freehold. Electors shall take an oath or affirmation of qualification, if required by the returning officer. No person shall be eligible to sit in the house of representatives unless he be of the Protestant religion, and hath been a resident in this State for three years previous to his election. The qualification of the elected, if residents in the parish or district for which they shall be returned, shall be the same as mentioned in the election act, and construed to mean clear of debt. But no non-resident shall be eligible to a seat in the house of representatives unless he is owner of a settled estate and freehold in his own right of the value of three thousand and five hundred pounds currency at least, clear of debt, in the parish or district for which he is elected.

XIV. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in general assembly, those who do meet shall have the powers of the general assembly. Not less than sixty-nine members shall make a house of representatives to do business, but the speaker or any seven members may adjourn from day to day.

XV. That at the expiration of seven Years after the passing of this constitution, and at the end of every fourteen years thereafter, the representation of the whole State shall be proportioned in the most equal and just manner according to the particular and comparative strength and taxable property of the different parts of the same regard being always had to the number of white inhabitants and such taxable property.

XVI. That all money bills for the support of government shall originate in the house of representatives, and shall not be altered or amended by the senate, but may be rejected by them, and that no money be drawn out of the public treasury but by the legislative authority of the State. All other bills and ordinances may take rise in the senate or house of representatives, and be altered, amended, or rejected by either. Acts and ordinances having passed the general assembly shall have the great seal affixed to them by a joint committee of both houses, who shall wait upon the governor to receive and return the seal, and shall then be signed by the president of the senate and speaker of the house of representatives, in the senate-house, and shall thenceforth have all the force and validity of a law, and be lodged in the secretary's office. And the senate and house of representatives, respectively, shall enjoy all other privileges Which have at any time been claimed or exercised by the commons house of assembly.

XVII. That neither the senate nor house of representatives shall have power to adjourn themselves for any longer time than three days, without the mutual consent of both. The governor and commander-in-chief shall have no power to adjourn, prorogue, or dissolve them, but may, if necessary, by and with the advice and consent of the privy council, convene them before the time to which they shall stand adjourned. And where a bill hath been rejected by either house, it shall not be brought in again that session, without leave of the house, and a notice of six days being previously given.

XVIII. That the senate and house of representatives shall each choose their respective officers by ballot, without control, and that during a recess the president of the senate and speaker of the house of representatives shall issue writs for filling up vacancies occasioned by death in their respective houses, giving at least three weeks and not more than thirty-five days' previous notice of the time appointed for the election.

XIX. That if any parish or district shall neglect to elect a member or members on the day of election, or in case any person chosen a member of either house shall refuse to qualify and take his seat as such, or die, or depart the State, the senate or house of representatives, as the case may be, shall appoint proper days for electing a member or members in such cases respectively.

XX. That if any member of the senate or house of representatives shall accept any place of emolument, or any commission, (except in the militia or commission of the peace, and except as is excepted in the tenth article,) he shall vacate his seat, and there shall thereupon be a new election; but he shall not be disqualified from serving upon being reelected, unless he is appointed secretary of the State, a commissioner of the treasury, an officer of the customs, register of mesne conveyances, a clerk of either of the courts of justice, sheriff, powder reviewer, clerk of the senate, house of representatives, or privy council, surveyor-general, or commissary of military stores, which officers are hereby declared disqualified from being members either of the senate or house of representatives.

XXI. And whereas the ministers of the gospel are by their profession dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function, therefore no minister of the gospel or public preacher of any religious persuasion, while he continues in the exercise of his pastoral function, and for two years after, shall be eligible either as governor, lieutenant-governor, a member of the senate, house of representatives, or privy council in this State.

XXII. That the delegates to represent this State in the Congress of the United States be chosen annually by the senate and house of representatives jointly, by ballot, in the house of representatives, and nothing contained in this constitution shall be construed to extend to vacate the seat of any member who is or may be a delegate from this State to Congress as such.

XXIII. That the form of impeaching all officers of the State for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the house of representatives. But that it shall always be necessary that two-third parts of the members present do consent to and agree in such impeachment. That the senators and such of the judges of this State as are not members of the house of representatives, be a court for the trial of impeachments, under such regulations as the legislature shall establish, and that previous to the trial of every impeachment, the members of the said court shall respectively be sworn truly and impartially to try and determine the charge in question according to evidence, and no judgment of the said court, except judgment of acquittal, shall be valid, unless it shall be assented to by two-third parts of the members then present, and on every trial, as well on impeachments as others, the party accused shall be allowed counsel.

XXIV. That the lieutenant-governor of the State and a majority of the privy council for the time being shall, until otherwise altered by the legislature, exercise the powers of a court of chancery, and there shall be ordinaries appointed in the several districts of this State, to be chosen by the senate and house of representatives jointly by ballot, in the house of representatives, who shall, within their respective districts, exercise the powers heretofore exercised by the ordinary, and until such appointment is made the present ordinary in Charleston shall continue to exercise that office as heretofore.

XXV. That the jurisdiction of the court of admiralty be confined to maritime causes.

XXVI. That justices of the peace shall be nominated by the senate and house of representatives jointly, and commissioned by the governor and commander-in-chief during pleasure. They shall be entitled to receive the fees heretofore established by law; and not acting in the magistracy, they shall not be entitled to the privileges allowed them by law.

XXVII. That all other judicial officers shall be chosen by ballot jointly by the senate and house of representatives, and, except the judges of the court of chancery, commissioned by the governor and commander-in-chief during good behavior, but shall be removed on address of the senate and house of representatives.

XXVIII. That the sheriffs, qualified as by law directed, shall be chosen in like manner by the senate and house of representatives, when the governor, lieutenant-governor, and privy council are chosen, and commissioned by the governor and commander-in-chief, for two years, and shall give security as required by law, before they enter on the execution of their office. No sheriff who shall have served for two years shall be eligible to serve in the said office after the expiration of the said term, until the full end and term of four years, but shall continue in office until such choice be made; nor shall any person be eligible as sheriff in any district unless he shall have resided therein for two years previous to the election.

XXIX. That two commissioners of the treasury, the secretary of the State, the register of mesne conveyances in each district, attorney-general, surveyor-general, powder-receiver, collectors and comptrollers of the customs and waiters, be chosen in like manner by the senate and house of representatives jointly, by ballot, in the house of representatives, and commissioned by the governor and commander-in-chief, for two years; that none of the said officers, respectively, who shall have served for four years, shall be eligible to serve in the said offices after the expiration of the said term, until the full end and term of four years, but shall continue in office until a new choice be made: Provided, That nothing herein contained shall extend to the several persons appointed to the above offices respectively, under the late constitution; and that the present and all future commissioners of the treasury, and powder-receivers, shall each give bond with approved security agreeable to law.

XXX. That all the officers in the army and navy of this State, of and above the rank of captain, shall be chosen by the senate and house of representatives jointly, by ballot in the house of representatives, and commissioned by the governor and commander-in-chief, and that all other officers in the army and navy of this State shall be commissioned by the governor and commander-in-chief.

XXXI. That in case of vacancy in any of the offices above directed to be filled by the senate and house of representatives, the governor and commander-in-chief, with the advice and consent of the privy council, may appoint others in their stead, until there shall be an election by the senate and house of representatives to fill those vacancies respectively

XXXII. That the governor and commander-in-chief, with the advice and consent of the privy council, may appoint during pleasure, until otherwise directed by law, all other necessary officers, except such as are now by law directed to be otherwise chosen.

XXXIII. That the governor and commander-in-chief shall have no power to commence war, or conclude peace, or enter into any final treaty without the consent of the senate and house of representatives.

XXXIV. That the resolutions of the late congress of this State, and all laws now of force here, (and not hereby altered,) shall so continue until altered or repealed by the legislature of this State, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

XXXV. That the governor and commander-in-chief for the time being, by and with the advice and consent of the privy council, may lay embargoes or prohibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the general assembly.

XXXVI. That all persons who shall be chosen and appointed to any office or to any place of trust, civil or military, before entering upon the execution of office, shall take the following oath: " I, A. B., do acknowledge the State of South Carolina to be as free, sovereign, and independent State, and that the people thereof owe no allegiance or obedience to George the Third, King of Great Britain, and I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear [or affirm, as the case may be] that I will, to the utmost of my power, support, maintain, and defend the said State against the said King George the Third, and his heirs and successors, and his or their abettors, assistants, and adherents, and will serve the said State, in the office of , with fidelity and honor, and according to the best of my skill and understanding: So help me God." -

XXXVII. That adequate yearly salaries be allowed to the public officers of this State, and be fixed by law.

XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be, the established religion of this

State. That all denominations of Christian Protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges. To accomplish this desirable purpose without injury to the religious property of those societies of Christians which are by law already incorporated for the purpose of religious worship, and to put it fully into the power of every other society of Christian Protestants, either already formed or hereafter to be formed, to obtain the like incorporation, it is hereby constituted, appointed, and declared that the respective societies of the Church of England that are already formed in this State for the purpose of religious worship shall still continue incorporate and hold the religious property now in their possession. And that whenever fifteen or more male persons, not under twenty-one years of age, professing the Christian Protestant religion, and agreeing to unite themselves in a society for the purposes of religious worship, they shall, (on complying with the terms hereinafter mentioned,) be, and be constituted a church, and be esteemed and regarded in law as of the established religion of the State, and on a petition to the legislature shall be entitled to be incorporated and to enjoy equal privileges. That every society of Christians so formed shall give themselves a name or denomination by which they shall be called and known in law, and all that associate with them for the purposes of worship shall be esteemed as belonging to the society so called. But that previous to the establishment and incorporation of the respective societies of every denomination as aforesaid, and in order to entitle them thereto, each society so petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon presence of religion shall entitle them to be incorporated and esteemed as a church of the established religion of this State:

1st. That there is one eternal God, and a future state of rewards and punishments.

2d. That God is publicly to be worshipped.

3d. That the Christian religion is the true religion

4th. That the holy scriptures of the Old and New Testaments are of divine inspiration, and are the rule of faith and practice.

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this State, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this State may forever enjoy the right of electing their own pastors or clergy, and at the same time that the State may have sufficient security for the due discharge of the pastoral office, by those who shall be admitted to be clergymen, no person shall officiate as minister of any established church who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz: "That he is determined by God's grace out of the holy scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation but that which he shall be persuaded may be concluded and proved from the scripture; that he will use both public and private admonitions, as well to the sick as to the whole within his cure, as need shall require and occasion shall be given, and that he will be diligent in prayers, and in reading of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace, and love among all people, and especially among those that are or shall be committed to his charge. No person shall disturb or molest any religious assembly; nor shall use any reproachful, reviling, or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors, and that profession which otherwise they might be brought to assent to. No person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government of this State. No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely join in, or has not voluntarily engaged to support. But the churches, chapels, parsonages, globes, and all other property now belonging to any societies of the Church of England, or any other religious societies, shall remain and be secured to them forever. The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.

XXXIX. That the whole State shall, as soon as proper laws can be passed for these purposes, be divided into districts and counties, and county courts established.

XL. That the penal laws, as heretofore used, shall be reformed, and punishments made in some cases less sanguinary, and in general more proportionate to the crime.

XLI. That no freeman of this State be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or by the law of the land.

XLII. That the military be subordinate to the civil power of the State.

XLIII. That the liberty of the press be inviolably preserved.

XLIV. That no part of this constitution shall be altered without notice being previously given of ninety days, nor shall any part of the same be changed without the consent of a majority of the members of the senate and house of representatives.

XLV. That the senate and house of representatives shall not proceed to the election of a governor or lieutenant-governor, until there be a majority of both houses present.

In the council-chamber, the 19th day of March, 1778.

Assented to.

RAWLINS LOWNDES.

HUGH RUTLEGE,

Speaker of the Legislative Council.

THOMAS BEE,

Speaker of the General Assembly.

Appendix M - Vermont

*Constitution of Vermont (1786)*¹³⁷

Whereas all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals, who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man: and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

And whereas the inhabitants of this State have (in consideration of protection only) heretofore acknowledged allegiance to the King of Great-Britain : and the said King has not only withdrawn that protection, but commenced and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them; employing therein not only the troops of Great-Britain, but foreign mercenaries, savages, and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British Parliament, with many more acts of tyranny, (more fully set forth in the Declaration of Congress) whereby all allegiance and fealty to the said King and his Successors are dissolved and at an end; and all power and authority derived from him ceased in the American Colonies. And whereas the Territory, which now comprehends the State of Vermont, did antecedently of right belong to the government of New-Hampshire, and the former Governor thereof, viz. his excellency Benning Wentworth, Esq. granted many charters of lands and corporations within this State to the present inhabitant and others. And whereas the late Lieutenant-Governor Colden, of New York, with others, did, in violation, of the tenth command, covet those very lands: and by a false representation, made to the Court of Great-Britain, (in the year 1764, that for the convenience of trade and administration of justice, the inhabitants were desirous of being annexed to that government) obtained jurisdiction of those very identical lands, *ex parte*, which ever was and is disagreeable to the inhabitants. And whereas the Legislature of New-York ever have, and still continue, to disown the good people of this State, in their landed property, which will appear in the complaints hereafter inserted, and in the 36th section or their present Constitution, in which is established the Grants of Land made by that government.

They have refused to make re-grants of our lands to the original Proprietors and Occupants, unless at the exorbitant rate of 2,300 dollars fees for each township; and did enhance the quitrent threefold, and demanded an immediate delivery of the title derived from New-Hampshire.

The Judges of their Supreme Court have made a solemn declaration, that the charters, conveyances, &c., of the lands included in the before-described premises, were utterly null and void, on which said title was founded. In consequence of which declaration, writs of possession have been by them issued, and the Sheriff of the county of Albany sent at the head of six or seven hundred men, to enforce the execution thereof.

They have passed an act, annexing a penalty thereto, of thirty pounds' fine, and six months' imprisonment, on any person who should refuse assisting the Sheriff, after being requested, for the purpose of executing writs of possession.

The Governors Dunmore, Tryon, and Colden, have made re-grants of several tracts of land included in the premises, to certain favourite land jobbers in the government of New-York, in direct violation of his Britannic Majesty's express prohibition, in the year 1707.

They have issued proclamations, wherein they have offered large sums of money for the purpose of apprehending those very persons, who have dared boldly and publickly to appear in defence of their just rights.

¹³⁷ Poore, Perley. "Constitution of Vermont 1786." In *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*. 2nd ed. Vol. 2. Washington, D.C.: Government Printing Office, 1878, http://books.google.com/books?id=7qMYAAAAIAAJ&pg=PA3749&ots=I7nM-6-vQ-&dq=the+federal+and+state+constitutions+colonial+charters+texts&output=text#c_top.

They did pass twelve acts of outlawry on the ninth day of March, A. D. 1774, empowering the respective Judges of their Supreme Court to award execution of death against those inhabitants in said district, that they should judge to be offenders, without trial.

They have and still continue an unjust claim to those lands, which greatly retards emigration into any settlement of this State.

They have hired foreign troops, emigrants from Scotland, at two different times, and armed them to drive us out of possession.

They have sent the Savages on our frontiers to distress us.

They have proceeded to erect the counties of Cumberland and Gloucester, and establish courts of justice there, after they were discountenanced by the authority of Great-Britain.

The free Convention of the State of New-York, at Harlem, in the year 1776, unanimously voted. "That all quitrents, formerly due to the King of Great-Britain, are now due, and owing to this Convention, or such future government as shall be hereafter established in this State."

In the several stages of the aforesaid oppressions, we have petitioned his Britannic Majesty in the most humble manner for redress, and have, at very great expense, received several reports in our favour: and in other instances, wherein we have petitioned the late legislative authority of New-York, those petitions have been treated with neglect. And whereas, the local situation of this State from New-York, which, at the extreme part, is upward of four hundred and fifty miles from the seat of that government, renders it extreme difficult to continue under the jurisdiction of said State;

Therefore it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be henceforth a free and independent State, and that a just, permanent, and proper form of government should exist in it, derived from and founded on the authority of the people only, agreeable to the direction of the honourable American Congress.

We the Representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government— confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society ; and being fully convinced, that it is our indispensable duty to establish such original principles of government as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever; do. by virtue of authority vested in us by our constituents, ordain, declare and establish the following Declaration of Rights, and Frame of Government, to be the Constitution of this Commonwealth, and to remain in force therein forever unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall, by the same authority of the people, fairly delegated, as this Frame of Government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

Chapter I

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights; amongst which are, the enjoying and defending life and liberty—acquiring, possessing and protecting property—and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law to serve any person, as a servant, slave, or apprentice, after he arrives to the age of twenty one years; nor female, in like manner, after she arrives to the age of eighteen years: unless they are bound by their own consent after they arrive to such age; or bound by law for the payment of debts, damages, fines, costs, or the like.

II. That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money.

III. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by any power whatsoever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship: Nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

IV. Every person within this 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.

V. That the people of this State, by their legal representatives, have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

VI. That all power being originally inherent in, and consequently derived from the people: therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times, in a legal way, accountable to them.

VII. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community: and that the community hath an indubitable, unalienable, single man, family, or set of men, who are a part only of that community: and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged to be most conducive to the public weal.

VIII. That those who are employed in the legislative and executive business of the State may be restrained from oppression, the people have a right, by their legal representatives, to enact laws for reducing their public officers to a private station, and for supplying their vacancies in a constitutional manner, by regular elections, at such periods as they may think proper.

IX. That all elections ought to be free and without corruption; and that all freemen, having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, and be elected into office.

X. That every member of society hath a right to be protected in the enjoyment of life, liberty and property; and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto: but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of the representative body of the freemen; nor can any man, who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor the people bound by any law, but such as they have in like manner assented to, for their common good. And previous to any law being made to raise a tax, the purpose, for which it is to be raised ought to appear evident to the Legislature to be of more service to the community, than the money would be if not collected.

XI. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his counsel—to demand the cause and nature of his accusation—to be confronted with the witnesses—to call for evidence in his favour, and a speedy public trial by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty—nor can he be compelled to give evidence against himself—nor can any man lie justly deprived of his liberty, except by the laws of the land, or the judgment of his peers.

XII. That the people have a right to hold themselves, their houses, papers and possessions, free from search or seizure: and therefore warrants, without oaths or affirmations first made, affording sufficient foundation for them? and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property not particularly described, are contrary to that right, and ought not to be granted.

XIII. That no warrant or writ to attach the person or estate of any freeholder within this State, shall be issued in civil action, without the person or persons, who may request such warrant or attachment, first make oath,

or affirm before the authority who may be requested to issue the same, that he or they are in danger of losing his, her, or their debts.

XIV. That when an issue in fact, proper for the cognizance of a jury, is joined in a court of law, the parties have a right to a trial *by* jury; which ought to be held sacred.

XV. That the people have a right of freedom of speech and of writing and publishing their sentiments, concerning the transactions of government—and therefore the freedom of the press ought not to be restrained.

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

XVII. The power of suspending laws, or the execution of 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.

XVIII. That the people have a right to bear arms, for the defence of themselves and the State: and as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by the civil power.

XIX. That no person in this Commonwealth can, in any case, be subject to law-martial or to any penalties or pains, by virtue of that law, except those employed in the army, and the militia in actual service.

XX. That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought therefore to pay particular attention to these points, in the choice of officers and representatives; and have a right, in a legal way, to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XXI.-That all people have a natural and inherent right to emigrate from one State to another, that will receive them ; or to form a new State in vacant countries, or in such countries as they can purchase, whenever they think that thereby they can promote their own happiness.

XXII. That the people have a right to assemble together, to consult for their common good—to instruct their representatives, and to apply to the Legislature for redress of grievances, by address, petition or remonstrance.

XXIII. That no person shall be liable to be transported out of this State, for trial for any offence committed within the same.

Chap. II

PLAN OR FRAME OF GOVERNMENT

Sect. I. The Commonwealth or State of Vermont, shall be governed hereafter by a Governor, (or Lieutenant-Governor) Council, and an Assembly of the Representatives of the freemen of the same, in manner and form following:

II. The supreme legislative power shall be vested in a House of Representatives of the freemen, or Commonwealth, or State of Vermont.

III. The supreme executive power shall be vested in a Governor, (or, in his absence, a Lieutenant-Governor) and Council.

IV. Courts of justice shall be maintained in every county in this State, and also in new counties when formed; which courts shall be open for the trial of all causes proper for their cognizance, and justice shall be therein impartially administered, without corruption, or unnecessary delay. The Judges of the Supreme Court shall be Justices of the Peace throughout the State; and the several Judges of the County Courts, in their respective counties, by virtue of their offices, except in the trial of such cases as may be appealed to the County Court.

V. A future legislature may, when they shall conceive the same to be expedient and necessary, erect a Court of Chancery, with such powers as are usually exercised by that Court, or as shall appear for the interest of the Commonwealth: Provided they do not constitute themselves the Judges of the said Court.

VI. The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

VII. In order that the freemen of this State may enjoy the benefit of election, as equally as may be, each town within this State, that consists or may consist of eighty taxable inhabitants, within one septenary or seven year*next after the establishing this Constitution, may hold elections therein, and choose each two representatives; and each other inhabited town in this State may, in like manner, choose each one representative to represent them in General Assembly, during the said septenary or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose each one representative forever thereafter.

VIII. The House of Representatives of the freemen of this State shall consist of persons most noted for wisdom and virtue, to be chosen by ballot by the freemen of every town in this State respectively, on the first Tuesday of September annually forever.

IX. The representatives, so chosen, (a majority of whom shall constitute a quorum for transacting any other business than raising a State tax, for which two thirds of the members elected shall be present) shall meet on the second Thursday of the succeeding October, and shall be styled, *The General Assembly of the State of Vermont*: they shall have power to choose their Speaker, Secretary of the State, their Clerk and other necessary officers of the house—sit on their own adjournments—prepare bills, and enact them into laws—judge of the elections and qualifications of their own members: they may expel members, but not for causes known to their constituents antecedent to their election; they may administer oaths, or affirmations, in matters depending before them—redress grievances—impeach State criminals—grant charters of incorporation—constitute towns, boroughs, cities and counties: they may annually, in their first session after their election, and at other times when vacancies happen, choose Delegates to Congress: and shall also, in conjunction with the Council, annually, (or oftener if need be) elect Judges of the Supreme and several County and Probate Courts, Sheriffs and Justices of the Peace: and also with the Council, may elect Major-Generals and Brigadier-Generals, from time to time, as often as then' shall be occasion; and they shall have all other powers necessary for the Legislature of a free and sovereign State: but they shall have no power to add to, alter, abolish, or infringe, any part of this Constitution.

X. The Supreme Executive Council of this State shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, . The freemen of each town shall, on the day of election for choosing representatives to attend the General Assembly, bring in their votes for Governor, with his name fairly written, to the Constable, who shall seal them up, and write on them, *Votes for the Governor*, and deliver them to the representative chosen to attend the General Assembly: and at the opening of the General Assembly, there shall be a committee appointed out of the Council and Assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort and count the votes for the Governor, and declare the person who has the major part of the votes to be Governor, for the year ensuing. And if there be no choice made, then the Council and General Assembly, by their joint ballot, shall make choice of a Governor.

The Lieutenant-Governor and Treasurer shall be chosen in the manner above directed. And each freeman shall *give* in twelve votes for twelve counsellors, in the same manner: and the twelve highest in nomination shall serve for the ensuing year as counsellors.

XI. The Governor, and in his absence, the Lieutenant-Governor, with the Council, (a major part of whom, including the Governor or Lieutenant-Governor, shall be a quorum to transact business) shall have power to commissionate all officers—and also to appoint officers, except where provision is or shall be otherwise made by law, or this frame of government ; and shall supply even' vacancy in any office occasioned by death or otherwise, until the office can be filled in the manner directed by law or this Constitution. They are to correspond with other States—transact business with officers of government, civil and military, and to prepare such business as may appear to them necessary to lay before the General Assembly. They shall sit as Judges to hear and determine on impeachments, taking to their assistance, for advice only, the Judges of the Supreme Court; and shall have power to grant pardons, and remit fines in all cases whatsoever, except in treason and murder, in which they shall have power to grant reprieves but not to pardon, until after the end of the next session of Assembly, and except in cases of impeachment, in which there shall be no remission or mitigation of punishment, but by act of legislation. They are also to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by the General Assembly : and they may draw upon the Treasurer for such sums as may be appropriated by the House of Representatives. They may also lay embargoes, or prohibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the House only : they may grant such licenses as shall be directed by law, and shall have power to call together the General Assembly, when necessary, before the

day to which they shall stand adjourned. The Governor shall be captain-general and commander-in-chief of the forces of the State, but shall not command in person, except advised thereto by the Council, and then only as long as they shall approve thereof: and the Lieutenant-Governor shall, by virtue of his office, be Lieutenant-General of all the forces of the State. The Governor, or Lieutenant-Governor, and the Council, shall meet at the time and place with the General Assembly: the Lieutenant-Governor shall, during the presence of the commander-in-chief, vote and act as one of the Council; and the Governor, and, in his absence, the Lieutenant-Governor, shall, by virtue of their offices, preside in Council, and have a casting, but no other vote. Every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any counsellor may enter his dissent, with his reasons to support it.

XII. The representatives, having met, and chosen their speaker and clerk, shall each of them, before they proceed to business, take and subscribe, as well the oath or affirmation of allegiance herein after directed (except where they shall produce certificates of their having heretofore taken and subscribed the same) as the following oath or affirmation, viz.

You ----- do solemnly swear, (or affirm) that, as a member of this Assembly, you will not propose or assent to any bill, vote, or resolution, which shall appear to you injurious to the people; nor do nor consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges as declared by the Constitution of this State; but will, in all things, conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. (In case of an oath) so help you God. (And in case of an affirmation) Under the pains and penalties of perjury.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz.

You do believe in one God, the Creator and Governor of the Universe, the rewarder of the good, and punisher of the wicked. And you do acknowledge the scriptures of the Old and New Testament to be given by divine inspiration; and own and profess the Protestant religion.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate, in this State.

XIII. The doors of the House, in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.

XIV. The votes and proceedings of the General Assembly shall be printed (when one third of the members think it necessary) as soon as conveniently may be, after the end of each session, with the yeas and nays on any question, when required by any member, (except where the votes shall be taken by ballot) in which case every member shall have a right to insert the reasons of his vote upon the minutes.

XV. The style of laws of this State, in future to be passed, shall be, *It is hereby enacted by the General Assembly of the State of Vermont.*

XVI. To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all bills which originate in the Assembly shall be laid before the Governor and Council for their revision and concurrence, or proposals of amendment; who shall return the same to the Assembly, with their proposals of amendment (if any) in writing: and if the same are not agreed to by the Assembly, it shall be in the power of the Governor and Council to suspend the passing of such bills until the next session of the Legislature. Provided, that if the Governor and Council shall neglect or refuse to return any such bill to the Assembly with written proposals of amendment, within five days, or before the rising of the Legislature, the same shall become a law.

XVII. No person ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

XVIII. Every man, of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and is of a quiet and peaceable behaviour, and will take the following oath, (or affirmation) shall be entitled to all the privileges of a freeman of this State.

You solemnly swear, (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favour of any man.

XIX. The inhabitants of this Commonwealth shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as the General Assembly shall by Jaw direct. The several companies of militia shall, as often as vacancies happen, elect their captains and other inferior officers; and the captains and subalterns shall nominate and recommend the field officers of their respective regiments, who shall appoint their staff-officers.

XX. All commissions shall be in the name of the freemen of the State of Vermont, sealed with the State seal, signed by the Governor, and in his absence the Lieutenant-Governor, and attested by the Secretary; which seal shall be kept by the Council.

XXI. Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for mal-administration. All impeachments shall be before the Governor or Lieutenant-Governor, and Council, who shall hear and determine the same, and may award costs.

XXII. As every freeman, to preserve his independence, (if without a sufficient estate) ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for. nor use in establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants, faction, contention, corruption and disorder among the people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation: and whenever an office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature. And if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

XXIII. No person in this State shall be capable of holding or exercising more than one of the following offices at the same time. viz. Governor, Lieutenant-Governor, Judge of the Supreme Court. Treasurer of the State, member of the Council, member of the General Assembly, Surveyor-General, or Sheriff.

XXIV. The Treasurer of the State shall, before the Governor and Council, give sufficient security to the Secretary of the State, in behalf of the General Assembly; and each High Sheriff. before the first Judge of the County Court, to the Treasurer of their respective counties, previous to their respectively entering upon the execution of their offices, in such manner, and in such sums, as shall be directed by the Legislature.

XXV. The Treasurer's accounts shall be annually audited, and a fair state thereof laid before the General Assembly, at their session in October.

XXVI. Every officer, whether judicial, executive, or military, in authority under this State, before he enter upon the execution of his office, shall take and subscribe the following oath or affirmation of allegiance to this State., (unless he shall produce evidence that he has before taken the same) and also the following oath or affirmation of office, (except such as shall be exempted by the Legislature.) viz.

THE OATH OF AFFIRMATION OF ALLEGIANCE

You do solemnly swear (or affirm) that you will be true and faithful to the State of Vermont; and that you will not, directly nor indirectly, do any act or thing injurious to the Constitution or government thereof, as established by Convention. (If an oath) So help you God. (If an affirmation) Under the pains and penalties of perjury.

THE OATH OB AFFIRMATION OF OFFICE

You do solemnly swear, (or affirm) that you will

faithfully execute the office of for the of —; and will therein do equal right and justice to all men, to the best of your judgment and abilities, according to law. (If air oath) So help you God. (If an affirmation) Under the pains and penalties of perjury.

XXVII. Any delegate to Congress may be superseded at any time, by the General Assembly appointing another in his stead. No man shall be capable of being a delegate to represent this State in Congress for more than three years, in any term of six years;—and no person, who holds any office in the gift of Congress, shall, during the time of his holding such office, be elected to represent this State in Congress.

XXVIII. Trials of issues, proper for the cognizance of a jury, in the Supreme and County Courts, shall be by jury, except where parties otherwise agree: and great care ought to be taken to prevent •corruption or partiality in the choice and return, or appointment of juries.

XXIX. All prosecutions shall commence by the authority of the State of Vermont—all indictments shall conclude with these words, *Against the peace and dignity of the State*. And all fines shall be proportionate to the offences.

XXX. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up and assigning over, *bona fide*, all his estate, real and personal, in possession, reversion, or remainder, for the use of his creditors, in such manner as shall be hereafter regulated by law. And all prisoners, unless in execution, or committed for capital offences, when the proof is evident or presumption great, shall be bailable by sufficient sureties: nor shall excessive bail be exacted for bailable offences.

XXXI. All elections, whether by the people, or in General Assembly, shall be by ballot, free and voluntary: and any elector, who shall receive any gift or reward for his vote, in meat, drink, monies or otherwise, shall forfeit his right to elect at that time, and suffer such other penalty as the laws shall direct: and any person who shall, directly or indirectly, give, promise or bestow any such rewards to be elected, shall thereby be rendered incapable to serve for the ensuing year, and be subject to such further punishment as a future Legislature shall direct.

XXXII. All deeds and conveyances of land shall be recorded in the Town Clerk's office, in their respective towns; and, for want thereof, in the County Clerk's office or the same county.

XXXIII. The Legislature shall regulate entails in such manner as to prevent perpetuities.

XXXIV. To deter more effectually from the commission of crimes, by continued visible punishment, of long duration, and to make sanguinary punishment less necessary, means ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital, whereby the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons: and all persons, at proper times, ought to be permitted to see them at their labour.

XXXV. The estates of such persons as may destroy their own lives, shall not for that offence be forfeited, but descend or ascend in the same manner as if such persons had died in a natural way. Nor shall any article, which shall accidentally occasion the death of any person, be henceforth deemed a deodand, or in anywise forfeited on account of such misfortune.

XXXVI. Every person of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means, acquire, hold and transfer land, or other real estate; and, after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights ut' a natural born subject of this State, except that he shall not be capable of being elected Governor, Lieutenant-Governor, Treasurer, Counsellor, or Representative in Assembly, until after two years' residence.

XXXVII. The inhabitants of this State shall have liberty, in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed; and in like manner to fish in all beatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the General Assembly.

XXXVIII. Laws for the encouragement of virtue, and prevention of vice and immorality, ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town for the convenient instruction of youth; and one or more grammar schools be incorporated, and properly supported in each county in this State. And all religious societies, or bodies of men, that may be hereafter united or incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

XXXIX. The declaration of the political rights and privileges of the inhabitants of this State, is hereby declared to be a part of the Constitution of this Commonwealth; and ought not to be violated on any pretence whatsoever.

XL. In order that the freedom of this Commonwealth may be preserved inviolate forever, there shall be chosen by ballot, by the freemen of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty-five, and on the last Wednesday in March in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the Council is chosen, except that they shall not be out of the Council or General

Assembly, to be called the Council of Censors; who shall meet together on the first Wednesday of June next ensuing their election, the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree: and whose duty it shall be to inquire whether the Constitution has been preserved inviolate in every part, during the last septenary (including the year of their service;) and whether the legislative and executive branches of government have performed their duty, as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution; they are also to inquire whether the public taxes have been justly laid and collected in all parts of this Commonwealth—in what manner the public monies have been disposed of—and whether the laws have been duly executed. *for* these purposes, they shall have power to send for persons, papers, and records; they shall have authority to pass public censures—to order impeachments—and to recommend to the Legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the Constitution; these powers they shall continue to have, for, and during the space of one year from the day of their election, and no longer. The said Council of Censors shall also have power to call a Convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this Constitution which may be defective—explaining such as may be thought not clearly expressed—and of adding such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election or such Convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

By order of Convention, July 4th. 1786.

Moses Robinson, *President*.

Attest:

Elijah Paine, *Secretary*

Appendix N - Virginia

*Constitution of Virginia (1776)*¹³⁸

Bill of Rights; June 12, 1776

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

SECTION 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SEC. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

SEC. 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

SEC. 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary

SEC. 3. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

SEC. 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assembled, for the public good.

SEC. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

SEC. 8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

SEC. 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

¹³⁸ Constitution of Virginia 1776." National Humanities Institute, Bowie, Maryland.

<http://www.nhinet.org/ccs/docs/va-1776.htm> (accessed March 24, 2010).

SEC. 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

SEC. 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

SEC. 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

SEC. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

SEC. 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

SEC. 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SEC. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

THE CONSTITUTION OR FORM OF GOVERNMENT, AGREED TO AND RESOLVED UPON BY THE DELEGATES AND REPRESENTATIVES OF THE SEVERAL COUNTIES AND CORPORATIONS OF VIRGINIA

Whereas George the third, King of Great Britain and Ireland, and elector of Hanover, heretofore intrusted with the exercise of the kingly office in this government, hath endeavoured to prevent, the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good:

By denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and, when so suspended neglecting to attend to them for many years:

By refusing to pass certain other laws, unless the persons to be benefited by them would relinquish the inestimable right of representation in the legislature:

By dissolving legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people:

When dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head:

By endeavouring to prevent the population of our country, and, for that purpose, obstructing, the laws for the naturalization of foreigners:

By keeping among us, in times of peace, standing armies and ships of war:

By effecting to render the military independent of, and superior to, the civil power:

By combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation:

For quartering large bodies of armed troops among us:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever:

By plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people:

By inciting insurrections of our fellow subjects, with the allurements of forfeiture and confiscation:

By prompting our negroes to rise in arms against us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law:

By endeavoring to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions of existence:

By transporting, at this time, a large army of foreign mercenaries, to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation:

By answering our repeated petitions for redress with a repetition of injuries: And finally, by abandoning the helm of government and declaring us out of his allegiance and protection.

By which several acts of misrule, the government of this country, as formerly exercised under the crown of Great Britain, is **TOTALLY DISSOLVED**.

We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the (general Congress, do ordain and declare the future form of government of Virginia to be as followeth:

The legislative, executive, and judiciary department, shall be separate and distinct, so that neither exercise the powers properly belonging to the other: nor shall any person exercise the powers of more than one of them, at the same time; except that the Justices of the County (courts shall be eligible to either House of Assembly

The legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once, or oftener, every year, and shall be called, The General Assembly of Virginia. One of these shall be called, The House of Delegates, and consist of two Representatives, to be chosen for each county, and for the district of West-Augusta, annually, of such men as actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one Delegate or Representative, to be chosen annually for the city of Williamsburgh, and one for the borough of Norfolk, and a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease, as that the number of persons, having right of suffrage therein, shall have been, for the space of seven Years successively, less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a Delegate or Representative to the Assembly.

The other shall be called The Senate, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business; for whose election, the different counties shall be divided into twenty-four districts; and each county of the respective district, at the time of the election of its Delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the Sheriffs of each county, within five days at farthest, after the last county election in the district, shall meet at some convenient place, and from the poll, so taken in their respective counties, return, as a Senator, the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes and numbered by lot. At the end of one year after the general election, the six members, elected by the first division, shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

The right of suffrage in the election of members for both Houses shall remain as exercised at present; and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election, for the supplying intermediate vacancies.

All laws shall originate in the House of Delegates, to be approved of or rejected by the Senate, or to be amended, with consent of the House of Delegates; except money-bills, which in no instance shall be altered by the Senate, but wholly approved or rejected

A Governor, or chief magistrate, shall be chosen annually by joint ballot of both Houses (to be taken in each House respectively) deposited in the conference room; the boxes examined jointly by a committee of each House, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses, in all cases) who shall not continue in that office longer than three years successively. nor be eligible, until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary shall be settled on him, during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government, according to the laws of this Commonwealth; and shall not, under any presence, exercise any power or prerogative, by virtue of any law, statute or custom of England. But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct: in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

Either House of the General Assembly may adjourn themselves respectively. The Governor shall not prorogue or adjourn the Assembly, during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

A Privy Council, or Council of State, consisting of eight members, shall be chosen, by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose, out of their own members, a President, who, in case of death, inability, or absence of the Governor from the government, shall act as Lieutenant-Governor. Four members shall be sufficient to act, and their advice and proceedings shall be entered on record, and signed by the members present, (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy, in such matters as he shall be directed by the board to conceal. A sum of money, appropriated to that purpose, shall be divided annually among the members' in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly. Two members shall be removed, by Joint ballot of both Houses of Assembly, at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

The Delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the mean time, by joint ballot of both Houses of Assembly.

The present militia officers shall be continued, and vacancies supplied by appointment of the Governor, with the advice of the Privy Council, on recommendations from the respective County Courts; but the Governor and Council shall have a power of suspending any officer, and ordering a Court Martial, on complaint of misbehaviour or inability, or to supply vacancies of officers, happening when in actual service.

The Governor may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country.

The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governor, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governor, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others, holding lucrative offices, and all ministers of the gospel, of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The Governor, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective County Courts. The present acting Secretary in Virginia, and Clerks of all the County Courts, shall continue in office. In case of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed, as before directed; and the Clerks, by the respective Courts. The present and future Clerks shall hold their offices during good behaviour, to be judged of, and determined in the General Court. The Sheriffs and Coroners shall be nominated by the respective Courts, approved by the Governor, with the advice of the Privy

Council, and commissioned by the Governor. The Justices shall appoint Constables; and all fees of the aforesaid officers be regulated by law.

The Governor, when he is out of office, and others, offending against the State, either by maladministration, corruption, or other means, by which the safety of the State may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney-General, or such other person or persons, as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office *pro tempore*, or subjected to such pains or penalties as the laws shall direct.

If all or any of the Judges of the General Court should on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences above mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

Commissions and grants shall run, "In the name of the Commonwealth of Virginia," and bear test by the Governor, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the Clerks of the several Courts. Indictments shall conclude, "Against the peace and dignity of the Commonwealth."

A Treasurer shall be appointed annually, by joint ballot of both Houses.

All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I. in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the Year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly.

In order to introduce this government, the Representatives of the people met in the convention shall choose a Governor and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people to continue until the last day of March next, and the other officers until the end of the succeeding session of Assembly. In case of vacancies, the Speaker of either House shall issue writs for new elections.