

RECORDS  
OF THE  
COUNCIL OF CENSORS  
OF THE  
STATE OF VERMONT

Paul S. Gillies and D. Gregory Sanford, Editors

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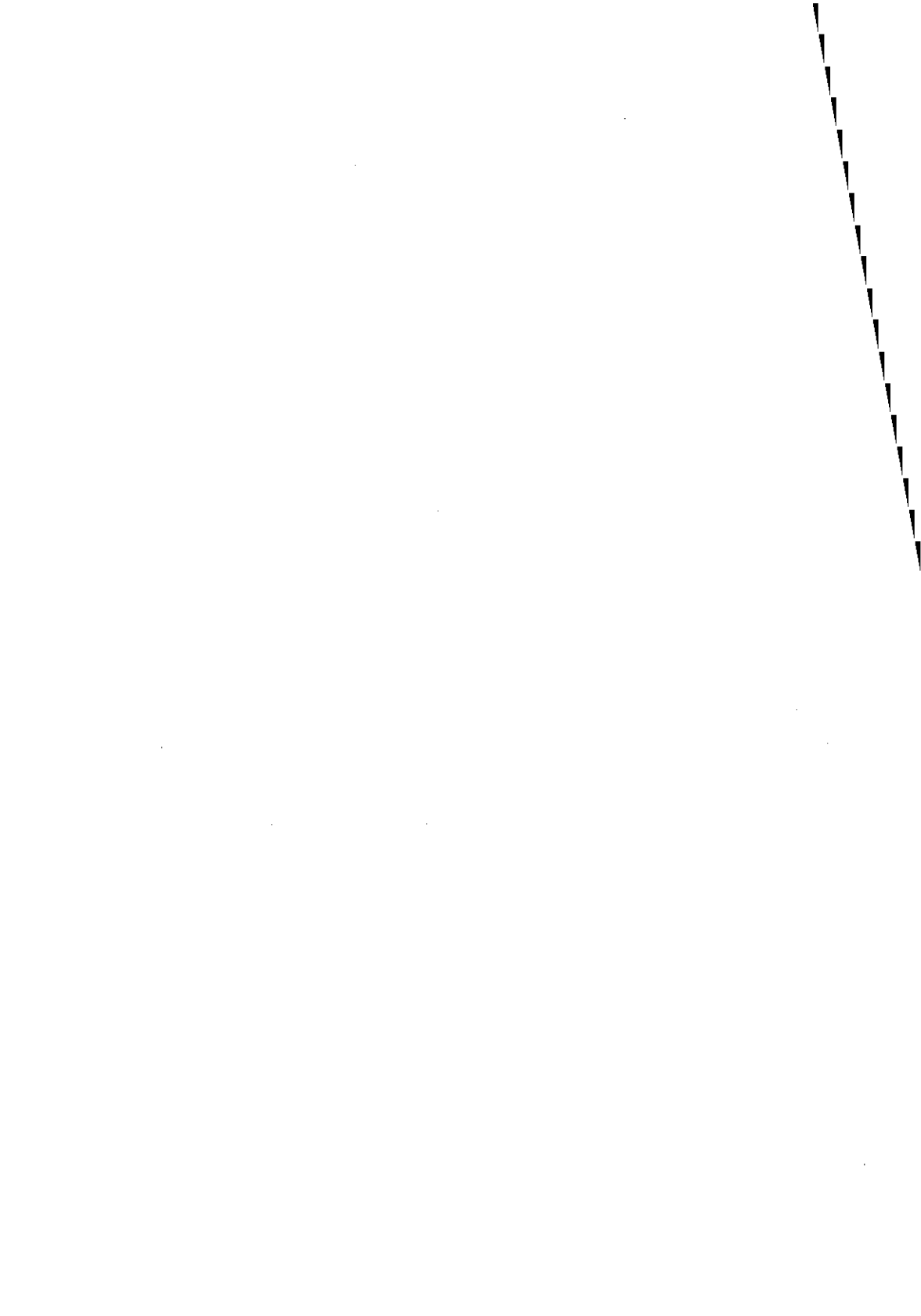
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## Foreword

In this the 214th year of the independence of Vermont and the 200th year of statehood, the publication of the work of the Council of Censors is a fitting tribute to Vermont, its history, and its Constitution. The Council's records are the last major unpublished source of Vermont constitutional materials, and their publication has been long overdue. Paul Gillies and Gregory Sanford have done a remarkable (and gargantuan) job in editing this volume. No hour was too early, no reference too remote, for their diligent, careful eyes.

That the Council's work has gone unnoticed and unheralded is a function of lack of access to the basic sources. A complete set of its journals and addresses has never been published, or even available in a single location. That there are lawyers and students of Vermont history who are unaware of the Council of Censors is one of the small embarrassments of our age.

With this publication, the Council's strong opinions on legislation, enforcement of the laws, and the development of the three branches of Vermont state government are at last available to a general readership. Perhaps more importantly, the Council's discussions of its proposals of amendment to the Vermont Constitution may now be used to find the meaning of the amendments made to our constitutions from 1777 to 1870. Make no mistake about them, the Councillors of Censors were the framers of our constitutions for eighty-five years. It was their foresight that gave us the separation of powers clause, the Vermont Senate, and presaged proportional representation of the Vermont House and Senate. They were early supporters of women's rights, and a progressive force in helping Vermonters recognize the changes they had to make to survive in the post-revolutionary period. While the Councillors were often politically conservative, they were never naive to the needs of Vermont or the Council's own role as challenger of the established order.

After reviewing these pages, readers might agree that our own times would benefit from a revival of the Council of Censors. While the court has taken over the judicial review function on individual cases and controversies, no formal institution in Vermont succeeds as well as the Council did in seeing and understanding the direction of our laws or the evolution of the legislative, executive and judicial branches of our government.

The Vermont Constitution has never seemed so critical to our freedom as it does today. There may have been years when its light was dimmed by neglect or the competing illumination of the federal constitution, but as Vermonters have turned away from Washington to find solutions to their deepest problems, the Vermont Constitution has taken on new meaning as a source of inspiration and jurisprudence. The records of the Council of Censors are an essential reference, in support of this new constitutional vitality, and a legacy of the Vermonters who gave this state its heart.

James H. Douglas, Secretary of State

July 4, 1991.



## Preface

The Council of Censors, meeting thirteen times between 1785 and 1869, never intended its work to be compiled and published in a single volume; in fact, in its early years, the Council never published its journals. Even once the journals were published, beginning in 1813, the Councils revised and edited these minutes prior to publication. Unedited minutes, the deliberations of the committees, and draft committee reports were neither published nor preserved.

There was simply no well-developed idea of journals as public records, and the early secretaries of the Council and the first Constitutional Conventions kept their copies of the journals as private property, after using them to prepare drafts of constitutions or addresses.<sup>1</sup> The Council's *addresses* were published beginning in 1786. Directed to the "People of the State of Vermont," their purpose was to describe and defend the Council's actions and proposals to citizens and government officials. The addresses helped citizens understand the rationale and impact of any proposed constitutional amendment so they could instruct their delegates to the Constitutional Convention.

In this work, which includes all known journals and address of the Council, we have tried to place the Council in the context of its time and place, legally, politically, and historically. We have traced the responses of the legislature and the courts to the Council's resolutions and censures. We have also followed the Council's proposals of amendments to the Constitutional Conventions to show what passed and what was rejected.<sup>2</sup> We have included, as appendices, short biographical sketches of the Censors and an annotated Vermont Constitution showing its origins and the proposals of the Council of Censors. This volume is not meant to be an historical analysis of the Council or its time. That analysis will come from others, perhaps spurred by the publication of this volume.

Our objective is to make the work of the Council of Censors accessible to the reader. Reading and rereading the journals and addresses has made us fond of the Censors, their eccentricities and small vices. Their words are sometimes extraordinarily inspiring, sometimes awkward and uncertain. Taken as a whole the journals

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<sup>1</sup>No journals were published for the Councils of 1785, 1792, 1799 or 1806. This volume contains the first publication of the journals of the Councils of 1786 and 1792; the journals for 1799 and 1806 have been lost. There is no journal for the Conventions of 1777 or 1786, and the journal of the Convention of 1793 is available only through happenstance. See page 134 for the story of its discovery in 1877 in Council Bluffs, Iowa. No Constitutional Convention was called in 1799, 1806 and 1862, so no convention journals were made in those years.

<sup>2</sup>We rejected the idea of publishing the journals of the Constitutional Conventions as a companion volume since they are generally devoid of debate or discussion.

reveal the social, economic, and political forces that helped shape Vermont from the end of the Revolutionary War to 1870, when the Council was abolished, and beyond, deep into our own times. The journals also offer insights on the application of the Vermont Constitution to legislation and executive acts.

We began this work over five years ago with little editorial experience, an uncertain agenda for the scope of its content, and the constant companionship of correspondence, telephone calls, and visits which mark our daily responsibilities as public servants. The trial of putting this volume together has taught us to be patient and to know our limits. Some of these are amply demonstrated in the pages that follow.

Above all else, we lament our failure to find a greater cache of original sources. From those originals we have located, we can sense the depth of loss that has occurred. Consider, for instance, the 1785 Address. In the Vermont Room of the State Library we found the original, initial draft of the Address. The original contained many paragraphs excised from the published version, including a previously-unknown proposal to censure the Executive Council for finding a certain Azariah Rude guilty of inimical conduct against the United States of America in 1778, and fining him thirty pounds for this offense.<sup>3</sup> The Council did not know Mr. Rude or his crime, but it did know that the Executive Council was in no respect competent under the Vermont Constitution to hold trials and fine people for violating the law.

The censure of the Executive Council for what it did to Mr. Rude is missing from the final version of the journals and addresses. There is much more in the draft than appears in the published version, and we have no way of knowing whether the editing was done by the people responsible for its publication or the Council as a whole, since we do not have the journal for that year. Working in Vermont history, however, the sadness that accompanies awareness of the loss of original sources is commonplace. Dwelling on the loss is ineffectual. We would prefer to herald what *is* available, in spite of the ravages of acidic paper, uncaring hands, or the belief that journals and drafts are private documents, and that is what we hope we have done by editing and publishing the journals and addresses of the Council of Censors.

This book is a product of many hands. In the early stages of preparation, the text had to be typed into the computer and proofed, including a complete reading aloud. Julie Cox Bressor, Marjorie Strong, Tim Tomasi, David Nevin, and Peter Nevin participated in this labor. Later, the hunt for references began, and among those involved

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<sup>3</sup>Governor and Council I, 206-8. For a transcription of the changes we found in the draft Address, see page 785.

in this glorious work were Glenn Howland, Esq., Kristina Bielenberg, Esq., Andrew Ward, Esq., Bill Smith and Kristine Crawford. Paul Donovan, Marjorie Zunder, and others on the staff of the Vermont State Library, and Barney Bloom and the staff of the Vermont Historical Society Library were of invaluable assistance to us in tracking down references and citations. Kathy White and Susy Lehoux shared in the typing and tracking. Christie Carter helped review the Index. Tod Parks displayed remarkable patience with our computer demands.

On a more historical note, we could not have completed the work without those indomitable Vermonters who came before us in these fields, including E.P. Walton, Franklin Dewart, Mary Greene Nye, Walter Hill Crockett, Edward Hoyt, Allen Soule, and John A. Williams.

Secretary of State James H. Douglas supported and encouraged our work as part of his consistent efforts to make government records more accessible to the public.

The demanding presence of Samuel Hand, Professor of History at the University of Vermont, never left us comfortable, even as this goes to press. The thought of what Sam would think or say has improved this work considerably.

The renewed enthusiasm of the Vermont Judiciary in the Vermont Constitution triggered us to begin this project, particularly the opinions of Judge Frank Mahady, Justice Thomas Hayes, and Justice William Hill. Justice Hill was an early supporter of the project and is a loyal friend of the Council of Censors, and it is to him we dedicate this work.





## Introduction

"[T]his council, as watchmen upon the walls of the political safety and happiness of the people of the state of Vermont, view, with deep concern . . .

Shortly after Vermont declared itself in a state of nature in January of 1777, Vermont received a copy of the 1776 Pennsylvania Constitution, sent to the people by a friend named Thomas Young. Vermont borrowed heavily from the document in the design of its first Constitution, including its provision for a Council of Censors.<sup>2</sup>

As established in Section 43 of the Vermont Constitution of 1777, the Council of Censors, a body of thirteen men elected every seven years for a one year term, was designed as a check upon government. It was a mechanism through which the people could periodically review the actions of their elected and appointed officials. To fulfill its duties the Constitution granted the Council the power to enquire: (1) "whether the legislative and executive branches of government had 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;" (2) "whether the public taxes have been justly laid and collected in all parts of this Commonwealth;" (3) "in what manner the public monies have been disposed of;" and (4) "whether the laws have been duly executed." The Constitution of 1786 added an additional and clarifying field of inquiry: "whether the constitution has been preserved inviolate in every part, during the last septenary (including the year of their service)."

To fulfill these duties, the Constitution gave the Council rather limited powers. It could exercise the "power 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." Neither able to repeal laws nor reverse executive decisions, it was principally an advisory body whose authority came from its position and its persuasiveness, and the publicity it gave to its censures.

The final and perhaps most critical of the Council's responsibilities

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<sup>1</sup>The 1813 Council of Censors, winding up to deliver a censure of unconstitutional activity. See page 203.

<sup>2</sup>For more on Young see the headnote for the 1777 Constitution on page 1. Vermont copied Pennsylvania's ideas on a Council of Censors with only minor changes; most notably Vermont had thirteen councillors elected at large, while Pennsylvania had at least two councillors from every city and county. Its council first met in November of 1783, and formally issued its report in August of the following year, concluding that no convention was necessary. In 1789, a new constitutional convention was called and abolished the 1776 Pennsylvania constitution, including its experiment with a council of censors. Lewis Hamilton Meader, *The Council of Censors* (The Historical Society of Brown University: Providence, 1899).

was "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." Of the thirteen Councils, ten called Conventions to consider amendments to the Vermont Constitution.

In all, the Councils objected to at least sixty-three acts of legislation. Of these, the legislature responded to thirty-six acts by amendment or repeal of the offensive provisions. The Council exercised its right of objection far more in its early years. Later Councils believed the judicial branch was more capable of providing that service.<sup>3</sup> Indeed, the exercise of judicial review by an independent judiciary was one of the Council's greatest legacies.

We can thank the Council of Censors for its work in changing the course of legislation. By its words and resolutions, the Council is responsible for the repeal of the laws requiring all taxpayers to support the gospel, the meeting house, and the first settled minister; for ending the practice of adopting special acts relieving individuals of their debts or granting them immunity from prosecution for a period of years; for eliminating the practice of punishing offenders of serious crimes with maiming or branding; and for taking the legislature out of the business of holding trials and hearing appeals.

The results of its resolutions on public taxes are not as direct, as changes in legislative policy sometimes took many years and multiple councils of censors to achieve. Still, the results include the requirement that property be appraised at its true value, the abandonment of the faculty tax on incomes of professionals, the end of tax assessments by the acre, and the repudiation of tax exemptions for railroad corporations.

The Council seldom found much to say about the results of its mandate to investigate the disposition of public monies. If the Council had an effect here, it was in forcing public officials, particularly county officers such as sheriffs and state's attorneys, to take more care with their fees and recordkeeping.

In response to the Council's inquiries into whether laws had been duly executed, the legislature frequently changed the law to increase the penalty, as it did with the law on hawking and peddling in 1821, or to change the program, as it did in 1856 in response to the Council's strong words criticizing it for failing to appoint a state school superintendent. The executive branch seldom responded to the Council; the dialogue, when there was one, was between the Council

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<sup>3</sup>See page 498, for instance, relating to the issue of whether the law authorizing the licensing of innkeepers and retailers for the sale of spiritous liquor was constitutional or not.

of Censors and the legislature, and most changes came as a result of that relationship.

The ten Councils that called Constitutional Conventions proposed a much larger number of changes to the Vermont Constitution than were actually adopted, although measuring the Council's success in numbers alone is not entirely fair. The proposals that led to the adoption of the Constitution of 1786 made government more representative and less democratic, as in the additions of "in a legal way," "by their legal Representatives," and "in a constitutional manner" that were sprinkled in Chapter I;<sup>4</sup> added the speech and debate and separation of powers clauses; and strengthened the role of the judiciary.

More of the amendments proposed by the Council in 1792 were rejected by the Convention than adopted. The Preamble was expunged, a four year residency requirement for candidates for Governor added, and changes were made to reflect the new status of Vermont as a member of the United States, but overall the changes were minor and undramatic compared to the amendments of 1786.

The remaining eight Councils offered 107 proposals to amend the Vermont Constitution, twenty-six of which were adopted. The 1834, 1848 and 1869 Councils were the most effective using this measure of its success.

What makes many of the Council's constitutional proposals fascinating is the number of times they were offered. These recurring proposals, and the responses of the constitutional conventions, provide insights into the evolution of Vermont government and political theory. Consider, for instance, the epic struggle to bring proportional representation to Vermont. In 1792, the Council of Censors first proposed a Senate, consisting of nine members, apportioned by county based on a rough standard of population, guaranteeing each county at least one senator. In 1813, the Council proposed a Senate composed on two members for each county over 7,000 in population and one member for those of 7,000 or less. The 1820 Council wanted to change the Executive Council into a co-ordinate body, elected by proportionally-designed districts. The 1827 Council's proposal for a Senate consisted of twenty-eight members, with the Constitution assigning the number of members initially and a decennial reapportionment following each census. On the fifth try, following the proposals made by the 1834-35 Council, the Constitutional Convention of 1836 finally adopted a thirty-man Senate by a vote of 116 to 113.

Even then, the debate over proportional representation did not end.

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<sup>4</sup>For an excellent study of the first Council of Censor as a reactionary institution, see Richard H. Coutant, "The First Two Councils of Censors: A New Perspective on the Making of the Vermont Constitution," (unpublished thesis, Vermont Law School, 1986).

In 1848 and 1855 the Councils proposed a more direct apportionment of the Senate by population, and in 1862 the subject was on the agenda at the time the Council decided to adjourn without making any formal proposal.

Apportionment of the House received no less attention from the Council throughout its history. The idea was first proposed in 1785, and renewed in 1820, 1841, 1848, 1855, and preliminarily in 1862, and while the plan never became law until 1965, after the federal court forced the issue, the idea never seemed to go away. Indeed, the close parallels between some of the Council proposals and the plan finally adopted in 1965 are striking. Even the Council of Censors, elected at large throughout its life, was a fit subject for proposals to have it chosen by proportionally-equal districts in 1820 and 1869.

The Constitution had left the design of the Constitutional Convention undefined. Until 1834, no Council considered abandoning the one town-one vote rule that applied to the House of Representatives for the Convention. From 1834 to 1855 proportional representation for conventions was discussed. In 1855 the Council tried to implement such a plan, much to the horror of the legislature and the Convention itself. Torn by the conviction that it was improperly constituted, the Convention of 1857 adjourned without voting on particular proposals of amendment. The offense was so great that it likely ensured the end of the Council of Censors by 1870.

Proportional representation was not the only area in which the Council demonstrated its concern about the nature of representation. The remarkable support in the 1869 Council for an amendment guaranteeing universal suffrage for all residents, regardless of sex, was rejected by the Convention of 1870 by a vote of 1 to 223. Yet the Council did not shy away from proposing it. Proposing what its members felt would improve the Constitution and the State was the duty of the Council, even when that meant its proposals would be regarded as unpopular or out of the mainstream.

Councils were as concerned with legislative power as they were with legislative representation. Again, a persistent Council effort illuminates the evolution of an issue of government, in this case the separation of powers.

The Vermont Constitution was silent on the powers of the judiciary in relation to legislative acts, but required the Council of Censors "to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the constitution."<sup>5</sup> The legislature usually responded to the Council's recommendation except when they involved private acts.

The practice of awarding individual citizens special privileges by private act was an integral part of legislative practice until the mid-

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<sup>5</sup>*Vermont Constitution* (1777), Chapter II, Section XLIV.

1820's in Vermont. Citizens would petition for a new trial, for the right to introduce evidence rejected by the courts, for authority to grant prisoners the liberties of the gaol-yard even when they refused or were unable to take a poor debtor's oath, or to suspend citizens from prosecution for debts for a period of years. Every Council from 1785 through 1827 complained about the practice.

In 1785, the Council condemned "the practice of legislating for individuals. . . . If a subject feels himself aggrieved, and thinks the law incompetent to give him redress, he immediately applies to the Assembly; and too often, laws are suddenly passed upon such application, to relieve in particular cases, which introduce confusion into the general system, or are afterwards discovered to be wholly unnecessary." The practice, according to the Council, "destroys the power assigned by the Constitution to the judicial branch." By 1821, the Council's objections included the impairment of contracts, in violation of the federal constitution, in addition to violations of the separation of powers clause of the Vermont Constitution.

The courts were slower to realize their powers of judicial review. In 1802, the Vermont Supreme Court heard arguments against the legislative practice of granting new trials to petitioners as "gross interferences by the legislative with the judicial power."<sup>6</sup> But not until 1814 did the Court actually strike down a legislative act as void: "The act [directing a deposition rejected as inadmissible by a court to be read in any future trial] is most clearly unconstitutional and void. It is an attempt of the legislature to make a judicial decision in a particular case; but the constitution of this State, prohibits the legislature from the exercise of any judicial powers."<sup>7</sup>

The *Wickwire* case did not stop the Legislature from adopting private acts, but the Vermont Supreme Court was not willing to ignore the point. In 1824, the court struck down an 1823 act that authorized an appeal beyond the statutory deadline.<sup>8</sup> ("That which distinguishes a Judicial, from a Legislative act, is, that the *one* is a determination of what the existing law is, in relation to a particular thing already done or happened; while the *other* is a predetermination of what the law shall be for the regulation and government of all future cases falling within its provisions. . . . [The act] is not a law, but a sentence or decree . . . .") The following year, the court confirmed the ruling in a case involving a legislative act authorizing the extension of commissioners' terms, to justify an appeal from a probate court decision involving the submission of claims against an estate. "[T]he act . . . is unconstitutional and void, as being an exercise of power by the legislature, properly belonging to the judiciary, and as being in the

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<sup>6</sup>*Pearl v. Allen*, 2 Tyler 311 (1802).

<sup>7</sup>*Dupy qui tam v. Wickwire*, 1 D. Chip. 237, 238 (1814).

<sup>8</sup>*Bates v. Kimball, Adm.*, 2 D. Chip. 77 (1824).

the nature of a sentence or decree, rather than a law, wholly retrospective in its operation and taking away a vested right."<sup>9</sup> That same year the court struck down an 1819 act freeing the body of Eli Barnard from imprisonment and arrest on any civil process for five years. It conferred "a privilege, not extended to other citizens in like circumstances; and [took] from the creditor rights, enjoyed by other citizens, in like circumstances."<sup>10</sup>

The court decisions of the 1820's took their toll. The last private act, at least denominated as such, was enacted in 1825.<sup>11</sup> The Legislature continued to authorize administrators and executors to sell assets of estates, to restore citizens to their legal rights after their conviction for felonies or to grant them rights although they were not citizens, but there were no new trials granted, no appeals expended or civil actions suspended, after that date.

The above examples suggest the avenues for study inherent in the deliberations of the Councils. But what of the Council itself?

Almost from the start the Council had its detractors. Samuel Williams, in the second edition of his history of Vermont, wrote, "The benefits which were expected to result . . . have not taken place, and impartiality requires us to acknowledge, that from the experience of thirty years, it does not appear that the plan is adequate to the object."<sup>12</sup>

Opposition to the Council was even voiced by individual Censors. A member of the 1869 Council complained that, "The question again recurs, is it necessary, is it expedient, to keep up this cumbersome system for the purpose of reviewing past legislation? Past experience proves that this has not been of much value throughout more than three-fourths of a century that we have practiced it."<sup>13</sup>

The Council also had its defenders, perhaps none so articulate as those members of the 1869 Council who tried to preserve the system. In reaction to the above-quoted charge, they responded, "The . . . powers delegated by the people to the Council of Censors ought not to be surrendered. Through them the people hold a check over the other departments of government. Executives may become usurpers, legislatures may become corrupt, and both become unfaithful

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<sup>9</sup>*Staniford v. Barry, Adm.*, Brayton 315, 316 (1825).

<sup>10</sup>*Ward v. Barnard*, 1 Aikens 121, 123 (1825).

<sup>11</sup>"An act, authorising the County Court in the county of Windsor, to sustain the petition of Elias Keyes, for a new trial," *Laws of 1825*, No. 95, 141.

<sup>12</sup>Samuel Williams, *The Natural and Civil History of Vermont* 2d ed. (Burlington: Samuel Mills, 1809), 400.

<sup>13</sup>See pp. 660-61.

'guardians' of the people", but the Council would remain as a check.<sup>14</sup>

By the end, the Council had essentially abandoned its role as an arbiter of constitutionality in legislative and executive acts, and in the review of public taxes and public monies. It had lost faith in its mandate. Ultimately, the Council fell victim to its own history of support for proportional representation and to the political agenda of Vermont's new managers. Whatever the reason, its time had passed. On June 15, 1870, the Convention voted to abolish the Council of Censors and itself by a vote of 123 to 85.

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<sup>14</sup>See page 684.



### Note to the Reader:

In the course of this book, we use abbreviations for many of the works commonly cited. Readers should consult the bibliography for full references, but to help with understanding the footnotes and commentary, readers should know the following short forms used to indicate these works:

*State Papers* refers to the State Papers of Vermont, published by the Office of the Secretary of State beginning in 1918 and including journals, laws and resolutions of legislatures prior to 1800, general petitions, and records of the court of confiscation. We cite these as being more commonly available than the original session laws and journals.

*Laws of Vermont* refers to the published acts and resolves of the General Assembly of Vermont, 1779 to the present, published by the Secretary of State.

*Compilation of 1797, Revision of 1808, Compilation of 1824, Revised Statutes* (1840), *Compiled Statutes* (1851), *General Statutes* (1863; 2d Ed., 1870), and *Revised Laws* (1880), refer to the periodic republications of compilations of laws by the State of Vermont. The reader should be careful to recognize that in most cases compilations are actually revisions of many of the laws adopted prior to the date of publication, usually in a single, brief act naming only the compilation.

*Governor and Council* refers to E.P. Walton's eight volume history of the Executive Council, the twelve men who along with the Governor exercised the supreme executive power. Walton embraces a wealth of documents and information beyond those of simply the Executive Council.

## The Constitution of 1777

On January 3, 1749 Governor Benning Wentworth of New Hampshire issued a grant for the town of Bennington. This was the opening move in a boundary dispute, primarily involving New Hampshire and New York, which clouded the validity of land titles in the area between Lake Champlain and the Connecticut River.

The dispute eventually became intertwined with the larger struggle for independence from Great Britain. Settlers of the "New Hampshire Grants" opposed to New York's claim of jurisdiction argued that they lacked representation in the New York assembly, that New York's attempt to collect quit-rents amounted to taxation without representation, and that New York, by challenging the validity of their land titles, unsettled their rights to life, liberty and property.

Citing the July 4, 1776 Declaration of Independence, the settlers declared their own independence at a January 15, 1777 convention in Westminster. The convention delegates declared Vermont (originally New Connecticut) "a free and independent state" whose citizens had "the sole and exclusive and inherent right of ruling and governing themselves in such manner and form as in their own Wisdom they shall think proper."

At the urging of Thomas Young, a former neighbor of Ethan Allen, the settlers responded to a May 15, 1776 resolution of the Continental Congress for the "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."

A June 4, 1777 convention meeting in Windsor used the language from the Congressional resolution to call for the election of delegates to a constitutional convention. The convention met in Windsor on July 2nd against the backdrop of British military operations at Fort Ticonderoga and Hubbardton. The fall of Ticonderoga hastened deliberations and according to Ira Allen, who provides the sole contemporary account, only the intervention of a thunderstorm kept the delegates in Windsor long enough to adopt a constitution. A preamble was not added to the constitution until December.

The Continental Congress, not anxious to alienate New York nor to encourage other separatist movements in the various states, refused to recognize Vermont. The Vermont Constitution presented Congress with other problems as well. The original thirteen states based their authority upon several factors: each had a colonial charter defining, no matter how poorly, their territorial limits; each state government could trace its original political legitimacy to a colonial government; and each accorded recognition to the other through membership in Congress. Vermont had none of these accepted claims to legitimacy, basing its right to existence on the fact that it alone had the support of its constituents and the power to enforce its laws. Thus Vermont became the first self-created state.<sup>1</sup>

Vermont pushed the boundaries of political thought in other ways as

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<sup>1</sup>For a particularly lucid presentation of this argument see Peter Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1781* (Philadelphia: University of Pennsylvania Press, 1983).

well. Despite rhetorical commitment to "the people" the original thirteen states were unclear on how to embrace popular involvement in government. The May 10 and 15, 1776 Congressional resolutions calling for new state constitutions stated that the basis for these constitutions should be "the authority of the people." The states responded by using their provincial congresses to draft and ratify state constitutions, blurring the distinctions between legislation and constitution making.

Vermont recognized such a distinction and again Thomas Young played a role. In his April 11, 1777 open letter to the inhabitants of Vermont Young urged Vermont to "invite all your freeholders and inhabitants to meet in their respective townships and choose members to a General Convention . . . to form a Constitution for your State." Young went on to write that "For my own part I esteem the people at large the true proprietors of governmental power. They are the supreme constituent power, and of course their immediate Representatives are the supreme Delegate power; and as soon as the delegate power gets too far out of the hands of the constituent power, a tyranny in some degree is established."<sup>2</sup>

Young's idea of a fundamental "constituent power" as essential to constitution making was accepted by Vermont, which elected delegates to a convention for the sole and express purpose of drafting and ratifying a constitution. While the relationship between legislation and constitution making was not entirely resolved--the Vermont General Assembly would enact laws making the constitution the supreme law of the land--the 1777 constitution marked another milestone in American political thought.<sup>3</sup>

Like Pennsylvania and some other states, Vermont's constitution had other checks on the delegate power. These included annual elections, a relatively weak executive branch with only an advisory veto, a unicameral legislature, and a relatively large legislative branch apportioned on town representation to assure that delegates closely resembled their constituents in an economic and social sense.

The balance between the constituent power and the delegate power would occupy the attention of virtually every Council of Censors and would, in the end, bring about the Council's demise.

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<sup>2</sup>Dr. Thomas Young, "To the Inhabitants of Vermont. a Free, and Independent State." April 11, 1777 as quoted in *Governor and Council*, Vol. 1, 394-395.

<sup>3</sup>The next step, popular ratification of constitutions, would not occur until 1780 when Massachusetts submitted a constitution to the voters. For an overview of state constitution making in the revolutionary period see Willi Paul Adams, *The First American Constitutions* (Chapel Hill: University of North Carolina Press, 1980).

# The Constitution of 1777

## Preamble

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 dominion 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 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 inhabitants 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 continued 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 of 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 2300 dollars fees for each township; and did enhance the quitrent, three fold, and demanded an immediate delivery of the title derived before, 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 regrants of several tracts of land, included in the premises, to certain favorite land jobbers in the government of New-York, in direct violation of his Britannic majesty's express prohibition, in the year 1767.

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 publicly, to appear in defence of their just rights.

They did pass twelve acts of outlawry, on the 9th 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, and the 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 quit-rents 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 favor; 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, at the extreme part, is upwards of four hundred and fifty miles from the seat of that government, which 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 honorable 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 and inherent 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 unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, 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 who professes the protestant religion be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiment, 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 people 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. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

V. 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.

VI. 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 set 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.

VII. 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 to supply the vacancies, by certain and regular elections.

VIII. That all elections ought to be free; and that all freemen, having a sufficient evident common interest with, and attachment to, the community, have a right to elect officers, or be elected into office.

IX. 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 the 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 law, but such as they have, in like manner, assented to, for their common good.

X. 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 favor, 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 he be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

XI. 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, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

XII. 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.

XIII. That, in controversies affecting property, and in suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred.

XIV. 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.

XV. That the people have a right to bear arms for the defence of the 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.

XVI. 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, therefor, 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 legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XVII. 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.

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, by address, petition or remonstrance.

XIX. That no person shall be liable to be transported out of this State, for trial, for any offence committed within this State.

## CHAPTER II PLAN OR FRAME OF GOVERNMENT

### SECTION I.

The Commonwealth or State of Vermont, shall be governed hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the Freemen of the same, in manner and form following.

### SECTION II.

The supreme legislative power shall be vested in a House of Representatives of the Freemen or Commonwealth or State of Vermont.

### SECTION III.

The supreme executive power shall be vested in a Governor and Council.

### SECTION IV.

Courts of justice shall be established in every county in this state,

## SECTION V.

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; reserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed.

## SECTION VI.

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 who is of a quiet and peaceable behavior, and will take the following oath (or affirmation), shall be entitled to all the privileges of a freeman of this State.

"I \_\_\_\_\_ solemnly swear, by the ever living God (or affirm in the presence of Almighty God that whenever I am called to give my vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man."

## SECTION VII

The House of Representatives of the Freeman of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every town in this State, respectively. And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.

## SECTION VIII.

The members of the House of Representatives shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled, The General Assembly of the State of Vermont; and 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 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, but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-

house, in Windsor, on the second Thursday of March next.

#### SECTION IX.

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 and clerk, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance hereinafter directed, as the following oath or affirmation, viz:

I \_\_\_\_\_ do solemnly swear, by the ever living God (or I do solemnly affirm in the presence of Almighty God), that as a member of this Assembly, I will not propose, or assent to any bill, vote or resolution, which shall appear to me 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 my 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 punisher of the wicked. And I 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.

#### SECTION X.

Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superceded, 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 re-election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress.

#### SECTION XI

If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns that do elect and send representatives (provided they be a majority of the inhabited towns 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.

## SECTION XII.

The doors of the house in which the representatatives of the freemen of this State shall sit, shall be open for the admission of all persons, who behave decently, except only when the welfare of the State may require the doors to be shut.

## SECTION XIII.

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 one third of the members require it; (except when the votes are 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 desire it.

## SECTION XIV.

To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determination as much as possible prevented, all bills of public nature shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in the case of sudden necessity) be passed into laws; and no other shall 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 and set forth in their preambles.

## SECTION XV.

The stile of the laws of this State shall be,—"Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of Vermont, in General Assembly met, and by the Authority of the same."

## SECTION XVI.

In order that the Freemen of this State might 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 years, 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.

## SECTION XVII.

The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. 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 councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.

The council that shall act in the recess of this Convention, shall supply the place of a council for the next General Assembly, until the new Council be declared chosen. The Council shall meet annually, at the same time and place with the General Assembly; and every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office.

## SECTION XVIII.

The Governor, and in his absence the Lieutenant or Deputy Governor, with the Council--seven of whom shall be a quorum--shall have power to commissionate all officers (except those who are appointed by the General Assembly), 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 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--shall have power to grant reprieves, but not to pardon, until after the end of the next session of the Assembly; but there shall be no remission or mitigation of punishment, except 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 General Assembly; and they may draw upon the Treasurer for such sums as may 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 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 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. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

#### SECTION XIX.

All commissions shall be in the name of the freemen of the State of Vermont, sealed with the State seal, signed by the Governor, or in his absence the Lieutenant-Governor, and attested by the Secretary; which seal shall be kept by the Council.

#### SECTION XX.

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.

#### SECTION XXI.

The supreme court, and the several courts of common pleas of this State shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to perpetuating testimony, obtaining evidence from places not within this State, and the care of 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.

#### SECTION XXII.

Trials shall be by jury; and it is recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries.

#### SECTION XXIII.

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 laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

#### SECTION XXIV.

All prosecutions shall commence in the name and by the authority of the freemen and the State of Vermont, and all indictments shall conclude with these words, "against the peace and dignity of the State." The style of all process hereafter, in this State, shall be,—The State of Vermont.

#### SECTION XXV.

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, in possession, reversion or remainder, 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.

#### SECTION XXVI.

Excessive bail shall not be exacted for bailable offences; and all fines shall be moderate.

#### SECTION XXVII.

That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the freemen in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probate, commissioned by the Governor and council, during good behavior, removable by the General Assembly upon proof of mal-administration.

#### SECTION XXVIII.

That no person, shall be capable of holding any civil office, in this State except he has acquired, and maintains a good moral character.

#### SECTION XXIX.

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 future 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.

SECTION XXX.

All fines, licence money, fees and forfeitures, shall be paid, according to the direction hereafter to be made by the General Assembly.

SECTION XXXI.

All deeds and conveyances of land shall be recorded in the town clerk's office, in their respective towns.

SECTION XXXII.

The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SECTION XXXIII.

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 dependance 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 to it, the profits ought to be lessened by the legislature.

SECTION XXXIV.

The future legislature of this State, shall regulate entails, in such manner as to prevent perpetuities.

SECTION XXXV.

To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing by hard labor, 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 the prisoners at their labor.

SECTION XXXVI.

Every officer, whether judicial, executive or military, in authority under this State, shall take the following oath or affirmation of allegiance, and general oath of office, before he enter on the execution of his office.



The oath or affirmation of allegiance.

"I \_\_\_\_\_ do solemnly swear by the ever living God (or affirm in the presence of Almighty God) that I will be true and faithful to the State of Vermont; 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 Convention."

The oath or affirmation of office.

"I \_\_\_\_\_ do solemnly swear by the ever living God (or affirm in the presence of Almighty God), 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."

#### SECTION XXXVII.

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 clear 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.

#### SECTION XXXVIII.

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 years residence, shall be deemed a free denizen of this State; except that he shall not be capable of being elected a representative, until after two years residence.

#### SECTION XXXIX.

That the inhabitants of this State shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, and on other lands (not enclosed); and in like manner, to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the General Assembly.

#### SECTION XL.

A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly.

## SECTION XLI.

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, that have or may be hereafter united and 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.

## SECTION XLII.

All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly.

## SECTION XLIII.

The declaration of the rights is hereby declared to be a part of the Constitution of this State; and ought never to be violated on any pretence whatsoever.

## SECTION XLIV.

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 of 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 enquire 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 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 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 of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

## The 1785 Council of Censors

Vermont's first septenary was marked by efforts to maintain and support the new state, establish its legitimacy, fend off external threats, and pursue union with the United States. While the military campaigns of the Revolution ended in 1782, British troops in Canada and the northern border region remained a threat. Some Vermonters perceived the British presence as an opportunity to either weight Vermont's petitions for union or as a vehicle for pursuing alternatives to admission to the United States.

New York's continued claims to Vermont kept the new American government from offering recognition. The temporary expansion of Vermont's borders to the east in 1778-79 and to the east and west in 1781-82 exacerbated tensions with New York, New Hampshire and Congress.

These external threats were mirrored by internal problems. Windham County residents, loyal to New York, rebelled against the jurisdiction of Vermont in 1783-84 and the General Assembly sent troops to quell the insurrection. Divisions appeared among Vermont's political elites as Ethan Allen and the so-called Arlington Junto crossed spears with an emerging Federalist movement that included Nathaniel Chipman and Isaac Tichenor.

Internal threats lead the government to enact a series of laws relating to treason, rioting, and "inimical conduct." The government also sought to facilitate the settlement of the state through the laying out of towns and roads. For revenue the state relied not only on the sale of charters and the imposition of taxes, but also upon the confiscation and sale of Tory property.

When the first Council of Censors met in Norwich in 1785, its members understood the necessity of demonstrating the stability and legitimacy of the government to Vermonters and the United States. Itself a unique government body (Pennsylvania's Council having already been abolished), the Council reviewed legislative and executive acts made during a period when the continued existence of Vermont was in doubt. Many actions singled out for censure related to the suppression of dissent; other censures recognized the need to protect creditors, the public credit, and the independence of the judiciary. The Council also moved to secure land titles, the very issue that had led to Vermont's independence. Throughout their deliberations the Censors displayed awareness of their larger role in establishing the legitimacy of Vermont's claims to self government, remarking at one point that failure to repeal a particular act would "afford our enemies the most solid argument they have yet offered against the reasonableness of our existence as a sovereign State."

The Censors were not immune to Vermont's political factionalism and some of their proposals have been interpreted as attempts to curtail some of the radical impulses of the early Republic. Regardless of their motives, when the Council adjourned in February of 1786, after completing its Address and calling for a constitutional convention to amend the 1777 Constitution, they had accomplished much to establish Vermont as a legitimate state.

*Note on text:* The Proposed Constitution and Address of the Council of Censors were originally published in 1786 by Hough and Spooner of Windsor, and did not include the Resolutions of the Council. The Resolutions, Proposed Constitution and Address of the Council of Censors were published by Slade's *Vermont State Papers* (1823), 510-44. The Journal of the Council was not published but the manuscript Journal is at the Vermont State Archives. The Resolutions in the manuscript contain two not included

in Slade: Resolution XV and the last cited Resolution on Andrew Graham.  
There is no journal for the Constitutional Convention of 1786.

Journals  
of the  
First Council of Censors

At a meeting of the Council of Censors, chosen agreeable to the 44th Section of the Constitution, and convened agreeable to an Act of the Legislature of the State of Vermont, passed the \_\_\_\_ day<sup>1</sup> of October 1784, entitled "An Act regulating the Choice of Censors",<sup>2</sup> --at Norwich in Windsor County, the 1st Wednesday (being the 1st day of June 1785.)--

INCREASE MOSELEY, EBENEZER CURTIS, EBENEZER WALBRIDGE, BENJAMIN CARPENTER, STEPHEN JACOB, JONATHAN HUNT, EBENEZER MARVIN, ELIJAH ROBINSON, & MICAH TOWNSEND, Esqs., severally produced Credentials of their Election; which being read & approved, they were severally sworn agreeable to the Constitution.--

MICAH TOWNSEND was elected Secretary to the Council & INCREASE MOSELY Esq. President thereof.

Then adjourned until tomorrow morning 9 o'clock.

**9 o'clock, 2d June 1785.**--Met according to Adjournment.

On motion, resolved, that Mr. ROBINSON, Mr. JACOB and Mr. TOWNSEND be a Committee to prepare rules & regulations for the Conduct of the Council and make report.

The Committee above named reported the following rules; which being read, were agreed to, viz.

1st. That no person not belonging to this Council be admitted into the Chamber, without the consent of the Council.--

2d. That each member obtain leave from the President before he speaks upon any subject, and conduct himself with decency while speaking.

3d. That no person interrupt another while speaking.

4th. That, when required by any member, each person making a motion, reduce it to writing.

Adjourn until 2 o'clock P.M.

**2 o'clock P.M. 2d June,** -- Council met, and after proceeding for some time in examining the nature of the Acts passed by the Legislature of this State, Adjourned until tomorrow morning 8 o'clock.

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<sup>1</sup>"Act Regulating the Choice of a Council of Censors," October 29, 1784. *State Papers XII*, 286.

<sup>2</sup>*State Papers XIII*, 286-88.

**3d June 1785, 8 o'clock A.M.** Met according to Adjournment.

Mr. TOWNSEND having leave of Absence to attend upon the Legislature, Mr. JACOB was elected Secretary *pro tempore*.

Elisha Hubbard was elected Messenger to the Council.

The Hon'ble JOSEPH MARSH Esq. presented the Credentials of his Election as a member of this Council; which being read were approved & the necessary Oaths were administered to him.

After further proceedings in examining the Acts of the Legislature--adjourned until 2 o'clock P.M.

**2 o'clock P.M., 3d June.**--Met according to adjournment. Watts Hubbard Jun'r presented a Petition, representing that he was arrested and tried in an unconstitutional manner in the Year 1778,--and praying this Council to examine into, and censure, the said Proceedings.<sup>3</sup> Which being read;--Ordered that the said Petition and the papers accompanying the same, lie on the Table for future Consideration.

Ordered that the Messenger wait upon his Excellency the Governor and the Council of this State, & request them to furnish this Council with their Journal for examination.

After proceeding further in examining the Proceedings of the Legislature--Adjourned until tomorrow Morning 8 o'clock.

**8 o'clock 4th June 1785.** Council met. A message was received from his Excellency, that he was not able to lay the request of this Body before his Council; there not being a quorum of them convened:--but that they had in this place, only the Journal of their last session.

Leave of Absence was granted to Mess'rs. MARVIN & JACOB until Monday morning 8 o'clock, and to Mr. MARSH, until Tuesday morning.

After further proceedings in examining the Acts of the Legislature, & a recess of two hours,--Adjourned 'till monday morning 8 o'clock.

**6th. June 1785--8 o'clock**--Council met. After further proceedings in examining the Acts of the Legislature, adjourned until 2 o'clock P.M.

**2 o'clock P.M. 6th. June**--Council met. After compleating the

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<sup>3</sup>Watts Hubbard, Jr. was one of the owners of Tory estates confiscated and sold during the Revolutionary War by the government of Vermont. His petition claimed that he had been tried and found guilty by an unconstitutional court that had offered him no opportunity to present witnesses or challenge evidence presented against him. *State Papers* VIII, 130. See also *State Papers* VI, 215, 257.

examination of the Acts of the Legislature, and some proceedings in examining the Journal of the Assembly, Adjourned until 8 o'clock tomorrow morning.

**8 o'clock A.M. 7th. June 1785**--Council opened.

*Resolved* that \_\_\_\_\_<sup>4</sup> be desired to wait upon the Auditor of Accounts, & request them to report in writing, to this Council, as soon as may be, a state of all the public Accounts, until the first day of June instant.--

*Resolved*, that his Excellency and the Hon'ble Council of this State, be requested to inform this Board to whom they may apply to possess themselves of the Journals of Council, from the formation of the Constitution, to the first Wednesday in June instant, for their Inspection:--And that his Excellency and the Council of this State be desired to give the necessary directions for that purpose.

*Resolved*, that Mr. CARPENTER be desired to wait upon his Excellency with a Copy of the last foregoing Resolution.--

*Resolved*, that Mr. BRACE and Mr. BEEBE be a Committee to examine the Journals of the Council of this State, from the formation of the Constitution to the first Wednesday in June instant, and that they report such parts of the proceedings of the said Council, (if any) as shall appear to them to be unconstitutional, or concerning which they shall be doubtful, to this Council, at their next sitting.

*Resolved*, that Mr. CURTIS and Mr. JACOB be a Committee to examine the Journal of the General Assembly from the formation of the Legislature, down to October Session, 1781;--And that they report to this Council, at their next Session, such part of the Proceedings of the Assembly, (if any) as shall appear to them to be unconstitutional, or concerning which they shall be doubtful.

*Resolved*, that the two Committees last above mentioned, be empowered to call for, and receive, the above mentioned Journals, severally committed to them for examination.

*Resolved*, that Mr. CARPENTER, Mr. HUNT, and Mr. TOWNSEND be a Committee to examine the Constitution of this State, & that they report such Alterations as they shall conceive necessary to be made therein, to the Council, at their next Session.

Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 7th June**--Council opened. After proceeding in examining the Constitution of this State, Adjourned until 8 o'clock tomorrow morning.

**8th June 1785--8 o'clock A.M.** Council met. A message was

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<sup>4</sup>This is blank in the journal.



received from the Council of this State informing that their Journals are lodged with Thomas Tolman Esq., Secretary of Council, at Arlington, and that directions should be given said Tolman for the delivery of said Journals to this Board, on their Application.

Mr. Tichenor, one of the Auditors of public Accounts, verbally informed this Council that they had not yet compleated the business of their Appointment, and that, not having with him the necessary papers, they are unable to report in writing what progress they have made in the Business. Whereupon

*Resolved*, that the Auditor of Accounts, be requested to report, in writing, to this Board, at the next Session thereof, a full State of all the public Accounts of this State, until the first Wednesday of June instant; And if such Accounts shall not be then closed, that they be requested to represent the Obstacles thereto, in writing. Adjourned until 2 o'clock P.M.

**2 o'clock P.M.—8th June 1785**--Council opened. The Hon'ble JOHN SESSIONS Esq. produced the Credentials of his Election; which being read and approved, and the necessary Oaths administered to him.

*Resolved* that Mr. SESSION take his Seat.

The Petition of Dudley Chase and others,<sup>5</sup> complaining of certain Grievances, was read, and ordered to lie on File, for future Consideration.

*Resolved*, that the Treasurer be requested to furnish this board, as soon as may be, with an official Account of the several taxes which have been from time to time, assessed upon each town in this State, with the arrearages of each town, the first Wednesday in June instant; And also the amount of the two taxes of ten shillings on the hundred Acres; and the arrearages then due (if any); And that the Treasurer be desired to deliver the same to Col. WALBRIDGE.

After further examination of the Constitution, adjourned until the last Thursday in September next, then to meet at the meeting-house in the east Parish in Windsor.

## Second Session

Windsor, the last Thursday (being the 29th.) of September, 1785.--

There met at the Meeting house in this Place, Mr. PRESIDENT, Mr. CARPENTER, Mr. ROBINSON, Mr. CURTIS, Mr. JACOB, and

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<sup>5</sup>The petition of Dudley Chase, seeking redress from the Council of Censors on behalf of the proprietors and inhabitants of Royalton, Bethel, Randolph, Braintree and Rochester, is found in *State Papers VIII*, 131-33.

Mr. TOWNSEND;--but there not being a sufficient number to transact business,--adjourned until tomorrow morning, 9 o'clock, to meet at the dwelling house of Mr. West in this Town.--

**A.M. 9 o'clock 30th. September 1785** The foregoing members met, but a Quorum not being convened, Adjourned until 2 o'clock, P.M.

**2 o'clock P.M. 30th. Septr.** The same members met as before and adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 1st. October 1785**--Met according to Adjournment, but there not being Quorum, adjourned until 2 o'clock P.M.

**2 o'clock P.M. 1st. October**--Met according to Adjournment. Present the same members as above & Mr. MARSH.

*Resolved*, that Zebulon Chandler be directed to call for, and receive, the records of the late Court of Confiscation, from the late Clerk of said Court, or any other person possessed of them, or any of them; and the same to deliver to this Council with all convenient dispatch. And the said Clerk, and every person possessed of any of said Records, are required to deliver the same to said Chandler, upon request.

The Committee appointed to examine the Constitution and report such Alterations as they conceive necessary to be made therein, reported a Draft, which was read. Then adjourned until Monday morning, 9 o'clock A.M.

**3d. October 1785--9 o'clock A.M.** Met according to adjourn't. After spending some time upon the Alterations in the Constitution, proposed by the Committee,--Adjourned until 2 o'clock. P.M.

**2 o'clock P.M.--3d. October**--Council met. After further progress made in the business last above mentioned, Adjourned until tomorrow morning 9 o'clock

**4th. October--9 o'clock A.M.** Council opened.--Present the same members as above & also Mr. SESSIONS. After further Progress made in the Business last above mentioned, Adjourned until 2 o'clock P.M.--

**2 o'clock P.M.--4th. October 1785**--Council met. Present the members before mentioned and Mr. WALBRIDGE and Mr. MARVIN. After proceeding further in the last mentioned Business, Adjourned 'till tomorrow morning 9 o'clock.

**9 o'clock A.M.—5th. October 1785** Council met. After further proceedings upon the Constitution, Adjourned 'till 2 o'clock. P.M.

**2 o'clock P.M.—5th. October--**Council met.

*Resolved*, that Mr. JACOB, Mr. CARPENTER & Mr. MARVIN be a Committee to prepare a Clause to be added to the Constitution, for rating property according to its true value.<sup>6</sup>

*Resolved*, that it be and is hereby recommended to the honorable the Legislature, in their next Session to repeal an Act passed in February 1779, entitled "An Act to prevent Riots, Disorders and Contempt of Authority, within this State, and for punishing the same",<sup>7</sup> on Account of the Punishment in said Act being disproportionate to the offences therein mentioned.

*Resolved*, that it be recommended to the Legislature, to alter so much of the last Clause of an Act passed in February 1779, entitled "An Act to encourage the destroying of Wolves and Panthers"<sup>8</sup> as inflicts corporeal Punishment for taking a Wolf out of a Pit or Trap--on account of the Punishment being disproportionate to the offence. Adjourned, until tomorrow morning 9 o'clock.

**9 o'clock A.M.—6th October 1785--**Council opened.

*Resolved*, that, in the opinion of this Council, the Punishment inflicted by the first and sixth clauses of an Act, passed in February 1779 entitled "An Act against counterfeiting bills of Public Credit, Coins or Currencies, and emitting and passing Bills or Notes on private Credit, and preventing Injustice in passing counterfeit Bills"<sup>9</sup> for the first offence is contrary to the humane Spirit of the Constitution and ought to be altered by the Legislature.

*Resolved*, that, in the Opinion of this Council the Proviso annexed to the third clause of an Act passed in February 1779, entitled "An Act for authenticating Deeds, and Conveyances"<sup>10</sup> is contrary to the thirty first Section of the frame of Government,<sup>11</sup> and inconvenient in Practice; and that it be recommended to the Legislature to amend the same.

*Resolved*, that, in the opinion of this board, the last Paragraph of

<sup>6</sup>Cf., The Council's Proposed Revision of the Constitution, Chapter II, Section XXXIX, 29, *infra*, for this proposal.

<sup>7</sup>*State Papers* XII, 50 (February 1779).

<sup>8</sup>*State Papers* XII, 77 (February 17, 1779).

<sup>9</sup>*State Papers* XII, 93 (February 1779).

<sup>10</sup>*State Papers* XII, 96 (February 1779).

<sup>11</sup>Section XXXI of the Vermont Constitution of 1777 provided that, "All deeds and conveyances of land shall be recorded in the town clerk's office, in their respective towns." See page 15.

an Act passed in February, 1779, entitled "An Act to prevent unseasonable night-walking, and for the punishing of Disorders committed in the night season"<sup>12</sup> is contrary to the tenth Article<sup>13</sup> in the Bill of rights, and that it be recommended to the Legislature to repeal the same.

Adjourned until 2 o'clock P.M.

**2 o'clock P.M.--6th. October.** Council met--

*Resolved*, that it be recommended to the Legislature to repeal an Act passed in February 1779, entitled "An Act to prevent the selling or transporting raw or untanned Hides or Skins out of this State"<sup>14</sup> as being contrary to the Principles of the Constitution.--

This Council conceiving it exceedingly inconvenient, and against the Interest of the Community, that so numerous a Body as the Governor, Council, and General Assembly of the State should be employed in determining Causes between Party and Party, and their attention thereby diverted from their more important Business of Legislation,--do hereby recommend to the hon'ble the Legislature, during their next session, to repeal such parts of an Act passed 22d. October 1779 entitled "An Act constituting the Superior Court a Court of Equity and declaring their Power"<sup>15</sup> as invests the Governor and Council and House of Representatives with Authority to hear and determine Cases in Equity,--With a Proviso that the repealing Act shall not affect any cause commenced, or depending, and undetermined, before the said Court of Equity.

*Resolved*, that this Board recommend to the Legislature to repeal an Act passed 3d. November 1780, entitled "An Act against inimical conduct"<sup>16</sup> on Account of the uncommon Severity of the same.

*Resolved*, that it be recommended to the Hon'ble the Legislature to repeal an Act passed on the 22d. February 1781 entitled "An act for quieting disputes concerning landed Property"<sup>17</sup> on account of its

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<sup>12</sup>State Papers XII, 132 (February 15, 1779).

<sup>13</sup>Article X of the Vermont Constitution of 1777 provided, "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 favor, and a speedy public trial 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." See page 10.

<sup>14</sup>State Papers XII, 162 (February 1779).

<sup>15</sup>State Papers XII, 181 (October 22, 1779).

<sup>16</sup>State Papers XII, 211 (November 3, 1780).

<sup>17</sup>State Papers XIII, 13. This act became law on December 21, 1781.

vesting in the Legislature an exclusive power of determining upon the validity of their own Grants.

Adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 7th. October--**Council met.

*Resolved* that it be recommended to the Hon'ble the Legislature to repeal an Act entitled "An Act for the Punishment of Conspiracies against the Peace Liberty and Independence of this State"<sup>18</sup> passed 21st. June 1782--on account of the inexpediency of continuing in force a Law of so great Severity in the present Circumstances of this State.

*Resolved* that it be recommended to the Hon'ble the Legislature to repeal the first Clause of an Act passed 22d. October 1782 entitled "An Act in Addition to an Act regulating Goals and Goalers"<sup>19</sup> on account of its not sufficiently guarding the Property of the Subject.--

*Resolved* that it be earnestly recommended to the Hon'ble the Legislature as soon in their next session as may be to repeal an Act passed 22d. October 1782 entitled "An Act for the regulation and establishment of Town Lines"<sup>20</sup> and the several Additions thereto-- And also an Act passed February 26th 1782 entitled "An Act to ascertain the Boundaries of the Towns therein mentioned."<sup>21</sup> And also an Act passed 23d. October 1783, entitled "An Act for the purpose of enabling the Surveyor General to complete the survey of the Town lines in this State"<sup>22</sup> And an Act passed 8th. March 1784 entitled "An Act for the purpose of cutting roads in the northern part of this State"<sup>23</sup>--

Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 7th October 1785--**Council met.

*Resolved* that it be recommended to the Hon'ble the Legislature to alter the Penalty contained in the fourth Clause of an Act passed 2d. March 1784 entitled "An Act to prevent the spreading of the small-Pox"<sup>24</sup> the same being in the Opinion of this Council contrary to the humane Spirit manifested in the twenty-sixth Section of the frame

<sup>18</sup>*State Papers* XIII, 98 (June 21, 1782).

<sup>19</sup>*State Papers* XIII, 150 (October 22, 1782).

<sup>20</sup>*State Papers* XIII, 151 (October 22, 1782).

<sup>21</sup>*State Papers* XIII, 82 (February 26, 1782).

<sup>22</sup>*State Papers* XIII, 220 (October 23, 1783).

<sup>23</sup>*State Papers* XII, 251 (March 8, 1784).

<sup>24</sup>*State Papers* XIII, 235 (March 2, 1784).

of Government.<sup>25</sup>

*Resolved* that it be recommended to the Hon'ble the Legislature to repeal an Act passed 9th. March 1784 entitled "an Act to reverse several Judgments therein mentioned"<sup>26</sup> as interfering with the Judicial Department.

Adjourned 'till tomorrow morning 9 o'clock.

**9 o'clock A.M. 8th. October 1785.**--Council met.

*Resolved* that Mr. TOWNSEND, Mr. SESSIONS and Mr. JACOB be a Committee to draw recommendations to the Legislature for the alteration and repeal of the Acts before mentioned with the reasons for the same.

On motion, *Resolved* that Mr. MARVIN, Mr. WALBRIDGE and Mr. ROBINSON be added to the Committee for examining the Journals of Council appointed in June last.

On motion resolved that Mr. PRESIDENT be added to the Committee for examining the Journal of the General Assembly appointed in June last.

*Resolved* that Mr. MARSH have leave of Absence until Tuesday morning next.

Adjourned until Monday morning 9 o'clock.

**10th. October 1785 9 o'clock A.M.** Council met.--

After some time spent in examining the Laws--adjourned until 2 o'clock P.M.

**2 o'clock P.M. 10th. October** Council opened--

After some further time spent in examining the Laws and Journals of Council Adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 11th. October**--Council met--And after some time spent in further examining the Journals of Council--Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 11th. October**--Council opened. After some further time spent in examining the Journals of Council and Assembly --Adjourned until tomorrow Morning 9 o'clock.

**9 o'clock A.M. 12th. October 1785**--Council opened. Granted leave of Absence this day to Mr. CURTIS. After spending some time

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<sup>25</sup>Section XXVI of the 1777 Constitution provided that, "Excessive bail shall not be exacted for bailable offences; and all fines shall be moderate." See page 14.

<sup>26</sup>*State Papers* XIII, 267 (March 9, 1782).

in examining the Laws and Constitution--Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 12th. October 1785**--Council met--After further proceeding in the business last mentioned Adjourned until 9 o'clock tomorrow morning.

**9 o'clock A.M. 13th. October 1785**--Council met--& after some time spent in examining the Laws; Adjourned until 9 o'clock tomorrow morning.

**9 o'clock A.M. 14th October 1785**--Council met and after further examining the Laws--Adjourned until 2 o'clock Afternoon.--

**2 o'clock P.M. 14th October**--Council met--

*Resolved* that Mr. JACOB be desired to request Col. Bradley, Mr. Knight, Mr. Chipman and Mr. Israel Smith to attend this Board as soon as may be for Counsel.<sup>27</sup>

Col. Bradley, Mr. Knight and Mr. Smith attended--pursuant to the request of this Board and gave their Opinions respecting Questions proposed to them.

Upon Motion, *Resolved* that the thanks of this Council be given to the Gentlemen above named for their Services.

After further examining the Laws--Adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 15th October 1785**--Council opened.

*Resolved* that it is the Opinion of this Board that its Powers extend to any transaction during the existence of this Council.

*Resolved* that Col. Matthew Lyon be impeached before the Governor and Council of this State for refusing to deliver to the order of this Board the records of the Court of Confiscation.<sup>28</sup> And that the

<sup>27</sup>Stephen Bradley of Westminster, Samuel Knight of Brattleboro, Nathaniel Chipman of Tinmouth, and Israel Smith of Rupert were all members of the General Assembly and also attorneys, whose advice on the question of the jurisdiction of the Council of Censors would not only settle the issue at hand--whether Matthew Lyon's refusal to comply with its order was impeachable as it occurred during the sitting of the Council--but would establish a precedent for future councils in ruling on matters occurring during the time the councils met. See Constitution of 1786, Sec. 43, page 100.

<sup>28</sup>Lyon's trial was held before the Governor and Council on October 18, 1785. He was found guilty the following day, and ordered to deliver the records of the Court of Confiscation to the Council of Censors and receive a reprimand from the President of the Court (the Governor). A fine of 500 pounds and the costs of prosecution would be levied on him, if he still

PRESIDENT be directed to acquaint the house of Assembly therewith and request them to appoint Counsel to prosecute the same to effect during the present Session of the Legislature.

Adjourned until Monday Morning 9 o'clock.

**17th October 1785 – 9 o'clock A.M.--Council met.--**

*Resolved* that it be and hereby is recommended to the hon'ble the Legislature in their present Session to repeal an act passed 18th. June 1785 entitled, "An Act to secure Daniel Marsh in the possession of a certain farm until he shall have Opportunity of recovering his Betterments, and nullifying several Judgments rendered against him."<sup>29</sup>

1st. Because the said Act in effect destroys the Power assigned by the Constitution to the judicial Department.

2d. Because it divests one Subject of his Possession to Land, already determined to be his right by a Court and Jury, and arbitrarily vests it in another, without the intervention of a Jury: contrary to the thirteenth Article in the Bill of rights, and the twenty second Section of the frame of Government.<sup>30</sup>

3d. Because it gives Mr. Marsh a greater Privilege than was thought proper by the Legislature to be given to other Subjects, by the seventh Clause of an Act passed by them the preceding day entitled "An Act for settling Disputes respecting landed Property"<sup>31</sup> as it enables him to enter his Action for the betterments of the Land without first paying the Costs of the Judgments recovered against him and by annulling those Judgments destroys Mr. Whitney's remedy for his Costs of Suit.

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refused to produce the records. Chipman then moved for a new trial, saying "that his cause had not been rightly understood and defended . . .," and the Governor and Council granted him a new trial. The records of the Governor and Council do not indicate that a second trial was held. The records of the Court of Confiscation were not turned over to the General Assembly. *Governor and Council* III, 83-4, 87. William Slade says that, "The Compiler [Slade] has been unable to find the records of the 'Court of Confiscation,' or any except the few which follow . . ." Slade's *State Papers*, 1823, 559-60. Mary Greene Nye's diligent work in the 1930's turned up a good deal more than Slade had found. See *State Papers* VI.

<sup>29</sup>*State Papers of Vermont* XIV, 25 (June 18, 1785).

<sup>30</sup>Article XIII (1777) provided, "That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury; which ought to be held sacred." Section XXII provided that, "Trials shall be by jury; and it is recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries." See page 7, 13.

<sup>31</sup>*State Papers* XIV, 17 (July 17, 1785).



4th. Because said Act appears to render void certain Judgments in forcible Entry and Detainer, and of consequence remits Fines; which is a branch of Power assigned by the Constitution to the Governor and Council.

5th. That said Act not only takes the Possession of the Land in dispute from Whitney and gives it to Marsh but hinders Whitney from commencing a Suit for recovering his Possession until a final Judgment shall be rendered in the Suit for Betterments--and Whitney is then left to a course of Litigation to recover the Possession which is thus extraordinarily wrested from him.

*Resolved* that it be and hereby is recommended to the Hon. the Legislature in their present Session to repeal an Act passed 18th. June 1785 entitled "An Act confirming Andrew Graham, of Putney, in the County of Windham in the quiet and peaceable Possession of the farm on which he now lives in said Putney and rendering all Judgments respecting the Possession of the same heretofore had and rendered by any Court of Law whatsoever null and void."<sup>32</sup>

1st. For reasons similar to the first second and fourth given in the preceding Resolution.

2d. Because the said Act is so worded as to reverse a Judgment rendered previous to the Existence of this State.

3d. Because by reversing the Judgments obtained against said Graham, the adverse party is precluded obtaining his Costs awarded by the Judgments.

4th. Because the said Act is so unguardedly worded as to suspend all Executions Processes and other Law Proceedings of what name or nature soever within the State and to declare that they be no further prosecuted.

5th. Because contrary to the Verdict of two Juries under Oath said Graham is declared the legal Possessor of the Land in dispute.

Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 17th. October 1785--**Council met.

After some time spent upon the Constitution adjourned until 9 o'clock tomorrow Morning.

**18th. October 1785 9 o'clock A.M.--**Council opened & after some further time taken up in examining the Constitution adjourned until 2 o'clock P.M.

**2 o'clock P.M. 18th. October--**Council met & after further Progress in examining the Constitution adjourned until 9 o'clock tomorrow Morning.

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<sup>32</sup>*State Papers* XIV, 28 (June 18, 1785).

**19th. October 1785--9 o'clock A.M.**--Council met. After further time spent in revising the Constitution Adjourned until 2 o'clock P.M.

**2 o'clock P.M. October 19th.** Council met. After further deliberation upon the Constitution adjourned tomorrow morning until 9 o'clock.

**9 o'clock A.M. 20th October**--Council opened.

Whereas there appears to this Council, for the preservation of the rights and happiness of the People, an absolute necessity of amending and explaining several Articles of the Constitution of this State, and of making some Additions thereto.

Therefore by virtue of the Power and Authority vested in this Council by the 44th Section of the frame of Government it is unanimously resolved that the first Constable of each Town in this State be and is hereby directed at least six and not more than twelve days previous to the second Tuesday of June next to warn a meeting of the Inhabitants of their respective Towns to be held at the usual Place of holding Freeman's Meetings within the same at two o'clock in the Afternoon of the said second Tuesday of June (by giving personal notice thereof, then and there) if they shall see proper, to elect one member of a Convention to be held for the purposes above mentioned, in the same manner as representatives in Assembly are legally to be chosen:--And that the said Constable, or in case of his Absence, the Town Clerk certify the due Election of the person chosen.

And that it be and is hereby recommended to the said members of Convention to convene on the last Thursday of said June at the Meeting house in Manchester to carry into execution the important purposes of their Appointment.

And in order to have the persons authorised to determine upon the Propriety of the several alterations proposed in the Constitution unbiased by Interest:

*Resolved* that in the opinion of this Council, the Governor, Lieutenant Governor, Treasurer of the State, Members of the Council of the State, Council of Censors, or General Assembly, Officers who hold their Commissions during good behaviour, and other Officers who may be interested by the Alterations proposed to be made in the Constitution ought not to be elected members of such Convention.<sup>33</sup>

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<sup>33</sup>The Council's opinion may not have been communicated to the towns with sufficient force, since the delegates included Asahel Smith of Benson (member of the General Assembly). John M. Comstock, Principal Civil Officers of Vermont, 1777-1918 (St. Albans: St. Albans Messenger Co., 1918), 279. This rule was not adopted in future Councils.

*Resolved* that the Treasurer be requested to furnish this board with an official Account of the several Taxes which have been from time to time assessed upon each town in this State with the arrearages of each Town the first day of January next And also the Amount of the two taxes of ten Shillings on the hundred Acres and the arrearages then due (if any) and that the Treasurer be desired to deliver the same to Mr. MOSELEY or Doct. MARVIN.

Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 20th. October** Council opened. After further Proceeding in revising the Constitution

*Resolved* that three hundred Copies of the Constitution as revised be printed and that Mr. CURTIS and Mr. JACOB be a Committee for distributing the same.

Adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 21st. October 1785**--Council opened.

Allowed the Debenture & gave an Order upon the Treasurer of the State for the Payment thereof.

*Resolved* that Mr. TOWNSEND be a Committee to make a draft of the Censures of the Council to be published for the perusal of the Freemen.

*Resolved* that Mr. CURTIS be requested to wait upon the Auditor of Accounts for a report in writing of the state of public accounts agreeable to a Resolution of this Council in June last.

Adjourned to meet at the Court house in Bennington on the first Thursday in February next.

### Third Session

Bennington the **1st. Thursday, being the 2d day, of February 1786.**

There met at the Courthouse in this Place Mr. PRESIDENT, Mr. CARPENTER, Mr. ROBINSON, Mr. HUNT and Mr. TOWNSEND but there not being a sufficient number to transact business--adjourned until tomorrow morning 9 o'clock to meet at the dwelling house of William Griswold in Bennington.

**9 o'clock A.M. 3d. February 1786**--The above named members met but for the reason above adjourned until 2 o'clock P.M.

**2 o'clock P.M. 3d. February**--The above named Members met & also Mr. WALBRIDGE; but for the same reason still continuing adjourned until tomorrow morning 9 o'clock.

**9 o'clock A.M. 4th February 1786**--The above named members

convened & adjourned until 9 o'clock Monday morning.

**6th. February 1786 -- 9 o'clock A.M.**--The members above named convened & adjourned until 2 o'clock P.M.

**2 o'clock P.M.** The members above named convened & adjourned 'til 9 o'clock tomorrow morning.

**7th. February 1786--9 o'clock A.M.**--The members above named convened & adjourned until 2 o'clock P.M.

**2 o'clock P.M.** The members above named convened & adjourned until 9 o'clock tomorrow morning.

**8th February 1786--9 o'clock A.M.**--The members above named convened & adjourned until 2 o'clock P.M.

**2 o'clock P.M.** The members above named convened & adjourned until 9 o'clock tomorrow morning.

**9th. February 1786--9 o'clock A.M.**--The members above named convened & also Mr. MARVIN.

*Resolved* that Mr. MARVIN and Mr. ROBINSON be a Committee to examine the Journals of the Council and General Assembly at their last Session and that they report such parts as appear to them to be unconstitutional or dubious.

Mr. TOWNSEND reported a draft of Censures to be passed upon the unconstitutional Proceedings of the legislative and executive branches of Government which was read.

Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 9th. February.** Council opened.

LEWIS BEEBE Esq. having taken the Oath as one of this Council took his seat.

*Resolved* that Mr. ROBINSON be requested to call upon Doct. Roswell Hopkins one of the Auditors for a full state of all the public accounts of this State. Adjourned until tomorrow morning 9 o'clock.

**10th. February 1786--9 o'clock A.M.**--Council opened--After making some Progress in examining the Draft of Censures--Adjourned until 2 o'clock P.M.

**2 o'clock P.M. 10th. February** Council opened. After making further progress in examining the draft of Censures--adjourned 'till tomorrow morning 9 o'clock.

**11th. February 1786--9 o'clock A.M.**--Council met. After making

further progress in examining the draft of Censures--Adjourned 'till Monday morning 9 o'clock.

**13th. February 1786--9 o'clock A.M.--**Council opened.

*Resolved* that a State of the Arrearages of Taxes on the first day of January last be published in both the News Papers printed in this State for the Information of the Freeman.

After making further Progress in examining the draft of Censures adjourned 'till 2 o'clock P.M.

**2 o'clock P.M.--13th. February** Council met. After making further Progress in examining the draft of Censures adjourned 'till tomorrow morning 9 o'clock.

**14th. February 1786--9 o'clock A.M.--**Council opened--After completing the Examination of the draft of Censures--Adjourned 'till 2 o'clock P.M.

**2 o'clock P.M. 14th February** Council met.

*Resolved* that one thousand Copies of the Draft of the Censures of this Council upon the Proceedings of the legislative and executive Branches of Government (signed by the PRESIDENT) be printed for the Perusal and consideration of the People; and that they be distributed by Mr. ROBINSON, Mr. JACOB & Mr. CURTIS according to the Grand List: reserving a suitable number for unincorporated inhabited Towns.

Passed the Debenture--

Then adjourned without Day.

A true Journal--Attest

MICAH TOWNSEND. Secry.

## Resolutions of the Council

### *In Council of Censors, October 5, 1785*

I. *Resolved*, that it be, and is hereby recommended to the Honorable the Legislature, in their next session, to repeal an act passed in February, 1779, entitled, "An act to prevent riots, disorders, and contempt of authority within this State, and for punishing the same," on account of the uncommon severity of the punishments to be inflicted for breaches of said act, and their disproportion to the offences; it being unjust and impolitic, in the opinion of the Council, as well as contrary to the humanity manifested in the Constitution, to inflict punishments which render a person and his connexions, infamous, and preclude all reformation for crimes which are not infamous in their nature; and because it puts a person who simply, and often inadvertently, commits a trespass, in so desperate a situation as, in its consequences, may be prejudicial to the peace of society.

II. *Resolved*, that it be, and hereby is, recommended to the Honorable the Legislature, to alter so much of the last clause of an act passed in February, 1779, entitled, "An act to encourage the destroying of wolves and panthers," as directs corporeal punishment for taking a wolf out of a trap; because punishments too severe in their nature, for the crimes, have a direct tendency to prevent the execution of the laws enforcing them; and if inflicted, to lessen the beneficial operation of the same punishments in cases where severity is expedient.

### *In Council of Censors, Oct. 6, 1785.*

III. *Resolved*, that it be recommended to the Honorable the Legislature, to alter the punishment to be inflicted by the first and sixth clauses of an act passed in February, 1779, entitled, "An act against counterfeiting bills of public credit, coins or currencies, and emitting and passing bills or notes on private credit, and preventing injustice in passing counterfeit bills;" this Council conceiving the punishment for the crime in the first clause to be too severe for the offence, (although heinous in its nature) as it excludes all idea of reformation, for the first transgression; and that the same punishments are beyond all proportion to the actions mentioned in the first paragraph of the sixth clause of said act, which are no otherwise offences, than because they are prohibited by law.

IV. *Resolved*, that it be recommended to the Honorable the Legislature, to alter the proviso annexed to the third clause of an act passed in February, 1779, entitled, "An act for authenticating deeds and conveyances;" because the said proviso is contrary to the intent of the XXXIst section of the frame of government, where there is no town clerk in the town, admits of so many different offices for recording deeds, as renders it difficult and expensive for the

purchasor to inform himself of the safety of his title.<sup>34</sup>

V. *Resolved*, that it be, and is hereby, recommended to the Honorable the Legislature, in their next session, to repeal the last paragraph of an act passed in February, 1779, entitled, "An act to prevent unseasonable night walking, and for the punishing of disorders committed in the night season;" because, as this Council conceives, the same is contrary to the 10th article in the Bill of Rights, which declares the right of an accused person to be confronted with witnesses, to be tried by an impartial jury of the country, and that he cannot be compelled to give evidence against himself.<sup>35</sup>

VI. *Resolved*, that it be recommended to the Honorable the Legislature, to repeal an act passed in February, 1779, entitled, "An act to prevent the selling or transporting raw or untanned hides or skins, out of this State;" the same being considered by this Council as being too great a controul over the right each individual has of disposing of his property, to be exercised by a permanent law, and as being contrary to the principles of the constitution.

VII. This Council conceiving it exceedingly inconvenient, and against the interest of the community, that so numerous a body as the Governor, Council, and General Assembly of the State, should be employed in determining causes between party and party, and their attention thereby diverted from their more important business of legislation; do hereby recommend to the Honorable the Legislature, during their next session, to repeal such parts of an act passed October 22, 1779, entitled, "An act constituting the superior court a court of equity, and declaring their power," as invest the Governor, Council, and House of Representatives, with authority to hear and determine cases in equity; with a proviso, that the repealing act shall not affect any cause commenced and depending before the said court of equity.

VIII. *Resolved*, that it be, and hereby is, recommended to the Honorable the Legislature, to repeal an act passed 3d November, 1780, entitled, "An act against inimical conduct;" and also an act passed 6th November, 1780, entitled, "An act in addition to and explanation of the last paragraph of an act, entitled, 'An act against high treason;'" on account of the large powers therein given, in the one to a single, and in the other to two ministers of justice--the vague definition of the offences--and the inexpediency of having acts in force after the reason for their existence has ceased.

IX. *Resolved*, that it be, and hereby is, recommended to the Honorable the Legislature, in their next session, to repeal an act

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<sup>34</sup>See page 15.

<sup>35</sup>See page 7.

passed on the 22d February, 1781, entitled, "An act for quieting disputes concerning landed property;" because this Council conceive it to be an encroachment made by the Legislature upon the power assigned by the constitution to the judicial department, and that it invests them with the authority of determining upon the validity of their own grants.

*In Council of Censors, October 7, 1785.*

X. *Resolved*, that it be, and is hereby, recommended to the Honorable the Legislature, in their next session, to repeal an act, entitled, "An act for the punishment of conspiracies against the peace, liberty, and independence of this State," passed 21st June, 1782; on account of the inexpediency of continuing in force a law of so great severity, after the necessity which occasioned passing it has ceased.

XI. *Resolved*, that it be, and hereby is, recommended to the Honorable the Legislature, in their next session, to alter the first clause of an act passed 22d October, 1782, entitled, "An act in addition to an act regulating goals and goalers;" on account of its not sufficiently guarding the property of the subject:

*Firstly*, in not more explicitly defining the time of notice to be given to the creditor, or his attorney.

*Secondly*, for that the said clause is so expressed, that it may be (and by some is) construed, that any justice of the peace of the county is obliged to administer the oath therein mentioned to the debtor, upon his application, although such justice should be convinced of the falsity of it.

*Thirdly*, because no penalty is prescribed in case of the debtor's false swearing.

*Fourthly*, because it leaves it in the power of the debtor to choose any justice in the county to determine upon his application, and authorises one justice to liberate a debtor from imprisonment, let the amount of his debts be what they may.

XII. *Resolved*, that it be, and hereby is earnestly recommended to the Honorable the Legislature, in their next session, to repeal an act passed 22d October, 1782, entitled, "An act for the regulation and establishment of town lines," and the several additions thereto; and also an act passed February 26th, 1782, entitled, "An act to ascertain the boundaries of the towns therein mentioned;" and also an act passed 23d October, 1783, entitled, "An act for the purpose of enabling the Surveyor-General to complete the survey of the town lines in this State;" and an act passed 8th March, 1784, entitled, "An act for the purpose of cutting roads in the northern parts of this State;" for the following reasons, viz.:

*First*, because the said several acts appear to this Council calculated for the emolument of individuals, by arbitrarily taking and disposing of the property of others, rather than for the true interest of the community at large.



*Secondly*, because, however injurious the operation of the said several acts may be to the property of individual towns or persons, they are obliged to defray the expense, and that upon much shorter notice, and less equitable principles, than the laws point out in common demands between party and party, as their lands are thereby subjected to sale at public vendue, for the satisfaction of debts, merely of a private nature, and differing from private contracts in no respect, only, that the persons on whom the demand is made, are not allowed a voice in the contract, and the satisfaction is made in a mode that precludes them the privilege of contesting the demand.

*Thirdly*, because they appear to authorise the Legislature to determine the right of property, held under different titles, and thereby preclude the aggrieved proprietors their remedy at law, contrary to the true intent and meaning of the 13th article in the Bill of Rights.

XIII. *Resolved*, that it be, and hereby is recommended to the Honorable the Legislature, to alter the penalty contained in the fourth clause of an act passed 2d March, 1784, entitled, "An act to prevent the spreading of the small-pox;" because the unusual severity of the said clause, is contrary to the humane spirit manifested in the XXVIth section of the Frame of Government, and may probably defeat its operation.<sup>36</sup>

XIV. *Resolved*, that it be, and hereby is recommended to the Honorable the Legislature, to repeal an act passed 9th March, 1784, entitled, "An act to reverse the several judgments therein mentioned;" this Council conceiving the said act to be an encroachment upon the authority assigned by the constitution to the judicial department; the supreme court being, in the opinion of this Council, competent to remedy the grievances complained of.

XV. *Resolved*, that it be, and hereby is recommended to the Honorable the Legislature, to alter an act passed 29th October, 1784, entitled, "An act for the purpose of opening a free trade to and through the Province of Quebec,"<sup>37</sup> so far as to provide that no further expense shall accrue to the State by any proceedings thereon; this Council conceiving it unreasonable to tax the inhabitants of the State at large to defray the expense of a treaty, the benefits of which will be partial and confined to a few individuals.

*In Council of Censors, October 17, 1785.*

*Resolved*, that it be, and hereby is recommended to the

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<sup>36</sup>The XXVIth Section of the 1777 Constitution provided that, "Excessive bail shall not be exacted for bailable offences; and all fines shall be moderate." See page 14.

<sup>37</sup>*State Papers* XIII, 290 (October 29, 1784).

Honorable the Legislature, in their present session, to repeal an act passed 18th June, 1785, entitled, "An act to secure Daniel Marsh in the possession of a certain farm until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him."

1. Because said act, in effect, destroys the power assigned by the constitution to the judicial department.

2. Because it divests one subject of his possession to land, already determined to be his right, by a court and jury, and arbitrarily vests it in another, without the intervention of a jury, contrary to the 13th article in the Bill of Rights, and the XXIIId section of the Frame of Government.<sup>38</sup>

3. Because it gives Mr. Marsh a greater privilege than was thought proper by the Legislature to be given to other subjects, by the 7th clause of an act passed by them the preceding day, entitled, "An act for settling disputes respecting landed property;" as it enables him to enter his action for the betterments of the land, without first paying the costs of the judgments recovered against him; and, by annulling those judgments, destroys Mr. Whitney's remedy for his costs of suit.

4. Because said act appears to render void certain judgments in forcible entry and detainer, and, of consequence, remits fines; which is a branch of power assigned by the constitution to the Governor and Council.

5. That said act not only takes the possession of the land in dispute from Whitney and gives it to Marsh, but hinders Whitney from commencing a suit for recovering his possession, until a final judgment shall be rendered in the suit for betterments; and Whitney is then left to a course of litigation to recover the possession which is thus extraordinarily wrested from him.

*Resolved*, that it be, and hereby is recommended to the Honorable the Legislature, in their present session, to repeal an act passed 18th June, 1785, entitled, "An act confirming Andrew Graham, of Putney, in the county of Windham, in the quiet and peaceable possession of the farm on which he now lives in said Putney, and rendering all judgments respecting the possession of the same, heretofore had and rendered by any court of law whatsoever, null and void."<sup>39</sup>

1. For reasons similar to the first, second, and fourth, given in the preceding resolution.

2. Because the said act is so worded as to reverse a judgment rendered previous to the existence of this State.

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<sup>38</sup>See page 7, 13.

<sup>39</sup>*State Papers* XIII, 28 (June 18, 1785).

3. Because, by reversing the judgments obtained against said Graham, the adverse party is precluded obtaining his costs awarded by the judgments.

4. Because the said act is so unguardedly worded, as to suspend all executions, processes, and other law proceedings of what name or nature soever, within the State; and to declare that they be no further prosecuted.

5. Because, contrary to the verdict of two juries under oath, said Graham is declared the legal possessor of the land in dispute.

The Constitution  
As Revised by the First Council of Censors  
And Recommended for the Consideration  
Of the People  
October, 1785.

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CHAPTER I  
A DECLARATION OF THE POLITICAL RIGHTS  
AND PRIVILEGES  
OF THE INHABITANTS OF THE  
STATE OF VERMONT.

I. That all men are born equally free and independent, and have certain natural and inherent 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, in this commonwealth, 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 public or private demands.

II. That private property ought to be subservient to public uses, when necessity so requires; nevertheless, whenever the property of any particular person is taken for the use of the public, the owner ought to receive an equivalent therefor.

III. That all men have a natural and unalienable 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 public 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 as civil government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community, and not for the emolument of any individuals, who are a part only of that community, the people, collectively considered, have a right to alter and reform their government, in such manner as shall, by them, be judged 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 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 are 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 favor, 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 he be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers.

XII. Laws made to punish 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.

XIII. Warrants, without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be authorised or required to search suspected places, or to seize any person or persons, his, her, or their property, not therein particularly described, ought not to be granted in any criminal matter or complaint.

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 to 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 cannot 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 the community. And as standing armies, in the time of peace, are dangerous to liberty, they ought not to be supported, unless there shall be imminent danger of an invasion, insurrection or rebellion, and then, only during the existence of those causes: 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 subjected 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, in a legal way, to assemble together in their respective towns 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.

## CHAPTER II PLAN OR FRAME OF GOVERNMENT

### SECTION 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.

### SECTION II.

The supreme legislative power shall be vested in such Assembly.

### SECTION III.

The supreme executive power shall be vested in a Governor (or, in his absence, a Lieutenant-Governor) and Council.

### SECTION 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 causes as may be appealed to the county court.)

### SECTION 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; and also a court to correct the errors of the supreme court of judicature: provided they do not constitute themselves the judges of either of said courts.

### SECTION VI.

The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly

belonging to the other.

#### SECTION VII.

To prevent unnecessary expense in legislation, for the more deliberate and expeditious proceeding in that important business, and that the freemen may be better and more equally represented, the whole number of Representatives in Assembly shall not exceed fifty; to be elected in manner following:<sup>40</sup>--each organized town in this State, on the first Tuesday in September annually, shall have liberty to choose one able, discreet freeholder, to represent them in a county convention, to be held at such time and place as the Legislature shall by law, appoint; the members of which convention, when met, shall, by ballot, elect from their own body so many of said representatives (to consist of persons most noted for wisdom and virtue) as the Legislature shall, in future, limit, having respect to the grand list of each county, in apportioning the number.

#### SECTION VIII.

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 the first session after their election, and at other times, when vacancies happen, choose delegates to Congress (subsequent to the admission of this State into confederation with the United States;)

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<sup>40</sup>The Council of Censors also propose, instead of the remainder of section VII, the following clause, to be at the election of the convention, viz: --The Legislature shall, in their first session after the approbation of this section of the Constitution, (having regard to the grand list, the local situation of, and the probability of a disproportionate increase of population in, the different districts) divide the whole State into fifty districts, to continue for three years next after the division; and provide for the due and orderly election of one representative in Assembly from each district, in such manner that the votes shall be received in the respective towns. That the Legislature shall have power, (if a different increase of population in the respective districts shall render it necessary) twice in each septenary, forever hereafter and no oftener, to divide the said districts in a more equal manner." This footnote appears in the text of the proposed Constitution.



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 there shall be occasion, to hold their offices during the pleasure of the Legislature: 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.

#### SECTION IX.

The Council of this State shall consist of one able, discreet freeholder, to be chosen from each county in the State, by freemen residing in the same county, in manner following:--The freemen of each town shall, annually, on the first Tuesday in September, bring in their votes for one Councillor, residing in the county in which such town lies, with his name fairly written, to the presiding officer of the meeting, who shall seal them up in the presence of the freemen, and write on the paper containing the same,--Votes for a Councillor,-- and the name of the town where taken,<sup>41</sup> and deliver them to the person chosen to attend the county convention for the purpose of electing representatives in Assembly:--which convention, when met, (after choosing a chairman and clerk of the same) before their proceeding to the choice of representatives, shall sort and count the votes for a Councillor, and shall declare the person who has the greatest number of votes, duly elected for the year ensuing: and if there shall be a tie, the convention shall choose one of those who have the greatest number of votes, to be Councillor for the year ensuing;

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<sup>41</sup>"If the Convention prefer the mode of dividing the State into districts for the choice of representatives, to that of choosing them in county convention;--the Council of Censors propose the following instead of the remainder of section IX, viz:--Which votes (at a certain time and place, to be appointed by the Legislature, in their first session after the approbation of this article) shall, by the several presiding officers of the freemen's meeting, or (in case of either of their necessary absence) by one of the selectmen of the same town, be delivered, sealed, to the high sheriff of the same county, or, in case of his necessary absence, to one of his deputies by the high sheriff appointed for the purpose, who shall be moderator of the same meeting; and after a choice made of a clerk of the meeting by the persons convened, they shall sort and count the votes for a Councillor, and shall declare the person who has the greatest number of votes, duly elected for the year ensuing;--and if there shall be a tie, the persons convened shall choose one of those who have the greatest number of votes to be Councillor for the year then coming;--which moderator shall give official notice of such choice to the person elected, and the said notice shall be a sufficient credential of such election." This footnote was also in the text of the proposed Constitution.

which chairman shall give official notice of such choice to the person elected; and the said notice shall be a sufficient credential of such election.

#### SECTION X.

The freemen of each town shall, on the first Tuesday of September, in every year, bring in to the constable, their votes for some able, discreet freeholder, residing in this State, to be Governor, with his name fairly written; who shall seal them up in the presence of the freemen, and write on the paper inclosing them,--Votes for Governor,--and the name of the town where taken, and deliver them to some representative chosen to attend the General Assembly: and at the opening of the said 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 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 also be chosen in the manner above directed.

#### SECTION 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 every 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 clerk, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

#### SECTION 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 theretofore 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 or 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.

#### SECTION 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.

#### SECTION 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.

#### SECTION XV.

The stile of the laws of this State, in future to be passed, shall be,--*It is hereby enacted by the General Assembly of the State of Vermont.*

#### SECTION 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.

#### SECTION XVII.

No person ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.

#### SECTION XVIII.

Every male freeholder, in the right of himself or his wife, of the age of twenty-one years and upwards, having resided in this State for the space of one whole year next preceding any election of representatives, or who has rented a tenement therein for the said time, of the yearly value of four pounds, and been rated, and actually paid taxes to this State for the same, who is of a quiet and peaceable behavior, shall be entitled to vote in the election of such officers as are to be chosen by the freemen.

#### SECTION 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 law, 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.

## SECTION 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, or in his absence, the Lieutenant-Governor, and attested by the Secretary of the State; which seal shall be kept by the said Secretary.

## SECTION 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.

## SECTION XXII.

All officers shall be paid an adequate, but moderate, compensation for their services; and if any officer shall wittingly, and knowingly, take greater fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State: 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 no person shall be capable of holding any civil office in this State, except he has acquired and maintains a good moral character.

## SECTION 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, Delegate, Agent or Commissioner to Congress or any other State or Power, Chancellor, Judge of the Supreme Court, Treasurer of the State, member of the Council, member of the General Assembly, Surveyor-General, or Sheriff. Nor shall any person be capable of serving in the office of Governor, more than four years successively; nor of re-election to the same office within four years from the expiration of the time for which he was last elected. Nor shall any person be capable of serving as Treasurer of the State more than three years successively; nor capable of re-election to the same office after the said term, until his accounts as Treasurer are completely settled. And no person shall be capable of serving as High Sheriff for any county, more than three years successively; nor of re-appointment to the said office, within three years from the expiration of the said term.

## SECTION 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.

## SECTION XXV.

The Treasurer's accounts shall be annually audited, and a fair state thereof laid before the General Assembly, at their session in October.

## SECTION 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 or 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 or 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 or 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 an oath) So help you God. (If an affirmation) under the pains and penalties of perjury.*

## SECTION XXVII.

Any delegate to Congress may be superceded 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.

## SECTION 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.

## SECTION 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.

## SECTION 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.

#### SECTION 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 so much further punishment as a future Legislature shall direct.

#### SECTION 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 of the same county.

#### SECTION XXXIII.

The Legislature shall regulate entails in such manner as to prevent perpetuities.

#### SECTION 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 labor, 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 labor.

#### SECTION 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 any wise forfeited, on account of such misfortune.

#### SECTION 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 of a natural born subject of this State; except that he shall not be

capable of being elected Governor, Lieutenant-Governor, Treasurer, Councillor, or Representative in Assembly, until after two years residence.

#### SECTION 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 boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the General Assembly.

#### SECTION 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.

#### SECTION XXXIX.

All private property, within this State, shall be rated according to the true value thereof, in all taxes to be hereafter levied; except such personal property as may, from time to time, be exempted by the Legislature, for the encouragement of agriculture, arts, sciences and manufactures, or for relieving the poor and necessitous.

#### SECTION XL.

To prevent this commonwealth being perpetually drained of circulating specie, by uses not beneficial to the same, the Legislature ought to prevent corporations and societies in remote places, (or any other person or persons in trust for them, or for their use) taking or holding any lands lying within this State, and to appropriate grants which have heretofore been made to such societies or corporations, to the use of literature within this community. Provided, on account of the contiguity and usefulness of the corporation of Dartmouth College to this State, this section shall not be understood to affect the said corporation, while the College is maintained in the town where it now stands.

#### SECTION XLI.

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.

#### SECTION XLII.

That the freemen of this commonwealth may be preserved inviolate for ever, 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 ninety-two, and in every seven years thereafter, in such modes as the Legislature shall by a future act particularly direct, thirteen persons, to be called the Council of Censors; who shall be elected from the number of those freemen



who are not then members of either the Council or General Assembly, and meet together on the first Wednesday of June next ensuing their election; (a 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)--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; (and if any person shall neglect or refuse to attend them, and give any information required by the said Council (if able,) or to deliver to them any papers or records in his or her custody, which shall be wanted by them in the course of their inquiry; upon the complaint of said Council to any justice of the peace, he or she shall (unless sufficient cause be shown to the contrary) be committed, by such justice, to the common goal, there to remain until he or she shall deliver up such papers or records, or (if able) give such information as is required, and pay costs of prosecution.)--They also 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 three 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.

#### SECTION XLIII.

The next election of Councillors and Representatives shall be in those of the modes mentioned in the preceding Frame of Government, which shall be thought most eligible by the convention, appointed to determine upon the alterations recommended by this Council of Censors, to be made in this constitution: and the persons

chosen shall convene, on the second Thursday in October next, at such place as the present Assembly shall appoint. And the said convention is invested with power (for the next election only) to divide the State into districts, or apportion the number of Representatives to the several counties, as the said convention shall think just. And it is hereby recommended to the said convention to ascertain a mode of election, and publish it for the information of the freemen, as seasonably as may be.

## Address of the Council of Censors

*To the Freemen of the State of Vermont:*

YOUR Council of Censors, elected agreeably to the XLIVth section of the Constitution, after having maturely considered the Frame of Government which has been the rule of political conduct for the inhabitants of this State, the last septenary; highly approving the principal part of it; with the greatest diffidence of their own judgment, and respect for the patriotism and abilities possessed by the formers of the present Constitution, have proposed certain alterations, heretofore offered to your consideration. In so doing, we principally had in view rendering government less expensive, and more wise and energetic; objects, in the opinion of this Council, more especially during the infancy of a commonwealth, worthy the attention of its freemen. The taxes which have been collected some years past for the support of government, demonstrate the expediency of the former; and every man's observation will suggest to him the necessity, for our political happiness and credit, of having government properly maintained, and the judicial and executive offices therein, filled by persons of the greatest wisdom and virtue.

In the proposed alterations, we endeavored to guard, in future, against what is esteemed by this Council (our circumstances considered) to have been an error in the Constitution--electing persons to judicial and executive trusts, during good behavior: as it invested them with estates in their offices, which, without an alteration of the Frame of Government, cannot be legally taken from them, but by proving, in a judicial course of proceeding, instances of mal-administration. We therefore left it in the power of the Governor, Council, and Assembly, (whom we view in the present condition of the State, to be most competent to the election of judicial, and the several executive officers, which, in the proposed alterations, they are authorised to choose) annually to leave out any one who shall be found unequal to, or otherwise improper for, his trust, and appoint a more suitable person in his place.<sup>42</sup> But this Council is not without hope that the ensuing septenary will furnish men so adequate to those offices, that the tenure of them may, consistent with the public interest, be put upon a more stable footing.

We also endeavored, after the example of some other States, to guard against the future introduction of an aristocratic power, destructive of the common weal, by providing that the same person should not, at one time, be invested with too many important offices, especially where one would be a hindrance to his properly

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<sup>42</sup>Proposed *Constitution of 1785*, Chapter II, Section VIII, 47. Became Chapter II, Section IX of the *Constitution of 1786*. See page 90.

discharging the duties of the other. And likewise to prevent any family, or party, in future, having it in their power to establish a set of connexions, prejudicial to the community, by providing that certain officers, of the greatest influence and importance, should, at stated periods, be reduced to the common level; and by being thus constantly reminded of their political mortality, be induced to act well their parts while on the stage.<sup>43</sup>

This Council proposed for your option two plans for electing Councillors and Representatives in Assembly, each differing from the mode now in use, but one of them necessarily consequent to the design of reducing the number:<sup>44</sup> if either meets with your approbation, we shall be happy; yet cannot but wish the choice of Representatives in a county convention may have a trial for one septenary.

In reviewing the proceedings of the legislative and executive branches of government, and examining whether they have performed their duty, "as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they were entitled to by the Constitution," it affords us great pleasure to find matters of commendation, yet accompanied with the mortification of having some to censure. But as the Constitution has allotted us solely, the last, and more unpleasing task, we can only in general observe, that, under God, this commonwealth is much indebted, even for its present existence as a separate community, to that undaunted firmness, and prudent vigilance for the public safety, which has been usually maintained in the legislative and executive departments, since the era of our independence. At open war with the most potent nation in Europe;--frequently threatened with invasions from a sister State, and, by her insidious arts, a powerful disaffection, fomented within the bowels of this commonwealth--denied relief from the authority who alone, under Heaven, could give it;--we have reason to look up, with gratitude, to that Being who is wisdom, and by whom a few husbandmen, unexperienced in the art of governing, have been enabled to pilot the ship through storms and quicksands, into the haven of independence and safety; and to admire when we consider how much was to be done, and by whom, that it has been so well done.

But we are obliged to check such agreeable thoughts, and however irksome to our feelings, turn our attention to the province allotted us; censuring such unconstitutional proceedings as may be drawn into precedent, if left unnoticed.

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<sup>43</sup>Proposed *Constitution of 1785*, Chapter II, Section XXIII, 52. Not adopted by the Constitutional Convention of 1786.

<sup>44</sup>Proposed *Constitution of 1785*, Chapter II, Section IX, 47. Not adopted by the Constitutional Convention of 1786.

We would premise in the words of Judge Blackstone, that, "in all tyrannical governments, the right both of making and enforcing the laws, is vested in one and the same man, or one and the same body of men, and wherever these two powers are united together, there can be no public liberty."<sup>45</sup> The convention who framed the Constitution of this State, aware of this, by a decided distribution of power, assigned the legislative authority to the Representatives of the people in General Assembly, and the supreme executive, to the Governor and Council; and from the last, again severed the judicial, and rendered it independent of both. And to preserve this balance of power, thus carefully made, and guard against any encroachment of one on the proper authority of either or the other, the convention made it the duty of the Council of Censors to inquire, "whether the legislative and executive branches of government have assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution."

In how many soever instances, therefore, the legislative and executive authorities have transgressed the limits marked out to them by the Constitution, and intruded upon the province allotted to the other, (whatever temporary reasons they might have for so doing) they are certainly, in those particulars, deserving of severe censure, as such conduct, from persons entrusted with the important charge of making and executing laws, (by trampling upon the fundamentals of government, which ought to be held sacred) naturally tends to introduce tyranny on the one hand, or anarchy on the other.

In some instances, however, it is probable that the Constitution has been invaded through necessity, in times of extreme danger, when good men were induced to hazard all consequences for the sake of preserving our existence as a people; yet in a review of these proceedings, we have thought proper to advert even to such breaches of the Constitution, lest they should be made use of as precedents when no such necessity shall exist.<sup>46</sup>

Some instances of the Council's assuming power not delegated to them, we now proceed to select from their journal.

On the 17th June, and 20th October, 1778, they take the extraordinary step of divorcing Laurania M'Clane, and Ruth Chamberlain, from their respective husbands, and declaring their right of marrying again.<sup>47</sup>

On the 14th November, 1781, they resolve, that Doctor John

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<sup>45</sup>Blackstone, Book I, Chapter II, 144. Blackstone's *Commentaries* were first published in 1765, and well known in America soon after that date.

<sup>46</sup>Proposed *Constitution of 1785*, Chapter II, Section VI, 46. Adopted as Chapter II, Section VI of the *Constitution of 1786*. See page 89.

<sup>47</sup>*Governor and Council* I, 269, 280.

Page, be remitted one fourth part of the debt due from him to Colonel William Marsh, on account of his debts being contracted in Continental money.<sup>48</sup> It is to be observed that the debts of Colonel Marsh, by the confiscation of his estate, had, before that time, become the property of this commonwealth; and that in April, 1781, the law fixing a general scale of depreciation for all debts contracted in continental money, had passed.<sup>49</sup> Why then, Doctor Page should be made an exception to the general rule, or from whence the authority was derived, that, in this instance, altered or dispensed with the operation of the law, we are left in the dark.

In the several acts of the Legislature respecting the survey of town lines,<sup>50</sup> the Governor and Council are, in the opinion of this Board, invested with the sole power and trust of adjusting the accounts of the several persons employed in running those lines: yet we find that in March, 1784, the Council resolve, "That the Surveyor-General settle the accounts of the several Surveyors under his direction, for their services in running town lines, and draw orders therefor, or for the payment thereof, on the hard money tax."<sup>51</sup>

This (however respectable the character of the Surveyor-General may be) appears to this Council to have been delegating a trust, committed to them solely to execute, and into very unsuitable hands, as it effectually destroyed the check intended by the Legislature upon the Surveyor's department. And in the view of this Council, it was a disposition of the public money not intended or authorised by the Legislature, as ample provision appears to have been made by law for compelling the proprietors and inhabitants of the several towns to defray the expense of those surveys.

On the 15th February, 1782, the Legislature enacted, "that all public acts, papers and records, that belong to the State, (excepting the particular records and papers of the Council) be deposited and remain in the hands of the Secretary of State." "That he attest and register charters of incorporation, grant copies of all records," &c.<sup>52</sup> On the 10th March, 1784, the Council resolve, "that the Secretary of Council keep in his office, all the records, and copies of charters of lands granted previous to October, 1781;" and that, "on account of the disputes respecting bounds of townships, which may occasion the alteration of some charters already given, he be directed not to

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<sup>48</sup>*Governor and Council* II, 131.

<sup>49</sup>*State Papers* XIII, 30 (April 16, 1781).

<sup>50</sup>*State Papers* XIII, 179 (February 24, 1783).

<sup>51</sup>*Governor and Council* III, 46 (March 6, 1784).

<sup>52</sup>*State Papers* XIII, 76 (February 15, 1782).

record any more charters, till the further order of Council."<sup>53</sup>

How the Secretary of State, and Secretary of the Council, can both, at the same time, possess the records of charters granted previous to October, 1781; or from whence the Council derive their power to alter or contravene acts of the Legislature, when it is by the Constitution made a principal part of their duty to see them faithfully executed, is beyond our comprehension: nor do we readily conceive to what manner charters already completed, can, with propriety, suffer an alteration.

On the 9th March, 1784, the General Assembly, in order to facilitate what had been so long and ardently wished for by them, and every good subject of this State, a final settlement of the public accounts, to enable the auditors to detect embezzlements, (if any) and the Legislature to provide for the payment of debts due from confiscated estates; made it the duty of the auditors to call on all persons who had acted in the capacity of commissioners of sequestration, &c. for such books, bonds, deeds, notes and papers, as had come to their possession by virtue of their appointment; and the said books and papers to inspect, examine, and liquidate; and to record in proper books, the estates, real and personal, which had been confiscated; specifying which had been sold, by whom, and whose order, and the several amounts in real value. And if any person possessed of any such public papers, should neglect to deliver them to the auditors, after demand made by them in writing for that purpose, he was, by said act, to forfeit a sum, not exceeding twenty-five thousand pounds.<sup>54</sup>

The auditors having (as this Council is informed) made such demand in writing, of the Honorable John Fasset, Esq., for the papers in his custody as commissioner of sequestration and sales, and he having refused delivering them agreeable to the demand, the auditors directed a suit to be commenced against him for the penalty contained in the act. Subsequent to which, (we do not assert it was done with the view of embarrassing the auditors in the performance of their duty, or of screening one of their members, but it had this effect) on the 16th of October, 1784, the Council received the papers of this kind from Mr. Fasset, (by him declared on oath to be the whole, to the best of his knowledge and remembrance) which had come to his hands as commissioner of sequestration, and discharged him therefrom accordingly. Of this transaction, (although a quorum of the auditors were then, and for thirteen days after, at the place where the Council sat) the auditors were kept in profound ignorance; and if the uncommon severity of the season had not prevented, the

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<sup>53</sup>*Governor and Council* III, 48.

<sup>54</sup>*State Papers* XIII, 261.

sheriff would have served their writ upon Judge Fasset some time after he was discharged from the papers by the Council.<sup>55</sup> How the auditors are now to come to those papers, time must discover.

It appears from the journal of Assembly, that in February session, 1782, a grant was made to John Wheeler and his associates, of a gore of land adjoining Lunenburg;<sup>56</sup> but difficulties having occurred in ascertaining the precise local situation of Lunenburg, it appears from the journal of Council, that a charter was directed to be made out on the 28th of October last, of another gore, in lieu of the former, but without a previous grant being made by the Assembly.<sup>57</sup> This proceeding being so evident an infringement upon the power vested in the Assembly, and at so late a period, calls for the severest censure of the freemen, and of this Council.

We now beg your attention in a retrospective view of such acts of the Legislature as we have selected for that purpose, some of which are of general concern, and very important in their consequences, while the operation of others is confined within narrow limits, and scarcely worthy of public notice for any other reason than lest they be drawn into precedent.

We would previously observe, in the words of the great Mr. Locke, who, speaking of legislative power, lays it down as the fundamental law of all commonwealths, "that the legislative cannot assume to itself a power to rule by extemporary and arbitrary decrees, but is bound to dispense law and justice, and to decide the rights of the subject by promulgated, standing laws, and known authorised judges. And that men give up their natural independence to society, with this trust, that they shall be governed by known laws; otherwise their peace, quiet, and propriety, will be in the same uncertainty as in a state of nature."<sup>58</sup>

The first act of legislation we shall notice, is the last clause of a statute passed 23d February, 1779, entitled, "An act making the laws of this State temporary;" by which it is enacted, "That no court or justice, shall take cognizance of any matter or thing, in which the title of land is concerned, or in any action of contract, where the parties appear to have made a bargain or contract, by note, bond, debts, or agreement in writing, or otherwise; any act or law to the contrary

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<sup>55</sup>*Governor and Council* III, 55.

<sup>56</sup>*State Papers* III, Part II, 73 (February 25, 1782); see also 109.

<sup>57</sup>*Governor and Council*, III, 96.

<sup>58</sup>John Locke, "An Essay Concerning the True Original, Extent and End of Civil Government," (*The Second Treatise of Government*), Chapter XI, § 136. in *Social Contract: Essays by Locke, Hume and Rousseau* (New York: Oxford University Press, 1968), 79-80.



notwithstanding."<sup>59</sup> This statute, together with those others passed from time to time, prohibiting the trial of the titles to land, appears to this Council to militate against the ninth article in the Bill of Rights, which is expressive of the design of forming social compacts, viz:

"That every member of society hath a right to be protected in the enjoyment of life, liberty, and property,"--against the thirteenth article in the Bill of Rights, "That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred:" and also against these words of the XXIII<sup>d</sup> section in the Frame of Government,--"All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay."

We would ask how property is to be legally protected, if not by the several courts administering justice, according to the known laws of the land? How parties can be said to enjoy their right of trial by jury, when the Legislature prohibit a trial of any kind? And how courts can with propriety be called open, within the meaning of the Constitution, or justice be administered therein impartially, without unnecessary delay, when they are disenabled to take cognizance of any matter wherein the title of land is concerned, and of any action founded upon a contract; which are nine tenths of the causes where justice is sought? How far the singular condition of real property within this commonwealth, and our peculiar political situation, ought to extenuate shutting the courts of justice with respect to landed property, is with you to decide: but a Legislature's preventing suits being brought *upon all private contracts*, is an unheard of transaction, and one which we presume will not be accounted for by the impartial world, and by posterity, upon principles very honorable to the promoters of it.

The laws to prohibit the judicial courts trying land titles, above alluded to, passed 22<sup>d</sup> October, 1779,<sup>60</sup>--8th November, 1780<sup>61</sup>--5th March, 1784,<sup>62</sup> and 29th October, 1784.<sup>63</sup>

The act passed by the Legislature on the 22<sup>d</sup> of October, 1779, "appointing commissioners for the better regulating titles of land within this State, and declaring their power," (although this Council is not informed that any trials in pursuance of it have been completed) ought not to escape your notice.

This act appoints five persons, commissioners, any three of whom are empowered to take into consideration, and fully examine,

<sup>59</sup>*State Papers* XII, 175 (February 23, 1779).

<sup>60</sup>*State Papers* XII, 178 (October 22, 1779).

<sup>61</sup>*State Papers* XIII, 220 (November 8, 1780).

<sup>62</sup>*State Papers* XIII, 248 (March 5, 1784).

<sup>63</sup>*State Papers* XIII, 280 (October 29, 1784).

all the evidence relating to, or respecting, the titles of controverted lands in this State: to send for persons; to administer oaths; to call upon the parties for charters, patents, deeds of conveyances, &c. and to examine the parties upon oath. And they were to make report to the Assembly, at their next session in October, which of the various claimants to the same land, ought *in justice and equity*, to possess, and forever hold the fee of said land, &c.&c. The act prescribes a mode of process for convening the parties, makes provision for hearing them for and against the report of the commissioners, and declares, that the resolution of the Assembly thereupon (when recorded) shall be an indisputable title to the lands, against all parties in the trial.

It is very usual for all public bodies, whether consisting of one, or many natural ones, whose power is short of despotic, to wish for an increase of it; and to aim at that object as invariably as the needle, without obstruction, points to the pole. Here was an extensive grasp at the agreeable desideratum of uncontrolled dominion; trials by jury, in the most important disputes concerning property, wholly thrown aside: the Legislature assuming to themselves the judicial power, so far as respected all the permanent property in the State, and casting aside all restraints of law in their decisions, they were to determine every cause, without being shackled with rules, but by their crude notions of equity; or in other words, according to their sovereign will and pleasure; by which means, all the landed interest in the commonwealth (which, in other nations and States, has constantly been viewed as sure and permanent to the owner) would be at the absolute disposal of the legislators, and the surest title to an estate in Vermont, would be the favor of its Assembly: and this chain of adamant would be effectually riveted, as redress (without a dissolution of government) could not be expected; none but the Legislature, whose interest it would be to withhold it, being competent to give it.

What means were made use of by a kind overruling providence to prevent this law being carried into execution we have not learned, but have much reason to be grateful for the event.

The last preceding observations render it unnecessary to say any thing more respecting an act passed October 22d, 1779, entitled, "An act constituting the superior court a court of equity, and declaring their power,"<sup>64</sup> and an act passed 22d February, 1781, "For quieting disputes concerning landed property;"<sup>65</sup> than that they appear to have originated from the same source; and were designed to exalt the legislative, at the expense of the judicial department; as the former

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<sup>64</sup>State Papers XII, 181.

<sup>65</sup>State Papers XIII, 13.

gives the Governor, Council, and Assembly, the powers of a court of chancery, in all causes exceeding four thousand pounds consequence, and the latter erects them into a court for the decision of all disputes between proprietors holding under different charters issued by the same authority.

The several statutes passed for obliging creditors to accept the produce of the country, in lieu of money, are also considered by this Council as violations of that protection, which, by the general and fundamental laws of society, and by the ninth article in the Bill of Rights above mentioned, every individual has a right to expect for his property, upon his entering into civil society. We leave them however, (if that can be the case) to be justified by the extremity of the times, and hope for better, when such expedients shall be thought unnecessary.

The act alluded to in the last preceding observation, passed 21st June, 1782;<sup>66</sup> 21st, 1782;<sup>67</sup> and 25th February, 1783.<sup>68</sup>

The act to suspend prosecutions against Joseph Farnsworth, Esq. passed 29th October, 1784, is also esteemed by this Council to merit the serious attention of the freemen of a commonwealth, which has yet a character to gain amongst the kingdoms and States of the earth. It declared, "That no actions should be commenced, prosecuted, or proceeded in, against Joseph Farnsworth, Esq. commissary-general of purchases, for contracts made by him in his public capacity, until the rising of the Legislature in October then next."<sup>69</sup>

It is the undoubted duty of the Legislature, when there is an absolute necessity of substituting credit for money, to do it with as much caution as a prudent man would in his private affairs; and as carefully to guard against a diminution of that credit, by providing means of payment at the prefixed time, as a discreet merchant would in his mercantile transactions: and if a State is deficient in these prudential maxims, the odium ought to be proportionate to the magnitude of the consequences.

It is therefore, with real concern this Council observes, that so many precedents have been afforded of late years, in this western hemisphere, of breach of contracts made on behalf, and by authority of, the public, as with many, in a great degree, to sanctify the measure: and that, after proceeding from one delusion to another, it has terminated in the almost total loss of public credit. And it is with equal satisfaction we have remarked that this State has, in general, shewn an honest disposition in fulfilling its contracts with individuals,

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<sup>66</sup>*State Papers* XIII, 97.

<sup>67</sup>*State Papers* XIII, 153.

<sup>68</sup>*State Papers* XIII, 184.

<sup>69</sup>*State Papers* XIII, 291.

so far as has been in the power of government, by paying them something of real value. This the Legislature has been enabled to perform, by levying taxes in some degree proportionate to the public expenses, and enforcing the collection of them: and if the exigencies of the community have necessitated the contraction of debts, the good disposition manifested in discharging those debts, has preserved our public credit with individuals; and the trifling depreciation, which the public securities of this State have at times undergone, has proceeded rather from a scarcity of specie, and the example of surrounding States, than a fear of their being redeemed at their original value.

The act above mentioned in favor of Mr. Farnsworth, is considered by this Council as one stride towards the destruction of that credit; and the more injurious to the persons interested, as they must have waited a considerable time upon the public, before passing this act. A few more legislative procrastinations would have taught individuals the folly of trusting their property *where the power and disposition to evade payment were united*.

It behooves the freemen, in the opinion of this Board, as a matter of last importance, to keep a watchful eye over every step of government which tends to sap public credit, and to manifest their severest resentment thereat.

We cannot dissolve the Council of Censors, with the pleasing satisfaction of having conscientiously discharged the trust reposed in us, if we omit noticing (however disagreeable it may be to many influential persons in this commonwealth) a law passed by the Legislature in their last session, under the title of, "An act for settling disputes respecting landed property."<sup>70</sup> This Council is of opinion, considering the various difficulties of coming to the knowledge of a good title to lands in this commonwealth, which originated from, and have been cherished by, the contentions of different States claiming this territory, it is equitable that provisions should be made by the Legislature, in favor of persons who made *bona fide* purchases from pretended owners, while it was out of their power to know with certainty in whom the title was vested; (though we cannot agree in sentiment with the Legislature, that the defrauded purchaser should be allowed to recover his damages, both from his voucher and the owner of the soil.) But that trespassers, who have no pretence of a title, should, by legislative authority, be enabled to recover from the legal owners, (who, in numberless instances, have been kept out of possession, sorely against their will, and to their great impoverishment) the value of their improvements, is sanctifying iniquity by law; and, by a *post facto* act, depriving the owners of

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<sup>70</sup>State Papers XIV, 17 (June 17, 1785).

such property, of their right of action against the trespassers: (which remedy, when the intruder has done more injury than benefit to the farm, it is equitable the owner should have) and it is giving a reward to persons for transgressing the laws. In whatever light this part of the act is viewed, it may truly be said to be unprecedented and unparalleled; and will, unless revised and materially altered, be an indelible blot in the annals of our history, afford our enemies the most solid argument they have yet offered against the reasonableness of our existence as a sovereign State, and be the greatest inducement to our friends to desert us, as having too little wisdom, or too much cunning, to hold the reins of an independent government.

We are sorry the occasion is afforded us to remark, that the Legislature especially in the former part of the septenary, have in some instances deviated from the humane spirit manifested in the XXVIth section of the Frame of Government: that by directing corporal punishment to be inflicted for offences not infamous in their natures, that chastisement is rendered less disgraceful to the delinquent, and less beneficial to society, where the crimes require it.

Nor ought the fickleness of the Legislature, and their want of deliberation in passing laws, to escape the observation of this Council. Few acts, of general concern, but have undergone alterations at the next session after the passing of them; and some of them at many different sessions: the revised laws have been altered--re-altered--made better--made worse; and kept in such a fluctuating position, that persons in civil commission scarce know what is law, or how to regulate their conduct in the determination of causes. If the Legislature in this particular have *intended* to be faithful guardians of the people, they have *acted* as very unsteady or improvident ones.

It is the opinion of this Council, that the General Assembly, in all the instances where they have vacated judgments, recovered in due course of law, (except where the particular circumstances of the case evidently made it necessary to grant a new trial) have exercised a power not delegated, or intended to be delegated, to them, by the Constitution. This mode of proceeding is an assumption of the judicial power in the last resort, and renders nugatory that important article in the Bill of Rights which provides, "*That in all suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred.*" It supercedes the necessity of any other law than the pleasure of the Assembly, and of any other court than themselves: for it is an imposition on the suitor, to give him the trouble of obtaining, after several expensive trials, a final judgment agreeably to the known established laws of the land; if the Legislature, by a sovereign act, can interfere, reverse the judgment, and decree in such manner, as they, unfettered by rules, shall think proper. If such is their constitutional authority, it would be a mercy

to prohibit any other persons than themselves the exercise of judicial powers. The legislative body is, in truth, by no means competent to the determination of causes between party and party, nor was, by our Constitution, or that of any other country who make pretences to freedom, ever considered so (not taking into view the amazing expense it would bring upon the public, and the disadvantage of its engrossing that time which ought to be occupied in their more important and proper employment of legislating.)

If one set of men are to enact and execute our laws, and when they do not find one to answer a particular purpose, to make it *instante*; or in other words, if they are to possess all the authority as judges, which they, as legislators, are pleased, from time to time, to confer on themselves, unhappy indeed is the lot of the people.

The instances alluded to of judgments being vacated by legislative acts are as follows, viz. "An act to set aside, and render null and void in law, a certain order therein mentioned," passed 6th March, 1784:<sup>71</sup> "An act to reverse the several judgments therein mentioned," passed 9th March, 1784:<sup>72</sup> "An act to secure Daniel Marsh in the possession of a certain farm, until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him," passed 18th June, 1785:<sup>73</sup> and, "An act confirming Andrew Graham, of Putney, in the county of Windham, in the quiet and peaceable possession of the farm on which he now lives, in said Putney and rendering all judgments respecting the possession of the same, heretofore had and rendered, by any court of law whatsoever, null and void;" passed 18th June, 1785.<sup>74</sup>

Similar to annulling judgments, is the power exercised of staying executions after judgments rendered; of which, in reviewing the acts of legislation, we find two instances: one entitled, "An act to stay the execution on a judgment given by the superior court, against Witherly Wittum, Malachi Wittum, and Witherly Wittum, Jun., in favor of David Caswell and Thomas White," passed 25th February, 1782:<sup>75</sup> the other passed 8th March, 1784, entitled, "An act to stay the execution, and grant a sum of money for the purpose of paying and satisfying the said execution."<sup>76</sup> The title of this last act, it is to be observed, carries a greater shew than substance of equity in it: the State was

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<sup>71</sup> *State Papers* XIII, 248.

<sup>72</sup> *State Papers* XII, 267.

<sup>73</sup> *State Papers* XIV, 24.

<sup>74</sup> *State Papers* XIV, 28.

<sup>75</sup> *State Papers* XIII, 80.

<sup>76</sup> *State Papers* XIII, 250. See also, *State Papers* VI, 96-8.

obliged in honor, and by promise, to indemnify the defendants: the act, after judgment, constrained the creditor to take public securities at par, both for his damages, and a large bill of costs expended in the suit.

Granting pardons by the Legislature, (except in cases of impeachment, and perhaps in those of treason and murder) is an evident infringement, and upon the constitutional prerogative of the executive Council, and as such, ought not to escape your notice. Yet we find this power exercised by the Assembly on the 26th of October, 1784, in the way of resolution (which was exceptionable for the mode, if on no other account) in the following words, viz: "*Resolved*, that Lemuel Roberts, and Noel Potter, be, and they are hereby pardoned (on account of their former merit and present submission) for their offence against the peace and dignity of the freemen of this State, in being concerned in, and leading on in a riot, for the rescuing one Carr, out of the hands of the Sheriff's deputy, some time in May last."<sup>77</sup>

If the exercise of this power had been left in its constitutional channel, *former merit and present submission*, might perhaps, have been considered as proper reasons for mitigating the fines, but not for complete pardons, in crimes tending to the dissolution of government.

Although this Council conceives the check intended by the XIVth section of the Frame of Government,<sup>78</sup> if carried into execution, to be very inconvenient in practice, and expensive to the State; yet, while the Constitution absolutely requires bills of a public nature to be printed for the consideration of the people, before they are passed into laws, we cannot esteem the legislature excusable in omitting it; and the notion of treating the general system of our statutes as temporary, we consider as an evasion of an article in the Constitution, thought by the Convention to be of importance.

On the 28th of February, 1782, the Legislature passed a law, entitled, "An act empowering Colonel Samuel Robinson, to give a deed of the lands hereafter described, to the heirs of William Emms, deceased; and vacating a certain deed of the premises obtained in a

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<sup>77</sup>*State Papers* III, Part III, 93.

<sup>78</sup>Section XIV of the 1777 Constitution provided that, "To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of a public nature, shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly for the last time of debate and amendment; . . . ." See page 11. Section XVI of the Constitution of 1786 deleted the requirement for printing. See page 51, 93.

fraudulent manner, by John Blackledge Emms, from said Samuel Robinson."<sup>79</sup> This Council cannot here omit observing, in addition to the reasons already given against the Legislature's exercising judicial powers, and reversing judgments, that the practice of legislating for individuals, and for particular cases, is much too frequent. If a subject feels himself aggrieved, and thinks the law incompetent to give him redress, he immediately applies to the Assembly; and too often, laws are suddenly passed upon such application, to relieve in particular cases, which introduce confusion into the general system, or are afterwards discovered to be wholly unnecessary. The act last mentioned (admitting the Legislature to be a proper court for determining whether a deed was fraudulently procured) was entirely needless;--the supreme court, possessing the powers both of a court of law and equity, being able to give proper relief in this and all other cases of fraud. When a person obtains a property, which the law of the land at the time of acquiring it, esteems a legal and equitable estate, if he is divested of it by a sovereign act of power, he has a right to complain of the injury; and all men of interest have a right, and it is their duty, to be alarmed at the precedent: if this was not the case, Colonel Robinson ought not to have applied to the Assembly, or they to have interfered.

That part of the act passed in the last session of the Legislature, for erecting the new county of Addison, which authorises the Governor and Council to appoint county officers therein, for the time being, is esteemed by this Board to be an unnecessary violation of XXVIIth section of the Frame of Government.<sup>80</sup> We are unable to imagine the particular circumstances of this part of the commonwealth to have been such, as to require adopting so extraordinary a measure, for any other purpose than to give a lead at some future county election.

In our enquiries whether "the public taxes have been justly laid and collected in all parts of this commonwealth;" we must offer it as our opinion, that neither has been fully the case. With regard to the equal collection of them, so many occurrences have intervened, known to the freemen at large, that the executive part of government does not appear greatly deserving of censure for their remissness in this respect; but in apportioning the taxes, this Council does not believe full justice has been done: all our towns are new, and a part of the most populous ones still uncultivated;--tradesmen of all kinds, and men of genius, are every where much wanted;--it must not certainly be therefore, as "good guardians of the people," that *faculties are rated, and unimproved real property, and articles of*

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<sup>79</sup>*State Papers* XIII, 88.

<sup>80</sup>See page 14.



*luxury, left without assessment.*<sup>81</sup> In the opinion of this Council, visible property, in proportion to its real value, is the only fit subject of taxation (except the Legislature shall find it expedient to impose a small tax on polls, not minors, for personal protection;) and every deviation from this rule, whether to exculpate one class of men, or to harrass another, is an error in government, and ought to be exploded our future system of taxation.

One branch of the duty assigned this Council is to enquire "in what manner the public monies have been disposed of." In discharging this part of the trust reposed in us, we cannot omit mentioning the dissipation of a considerable part of the public lands in this State, at so early a period that settlements could not be made, and in most cases were not stipulated to be made, before the conclusion of the war; and at a time when actual surveys could not be performed: by which means an ample foundation is laid for the confusion proceeding from interfering grants--a door open for a variety of lawsuits, and applications to the legislature to procure compensation for lands which the grantees are unable to hold; and the public is deprived of a fund, which, if rightly managed, would probably defray the ordinary expenses of government. The ungranted and confiscated lands seem to have been a boon conferred by Providence, for the support of our republic in its infancy, while its subjects were unable to pay taxes: yet the first septenary has seen the whole, or nearly the whole of them, squandered; and the inhabitants will have reason to think themselves peculiarly fortunate, if they yet escape paying considerable sums on account of them. How far the peculiar difficulties the State has been obliged to struggle through, ought to excuse this lavish disposition of the public property, must be decided by you, to whom all officers are mediately, or immediately, accountable for their conduct.<sup>82</sup>

This Council is not insensible that the freemen look to this Board for information, with respect to the confiscation and sale of the estates of persons who joined the enemy; and are unhappy, that, after obtaining all the light in our power, we think it most prudent to refer them to such report as the auditors shall make on this subject.<sup>83</sup> And we are all so unhappy, that, being destitute of a complete state of the public accounts from the auditors, (which we have repeatedly

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<sup>81</sup> *State Papers* XII, 44, 48.

<sup>82</sup> See *Governor and Council* II, 61-4. Ira Allen's accounts of the State Treasury show that 190,433 pounds were received by the Land Committee on sales of public lands, accounting for about 40% of the total revenue of the State during the Republic era.

<sup>83</sup> Auditors' report on confiscation. See *State Papers* XIII, 263. Also, *State Papers* VI (1941).

requested of them) it is out of our power to make further enquiries in what manner the public monies have been disposed of. Nor ought this Council here to omit noticing that the General Assemblies, previous to February, 1784, are, in the idea of this Council, highly censurable for omitting to enact laws adequate to compel the annual liquidation of the public accounts: and that the Council are not free from blame for the appointment, and continuance of persons in office of great public trust, who did not keep regular books: by which means (we conclude, from the information of those auditors who have taken an active part in the business) several public accounts of a very important nature, can never be properly adjusted; and the *defaulters of unaccounted thousands* will probably reserve them for their families.

We have now, in an imperfect manner, finished the important and invidious task allotted this Council--censuring the proceedings of the supreme legislative and executive branches of government, composed of gentlemen of the best characters, and greatest influence, in the commonwealth. A principle of duty has led us to speak our sentiments with a freedom, which, we are not insensible, will be disagreeable to many: but as we have been actuated solely by a desire of contributing our mite to the honor and felicity of the community, and are conscious of no sinister or personal motives in our proceedings, we cheerfully submit our opinions to your candid consideration; and if we are so unhappy as materially to differ in sentiment from that respectable body, the freemen of the State of Vermont, we must console ourselves with the pleasure of having meant well, and that it is the lot of humanity to err.

By the order of the Council of Censors,

INCREASE MOSELEY, *President*

Bennington, 14th February, 1786.

### Results of the 1785 Council of Censors

The Legislature received a copy of the Resolutions of the Council in October of 1785 and promptly ordered the Committee on Revision to prepare and bring bills repealing and altering several acts among those mentioned in the Resolutions. The Assembly voted to accept the recommendations of the first through sixth, eighth through twelfth, thirteenth and fifteenth resolutions, to table the seventh for further consideration, and to disagree with the fourteenth resolution.<sup>84</sup> The fourteenth resolution related to "An act to reverse several judgments therein mentioned," passed March 9, 1784.<sup>85</sup>

During July of 1786, the Constitutional Convention met in Manchester and adopted the Constitution of 1786. The General Assembly waited for the Convention to complete its work before making any serious amendments to the laws it had adopted during the early years of the Republic.<sup>86</sup> The Assembly's Committee on Revision made its report on October 30, 1786, which was read and accepted by the Assembly, but legislative action on the recommendations did not occur for four months.<sup>87</sup>

In "An act to repeal the several statutes therein mentioned or described," adopted in 1787 (which we call the "mass repealer of 1787" in the pages that follow), the General Assembly repealed all acts passed from February, 1779, through October of 1786, with a few, specific exceptions.<sup>88</sup> In this manner, many of the laws the Censors found offensive were eliminated. The exemptions included acts "for the cutting of roads in the northern part of this State," for giving further time of redemption to lands which have been sold, acts granting new trials, and private acts of all sorts. During March, 1787, the Legislature also reworked many of the statutes that were the subject of objection by the Council.

### Corporeal punishment laws: Resolutions I - III, & VII.

The law that punished rioting by a hundred lashes on the naked back,

<sup>84</sup>*State Papers* III, Part III, 183-84.

<sup>85</sup>*State Papers* XIII, 267.

<sup>86</sup>Once the Convention was through with its work, the General Assembly "established" the Constitution of 1786 by an act dated March 8, 1787. *State Papers* XIV, 238. The practice of "establishing" the Constitution as an act of the legislature started in 1779, when the General Assembly adopted, "An act for securing the general privileges of the people, and establishing common law and the constitution, as part of the laws of this state." *State Papers* XII, 36-7. A similar act was adopted on June 21, 1782 (*State Papers* XIII, 101). When Randolph was included in Orange County in 1783, its inhabitants were expressly granted the right to "enjoy such Privileges and Immunities as are enjoyed by the inhabitants of other Towns in said County, agreeable to the Constitution of this State." *State Papers* XIII, 191. All three acts were repealed by "An Act to Repeal the Several Statutes Therein Mentioned or Described" (March 10, 1787) (hereafter, the mass repealer of 1787). *State Papers* XIV, 337-9. The 1787 act was repealed in 1797. "An Act Repealing Certain Acts Therein Mentioned," *Compilation of 1797*, Chapter LXIX, 600.

<sup>87</sup>*State Papers* III, Part III, 256.

<sup>88</sup>*State Papers* XIV, 336 (March 10, 1787).

and by branding the letter "C" on the forehead for second offense,<sup>89</sup> was changed to provide for a fine of fifty pounds.<sup>90</sup> Resolution I. The law that punished taking a wolf out of a pit or trap with ten stripes on the naked back and a fine of eight pounds<sup>91</sup> was amended to eliminate the stripes, while leaving the fine.<sup>92</sup> Resolution II. The anti-counterfeiting law of 1779 punished the crime by having the right ear of the guilty cut off and the forehead branded with a "C," followed by life imprisonment and forfeiture of estate.<sup>93</sup> In 1787, the General Assembly enacted a new anti-counterfeiting law, having the same punishment, but reducing a similar punishment for striking bills of credit to treble damages tied to the value of the bills.<sup>94</sup> Resolution III.

"An act against inimical conduct" and another in addition to it had irritated the Council of Censors because of its "uncommon severity," which included stripes, and because it put too much power in the hands of a single minister of justice.<sup>95</sup> A new law proscribing High Treason was adopted on March 8, 1787, leaving jurisdiction exclusively in the Supreme Court and providing for fines in lieu of other punishment.<sup>96</sup> Resolution VIII.

#### **Recording Deeds: Resolution IV.**

By the time that the General Assembly faced the problem of where deeds should be recorded, the Constitutional Convention of 1786 had already amended the Vermont Constitution to provide that "[a]ll deeds and conveyances of lands shall be recorded in the town clerk's office in their respective towns; and, for want thereof, in the county clerk's office in the same county."<sup>97</sup> The Council of Censors had worried that the General Assembly had confused the situation by requiring recording with the town clerk of an adjoining town when property was sold before a town clerk's office was established.<sup>98</sup>

The General Assembly enacted a new recording law in 1787, building on the new constitutional provision, and providing for a more specific recording procedure for mortgages and for town clerks' failures.<sup>99</sup>

#### **Legislative intrusion: Resolutions VII, IX, XIV.**

In "An act constituting the Superior Court a court of Equity . . .," the

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<sup>89</sup> *State Papers* XII, 50 (February 1779).

<sup>90</sup> *State Papers* XIV, 281 (3-8-87).

<sup>91</sup> *State Papers* XII, 77 (2-17-79).

<sup>92</sup> *State Papers* XIV, 153 (February 27, 1787).

<sup>93</sup> *State Papers* XII, 93 (2-79).

<sup>94</sup> *State Papers* XIV, 241 (March 8, 1787).

<sup>95</sup> *State Papers* XII, 211, 219.

<sup>96</sup> *State Papers* XIV, 265.

<sup>97</sup> *Vermont Constitution* (1786), Chapter II, Section XXXII.

<sup>98</sup> *State Papers* XII, 96 (February, 1779).

<sup>99</sup> *State Papers* XIV, 218 (March 8, 1787).

General Assembly and Governor and Council were authorized to hear equity appeals from Superior Court in disputes over estates or charters.<sup>100</sup> The offending section of this law was repealed in a new act on October 27, 1786.<sup>101</sup> Resolution VII. The same objection--legislative encroachment on judicial branch authority--was made to an act for "quieting disputes," adopted in 1781. Under this law, the Governor and Council and the Assembly acted as a court of chancery, with authority to hear all causes involving 4,000 pounds in consequence and disputes between proprietors fighting over conflicting charters.<sup>102</sup> Resolution IX. The Censors had also objected to "An act making the laws of this State temporary," which prohibited courts from trying titles to lands in dispute, on the same grounds.<sup>103</sup> The mass repealer of 1787 eliminated both acts. To underscore the point, the Council proposed the Separation of Powers doctrine, which was adopted by the Constitutional Convention and became Chapter II, Section VI of the 1786 constitution.

The General Assembly did not capitulate entirely on the issue of encroachment. It retained the authority to grant new trials, reverse judgments, or settle land disputes, and so exempted several of these acts from repeal in 1787.

"An Act to reverse several judgments therein mentioned" was the sole censured act the Assembly disagreed with in February of 1786. When the time came to deal with the Council's resolutions, the mass repealer explicitly exempted "any private act of what name or nature soever."<sup>104</sup>

The Censors had objected to an act to "secure Daniel Marsh in the possession" of his farm as an intrusion of the legislative into the judicial branch.<sup>105</sup> As a "private act for the confirmation of Landed Property," it too was exempt from the mass repealer.<sup>106</sup> The act was, however, repealed expressly on November 2, 1792.<sup>107</sup> The act confirming Andrew Graham in the possession of his farm, expressly exempted from repeal by the General Assembly in 1787, escaped untouched by the legislature.<sup>108</sup> The act "for settling Disputes respecting landed property," objectionable to the Council because it allowed trespassers to recover the value of their improvements, was also expressly exempted from the mass repealer of 1787.<sup>109</sup>

#### **Town lines and highways: Resolution XII.**

The law of 1782 relating to the establishment of town lines was a source of irritation for the Council. It required towns and proprietors to send the

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<sup>100</sup> *State Papers* XII, 181.

<sup>101</sup> *State Papers* XIV, 95.

<sup>102</sup> *State Papers* XIII, 13.

<sup>103</sup> *State Papers* XII, 175.

<sup>104</sup> *State Papers* XIV, 339.

<sup>105</sup> *State Papers* XIV, 24.

<sup>106</sup> *State Papers* XIV, 338.

<sup>107</sup> *State Papers* XV, 100.

<sup>108</sup> *State Papers* XIV, 28, 338.

<sup>109</sup> *State Papers* XIV, 338.

originals of all charters to the Surveyor General, or risk loss of that property right. If no charter could be produced, then the Assembly would order the Surveyor General to make new lines, with the expense defrayed by the towns or proprietors, as the Assembly directed.<sup>110</sup> Other acts--relating to ascertaining the boundaries of towns,<sup>111</sup> enabling the Surveyor General to complete surveys of towns,<sup>112</sup> and cutting roads in the northern part of the state<sup>113</sup>--were objectionable because they seemed to be of a more private than community interest, the owners had to bear the expense without adequate notice or fairness, and the Legislature could then determine the right of property held under different titles, precluding landowners their remedy at law. A new act on March 9, 1787 gave the selectmen the power to lay out roads, on their own motion or by a petition from three or more freeholders, with provisions for damages and appeals.<sup>114</sup> The mass repealer expressly exempted "any Acts for the regulation and establishment of town lines, or for the cutting roads in the northern part of this State . . . ."<sup>115</sup>

**Goals (or Goals):** Resolution XI.

The Council censured the law regulating goals and goalers<sup>116</sup> because it did not "sufficiently [guard] the property of the subject," presumably the creditor. It allowed the debtor freedom if he took the poor debtor's oath and his creditors did not agree to pay for his keeping. A law "regulating goals and goalers" was adopted March 9, 1787, providing more adequate notice to creditors, making false swearing of the oath a crime, and amending the debt collection process in other ways to ensure adequate security to creditors.<sup>117</sup>

**Smallpox:** Resolution XIII.

The 1784 smallpox control law allowed selectmen to quarantine victims; if an infected person did not report the fact to the selectmen, the court could fine him 500 pounds.<sup>118</sup> In 1787, the General Assembly enacted a similar law, but reduced the fines and allowed a sick person, if his physician approved, to resist being moved to quarantine. The new law required the town to provide medical attention to impoverished small pox victims.<sup>119</sup>

**Other Acts Repealed by the Act of 1787:** Resolution V, VI, X, XV.

<sup>110</sup> *State Papers* XIII, 151.

<sup>111</sup> *State Papers* XIII, 82.

<sup>112</sup> *State Papers* XIII, 220.

<sup>113</sup> *State Papers* XIII, 251.

<sup>114</sup> *State Papers* XIV, 325.

<sup>115</sup> *State Papers* XIV, 338.

<sup>116</sup> *State Papers* XII, 150, (October 22, 1782).

<sup>117</sup> *State Papers* XIV, 323.

<sup>118</sup> *State Papers* XIII, 235.

<sup>119</sup> *State Papers* XIV, 156.

The Council thought the act relating to unseasonable night walking<sup>120</sup> contrary to the 10th article in the Bill of Rights because of the lack of opportunity by an accused person to be confronted with witnesses or tried before an impartial jury. The law provided that a person who failed to give a satisfactory account of himself when certain disorders were committed in the nighttime would be subject to pay the damages, as well as a fine.<sup>121</sup> Resolution V. The proposed addition to Chapter I of the Vermont Constitution guaranteed all persons a certain remedy by recourse to the laws, and was adopted as Article IV of the Vermont Constitution in 1786.

The act relating to selling and transporting hides out of state was, according to the Council, "too great a controul over the right each individual has of disposing of his property, to be exercised by permanent law . . ."<sup>122</sup> Resolution VI. The Council also objected to the act that promoted a free trade treaty with Quebec, because the benefits of such a treaty would accrue to a few individuals, and not the general population.<sup>123</sup> Resolution XV. Severity was the objection to an action for the "punishment of conspiracies against the state," adopted in 1782, which included banishment, imprisonment and death among its remedies.<sup>124</sup> Resolution X. No legislative correction was made to any of these laws, and they were erased by the passage of the mass repealer.

#### **Governor and Council actions: Resolution IV, VII.**

The Council of Censors objected to the McClane and Chamberlain divorces, and the relief of Dr. John Page from his debts, among others. The Legislature did nothing in these matters, and the Governor and Council was equally silent.

The Governor and Council's actions in settling, as opposed to adjusting, the accounts of the Surveyor General was the subject of further objection by the Censors, on the grounds that "it effectually destroyed the check intended by the Legislature upon the Surveyor's department." On October 26, 1787, the Assembly reestablished its primary role in expenditures by authorizing the funds to pay the expenses of David Hide, who provided Surveyor General James Whitelaw with provisions.<sup>125</sup> On October 29, 1789, the General Assembly appointed commissioners to settle and adjust the accounts of Ira Allen and James Whitelaw, respectively the former and present Surveyors General.<sup>126</sup>

The Censors were troubled by the confusion between the Secretary of State's powers, as established by the Legislature, and those of the Secretary of the Council, as established by a Council resolution, on the question of which office would keep copies of charters. The mass repealer expressly

<sup>120</sup> *State Papers* XII, 132 (February 15, 1779).

<sup>121</sup> *State Papers* XIV, 336 (March 10, 1787).

<sup>122</sup> *State Papers* XII, 162.

<sup>123</sup> *State Papers* XIII, 290.

<sup>124</sup> *State Papers* XIII, 98.

<sup>125</sup> *State Papers* XIV, 389.

<sup>126</sup> *State Papers* XIV, 508.

exempts "An act pointing out the office and duty of the Secretary of State," which was the subject of the Censors' objections.<sup>127</sup>

The objection to the Council's grant of an unspecified parcel to John Wheeler and company, correcting an error made by the Assembly, was the subject of censure, but we have not been able to locate which grant Wheeler received, if at all, at a later time.

The Censors suggest that something intervened to keep the four acts prohibiting the courts from trying land titles from taking effect, but did not explain what it was. This problem was resolved by the addition of Article IV to Chapter I of the Constitution.

The four laws relating to executions appear to have been resolved by an act of the same name adopted on February 28, 1787.<sup>128</sup> The objectionable laws required creditors to accept crops and other non-specie as substitutes for payment of executions. The new law authorized debtors' goods, with a few exceptions, to be seized and sold at auction, with the money going to pay the debts.

In some cases, the Council's recommendations were impossible to fulfill. This category includes all acts that had outlived their useful purpose before the General Assembly addressed the problems the Censors condemned. For instance, the act staying the execution of judgments against the Wittums<sup>129</sup> and the act "to suspend the trial of the titles of lands therein limited,"<sup>130</sup> were expressly limited to suits and executions within the year following their enactment. A similar conclusion arises from the Censor's objections to the act suspending prosecutions against Joseph Farnsworth.<sup>131</sup> The mass repealer never had a chance to affect this act, since it was expressly limited to actions to be commenced "until the opening of the Legislature in October next," which would have been October of 1785.

The act staying the execution against Leonard Spaulding and Timothy Underwood was limited to three months from the date of the act, to give the Treasurer time to pay the judgment, provided that Spaulding and Underwood "became bound with sufficient sureties to the State's Attorney in the County of Windham, to be accountable for the avails of the farm which occasioned the aforesaid suit, and satisfy the Sheriff or Office for the Cost that has already accrued on said Execution."<sup>132</sup> The mass repealer had no effect on this action.

The pardoning of Lemuel Roberts and Noel Potter<sup>133</sup> by the Assembly was unaffected by the mass repealer, which exempted "any acts of pardon." The mass repealer also exempted acts "directing persons to sell Land or execute Deeds therefor; not to any private acts for the confirmation of Landed Property . . .," which would have included the act that empowered

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<sup>127</sup> *State Papers* XIII, 76. *State Papers* XIV, 337.

<sup>128</sup> *State Papers* XIV, 181 (February 28, 1787).

<sup>129</sup> *State Papers* XIII, 80 (February 25, 1782).

<sup>130</sup> *State Papers* XIII, 248 (March 5, 1784).

<sup>131</sup> *State Papers* XIII, 291.

<sup>132</sup> *State Papers* XIII, 250 (March 8, 1784).

<sup>133</sup> *State Papers* XIII, 93.



Samuel Robinson to give a deed to the heirs of William Emms.<sup>134</sup>

The appointment by the Governor and Council of Addison County officials, authorized by the October 18, 1785 act,<sup>135</sup> was unaffected by legislative action as well. By the time the General Assembly confronted the issue, new elections by the Assembly for Addison County officials had already been made.<sup>136</sup>

### **The 1785 Council of Censors and the 1786 Constitution**

The most comprehensive changes made to the Vermont Constitution were the result of the Council of Censors' proposals of 1785. This process was also the first time in U.S. history that a constitutionally-mandated amendment process was successfully implemented.<sup>137</sup> Not all of the Council's proposals were adopted by the Constitutional Convention of 1786, but many material changes were made in reliance on the Council's recommendations. Unfortunately, no copy of the journal of Constitutional Convention has survived, so what we know of what the Convention did comes solely from a comparison of the Censors' proposals and the 1786 Constitution.

The Vermont Constitution of 1777 contained a Preamble, 19 articles, and 44 sections. The Council of Censors proposed amendments to almost every article and section in the Constitution, and additions to both chapters as well. The rejected proposals warrant review. They range from minor changes in language--substituting "public or private demands" for "debts, damages, fines, costs, or the like" at the end of Article I--to the substantial. The proposed amendment to Section VII, for instance, would have created a 50 member House apportioned by the size of the grand list and elected by a county convention of town delegates. The proposals to change Article II would have guaranteed compensation for the taking of "any person's" as opposed to "any man's" property. An *ex post facto* provision would have become Article XII--"Laws made to punish 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."<sup>138</sup> The proposed repeal of Article XI would have eliminated the guarantee that "the people have a right to hold themselves, their houses, papers and possessions free from search and seizure." The right to assemble, guaranteed in Article XVIII (1777) would have been limited to assemblies of residents in the "respective towns," and not in other places in the state.

Members of the Executive Council would have been elected from each

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<sup>134</sup>*State Papers* XIII, 88 (February 28, 1782).

<sup>135</sup>*State Papers* XIV, 33).

<sup>136</sup>*State Papers* III, Part III, 240.

<sup>137</sup>For popular reactions to the Council's proposals, see *The Vermont Journal*, April 10 and April 15, 1786; *The Vermont Gazette*, June 5, 1786.

<sup>138</sup>The prohibition against *ex post facto* criminal laws became constitutional law through the adoption of Article I, Section 10 of the U.S. Constitution in March of 1791, when Vermont was admitted to the Union.

county, rather than at large, as Section XVII provided. Only male freeholders and renters who had paid their taxes would have had the right to vote, if the amendment to Section VI had passed. Companies of the militia would have elected their captains and other officers, rather than the people (see proposed Section XIX). The Governor would be limited to four successive annual terms, and a hiatus of four years before running for the office for another term (proposed Section XXIII).

Rejecting these proposals, the Constitutional Convention still added four new articles and three new sections, and amended nine articles and 27 sections of the 1777 constitution, the majority of which are still to be found in our present Constitution.

The new articles include the guarantee that "[e]very 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."<sup>139</sup> Several acts of the General Assembly which were the subject of censure by the Council likely gave rise to this article. The laws prohibiting trials of titles of lands for periods of time between the adjournment and convening of legislative sessions is one. Another is the law that prohibited "unseasonable nightwalking",<sup>140</sup> since it made a person liable for damages if he could not give a satisfactory account of himself, and did not provide an accused the opportunity to confront an accuser or have a jury trial on the question.

Article XVI immunizes deliberation, speech and debate in the Legislature from accusation or prosecution, action or complaint.<sup>141</sup>

Article XVII provides that "[t]he 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."<sup>142</sup> The Council of Censors railed against the Legislature's habit of passing private legislation that favored individuals with new trials or granted immunity from suit for a period of years. It had also proposed the separation of powers doctrine (Section VI).

Article XIX of the proposed Constitution of 1786 guarantees that martial law applies only to those in the army or the militia.

The insurrection of 1786 and the general instability of the era probably explains the sprinkling of phrases such as "in a legal way" (Articles VI and XX), "by their legal representatives" (Articles V and VIII, and with a small variation in Article X), and "in a constitutional manner" (Article VIII) in Chapter I. These amendments would ensure that only legislative action could reduce public officers to a private station, to exact a due and constant regard from them to the public or to ensure that the "people of this state . . . have the sole, exclusive and inherent right of governing and regulating the internal police of the same." The addition of "concerning the transactions of

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<sup>139</sup> *Vermont Constitution* (1786), Article IV.

<sup>140</sup> *State Papers* XII, 132.

<sup>141</sup> *Vermont Constitution* (1786), Article XVI.

<sup>142</sup> *Vermont Constitution* (1786), Article XVII.

government" in Article XV is further evidence of this change in attitude.

Elections, by the amendment of Article IX, were not only to be free, but "without corruption."

The people's guarantee of trial by jury was defined, and limited, by the addition of the words, "when an issue in fact, proper for the cognizance of a jury," in Article XIV. Juries decided questions of fact and law prior to this change in the Constitution.

Four new Sections were added to Chapter II. The most important was Section VI, which added a separation of powers clause. Separation of powers was also at work in the addition of Section XVII, which prohibited the General Assembly from declaring anyone guilty of treason or felony, strengthening the courts' powers in matters best reserved for the judicial branch. Section V, authorizing the General Assembly to establish a court of chancery and a court to correct the errors of the Supreme Court, "provided they do not constitute themselves the judges of either of said courts," was another important corrective in the separation problem, since the General Assembly had in Vermont's first septenary made itself an appellate court for land title disputes and had overruled the Supreme Court in a number of cases.

The final section added was Section XXXV, which prohibited forfeitures of suicides. It served as a change in the common law rule on this subject.

Section IV amplified the former Section XXIII by additional language, which augmented the guarantees of the judicial branch in the new Article IV, requiring courts in every county and making all judges ex officio justices of the peace. Section XXVIII echoed the new Article XIV on jury trials and the prevention of corruption and partiality of juries.

Judges were originally appointed to serve during good behavior, in Section VIII; after 1786, they were elected annually.

The section on schools was changed from "A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to be paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth at low prices," along with a requirement for a grammar school in each county and a state university. The new Section XXXVIII provided that 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 . . . ."

The Convention, on the Council's recommendation, also changed the title of Deputy Governor to Lieutenant-Governor (Sections I and III); limited the expulsion of State Representatives to "causes known to voters' constituents antecedent to their election" and limited their authority to administer oaths to "matters depending before them" (Section VIII). It changed the "You" of oaths to "I" (Sections XII and XXVI); gave a single member a right to insist on "the yeas and nays on any question," (Section XIV); amended the process of reviewing bills by the Governor and Council (Section XVI); obliged inhabitants, rather than just freemen, to complete military training (Section XIX); authorized awarding costs in impeachment trials (Section XXI); limited the term of a delegate to Congress to three years in any six year term (Section XXVII); exempted prisoners committed for executions or capital offenses from the provision establishing a right to bail (Section XXX); made the county clerk's office the proper filing office for deeds when there was no

town clerk (Section XXXII); ensured that all persons of good character who came into the State and take the Freeman's Oath will be "free denizens thereof" and have all the rights of a "natural born subject of this State" (Section XXXVI); added a new duty to those of the Council of Censors, "to inquire whether the constitution has been preserved inviolate in every part during the last septenary; (including the year of their service) . . .," and gave them subpoena power (Section XLII).



# The Constitution of 1786<sup>1</sup>

## 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 and inherent 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 unalienable 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 [who professes the protestant religion] 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] **whatever**, that shall in any case interfere with, or in any manner controul, the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of [people] **christians** ought to observe the Sabbath or [the] Lord's day, and keep up [, and support,] some sort of religious worship which to them shall seem most agreeable to the revealed will of God.

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<sup>1</sup>The Vermont Constitution of 1777 appears in the standard type. The Council's proposals which became law by their adoption by the 1786 Constitutional Convention appear in **bold type**. Where portions of the 1777 Constitution have been deleted by the Convention, this material is set off in brackets [like this]. The Preamble of 1777 is part of the Constitution of 1786. It is not reproduced here, but can be found on page 3.

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 not for the particular emolument or advantage of any 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** [or abolish] government, in such manner as shall be, by that community, judged 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, [at such periods as they may think proper, to] **by their legal Representatives, to enact laws for reducing their public officers to a private station, and [to] for supplying the vacancies in a constitutional manner,** by [certain and] 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, [or] **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 [the] **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] **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 are 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 community than the money would be, if not collected.**<sup>2</sup>

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 favor, 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] **he** be 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 by 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 actions, 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 debt.

XIV. That [in controversies affecting property, and in suits between man and man,] **when any 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 to 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.

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<sup>2</sup>Originally, the last sentence of Section XXXVII of the 1777 Constitution.



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

**XVII.** The power of suspending laws, or the execution of laws, ought never to be exercised 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 the 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 subjected 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 [this State] the same.

## CHAPTER II PLAN OR FRAME OF GOVERNMENT

### SECTION I.

The Commonwealth or State of Vermont, shall be governed hereafter, by a governor [, Deputy Governor,] **(or lieutenant-governor,)** council, and an assembly of the Representatives of the freemen of the same, in manner and form following.

### SECTION II.

The supreme legislative power shall be vested in a house of representatives of the freemen or commonwealth or state of Vermont.

### SECTION III.

The supreme executive power shall be vested in a governor **(or, in his absence, a lieutenant-governor)** and Council.

### SECTION IV.

Courts of justice shall be [established] 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 causes as may be appealed to the county court.)**

### SECTION 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 said court.

### SECTION VI.

The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

### SECTION VII.

In order that the Freemen of this State might 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 years 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 the 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.

#### SECTION VIII.

The house of representatives of the freeman 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.** [And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.]

#### SECTION IX.

The [members of the House of] representatives, [shall be] so chosen [on the first Tuesday of September, forever (except in this present year) and], **(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 [a] members, but not [a second time for the same cause] **for causes known to their constituents antecedent to their election:** they may administer oaths or affirmations, **in matters depending before them** [on examination of witnesses]--redress grievances--impeach State criminals--grant charters of incorporation--constitute towns, boroughs, cities, and counties: **they may annually, in the 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 there 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. [And for this present year the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in Windsor, on the second Thursday of March next.]

## SECTION X.

The supreme executive council of this State, shall consist of a governor, lieutenant-governor, and twelve persons, chosen in the following manner, viz. 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 representatives 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 councillors, in the same manner, and the twelve highest in nomination shall serve for the ensuing year as councillors.

[The council that shall act in the recess of this Convention, shall supply the place of a council for the next General Assembly, until the new Council be declared chosen. The Council shall meet annually, at the same time and place with the General Assembly; and every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office.]

## SECTION XI.

The governor, and in his absence the lieutenant-[or Deputy] governor, with the council, [seven of whom] (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 [those who are appointed by the General Assembly agreeable to this frame of government, and the laws that may be made hereafter;] **where provision is, or shall be, otherwise made by law, or this Frame of Government;**--and shall supply every vacancy in any office, occasioned by death [, resignation, removal or disqualification] **or otherwise**, until the office can be filled in the [time and] 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** [but] there shall be no remission or mitigation of punishment [on impeachment except], 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 councillor may enter his dissent, with his reasons to support it.

## SECTION XII.

[A quorum of the house of representatives shall consist of two thirds of the whole number of members elected; and] **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 [of fealty and] **or affirmation** of allegiance herein after directed, **(except where they shall produce certificates of their having theretofore taken and subscribed the same)** as the following oath or affirmation, viz:

[I] **You** \_\_\_\_\_ do solemnly swear [by the ever living God (or I do solemnly affirm in the presence of Almighty God)] **(or affirm)** that, as a member of this assembly, [I] **you** will not propose, or assent, to any bill, vote or resolution, which shall appear to [me] **you** 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] **by** the constitution of this state; but

will, in all things, conduct [myself] **yourself** as a faithful, honest representative and guardian of the people, according to the best of [my] **your** judgment and abilities. **(In case of an oath,) So help [me] 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:

*[I] **you** do believe in one God, the creator and governor of the universe, the rewarder of the good, and punisher of the wicked. And [I] **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.

### SECTION XIII.

The doors of the House in which the [representative of the freemen of the State] **General Assembly of this commonwealth**, shall sit, shall be [and remain] open for the admission of all persons who behave decently, except only when the welfare of the State may require [the doors] **them** to be shut.

### SECTION 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 (when) **where** the votes [are] **shall be** taken by ballot,) in which case every member shall have a right to insert the reasons of his vote upon the minutes.

### SECTION XV.

The stile of the laws of this State, **in future to be passed**, shall be,--[Be it enacted, and] *It is hereby enacted by* [the Representatives of the Freemen of the State of Vermont in] *by the General Assembly of the State of Vermont.*

### SECTION 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 [of public nature] **which originate in the Assembly**, shall be [first] laid before the governor and council, for their [perusal] **revision**, and concurrence or proposals of amendment [and shall be printed for the consideration of the people before they are read in general assembly for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in the case of

sudden necessity) be passed into laws; and no other shall be passed into laws, until the next session of Assembly.] **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. [And for the more perfect satisfaction of the public, the reasons and motives for making such laws, shall be fully and clearly expressed and set forth in their preambles.]**

#### SECTION XVII.

**No person ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature.**

#### SECTION 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 who is of a quiet and peaceable behavior, and will take the following oath (or affirmation), shall be entitled to all the privileges of a freeman of this State.

*"[I] **You solemnly swear, (or affirm) [by the ever living God (or affirm in the presence of Almighty God)] that whenever [I am called to] you give [my] your vote or suffrage, touching any matter that concerns the State of Vermont, [I] you will do it so as in [my] your conscience [I] you shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man."***

#### SECTION XIX.

The [freemen] **inhabitants** of this commonwealth shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as the General Assembly shall, by law, direct. [reserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed] **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.**

#### SECTION 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, or in

his absence, the lieutenant-governor, and attested by the secretary, which seal shall be kept by the council.

#### SECTION 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.

#### [SECTION XXII.]

[Excessive bail shall not be exacted for bailable offences; and all fines shall be moderate.]

#### SECTION 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 effect of which are dependance and servility, unbecoming Freemen, in the possessors or expectants, and 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 to 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.

#### SECTION 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.

#### SECTION 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.



## SECTION XXV.

The Treasurer's accounts shall be annually audited, and a fair state thereof laid before the General Assembly, at their session in October.

## SECTION 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 [general] oath or affirmation of office [before he enter on the execution of his office], (except such as shall be exempted by the Legislature) viz:—

The oath or affirmation of allegiance.

"[I] You \_\_\_\_\_ do solemnly swear [by the ever living God (or affirm in the presence of Almighty God)] (or affirm) that [I] you will be true and faithful to the State of Vermont; and that [I] you will not, directly or indirectly, do any act or thing [prejudicial or] 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 or affirmation of office.

"[I] You \_\_\_\_\_ do solemnly swear [by the ever living God (or affirm in the presence of Almighty God)] (or affirm) that [I] 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 [my] your judgment and abilities, according to law. (If an oath) *So help you God.* (If an affirmation) *under the pains and penalties of perjury.*

## [SECTION XXVII.]

[That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the freemen in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probate, commissioned by the Governor and council, during good behavior, removable by the General Assembly upon proof of mal-administration.]

SECTION XXVII.<sup>3</sup>

[Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and

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<sup>3</sup>Formerly, SECTION X (1777).

annually, forever afterward, as long as such representation shall be necessary.] Any delegate to Congress may be superceded at any time, by the General Assembly appointing another in his stead. No man shall [sit] **be capable of being a delegate to represent this State** in Congress [longer than two years successively, nor be capable of re-election for three years afterwards;] **for more than three years in any term of six years;**--and no person who holds any office in the gift of congress, shall, [thereafter] **during the time of his holding such office**, be elected to represent this state in congress.

#### [SECTION XXVIII.]

[That no person, shall be capable of holding any civil office, in this State except he has acquired, and maintains a good moral character.]

#### SECTION XXVIII.

Trials [shall be by jury; and it is recommended to the legislature of this Stat to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries] **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.**

#### SECTION XXIX.

All prosecutions shall commence [in the name and]--by the authority of [the Freemen of] the State of Vermont; all indictments shall conclude with these words--*against the peace and dignity of the State*. [The style of all process hereafter, in this State, shall be,--The State of Vermont.] **And all fines shall be proportionate to the offences.**

#### SECTION 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 [unless for capital offences, when the proof is evident or presumption great]: nor shall excessive bail be exacted for bailable offences.

#### SECTION 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 so much further punishment as a future legislature shall direct.**

#### [SECTION XXXII.]

[The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.]

#### SECTION 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 of the same county.**

#### SECTION XXXIII.

The Legislature shall regulate entails in such manner as to prevent perpetuities.

#### SECTION 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] **houses** ought to be provided for punishing by hard labor, 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 [the prisoners] **them** at their labor.

#### SECTION 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 any wise forfeited, on account of such misfortune.

#### SECTION XXXVI.

Every [foreigner] **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 [of this State:] **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 governor, lieutenant-governor, treasurer, councillor, or representative in assembly, until after two years residence.**

[SECTION XXXVII.]

[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 clear 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.]

SECTION XXXVII.

[That] 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 enclosed; and in like manner to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the general assembly.

[SECTION XL.]

[A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth a low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly.]

SECTION XXXVIII.

Laws for the encouragement of virtue, and prevention of vice and immorality, [shall be made and] **ought to be constantly kept in force, [and provision shall be made for their due execution;] 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 [have or] may be hereafter united [and] 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.

[SECTION XLII.]

[All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the

General Assembly.]

#### SECTION XXIX.

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 [State] **commonwealth**; and ought [never] **not** to be violated, on any pretence whatsoever.

#### SECTION XL.

In order that the freedom of this commonwealth may be preserved inviolate for ever, 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 of 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] **duties shall** be to enquire, **whether the constitution has been preserved inviolate in every part, during the last septenary (including the year of their service)** 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 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 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 of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

## The 1792 Council of Censors

Vermont's second septenary began in turmoil, and ended with acceptance as the fourteenth state. Drastically fluctuating interest rates, currency values, land prices, wages, and commodity prices, combined with the lack of hard specie, engendered widely felt economic stress and fueled unrest. This unrest focused upon the courts which were hearing an increasing number of debt and land title cases. Daniel Shays' 1786 rebellion in neighboring Massachusetts demonstrated the threat inherent in economic uncertainty.

Echoing Shays, 200 Vermont farmers protested at the opening of the Supreme Court's term in Rutland in August of 1786. In response the General Assembly at its October session passed an act authorizing that "neat-cattle, Beef, Pork, Sheep, Wheat, Rye and Indian Corn" as lawful tender for the payment of debts.<sup>1</sup> Court riots, however continued, at Windsor in October and again in Rutland in November. The increasing violence of the riots lead the 1787 Legislature to enact a harsher law on the prevention and punishment of riots, disorders and contempt of authority.<sup>2</sup> Economic problems continued with crop failures and famine during 1788-89, but by the end of 1789 stabilized prices and markets in Vermont diminished the threat from economic disruptions.

Vermont, and the Arlington Junto, lost its most notable leader with the death of Ethan Allen in 1789. That same year Governor Thomas Chittenden, serving in his eleventh term, was denied re-election by a vote of the Assembly, despite winning a plurality in the general election. His defeat was partly attributed to the "Woodbridge affair," a political scandal arising from attempts to repay Ira Allen for his services as Surveyor General. In 1790 Chittenden was re-elected as conditions improved and the true story of the Allen case became public following an investigation by a committee of the Assembly. The Tichenor-Chipman faction continued to pursue statehood and Ira Allen with equal fervor.

The ratification of the U.S. Constitution in 1789 promised greater stability for the new country and also helped quiet territorial conflicts among the thirteen states. This, in turn, offered hope for Vermont. In late 1790 New York, lobbying to locate the national capital in New York City, relinquished its claims to Vermont in exchange for \$30,000. Vermont then ratified the U.S. Constitution and, on March 4, 1791, became the fourteenth state. That fall the General Assembly ratified the U.S. Bill of Rights and Vermont elected it first Congressional delegation.

There was the promise of better times when the second Council of Censors convened at Rutland on June 6, 1792. Statehood and peace brought relative stability, ending uncertainties over land titles and opening the Vermont frontier. The first U.S. Census counted 85,425 Vermonters while over 116 towns had been chartered by the time of statehood. While the Censors found less to censure they did propose Vermont's third new constitution in fifteen years.

*Note on text:* The Journal of the 1792 Council was not published and the manuscript Journal, held by the Vermont State Archives, is the basis for the following transcript. The Address and Proposed Constitution were

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<sup>1</sup>*State Papers* XIV, 229-30.

<sup>2</sup>*State Papers* XIV, 281.

published in 1792 by Anthony Haswell in Rutland.

Journal  
of the  
Second Council of Censors

State of Vermont - Rutland, June 6th, 1792

The Council of Censors met this day at the Court House in  
Rutland agreeable to law<sup>1</sup> & the Constitution of this State--

Members present -

The Honorable SAMUEL KNIGHT  
ELIJAH PAINE  
SAMUEL MATTOCKS  
JOHN WHITE  
ELIJAH DEWEY  
JONAS GALUSHA  
ROSWELL HOPKINS -

The Ballot being taken for a President of this Council--the Hon'ble  
SAM'L KNIGHT Esq. was Elected

ROS'L HOPKINS Esq. Secretary--

Adjourned until to morrow morning 9 o'clock then to meet at the  
House of SAM'I MATTOCKS Jun. in this town--

—Thursday June 7th 1792—

Met according to adjournment

Members present

Mr. PRESIDENT  
Mr. PAINE  
Mr. MATTOCKS  
Mr. WHITE  
Mr. DEWEY  
Mr. GALUSHA  
Mr. HOPKINS

*Resolved*

That the following be adopted as Rules for the regulation of this  
Council viz.

1st That no member address the president without rising

2d That no member speak without leave of the president

3d That no person speak more than twice on the same subject without  
leave of the other Members

4th That no Resolution be passed without it first being reduced to writing  
On motion of Mr. PAINE,

*Resolved* that the Council of Censors will in the prosecution of the

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<sup>1</sup>State Papers XV. 3-4



duties of their office

Attend

1st to any alteration which may be necessary in the Constitution

2d to the manner in which the Legislative and Executive department in government have exercised their power.

3d How the public monies have been laid and collected--and

4th In what manner they have been disposed of

Read the Constitution through and after discussing several articles adjourned until 2 o'clock P.M.

**2 o'clock P.M.** Met according to adjournment--

*Resolved* that Mr. DEWEY be desired to call on Joseph Fay Esq. Sec'y of Council and request him to bring to Rutland at the Session of Assembly in October next the minutes & journals of Council during the last seven years for the perusal of this council at that time--

Adjourned until Monday preceding the 2d Thursday of Oct. next then to meet at this place

## Second Session

**Monday Oct. 8 1792--**

Met according to adjournment

Members present

SAMUEL KNIGHT Esq. President

BENJ'A BURT Esq.

BENAH LOMIS Esq.

JOHN WHITE Esq.

SAMUEL MATTOCKS Esq.

ROS'L HOPKINS Esq.

Adjourned until tomorrow morning 8 o'clock then to meet at JUDGE MATTOCKS in this town.

**Tuesday Oct. 9th 1792--**

Met according to adjournment--and there being not a quorum present--Adjourned until 2 o'clock afternoon

**2 o'clock P.M.**

Met according to adjournment--JUDGE TICHENOR, JONAS GALUSHA and ELIJAH DEWEY Esquire attended & took their seat.

Adjourned until 8 o'clock tomorrow morning.

**Wednesday Oct. 10th 1792 --**

Met according to adjournment--

- Members present -

Mr. PRESIDENT

Mr. TICHENOR

Mr. GALUSHA

Mr. DEWEY

Mr. WHITE  
Mr. BURT  
Mr. MATTOCK

Mr. LOOMIS  
Mr. HASWELL  
Mr. HOPKINS

On motion of Mr. WHITE, *Resolved* to proceed to the examination of the Laws passed since the last septenary at this time--after reading

The Hon'ble JUDGE BRIDGMAN produced his credentials as a member of this Council & he took his seat--

After reading several of the Statutes passed since October 1786, adjourned until 2 o'clock P.M.--

### 2 o'clock P.M.--

Met according to adjournment -

After reading & considering a number of the Statute Laws of this State--Adjourned until 8 o'clock tomorrow morning--

### Thursday Oct. 11th 1792

Met according to adjournment--

- Present -

Mr. PRESIDENT  
Mr. TICHENOR  
Mr. WHITE  
Mr. PAINE  
Mr. BURT

Mr. DEWEY  
Mr. LOOMIS  
Mr. MATTOCKS  
Mr. HASWELL  
Mr. HOPKINS

Mr. GALUSHA--

A petition from Matthew Lyon praying that Lem'l Chipman Esq. might be impeached for Mal-Administration for signing an attachment against him without oath being given as the law directs--was read--after reading considering a number of the Statutes of this State

Adjourned until tomorrow morning 8 o'clock--

### Friday October 12th 1792

Met according to adjournment--

Present

Mr. PRESIDENT  
Mr. BURT  
Mr. TICHENOR  
Mr. BRIDGMAN  
Mr. WHITE  
Mr. LOOMIS

Mr. PAINE  
Mr. BURK  
Mr. MATTOCKS  
Mr. DEWEY  
Mr. HOPKINS  
Mr. HASWELL--

Mr. GALUSHA

After reading & considering several of the Statute Laws--Adjourned until 2 o'clock afternoon--

### 2 o'clock P.M.

Met according to adjournment.

*Resolved.* That Mr. LOOMIS be directed to wait upon the

Secretary of the Council and request the Journals of that honorable body for the last Septenary, for the inspection of the Council of Censors--

After consultation on the Journals of Council.

*Resolved.* That the Council of Censors now proceed to the consideration of the constitution.

Council proceeded to the consideration of several articles of the bill of rights. After which they adjourned to eight o'clock tomorrow morning.

### Saturday October 13th 1792--

Met according to adjournment.--

Present.

Mr. PRESIDENT  
Mr. TICHENOR  
Mr. BRIDGSMAN  
MR. BURT  
Mr. MATTOCKS  
Mr. PAINE

Mr. WHITE  
Mr. LOOMIS  
Mr. BUCK  
Mr. DEWEY  
Mr. HASWELL  
Mr. GALUSHA

Mr. HOPKINS

The council proceeded to the further consideration of the Bill of Rights.--

*Voted.* That the 13th article of said bill of rights<sup>2</sup> be expunged.--

The council having heard and attended to the Bill of Rights, proceeded to the consideration of a petition signed by Matthew Lyon. Whereupon, *Resolved* it is expedient that complaints of individual officers for offenses against the Constitution should be made in the first instance to the Gen'l Assembly.<sup>3</sup>

*Resolved* that the petition be dismissed--

Proceeded to the consideration of the Constitution. Adjourned 'till

<sup>2</sup>Article XIII provided, "That no warrant or writ to attach the person or estate of any freeholder within this state, shall be issued in civil actions, 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 debt." See page 7.

<sup>3</sup>Matthew Lyon's petition against Lemuel Chipman is found in *State Papers* IX, 464. Lyon condemns "a Pernicious practice prevail[ing] among Justices of the Peace & persons Authorized to Grant writs of Issueing Attachments without the persons granting such Attachments examineing into the propriety or Necessity of such Attachments, & without the Oath being made by the person praying out such Attachment which Our Constitution requires in the 13th Article in the bill of Rights." Lemuel Chipman, as Assistant Judge of Rutland County, apparently had granted an attachment against Lyon himself in December of 1791, without the necessary oath of the creditor that he was in danger of losing his debt.

2 o'clock P.M.

Met according to adjournment. Proceeded to the consideration of the Constitution.

Adjourned until next Monday 9 o'clock in the morning--

**Monday Oct. 14th 1792 --**

Met according to adjournment--

- Members present -

Mr. PRESIDENT

Mr. TICHENOR

Mr. BRIDGMAN

Mr. BUCK

Mr. MATTOCKS

Mr. PAINE

Mr. WHITE

Mr. LOOMIS

Mr. BURT

Mr. DEWEY

Mr. GALUSHA

Mr. HOPKINS

Mr. HASWELL

Proceeded to the consideration of the Constitution. Adjourned until 2 o'clock afternoon.

**2 o'clock P.M.**--Met according to adjournment & after discussing the Constitution, adjourned until tomorrow morning 8 o'clock.

**Tuesday Oct. 16th 1792**

Met according to adjournment--

Present--All the members of the Council.

On motion of Mr. DEWEY

*Resolved* that this Council judge it necessary to amend or alter the Constitution at this time--

*Resolved* that the Supreme Legislature shall consist of a Senate and House of Assembly--

*Resolved* that the Senate shall be chosen by districts.--And the members of the House of Assembly by town.

*Resolved* that Mr. BUCK, Mr. PAINE, Mr. HASWELL, Mr. TICHENOR and Mr. WHITE be a Com't. to prepare a draft for the amendments of the constitution & make report--

Adjourned until 2 o'clock P.M.

**2 o'clock P.M.**

Met according to adjournment--And after some debate on the constitution adjourned until tomorrow morning 8 o'clock

**Wednesday Oct. 17th 1792**

Met according to adjournment--

Members present--all the members of Council. After some debate on the constitution adjourned until 2 o'clock--P.M.

**2 o'clock P.M.**

Met according to adjournment--and adjourned until tomorrow

morning 8 o'clock--

**Thursday Oct. 18th 1792**

Met according to adjournment--

All the members present--Adjourned until 2 o'clock afternoon--

**2 o'clock P.M.**

Met according to adjournment--and adjourned until tomorrow morning 8 o'clock--

**Friday Oct 19th 1792**

Met according to adjournment & adjourned until tomorrow morning 8 o'clock--

**Saturday Oct. 20th 1792**

Met according to adjournment--All the members present--Adjourned until Monday next 8 o'clock in the morning--

**Monday Oct. 22d 1792**

Met according to adjournment--All the members present.

The Com't appointed to make a draft of the alterations proposed in the constitution requested the same of the Council in several articles--After some debate adjourned until tomorrow morning 8 o'clock--

**Tuesday Oct. 23d 1792**

Met according to adjournment--All the members present--After some debate on the request of the Com't adjourned until 2 o'clock--afternoon--

**2 o'clock P.M.**

Met according to adjournment--and adjourned until tomorrow morning 8 o'clock--

**Wednesday Oct. 24th 1792**

Met according to adjournment--All the members present--After debating on the amendments of the constitution adjourned until tomorrow morning 8 o'clock--

**Thursday Oct. 25th 1792**

Met according to adjournment--All the members present--After debating on the amendments of the constitution adjourned until tomorrow morning 8 o'clock--

**Friday Oct. 26th 1792**

Met according to adjournment--All the members present--

*Voted* that Mr. LOOMIS, Mr. BUCK and Mr. HASWELL be a

Com't to redraft the constitution as amended & point out the several amendments & alterations made in the old constitution--

*Voted* unanimously to call a convention for the purpose of adopting the amendments proposed in the Constitution--

Adjourned until tomorrow morning 8 o'clock--

### **Saturday Oct. 27th 1792**

Met according to adjournment--All the members present except Mr. PAINE--

*Resolved* that Mr. TICHENOR be requested to wait on the Hon'ble Gen'l. Assembly and enquire what order they will please to take to pay the Council of Censors--

Adjourned until Monday next 8 o'clock in the morn'g.

### **Monday Oct. 29th 1792**

*Resolved* that Mr. TICHENOR & Mr. HOPKINS be directed to wait on the Hon'ble Gen'l. Assembly with a debenture of this Council made up to this day--

*Resolved* that Mr. HASWELL print 12 copies of the constitution as amended by this Council and transmit one to each member of this Council as soon as may be

*Resolved* to adjourn this Council until the 22d day of Nov. next then to meet at this place

## **Third Session**

### **Thursday Nov. 22d 1792--**

Met according to adjournment--

- Members present -

Mr. GALUSHA

Mr. MATTOCKS

Mr. LOOMIS

There not being a quorum present adjourned until 9 o'clock tomorrow morning

### **Friday Nov. 23d 1792**

Met according to adjournment--

- Members present -

Mr. KNIGHT

Mr. LOOMIS

Mr. BRIDGMAN

Mr. MATTOCKS

Mr. GALUSHA

Mr. HOPKINS -

There not being a quorum--adjourned until 9 o'clock tomorrow morning.

### **Saturday Nov. 24th. 1792**

Met according to adjournment. Members present--the same as yesterday--Adjourned until Monday morning next 9 o'clock in the

morn.

**Monday Nov. 26th 1792**

Met according to adjournment--Members present

Mr. PRESIDENT

Mr. MATTOCKS

Mr. BRIDGMAN

Mr. HASWELL

Mr. GALUSHA

Mr. HOPKINS

Mr. LOOMIS

There being a quorum proceeded to business--

*Resolved* that a Com't of three be appointed to examine the Treas'rs accounts and make a stating & lay the same before this council--Members chosen Mr. MATTOCKS, Mr. GALUSHA and Mr. HOPKINS--

Adjourned until 2 o'clock afternoon--

**2 o'clock P.M.**

Met according to adjournment--The Committee on the Treas'rs account not being ready to report, adjourned until tomorrow morning 9 o'clock--

**Tuesday Nov. 27th 1792 --**

Met according to adjournment--Members present the same as yesterday.

The Com't on the Treas'rs accounts made their report of a stating of the Treas's accounts--which was read--

Proceeded to an examination of the laws passed last Session

Adjourned until 2 o'clock afternoon--

**2 o'clock P.M.**

Met according to adjournment--

*Resolved* that a Com't of three be appointed to prepare a draft of an address to lay before the People--Members chosen--Mr. PRESIDENT, Mr. HASWELL & Mr. HOPKINS--

Adjourned until tomorrow morning 9 o'clock

**Wednesday 9 o'clock A.M. Nov. 28th 1792**

Met according to adjournment--Members present the same as yesterday--

Proceeded to consider the amendments of the constitution--

Adjourned until 2 o'clock afternoon--

**2 o'clock P.M. Nov. 28th 1792**

Met according to adjournment--

Proceeded to consider the amendments of the constitution--

Adjourned until 9 o'clock tomorrow morning

**Thursday -- Nov. 29th 1792**

Met according to adjournment--Members present the same as yesterday.

Proceeded to consider the amendments of the constitution--  
Adjourned until 2 o'clock afternoon--

**2 o'clock P.M.**--Whereas we judge it inconsistent with the spirit and genius of a free people that a man should be adjudged to pay costs where an impartial jury of the county has found him not guilty

Therefore--*Resolved* that this Council recommend to the Legislature to repeal the last paragraph of an act entitled an act regulating the disposal of fines & penalties and the payment of costs in cases of delinquencies passed March 9 1787<sup>4</sup>

*Resolved* that the Secretary of this Council transmit a copy of the preceding resolution to the Legislature at their next session--

*Resolved.* That Mr. HASWELL direct one copy of the proceedings of this council, when printed to the Governor, lieutenant Governor and each member of council, one to each judge of the supreme and county courts, the sheriff of each county, and one to each member of the present council of Censors: the residue to be distributed by the town clerks, as previously directed, as equally and speedily as may be.--

**In Council of Censors, Nov. 30th 1792**

*Resolved* that \_\_\_\_\_ it be recommended to the Treasurer to pay \_\_\_\_\_<sup>5</sup> Kimbal the sum of three pounds Lawful money in hard money for his going express to Norwich to carry a request to DANIEL BUCK Esq. one of the members of this Convention to attend to make a quorum--

*Resolved* that the thanks of this Council be returned to the Hon'ble Sam'l KNIGHT Esq. for his Services as President of said Council at their several sessions--

*Resolved* that the Treasurer pay the debenture of this Council to the several persons therein named the several sums annexed to their names being in the whole 29--13s. agreeable to an act of the Legislature passed Nov. 8st Inst.--

**Vermont-- In Council of Censors Nov. 29th 1792**

To the Honorable the Legislature of this State to be convened in October next--

This Council in examining the proceedings of the Legislature and executive department of the government during the last septenary

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<sup>4</sup>State Papers XIV, 319.

<sup>5</sup>These two spaces were left blank in the Journal.



are happy to find no proceedings, which we judge unconstitutional-- But, with due deference we think the Legislature have in some instances too hastily and inconsiderately passed insolvent acts, and acts suspending the operation of law against particular persons and acts granting particular privileges to individuals--<sup>6</sup>

We conceive there can be but few instances in this State where insolvent acts or acts suspending the operation of law ought to be passed--and that acts granting particular privileges ought not to be passed by the Legislature in favour of individuals unless to service such individuals the exclusive right of their own inventions and we also judge it is inconsistent with the spirit and genius of a free people that a man should be adjudged to pay costs when an impartial jury of the county has declared he is not guilty--

Therefore,

This Council recommend to the Legislature to repeal the last paragraph of an act passed March 9th 1787 entitled "An act regulating the disposal of fines and penalties and the payment of costs in cases of delinquencies"--<sup>7</sup>

It gives us great pleasure that when we take a retrospective view of the multiplicity and the intricacies of business as brought before the Legislature, that there are so few instances where they have -----nd<sup>8</sup> are happy to find that wisdom and stability mark the proceedings of our public bodies, and that this government is daily gaining knowledge and respectability

An account of the arrearages of taxes granted from the 1st of January 1786 to the 26th day November 1792 exclusive of the tax for raising 3000 dollars and the tax granted by the Legislature in October 1792--<sup>9</sup>

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<sup>6</sup>E.g., *State Papers* XIV, 194, "An Act to Discharge Abel Spencer from his Creditors on Delivering Up Bonafide All His Estate," (March 6, 1787). Acts of insolvency remained popular, in spite of the Council's displeasure, well into the 1820's.

<sup>7</sup>The last paragraph of this act provides, "But if it shall so happen that such charges cannot be obtained out of the Estate or service of any person so convicted, such charges shall be paid out of the Treasury into which the Fine ought by law to be paid." *State Papers* XIV, 319.

<sup>8</sup>The manuscript of the Council journal has lost a section here.

<sup>9</sup>Copies of this list are not included in the text of this publication. They are available upon request at the State Archives. Eds.

## Address of the Second Council of Censors

In Council of Censors, Nov. 30, 1792

*To the Freemen of the State of Vermont:*

We have now the honor to submit to your consideration such amendments in the Constitution of this State, as have appeared to us the most advisable.

Sensible that experience alone can evince the utility of political institutions, we have directed our attention rather to remedy the few inconveniences which have been found in the present Constitution, than to introduce theoretical improvements, the issue of which might be doubtful, and perhaps might have a tendency, in the end, to mar that political happiness which we have already attained.

One inconvenience we conceive to be, the vesting of all legislative power in a single and numerous body. Their numbers, which are necessary, in order fully to comprehend all the national interests, passions, manners and sentiments to which laws ought to be adapted, tend to encumber discussion and subject such legislatures frequently, to hasty and crude determinations. This, we have apprehended, to be a principal reason, why so many amendments, explanations, and alterations, have been constantly found necessary, in our laws. To remedy these inconveniences, by introducing a more deliberate discussion, in the proceedings of the legislature, we have proposed the addition of a Senate, who shall have distinct power, and an equal voice, in all affairs of legislation. To facilitate their deliberations, they are to be less numerous than the House of Representatives: we have taken care, nevertheless, that the Senate shall be, in the fullest sense, representatives of the people, and amenable to them, for their conduct, as much as the members of the other branch; and have so provided for their election as to give a different combination, and a more collective view, of the interests which they represent:--this we conceive, will introduce more deliberation into the business of legislation, and give to each branch, an opportunity of correcting many errors, which may otherwise escape attention.

We have thought it inconsistent with the principles of a free government, that the executive should have a negative on the proceedings of the legislature; nevertheless, as the executive have an opportunity of observing all difficulties, which arise in the execution of laws, and are the centre of information, upon that subject, we judge it necessary, that the legislature should be availed of such information:--we therefore propose, that all acts, before they pass into laws, shall be laid before the executive for revision: they are, however, to make no leading propositions, but simply to state

their objections, if any they find, with their reasons in writing, to the legislature; who still are to have the sole power of passing laws.

The other amendments are such as, we are induced to believe, will better explain the several articles, and prevent the passing *ex post facto* laws, and make the practice, in the different branches of government, more uniform.

In examining the proceedings of the legislative and executive departments of this government, during the last septenary, we are happy to find no proceedings which we judge unconstitutional or deserving of censure.

The several taxes, in our opinion, have been justly laid; except where the legislature have doomed, in a few instances, towns, more than the amount of their lists, as returned by their listers; which has thrown an unequal burthen on the collectors of those towns.<sup>10</sup>--The public monies, we find, have been expended with economy; and the several taxes, have been, generally collected.

On a retrospective view, it gives us pleasure to observe, the many valuable improvements which have been made in this government, since the first formation, and the mild and equal energy, which, by such improvements, has been added to the administration, and the increasing happiness of the citizens, in the security of their rights.

It has been our anxious endeavor, to add something to those improvements. Our arrangements, on this head, we now submit, to the consideration of an enlightened community; to judge of their tendency, whether they are calculated in whole, or in part, to add any thing, to the improvement of our present system, to give a further security to the rights, and an increase of happiness to the people.

*By order of Council,*

*I have the honour to be,*

*With due respect,*

*The public's most obedient,*

*Humble servant,*

SAMUEL KNIGHT, *President.*

*Attest*

ROS. HOPKINS, *Secretary.*

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<sup>10</sup>The dooming or doomage of towns occurred when towns failed to pay their share of the state tax burden. The State Treasurer was required to publish the towns' names in the two newspapers of the state and the selectmen were directed, within three months of the publication, to give the Treasurer the name of their first constable. See *State Papers* XIV, 360, "An act for the purposes therein specified," (October 25, 1787).

# The Constitution of Vermont

As Proposed by the Council of Censors  
In the Year 1792.

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## CHAPTER I A DECLARATION OF THE RIGHTS OF The INHABITANTS OF THE STATE of VERMONT.

### ARTICLE 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, in this commonwealth, 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.

### ARTICLE II.

That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

### ARTICLE III.

That all men have a natural and unalienable 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 to, 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 controul 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.

### ARTICLE IV.

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character: he ought to obtain right

and justice freely, and without being obliged to purchase it; compleatly and without any denial; promptly and without delay; conformably to the laws.

#### ARTICLE V.

That the people of this state, by their legal representatives, have the sole, exclusive and inherent, and exclusive right of governing and regulating the internal police of the same.

#### ARTICLE 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.

#### ARTICLE VII.

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 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 most conducive to the public weal.

#### ARTICLE VIII.

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, agreeable to the regulations made in this constitution.

#### ARTICLE IX.

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 any person'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 are 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 community than the money would be if not collected.

#### ARTICLE X.

That in all prosecutions for criminal offences a person 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 favor, 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 person be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers.

#### ARTICLE XI.

That the people have a right to hold themselves, their houses, papers, and possessions free from search or seizure, and therefore warrants, without oath or affirmation first made, affording sufficient foundation for them, and whereby any officer or messenger may be commanded and 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.

#### ARTICLE XII.

That when any issue in fact, proper for the cognisance of a jury, is joined, in a court of law, the parties have a right to trial by jury, which ought to be held sacred.

#### ARTICLE XIII.

That the people have a right to 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.

#### ARTICLE XIV.

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

#### ARTICLE XV.

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 as this constitution, or the legislature shall first provide for.

#### ARTICLE XVI.

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.

#### ARTICLE XVII.

That no person in this state 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, and the militia in actual service.

#### ARTICLE XVIII.

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 making and executing such laws as are necessary for the good government of the state.

#### ARTICLE XIX.

That all people have a natural and inherent right to emigrate from one State to another that will receive them.

#### ARTICLE XX.

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.

#### ARTICLE XXI.

That no person shall be liable to be transported out of this state for trial for any offence committed within the same.

#### ARTICLE XXII.

All provision of law to establish a perpetuity of estates, while it takes away the right of disposal on the one hand, has a direct tendency to abridge the equal right of acquisition on the other--Entails therefore are against common right and ought not be allowed.

## CHAPTER II.

### PLAN OR FRAME OF GOVERNMENT

#### SECTION I.

The State of Vermont shall hereafter be governed by a Governor or Lieutenant-Governor, Senate, and House of the Representatives of the Freemen of the same, in manner and form following.

#### SECTION II.

The supreme legislative power shall be vested in the Senate and House of Representatives.

#### SECTION III.

For the first septenary, or seven years next after the amendments of this constitution shall be adopted, the Senate shall be composed of members from the several counties in this state, apportioned in manner following--The county of Bennington shall have a right to elect two,--the counties of Windsor, Windham and Rutland, respectively, three--the counties of Addison and Chittenden, one each, the county of Orange, two, and every new county, when formed and organized, one. But no county out of which a new county shall be formed, shall have a right to elect more than one Senator, unless there shall be more than 10,000 souls remaining in that county, agreeable to the last census. And forever after each county may elect one Senator for every eight thousand souls in such

county; and any county not containing that number may elect one Senator. For which purpose the freemen of this state shall assemble, in their respective towns, or places for electing representatives, on the first Tuesday of September, annually, and vote, by ballot, for the number of senators their county shall have a right to elect, which votes shall be sealed up, by the presiding officer of such meeting, (in the presence of the freemen) who shall write thereon, votes for Senators, and the name of the town where taken, and within six days after the day of election, deliver the same to one of the Judges of the county court in the same county, and the Judges of said court shall meet at the place where the county court of said county was last holden, on the third Tuesday of September annually, and proceed, publicly, to sort and count said votes; and the person or persons having the greatest number of votes shall be declared duly elected, and if any two or more who are highest in nomination, shall have an equal number of votes, the said Judges shall decide the choice between them by lot. And a certificate of said choice, signed by a majority of the Judges, shall be sufficient evidence of their Election.

Article 2. No person shall be eligible to the office of Senator until he shall have arrived to the age of thirty years.

Article 3. The Judges of the county court shall be ineligible to be elected Senators, while executing the office of Judges. Nor shall any Senator, while holding that office, hold or execute any office in the judicial department.

#### SECTION IV.

The House of Representatives shall be composed of one member from each town in this state (which at the time of election shall consist of forty families) to be chosen by the freemen of such towns respectively, by ballot, on the first Tuesday of September, annually.

Article 2. And if it shall so happen that any person who is elected a representative, shall likewise be chosen a Senator, the freemen of such town upon being notified thereof, & of the person's acceptance (after being duly warned) may meet at any time, previous to the second Tuesday of October following, and choose some other meet person to represent such town for the year ensuing.

Article 3. And in order that the citizens of this state may enjoy equally the benefits of representation, the freemen of any town which shall not consist of forty families, may meet on the day for electing representatives, with the freemen of any other town or towns of like description, to complete the number of forty families, and choose, by ballot, one representative, (but a majority of all the votes in such towns shall be necessary to the choice of a representative) and a certificate of the choice, from the presiding officer, shall be sufficient evidence of the election.

#### SECTION V.

The senate and house of representatives thus chosen, shall meet



on the second Thursday of October, next after their election, at such place shall be appointed by law, and shall be stiled THE LEGISLATURE OF THE STATE OF VERMONT.

Article 2. A major part of the members of each house shall be necessary to constitute a quorum to transact any business except that of adjourning from day to day, and before they proceed to any business, other than choosing their necessary officers, each member shall take the following oath.

*"You \_\_\_\_\_ do solemnly swear (or affirm) that as a member of the legislature of the state of Vermont, you will not propose or assent to any bill, vote or resolution, which shall appear to you 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 by the constitution of this state, but will in all things conduct yourself as an honest representative (or senator, as the case may be) and guardian of the people, according to your best 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 no religious test shall be required of any member of the legislature.

#### SECTION VI.

The Lieutenant Governor shall be President of the Senate, except when he shall exercise the office of Governor; during which time, or in his absence, the senate shall appoint one of their own members, their president, and the president shall have a casting but no other vote.

#### SECTION VII.

Each house shall chuse their own necessary officers, and judge of the election and qualification of their own members. They shall have power to compel the attendance of absent members in such manner as they shall deem expedient; determine the rules of their own proceedings--punish their members by admonition or expulsion for disorderly behaviour, but they shall not expel any member for causes known to his constituents, antecedent to his election. And the two houses shall have all the powers necessary for the legislature of a free and independent state. But they shall have no power to add to, alter, abolish, or infringe any part of this constitution.

#### SECTION VIII.

Each house shall keep fair journals of its proceedings, and publish them immediately after every session, except such part as may require secrecy; and the yeas and nays of the members, on may questions, shall, at the desire of any member, be entered on the journals.

#### SECTION IX.

The stile of the laws of this state in future to be passed, shall be, *Be it enacted by the Senate and the House of Representatives of*

*the State of Vermont.*

#### SECTION X.

The doors of each house shall be open, (except the business immediately before the house may require secrecy,) and neither house shall adjourn more than two days, without the consent of the other.

#### SECTION XI.

The house of representatives may impeach any of the officers of government, for mal-administration, and the senate shall try all impeachments.

No sentence on impeachment shall extend further than removal from, or disqualifying for office, and the awarding of costs.

#### SECTION XII.

All bills for raising a revenue shall originate in the house of representatives, but the senate may non-concur or propose alterations or amendments, and all other bills may originate in either house.

#### SECTION XIII.

No money shall be drawn out of the treasury, unless first appropriated by act of legislation.

#### SECTION XIV.

No person ought in any case to be declared guilty of treason or felony by the legislature.

#### SECTION XV.

No person shall be elected a senator or representative until he has resided two years in this state, the last of which shall be in the county, town, or district for which he is elected.

#### SECTION XVI.

No member of either branch of the legislature shall, directly or indirectly, receive any fee or reward, to bring forward or advocate any bill, petition, or other business, to be transacted in the legislature, or advocate any cause, as council in either house of legislation, except when employed in behalf of the state.

#### SECTION XVII.

To the end that laws before they are enacted may be more maturely considered, and hasty determinations as much as possible prevented, every bill which shall have passed the senate, and house of representatives shall, before it becomes a law, be presented to the governor, or person executing the office of governor, and council, for their approbation: if approved, the governor, or person executing the office of governor, shall write on the bill, approved; but if not approved, he shall within four days, Sundays excepted, return it with their objections, in writing to that house in which it shall have originated, and in such case it shall be the duty of that house to reconsider said bill, and if said bill shall then pass, it shall be sent, together with the objections, to the other house, who shall likewise reconsider said bill, and if it shall again pass, in that house, it shall

become a law of this state, notwithstanding the disapprobation of the governor and council.

If any bill shall not be returned by the governor, as aforesaid, within four days (Sundays excepted) after it shall have been presented to him, the same shall become a law, unless an adjournment of the legislature shall prevent its return, in which case it shall not be a law.

#### SECTION XVIII.

Every man of the full age of twenty-one years who is a citizen of the United States, having resided in this state for the term of one whole year next before the election of Representatives, who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a freemen 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 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 favor of any man."*

#### SECTION XIX.

Every officer of state, whether judicial or executive, shall be liable to impeachment by the house of representatives, either when in office or after his resignation or removal, for mal-administration, and no trial on impeachment shall be a bar to prosecution at law.

#### SECTION XX

Laws for the encouragement of virtue, and prevention of vice and immorality, ought to be kept constantly 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 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 in justice ought to enjoy, under such regulations as the legislature of this state shall direct.

### CHAPTER III. EXECUTIVE.

#### SECTION I.

The supreme executive power shall be vested in the governor, or in his absence the lieutenant governor, or in case of the absence or disability of both, in such person as the legislature shall appoint.

#### SECTION II.

The governor, lieutenant governor and treasurer shall be chosen in the following manner--

The freemen of each town shall, on the day appointed for the election of senators, vote, by ballot, for the persons whom they would have for governor, lieutenant governor and Treasurer, by writing their names fairly, on separate pieces of paper, and the presiding officer of the respective meetings shall (in the presence of the freemen) seal up the separate parcels of votes, and write on them votes for governor, lieutenant governor or treasurer, as the case may be, and the name of the town where taken, and sign his name to the same, and deliver said votes, so sealed up, to the representative of that or some other town or district, chosen for the ensuing year, and at the opening of the two houses of the legislature, there shall be a committee appointed, from the senate and house of representatives, who, after being duly sworn to the faithful discharge of their trust, shall receive, sort and count said votes, and the person having the majority of the votes, for either office, shall be duly elected to said office. But if there be no choice, the senate and house of representatives, by their joint ballot, shall make choice of such officers.

#### SECTION III.

The governor, and in his absence the person exercising the office of governor, shall have power to commission all officers, and also to appoint officers (except where provision is or shall be otherwise made by law, or this frame of government,) and supply every vacancy in any office, occasioned by death or otherwise, until the office can be filled in the manner directed by law, or this constitution. He shall have the power to correspond with other states, transact business with officers of government civil and military, and prepare such business as to him shall appear necessary to lay before the legislature. He shall have power to grant pardons, and remit fines, in all cases whatever, except in treason, murder and impeachment; in which cases only the legislature may grant pardons; but the governor may grant reprieves until the rising of the then next session of the legislature. He shall take care that the laws be faithfully executed, and expedite the execution of such measures as may be resolved upon by the legislature; and he may lay embargoes, or prohibit the exportation of any commodity, for a time not exceeding thirty days, in the recess of legislature. He shall have power to call together the two houses of the legislature, when necessary, before the day to which they shall stand adjourned. He shall be captain general and commander in chief of the forces of the state.

#### SECTION IV.

The Lieutenant Governor shall be Lieutenant General of all the forces of this State in virtue of his office.

#### SECTION V.

The governor may appoint a secretary for himself and his council.

## SECTION VI.

No person shall be eligible to the office of governor or lieutenant governor, until he shall have resided in this state four years next preceding the day of his election.

No person shall be eligible to the office of governor until he shall arrive at the age of thirty five years.

No person shall be eligible to the office of lieutenant governor until he shall have arrived at the age of thirty years.

## SECTION VII.

The senate and house of representatives shall annually elect four persons, in the same manner they are to elect judges of the supreme court, who shall be called the advisory council (but they shall not choose members of either house of the legislature) and shall meet with the governor at every session of the legislature, to advise with him in granting pardons, remitting fines, laying embargoes, revising bills passed by the legislature, and in such other cases as the governor shall deem necessary.

## SECTION VIII.

No person shall be capable of holding or exercising more than one of the following offices, at the same time, viz: governor, lieutenant governor, advisory council, judge of the supreme court, treasurer of the state, senator, representative, surveyor general, sheriff, senator or representative in congress. Nor shall any person holding any office of profit or trust, under the authority of Congress, be eligible as one of the advisory council, or to any appointment in either branch of the legislature, nor shall he be capable of holding any executive, judiciary, or military office under this state.

## SECTION IX.

All commissions shall be, in the name of the freemen of the state of Vermont, sealed with the state seal, signed by the governor, or in his absence by the officer exercising the office of governor, and attested by the secretary of state; which seal shall be kept by the governor.

## SECTION X.

The treasurer of the state shall, before the governor, give sufficient security to the secretary of state, in behalf of the legislature; and each High Sheriff before the first Judge of the County Court, to the Treasurer of the 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.

## SECTION XI.

The treasurer's account shall be annually audited, and a fair state thereof laid before the legislature at their session in October.

## CHAPTER IV. JUDICIARY.

### SECTION 1.

The judiciary department shall consist of one supreme court, a court of chancery, and a county court in each county, courts of probate in each district, and justices of the peace.

Either house of the legislature may, by ballot, nominate or elect judges of such courts, major generals, brigadier generals, secretary of state, and sheriffs; and also without ballot, nominate or elect justices of the peace, and transmit such nominations within two days to the other house, for their approbation, but such election shall not be valid, until approved of by the other house: if the other house do not approve, they shall make a nomination, and transmit the same to the house in which the election was first made. If both houses do not agree in any such choice, in that case both houses shall, by joint ballot elect such officer.

### SECTION II.

The judges of the supreme, chancery, county, and probate courts, secretary of state, sheriffs, and justices of the peace shall be elected annually.

### SECTION III.

Courts of justice shall be maintained in every county of 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 office, except in the trial of such causes as may be appealed to the county court.

### SECTION IV.

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.

### SECTION V.

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.

### SECTION VI.

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.

## CHAPTER V.

### SECTION 1.

The legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

### SECTION II.

The inhabitants of this state shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as congress, agreeable to the constitution of the United States, and the legislature of this state shall direct. The several companies of militia shall, as often as vacancies happen, elect their captains and other officers; and the captains and subalterns shall nominate and recommend the field officers of their respective regiments who shall appoint their staff officers.

### SECTION III.

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, and faction, contention and discord 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 when ever 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 wittingly and wilfully take greater fees than the law allows him, it shall ever after disqualify him from holding office in this state--until he shall be restored by act of legislation.

### SECTION IV.

Every officer whether judicial, executive, or military, in authority under this state, before he enters 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 military officers, and such as shall be exempted by the Legislature) viz.

The oath or 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 or 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 or 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 an oath, So help you God. If an affirmation, under the pains and penalties of perjury.*

#### SECTION V.

All elections, whether by the people, or the legislature shall be 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 and 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 so much further punishment as a future legislature shall direct.

#### SECTION VI.

All deeds and conveyances of land shall be recorded in the town clerk's office in their respective towns; and for want of such office, in the county clerk's office of the same county.

#### SECTION VII.

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 labor 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 labour.

#### SECTION VIII.

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.

#### SECTION IX.

The inhabitants of this state shall have liberty, in seasonable times, to hunt and fowl on the land they hold, and on other lands not enclosed; and in like manner to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the legislature.



## SECTION X.

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 state; and ought not to be violated on any pretence whatsoever.

## SECTION XI.

In order that the freedom of this state may be preserved inviolate for ever, there shall be chosen, by ballot, by the freemen of this state, on the last Wednesday of March, in the year 1799, and on the last Wednesday of March in every seventh year thereafter, thirteen persons, who shall be chosen in the manner the governor is chosen, excepting that the thirteen highest shall be declared duly elected, who shall be called the council of censors. The governor, lieutenant governor, councillors, judges of the supreme court, members of either branch of the legislature, senators or representatives to congress, or persons holding office under the authority of congress, shall be ineligible to a seat in said council. And the said council of censors shall meet on the first Wednesday of June, next ensuing their election; a 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; whose duty it shall be to enquire 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 that they are entitled to by the constitution. They are to enquire whether the public taxes have been justly laid and collected in all parts of this state; in what manner the public monies have been disposed of; and whether the laws have been duly executed. For these purposes they shall have authority to send for persons, papers and records. They also shall have authority to pass public censures, to order impeachments, and to recommend to the Legislature the repealing such laws as appeared 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. This said council of censors shall also have power to call a convention, from the several towns or districts who are entitled to send a representative, to be apportioned as nearly equal to their numbers as may be, but no town to send more than three members, (which convention shall meet within two years after the sitting of said council of censors) 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 article 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.<sup>11</sup>

VERMONT,

In COUNCIL of CENSORS,

November 30, 1792.

WHEREAS there appears to this council, for the preservation of the rights and happiness of the people, an absolute necessity of amending and explaining several articles of the constitution of this state and making some addition, thereto,

Therefore, by virtue of the power and authority vested in this council, by the 40th section of the frame of government, it is unanimously,

*Resolved*, That four hundred and fifty copies of the Constitution, as revised by this council, and the present constitution, be printed, for the perusal of the people, and that Mr. Haswell be requested to print and transmit the same, by express, to the sheriffs of the several counties, to be by them immediately transmitted to the town clerks of the several towns, for the use of the inhabitants; and that the sheriffs apportion the books, sent to the town clerks, as nearly equal as may be, having respect to the number of inhabitants in the respective towns.

*Resolved*, That the constitution as amended, &c. be published in the Vermont Journal and Vermont Gazette.

*Resolved*, That the first constable of each town in this state, be, and is hereby directed, at least twelve days previous to the last Monday in June next, to warn a meeting of the inhabitants of their respective towns, according to law, to meet at the usual place of holding freemen's meetings, within the same, at two o'clock in the afternoon, of the said last Monday in June, then and there to elect, in the same manner as representatives are elected, one member, to attend a convention, to be holden for the purpose of considering and adopting the amendments of the constitution, as proposed by this council: And that the constable, or in case of his absence, the presiding officer of such meeting, certify the election of the person chosen.

*Resolved*, That it be recommended to the said members of convention, to convene on the first Wednesday of July next, at the courthouse in Windsor, to take under consideration the amendments of the constitution of this state, as proposed by this council, and if they think proper, to adopt the same as the constitution of this state.

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<sup>11</sup>An account of arrearages of taxes from various towns that was printed with the address and proposed constitution appeared here. For a copy, contact the State Archives.

*Resolved*, That the thanks of this council be returned to the honourable Samuel Knight, esq. for his service as president of said council, at their several sessions.

*The preceding are true copies from the minutes,*

*Attest.*

ROSWELL HOPKINS, *Secretary.*

### Results of the 1792 Council of Censors

The 1792 Council was not successful in convincing the General Assembly to change the one act it objected to in its journal of November 29, 1792. This was, "An act regulating the disposal of fines and penalties and the payment of costs in case of delinquencies."<sup>12</sup> The Council believed the act was "inconsistent with the spirit and genius of a free people that a man should be adjudged to pay costs where an impartial jury of the county has found him not guilty." The objectionable paragraph includes the provision that, "if there shall appear a strong presumption to the said Court that the person complained of is guilty of the offence charged against him," the persons must bear the cost of prosecution, even if not found guilty. The Assembly took no action on this recommendation. The issue did come back again, however, in the 1799 Council's considerations.

### The 1792 Council of Censors and The Constitution of 1793

The Constitution of 1793 was the first Vermont Constitution after statehood. Vermont had ratified the U.S. Constitution in 1791, and the 1792 Council had the important task of amending the 1786 Vermont Constitution to avoid conflicts with its federal equivalent.

The Constitutional Convention of 1793 met in Windsor on July 3, 1793. The Convention was called pursuant to a resolution of the 1792 Council of Censors, adopted on November 30, 1792. The Council ordered an election on the last Monday in June of the coming year, each town to elect a member of the Convention, "to convene on the first Wednesday of July next, at the courthouse in Windsor, to take under consideration the amendments of the constitution of this state, as proposed by this council, and if they think proper, to adopt the same as the constitution of this state." One hundred and twenty-five strong, with Thomas Chittenden as President and Lewis Morris as Secretary, the Convention on the first day ordered "that the mode of discussing the business of this Convention shall be to appoint two persons--one for the purpose of reading the Old Constitution--the other the new--and where there is no alteration the same be passed in silence, and where there is any alteration or addition the same be taken up and debated."

Many of the major changes proposed by the Council were not adopted by the 1793 Constitutional Convention. The most important of these was the creation of a Senate and the elimination of the Executive Council. This was principally drawn in the proposed Chapter II, which created a system based on population standards for apportioning a Senate of nine members, with the authority to expand its members for each additional 10,000 souls in a county. On the election of House members, the proposed constitution would have allowed residents of towns with fewer than forty families to join with larger towns in the election of their representatives.<sup>13</sup> Both the Senate and House would be authorized to punish their members by admonition or expulsion for disorderly conduct.<sup>14</sup> Candidates for governor would have had to reach the

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<sup>12</sup>*State Papers* XIV, 319 (March 9, 1787).

<sup>13</sup>Chapter II, Section IV, Article 3.

<sup>14</sup>Chapter II, Section VII.

age of 35 (lieutenant-governors and senators, 30) The Senate and House would elect an advisory council of four members, who would meet with the governor and advise him on granting pardons, remitting fines, laying embargoes, revising bills and other matters.<sup>15</sup> The Governor would have no veto power, nor even the power to suspend laws, as under the 1786 Constitution; the best he could do is to return the bills submitted for his review to the chamber from which it originated, which would then reconsider it and enact it if it wanted.<sup>16</sup> None of these proposals were adopted by the Convention.

The Convention did vote to expunge the Preamble, which had been added to the Constitution in December of 1777. The Council of Censors did not expressly propose its elimination, but it is missing from the draft Constitution submitted to the Convention. The Convention Journal clearly reflects the delegates' intentions to delete it.<sup>17</sup>

The Convention's final version of Chapter I included many changes proposed by the Council, including the deletion of two articles and one section and the addition of four new sections. The Convention agreed to delete Article 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." The Convention also agreed to expunge Article XIII, "That no warrant or writ to attach the person or estate of any freeholder within this state, shall be issued in civil actions, without 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."

In Article II, the Convention agreed with the Council's proposal to substitute "any person's property" for "any particular man's property" for purposes of receiving the equivalent in money when it is taken for the use of the public. Article IX, as numbered in the Constitution of 1786, which then became Article VIII, was also changed by the Convention by the addition of the words, "agreeably to the regulations made in this constitution" at its end. The Convention also adopted a small change in Article XV, reserving the power of suspending laws or their execution, "in particular cases, as *this constitution*, or the legislature shall expressly provide for" (italicization added). The Convention adopted the Council's proposal to delete language from Article XIX, "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]." This change was

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<sup>15</sup>Chapter III, Section VII.

<sup>16</sup>Chapter II, Section XVII.

<sup>17</sup>In 1856, the House Committee on the Judiciary concluded that the preamble had never been formally repealed, believing that its harsh words on New York recommended against its publication in 1791. The 1793 Convention Journal, however, was not published until 1912. See below for more on its curious history.

a reaction to statehood, to conform the state constitution to the U.S. Constitution of 1789.

The Convention journal notes, "[Article] 22d. Article read and accepted." Article XXII as proposed by the Council provided, "All provision of law to establish a perpetuity of estates, while it takes away the right of disposal on the one hand, has a direct tendency to abridge the equal right of sequestration on the other--Entails therefore are against the common right and ought not be allowed . . ."<sup>18</sup> This article did not appear in the published Constitution of 1793.<sup>19</sup> The journal may not reflect a subsequent decision to remove the new Article XXI.

In Chapter II, Section 11 was amended to add that, "The governor may appoint a secretary for himself and his council." In this same Section, the Convention agreed with the Council to change the word, "commissionate" to "commission," to describe the Governor's powers in appointing public officers, and by another minor change, substituting "legislature" for "legislation" in identifying the manner of remission for cases of impeachment. The Convention also expunged the religious test in the old Constitution. This was an oath in Section 12 that the officer "believe[d] in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked" and "acknowledge[d] the scriptures of the old and new testament to be given by divine inspiration, and . . . own[ed] and profess[ed] the protestant religion." Section 12th of the 1793 Constitution deleted this oath, as well as the phrase, "And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this state."

The Convention added Section 17th, that "No money shall be drawn out of the Treasury, unless first appropriated by act of Legislation." It added Section 18th, which provided that, "No person shall be elected a Representative, until he has resided two years in this State: the last of which shall be in the town in which he is elected." And it added Section 19th, that, "No member of the Council, or House of Representatives, shall, directly or indirectly, receive any fee or reward, to bring forward, or advocate all bill, petition, or other business, to be transacted in the Legislature; or advocate any cause, as Council, in either House of Legislature, except when employed in behalf of the State."

In Section 22nd, the Convention added the words "agreeably to the Constitution of the United States, and the Legislature of this State" and deleted "as the General Assembly shall, by law," before the word "direct." In Section 23rd, the Governor, rather than the Council, became the keeper of the seal.

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<sup>18</sup>*State Papers* XV, 165.

<sup>19</sup>On October 20, 1786, the Assembly Journal reports, "Resolved that the Committee appointed by the Convention, for preparing the Constitution for the press, lay before the General Assembly at their next session the journals of said Convention in order to see if some particular section of the constitution are not omitted through mistake." *State Papers* III, Part III, 232. No specific notice of the Committee's work appears in the 1787 Assembly Journal, although the General Assembly did "establish the constitution of Vermont" by an act of the legislature on March 8, 1787. *State Papers* XIV, 238.

The words, "no trial or impeachment shall be a bar to a prosecution at law," were added to Section 24th of the 1793 Constitution. In Section 25th, "wittingly and unwittingly" was added to the third sentence, "directly or indirectly" deleted, and "until he shall be restored by act of Legislation" added to the end of the sentence.

The sentence, "Nor shall any person holding any office of profit or trust under the authority of Congress, be eligible to any appointment in the Legislature, or of holding any executive or judiciary office under this State," were added to Section 26th.

A new Section 30th provided that, "No person shall be eligible to the office of governor or lieutenant governor, until he shall have resided in this State for four years next preceding the day of his election."

The Convention expunged the former Section 27th, providing that "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." With statehood, the U.S. Constitution governed the election and qualification of congressional representation.

Immediately following this decision, the Convention Journal reports, "The Constitution passed in bulk," and Lewis Morris, its Secretary, and Stephen Jacob, a Convention delegate who was at that time also U.S. District Attorney, were appointed as a Committee to "inspect the printing of the Constitution as agreed to by this Convention, and that they have 500 Copies printed and kept in the possession of the Printer until they shall receive further orders from the Legislature of this State."

The Convention Journal was not regarded as a public record by Lewis Morris, the Convention Secretary. It was not copied at the time, and for much of the next century was regarded as lost. H. S. Wardner reported in the *Vermont Journal* of July 19, 1921 that he had just received a copy of the journal of the Constitutional Convention of 1793, which since 1793 had been in private hands, in line of succession from Lewis Morris to Alden Spooner, the printer of the 1785 Constitution, to Stephen Jacob. It was acquired on Judge Jacob's death by Congressman Horace Everett. Everett's grandson, Leonard Everett, found it in Council Bluffs, Iowa among the family papers. It had made a return trip to Windsor in 1877, when Horace Everett, son of Congressman Everett, had sent it to be exhibited at the Vermont Centennial in Windsor, but it was apparently returned to Iowa after the ceremony. At that time, the Vermont Historical Society copied the text and printed it in its Proceedings. The original journal of the 1793 Convention is now in the custody of the State Archives, in Montpelier.

On November 3, 1796, the General Assembly passed, "An act adopting the Constitution of Vermont as the supreme law of the state and describing those persons entitled to the privileges of law and justice."<sup>20</sup> In addition to enacting the Constitution, mandating that it "shall be forever considered, held and maintained as the supreme law of this State," the act provided, "That all the Citizens of Subjects of the United States of America shall, within this

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<sup>20</sup>*State Papers* XVI, 36.

State or Commonwealth, be equally entitled to the privileges of law and justice, with the citizens of this State, in all causes proper for the cognizance of the civil authority and courts of judicature in the same, and that without partiality or delay; and that no person's body shall be restrained or punished unless by authority of Law."

Daniel Chipman, in a speech before the 1836 Constitutional Convention, described the 1793 Convention this way: "At the end of the second septenary in the year 1793 the Council of Censors proposed an entire new frame of government. They proposed to constitute a Senate in place of the Governor and Council, as is proposed by the amendment now under consideration of the committee. Those amendments were rejected by the convention, not because the people had in the seven years preceding become attached to the constitution by habit, but because the amended constitution provided, that no town should be entitled to a representative, unless it contained forty families, and because the Senate was apportioned to the different counties according to their population.

"At that early time, in the year 1793, a great portion of the towns north of the counties of Rutland and Windsor, contained less than forty families, and as we had even in those days, some genuine demagogues, they undertook to render themselves popular, by telling the people in that region, that if the proposed amendments to the constitution should be adopted they would lose their whole might in both branches of the legislature. And so successful were they, that every member of the convention from that section of the State except two, voted against the amendments."<sup>21</sup>

The Convention journal was finally published by the Vermont Historical Society in 1912.

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<sup>21</sup>"Speech of Hon. Daniel Chipman," (Middlebury: E.R. Jewett, 1837).





# The Constitution of 1793<sup>1</sup>

## [Preamble]<sup>2</sup>

### 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 and inherent 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] **person'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 unalienable 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 whatever, that shall in any case interfere with, or in any manner controul, the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of christians ought

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<sup>1</sup>The Vermont Constitution of 1786 appears in the standard type. The Council's proposals which became law by their adoption by the 1792 Constitutional Convention appear in **bold type**. Where portions of the 1786 Constitution have been deleted, this material is set off in brackets [like this].

<sup>2</sup>The Preamble was deleted by action of the Convention of 1793. Its length necessitates not reproducing it here in bracketed form. For a copy, see the Constitution of 1777.

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] **inherent and exclusive** 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 not for the particular emolument or advantage of any single man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable, and infeasible right, to reform or alter government, in such manner as shall be, by that community, judged 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 the vacancies in a constitutional manner, by regular elections, at such periods as they may think proper.]

VIII. 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, **agreeably to the regulations made in this constitution.**

IX. 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] **any person'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 are 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 community than the money would be, if not collected.

X. That in all prosecutions for criminal offences, [a man] a **person** hath a right to be heard by himself and his counsel; to demand the cause and nature of his accusations; 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 [he] **any person** be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers.

XI. That the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure; and therefore warrants, without oath[s] or affirmation[s] first made, affording sufficient foundation for them, and whereby by 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 actions, 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 debt.]

XII. That when any 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.

XIII. That the people have a right to 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.

XIV. The freedom of deliberation, speech and debate in the Legislature, is so essential to the rights of the people, that it cannot

be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XV. 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 **this constitution, or** the Legislature shall [expressly] provide for.

XVI. That the people have a right to bear arms for the defence of the 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.

XVII. That no person in this commonwealth 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, and the militia in actual service.

XVIII. 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.

XIX. 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].

XX. 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.

XXI. That no person shall be liable to be transported out of this State, for trial for any offence committed within the same.

## CHAPTER II PLAN OR FRAME OF GOVERNMENT

### SECTION 1st.

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.

### SECTION 2nd.

The Supreme Legislative power shall be vested in a House of Representatives of the freemen [or] of the commonwealth or State of Vermont.

### SECTION 3rd.

The Supreme Executive power shall be vested in a Governor (or, in his absence, a Lieutenant-Governor) and Council.

### SECTION 4th.

Courts of justice shall be maintained in every county in this State, and also in new counties when formed; which courts shall be opened 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 causes as may be appealed to the County Court.

### SECTION 5th.

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 said court.

### SECTION 6th.

The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other.

### SECTION 7th.

In order that the freemen of this State might 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 years next after the establishing this constitution,

may hold election 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 the 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.

#### SECTION 8th.

The House of Representatives of the Freeman 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 originally, forever.

#### SECTION 9th.

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 the 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 there 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.

#### SECTION 10th.

The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. 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 Representatives

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 Councillors, in the same manner, and the twelve highest in nomination shall serve for the ensuing year as Councillors.

#### SECTION 11th.

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 commission[ate] 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 every 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] 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 [Treasurer] Treasury 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 councillor may enter his dissent, with his reasons to support it; and the Governor may appoint a Secretary for himself and his Council.

#### SECTION 12th.

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 theretofore 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 or 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.]

#### SECTION 13th.

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.

#### SECTION 14th.

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.

#### SECTION 15th.

The stile of the laws of this State, in future to be passed, shall be,--*It is hereby enacted by the General Assembly of the State of Vermont.*

#### SECTION 16th.

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.

#### SECTION 17th.

No money shall be drawn out of the Treasury, unless first appropriated by act of Legislation.

#### SECTION 18th.

No person shall be elected a Representative, until he has resided two years in this State: the last of which shall be in the town for which he is elected.

#### SECTION 19th.

No member of the Council, or House of Representatives, shall, directly or indirectly, receive any fee or reward, to bring forward, or advocate any bill, petition, or other business, to be transacted in the Legislature; or advocate any cause, as Council, in either House of Legislature, except when employed in behalf of the State.

#### SECTION 20th.

No person ought, in any case, or in any time, to be declared

guilty of treason or felony by the Legislature.

#### SECTION 21st.

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 who 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 favor of any man."*

#### SECTION 22nd.

The inhabitants of this commonwealth shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, agreeably to the **Constitution of the United States, and the Legislature of this State**, [as the General Assembly shall, by law,] 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.

#### SECTION 23rd.

All Commissions shall be in the name of the freemen of the State of Vermont, sealed with the State seal, signed by the Governor, or in his absence, the Lieutenant-Governor, and attested by the Secretary, which seal shall be kept by the [council] **Governor**.

#### SECTION 24th.

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; **and no trial or impeachment shall be a bar to a prosecution at law.**

#### SECTION 25th.

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 effect of which are dependance and servility, unbecoming freemen, in the possessors or expectants, and 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 to it, the profits ought to be lessened by the Legislature. And if any Officer shall **wittingly and willfully** 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, **until he shall be restored by act of Legislation.**

#### SECTION 26th.

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. **Nor shall any person holding any office of profit or trust under the authority of Congress, be eligible to any appointment in the Legislature, or of holding any executive or judiciary office under this State.**

#### [SECTION XXVII.]

[Any delegate to Congress may be superceded 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.]

#### SECTION 27th.

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.

#### SECTION 28th.

The Treasurer's accounts shall be annually audited, and a fair state thereof laid before the General Assembly, at their session in October.

#### SECTION 29th.

Every Officer, whether judicial, executive or military, in authority under this state, before he enters 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 or 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 or 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 or 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 an oath) So help you God. (If an affirmation) under the pains and penalties of perjury."

#### SECTION 30th.

No person shall be eligible to the Office of Governor, or Lieutenant Governor, until he shall have resided in this State four years next preceding the day of his election.

#### SECTION 31st.

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.

#### SECTION 32nd.

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 proportion[ate]d to the offences.

#### SECTION 33rd.

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.

## SECTION 34th.

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 so much further punishment as a future legislature shall direct.

## SECTION 35th.

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 of the same county.

## SECTION 36th.

The Legislature shall regulate entails in such manner as to prevent perpetuities.

## SECTION 37th.

To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishment less necessary, houses 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 labor.

## SECTION 38th.

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.

## SECTION 39th.

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 of a natural born subject of this State; except that he shall not be capable of being elected Governor, Lieutenant-Governor, Treasurer, Councillor, or Representative in Assembly, until after two years

residence.

#### SECTION 40th.

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 enclosed; and in like manner to fish in all boatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the general assembly.

#### SECTION 41st.

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.

#### SECTION 42nd.

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.

#### SECTION 43rd.

In order that the freedom of this commonwealth may be preserved inviolate for ever, 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 of 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 duties shall be to inquire, whether the constitution has been preserved inviolate in every part, during the last septenary (including the year of their service) 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 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 of 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 9, 1793  
Thomas Chittenden, President

[Attest] L. R. Morris, Secretary





## The 1799 Council of Censors

Vermont's third septenary was marked by relative tranquility and prosperity. The state's population rose from 85,425 in 1791 to 154,396 by 1800. At least fifty new towns were settled, roads were built, the first turnpikes started, and plans launched for canals linking Lake Champlain with the St. Lawrence and the Hudson Rivers, and for further opening the Connecticut River to commerce.

The leaders of the revolutionary era continued to fade from the scene. Thomas Chittenden declined to run for another term in 1797, due to ill health, and died before completing his nineteenth term. Ira Allen spent much of the septenary in prison in Europe, while his enemies at home continued their attacks.

In 1797 Isaac Tichenor was elected governor, his oath of office being administered by Chief Judge Nathaniel Chipman. Chipman was shortly thereafter elected to the U.S. Senate. The Federalists, though successful, were not without opposition. The French Revolution, Jay's Treaty, and other national and international events divided Vermonters. Fears of war increased militia activity and in 1797 the federal government set a 2,150 man militia quota for Vermont. Democratic-Republican clubs, associated with Thomas Jefferson, formed in the 1790's in opposition to Federalist policies.

The most notorious example of national politics infecting Vermont was the conviction and imprisonment of Congressman Matthew Lyon and printer Anthony Haswell under the Alien and Sedition Acts of 1798. Vermonters responded by re-electing Lyon from his Vergennes jail cell.

"Party spirit" emerged from local issues as well. There was concern, particularly in the western Vermont, that the original commitment to popular democracy was succumbing to religious and political establishments. For example, by the late 1790's disputes erupted in several towns over the ownership of meeting houses and the apportionment of religious taxes among competing denominations.

Despite repeated pronouncements decrying "party spirit," the policies and personalities of political opponents and candidates were often viciously attacked. Even President Washington, before his retirement in 1796, was not immune from such attacks. These heated election contests infected the General Assembly.

Some of these events and actions drew the attention of the third Council of Censors. The Council was in comparison, however, less active than its predecessors and for the first time a Council did not propose an extensive rewrite of the Vermont Constitution. The Censors, whose names do not appear in the following transcript, were Samuel Knight, Benjamin Emmons, Elias Buel, Noah Chittenden, Elijah Dewey, David Fay, Lot Hall, Jonathan Hunt, John Leverett, Nathaniel Niles, Moses Robinson, John White, and John Willard.

*Note on the Text:* No Journal for the 1799 Council of Censors has been found. The text of the Address of the Council was printed by Anthony Haswell in Bennington in 1800. The Address indicates that the Censors met in October, 1799 in Windsor and in February, 1800.



An Address  
of the  
Council of Censors  
to the People of Vermont

*Respected Fellow Citizens,*

Your Council of Censors, elected in the month of March last, agreeable to the constitution,<sup>1</sup> having accepted their appointment and duly proceeded to the examination of the various important concerns committed to their charge, submit the following as the result of their deliberations to you, the people, as the true fountain of government, and the original source of delegated power.

The council after due deliberation on the expediency of revising and amending the constitution have ultimately concluded not to recommend any alterations; and although every member of this board has manifested an opinion, that alterations might possibly be made, for the greater security of our inestimable rights, yet the present convulsed state of political opinion, renders the present an unsuitable period for entering on such an important business.

"To enquire whether the constitution has been preserved inviolate, in every part, during the last septenary, 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; 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," are the truly painful but assigned duties of this board. On the one hand to touch the character and conduct of those public functionaries, in whom the people have reposed the highest confidence, is an irksome and undesirable business, yet on the other, to admit any man, or set of men in community, to rule and govern without limit, control, or accountability, is an evil of such magnitude, as to strip the duty of its disagreeable tints, by evincing its absolute necessity.

Public officers are thus arraigned before the tribunal of the sovereign people, whose servants they are, and by whom alone they are invested with certain, degrees of power.

Under these impressions we have cheerfully attended to our duty, and with diffidence of our own opinions, and respect for the abilities

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<sup>1</sup>"An act regulating the choice of a council of censors," *State Papers XVI*, 246-48.

of those who have administered the government, present the following.

That in examining the procedure of the legislature during the last septenary, we are of opinion, that except in a few instances, they have conducted public concerns agreeable to the rules prescribed by the constitution. The exceptions which we advert to are as follows, viz:

In the sixth section of the 58th chapter of the laws, entitled "*An act directing the mode of elections*," &c. passed October 26th, 1796, the supreme court are empowered to disfranchise a freeman for any *evil practice which shall render him notoriously scandalous*.<sup>1</sup> This part of the section, independent of its vague and uncertain meaning, is against the letter and spirit of the eighth article of the bill of rights, and the 34th section of the form of government, the former only declares *That all elections ought to be free and without corruption*, the latter, points out what constitutes the crime of bribery in elections, and the punishment therefor, leaving to the legislature the right of adding farther penalties for the crime, as therein ascertained.-----

The Council are fully of opinion, that the framers and adopters of the constitution, contemplated to preserve inviolate the right of suffrage to every freeman, unless he should in fact forfeit the right, by acting wickedly and corruptly, relating only to that inestimable privilege.

The 9th section of the 15th chapter of the laws, entitled, "*An Act relating to fines and forfeitures*," &c. passed by the legislature in March, 1797, subjects persons acquitted by a jury in criminal prosecutions, to pay cost in certain cases, at the discretion of the court or justice of the peace before whom the trial is had.<sup>2</sup>

This law in the opinion of this board is an infringement of the 10th section of the bill of rights, which declares, "*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 offence, to be confronted with the witness, to call for evidence in his favor, and to have a speedy public trial by an impartial jury of his country without the unanimous consent of which jury he cannot be found guilty*."

It will be clearly discerned, by every candid and reflecting mind, that the power here given, does not subject the citizen to any kind of penalty in a criminal prosecution, where trial is had by jury, unless such jury first unanimously declare him guilty.

To suppose the free citizens of this state to be subjected to any pains, penalties, or cost, for the same charge on which they had

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<sup>1</sup>Revision of 1797, Chapter LVII, Section 6, 551.

<sup>2</sup>Revision of 1797, Chapter XV, 203 (March 6, 1797).

been acquitted, is not only a violation of the constitution, but inconsistent with the principles of justice and humanity.

The 51st chapter, entitled, an act to support the gospel, passed Oct. 26, 1797, excepting the first and last sections, ought to be repealed.<sup>3</sup>

This act the council are sensible, embraces a subject of the most important and delicate concern to community and to individuals; they therefore entered upon the consideration of it with the utmost precaution, and examined it with care: yet they could not pass it in silence, the duties enjoined on them by the constitution requiring, that they should attend to the infringement of the rights of individuals, as well as of distinct classes of citizens.

The third article in the bill of rights, says,

*That all men have a natural and unalienable 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 to, 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 whatever, 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 framers of the bill of rights, by this article, indisputably meant to convey the idea, that man necessarily possesses natural knowledge, or simple reason, which they have designated by the name of conscience. This they declare is inalienable, clearly conveying the idea, that one man cannot convey to another man his individual right of worshipping God according to the dictates of his conscience, any more than he can convey to him his right of breathing; for it is impossible in the nature of things, that one person can be profited intellectually, by a conveyance to him of another person's right of thinking; and if these premises are correct, it certainly follows, that the rights of conscience cannot be deputed; that religion is a concern personally and exclusively operative between the individual and his God; and that whoever attempts to control this sacred right, in any possible way, does it by usurpation

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<sup>3</sup>Revision of 1797, Chapter LI, 474 (October 30, 1797).

and not by right.

The second clause of the third article, as above recited, says, "No man ought to, 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." Here again conscience is made the only criterion by which a man can possibly be bound, in the execution of such designs; in opposition to which, the law we hereby propose to have repealed, expressly binds the citizens of this state, indiscriminately, to erect and support places of public worship, and to maintain ministers, contrary to this clearly defined right, provided they are so unfortunate as to be in the minority of any town, who may act under the authority of this law, and who are not at the time of taking the vote, possessed of a certain prescribed certificate.

Could not the legislature as well declare, that the inhabitants of every town in this state, should build a house for public worship, and settle and support a congregational minister, provided a certain number thereof were not possessed of a certificate, that they supported a minister of a different denomination? This would only support the same ground that the law contemplates, as in both cases the minority are only subjected by the majority. But in no case have civil power any constitutional right to interfere in religious concerns, except to bind persons or communities to discharge their civil contracts, individually entered into, for the mutual support of religious social worship.

In consonance with these ideas, the article before recited, expressly declares, that no authority can, or of right ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control the right of conscience, in the free exercise of religious worship.

The foregoing sections and part of sections of laws, are in the opinion of the council, repugnant to the Constitution; and in enacting them into laws, the legislature have assumed upon themselves, and exercised greater powers, than they are entitled to by the Constitution. And under this impression the council recommend the repeal of each and every of the above recited clauses, to restore community to their inestimable constitutional privileges, and prevent the establishment of precedents dangerous to, and subversive of, the dearest rights of freemen.

In examining the journals of the house of representatives, the council are happy to say, that they have found the proceedings of that house, a few instances excepted, regular and proper. The admission of Stephen Buchannon to a seat, in the house of representatives in Oct. 1796, who was not elected on the day pointed out by the Constitution, they deem unconstitutional, as there is no article in that instrument to warrant the house in such a

procedure.<sup>4</sup>

The 8th section of the constitution declares,

Art. 8. *That all election 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, agreeably to the regulations made in the constitution.*

The 9th section of the constitution defines the powers of the legislature, the latter clause of which is in the following words, "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."

We likewise find on the journals of the house repeated instances of resolutions, passed by the house, authorizing different towns on various occasions, to elect representatives to represent them in the general assembly, and that in consequence of such resolutions, representatives have been elected on days not appointed for their election by the constitution, who have taken their seats accordingly.<sup>5</sup>

The council are of opinion, that the same reasons which were offered in the case of Mr. Buchannon, will apply with equal force in these instances respectively.

From the journals of October 1799, the following extracts (being the whole that relate to the subject) are selected and offered to the public with some comments thereupon.

In General Assembly, October 22d, 1799.

The following communication from the honorable Council of Censors, was laid before the house, to wit:

STATE OF VERMONT )

Windsor, Oct. 21, '99 )

*To the honorable General Assembly now in session at Windsor.*

WHEREAS the Council of Censors now sitting at Windsor, in their enquiries do find, that William Coley, esq. while high sheriff of the county of Bennington, did wittingly and willingly take and receive for summoning the grand and petit jurors, to serve before the supreme court at their session holden at Manchester, in the month of February last, greater fees for his said services, than allowed by the laws of the state, under color of his said office of sheriff, as aforesaid.

And further that the said William Coley, esq. while high sheriff of said county, did wittingly and willingly take and receive, for summoning the petit

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<sup>4</sup>*State Papers* III, Part VII, 186. The Committee appointed to look into the credentials of Stephen Buchannon of Chelsea concluded that he could not, constitutionally, be seated, since he was elected on October 11, 1796, after Dr. Joshua Elderkin, who had been elected on the first Tuesday of September, became too ill to serve. The Assembly voted not to accept the Committee report and allowed Buchannon to be seated.

<sup>5</sup>*State Papers* III, Part VI, 5, 7.



jurors to serve before the supreme court holden at Manchester by adjournment, in the month of June last, greater fees for said services, than allowed by the laws of the state, under color of his said office of sheriff, as aforesaid.

Which taking and receiving said fees, as aforesaid, is contrary to, and in violation of the laws and Constitution of the state.

The Council of Censors do therefore in pursuance of their duty, and by the authority vested in them, *order*, that the said William Coley, sheriff as aforesaid, be impeached before the Governor and Council of the state, for the mal-administration of his office as aforesaid.

And that this order be signed by the president, and countersigned by the secretary of this board, and by him transmitted to the speaker of the General Assembly, with the names of the witnesses, to support the charges of mal-administration.

(Signed)

*By order of the Board.* Moses ROBINSON, *Pres.*

David FAY, Secretary.<sup>6</sup>

*October 26th, 1799.*

The house went into the consideration of the foregoing order. On motion,

The house resolved itself into a committee of the whole house, upon the subject of the said communication, and after sometime spent therein, Mr. Speaker resumed the chair, and Mr. Gideon Olin reported, that the committee had, according to order, had the said communication under consideration, and do recommend to the house to adopt measures to carry into effect the said order of the council of censors.

Whereupon, On motion,

*Ordered*, That the house do accept the said report.

*October 30th, 1799.*

The house went into further consideration of the order from the Council of Censors.

On motion, *Resolved*, That the said communication be referred to a committee consisting of one member from each county, to state facts in detail, and make report to the house:

And a committee was appointed, of Mr. Richard Hurd, Mr. Blake, Mr. Hammond, Mr. Zebina Curtis, Mr. Chipman, Mr. Johnson, Mr. Hay, Mr. Bean, and Mr. Francis Davis.

*November 2d, 1799.*

*The committee to whom was referred the order of the Council of Censors, relative to the impeachment of William Coley, made report that the said William Coley, by himself and his deputies, summoned the grand and*

<sup>6</sup>To this communication the council annexed the following names as witnesses necessary to support the impeachment, viz.

Sam'l Robinson 2d, of Bennington  
with the original venires.

David Robinson, Bennington,  
Lemuel Bradley, Sunderland,

Gideon Ormsby, Manchester,  
John Shumway, Dorset,  
David Sheldon, Reupert,  
Tyrus Hurd, Arlington.

N.B. This does not appear on the records of the house." This footnote appears in the journal of the 1799 Council.

*petit jurors to attend the supreme court at Manchester, in February last, and that he in like manner summoned, the petit jurors to attend the said supreme court in June last, That he the said Coley, exhibited his charges to the judges of the supreme court, who allowed the same, amounting in the whole to thirty-eight dollars, twenty-seven cents, That it was observed by said Judges, on examining his account for said services, that his charges were high, to which the said Coley replied, that he had been obliged to travel several times into some of the towns, before he could procure a draught of jurors. That on a computation, we find the said sheriff's fees for travel computing from the place of service on each juror to place of return, amount to twenty-five dollars, seventy-four cents. That we have no proof on what number of said jurors, service was made by copy, but computing only sixteen of forty-two to have been served by copy, the amount would have been, four dollars, twenty three cents. That we have no absolute proof for what number of jurors the said venire issued, or on what number it was served, but as the law required that the venire for each petit jury should issue for the number of fifteen, we are to presume that the venire did issue for that number, and that service was made accordingly; And that the service on the said six other jurors not before estimated, on an average with those before estimated, would amount to three dollars and sixty-six cents; that the amount of fees for extra travel as before stated, and which have been proved to us as four dollars twenty-eight cents; that the amount of actual travel to the several town clerks and justices, when he did make a draft of jurors, is four dollars ninety-eight cents; that we have no positive proof of any other extra travel; but we fully believe the said Coley did go twice to Sandgate, and once to Dorset, before he could obtain a draught of jurors; which would amount to two dollars thirty-four cents, amounting in the whole to forty-five dollars, twenty-three cents the amount of the items contained in the above statements for which we have no positive proof, is six dollars, which deducted from the above sum, there remains, thirty-nine dollars twenty-three cents.*

*We further report, that on examination of the treasurer with his books, the whole sum that has been paid to said Coley, for his services the year past, is fifty-three dollars and sixty-five cents; which includes his own personal attendance, on the several terms of the supreme court, in February and June last, as also his fees for removing a prisoner from Bennington to Manchester. From all which it fully appears to the committee, that the charges exhibited against the said Coley, are wholly unsupported.*

*(Signed)*

*Richard Hurd, for committee.*

The said report being read, was accepted.

On motion,

*Resolved*, That on examination of the charges exhibited to this House against William Coley, sheriff of Bennington county, by the Council of Censors, in their order of the 21st October, 1799, they appear to be wholly unsupported. And that the said order be dismissed.<sup>7</sup>

On motion,

*Resolved*, That a committee be appointed to examine the Fee-Bill, and to

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<sup>7</sup>State Papers III, Part VII, 656-7.

report to the House what alterations, if any, are necessary to be made in the said bill

And a committee was appointed of Mr. Wright, Mr. Butler, and Mr. Shumway.

*November 5, 1799.*

The committee appointed to examine the Fee-Bill, &c.

Made Report,

That upon examining the law, are of opinion it cannot be construed so as to give an officer more than six cents per mile, for actual travel for serving any one process, altho' several persons may be named in it, and served on the same, except it be a forced construction. Therefore, are of opinion that no alteration ought to be made.

(Signed)

Josiah Wright, for committee.

*The foregoing is a true copy from the Journals.*

Examined *Samuel C. Crafts, clerk of G.A.*

From this record it appears, that the board of Censors ordered, that William Coley, sheriff of Bennington county, should be impeached before the governor and council, for taking in three instances, greater fees than were allowed by law.

The 43d section of the constitution invests the Council of Censors, among other important powers, with the right to order impeachments.

The 24th section of the constitution makes it the duty of the house of representatives to impeach, and the governor or lieutenant governor and council, to hear, try, and determine impeachments.

These premises will warrant the conclusion, that when the council of censors shall order an impeachment, the house of representatives are the only board or constituted authority, to whom such order can be directed; and who, on receiving such order, are constitutionally bound to proceed to transmit to the governor and council articles of impeachment, who are to cause the accused to be notified, to proceed to the examination of the facts, and to render sentence accordingly: in which business the house of representatives are by no means invested with concurrent authority with the governor and council, or with discretionary power in the execution of orders constitutionally directed to them. But if the transactions of the house of representatives as recorded on their journals, are just and proper, the conclusion must be, that the council of censors have a right to order the house of representatives to impeach, but that the house so far from being obliged to comply with the orders, can reject, dismiss, or supercede them at pleasure.

To admit that the house have a right to investigate the facts on which impeachments are founded, when ordered as aforesaid, admits the further idea, that they have the right of deciding whether they will comply with the order of the council of censors, constitutionally directed to them, or not.

It will not be contended that the house have a right to try

impeachments, their power only extending, when ordered as aforesaid, to the act of impeaching: But in the present existing instance, the house, unconstitutionally entered upon the trial of facts, in an important cause, and made a decision in the case.

In further examining the transactions of the house on this subject, we are again led to enquire, what principles governed them in their determinations in the case referred to. In the first place they go into committee of the whole on the order from the council of censors, and the chairman reports a recommendations to the house to adopt measures to carry it into *effect*, which report was accepted. Thus far the two bodies progressed constitutionally. The house next proceeded to appoint a select committee, to report in detail the facts on which the order of the council of censors was made. This procedure was unconstitutional, and inconsistent with their former conduct on the subject; for there appears no motion or resolve on record, for reconsidering the previous order of the house on the report of the committee of the whole, which the procedure of the select committee not only tended to disannul, but to render the legal order of the council of censors void.

Thus the select committee reported contrary to the report of the committee of the whole; the report of the committee of the whole is disannulled by the acceptance of the report of the select committee, a legal order from a constituted board, contemned by a body constitutionally obliged to receive and execute such orders, and the house of representatives assume the power to hear and determine the facts on which an order of impeachment was predicated.

The report of the select committee so made and accepted, embraces several other objects worthy of attention. In the first place the three crimes alleged against Mr. Coley (either of which, if true, were sufficient to have founded a conviction upon) are, by the assembly consolidated; and by adopting an entirely new and unprecedented mode, allowing separate travel to each juror, with travel and extra travel to the clerks, they have made up and allowed to Mr. Coley thirty-nine dollars and twenty-three cents. Which allowance was exorbitant and inconsistent with legality, inconsistent with true calculation on their own acknowledged plan, and even exceeded Mr. Coley's charge, as will appear conspicuous by the following statement.

For summoning the petit jury, in Feb. term, 1799,

Legal charge, as by  
rule adopted by  
the supre. court.  
for actual, viz.  
circuitous travel,  
to jurors & cl'ks.

Separate travel  
truly calculat-  
ed, on the as-  
sembly's own  
plan.

Coley's charge  
for the same  
service, as en-  
dorsed on the  
venire.

dol. 8. 31

66 miles travel, at 6 cts. per mile, is	3.96	80 miles travel at 6 cents per mile, is	4.80
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Service by reading,	<u>.72</u>	Service by reading,	.72
Total	4.68	One third of the sum al- lowed for travel to clerks	<u>3.08</u>
		Total	<u>8.60</u>

### For summoning the grand jury, February term 1799.

Legal charge	Separate travel	Coley's charge	
To 102 miles travel, including travel to to the clerks and justices.	To 237 miles at six cts. per mile	18.09	
6.18		14.22	
Service by reading.	Service by reading,	1.08	
1.08	1-3 allow- ance as a- bove.	<u>3.08</u>	
Total	<u>7.26</u>	Total	<u>18.38</u>

### For summoning the petit jury, June term, 1799.

Legal charge	Separate travel	Coley's charge.	Assembly's
To 75 miles tra- vel at 6 cents per mile, is	78 miles at 6 cts per mile, is	11. 87	allowance to Coley, for above services,
4.50	4.68		
Service by reading	Service by reading		39.23
.72	.72		
5.22	One third allowance as above	<u>3.08</u>	
	Total on the assembly's a- vowed plan.	8.48	
Sum total leg. chg	Sep. travel	35.56	Total of Coley's charge
17.16			38.17

Thus the statement shews from existing facts, that the legal charge for the three venires, would be 17 dollars, 16 cents; the charge upon the principle as established by the assembly, would be thirty-five dollars, forty-six cents, the charge by Mr. Coley, is thirty-eight dollars, twenty-seven cents; and the sum allowed by assembly, is thirty-nine dollars, twenty-three cents.

Hence in the first instance here stated it appears, that the legal charge of Mr. Coley on the plan avowed by the supreme court, would have been four dollars, sixty-eight cents, on the avowed plan of the general assembly, it would have been eight dollars, sixty cents; Mr. Coley's charge as appeared by his own return, eight dollars, thirty-one cents, which left due to him on the assembly's plan, 29 cents.

In the second instance, legal charge would have been seven dollars, twenty-six cents, on the assembly's plan, eighteen dollars,

thirty-eight cents, Mr. Coley's charge eighteen dollars, nine cents, which left due to him, twenty-nine cents.

In the third instance, legal charge would have been five dollars, twenty-two cents, separate travel, eight dollars, forty-eight cents, Coley's charge, eleven dollars, eighty-seven cents, which taking out the eight cent false credit, exceeded the true calculation on the assembly's plan, two dollars, eighty-one cents, and consequently if Mr. Coley was innocent upon the two first, he was criminal on their own scheme upon the third.

Agreeable to the preceding mode of calculation of legal fees, for serving the venires for grand and petit juries, in the nine organized counties in the state, during the ensuing septenary, it would form an aggregate of one thousand three hundred and ninety-two dollars, ninety-three cents, but if computed on the assembly's new plan, to exculpate Mr. Coley, exclusive of their imaginary estimates, it would amount to three thousand, two hundred and three dollars, six cents, surmounting the legal fees, calculated on the liberal rule avowed by the supreme court, 1810 dollars, 14 cents, or, 417 dollars, 22 cents more than double.

Which pernicious scheme of calculation, the council are persuaded, does involve in it, principles and consequences dangerous to the rights of the people, and having been fully adopted by our last legislature we deem their conduct, in that influence, to have been contrary to justice, and therefore highly censurable.

In the second place it should be remembered, that the computations were made, and consented to by the house, without having the existing documents before them. Had the assembly so far complied with the order from the council of censors, as to have sent for the original venires, with Mr. Coley's fees and returns endorsed thereon, which constituted no inconsiderable part of the evidence, notified by the board to the house, as necessary to prosecute the impeachment to effect, they would have found that the veneris for the petit jurors, issued for twelve only, and also the mode in which they were served, and consequently they would not have fallen into the egregious blunder, which they did when they undertook to conjecture that possibly fifteen jurors were summoned instead of twelve.

The account allowed by the house for travel to the several clerks, and for extra travel to the same, being without data to form an opinion upon, we pass, with simply, observing, that the law makes no provision for any such service, and therefore the rational conclusion is, that the legislature in framing the laws, contemplated that the legal fees for summoning jurors, would amply compensate for all the duties requisite in serving venires, and more especially so, as the law is calculated to render the service of drawing juries easy, by allowing either of the select men of any town to answer all the purposes of a clerk.

How the treasurer's books could reflect light on the subject of the charge against Mr. Coley, the council of censors are at a loss to decide. It is a fact generally known, that the clerks of the supreme court, being paid for their service in drawing orders, in proportion to the number drawn, will make out an order for the whole or for any part of an account presented to them: It is therefore optional with the creditor of the State to have his account divided into as many orders as he pleases, and to take out such orders at his pleasure; which orders pass current from citizen to citizen in the payment of taxes. Mr. Coley might therefore have received the whole, or any part of his demand, and the treasurer's books, of consequence, be rendered no evidence in the case.

But the most singular features of the business appear, on reviewing the extraordinary transactions of the house before recited, in connection with a subsequent procedure, which took place only three days after the acceptance of the above report.

In consequence of the before unheard of construction of the fee bill, given by the house in the case of Mr. Coley, a motion was made for the appointment of a committee to revise it, and report to the house what alterations, if any, were necessary to be made in said bill. This committee reported,

*That having examined the law denominated the fee bill, they were of opinion that it could not be so construed as to give an officer more than six cents per mile for actual travel, for serving any one process, altho' several persons may be named in it, and the process served on them, except it be a forced construction.<sup>8</sup>*

The acceptance of this report by the house, does not appear on the journals, but this board have strong reasons to believe that it was accepted, and that the clerk of the house hath been negligent in his duty in not recording the same, as four reputable gentlemen, members of the legislature, have appeared before them, and under oath declared, that it was accepted by a majority of the house, and that the speaker declared it a vote.

This being true it must naturally follow, that the sense of the house upon the right construction of the fee bill, was perfectly reversed in the course of three days, and Mr. Coley's charges, consequently, illegal and exorbitant.

The council of censors deeming it their indispensable duty, to lay before the people an accurate statement, of every infringement upon the constitution and laws which shall come to their knowledge, are constrained to communicate the proceedings of a military tribunal, lately holden in this state, which they consider subversive of the sound rights and privileges of the free citizens of Vermont.

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<sup>8</sup>*State Papers III, Part VIII, 687.*

On the 19th of September 1799, the captain General issued his orders for calling a general court martial, to convene on the 25th of September then next following, at Middlebury, in the county of Addison, which was afterwards postponed and ordered to be holden on the 30th of said September, at said Middlebury, for the trial of such persons as should be brought before them.

Agreeably to these General Orders, the officers therein named, met at the place appointed, on the day specified, when David Whitney,<sup>9</sup> Major General of the third division of the militia of Vermont, who had previously been put under an arrest, by the Captain General, was brought before said court martial, and put on trial on the following articles of impeachment, or charges exhibited against him, which were lodged with the Captain General before the order for court martial issued.

*To his excellency Isaac Tichenor, esq. captain-general, and commander in chief in and over the state of Vermont.*

*David Whitney, majorgeneral of the third division of the militia of this state, is impeached by the undersigned officers in the first brigade of said division, for unmilitary conduct in this, to wit. We accuse the said David Whitney, when majorgeneral as aforesaid, of having been guilty of the following crimes, and unmilitary conduct.*

*1st. For that the said David, when majorgeneral as aforesaid, in the most base and mean manner, debauched the wife of his friend, and thereby destroyed the peace and happiness of a respectable family*

*2d. For that the said David, when majorgeneral, as aforesaid, meanly, cowardly, and tamely submitted himself, and without any resistance, to be taken and placed by two or three persons astride a pole or rail, between two horses, with a rope round his neck holden by a boy, and in this situation permitted and suffered himself to be led and carried in open day, several miles, through the public streets of Addison*

*3d. And for that the said David, when majorgeneral, as aforesaid regardless of the dignity and propriety of conduct which became him, as an officer, did without just cause or provocation, insult, abuse and strike with his fist, an aged man, and late a respectable officer in the armies of the United States, and did refuse to make any restitution whatever, for the aforesaid injuries and abuse.*

*4th. And for that the said David when majorgeneral as aforesaid, void of the spirit belonging to an officer, and a gentleman, hath at divers times been guilty of unmilitary conduct, in publicly assaulting and beating his wife, and in associating himself with divers riotous*

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<sup>9</sup>David Whitney served as a member of the Constitutional Conventions of 1793 and 1814 from the town of Addison, and of the Constitutional Convention of 1843 as a representative from Bridport.



*and disorderly persons, and abusing the good and peaceable citizens of this state.*

*All which said conduct of the said David, being majorgeneral as aforesaid, is unmilitary and against the form, force and effect of the thirty second section of an act regulating and governing the militia of this state.*

*Wherefore your excellency is requested to arrest the said David, and order a court martial for the trial of the said David, in the premises, agreeable to the act aforesaid.*

*We are with respect your Excellency's humble servants,*

Justice Bellamy, Major of the second  
regiment in said brigade.

Josias Smith, Captain of Cavalry in said regiment.

Vergennes, Feb. 7th, 1779.

Upon these articles of accusation the said David Whitney, was put on trial, and the sentence of the court martial was as follows, viz.

#### GENERAL ORDERS

*The Court martial which was holden at Middlebury, for the trial of Major General David Whitney, on the 30th ultimo, are of opinion, that the said David Whitney, while Major General of the third division of the militia of this state, was guilty of great unmilitary conduct. And therefore do adjudge and sentence, that the said David Whitney be removed from his said office of Major General and incapable of holding any military commission under the authority of the state of Vermont, for and during the term of five years.*

*The Captain General has approved the sentence, and orders the court dissolved.*

By order of the Commander in Chief,

DAVID FAY, Adjutant General.

Windsor, October 23d, 1799.

The constitution of the state of Vermont, in the 17th article of the bill of rights, expressly declares,

*That no person in this state, 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, or the militia in actual service.*

But as it appears by the charges against said Whitney, that the allegations and sentence against him are predicated upon the 32d section of an act regulating and governing the militia of this state, which is in the words following, viz.

Section 32. And it is hereby further enacted, *That every officer holding a commission in the militia, who shall be accused of any unmilitary conduct, neglect of duty, or disobedience of orders or who shall when on duty appear or behave himself in an unofficer like manner; or shall wilfully injure those who are under his command, he shall be liable to be tried by a court martial, and if found guilty, to be sentenced by said court to be reprimanded in orders, or to be*

removed from office.<sup>10</sup>

The Council of Censors have duly and carefully examined the said section and are of opinion, that the words or terms unmilitary conduct, neglect of duty, and disobedience of orders, must have an appropriate meaning, and relate to being legally called, or in the actual exercise of military functions, and cannot but by a forced construction, be wrested to warrant the commander in chief, or any other officer, in arresting and arraigning those in subordination to them, before a military tribunal, for any crimes or misdemeanors with which they may be charged, when not acting in a military capacity, or legally called thereto.

From hence it follows, that the Commander in Chief, and the members of the court martial, have assumed to themselves new and unheard of jurisdictional powers, by which they have broken down that sacred principle, which is now incorporated with the very essence of freedom, *That the military shall be kept under strict subordination to, and governed by the civil power*, by arraigning a citizen before an unconstitutional military tribunal, subjecting him to an illegal trial, and passing an ignominious martial sentence upon him, for crimes and misdemeanors, not one of which are even alleged to have been committed while he was acting in a Military capacity, and for which of consequence he could only be amenable before a civil tribunal.

The council are therefore obliged to declare, that they esteem the proceedings in the case of Major General Whitney, to be a bold attempt, to extend the authority of the military over the civil power, and that it is truly alarming, as its ultimate tendency must appear to be, to overwhelm our civil jurisprudence, in the vortex of military tribunals, abridging the right of trial by jury, and giving the commander in chief an undue influence and authority over the liberties and privileges of his fellow citizens.

It is therefore the opinion of this board, that the order for, and trial of Major General David Whitney, by court martial, without alleging crimes or misdemeanors, committed while in the execution of, or especially called to the discharge of the duties of his military functions, are flagrant violations of the constitution and laws of this state, and that the conduct of the commander in chief, in arresting Major General David Whitney, ordering him before the court martial, and approving and publishing the sentence of the said court martial, is highly censurable.

In our enquiry, "whether the public taxes have been justly laid and collected in all parts of this commonwealth," we are of opinion, that the act passed by the legislature in October 1797, laying a tax

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<sup>10</sup>Revision of 1797, Chapter XLVII, Section 32, 458-59.

of one cent per acre, on all lands in this state indiscriminately,<sup>11</sup> was unequal and unjust. It is a principle universally allowed, that property ought to be taxed in proportion to its real value, and annual income; and though it is impossible by any general rule to do perfect justice, yet the mode that makes the nearest approach thereto is to be preferred. The taxing the wild and uncultivated mountains per acre, equal to the lands of the highest cultivation, or covered with elegant buildings, can bear no proportionate estimate, either in value or income. The statement annexed will shew the amount of taxes, which have been levied and not collected during the last septenary.

In our inquiries whether the laws have been duly executed, for the last septenary, we are happy to declare, that we find but few exceptions to their having been duly carried into effect.

The laws relating to weights and measures, which make it the duty of each county treasurer, and the selectmen of each organized town, to provide standards of weights and measures, for the use of such counties and towns,<sup>12</sup> have not been complied with. Several counties and many towns have omitted to procure such standards.

It is evident that this neglect in its consequences, most sensibly affects community. The honest are liable to err, and the dishonest may pursue their evil practices with impunity. We conceive the fault which occasions this evil, rests principally with the several counties, in not furnishing their treasurer with the means of procuring standards.

The law provided to refrain gaming,<sup>13</sup> a practice that tends to the mispending of time and property, and introduces every species of immorality and dissipation, we are unhappy to say a law so necessary in its nature, and beneficial in its designs hath, during the last septenary, been greatly disregarded. And that the law for the due observation of the Sabbath, hath not been duly observed and kept, but its binding obligations too often dispensed with by civil ministers on trivial pretences.

The laws for the punishment of profane swearing,<sup>14</sup> we are sorry to be obliged to say, is little regarded. The ear of the moral citizen is frequently grated by profane oaths and horrid imprecations, and the sacred obligation of oaths taken in courts of justice is thereby greatly impaired. When existing laws are not executed but disregard-

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<sup>11</sup>The records of the Assembly for the fall session of 1797 show that "An act assessing a tax of one cent on each acre of land in this state for the support of government during the year 1797 and other purposes," passed November 10, 1797. *State Papers* XVI, 224.

<sup>12</sup>*Revision of 1797*, Chapter XXXVIII, 400.

<sup>13</sup>*Revision of 1797*, Chapter X, Section 13, 182.

<sup>14</sup>*Revision of 1797*, Chapter X, Section 20, 186.

ed, it tends to destroy the energy of government, and bring the law into contempt. This evil appears to arise partly from the neglect of the duty of officers appointed to carry the law into execution, and partly from the deficiency of the law in not sufficiently pointing out and defining the duty of informing officers.

In enquiring into the treasury department, we find the treasurer's books have been kept fair and regular, and his public accounts to have been duly audited during the last septenary. As to the disposal of the public monies we find they have been paid out agreeable to appropriations made by law.

Complaints having been exhibited to this board, of mal conduct in the sheriff's department, we have thought it our duty to go into an impartial enquiry on the subject. Notwithstanding the measures taken by this board to procure and have laid before them certified copies from the several clerks of the supreme and county courts in this state, of the sheriff's returns of fees charged and sums allowed for serving venires of the grand and petit juries for the last septenary, they have not been able to procure said documents from the eastern counties, principally owing to the non-attendance of several of the members of the eastern district.

As far as they have been able to procure the necessary documents to investigate the subject, they find that the sheriffs in Bennington county, for the last septenary, excepting in those cases which they have laid before a constitutional board, have not taken or charged greater fees than was allowed by law; also in the county of Rutland, the sheriffs have not charged or received greater fees than were allowed by law; in the county of Chittenden we have not been able, for want of evidence, to ascertain the actual travel, in many instances, and therefore cannot say they have exceeded the law, but we find the charges much augmented since the year 1797. In the counties of Addison and Franklin, we find some instances irreconcilable with the principles of law, which will be laid before a proper board, and also the charges of the sheriffs for levying venires, in other instances have been augmented considerably, for several of the last years.

We cannot close the subject without observing, that it is a principle of duty which we owe to you and ourselves, that has led us thus to speak our sentiments, with a freedom which we are not insensible will be disagreeable to some: but as we have been actuated solely by a desire of contributing our mite to the honor and felicity of the community; conscious of no sinister or personal views in our enquiries, we submit our opinions to your candid consideration. And should we be so unhappy as materially to differ in sentiment from the respectable freemen of this commonwealth, still it will afford us consolation to reflect on the rectitude of our intentions, whilst we are sensible it is the common lot of human nature to be liable to err.

*By order of the Council,*

MOSES ROBINSON, *President.*

*Attest, DAVID FAY, Secretary.*<sup>15</sup>

In COUNCIL of CENSORS, February 4, 1800.

*Resolved,* That nine hundred copies of the Address be printed, for the perusal of the people, and that the state printer be requested, to print the same immediately, and transmit them without delay, by express, to the sheriffs of the several counties, to be by them immediately transmitted to the town clerks of the several towns, for the use of the inhabitants.

The printer is requested to apportion the books to each county, suitably, and the sheriff's to apportion them to the town clerks, as equally as may be, both the printer and the sheriffs having respect to the number of inhabitants in the respective counties and towns; and that the said town clerks distribute said copies among the people of their several towns, in the most suitable method, so as to give general information; and also that this resolution be published in all the newspapers printed in this state.

*Resolved,* That the thanks of this Council be returned to the honorable Moses Robinson, esquire, for his services as president of this board, during their several sessions.

*A true Copy from the Journals of the Council of Censors.*

*Attest.*

DAVID FAY, *Secretary.*

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<sup>15</sup>Following this section of the address, the Council appended "An account of the arrearages of taxes, granted last septenary, viz. Tax grant, Oct. 1792 to ditto granted 1798 inclusive, and also including the half penny land tax for raising thirty thousand dollars." A copy of this list is available at the State Archives.

### Results of the 1799-1800 Council

The 1799 Council of Censors made no recommendations to amend the Vermont Constitution, at least in their Address.<sup>16</sup> No journal of the Council's sessions has survived, however, so it is impossible to tell what it may have considered, before reaching the conclusion to call no Constitutional Convention for 1800. The legislature did receive a formal message from the Council on October 11, 1800, as well as orders for the impeachment of two sheriffs, John Chipman of Addison County and Prince B. Hall of Franklin County.<sup>17</sup>

The Chipman impeachment resolution was akin to that levelled at William Coley.<sup>18</sup> The resolution on Prince Hall was for a similar offense.<sup>19</sup> The Chipman matter was assigned to a committee on October 16, to collect the facts and draw up articles of impeachment if necessary, and so with Hall on October 20.<sup>20</sup> On the 21st, the Chipman committee reported the details of their investigation, including the discovery that the Supreme Court had approved Chipman's accounts. The following day the House voted down a proposal to release Prince Hall from further scrutiny if the committee found the Supreme Court had approved his accounts, and then promptly ordered the house to take measures to forward articles of impeachment as soon as possible. The committee made its report on the investigation of Hall on the 23rd, and the House that day voted to take no further action on either Hall or Chipman, concluding that the Council had not been "information of the

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<sup>16</sup>Governor Isaac Tichenor was disappointed by this failure to call a constitutional convention. In his 1799 Inaugural Address, he hoped the Council would help solve the financial problems of the state. The Council of Censors, he wrote, "if the result of their wise deliberations should conclude a calling a Convention, would enhance demands on the public chest." *State Papers III*, Part VIII, 472.

<sup>17</sup>*Vermont House Journal* (1800), 25-31.

<sup>18</sup>"Whereas the council of censors, sitting in Bennington, in their enquiries do find, that John Chipman, esq. whilst high sheriff of the county of Addison, did wittingly and willingly take and receive, for summoning the grand jury to serve before the supreme court holden at Middlebury, in the county of Addison, at their session, January term 1797, greater fees for his said services, than are allowed by the law of the state, under colour of his said officer of Sheriff, as aforesaid. Which taking and receiving said fees as aforesaid, is contrary to, and in violation of the law and constitution of this state.

"The council of censors do therefore, in pursuance of their duty, and by authority vested in them, Order, That the said John Chipman, esquire, sheriff as aforesaid, be impeached before the governor and council of this state, for the mal-administration of his office as aforesaid. And that this order be signed by the president, and countersigned by the secretary of this board, and by him transmitted to the speaker of the general assembly, referring to the evidence to support the charge of mal-administration." *Vermont House Journal* (1800), 29-30.

<sup>19</sup>*Ibid.*, 30-31.

<sup>20</sup>*Vermont House Journal* (1800), 74, 104.

manner in which the supreme court allowed the charges" or of the services either sheriff had rendered.<sup>21</sup> The Coley impeachment had been handled in the same manner. The Council's mandate would not be respected.

The Council concluded that several acts of the General Assembly failed to comport with the Vermont Constitution. The Council found that the "Act directing the mode of elections," for instance, which passed October 26, 1796,<sup>22</sup> violated Article 8th and Section XXXIV of the 1793 Constitution. The act was discussed by the legislature in 1800,<sup>23</sup> but no formal repeal was enacted until 1832.<sup>24</sup>

The Council also objected to "An act relating to fines and forfeitures," originally enacted in March of 1797. The offensive Section 9 of this act was repealed on November 4, 1800, by the Assembly.<sup>25</sup>

The 1797 law requiring all taxpayers to support the construction of houses of public worship and the settling of congregational ministers was amended, on the recommendations of the Council, by simplifying the certificate of nonagreement with the "religious opinion" of a majority of town inhabitants, authorizing absent persons to dissent within one month of any vote, and allowing dissenters to file once to be released from further taxation, after paying their share for that year.<sup>26</sup> This was not enough. It was the subject of a similar objection by the 1806 Council of Censors.

The General Assembly originally adopted a tax of one cent per acre on all land in the state in November of 1797. This incurred the displeasure of the Council as "unequal and unjust," and led to the adoption of a state tax of one cent on the dollar of "the list of the polls and rateable estate of the inhabitants," on November 2, 1799.<sup>27</sup>

In 1801, the Legislature amended the laws relating to weights and measures, which was a concern of the Council of Censors because of the failure of some counties and many towns to "procure" and use the standards set by the county treasurer and selectmen. The General Assembly provided, "That it shall be the duty of the several State's Attornies, and empaneled grand jurors, within their several counties, to prosecute all breaches of the

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<sup>21</sup> *Ibid.*, 113-14, 120-21, 130-31.

<sup>22</sup> *Revision of 1797*, Chapter XV, 203 (March 6, 1797).

<sup>23</sup> "Resolved, That in the opinion of this house, the sixth section of the 58th chapter, referred to in the said address of the council of censors to this house, is not unconstitutional. Therefore do not repeal the same." *Vermont House Journal* (1800), 25, 115.

<sup>24</sup> *Laws of 1832*, No. 11, § 12, 13.

<sup>25</sup> "An act repealing the ninth section of an act, entitled, 'An act relating to fines, forfeitures, penalties and costs: and directing the mode of taking recognizances in certain cases.'" *Laws of 1800*, 26-7.

<sup>26</sup> "An act in addition to, and alteration of an act, entitled, 'An act for the support of the gospel.'" For an interesting perspective on the fight within a town to build a church for a settled minister, see Hurd, *Weathersfield Century One*, 29-41.

<sup>27</sup> "An act assessing a tax of one cent on the dollar on the list of 1799," *State Papers XVI*, 397.

aforesaid act, so far as it relates to the delinquent County Treasurers, or Select Men, from and after the first day of June, A.D. one thousand eight hundred and two."<sup>28</sup>

The 1801 General Assembly also amended the laws relating to gaming. Although the Council did not expressly recommend changes, it had shown its displeasure in the degree to which the laws had been disregarded. Perhaps as a reaction, the General Assembly, on November 4, 1801, changed the penalty for gaming from four dollars to not more than three dollars nor less than one dollar, and the penalty for innkeepers allowing gaming from fifteen dollars to three dollars for the first offense and six for each succeeding offense. The reduction also allowed jurisdiction for gaming crimes to vest in the local Justice of the Peace and Grand Juror. "An act in addition to an act entitled, 'An act for the punishment of certain inferior crimes and misdemeanors.'"<sup>29</sup>

No change was made to the laws relating to the militia as a result of the Council's objections to the handling of the Whitney affair. Those objections were more to the conduct of officers, however, than to the quality of the law.

The Council of Censors had been troubled by reports of "mal conduct in the sheriff's department" in their Address, but for lack of evidence could take no action. In 1802, the legislature required all sheriffs, bailiffs, constables, and attorneys to make out and deliver a statement of their services, on demand, and issue receipts for payments of their fees. The act provided for a penalty of ten dollars for recovery of overcharges or fees for services not performed.<sup>30</sup>

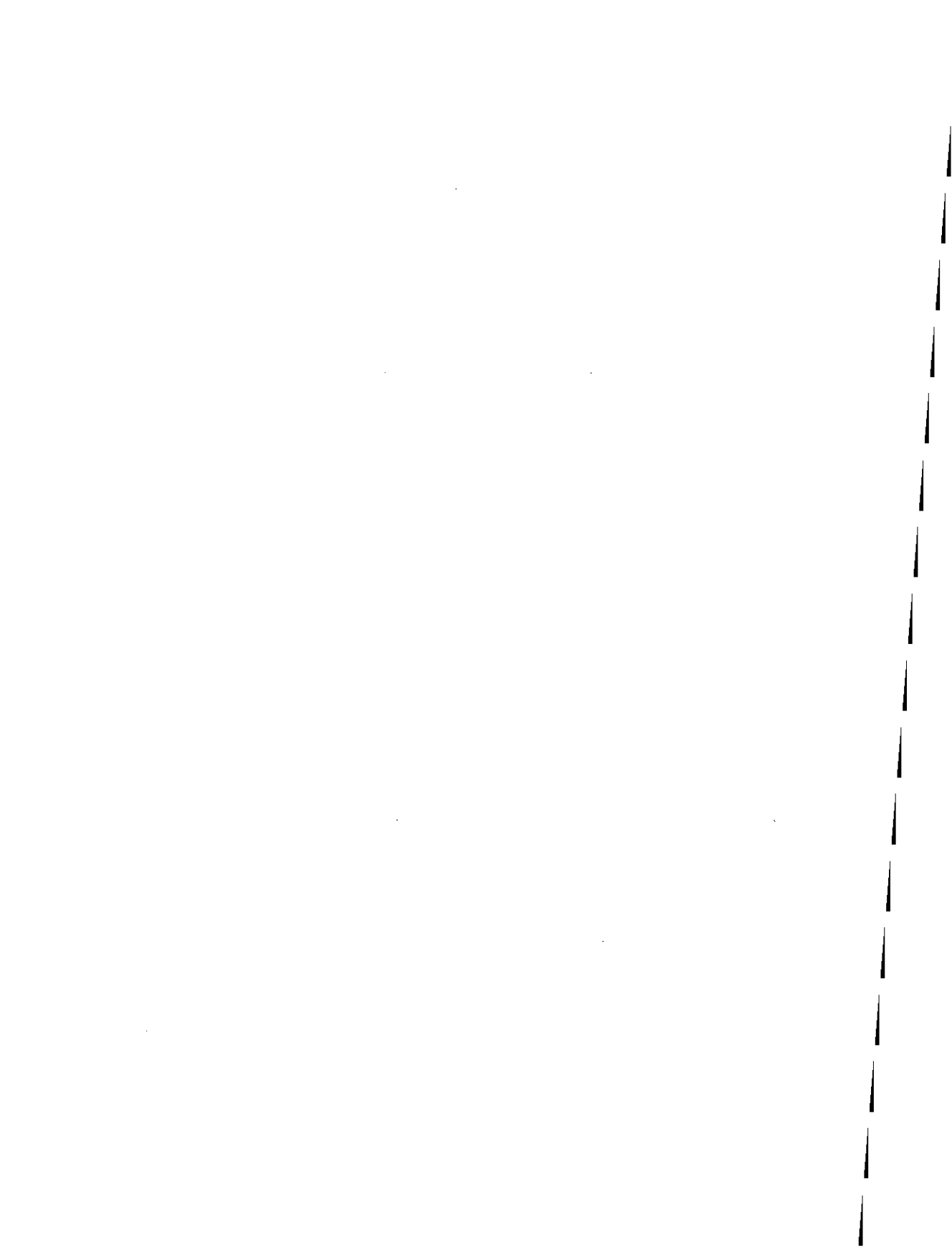
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<sup>28</sup>"An act in addition to an act entitled 'An act relating to weights and measures,'" *Laws of 1801*, 20-1.

<sup>29</sup>*Laws of 1801*, 14-5.

<sup>30</sup>*Laws of 1802*, Chapter 48, § 3, 76.





## The 1806 Council of Censors

Elections for the 1806 Council of Censors were held on the last Wednesday of March, 1806.<sup>1</sup> The Censors elected, who are not enumerated in the Address, were Apollos Austin, Ezra Butler, Loyal Case, Isaac Clark, Isaiah Fisk, Thomas Gross, Udney Hay, William Hunter, Samuel Huntington, John Noyes, Moses Robinson, Mark Richards, and James Tarbox. Moses Robinson was elected president. According to *Spooner's Vermont Journal* of June 9, 1806, Loyal Case was chosen secretary, though Thomas Gross is listed as scribe on the Council's Address.

Lack of a Journal for the Council makes it hard to know the precise dates when the Council met, but their first session was in Middlebury during the first week of June. They met again in Middlebury in October and in Woodstock in December.

"Party spirit" still marked Vermont politics as Federalists and Democratic-Republicans continued to clash. Again international and national events exacerbated party strife, particularly the war in Europe. Isaac Tichenor retained the governorship throughout the septenary, though the Federalists were less successful in controlling the General Assembly. As in the previous septenary, religious issues and revivals helped fuel political controversy, with the assessment of taxes for building and maintaining churches again playing a role.<sup>2</sup>

The *Vermont Gazette* of June 2, 1806 carried a letter addressed to the Council of Censors and signed by "Tim Scribble." The letter argued in favor of frequent elections, particularly in terms of the judiciary. *Spooner's Vermont Journal* of June 9th also carried a letter on the length of judicial terms, pointing out the custom of other states of allowing judges to serve during good behavior.

The *Vermont Journal* of June 23rd published a letter describing Council actions during their Middlebury session. The Council received a letter complaining that "an officer of the Government" was committing "mal-administration in his office." Udney Hay questioned the Council's ability "to censure an officer upon *ex parte* evidence, however strong." The Council asked the unidentified officer to attend their next session.

The letter also mentioned that the Council was split over the "religious act" and then went into some detail about Dr. Huntington's request that each Censor "give his *present* opinion, whether he thought it most advisable to amend or alter the constitution." The subsequent debate involved how accountable each Censor would be for the opinion he expressed. After the Censors were assured they were just being asked their "simple opinion . . . there was a perfect silence for about ten minutes; every one seemed to feel the weight of the subject and was unwilling, even in this nonbinding manner, to hazard an inconsiderate opinion to the world."

A vote was called on whether to propose amendments. The Censors voted seven to five not to propose amendments (Apollos Austin was absent). Those in favor of proposing amendments were Gross, Hay, Huntington,

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<sup>1</sup>Laws of 1805, 33-36.

<sup>2</sup>For a discussion of some of the intermingling of religious, social, and political factors see Randolph Roth, *The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791-1850* (New York: Cambridge University Press, 1987)

Richards, and Robinson; those opposed were Butler, Case, Clark, Fisk, Hunter, Noyes and Tarbox.

Regrettably the *Journal's* coverage of the Council did not continue. We do not know if the accused government official presented himself at the next session of the Council, nor what other debates may have occurred.

*Note on text:* The text is from Anthony Haswell's 1807 printing in Bennington of the Address, published pursuant to the order of the Council. No Journals of the sessions have been found.

An  
Address  
Of The  
Council of Censors

(Chosen March 26th, 1806)  
To The People Of  
Vermont  
1807  
Woodstock, December 1806.

*Respected Fellow Citizens,*

The Council of Censors, elected by you on the 26th of March last,<sup>1</sup> having assembled agreeably to the constitution, and executed the business assigned to them, submit the following to your consideration, as the result of their enquiries.

Respecting an alteration of the constitution, it appears to us, that although we are sensible that imperfection is inscribed on all the proceedings of men; that all compacts binding man to man have their defects; and that our constitution may have its errors: yet we are of opinion, all things being considered, that there is not that absolute necessity of an alteration of the constitution, which would justify the Council of Censors, at this time, in calling a convention for that purpose.

It is made the duty of the Council of Censors, to enquire whether the constitution has been preserved inviolate, in every part, during the last septenary or seven years, 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 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.

Upon examining the acts of the legislature, we with pleasure observe, that in general, they are unexceptionable. There are, however, some exceptions. We have compared the third article of the Bill of Rights, being a part of the Constitution, with the laws now in force, for the purpose of supporting Ministers of the Gospel, and building meeting houses for divine service. We consider all the laws

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<sup>1</sup>Laws of 1805, Chapter XXIII, 33-36.

now in force on the subject, except the first and last sections of an act, entitled an act for the support of the Gospel, passed October 26th, A.D. 1797, to be contrary to the said article.<sup>2</sup>

Accordingly the following resolution was, by this council, communicated to the legislature at Middlebury, in October last, viz.

*In COUNCIL of CENSORS, October 16, 1806.*

*Resolved*, That this council recommend to the legislature now sitting, to repeal the whole of the act, entitled an act entitled an act in addition to and alteration of an act, entitled an act for the support of the Gospel, passed November 3d, A.D. 1801, and also the second, third, fourth, fifth and sixth sections of an act, entitled an act for the support of the Gospel, passed October 26th, 1797, for that the said council are of opinion, the said former act, and the said second, third, fourth, fifth and sixth sections of the act last mentioned, are contrary to the third article of the Bill of Rights, of the inhabitants of this state: and that the said council especially recommend the repealing of the same, as they agree in opinion with the former Council of Censors, who recommended to the legislature the repealing of the said second, third, fourth, fifth and sixth sections of the said act, passed October 1797, which the legislature have neglected fully to comply with: and the said council refer the said legislature to the reasons offered by the former council, as in the opinion of this council, they are conclusive to shew, the recommendation of the former council ought to have been complied with. Although the above law and sections of a law, were recommended to the legislature in October last to be repealed,<sup>3</sup> yet we do not find that they were repealed.

It appears to us that the above resolution has those reasons for its support, that it must appear to be important, not only in itself, but in its consequences to community.

The third article in the Bill of Rights says, that all men have a natural and inalienable right to worship Almighty God, according to the dictates of their own conscience and understandings, as in their opinion shall be regulated by the Word of God: and that no man ought, or can of right 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 own 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

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<sup>2</sup>This is the same objection made to the laws relating to support of the gospel as made by the 1799 Council of Censors. The laws relating to this subject can be found in *Revision of 1797*, Chapter LI, 474-79, and *Revision of 1808*, ii, 173-9.

<sup>3</sup>*Assembly Journal*, 1806, 90-1.

power whatever, that shall in any case interfere with, or in any manner controul 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 word of God.

This article very plainly declares, that our right to worship Almighty God, is truly inalienable, that it cannot be given to others, nor taken from ourselves: and that this is the case with every man.

Man therefore being possessed of knowledge, or reason, which is generally called conscience, and which, by the assistance of scripture, he regards as his rule of faith and manners, considers himself, in the important concerns of religion, the only judge for himself, and on this principle, he believes that his right to worship God undisturbed, and without inconvenience, is an inalienable right. On this principle too, he believes 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 own conscience.

Man being his own judge, agreeably to this article, feels himself accountable to none but his God: And as this right was given him by his maker, as a talent for improvement, and for which he only must be accountable, it follows that all restraint in one case, or compulsion in another, is contrary to the nature of the thing itself, and the above recited article.

This council therefore, impressed with a sense of the importance of the rights of conscience, and of maintaining those rights, are of opinion that the aforementioned sections of laws are repugnant to the constitution: and that the legislature in enacting them, have assumed to themselves and exercised greater powers, than they were entitled to by the constitution of this state. Under these impressions the council have recommended their repeal.

The consequences likewise of this law to society, have had their influence with us in our recommendation.

Every man feels this right, which has been mentioned, and is inclined to feel his importance on that ground: consequently, the evil upon being deprived of this privilege, will appear to him, as great as the good could appear were the enjoyment to continue.

Nothing makes men more unfriendly to a government, than a constant belief that that government has curtailed their privileges, and lessened their rights. It must, so far as it goes, destroy our confidence in the government, and interrupt the friendly intercourses, which ought to subsist between rulers and ruled. Add to this, the evils which have been experienced on the execution and enforcing of the abovementioned laws; considering the violence done to the feelings of men; the injuries done to their property; the animosities

which they have excited; the ill will which they have engendered; the breaking up and destroying the peace and harmony of societies, of which they have been the origin; and the dangerous lengths of which it is a foundation for us to go, in both civil and religious usurpation: We say, in the consideration of those evils, together with the unconstitutionality of these laws, you may see the reasons of our recommendations for their repeal.

The repeal of said law and each of the above mentioned clauses, we believe to be absolutely necessary, to restore our inestimable constitutional privileges to community, and to prevent the establishment of those precedents, which are dangerous to liberty, and subversive of the rights of conscience.

We consider the first clause of the second section of an act, entitled an act to empower the Judges of the Supreme court to grant bills of divorce, and to repeal parts of certain acts therein mentioned, passed November 7th, 1805,<sup>4</sup> to be contrary to the thirty ninth section of the constitution of this state.

The section of the Constitution above alluded to, is in words following, viz.

"Every person of good character, who comes to settle in this state, having taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold and transfer, land or other estate, and after one year's residence, shall be deemed a free denison thereof, and be entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected Governor, Lieutenant Governor, Treasurer, Councillor, or representative in assembly, until after two year's residence."

The clause of the second section of the above-mentioned act, is in the words following, viz.

That no person shall be entitled to receive any benefit under this act, until it shall be fully proved to the court, that the petitioner has resided within this state for three years immediately preceding the application as aforesaid.

Upon a careful reading of this section in the constitution, and the clause of the above mentioned act, there appears to be a great and visible contrast. That which is granted by this constitution to the citizens of this state, is explained by those privileges which are enjoyed by the natural born subject, with this difference only; by the natural born subject, the privileges of this law may be immediately enjoyed, but by him, who comes from abroad to settle here, this privilege cannot be enjoyed, says the constitution, till after one year's residence; but by this law, the privileges enjoyed by the natural born citizen without limitation, cannot be enjoyed by the emigrant until

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<sup>4</sup>Laws of 1805, No. 6, 273-4.

after three year's residence. This inequality is evident, when we bring into view two persons, the one a natural born subject, the other a person who has migrated hither, and been a resident in the state one year, and who each have reason, and equal reason, to be divorced.

The unconstitutionality of this law will appear in this; that the natural born subject may take the immediate benefit of this law, while the subject by emigration, though he or she have already been resident one year, must wait two years more before they can receive this benefit.

The contrast therefore, in this case, between the constitution and the above-mentioned law, is great and visible, and justifies this council, as we apprehend, in saying that the law is unconstitutional.

The repeal of the above-mentioned law was recommended by this council to the legislature at Middlebury, in October last; but we do not find that it was repealed.<sup>5</sup>

In examining whether the public taxes have been justly laid and collected in all parts of this commonwealth; we observe it as our opinion, that taxes ought to be laid on property, as nearly as may be, according to its real value and annual income; and altho' it be difficult, if not impossible to do strict justice by any general rule, yet the mode approaching the nearest to justice, we believe, should be adopted. Therefore it is our opinion that a tax on the cultivated and mountainous parts of the state by the acre, which are poor and barren, equal to lands of a better quality, and situation, as we find is the case in several instances, is unequal and unjust.<sup>6</sup>

Likewise the too frequent taxing of wild lands,<sup>7</sup> which has so often been the case, and makes these taxes so much greater according to the valuation of such property, than other taxes, is likewise unequal, and unjust.

The law pointing out the principle of taking the list, of the rateable property of the inhabitants of this state, and directing listers in their office and duty, is exceptionable on account of unequal valuation.<sup>8</sup>

In our enquiries whether the laws have been duly executed, we

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<sup>5</sup>*Vermont Assembly Journal* (1806), 116.

<sup>6</sup>This is another objection to legislation that 1806 shares with the Council of 1799. The tax was assessed annually on the "polls and rateable estate of the inhabitants . . . ." *Laws of 1806*, Chapter 44, 56-7.

<sup>7</sup>E.g., "An act assessing a tax of one penny per acre on the lands in the town of Barton," (February 18, 1797), *State Papers* XVI, 93.

<sup>8</sup>"An act ascertaining the principles on which the list of this state shall be made, and directing listers in their office and duty," (March 20, 1797), *Revision of 1797*, Chapter LXII, 565-76.



are sorry to say, that the laws for the punishment of profane swearing,<sup>9</sup> are not attended to as a matter of such importance requires.

We consider the unnecessary and profane taking the name of God, which appears in profane oaths and horrid imprecations, to be not only grating and offensive to every pious mind, and ruinous and destructive to community in general, especially to the youth; but has a tendency likewise, greatly to impair the validity of an oath before the magistrate.

Considerations like these, on a matter which so nearly concerns the commonwealth; which are so necessary towards ensuring and continuing the divine blessing, and in averting the tokens of the divine displeasure; have determined us to say, that, in this particular, the law is not duly executed.

The evil above mentioned seems to have two sources; the deficiency of the law in that case made and provided, is this, that it does not sufficiently define the duty of the informing officers: but more perhaps from this consideration, the too general neglect of those officers, who are appointed to carry this law into execution. Melancholy is the prospect to the state, so far as this neglect prevails; for by reason of swearing the land mourns.

We can by no means neglect to mention, likewise, the undue execution of the law provided to restrain gaming;<sup>10</sup> a practice by which time is wickedly spent; property foolishly lost, or unjustly gained, and a foundation hereby laid for the introduction of every species of immorality and dissipation.

That law made for the express purpose of duly observing the Sabbath,<sup>11</sup> does not appear to have been so executed, as to answer the design of the law itself, nor the expectations of the serious part of the community. Perhaps there is no one consideration of more importance to community than the due observation of the Sabbath and it has the greatest tendency to confirm men in the belief; in the veneration and esteem of a supreme being; confirms men in the conviction of his providence and their own accountability to him: and as the veneration of the Deity and a belief in his providence, is inseparable with individual and social happiness: hence we may add, that all the blessings of sociability; of friendly intercourse, of justice, humanity, and kindness, are in a great degree supported by a due observation of the same.

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<sup>9</sup>"An act for the punishment of certain inferior crimes and misdemeanors," (March 4, 1797), *Revision of 1797*, Chapter X, 186.

<sup>10</sup>*Ibid.*, 181-2.

<sup>11</sup>"An act to enforce the due observation of the Sabbath," (March 3, 1797), *Revision of 1797*, Chapter XIII, 196-8.

The law against intemperance<sup>12</sup> seems not to be executed agreeably to the wishes of sober men in general.

No crime is, perhaps, attended with more evil consequences to society and individuals, than that of drunkenness. In proportion as this vice prevails, the morals of old and young appear to be affected. If there be, in any degree, a reformation on this head, as many think there is, we sincerely rejoice and are glad; for we are sure that the glory of our state must consist in the virtue of her sons.

With respect to the treasury, it is but justice to observe, that upon a careful and strict examination, we are persuaded, that business in that department has been conducted with accuracy and uprightness. It may however be observed, without impropriety, that the stream of revenue coming through the hands of the states attornies, appears not to be altogether free from embarrassment. It would be a very laborious task, to ascertain with accuracy, the amount of monies which still remain in this channel of conveyance to the public chest. We must, therefore, leave this branch of our enquiries, without being able to make a more particular statement.

Whereas a complaint has been exhibited to this council, against David Leavitt, one of the late justices of the peace within and for the county of Windham, charging him the said David Leavitt, as justice of the peace, with mal-administration, in his late official capacity as aforesaid; and the said David have been officially notified to appear before said council, to answer to said complaint: and having neglected to make his personal appearance, but in lieu thereof has sent forward an official letter, subscribed by himself, in which he pleads guilty, or confesses the truth of the most material articles of charge, contained in said complaint, which conduct confessed as aforesaid, is highly reprehensible and deserving of public censure, in the opinion of this council.

We are unwilling to close the subject of this address without observing, that we have thus spoken our opinions, with that freedom which may be disagreeable to some, from a sense of duty which we owe to you and ourselves. Yet as we have been actuated purely by an ardent desire of contributing to the honor, dignity and happiness of the commonwealth, and as we are conscious of no private or personal views in our enquiries, we therefore cheerfully submit our opinions to your candid and impartial consideration.

The consideration that we have acted with purity of intention, and

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<sup>12</sup>In 1806, the laws did not expressly proscribe drunkenness. Breaking the peace was a crime. "An act for the punishment of certain inferior crimes and misdemeanors," (March 4, 1797), *Revision of 1797*, Chapter X, section 21, 187. The first Vermont law making drunkenness a statutory crime was Act No. 2 of the *Laws of 1855*, No. 2. This law was repealed by Act No. 208 of the *Laws of 1978*.

that it is the common lot of human beings to err, will afford us consolation, though we may be so unhappy as to differ from those whom we respect and esteem.

*By order of the council,*

MOSES ROBINSON, *President.*

*Attest,* THOMAS GROSS, *Scribe.*

### Results of the 1806 Council of Censors

As in 1799, the 1806 Council did not call for a constitutional convention. The lack of the Council journal prevents us from seeing what they might have recommended, but the Address mentions several acts which the Council found objectionable.

The House first considered the Council's Address on October 13, 1807.<sup>13</sup> The laws on town support of the Gospel, for instance, the Council found contrary to Article 3d of the Bill of Rights of the Vermont Constitution. The Council sent its resolution asking the General Assembly to repeal all but the first and last sections of the law. On October 24, 1807, the Assembly passed, "An act, to repeal a certain act, and parts of an act, therein mentioned":

Whereas the late council of censors have recommended to the legislature, to repeal an act, entitled, "An act in addition to, and alteration of an act entitled, "An act, for the support of the gospel," passed the third of November, one thousand eight hundred and one; and the *second, third, fourth, fifth and sixth sections* of an act, entitled, "An act for the support of the gospel," passed October twenty-sixth, one thousand seven hundred and ninety-seven,--and

Whereas it appears to this assembly, that the said act and sections, the better to promote harmony and good order in civil society, ought to be repealed: therefore,

*It is hereby enacted by the General Assembly of the State of Vermont, That the act and sections aforesaid, be, and the same are hereby repealed.*<sup>14</sup>

The Council also objected to the laws on divorce, which were effective only to persons who had resided in Vermont for a minimum of three years. The General Assembly repealed the offensive section of the divorce law on October 21, 1807, with "An act, in amendment of, and to repeal part of an act, concerning bills of divorce."<sup>15</sup> The new act substituted a one year for the three year requirement in the former law. The one year period, as the act explains, "is required by the constitution of this state, in order that a man become a freeman of this state."<sup>16</sup>

The Assembly did not change the laws relating to the collection of taxes, either by requiring land and property to be assessed at "real value" or stopping the practice of taxing wild lands.<sup>17</sup> It also failed to respond to the Council's objections to the laws relating to profane swearing, observance of the Sabbath, and intemperance.

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<sup>13</sup>*Vermont Assembly Journal* (1807), 50.

<sup>14</sup>*Laws of 1807*, Chapter XX, 22. See *Vermont Assembly Journal* (1807), 73.

<sup>15</sup>*Laws of 1807*, Vol. 1, Chapter XXV, No. 6, 273.

<sup>16</sup>*Vermont Constitution* (1793), Chapter II, Section 21.

<sup>17</sup>E.g., "An act, laying a tax of two cents per acre on the township of Kellyvale," *Laws of 1807*, Chapter XXXVI, 56, as evidence the Legislature had not mended its ways. The proposal to change the laws on the creation of lists was assigned to a committee on October 13, 1807, but not enacted during that session. *Vermont Assembly Journal* (1807), 50, 245.

The Council worried that "the stream of revenue coming through the hands of the states attornies, appears not to be altogether free from embarrassment." But the lack of time and resources prevented the Council from making further inquiry about the subject. The General Assembly of 1807, however, assigned a committee to review the matter, which reported to the Assembly on October 24, 1807.<sup>18</sup> The committee was able to effect a settlement with many of the state's attorneys. The committee also reported that "further provision should be made by law, as well for the better keeping, auditing, and settling accounts, between the State and the several State's Attornies in future, as for the completion of a settlement with those now in arrear . . . ." The bill was then introduced, and eventually enacted as Chapter XCVIII of the Laws of 1807.<sup>19</sup>

David Leavitt did not suffer long from the censure he received from the Council of Censors. He was elected as Putney's representative to the General Assembly in 1808, 1809 and 1814.

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<sup>18</sup>*Vermont Assembly Journal* (1807), 160.

<sup>19</sup>*Laws of 1807*, 125-8.

## The 1813 Council of Censors

On some levels, the years from 1807 to 1813 brought continued growth to Vermont. The state's population continued its rapid growth, increasing 41% over the previous Census, reaching a total of 217,895. Vermont finally settled in a permanent seat of government. Montpelier was designated the state capital in 1805 and the State House formally opened in 1808.

The septenary began with Isaac Tichenor still governor and Republicans in control of the House. Tichenor's chain of electoral success was broken in 1807, and the governorship changed hands five times during the septenary (in comparison, Thomas Chittenden or Tichenor held the office all but one of Vermont's first twenty-nine years of existence). The Jeffersonian Republicans, who generally controlled the General Assembly, attacked the absentee ownership of land, incorporated a State Bank on the grounds that credit "ought not to be exclusively enjoyed by the Commercial Interests, but should be participated in by the Agricultural Citizens";<sup>1</sup> and opposed the state's militia laws as "UNEQUAL, OPPRESSIVE, and intolerably grievous to the poorer class of citizens."<sup>2</sup>

The ebb and flow of party fortunes is perhaps best encapsulated in the new Vermont county formed in 1810. Initially named Jefferson County, it was re-named Washington County in 1814.

As before, events outside Vermont had significant impact. In December, 1807 a U.S. embargo act went into effect (Vermont's U.S. Representatives split over the measure, two to two). In March, 1808 a land embargo act followed. When the General Assembly of that year passed a resolution in support of the embargo, eighty-eight Federalist representatives, led by Nathaniel Chipman, dissented.

Smuggling along the border and on Lake Champlain became prevalent. After enforcement officers were killed in the capture of the smuggling boat the *Black Snake*, an estimated 10,000 Vermonters gathered to watch one of the smugglers hung. In another indication of the divisions within society, three Vermonters were tried for treason before the U.S. Circuit Court in Burlington in 1808; all three were acquitted.

While Vermont was only one of three northern states to vote for James Madison in the 1812 presidential election, Federalist sentiment was still strong. The outbreak of war, uncertainty of Federalist loyalty, naval battles on Lake Champlain and the threat of British invasion provided the backdrop for the 1813 Council of Censors.

*Note on text:* The Journal was printed in 1814 by Slade and Ferguson of Middlebury.

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<sup>1</sup>Petition of John Holbrook and others, September 27, 1806, State Archives, Manuscript Vermont State Papers, Vol. 45, 234.

<sup>2</sup>Petition of Job Winslow and others, October 7, 1807, *Ibid.*, Vol. 46, 192-193.



Journal  
of the  
Council of Censors

At Their Sessions  
in  
June and October, 1813  
and  
January, 1814

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The Council of Censors, elected on the last Wednesday of March, A.D. 1813, agreeably to the forty-third section of the Constitution of the State of Vermont, and an act of the General Assembly of said State,<sup>1</sup> assembled at the State-house in Montpelier, on the first Wednesday of June, (being the 2d day of the month) in the year of our Lord one thousand eight hundred and thirteen, and in the thirty-seventh year of the Independence of the United States;--when the following named persons appeared, produced credentials of their election, and took their seats, to wit:--

*The Honorable* ISAAC TICHENOR,  
*The Honorable* NATHANIEL CHIPMAN,  
WILLIAM HALL, Jr.,  
CHARLES MARSH,  
ISAAC BAYLEY,  
LUTHER JEWETT, Esquires.  
EBENEZER CLARK,  
ELIJAH STRONG,  
NICHOLAS BAYLIES, &  
ROBERT TEMPLE,

The above named members constituting a quorum of said Council, they proceeded to the choice of a President and Secretary; --when, the ballots having been taken, sorted and counted, it appeared that the Honorable ISAAC TICHENOR was elected President of said Council, and ROBERT TEMPLE was elected Secretary.

Mr. MARSH moved the following Resolution, which was read and passed, to wit:

*In Council of Censors,  
Montpelier, June 2d, 1813.*

*Resolved,* That the Rev. Chester Wright be requested to attend this Council during the present session, as Chaplain, and that the

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<sup>1</sup>*Laws of 1812, Chapter 52, 59-62.*



meeting of the Council be opened every day with prayer, at 9 o'clock in the morning.

On motion of Mr. MARSH, the following Resolution was read and adopted:

*Resolved*, That the Sheriff of the County of Jefferson<sup>2</sup> be, and he hereby is requested, to attend by himself or deputy, the meeting of this Council, during its present session.

The Council adjourned until 9 o'clock to-morrow morning.

**Thursday, 3d June 1813, 9 o'clock A.M.**

The Council met pursuant to adjournment.

On motion of Mr. CHIPMAN,

*Resolved*, That a committee of three members be appointed, to be denominated a Committee of Arrangement, to propose and report such business for the consideration of the Council as they may think proper.

Members chosen, Messrs. CHIPMAN, MARSH and TICHENOR.

The Council adjourned until 2 o'clock this afternoon.

**At 2 o'clock P.M.** the Council met pursuant to adjournment.

Mr. CHIPMAN, from the Committee of Arrangement, made the following Report, in part:

*In Council of Censors, June 3d, 1813.*

The Committee to whom was referred the arrangement of business which ought to be taken up by the Council, Report,

That the said Council ought to enquire,

*First*--Whether all the statutes now in force are consistent with the various provisions of the constitution.

Under this head they ought to enquire,

1st, Into the constitutionality of the act establishing a State Bank,<sup>3</sup>

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<sup>2</sup>Jefferson County was the early name for Washington County. The change of name was made in 1814, in reaction to residual antagonism for the third President arising from the embargo of 1808.

<sup>3</sup>"An act establishing a State Bank," *Laws of 1806*, Chapter 110, 164-9; "An Act, in addition to an act establishing a State Bank," *Laws of 1807*, Chapter CIX, 151-2; "An Act, in addition to an act establish the Vermont State Bank," *Laws of 1807*, Chapter CXXXI, 187-9; "An Act making provision for the collection of debts due to the State Bank," *Laws of 1809*, Chapter CXXX, 119-22; "An Act, in addition to an act, entitled 'An act establishing a state bank,' passed November 10, 1806," *Laws of 1809*, Chapter XCI, 86; "An Act making the bills of the Vermont state bank a tender in the payment of all land taxes, granted by this legislature, at their present session," *Laws of 1809*, Chapter CXVII, 107; "An Act in addition to An Act entitled An Act establishing a State Bank," *Laws of 1810*, Chapter 76, 106-8; "An Act, making the bills of the Vermont State Bank, a tender in the payment of all land taxes, granted by this legislature, at their present session," *Laws of*

and the various acts on the same subject.

2d, They ought to enquire into, and examine the act entitled "an act to prevent intercourse with the enemies of this and the United States."<sup>4</sup>

3d, They ought to enquire into the constitutionality of the act entitled "an act to provide for the raising a volunteer corps for the service of the United States."<sup>5</sup>

4th, Into the constitutionality of the act, entitled "an act suspending civil process against the persons and property of the officers and soldiers of this State, while in service."<sup>6</sup>

*Second*--Whether the public taxes have been justly laid and collected in all parts of the State.

*Third*--In what manner the public monies have been disposed of.

Under this head they ought to enquire,

1st, Into the expenditure of the public monies in the management of the State Bank.

2d, Into the expenditure of monies appropriated for the building of a State prison.

3d, Into the expenditure of public monies by various acts of the Legislature in making particular appropriations.<sup>7</sup>

*Fourth*--They ought to enquire whether the laws have been duly

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1810, Chapter 58, 78-9; "An Act, in addition to an Act, establishing a State Bank," *Laws of 1810*, Chapter 111, 158-9; and "An act in addition to the several acts establishing a State Bank," *Laws of 1813*, Chapter CIX, 152-3.

<sup>4</sup>"An Act, to prevent intercourse with the enemies of this and the United States, on the Northern Frontier," *Laws of 1812*, Chapter 102, 141-6.

<sup>5</sup>"An Act, to provide for the raising of a volunteer corps, for the service of the United States," *Laws of 1812*, Chapter 103, 147-51; "An Act, in addition to an Act, entitled "an Act, to authorise the raising of a Volunteer corps, for the service of the United States," *Laws of 1812*, Chapter 144, 197-98.

<sup>6</sup>"An Act, suspending civil process against the persons and property of the Officers and Soldiers of this State, while in service," *Laws of 1812*, Chapter 116, 165-6.

<sup>7</sup>*Laws of 1806*, Chapter 121, 190-91 (\$12,000 appropriated to cover \$12,707.22 in proposed expenditures); *Laws of 1807*, Chapter CXXXV, 204-5 (\$12,200 appropriated to cover \$12,876.58 in expenditures); *Laws of 1808*, Chapter 131, 182-83 (\$12,000 appropriated to cover \$11,915.72 in expenditures); *Laws of 1809*, Chapter CXXXIV, 131-32 (\$12,000 appropriated to cover \$10,955.79 in expenditures); *Laws of 1810*, Chapter 110, 157-58 (\$12,000 appropriated to cover \$10,189.22 in expenditures); *Laws of 1811*, Chapter CXXVII, 160-61 (\$12,000 appropriated to cover \$9,196.31 in expenditures); *Laws of 1812*, Chapter CXLIX, 201-2 (\$50,000 appropriated to cover \$13,800 in expenditures plus payment of orders drawn by the visitors of the state's prison).

executed.

Under this head they ought to enquire,

1st, Whether the military power has not, in repeated instances, violated the sacred rights of civil liberty, of individual citizens;--and whether the executive authority of this State have taken proper measures, as guardians of the rights of the people, to discountenance and prevent such encroachments.

2d, Whether many of the County Courts have not, in derogation of the rights of creditors, wantonly abused the discretion confided to them by the laws, in setting out liberties of gaol yards.<sup>8</sup>

*Fifth*--They ought to enquire whether it is the duty of the Council to recommend any, and what alterations or amendments in the Constitution.

1st, Particularly the introduction of Senate as a co-ordinate branch of the Legislature.

2d, To designate the powers and duties of the Governor; to provide for a Council of Revision on laws to be passed.

3d, To provide for a different mode of appointments of office--particularly the appointments of Judges of the Supreme Court; and whether they ought by the Constitution to hold their offices during good behaviour; and yet be removable by a concurrent resolution of both houses;--and whether their compensation ought not to be fixed.

4th, Whether it be necessary to continue the Court of Chancery; and if continued, whether it ought not to be a separate court.

5th, Whether it would not be proper to organize the County Courts in such manner as to divide the State into circuits, with a Chief Justice to preside in each Court in his circuit, and to hold his office on the same tenure as the Judges of the Supreme Court; and to fix the tenure of office for the Assistant Judges and Justices of the Peace, &c. &c.

All which is submitted by

N. CHIPMAN, *for Committee.*

DANIEL FARRAND, Esq. appeared, produced credentials of his election as a member of this Council, and took his seat.

The Council adjourned until 9 o'clock to-morrow morning.

**Friday, 4th June, 1813, 9 o'clock A.M.**

The Council met pursuant to adjournment.

The Committee of Arrangement made the following additional Report:

<sup>8</sup>[A]ny person imprisoned in jail, on *mesne process* in any civil action, or upon execution, founded on a proper action of debt, covenant, contract or promise, shall be admitted to the liberties of the jail-yard: such prisoner first giving bond, to the sheriff of the county in which he shall be imprisoned . . .

" *Revision of 1808*, Vol I, Chapter XXVIII, Section 10, 283.

*In Council of Censors, June 4, 1813*

The Committee to whom was referred the arrangement of business which ought to be taken into consideration by the Council, further Report:

That the Council ought to enquire into the expediency of making constitutional provision for securing to the citizens of this State the privilege of *Habeas Corpus*.

N. CHIPMAN, *for Committee*.

Which additional Report was read and accepted.

The Report of the Committee of Arrangements was taken up and read by paragraphs; when, that part of the Report which relates to the enquiry whether all the statutes now in force, are consistent with the various provisions of the Constitution, was referred to a committee of two, consisting of Messrs. FARRAND and EDMONDS.

On that part of the Report which relates to the enquiry whether the public taxes have been justly laid and collected in all parts of the State; the President is requested to communicate with the Treasurer of this State on that subject, with a view to obtain the necessary information.

On that part of the subject of said Report, which relates to the enquiry, in which manner the public monies have been disposed of, Mr. FARRAND introduced the following Resolution, which was read and adopted:

*Resolved*, That a committee of two be appointed to enquire into the expenditure of public monies during the last septenary; and that said committee have power to call on the Treasurer, and all other officers of this State, to furnish such documents as they may deem necessary to elucidate the subject.

Members chosen, Messrs. BAYLIES and MARSH.

That part of the Report which relates to the enquiry whether the laws have been duly executed, was referred to a committee of three, consisting of Messrs. FARRAND, TEMPLE and BAYLIES.

That part of said Report which relates to the proposal of alterations and amendments to the Constitution, was, on motion of Mr. MARSH, referred to a committee of two. Members chosen, Messrs. CHIPMAN and TEMPLE.

A letter was received, directed to the Council of Censors, dated Jericho, June 1, 1813, signed John Thompson, complaining of the Judges of the Supreme Court, &c. which was read.

The Council adjourned to the second Thursday of October next, to meet at 10 o'clock A.M. at the State-House.

## Second Session

On the Second Thursday of October, (being the 14th day of the month), A.D. 1813, several members of the Council of Censors

met at Montpelier, pursuant to adjournment; and a quorum not being present, adjourned until to-morrow morning at 9 o'clock.

**Friday, 15th Oct. 1813, 9 o'clock A.M.**

The Council met pursuant to adjournment; and there not being a quorum present, adjourned until to-morrow morning at 9 o'clock.

**Saturday, Oct. 16, 1813, 9 o'clock, A.M.**

The Council met pursuant to adjournment, and a quorum appeared.

A letter was received from William Barton, dated Danville Gaol, Oct. 12, 1813, complaining of the conduct of the Judges of the Supreme Court; which was read.<sup>9</sup>

A communication was received from Joseph H. Ellis, complaining of the conduct of the Judges of the Supreme Court, and sundry other officers of the Government; which was read.

Mr. HALL introduced the following Resolution, which was read and adopted, to wit:

*In Council of Censors, Oct. 16, 1813.*

*Resolved*, That this board will meet the two branches of the Legislature in the Representatives' room, at the opening of the House in the morning, for the purpose of attending prayers; and that the meeting of this board be at nine o'clock in the morning, during the present session.

The Council adjourned until two o'clock this afternoon.

**At two o'clock P.M.** the Council met pursuant to adjournment.

On motion of Mr. MARSH, Mr. BAYLEY was added to the committee on that part of the Report of the *Committee of Arrangement* which relates to the enquiry, whether all the statutes now in force are consistent with the various provisions of the

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<sup>9</sup>General William Barton was a revolutionary war hero who, along with Ira Allen, was among the original proprietors of the town of Providence, later called Barton. Due to reversals of his fortune, particularly involving a long protracted lawsuit with the heirs of Ira Allen over the title to his lands in Barton, the General was imprisoned for debt in 1812 in Danville. He then began a series of petitions for relief to the Legislature, all of which were unavailing as the various committees learned the details of the suits and concluded he was not entitled, as he had sufficient means of his own. He petitioned Congress, and found no relief. His claims were not based on his poverty, but on his insistence that he would not leave a two mile square area around Danville jail without some satisfaction that injustice had been done to him. *Governor & Council VIII*, 306-11. The 1820 Council also received a petition from Barton. Finally, in 1824, the Marquis de Lafayette, after finishing his tour of Vermont, paid General Barton's debts and the General returned to his family in Providence, R.I. *Crockett III*, 208.

constitution.

To give time to the several committees, the Council adjourned until Monday next at 9 o'clock A.M.

**Monday, 18th Oct. 9 o'clock A.M.**

The Council met pursuant to adjournment; and none of the committees being ready to report, adjourned to 2 o'clock this afternoon.

At 2 o'clock P.M. the Council met agreeably to adjournment--and after some time spent in session adjourned until to-morrow morning.

**Tuesday, 19th Oct. 9 o'clock A.M.**

Mr. CHIPMAN moved, that the committee to whom was referred that part of the Report of the *Committee of Arrangement* which relates to the proposal of alterations and amendments to the Constitution, be discharged; which passed in the negative.

The Council adjourned until to-morrow morning to give time to the several committees to make report.

**Wednesday, 20th Oct. 9 o'clock A.M.**

The Council met agreeably to adjournment.

The Committee appointed to enquire, whether all the statutes of this State, now in force, are consistent with the various provisions of the Constitution, made the following Report:

*To the Honorable the COUNCIL OF CENSORS,  
now convened at Montpelier.*

Your Committee appointed to enquire whether all the statutes of this State, now in force, are consistent with the various provisions of the Constitution;--Report in part:

That the act entitled "an act to prevent intercourse with the enemies of this and the United States, on the northern frontiers," passed the 6th day of November, A.D. 1812, is, in the opinion of this committee, unconstitutional in the following particular:

1st. It appears to this committee, that this is a subject on which the Legislature of this State have no right to act; the whole power to regulate commerce and the intercourse with foreign nations, both in peace and war, have been delegated to the Congress of the United States.

2d. The second section of said act authorises any one who may suspect that another is driving cattle, or carrying property to the province of Lower Canada, to apprehend such person without warrant, and him detain, until a warrant can be obtained: which your committee conceive to be a direct violation of the 11th article of the Bill of Rights.

3d. That the third section of the said act, deprives the person

whose property may be seized under the same, of his right to trial by jury, *or even of any trial*, by making no provision for giving notice of the seizure, or of his property being libelled, and makes it the duty of the Justices before whom the same is libelled, to proceed immediately to condemn the same.

4th. By the fourth section of said act, every justice of the peace, within his jurisdiction, is authorised, without warrant, to inspect the trunks or papers of any person travelling to or from the province of Canada, or elsewhere, under suspicious circumstances, and open the same, if necessary, and to detain such papers as he may deem improper to be carried to or from said province; whereas, by the 11th article of the Bill of Rights, it is declared, "that the people have a right to hold themselves, their papers, and possessions, free from search or seizure," &c.: for which reasons your committee are of opinion that the said act ought to be publicly censured by this Council; and that the repeal thereof be recommended to the Legislature.

Your Committee further report, that the act entitled an act, suspending civil process against the persons and property of the officers and soldiers of this State, while in service, passed the 6th of November, 1812, is contrary to the Constitution of this State; inasmuch as the said law suspends the right of action, which every citizen ought to have for redress of any wrongs or trespasses which may be committed or done by that particular class of people,<sup>10</sup> and tend not only to raise the military over the civil authority, but actually to put the citizens under the control of the officers and soldiers who may be stationed in this State;--wherefore your committee are of opinion, that the last mentioned act ought also to be publicly censured, and the repeal thereof recommended to the Legislature.

Your Committee have examined the laws passed at the last session of the Legislature, to provide for the raising a volunteer corps, and although they believe those acts are exceptionable as those before mentioned, yet as they have expired, and ceased to operate, your committee have not thought it worth while to notice them any farther.<sup>11</sup> All which is submitted by

Oct. 20, 1813

DANIEL FARRAND  
ISAAC BAYLEY

The foregoing Report having been read, was ordered to lie on the table.

The Council adjourned until 2 o'clock P.M.

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<sup>10</sup>*Vermont Constitution*, Chapter I, Article 4th, *State Papers* XV, 162.

<sup>11</sup>*Laws of 1812*, Chapter 103, 147-51; *Laws of 1812*, Chapter 144, 197-98.

At 2 o'clock P.M. the Council met according to adjournment.

Mr. CHIPMAN, from the committee to whom was referred that part of the Report of the *Committee of Arrangement*, which relates to the proposal of alterations and amendments to the Constitution, made Report:

That in the opinion of your committee, it will be expedient to propose amendments to the following effect:

1st. To propose a Senate in lieu of the present Executive Council, to be, with the House of Representatives, a co-ordinate branch of the Legislature.

2d. The Senate to be composed of members elected from each County. The Freemen of any County, which shall at any time be found to contain, agreeably to the census of the United States, not less than seven thousand inhabitants, shall elect two Senators of such County; and the Freemen of each County which shall in like manner be found to contain less than seven thousand inhabitants, shall be entitled to elect one Senator from such County. To make a provision for ascertaining and giving notice to the Senators who shall be chosen at the first election; to be thereafter regulated by law. That a majority of the Senators elected constitute a quorum. The Senate to have the like power to decide on the elections and qualifications, and to expel any of its members, as is provided in the case of the House of Representatives, and to appoint its own officers. The Lieut. Governor to be President of the Senate, except when he shall exercise the office of Governor; in which case, and when the office shall be vacant, the Senate to appoint one of its own members President pro tempore. The Lieut. Governor, when presiding in the Senate, to have a casting, but no other vote.

3d. The Governor and Lieut. Governor to be elected in the manner prescribed by the constitution and laws of the State; to hold their respective offices for one year, from the day of declaring their election, until the first day inclusive of the next annual session of the Legislature.<sup>12</sup>

4th. Hereafter, the person having the greatest number of legal votes for Governor, shall be declared duly elected.<sup>13</sup>

5th. If there shall at any time be no due election by the Freemen, of Governor or Lieut. Governor, the Senate, when

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<sup>12</sup>The 1793 *Vermont Constitution* provided no express provision on the beginning and end of the term of governor. This proposal would have clarified the matter.

<sup>13</sup>The *Vermont Constitution* (1991) still requires a majority vote for governor. See Chapter II, Section 47. Five days after this proposal was made, the Joint Assembly elected Martin Chittenden Governor, in one of the most bitterly contested elections in our history, after the electorate failed to elect a governor by majority vote. *Vermont Assembly Journal* (1813), 39.



organized, and the House of Representatives, shall, by joint ballot, elect to the office of Governor or Lieut. Governor, as the case may be, one of the two candidates for those offices, respectively, for whom the greatest number of legal votes shall have been returned. In the absence of the Governor, or in cases of inability or vacancy in the office, the Lieut. Governor shall exercise the powers of Governor; and provision shall be made by law for designating the officer, who, in the absence, inability, or vacancy in the offices of both Governor and Lieut. Governor, shall exercise the office of Governor.

6th. With a proviso, that no person shall be eligible to the office of Governor or Lieut. Governor, or to be a Senator, or Representative, unless he shall be a Freeman of the State, shall have been five years a citizen of the United States, and shall have resided in this State three years next before his election, the last year of which in case of a Senator, shall have been in the County, and in case of a Representative, in the town, for which he shall be elected.

7th. That a Senator shall be incapable of holding any of the following offices or places, to wit: ----- or any office in the Judiciary which is to be holden during good behaviour; but the acceptance of any of the places or offices before mentioned, shall vacate his seat in the Senate.

8th. In addition to the command in chief of the Militia, and the ordinary and constituted powers of the Executive, which are hereafter to be vested in the Governor, that he shall nominate, and by and with the advice of the Senate, appoint all Judges in the courts of law and chancery, Sheriffs, High Bailiffs, and Justices of the Peace, Major Generals and Brigadier Generals of the Militia, and in like manner to nominate and appoint all other officers under the constitution and laws of this State, for whose appointments provision shall not otherwise made by law, or by the constitution as amended.

9th. To provide for a court of chancery distinct from the courts of law, with general jurisdiction in causes proper for a court of Equity. The Chancellor to hold his office on the tenure, removable in the same manner as the Judges of the Supreme Court; and to be in like manner secure in respect to his compensation.

10th. The Judges of the Supreme Court to hold their offices, respectively, during good behavior; removable nevertheless, by a concurrent resolution of the Senate and House of Representatives, passed by a majority of two thirds of each House.

11th. Each Judge shall receive compensation to be fixed by law, and which shall not be diminished during his continuance in office.

12th. The Chief Judges of the several Circuits of the County Courts, or Common Pleas, whenever such Courts shall be established in lieu of the present system of County Courts, shall hold their respective offices on the same tenure, and removable in the same manner, as is provided in the case of Judges of the Supreme Court.

13th. All other Judges of any of the Courts of law, Judges of Probate and Justices of the Peace, to hold their offices for seven years from the time of their respective appointments, and no longer, unless re-appointed; subject to be removed as in the case of Judges of the Supreme Court.

14th. To provide that the privilege of the writ of Habeas Corpus shall not be suspended; and that provision shall be made by law to render it an expeditious and effectual remedy in all cases proper therefor.

15th. To provide that the Governor, with the Judges of the Supreme Court, and Chancellor, when there shall be such officer, shall be a council of revision; to whom all acts shall, before they become laws, be submitted for revision; and who, if they shall deem any act inexpedient, improper, or unconstitutional, shall, within a time to be prescribed, return such act, with their objections in writing, to the House in which the same originated; and such act shall not become a law, unless the same shall be re-passed by two thirds of the members present in each House.

16th. The Governor to have the power of calling the Legislature to meet on special occasions, and to adjourn the two Houses if they cannot agree on a time of adjournment.

All which is humbly submitted, by

N. CHIPMAN, *for Committee.*

The foregoing Report having been read, was accepted.

Mr. MARSH called up the Report of the Committee to enquire whether all the statutes of this State now in force, are consistent with the various provisions of the Constitution, which having been again read, was accepted; and the following Resolution was introduced and passed, to wit:--

*In Council of Censors, Oct. 20, 1813.*

*Resolved,* That Messrs. MARSH and FARRAND be a Committee to report to the Council resolutions, recommending the repeal of an Act entitled "An Act to prevent intercourse with the enemies of this and the United States, on the northern frontier," passed 6th Nov. 1812; and the Act entitled "An Act to suspend process against the persons and property of the officers and soldiers of this State, while in service," passed the day last aforesaid, assigning reasons for repealing each Act respectively.

On motion of Mr. CHIPMAN, to-morrow morning is assigned to take up the Report of the Committee on the proposal of alterations and amendments to the Constitution.

The Council adjourned until 9 o'clock to-morrow morning.

**Thursday, Oct. 21, 1813 -- 9 o'clock A.M.**

The Council met according to adjournment.

Mr. MARSH, from the Committee appointed yesterday to report to the Council Resolutions, recommending to the Legislature the repeal

of certain Acts--made a Report in part, which was accepted; and the said Report having been read by paragraphs, and having undergone sundry amendments, was adopted in the following words:

*In Council of Censors, Oct. 21, 1813.*

*Resolved*, That the act of the Legislature of this State, entitled "An act suspending civil process against the persons and property of the officers and soldiers of this State, while in service," passed on the 6th Nov. last, is subversive of the rights and privileges of the citizens of this and the United States; and its various provisions are made in violation of the letter and spirit of the constitution of the United States, and the constitution of this State.

It is a violation of the constitution of the United States,

In that the said act provides, "that no writ of summons or attachment against the body or property of any officer or soldier belonging to this state, while in actual service, shall be had or prosecuted, nor any judgment rendered thereon; nor any writ or writs of execution issued after the passing of said act, against any such officer or soldier, on any judgment or judgments already rendered."

Whereas the said constitution provides that "the constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land: and the judges in every state shall be bound thereby, any thing in the constitution and laws of any state to the contrary notwithstanding:" and the said laws of the United States, made in pursuance of the said constitution, do confer on the citizens of this and the United States, the right of suing the citizens of this state, both officers and soldiers, in various instances in the said laws enumerated.

It is a violation of the said constitution,

In that the subject matter thereof is, by the said constitution, confided to the legislature of the United States, which had, before the passing of the said act, acted on the subject in such manner, that whatever privilege of suing the officers and soldiers, was not taken away by the act of congress, is virtually secured to the citizens of this and the United States, and cannot be affected by any act of any particular state.

It is a violation of the said constitution,

In that its direct tendency is to impair the judicial power of the United States, as secured to them in the second section of the third article of the said constitution, and, in pursuance thereof, delegated to the courts of the United States, by the various acts of Congress.

It is a violation of the said constitution,

In that it is a law impairing the obligation of contracts, contrary to the provisions of the tenth section of the first article of the said constitution.

It is a violation of the constitution of this state,

In that it exempts the military from the constitutional subordination of the civil power; and subjects the citizens of this and the United

States to injury, abuse, and deprivation of civil liberty, by the said officers and soldiers, and leaves them without redress by suits at the common law, contrary to the sixteenth article in the bill of rights of the said constitution.<sup>14</sup>

It is a violation of the said constitution,

In that it is an unnecessary delay, and even denial of recourse to the laws and of justice, to the citizens of this and the United States, contrary to the fourth article of the said bill of rights.

It is a violation of the said constitution,

In that it has a tendency to deprive the citizens of this state, and the citizens of the United States, who come among us, of the unalienable rights of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing happiness and safety, contrary to the first article of the said bill of rights--Therefore,

*Resolved*, That this council, as watchmen upon the walls of the political safety and happiness of the people of the state of Vermont, view, with deep concern, the multiplied aggressions of the military power, both officers and soldiers, during the year past, upon the civil rights, privileges, and property of the peaceable, unoffending, and defenceless citizens of this state.

*Resolved*, That while we witness, not only the existence of the said aggressions, but perceive that they are not only permitted, but, through the impunity afforded to the aggressors, have even been invited by the solemn act of the legislature of a free, sovereign, and independent people, in the provisions of the act aforesaid;--not to remonstrate, would be to join in overthrowing the liberties of our country, and betraying a trust reposed in us by the constitution of this state.

*Resolved*, That this council do earnestly recommend to the legislature of this state, now in session, the immediate and unqualified repeal of the said act--and the secretary of this board forthwith transmit a copy of these resolutions to the speaker of the house of representatives, to be laid before that honorable body for their consideration.<sup>15</sup>

The petition of William Gibson and others, inhabitants of Ryegate, Barnet and Topsham, who "profess the Presbyterian religion as it has been professed in the purest times of reformation," and who "look upon that form of church government to secure the rights of God and

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<sup>14</sup>Article XVI provided that, "That the people have the right to bear arms for the defence of themselves and 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." See page 140.

<sup>15</sup>*Assembly Journal* (1813), 41-2.

man better than any other;"--and praying that the constitution may be so amended, as that "*the scriptures of the Old and New Testament shall be declared the supreme rule in all things, and paramount to all laws and constitutions; and that no law, contrary to, or inconsistent with the same, shall be binding on the conscience of any Christian;*"--was received and read, and laid on the table.

The Council adjourned until 2 o'clock this afternoon.

**At two o'clock P.M.** the Council met according to adjournment.

On motion of Mr. MARSH, Messrs. JEWETT and HALL were appointed a committee to examine the account of orders drawn on the Treasurer of this State by the Auditor of Accounts for the last seven years;--and make report to this Council.

The Council adjourned until to-morrow morning.

**Friday, Oct. 22,--9 o'clock A.M.**

The Council met according to adjournment.

On motion of Mr. HALL, the Council took up the proposed amendments to the Constitution, as reported by the Committee on that subject;--and having spent considerable time in the discussion of the same, adjourned to 2 o'clock this afternoon.

**At two o'clock P.M.** the Council met pursuant to adjournment, and having spent some time on the proposed amendments to the constitution, adjourned until to-morrow morning.

**Saturday, Oct. 23,--9 o'clock A.M.**

The Council met according to adjournment, and took up the proposed amendments to the constitution, as reported by the Committee appointed on that subject.

The second proposition was, on motion of Mr. MARSH, referred back to the Committee, to make a new arrangement for the election of a Senate.

The fourth proposition as reported by the Committee, was ordered to be stricken out.

After considerable time spent in the discussion of said report, the Council adjourned until 2 o'clock this afternoon.

**At two o'clock P.M.** the Council met pursuant to adjournment.

Mr. FARRAND, from the Committee appointed by resolution on the 20th inst. reported the following resolutions:

*In Council of Censors, Oct. 23, 1813.*

*Resolved,* That having examined an act of the Legislature of the State of Vermont, passed the 6th day of Nov. 1812, entitled "An act to prevent intercourse with enemies of this and the United States, on the northern frontier," this Council is of opinion, that the said act is contrary to the various provisions in the constitutions of this and the

United States.

It is contrary to the provisions of the constitution of the United States, in this:--

That by the said constitution of the U. States, the power to regulate commerce with foreign nations, and to regulate captors both by land and water, are delegated to the congress of the United States;--and the before mentioned act seems to be an attempt to wrest this power from congress, and place it in the hands of the legislature of this state, by regulating commerce with the province of Canada; and by authorizing captors both by land and by water.

It is contrary to the provisions of the constitution of this state, in this:--

By that constitution, the right to trial by jury is secured to every citizen, in cases proper to be tried by jury:<sup>16</sup> whereas this act deprives any person, whose property may be seized under the said act, of the right to such trial, and even of any trial, by authorizing any three justices in the state, one of whom to be a judge of the county court, without regard to time or place, immediately on receiving a libel of said property, to proceed and condemn the same, without any notice that his property has been seized and libelled.

Although this council feel a deep concern at this departure from the rules established by our constitution, and by the uniform practice for a series of years, in settling and establishing the rights of property: yet they feel it to be of little moment when compared with the violations of personal liberty, which appear in various parts of this act.

We find by the second section of the said act, that any citizen of this or the United States, while about his lawful and necessary business, may, on the suspicion, or pretended suspicion, of any one, be deprived of his liberty, and held in durance until a warrant can be obtained to take him before a magistrate; *there*--not to answer for any crime committed, but to give security that he will not be guilty of the crime, which the person apprehending him, suspected he was about to commit.

We find by the fourth section of the act under consideration, that every person travelling through this state, under suspicious circumstances, is liable to have his trunk opened and searched--his papers, of whatever kind, searched and seized, by any and every justice of the peace, within whose jurisdiction he may happen to be; and this without any warrant obtained therefor.

We need only refer you to the eleventh article of the bill of rights to prove the repugnancy of this act to our sacred constitution.

This council, acting as faithful censors and guardians of the

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<sup>16</sup>*Vermont Constitution* (1793), Chapter I, Article X.

liberties of the people, cannot refrain from observing, that such acts of the legislature have a demoralizing influence on society;--tend to let loose one class of citizens against the other;--to produce recriminations and revenge; and to introduce discord and confusion in this once happy and peaceful state. Therefore,

*Resolved*, That the speedy and unqualified repeal of said act, be recommended to the legislature; and that the secretary to this board be directed to transmit a copy hereof to the speaker of the house of assembly, to be laid before that honorable body.

The foregoing reported resolutions having been read, were adopted.

Mr. MARSH introduced a resolution declaring an act of the legislature, directing the deed of Job and Theoda Wood to be given in evidence, to be unconstitutional;<sup>17</sup> which was read, and ordered to lie on the table.

The proposed amendments to the constitution were again taken up; and after considerable discussion thereof, were referred back to the committee on that subject, to report specific articles.

On motion of Mr. CHIPMAN, Messrs. HALL and FARRAND were added to the committee on the proposed amendments to the constitution.

The Council adjourned until Monday next.

#### **Monday, Oct. 25, 1813.--9 o'clock A.M.**

The Council met according to adjournment, and took up the resolutions introduced on Saturday last by Mr. MARSH; which having been read, passed in the words following, to wit:

#### *In Council of Censors, Oct. 25, 1813.*

*Resolved*, That the act entitled "An act directing the deed of Job and Theoda Wood to be given in evidence," passed the 20th October, 1812, is unconstitutional, and ought not to have been passed.

The said act recites, that, "whereas Job Wood, and Theoda Wood, wife of said Job, late of Bennington, in the county of Bennington, did execute a deed, granting all their right and title unto the estate, both real and personal, of Henry Walbridge, 2d. late of said Bennington, deceased, to Stebbins Walbridge, of said Bennington, dated the 26th day of March, 1800, which deed was, on the 14th day of March, 1801, at said Bennington, duly acknowledged by the said Job, as also by the said Theoda, separately and apart from her husband, as the law requires;--that the same was executed freely, and without any compulsion of her husband; a certificate of which said acknowledgment was then and

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<sup>17</sup>"An Act, directing the deed of Job and Theoda Wood, to be given in evidence," *Laws of 1812*, Chapter 17, 20-21.

there made upon the said deed, by Samuel Safford, then councillor and justice of the peace, before whom the said acknowledgment was made, the said Job Wood and Theoda Wood, his wife, personally appeared, and as the law directs, severally acknowledged the same to be their free act and deed, before said justice:--and whereas doubts have arisen whether the said deed could be read in evidence; which to remove, the said act enacts--"That the said deed herein before described be, and the same is hereby directed to be good and valid, and that the same shall, to all intents and purposes, have the same force and effect as if the certificate of acknowledgment had been made in the usual form."

The said act is unconstitutional--In that it appears in the recitative clause of the said act, that the said deed, for want of a proper acknowledgment endorsed thereon, and recorded at length with the said deed, was, by the existing law of this state, absolutely void; and that in consequence thereof remained vested in the said Theoda Wood, and might have become, at the time of passing the said act, vested in her heirs, or subsequent grantee.

The enacting clause of the said act therefore tends to divest one individual of a private right and title, and to invest the same in another individual, by a sovereign act of the legislature:--whereas the constitution does not confer on the legislature any power to decide on rights of individuals; and every attempt thus to decide on, and destroy the rights of individuals, by the legislature, is an assumption of power not warranted by the constitution.--Therefore,

*Resolved*, That this Council do recommend to the legislature now in session, to repeal the said act; and that the secretary of this board be directed to transmit, forthwith, a copy of these resolutions to the speaker of the house of representatives, for the consideration of that honorable body.

The Council adjourned to 2 o'clock this afternoon.

At two o'clock P.M. the Council met agreeably to adjournment, --and after having had under consideration the proposed amendments to the constitution, with a view of instructing the committee on that subject; adjourned until to-morrow morning.

**Tuesday, Oct. 26.**--9 o'clock A.M.

The Council met according to adjournment,--and to give time to the several committees, adjourned until 2 o'clock this afternoon.

At two o'clock P.M. the Council met according to adjournment.

The Committee on the proposed amendments to the constitution, made a detailed report of articles to be added to the constitution--which was read and accepted: and the same having been discussed, and several amendments made thereto, the Council adjourned until to-morrow morning.



**Wednesday, Oct. 27--9 o'clock A.M.**

The Council met according to adjournment.

The Council took up the articles reported by the Committee on the proposed amendments to the constitution; and having gone through the same by paragraphs, and several amendments having been made thereto, was adopted as follows; and ordered to be engrossed, to be signed by the members, and proposed to the people as amendments to the constitution.

1st. There shall, hereafter, in lieu of the present Executive Council, be a Senate; which, with the House of Representatives, shall be a co-ordinate branch of the Legislature of the State of Vermont.

2d. The Representatives shall be elected, as is provided by the present Constitution. The Senate and House of Representatives shall constitute *the General Assembly of the State of Vermont*.

3d. The Senate shall be composed of twenty-four Senators, to be elected by the Freemen of each County respectively; the votes to be given for the whole number to be elected for such County, in the same manner as is provided in the election of Councillors; each County to be entitled to one, and the remainder to be apportioned to the several Counties, according to their population, agreeable to the last Census of the United States, regard always being had, in the apportionment, to the Counties having the greatest fraction. The several Counties shall, until after the next Census of the United States, be entitled to elect their Senators, in the following proportion, to wit: Bennington County two--Windham County three--Rutland County three--Windsor County four--Addison County two--Orange County two--Chittenden County one--Caledonia County one--Franklin County two--Orleans County one--Essex County one--Grand-Isle County one--and Jefferson County one. And the persons having the greatest number of legal votes, shall be declared duly elected. The Legislature shall make a new apportionment of the Senators to the several Counties, after the taking of each Census of the United States; always regarding the above provisions in this Article.

4th. For the first election of Senators, after the adoption of this amendment, the Freemen of the several towns in each county, shall give their votes for the number of Senators apportioned to such county, at the same time; and under the same regulations, as is provided for the election of Councillors. And the Constable, or presiding officer, shall, in like manner, sort and count the said votes, and make two lists of the name of each person, with the number of votes given for each, annexed to his name; a record of which shall be made in the town clerk's office; and shall seal up such lists separately, and write on each the name of the town, and these words, "*Votes for Senators*;" one of which lists shall, by the presiding officer, be delivered to the representative for said town, to be

transmitted to the President of the Senate; the other list, the said presiding officer shall deliver to the Clerk of the County Court for said County, within ten days; whose duty it shall be to sort and count said votes, and make a record of the same; a copy of which he shall transmit to the Senate; and shall also, on or before the first day of October then next, transmit to the person or persons having the greatest number of votes for Senator or Senators, a certificate of his or their election.

5th. The members of the Senate shall be elected for three years; and immediately after the first election, shall be divided by lot into three classes; the seats of the first class to be vacated at the end of the first year, and the seats of the second class at the end of the second year; and so on continually, to the end, that one third of the Senate may be elected annually.

6th. At the first session of the Legislature after organization of the Senate, provision shall be made, by law, directing the mode of giving in, sorting, counting, certifying, and returning, the votes for Senators; and for filling all vacancies, by ordering a new election in the County, or Counties, where such vacancy may happen, in the Senate, by resignation, or otherwise.

7th. The Senate shall have the like powers to decide on the elections and qualifications, and to expel any of its members, and to make its own rules, and appoint its own officers, as is provided in the case of the House of Representatives. A major part of the Senators shall constitute a quorum. The Lieutenant Governor shall be President of the Senate, except when he shall exercise the office of Governor; in which case, and when the office shall be vacant, and in the absence of the Lieutenant Governor, the Senate shall appoint one of its own members, President pro tempore. The Lieutenant Governor, when presiding in the Senate, shall have a casting, but no other vote.

8th. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. No person shall be convicted, without the concurrence of two thirds of the members present. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under this State. But the party convicted shall nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

9th. The Governor and Lieutenant Governor shall be elected in the manner prescribed by the Constitution and laws of this State; and shall hold their respective offices from the day of declaring their election, until the first day, inclusive, of the next annual session of the Legislature. The votes for Governor, Lieutenant Governor and Treasurer, shall be sorted and counted, and their elections declared, by a committee appointed by the Senate and House of

Representatives. If there shall, at any time, be no due election by the Freemen, of Governor or Lieutenant Governor, the Senate, with the House of Representatives, shall, by joint ballot, elect to the office of Governor or Lieutenant Governor, as the case may be, one of the two candidates for those offices, respectively, for whom the greatest number of votes shall have been returned.

10th. No person shall be eligible to the office of Governor, Lieutenant Governor, Senator or Representative, unless he be a Freeman of this State, and have been five years a citizen of the United States; and have resided in this State three years next before his election; the last year of which, in case of a Senator, shall have been in the County, and in case of a Representative, in the town for which he shall be elected.

11th. No person shall be allowed to vote in any of the elections aforesaid, unless he be a citizen of this and the United States.

12th. The Governor shall be Captain General and Commander in Chief of the Militia of this State; he shall commission all officers, and fill all vacancies in office, occasioned by death or otherwise, by commissioning some fit person or persons, as the case may require, to exercise the powers and perform the duties of such office, until the same can be filled in the manner directed by law or this Constitution; he may require the opinion in writing of the Justices of the Supreme Court, on any legal or constitutional question, relating to the powers and duties of his office; and may also demand of any officers, in the executive department, information, or their opinion, on any subject relating to the duties of their respective offices.

13th. The Governor shall have power, after convictions, to grant pardons, for offences against this State, except in cases of impeachment and capital offences; but he shall, in capital offences, have power, by granting reprieves, to suspend execution until after the next session of the Legislature; in which cases the Legislature, only, shall have power to pardon.

14th. In addition to the powers herein before mentioned, and the ordinary powers and duties of the executive, prescribed by the Constitution and laws of this State, the Governor shall nominate, and by and with the advice and consent of the Senate, appoint all Judges of the Courts of Law and Chancery, Judges of Probate, Sheriffs, High Bailiffs, Justices of the Peace, and Major and Brigadier Generals. And also in like manner, to nominate and appoint all other officers for whose appointments provision shall not be otherwise made by law or this Constitution.

15th. The Representatives of the several Counties, shall, at every session of the Legislature, from time to time, in County Convention, recommend to the Governor suitable persons to be appointed Justices of the Peace, in the several towns in their respective Counties, when such appointments shall be necessary: And shall, in like manner, when the appointment of a Sheriff or High

Bailiff, shall be necessary in any County, recommend two suitable persons, for each or either of said officers, as the case may be; and the Governor shall nominate to each office, respectively, one of the two persons recommended.

16th. The Governor shall have power, in case he deem it expedient, to call a special meeting of the Legislature.

17th. 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, every bill which shall have passed the House of Representatives and Senate, shall, before it becomes a law, be presented to the Governor; if he approves, he shall sign it; if not he shall return it, with his objections, in writing, to the House in which it originated; who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration, three fifths of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by three fifths of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill, shall be entered on the Journal, of each House respectively. If any bill shall not be returned by the Governor within five days, (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner, as if he had signed it, unless the Legislature, by their adjournment, within three days after the presentment of such bill shall prevent its return; in which case it shall not become a law.

18th. There shall be established in this State, a Court of Chancery, distinct from the Courts of law, with general jurisdiction in causes properly determinable in equity.

19th. The Chancellor shall hold his office on the same tenure, and be removeable in the same manner, as is provided in the case of Judges of the Supreme Court; and shall in like manner, be secured in his compensation.

20th. The Judges of the Supreme Court, shall hold their offices, respectively, during good behavior; they shall, nevertheless, be removed from their respective offices, by a resolution of the Senate and the House of Representatives, assigning reasons for such removal; and concurred by a majority of two thirds of each house.

21st. The Legislature shall, whenever it shall be deemed expedient, establish Circuit Courts of Common Pleas, in lieu of the County Courts, with a Chief Judge for each circuit.

22d. The Chief Judges of the Circuit Courts shall hold their respective offices on the same tenure, and be removeable in the same manner, as is provided in case of the Judges of the Supreme Court.

23d. All other Judges of the County or Circuit Courts, and the

Judges of Probate, shall hold their offices for five years; and all Sheriffs, High Bailiffs, and Justices of the Peace, for three years, from the time of their appointment, respectively; removeable nevertheless, as in the case of the Judges of the Supreme Court. Sheriffs shall be incapable of being reappointed to the same office, for three years next succeeding the expiration of the time for which they were respectively appointed.

24th. All elections and appointments to the legislature, and to offices under the Constitution, shall be annual, in all cases where provision is not otherwise made.

25th. No person shall be capable of holding, in this State, more than one of the following offices or places, at the same time, to wit:-- Governor, Lieut. Governor, Chancellor, Judge of the Supreme Court, Chief Judge of any Circuit Court, Representative or Senator in the Congress of the United States, Treasurer of the State, Representative or Senator in the legislature of this State, Surveyor General, or Sheriff; nor shall any person holding any office of profit or trust under the authority of Congress, be capable of being elected a Senator or Representative in the State Legislature, or of holding any executive, judiciary, or military office, under this State.

26th. Neither House shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two Houses shall be sitting.

27th. The writ of *Habeas Corpus* shall in no case be suspended. It shall be considered a writ issuable of right; and the Legislature shall make provision to render it a speedy and effectual remedy, in all cases proper therefor.

28th. BE IT ORDAINED, That such parts and provisions only, of the Constitution of this State, established by convention, on the ninth day of July, one thousand seven hundred and ninety three, as are altered or superceded by any of the foregoing amendments, or are repugnant thereto, shall hereafter cease to have effect.

The foregoing proposed amendments having been adopted, the following resolution was introduced by Mr. MARSH, and passed.

*In Council of Censors, Oct. 27, 1813.*

*Resolved*, two thirds of this Council concurring herein, that it is expedient to call a convention to meet at the State house in Montpelier, on the \_\_\_\_ day of \_\_\_\_ for the purpose of taking into consideration the proposed amendments to the Constitution, as agreed on by this Council.

Those who voted for said resolution are Messrs. TICHENOR, BAYLEY, BAYLIES, CHIPMAN, CLARK, FARRAND, HALL, JEWETT, MARSH, STRONG and TEMPLE--no one voting in the negative.

On motion, Messrs. CHIPMAN and TEMPLE were appointed a committee to draft and report an ordinance, directing the mode of electing members of said convention.

The Council adjourned until to-morrow morning.

**Thursday, Oct. 28--9 o'clock A.M.**

The Council met pursuant to adjournment.

On motion of Mr. TICHENOR,

*Resolved*, That a committee of two be appointed to report the articles in the constitution, that are in any manner altered or abolished, by the proposed amendments thereto.

Members chosen, Messrs. CHIPMAN and BAYLEY.

Mr. HALL asked, and obtained leave of absence, from this day at noon, until the end of the session.

The petition of Joseph H. Ellis, complaining of the Judges of the Supreme Court, &c. was called up, and after a short discussion, the petitioner had leave to withdraw his petition.

The Council adjourned until 2 o'clock P.M.

At **two o'clock** the Council met agreeably to adjournment; and to give time to committees, adjourned until to-morrow morning.

**Friday, Oct. 29 -- 9 o'clock A.M.**

The Council met according to adjournment.

Mr. CHIPMAN from the committee appointed to report the articles in the constitution, that are in any manner altered or abolished, by the proposed amendments thereto;--made report;--

That in the first chapter of said constitution, entitled, "*A Declaration of the Rights of the State of Vermont*"--no article is altered, abolished or superseded, by any of the amendments proposed by this Council.

That in the second chapter of said constitution entitled, "*A plan or frame of government*"--the following articles or sections, are altered, abolished or superseded, either in whole or part, to wit: the first, second, third, fifth, ninth, tenth, eleventh, sixteenth, eighteenth, twenty-first, twenty-fourth, twenty-ninth, thirtieth, and thirty-ninth. All which is submitted, &c.

(signed)

N. CHIPMAN,

I. BAYLEY.

The president of this Council laid before the board "*A statement of balances due the Treasury for taxes*," as prepared by the Treasurer of the State, in the words and figures following, to wit:<sup>18</sup>

Mr. STRONG introduced the following resolution, which was read and passed, to wit:

*In Council of Censors, Oct. 29, 1813.*

*Resolved*, that a committee of two be appointed to report a suitable address to accompany the proposed amendments to the

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<sup>18</sup>The statement of balances appears in the Journal, but is not reprinted here. For a copy, please contact the State Archives.

constitution.

Members chosen, Messrs. MARSH & FARRAND.

The Council adjourned until to-morrow morning.

**Saturday, Oct. 30--9 o'clock A.M.**

The Council met according to adjournment.

Mr. MARSH reported an address to accompany the proposed amendments to the Constitution--which was read and re-committed to the same committee for the purpose of making some additions and amendments thereto.

The Council adjourned until Monday morning next.

**Monday, Nov. 1---9 o'clock A.M.**

Mr. CHIPMAN, from the Committee appointed to draft an ordinance, directing the mode of election of the members of the Convention, reported an ordinance for that purpose; which having been read and considered, and amended, passed in the following words, to wit:

**STATE OF VERMONT.**

*In Council of Censors, November 1, 1813.*

This Council having agreed to propose certain amendments to the Constitution of this State, and having determined to call a Convention, to consider of such amendments: *Therefore,*

**IT IS ORDERED BY SAID COUNCIL,**

THAT a Convention of the People of the State of Vermont, shall meet at the STATE HOUSE, in Montpelier, on the first Thursday of July next, to consider of the amendments to the Constitution, proposed by this Council; and to adopt the same, or such part of them, as the said Convention shall judge will be most conducive to the good government, peace and happiness of the good People of the State. And for the purpose of electing Members, to attend said Convention, the first Constable, or in his absence, the Town Clerk, or in his absence, the Selectmen of each Town in this State, entitled to send a Representative to the General Assembly, of this state without further order, shall set up a notification, at such place or places, as shall have been appointed by the Inhabitants of their several towns, for notifying town meetings, at least twelve days before the last Tuesday of May next, warning the Freemen of their respective towns, to meet on the said last Tuesday of May next, at one o'clock afternoon, at the usual place of holding Freemen's Meeting in such town, for the purpose of electing a Delegate or Representative, to represent said town in said convention; at the opening of which meeting, this Order shall be publicly read.

And the first Constable, or in his absence, the Town Clerk, or in their absence, one of the Selectmen, or a Justice of the Peace of the same town, shall be the presiding officer of such meeting; whose duty it shall be, to call on the Freemen of such town, from time to

time, for the space of three hours, to give in their votes for a Delegate to represent such town in said Convention; which votes shall be given and received in the same manner, and under the same regulations, as is by law provided in the case of the election of a Representative to the General Assembly; at the expiration of which time, the votes for such Delegate or Representative, shall be by the said presiding officer, with the assistance of the Town Clerk, sorted and counted; and if no person shall have a majority of all the votes, the said presiding officer shall notify the same; and call on the freemen as aforesaid, giving a reasonable time only for receiving such votes, until an election shall be made. And after an election shall be made as aforesaid, the presiding officer of such meeting shall give to the person elected, a certificate of the following tenor, to wit:--

*At a Freeman's Meeting, legally warned and holden at \_\_\_\_\_ on the last Tuesday of May, 1814, A.D. was elected a Delegate, by a majority of the Freeman present, to represent the town of \_\_\_\_\_ in Convention, to be holden at Montpelier, on the first Thursday of July next, for the purpose of taking into consideration certain amendments to the Constitution of this State, proposed by the Council of Censors in November, 1813.*

*Given under my hand at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ A.D. 1814.*

C.D.      ( First Constable,  
              ( or presiding officer,  
              ( as the case may be.

Which certificate shall be a sufficient Credential of such person's election.

*Passed in Council of Censors, Nov. 1, 1813.*

ISAAC TICHENOR, *President.*

Attest, ROBERT TEMPLE, *Secretary.*

The Council took up the resolution for calling a Convention, passed the 27th Oct. 1813, for the purpose of filling the blanks appointing the time for said Convention to meet:--when it was voted that said blank be filled so that said Convention shall be directed to assemble on the first Thursday of July 1814.

Mr. MARSH, from the Committee appointed for that purpose, reported the address to the people, to accompany the proposed amendments to the Constitution, with additions;--which having been read and amended, passed in the words following to wit:

TO THE PEOPLE OF THE  
STATE OF VERMONT.

The Council of Censors, chosen by the Freeman on the last Wednesday of March, in the year of our Lord one thousand eight hundred and thirteen, regard the power of proposing alterations and amendments to the Constitution, and calling a Convention to consider the expediency of their adoption, as the most important trust confined



to them by the people.

The Council has taken this subject into serious consideration; attending both to the defects in the Constitution, and the remedies which would be most likely to secure the rights, and promote the happiness and prosperity of the people.

We have not been insensible of the difficulties attending innovations upon political systems, in times like the present, when the whole civilized world is in a state of convulsion; and when our own country and State are distracted by great political divisions--yet, considering that we were not appointed to act for any party or faction, but for the good of the whole community; and though we are not wholly of the same opinion or party in politics, we unanimously agree in recommending the following amendments, as being calculated to secure, more effectually, the inestimable rights of civil liberty to individuals, and, at the same time, by defining, more distinctly, the powers of the several branches of the Government, to render it more permanent, as well as more energetic in its operations.

The experience of every age has taught mankind the necessity of vesting portions of the supreme legislative power of the State in the hands of several bodies of men, in order to form proper checks upon the hasty and undue exercise of its authority. We have thought the want of this a great defect in our Constitution; and have therefore proposed the introduction of a Senate, as a coordinate branch of the Legislature.

The people are, by the provisions of the present Constitution, represented in the most numerous branch of the Legislature, by persons annually chosen by the Freemen of each town, without regard to the number of its inhabitants; by means of which, there is great want of equality in the representation of the people, in that branch of the Legislature. On this account the Council thought that the representation in the Senate should be apportioned among the several Counties, as near as might be, according to the number of inhabitants; and, at the same time, securing to each County, its separate right of representation in that body. The representation from the northern counties, in the House of Representatives, is at present more numerous, in proportion to their inhabitants, than from the other parts of the State. By the appointment of the Senators, among the several Counties, now proposed, it is believed a nearer approach is made to equality.

It has been thought expedient that the Senators should be elected for three years, and yet be so classed, as that one third of the whole number should be chosen annually; to the end that there might be always a quorum of old members, well acquainted with the affairs of state, and the various persons holding offices in the different parts thereof, and be thereby better qualified to judge of nominations made to them for appointments; to add weight and

stability to their proceedings; and, in general, to enable them more understandingly to discharge the duties of their station, to the satisfaction, and for the benefit of the community.

It is too obvious to need proof, that bodies of men are unstable in proportion as they are numerous; and conduct without due consideration, and regard to the public interest, in proportion as their responsibility is shared by numbers. We have, therefore, thought it advisable, to confer the power of nomination to office, on the Governor; who, by his annual election, is immediately responsible to the people; and the power of controuling appointments to office, in pursuance of his nomination, on the Senate, the less numerous branch of the Legislature. The Council hopes, by these means, to leave the choice of the members of the Legislature more free from the influence of designing men; who may often promote the election of individuals, in order that themselves, in their turn, may be promoted; And also to relieve the Legislature itself from the corrupting influence of a too frequent exercise of the power of appointment; as well as to save much time of the Legislature, and expense to the State, now wasted in the present mode of electing officers.

The frequent election of the Judges of the Courts of Law and Chancery, it is believed, must unavoidably have a tendency to make them feel dependent on their electors, and other influential members of society; and to prevent the unbiased exercise of their opinions, in the decision of causes between men high in office or influence, and the members of the lower and more ordinary classes of society; and thereby corrupt the fountain, as well as the streams of justice. The members of the Council, therefore, thought it their duty to devise, and recommend, an amendment of the Constitution, rendering the Judiciary so far independent, as to place them above the influence of popular party, or personal motives; and yet liable to removal for reasonable objections, which do not amount to cause of impeachment. They have therefore proposed so to amend the Constitution, as to have them appointed during good behavior; yet removable by the resolution of both houses of the Legislature, passed by two thirds of the members of each; as being the best medium between absolute independence, and an entire dependence on the representatives of the people. The ordinary Judges of the Courts of common jurisdiction, it has been thought expedient, should hold their offices for the term of five years, removeable in the same manner.

Chancery powers cannot, from their nature, be accurately defined or limited; and are therefore, in some measure, dangerous; yet, when reduced to system, by practice and precedent, highly, useful, important and necessary. The inconvenience of the exercise of those powers, by the Judges of a court of common law jurisdiction, has been unhappily experienced by the suitors in our Courts. Great delay in causes in Chancery has been occasioned by want of time,

and hurry of business, on the law side of the Court. Necessary rules and orders for bringing causes to a hearing and decision, cannot be adopted and maintained in our present system: And the unavoidable precipitancy, in the proceedings, forbids the expectation of the attainment of correct decisions, by the proper discussion of the parties, and due deliberation of the Court. The Council has, therefore, recommended the establishment of a Court, with Chancery powers, distinct from the Courts of law.

We have taken care not to have a magistracy odious to the people, by requiring their immediate representatives, in county convention, from time to time, to recommend to the Governor, for his nomination to the Senate, suitable persons for Justices of the Peace, Sheriffs and High Bailiffs, in their respective Counties.

The Council has made the several proposed amendments distinct from each other, to the end, that any one, or more of them, might be either adopted, or rejected, without adopting or rejecting the whole; as might, in their opinion, be most conducive to the welfare of the people.

Sincerely believing that the amendments proposed will, if adopted, contribute to the security of the rights and happiness of the people, the permanency of the government, and the facility of the exercise of its various functions, we cordially and earnestly recommend them to your dispassionate consideration.

The foregoing address having been adopted, was signed by the following members, to wit:

ISAAC TICHENOR,  
NATHANIEL CHIPMAN,  
DANIEL FARRAND,  
EBENEZER CLARK,  
ELIJAH STRONG,  
CHARLES MARSH,  
WILLIAM HALL, jun.  
LUTHER JEWETT,  
ISAAC BAYLEY,  
NICHOLAS BAYLIES, &  
ROBERT TEMPLE.

The Council adjourned until two o'clock, P.M.

**At two o'clock P.M.** the Council met pursuant to adjournment.

On motion of Mr. MARSH, it is ordered, that the following caption be prefixed to the articles proposed to be added to the Constitution, to wit:

*"Articles of amendment, alteration and addition to the Constitution of the State of Vermont, proposed by the Council of Censors, on the first day of November, 1813."*

And,

On motion of Mr. MARSH, the following resolution was adopted,

and ordered to be signed by the President and Secretary, and to be annexed and immediately follow the articles proposed to be added to the Constitution:

*In Council of Censors, Nov. 1, 1813.*

*Resolved*, That the foregoing amendments, alterations, and additions to the Constitution, consisting of twenty-eight articles, be proposed to the people for their consideration and adoption.

On motion of Mr. MARSH,

*Resolved*, That those articles in the Constitution which are proposed to be annulled, altered or abolished, as reported by the committee, be published with the following caption prefixed thereto, as follows:

*Articles of the Constitution of the State of Vermont, proposed to be amended, altered or abolished, by the Council of Censors.*

ART. 1. 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:

ART. 2. The Supreme Legislative power shall be vested in a House of Representatives of the Freeman of the Commonwealth or State of Vermont.

ART. 3. The Supreme Executive power shall be vested in a Governor, or, in his absence, a Lieutenant Governor and Council.

ART. 5. 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 said courts.

ART. 9. 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, on the first session after their election, in connection with the Council (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 there 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.

ART. 10. The Supreme Executive Council of this State shall consist of a Governor, Lieutenant Governor, and twelve persons, chosen in the following manner, to wit:--The Freemen of each town shall, on the day of the 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 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 also be chosen in the manner above directed. And each Freeman shall give in twelve votes for twelve Councillors, in the same manner, and the twelve highest in nomination shall serve, for the ensuing year, as Councillors.

ART. 11. 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 commission all officers, & also to appoint officers, except where provisions is or shall be otherwise made by law, or this frame of government; and shall supply every 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 of 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 Treasury 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 Councillor may enter his dissent, with his reasons to support it. And the Governor may appoint a Secretary for himself and his Council.

ART. 16. 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.

ART. 18. No person shall be elected a Representative until he has resided two years in this State, the last of which shall be in the town for which he is elected.

ART. 21. 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 must conduce to the best good of the same, as established by the*

*Constitution, without fear or favor of any man."*

ART. 24. 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, and Council, who shall hear and determine the same, and may award costs; and no trial or impeachment shall be a bar to a prosecution at law.

ART. 26. 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. Nor shall any person, holding any office of profit or trust, under the authority of Congress, be eligible to any appointment in the Legislature, or of holding any executive or judiciary office under this State.

ART. 30. No person shall be eligible to the office of Governor or Lieutenant Governor, until he shall have resided in this State four years next preceding the day of his election.

ART. 39. 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 of a natural born subject of this State, except that he shall not be capable of being elected Governor, Lieutenant Governor, Treasurer, Councillor, or Representative in Assembly, until after two years residence.

And,

On motion of Mr. MARSH, the following resolution was adopted, and ordered to be annexed and immediately follow the said articles, and to be signed by the President and Secretary:

*In Council of Censors, Nov. 1, 1813.*

*Resolved*, that the first, second, third, fifth, ninth, tenth, eleventh, sixteenth, eighteenth, twenty-first, twenty-fourth, twenty-sixth, thirtieth, and thirty-ninth articles, in the second chapter of the Constitution of the State of Vermont, intitled, "*A plan or frame of Government*"--be published with the amendments proposed by the Council, as being either altered, amended or abolished, either in whole or in part, by the said proposed amendments.

Mr. BAYLIES introduced the following resolution, which was read and adopted.

*In Council of Censors, Nov. 1, 1813.*

*Resolved*, that twelve hundred copies of the proposed amendments and alterations of the Constitution, and articles therein to be amended, altered or abolished, together with the address of the Council, and their resolutions concerning the same, be forthwith

printed; and be distributed among the people, as the house of Representatives may direct.

And also, *Resolved*, that copies of the doings of the Council of Censors, in relation to the alterations and amendments of the Constitution, be transmitted by the Secretary as soon as may be, to his Excellency the Governor, to be laid before the General Assembly.

Mr. BAYLEY was appointed to make up the debenture of the Council of Censors.

The Council adjourned until to-morrow morning.

### **Tuesday, Nov. 2, 9 o'clock A.M.**

The Council met according to adjournment.

On motion, Mr. MARSH was appointed to prepare a final address to the people, and to report the same at the next session of this Council.

On motion of Mr. MARSH, Mr. HALL was added to the committee to enquire into the expenditure of public money--said committee to report at the next session.

On motion,

*Resolved*, that when the Council adjourn, they will adjourn to meet at the Court-House in Middlebury, on the third Tuesday of January next.

Voted, that the President of this Council be requested to remain in this town, until the proposed amendments to the Constitution, with the address to the people, &c. shall have been printed, for the purpose of inspecting the proof-sheet.

The Council then adjourned to meet at Middlebury on the third Tuesday of January next.

## **Third Session**

Agreeably to the adjournment of the Council of Censors, several of the members assembled at Middlebury on the **third Tuesday of January, A.D. 1814**--but a quorum not appearing, adjourned until to-morrow, at 10 o'clock A.M.

### **Wednesday, January 19, 1814--10 o'clock A.M.**

Several members of the Council met according to adjournment;--but a quorum not yet having appeared, adjourned until to-morrow, at 10 o'clock A.M.

### **Thursday, January 20, 10 o'clock A.M.**

The Council met according to adjournment--and a quorum of the members appeared.

The President of the Council being absent, Mr. MARSH was appointed President pro tempore.



The following resolution was introduced by Mr. BAYLIES, read and adopted:

*In Council of Censors, Jan. 20, 1814.*

*Resolved*, that the Secretary of this board procure 750 copies of the Journal of this Council to be printed: and that the same be distributed by the several sheriffs, as follows, to wit: two to the Governor, five to the Secretary of State, two to each town-clerk for the use of the town, and two hundred and twenty to be by the Sheriff of Jefferson County distributed among the members of the Convention, when assembled in Montpelier--and two to each member of this Council.

The Council, after having had under consideration the subject of the expenditure of public money, adjourned until to-morrow, at 10 o'clock, A.M.

**Friday, January 21, 1814, 10 o'clock A.M.**

The Council met pursuant to adjournment.

The following resolution was introduced and passed:

*In Council of Censors, Jan. 21, 1814.*

*Resolved*, that the Secretary of this Council be directed to transmit to his Excellency the Governor of this State, a certified copy of the articles proposed to be added to the Constitution, with a request that he will be pleased to lay the same before the Convention, to be holden at Montpelier on the first Thursday of July next.

The Council, after having had under consideration the subject of the expenditure of public money, adjourned until ten o'clock to-morrow morning.

**Saturday, Jan. 22, 1814, 10 o'clock A.M.**

The Council met according to adjournment.

The Hon. ISAAC TICHENOR, President of the Council, appeared and took the chair.

Having had under consideration the subject of the expenditure of public money, and the several duties assigned them by the Constitution--adjourned until Monday morning next, at 8 o'clock.

**Monday, Jan. 24, 1814, 8 o'clock A.M.**

The Council met according to adjournment.

Mr. MARSH, from the committee appointed for that purpose, reported the following address to the people:--which having been read, was adopted, and ordered to be signed by the President and Secretary, and published.

*To the People of the State of Vermont.*

The council of censors deem it their duty to lay before you a concise view of their proceedings on the various subjects which have

occupied their attention during the year past.

It will be recollected that the constitutional duties and powers of the council of censors is comprised summarily in the following words found in the 43d Sec. of the constitution, "whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part during the last septenary--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 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 censure, to order impeachment, and to recommend to the legislature the repealing such laws as shall appear to them to have been passed contrary to the principles of constitution.

"The said council of censors shall also have power to call a convention to meet within two years after their setting, if there appears to them an absolute necessity of amending any article in 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." These several subjects, and the conduct of the different officers of government in relation to them have passed in review before us, and occupied our serious consideration. We deem it but justice to say, that in general, the various departments and officers of government, have, during the last septenary, in the exercise of their various functions, kept within the pale of the constitution; yet, without intending to cast any odium on any persons, or party, we must observe, that sundry acts of the legislature of this state, passed at the session thereof in October, 1812, are violations of the constitutions of this, and the United States; and that the legislature in passing them, have not performed their duty as guardians of the people; but have assumed to themselves and exercised greater powers than they were entitled to by the constitution. The acts alluded to are the act entitled "An act directing the deed of Job and Theoda Wood to be given in evidence" passed the 20th of Oct. 1812--the act entitled "an act to prevent intercourse with the enemies of this and the U.S. on the northern frontier," passed the 6th of Nov. 1812--and the act entitled "an act suspending civil process against the persons and property of the officers and soldiers of this state, while in the service," passed the 6th of Nov. 1812. These several acts the council has recommended to the legislature to repeal; the reasons for such recommendation may be seen at large in our journals. The council has had the satisfaction to notice, that the two

last named acts have been accordingly repealed.

Nothing appears from the enquiry we have been able to make, but that the public taxes have been justly laid and collected in all parts of the state.

We have also inquired into the expenditure of public monies; and though we think the legislature have, in many instances, during the last septenary, by special acts, granted and appropriated considerable sums incautiously, and to an unnecessary amount; yet we do not think the abuses have been so flagrant, as to call for any particular animadversion of this board.

We have, in a former address accompanying the proposed amendments to the constitution, noted in brief, our reasons for recommending their adoption by the people. We now add the following:

It is of much importance that the people should be acquainted personally with those to whom they commit important official trusts. The number of officers who are to be chosen by a general vote of all the freemen, should therefore be diminished as much as may be. By substituting a senate for the executive council, and having the members chosen by the freemen of the respective counties, the candidates will be more immediately known to all who are to vote for them. If the amendments are adopted, there will be no offices of the state government, except the governor, and treasurer, to be chosen by a general ticket.

There is no principle of government more difficult to provide for, satisfactorily, than that of fixing the power of appointment to office, in hands where it will not be liable to abuse. In order to this, it is necessary to have it confided to persons immediately responsible to the people. No officer is more so than the governor. He is annually elected by the whole people, and will of course feel the influence of every powerful motive to nominate such men to office, as will render his administration acceptable to the people. In the appointment of county officers, it may be supposed that the senators of each county will have great influence, and will for that reason, as they will be deemed in some measure responsible to the people of their respective counties, be careful to promote the best men to office.

As the officers of government are now chosen by the joint ballot of the executive council and house of representatives, there is little or no responsibility to the people. The people as a body, can call no man to account, (by leaving him out of office,) as they know not which individual has incurred the blame.

Notwithstanding we think that judges should generally hold their offices during good behaviour, yet there may be exceptions to this rule. Judges may by age or imbecility, become incompetent to the discharge of their official duties, without being liable to impeachment. We have therefore provided for their removal, by the resolutions of the two branches of the legislature, concurred in by two thirds of

each house.

The legislative in all governments, is the supreme power of the state; and this alike, whether it be vested in the people themselves, their representative body, or in the monarch; accordingly in despotic governments the tyrant always takes care to have his judges dependent on himself; and by this provision, he necessarily holds the lives and fortunes of his subjects entirely under his controul. In like manner those meteors, the republics of ancient times, which appeared indeed for a little time, and then vanished, made their judges dependent immediately on the people; thus securing in themselves the seeds of their dissolution;--and having no independent judiciary to withstand the violence of popular factions and individuals, they soon became a prey to themselves. It is easy to perceive, that the principle of dependence wherever it may rest, will have the same general tendency, which is towards partiality:--And partiality in the judiciary is of all things the most pernicious; as it tends to the perversion of justice between individuals, the insecurity of civil liberty, and ultimately, to the dissolution of the government; and to the consummation of despotism in the assumption of supreme power by some aspiring individual. Why do our laws, in conformity with the dictates of common sense, prohibit persons from judging between their relatives, and others? Is it not because they are dependent upon, or feel some bias towards one of the parties? and is not the principle, the same in many cases, which continually arise for adjudication in our courts of law and chancery, in their present dependent situation? They are dependent on the legislature; and of course on the dominant party, and leading members of that body. If a person obnoxious to the ruling party, or some powerful individual of such party, be prosecuted for a supposed offence against the laws of community, can it be expected that the judges, thus dependent on such party or individual, can act in this case with that impartiality, which the laws of God and man require? If not, where is our security? Suppose a civil action depending between a popular leader in the prevailing party, and one of the opposite party, or an obscure member of society, the friendless widow, or helpless orphan; can there be that security for an impartial decision, as if no such dependence existed? Surely this will not be pretended.

We must take human nature, and make constitutions and laws for its regulation and government, as we find it to be. If the judges hold their offices during good behaviour, that is, while in the exercise of their official duties, they conduct with fairness, impartiality, and faithfulness, will not their motives, even if they are bad men, be on the side of a correct, and regular discharge of their official duties? Will they not say, "it is for the want of this only, that we can be turned out of office? If we are honest and faithful, will not a majority of the people and of the legislature, justify our conduct, and support us in office from the violence of party?"

History and experience teach us, that in all those states where the judiciary has been by the constitution rendered independent of the other branches of the government, and even of the people themselves, civil liberty has been preserved inviolate; and the decisions in civil causes have inspired the utmost confidence in that important department of the government. The knowledge of this truth induced the sages, who framed the constitution of the United States, as well as the people of all our sister states, except Rhode Island and Connecticut, to incorporate this important provision into their respective constitutions. Accordingly, we find in our sister states, that the judges enjoy the entire confidence of all political parties. So also it is with the courts of the United States. No one thinks of enquiring into the political character of the judge by whom he is to be tried, in order to ascertain the probable result of the controversy in which he is engaged. Can this be said of our own judicial proceedings in the court of the highest jurisdiction, in this state? And if not to what is it to be imputed, but to the dependent situation of the administrators in that tribunal? It is of great importance not only that justice should be done, but that the suitors should feel satisfied, that their trials are impartially conducted.

It will be observed, that by the last article of the proposed amendments, "it is ordained, that such parts and provisions only, of the constitution of this state, as established by convention on the 9th of July, 1793, as are altered or superceded by the foregoing amendments, or are repugnant thereto, shall cease to have effect."--The consequence is, that not only the several articles, but even parts of articles or provisions of that instrument, which are not contravened by any of the proposed amendments, will still be in force.

We now close the important labors assigned to us by the constitution, in the hope, that our fellow citizens will extend to us the charity to believe, that in the discharge of our duties, our sole object has been to promote the happiness of the people, and to secure their rights;--uninfluenced by any party or local views whatever; being fully persuaded, that in the establishment of fundamental principles, the permanent good of the whole community ought and will be consulted, independent of all party and transient considerations.

By order of the council.

ISAAC TICHENOR, *President*.

ROBERT TEMPLE, *Secretary*,  
Middlebury, January 24, 1814.

No other business appearing to require the attention of the Council of Censors, they adjourned without day.

### Results of the 1813 Council of Censors

The 1813 Council of Censors succeeded in convincing the Legislature to take action on some of its recommendations.

The Council objected to the act preventing intercourse with the enemies of Vermont and the United States on the northern frontiers on several grounds. The authority was beyond the power of the Legislature to grant; only the Congress could regulate commerce with foreign nations. There were due process and search and seizure problems as well. On November 16, 1813, the Legislature repealed this act. The repealer explained, "That this repeal shall, in no wise affect such proceedings as have been had under said act, where the same have been closed;--and *provided also*, That all such prosecutions under the said act as are now pending, shall be discontinued, and no costs taxed for either party."<sup>19</sup>

No action was required on the provisions of an act for the raising of a Volunteer corps in service of United States, "as they have expired, and ceased to operate." The Council found that raising a volunteer corps for the United States was not a matter of state jurisdiction.

The act suspending civil process against the persons and property of the officers and soldiers of Vermont was also marked for repeal by the Council. In this case the Council argued that it raised the military over the civil authority and put citizens under the control of officers and soldiers stationed in Vermont. The Legislature repealed this act on November 15, 1813.<sup>20</sup> The repeal was not complete, however, since the repealer provided, "That said act shall remain in full force and effect, as to the suspending of civil process founded on contract against the non-commissioned soldiers, belonging to this state, now in the service of the United States, so long as they shall continue in such service." In the same vein, the 1813 act explained that "this repeal shall not operate to take away the defence of those, who are discharged from service, in actions commenced upon contract, previous to their discharge."

The Council's objections to the act directing the deed of Job and Theoda Wood to be given in evidence, because the Vermont Constitution does not confer on the Legislature the power to decide on rights of individuals, failed to result in final legislative action to repeal the act. A bill repealing the act passed the House in 1813, but on November 6, the Governor and Council, the Council *nonconcurring* in passing the bill, for the following reasons:

*First*, because the evidence exhibited & the facts proved were in the opinion of the last legislature sufficient reasons for the passing of said act, and the same reasons still existing do, in the opinion of this Council, forbid the repeal of said law. *Secondly*, because, from a review of the facts in this case, the Council are fully convinced, that the said act is strictly equitable, and the Council have not been able to discover wherein said law is unconstitutional. *Thirdly*, because, if the Council [of Censors] are incorrect in their views of the constitutionality of this law, the question is still open for the

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<sup>19</sup>*Laws of 1813*, Chapter CXXX, 176. As late as 1845, Jedediah P. Ladd was still trying to reap damages for tobacco seized and confiscated under the non-intercourse act of 1813. *Vermont House Journal* (1845), 304-6.

<sup>20</sup>*Laws of 1813*, Chapter CIII, 145.

decision of the courts of law.<sup>12</sup>

The Council made no findings or recommendations on the subject of the just laying or collection of public taxes.

The Censors concluded that the Legislature had "appropriated considerable sums incautiously," but did not think the abuses so flagrant that action was necessary. The Council had, during the first day of their session, planned to investigate funds of the State Bank and the State Prison, but ultimately made no recommendation on these subjects. The Legislature may, on its own, have taken action on this score, in an act passed November 16, 1813, which required the officers known as the visitors of the State's Prison to "make report of their doings, during the year, in which they shall have served, to, and lodge the same with the secretary of state, to be laid before the general assembly."<sup>13</sup> Another act of 1813 orders the directors of the Vermont State Bank to burn all the bills of the Bank.<sup>14</sup>

There is nothing in the Council's address about two other subjects the Council intended to study. Neither the threat of the military power violating private rights nor the county's practices of granting liberties of gaol yards appears in the address.

After the Council of Censors issued its report, but before the Constitutional Convention met in 1814, the firm of Walton and Goss of Montpelier published, "The Constitutionalist, or Amendments of the Constitution proposed by the Council of Censors, supported by the Writings and Opinions of James Wilson, L.L.D." This pamphlet, whose author was not identified, compared the Council's proposals with lectures given by Wilson during the years 1790-92. Wilson was an Associate Justice of the U.S. Supreme Court, a law professor, and a member of the 1787 Constitutional Convention that drafted the federal constitution.

### The 1814 Constitutional Convention

The members of the 1813 Convention were elected on the last Tuesday of May, 1814. The Convention convened in Montpelier, at the State House, on the first Thursday of July, 1814. Former Governor Jonas Galusha was elected Chairman, William Griswold, Secretary. As was customary, the Convention then adopted rules and heard the presentation of the proposed amendments and address of the Council of Censors.

Nathaniel Niles of Fairlee then moved that the Convention resolve not to adopt any of the proposed amendments. The Convention resolved itself into a committee of the whole and began to debate Niles's motion. It was ordered to lie on the table. The following day, on motion of Daniel Chipman of Middlebury, the Convention took up the first proposal, on the creation of a Senate. That afternoon, the first proposal was defeated by a vote of 20 to 188. The second through eighth articles of amendment were rejected summarily, as being related to the first.

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<sup>12</sup>*Governor and Council VI*, 32.

<sup>13</sup>*Laws of 1813*, Chapter CVIII, 151-2. The report of the Board of Visitors is found in *Assembly Journal* (1814), 41-42, and includes details on the finances relating to the prison.

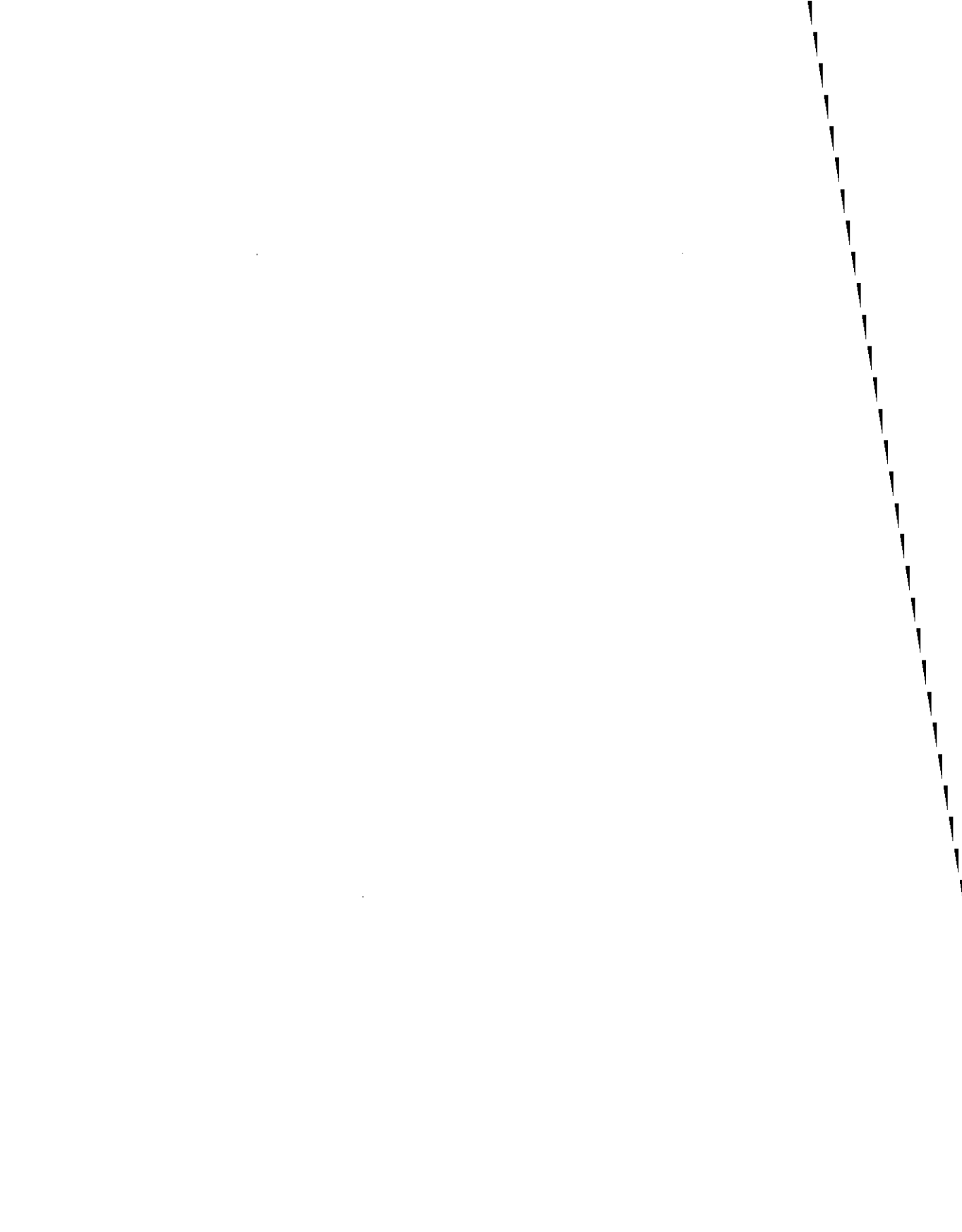
<sup>14</sup>*Laws of 1813*, Chapter CIV, 152-5.

The ninth article next came up for consideration. It related to the term of office of the Governor and Lieutenant Governor, and was defeated by a vote of 5 to 195. The tenth through 26th were then turned down without debate by voice vote. Number 27 fell by a vote of 51 to 156--the closest vote of them all--and 28 was defeated unanimously. On Saturday, July 9, the Convention adjourned, having adopted none of the proposals.

The writ of habeas corpus was eventually included in the Vermont Constitution by an amendment proposed and adopted in 1836.

The Convention Journal was printed by Ebenezer Eaton in Danville, 1814, and was published by order of the Convention.





## The 1820-21 Council of Censors

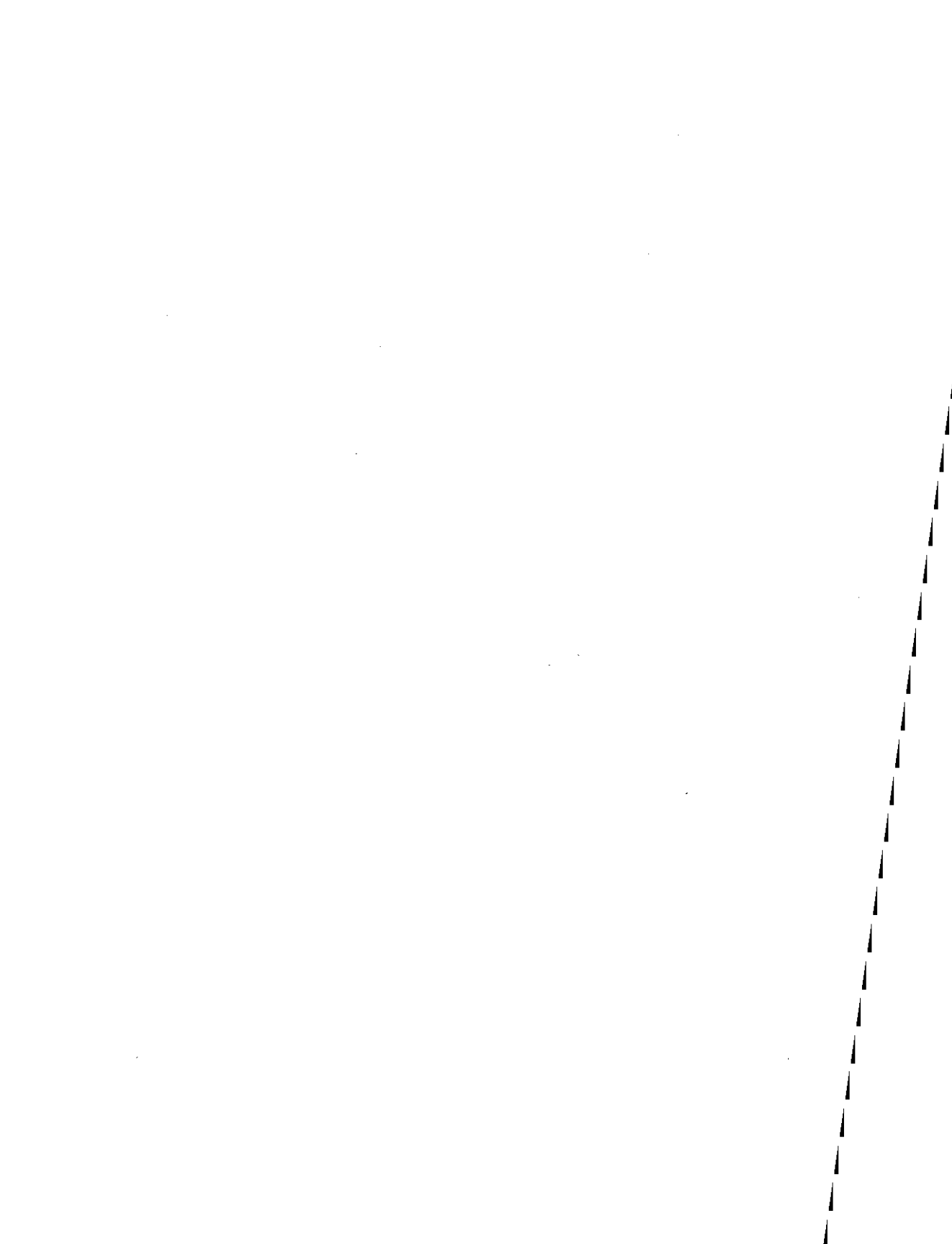
In comparison to the previous Council, the 1820-21 Censors met in a time of tranquility and hope. The war had ended and the intense party factionalism of the previous decades had abated. In 1815 the national Federalist Party, tainted with suspicion of treason, collapsed; the Vermont Federalists followed in 1818. One sign of the quieting of party strife was that the 1820 gubernatorial contest attracted only 14,080 voters compared to the 35,752 who had turned out for the 1812 election.

Vermont's population grew 8.3% from 1810 to 1820, reaching a total of 235,981 despite the dislocations caused by the war. Hopes for immediate prosperity after the war, however, failed to materialize. The harsh weather of 1816-17, the former forever known as the Year without Summer, led to crop failures while 1819 brought a national financial panic. The number of debt cases heard right after the war increased and beneath the promise of census figures was a rise in the number of young people emigrating from the state.

Still it was a time of hope. There was a religious revival and former party rivals joined together in advancing a variety of reforms. Greater protections from imprisonment for debt were passed, as were reforms of the militia and capital punishment laws. Vermont's anti-slavery fervor began to emerge within the national debate over the extension of slavery. Temperance also began to gain attention as a reform movement, the 1817 legislature creating a committee on the use of ardent spirits. Laws were tightened restricting the sale of spirits to disorderly persons. There was also increased interest in providing education for the poor as a way of furthering the common good. Many of these early reform movements temporarily faltered but would blossom in the ensuing decades.

Still it was an era of good feelings when the Council of Censors met on Wednesday, June 7, 1820 at the State House. It adjourned the following day, after appointing committees, until Monday, October 16. Again meeting at the State House, the Censors met until October 27. The third and final session was held at the State House from March 15 until March 26.

*Note on text:* The text is from the Vernon town clerk's copy of the 1821 publication of the Journal of the Council of Censors, printed by Ebenezer Eaton of Danville.



Journal  
of the  
Council of Censors;

at their sessions  
in  
June & October, 1820;  
and  
March, 1821.

The *Council of Censors*, elected on the last Wednesday of March, A.D. 1820, agreeably to the provisions of the Constitution of the State of Vermont, and an act of the General Assembly of said State,<sup>1</sup> assembled at the State House in Montpelier, on the first Wednesday of June, being the 7th day of said month, in the year of our *Lord* one thousand eight hundred and twenty, and in the forty-fourth year of the independence of the United States;--

When the following named persons appeared, produced credentials of their election, and took their seats, to wit:

The Hon. WILLIAM HUNTER,  
CHARLES RICH,  
JOEL BROWNSON,  
JOSEPH SCOTT,  
AUGUSTINE CLARKE, Esquires  
ISAAC CUSHMAN &  
JOSHUA Y. VAIL

The members before named constituting a quorum of said Council, they proceeded to the choice of a President and Secretary;--

When the ballots being taken, sorted and counted, it appeared that the Hon. WILLIAM HUNTER was elected *President* of said Council, and JOSHUA Y. VAIL, *Secretary*.

The Secretary then offered the following resolution, which was read and adopted:

*Resolved*, That the Sheriff of the County of Washington be requested to attend, by himself or Deputy, upon this Council during their present session.

Mr. CLARKE offered the following resolution, which was read and adopted:

*Resolved*, That the Rev. Chester Wright be requested to attend as Chaplain during the present session of this board.

On motion of Mr. SCOTT, the Council adjourned until eight o'clock tomorrow morning.

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<sup>1</sup>Laws of 1819, Chapter XVII, 27-31.

**Thursday, June 8, 1820.**

Council met pursuant to adjournment.

WILLIAM NUTTING, Esquire, appeared, produced credentials of his election as a member of this Council, and took his seat.

Mr. RICH offered the following resolutions which were read, considered and adopted, to wit--

*Resolved*, That Committees be appointed for the following objects, viz. to enquire--

1st. Whether within the last septenary, the legislative branch of the government has performed its duty as the guardian of the people, or whether it has assumed to itself other, or greater powers, than it is entitled to by the Constitution.

2d. To make the like enquiry as to the executive branch of the government.

3d. To enquire whether the public taxes have been justly laid and collected in all parts of the State.

4th. To enquire into the manner in which the public monies have been expended.

Also--

*Resolved*, That the members of this Council be instructed to enquire, whether the laws have been duly executed within the counties in which they severally reside.

The following members were appointed committees on the several subjects embraced in the resolution of Mr. RICH.

On the first enquiry--Messrs. BROWNSON and VAIL.

On the second--Messrs. RICH and CUSHMAN.

On the third--Messrs. CLARKE and SCOTT.

On the Fourth--Messrs. HUNTER and NUTTING.

Mr. NUTTING offered a resolution for the purpose of raising a committee to enquire into the expediency of amending certain parts of the Constitution therein mentioned; which was ordered to lie on the table.

Mr. RICH offered a resolution for the amendment of another clause of the constitution therein mentioned--which was ordered to lie on the table.

The Secretary offered a resolution proposing to alter and award the sixteenth section of the constitution in the manner expressed therein;<sup>2</sup>

Which was likewise ordered to lie on the table.

On motion of Mr. BROWNSON, the Council was then adjourned, to the Monday next following the second Thursday of October next, to meet at the State House.

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<sup>2</sup>Section XVI related to the powers of the Governor and Council to suspend legislative proposals until the next session of the legislature.

## Adjourned Session.

On the Monday next following the second Thursday of October, A.D. 1820, being the sixteenth day of said month, a number of the members assembled at the State House, agreeably to the adjournment of the Council, towit:

The Hon. WILLIAM HUNTER and JOSHUA Y. VAIL.

Also--JOHN PHELPS, JOEL PRATT, and AMOS THOMPSON, Esquires, appeared, presented credentials of their election as members of this board, and took their seats.

A quorum not being present, the Council adjourned to eleven o'clock tomorrow morning.

## Tuesday, October 17, 1820.

Council met pursuant to adjournment.

Messrs. CUSHMAN, SCOTT and NUTTING appeared and took their seats.

A quorum being present, the Council proceeded to business.

On motion of Mr. NUTTING,

*Resolved*, That the Sheriff of Washington County be requested to attend upon this board, by himself or deputy, during their present session.

On motion,

*Voted*, That the Secretary be requested to furnish one copy of the laws passed each year for the past septenary.

The resolution offered by Mr. NUTTING at the last session, relative to proposing amendments to the constitution, was called up, read and ordered to lie on the table.

The resolution offered by Mr. RICH, at the last session, was also called up, read and ordered to lie on the table.

The resolution offered by the Secretary at the last session, was called up, read and ordered to lie on the table.

Mr. PHELPS introduced the following resolution, which was read and adopted:

*Resolved*, That this Council will meet with the two branches of the Legislature in the Representatives' room, at the opening of the House each morning of the present session for the purpose of attending prayers.

On motion of Mr. PHELPS,

*Resolved*, That a committee of one be appointed to inform the Rev. Mr. Leonard, chaplain of the Legislature, of the above resolution.

Mr. PHELPS was appointed to do that service.

Council adjourned to 2 o'clock, P.M.

Council met pursuant to adjournment.

ASA ALDIS and JEDEDIAH HYDE, Esquires, appeared, produced credentials of their election, as members of this Council, and took their seats.

Mr. BROWNSON also appeared and took his seat.

Mr. PHELPS introduced the following resolution, which was read and adopted.

*Resolved*, That a committee of three members from this board be raised to draft and report rules for its government, during its constitutional duties.

Members appointed were, Messrs. ALDIS, PHELPS & PRATT.

Mr. NUTTING called up the resolution offered by him heretofore, on the subject of proposing amendments to the constitution. Mr. PHELPS offered an amendment to the same, both of which were ordered to lie on the table till tomorrow morning.

Messrs. CUSHMAN and ALDIS were added to the committee, appointed on the 1st enquiry in the resolution offered by Mr. RICH at the last session.

Mr. THOMPSON was added to the committee on the second inquiry in the said resolution.

Mr. NUTTING was added to the committee appointed on the third enquiry in said resolution.

Mr. RICH was added to the committee on the 4th enquiry in said resolution.

Council adjourned till nine o'clock to-morrow morning.

### Wednesday, October 18, 1820

Council met pursuant to adjournment.

The committee, appointed to draft rules for the Council, made the following report, which was read and accepted, to wit:

#### *RULES OF THE COUNCIL OF CENSORS.*

*First.* The Council shall meet every day, Sundays excepted, at nine o'clock, in the morning, and at two o'clock, afternoon, unless otherwise specially ordered.

*Second.* All committees shall be appointed by the President--but such appointment may, on motion of any member, be overruled by the Council, in which case, the Council shall, on the nomination of a member, immediately fill the vacancy.

*Third.* The President shall take the chair at the hour to which the Council stands adjourned, and when a quorum shall have assembled, he shall call to order and proceed to business.

*Fourth.* No member shall absent himself from the service of the Council, unless he have leave of absence, or be unable to attend.

*Fifth.* The yeas and nays may be taken, and entered upon the Journal on the call of a member.

*Sixth.* A motion to adjourn shall be always in order. Motions on resolutions, and other subjects of deliberation, shall have precedence, as follows, to wit:-- 1st, to dismiss. 2d, to postpone to a day certain. 3d, to lie on the table. 4th, to commit--and 5th, to amend.

ASA ALDIS for committee.

Mr. NUTTING called up the resolution offered by him, and yesterday laid on the table, with an amendment proposed thereto by Mr. PHELPS; which amendment was adopted, and the resolution, as amended, passed, as follows:--

*Resolved*, That a committee of three be appointed, whose duty it shall be to enquire and make report, whether it be necessary to call a convention, for the purpose 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.

Messrs. PHELPS, THOMPSON and NUTTING were appointed on the committee.

Mr. NUTTING offered the following resolution, which was read and adopted:

*Resolved*, That a committee of three members of this Council be appointed to enquire, whether all the provisions of an act, entitled "An act regulating and governing the militia of this State," passed Nov. 10, 1818,<sup>3</sup> are consistent with the Constitution.

Messrs. PHELPS, THOMPSON and NUTTING were appointed.

On motion of Mr. NUTTING--

*Resolved*, That an addition of two members be made to the committee raised on the resolution offered by him on the subject of amending the Constitution.

Messrs. ALDIS and PRATT appointed.

Council adjourned.

## 2 o'clock, P.M.

Council met pursuant to adjournment.

Mr. RICH appeared, and took his seat as a member of this Council.

Mr. RICH called up the resolution offered by him at the last session which, being read, as follows:

*Resolved*, That in case a convention shall be called, it is expedient to propose such an amendment to the Constitution, as shall limit the number of Representatives in the General Assembly, to \_\_\_\_\_ to be apportioned among the several counties, in proportion to the population"--Was referred to the committee raised on the subject of amending the constitution.

Mr. NUTTING called up the resolution offered by the Secretary, at the last session, as follows:

*Resolved*, That it is expedient, so to alter and amend the sixteenth section of the second chapter of the Constitution, as to enlarge and define the powers of the Council, and make it a

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<sup>3</sup>Laws of Vermont, 1818, Public Acts, Chapter II, 22-65.



co-ordinate branch of the Legislature, which was referred to the same committee.

Council adjourned.

**Thursday, October 19, 1820**

Council met pursuant to adjournment.

Mr. BROWNSON introduced the following resolution, which was read and adopted:

*Resolved*, that a committee of three members of this Council be appointed to enquire into the subject of granting new trials by the legislature, and whether the several acts passed by the legislature for that purpose, are consistent with the Constitution.<sup>4</sup>

Messrs. RICH, HYDE and VAIL were appointed.

Council adjourned.

**2 o'clock, P.M.**

Council met pursuant to adjournment.

Mr. THOMPSON introduced the following resolution, which was read and adopted.

*Resolved*, That a committee of three be appointed, to enquire whether the law passed Nov. 3, 1810, empowering and commanding the select men in the several towns in this State, on certain conditions, to make up a tax of one cent on the dollar, on the polls and rateable estate for the support of schools has been strictly complied with.<sup>5</sup>

Messrs. THOMPSON, SCOTT and CUSHMAN were appointed.

Mr. NUTTING introduced the following resolution, which was read and adopted:

*Resolved*, That the committee on the resolution introduced by Mr. THOMPSON, be instructed to enquire, whether the laws regulating the rate of interest,<sup>6</sup> and the law regulating the retailing of spirituous liquors,<sup>7</sup> also the laws licensing hawkers and pedlars<sup>8</sup> have been duly executed.

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<sup>4</sup>E.g., "An Act, authorising Gerarus Booth and Ezra Mygatt, to bring a petition for a new trial in the case therein mentioned," *Laws of 1818*, Miscellaneous, Chapter II, 247-48.

<sup>5</sup>An Act, in addition to an Act entitled An Act for the support of schools, *Laws of 1810*, Chapter 107, 153-55.

<sup>6</sup>*Laws of 1802*, Chapter 105, 169-74; *Laws of 1817*, Chapter CXLI, 127; *Compilation of 1824*, Chapter LXIV, 162-65.

<sup>7</sup>*Laws of 1822*, Chapter 3, 9-11; *Compilation of 1824*, Chapter LXIV, 486-9.

<sup>8</sup>*Laws of 1806*, Chapter 116, 179-82; *Compilation of 1808*, ii, Chapter LVIII, 11-13 (Passed, November 11, 1808).

Council adjourned.

Friday, October 20, 1820.

Council met pursuant to adjournment.

Mr. RICH, from the committee raised on the resolution of Mr. BROWNSON, relative to the granting of new trials by the Legislature, made the following report, which was read, and ordered to lie on the table:

The committee appointed "to enquire into the subject of granting new trials by the Legislature, and whether the several acts passed by the Legislature for that purpose are consistent with the Constitution"--

#### REPORT--

That the sixth section of the second chapter of the Constitution provides, that "the legislative, executive, and judiciary departments of the government, shall be separate and distinct, so that neither exercise the powers properly belonging to the other,"--but the powers which "properly" belong to the judiciary are not particularly defined by the Constitution:--

Hence it is believed by the committee, to have been the intention of the framers of that instrument, to refer to the prior usage of this, and other countries, for the definition of those powers.

And it is believed, the granting of new trials is as well understood to be a judicial act, as the enforcing of the payment of debts, or the infliction of penalties for the commission of crimes.

If there be any exceptions to this principle, they must relate to courts unknown to the "common law," and peculiar to our own institutions; and in regard to such, if any there be, it is believed by the committee, that the authority to grant new trials, should rather be exercised by some judicial tribunal, to be designated by the Legislature, than by that body.

In looking over the acts passed during the six years, except in a few instances in justices' courts, the committee have found but one act of the Legislature granting a new trial, and that an act of the last session, "granting a new trial to Jireh Durkee,"<sup>9</sup> in a cause, in which "final judgment was rendered at the Supreme Court begun and holden in Windham county on the second Tuesday of September, 1815." This act directs the Clerk of the Supreme Court for Windham county "to bring forward said action anew on the docket of said court, at the next term in said county," and the court to "proceed in the disposition, trial, and rendition of judgment in said cause in the same manner as though a new trial therein were granted by said

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<sup>9</sup>"An act granting a new trial to Jireh Durkee," *Laws of 1819*, Chapter XCLIII, 170-2.

court;" sets aside, and declares null and void, the former judgment.

The committee respectfully recommend the adoption of the following resolution:

*Resolved*, That in the opinion of this Council, the passing of the act, entitled "an act, granting a *New trial* to Jireh Durkee," was not authorised by the Constitution.

Mr. PHELPS, from the committee on the subject of proposing amendments to the Constitution, made report, in part, which was read and ordered to lie on the table.

On motion of Mr. RICH, the committee raised on the subject of proposing amendments to the Constitution, were discharged from any further consideration thereof.

Mr. THOMPSON, from the committee raised on a resolution offered by him on the subject of the cent tax for the support of schools, made report upon the several matters referred to it, which was read and ordered to lie on the table.

Mr. RICH introduced the following resolution, which was read and adopted:

*Resolved*, That it is expedient so to amend the tenth section of the constitution, that the Legislature shall have power to divide the state into districts for the purpose of choosing councillors, and to direct the mode of their election.<sup>10</sup>

Mr. THOMPSON offered the following resolution, which was read and adopted:

*Resolved*, That it is expedient so to amend the ninth section of the Constitution, that the Judges of the Supreme court shall hold their offices for the term of seven years, removable by a joint vote of two thirds of the Council and General Assembly.<sup>11</sup>

Mr. NUTTING introduced the following resolution, to wit:

*Resolved*, That it is expedient so to amend the sixteenth section of the Constitution, as more accurately to define the powers of the executive council.--Which was read, and the

Council adjourned.

### 2 o'clock, P.M.

Council met pursuant to adjournment.

The resolution of Mr. NUTTING being under consideration, and the question, Will the Council adopt the resolution? was decided in the negative, and the resolution rejected.

The Secretary offered the following resolution:

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<sup>10</sup>Members of the Executive Council were elected at large pursuant to Chapter II, Section 10th of the Constitution. See page 142-43.

<sup>11</sup>According to Chapter II, Section 9th of the Constitution, Judges of the Supreme Court were elected by the Assembly annually. See page 142.

*Resolved*, That it is expedient so to amend the Constitution, that no member of the General Assembly, or Executive council shall be eligible to any civil office, in the gift of the Legislature, except that of justice of the Peace.--Which was read. And the question, Will the Council adopt the resolution? was decided in the negative, and the resolution rejected.

Mr. RICH called up the report of the committee on the subject of new trials, which was read and concurred in. And the resolution therein submitted was unanimously adopted.

Mr. RICH introduced the following resolution, which was read and adopted:

*Resolved*, That a committee be appointed to enquire whether any, and if any, what further measures ought to be adopted in regard to the act of the Legislature, entitled "an act granting a new trial to Jireh Durkee."

Messrs. PHELPS and PRATT were appointed the committee.  
Council adjourned.

#### **Saturday, October 21, 1820**

Council met pursuant to adjournment.

Mr. RICH called up the resolution offered by him, on the subject of amending the Constitution, so as to limit the number of Representatives, &c. which had been referred to a committee, and that committee discharged from the further consideration thereof, and moved that said resolution be adopted. And, after debate, the question, Shall the resolution be adopted? was decided in the negative, and the resolution rejected.

Council adjourned.

#### **2 o'clock, P.M.**

Council met pursuant to adjournment.

Mr. PHELPS, from the committee on the resolution of Mr. RICH, directing an enquiry what further proceedings, if any, relative to the new trial granted to Jireh Durkee, made report; which was read.--When Mr. RICH moved an amendment, which was rejected.--And, on a motion of Mr. NUTTING, the report was ordered to lie on the table, and be made the order of the day for Monday morning.

Mr. RICH introduced the following resolution, which was read and adopted:

*Resolved*, That a committee be appointed to enquire and report, whether it is conformable with the duties of the Legislature, as a guardian of the rights of the people, to grant money from the treasury, to defray the expenses of individuals, who, in the exercise of their own discretion, shall have incurred expenses in pursuing and apprehending such as may be supposed to have been guilty of offences.--Messrs. NUTTING, HYDE and PHELPS were appointed.

Council adjourned to Monday morning.

**Monday, October 23, 1820**

Council met pursuant to adjournment.

Mr. CLARKE appeared, and took his seat as a member of this Council.

Mr. NUTTING introduced the following resolution, which was read and ordered to lie on the table.

*Resolved*, (two thirds of this council concurring herein) that it is expedient to a convention, to meet at the State house, in Montpelier, on the \_\_\_\_ day of \_\_\_\_\_ for the purpose of taking into consideration the proposed amendments to the Constitution, which have been, or may be agreed on by this Council.

Mr. NUTTING introduced the following resolution, which was read, and laid on the table, towit:

*Resolved*, That the Secretary be directed to procure to be printed for the use of the Council seven hundred copies of all resolutions, proposing amendments to the Constitution, which have been laid before the Council, as well those which have been rejected, as those which have been adopted: and that a further consideration of the resolution, providing for calling a convention, be deferred till the Thursday next following the second Tuesday in March next.

Mr. PHELPS called up the report of the committee on the resolution of Mr. THOMPSON relative to the school tax, which was read, and referred back to the committee for amendment.

Messrs. CLARKE and NUTTING were added to the committee aforesaid, in room of Messrs. THOMPSON and CUSHMAN, who are absent.

Mr. NUTTING called up the order of the day, on the report of the committee on the subject of further proceedings relative to the *New trial* granted to Jireh Durkee, which was read and ordered to lie on the table, and be made the order of the day for the afternoon.

Council adjourned.

**2 o'clock, P.M.**

Council met pursuant to adjournment.

Mr. BROWNSON offered the following resolution, which was read and ordered to lie on the table, towit:

*Resolved*, That the several acts of the Legislature of this State, entitled acts suspending civil process against the persons, as also acts suspending civil process against the persons and property of individuals for a term of years, are a subversion of the rights and privileges of the citizens of this and the United States, and their various provisions are made in violation of the letter and spirit of the

Constitution of this and the United States.<sup>12</sup>

The *Secretary* called up the resolution offered by him for amending the 16th section of the second chapter of the Constitution, which was read, and amended as follows, towit:--

*Resolved*, That it is expedient so to alter and amend the 16th section of the Constitution, that instead of the executive council, provision should be made for another branch of the Legislature, with co-ordinate powers.--And the question, Shall the resolution be adopted? was decided in the negative, and the resolution rejected.

The committee, on the resolution of Mr. THOMPSON, on the subject of the one cent tax for the support of schools, made report, which was read, and after several amendments made thereto, was ordered to lie on the table.

Council adjourned.

### **Tuesday, October 24, 1820**

Council met pursuant to adjournment.

Mr. PRATT called up the resolution offered yesterday by Mr. BROWNSON, which was read and amended--And, on motion of ALDIS, referred to the next session of this Council.

Mr. NUTTING, from the committee on the resolution introduced by Mr. RICH on the 21st instant, made report, which, being read and amended, was concurred in by the Council, towit:

Your committee, to whom was referred the resolution, making the enquiry, whether it is conformable with the duties of the Legislature, as guardians of the rights of the people, to grant money from the treasury to defray the expenses of individuals, who, in the exercise of their own discretion, shall have incurred expenses in pursuing and apprehending such as may be supposed to have been guilty of offences,

### **REPORT--**

That so far as they have been able to discover, no grants of money have been made in these cases, unless the claimants have apprehended and brought the offenders to justice, either by conviction or forfeiture of bonds.

That, although the policy of some of the particular individual grants may be questioned; yet the right of the Legislature to give relief in these cases, when in their wisdom it shall seem necessary, cannot be doubted.

Council adjourned.

### **2 o'clock, P.M.**

Council met pursuant to adjournment.

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<sup>12</sup>E.g., "An act for the relief of Abraham M'Wain," *Laws of 1819*, Chapter XL, 69-70.

Mr. ALDIS called up the resolution offered by Mr. NUTTING, directing the printing of the resolutions, proposing amendments to the Constitution, which was read and adopted.

Mr. PRATT called up the report of the committee on the further measures to be adopted relative to the subject of granting a new trial to Jireh Durkee, which was read as follows:

"The committee, appointed to enquire whether any, and if any, what further measures ought to be adopted in regard to the act of the Legislature, entitled an act granting a new trial to Jireh Durkee, passed October 29, 1819,

*Report the following resolution:*

"*Resolved*, That this Council do recommend to the Legislature now in session to repeal the said act; and that the Secretary to this board, be directed to transmit forthwith a copy of the proceedings of this council in relation to said act, to the Speaker of the General Assembly to be laid before that honorable body." And, on the question, Will the Council adopt the resolution offered by the committee, it was decided in the affirmative.

*The Report* of the committee on the resolution of Mr. THOMPSON, was called up, read and amended, and the question, Will the Council concur in the report, and adopt the resolution therein? was decided in the affirmative, and are as follows, towit:

The committee, to whom was re-committed the resolution directing an enquiry, whether the law requiring the select men of each town in this State to assess a tax of one cent on the dollar of the list of their respective towns for the support of schools: also, the laws regulating the rate of interest: The laws regulating the retailing of spirituous liquors--and the laws regulating the licensing of hawkers and pedlars, have been duly executed, respectfully offer the following Report, viz:

That the law, entitled "an act in addition to an act for the support of schools," passed November 3d, A.D. 1810, making it the duty of the select men of the several towns in this State to assess a tax of one cent on the dollar on the list of the polls and rateable estate of the inhabitants of their respective towns for the purpose of schooling, has not been duly executed, but by the the select men of very many towns has been totally neglected.

Your committee are of opinion that the law itself is defective, in that it imposes no penalty on such town or select men for such neglects, and calls for legislative interference.

Your committee further report, that the law regulating the rate of interest, has, for the last septenary, been grossly and openly violated by a large proportion of our monied citizens throughout the State;--that with the pressure of the times, this evil appears to be increasing, and calls aloud for remedy.

Your committee are of opinion that a more faithful attention to their several duties in this respect by the State's attornies and grand

jurors in the several counties, though it might in some measure check, yet, owing to the difficulty of obtaining evidence, can never effectually remedy this evil, but that legislative aid is indispensable.

Your committee further report, that the laws regulating the sale of spirituous liquors have not been strictly executed; but as these laws were principally, or at least, in part, intended for the protection of the rights of a particular class of our citizens, and afford a sufficient remedy for their infringement, your committee do not consider any further attention to the subject necessary.

Your committee further report, that the laws providing for licensing hawkers and pedlars have, for ought that has been made to appear to your committee, been duly executed.

To conclude,

Your committee recommend to the Hon. Council the adoption of the following resolution:--

*Resolved*, That the Secretary of this Council forthwith transmit a copy of this report and resolution to His Excellency the Governor and the Hon. Council.

Council adjourned.

### Wednesday, October 25, 1820

Council met pursuant to adjournment.

The Secretary exhibited a draft of the resolutions proposing amendments to the Constitution, for the purpose of being printed, which was concurred in by the Council.

The Secretary introduced the following resolution, which was read, to wit:

*Resolved*, That the provisions of the first section of an act defining the powers of Justices of the Peace, and authorising them to hear, try, and determine actions or prosecutions for crimes that are infamous, without the presentment of a grand jury, are inconsistent with the provisions of the Constitution of this and the United States<sup>13</sup>--which, being under consideration,

Council adjourned.

### 2 o'clock, P.M.

Council met.

The committee on the resolution of Mr. NUTTING, directing an enquiry into the several provisions of the militia law, made the following report, which was read, and unanimously concurred in by the Council, to wit:

"The committee, to whom was referred the resolution, directing an enquiry, whether "all the provisions of an act, entitled an act,

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<sup>13</sup>Compilation of 1824, Chapter XI, 124 (Passed, March 4, 1797).



regulating and governing the militia of this State, are consistent with the Constitution,

REPORT--

"That the 17th article of the first chapter of the Constitution provides, "that no person in this state 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 and militia in actual service."-- That the 33d section of the act above mentioned, "provides rules and articles, by which the militia of this state shall be governed, *when not in actual service*;" which rules and articles impose various "pains and penalties" on "persons in this State."

It has been made to appear to your committee that there is considerable complaint against the said rules and articles, and much doubt of their constitutionality. And your committee are of opinion, that if the words "*Law Martial*" in the aforesaid article of the Constitution were intended, according to their more general and vulgar acceptation, to embrace all laws for the government of the army and militia, the said provisions of the act aforesaid are clearly unconstitutional.

But the committee are further of opinion, that the words, "*Law Martial*," in the said article of the Constitution, were intended to be taken in their more limited and technical sense, as "the arbitrary will of a military commander." And that the said article of the Constitution was not intended to limit the powers of the Legislature in the enactment of laws regulating the militia not in actual service, but to secure the citizens from an infringement of their rights by military commanders in *actual service*. The committee are confirmed in this opinion by considering the absolute necessity of laws, imposing penalties for regulating the militia, and from observing that the 22d section of the Constitution empowers the Legislature to enact such laws.<sup>14</sup>

The committee therefore report, that the provisions of the act, entitled "an act regulating and governing the militia of this State," are consistent with the Constitution.

The resolution, introduced by the Secretary in the forenoon, was called up and referred to the next session of this Council.

Council adjourned.

Thursday, October 26, 1820.

Council met.

Mr. CLARKE introduced the following resolution, which was read

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<sup>14</sup>Section XXII provided, in part, "The inhabitants of this State shall be trained and armed for its defence, under such regulations, restrictions, and exceptions, as Congress, agreeably to the Constitution of the United States, and the Legislature of this State, shall direct."

and adopted, towit:

*Resolved*, That the committee, appointed to take into consideration the constitutionality of granting new trials by Legislature, be instructed to enquire, whether the act, entitled "an act for the relief of Joel Coukey,"<sup>15</sup> passed Oct. 27, 1814, and such other acts as have been, and shall be passed within this septenary, granting new trials in cases commenced before Justices of the Peace, are consistent with the Constitution, and make report thereon to this Council.

Council adjourned.

2 o'clock, P.M.

Council met.

On motion of Mr. NUTTING,

The Secretary was appointed to make and certify the debentures for this and the last June session.

After some time spent in session,

Council adjourned.

Friday, October 27, 1820.

Council met.

A memorial was received from Wm. Barton, dated Danville Goal, Oct. 7, 1820, complaining of the conduct of former Judges of the Supreme Court, which was read, and ordered to lie on the table.<sup>16</sup>

On motion of Mr. PHELPS, the Council adjourned, to meet at the State House on the Thursday next following the second Tuesday of March next.

### Third Session.

On the Thursday next following the second Tuesday of March, A.D. 1821, being the 15th day of said month, the Council of Censors met at the State House in Montpelier agreeably to adjournment, towit:

Messrs. BROWNSON, RICH, CUSHMAN, PHELPS, PRATT, CLARKE and NUTTING.

The President and Secretary being absent, Mr. BROWNSON was chosen President, and Mr. NUTTING, Secretary, pro tempore.

On motion of Mr. PHELPS,

*Resolved*, That the Rev. Chester Wright be requested to attend as Chaplain of the Council during the present session.

Also--That the Sheriff of the County of Washington be requested

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<sup>15</sup>Laws of 1814, Chapter XVII, 13-4.

<sup>16</sup>See footnote 9, page 196.

to attend on the Council, by himself or deputy, during the present session.

On motion of Mr. PHELPS,

Mr. NUTTING was appointed to examine and report the unfinished business of the last session.

The Council adjourned.

**Friday, March 16, 1821.**

The Council met.

Messrs. THOMPSON and SCOTT appeared and took their seats.

The committee for that purpose, made report of the unfinished business of last session, which was accepted.

The memorial of Wm. Barton was called up, and referred to Messrs. RICH, PHELPS and THOMPSON.

The resolution introduced by Mr. BROWNSON on the 23d of Oct. last, relative to acts of suspension was called up, amended, and adopted as follows, viz:

*"Resolved*, That a committee be appointed to enquire whether the several acts of the Legislature suspending process against the persons and property of individual citizens, are consistent with the Constitution of this and the United States."<sup>17</sup>

Messrs. PRATT and CUSHMAN were appointed on said committee.

The Council adjourned.

**2 o'clock P.M.**

The Council met.

Mr. HUNTER appeared, and took his seat.

The resolution introduced by Mr. NUTTING, on the 23d of Oct. last, relative to calling a convention, was called up, and, after debate, was ordered to lie on the table.

Mr. RICH offered the following resolution, which was read and adopted, viz:

*Resolved*, That the Council do now proceed to the consideration of the resolutions, acted upon at the last session, relative to amending the Constitution, as well those which were passed in the affirmative, as those which passed in the negative.

The Council adjourned.

**Saturday, March 17, 1821.**

The Council met.

The committee, to whom was referred the memorial of W. Barton,

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<sup>17</sup>E.g., "An Act freeing the person of Levi Bellows from arrest and imprisonment, and his property from attachment or execution for the term of three years," *Laws of 1818*, 148-9.

made report, which was accepted, and the resolution therein contained, was adopted, viz:

*Resolved*, That the committee be discharged from the further consideration of the said memorial.

Messrs. HYDE and VAIL, who are absent, were discharged from the committee on the resolution relative to Legislative acts, granting new trials, and Messrs. PHELPS and CLARKE were added to said committee.

Mr. THOMPSON was added to the committee on the resolution, relative to acts of suspension.

Mr. THOMPSON introduced the following resolution, which was laid on the table, viz:

*Resolved*, That it is expedient so to amend the Constitution, that no person shall exercise the office of Sheriff for more than three years in succession.

The Council adjourned.

## 2 o'clock, P.M.

The Council met.

Mr. NUTTING introduced the following resolution, which was read and adopted, viz:

*Resolved*, That the committee appointed on the first resolution, offered by Mr. RICH, on the 8th of June last, be instructed to enquire into the constitutionality of the act, passed on the 16th day of November last, in addition to an act, annexing the town of Roxbury, in the county of Orange, to the county of Washington.<sup>18</sup>

Mr. NUTTING called up, and, with leave, amended the resolution offered by him at the last session, proposing an amendment to the 16th section of the constitution, to read as follows, viz:

*Resolved*, That in case a convention be called, it is expedient so to amend the 16th section to the Constitution, that the Governor and Council shall have power to nonconcur in, as well as propose amendments to, any bill passed by the General Assembly; and if the General Assembly shall refuse to concur in any amendment proposed by the Governor and Council, or shall persist in passing any bill non-concurred, the Governor and Council shall have power to refer such bill to the next General Assembly; and that no bill so referred shall become a law till re-enacted by the General Assembly and concurred in by the Governor and Council;--*Provided*, That if the Governor and Council shall neglect to return any bill, with their doings thereon to the General Assembly, within five days, Sundays excepted, or before the rising of the Legislature, the same shall become a law.

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<sup>18</sup>Laws of 1820, Chapter 35, 42.

Mr. VAIL took his seat, and called up the resolution introduced by him on the 25th of October last; and the question, Shall the resolution be adopted? was decided in the negative.

The Council adjourned.

### Monday, March 19, 1821

Council met.

Mr. PHELPS called up the resolution offered by Mr. THOMPSON on the 20th of Oct. last, and moved an amendment by striking out the words, "*seven years*," and inserting *three years*, which was rejected.

Mr. RICH moved to amend the same, by erasing all after the words "removable by," and inserting the words "a resolution passed by two thirds of the General Assembly, and concurred in by the Governor and Council," which was rejected.

The resolution was amended by inserting after the word *Resolved*, the words "in case a convention shall be called."

The resolution, so amended, was adopted.

Mr. CLARKE called up the resolution introduced by the Secretary on the 20th Oct. last, which was read and laid on the table.

Mr. RICH offered an amendment to the two resolutions offered by him on the 18th and 20th of Oct. last, which, after considerable discussion, was laid on the table.

Council adjourned.

### 2 o'clock, P.M.

Council met.

The amendment to the resolutions of Mr. RICH, was called up, and after debate, laid on the table.

Mr. CLARKE called up the resolution introduced by the Secretary on the 20th Oct. last, and offered an amendment, which was agreed to, and the resolution so amended, adopted as follows, to wit:

*Resolved*, That, if a convention shall be called, it is expedient so to amend the Constitution, that no member of the General Assembly, or Executive Council, shall be eligible to the office of Judge of the Supreme or County Court, Judge of Probate, Sheriff, High-bailiff or States Attorney.

The resolution introduced by Mr. NUTTING, relative to the sixteenth section of the Constitution, was called up by him, amended and adopted as follows, viz:

*Resolved*, That, in case a convention shall be called, it is expedient so to amend the 16th section of the Constitution, that no bill shall become a law without the concurrence of the Governor and Council; *Provided*, That, if the Governor and Council shall neglect to return to the General Assembly any bill which shall have been submitted to them, within five days, Sundays excepted, or before the rising of the Legislature, it shall become a law.

Council adjourned.

**Tuesday, March 20, 1821**

Council met.

Mr. PHELPS, from the committee on the subject of granting new trials by the Legislature, made report, which was read and laid on the table.

Mr. RICH called up the amendment, offered by him yesterday, to the two resolutions he introduced on the 18th and 20th Oct. last, which was read, and after debate, and before decision thereon,

The Council adjourned.

**2 o'clock, P.M.**

Council met.

The Secretary presented a communication from the Hon. Benja. Swan, Esq. Treasurer, on the subjects of levying, collecting, and expending the public taxes, which was referred to the committee raised on those subjects.

The amendment of Mr. RICH to his two resolutions, being again under consideration, which was amended, and, after debate, adopted, as follows, towit:

*Resolved*, That in case a convention shall be called, it is expedient to propose so to amend the Constitution, that the executive council shall consist of a number of members equal to the whole number of counties in the State, one of whom to be elected by the freemen in each county--And the House of Representatives of one member for every \_\_\_\_\_ hundred of inhabitants; the members to be apportioned among the several counties by the Legislature, at every session next after a census shall have been taken and published under the authority of the United States. Provided, That no county shall have a number of representatives, greater than the number of organized towns within the same, nor shall any county have less than three Representatives.

Mr. RICH called up the resolution offered by Mr. NUTTING on the 20th Oct. 1820--which was read as follows, towit:

*Resolved*, two thirds of this council concurring herein, that it is expedient to call a convention to meet at the State House, in Montpelier, on the \_\_\_\_\_ of \_\_\_\_\_ for the purpose of taking into consideration the proposed amendments to the Constitution, which have been, or may be agreed on by this Council.--And, on the question, Will the Council adopt the resolution?--the yeas and nays being demanded, were as follows:

YEAS--Messrs. BROWNSON, CUSHMAN, CLARKE, HUNTER, NUTTING, PRATT, PHELPS, RICH, SCOTT, THOMPSON, and VAIL --11.

No one voting in the negative.

Two-thirds of the Council having voted in the affirmative, the

resolution was adopted.

On motion of Mr. RICH,

*Resolved*, That a committee of three be appointed to reduce the proposed amendments to the Constitution into form.

Messrs. PHELPS, NUTTING, and RICH were appointed.

On motion,

*Resolved*, That a committee of three be appointed to draft an address to the people on the subject of the proposed amendments.

On motion,

Voted, That Messrs. PHELPS, NUTTING and RICH be the committee.

Messrs. CLARKE and BROWNSON were added to the committee on the subject of enquiring into the constitutionality of the laws suspending civil process against the bodies and property of individuals.

Council adjourned.

### Wednesday, March 21, 1821.

Council met.

Mr. PHELPS called up the report made by him, on the subject of granting new trials by the Legislature, which was read, as follows:

The committee appointed to enquire, whether an act, entitled an act "for the relief of Joel Coukey, passed Oct. 27, 1814"--and such other acts as have been passed within this septenary, granting new trials in cases commenced before Justices of the Peace, are consistent with the Constitution,

#### REPORT--

That the act granting a *New trial* to Joel Coukey, and sundry other acts, granting new trials to individuals, which have been passed within the last septenary, are not consistent with the principles of the Constitution. If there be any difference in principle, between these acts and the act granting a new trial to Jireh Durkee, which has been before the Council, and considered to be unconstitutional, it must be in this--That there appears to be no tribunal established and designated by the Legislature, to hear and determine petitions for new trials, in cases within the jurisdiction of a Justice of the Peace.

In the 7th section of the act, defining the powers of Justices of the Peace, it is provided, that no judgement, &c. rendered by a Justice of the Peace within this State, on the merits of any civil cause, or action, within the jurisdiction of a justice, shall be removed, by a writ of error, certiorari, or any other process whatever; or shall be re-examined, or reversed by the Supreme Court of Judicature.

When these powers were originally given to Justices of the Peace, their jurisdiction was more limited than at present, and policy required, that civil controversies, so limited in amount, should be finally settled in the tribunals having jurisdiction thereof, reserving the right only of appeal to the County Courts of the respective counties.

But, since the enlarging of the jurisdiction of these tribunals, the amount in controversy may be of sufficient importance to require new trials in cases within their jurisdiction, when it shall appear, that from any cause, justice has not been obtained.

But your committee are of opinion, that it is the duty of the Legislature to provide the necessary judicial tribunal, to hear and determine upon applications of this nature, rather than to assume this power themselves.

Your committee, therefore, report the following resolution:

*Resolved*, That the act, entitled an act for the relief of Joel Coukey, passed Oct. 27, 1814, and such other acts as have been passed by the Legislature within the last septenary, granting new trials, in causes originally commenced before justices of the peace, are not conformable to the principles of the Constitution.

Mr. Rich moved that the report lie on the table, which was decided in in the negative.--And, after discussion, on the question, Will the Council concur in the report, and adopt the resolution therein reported? the yeas and nays were taken.

Those who voted in the affirmative, were,

Messrs. BROWNSON, CLARKE, CUSHMAN, HUNTER, NUTTING, PHELPS, PRATT, SCOTT and VAIL--9

Those who voted in the negative were,

Messrs. RICH and THOMPSON--2

So the report was concurred in, and the resolution adopted.

Mr. PRATT, from the committee on the subject of granting acts of suspension and insolvency, handed in the following report, which was read, and ordered to lie on the table, towit:

Your committee, to whom was referred the resolution relative to the various acts of suspension and insolvency, passed by the Legislature during the last septenary.

#### REPORT--

That, by the tenth section of the first article of the Constitution of the United States, it is declared, that no law, impairing the obligation of contracts, shall be passed by any State.

Your committee cannot but view the several acts of this government, releasing the property of the debtor from the operation of those laws, under which the contracts were made, as impairing that obligation, and subversive of the rights of the citizen, and in violation of the Constitution of the United States:

Therefore--*Resolved*, That, in the opinion of this Council, the several acts of the Legislature, referred to above, are in violation of the Constitution of the United States.

Mr. BROWNSON, from the committee to which was referred the resolution offered by Mr. NUTTING, relative to the constitutionality of the "act passed the 16th day of Nov. last, in addition to an act, annexing the town of Roxbury, in the County of Orange, to the County of Washington," made the following report, towit:



Your committee, to whom was referred the within resolution,  
REPORT--

That, in their opinion, the act therein referred to, is not in violation of the Constitution of this State.

Which was read, and ordered to lie on the table.

Mr. RICH introduced the following resolution, to wit:

*Resolved*, That the committee, appointed to prepare and report amendments to the Constitution, be instructed so to frame them, that the powers given to, and duties enjoined upon the Governor and Council, by the eleventh section of the second chapter of the Constitution, shall be exercised and performed by the Governor; except that he shall not sit as a judge "to hear and determine on impeachments;" nor "grant pardons or remit fines;" "lay embargoes, or prohibit the exportation of any commodity," or command the forces of the State in person, without the advice and consent of the Council--That the Lt. Governor be the presiding officer of the Council--and give to the Council a right to originate bills, as well as to propose amendments thereto.

Which was read, and while under consideration,

The Council adjourned.

2 o'clock, P.M.

Council met.

The resolution of Mr. RICH being again under consideration --

Mr. BROWNSON moved a division of the question, to embrace that part relating to the powers of the Governor and Lieut. Governor. And, on the question, Will the Council adopt that part of the resolution? the yeas and nays were taken, and were as follows:

YEAS--Messrs. BROWNSON, CLARKE, HUNTER, PHELPS, PRATT, RICH, SCOTT and VAIL--8.

NAYS--Messrs. CUSHMAN, NUTTING and THOMPSON--3.

So the question on this part of the resolution was decided in the affirmative.

And on the question, Will the Council adopt the remainder of the resolution? the yeas and nays were taken, as follows:

YEAS--Messrs. CLARKE, HUNTER, PHELPS, PRATT, RICH, SCOTT and VAIL--7.

NAYS--Messrs. BROWNSON, CUSHMAN, NUTTING, and THOMPSON--4.

So the question on the last clause was decided in the affirmative, and the whole resolution adopted.

Council adjourned.

Thursday, March 22, 1821

Council met.

Mr. RICH, from the committee appointed to reduce the proposed amendments to the Constitution into form, made report, which was

read, and,

On motion of Mr. RICH,

Ordered, That the Secretary procure twenty copies to be printed for the use of the members.

Mr. RICH, at his request, was discharged from the committee on the second resolution offered by him on the 8th of June last, and Mr. BROWNSON was appointed on said committee.

Mr. CLARKE, from the committee on the third resolution offered by Mr. RICH, on the 8th of June last, made the following report, which was read and accepted:

The committee, to whom was referred the resolution to enquire, whether the public taxes have been justly laid and collected in all parts of this commonwealth,

#### REPORT--

That, having examined the several acts of the Legislature, raising money for the support of government, there is nothing appears, in the opinion of your committee, but that the interests of the citizens, in all parts of the State, have been duly regarded;--and they herewith submit a statement from the Treasurer, of the amount of taxes which have been laid during the last septenary, together with the balances due from the several towns in this State, on the 27th February, A.D. 1821:--<sup>11</sup>

On motion of Mr. RICH,

*Resolved*, That, when the Council do adjourn, it adjourn until tomorrow morning.

Mr. CLARKE called up the report of the committee on the subject of acts of suspension and insolvency, passed by the Legislature the last septenary--which was read and laid on the table.

Council adjourned.

#### Friday, March 23, 1821

Council met pursuant to adjournment.

The report of the committee, on the proposed amendments to the Constitution, was called up, and read as follows, to wit:--

#### ARTICLE I.

The supreme legislative powers of this State, shall be exercised by the House of Representatives and Council, which, together, shall be styled, "The General Assembly of the State of Vermont;" and each of which shall have a negative upon the other, and exercise the like powers in all acts of legislation. But no bill, or resolution, which shall have been passed by one branch of the Legislature, shall have the effect of a law, without the concurrence of the other. *Provided*,

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<sup>11</sup>The statement of all taxes granted and money received from 1813 to 1820 and a list of balances is printed in the text of the Journal. For a copy, contact the State Archives.

That all bills for the levying of taxes, or the appropriation of money, shall originate in the House of Representatives.

ART. II.

From and after the day next preceding the second Thursday in October, in the year one thousand eight hundred and twenty three, the House of Representatives shall consist of one member for every two thousand inhabitants within the State, and be elected by the freemen on the first Tuesday of September in the year abovementioned; and on the first Tuesday of September, annually forever thereafter.

And from and after the day first abovementioned, the Council shall consist of one member from each of the counties in the State; one of whom shall be elected annually by the freemen in each county on the day of the election of Representatives.

The Legislature shall, at its session in October, in the year one thousand eight hundred and twenty-two, apportion the representatives among the several counties, as near as may be, according to the population in each; and direct the manner of their election, and that of Councillors; and at the end of every ten years thereafter, shall make an new apportionment of Representatives. Provided, that the number of Representatives, apportioned to any County, shall never be less than three, nor greater than the whole number of organized towns within such County.

ART. III.

No member of the House of Representatives, or of the Council, shall, during the period for which he shall have been elected, be appointed to the office of a Judge of the Supreme or County Court, Judge of Probate, Sheriff, High Bailiff, State's Attorney, Justice of the Peace; or Superintendent, or any other Officer of the State's Prison.

ART. IV.

The Supreme Executive power of the State, shall be exercised by the Governor, (or in case of his absence or disability, by the Lieutenant Governor) who shall exercise all the powers vested in, and perform all the duties enjoined upon the Governor and Council, by the eleventh section, of the second chapter of the Constitution; except that he shall not sit as a Judge to "hear and determine on impeachments," (which shall be heard and determined by the Council). Nor shall he, without the advice and consent of the Council, "grant pardons or remit fines;"--"lay embargoes or prohibit the exportation of any commodity." Neither shall he command the forces of the State in person, except advised thereto by the Council, and then, only so long, as it shall approve thereof. The Lieutenant Governor, when present, shall, by virtue of his office, preside in the Council, and have a casting vote, and no other; but in his absence the Council shall elect one of its members to preside, who shall vote as other members.

## ART. V.

Judges of the Supreme Court, who shall be elected subsequent to the adoption of this article, shall severally hold their offices for the term of seven years from the date of their election; but may be removed by impeachment, or by resolution adopted by a vote of the House of Representatives and Council, in joint meeting, a quorum of each being present, and two thirds of the whole number present, voting in the affirmative; which resolution shall be entered on the Journal of the House of Representatives, with the yeas and nays thereon.

Mr. RICH offered the following amendment to the second article, which was read and adopted, to wit:

And, *Provided* further--That when the population of the State shall have increased to the number of *three hundred thousand*, the Legislature may so alter the apportionment of Representatives, as to reduce the whole number to one hundred and twenty, and from time to time every ten years thereafter, so that the number shall never exceed one hundred and fifty.

Mr. THOMPSON moved to amend the first proviso to the second article by striking out after the word "three," the following, "nor greater than the whole number of organized towns within such county."--And the question, *Will the Council adopt the amendment?* was decided in the negative.

Mr. NUTTING moved to amend the first article, by striking out all after the words, "House of Representatives," and inserting the following to wit:

"But all bills or acts which shall have been passed or enacted by the General Assembly, shall be laid before the Governor and Council --and no bill or act shall become a law without their concurrence.--*Provided*, That, if the Governor and Council shall refuse or neglect to return any bill within five days, Sundays excepted, after it shall have been laid before them, unless the General Assembly, by rising within five days, shall prevent its return, such bill shall become a law;"--

Which, being under consideration, and before decision thereon, The Council adjourned.

2 o'clock, P.M.

Council met.

The amendment offered by Mr. NUTTING to the first article, being again taken up and discussed; and on the question, *Will the Council adopt the amendment?*--the yeas and nays were taken, as follows:

YEAS--Messrs. BROWNSON, CUSHMAN, NUTTING and THOMPSON--4.

NAYS--Messrs. CLARKE, HUNTER, PHELPS, PRATT, RICH, SCOTT and VAIL--7.

So it was decided in the negative, and the amendment was not adopted.

On motion of Mr. RICH, the further consideration of said report was postponed till to-morrow morning.

Council adjourned.

### Saturday, March 24, 1821

Council met.

Mr. THOMPSON called up the report of the committee on the amendments to the Constitution--and proposed the following amendment to the fifth article, towit:

*"Provided, That all resolutions, for the purpose of convening the two Houses for the removal of any of the Judges as aforesaid, shall originate in the House of Representatives, and it shall be the duty of the Council to concur therein, as soon as may be."*

And the question, *Will the Council adopt the amendment?* was decided in the negative.

The *Secretary* then moved to amend the second article, by striking out the whole after the words "twenty three," and inserting the following, towit:

*"Each organized town in the State, containing five hundred inhabitants, shall be entitled to one representative, and those towns not entitled as aforesaid, shall be so classed by the Legislature at their session in October, 1822, that each town may send a representative every other year. Provided, however, that upon the application of any two towns as aforesaid, the Legislature shall unite them for the purpose of sending a representative; and, when so united, they shall be entitled to send one representative every year; --and every such town, when its population shall have increased to the number of five hundred, which shall have been ascertained by a census taken and published by this State, or the United States, shall be entitled to send a representative every year thereafter."*

And, on the question, *Will the Council adopt the amendment?* the yeas and nays were taken, as follows:

YEAS--Messrs. CUSHMAN, SCOTT and VAIL--3.

NAYS--Messrs. BROWNSON, CLARKE, HUNTER, NUTTING, PHELPS, PRATT, RICH and THOMPSON--8.

So the question was decided in the negative, and the amendment was not adopted.

The report then being under consideration, and the question, *Will the Council concur in the report, and adopt the articles, in the form therein reported, as amended,* was decided unanimously in the affirmative.

Whereupon, Mr. NUTTING submitted the following Ordinance, towit:

STATE OF VERMONT

In Council of Censors,

*March 24, 1821.*

The Council of Censors, having agreed to propose certain amendments to the Constitution of this State, and having determined to call a Convention, to consider of such amendments.

THEREFORE,

IT IS ORDERED *by the said Council,*

That a Convention of the people of this State shall meet at the State House in Montpelier, on the third Thursday of February next, to consider the amendments proposed by this Council, and to adopt the same or such part of them, as the said Convention shall judge will most promote the good government and happiness of the people of the State.

And for the purpose of electing delegates to attend the said Convention, the first constable, or in his absence, the town Clerk, or in the absence of both, one of the Selectmen of each town in this State entitled to send a representative to the General Assembly of this State, shall without further order, set up a notification at the usual place or places of setting up notifications for town meetings, in their respective towns, at least twelve days before the first Monday of February next, warning the Freemen of their respective towns, to meet on said first Monday of February next, at one of the clock in the afternoon, at the usual place of holding freemens' meeting in their towns respectively, for the purpose of electing in their towns respectively, for the purpose of electing a delegate to represent such town in the said convention, at the opening of which meeting this order shall be publicly read.

And the first Constable, or in his absence, one of the Selectmen, or a Justice of the Peace of the same town, shall be the presiding officer of such meeting; whose duty it shall be to call on the freemen of such town, from time to time for the space of two hours, to give in their votes for a delegate to represent such town in said Convention, which votes shall be given and received in the same manner, as is by law provided in case of the election of a representative to the General Assembly; and at the expiration of the said two hours, the votes for such delegate, shall be, by the presiding officer, with the assistance of the town clerk, sorted and counted; and if no person shall have a majority of all the votes, the said presiding officer shall declare the same, and shall call on the freemen to give in their votes as aforesaid, giving a reasonable time only for receiving such votes, until an election be made.

And, after an election shall be made as aforesaid, the presiding officer shall give to the person elected, a certificate of the following tenor, viz:

At a Freemen's meeting, legally warned and holden at \_\_\_\_\_ in the State of Vermont, on the first Monday of February, A.D. 1822, A.B. was elected, by a majority of the freemen present, a delegate to represent said town in the Convention to be holden at Montpelier, on

the third Thursday of February instant, for the purpose of taking into consideration certain amendments to the Constitution, proposed by the Council of Censors, in March last.

Attest, \_\_\_\_\_ Presiding Officer.

Which certificate shall be sufficient credentials of such person's election.

*In Council of Censors, March 24, A.D. 1821.*

Read and adopted.

Attest, JOSHUA Y. VAIL, Secretary.

Council adjourned to nine o'clock Monday morning next.

### Monday, March 26, 1821

Council met pursuant to adjournment.

Mr. RICH, from the committee appointed to draft an address to the people, to accompany the proposed articles of amendment to the Constitution, made report, which was read and adopted, as follows:--

## The Unanimous Address of the Council of Censors

Adopted March 26, 1821,

*To the People of the State of Vermont*

Respected Fellow Citizens--

The Council of Censors, elected by the freemen on the last Wednesday of March, in the year of our Lord one thousand eight hundred and twenty, having unanimously determined in favor of calling a Convention, to pass upon sundry amendments to the Constitution;--they now proceed to discharge a duty which they owe to their constituents, by submitting the amendments to their consideration; specifying the parts of the present Constitution which will be affected by their adoption, and by suggesting *some* of the reasons which have induced the Council to propose them:

The adoption of the first article of the amendments, will alter the second and ninth sections of the second chapter of the Constitution, and entirely supersede the sixteenth section of the same chapter.

The seventh section of the same chapter will be superseded, and the eighth partially changed by the adoption of the second article. And the adoption of either one, or both, of the two first articles of the amendments, will affect the tenth section of the same chapter.

The third amendment embraces an entirely new principle, and does not affect any part of the present Constitution.

The adoption of the fourth article, will supersede the third section of the second chapter, and alter the provisions of the eleventh and twenty-fourth sections, and the provisions of the ninth section will be further changed by the adoption of the fifth article of the amendments.

None, *Fellow-Citizens*, can be more ready than the Council, to admit, that the provisions of a constitution should not be changed, without strong and manifest reasons for such change; and hence the present experiment has not been hazarded without much deliberation, and a thorough conviction, that such reasons do exist, for embracing the present season of tranquility, to attempt an improvement in our *Political Charter*, which is universally admitted to be more or less defective.

The subject has been approached with caution, and consequently but few amendments have been proposed; and those few so framed, as to preserve, as far as possible, the original features of the Constitution.

That instrument provides in the sixteenth section of the second chapter, that "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."

The authority here given to the Governor and Council, to concur in the passing of bills, either with or without amendments, seems necessarily to include an authority, to withhold such concurrence.--And such undoubtedly would have been the construction given to it, by every department of the government, and every citizen of the State; and have prevented many severe and humiliating contests between the House and the Council, but for the further *obscure* provisions of the section referred to, to wit: "who, (the Governor and Council) 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."

Hence it is, that while it is contended by some, that the Governor and Council have power to refuse *absolutely*, their assent to a bill, which, in their opinion, is wrong in *principle*, and not susceptible of being improved by amendment; others deny to them any authority, but to *concur*, or propose amendments. Under this latter construction, which we have been reluctantly compelled to believe a correct one; should a bill be passed by the House of Representatives, (no matter under what circumstances, or what state of public excitement) which in the best judgment of the Governor and Council is wrong in principle, and ought not to pass, under any possible



modification of its provisions; they have no alternative left to them, but to lay aside the character of consistent legislators, and propose such alterations under the name of amendments, as shall be so obnoxious to the House that it will refuse its assent thereto.--In which event, and in no other, the Council can prevent the passage, by suspending it till the next session; till a new election of members shall have intervened.

Few, if any, it is believed, will deny, that the powers of legislation should be exercised by two distinct branches; but should proof of this position be desired, it may be found in the circumstance of unceasing change, to which the laws of the state have been subjected, and in the institutions of other states, which have been dictated by the greatest experience, and the most brilliant talents of the country.

And although some difference of opinion has existed among the members of the Council of Censors, as to the extent of the powers, which should be exercised by the less numerous branch of the Legislature, as well as in relation to the provisions of some other of the amendments, all have concurred in this, that they should have an unqualified negative upon the other house. Under a belief, however, that any discrimination of powers between the two, would be liable to misconstruction, it has been determined by the board, that the like powers should be exercised by each; and with a view to that object, as well as to obviate the difficulties above suggested, the first article of the amendments has been framed.

The second of the proposed amendments, provides for the apportionment of Representatives among the several counties, according to the population in each, with some trifling exceptions; and upon such a ratio, as will greatly diminish the present number. It further provides, that instead of the present Council, consisting of twelve members elected by a general ticket throughout the State, it shall consist, in future, of one member from each county.

At an early period of our history, when the present Constitution was formed, and when but few towns in the State were inhabited, the convenience of sending one member from each town, small as the whole number then was, undoubtedly overbalanced all of the *then* objections, to the inequality in the representation; and induced the statesmen of that period to leave to their successors, the adoption of such regulations on the subject, as the future, altered condition, of the State might suggest. The population of the State has happily progressed, till under the provisions of the Constitution, more than two hundred and ten members have had a seat in the House at the same session;--a number which is liable to be soon considerably enlarged, by the organization of new towns. Several members have come from towns, having less than ten freemen, and which have not paid into the treasury annually, one half the amount drawn from it by their members; nor will the towns, in the different

sections of the State, ever approximate in any considerable degree, towards an equality in population or wealth; nature herself has forbidden it.

Taking the census of 1810 for the basis as to population, and the list of 1818 for the amount of State tax, at one cent on the dollar; and it is ascertained that in the last mentioned year, one entire county sent one member to the Assembly for every forty-four dollars paid into the treasury; and for every three hundred and eighty-six inhabitants: while another, sent only one member for every two hundred and fifty four dollars paid in, and for every nineteen hundred and thirty-seven inhabitants. And there are many instances, where comparing one town with another in the same county, the inequality is much greater.

With a knowledge of this inequality in the representation, the loss of time to the community, and the inconvenience and expense attending the transaction of business in so large an assembly; where popular excitement, if it must unfortunately exist, will be felt, much in proportion to the magnitude of the body; we have been unable to resist the belief, that the public interest, and the future harmony of the State would be greatly promoted by the change proposed:--a change, which, while it will probably reduce the number of representatives to about one hundred and twenty; will give to each section of the State, a fair proportion.

In connection with this provision, as has before been observed, is another, authorising the freemen of each county, to elect one member of the Council; securing to each of the respective counties, an equal influence in that branch of the Legislature. That this latter provision allows of a great inequality of representation in the Council is readily admitted: but it differs but little from what, in practice and from a spirit of courtesy, has hitherto existed: and is believed to be far less objectionable than that which at present exists in the other branch; accompanied as that is with such overwhelming numbers.

It is apprehended, that there are few, if any, who would not prefer, that the Council should be elected by districts, rather than by a general ticket.

But, should the State be formed into districts of equal population, many inconveniences would be experienced. In some cases, two and probably more Councillors, would be citizens of the same county; while several others would be destitute of a member. A further inconvenience would be felt from having counties divided, and subdivided, in the formation of districts. Each county must be regarded as a kind of distinct community; the citizens of which, have to a certain extent, common interests and affections; and it is deemed proper, that they should be permitted to elect a Councillor, without any interference of their neighbors. By this organization, the thinly populated counties will find an equivalent for their loss of numbers, in the House of Representatives.

The third of the proposed amendments, excludes the members of both branches of the Legislature, during the period for which they were elected, from being appointed to certain civil offices within their gift. This provision, particularly so far as relates to judicial officers, is believed to be necessary to give full effect to the sixth section of the second chapter of the constitution; which declares that "the legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other." While we have been unable to perceive any sound objection, which *can* be urged against this amendment; we have supposed there were such obvious reasons in its favor, and such a manifest fitness in the principle, as to insure to it, a favorable reception.

The citizen who may be clothed with the high prerogative of a *Legislator*, at a period when it shall suit his convenience to accept that trust, most assuredly will not feel, that *his* rights are abridged, because, while acting in that capacity, he cannot be elected a Judge, a Sheriff, or a Justice of the peace. And it may with confidence be asked, whether it is not in accordance with the soundest maxims of republicanism, that the legislator should be divested of other offices, and of all tempting facilities for obtaining them?--and that the framer of the laws should not be appointed to enforce their execution?

The fourth article of the amendments, vests in the Governor the executive functions of the State; except that he shall not sit as a judge, to "hear and determine on impeachments;" nor without the advice and consent of the Council, "grant pardons or remit fines"--"lay embargoes, or prohibit the exportation of any commodity:" And that, as commander in chief of the forces of the State, he "shall not command in person, except advised thereto by the Council."

Such are the provisions of the present Constitution, that the Governor cannot legally perform the most trifling official duties, without the concurrence of the Council. Without their concurrence, he cannot correspond with other States; or with the offices of this;--nor even make a communication to the assembly.--And it is respectfully submitted, whether experience has not abundantly shown, that the ordinary execution duties can with much more convenience, and with perfect safety to the public interests, be performed by the Governor, and upon his responsibility?--

Particularly, as he is annually elected by the very people, who are to be affected by his acts--separated from the Council, as is proposed by the article referred to;--and relieved from the details of legislation; he will during the session of the Assembly, have some leisure for reflection;--and to mature and "prepare such business as may appear necessary to lay before "that body;"--to seek for, and obtain such information, as will enable him to secure the better execution of the laws, or to suggest their defects.

It is provided by the fifth, and last, article of the amendments,

that the Judges of the Supreme Court shall be elected for the term of seven years; removable by impeachment, or a joint vote of both branches of the Legislature, two thirds voting in the affirmative. There are certainly few subjects, and probably none, on which the opinions of the citizens of the United States have been more divided, than the term of office most suitable for the judges of the highest tribunals. Some contend for annual elections, and some for a term of years; but probably much the largest portion, for the term of good behavior. All agree, that the organization, which shall secure the greatest integrity and ability, in the discharge of official duties, is the best; as, while it will ensure dispatch, it will promote a uniformity of decisions; without which, the laws can neither be rendered certain, or the life, liberty, or property of the citizens secure. It is readily admitted, that much may be said in favor of annual elections, as well as for the term of good behavior, while it is believed by the Council, that many objections may be urged against both. Hence, it is humbly conceived, that an election for a term of years, sufficient to enable the person elected, to have his character as a judge well known, will best promote the public welfare.

If, when that character shall have become too well known to be mistaken by the community, his public labors shall be approved, but little doubt can exist of a reelection, at the end of his term; while, should they be disapproved, his place can be filled, as it ought, by another; with far less inconvenience than his removal procured, if elected for good behavior.

It is certainly due to the citizen, who shall have been invited from other avocations to discharge the highly responsible, and critical duties of the bench; that while his best efforts shall be employed in the service of his country, he shall be so far removed from the influence of prejudice or partiality, as to be morally secure in his place, till his fellow citizens shall have had an opportunity, to form a fair and unbiassed estimate of his qualifications. If after this, it shall be made his duty to retire, at the end of his term, no injustice will have been done on the one hand, or public injury on the other:--and no reasonable complaint will be heard.

These considerations, with many others, which, it is presumed, will readily occur, have induced a belief in the Council, that a regard for the respectability of our institutions, and the best interests of the State, recommend the adoption of the article.

The Council had felt a strong disposition, so to frame the amendments, that either one, the whole, or any number of them may be adopted, without producing any incongruity in the system;--and it is confidently believed that the object has been fully accomplished; unless by the adoption of the first article, and *rejection* of the fourth, there should be such an increased mixture of legislative powers, with executive duties, as to produce an incongruity, greater in *degrees* than at present, with the sixth section of the second chapter of the

Constitution.

It is believed, however, that no objection will be urged against the fourth article, by the Board which shall have adopted the first.

Without further remarks, the Council, *very respectfully*, submit the amendments to the consideration of their *Fellow-Citizens*, in the humble hope, that the present "era of *good feeling*," will secure for them, a *candid* and impartial examination; and that such a decision will be ultimately pronounced upon them, as will best promote the happiness and prosperity of the State.

Mr. RICH, from the same committee, reported the following resolution, which was read and adopted:

*Resolved*, That the five proposed amendments to the Constitution, agreed to by the Council, be signed by the President and Secretary, and proposed to the people, for their consideration and adoption; and that the said amendments, together with the second, third, seventh, eighth, ninth, tenth, eleventh, sixteenth and twenty fourth sections of the second chapter of the Constitution, be annexed to, certified by the Secretary, and published with the foregoing address; together with the Ordinance for calling a Convention.

Mr. RICH introduced the following resolution, towit:

*Resolved*, That the following caption be prefixed to the proposed articles of amendment to the Constitution, towit:

*"Articles of Amendment to the Constitution of the State of Vermont, proposed by the Council of Censors, on the 24th day of March, 1821."*--And that to the sections of the Constitution, which will be altered, or superceded by the adoption of the amendments, there be prefixed the following caption, towit:--*"Sections of the Constitution of the State of Vermont, which will be altered or superceded by the adoption of the amendments, proposed by the Council of Censors."*

*Resolved*, That the Secretary be directed to transmit to his Excellency the Governor of this State, a certified copy of the articles of amendment, proposed by this Council to the Constitution, and the papers thereto subjoined; and signify to him the request of the Council that he will cause the same to be laid before the Convention, when assembled at Montpelier, on the third Thursday of February, A.D. 1822.

*Resolved*, That the Secretary procure five hundred and fifty copies of the address accompanying the amendments to the Constitution to be printed, with the articles, sections and ordinance thereto annexed; and that he distribute them (by mail) as follows, towit:--To the Governor ten copies--to the Lieutenant Governor five copies;--to the Secretary of State, and Council--to the members of the House of Representatives, of the Council and Clerk of the Assembly, each one copy;--to the late Governors Tichenor, Galusha and Chittenden, each five copies;--to the first Constables of the

respective towns, each one copy;--to the members of the Council of Censors each five copies;--and to the publishers of the several newspapers in the State each one copy.--Which were severally read and adopted.

Mr. PRATT called up the report of the committee on acts of suspension and insolvency passed by the Legislature, which was read.--And the question, Will the Council concur in the report, and adopt the resolution therein reported, was decided in the affirmative.

Mr. NUTTING, from the committee on the resolution directing an enquiry in what manner the public money had been expended, made the following report--which was read and adopted, towit:

The committee to whom was referred the resolution directing an enquiry into the manner in which the public money has been expended,

#### REPORT--

That they have examined the several acts of the Legislature for the last septenary, making general or special appropriations of money; and have also received from the Treasurer of the State an account of all monies paid out of the Treasury, both on special acts of appropriation, and on orders drawn by the various officers authorised by law to audit claims against the State; and though your committee may doubt the expediency of sundry special acts granting sums of money to individuals, yet they have not found any intentional, or censurable misapplication of the public monies during the last septenary.

Ordered, That the Secretary and Mr. NUTTING be a committee to revise and correct the Journals, as they shall deem proper for publication.

Mr. PHELPS offered the following address to the people, for the consideration of the Council, towit:

#### Address

*Of the Council of Censors to the People of Vermont.*

Fellow-Citizens--

The Constitution of this State, revised and established by Convention on the 9th day of July, 1793, creates and defines the powers and duties of the Council of Censors:

*And they are,*

*First*--To enquire whether the Constitution has been preserved inviolate.

*Secondly*--Whether the legislative and executive branches of government have performed their duties, or exercised other or greater powers, than they are entitled to by the Constitution.

*Thirdly*--To enquire whether the public taxes have been justly laid, and in what manner the public money has been disposed of.

*Fourthly--Whether the laws have been duly executed;*

*And the Council have power,*

*First--To pass public censures; and to order impeachments.*

*Secondly--To recommend to the Legislature the repealing of such laws as shall appear to them to have been passed contrary to the principles of the Constitution; and,*

*Thirdly--To call a Convention, if there appears to them an absolute necessity of amending any article of the Constitution, &c.*

To the first of these enquiries, towit,

Whether the Constitution has been preserved inviolate? We find, as far as we have been able to pursue our enquiries, that the several branches of government have been generally directed, in the execution of their functions, by the provisions of the Constitution. Certain acts of the Legislature, which have been passed within the last septenary, however, such as private acts of suspension and insolvency, and acts granting new trials at law, we have felt it our duty, with due deference, to declare in our opinion, not warranted by the Constitution. It is but justice, however, to remark, that acts of this character, are not peculiarly applicable to the proceedings of the Legislature for the last seven years, whose doings our duty calls upon us particularly to review; but have been passed more or less, by the Legislature, almost from the commencement of the government.

In relation to acts of suspension, of insolvency, and of freeing the bodies of insolvent individuals from imprisonment for a term of years, and all acts of this character; we consider them repugnant to the provisions of the Federal Constitution, which declares, that *no State shall pass any law impairing the obligation of contracts.* And,

*First--In those cases where the Legislature have attempted to free the body, merely from arrest, we conceive, that the contract is impaired, in this, that the act attempts to interpose an obtrusion to the ordinary legal process, to enforce payment; and although it may be urged that the imprisonment of the body made no part of the contract, on which the credit was given; still the consideration that the debtor would not secrete his effects, or do any other act, to defeat the fair fulfillment of the contract, we believe to be clearly implied in the obligation; and any act of legislation, which aids the debtor to withhold his effects; or in other words any supposed relief, other than the general law for the relief of poor debtors, does impair the obligation of the contract.*

*Secondly--Private acts of insolvency, that is, acts releasing debtors from their contracts forever, on surrendering up all their property and effects, for the equal dividend of all their creditors; these, we conceive, impair the obligation of contracts, in this:*

When credit is given, we apprehend that the creditor is not bound to rest the security of his obligation entirely upon the existing circumstances of the person to whom he gives credit. He may fairly

calculate upon his integrity, his talents and his future acquisitions. these become considerations in the view of the creditor, on which the obligation of the contract is rendered more secure. To remove the lien upon such acquisitions would seem to impair the obligation, so far as it rendered the contract less valid and secure. And further, all the beneficial purposes, of granting to Congress the power of establishing uniform laws on the subject of bankruptcies, might be defeated, if the states could evade the Constitution, by passing insolvent laws.

*Thirdly*--Acts which suspend the payment of debts for a limited time, but beyond that agreed on by the parties, not only impairs, but too frequently, it is believed, destroys the obligation of contracts altogether;--And,

*Fourthly*--Acts, (for such we find there are) which suspend the payment of debts, as against some particular creditors by name, leaving the right of legal process open to other creditors, are not only unconstitutional for the reasons above given; but are moreover manifestly unjust.

SECONDLY. On an investigation of the second branch of our inquiries, towit:

Whether the legislative and executive branches of government, have assumed to themselves or exercised other, or greater powers than they are entitled to by the Constitution?--We find, that probably under a misconceived view of their powers, the Legislature have granted new trials at law in causes that have been pursued to final judgment--have set aside and declared those judgments void--have ordered such causes to be brought forward anew on their respective dockets, and to be reheard as though no judgment had been rendered therein.--This, we conceive, an assumption of power by the Legislature, unauthorised by the Constitution. To say nothing upon the consideration of the natural injustice that is involved, in thus disturbing rights that have been legally settled and vested; the 6th section of the second chapter of the Constitution of this State declares, that *the legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other.* The granting of new trials, it is believed, is considered by civilians and jurists, to be as clearly judicial acts, as any decisions, whatever, that are passed during trials at law.--The reasons which may exist for granting a new trial, must be determined by the principles and usages of law.--The judicial tribunals are the constitutional depositories of these principles and usages.--It is presumed that they, and not the Legislature, understand, and will be governed by them. Nor does there appear to be necessity for this assumption of power by the Legislature, even "for the redress of grievances." For our higher judicial tribunals, are empowered by statute to grant new trials, in all cases, where it shall appear, that justice has not been obtained.



THIRDLY. In reference to the third object of our enquiries, towit:

Whether the public taxes have been justly laid and collected; and in what manner the public money has been disposed of:--We find, that, although attempts have, from time to time been made to equalize taxation, still it is to be feared, that complaints are justly made, both as to the equality of the mode of assessment, and to the uniformity of the execution of the laws on this subject.

We discover nothing but that the public money has been fairly disposed of, in conformity to appropriations made by law.--Some of those appropriations, however, we conceive, at least, of doubtful policy.--Particularly such as have been made to individuals, for pursuing, detecting and procuring the conviction of offenders.

FOURTHLY. In pursuing our enquiries in relation to the due execution of the laws.--We find, that but few complaints of this class appear to exist.

The act, however, in addition to an act, entitled an act, for the support of schools, passed Nov. 3d, 1810, we learn, with regret indeed, in some of our towns, is not carried into execution.--An act of this character, we should hope and trust, would want no penalties annexed to it, to insure its observance, by an enlightened and free people; and probably it was from this view of it, that the Legislature annexed no penalty, to coerce its observance. We trust that the attention of the Legislature will be called to this subject, and that the necessary penalties to coerce its observance may be added.

The act in relation to interests on contracts for money received on loan, we believe to be to be too generally disregarded. If the law in question be necessary to secure the interest and safety of the people; we think that more prompt and efficient measures should be taken to ensure its thorough and impartial execution.

## SECOND

*Of the power and authority of the Council of Censors*

FIRST. To pass the public censures, and to order impeachments.

From the exercise of our powers on subjects of this delicate and invidious nature, we are happily relieved. No complaints against any of the public functionaries have come to our knowledge.

SECONDLY. In conformity with the duty enjoined upon us to recommend to the Legislature, the repeal of such laws, as shall appear to have been passed contrary to the principles of the Constitution;--

It appears to us that the act granting a new trial to Jireh Durkee, passed Oct. 29, 1819, is contrary to the principles of the Constitution, for reasons already given in our examination of the character of these laws; and as this act, from the recent periods in which it was passed, may still be in force, we have recommended its repeal.

THIRDLY. In relation to our duties of calling a Convention to

revise the Constitution--

Serious doubts, at first, rested in the minds of many of this Council, as to the expediency of this measure.--But being impressed with a deep sense of the positive defects that exist in some of the most essential provisions of the Constitution, particularly in the too great and very unequal representation, in proportion to the population of the state: the want of sufficient and well defined checks on the legislative branch, to guard against the hasty and inconsiderate proceedings, that all bodies, constituted as that is, though with the purest intentions, are but too liable to adopt; the manifest impropriety that the Representatives and Council, who have the power of appointments, shall also have the right to be elected into the various civil offices in the State: that the Governor cannot constitutionally prepare a communication for the Legislature, correspond with the executives of other states; or supply a vacancy, *pro tem pore*, that may be occasioned by death or otherwise, without convening the Council from the remote parts of the State. And that the Judges of the highest judicial tribunal, should hold their places, merely by the courtesy, and at the good pleasure of the Legislature.--These are defects, which we consider our duty obliges us to point out; and, to remedy which, we have been unanimous in the opinion, that the present season of public and political harmony should be embraced, to give to this important subject the most cool and dispassionate consideration.

The articles of amendment which we propose to be adopted, and the articles of the existing Constitution, which will be affected thereby, together with our views of the expediency and necessity of the measures proposed, have been submitted entire in another address.

Having finished the duties assigned us, we submit the result of our deliberations to the consideration of an enlightened public.

Which address was read, considered and adopted.

Mr. RICH introduced the following resolution, which was read and adopted:

*Resolved*, That six hundred copies of the Journal of this Council be printed; and that two hundred and sixty copies thereof be delivered to the Surveyor of public buildings, at Montpelier, to be kept and distributed among the members of the Convention, when assembled, on the third Thursday of February, 1822; And that the remaining copies be delivered to the Sheriffs of the several Counties, to be by them distributed as follows, to wit: to the Governor four copies; Lieutenant Governor two copies;--to the Secretary of State twenty-five copies; to the Secretary of the Governor and Council ten copies; to the late Governors Tichenor, Galusha and Chittenden, each two copies;--to the Clerks of the several towns, each one copy;--to the members of this Council, each four copies; and to the Clerk of the General Assembly ten copies.

There appearing no other business that required the attention of the Council of Censors, they adjourned without day.

### Results of the 1821 Council of Censors

The 1821 Council identified nine separate acts or types of legislation that required investigation on constitutional grounds. These were the militia laws, the law on interest, the school tax of 1810, the law regulating hawkers and pedlars (peddlers), the law on spirituous liquor sales, the private act granting Jireh Durkee a new trial, the law on trials by justices, the act annexing Roxbury to Washington County, and the practice of awarding bounties to private citizens for apprehending accused criminals.

The committee appointed to look into the militia laws found that the 33rd section of the law attempted to govern the militia "when not in actual service," which was alleged to be contrary to the constitutional prohibition against martial law (Chapter I, Article 17th). The committee reported that they found no problem with these laws, that Article 17th was never intended to limit the powers of the Legislature, but "to secure the *citizens* from infringement of their rights by military commanders in actual service." The committee concluded that the laws were consistent with the Constitution. The militia laws were not included in the Council's address.

Governor Richard Skinner addressed the Council's recommendations on the law regulating the rate of interest in his 1821 inaugural address. "As a general principle," he wrote, "it is inexpedient to retain upon the records of the state an inefficient law."<sup>12</sup> A new law on usury was adopted on November 12, 1822. The problem was a lack of "an effectual remedy" to violations of the law. The 1822 act provided remedies for persons who paid unlawful interest, including the right to recover the amounts improperly paid and allowed those who collected it to repay it and be discharged from further liability.<sup>13</sup>

The Council's report on the law directing selectmen of each town to assess a tax of one cent on the dollar of the list for the support of schools appears in the Assembly Journal of 1820 on October 27.<sup>14</sup> Skinner also wrote about the school tax, and the Council's conclusion that "the act of A.D. 1810, for the support of schools, [had] not been duly executed . . ."<sup>15</sup> The Council complained that the lack of a penalty to coerce its observance had left many towns free to ignore the law that required selectmen to assess a tax of one cent on the dollar of the list. On November 15, 1821, the Legislature enacted a new law giving the county grand jurors the responsibility of ensuring that each town assessed the tax. The act authorized an indictment against every town neglecting its duties and a fine equal to one half of the amount required to be collected for schools, to be paid to the treasury of the county. The school district clerk was also required by this new law to designate the names of heads of families and the number of weeks a school has been kept in the town during the year.<sup>16</sup>

The Council had raised a concern about whether the laws relating to hawkers and pedlars were duly executed, although in the end it made no

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<sup>12</sup>*Assembly Journal* (1821), 10.

<sup>13</sup>*Laws of 1822*, Public Laws, Chapter 3, 8-11.

<sup>14</sup>*Assembly Journal* (1820), 103-4.

<sup>15</sup>*Assembly Journal* (1821), 10.

<sup>16</sup>*Laws of 1821*, Public Laws, Chapter 29, 90-1.

recommendations about the subject. Nevertheless, in 1821, this law was amended by increasing the fees charged by the judges of the county court, the fees kept by the judges for issuing the license, and the penalty for hawking without a license.<sup>17</sup>

The laws on the retailing of spirituous liquors were taken up for consideration by the General Assembly in 1821.<sup>18</sup> No action was taken on the subject at least through 1824.

The Assembly received a copy of the Council's committee report and resolution on the act granting a new trial to Jireh Durkee on October 26, 1820.<sup>19</sup> The report was tabled by the Assembly, and no action was taken on the act. See discussion below on "Private Acts."

The laws establishing the powers of Justices of the Peace drew criticism from the Council because they did not allow for an appeal to the Supreme Court in cases within those officers' jurisdiction. The Council felt a new trial ought to be available before another tribunal. By the act of November 15, 1821, the General Assembly responded. The new law provided for appeals from Justice's decisions in civil cases, except in cases involving notes of hand, and settled accounts, where no more than \$20.00 was involved.<sup>20</sup>

The Council investigated the act annexing Roxbury to Washington County and determined that it was not unconstitutional, with no reasons given for the original concern or the decision not to recommend a remedy. During 1821, however, the General Assembly completed the transition of Roxbury by annexing Roxbury to the Washington Probate district.<sup>21</sup>

The practice of paying private citizens for enforcing the laws of the state was the source of some concern by the Council. During 1821, however, the General Assembly awarded Caleb Fisk, David Atwood, Stephen Gilman and Samuel W. Webster eight dollars "for services rendered in apprehending Thomas Rogers and Matthew Bathersby, two felons."<sup>22</sup>

The Council considered several proposals of amendment that were eventually rejected by the Council and not made a part of its presentation to the Constitutional Convention. These included limiting the size of the Legislature, prohibiting payment to private individuals who have apprehended persons believed to be guilty of offenses, the creation of some other coordinate body other than the Executive Council (perhaps a Senate), and a three term maximum for sheriffs.

The Council ultimately proposed five amendments to the Vermont Constitution, including:

1. Authorizing clear veto powers of the Governor and Council.
2. Population-based apportionment of the House of Representatives, on the basis of one representative for each 2,000 persons, and allocation of one Councillor per county, elected by the county. This would be redone following

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<sup>17</sup>*Laws of 1821*, Public Acts, Chapter 17, 85-7.

<sup>18</sup>*Assembly Journal* (1821), 18.

<sup>19</sup>*Assembly Journal* (1820), 92-4.

<sup>20</sup>*Laws of 1821*, Public Acts, Chapter 7, 76-9.

<sup>21</sup>*Laws of 1821*, Public Acts, Chapter 29, 98-9.

<sup>22</sup>*Laws of 1821*, Private Acts, Chapter 1, 117.

each decennial census, by House.

3. Prohibiting Council or House members from holding offices of profit or trust.

4. Authorizing the Governor to act independently of the Council in everything except pardons, embargoes, or impeachments, and as commander in chief.

5. Seven year terms for Supreme Court judges; impeachment or removal by joint resolution.

#### **The Constitutional Convention of 1822**

The members of the 1822 Convention were elected on the first Monday of February, 1822. Two hundred and seventeen towns were represented. The Council met at the State House in Montpelier on Thursday, February 21 and dissolved on February 23, 1822. Former Governor Jonas Galusha was elected President, with William A. Griswold as Secretary.

The journal of the Convention reprints the proposals of amendment to the Vermont Constitution proposed by the Council, as well as the Council's Address. These communications were referred to a committee of the whole house and made the order of the day on February 22. The first day was spent entirely on organization.

On February 22, the Convention took up each of the five proposed amendments. In each case, the Convention voted against adoption. Only the third proposal, prohibiting members of the House of Representatives or the executive Council from appointments to various judicial, county or state prison offices, received any substantive report. That Article failed by a vote of 93 to 121. Before adjourning for the day, the Convention ordered that 600 copies of its Journal be printed and distributed.

On February 23, the Convention met at 6 a.m., and after "a solemn, and impressive address to the Throne of Grace by the Rev'd Chaplain," Rev. Chester Wright, dissolved.

The Convention's Journal was published by J. Spooner in Burlington in 1822.



## The 1827 Council of Censors

The Council convened at the State House in Montpelier on June 6, 1827, staying in session until June 8. It reconvened at the Court House in Montpelier on October 15, the legislature being in session. It adjourned on October 25 and met for the last time in Burlington, probably at the Court House, on November 26-31.

The era of good feelings in which the previous Council had met was showing signs of strain. The 1824 presidential election was thrown into the U.S. House, where John Quincy Adams was selected over Andrew Jackson, who had garnered more electoral votes. The national split reverberated in Vermont as the National Republican coalition started coming apart. The departure of leaders such as C. P. Van Ness and William Czar Bradley from the coalition marked the beginnings of another period of political strife.

There was a general prosperity, as Vermont farms grew larger and wool began to re-emerge as a leading Vermont product. Some of Vermont's larger towns and villages also experienced manufacturing and commercial success. The towns promoted, and competed for, canals and other transportation and marketing advantages. Vermont business interests, particularly those connected to the wool industry, became strong supporters of protective tariffs.

The reform movements continued to develop and by the end of the septenary were showing signs of greater organizational skills. For example, the formation of a American Society for the Promotion of Temperance in 1826 in Boston lead to the creation of the Vermont Society for the Promotion of Temperance in 1828. Drunkenness received increasing attention, with wide circulation of stories of drunken rowdiness among laborers and at militia musters, house raisings, and other social events.

Vermont's prosperity was not uniform. Farms, for example, were increasing in size more rapidly then in number. Farm land cost more, further restricting opportunities for those who wanted to start farms. It was also becoming more difficult to start and own your own commercial and manufacturing concern, partly because of greater competition spawned by improved transportation and marketing networks.

Nor was commercial success equal among Vermont municipalities. Rivalries among towns spilled over into the legislature. In 1826, when some Connecticut River towns sought to incorporate a steamboat company, towns excluded from the projected steamboat service attempted to block passage of the charter.

Such battles led some of the more prosperous--and more populous--towns to promote population-based apportionment for the legislature. These plans drew the ire of proponents from smaller communities who were competing for the same economic prizes. Ebenezer Eaton, editor of the Danville *North Star*, argued that the smaller towns needed an equal legislative voice to protect Vermont "from that spirit of monied, aristocratical, monopolizing corporation mania, which so often discovers itself in populous, speculating, commercial towns."

*Note on text:* The text is from the 1828 of the Journal of the Council of

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<sup>1</sup>Danville *North Star*, March 13, 1827 as quoted in Roth, *The Democratic Dilemma*, 140.



Censors by E.P. Walton of Montpelier.

Journal  
of the  
Council of Censors

At Their Sessions at  
Montpelier and Burlington,  
In June, October, and November,  
1827.

The Council of Censors, elected on the last Wednesday of March, A.D. 1827,<sup>1</sup> assembled at the state house in Montpelier on the first Wednesday of June, being the sixth day of said month, in the year of our Lord 1827, and of the independence of the United States, the fifty-first;--when the following named persons appeared, produced their credentials, and took their seats, to wit:

ASA AIKENS,  
WILLIAM A. GRISWOLD,  
DANIEL KELLOGG,  
JOHN W. DANA,  
JEDEDIAH H. HARRIS,  
OBADIAH NOBLE, junior,  
WILLIAM GATES,  
WILLIAM HOWE,  
EZEKIEL P. WALTON,  
BATES TURNER.

The Council being called to order, the Hon. ASA AIKENS was elected President, and DANIEL KELLOGG, Secretary.

Mr. GRISWOLD, on motion, introduced the following resolution:

"*Resolved*, That the Rev. Chester Wright be requested to attend this Council, as their Chaplain, during the present session, and that the meeting of the Council be opened with prayer, at nine o'clock, every morning."

Which was read and adopted.

Mr. WALTON, on motion, introduced the following resolution:

"*Resolved*, That the Sheriff of Washington county, in person or by deputy, be requested to attend this Council, during their present session."

Which was read and adopted.

Mr. GRISWOLD, on motion, introduced the following resolution:

"*Resolved*, That a committee, consisting of three persons, be appointed to report rules for the government of the Council."

Which was read and adopted.

Whereupon Messrs. GRISWOLD, NOBLE, and TURNER were

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<sup>1</sup>Laws of 1826, No. 54, 26-28.

appointed said committee.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

SAMUEL S. PHELPS, LEONARD SARGENT, and JOEL ALLEN, Esquires, severally appeared in the Council, produced their credentials, and took their seats.

The committee appointed to report rules for the government of the Council, reported the following, to wit:

#### "RULES OF THE COUNCIL OF CENSORS.

*First.*--The Council shall meet every day, (Sundays excepted) at nine o'clock in the morning and at two o'clock in the afternoon, unless otherwise specially ordered.

*Second.*--All committees shall be appointed by the President, but such appointment may, on motion of any member, be overruled by the Council, in which case the Council shall, on the nomination of a member, immediately fill the vacancy.

*Third.*--The President shall take the chair at the hour to which the Council stands adjourned, and when a quorum shall have assembled, he shall call to order and proceed to business.

*Fourth.*--No member shall absent himself from the service of the Council, unless he have leave of absence or be unable to attend.

*Fifth.*--The yeas and nays may be taken and entered upon the journal, upon the call of a member.

*Sixth.*--A motion to adjourn shall be always in order. Motions on resolutions and other subjects of deliberation shall have precedence as follows, to wit:

1st--To dismiss.

2d--To postpone to a day certain.

3d--To lie on the table.

4th--To commit.

5th--To amend.

WILLIAM A. GRISWOLD, *for committee.*"

Which was read and adopted.

Mr. GRISWOLD, on motion, introduced the following resolution:

*"Resolved,* That it is inexpedient to alter or amend the constitution of this state."

Which was read and ordered to lie upon the table, and made the order of the day for to-morrow morning.

On motion of Mr. SARGENT, *Voted,* To reconsider the vote postponing the consideration of the resolution introduced by Mr. GRISWOLD.

On motion of Mr. SARGENT, said resolution was committed to a committee of the whole.

The Council resolved itself into a committee of the whole, Mr. HOWE in the chair, when the said resolution came under consideration.

The committee of the whole rose and reported to the Council,

that it was inexpedient to pass said resolution. Whereupon the council resolved, unanimously, not to pass said resolution.

Adjourned to 9 o'clock, to-morrow morning.

**Thursday, June 7th--9 o'clock, A.M.**

The Council met pursuant to adjournment.

Mr. PHELPS, on motion, introduced the following resolution, to wit:

*"Resolved, That it is expedient so to amend the constitution of this state, as to provide for a Senate, making them a co-ordinate branch of the legislature."*

Which was read and committed to a committee of the whole.

The Council resolved itself into a committee of the whole, Mr. NOBLE in the chair, when the aforesaid resolution came under consideration. Whereupon the committee resolved to recommend to the Council the passage of said resolution.

The committee of the whole rose, and through their chairman, reported to the Council, that it was expedient to pass said resolution; whereupon the Council resolved unanimously to adopt said resolution.

The Secretary, on motion, introduced the following resolution, to wit:

*"Resolved, That a committee of three be appointed to inquire into the expediency of so amending the constitution, that no member of either branch of the legislature, shall, during the term for which he is elected a member thereof, be eligible to any judicial appointment under the authority of this state."*

Which was read and adopted, and Messrs. KELLOGG, SARGENT and HOWE, were appointed said committee.

Mr. PHELPS, on motion, introduced the following resolution:

*"Resolved, That a committee of three members be appointed, whose duty it shall be to inquire whether the right of suffrage can legally be exercised in this state by persons not owing allegiance to the government of the United States, and whether it be expedient to recommend any alteration of the constitution or existing statute on that subject."*

Which was read and passed, and Messrs. PHELPS, TURNER, and ALLEN were appointed the committee.

Mr. GRISWOLD, on motion, introduced the following resolution:

*"Resolved, That a committee of two persons be raised for the purpose of inquiring whether the twenty-sixth section of the constitution has been preserved inviolate and more particularly to inquire whether any person or persons holding any office of profit or trust under the authority of Congress, have been considered as eligible to appointments in the legislature, or whether any such persons have been permitted to hold any executive or judiciary offices under this state."*

Which was read and passed, and Messrs. GRISWOLD and WALTON were appointed the committee.

The President introduced the following resolution:

"Resolved, That in case the Council shall call a convention, it is expedient to propose so to amend the constitution, that whenever there shall appear to a Council of Censors, an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not to be clearly expressed, or of adding such as may be found necessary for the preservation of the rights and happiness of the people, the Council of Censors may propose such amendment, explanation or addition, directly to the people for their adoption, instead of calling a convention to adopt the same."

Which was read and laid upon the table.

Adjourned to 2 o'clock P.M.

#### 2 o'clock, P.M.

The Council met pursuant to adjournment.

Mr. SARGENT presented the memorial of Reuben H. Blackmer,<sup>2</sup> and the accompanying papers, which were read and laid upon the table.

Mr. SARGENT presented the memorial of Robert Willson<sup>3</sup> and others, which was read and laid upon the table.

The resolution introduced by the PRESIDENT, was called upon and referred to a committee of three members; whereupon, Messrs. PHELPS, TURNER and NOBLE were appointed said committee.

Mr. SARGENT, on motion, introduced the following resolution:

"Resolved, That a committee consisting of three, be raised whose duty it shall be to inquire, whether the constitution has been preserved inviolate in every part the last septenary, 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."

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<sup>2</sup>The content of Reuben Blackmer's petition is lost, but it related to a petition signed by Blackmer and others filed with the Legislature on October 13, 1826, asking for the repeal of an act annexing part of Mt. Tabor to Dorset, adopted during the 1825 session of the General Assembly, without the consent of Dorset. *Manuscript Vermont State Papers*, Vol. 59, 41 (Vermont State Archives). Blackmer was Dorset's representative to the House in 1823, 1824 and 1826.

<sup>3</sup>The content of Robert Willson's petition is unknown, but may have related to a petition he signed, dated October 14, 1830, for a new county. *Manuscript Vermont State Papers*, Vol. 61, 140 (Vermont State Archives). Lamoille County was finally formed in 1834.

Which was read and passed.

Committee appointed, Messrs. SARGENT, HARRIS and DANA.

Mr. GRISWOLD, on motion, introduced the following resolution:

"*Resolved*, That a committee of two persons be appointed to make inquiry, whether the public taxes have been justly laid and collected in all parts of the commonwealth."

Which was read and adopted; whereupon, Messrs. NOBLE and GATES were appointed said committee.

Mr. PHELPS, on motion, introduced the following resolution:

"*Resolved*, That a committee of three members be appointed to inquire whether any, and if any, what amendment is necessary in the constitution of this state, so far as the same relates to the judiciary department."

Which was read and adopted, and Messrs. TURNER, HARRIS and HOWE were appointed the committee.

Mr. GRISWOLD, on motion, introduced the following resolution:

"*Resolved*, That the committee raised on the subject of the levying and collection of the public taxes, be instructed also to inquire whether the public officers, appointed to collect and receive the monies due the state, have regularly accounted for the same to the proper department, and whether the laws have been duly executed in this respect."

Which was read and adopted.

The memorial of Robert Willson and others, was called up and referred to a committee to two members. Committee appointed, Messrs. KELOGG and ALLEN.

The memorial of Reuben H. Blackmer, was called up and referred to the committee raised on the resolution, introduced by Mr. SARGENT, on the 7th instant.

Adjourned to 9 o'clock to-morrow morning.

#### Friday, June 8—9 o'clock, A.M.

The Council met pursuant to adjournment.

Mr. PHELPS, on motion, was excused from serving on the committee raised on the resolution introduced by the PRESIDENT, on the seventh instant, and the PRESIDENT was appointed to fill the vacancy.

The Council, on motion of Mr. GRISWOLD, resolved to add to the committee, raised on the resolution introduced by Mr. GRISWOLD, on the seventh instant, relating to the levying and collecting of the public taxes, one member; whereupon, the PRESIDENT was appointed upon said committee.

Adjourned to the third Monday of October next, to meet at the court house in Montpelier.

Attest--DANIEL KELLOGG, Secretary.

## Second Session.

**Montpelier, Monday, October 15, 1827,****9 o'clock, A.M.**

The Council met pursuant to adjournment.

The PRESIDENT called to order, and the meeting of the Council was opened by prayer, by the Rev. Chester Wright. A quorum not appearing, the Council adjourned to 2 o'clock, P.M.

**2 o'clock, P.M.**

The Council met, pursuant to adjournment; and the Secretary being absent, E.P. WALTON was appointed, Secretary, *pro. tem.*

Mr. HARRIS, on motion, introduced the following resolution:

"Resolved, That the Sheriff of Washington county be requested to attend upon this Council, by himself or deputy, during the present session."

Which was read and passed.

Mr. SARGENT, on motion, introduced the following resolution:

"Resolved, That the Rev. Chester Wright be requested to attend, as Chaplain of this Council, during their present session."

Which was read and passed.

On motion of Mr. SARGENT, an additional member was appointed on the committee raised on the resolution introduced by Mr. KELLOGG, on the 7th June, relative to the propriety of members of either branch of the legislature, during their appointment, holding judicial offices. Mr. NOBLE appointed on the committee.

Adjourned to 9 o'clock, to-morrow morning.

**Tuesday, October 16--9 o'clock, A.M.**

The Council met pursuant to adjournment.

The following communication was received from the Secretary:

"MONTPELIER, Oct. 15, 1827.

Sir: You will please to communicate to the Council of Censors, that official duties require my attendance upon the Governor and council at the present time; and that consequently it is inconvenient for me to attend to the duties of Secretary to the Council of Censors. I therefore beg leave, sir, to resign said appointment.

I have the honor to be,

Respectfully, your ob't servant,  
DANIEL KELLOGG.<sup>4</sup>

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<sup>4</sup>Daniel Kellogg was Secretary to the Governor and Council from 1823 to 1828. If he had been a member of the Governor and Council, the Constitution would have excluded him from service on the Council. As it turned out, his duties as Secretary of the Governor and Council would take priority over his duties as the Secretary of the Council of Censors.

The Hon. ASA AIKENS, President  
of the Council of Censors."

The resignation was accepted, the Secretary excused, and E.P. WALTON was appointed Secretary.

On motion of Mr. SARGENT, the committee raised upon the resolution introduced by him on the 7th June, were discharged from the further consideration of the subject.

Mr. NOBLE, on motion, introduced the following resolution:

"Resolved, That there be a committee of three appointed, whose duty it shall be, to examine the laws passed by the legislature in the years 1821, 1822, and 1823; and also a committee of three members to take into consideration the laws passed by the legislature in the years 1824, 1825, and 1826."

Which was read and passed; and Messrs. NOBLE, HOWE, and DANA were appointed the first committee; and Messrs. SARGENT, HARRIS, and TURNER, the second.

On motion of Mr. HARRIS, the memorial of Reuben H. Blackmer was called up, and the committee to whom it was referred were discharged from any further consideration of the same; and the memorial referred to the second committee to be raised on the resolution of Mr. NOBLE. To which committee was also referred the memorial of Henry Lake,<sup>5</sup> introduced by Mr. SARGENT.

Adjourned to 2 o'clock, P.M.

#### 2 o'clock, P.M.

The Council met pursuant to adjournment.

Mr. HARRIS, on motion, introduced the following resolution:

"Resolved, That the PRESIDENT of this Council be added to the committee raised on a resolution, introduced by Mr. PHELPS, for the purpose of furnishing a draft, providing for a Senate, as a co-ordinate branch of the legislature."

Which was read and passed.

Adjourned to 9 o'clock, to-morrow morning.

#### Wednesday, October 17—9 o'clock, A.M.

The Council met pursuant to adjournment.

Messrs. DANA and GATES appeared and took their seats.

A communication from Robert B. Bates, Esquire, Speaker of the House of Representatives, conveying a copy of a resolution, inviting this Council on the floor of the House, was communicated by the PRESIDENT.

The committee to whom was referred the resolution introduced

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<sup>5</sup>Henry Lake was also interested in returning part of Mt. Tabor from Dorset. *Manuscript State Papers*, Vol. 58, 153 (Vermont State Archives). See reference to Reuben Blackmer's petition, *supra*.



by the PRESIDENT, on the 7th June last, made the following  
REPORT.

*"To the Honorable the Council of Censors, now in session:*

Your committee to whom was referred the resolution recommending an amendment to the forty-third article of the second chapter of the constitution of this state, respectfully report the following article for the consideration of the Council.

ARTICLE.--Whenever any Council of Censors shall propose any amendment, explanation, or addition to the constitution of this state, they shall propose the same directly to the people for their adoption, instead of calling a convention to adopt the same; in which case, they shall, by an ordinance to be by them promulgated for that purpose, call upon the freemen of the state qualified to vote for representatives to the General Assembly to meet at the place of the last freemen's meeting in their towns respectively, on a day and hour to be designated in such ordinance, for the purpose of voting upon the amendments which the Council of Censors shall have proposed. And 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 for such freemen's meeting.

And the Council of Censors shall, in such ordinance designate the method in which the freemen shall be supplied with ballots, the manner in which their votes shall be expressed, the time, place and manner of their return, and how and by whom the result shall be ascertained and certified to the Governor. And whom the result of such balloting shall have been certified to the Governor, or in his absence or disability to the Lieutenant Governor, he shall by proclamation make the same known to the people. And such article or articles as shall have been adopted by a majority of the freemen voting as aforesaid, he shall cause to be transcribed and certified under his hand and the seal of the State, and deposited in the office of the Secretary of State. And the Secretary of State shall record the same. And they shall thereupon become and thenceforth be a part of the constitution of this state, and, as such, binding on the inhabitants thereof forever.

All which is respectfully submitted.

A. AIKENS, *for the committee.*

October 17, 1827."

Which report was read and laid upon the table.

Adjourned to 2 o'clock, P.M.

**2 o'clock, P.M.**

The Council met pursuant to adjournment; and adjourned to 9 o'clock, tomorrow morning.

**Thursday, October 18—9 o'clock, A.M.**

The Council met pursuant to adjournment.

The committee to whom was referred the memorial of Reuben H. Blackmer, and the petition of Henry Lake, made the following

**REPORT.**

*"To the Council of Censors, now in session:*

Your committee to whom was referred the memorial of Reuben H. Blackmer, report, that the act of the legislature, passed Nov. 17, 1825, and referred to in said memorial, is not, (in the opinion of your committee) in violation of any article of the constitution of this state.<sup>6</sup>

The same committee, to whom was referred the petition of Henry Lake, upon the same subject, report, that said petition ought to be dismissed.

All which is respectfully submitted.

L. SARGENT, *for committee.*"

Which was accepted, and the report laid upon the table.

Adjourned to 2 o'clock, P.M.

**2 o'clock, P.M.**

The Council met pursuant to adjournment.

The committee to whom was referred the resolution introduced by Mr. PHELPS, raising a committee to prepare amendments to the constitution, providing for a Senate, made the following

**REPORT.**

*"To the Honorable the Council of Censors, now in session:*

Your committee to whom was referred the resolution raising a committee to prepare amendments to the constitution, providing for a Senate, respectfully report the following articles, viz:

ARTICLE 1. The most numerous branch of the legislature of this state shall hereafter be styled the House of Representatives.

ARTICLE 2. The supreme legislative powers of this state shall hereafter be exercised by a Senate and the House of Representatives. These two bodies shall together be styled "The General Assembly of the State of Vermont." Each shall have and exercise the like powers in all acts of legislation, and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared a law, without the concurrence of the other.

ARTICLE 3. The Senate shall be composed of twenty-eight Senators, to be of the freemen of the county for which they are chosen respectively, who are of the age of thirty-five years and upwards, and to be elected by the freemen of each county respectively. Each county shall be entitled to one senator, and the

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<sup>6</sup>"An act, annexing a part of the town of Mount Tabor, in the county of Rutland, to the town of Dorset, in the county of Bennington," (November 17, 1825), *Laws of 1825*, 25.

remainder of the senators shall be apportioned to the several counties in proportion to their population, according to the last census of the United States, regard always being had in the apportionment to the counties having the greatest fraction. The several counties shall, until after the next census of the United States, be entitled to elect their senators in the following proportion, to wit: Bennington county, two--Windham county, three--Rutland county, three--Windsor county, four--Addison county, two--Orange county, three--Washington county, two--Chittenden county, two--Caledonia county, two--Franklin county, two--Orleans county, one--Essex county, one--and Grand-Isle county, one. The legislature shall make a new apportionment of the senators to the several counties, after the taking of each census of the United States, always regarding the above provisions in this article.

ARTICLE 4. After the adoption of the preceding articles, the freemen of the several towns in each county shall annually give their votes for the number of senators apportioned to such county, at the same time and under the same regulations, as is now provided for the election of councillors. And the person or persons equal in number to the number of senators for such county, having the greatest number of legal votes, in his or their county respectively, shall be the senator or senators for such county. At every election of senators, after the votes shall have been taken, the constable or presiding officer, assisted by the selectmen and civil authority present, shall sort and count the said votes, and make two lists of the name of each person, with the number of votes given for each, annexed to his name; a record to which shall be made in the town clerk's office; and shall seal up such lists separately, and write on each the name of the town, and these words, "Votes for Senator," or "Votes for Senators," as the case may be, one of which lists shall be delivered by the presiding officer to the representative of said town, if any, and if none be chosen, to the representative of an adjoining town, to be transmitted to the President of the Senate, the other list the said presiding officer shall, within ten days, deliver to the clerk of the county court for the same county, and the clerk of each county court respectively, or in case of his absence or disability, the sheriff of such county, or in case of the absence or disability of both, the high bailiff of such county, on the tenth day after such election; shall publicly open, sort and count said votes, and make a record of the same, in the office of the clerk of the county court, a copy of which he shall transmit to the Senate, and shall also, on or before the first day of October (then next) transmit to the person or persons, elected, a certificate of his or their election.

SECTION 5. The Senate shall have the like powers, to decide on the election, and qualifications, and to expel any of its members, and make its own rules and appoint its own officers, as is provided in the case of the House of Representatives. A major part of the

Senators shall constitute a quorum. The Lieutenant Governor shall be President of the Senate, except when he shall exercise the office of Governor, in which case, and when the office shall be vacant, and in the absence of the Lieutenant Governor, the Senate shall appoint one of its own members, President pro. tempore.

The Lieutenant Governor when presiding in the Senate, shall have a casting vote, but no other.

SECTION 6. The Senate shall have the sole power to try all impeachments; when sitting for that purpose, they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment, shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under this state, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 7. The supreme executive power of the state shall be exercised by the Governor, or in case of his absence or disability, by the Lieutenant Governor, who shall exercise all the powers vested in, and perform all the duties, enjoined upon the Governor and Council by the eleventh section of the second chapter of the constitution, except he shall not sit as a judge, to hear and determine on any impeachment, nor grant reprieve or pardon, in any such case, nor shall he command the forces of the state in person, unless on the advice and consent of the Senate, and then only so long as it shall approve thereof. The Governor may have a Secretary of civil and military affairs, whom he may appoint (*de bene placito*<sup>7</sup>) whose services he may at all times command, and for whose compensation, provision shall be made by law.

SECTION 8. The votes for Governor, Lieutenant Governor and Treasurer of the state shall be sorted and counted, and the result declared, by a committee appointed by the Senate and House of Representatives. If at any time, there shall be no due election by the freemen, of Governor, Lieutenant Governor or Treasurer of the state, the Senate, with the House of Representatives, shall by a joint ballot, elect to the office of Governor, Lieutenant Governor or Treasurer of the state as the case may be, one of the three candidates for those offices respectively, for whom the greatest number of votes shall have been returned.

SECTION 9. The Secretary of state, and all officers who under the existing provisions of the constitution are elected by the House of Representatives and Council, shall hereafter be elected by the Senate and House of Representatives, in joint committee, at which

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<sup>7</sup>To serve at his pleasure.

the Governor, or in his absence or disability, the Lieutenant Governor shall preside, and the presiding officer of any such committee shall have a casting vote and no other.

ASA AIKENS, *for the committee.*

October 18, 1827."

Which on motion of Mr. HARRIS, was referred to the committee of the whole, Mr. HOWE in the chair.

*In committee of the whole, October 18, 1827.*

The several articles of amendment were read, article by article.

Mr. NOBLE moved to amend the second article by adding the following:

"*Provided*, That all bills for raising revenue, shall originate in the House of Representatives."

Which proposal of amendment was laid upon the table.

On motion of Mr. HARRIS, the third article was amended by erasing the word "*five*."

On motion of Mr. TURNER, the third article was further amended by inserting the words, "*and no more*" immediately after the word Senators in the second line.

After further investigation and discussion, the articles were severally laid on the table, when, on motion of Mr. GRISWOLD, the committee rose, reported progress and obtained leave to sit again.

Mr. HARRIS, on motion, introduced the following resolution:

"*Resolved*, That the Secretary of this Council be directed to procure the printing of fifteen copies of the draft, reported by the committee, raised upon the resolution introduced by Mr. PHELPS, providing for a Senate as a co-ordinate branch of the legislature, for the use of this Council."

Which was read and passed.

Adjourned to 9 o'clock to-morrow morning.

#### **Friday, October 19—9 o'clock, A.M.**

The Council met pursuant to adjournment.

Mr. PHELPS appeared and took his seat as a member of the Council.

The committee, raised upon the resolution of Mr. NOBLE, to examine the laws passed in the years 1821, 1822 and 1823, made the following

#### **REPORT.**

*"In Council of Censors, 1st October, 1827.*

The committee appointed to examine the laws passed by the legislature of this state in the years 1821, 1822, and 1823, report, that the several acts passed by said legislature at their October session, 1821, for the relief of Nathan Gibbs, Nathaniel Blood, Samuel Beards, Philo Castle, Samuel Parker, Nathaniel Allen, John Law, Joseph Parker, Joel Hill, Moses Aldrich, Benjamin Boord, Jeremiah Morril, Lyman King, and Charles Preston, freeing their

bodies from arrest and imprisonment,<sup>8</sup> and the several acts of the same session, for the relief of Hubbel Mitchell, Tilley H. Cleasby, James Miner, Nathaniel Waldorn, jr., John Fry, John M. Jewett, Cyrus Clement, Moses Myers, Hozea White, Elijah Southard, Orren Kelsey, Joseph Clifford, Benjamin Heart, Samuel Carr, Curtis Kelley, jr., Warren Evans, Rufus Woodward, and Thomas Stanton, authorizing them to take the oath prescribed for poor debtors;<sup>9</sup> and the acts passed the same session, granting new trials to Silas Hathaway and Uzal Parsons and to William Strong;<sup>10</sup> and the several acts passed at the October session, 1823, for the relief of Issac Kimball, Daniel Staniford, and Alexander Campbell, authorizing them severally to appeal from the determination of commissioners upon insolvent estates,<sup>11</sup> are, in the opinion of your committee, contrary to the principles of the constitution.

O. NOBLE, jr. *for committee.*"

Which was read and accepted and laid upon the table.

Adjourned to 2 o'clock, P.M.

#### 2 o'clock, P.M.

The Council met pursuant to adjournment, when,

On motion of Mr. HARRIS, the Council resolved itself into committee of the whole, Mr. HOWE in the chair.

*In committee of the whole, October 19, 1827.*

The printed report of proposals of amendment to the constitution being under consideration, several propositions of amendment to the report were made and severally discussed, when the committee rose, reported, and, on motion of Mr. NOBLE, were discharged from further consideration of the articles of amendment.

Mr. NOBLE, on motion, introduced to the Council the following amendment to the second article:

"*Provided*, That all bills for raising revenue, shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills."

Which was read and passed, and the report, on motion of Mr. PHELPS, was laid upon the table.

On motion of Mr. TURNER, a member was added to the committee raised on the resolution of Mr. KELLOGG, relative the constitutional right of members of the legislature to hold judicial

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<sup>8</sup>For Gibbs to Preston, see *Laws of 1821*, Chapters 32-45, 130-8.

<sup>9</sup>For Mitchell through Stanton, see *Laws of 1821*, Chapters 46-63, 138-47.

<sup>10</sup>For Hathaway, Piersons (Parsons) and Strong, see *Laws of 1821*, Chapters 113 and 114, 201-2.

<sup>11</sup>For Kimball, Staniford and Campbell, see *Laws of 1823*, Chapters 70, 71 and 72, 88-89.

offices; and Mr. GRISWOLD was appointed on the committee.

Adjourned to 9 o'clock, to-morrow morning.

**Saturday, October 20— 9 o'clock, A.M.**

The Council met pursuant to adjournment.

The committee raised on the resolution of Mr. GRISWOLD, to inquire whether the twenty-sixth section of the constitution has been preserved inviolate, made the following

**REPORT.**

"OCTOBER 20, 1827.

*To the Honorable Council of Censors, now in session:*

Your committee, to whom the consideration of the said resolution was referred, report, that sundry persons holding offices of profit and trust, under the authority of Congress, have been, for several years past, permitted to hold seats as members of the legislature of this state, and also that in sundry instances like persons have been appointed to, and have exercised judicial offices under the authority of this state, at the same time exercising and performing the duties of offices of profit and trust under the authority of Congress;—and are therefore of opinion that the twenty-sixth section of the constitution has been, in this respect, violated.

WM. A. GRISWOLD,<sup>12</sup> *for committee.*"

Which was read and accepted, and laid upon the table.

The committee raised upon the resolution of Mr. KELLOGG, to inquire into the expediency of amending the constitution, made the following

**REPORT.**

*"To the Council of Censors, now in session:*

Your committee, raised on the resolution introduced by Mr. KELLOGG on the 7th of June last, with instructions to inquire into the expediency of so amending the constitution that no member of either branch of the legislature shall, during the term for which he is elected, be eligible to any judicial appointment under the authority of this state, do report, that it is inexpedient to make any alteration in the constitution on that subject.

L. SARGENT, *Chairman.*"

Which was read and accepted.

The report of the committee raised on the resolution introduced by Mr. GRISWOLD, was called up, and, on motion of Mr. PHELPS, was recommitted to the committee, with instructions to report the facts.

The committee raised on the resolution of Mr. PHELPS, to inquire whether any, and if any, what amendment is necessary in the

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<sup>12</sup>William Griswold served as U.S. District Attorney from 1821 to 1828.

constitution of this state, so far as relates to the judiciary department, made REPORT--"That it is inexpedient to make any alteration in the same;" which was read and accepted.

The report of the committee to whom was referred the memorial of Reuben H. Blackmer, and the memorial of Henry Lake, was called up, and the memorialists had leave to withdraw their memorials.

The report of the committee raised on the resolution of Mr. PHELPS, providing for a Senate, was called up, when,

On motion of Mr. NOBLE, the Council resolved itself into committee of the whole, Mr. HOWE in the chair.

*In committee of the whole, October 20, 1827.*

The committee of the whole took into consideration the report of the committee, proposing sundry amendments to the constitution, providing for a Senate,--and after discussion, rose, reported progress and obtained leave to sit again; and the opening of the Council at 2 o'clock, P.M. was assigned by the PRESIDENT as the hour of its session.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The second committee raised on the resolution of Mr. NOBLE, made the following

### REPORT.

*"To the Council of Censors, now in session:*

The second committee raised on the resolution of Mr. NOBLE, report, that they have attended to the duties required by said resolution, and on inspection of the proceedings of the legislature, your committee find an act, passed Nov. 18, 1824, entitled "An act authorizing the supreme court to sustain the petition of Truman Chittenden, for a new trial;"<sup>13</sup> which act, in the opinion of your committee, is in violation of the constitution of this state. On recurring to the proceedings of the legislature of 1826, your committee find, with regret, that an unfortunate controversy then existed, and, as your committee learn, still exists, between the Executive Council and the House of Representatives, touching the respective powers of these two branches of government, in their acts of legislation.

The first proceeding which has drawn the attention of your committee, relates to a bill entitled, "An act to repeal part of an act therein mentioned," passed by the House of Representatives in 1825,<sup>14</sup> sent to the Governor and Council and by that body

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<sup>13</sup>*Laws of 1824*, Chapter 76, 116.

<sup>14</sup>*Assembly Journal* 1825, 165.



suspended until the session of 1826.<sup>15</sup> At the session of 1826 the House of Representatives re-passed the said bill and declared the same to be a law, without the concurrence of the Governor and Council.<sup>16</sup> On the 25th October 1826, the Governor and Council adopted a resolution declaring the said proceedings of the House to be an assumption of power, unprecedented and unwarranted by the constitution.<sup>17</sup> On the 8th November following, a resolution passed the House asserting the right of that body to pass suspended bills into laws, at a subsequent session.<sup>18</sup> On the 11th November, 1826, the Governor and Council passed a resolution directing their Secretary to keep suspended bills in his possession, subject to the order of the Governor and Council at their then next session.<sup>19</sup>

On recurring to the constitution under which the two branches of

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<sup>15</sup>*Governor and Council* VII, 196.

<sup>16</sup>*Assembly Journal* 1826, 51. On October 23, 1826, the bill was "read the third time and passed; and said bill has become a law."

<sup>17</sup>*Governor and Council* VII, 225. "Resolved that the late act of the House of representatives, in declaring a bill entitled 'An act repealing part of an act therein mentioned,' to have become a law, without the concurrence of the Gov. and Council, is an assumption of power unprecedented and unwarranted by the constitution." This resolution was read and laid on the table, and not adopted, as the Censors Journal explains.

<sup>18</sup>*Assembly Journal* 1826, 142-3, 153-5, and 162. The resolution, "That the house of representatives do possess the constitutional power to pass a bill into a law, without the concurrence of the governor and council, which has originated in the house, and been suspended by the governor and council," was finally adopted by the House on November 14, 1826, by a vote of 144 to 22.

<sup>19</sup>*Governor and Council* VII, 245. The House responded to this resolution by appointing a select committee to consider its next move. "The committee are at a loss to conjecture what course the governor and council propose to take in relation to such bills, at the next session. They cannot for a moment entertain the belief, that it is their intention to withhold them, altogether, from the house. Such a step would disclose an intrepidity in the acquisition of power, not to be presumed; and should they return them early in the next session, it is, perhaps, of little consequence in whose hands they are kept during the intermediate time.

"Should, however, the governor and council persist in the resolution they have adopted, to the prejudice of the powers of the house, the committee would have no difficulty in pointing out a mode which would enable the house to keep its papers under its safe control. Presuming, however, that farther consideration will induce the governor and council to recede from the step they have taken, they have come to the conclusion to report, that, in their opinion, it is inexpedient for the general assembly to adopt, at this time, any measure to counteract the powers assumed by the governor and council."

government claim the exercise of their respective powers, your committee are unable to express an unanimous opinion as to the rights and powers of the two branches of government, or to decide which branch have assumed or exercised other or greater powers than they are entitled to by the constitution. Your committee cannot impute any impure motives to either branch of government, or any member thereof, in the exercise of official power; but believe that the controversy between the two branches has resulted from different constructions of the inexplicit and doubtful language of the constitution, touching the powers of the two branches.<sup>20</sup>

Your committee, therefore, recommend the adoption of the following resolution:

*Resolved*, That it is inexpedient for this Council to pass any opinion or vote upon the proceedings of the legislature of 1826, until the next session of this Council.

All which is submitted, by

L. SARGENT, *for committee*."

Which was read and laid upon the table.

The hour of the session of the committee of the whole having arrived,

The Council, on motion of Mr. NOBLE, resolved itself into committee of the whole, Mr. HOWE in the chair; when the committee took up the report providing for Senate, and, having voted sundry amendments to the report, the committee rose, and through their chairman recommended the adoption of the amendments; whereupon the Council voted to adopt the amendments proposed; when,

On motion of Mr. HARRIS, the report of the committee, as amended, was laid upon the table.

Adjourned to Monday morning, 9 o'clock, A.M.

#### **Monday, October 22--9 o'clock, A.M.**

The Council met pursuant to adjournment.

The report of the committee raised on the resolution of Mr. PHELPS, providing for a Senate, was called up and read as amended, and sundry amendments proposed, when, on motion of Mr. TURNER, the report, together with the proposed amendments, was recommitted to the committee making the report.

The report of the first committee raised to examine the laws of the years 1821, 1822 and 1823, on motion, was referred to the committee to be raised to draft an address to the people. To the same committee was also referred the report of the second committee raised to examine the laws of the years 1824, 1825 and 1826.

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<sup>20</sup>At issue was the interpretation of Chapter II, Section 16 of the Constitution.

The report of the committee recommending an amendment to the constitution, providing that future amendments be submitted directly to the people, was called up and read, and, on motion, laid upon the table.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The committee to whom was recommitted the report providing for a Senate, reported the same with an amendment to the fourth article, which was accepted, and, on motion of Mr. DANA, the proposed amendment was adopted by the Council, and the report laid upon the table.

Mr. HARRIS, on motion, had leave of absence from and after tomorrow morning.

Mr. PHELPS, from the committee appointed to inquire into the constitutional right of admitting aliens to the right of suffrage, made the following

### REPORT.

*"To the Council of Censors:*

The committee who were directed to inquire whether the right of suffrage can legally be exercised in this state by persons not owing allegiance to the United States, respectfully report, that the existing provision of the constitution, defining the qualifications of a freeman, is, in the opinion of your committee, objectionable, inasmuch as it admits of two different and opposite constructions. A literal construction of the clause would certainly extend the right of suffrage indiscriminately to all who, under any circumstances, should have resided in the state one full year. The manifest impropriety and danger of such a rule, as well as its repugnancy to the provisions of the constitution of the United States, seems to require that, if the clause in question be susceptible of such a construction, it should be altered or explained. At the same time a different and more liberal mode of construction might be adopted, and one in the opinion of your committee more correct, which, depending not so much on the precise import of particular phraseology as upon general political principles and a reference to the nature and object of the provision in question, would exclude all who do not, in the strictest sense, owe allegiance to the general government of our country. But, whatever may be the true construction, it is well known that a difference of opinion has existed among those whose opinions are entitled to consideration, and that a different practice has prevailed in different parts of the state. Your committee, therefore, considering that no important provision of the constitution should be left liable to constructions so different, recommend that an explanatory clause should be proposed to be added to the twenty-first section of the plan or frame of government, of the following tenor:

*Provided*, That no person, not a native born citizen of this or some one of the United States, shall be entitled to exercise the right of suffrage, unless naturalized agreeably to the *acts of Congress*.

All which is submitted.

S.S. PHELPS, *for committee*."

Which was read and accepted, and on motion of Mr. HARRIS, laid upon the table.

Adjourned to 9 o'clock, to-morrow morning.

### **Tuesday, October 23--9 o'clock, A.M.**

The Council met pursuant to adjournment.

Mr. SARGENT, on motion, introduced the following resolution:

*"Resolved*, That a committee consisting of two be raised, whose duty it shall be to inspect the proceedings of the Legislature, now in session, and make report at the next session of this Council."

Which was read and passed, and, on motion, it was voted that the rule requiring the appointment of all committees by the PRESIDENT be dispensed with; and the PRESIDENT and Mr. KELLOGG were appointed the committee.

The report of the committee raised upon the resolution of Mr. PHELPS, providing for a Senate, was called up, when

Mr. PHELPS moved to amend the report by erasing all that part of the sixth article following the word "quorum," in the fourth line, and inserting in lieu thereof, "The President shall have a casting vote, but no other." Which proposal was read and laid upon the table.

On motion of Mr. PHELPS, *Voted*, That the Secretary be directed to procure the printing of fifty-two copies of the report, together with the amendment proposed by Mr. PHELPS to the sixth article, for the use of the Council.

The report of the committee raised on the resolution instructing an inquiry into the constitutionality of permitting aliens to exercise the right of suffrage, was called up, discussed, and on motion of Mr. GRISWOLD, was again laid upon the table.

The report of the committee to whom was referred the resolution recommending an amendment to the forty-third article of the second chapter of the constitution; which report recommended to the Council the adoption of an article of amendment to the constitution, that any future Council of Censors, whenever they shall propose any future amendments to the constitution, shall propose the same directly to the people for their adoption, instead of calling a convention; was called up, and on the question, Will the council adopt the article of amendment proposed in the report? the Council decided in the negative.

Adjourned to 2 o'clock, P.M.

### **2 o'clock, P.M.**

The Council met pursuant to adjournment.

The report of the committee upon the subject of alienage was called up, and on motion of Mr. GRISWOLD, was laid upon the table, and the further consideration of the report referred to the next adjourned session of the Council.

The committee to whom was recommitted the report of the committee raised for the purpose of inquiring whether the twenty-sixth section of the constitution has been preserved inviolate, made the following

#### REPORT.

*"In Council of Censors, October 23, 1827.*

Your committee, to whom the report was recommitted, report the following statement of facts:--That in the year 1821, Roswell Butler, of Essex, in the county of Chittenden, being a postmaster, and Roger Enos, an inspector of the customs in the revenue department, held seats as members of the legislature of this state--That in the years 1822, 1823 and 1824, the said Roswell Butler, postmaster as aforesaid, held a seat in said legislature, and that during the same years the Hon. Israel P. Dana, then being postmaster, held and exercised the duties of the office of councillor within this state--That in the years 1825 and 1826, David M. Camp, Esq. being an inspector of customs as aforesaid, held a seat as a member of the legislature during said years, and that the said Dana still, being a postmaster, held and exercised the duties of the office of councillor as aforesaid--and that during the same year 1826, Asa Keyes, of Putney, being a postmaster, held a seat as a member of the legislature--and that in the year 1827, Seth Cushman, of Guildhall, and John Beckwith, of Sutton, being inspectors of the customs as aforesaid, and the said Cushman also a postmaster, have been returned and held seats as members of the legislature--and that David Shelden, jr., Esq. of Rupert, being a postmaster, has held and exercised the duties of the office of justice of the peace for the county of Bennington for several years past--and that during the present year, the Hon. Samuel Weed, being a postmaster, has held and exercised the duties of the office of judge of the county court for the county of Franklin.

WM. A. GRISWOLD, *for committee.*"

Which was read and laid upon the table.

The committee to whom was referred the petition of Robert Willson and others, on motion, were discharged from the further consideration of the petition, the petition was dismissed, and the petitioners had leave to withdraw their petitions.

Adjourned to 9 o'clock, to-morrow morning.

**Wednesday, October 24--9 o'clock, A.M.**

The Council met pursuant to adjournment.

Mr. GRISWOLD introduced the following resolution:

*"Resolved, as the opinion of this Council, That the twenty-sixth*

section of the constitution has, during the last septenary, been violated in this respect, to wit: That sundry persons, holding offices of profit and trust under the authority of Congress, have been considered as eligible to appointments in the legislature, and held appointments in the same; and also, that like persons, during said period, have held judicial offices under this state."

Which was read, and on motion, laid upon the table.

Mr. PHELPS, on motion, introduced the following resolution:

"*Resolved*, That an ordinance of this Council be passed, calling a convention to meet in the month of June next, to take into consideration such amendments as may be proposed for their adoption, by this Council; and that the Secretary be directed to deliver a copy of this resolution to the Hon. Speaker of the General Assembly, in order that an appropriation may be made to defray the expense of said convention."

Which was read and laid upon the table.

On motion of Mr. TURNER, the Council resolved itself into committee of the whole, for the purpose of taking into consideration the report of the committee, providing for a Senate, together with the amendment proposed by Mr. PHELPS, Mr. SARGENT in the chair.

The committee, after some time spent in investigation and discussion, rose, and through their chairman reported progress and asked leave to sit again; and 2 o'clock, P.M. was assigned by the PRESIDENT as the hour of its session.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The resolution introduced by Mr. PHELPS, for calling a convention, was called up, and, on motion of Mr. TURNER, was again laid upon the table.

The hour of the session of the committee of the whole having arrived, the Council resolved itself into committee of the whole, on the report of the committee providing for a Senate, Mr. SARGENT in the chair.

*In Committee of the whole, Oct. 26, 1827.*

After some time spent in investigation and discussion, the committee on motion, rose, reported progress and asked leave to sit again; and five o'clock this evening was assigned by the PRESIDENT, as the hour of its session.

Mr. GRISWOLD, on motion, introduced the following resolution:

"*Resolved*, That the further consideration of the amendments proposed to the constitution be postponed until the first Wednesday of March next."

Which was read, and, on motion, laid upon the table.

The resolution introduced by Mr. PHELPS, resolving to call a convention in June next, was called up, and after discussion on the

question, Will the Council adopt the first part of the resolution? the yeas and nays were called, and being taken, were

YEAS--Messrs. PHELPS and TURNER--2.

NAYS--Messrs. AIKENS, ALLEN, DANA, GATES, GRISWOLD, HOWE, NOBLE, SARGENT and WALTON--9.

So the resolution was not adopted.

The resolution introduced by Mr. GRISWOLD, resolving to postpone the further consideration of the proposed amendments to the constitution to the first Wednesday of March next, was called up, and the question, Will the Council adopt the resolution? was decided in the negative.

Mr. PHELPS, on motion, introduced the following resolution:

"Resolved, That this Council stand adjourned to the fourth Wednesday of November next, to meet at \_\_\_\_\_ in this state."

Which was read, and on motion, the blank was filled with "Burlington," and the resolution, as amended, was laid upon the table.

Adjourned to 9 o'clock, to-morrow morning.

#### Thursday, October 25--9 o'clock, A.M.

The Council met pursuant to adjournment.

The report of the committee, raised upon the resolution instituting an inquiry whether the 26th section of the constitution has been preserved inviolate during the last septenary, with the accompanying facts and resolution, was called up, and, on motion of Mr. PHELPS, was again laid upon the table.

At the suggestion of Mr. PHELPS, the resolution, in relation to an adjournment of the Council, was called up, and so amended as to read as follows:

"Resolved, That when this Council adjourns, it shall stand adjourned to the fourth Monday of November next, to meet at Burlington in this state."

Which resolution as amended, was laid upon the table.

Adjourned to 2 o'clock, P.M.

#### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The report of the committee, appointed to inquire whether the 26th section of the constitution has been preserved inviolate during the last septenary, was called up, when

Mr. TURNER moved that the further consideration of the report and accompanying resolution be referred to the next session of the Council, whereupon the yeas and nays were called, and being taken, were,

YEAS--Messrs. AIKEN, ALLEN, DANA, GATES, HOWE; NOBLE, PHELPS, SARGENT and TURNER--9.

NAYS--Messrs. GRISWOLD and WALTON--2.

So the motion prevailed, and the further consideration of the report, with the accompanying facts and resolution, was referred to the next session of the Council.

On motion of Mr. HOWE, the Council resolved itself into committee of the whole, on the report of the committee proposing amendments to the constitution, Mr. GRISWOLD in the chair.

The committee of the whole took up the report, and after the disposal of sundry motions to amend, the committee rose, reported progress, and asked leave to sit again. Leave to sit being granted, 9 o'clock to-morrow morning was assigned as the hour of its session.

Adjourned to 9 o'clock, to-morrow morning.

### Friday, October 26—9 o'clock, A.M.

The Council met pursuant to adjournment.

On motion of Mr. TURNER, the Council resolved itself into committee of the whole, on the report of the committee, proposing articles of amendment to the constitution, Mr. GRISWOLD in the chair.

*In committee of the whole, October 26, 1827.*

Mr. AIKENS moved an amendment to the 8th article, which was adopted. Whereupon the committee rose, and through their chairman recommended to the Council the adoption of the amendment proposed to the 8th article; and the Council, concurring in the recommendation of the committee of the whole, adopted the amendment.

On motion of Mr. PHELPS, the further consideration of the report of the committee was referred to the next session of the Council.

Mr. PHELPS introduced the following resolution:

*"Resolved*, That a committee of three persons be appointed whose duty it shall be, to draft an address to the freemen of this state, upon the several subjects acted upon by this Council."

Which was read and passed. Committee appointed, Messrs. PHELPS, GRISWOLD and NOBLE. The PRESIDENT was added to the committee by nomination and vote of the Council.

Voted, That the Secretary be requested to make up the debenture of the Council, and that the President and Secretary certify the same.

The Council adjourned to meet again at Burlington, in this state, on the 4th Monday of November next.

E.P. WALTON, *Secretary*.

### Third Session.

Burlington, Monday, November 26, 1827,  
9 o'clock, P.M.

The Council met pursuant to adjournment.



The PRESIDENT took the chair, and called the Council to order, when the following members appeared and took their seats, to wit: Mr. AIKENS, President--Messrs. GRISWOLD, KELLOGG, NOBLE and PHELPS.

On motion of Mr. KELLOGG, the Council proceeded to the appointment of a Secretary, *pro tem*. Whereupon Mr. KELLOGG was nominated and appointed.

Mr. GRISWOLD introduced the following resolution:

"Resolved, That the Rev. Reuben Smith be requested to attend upon this Council as chaplain, during the present session."

Which was read and passed.

Mr. GRISWOLD introduced the following resolution:

"Resolved, That the Sheriff of Chittenden county be requested to furnish an officer to attend upon the Council, during the present session."

Which was read and passed.

Adjourned to 9 o'clock, to-morrow morning.

DANIEL KELLOGG, *Sec. pro tem*.

#### Tuesday, November 27--9 o'clock, A.M.

The Council met pursuant to adjournment.

Messrs. HARRIS, GATES, HOWE, WALTON and ALLEN appeared and took their seats.

The journals of the Council, from the commencement of its first session, were read.

On motion of Mr. PHELPS a committee of two members was appointed to report the unfinished business of the last session. Committee appointed, Messrs. WALTON and KELLOGG.

The resolution, reported by the committee, instructed to inquire whether the 26th section of the constitution has been preserved inviolate, was called up, and on motion of Mr. KELLOGG, was laid upon the table.

Mr. PHELPS introduced the following resolution:

"Resolved, That the Secretary be directed to procure from the Clerk of the House of Representatives a copy of any resolution of that House, within the last septenary, relative to the right of persons holding offices under the authority of Congress, to seats in that House."

Which was read and passed.

Mr. KELLOGG introduced the following resolution:

"Resolved, That a committee of three members of this Council be appointed, with instructions to report an amendment to the proposition now before the Council, creating a Senate in lieu of the Executive Council, providing that all bills that shall have passed the House of Representatives and Senate, shall, before they become

laws, be laid before the governor for his examination and approval; and if the Governor shall not approve of such bill, he shall have power to return the same to the House of legislation in which it originated, with his objections in writing--and if such bill shall afterwards be passed by the two houses of legislation, the same shall become a law."

Which was read, and laid upon the table. Committee appointed, Messrs. KELLOGG, PHELPS and HARRIS.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The committee appointed to report the unfinished business of last session, made the following

#### REPORT.

*"To the Council of Censors, now sitting:*

The committee appointed to report the unfinished business of the Council, report the accompanying list as containing all the unfinished business of the Council, as appears by their journal.

#### LIST OF UNFINISHED BUSINESS.

1. Report of the committee, submitting articles of amendment to the constitution.
2. Report of the first committee, appointed to examine the laws of 1821.
3. Report of the second committee, appointed to examine the laws of 1824.
4. Report of the committee on the subject of alienage.
5. Report of the committee, in relation to the twenty-sixth section of the constitution.
6. The resolution, raising a committee to make inquiry as to the levying and collecting taxes and the disposal of public monies.
7. The resolution, raising a committee to examine the laws of 1827.
8. The resolution, raising a committee to draft an address to the freemen, upon the subjects acted upon by the Council.

Which is respectfully submitted.

E. P. WALTON, *for committee.*

*In Council of Censors, Nov. 27, 1827."*

The report of the committee, on the subject of alienage, was read and recommitteed to the committee, with instructions to report an explanatory clause to the twenty-first section of the plan or frame of government.

The articles of proposed amendment to the constitution were called up, read article by article; and the *first, second, fifth, seventh, eighth, ninth* and *tenth* articles, adopted.

The third article was amended by transposing the last sentence from the close of the article, and inserting it in the sixth line, immediately after the word "fraction," and adopted, as amended.

Voted to pass over the fourth article, and to amend the sixth article by inserting the words "*or disability*" immediately following the word "*absence*," in the sixth line; which article, as amended, was adopted, when,

On motion of Mr. PHELPS, the word "article," at the commencement of each paragraph was erased and the word "section" inserted in lieu thereof, and the proposals of amendment as amended and passed, were laid upon the table.

The committee to whom was recommitted the report, on the inquiry whether the right of suffrage can legally be exercised in this state by persons not owing allegiance to the United States, made report of the following resolution:

"*Resolved*, That the following amendment be proposed to the people of this state, to be annexed, to the twenty-first section of the plan or frame of government:--

*Provided*, That no person, not a native born citizen of this, or some one of the United States, shall be entitled to the right of suffrage, unless naturalized agreeably to the acts of Congress.

Which is submitted.

S. S. PHELPS, *for the committee*."

Which was read and laid upon the table.

Adjourned to 9 o'clock, to-morrow morning.

### Wednesday, November 28—9 o'clock, A.M.

The Council met pursuant to adjournment.

Messrs. DANA and SARGENT appeared and took their seats.

The report of the committee to whom was recommitted the report on the subject of the right of suffrage by aliens, was called up, and the resolution reported by the committee amended, by erasing all that part of the resolution, immediately following the word "state," in the second line, and inserting the following substitute, offered by Mr. KELLOGG, viz:

"No person, who is not already a freeman of this state, shall be entitled to exercise the privileges of a freeman, unless he be a natural born citizen of this, or some one of the United States, or until he shall have been naturalized agreeably to the acts of Congress."

The committee to whom was referred the resolution instituting an inquiry whether the public taxes have been justly laid and collected, made "REPORT--That, on examination, they do not find any thing which shows that the public taxes have not been justly levied and promptly collected, in all parts of the state, for the last seven years; and that there is nothing, in this respect, which requires the censure of the Council of Censors.

Which is submitted.

O. NOBLE, jr. *for committee*.

*Burlington, Nov. 28, 1827.*"

Which was read and accepted, and referred to the committee

raised to draft an address to the freemen.

The committee to whom was referred the resolution instituting an inquiry whether public officers, appointed to collect and receive the public monies, due the state, have regularly accounted for the same, made "REPORT--That, on examination, they so not find any defalcation of public officers, requiring the animadversion of this council.

Which is submitted.

O. NOBLE, jr. *for committee.*"

Which was read and referred to the committee raised to draft an address to the freemen.

On motion of Mr. PHELPS, a committee of three members was raised, to examine, and prepare the journals for publication. Committee appointed, Messrs. WALTON, KELLOGG, and GRISWOLD.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The committee to whom was referred the resolution introduced by Mr. KELLOGG, on the 27th instant, made a report, which was read and accepted, and the accompanying resolution adopted:

"*Resolved*, That the following amendment be proposed to the people to be added to the constitution of this state, to wit:--

Every bill, which shall have passed the House of Representatives and Senate, shall, before it becomes a law, be presented to the Governor; if he approve he shall sign it; but if not, he shall return it, with his objections in writing, to that House in which it shall have originated, who shall proceed to reconsider it. If, after such reconsideration, a majority of the House shall pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved, by a majority of that house, it shall become a law. If any bill shall not be returned by the Governor within five days after it shall have been presented to him, or before the rising of the General Assembly, the same shall become a law.

Which is submitted.

D. KELLOGG, *for committee.*"

Mr. GRISWOLD introduced the following section in addition to the above:

"Every order, resolution, or vote, to which the concurrence of both houses may be necessary, (except on a question of adjournment,) shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by a majority of both houses, according to the rules and limitations prescribed in case of a bill."

Which was read, and on the question, Will the Council adopt the amendment proposed? the yeas and nays being called and taken, were

YEAS--Messrs. AIKENS, GRISWOLD and HOWE--3.

NAYS--Messrs. ALLEN, DANA, GATES, HARRIS, KELLOGG, NOBLE, PHELPS, SARGENT and WALTON--9.

So the motion did not prevail, and the proposed amendment was rejected.

The committee appointed to examine the laws passed at the last session of the General Assembly, made the following

#### REPORT.

*"To the Council of Censors, now in session:*

The committee appointed to examine the proceedings of the legislature at their session in 1827, report, that they have performed the duty assigned them, by examining the acts of the last session, so far as an opportunity has been afforded them, and they are not aware of any law having been passed by the legislature at that session, requiring the animadversion of this Council.

Which is submitted.

A. AIKENS, *for committee.*"

Which was read and accepted, and referred to the committee raised to draft an address to the freemen.

Adjourned to 9 o'clock, to-morrow morning.

#### Thursday, November 29--9 o'clock, A.M.

The Council met pursuant to adjournment.

The report of the committee, proposing amendments to the constitution, providing for a Senate, was called up, and sundry amendments passed, when the Council, by an unanimous vote, adopted the articles submitted in the report, as follows:

##### ARTICLE 1.

SECTION 1. The most numerous branch of the legislature of this state shall hereafter be styled the House of Representatives.

SECTION 2. The supreme legislative powers of this state shall hereafter be exercised by a Senate and the House of Representatives. These two bodies shall together be styled "the General Assembly of the State of Vermont." Each shall have and exercise the like powers in all acts of legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared a law, without the concurrence of the other. Provided, That all bills for raising revenue, shall originate in the House of Representatives; but the Senate may propose, or concur with amendments as on other bills.

SECTION 3. The Senate shall be composed of twenty-eight Senators, and no more, to be elected by the freemen of each county respectively. The Senators shall be apportioned to the several counties, in proportion to their population, according to the last census, next before each apportionment. Provided, That each county shall have at least one Senator; regard always being had, in

the apportionment, to the counties having the greatest fraction. The legislature shall, immediately after the taking of each census of the United States, make a new apportionment of the Senators to the several counties, (agreeably thereto,) or to such other census as may be taken under the authority of this state--always regarding the above provisions in this section. The several counties shall, until after the next census of the United States, be entitled to elect their Senators in the following proportion, to wit: Bennington county, *two*--Windham county, *three*--Rutland county, *three*--Windsor county, *four*--Addison county, *two*--Orange county, *three*--Washington county, *two*--Chittenden county, *two*--Caledonia county, *two*--Franklin county, *two*--Orleans county, *one*--Essex county, *one*--and Grand Isle county, *one*.

SECTION 4. After the adoption of this article, the freemen of the several towns in each county, shall, annually, on the first Tuesday of September, vote by ballot for the number of Senators apportioned to such county. And the person, or persons, equal in number to the number of Senators for such county, having the greatest number of legal votes in his or their county respectively, shall be the Senator or Senators for such county, whose term of office shall commence and expire at the same time with that of the members of the House of Representatives. At every election of Senators, after the votes shall have been taken, the constable or presiding officer, assisted by the selectmen and civil authority present, shall sort and count the said votes, and make and certify two lists of the name of each person, with the number of votes given for each annexed to his name; a record of which shall be made in the town clerk's office; and shall seal up such lists separately, and write on each the name of the town, and these words, "Votes for Senator," or, "Votes for Senators," as the case may be; one of which lists shall be delivered by the presiding officer to the representative of said town, if any, and if none be chosen, to the representative of an adjoining town, to be transmitted to the President of the Senate; the other list, together with the said ballots, the said presiding officer shall, within ten days, deposit in the office of the clerk of the county court for the same county, and the clerk of each county court respectively, or in case of his absence or disability, the sheriff of such county, or in case of the absence or disability of both, the high bailiff of such county, on the tenth day after such election, shall publicly open, sort and count said votes, and make a record of the same, in the office of the clerk of the county court, a copy of which he shall transmit to the Senate; and shall also, on or before the first day of October (then) next, transmit to the person or persons elected, a certificate of his or their election. Provided, however, and it is hereby further ordained and declared, that the General Assembly shall have power to regulate by law the mode of balloting for Senators within the several counties, and to prescribe the means and manner by which the result of the

balloting shall be ascertained, and through which the Senators chosen shall be certified of their election. But they shall not have power to apportion the Senators to the several counties, otherwise than according to the population thereof, agreeably to the provisions herein before ordained.

SECTION 5. No person shall be a Senator, who has not attained the age of thirty years, and been two years an inhabitant of this state, the last of which he shall have resided in the county for which he is elected. And the Senators shall be under the same restrictions, prohibitions and disabilities, that the Councillors now are by the nineteenth and twenty-sixth sections of the second chapter of the constitution of this state.

SECTION 6. The Senate shall have the like powers, to decide on the election, and qualifications, and to expel any of its members, and to make its own rules, and appoint its own officers, as is provided in the case of the House of Representatives. A major part of the Senators shall constitute a quorum. The Lieutenant Governor shall be President of the Senate, except when he shall exercise the office of Governor, in which case, and when the office shall be vacant, and in the absence or disability of the Lieutenant Governor, the Senate shall appoint one of its own members President pro tempore. The Lieutenant Governor, when presiding in the Senate, shall have a casting vote, but no other.

SECTION 7. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment, shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under this state. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 8. The supreme executive power of the state shall be exercised by the Governor, "or in case of his absence or disability, by the Lieutenant Governor," who shall exercise all the powers vested in, and perform all the duties enjoined upon the Governor and Council by the eleventh and twenty-seventh sections of the second chapter of the constitution, except he shall not sit as a Judge, to hear and determine on any impeachment, nor shall he, without the advice and consent of the Senate, grant pardons, or remit fines, lay embargoes, or prohibit the exportation of any commodity. Neither shall he command the forces of the state in person, unless on the advice and consent of the Senate, and then only so long as it shall approve thereof. The Governor may have a Secretary of civil and military affairs, whom he may appoint during pleasure, whose services he may at all times command, and for whose compensation provision shall be made by law.

SECTION 9. The votes for Governor, Lieutenant Governor, and Treasurer of the state, shall be sorted and counted, and the result declared, by a committee appointed by the Senate and House of Representatives. If, at any time, there shall be no due election by the freemen of Governor, Lieutenant Governor or Treasurer of the state, the Senate, with the House of Representatives, shall by a joint ballot, elect to the office of Governor, Lieutenant Governor or Treasurer of the state, as the case may be, one of the three candidates for those offices respectively for whom the greatest number of votes shall have been returned.

SECTION 10. The Secretary of State, and all officers who, under the existing provisions of the constitution, are elected by the House of Representatives and Council, shall hereafter be elected by the Senate and House of Representatives, in joint committee, at which, the Governor, or in his absence or disability, the Lieutenant Governor shall preside; and the presiding officer of any such committee shall have a casting vote, and no other.

#### ARTICLE 2.

Every bill, which shall have passed the House of Representatives and Senate, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections in writing, to that house in which it shall have originated, who shall proceed to re-consider it. If, after such re-consideration, a majority of the house shall pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered, and if approved by a majority of that house, it shall become a law. If any bill shall not be returned by the Governor, within five days after it shall have been presented to him, or before the rising of the General Assembly, the same shall become a law.

#### ARTICLE 3.

No person, who is not already a freeman of this state, shall be entitled to exercise the privileges of a freeman, unless he be a natural born citizen of this or some one of the United States, or until he shall have been naturalized agreeably to the acts of Congress.

Which was referred to the committee raised to draft an address to the freemen.

Mr. SARGENT introduced the following resolution:

*"Resolved*, two-thirds of this Council concurring herein, That it is expedient to call a convention to meet at the state house in Montpelier, on the 26th day of June, 1828, for the purpose of taking into consideration such amendments to the constitution, as shall be proposed by this Council."

Which was read, and on the question, Will the Council pass the resolution? the yeas and nays were taken, and were,

YEAS--Messrs. AIKEN, ALLEN, DANA, GATES, GRISWOLD, HARRIS, HOWE, KELLOGG, NOBLE, PHELPS, SARGENT,



TURNER, and WALTON--13.

NAYS--none.

So the resolution was adopted, and was referred to Mr. SARGENT, to draft an ordinance.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

Mr. HARRIS introduced the following resolution:

*"Resolved, That the first, second, third, ninth, tenth, eleventh, sixteenth, nineteenth, twenty-first, twenty-fourth, twenty-sixth, twenty-seventh, and thirty-ninth sections of the second chapter of the present constitution of this state, be published with the amendments proposed by this Council, as being either altered, amended or abolished, either in whole or in part, by said proposed amendments."*

Which was read and laid upon the table.

The PRESIDENT introduced the following resolution:

*"Resolved, That the following title be prefixed to the proposed articles of amendment to the constitution of this state, to wit:--"Articles of amendment to the constitution of the state of Vermont, proposed by the Council of Censors on the 29th day of November, 1827." And that to the sections of the constitution which will be altered or superceded by the adoption of the amendments, there be prefixed the following title, to wit:--"Sections of the constitution of the state of Vermont which will be altered or superseded by the adoption of the amendments proposed by the Council of Censors."*

Which was read and adopted.

Adjourned to 6 o'clock, this evening.

### 6 o'clock, Evening.

The Council met pursuant to adjournment.

Mr. TURNER appeared and took his seat, and had leave to record his vote in favor of the resolution introduced by Mr. SARGENT, resolving that it is expedient to call a convention.

The Secretary submitted the following communication, from Timothy Merrill, Esquire, Clerk of the General Assembly, in compliance with a resolution of this Council, passed Nov. 26, 1827, to wit:

*Resolved, as the sense of this House, That any person, holding and exercising the office of postmaster, is not eligible to the office of representative, in this House; and, by the constitution of this state, is not entitled to a seat in the General Assembly.*

*In General Assembly, Oct. 22d, 1827.*

Read, and ordered to lie on the table.

*In General Assembly, Nov. 14th, 1827.*

Called up--and on the question, Shall the resolution be dismissed? the

yeas and nays were taken--yeas 23, nays 155--and the resolution passed.

STATE OF VERMONT,  
CLERK'S OFFICE, MONTPELIER, NOV. 27, 1827.

I hereby certify that the foregoing is a true copy of a resolution, passed by the General Assembly of the State of Vermont, at their October session, 1827.

T. Merrill,

*Clerk of the Gen. Assembly.*

DEAR SIR:

A resolution was, also, passed, directing the committee of elections "to inquire, if any, and how many there are, holding seats in this House, who, at the time of their election, were holding offices of profit or trust under the authority of Congress; and make report to the House."<sup>21</sup> The committee made report, in substance, that several members of the House, at the time of their election, were deputy postmasters--and stating that the office of postmaster is held under the authority of Congress, &c.; which report was concurred in, &c.

After as diligent a search as the time would permit, I have not been able to discover any resolution of the House of Representatives, during the last septenary, relative to the subject mentioned in the resolution of the Honorable Council of Censors, except as above stated.

I am, respectfully,

Your obedient serv't.

Gen. E.P. Walton.

T. Merrill.

Which was read and laid upon the table.

Mr. SARGENT made report of a draft of an ordinance; which was read and laid upon the table.

Adjourned to 9 o'clock, to-morrow morning.

#### Friday, November 30--9 o'clock, A.M.

The Council met pursuant to adjournment.

The resolution introduced by Mr. HARRIS, designating the several sections of the present constitution of Vermont which will be altered, amended or abolished by the amendments proposed by this Council, was called up and passed.

The resolution offered by Mr. GRISWOLD, on the 24th October last, and the communication of the Clerk of the General Assembly, in relation to the subject matter of the resolution, were called up, when

Mr. KELLOGG moved to amend the resolution by erasing the words, "*been considered as eligible to appointments in the legislature, and held appointments in the same,*" and inserting in lieu thereof the words, "*received and held appointments in the legislature.*" And on the question, Will the Council adopt the amendment proposed? the yeas and nays were called, and being taken, were,

YEAS--Messrs. AIKENS, ALLEN, DANA, GATES, HOWE, KELLOGG, NOBLE, AND PHELPS--8.

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<sup>21</sup> *Assembly Journal* (1827), 219.

NAYS--Messrs. GRISWOLD, HARRIS, SARGENT, and WALTON--4.

So the proposed amendment was adopted. The resolution, as amended, passed, as follows:

"*Resolved*, as the opinion of this Council, That the twenty-sixth section of the constitution has, during the last septenary, been violated in this respect, to wit: That sundry persons, holding offices of profit and trust, under the authority of Congress, have received and held appointments in the legislature; and also, that like persons, during said period, have held judicial offices under this state."

Which was referred to the committee raised to draft an address to the freemen.

The report of the committee submitting a draft of an ordinance, providing for calling a convention, was called up and adopted, in the words following:

### STATE of VERMONT.

*In Council of Censors, Nov. 29, 1827.*

THIS Council, having agreed to propose certain amendments to the constitution of this state; and having determined to call a CONVENTION to consider such amendments;--

THEREFORE, IT IS ORDERED by said Council, That a convention of the people of the state of Vermont shall meet at the state house in Montpelier, on the 26th day of June, A.D. 1828, to consider of the amendments to the constitution proposed by this Council, and to adopt the same, or such parts thereof, as the said convention shall judge will be most conducive to the good government, peace and happiness of the people of this state.

And for the purpose of electing delegates to attend said convention, the first constable, or, in his absence, the town clerk, or, in his absence, one of the selectmen of each town in this state, entitled to send a representative to the General Assembly, without further order, shall set up a notification at such place or places as shall have been appointed for notifying town meetings in such towns, at least ten days before the tenth day of June next, warning the freemen of their respective towns to meet on the tenth day of June, 1828, at one of the clock, afternoon, at the place where the last freemen's meeting was held in such town, for the purpose of electing a delegate to represent the freemen of said town in said convention--at the opening of which meeting, this order shall be publicly read.

And the first constable, or, in his absence or disability, the town clerk, or some one of the selectmen of each town, or a justice of the peace, shall preside at such meeting; whose duty it shall be, to call on the freemen of such town, from time to time, for the space of two hours, to give in their votes for such delegate; which votes shall be given and received in the same manner and under the same regulations as is by law provided in the case of electing representatives of

the General Assembly. And at the expiration of which time, the votes so taken, shall, by the said presiding officer, with the assistance of the selectmen and justices of the peace in such town, be sorted and counted; and if no person shall have a majority of all the votes, the said presiding officer shall notify the same, and again call upon the freemen, as aforesaid, giving a reasonable time only for receiving such votes, until an election shall be made.

And after an election shall have been made, as aforesaid, the presiding officer of such meeting shall deliver to the person elected, a certificate of the following tenor, to wit:

*"At a freeman's meeting warned and holden at ----, in pursuance of an order of the Council of Censors, on the 10th day of June, 1828, A.B. was elected a delegate by a majority of the freemen present, to represent the inhabitants of ----, in convention to be holden on the 26th day of June instant, for the purpose of taking into consideration certain amendments to the constitution of this state, proposed by said Council of Censors in November last.*

Given under my hand, at ----, this 10th day of June, 1828.

*C.D. First constable or presiding officer."*

Which certificate shall be a sufficient credential of such person's election.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

Mr. KELLOGG introduced the following resolution:

*"Resolved, That six hundred copies of the journal of this Council be printed; and that two hundred and sixty copies thereof be delivered to the Surveyor of the public buildings, at Montpelier, to be kept and distributed among the members of the Convention, when assembled on the 26th day of June, 1828; and that the remaining copies be delivered to the Sheriffs of the several counties, to be by them distributed as follows, to wit:--To the Governor, four copies; Lieutenant Governor, two copies; to the Secretary of State, twenty-five copies; to the Secretary of the Governor and Council, ten copies; to the late Governors, Tichenor, Galusha, Chittenden, Skinner and Van Ness, each two copies; to the Judges of the Supreme Court, each one copy; the Clerks of the several towns, each one copy; to the members of this Council each four copies; and to the Clerk of the General Assembly, ten copies."*

Which was read and passed.

Mr. GRISWOLD introduced the following resolution:

*"Resolved, That the Secretary be directed to transmit to His Excellency the Governor of this State, a certified copy of the articles of amendment proposed by this Council to the constitution, and the papers thereto subjoined; and signify to him the request of the Council, that he will cause the same to be laid before the*

Convention, when assembled at Montpelier, on the 26th day of June, A.D. 1828,"

Which was read and passed.

Mr. GRISWOLD introduced the following resolution:

"*Resolved*, That the Secretary procure six hundred copies of the address, accompanying the amendments to the constitution, to be printed, with the articles, sections and ordinance thereto annexed; and that he distribute them by mail, as follows, to wit:--To the Governor, ten copies; to the Lieutenant Governor, five copies; to the Secretaries of State and Council, to the members of the Council and House of Representatives, and Clerk of the Assembly, each one copy; to the late Governors, Tichenor, Galusha, Chittenden, Skinner, and Van Ness, each five copies, to the first Constables of the respective towns, each one copy; and to the members of the Council of Censors, each four copies.

Which was read and passed.

Adjourned to 7 o'clock, this evening.

#### 7 o'clock, Evening.

The Council met pursuant to adjournment.

The committee, raised to draft an address to the people, reported the following

#### Address.

*To the Freemen of the State of Vermont:*

The Council of Censors, chosen on the last Wednesday of March, A.D. 1827, being about to close their official labors, have thought it proper, in compliance with previous usage, to present to the public, in the form of an address, the result of their deliberations.

The duties and powers of the Council, so far as it is considered necessary to notice them on this occasion, may be classed under two heads:--

First, They are to inquire whether the constitution has been preserved inviolate, in all its parts. And

Secondly, They have power to propose such amendments to the constitution of this state as they shall deem expedient, and to call a convention of the people for their adoption.

In the prosecution of their inquiries, under the first branch of their duties, the Council have discovered, with great satisfaction, that few violations of the constitution have occurred; and that there is little in the administration of the government, in its various departments, which they find it necessary to censure.

In reviewing the history of our state, we find that no Council has been elected under our present constitution, who have not found it necessary to censure, and often in pointed terms, a departure from

the constitution, and from those principles which have ever been considered indispensable, both to the safety and permanence of our political institutions, and to the public welfare. But owing, as we believe, to the general increase of intelligence--to a more intimate and correct acquaintance on the part of the people of this state, with the theory and leading principles of their civil institutions, and, above all, to an improvement in the administration of the judiciary department, of which the state may justly boast, these instances are rapidly diminishing; and we indulge the hope, that the time will soon arrive, when little or nothing need be said, by a subsequent Council of Censors, under this branch of their inquiries.

The present Council, however, find it to be their duty to animadvert upon two particulars, in which the constitution has, in their view, been violated.

The first is attributable to a principle of legislation, in the opinion of the Council, palpably at war with the principles of our constitution, and which the Council regret to say, has been persisted in, notwithstanding the repeated animadversions of different Councils of Censors. We allude to the practice, which until very recently, has obtained in the legislature of passing acts, (for laws they cannot be termed,) exempting individuals from the operation of the general laws of the land. Of this nature are certain acts of suspension, acts granting new trials, and granting appeals, where none were allowed by law, which will be found enumerated in the journal of the Council. These acts, the Council deem unconstitutional, as they tend to exempt individuals from the general laws of the land, and also interfere, in a manner wholly unauthorized, with the proceedings of the judiciary department.<sup>22</sup> The Council however are aware, that the highest judicial tribunals have pronounced these acts to be void, and they have reason to hope that this decisive interposition of the courts, will hereafter prevent their enactment.

The other instance in which the constitution has, in our opinion, been violated, consists in the fact, that persons holding offices of profit and trust under the authority of Congress have been permitted to hold seats in the legislative body, and have been appointed to and held judiciary offices under the authority of this state. That such has been the fact, the Council are fully satisfied. At the same time it is proper to remark, that we know of no instance, in which the legislature have expressly sanctioned the procedure, and we are also aware that the General Assembly did at their last session, by an explicit resolution, declare such persons ineligible to seats in that

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<sup>22</sup>E.g., *Dupy qui tam v. Wickwire*, 1 D. Chip. 237, 238 (1814). See Introduction for a more comprehensive review of cases dealing with private acts.

house. But it must be admitted that many instances of the kind have passed unnoticed. The Council therefore feel themselves bound to express their opinion: It is, first, that the provision of the constitution is too clear and explicit to admit of doubt as it respects persons holding offices of profit and trust, created by act of Congress; and, secondly, that the reason and propriety of the provision, are too obvious, and its importance too manifest to admit of its being disregarded.

The Council deem it their duty to go further, and to say that the practice, (if such practice has obtained in the state,) of depositing a resignation of an office incompatible with a seat in the legislature, in the hands of a friend, with a view to obtain a seat in the house, and, with a view to withdraw such resignation after the session shall have terminated, is to be regarded, for the most obvious reasons, as a mere evasion of the constitution.

With these exceptions, the Council are gratified to find, that the administration of the government in all its departments, has been conducted as they believe, with a scrupulous regard to the land-marks established by the constitution, and with a purity of purpose, calculated to sustain and perpetuate our free republican system.

We are not disposed to enumerate all the various subjects of our inquiries under this head. It is sufficient to say with respect to such as are not specifically mentioned that we find nothing wrong.

The power of proposing amendments to the constitution is one with respect to which, the Council have felt great responsibility. Knowing, as we do, that the main features of our present constitution are approved by the people of the state; knowing that the state has prospered under it; that public security and private happiness have been thus far the fruits of it; that it was dangerous to unsettle foundations, and that the people were averse to doing so, we have approached this subject with extreme caution--disposed to remedy its defects, without doing violence to the fabric--to supply the deficiencies which experience may have suggested, without violating the system which experience has approved. We have found it, like every other work of human contrivance, deficient--and we have proposed such amendments, and such only, as we believe the people of this state have already discovered to be necessary.

Three propositions of amendment are submitted to the freemen. The third article relates to a subject, which has been often agitated, and has been a subject of much difficulty. Whether a person not owing allegiance to the United States, can or cannot be made a freeman under the constitution of this state, is a question which we have not known to be settled, by any authority whose decisions would extend through the state. The constitution, in the terms of it, we consider equivocal, and we are informed that different constructions of it and different practices prevail in different parts of the state.

We have thought it expedient, with a view of settling this question, to propose the annexed article. Doubting as we do whether any person can legally be made a freeman of this state, who owes no allegiance to the United States, especially as the power of naturalization, is by the constitution of the United States vested exclusively in Congress, and considering the gross impropriety of admitting those to participate in the elective franchise, who owe no allegiance to the country, we have submitted the article in its present form;--at the same time the article is so framed, that no person, now a legal freeman of the state, will be disfranchised by it.

The first article, which provides for the creation of a Senate, is the important amendment, to which the Council would call the attention of their fellow-citizens. They have been induced to make this proposition by considerations too numerous and complicated to be embodied in this address. Some few of them may perhaps be concisely stated.

They consider the division of the legislative power, between, at least two bodies, as essential to its safe exercise. And in this opinion they are fortified, as they believe, by the experience of all ages. No government, either in ancient or modern times, in which the legislative power has been vested in a single body, has endured long. We might enlarge upon this point, did the limits of this address, admit; but the subject has long since been exhausted by abler pens, and we will only add, that in this position, we consider ourselves supported, at this day, not only by the common opinion, but by the general experience of mankind.

We would also refer our fellow-citizens to the constitution of the United States, and to those of the respective states in the Union. In all of these, we believe, the legislative power is now vested in two co-ordinate branches. Many of them were originally like ours; but in every such instance time and experience have led to a change; and we have now the example of every state in the Union for the measure proposed.

It would be well, we think, that the people of Vermont should consider, whether a measure, which in every other state has been found necessary, and sooner or later adopted, be or be not worthy of their adoption.

But if reasons are necessary to show the measure expedient, or necessary here, they might be found, we believe, in every page of our political history.

We cannot go into a minute examination of this subject, but we beg leave to refer our fellow-citizens to the notorious instability, not to say fickleness of our legislation; to the continual fluctuation produced by laws, hastily, not to say inconsiderately passed, and of course necessarily altered or repealed. If an instance is wanting it may be found in the successive and rapid changes in the laws relating to the judiciary department. It is much to be regretted that,



in a subject of such common interest and general concern, so much uncertainty and embarrassment should exist. It is believed that the introduction of a co-ordinate branch into our legislature, would tend to greater stability, and, in a great measure, remedy the evils suggested.

But there is another consideration, which, with the Council, is irresistible. The unfortunate collision which has for some time existed between the Executive Council and the General Assembly, involving the respective powers of the two houses, calls loudly for the interference of the freemen.

It is a contest between two bodies, neither of which acknowledge a superior, and between whom there is no arbiter to decide.--This contest, for aught the Council can discover, must continue until the constitution is either explained or altered by competent authority. It is not believed that the people desire the continuance of this unfortunate contest. The Council of Censors have thought it their imperious duty to suggest a remedy, and in providing one, they have followed the course, which the experience of the world (so far as they are acquainted with it) has dictated.

Another consideration has not escaped us: The present Executive Council are elected by a general ticket, and it is unquestionably true, that a great majority of the freemen cast their votes for men of whom they know nothing, and for whom they vote, because their names are to be found in some newspaper as candidates for the office. This mode of election is, in the opinion of the Council, inconsistent with every principle of fair representation.

To remedy this evil we propose a Senate, to be elected in their respective counties, where the members elected, and their qualifications may be known to the freemen; where, in short, the people may know for whom they vote, and whom they trust. It is not thought proper to examine, at this time, all the details of the project submitted.

The second article proposed merely secures to the Governor the power which he already exercises as the presiding officer of the Executive Council. It is not considered expedient to deprive him of this power. At all events, he has, by the proposition, no negative to the proceedings of the legislature.

On the whole, the Council commit themselves to the candor of their fellow-citizens. They have discharged their duty, and submit the propositions, relying upon the good sense of the people for their adoption.

Which was read and unanimously adopted.

Adjourned to 9 o'clock, to-morrow morning.

#### **Saturday, November 31--9 o'clock.**

The Council met pursuant to adjournment; and there appearing no further business that required the attention of the Council of

Censors, they adjourned without day.

### Results of the 1827 Council of Censors

The Council looked into the practice of Postmasters serving in the legislature, which it found to be a violation of section 26 of the Vermont Constitution. No formal action was taken by the General Assembly, which itself had already recognized the problem. In 1975, the Vermont Supreme Court found no conflict between the offices of selectman and postmaster, concluding that postmaster is no longer a federal office, given the reorganization of that institution in 1971. "With an uncertainty in the measure of the mischief sought to be prevented, and strong dilution of the proscribed status of the old office of postmaster, the question takes on a different aspect. The constitutional provision represents a denial of a right to a citizen. If it cannot be clearly demonstrated that he falls within its proscription, or equally plainly shown that he is in violation of its purpose, he is entitled to be held free of its prohibition."<sup>23</sup>

In its review of legislation, the Council objected principally to private acts, including requests for new trials and new appeals, relief from the poor debtor's oath, and relief from arrest and imprisonment for debt. As in previous years, the Council was adamant that these kinds of acts were outside the authority of the legislature.

The Council also explored the possibility of amending the Constitution to authorize submission of proposals of amendment directly to the people, without the need for a Constitutional Convention.

The Council proposed three amendments to the Vermont Constitution. These were the creation of a Senate with twenty-eight members, the Governor's veto power, and a requirement that all freemen must be either natural born or naturalized citizens of the United States. The Council's adoption of the resolution proposing a State Senate was unusual since the vote came on the second day of the Council's session.

The Council considered, but did not formally adopt, recommendations prohibiting members of the legislature from serving in the judiciary during their terms of office.

### The 1828 Constitutional Convention

The delegates to the Constitutional Convention of 1828 were elected on June 10, 1828. The Convention met at the State House in Montpelier on June 26, elected Samuel Crafts President and Willys Lyman Secretary. There were 208 towns represented. As in previous years, the Convention read the proposed articles and address aloud, and then began to review the proposals as a committee of the whole.

The following day two resolutions were offered, one concluding that the first and second articles of amendment were inexpedient, the other that the third ought to be approved. That afternoon, a new resolution substituting for the first, resolving that it was expedient to adopt the first and second articles, was defeated by a vote of 47 to 182. The second resolution, relating to the third article, passed by a vote of 134 to 92, and a committee of two was appointed to draft an ordinance. The third resolution related to citizenship as a prerequisite to voting. One member from each county served as a committee and worked up the debentures for the members, and the Conven-

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<sup>23</sup>*Baker v. Hazen*, 133 Vt. 433, 437, 341 A.2d 707 (1975).

tion adjourned after a prayer by the Rev. Chester Wright after 5:00 p.m. on June 28.

The ordinance became the first article of amendment to the Vermont Constitution of 1793. It is now Chapter II, Section 42, having been rewritten by the 1974 amendment to the section recognizing the right of 18 year olds to vote.

The Convention's Journal was published by Wyman Spooner of Royalton in 1828.



## The 1834 Council of Censors

The Council of Censors met in Montpelier at the State House on June 4, 1834. On June 6 they adjourned, meeting again in Montpelier from October 15 to 24. The final session, which lasted from January 7-16, 1835, was held in Middlebury.

The pressures which were fermenting when the last Council met were now coming to the fore. It was not a two party system that emerged from the end of the era of good feelings. Instead three political factions contended for control--the Anti-Masons, the Jacksonian Democrats, and the National Republicans (Whigs). At the same time a host of reforms attracted followers including temperance, anti-slavery, and sabbatarianism. Interwoven into the reform and political movements was a sustained religious revival that began in the late 1820's.

The antimasonic movement traced its immediate origins to the disappearance of William Morgan of New York in 1826. Morgan was widely believed to have been murdered by Masons because he was about to divulge the secrets of the organization. For a variety of reasons the Masons, with their secret rites, came to embody a perceived threat to the Christian republicanism associated with the founding of the United States (July 4, 1826 not only marked the fiftieth anniversary of the Declaration of Independence, but was also the death date for both Thomas Jefferson and John Adams).

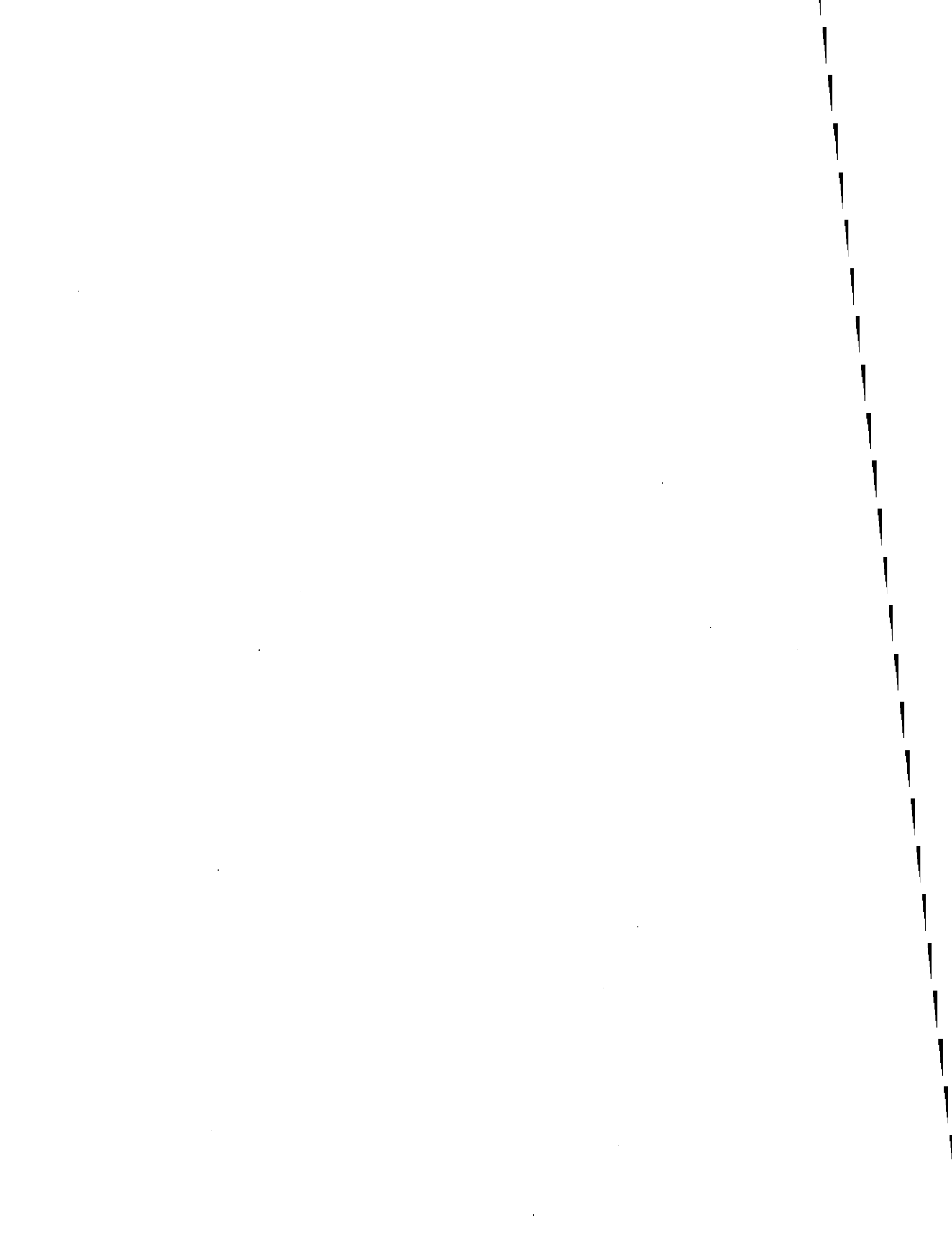
By 1828 Anti-Masons were organized in Vermont and by 1831 had captured the governorship. Their political success continued to the mid-1830's, holding both the governorship and the speakership of the house and providing the Anti-Masonic presidential candidate his only electoral votes in 1834.

This same period saw the increasing politicalization of reform movements. Some temperance leaders, for example, felt that by 1834 they had gone as far as they could go without turning to legislative mandates.

The anti-slavery movement was also becoming more political and divisive. Vermonters debated abolition, colonization, the spread of slavery into the west, and the threat of disunion inherent in the slavery debate. The stances of the national parties on slavery reflected upon their state organizations. Andrew Jackson's association with slaveholding, for example, weakened the Vermont Jacksonian party. The Anti-Masons also fell victim to suspicions about the fervor of their anti-slavery stance.

The success of the Anti-Masons in Vermont was tied, in part, to the growing sense of displacement not only by those who found it increasingly difficult to own their own farm or business, but also by those towns which were losing out in the race for commercial success. The inter-town rivalries for transportation routes and other commercial advantages continued, as did the debate over population apportionment for the General Assembly. That the Anti-Masons could capture a significant portion of the General Assembly seemed to weight the arguments of those who saw a unicameral body as too susceptible to political insurgencies. An ongoing controversy over the powers of the Executive Council vis a vis the General Assembly, particularly in terms of amending or vetoing legislation, further diminished support for Vermont's unicameral system.

*Note on text:* The text is from an 1835 edition of the Journal of the Council of Censors printed by Knapp and Jewett of Middlebury.



Journal  
of the  
Council of Censors

At their sessions holden at  
Montpelier and Middlebury  
in  
June and October 1834  
and  
January 1835

JOURNAL, &c.

THE COUNCIL OF CENSORS elected on the last Wednesday of March, A.D. 1834,<sup>1</sup> assembled at the State House in Montpelier, on the first Wednesday of June, A.D. 1834, when the following named persons appeared, produced their credentials and took their seats, to wit:--

JOEL DOOLITTLE,	Addison County
STEPHEN ROBINSON,	Bennington "
WILLIAM STRONG,	Windsor "
JOHN PHELPS,	Windham "
NATH'I HARMON,	Rutland "
JOSEPH REED,	Washington "
ALVAN FOOTE,	Chittenden "
ROBERT HARVEY,	Caledonia "
E.H. STARKWEATHER,	Orleans "
WILLIAM HEBARD,	Orange "
JOSEPH SMITH,	Franklin "

The Council being called to order, after prayer by the Rev. Chester Wright, the Hon. JOEL DOOLITTLE was chosen President pro tem., and WILLIAM HEBARD, Secretary pro tem.

Mr. FOOTE introduced the following Resolution:

*Resolved*, That the Sheriff of Washington County be, and he hereby is requested to attend the meetings of this Council by himself, or his Deputy, during its present session.

Which was read and adopted.

Mr. HARVEY introduced the following Resolution:

*Resolved*, That the Rev. Chester Wright be requested to attend this Council during its present session as Chaplain, and that the meetings of the Council be opened each day with prayer, at nine o'clock in the morning.

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<sup>1</sup>"An Act to regulate the choice of a Council of Censors," *Laws of 1833*, No. 7, 6-9.



Which was read and adopted.

Mr. FOOTE introduced the following Resolution:

*Resolved*, That a Committee of three be appointed to report Rules for the government of this Council, to be nominated by the PRESIDENT.

Which was read and adopted.

When, upon nomination of the PRESIDENT,

Messrs. FOOTE, PHELPS, and STARKWEATHER, were chosen said Committee.

Adjourned to 2 o'clock, P.M.

### 2 o'clock, P.M.

The Council met pursuant to adjournment.

The Committee raised for the purpose of reporting Rules for the government of this Council, submitted the following Report, to wit:--

1st. The Council shall meet every day, (Sundays excepted,) at nine o'clock in the morning, and at 2 o'clock,, in the afternoon, unless otherwise specially ordered.

2nd. All Committees shall be appointed by the President, but such appointment may, on motion of any member, be overruled by the Council, in which case the Council shall, on the nomination of a member, immediately fill the vacancy.

3d. The President shall take the Chair at the hour to which the Council stands adjourned, and when a quorum shall have assembled, he shall call to order and proceed to business.

4th. No member shall absent himself from the services of the Council, unless he have leave of absence, or be unable to attend.

5th. The yeas and nays may be taken and entered upon the journal, upon the call of a member.

6th. The following Committees shall be appointed, to wit:

A Committee consisting of three members, to be denominated the Legislative Committee, whose duty it shall be to take into consideration all amendments in the Legislative Department of the Constitution.

A Committee consisting of three members, to be denominated the Executive Committee, whose duty it shall be to take into consideration amendments in the Executive Department of the Constitution.

A Committee consisting of three members, whose duty it shall be to take into consideration all amendments in the Judicial Department of the Constitution, to be called the Judiciary Committee.

A Committee consisting of three members, whose duty it shall be to inquire whether the Constitution has been preserved inviolate, and the laws duly executed during the last Septenary, to be denominated the Committee on the Powers of the Constitution.

A Committee consisting of three members, whose duty it shall be to inquire whether the public taxes have been duly laid, collected, and disposed of, to be denominated the Financial Committee.

7th. A motion to adjourn shall be always in order.

8th. Motions on resolutions shall have precedence as follows; to wit:

1st.--To dismiss.

2nd.--To postpone to a day certain.

3d.--To lie on the table.

4th.--To commit.

5th.--To amend.

A. FOOTE, *for Committee.*

Which was read and accepted.

On motion, it was then

*Voted*, That the Rules contained in the foregoing Report be adopted as the Rules to govern this Council.

On motion of Mr. STARKWEATHER, the Council proceeded to choose a President and Secretary of this Council.

When the Hon. JOEL DOOLITTLE was chosen President, and WILLIAM HEBARD was chosen Secretary.

Council adjourned to 4 o'clock, P.M.

#### 4 o'clock, P.M.

The Council met pursuant to adjournment.

The PRESIDENT announced the appointment of the following Committees:

On the Committee denominated the Legislative Committee, Messrs. HARMON, STRONG and HEBARD.

On the Committee denominated the Executive Committee, Messrs. FOOTE, ROBINSON and HARVEY.

On the Committee denominated the Judiciary Committee, Messrs. PHELPS, SMITH and STARKWEATHER.

On the Committee on the Powers of the Constitution, Messrs. PHELPS, FOOTE and HARMON.

On the Committee denominated the Financial Committee, Messrs. SMITH, REED and HEBARD.

Mr. HARMON offered the following Resolution,

*Resolved*, That a Committee of five members be appointed, to be denominated a Committee of Arrangements, to propose and report such business for the consideration of the Council, as they may think proper.

Which was read and adopted.

Mr. STRONG offered certain propositions for the amendment of the Constitution, which were read and ordered to lie upon the table.

On the Resolution of Mr. HARMON,

Messrs. HARMON, PHELPS, STRONG, SMITH and STARKWEATHER were appointed a Committee.

Council adjourned to 9 o'clock to-morrow morning.

#### Thursday, June 5th, 9 o'clock, A.M.

Council met pursuant to adjournment.

The Committee of Arrangements submitted the following Report:  
"The Committee of Arrangements respectfully report for the consideration of the Council the following Resolutions:

1st. *Resolved*, That the Legislative Committee be instructed to

inquire whether it be necessary to amend the Constitution, relative to the Legislative branches thereof.

2d. *Resolved*, That the Executive Committee be instructed to inquire whether it be necessary to alter or explain the Constitution in relation to the powers of the Governor and Council, and make report thereon.

3d. That the Judiciary Committee be instructed to inquire whether it be necessary to amend the Constitution relative to the appointment and tenure of office of the Judges of the Supreme Court, and make report thereon.

4th. *Resolved*, That the Financial Committee be instructed to inquire whether the public taxes have been justly laid and collected in all parts of the State. Also, in what manner the public monies have been disposed of, and whether the laws relative to the revenue have been duly executed, and that said Committee have power to send for persons and papers and records, and make report thereon.

5th. *Resolved*, That the Committee on the Powers of the Constitution be instructed to inquire, whether the Constitution has been preserved inviolate during the last seven years, and whether the Legislative branches of the Government have performed their duties as agents of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to, and particularly whether any laws have been enacted contrary to the principles of the Constitution, and make report thereon."

N. HARMON, *for Committee*.

Which was accepted.

Adjourned to 2 o'clock, P.M.

#### 2 o'clock, P.M.

The Report of the Committee of Arrangements was called up, and the various resolutions therein were separately read and adopted.

Mr. FOOTE offered the following Resolution, to wit:

*Resolved*, That the 43d. Section of the Constitution ought so to be amended, as to provide that amendments and alterations of the Constitution, which may be proposed by the Council of Censors, shall be submitted directly to the Freemen of this State, to be, by them, adopted or rejected.

Which, on motion, was read and referred to a Select Committee of three to report to the next session of this Council.

Mr. HEBARD offered the following Resolution:

*Resolved*, That if this Council shall finally deem it expedient to call a Convention of the people, the same shall be composed of delegates chosen and appointed from the different sections of the State, as nearly as may be, in proportion to the population.

Which was read, and on, referred to a Select Committee of three, of which the PRESIDENT is to be Chairman.

On Resolution of Mr. FOOTE,  
Messrs. FOOTE, STRONG and HEBARD, were appointed a Committee.

On the Resolution of Mr. Hebard,  
The PRESIDENT, and Messrs. PHELPS and REED were appointed a Committee.

The propositions for amendments of the Constitution, offered by Mr. STRONG, were called up, and on motion, were referred to the Committee raised on the resolution of Mr. FOOTE.

The following resolution was introduced by Mr. REED.

*Resolved*, That the SECRETARY be instructed to procure to be printed fifty copies of the Journal of the proceedings of this Council of Censors, at this session, for the use of the members.

Whereupon the yeas and nays were called, and being taken, were

YEAS--Messrs. DOOLITTLE, ROBINSON, STRONG, PHELPS, HARMON, REED, FOOTE, HEBARD--8.

NAYS--Messrs. HARVEY, STARKWEATHER, SMITH--3.

So the Resolution was adopted, and the SECRETARY was instructed to procure fifty copies of the Journal of the proceedings of this Council of Censors to be printed for the use of the members.

Adjourned to 5 o'clock to-morrow morning.

#### **Friday, June 6, 5 o'clock, A.M.**

Council met pursuant to adjournment.

On motion of Mr. STRONG, the Council adjourned to meet again in Jefferson Hall<sup>2</sup> on the Wednesday next following the second Thursday of October next.

### **Second Session**

#### **of the Council of Censors.**

**Montpelier, Wednesday,  
October 15th, 1834**

The Coucil met pursuant to adjournment.

The PRESIDENT called to order. DAVID HIBBARD Jr., Esq. appeared, produced his credentials, and took his seat in the Council. A quorum not appearing, the Council adjourned to 9 o'clock to-morrow morning.

**Thursday, October 16, 1834, 9 o'clock, A.M.**

The Council met pursuant to adjournment.

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<sup>2</sup>Jefferson Hall was a room in the State House.

SAMUEL W. PORTER, Esq. appeared, produced his credentials, and took his seat in the Council.

Mr. FOOTE introduced the following Resolution:

"*Resolved*, That the Rev. Chester Wright, be requested to officiate as chaplain of the Council during its present session."

Which was read and passed.

Mr. FOOTE introduced the following Resolution:

"*Resolved*, That the Sheriff of Washington County be, and he hereby is requested, to attend the meetings of this Council, by himself or his deputy, during its present session."

Which was read and passed.

Mr. PHELPS introduced the following Resolution:

"*Resolved*, That the PRESIDENT of the Council be instructed to appoint Messrs. PORTER, and HIBBARD of this Council, absent at the first session thereof, upon such Committees then raised, as in the opinion of the PRESIDENT shall be proper."

Which was read and passed.

Whereupon Mr. HIBBARD was added to the Judiciary Committee, and also to the Committee raised on the powers of the Constitution.

And Mr. PORTER was added to the Financial Committee, and also to the Committee raised on the Resolution introduced by Mr. HEBARD on the 5th day of June last.

Mr. PHELPS introduced the following Resolution:

"*Resolved*, That this Council will hear the arguments of any gentlemen of this State, at the bar of this Council, expressing his views on any subject, within the Constitutional duties of this Board."

Which on motion was ordered to lie on the table.

Adjourned to 2 o'clock P.M.

#### Friday, October 17, 9 o'clock A.M.

Council met pursuant to adjournment.

Mr. FOOTE for the committee raised upon the Resolution for the alteration of the 43d. article of the Constitution, submitted the following Report, which on motion was accepted, and ordered to lie on the table.

*To The Hon. Council of Censors now in session:--*

Your Committee to whom was referred the resolution recommending an amendment to the 43d. Article of the 2d. Chapter of the Constitution of this State, respectfully beg leave to Report, that in their opinion, the said resolution ought to be adopted: And they further beg leave to Report for the consideration of the Council, the following article:

ARTICLE. Whenever any Council of Censors shall propose any amendment, explanation, or addition to the Constitution of this State, they shall propose the same directly to the people for their adoption, or rejection instead of calling a Convention to adopt or reject the same; in which case, they shall, by an ordinance, to be by them

promulgated for that purpose, call upon the freemen of the State, qualified to vote for Representatives to the General Assembly, to meet at the place of their last freemen's meeting, in their towns respectively, on a day and hour to be by them designated in such ordinance, for the purpose of voting upon the amendments which the Council of Censors shall have proposed. And 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 for such freemen's meeting.

And the Council of Censors shall, in such ordinance, designate the method in which the freemen shall be supplied with ballots, the manner in which their votes shall be expressed, the time, place and manner of their return, and how and by whom the result shall be ascertained and certified to the Governor.

And when the result of such balloting shall have been certified to the Governor, or in his absence, to the Lieutenant Governor, he shall by proclamation, make the same known to the people. And such Article or Articles as shall have been adopted by a majority of the freemen voting as aforesaid, he shall cause to be transcribed and certified under his hand and the seal of the State and deposited in the office of the Secretary of State; and the Secretary of State shall record the same. And they shall thereupon become and thenceforth be a part of the Constitution of this State, and as such, binding the inhabitants thereof forever.

All which is respectfully submitted.

A. FOOTE, *for the Committee.*

October 17, 1834.

When on motion it was ordered that the SECRETARY procure to be printed for the use of the members, three hundred copies of said Report.

The PRESIDENT offered the following Resolution:

"*Resolved*, That the Legislative Committee be instructed to inquire and make report to this Council, of the expediency of so altering the Constitution, as that the county officers in each county, shall be elected by the Freemen thereof."

Which on motion was ordered to lie on the table.

Council adjourned to 2 o'clock P.M.

### 2 o'clock P.M.

Council met pursuant to adjournment.

Mr. PORTER offered the following Resolution:

"*Resolved*, That the Legislative Committee be instructed to inquire into the expediency of so altering the Constitution, as to provide for the choice of Governor, Lieut. Governor, Treasurer, and members of the Council and House of Representatives, annually on the \_\_\_\_\_ Tuesday of November, and for the annual meeting of the Legislature on the \_\_\_\_\_ Thursday of the succeeding January, and make report

thereon."

Which was read and passed.

The PRESIDENT for the Committee raised last June on the Resolution introduced by the SECRETARY in relation to the manner of appointing delegates, made the following Report, which was read and accepted.

*To The Hon. Council of Censors now sitting:*

Your committee, to whom was referred the resolution offered by Mr. HEBARD on the 5th day of June last, in the words following:

"*Resolved*, That if this Council shall finally deem it expedient to call a convention of the people, the same shall be composed of delegates chosen and appointed, from the different sections of the State, as nearly as may be, in proportion to the population,"

Respectfully report,--

That in the opinion of your Committee, the principles of the resolution are in strict accordance with the spirit of the Constitution, and of representative government. The framers of the Constitution obviously had in view, an equal representation of the people, in the delegation of powers; that it is a sound republican maxim that population, and representation ought to be equal--and that the mode heretofor pursued, in the elections of delegates, had failed to secure that equality in representation, which the spirit and genius of our government were designed to ensure.

The Constitution not having prescribed the form or manner of calling a convention, by the Council of Censors; the manner and form of calling a convention, must necessarily be left to the discretion of the Council, as acting for the people in their primary capacity, and without the restraints of precedent.

Your committee see no objection, either in principle or practice, to the mode contemplated by the resolution, and believing that mode reasonable and proper, and that the same would be acceptable to the people of this State, whose agents we are, recommend the adoption of the resolution.

J. DOOLITTLE, *for Committee.*

October 17, 1834.

Mr. STARKWEATHER offered the following Resolution:

"*Resolved*, That the Judiciary Committee be instructed to report an amendment of the Constitution of this State providing that the Judges of the Supreme Court shall hold their offices for the term of \_\_\_\_\_ years to terminate at different periods, removeable by address, on a vote of two thirds of both houses of the Legislature, to be incapable of holding any other office, and also incapable of being a candidate for any other office while they hold the said office of Judge."

Which was read and passed.

Mr. HARMON from the Legislative Committee submitted the following Report, which was read and accepted.

*"To the Hon. the Council of Censors now sitting:*

Your Committee of the Legislative, to whom was referred the resolution requiring them to enquire and make report on the expediency of so altering the Constitution, that the County officers in each County, shall be elected by the freemen thereof. Report, that in the opinion of your Committee it is inexpedient so to amend the Constitution.

Which is respectfully submitted.

N. HARMON, for the majority of the Committee."

Which on motion was ordered to lie on the table.

Council adjourned to 9 o'clock to-morrow morning.

**Saturday, Oct. 18, 1834, 9 o'clock, A.M.**

Council met pursuant to adjournment.

Mr. PHELPS introduced the following Resolution:

*Resolved,* That a Committee of \_\_\_\_\_ members be appointed, whose duty it shall be to prepare an address to the people.

Which was read and passed.

And on motion the blank was filled with "*three*."

Mr. PHELPS for the Judiciary Committee, to whom was referred the Resolution of Mr. STARKWEATHER, made the following Report:

*To the Council of Censors:*

The Judiciary Committee having considered the resolution of Mr. STARKWEATHER, to them submitted, respectfully report as an amendment to the Constitution, the following

#### ARTICLE

The Judicial power of the State shall be vested in one Supreme Court, and such inferior Courts, as the Legislature may from time to time ordain and establish, to be maintained in every County in this state. The Judges both of the Supreme and inferior Courts shall hold their offices during the term of seven years. They may be removed by impeachment, or by a resolution of the Legislature, a quorum being present, and two thirds of the whole number voting in the affirmative. They shall be re-eligible, and while they are in office they shall be ineligible to any other office whatever, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.

J. PHELPS, *for the Committee.*

Which on motion was accepted and the SECRETARY was ordered to procure three hundred copies to be printed.

The Resolution of Mr. ROBINSON, declaring it inexpedient to propose amendments to the Constitution, for the consideration of the people, was called up, when Mr. ROBINSON withdrew the Resolution.

Council adjourned to 2 o'clock P.M.



**Saturday, October 18, 2 o'clock, P.M.**

Council met pursuant to adjournment.

The report of the Judiciary Committee, which was read in the forenoon, on motion was recommitted, together with another paper offered as an amendment to the Constitution.

The Resolution offered by the PRESIDENT in relation to the election of County officers, was called up, and on motion, was adopted, and referred to the Legislative Committee.

Mr. HARMON, for the Committee to whom was referred the resolution offered by Mr. PORTER, in relation to the time of holding freemen's meetings, and the time of the meeting of the Legislature, made the following Report:

*"To the Hon. Council of Censors now sitting:*

Your Committee of the Legislative, having considered the resolution of Mr. PORTER, requiring them to enquire into the expediency of so altering the constitution, as to change the time of electing the Governor, Lieut. Governor, Council and House of Representatives,--and also to change the time of the annual meeting of the Legislature, Report,

That in the opinion of your Committee, the time for electing the said functionaries, respectively, ought to be changed to the first Tuesday in November, annually, and that the meeting of the Legislative bodies be, in future, on the first Thursday of January, annually.

Which is respectfully submitted.

N. HARMON, *for Committee."*

Which Report was read and accepted.

Council adjourned to 11 o'clock Monday morning.

**Monday, Oct. 20, 1834, 11 o'clock A.M.**

Council met pursuant to adjournment

Mr. PHELPS offered the following Resolution:

*Resolved*, That the Financial Committee be instructed to inquire whether the public taxes have been justly laid and collected, in the last septenary, and how the public monies have been disposed of, and make report thereon.

Which was read and on motion ordered to lie on the table.

The Report of the Legislative Committee, providing for a Senate, on motion was called up, and was read, article by article,--when after some debate, the Council adjourned to 2 o'clock P.M.

**Monday, October 20, 1834, 2 o'clock, P.M.**

Council met pursuant to adjournment.

The Report of the Legislative Committee, which was under consideration when the Council adjourned, on motion was recommitted.

The following Resolution was transmitted from the House of

Representatives, to this Council by the clerk of the House of Representatives.

"*Resolved*, That the members of the Council of Censors now holding a session in this town be admitted to seats on the floor of this House."

Mr. PORTER offered the following Resolution:

"*Resolved*, That the State Treasurer be requested to prepare and furnish to this Council a statement of balances due the Treasury for Taxes, therein designating the names of the towns from which such balances are due, and the years in which they respectively accrued, and also a statement of such balances if any are due from the Sheriffs, Clerks, and State's Attorneys in the several Counties,--and on what account the same have accrued."

Which was read and passed.

Mr. PHELPS called up the Report of the Committee, on the Resolution offered by the SECRETARY in relation to the manner of calling a Convention, when after considerable debate, the Report was laid on the table and made the order of the day for to-morrow morning.

The PRESIDENT announced the appointment of Messrs. PORTER, REED, and ROBINSON, to serve as additional members of the Legislative Committee.

Mr. PORTER offered the following Resolution:

"*Resolved*, That the Treasurer be requested to prepare and furnish to this Council a statement of the amount of annual receipts into the State Treasury, (excepting those of pedlar's licenses,) from the several Counties during the last septenary, together with the annual amount of orders drawn upon said Treasury in said Counties during said period, separating such orders as were drawn for expenses incurred in apprehending felons, from the rest of the expenditures."

Which was read and passed.

Council adjourned to 9 o'clock to-morrow morning.

**Tuesday, Oct. 21, 1834, 9 o'clock, A.M.**

Council met pursuant to adjournment.

A Petition of Amos Garnzey, praying that the Constitution may be so altered, that the competency of a witness shall in no case depend upon his religious belief, was read, and on motion was referred to a select Committee of three.<sup>3</sup>

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<sup>3</sup>Amos Garnzey (or Garnsey) had petitioned the General Assembly for relief from a problem he had encountered in court, where he was found incompetent to testify because he did not have religious sentiments acknowledging the existence of an afterlife in which those who lied under oath would be punished for offending the name of God. The select

The PRESIDENT announced the appointment of Messrs. PHELPS, FOOTE and HIBBARD, for said Committee.

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committee of the General Assembly appointed to review his petition to the legislature, reported, "The committee were first led to inquire into the character and extent of the rule adopted by the courts in this State including witnesses by reason of the peculiarity of their religious opinions. To this end, they have carefully looked through the Reports of the Supreme Court but have not been able to find any reported decisions upon the subject. They learn however, from other sources of information, that within a few years, the Supreme Court, as well as the inferior tribunals of justice, have adopted a rule excluding from the right to give testimony all those who do not believe in certain points of theology. It has been a source of regret to the Committee that cases of this character had not been reported in order that they, in common with their fellow citizens, might be apprised of the exact standard of judicial orthodoxy, and the manner of trying by it the religious faith of witnesses. They believe that all the decisions of the Courts of Vermont on this branch of jurisprudence have been made within the last fifteen years, and although it seems now well understood that a certain religious faith is necessary to qualify a witness to testify in court, the precise character and amount of the faith has not been defined or at least has not been promulgated. The earliest decisions of the courts, that have fallen under the notice of the Committee, required a belief in *the existence of God and of rewards and punishments in another life*, to confer the right of testifying. As this rule, in its terms, excluded a numerous and respectable sect of Christians, it seems to have been soon abandoned and the courts substituted in its stead a new rule of orthodoxy, requiring a belief in *the existence of God and a state of retribution*. The last rule again was narrowed in its terms by the courts for reasons that do not suggest themselves to the Committee, and according to the latest decisions, a citizen must believe in *the existence of a Supreme Being and his moral government of the world*. What constitutes a *Supreme Being* within this rule, or in other words precisely what a person must believe to become a competent witness has not been announced by the judges, and the subject from its peculiar character seems likely to remain an uncertainty." The Committee concluded the courts had overstepped their jurisdiction, "have intermeddled in a matter in which they have no concern, have disregarded the plain injunctions of the constitution, and have violated sacred rights belonging to the freemen. That every citizen in this State may hold any opinions, however false, absurd or fanatical they may be, on subjects of religion, according to the dictates of his understanding on the suggestions of mere caprice is a proposition too plain to be questioned." The Committee's recommendations on a bill to clarify the law on oaths were not answered, and no legislation was adopted to change the courts' practice. Ironically, since 1787, Vermont had allowed witnesses to substitute "affirm" for "swear" and "under the pains and penalties of perjury" for "so hold me God," in deference to the Quakers, but this opportunity was not sufficient to restrain the courts from developing their own religious tests. *State Papers* XIV, 150 (1787) (Quakers only); *Laws of 1797*, 109 (all persons who are religiously scrupulous of taking oaths). The petition is in the Manuscript State Papers of the State Archives.

Mr. HIBBARD called up the Resolution and Report of the Committee in relation to the manner of calling a Convention, which was made the order of the day for this morning, and after considerable debate, and without coming to any decision on the same, the Council adjourned to 2 o'clock, P.M.

**Tuesday, Oct. 21, 1834, 2 o'clock, P.M.**

Council met pursuant to adjournment.

The further consideration of the Resolution and Report which was under consideration when the Council adjourned, was resumed, and debated, when it was moved that the further consideration of the same be postponed to the next session of this Council,--and the yeas and nays being demanded, they were as follows:--

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, PORTER, and HEBARD--6.

NAYS--Messrs. ROBINSON, PHELPS, REED, and HIBBARD--4.

So the further consideration of said Resolution and Report was postponed till the next session of this Council.

A communication was received from the Treasurer of the State, exhibiting a statement of the Taxes now due from the several towns in the State, which on motion was referred to the Committee hereafter to be raised to draft an address to the People.

Mr. PORTER introduced the following Resolution:

*Resolved*, That the State Treasurer be requested to furnish to this Council a statement of the balances due from the County Court Judges in the several Counties, for pedlars' licences.

Which was read and passed.

Council adjourned to 9 o'clock, A.M.

**Wednesday, Oct. 22, 1834, 9 o'clock, A.M.**

Council met pursuant to adjournment.

Mr. PHELPS offered the following Resolution:

*Resolved*, That a Committee of one be appointed, whose duty it shall be to examine the Constitution of all the States in this Union, and report an abstract, how the Legislature is framed,--the number and periods of service of Senators and Representatives, the term of office of the Judges, and how, and where the appointing power is lodged in each.

Which was read and passed.

And Mr. PHELPS was appointed the said Committee.

Mr. HEBARD offered the following Resolution:

*Resolved*, That when this Council of Censors adjourn this session, they adjourn to meet again at the Court House, in Middlebury, on the first Wednesday in January, A.D. 1835.

Which was read and passed.

Mr. HARMON offered the following Resolution:

*Resolved*, That this Council do adjourn on the 23d day of this

present October at five o'clock A.M.

Which was read, and on motion was ordered to lie on the table.

Mr. PORTER offered the following Resolution:

*Resolved*, That the Legislative Committee be directed to report an article of amendment to the Constitution.

Which was read and passed.

Mr. HARMON for the Legislative Committee submitted a Report, which was read and ordered to lie on the table.

Mr. HIBBARD offered the following Resolution:

*Resolved*, That the Financial Committee be directed to examine the account of orders drawn by the Auditor of accounts for the last seven years, and make report to this Council.

Which was read and passed.

Mr. PORTER called up the Report of the Legislative Committee and on motion of Mr. PHELPS, it was recommitted.

Council adjourned to 3 o'clock P.M.

### Wednesday, October 22, 1834, 3 o'clock, P.M.

The Council met pursuant to adjournment.

Mr. HARMON submitted the following Report from the Legislative Committee.

*To the Hon. the Council of Censors, now sitting:*

Your Committee of the Legislative, under your instructions to prepare amendments of the Constitution, providing for and constituting a Senate, with powers co-ordinate with those of the House of Representatives, respectfully report the following, to wit:

ARTICLE I. The most numerous branch of the Legislature of this State, shall, hereafter, be styled the House of Representatives.

ART. II. The Supreme Legislative power of the State, shall, hereafter, be exercised by a Senate, and the House of Representatives; which shall be styled "the General Assembly of the State of Vermont." Each shall have and exercise the like powers, in all acts of Legislation; and no bill, resolution or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be a law, without the concurrence of the other. Provided, that all revenue bills shall originate in the House of Representatives.

ART. III. The Senate shall be composed of thirty Senators, to be of the Freemen of the County, for which they are elected, respectively, who are thirty years of age or upwards, and to be elected by the Freemen of each County, respectively. Each County shall be entitled to one Senator; and the remainder of the Senators shall be appointed to the several Counties, in proportion to their population, according to the last census of the United States, regard being always had, in the appointment to the counties having the greatest fraction. The several counties shall, until after the next census of the United States, be entitled to elect their Senators, in the

following proportion, to wit.--Bennington county, two; Windham county, three; Rutland county, three; Windsor county, four; Addison county, three; Orange county, three; Washington county, two; Chittenden county, two; Caledonia county, two; Franklin county, three; Orleans county, one; Essex county, one; and Grand Isle county, one. The Legislature shall make a new appointment of the Senators, to the several counties, after the taking of each census of the United States, or census taken by order of the Government of this State; always regarding the above provisions, in this article.

ART. IV. The freemen of the several towns in each county, shall annually, give their votes for the number of Senators apportioned to such county, at the same time, and under the same regulations, as are now provided for the election of Councillors; and the person or persons equal in number to the number of Senators for such county, having the greatest number of legal votes, in his or their county, respectively, shall be the Senator, or Senators, for such county. At every election of Senators, after the votes shall have been taken, the constable, or presiding officer, assisted by the selectmen and civil authority present, shall sort and count the said votes, and make two lists of the name of each person, with the number of votes given for each, annexed to his name; a record of which shall be made in the town clerk's office; and shall seal up such lists, separately, and write on each the name of the town, and these words--"Votes for Senator," or "Votes for Senators," as the case may be; one of which lists shall be delivered, by the presiding officer, to the representative of said town, (if any,) and if none be chosen, to the representative of an adjoining town, to be transmitted to the President of the Senate; the other list, the presiding officer, shall within ten days, deliver to the clerk of the County Court, for the same County; and the clerk of each County Court, respectively, or in case of his absence or disability, the Sheriff of such county, or in case of the absence or disability of both, the High Bailiff of such county, on the Monday after such election, shall publicly open, sort and count said votes, and make a record of the same in the office of the clerk of such County Court; a copy of which, he shall transmit to the Senate; and shall also, within ten days thereafter, transmit to the person or persons elected, a certificate of his or their election.

SEC. 2. The members of the Senate shall be elected for three years; and immediately after the first election, shall be divided by lot, into three classes; the seats of the first class to be vacated at the end of the first year; and the seats of the second class, at the end of the second year, and so on, continually to the end, that one third of the Senate may be elected annually.

Provided, however, and it is hereby ordained, and declared, that the General Assembly shall have power to regulate, by law, the mode of balloting for Senators, within the several counties, and to prescribe the means and the manner, by which the result of the

balloting, shall be ascertained, and through which, the Senators chosen, shall be certified of their election. But they shall not have power to apportion the senators to the several counties, otherwise, than according to the population thereof, agreeably to the provisions herein before ordained.

SEC. 3. The Senate shall have the like powers to decide on the election, and qualifications of, and to expel any of its members, make its own rules, and appoint its own officers, as are incident to, or are possessed by the House of Representatives. A majority shall constitute a quorum. When the Lieutenant Governor shall exercise the office of Governor, when his office shall be vacant, or in his absence, the Senate shall appoint one of its own members, to be President of the Senate pro tempore. And the presiding officer of the Senate shall have a casting vote, but no other.

SEC. 4. The Senate shall have the sole power of trying and deciding on all impeachments; when sitting for that purpose, they shall be on oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present. Judgment in cases of impeachment, shall not extend farther than to removal from office and disqualification to hold or enjoy any office of honor, or profit, or trust, under this State; but the party convicted, shall, nevertheless, be liable and subject to indictment, trial, judgement and punishment, according to law.

SEC. 5. The Supreme, Executive power of the state shall be exercised by the Governor, or in case of his absence or disability, by the Lieutenant Governor, who shall have all the powers vested in, and perform all the duties enjoined upon the Governor, and Council, by the Eleventh Section of the chapter of the Constitution as at present established: excepting that he shall not sit as Judge, in case of impeachment, nor grant reprieve or pardon in any such case: nor shall he command the forces of the State in person, in time of war, or insurrection, unless by the advice and consent of the Senate, and no longer than they shall approve thereof. The Governor may have a Secretary of Civil and Military Affairs, to be by him appointed, during his pleasure, whose services, he may at all times command: and for whose compensation, provision shall be made by law.

SEC. 6. The votes for Governor, Lieutenant Governor, and Treasurer of the State, shall be sorted and counted, and the result declared, by a committee, appointed by the Senate and House of Representatives. If at any time there shall be no election, by the freemen, of Governor, Lieutenant Governor, or Treasurer of the State, the Senate, with the House of Representatives, shall, by a joint ballot, elect to the office not filled by the freemen as aforesaid, one of the three candidates for such offices, respectively, (if there be so many) for whom the greatest number shall have been returned.

SEC. 7. The Secretary of State and all officers, excepting such as are, otherwise, provided for, who under the existing provisions of

the Constitution, are elected by the Council and House of Representatives, shall, hereafter, be elected by the Senate and House of Representatives, in joint Assembly: at which, the presiding officer of the Senate, shall preside; and the presiding officer of such joint Assembly, shall have a casting vote, and no other.

ARTICLE V. Every bill, which shall have passed the House of Representatives and Senate, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it--if not, he shall return it, with his objections, in writing, to the House, in which it shall have originated; which shall proceed to reconsider it. If after such reconsideration, a majority of the House shall pass the bill, it shall together with the objections, be sent to the other House; by which, it shall, likewise be reconsidered; and if approved by a majority of the House, it shall become a law. But in all such cases, the votes of both Houses, shall be taken by yeas and nays; and the persons voting for or against the bill, shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor, within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law, in like manner as if he had signed it; unless the two Houses, by their adjournment, within two days after the presentment of such bill, shall prevent its return; in which case, it shall not become a law.

ARTICLE VI. The Legislature shall have power to divide the State, for the election of Senators, into convenient districts, which may from time to time, be altered, and new districts established, as public convenience may require; and the Senators shall be apportioned among the several districts, in proportion to their population, according to the last Census, next before such appointment. Provided, however, and it is hereby further ordained and declared that the General Assembly shall have power to regulate by law, the mode of balloting for Senators, within the several districts, and to provide the means and manner, by which the result of the balloting shall be ascertained, and through which, the Senators shall be certified of their election; but they shall not have power to apportion the Senators to the several districts, otherwise than according to the population thereof, agreeably to the provision herein before ordained.

Sec. 2. The laws which shall be enacted in pursuance and by virtue of the preceding section, so long as the same shall remain in force, shall supercede, and thereby suspend the provisions of so much of the third Article of these amendments, as provides for the choice of Senators, by Counties.

N. HARMON, *for Committee.*

Which was read and accepted.

On motion of Mr. FOOTE the Council resolved itself into a Committee of the whole, Mr. STRONG in the chair, when the foregoing Report was taken up; and the Committee proceeded to the



consideration of the same,--each article and section being read separately, and on motion the First, Second, and Third Articles and the First Section of the Fourth Article were adopted. When on motion, the Committee rose, reported progress, and had leave to sit again.

Council adjourned to 7 o'clock this evening.

**Wednesday, Oct. 22, 1834, 7 o'clock, P.M.**

Council met pursuant to adjournment.

Council resolved itself into a Committee of the whole, Mr. STRONG in the Chair, and went into a farther consideration of the foregoing Report.

When on motion, the remainder of the Fourth Article and the Fifth Article were adopted, each remaining Section and Article being taken up separately.

On motion, the Committee rose, reported progress, and had leave to sit again.

Mr. HARMON offered a Report for a majority of the Legislative Committee, in relation to the appointment of County officers, and on motion, the same was laid on the table.

Council adjourned to 9 o'clock to-morrow morning.

**Thursday, Oct. 23, 1834, 9 o'clock, A.M.**

Council met pursuant to adjournment.

Mr. PHELPS, who was appointed a Committee to examine the Constitutions of the Several States, and report an abstract, submitted a Report.

Which was read, and accepted, and on motion was ordered to be filed with the SECRETARY for the use of the members.

The SECRETARY offered the following Resolution:

*Resolved*, That this Council adjourn its present session on Friday, the 24th day of October, instant, at 7 o'clock, A.M.

Which was read and passed.

Mr. PHELPS for the Committee raised on the Petition of Amos Garnzey, submitted the following Report:

*"To the Council of Censors now sitting:*

The Committee to whom was referred the Petition of Amos Garnzey, respectfully ask leave to Report,

That they have had the same under consideration, and can see nothing therein requiring the action of this board, and pray to be discharged from the further consideration of the same.

J. PHELPS, *for Committee.*

Oct. 23, 1834."

Which was read and accepted,--and on motion the Petitioner had leave to withdraw his petition.

On motion of Mr. HIBBARD, the Council proceeded to take the mileage of the members.

On motion of Mr. HEBARD a Committee was appointed to make up the debentures of the Council.

Messrs. FOOTE and HEBARD were appointed said Committee.

Mr. FOOTE called up the Resolution and Report of the Legislative Committee in relation to the appointment of County officers, which was laid on the table last evening, and on motion of Mr. HIBBARD to accept the same, it was voted not to accept the said Report, and the Committee were discharged from any further duty in relation to the said Resolution.

Mr. FOOTE offered the following Resolution:

*Resolved*, That the Judiciary Committee be instructed to report an article so to amend and alter the Constitution, as to provide that Judges of Probate, shall be elected by the Freemen of the several Probate Districts, Sheriffs, High Bailiffs, State's Attornies, and Jail Commissioners, by the Freemen of the several counties; and Justices of the Peace by the Freemen of the several towns.

Which was read and passed.

The Council resolved itself into a Committee of the whole on the further consideration of the Report of the Legislative Committee, providing for a Senate, Mr. STRONG in the Chair.

When the Sixth and last Article of said Report was adopted.

The Committee then rose and made Report to the Council the various Articles of amendment to the Constitution, providing for a Senate, contained in the foregoing Report, which were read, and on motion were adopted.

On motion of Mr. FOOTE, the SECRETARY was ordered to procure to be printed three hundred copies of the said Report.

Council adjourned to 2 o'clock P.M.

#### **Thursday, Oct. 23, 1834, 2 o'clock P.M.**

Council met pursuant to adjournment.

Mr. PHELPS for the Judiciary Committee, submitted the following Report with reference to the election of County officers by the Freemen:

*"To the Hon. Council of Censors now sitting:*

The Committee to whom was referred a resolution instructing them to report an amendment to the Constitution, providing for the election of County officers by the freemen of the several Counties, beg leave to Report the following.

#### **ARTICLE**

Sheriffs, High Bailiffs, States' Attorneys and Jail Commissioners shall be elected by the freemen of their respective Counties; Judges of Probate, be the freemen of their respective Probate Districts; Justices of the Peace, not exceeding ten, for each town, by the freemen of their respective towns, in the manner now directed in the Constitution for the choice of Councillors; and the proper officer, after he shall have sealed up and directed the votes, shall deliver them to

some Representative chosen to attend the General Assembly. And at the opening of the General Assembly, there shall be a Committee appointed out of the Senate and House of Representatives, who shall be sworn, and shall proceed to receive, sort and count the votes, and, the highest in nomination for the respective offices, shall be commissioned and sworn for the ensuing year, and if two persons designed for any one such office shall have received an equal number of votes, the Senate and House of Representatives, in joint ballot shall elect one of them, who shall service as aforesaid. And the officers aforesaid, shall hold their respective offices for the term of three years--provided the Sheriffs shall not be re-eligible to the same office during the three years next following the term for which they shall have been elected.

J. PHELPS, *for Committee.*

Oct. 23, 1834."

Which was read, and on motion was accepted.

Mr. FOOTE called up the Report on the Resolution in relation to the manner of calling a Convention, when on motion it was ordered that the SECRETARY procure to be printed three hundred copies of the same.

On motion of Mr. PORTER, the SECRETARY was ordered to procure to be printed three hundred copies of the Report of the Judiciary Committee providing for the election of County officers by the freemen of the County.

On the Resolution providing for the appointment of a Committee to draft an address to the people,

Messrs. PHELPS, FOOTE, and HARMON were appointed a Committee.

Mr. FOOTE moved to reconsider the vote taken on the Resolution fixing on 7 o'clock to-morrow morning for the adjournment of this Council,--and on the question will the Council reconsider the said vote, it was decided in the affirmative.

Mr. ROBINSON had leave of absence from and after to-morrow morning.

Council adjourned to 9 o'clock to-morrow.

**Friday, Oct. 24, 1834, 9 o'clock, A.M.**

Council met pursuant to adjournment.

On motion, Mr. REED was appointed a Committee to settle and adjust the incidental expenses of the Council at this session.

On motion, Council adjourned to meet again at the Court House in Middlebury, on the first Wednesday of January, A.D. 1835.

### Third Session of the Council of Censors.

**Middlebury, Wednesday,**

**January 7th, 1835.**

Council met pursuant to adjournment.

The PRESIDENT called to order.

Mr. FOOTE introduced the following Resolution:

*Resolved*, That the Sheriff of Addison County be requested to attend by himself, or his deputy, the Council of Censors during its present session.

Which was read and passed.

Mr. HARVEY introduced the following Resolution:

*Resolved*, That the Rev. Mr. Bates, be requested to attend the Council of Censors, during its present session, as Chaplain.

Which was read and passed.

A quorum not being present, the Council adjourned to to-morrow morning, 9 o'clock, A.M.

**Thursday, Jan. 8, 1835, 9 o'clock, A. M.**

Council met pursuant to adjournment.

On motion of Mr. FOOTE, the Council voted to reconsider the vote taken at the last session, adopting the Report of the Committee providing for a Senate.

On motion of Mr. PHELPS, the said Report was referred to a select committee, consisting of Messrs. PHELPS, FOOTE, and PORTER.

Mr. PHELPS offered the following Resolution:

*Resolved*, That the Committee on the powers of the Constitution, be instructed to prepare and report an amendment of the Constitution, abolishing the Council of Censors, and providing another mode of amending the Constitution.

Which was read and passed.

Council adjourned to 2 o'clock, P.M.

**Thursday, Jan. 8, 1835, 2 o'clock, P.M.**

Council met pursuant to adjournment.

On motion of the SECRETARY, a Committee of two was appointed to report the unfinished business of last session. And the SECRETARY and Mr. HARMON were appointed said Committee.

Mr. PORTER offered the following Resolution:

*Resolved*, Two-thirds of this Council concurring herein, that it is expedient to call a Convention to meet at the State House in Montpelier, on the \_\_\_\_ day of \_\_\_\_ for the purpose of taking into consideration the proposed amendments to the Constitution, which have been, or may be agreed on by this Council.

Which was read and on motion was ordered to lie on the table.

Mr. FOOTE called up the report of the Committee, amending the 43d Article of the 2d Chapter of the Constitution,--and on motion it was made the order of the day for to-morrow afternoon.

Mr. PORTER called up the Report of the Committee providing for the election of County Officers by the freemen of the County, which was made the order of the day for to-morrow afternoon.

Mr. PHELPS for the Committee on the Powers of the Constitution, submitted the following Report:

*"To the Council of Censors now sitting:*

The Committee to whom was referred the Resolution in relation to abolishing the Council of Censors, Report the following

ARTICLE.

The General Assembly, by joint Resolution, shall have power to propose amendments to the Constitution, when necessary; which Resolution containing the amendments proposed, shall be referred to the succeeding session, and shall be published for public consideration. At which session, such Resolution shall be reconsidered, and if again passed shall be submitted to the freemen, in freemens' meeting assembled for their approval, or rejection. Said freemens' meeting shall be convened and governed, and the result ascertained and authenticated in such manner as the General Assembly shall by law establish. And the forty-third Article of the Constitution, providing for a Council of Censors shall be abolished.

J. PHELPS, *for Committee.*"

Which was accepted and ordered to lie on the table.

Mr. PORTER called up the Report of the Judiciary Committee in relation to the tenure of office of the Judges of the Supreme Court, and on motion the same was made the order of the day for to-morrow in the forenoon.

Mr. PHELPS offered the following Resolution:

*Resolved*, That if a Convention shall be ordered, it shall be composed of delegates, not exceeding two hundred, to be chosen by the freemen of the State, to be apportioned as near as may be in districts, according to the population, in such manner as the Legislature at its next session shall direct.

Which was read and ordered to lie on the table.

Council adjourned to 9 o'clock to-morrow morning.

Friday, Jan. 9, 1835, 9 o'clock, A.M.

Council met pursuant to adjournment.

The SECRETARY submitted the following Report of the unfinished business of the Council:

*"To the Council of Censors now sitting:*

The Committee appointed to report the unfinished business of the last session, report the following:

1st. Resolution raising a Committee to examine the laws of

1828, 1829, and 1830,--and also a Committee to examine the laws passed in 1831, 1832, and 1833.

2d. Report of the Committee recommending an amendment of 43d. Article of the Constitution.

3d. Report of the Committee on the election and meeting of the Legislative bodies.

4th. Report of Committee in relation to the manner of calling a Convention.

5th. Resolution raising a Committee to prepare an address to the people.

6th. Report in relation to the term of office of the Judges.

7th. Resolution calling upon the Financial Committee to inquire and make report whether the public taxes have been justly laid and collected, during the last septenary.

8th. Resolution calling upon the Financial Committee to examine the account of orders drawn by the Auditor of Accounts for the last seven years, and make report.

9th. Report of Committee providing for a Senate.

10th. Report of Committee in relation to the election of County officers by the freemen.

Which was respectfully submitted.

WM. HEBARD, *for Committee.*"

Which was read and accepted.

Mr. PHELPS submitted the following Report of the Select Committee to whom was referred the Report of the Legislative Committee providing for a Senate.

"The Committee to whom was referred the Report of the Committee providing for a Senate, beg leave to Report the same, together with certain proposals of amendment.

J. PHELPS, *for Committee.*"

Which report was accepted.

On motion of Mr. FOOTE, the Council took up the said Report providing for a Senate, together with the proposals of amendment and proceeded to the consideration of the same.

When on motion the 2d Article was amended by adding at the end, the following words:--"But the Senate may propose or concur with amendments, as on other bills."

On motion the 16th line of the 4th Article was amended by striking out the word "Monday," and inserting in lieu thereof "tenth day."

On motion it was amended by striking out the words "and it is hereby ordained and declared," in the 5th line of the 2d Section of the 4th Article.

On motion the Report was further amended by inserting in the 8th line of the 2d Section of the 4th Article the following words: "and for filling all vacancies which shall happen by death, resignation or otherwise."

On motion the Report was amended in the 3d line of the 3d section of the 4th Article, by striking out the words, "when the Lieut. Governor" and insert the following,--"The Lieut. Governor shall be President of the Senate, except when he"--and in the 5th line after the word "absence," by inserting,-- "in which case."

On motion it was amended by striking out the word "due" in the 3d line of the 6th Section of the 4th Article.

On motion the said Report was further amended by striking out the words,--"and it is hereby further ordained and declared"--in the 5th line of the 6th Article.

On motion the Report was further amended by adding, in the 8th line of the 6th Article, after the word "power," the following,--"increase the number of Senators or to"--and striking out the word "Senators," and inserting in lieu thereof the word "them."

Mr. PORTER then moved to amend the Report by striking out the 1st, 2d, 3d, and 4th lines of the 2d Section of the 4th Article.

When on motion of Mr. ROBINSON, the further consideration of said Report was postponed till afternoon.

Mr. HARVEY called up the Report of the Judiciary Committee, which was made the order of the day for this forenoon,--

When Mr. PORTER moved to dismiss the Report, upon which the Yeas and Nays were demanded, but before taking the question the Council adjourned to 2 o'clock P.M.

#### **Friday, Jan. 9, 2 o'clock, P.M.**

Council met pursuant to adjournment.

The Council resumed the further consideration of the Report which was under consideration when the Council adjourned,--but without taking the question the further consideration of the same was postponed till to-morrow morning.

The Report providing for a Senate, which was postponed for further consideration till this afternoon, was called up, when the motion of Mr. Porter to amend the same by striking out the 1st, 2d, 3d, and 4th lines of the 2d Section of the 4th Article again came under consideration,--and the Yeas and Nays being called for, they stood as follows:

YEAS--Messrs. ROBINSON, HIBBARD, HARVEY, PORTER, REED and HEBARD--6.

NAYS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, PHELPS and STARKWEATHER--6.

So the motion to amend was lost.

Council adjourned to 9 o'clock to-morrow morning.

#### **Saturday, Jan. 10, 1835, 9 o'clock A.M.**

Council met pursuant to adjournment.

On motion of Mr. STARKWEATHER, the Council reconsidered the vote taken yesterday upon the motion to strike out the four first lines

in the 2d Section of the 4th Article of the Report providing for a Senate.

The question then recurred upon the motion of Mr. Porter to amend the said Report by striking out the four first lines in the 2d. Section of the 4th Article, and the Council voted so to amend.

The motion to dismiss the Report in relation to the tenure of office of Judges was withdrawn.

The said Report was then called up.

Mr. FOOTE moved to amend the same by striking out the words "both," and the words, "and inferior" in the third line.

And the Council voted so to amend.

Mr. FOOTE then moved to strike out the word "seven," in the 4th line.

Which was accordingly stricken out.

Mr. FOOTE then moved to fill the blank with the word "five" for the number of years, that the Judges shall hold their offices, --and the Yeas and Nays being demanded, they were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, PORTER, REED, and STARKWEATHER--7.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, HARVEY and HEBARD-5.

So the blank was accordingly filled with the number "five."

On motion of Mr. STARKWEATHER, the Report of the Judiciary Committee in relation to the tenure of office of the Judges was recommitted to said Committee with instructions to report an amendment providing that the Judges of the Supreme Court shall be elected for different periods at the first election.

Mr. PORTER called up the Report providing for a Senate, and on motion the Council amended the same, by striking out the words "in proportion," in the 3d and 4th lines of the 6th Article, and inserting the word, "according,"--and inserting the word "and," between the words "population" and "according" in the 4th line.

On motion of Mr. FOOTE, the Council voted to add to said Report the following:

"Neither house, during the session of the General Assembly, shall without the consent of the other house, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting,--and in case of disagreement between the two houses with regard to adjournment, the Governor may adjourn them to such time as he shall think proper."

Mr. PORTER called up the Report of the Committee providing for the election of County Officers by the freemen of the several Counties, and moved to amend the same by striking out the words "States' Attornies" upon which the Yeas and Nays were demanded and were as follows:

YEAS--The PRESIDENT, Messrs. ROBINSON, STRONG, HARMON, PORTER, REED--6



NAYS--Messrs. PHELPS, FOOTE, HIBBARD, HARVEY, STARKWEATHER, and HEBARD--6.

So the motion to amend was lost.

Mr. PORTER then moved to amend the same by striking out the words "Jail Commissioners."

Which motion was decided in the negative.

Mr. PORTER then moved to amend the same by striking out the words "Judges of Probate."

Which motion was decided in the negative.

Mr. PORTER then moved to strike out the words, "Justices of the Peace, not exceeding ten for each town."

Which motion was decided in the negative.

Council adjourned to 2 o'clock P.M.

#### **Saturday, Jan. 10, 1835, 2 o'clock, P.M.**

Council met pursuant to adjournment.

On motion of Mr. PORTER the Report of the Committee which was under consideration when the Council adjourned, was laid on the table.

Mr. PORTER called up the Report of the Committee providing for a Senate.

On motion of Mr. PORTER the said Report was adopted as amended.

Mr. FOOTE moved that said Report with the amendments be referred to the Legislative Committee, to be engrossed with the amendments, and arranged in their proper order.

Which was referred accordingly.

Mr. PORTER called up the Resolution making it expedient to call a Convention.

When Mr. HIBBARD moved to amend the same by adding--"To be composed of delegates chosen and appointed from the several towns entitled to send a Representative to the General Assembly of this State."

Which motion to amend was decided by the PRESIDENT not to be in order.

Mr. HIBBARD then moved to lay the Resolution on the table, which was decided in the negative.

Council adjourned to 9 o'clock Monday morning.

#### **Monday, Jan. 12, 1835, 9 o'clock, A.M.**

Council met pursuant to adjournment.

On motion of Mr. PORTER the Resolution which was under consideration when the Council adjourned Saturday evening, was laid upon the table.

Mr. PORTER called up the Report of the Committee providing an amendment to the 43d Article of the 2d Chapter of the Constitution.

Mr. FOOTE then moved to adopt said Report, and the Yeas and

Nays being demanded, they were as follows:

YEAS--The PRESIDENT, Messrs. ROBINSON, STRONG, PHELPS, HARMON, FOOTE, HIBBARD, HARVEY, PORTER, REED, and HEBARD--11.

NAYS--None.

So the Report was unanimously adopted.

Mr. HIBBARD offered the following Resolution:

*Resolved*, That if this Council finally deem it expedient to call a Convention of the people, the same shall be composed of delegates chosen and appointed from the several towns entitled to send a Representative to the General Assembly of this State.

Mr. HEBARD moved to lay the Resolution on the table, and the Yeas and Nays being demanded, they were as follows.

YEAS--The PRESIDENT, Messrs. STRONG, FOOTE, HARVEY, PORTER, STARKWEATHER, HEBARD--7.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, REED--4.

So the Resolution was laid on the table.

Mr. PORTER called up the Resolution for calling a Convention, which was laid on the table this morning, but before taking any vote upon the same, the Council adjourned to 2 o'clock P.M.

#### **Monday, Jan. 12, 1835, 2 o'clock P.M.**

Council met pursuant to adjournment.

When the further consideration of the Resolution which was under consideration when the Council adjourned, was resumed, and on the motion to adopt the same, the yeas and nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, HARVEY, REED, PORTER, STARKWEATHER, HEBARD--9.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD--3.

So the Resolution to call a Convention, was adopted by a constitutional majority of two thirds.

Mr. PORTER called up the Report of the Committee, providing for the election of County Officers by the freemen.

On motion of Mr. FOOTE, the vote taken on Saturday on the motion to amend the said Report by striking out the words "Jail Commissioners" was reconsidered.

When on motion of Mr. PHELPS the same was amended by striking out the words "and Jail Commissioners."

Mr. ROBINSON moved to amend the same by striking out the three last lines,

When on motion of Mr. STARKWEATHER, before any vote was taken upon said motion, the said Report was recommitted.

Mr. HIBBARD called up his Resolution in relation to the manner of calling a Convention,

When the SECRETARY moved to amend the same, by striking out all after the word *Resolved*, and inserting in lieu thereof,--"That the Convention directed to be called by a Resolution of this Council,

be composed of Delegates chosen and appointed from the different sections of the State, as nearly as may be in proportion to the population."

But before taking any question upon the amendment, the Council adjourned to 7 o'clock this evening.

**Monday, Jan. 12, 1835, 7 o'clock, P.M.**

Council met pursuant to adjournment.

On motion the PRESIDENT announced the appointment of Mr. PORTER, on the Financial Committee in place of Mr. SMITH who was absent.

The Council resumed the further consideration of the amendment of the Resolution which was under consideration when the Council adjourned; and Yeas and Nays being demanded they were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, PORTER, HEBARD--6.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, REED, HARVEY, STARKWEATHER--6

So the motion to amend was lost.

Council adjourned to 9 o'clock to-morrow morning.

**Tuesday, Jan. 13, 1835, 9 o'clock, P.M.**

Council met pursuant to adjournment.

Mr. ROBINSON for the Committee submitted the following Report:  
*"To the Council of Censors now in session:*

The Committee raised on the Resolution of Mr. HEBARD to examine the laws of 1828, 1829, and 1830, have attended to the business of their appointment, and do respectfully

Report, they do not find any thing in said laws which require censure from this board.

STEPHEN ROBINSON, *for Committee.*

Jan. 13, 1835."

Which was read and accepted.

Mr. PHELPS for the Committee to whom the Report of the Committee providing for the election of County Officers by the freemen was recommitted, submitted the following Report:

"The Committee to whom the subject of electing County Officers by the freemen was referred, submit the following:

**AMENDED ARTICLE.**

SEC. 1. Sheriffs and High Bailiffs shall be elected by the freemen of their respective Counties, and shall hold their offices for the term of three years. Sheriffs shall give bonds in such manner and amount as the Legislature shall direct. And Sheriffs shall not be re-eligible to the same office during the three years next following the term for which they shall have been elected.

SEC. 2. States' Attornies shall be annually elected by the

freemen of their respective Counties.

SEC. 3. Judges of Probate shall be annually elected by the freemen of their respective Probate Districts.

SEC. 4. The election of the several offices mentioned in the proceeding sections shall be made at the times and in the manner now directed in the Constitution for the choice of Councillors,--and the proper officer after he shall have sealed up and directed the votes, shall deliver them to some Representative chosen to attend the General Assembly. And at the opening of the General Assembly, there shall be a Committee appointed out of the same who shall be sworn, and shall proceed to receive, sort and count the votes,--and the highest in nomination for the respective offices shall be, by said Committee declared duly elected, and by the Governor be duly Commissioned, and if two or more persons designated for any one such office shall have received an equal number of votes, the General Assembly shall elect one of them, who shall serve as aforesaid.

SEC. 5. Justices of the Peace, not exceeding ten to each town shall be annually elected by the freemen thereof, and until otherwise provided by law, their election shall be made on the day and in the manner now directed for the choice of Representatives to the General Assembly--and it shall be the duty of the town Clerk of each town for the time being to make a certificate of the names of such persons who shall have been duly elected to said office, directed to the Governor, who on receiving such certificate, shall commission the same.

J. PHELPS, *for Committee.*"

Which was read and accepted.

Mr. ROBINSON then moved to amend the said Report by striking out the words, "not exceeding ten for each town."

Which motion was decided in the affirmative.

Mr. HARVEY then moved to fill the blank with the number "fifteen."

But before taking the question upon the motion to the fill the blank, the Council voted to postpone the further consideration of the subject till afternoon.

Mr. STARKWEATHER for the Committee to examine the laws, submitted the following Report:

*"To the Council of Censors now sitting:*

Your Committee to whom the acts of the Legislature of the State of Vermont, passed to their session in 1831, 1832, and 1833, respectfully Report, That they have had the same under consideration, and that they have discovered nothing which to them appears to be an infraction of the Constitution of this State.

E. H. STARKWEATHER, *for Committee.*

Jan. 13th, 1835."

Which was read and accepted.

Mr. PORTER called up the Resolution of Mr. HIBBARD in relation to the manner of calling a Convention, by choosing a delegate from each town. When Mr. HIBBARD moved to adopt the same.

On which the Yeas and Nays were demanded, and were as follows:

YEAS--Messrs. ROBINSON, PHELPS, HIBBARD, HARVEY, REED, STARKWEATHER--6

NAYS--The PRESIDENT, Messrs. STRONG, FOOTE, HARMON, PORTER, HEBARD--6.

So the Resolution was not adopted.

Mr. HEBARD offered the following Resolution:

*Resolved*, That a Committee be appointed to Report to this Council the manner of calling a Convention, designating the number of delegates of which it shall be composed, and their apportionment among the people.

On which the Yeas and Nays being demanded, were as follows:

Yeas--The PRESIDENT, Messrs. STRONG, ROBINSON, HARMON, FOOTE, PORTER, HIBBARD, STARKWEATHER, HEBARD--9.

NAYS--Messrs. PHELPS, HARVEY, REED--3.

So the Resolution was adopted--and the PRESIDENT, and Messrs. FOOTE and STARKWEATHER composed said Committee.

Mr. PHELPS for the Judiciary Committee, submitted the following amended Report:

The Committee to whom was referred the Report of the Committee in relation to the tenure of office of the Judges of the Supreme Court, respectfully Report the same, with the following

#### AMENDMENT

And that at the next election of Judges of the said Court, the Chief Justice thereof shall be elected to hold his office for the term of five years,--the first Assistant Justice shall be elected and hold his office for the term of four years,--the second Assistant Justice for the term of two years,--the third Assistant Justice for the term of two years,--the fourth Assistant Justice for the term of one year. And that annually thereafter there shall be one Judge of said Court, elected, who shall hold his office for the said term of five years.

J. PHELPS, *for Committee.*"

Which was read and accepted.

On motion of the SECRETARY, the same was recommitted with the amendment, for the purpose of being engrossed.

Council adjourned to 2 o'clock P.M.

**Tuesday, Jan. 13, 1835, 2 o'clock, P.M.**

Council met pursuant to adjournment.

The SECRETARY offered the following Resolution:

*Resolved*, That a Committee be appointed to examine the laws passed by the Legislature at their session in the year 1834, and

make report thereon,--Which was read and accepted.

Messrs. HEBARD, ROBINSON and REED were appointed said Committee.

A proposition for an amendment to the Constitution was submitted by Mr. FOOTE providing that the writ of Habeus Corpus should issue as a writ of Right. Which on motion was referred to the Judiciary Committee.

Mr. HARVEY called up the amended Report of the Committee, in relation to the election of County Officers by the freemen. And on the motion to fill the blank for the number of Justices in each town, with "fifteen," the Yeas and Nays being demanded, were as follows:

YEAS--Messrs. ROBINSON, FOOTE, HARVEY.--3.

NAYS--The PRESIDENT, Messrs. PHELPS, HARMON, PORTER, HIBBARD, REED, STARKWEATHER, HEBARD--8.

So the motion was lost.

On motion of Mr. FOOTE the Council voted to fill the blanks with "eight," which was accordingly so filled.

The SECRETARY called up the Resolution of Mr. PHELPS in relation to the manner of calling a Convention, and the Yeas and Nays being demanded were as follows:

YEAS--none.

NAYS--All--12.

So the Resolution was rejected.

The PRESIDENT for the Committee appointed to devise the most proper mode of calling a Convention, submitted the following Report:

*"To the Hon. Council of Censors:*

Your Committee appointed to devise the most proper mode of calling a Convention to consider the propositions for amendments and alterations of the Constitution, which may be proposed by this Council, make the following Report:

That the said Convention shall consist of two hundred members,--to be apportioned to the several Counties in the State in the following manner:

Bennington County,	13	Windham County,	20
Rutland "	22	Windsor "	28
Orange "	19	Addison "	19
Washington "	15	Chittenden "	16
Caledonia "	15	Franklin "	17
Orleans "	10	Essex "	3
Grand Isle "	3		

to be elected agreeably to an ordinance to be prescribed by this Council.

J. DOOLITTLE, *for Committee.*"

Which Report was read and accepted.

Mr. PORTER then moved to adopt the Report, and the Yeas and Nays being demanded, were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE,

PORTER, HEBARD--6.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, HARVEY, REED, STARKWEATHER--6.

So the motion to adopt was lost.

Mr. ROBINSON introduced the following Resolution:

*Resolved*, That this Council do adjourn to-morrow morning at 7 o'clock without day.

Which was read and on motion, ordered to lie on the table.

Mr. PORTER offered the following Resolution:

*Resolved*, That the Convention directed to be called by this Council shall be composed of delegates elected by the freemen of the several Counties, and that in order that the representation of the people in said Convention may be as equal as circumstances will admit, every County having 3625 inhabitants and upwards, shall be entitled to five delegates--if 5125 inhabitants, shall be entitled to six delegates, and proceeding in that manner, making 1500 inhabitants the mean increasing number for every additional delegate,--regard being had to the last Census as a basis for said calculation.

Which on motion was laid on the table till to-morrow morning.

Mr. ROBINSON offered the following Resolution:

*Resolved*, That a Committee of two be appointed to make up the debentures of the Council.

Which was adopted, and Messrs. HEBARD and ROBINSON were appointed said Committee.

On motion of Mr. PORTER the Council adjourned to half past 6 o'clock this evening.

**Tuesday, Jan. 13, 1835, Half Past 6 o'clock, P.M.**

Council met pursuant to adjournment.

Mr. PHELPS for the Judiciary Committee, submitted the following Report in relation to the writ of Habeas Corpus,--

The Committee to whom the subject matter was referred, respectfully beg leave to report to the Council the following, as an additional article to the Declaration of Rights,--

The Writ of Habeas Corpus shall in no case be suspended.--It shall be a writ issuable of right,--and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefor.

Which was read and accepted.

And on motion of Mr. FOOTE the said Report was adopted.

Council adjourned to 9 o'clock to-morrow morning.

**Wednesday, Jan. 14, 1835, 9 o'clock, A.M.**

Council met pursuant to adjournment.

Mr. HEBARD for the Committee to examine the Laws passed by the Legislature at their Session, in 1834, submitted the following Report,--

"The Committee to whom was referred the examination of the Laws passed at the Session of Legislature in the year 1834, respectfully beg leave to report,

That they have had the same under consideration, and that they discover nothing, which in their opinion requires the attention of this Council.

WILLIAM. HEBARD, *for Committee.*

Jan. 14, 1835."

Which was read and accepted, and on motion the same was adopted.

Mr. PHELPS called up the Reports of the other two Committees to examine the Laws, which had been previously accepted, and on motion they were adopted.

Mr. PORTER called up the Resolution laid on the table yesterday in relation to the manner of calling a Convention, and moved the adoption of the same, upon which the Yeas and Nays were demanded, and were as follows:

YEAS--The PRESIDENT, Messrs. FOOTE, STRONG, PORTER, HARMON, HEBARD--6.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, HARVEY, REED, STARKWEATHER--6.

So the Resolution was not adopted.

Mr. STARKWEATHER offered the following Resolution:

*Resolved*, That the Convention directed to be called by this Council shall be composed of Delegates equal in number, to the number of organized towns in the State, which Delegates shall be selected, one from each town, and elected by Districts,--each County comprising one District.

And on the motion to adopt the same, the Yeas and Nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, FOOTE, PORTER, STARKWEATHER, HEBARD--7.

NAYS--Messrs. ROBINSON, PHELPS, HIBBARD, HARVEY, REED--5.

So the Resolution was adopted.

Council adjourned to 2 o'clock, P.M.

**Wednesday, Jan. 14, 1835, 2 o'clock, P.M.**

Council met pursuant to adjournment.

On motion of Mr. HARVEY a Committee was appointed to draw up an Ordinance, consisting of Messrs. FOOTE and PORTER.

On motion of Mr. PORTER, a Committee was appointed to prepare and revise the proposed Amendments for publication, consisting of Messrs. PHELPS, HEBARD, and STARKWEATHER.

On motion of Mr. PORTER a Committee was appointed to examine the Constitution, and see what parts of it are abolished or affected by the proposed Amendments, consisting of Messrs.



HARMON, REED and HARVEY.

Mr. PHELPS, for the Judiciary Committee, made an amended report in regard to the tenure of office of the Judges of the Supreme Court,--which was accepted.

The SECRETARY then moved to dismiss the amended Report and the whole subject matter of the same.--On which the Yeas and Nays were as follows:

YEAS--Messrs. ROBINSON, PHELPS, HARVEY, FOOTE, HIBBARD, HEBARD--6.

NAYS--The PRESIDENT, Messrs. STRONG, HARMON, PORTER, REED, STARKWEATHER--6.

So the motion to dismiss was lost.

It was then moved to adopt the Report as amended,--On which the Yeas and Nays were as follows:

YEAS--Messrs. STRONG, STARKWEATHER--2.

NAYS--The PRESIDENT, Messrs. ROBINSON, PHELPS, HARMON, FOOTE, HIBBARD, HARVEY, PORTER, REED, HEBARD--10.

So the motion was lost.

Mr. HARMON then moved to adopt the original Report as amended by the Council,--On which the Yeas and Nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, HARMON, HARVEY, STARKWEATHER--5.

NAYS--Messrs. ROBINSON, PHELPS, FOOTE, PORTER, HIBBARD, REED, HEBARD--7.

So the motion to adopt did not prevail.

Mr. REED for the Financial Committee submitted the following Report:

"The Committee of Finance, appointed to enquire whether the public taxes have been duly laid and collected, and disposed of, make Report,--

That on examination they do not find any thing which shows that the Public Taxes have not been justly laid and promptly collected, in all parts of the State, for the last seven years, and that there is nothing in this respect requiring the animadversion of this Council.

JOSEPH REED, *for Committee.*"

Which was accepted, and on motion the same was adopted.

Mr. STARKWEATHER had leave of absence from and after to-day.

Council adjourned to 9 o'clock to-morrow morning.

**Thursday, Jan. 15, 1835, 9 o'clock, A.M.**

Council met pursuant to adjournment.

Mr. ROBINSON had leave of absence from after to-day.

On motion of Mr. FOOTE the Council voted to amend the 5th Section of the 4th Article of the Report providing for a Senate, by

adding the 3d line after the word "eleventh," the words "and twenty-seventh."

Mr. PHELPS offered the following Resolution:

*Resolved*, That the following caption be prefixed to the articles proposed to be added to the Constitution, to wit:

*Articles of Amendment, alteration and addition to the Constitution of the State of Vermont, proposed by the Council of Censors on the 15th day of January A.D. 1835.*

Which was read and on motion was adopted.

Mr. PHELPS offered the following Resolution:

*Resolved*, That the foregoing amendments, alterations, and additions to the Constitution, consisting of Twenty Articles, be proposed to the people for their consideration and adoption.

Which was read and on motion was adopted.

Mr. PHELPS offered the following Resolution:

*Resolved*, That those articles in the Constitution which are proposed to be altered, amended, or abolished, by this Council, be published with the following caption prefixed thereto, as follows:

*Articles of the Constitution of the State of Vermont proposed to be amended, altered, or abolished by the Council of Censors.*

Which was read and adopted.

Mr. PHELPS offered the following resolution:

*Resolved*, That the SECRETARY procure six hundred copies of the Journal of this Council to be printed, and that two hundred and fifty thereof be delivered to the Surveyor of the public buildings at Montpelier, to be kept and distributed among the members of the Convention when assembled.--And that the remaining copies be delivered to the Sheriffs of the several Counties, to be by them distributed as follows:--To the Governor four copies--to the Lieut. Governor, four copies--to the Secretary of State, fifty copies--to the Secretary to the Governor and Council, ten copies--to the late Governors, and Lieut. Governors, and Judges of the Supreme Court, one copy each--to the members of this Council, each one copy--and to the Clerk of the General Assembly, ten copies.

Mr. PHELPS offered the following Resolution:

*Resolved*, That the SECRETARY be requested to transmit to his excellency the Governor of this State a certified copy of the Articles of Amendments proposed by this Council to the Constitution, and the papers thereto subjoined, and signify to him the request of the Council, that he will cause the same to be laid before the Convention when assembled at Montpelier on the first Wednesday in January in the year 1836.

Which was read and adopted.

On motion of Mr. REED, the Financial Committee was discharged from any further consideration of the Resolution introduced by Mr. HEBARD on the 22d day of October last.

The Report of the Legislative Committee made at the last session

in relation to the election and meeting of the Legislature, was called up, and on motion was dismissed.

The Report of the Committee made at the last session in relation to the manner of calling a Convention was called up, and on motion of Mr. PORTER was referred to the first day of next March.

Mr. PHELPS on motion was excused from serving on the Committee to draft an Address to the People.

On motion of Mr. PORTER the PRESIDENT was added to said Committee in place of Mr. PHELPS excused.

Council adjourned to 2 o'clock.

**Thursday, Jan. 15, 1835, 2 o'clock P.M.**

Council met pursuant to adjournment.

Mr. PORTER called up the Report of the Committee in relation to the choice of County Officers.

On motion to adopt the same, it was agreed to take up each article separately by itself--and on motion to adopt the first article, the Yeas and Nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, PHELPS, FOOTE, HIBBARD, HARVEY, PORTER, REED, HEBARD--9.

NAYS--Mr. HARMON--1.

So the first section was adopted.

On motion to adopt the 2d Article, the Yeas and Nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, PHELPS, FOOTE, HARVEY, REED, PORTER, HIBBARD, HEBARD--9.

NAYS--Mr. HARMON--1.

So the 2d Article was adopted.

On motion to adopt the 3d Article, the Yeas and Nays were as follows:

YEAS--The PRESIDENT, Messrs. STRONG, PHELPS, FOOTE, HARVEY, HIBBARD, REED, PORTER, HEBARD--9.

NAYS--Mr. HARMON--1.

So the 3d Article was adopted.

On motion voted to adopt the 4th Article.

On motion voted to reconsider the vote, to fill the blank in the 5th Section with the number "eight" for the number of Justices of the Peace.

On motion of Mr. PORTER voted to fill the blank for the number of Justices of the Peace with the word "ten."

On motion of Mr. HARVEY the Council then voted to adopt the said Article.

On motion the Council then voted to adopt the whole Report.

On motion of Mr. PHELPS the Council voted to propose the following Article as an Amendment to the Constitution, to wit:

Such parts and provisions only as the Constitution of this State established by Convention on the ninth day of July, A.D. 1793, as

are altered or superceded by any of the foregoing Amendments, or are repugnant thereto, shall hereafter cease to have effect.

Mr. HARVEY and Mr. HIBBARD had leave of absence from and after tomorrow.

Council adjourned to 9 o'clock to-morrow morning.

**Friday, Jan. 16, 1835, 9 o'clock A.M.**

Council met pursuant to adjournment.

Mr. PORTER moved to reconsider the vote adopting the Resolution of Mr. STARKWEATHER, in regard to the manner of calling a Convention,--On which the Yeas and Nays were as follows:

YEAS--Messrs. PHELPS, HIBBARD, HARVEY, PORTER, REED, HEBARD--6.

NAYS--The PRESIDENT, Messrs. STRONG, FOOTE, HARMON--4.

So the vote was reconsidered.

Mr. PORTER then moved to reconsider the vote rejecting the Resolution of Mr. HIBBARD in relation to the manner of calling a Convention, on which the Yeas and Nays were,

YEAS--Messrs. PHELPS, HIBBARD, HARVEY, PORTER, REED, HEBARD--6.

NAYS--The PRESIDENT, Messrs. STRONG, FOOTE, HARMON--4.

So the vote was reconsidered.

The question then recurred on the passage of the last mentioned Resolution, and the mover having agreed to have it amended so as to read as follows:

*Resolved*, That the Convention directed to be called by the Council be composed of Delegates chosen and appointed by the several towns entitled to send Representatives to the General Assembly of this State.

And on the passage of the Resolution the Yeas and Nays were as follows:

YEAS--Messrs. HARMON, HIBBARD, HARVEY, PORTER, REED, HEBARD--6.

NAYS--The PRESIDENT, Messrs. STRONG, PHELPS, FOOTE--4.

So the Resolution was adopted.

The Committee to draft an Ordinance reported the following:

#### STATE OF VERMONT

*In Council of Censors Jan. 16, 1835.*

This Council having agreed to propose certain Amendments to the Constitution of this State; and having determined to call a Convention to consider such Amendments:

THEREFORE, *It is ordered by said Council*, That a Convention of the people of the State of Vermont, shall meet at the State House in Montpelier on the first Wednesday of January, A.D. 1836, to consider

of the Amendments to the Constitution proposed by this Council and to adopt the same, or such parts thereof, as the said Convention shall judge will be most conducive to the good government, peace and happiness of the people of this State. And for the purpose of electing Delegates to attend said Convention, the first Constable, or in his absence, the Town Clerk, or in his absence, one of the Selectmen of each town in this State entitled to send a Representative to the General Assembly, without further order, shall set up a notification, at such place or places, as shall have been appointed for notifying town meetings in such towns, at least ten days before the third Tuesday of November next, warning the freemen of their respective towns to meet on the third Tuesday of November, 1835, at one o'clock in the afternoon at the place where the last freemen's meeting was held in such town, for the purpose of electing a delegate to represent the freemen of said town in said Convention--at the opening of which meeting, this order shall be publicly read.

And the first Constable, or in his absence or disability, the Town Clerk, or some one of the Selectmen of each town, or a Justice of the Peace, shall preside at such meeting--whose duty it shall be to call on the freemen of such town, from time to time, for the space of two hours, to give in their votes for such delegate; which votes shall be given and received in the same manner, and under the same regulations as is by law provided in the case of electing Representatives to the General Assembly.

And at the expiration of which time, the votes so taken, shall by the said presiding officer, with the assistance of the Selectmen and Justices of the Peace in such town be sorted and counted: and if no person shall have a majority of all votes, the said presiding officer shall notify the same, and again call upon the freemen as aforesaid, giving a reasonable time for receiving such votes, until an election shall be made.

And after an election shall have been made, as aforesaid, the presiding officer of said meeting shall deliver to the person elected, a certificate of the following tenor, to wit:--

At a freemen's meeting warned and holden at \_\_\_\_\_ in pursuance of an order of the Council of Censors, on the third Tuesday of November, A.D. 1835, A.B. was elected a delegate, by a majority of the freemen present, to represent the inhabitants of \_\_\_\_\_ in Convention to be holden on the first Wednesday of January, A.D. 1836, for the purpose of taking into consideration certain amendments to the Constitution of this State, proposed by said Council of Censors in January last.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 1835.

C.D. First Constable, or Presiding Officer.

Which certificate shall be sufficient credential of such person's

election.

Which Ordinance was accepted and unanimously adopted.

The Committee appointed to examine the Constitution, and see what parts will be altered, abolished, or affected by the proposed Amendments, submitted the following Report:

*"To the Hon. the Council of Censors now sitting:--*

Your Committee appointed to Report such Articles in the Constitution, as are in any manner altered or abolished, or superceded, by the proposed Amendments thereto made, Report:

That in the first Chapter of said Constitution, entitled a "Declaration of the rights of the State of Vermont," no article is altered, or abolished, or superceded, by any of the Amendments proposed by this Council.

That in the second Chapter of said Constitution, entitled "a plan or frame of government," the following Articles, or Sections, are altered, or abolished, or superceded, either in whole or in part, to wit:--the First, Second, Third, Ninth, Tenth, Eleventh, Sixteenth, Twenty-Fourth, Twenty-Seventh, and Forty-Third.

All which is respectfully submitted.

N. HARMON, *for Committee.*"

Which on motion was accepted.

Mr. FOOTE was excused from serving on the Committee to draft an Address to the People,--and on motion of Mr. PHELPS, the SECRETARY was added to said Committee in the place of Mr. FOOTE, excused.

On motion of Mr. PHELPS it was ordered that the Address when prepared shall be signed by the PRESIDENT and SECRETARY and be published with the proposed Amendments, together with the Journal of the proceedings.

Mr. PHELPS offered the following Resolution:

Resolved, That the PRESIDENT and SECRETARY be empowered to revise and prepare the Journal, and all proceedings passed on by this Council, for the press, and also the Address to the People, and superintend the printing of the same.

Which was adopted.

Mr. PHELPS offered the following Resolution:

Resolved, That the thanks of this Council be respectfully presented to the PRESIDENT, for the ability, and impartiality, with which he has presided over its deliberations.

Which Resolution was unanimously adopted.

On motion of Mr. PHELPS, the Council then adjourned without day.

#### ARTICLES

*Of Amendment, alteration and addition, to the Constitution of the State of Vermont, proposed by the Council of Censors on the 15th day of January, A.D. 1835.*

ARTICLE 1ST. *Sheriffs and High Bailiffs shall be elected by the*

freemen of their respective Counties,--and shall hold their offices for the term of three years,--Sheriffs shall give bonds in such manner and amount as the Legislature shall direct,--and the Sheriffs shall not be re-eligible to the same office during the three years next following the term for which they shall have been elected.

ARTICLE 2D. *State's Attornies* shall be annually elected by the freemen of their respective Counties.

ARTICLE 3D. *Judges of the Probate* shall be annually elected by the freemen of their respective Probate Districts.

ARTICLE 4TH. The election to the several offices mentioned in the preceeding Articles shall be made at the times and in the manner now directed in the Constitution for the choice of Councillors.--And the proper officer after he shall have sealed up and directed the votes, shall deliver them to some Representative chosen to attend the General Assembly.--And at the opening of the General Assembly, there shall be a Committee appointed out of the same who shall be sworn, and shall proceed to receive, sort and count the votes.--And the highest in nomination for the respective offices, shall be by said Committee declared duly elected,--and by the Governor be duly commissioned; and if two or more persons designated for any one such office, shall have received an equal number of votes, the General Assembly shall elect one of them who shall serve as aforesaid.

ARTICLE 5TH. *Justices of the Peace*, not exceeding ten to each town, shall be annually elected by the freemen thereof,--and until otherwise provided by law, their election shall be made on the day, and in the manner now directed for the choice of Representatives to the General Assembly,--and it shall be the duty of the Town Clerk of each town, for the time being, to make a certificate of the names of such persons, who shall have been duly elected to said office, directed to the Governor, who on receiving such certificate, shall commission the same.

ARTICLE 6TH. The most numerous branch of the Legislature of this State shall hereafter be styled the House of Representatives.

ARTICLE 7TH. The Supreme Legislative power of this State shall hereafter be exercised by a Senate and the House of Representatives; which shall be styled, "The General Assembly of the State of Vermont."--Each shall have and exercise the like powers in all acts of Legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other.

*Provided*, That all Revenue bills shall originate in the House of Representatives,--but the Senate may propose or concur with amendments, as on other bills. Neither House during the session of the General Assembly, shall without the consent of the other, adjourn for more than three days, nor to any other place than that, in which the two houses shall be sitting,--and in case of disagreement

between the two Houses, with respect to adjournment, the Governor may adjourn them to such time as he shall think proper.

ARTICLE 8TH. The Senate shall be composed of thirty Senators, to be of the freemen of the County for which they are elected, respectively, who are thirty years of age or upwards, and to be annually elected by the freemen of each County respectively.--Each County shall be entitled to one Senator, at least, and the remainder of the population, as the same was ascertained by the last Census, taken under the authority of the United States,--regard being always had, in the several Counties shall, until after the next Census of the United States, be entitled to elect, and have their Senators, in the following proportion, to wit:

Bennington County, two; Windham County, three; Rutland County, three; Windsor County, four; Addison County, three; Orange County, three; Washington County, two; Chittenden County, two; Caledonia County, two; Franklin County, three; Orleans County, one; Essex County, one; Grand Isle County, one.

The Legislature shall make a new apportionment of the Senators to the several Counties, after the taking of each Census of the United States, or Census taken, for the purpose of such apportionment, by order of the Government of this State--always regarding the above provisions in this article.

ARTICLE 9TH. The freemen of the several towns in each County shall annually, give their votes for the Senators, apportioned to such County, at the same time, and under the same regulations, as are now provided for the election of Councillors.--And the person or persons, equal in number to the number of Senators, apportioned to such County, having the greatest number of legal votes, in such County respectively, shall be the Senator or Senators, of such County.--At every election of Senators, after the votes shall have been taken, the Constable or presiding officer, assisted by the Selectmen and civil authority present, shall sort and count the said votes, and make two lists of the names of each person, with the number of votes given for each annexed to his name, a record of which shall be made in the Town Clerk's office, and shall seal up said lists, separately, and write on each the name of the town, and these words, "Votes for Senator," or "Votes for Senators," as the case may be, one of which lists shall be delivered, by the presiding officer, to the Representative of said town, (if any) and if none be chosen, to the Representative of an adjoining town, to be transmitted to the President of the Senate;--the other list, the said presiding officer, shall within ten days, deliver to the Clerk of the County Court, for the same County,--and the Clerk of each County Court, respectively, or in case of his absence or disability, to both, to the High Bailiff of such County, on the tenth day after such election, shall publicly, open, sort, and count said votes;--and make a record of the same in the office of the clerk of such County Court, a copy



of which he shall transmit to the Senate:--and shall also within ten days thereafter, transmit to the person or persons elected, a certificate of his or their election.

Provided, However, that the General Assembly shall have power to regulate by Law the mode of balloting for Senators, within the several Counties, and to prescribe the means, and the manner by which the result of the balloting shall be ascertained, and through which the Senators chosen shall be certified of their election, and for filling all vacancies in the Senate, which shall happen by death, resignation or otherwise. But they shall not have power to apportion the Senators to the several Counties, otherwise, than according to the population thereof agreeably to the provisions herein ordained.

ARTICLE 10TH. The Senate shall have the like powers to decide on the election and qualifications of, and to expel any of its members, make its own rules, and appoint its own officers, as are incident to, or are possessed by, the House of Representatives. A majority shall constitute a quorum. The Lieut. Governor shall be President of the Senate, except when he shall exercise the office of Governor, or when his office shall be vacant, or in his absence, in which cases the Senate shall appoint one of its own members, to be President of the Senate, *pro tempore*. And the President of the Senate shall have a casting vote, but no other.

ARTICLE 11TH. The Senate shall have the sole power of trying and deciding upon all impeachments--when sitting for that purpose, they shall be on oath, or affirmation, and no person shall be convicted, without the concurrence of two thirds of the members present. Judgment in cases of impeachment, shall not extend farther than to removal from office--and disqualification to hold or enjoying any office of honor, or profit, or trust, under this State. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to Law.

ARTICLE 12TH. The Supreme Executive power of the State, shall be exercised by the Governor, or, in case of his absence, or disability, by the Lieut. Governor; who shall have all the powers, and perform all the duties vested in, and enjoined upon the Governor and Council, by the Eleventh and Twenty-seventh Sections of the second Chapter of the Constitution, as at present established, excepting that he shall not sit as a judge, in case of impeachment, nor grant reprieve or pardon, in any such case; nor shall he command the forces of the State in person, in time of war, or insurrection; unless by the advice and consent of the Senate; and no longer than they shall approve thereof. The Governor may have a Secretary of civil and military affairs, to be by him appointed during pleasure, whose services he may at all times command; and for whose compensation provision shall be made by law.

ARTICLE 13TH. The votes for the Governor, Lieut. Governor, and Treasurer, of the State, shall be sorted and counted and the result

declared, by a committee appointed by the Senate and House of Representatives. If, at any time, there shall be no election, by the freemen, of Governor, Lieut. Governor, and Treasurer, of the State, the Senate and House of Representatives shall, by a joint ballot, elect to fill the office, not filled by the freemen as aforesaid, one of the three candidates for such office, (if there be so many) for whom the greatest number of votes shall have been returned.

ARTICLE 14TH. The Secretary of State, and all officers, whose elections are not otherwise provided for, and who under the existing provisions of the Constitution, are elected by the Council and House of Representatives, shall, hereafter, be elected by the Senate and House of Representatives, in joint assembly, at which the presiding officer of the Senate, shall preside; and such presiding officer in such joint assembly shall have a casting vote, and no other.

ARTICLE 15TH. Every bill which shall have passed the Senate and House of Representatives, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; if not, he shall return it, with his objections in writing, to the House, in which it shall have originated; which shall proceed to reconsider it. If, upon such reconsideration, a majority of the House shall pass the bill, it shall, together with the objections, be sent to the other House, by which, it shall, likewise, be reconsidered, and, if approved by a majority of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for or against the bill, shall be entered on the journal of each House, respectively. If any bill shall not be returned by the Governor, as aforesaid, within five days, (Sundays excepted) after it shall have been presented to him, the same shall become a law, in like manner, as if he had signed it; unless the two Houses, by their adjournment, within three days after the presentment of such bill, shall prevent its return; in which case, it shall not become law.

ARTICLE 16TH. The Legislature shall have power to divide the State, for the election of Senators, into convenient Districts, which may, from time to time, be altered and new districts established, as public convenience may require; and the Senators shall be apportioned among the several districts, according to their population, and according to the last Census, next before such apportionment. *Provided*, Also that the General Assembly shall have power to regulate, by law, the mode of balloting for the Senators, within the several districts; and, to provide the means and manner, by which, the result of such balloting, shall be ascertained, and by, and through which, the Senators shall be certified of their election; but they shall not have power to increase the number of Senators, or, to apportion them to the several districts, otherwise, than according to the population, as near as may be, agreeably to the provisions herein, before, ordained.

ARTICLE 17TH. The laws which shall be enacted, in pursuance, and by virtue of the preceeding Article, so long as the same shall remain in force, shall supersede, and thereby suspend the provisions of so much of the Eighth Article of these Amendments, as provides for the choice of Senators by Counties.

ARTICLE 18TH. The Writ of Habeas Corpus shall in no case be suspended.—It shall be a writ, issuable of right; and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefore.

ARTICLE 19TH. Whenever any Council of Censors shall propose any amendment, explanation, or alteration, or addition to the Constitution of this State, they shall propose the same directly to the people, for their adoption or rejection, instead of calling a Convention to adopt or reject the same; in which case they shall by an ordinance, to be by them promulgated for that purpose, call upon the freemen of the State, qualified to vote for Representatives to the General Assembly, to meet at the place of their last freemen's meeting, in their towns respectively, on a day and hour to be by them designated in such ordinance, for the purpose of voting upon the amendments which the Council of Censors shall have proposed. And 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 of such freemen's meeting. And the Council of Censors shall, in such ordinance, designate the method in which the freemen shall be supplied with ballots, the manner in which their votes shall be expressed, the time, place and manner of their return, and how, and by whom the result shall be ascertained and certified to the Governor. And when the result of such balloting shall have been certified to the Governor, or in his absence, to the Lieutenant Governor, he shall by proclamation make the same known to the people. And such Article or Articles as shall have been adopted by a majority of the freemen voting as aforesaid, he shall cause to be transcribed and certified under his hand and seal of the State, and deposited in the office of the Secretary of State; and the Secretary of State shall record the same. And they shall thereupon become, and henceforth be, a part of the Constitution of this State, and, as such, binding on the inhabitants thereof forever.

ARTICLE 20TH. Such parts and provisions only of the Constitution of this State, established by a Convention on the ninth day of July, one thousand seven hundred and ninety-three, as are altered or superceded by any of the foregoing amendments, or are

repugnant thereto, shall hereafter cease to have effect.<sup>4</sup>

ORDINANCE.

STATE OF VERMONT,

IN COUNCIL OF CENSORS, Jan. 16, 1835.

This Council having agreed to propose certain Amendments to the Constitution of this State; and having determined to call a Convention to consider such Amendments:

THEREFORE, *It is ordered by said Council*, That a Convention of the people of the State of Vermont, shall meet at the State-House in Montpelier, on the first Wednesday of January, A.D. 1836, to consider of the Amendments to the Constitution proposed by this Council, and to adopt the same, or such parts thereof, as the said Convention shall judge will be most conducive to the good government, peace and happiness of the people of this State. And for the purpose of electing Delegates to attend said Convention, the first Constable, or in his absence, the Town Clerk, or in his absence, one of the Selectmen of each town in this State entitled to send a Representative to the General Assembly, without further order, shall set up a notification, at such place or places as shall have been appointed for notifying town meetings in such towns, at least ten days before the third Tuesday of November next, warning the freemen of their respective towns to meet on the third Tuesday of November, 1835, at one o'clock in the afternoon at the place where the last freemen's meeting was held in such town, for the purpose of electing a delegate to represent the freemen of said town in said Convention--at the opening of which meeting, this order shall be publicly read.

And the first Constable, or in his absence or disability, the Town Clerk, or some one of the Selectmen of each town, or a Justice of the Peace, shall preside at such meeting, whose duty it shall be to call on the freemen of such town, from time to time, for the space of two hours, to give in their votes for such Delegate; which votes shall be given and received in the same manner, and under the same regulations as is by law provided in the case of electing Representatives to the General Assembly.

And at the expiration of which time, the votes so taken shall, by the said presiding officer, with the assistance of the Selectmen and Justices of the Peace in such town, be sorted and counted: and if no person shall have a majority of all the votes, the said presiding officer shall notify the same, and again call upon the freemen as aforesaid, giving a reasonable time for receiving such votes, until an

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<sup>4</sup>Eds. note. In the interests of space, we have chosen not to reprint the sections to be amended. No articles were involved. Sections 1, 2, 3, 9, 10, 11, 16, 24, 27, and 43 of the 1793 Constitution were slated for change, if each of the Council's proposals were adopted.

election shall be made.

And after an election shall have been made, as aforesaid, the presiding officer of said meeting shall deliver to the person elected, a certificate of the following tenor, to wit:

At a Freemen's meeting warned and holden at \_\_\_\_\_ in pursuance of an order of the Council of Censors, on the third Tuesday of November, A.D. 1835, A.B. was elected a delegate, by a majority of the freemen present, to represent the inhabitants of \_\_\_\_\_ in Convention to be holden on the first Wednesday of January, A.D. 1836, for the purpose of taking into consideration certain amendments to the constitution of this State, proposed by said Council of Censors in January last.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 1835.

C.D. First Constable, or Presiding Officer.

Which certificate shall be sufficient credential of such person's election.

## ADDRESS

### *To the People of the State of Vermont:*

The Council of Censors, elected by the Freemen of the State, on the last Wednesday in March, 1834, pursuant to the 43d Article of the Constitution, having considered and deliberated upon the various subjects, by that Article referred to us for consideration, have now the honor of submitting to your consideration the result of our deliberations, so far as your future action thereon has become constitutionally necessary.

Among the *duties* assigned us, by the Constitution, are the proposing any amendments, explanations, or additions to any article of the constitution, in our opinion, necessary for the better preservation of the rights and happiness of the people. In the discharge of these duties, we have carefully examined into the constitution, and its various provisions, and have pointed out several defects therein, as a plan of government, and have proposed the appropriate remedies.

Among the *powers* assigned us, is that of calling a Convention: in the exercise of this power, we have resolved to call a Convention, to consider of the proposals we offer as remedies to the defects in the Constitution, as a plan of government, the better to secure the rights and happiness of the people.

We believe that the framers of the Constitution had in view, not only an equal representation of the people in the delegation of powers, but also intended to make provision, in that instrument, for the proper checks and balances in the legislative department, to the end that hasty and improvident legislation might thereby be avoided.

An examination of the constitution, and its provisions, will, we

believe, satisfy any one that it was designed for, and adapted to, a people, few in number, whose business relations were few and simple, and but little advanced in agriculture, commerce and arts; and that however wisely it may have been adapted to the infancy of the State, in commencing government, the changes which an increased population has produced, and the more multiplied and complicated relations which have sprung up, in the course of forty years, call for a more artificial and perfect system of government, than is to be found in that instrument.

The Constitution of the United States, and those of nearly all our sister States, show that a division of the legislature into two separate branches, with co-ordinate powers, has been found best adapted to ensure safety and stability in legislation, and to prevent a hasty and improvident exercise of legislative authority.

It is believed that wherever supreme legislative power is vested in a single individual, or in a single assembly, unchecked, the tendency of the exercise of that power is, in the former case, to despotism--in the latter, to anarchy.

In the structure of the best constitutions of government, wherein all the rights, and the rights of all, are best secured, it will be found that peculiar care has been taken, in the structure of those forms, to provide suitable checks in the distribution of powers to the different branches of the law-making power, in a manner most effectually to guard against a hasty or undue exercise of that power.

We believe that the framers of the present Constitution, in making provision in that instrument, for the Executive Council, had this object in view. This belief is strengthened by the fact that for thirty years next following the adoption of the constitution, in 1793, the grant of legislative authority, by that instrument, to the Executive Council, was never denied, or seriously doubted; and during the same period, that Council did, to every practical purpose, hold and exercise, parity of powers, with the House of Representatives, in all matters of legislation; nor was this power denied or questioned, so long as the framers of the constitution, or their contemporaries, continued to take part in the councils of the state. They were the best expositors of their own design in the grant of powers by that instrument. Nor is it recollected, that, during the same period, any collisions arose between the Council and House of Representatives, in regard to the powers of the former; and their exercise of them was, at least, acquiesced in. Those patriotic men have passed away, and others have succeeded to their places in the councils of state.

The recent history of our state legislation will show how very imperfectly this provision has answered the design of its patriotic authors.

Within the last few years, an examination into the constitution, in regard to the grant of legislative authority to the Executive Council, has resulted in the denial, by the House of Representatives, of the

existence of any such authority. The Council may revise a bill, or concur in passing it, or propose amendments to it; but these acts are now declared to be subordinate to the will of the House of Representatives, who claim and exercise supreme and uncontrolled legislative authority. The utmost power of control which the Council have over a bill, is to retard its passage one year--after which, it becomes a law without their concurrence or control. Repeated instances of this kind have recently occurred.

The House of Representatives being elected, one from each organized town, by the freemen thereof, without regard to the number of inhabitants, and that being very unequal in the different towns, renders the representation also very unequal: a town which contains twenty freemen, which sends a representative, has the same voice in the legislature, as a town which contains five hundred freemen--presenting in a government of the people, professedly republican, and based on the principle of equal representation, *this strange anomaly*, a single, though numerous assembly of men, claiming and exercising sole and supreme legislative authority--a majority of which is elected by about *one fourth part* of the freemen of the state.

Although we consider this inequality of representation inconsistent with sound policy, and contravening the sound republican maxim, that population and representation ought to be equal; and also, as depriving the people of that equality in representation which the spirit and genius of our government were designed to secure, still such is the force of long-established habit of town representation, and so interwoven, by usage, is that mode with the management of our state affairs, as it may bear upon our political institutions, we consider any attempt to remedy the evil, by changing the mode to the ratio of population, as of doubtful success: but, without admitting that the *usage* has grown into a *right*, we have thought it more expedient, under existing circumstances, to provide a partial remedy, than attempt a radical change.

With these views, we propose, as a safeguard against hasty and improvident legislation, and to remedy, in some degree, the inequality of representation in the most numerous branch of the legislature, a *Senate* as a substitute for the present Council. The Senate to consist of thirty members, to be apportioned to the several counties, as near as may be, in the ratio of population--providing however, that each county shall have, at least, one Senator.

In proposing a Senate to be constituted as a co-ordinate branch of the legislature, our purpose is, to create a power as a counterpoise to the popular branch, and thereby to give greater stability to the legislative department. We are not particular, in any wise, by what name this co-ordinate branch shall be designated--it may be Senate or Council, so it be vested with efficient authority.

The division of the legislature into two separate and distinct

branches, with parity of powers, sitting and acting separately, is, we believe, founded on principles of good policy, and sustained and sanctioned by universal experience. By such a division of legislative authority, a guard is interposed against the evil effects and dangers consequent upon the hasty and premature adoption of measures springing, as they sometimes do, from passion, party influence, party intrigue, or local interests, which are often brought to bear with great force, and exert a powerful and dangerous sway in a single assembly.

It is obvious that measures originating under such circumstances, or under *any* circumstances, in a single numerous assembly, are not as likely to be carried through to final consummation, and assume the character and solemnity of laws, when they are to be subjected to the revision and scrutiny of another body, acting separately, more deliberate, without prejudice or undue influence, by whose authority such measures may be arrested in their progress, and whereby the evils of a hasty and premature exercise of power in the other branch may be avoided.

In a Senate are presumed to be found deliberation, wisdom and stability, as the peculiar properties of its constitution and character. Although in the proposition which we offer, for substituting a Senate for the Executive Council, the Senators are to be elected annually, still we believe, that from their deliberative character, numbers, age and experience, they will possess and exercise, by way of check and counterpoise to the other branch, and influence and control, in all matters of legislation, both safe and salutary.

That legislation has been fluctuating, hasty and improvident, and unnecessarily multiplied, will be apparent to any one who will look into the statutes; else, why so many *additional, amendatory, explanatory and repealing* acts, in continued succession, with which our statutes abound, if those acts had been providently and deliberately passed? The subject matter has not so often changed. --This will appear by reference to one fruitful source of legislative enactments--that in regard to the judiciary department. So essential are stability and uniformity in the administration of civil justice, in that department, that legislative enactments in relation thereto ought to be few, and those clear and unambiguous. It is through this department that the government is brought home to the people, and made to bear upon them individually, more than any other: but if the laws "regulating judicial proceedings" are fluctuating, there is great danger that those proceedings themselves will be fluctuating, and the rights of citizens rendered insecure. Yet it is believed that nothing is hazarded, by saying that twice as many acts have been passed in relation to that subject, in any given period, as there have years passed in the same period.

We might refer to several other subjects about which legislation has, we think, been unnecessarily multiplied--such are the jurisdiction



of justices of the peace, settlement of estates, and common schools.

We are unable to assign any other reason for this accumulation of legislative enactments, than a precipitate and improvident exercise of legislative authority, without due deliberation and reflection in the application of remedies to the evils intended to be remedied.

The collisions which have of late arisen between the Executive Council and General Assembly, we consider of serious import, and call for remedial interference; as they are, from the present aspect of things, likely to continue so long as the present organization continues. And it is for the people alone to find and apply the remedy.

In 1826, the Council passed a resolution that the House of Representatives had no authority to pass a bill into a law, without the concurrence of the Council; and that their doing so was an infringement upon the constitutional powers and prerogatives of the Council.<sup>5</sup> On copies of these resolutions being sent to the House, they in turn resolved that they *did* possess the constitutional power to pass a bill into a law without the concurrence of the Council, which had originated in the House, and been suspended by the Council.<sup>6</sup> Thus the issue was formed, without an arbiter to decide it, except the parties themselves. The issue was on the side of numbers--the house claimed it, and acted accordingly.--The decision, as it now stands, is this: That no legislative authority whatever, express or implied, is granted, by the constitution, to the Executive

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<sup>5</sup>"Resolved, in the opinion of the Council, that no bill originally introduced into the House of representatives can become a law without the concurrence of the Gov. and Council is an infringement upon the constitutional powers and prerogatives of the Gov. and Council. Resolved that the late act of the House of representatives, in declaring a bill entitled, 'An act repealing part of an act therein mentioned' is an assumption of power unprecedented and unwarranted by the constitution." *Governor & Council* VII, 225 (resolution introduced), 233 (resolution adopted by Governor and Council).

<sup>6</sup>The response of the House was equally irritable: "Resolved that the House of representatives do possess the constitutional power to pass a bill into a law without the concurrence of the Gov. and Council which has originated in the house and has been suspended by the Gov. and Council. Resolved, that declaring the bill, entitled, 'An act repealing part of an act therein mentioned,' to have become a law without the concurrence of the Gov. and Council, is warranted by the constitution." *Governor & Council* VII, 251. On November 11, the Governor and Council responded with the following: "Resolved, that the Sec'y of the Governor and Council be directed to keep in his possession all bills that have been or may be suspended, and hold the same subject to the order of the Council at the next session, and that his Excellency the Gov. be requested, wherever the passage of any bill is suspended by the Council, to notify the House of representatives thereof." *Governor & Council* VII, 245.

Council. Whether this decision be right or wrong, the effect is the same--to reduce the Council to an inefficient powerless body. They may give their advice, or propose amendments to be adopted or rejected at the will of the General Assembly.

Under the present organization, no reasons of state policy occur to us for the longer continuing of that body, thus shorn of its authority, as an appendage, next to useless, of the General Assembly, subject to its will and under its control in all matters of legislation.

We can hardly refrain from the expression of the opinion, that the Executive Council do not now hold and exercise that balancing power in legislation, which the framers of the constitution designed to grant to them in that instrument. No improper motive, however, is intended to be imputed to the House of Representatives: if the power constitutionally belongs exclusively to them, it is their right and duty to assume and exercise it: they act no otherwise than single assemblies usually do: tenacious of power and prerogative, they will not readily surrender them on doubtful constructions.

But, fellow-citizens, much as these collisions and interruptions in the important business of legislation are to be regretted, still we must take the case as it is, and endeavor to provide remedies for the evils as they are found to exist. The remedy we propose, is the substitution of a Senate for the present Council, with competent authority to interpose effectual checks to the undue and hasty exercise of legislative power by the other branch.

Plans of government are sometimes proposed as matters of experiment. The one which we now offer for your adoption, we believe a safe one, and comes strongly recommended by that oracle of wisdom, *universal experience*.

It is a common remark, that we have done well under our present constitution: this may be true, and still it would be wise and prudent to set guards for the future security and permanency of our prosperity, tranquility and happiness. If we, as a people, have been prosperous and happy under our present form of government, other causes than that form are assignable. That our valleys have yielded abundant crops, and our flocks and herds have fattened upon our hills, furnish no good reason why defects in our frame of government should not be amended.

If the character of our population be such at present as may furnish some security against the abuses which may grow out of defects in our form of government, we cannot promise ourselves that such a state of things will continue. We cannot foresee what changes may be brought about by the various events to which all affairs, depending on human agency, are liable--by the course of migration, the influx of foreigners, the multiplication of corporations, the investment of large capital in banking, manufacturing, and other establishments; and which will bring, in their train, a variety, and,

perhaps, conflicting interests. The time may come when constitutional power may be eagerly sought for, to be exercised for party or sinister purposes.

Our relation to the Union, as an integral part, might furnish motives for assimilating our form of government to that of the other members.

We are fully sensible that long established forms of government ought not to be changed for slight and transient causes: still, when defects in those forms become palpable, it is a dictate of wisdom and prudence to remedy them; and we believe the present a very favorable time.

The inquiry may well be made, whether the proposed amendments would have the effect, if adopted, to change a long established form of government: for, as before remarked, such was the practical construction of the constitution, that the Council did exercise parity of powers in legislation, and bills often originated in that House; and it was not until within the last few years that this power was denied them by the other House; and it is within the same period that the House of Representatives have assumed, and claim to possess and exercise exclusive legislative authority: the form is therefore of recent origin; and should it long succeed, it will have no precedent.

Most of the state constitutions, which were formed immediately after the revolution, made provision for dividing the legislature into two distinct and separate branches, with co-ordinate powers. To this there were some exceptions.--Pennsylvania and Georgia were within the exception.--They commenced self-government, by placing legislative authority in a single assembly.--They, however, soon discovered their error, and have subsequently changed their form, by providing for a Senate, with co-ordinate powers.

Some of the states, immediately subsequent to the revolution, continued on the plan of their colonial charters, which by the changes effected by that event, threw the legislative power into the hands of a single assembly. In these cases, reliance seemed, for a considerable time, to be placed on the *character* and *habits* of the people, to supply or remedy the defects in their form of government. Time and experience have, however, convinced them of the error, and more recently they have new-modeled their form of government, by providing for a Senate, with co-ordinate powers.

We admire and approve the constitution of the United States, as containing provisions calculated to secure and perpetuate our rights and liberties, personal, civil, and political; and this has stood the test of peace, of war, of party strife, and of sectional dissension.

The same provisions are found in the constitutions of our sister states, and meet with like approbation.

It is believed that Vermont is the only state in which the legislature is not divided into two co-ordinate branches.

The people of Vermont are not behind their neighbors in the science of self-government, and it would seem that they are in advance, in that particular, of the government itself as indicated by its form.

We consider a Senate, constituted as proposed, as possessing many advantages over the Council as at present elected and organized, even if it were clothed with the requisite authority.

The Council, twelve in number, are elected by general ticket, and, as custom has established, one in each county, up to that number. The electors will have little or no knowledge of the person or qualifications of the candidate, except perhaps the one in their own county: whereas, the Senators, in the manner proposed, are elected by counties, and by the freemen of their respective counties: the electors will generally be acquainted with the candidates and their qualifications. And from their numbers, their deliberative character, separate action, and entire independence of the other branch, will possess a more controlling influence, and ensure a more steady and consistent direction in the exercise of legislative authority.

In designating the number of Senators, we have acted on the principle of applying an *adequate* remedy to the evil designed to be remedied: the number is large in proportion to our population, but not large in proportion to the other branch. The House of Representatives is more numerous in comparison to our population, than in most of our sister states.

The Senate ought, in point of numbers, to be apportioned to the other branch, in that respect, to which it is designed to be placed as a balancing power.

By reference to the constituents of several of the other states, it is found that there is some diversity in the apportionment of the Senate, as to numbers, to the popular branch; and probably the average result will allow to the Senate, in the ratio of numbers to the other branch, about one to five. In the plan we propose, the number of Senators is less in proportion to the other branch--being about one to eight.--We think the number not too large. In allotting the Senators to the several counties, we assume as a basis one Senator to every 10,000 inhabitants, on the census of 1830, having regard to the greatest fraction.--This principle carried out, produces the result as proposed.

The provisions made in the constitution for its own amendment, are found in the 43d article. The repeated unsuccessful attempts which have been made to effect some amendments of acknowledged necessity, prove that these provisions have not answered the beneficial purpose for which they were designed. For these repeated failures, we can assign no other reason than that the subject has not been properly presented to the people. Believing that all political power belongs to, and is derived from, the people; and that it is their peculiar province to form plans of government, and to alter and

amend the same, as they may think proper.

In order to bring the subject directly before the people, we propose so to alter the said 43d article, as to provide, that the Council of Censors shall, hereafter, when they propose amendments or alterations of the constitution, submit the same directly to the freemen of the state, assembled in their respective towns, to be adopted or rejected by them as a majority shall decide. This mode appears to us to possess many advantages over the mode heretofore pursued, of submitting such proposals to a convention, as it gives to every freeman the privilege of exercising his inherent right directly upon the subject matter proposed, without the necessity of delegating that right to another to act for him. It will also express the will, and ensure the action of the whole people, without regard to corporations. It will, moreover, save the trouble and expense of electing and paying a numerous convention, for the purpose of doing that which the freemen are fully competent to do for themselves.

The present mode of electing county officers, by the legislature, we consider objectionable, and that a different mode ought to be adopted. Besides the time spent in making those appointments, and which ought to be devoted to the more appropriate subjects of legislation, there are other evils incident to the present mode, quite notorious. The great number of candidates presented for those offices, each accompanied by his friends, to advocate his "claims," the contests which generally and almost necessarily grow out of these conflicting claims of rival candidates, are calculated to lead to the use of improper, not to say corrupt, means in the attainment of the object.

We also consider that the freemen of the respective counties are fully competent to the election of county officers: they will have the advantage of an acquaintance with the candidates and their qualifications, and will be more likely to make such selection as will be acceptable to the people. We propose, therefore, so to alter the constitution, that the Judges of Probate shall be elected by the freemen in the several probate districts.--That Sheriffs, High Bailiffs, and State's Attorneys, be elected by the freemen of the several counties; and Justices of the Peace by the freemen in the several towns.

In proposing this mode, we have kept in view, that, as in republican governments, all power resides in the people, so all elections to office ought to be kept as near the people, and as much within their control, as convenience will permit: that the candidate for office ought to be elected by those whose officer he is, when elected. What is here said applies to all county officers, except Justices of the Peace. In proposing that Justices of the Peace should be elected by the freemen in the several towns, though county officers, still as their official duties are mostly exercised within their own towns, it is considered that the persons elected would be

more likely to be acceptable to the people. But chiefly our purpose is to lessen the number: we propose to limit it to ten in each town, which it is believed will be amply sufficient for the convenience of any town. Owing to some cause, which perhaps may be found in connexion with town elections of Representatives, the number of Justices appointed, especially in some towns, is greater than the public good, regard to fitness for office, the respectability of the magistracy, or the furtherance of justice do, or can require.

Our proposals, in regard to the election of county officers, are presented in distinct sections, so that one or more may be adopted or rejected, without prejudice to the other.

In varying the common tenure of office in case of Sheriff to three years, we believe it will lead to greater caution and circumspection in regard to qualification and responsibility in the selection of a candidate to fill the office. And by rendering an incumbent ineligible for the next succeeding three years, will prove a salutary provision, as it will require the Sheriff to close up his official business within short periods. The office is one of difficulty and hazard; and in cases where the Sheriff has held the office for many successive years, without frequent settlements of his official concerns, the Sheriff and his bondsmen have been involved in difficulty and ruin. The Sheriff ought to know, and his bondsmen and others concerned have a right to know, at short periods, the condition of the department.

We have proposed adding an entire section to the constitution, for the protection of every person against all restraints of personal liberty, without the authority of law, by providing that the writ of habeas corpus shall be a writ issuable of right, and shall in no case be suspended; and although the legislature, by enactment, have made liberal provision for its use, yet we consider, from its importance to the liberty of the citizens, it ought to be made to rest on a more immutable foundation than legislative enactment. As a charter of liberty, it is worthy a place in the constitution.

In regard to the manner of calling a Convention, the members of this Council have entertained some diversity of opinion. We are not able to assign any other reason for the repeated failures in the adoption of amendments which have been proposed by the Council of Censors at nearly every septennary since the adoption of the constitution in 1793, than the mode of electing delegates, not by the people, but by corporations. And as the manner is left to our discretion, a portion of us consider that the mode ought to be so changed that the delegates shall be elected from the different sections of the state in the ratio of population, as being more equal, and in accordance with the spirit and genius of our republican form of government.--On the other hand, a portion of us, admitting the correctness of the principle as more equitable, and in conformity to the spirit and genius of the government, but object to its adoption on the ground of expediency. The authority of precedent is urged, and

the inexpediency of departing from long established usage.

But so strongly impressed are we, with the importance of some amendments to our present form of government, and believing that the same sentiment is entertained by a great majority of the people, and anxious to bring the proposed amendments within their reach, for their constitutional action thereon, something of individual opinion as to the mode, has been conceded, and the mode pointed out in the ordinance, is the result of compromise, with a view to the advancement of the public good.

Having closed our deliberations on the various subjects assigned us by the constitution as a Council of Censors, we now present to you, fellow-citizens, the result of our deliberations, in the confident hope of your approval and adoption.

In the discharge of our duties, we have faithfully and diligently examined into the constitution and its various provisions as a frame of government, and have pointed out to you wherein we consider it essentially defective; and have also pointed out the remedies proper to be applied; and by the application of which, we believe, legislative authority will be exercised with more safety, steadiness and harmony, the rights of the people better secured, and their prosperity and happiness better preserved.

By order of the Council of Censors,

JOEL DOOLITTLE, *President.*

WILLIAM HEBARD, *Secretary.*

### **The Result of the 1834 Council of Censors**

Unlike other Councils to date, the 1834 Council found no legislative acts to censure, nor did it find any trouble with the levy or assessment of taxes during the septenary.

The Council did propose amendments to the Vermont Constitution. It proposed direct popular ratification of constitutional amendments, instead of continuing the Constitutional Convention form of adoption, and the popular election of county and probate district officers, including justices of the peace. It wanted to change the date of the General Election to the first Tuesday of November and that of the convening of the legislature to the first Thursday of January; seven year terms for judges, with legislative power to remove them on a two-thirds vote; and an amendment to ensure that the Writ of Habeas Corpus could never be suspended.

The most important proposal the Council made in this session was the creation of a Senate.

The Council discussed the possibility that if it were to call a Convention to consider its proposals that it would establish proportional representation as the method for apportionment, as opposed to a one town-one delegate approach. Ultimately, it decided to stay with the traditional approach, however, and permit each town to elect and send a delegate to the Constitutional Convention.

### **The Constitutional Convention of 1836**

The Convention began on Wednesday, January 6, 1836 at the State House in Montpelier and adjourned on January 14, the following Saturday. Of the twenty amendments proposed by the Council, the Convention adopted twelve, principally those dealing with the creation of the State Senate and the writ of habeas corpus.

Getting down to business on January 6, the Convention elected Lyman Fitch as President and Luther Hunt as Secretary, organized into committees, read the Council's proposals of amendment and Address, and adopted its rules. On Saturday, January 9, the delegates voted on the proposals dealing with the creation of a Senate on a single motion, and the articles passed by a vote of 116 to 113. The following Monday, the Convention refused to reconsider its Saturday vote on creating a Senate by 110 to 119.

In the afternoon, they decided to reject the proposal to eliminate the Constitutional Convention and permit direct popular ratification of constitutional amendments by 193 to 27. They rejected proposals 16 and 17, which would have authorized the legislature to redistrict the Senate from time to time, using the decennial census, 210-8.

On Tuesday, January 12, they heard the report of the credentials committee, noted the "informalities" and "imperfections" in the various submissions, and agreed to continue to seat everyone, in spite of them. They took up the election of county and probate district officers next. In order, each of the proposals on this subject were defeated. Before adjourning for the day, they adopted proposals naming the House as the most numerous branch, underscoring that the Supreme Executive power should be exercised by the Governor (and eliminating the executive Council), and ensuring that all elections in which the House and Governor and Council formerly voted would now involve the House and Senate. On January 13, the Governor's veto power was assured, the writ of habeas corpus



recognized as a matter of right, and a general purpose amendment adopted allowing newly adopted amendments to supercede inconsistent parts of the former Constitution. On the 14th, the Convention adjourned without day.

The State of Vermont at last had a Senate. The idea had been first proposed in 1793. The proposals to elect county and probate district officers would be raised again in 1841 and 1848, and would finally become part of the Constitution at the 1849 Constitutional Convention.

The Convention's Journal was published in 1836 by J. Spooner, Printer, of St. Albans. As with other journals, there is little more than motions, roll call votes, and dates and times of its meetings. The speeches of Daniel Chipman, delegate from Ripton, were printed by E. R. Jewett of Middlebury in 1837. They promote the creation of the Senate. The remarks conclude with these stirring paragraphs:

"Mr. Chairman, feeling grateful as I do for the attention which the committee have given to my remarks, I cannot so unreasonably tax their patience as to proceed further, but must come to a close. If, in the opinion of any, I have discovered too great a degree of earnestness, I only request them to consider, that while a youth I witnessed the origin and progress of the government. I looked on with intense interest during the long and doubtful struggle for independence. In early life I became a humble actor in the concerns of the government. I was many years a member of the Assembly, where I witnessed an overbearing spirit, impatient of all restraint--yearly increasing with an increasing rage for legislation. A constant change in the laws was the consequence. All the evils of which I might never have known, had I not during the whole period attended the courts, where and where only can the whole extent of those evils be seen and felt. And being fully satisfied that all this arose from a defect in the constitution, I looked with increasing anxiety for the time which it should be amended. But observing that the body of the people, not aware that the evils arising from too much legislation, of which they all along complained, arose from a defect in the constitution, were becoming more blindly attached to it, and more and more averse to any alteration of it--I despaired of living to see the day when the Constitution would be amended.

"But for several years past I have been encouraged. I have seen this blind attachment to a most defective Constitution, gradually giving way before increased intelligence and the light of experience. I observed that in the convention of 1822, only 17 voted for a Senate. That in the convention of 1827, the number was more than doubled, 40 voting for a Senate.

"And will any gentlemen say that we have not more than double that number in this convention in favor of a Senate? You perceive then the progress of public sentiment. This shows that the amendments under consideration will be adopted--if not now they must be at the end of this septenary. Why then not adopt them now? Why may I not be permitted to see it done?"

Given the reliance on the argument that a Senate would slow down the legislative process and produce fewer changes, we thought we would look at the impact of the creation of the Senate. In 1835, the year before the Senate was created, the legislature passed a total of 138 acts, including 43 public acts (as opposed to corporation and private acts). The laws of that year consisted of 149 pages of text. In 1836, the first year of the Senate, the total legislative output amounted to 147 acts, 52 of them public, taking

151 pages of text. Although this statistical approach to calculating "the rage for legislation" may not be entirely appropriate, it is at least doubtful that the addition of the Senate had the effect the Council and the Convention intended.

Daniel B. Carroll felt even stronger about the Senate's lack of success in slowing down the pace of legislation. In his *The Unicameral Legislature of Vermont*, Carroll looked at a twenty year period, ten on either side of the adoption of the Senate, and concluded that there was, if anything, a negative effect on the legislative process.<sup>4</sup>

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<sup>4</sup>Daniel B. Carroll, *The Unicameral Legislature of Vermont* (Montpelier: The Vermont Historical Society, 1933).



## The 1841 Council of Censors

The septenary began with confusion over the question of succession. In 1835 Governor William Palmer, the Anti-Masonic standard bearer, failed to capture the required majority in the gubernatorial election, throwing the election into the legislature. The legislature, however, was still fragmented among the various political parties and was unable to elect a governor after sixty-three ballots. Silas Jenison, the Lieutenant Governor, performed the duties of governor during the remaining term.

Two years later the incumbent State Treasurer, Augustine Clark, failed to receive a majority. Despite the fact that Clark had a plurality, the General Assembly elected Norman Williams, who had finished a distant third (he received 3.4% of the popular vote, compared to Clark's 47.3%). Williams, however, declined to serve and the House and Senate split over whether the Constitution allowed them to make a second election. Finally Governor Jenison made an appointment to fill the vacancy.

The Anti-Masons merged with the Whigs, both parties nominating the same candidates in 1836. Jenison was elected in his own right in 1836 and served until 1840.

Jenison and the Whigs maintained control of the government throughout the septenary, despite a recession that lasted from 1837 to 1843. Banks failed, incorporation bills within the legislature slowed, and plans for railroads were modified. In contrast the 1835 session of the legislature had seen a tremendous push for railroads, incorporating such lines as Vermont Central, Rutland and Connecticut River, the Connecticut and Passumpsic, and the Bennington and Brattleboro.

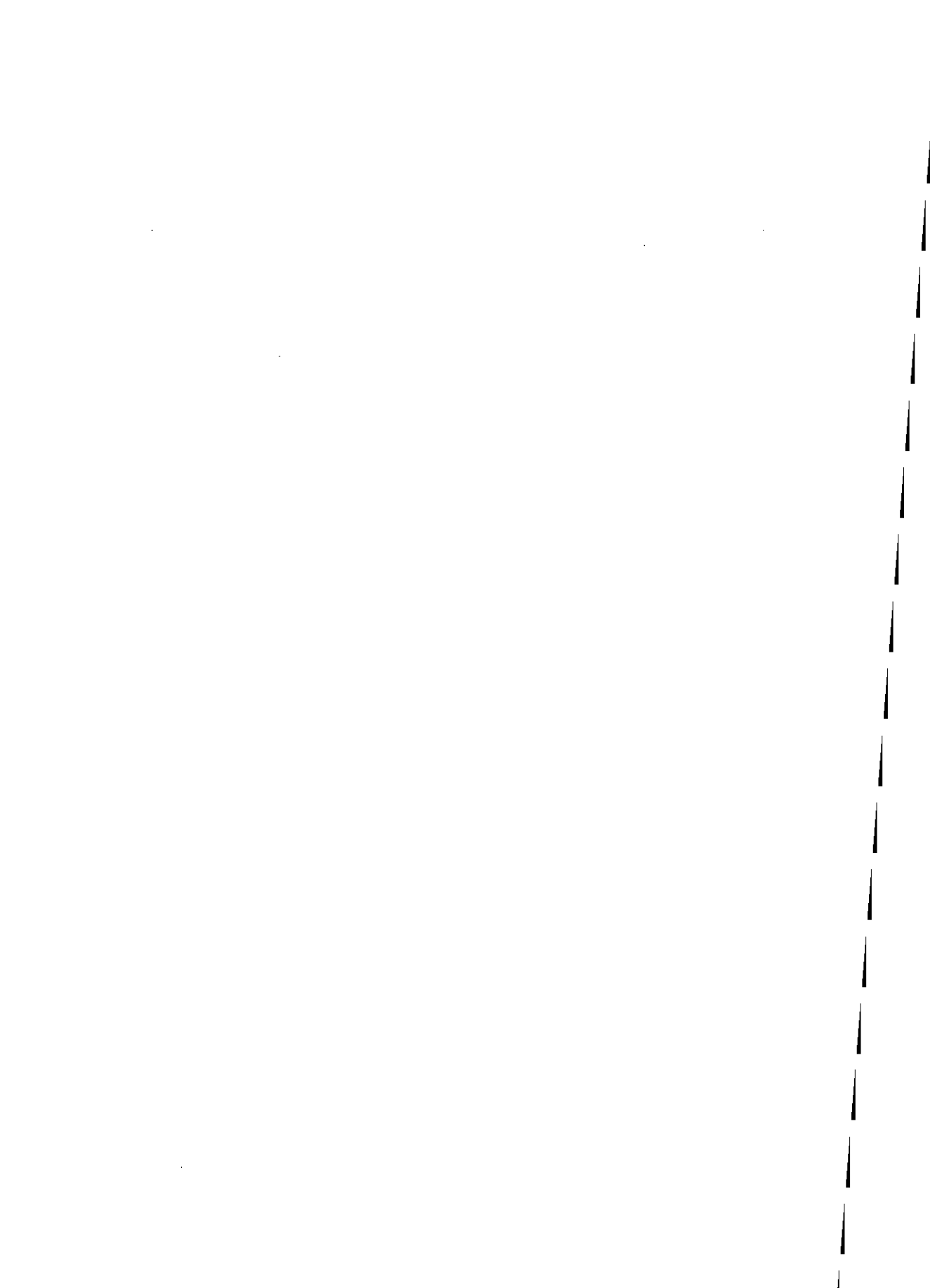
The Whigs also had trouble comfortably encompassing the reform movements which were still active in Vermont. Temperance advocates, proponents of militia reform, anti-slavery forces (colonization supporters and abolitionists), and supporters of education all demanded that the party espouse their cause.

The Democratic Party also had difficulty accommodating the various reform movements and both parties' problems were occasionally exacerbated by the actions of their national organizations. National party leaders with slaves or slaveholder associations were suspect, while presidential contests such as Whig William Henry Harrison's 1840 "log cabin and hard cider" campaign called into question commitments to temperance.

Vermont's economic problems, and the lack of opportunity, continued to fuel emigration from Vermont. This emigration was not uniform. Some counties and towns suffered actual population losses. In Windham County for example, seventeen of twenty-three towns lost population between 1830 and 1840. In Caledonia County only one of seventeen towns declined in population, though many had only negligible growth. Individual communities, such as Burlington, continued to sustain significant growth. This imbalance helped keep agitation for population based apportionment alive, despite the creation of a senate.

The Council of Censors met at Montpelier, at the State House June 2-3, 1841. They reconvened in Montpelier on October 20-29 and held a final session February 9-15, 1842 in Burlington.

*Note on text:* The journal was published in 1842 in Burlington by Chauncey Goodrich.



Journal  
of the Sessions of the  
Council of Censors  
of the  
State of Vermont

Held At Montpelier,  
In June and October, A.D. 1841,  
And At Burlington,  
In February, A.D. 1842.

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The Council of Censors, elected on the last Wednesday of March, A.D. 1841, agreeably to the Constitution of the State of Vermont,<sup>1</sup> met at the state-house in Montpelier, on the first Wednesday in June, being the second day of said month, in the year of our Lord, 1841, when the following members appeared, produced their credentials, and took their seats, to wit:

JOSEPH D. FARNSWORTH,  
PETER STARR,  
JOHN A. PRATT,  
WALLIS MOTT,  
AUSTIN BIRCHARD,  
MARTIN C. DEMING,  
LUTHER CARPENTER,  
GORDON NEWELL,  
HEZEKIAH H. REED,  
ALVAH R. FRENCH,  
HEMAN ALLEN.

The Council having been called to order, the Hon. J.D. FARNSWORTH was elected President *pro tem.*, and GORDON NEWELL, Secretary, *pro tem.*

Mr. ALLEN, on motion, introduced the following resolution:

*Resolved*, That the Sergeant-at-Arms be requested to attend on the Council, by himself or his deputy, during the present session.

Which was read and adopted.

Mr. PRATT, on motion, introduced the following resolution:

*Resolved*, That a committee of three be appointed to report

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<sup>1</sup>"An act, to regulate the choice of a Council of Censors," *Laws of 1840*, No. 15, 19-21.

rules for the government of this Council, to be nominated by the PRESIDENT.

Which was read and adopted, and Messrs. ALLEN, PRATT and STARR were appointed the committee.

Mr. STARR, on motion, introduced the following Resolution:

*Resolved*, That the Rev. Buel W. Smith, be requested to act as Chaplain to this Council during the present session, and that the session be opened in the morning with prayer.

Which was read and adopted.

Council adjourned to nine o'clock to-morrow morning.

G. NEWELL, Sec. pro tem.

#### Thursday, June 3d, 1841.

Council met pursuant to adjournment.

Prayer by the Rev. B.W. Smith.

On motion of Mr. BIRCHARD, the Council proceeded to choose a President and Secretary.

Whereupon the

HON. J.D. FARNSWORTH,  
was chosen President, and

H.H. REED,  
was chosen Secretary.

The Committee appointed for reporting rules for the government of the Council, submitted the following report, to wit:

I. The Council shall meet every day (Sundays excepted), at nine o'clock A.M. and at 2 o'clock P.M. unless otherwise specially ordered.

II. The President shall take the chair at the hour to which the Council stands adjourned, and to call order and proceed to business.

III. All committees shall be appointed by the President, but such appointments may, on motion of a member, be overruled by the Council, in which case the Council shall, on the nomination of a member, fill the vacancy.

IV. No member shall absent himself from the services of the Council unless he shall have leave, or be unable to attend.

V. The yeas and nays may be taken and entered upon the journal, upon the call of a member.

VI. The following standing committees shall be appointed, to wit:

1st. A committee of three to inquire whether the Constitution has been preserved inviolate during the last septenary, which shall be called the *Committee on the powers of the Constitution*.

2d. A committee of three to inquire whether the legislative branch of the 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, which shall be called the *Legislative Committee*.

3d. A committee of three, to inquire whether the executive has assumed or exercised other or greater powers than the constitution allows, which shall be called the *Executive Committee*.

4th. A committee of three, who shall inquire whether the public taxes

have been justly levied and collected, and in what manner the public monies have been disposed of, which shall be called the *Committee on Taxes and Expenditures*.

VII. A motion to adjourn shall always be in order.

VIII. Motions on resolutions shall have precedence as follows:

1st--To dismiss.

2d--To postpone to a day certain.

3d--To lie on the table.

4th--To commit.

5th--To amend.

Which was read and adopted.

Mr. BIRCHARD introduced the following resolutions:

Resolved, That a standing committee of three shall be appointed, denominated the *Judiciary Committee*.

Resolved, That a committee of three members be appointed to report business for the consideration of the Council, which shall be denominated the *Committee of Arrangements*.

Which was severally read and adopted.

Mr. STARR introduced the following resolution:

*Resolved*, That it is expedient so to amend the Constitution of this State, as to secure a more equal representation of the people in the House of Representatives.

Which was read and referred to a select committee of three.

Mr. ALLEN introduced the following resolution:

*Resolved*, That a committee of three members be raised, whose duty it shall be to inquire into the expediency of so amending the Constitution as to elect the Senators for three years. And that at the commencement of the next session of the Legislature, after the election of Senators under the Constitution, amended as aforesaid, they shall be divided into three classes, so that the seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year, and of the third class at the expiration the third year, so that one third may be chosen every year. And if vacancies happen by resignation or otherwise, the Governor may make temporary appointments until the next annual election, when such vacancy shall be filled for the remaining part of the term, in the same manner as the election of other Senators is made.

Which was read and adopted.

Mr. NEWELL introduced the following resolution:

*Resolved*, That it is expedient so to amend the Constitution as to give the appointing power or election of Sheriffs, High Bailiffs, State's Attornies, Justices of the Peace in the several counties and towns, to the people directly, at their annual town meetings for the election of state officers, under such restrictions and regulations as the Council shall prescribe.

Which was read and referred to a select committee of three.

Mr. PRATT introduced the following resolution:



*Resolved*, That the Treasurer of this State be requested to prepare and furnish to this Council, at their adjourned session in October next, a statement of balances due the Treasury for taxes, therein designating the names of towns from which such balances are due, and the year in which they respectively accrued. And also a statement of balances, if any are due, from the several Sheriffs, County Clerks and State's Attorneys in the several counties, and the years in which such balances accrued. And also a statement, if any balances are due from any of the County Judges for licences, &c.

Which was read and adopted.

Mr. ALLEN introduced the following resolution:

*Resolved*, That a committee on the Powers of the Constitution be directed to inquire whether the eleventh chapter of the militia law, relating to courts martial and courts of inquiry,<sup>2</sup> does not contain provisions repugnant to the seventeenth article of the first part of the Constitution.

Which was read and adopted.

Mr. STARR presented the following resolution:

*Resolved*, That it is expedient so to amend the Constitution of this State as to give more permanency to the office of the Judges of the Supreme Court.<sup>3</sup>

Which was read and referred to the Judiciary committee.

Adjourned.

2 o'clock, P.M.

Council met pursuant to adjournment.

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<sup>2</sup>The militia law, adopted on November 1, 1837, is "An Act, for regulating and governing the Militia of this State," *Laws of 1837*, No. 32, 19-59; also, "Of the Militia," *Revised Statutes*, 576-81. This law provides, in Chapters IX and XI, fines and penalties for violations committed while not in actual service. Chapter I, Article 17th of the *Vermont Constitution* of 1793 provided, "That no person in this State 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, and the militia in actual service."

<sup>3</sup>Chapter II, Section 9th of the *Vermont Constitution* of 1793 authorized the House of Representatives to "annually on their first session after their election, in conjunction with the Council (or oftener if need be) elect Judges of the Supreme and several county and Probate Courts. . . ." The history of the Supreme Court up to this time reveals occasional refusals of the Joint Assembly to return Judges (the term "Justice" was adopted in 1913 by an amendment to the Constitution). In 1781, Paul Spooner was not elected, although he was soon appointed to fill the vacancy caused by the resignation of Moses Robinson, who refused to serve on the court after losing to Elisha Payne as Chief Judge. *State Papers* III, Part II, 8. The most dramatic changes were the Federalist purges of the court in 1801 and 1813, when all members of the court were replaced.

Mr. NEWELL presented the following resolution:

*Resolved*, That it is expedient so to amend the Constitution as to change the time of the general state elections from the first Tuesday of September to the \_\_\_\_ day of November. And also the meeting or session of the Legislature in October to some day in the month of December or January, as may be found for the interest and convenience of the people.

Which was read and referred to a select committee of three.

Mr. REED presented the following resolution:

*Resolved*, That a committee of three be appointed to inquire and report at the next session of this Council, whether any person holding any office of profit or trust under the authority of Congress, either openly or by covinous resignation, during the last septenary, has at the same time held any Legislative, Executive, or Judiciary office under this state, in violation of the twenty-sixth section of the second part of the Constitution.

Which was read and adopted.

The PRESIDENT announced the appointment of the following Committees:

On the Powers of the Constitution--Messrs. ALLEN, STARR, and NEWELL.

On the Legislative Committee--Messrs. PRATT, DEMING, and MOTT.

On the Executive Committee--Messrs. REED, CARPENTER, and FRENCH.

On Taxes and Expenditures--Messrs. DEMING, BIRCHARD, and PRATT.

On the Judiciary Committee--Messrs. STARR, NEWELL, and BIRCHARD.

On the Committee of Arrangements--Messrs. BIRCHARD, REED and FRENCH.

On Mr. STARR's resolution for a more equal Representation--Messrs. STARR, NEWELL and ALLEN.

On Mr. ALLEN's resolution for electing Senators for three years--Messrs. ALLEN, CARPENTER and MOTT.

On Mr. NEWELL's resolution for electing county officers--Messrs. NEWELL, PRATT and CARPENTER.

On Mr. NEWELL's resolution for changing the time of elections, &c.--Messrs. NEWELL, ALLEN and STARR.

On Mr. REED's resolution for holding offices in violation of the Constitution--Messrs. REED, STARR and CARPENTER.

Mr. BIRCHARD, from the Committee of Arrangements, made the following report:

*Resolved*, That the Legislative Committee be instructed to inquire whether it be necessary to amend the Constitution relative to the Legislative departments of the government.

*Resolved*, That the Executive Committee be instructed to inquire

whether it be necessary to amend or explain the Constitution relative to the powers and duties of the Executive officers of the Government.

*Resolved*, That the Judiciary Committee be instructed to inquire whether it be necessary to amend the Constitution relative to the appointment and tenure of the Judiciary officers of the Government.

*Resolved*, That the Committee on Taxes and Expenditures be instructed to inquire whether the public taxes have been justly laid and collected in all parts of the State; whether the public monies have been honestly disbursed and economically expended, and whether the revenue laws have been duly executed. And also that the Committee have power to send for persons, papers and records.

*Resolved*, That the Committee on the Powers of the Constitution be instructed to inquire whether the constitution has been preserved inviolate during the last septenary, and whether the Executive or Legislative branches of the government have performed their several duties as faithful agents of the people, or assumed to themselves unconstitutional powers; and also whether any unconstitutional laws have been enacted, and whether the laws generally have been duly executed, and also that the committee have power to send for persons, papers and records.

Mr. ALLEN introduced the following resolution:

*Resolved*, That the Secretary be instructed to procure to be printed fifty copies of the proceedings of this Council of Censors, at this session, for the use of the members.

Which was read and adopted.

On motion, the Council adjourned, to meet again at the State House, in Montpelier, on the Wednesday next after the second Thursday of October next.

## Second Session

Montpelier, Wednesday,  
October 20, 1841.

The Council met pursuant to their adjournment.

Present, Hon. J.D. FARNSWORTH, President,

PETER STARR,  
JOHN A. PRATT,  
WALLIS MOTT,  
AUSTIN BIRCHARD,  
MARTIN C. DEMING,  
LUTHER CARPENTER,  
GORDON NEWELL,  
HEZEKIAH H. REED,  
ALVAH R. FRENCH,  
HEMAN ALLEN.

The PRESIDENT called to order.

Prayer by the Rev. Mr. Young.

DAVID HIBBARD Jr., a member of the Council, appeared, produced his credentials and took his seat.

On motion,

*Ordered*, That when the Council adjourn, they adjourn to meet at three o'clock this afternoon.

The Council adjourned.

### 3 o'clock P.M.

The Council met pursuant to adjournment.

EPHRAIM PADDOCK, a member of the Council, appeared, and on motion, was admitted to a seat.

Mr. NEWELL presented the following resolution:

*Resolved*, That the President of the Council be instructed to appoint such of the members of this Council as were absent at the first session thereof, upon such of the committees then raised, as, in the opinion of the President, shall be proper.

Which was read and adopted.

Mr. BIRCHARD presented the following resolution:

*Resolved*, That the Rev. Mr. Kellogg and the Rev. Mr. Young be requested to attend alternately on this Council, during the present session, and that the morning sessions be opened with prayer.

Which was read and adopted.

Mr. ALLEN presented the following resolution:

*Resolved*, That the sergeant-at-arms be requested to attend, by himself or deputy, during the session of this Council.

Which was read and adopted.

Mr. STARR introduced the following resolution:

*Resolved*, That it is expedient to amend the Constitution of this State by expunging or abolishing the *forty third section* thereof, relating to the Council of Censors and the mode of amending or altering the Constitution of this State; and by adding or substituting, in lieu thereof, the following section or provision, viz:

All amendments or alterations of the Constitution of this State, hereafter to be made, shall be proposed to the people, and be adopted by them in the following manner, to wit: All amendments or alterations of the Constitution shall be first proposed in the form of a resolution or resolutions in either branch of the Legislature, at the annual session thereof, and be passed or adopted in the usual form of passing laws after a first, second, and third reading; and after being so adopted by the branch of the Legislature in which they are first presented, they shall be sent to the other branch, for their consideration and action thereon; and if adopted by both branches in the same manner, or after amendment thereof, said resolution or resolutions, shall be published, as "proposed amendments of the Constitution of the State," with the laws of the session, in which the

same is or are adopted; and also in all the newspapers of the State, under the direction of the Secretary of State, for the information and action of the *people* thereon. And the Legislature shall, at the same session thereof, prescribe by *act* the form of a *ticket*, and the mode of voting, by the *people*, with reference to the said amendments so proposed, at the then next annual election of state officers in this State. At which time the votes of the freemen shall be taken in reference to the amendments so proposed as aforesaid, and counted, certified and returned to the General Assembly, and be canvassed in the same manner that the votes for Governor, &c. are returned and canvassed. And if a majority of the legal votes of the freemen so returned and canvassed as aforesaid, shall be in favor of the adoption of the said amendments so proposed as aforesaid, the same shall become a part of the Constitution of this State, and shall, by proclamation of the Governor, be published and declared to be part of the Constitution.

Which was read and referred to a select committee of three, and Messrs. PADDOCK, HIBBARD and BIRCHARD were appointed the committee.

The PRESIDENT announced the appointment of Mr. PADDOCK as an additional member of the committee on the powers of the Constitution, and Mr. HIBBARD, as an additional member of the committee on Mr. ALLEN's resolution for electing Senators for *three* years.

The Council adjourned.

#### Thursday, October 21, 1841.

Prayer by the Rev. Mr. Kellogg.

Mr. ALLEN, from the committee on the Powers of the Constitution, to whom was referred the resolution in relation to the militia laws of this State, made the following report: to wit.

"It is made the duty of the Council of Censors to inquire whether the Constitution has been preserved inviolate, for the last septenary; and to recommend to the Legislature the repealing of such laws as shall appear to them to have been passed contrary to the principles of that instrument. This is an important duty, and imperatively required to be performed, by the provisions of the Constitution. The Council of Censors have no right to inquire whether the operations of a law appear useful and beneficial to a portion of citizens, provided they find that law contravening the provisions of the Constitution. In such case, it is their duty to recommend the repeal of such law. If we would guard our rights, we should watch the barriers erected to protect them, and see that they are not broken down.

In pursuance of this duty, the committee have had their attention drawn to the provisions of the law referred to them, regulating and governing the militia of this State. They have, with great caution, examined the constitutionality of this law, inasmuch as the

enactments which they feel bound to censure have stood upon the statute book from an early period of our government.

In the ninth and eleventh chapters of the militia laws, are contained the enactments of the rules and articles by which the militia of this State shall be governed, when not in actual service. These chapters contain provisions for sundry amercements and forfeitures for unmilitary conduct and disobedience of orders, imposed without the intervention of any civil magistrate, and excluding the right of trial by jury. The fine is imposed by a court martial, and the execution of the sentence enforced by levy on the goods, chattels, or body of the delinquent. This, the committee believe, is in direct violation of the seventeenth article of the Constitution, which declares "that no person in this State can, in any case, be subjected to *law martial*, or to any penalties and pains by virtue of that law, except those employed in the army and militia in actual service," as well as in violation of another sacred provision of that instrument, which also declares "that, in all prosecutions for criminal offences, the person accused shall have a right to a speedy public trial by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty." The militia *in actual service* is widely different from militia *called out for ordinary discipline*, or for *review of arms*. When the militia are in actual service, the rules and articles of war for the army of the United States are made to apply to them, according to the provisions of the Constitution. The Constitution of the United States gives to Congress the power to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.<sup>4</sup> But the courts, as now established, for governing the militia when not in actual service, are denominated courts martial. The laws by which they are governed are peculiar to these courts, and are consequently *laws martial*. They are exercised upon and affect the militia man not in actual service; consequently they are against the provisions of the Constitution relative to this subject.

Neither do your committee see the necessity of adopting law martial in governing the militia when called together for the review of arms or military drill, in time of peace. They believe the civil arm possesses strength sufficient for their government when called together for such purposes. They see no greater reason for the exercise of martial law for their government, in time of peace, than there is for its exercise in the government of other bodies of men employed in the ordinary business of life.

The civil law, only, should operate on all classes of our citizens, so long as they are employed as ordinary citizens. The militia of this

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<sup>4</sup>U.S. Constitution, Article I, § 8.

State are citizens with us. We are of the militia, and should all be governed by the same laws, administered in the same manner, so far as is consistent with the welfare of our institutions. Above all, the right of trial by jury, that palladium of liberty, guaranteed by the Constitution, should never be infringed. To guard with the utmost vigilance against the introduction of all arbitrary modes of trial, which would eventually destroy our liberties, is a duty worthy of every citizen, one which he owes to the community and to himself.

Your committee, therefore, recommend the repeal or modification of that part of the military law, above referred to, which they believe to be derogatory to the provisions of the Constitution of this State."

Which report was read and referred to a committee of the whole, Mr. NEWELL in the chair.

The committee of the whole, having had said report under consideration, recommend to the Council the adoption of said report, and the appointment of a committee of three to draft a memorial to the Legislature now in session, recommending a modification of the militia laws so far as to give to delinquents, under those laws, the right of trial in the civil courts for offences committed by such delinquents when not in the actual service of this state, or the United States.

On motion,

The Council resolved to concur in said recommendation. And thereupon the PRESIDENT appointed Messrs. PADDOCK, ALLEN and HIBBARD a committee to draft such memorial.

Mr. HIBBARD introduced the following resolution:

*Resolved*, That the committee on the Powers of the Constitution be directed to inquire whether the several acts of the Legislature of this state, passed Nov. 8, A.D. 1832, entitled "An act to provide for removing obstructions in Nulhegan River,"<sup>5</sup> also an act entitled "An act to provide for removing obstructions in the Passumpsic and Moose Rivers," passed Nov. 7, A.D. 1835,<sup>6</sup> and also an act to provide for removing obstructions in Paul's stream, in the county of

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<sup>5</sup>*Laws of 1832*, No. 61, 115-6. The act authorized Jeremiah Jordan and his assigns to remove rocks, shoals, angles, logs and other obstructions for the purpose of widening, deepening and straightening the Nulhegan river, for a term of ten years. Jordan was then authorized to collect tolls on lumber passing down the river. Jordan would have to pay compensation for damages to landowners for his work on the river, with a right to review of that compensation in the county court.

<sup>6</sup>*Laws of 1835*, No. 90, 145. The same rights given to Jeremiah Jordan under the previous act were granted to Elijah McLeran under this legislation in relation to the Passumpsic and Moose Rivers.

Essex, passed Nov. 19, A.D. 1839,<sup>7</sup> are authorized by the constitution of this state.

Which was read and passed.

Mr. PRATT introduced the following resolution:

*Resolved*, That, should this council call a convention of the people, it shall be composed of delegates chosen from the different counties of this state, as near as may be in proportion to the population thereof.

Which was read and ordered to lie on the table.

The council adjourned.

### Afternoon.

The PRESIDENT submitted the following resolution:

*Resolved*, That it is expedient to amend the constitution of this state so as to require, in addition to the qualifications now required of a candidate for admission as a freeman, that he be able to read the English language.

Which was read and referred to the committee on the Powers of the Constitution.

Mr. STARR, from the Judiciary Committee, to which was referred the resolution recommending an amendment of the constitution so as to give more permanency to the office of Judges of the Supreme Court, made the following report, viz:

"That, having had the said resolution under their consideration, they do not deem it expedient to recommend, at the present time, any alteration of the constitution in that respect."

Which was read and ordered to lie upon the table.

Mr. HIBBARD introduced the following resolution:

*Resolved*, That a committee be appointed to inquire into the expediency of so amending the constitution of this state as to abolish the last clause of the twenty sixth section of the second part of the constitution.

Which was read and ordered to lie on the table.

The council adjourned.

### Friday, October 22, 1841.

Prayer by the Rev. Mr. Young.

A communication was received from the treasurer of the state, which was, on motion, referred to the committee on Taxes and Expenditures.

Mr. NEWELL, from the committee to whom was referred the resolution instructing them to inquire and make report on the

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<sup>7</sup>*Laws of 1839*, No. 43, 91. Francis Cushman and Isaac Denison were authorized by this act to remove obstructions and collect tolls on lumber in Paul's Stream in the County of Essex.



expediency of altering or amending the constitution so that the State's Attorneys, Sheriffs, High Bailiffs, and Justices of the Peace in the several counties and towns should be elected by the freemen thereof, reported, that, in the opinion of the committee, it is expedient so to amend or alter the constitution.

Which was read and adopted: and said report was referred to the same committee with instructions to draft articles of amendment in accordance therewith.

Mr. Reed, from the committee to whom was referred the resolution of inquiry for holding offices in violation of the constitution, made the following report, viz:

That the committee consider the office of deputy Postmaster to be an office of profit and trust, and held under the authority of Congress, and therefor incompatible with the holding, at the same time, of any legislative, executive, or judiciary office under this state.<sup>8</sup> Your committee further report, that, from inquiry and examination, they are fully satisfied that there have been frequent violations of the twenty sixth section of the second part of the constitution, during the last septenary, by persons holding the office of *deputy Postmaster* under the authority of congress, and at the same time holding the office of a member of the legislature or some judiciary office under this state.

Which was read and concurred in.

The council adjourned.

#### Afternoon.

Mr. PADDOCK, from the committee to draft resolutions and a memorial to the legislature, now in session, recommending a modification of the militia laws, & c., presented the following:

IN COUNCIL OF CENSORS, Oct. 22, A.D. 1841

*Resolved*, That so much of the acts passed on the first day of November, A.D. 1837, and on the nineteenth day of November, A.D. 1839, regulating and governing the militia of this state when not in actual service, as are hereafter mentioned and pointed out, are unconstitutional, and not ought to have been passed. To wit: in chapter nine and section first, the articles numbered 1, 2, 3, 5, 12, and 21; in chapter eleven, the sections numbered 1, 3, 4, 5, 6, and

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<sup>8</sup>Section 26th of the Constitution provided, "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. Nor shall any person holding any office of profit or trust under the authority of Congress, be eligible to any appointment in the Legislature, or of holding any executive or judiciary office under this State." See page 147.

7, passed the 1st day of November, A.D. 1837;<sup>9</sup> also, in chapter six, the section numbered 3; and in chapter eight, the sections numbered 2, 3, 4, 5, 6, 7, 8, and 9; and also, in chapter ten, the sections numbered 7, 12, 13, and 14, passed the 19th day of November, A.D. 1839.<sup>10</sup>

The articles and sections above enumerated contain provisions for imposing sundry amercements, fines, and forfeitures on citizens of this state, for unmilitary conduct and disobedience of orders, without the intervention of any civil magistrate, and excluding the right of trial by jury.

The fine is imposed by a court-martial, and the sentence enforced by the levy of execution on the goods, chattels, or body of the delinquent.

This the Council of Censors believe to be in direct violation of the seventeenth article of the Constitution, which declares, "That no person in this state can, in any case, be subjected to *law martial*, or to any penalties and pains by virtue of that law, except those employed in the army and in the militia in actual service;" and also in violation of another sacred provision of that instrument which declares, "That in all prosecutions for criminal offenses, the person accused shall have a right to a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury, he cannot be found guilty."

The Council find the seventh section in the tenth chapter of the law passed on the 19th day of November, A.D. 1839, to be, if possible, more exceptionable than the other sections in said chapter, specified as aforesaid.

Certain penalties are therein imposed on officers, required by said laws to make return in writing, and on failure to perform their duty, the officer, to whom such return should have been made, may demand the penalty of the delinquent officer either verbally or in writing; and if the delinquent officer shall neglect or refuse to pay said fine, within fifteen days after demand made as aforesaid, then the officer to whom such return should have been made, shall issue his execution therefor.

The Council consider this section, as not only contravening the principles of the Constitution, but despotic in its character, and wholly repugnant to the spirit and genius of our government.

The militia in actual service is a very different thing from the militia called out for ordinary discipline, or for the review of arms; and the exception in the seventeenth article in the Constitution in no wise authorizes the above enactments. Therefore,

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<sup>9</sup>Laws of 1837, No. 32, 35-48.

<sup>10</sup>Laws of 1839, No. 4, 9, 11-14.

*Resolved*, That the Council do recommend to the Legislature now in session, to repeal the articles and sections above specified; and that the Secretary of this Council be directed to transmit, forthwith, a copy of these resolutions to the President of the Senate and to the Speaker of the House of Representatives, for the consideration of their respective honorable bodies.

Which was read and adopted by a unanimous vote of the Council.

Mr. HIBBARD called up the resolution for abolishing the last clause of the twenty sixth section of the second part of the Constitution. And the same was referred to a committee of three, and Messrs. HIBBARD, PADDOCK and FRENCH were appointed the committee.

Mr. ALLEN, from the committee to whom was referred the resolution for electing Senators for three years, made the following report, viz:

"That, in order to preserve a republican government in its freedom, all wise legislation has introduced the system of checks and balances of power.

The Constitution of the United States, and most of the States of the Union, have introduced for checks the three departments of government, an Executive, a Senate and House of Representatives.

We have done the same, but have we adopted it in that manner, which will best promote its object? The committee believe not, and that the deficiency consists in the want of a more permanent tenure in the office of the Senators.

All branches of our Legislature derive their power directly from the people, and are made responsible to them for their conduct, at short and limited periods. By the present Constitution they surrender their powers to the people at the end of each year.

The committee believe that the Senators should be elected for three years, and classed in such manner, that one third should go out of office at the end of each year.

One great object in creating a Senate is to review and re-examine the doings of the House of Representatives, and form a check on a too hasty legislation, which is known to be sometimes attendant upon so numerous a body as the House of Representatives.

To qualify the Senators for their duties they ought to have more experience than can be expected of them when chosen for so short a period as one year.

If the selection of the candidates be ever so well made, without previous experience they cannot, in the course of one year acquire that acquaintance with legislation, nor that familiarity with the various rules of action, as ought to be acquired for a competent discharge of their duty.

It is believed that if the tenure of office for Senators should be

fixed at three years, more attention would be paid to the selection of candidates for the office, than when the office is fixed at a shorter period.

Under a tenure of three years, the Senator will feel a greater necessity, and will with more assiduity prepare himself for a competent discharge of his duties, than when elected for a single year.

His own powers, principles, and experience, will be known to his constituents, and if he has approved himself to them for his wisdom and faithfulness, and devotion to the true principles of our government, he will stand a better chance for re-election than the same person would under the present system. He thus has the opportunity of testifying to his constituents his capacity to carry out the trust which they have placed in his hands.

Your committee would, therefore, recommend an alteration of the Constitution so as to give to Senators a tenure of office for three years, and in such manner that the seats of one third of their number should be vacated at the end of each year."

Which report was read and adopted, and referred to a committee of two with instructions to draft articles of amendment to the Constitution in conformity with said report.

Messrs. PADDOCK and ALLEN were appointed the committee.

The Council adjourned.

#### Saturday, October 23, 1841.

Prayer by the Rev. Mr. Kellogg.

Mr. PADDOCK, from the committee to draft articles of amendment to the Constitution, for electing Senators for three years, presented the following *articles of amendment*, viz:

ARTICLE 1. The Senate shall be composed of thirty Senators, to be of the freemen of the county for which they are elected respectively, who shall have attained the age of thirty years, and to be elected for three years by the freemen of each county respectively. Immediately after they shall be assembled, in consequence of the first election under this Constitution, as amended, they shall be divided equally into three classes; the seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; and of the third class at the end of the expiration of the third year, so that one third may be chosen every year. And if vacancies happen by resignation or otherwise, during the electoral year, the Governor may make temporary appointments until the next election, when the vacancies may be filled by the freemen.

ARTICLE 2. The Senators shall be apportioned to the several counties according to the population, as ascertained by the census, taken under the authority of Congress, A.D. 1840; regard being always had in such apportionment to the counties having the greatest fraction, always giving to each county one Senator at least. The

Legislature shall make a new apportionment of the Senators to the several counties, after the taking of each census of the United States, or after a census taken for the purpose of such apportionment by order of the government of this State.

Which was read and ordered to lie on the table.

Mr. NEWELL, from the committee to whom was referred the resolution for changing the time of elections, and the time of holding the sessions of the Legislature, reported the following articles of amendment of the Constitution, viz:

1. The general state election shall hereafter be held on the second Tuesday of October annually, forever. And the Legislature shall meet on the first Thursday of January in the year of our Lord one thousand eight hundred and forty four, and on the first Thursday of January in every year thereafter, unless they shall, by law, appoint different days, either for the general election or the meeting of the Legislature.

2. The Governor, Lieutenant Governor, Treasurer, Secretary of State, Judges of the Supreme, County and Probate Courts, Sheriffs and High Bailiffs, shall hold their offices until others are elected and qualified in their stead.

Which articles were read and laid on the table.

Mr. PRATT had leave of absence until Monday morning next.

Mr. NEWELL, from the committee to whom was referred the report on the resolution for electing county officers by the freemen, submitted the following articles of amendment, viz:

#### ARTICLE.

SECTION 1. Sheriffs and High Bailiffs shall be elected by the freemen of their respective counties, and shall hold their offices for the term of one year, and shall give bonds in such manner and amount as the Legislature shall direct.

SECTION 2. State's Attorney's shall be annually elected by the freemen of their respective counties.

SECTION 3. The election of the several officers mentioned in the preceeding sections, shall be made at the times and in the manner now directed in the Constitution for the choice of Senators. And the proper officer, after he shall have sealed up and directed the votes, shall deliver them to some representative chosen to attend the General Assembly, and at the opening of the General Assembly, there shall be a committee appointed out of the same, who shall be sworn and shall proceed to receive, sort and count the votes, and the highest in nomination for the respective offices shall be by said committee declared duly elected, and by the Governor be duly commissioned. And if two or more persons, designated for any one such office, shall have received an equal number of votes, the General Assembly shall elect one of them to such office.

SECTION 4. Justices of the peace in each town shall be annually elected by the freemen thereof, and, until otherwise

provided by law, their election shall be made on the day and in the manner now directed for the choice of representatives to the General Assembly; provided, that no town having less than one thousand inhabitants, by the last census of the United States, shall have more than five Justices of the peace, and no town having not to exceed fifteen hundred inhabitants shall have more than seven Justices of the peace. And no town shall have more than twelve Justices of the peace; provided, also, that any town may at the annual March meeting determine by vote or resolution to elect a less number of Justices at their next freemen's meeting than the number above limited, and provided, also, that said Justices shall in all cases be elected by a plurality of votes. And it shall be the duty of the town clerk of each town, for the time being, to make a certificate of the names of such persons who shall have been duly elected to said office, directed to the Governor, who, on receiving such certificate, shall commission the same.

Which were read and ordered to lie on the table.

Mr. PADDOCK, from the committee to whom was referred the resolution for abolishing the forty third section of the Constitution, reported that, in the opinion of said committee, it is inexpedient to abolish the forty third section of the Constitution of this State.

*Ordered*, that said report be laid on the table.

On motion,

*Resolved*, That when the Council adjourn, it adjourn to meet on Monday next, at nine o'clock, A.M.

The Council adjourned.

#### Monday, Oct. 25, 1841

Prayer by the Rev. Mr. Young.

Mr. STARR, from the committee to whom was referred the resolution for a more equal representation, made the following report, viz:

That, in the opinion of the committee, it is expedient to alter or amend the eighth section of the second part of the Constitution, by adding thereto the words following, to wit:

"Provided, that every town having two thousand and five hundred inhabitants, shall have the right to elect two representatives, and every town having three thousand five hundred inhabitants, shall have the right to elect three representatives, and every town having five thousand inhabitants, shall have the right to elect *four* representatives."

Mr. ALLEN, from the committee on the powers of the Constitution, to whom was referred the resolution, to inquire whether it be expedient so to amend the Constitution of this State as to require, in addition to the qualifications now required of a candidate for admission as a freeman, that he be able to read the English language, reported, that they have had the subject under consideration, and that, though they deem it of the highest

importance that all classes of our citizens should be educated so far as to be able to read the English language, and that they should also be qualified to transact all ordinary business; and that the foundation of all free institutions of government rests upon the intelligence of its inhabitants, and that every facility should be afforded for the general diffusion of knowledge amongst its citizens; yet they have come to the conclusion that it is inexpedient at this time to propose any alteration of the constitution in regard to this subject.

Which was read and accepted.

On the question "shall the resolution be adopted?" it was decided in the negative. So the resolution was rejected.

Mr. BIRCHARD, from the minority of the committee to whom was referred the resolution for abolishing the forty third section of the constitution, and for substituting some other provision for amending said constitution, submitting the following

#### ARTICLE.

The Senate, at its first session in the year one thousand eight hundred and forty six, and its first session in every fifth year thereafter, shall have power to propose amendments to the constitution; and when any specific and particular amendment or amendments to the constitution shall be proposed in the senate, and agreed to by a majority of that body, such amendment or amendments shall be entered on the journal of the senate, with the yeas and nays taken thereon, and it shall be the duty of the senate to submit such proposed amendment or amendments to the people; and if they shall be approved or ratified by a majority of the qualified voters of the state who may vote thereon, at meetings legally warned and holden for that purpose, they shall become a part of the constitution of this state. And the amendment or amendments proposed by the senate shall be published for public consideration, at least six months previous to the time of holding the meeting aforesaid. And the senate shall have the power to pass and enforce all ordinances necessary for carrying the provisions of this article into full and complete effect. And the forty third section of the constitution, which provides for a council of censors, shall be hereby abolished.

Which article was referred to the committee of the whole.

Mr. ALLEN, from the committee on the Powers of the Constitution, to whom was referred a resolution of inquiry, whether the several acts of the legislature of this state for removing obstructions in Nulhegan river and other rivers and streams, are authorized by the constitution of this state, reported:

"That the several laws relating to the improvements of the rivers or streams in said acts named, by removing the obstructions therein, are alike in character, and will come under the same rule of decision in regard to their constitutionality.

The streams are high above the ebb and flow of the tides, and are not of sufficient dimensions for the floating of vessels, or other water craft, of any considerable size. They are not, therefore, such as come within the description of those rivers or waters which belong to the public.<sup>11</sup> Nor could these waters be used by the public without improvement by widening and clearing out their channels. They would not belong to the public unless so dedicated by the owners of the soil through which they pass, or made public by act of the legislature.

In these acts the legislature have given to certain individuals the right to enter upon and improve said streams so as to render them navigable, or render them useful for some purposes, allowing, as a compensation therefore, the right to receive tolls upon property floated down said streams, the rates to be regulated by the courts of the county through which the streams flow.

Although the words of the acts do not declare that the use of these waters shall belong to the public, yet such is their spirit and effect, and your committee believe that the legislature have, by these laws, dedicated the use of these waters to the public.

In the same acts provision is made for compensation, to the individual owners, for all damages that may be done to their lands or property, in carrying the objects of the several acts into effect.

In the second article of the first part of the constitution of this state, it is declared, "That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money."

The committee believe that the legislature went upon the ground that necessity required that the property in these streams should be made subservient to public use, and that, for such purpose, they allowed the improvements to be made. And, inasmuch as ample provision is made in those acts for compensation to the individual owners of the lands upon those streams, as an equivalent, the legislature did not transcend their powers, under the constitution, in making those laws."

And said committee recommended the adoption of the following resolution:

"Resolved, That it is inexpedient to recommend to the legislature the repeal of said laws."

And on the question "shall the resolution pass?" the yeas and

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<sup>11</sup>The distinction between public and private waters would be affected, if not settled, by Chapter II, Section 40, which guaranteed inhabitants the liberty in seasonable times to "fish in all boatable and other water (not private property) under proper regulations, to be hereafter made and provided by the General Assembly."



nays, having been required by Mr. NEWELL, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. DEMING, BIRCHARD, PRATT, NEWELL, CARPENTER, ALLEN, STARR, REED, PADDOCK, FARNSWORTH, FRENCH, and MOTT--12.

Mr. HIBBARD voted in the negative--1.

The council adjourned.

### **Tuesday, Oct. 26, 1841.**

Prayer by the Rev. Mr. Kellogg.

Mr. NEWELL called up the reported articles of amendment of the Constitution for the election of county officers, stated on the journal of Saturday last.

Mr. HIBBARD moved to dismiss said articles.

And on the question, shall the articles be dismissed? the yeas and nays having been required, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. ALLEN, PADDOCK and HIBBARD--3.

Those who voted in the negative are,  
Messrs. DEMING, BIRCHARD, PRATT, NEWELL, CARPENTER, STARR, REED, FARNSWORTH, FRENCH, and MOTT--10.

So it was decided in the negative.

The Council, on motion, went into committee of the whole, on said articles of amendment, Mr. HIBBARD in the chair.

The committee of the whole, having had said articles of amendment under consideration, reported the same with the following proposal of amendment, viz: strike out the second article, relating to the election of State's Attorneys.

And the question, will the Council concur in the amendment proposed by the committee of the whole? having been taken, was decided in the affirmative.

On motion, the Council resolved to adopt said articles of amendment, as amended.

Mr. PADDOCK had leave of absence from and after to-day.

The Council adjourned.

### **Afternoon.**

On motion, the Council took under consideration the report upon the resolution relating to a more equal representation in the House of Representatives, stated on the journal of Monday last; and on the question, shall the said report and amendment be accepted and adopted? the yeas and nays having been required, were taken, and were as follows:

Those who voted in the affirmative are, Messrs. PRATT, STARR and ALLEN--3.

Those who voted in the negative are,

Messrs. DEMING, BIRCHARD, NEWELL, CARPENTER, FARNSWORTH, REED, FRENCH, HIBBARD and MOTT--9.

So it was decided in the negative.

The Council adjourned.

**Wednesday, Oct. 27, 1841.**

Prayer by the Rev. Mr. Young.

On motion of Mr. ALLEN, the Council took under consideration the resolution and report for the election of Senators for three years.

On motion of Mr. ALLEN,

Ordered, That said report be referred back to the same committee, and that three additional members be added to said committee.

The PRESIDENT appointed Messrs. STARR, BIRCHARD and FRENCH as additional members of the committee.

Mr. BIRCHARD called up the resolution for abolishing the forty-third section of the Constitution, &c., together with the report and counter report thereon, and the same were referred to the committee of the whole.

The council adjourned.

**Afternoon.**

Mr. PADDOCK, from the select committee to whom was referred the report made on the resolution for electing Senators for three years, returned said report without alteration.

Mr. REED moved to amend said report, so as to elect Senators for two instead of three years.

And the question, shall the amendment be adopted? having been taken, was decided in the negative.

The question, shall the articles of amendment to the Constitution for the election of Senators for three years, as reported by the committee, be adopted? was then taken, and decided in the affirmative.

So the said articles of amendment were adopted.

On motion of Mr. ALLEN, the Council went into committee of the whole, on the resolution and report for abolishing the forty-third article of the Constitution, Mr. HIBBARD in the chair.

The committee of the whole, having had said resolution and report under consideration, rose, and, through their chairman, made the following report:

"The committee of the whole recommend to the Council of Censors to propose an article so amending the forty-third section of the Constitution as to retain the Council of Censors, but providing for the submission of any amendments of the Constitution, which they may at any time propose, directly to the people in their primary assemblies or town meetings."

On the question, will the Council adopt the report from the

committee of the whole for amending the forty-third section of the Constitution? the yeas and nays having been required, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. DEMING, BIRCHARD, PRATT, NEWELL, CARPENTER, STARR, ALLEN, and FARNSWORTH--8.

Those who voted in the negative are,

Messrs. REED, FRENCH, HIBBARD and MOTT--4.

So it passed in the affirmative.

On motion of Mr. PRATT, a committee of one was raised to draft and report an article of amendment, in conformity with said report. And Mr. ALLEN was appointed the committee.

Mr. ALLEN, from the committee to draft an article of amendment to the forty third section of the Constitution, reported the following

#### ARTICLE.

Whenever two thirds of any Council of Censors shall propose any amendment, explanation or addition to the Constitution of this State, they shall propose the same directly to the people for their adoption, instead of calling a convention to adopt the same; in which case, they shall, by an ordinance, to be by them promulgated for that purpose, call upon the freemen of the State qualified to vote for representatives to the General Assembly, to meet at the place of the last freemen's meeting in their towns respectively, on a day and hour to be designated in such ordinance, for the purpose of voting for the amendments which the Council of Censors shall have proposed.

And 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 for such freemen's meeting.

And the Council of Censors shall, in such ordinance, designate the method in which the freemen shall be supplied with ballots, the manner in which their votes shall be expressed, the time, place, and manner of their return, and how and by whom the result shall be ascertained and certified to the Governor. And when the result of such balloting shall have been certified to the Governor, or in his absence or disability, to the Lieutenant Governor, he shall, by proclamation, make the same known to the people. And such article or articles as shall have been adopted by a majority of the freemen voting as aforesaid, he shall cause to be transcribed, and certified under his hand and seal of the State, and deposited in the office of the Secretary of State. And the Secretary of State shall record the same. And they shall thereupon become and thenceforth be a part of the Constitution of this State and as such binding on the inhabitants thereof forever.

On the question, shall the aforesaid article of amendment be adopted? it passed in the affirmative.

So the article was adopted.

Mr. NEWELL called up the report and articles of proposed amendments, presented by the committee on the resolution for changing the time of election of state officers and holding the sessions of the General Assembly.

On the question, shall said reported articles and sections of amendment to the Constitution be adopted? the yeas and nays having been demanded, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. DEMING, BIRCHARD, PRATT, NEWELL, CARPENTER, STARR, ALLEN, FARNSWORTH, FRENCH and MOTT--10.

Those who voted in the negative are,

Messrs. REED and HIBBARD--2.

So it was determined in the affirmative, and said articles and sections were adopted.

Mr. PRATT called up the resolution presented by him, relating to the manner of calling a convention, and, on motion, the said resolution was dismissed.

The Council adjourned.

#### Thursday, Oct. 28, 1841.

Prayer by the Rev. Mr. Kellogg.

Mr. PRATT introduced the following resolution:

*Resolved*, two thirds of this Council concurring herein, that it is expedient to call a convention, to meet at the State House in Montpelier, on the \_\_\_\_\_ day of January, A.D. 1843, for the purpose of taking into consideration the proposed amendments to the Constitution, which have been or may be agreed on by this Council. The convention to consist of one member from each organized town in this State.

Which was read, and on motion,

Ordered, That said resolution be laid on the table.

Mr. PRATT introduced the following resolution:

*Resolved*, That when this Council adjourn, it shall adjourn to meet again at Woodstock, in the county of Windsor, on the 9th day of February next.

Mr. ALLEN moved to amend the aforesaid resolution, by striking out "Woodstock, in the county of Windsor," and inserting "Burlington, in the county of Chittenden."

And the question, shall the proposed amendment be adopted? having been taken, was decided in the affirmative.

The question, shall the resolution be adopted as amended? was then taken and decided in the affirmative.

So the resolution, as amended, was adopted.

Mr. ALLEN introduced the following resolution:

*Resolved*, That a committee of one be appointed, whose duty it shall be to examine the constitution of all the states in this union, and report an abstract, showing how the legislature is formed in each

state, the number and periods of service of the senators and representatives, the term of office of the judges, and the manner of their election, and where the appointing power is lodged.

Which was read and adopted.

And Mr. NEWELL was appointed the committee.

Mr. PRATT introduced the following resolution:

*Resolved*, That a committee of three be appointed to draft an address to the people.

Which was read and adopted.

Messrs. FARNSWORTH, STARR, and ALLEN were appointed the committee.

Mr. ALLEN introduced the following resolution:

*Resolved*, That a committee of three be appointed for the purpose of revising and redrafting the several articles and sections of amendment to the constitution, which have been or may be proposed and adopted by this Council of Censors, and also to remodel said proposed amendments so as to render them consistent with the remaining parts of the constitution of this state, and also to report the articles of the present constitution which this council have proposed, or may propose, to amend, alter, or abolish.

Messrs. ALLEN, REED, and STARR were appointed said committee.

Mr. FRENCH introduced the following resolution:

*Resolved*, That a committee of three be appointed to present an article of amendment to the tenth section of the second part of the constitution of this state, so that the certificate of the presiding officer, as to the number of votes given for governor, lieutenant governor, and treasurer, shall be sufficient, without forwarding the ballots to the General Assembly, as is now required by said tenth section.

Which was read and passed.

Messrs. REED, ALLEN, and STARR were appointed said committee.

Mr. STARR introduced the following resolution:

*Resolved*, That the proposed article of amendment adopted by this Council, for altering the general elections and the time of the session of the General Assembly in this state, be amended by adding thereto the following words: "Provided, that the several officers appointed under the authority of the legislature, at their session previous to the adoption of this amendment, shall continue in office until others are appointed in due course of law."<sup>12</sup>

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<sup>12</sup>See Opinion of the Judges of the Supreme Court, 1832, on the question of whether the Governor and Lieutenant Governor hold their respective offices until their successors are legally elected, concluding that they *do*. *Governor & Council* VIII, 279-83.

Which was read and passed.

Mr. HIBBARD introduced the following resolution:

*Resolved*, That a committee of two be appointed to make up the debentures of this council.

Which was read and passed.

Messrs. HIBBARD and MOTT were appointed said committee.

Mr. NEWELL introduced the following resolution:

*Resolved*, That the Council of Censors deem it expedient to inquire into the propriety of so altering the provision in the constitution, making it the duty of the legislature to elect brigadier generals, that such officers shall be elected by the officers of the brigade.<sup>13</sup>

Which was read, and, on motion,

Ordered, That said resolution be laid on the table.

Mr. HIBBARD, from the committee appointed to make up the debentures of this Council, reported that said committee had performed the service assigned them.

On motion, Mr. REED was appointed a committee to receive and disburse said debentures.

Mr. REED reported that he had performed said service.

The Council adjourned.

#### Friday, October 29, 1841.

Prayer by the Rev. Mr. Kellogg.

The Council adjourned to meet at Burlington, on the ninth day of February 1842, in pursuance of their special order.

H.H. REED, Secretary.

#### Third Session.

#### Wednesday, February 9, 1842.

The Council of Censors, in pursuance of their adjournment, assembled at Burlington, in the county of Chittenden, on the ninth day of February, A.D. 1842.

Present, the Hon. JOSEPH D. FARNSWORTH, President,  
HEMAN ALLEN,  
WALLIS MOTT,  
PETER STARR,  
JOHN A. PRATT,  
GORDON NEWELL,  
LUTHER CARPENTER,  
ALVAH R. FRENCH,  
EPHRAIM PADDOCK,

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<sup>13</sup>Chapter II, Article 9.

DAVID HIBBARD, Jr.

Prayer by the Rev. Mr. Converse.

The PRESIDENT communicated to the Council the resignation of HEZEKIAH H. REED, of the office of Secretary of the Council, which was accepted.

On motion of Mr. ALLEN,

*Ordered*, That a secretary *pro tempore* be appointed, and GORDON NEWELL, a member, was duly appointed secretary *pro tempore*.

On motion of Mr. NEWELL,

*Ordered*, That a secretary of the Council be appointed, and William Weston was duly elected, who appeared and entered upon the duties of his office.

On motion, the journals of the previous session were read.

Mr. ALLEN introduced the following resolution,

*Resolved*, That a committee of two be appointed to report the unfinished business of the last session.

Which was read and passed.

The following communication from the treasurer of Vermont was laid before the Council by the PRESIDENT.

Treasurer's Office,

Montpelier, January 20, 1842.

*"To J.D. FARNSWORTH, Esq., President:*

Sir,—In compliance with a resolution of the Council of Censors, furnished me at the close of their session in November, I would respectfully report that the following taxes are now due and unsettled.<sup>14</sup>

In addition to the above, there are some few small balances of less than one dollar each, and mostly less than twenty five cents, which will be settled on receiving the taxes of the current year.

I know of nothing due from sheriffs, except I have within a few days issued extents for the amounts above reported due from Glastenbury, Duxbury, and Alburg.

I have no documents in my office whereby I can state the indebtedness of county clerks, state's attorneys, or judges of the county courts.

The delinquent collectors of taxes have all been written to, and I have received answers from them, and have no doubt the greatest part of the taxes will be paid within thirty days.

I am, sir, respectfully yours,

John Spalding, *Treasurer.*"

Which communication was read and referred to the committee on Taxes and Expenditures.

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<sup>14</sup>The listing of towns and taxes owed is available upon request at the State Archives.

Mr. HIBBARD introduced the following resolution:

*Resolved*, That the sheriff of Chittenden County be requested to attend the Council of Censors, by himself or deputy, during their present session.

Which was read and passed.

The council adjourned.

#### Afternoon.

Mr. PRATT introduced the following resolution:

*Resolved*, That the Rev. J.K. Converse, of Burlington, be requested to attend the Council of Censors, during their present session, and that our sessions be opened each morning with prayer.

Which was read and passed.

The PRESIDENT announced the appointment of Messrs. STARR and ALLEN as the committee to report the unfinished business of the last session, under the resolution stated upon the journal of this forenoon.

The council adjourned.

#### Thursday, February 10, 1842.

Prayer by the Rev. Mr. Converse.

Mr. AUSTIN BIRCHARD, a member of the Council, appeared and took his seat.

Mr. STARR, from the committee appointed to report the unfinished business of the last session of the Council, made the following report:

"The committee report as the unfinished business of the Council, the resolution offered by Mr. FRENCH for amending the tenth section of the second part of the constitution of the state, which requires the return of ballots given for Governor, Lieutenant Governor, and Treasurer of the state.

2. The resolution, offered by Mr. NEWELL, for amending the constitution so as to give the election of Brigadier General to the officers of the brigade.

3. The resolution of Mr. HIBBARD, to abolish the last clause of the twenty sixth section of the second part of the constitution, excluding officers holding their appointments under the authority of Congress, from holding offices under this state.

4. The report of the committee on the resolution of Mr. STARR for an amendment of the constitution, so as to give more permanency to the office of Judges of the Supreme Court.

5. A resolution, offered by Mr. PRATT, for calling a convention, to be composed of one member from each town.

6. A resolution, offered by Mr. PRATT, for the appointment of a committee of three members, to prepare an address to the people of the state.

7. A resolution, offered by Mr. ALLEN, for the appointment of a



committee of three members, to re-draft the amendments proposed by the Council of Censors."

On motion of Mr. NEWELL, the Council took under consideration a resolution introduced by him on the 28th day of October, 1841, which is as follows:

*Resolved*, That the Council of Censors deem it expedient to inquire in to the propriety of so altering the provision of the constitution, making it the duty of the Legislature to appoint Brigadier Generals, providing that such officer shall be elected by the officers of the brigade.

Which resolution was referred to the committee of the whole.

The Council went into committee of the whole, on said resolution, Mr. PRATT in the chair.

The committee of the whole, having had said resolution under consideration, reported, that they had passed the following resolution:

*Resolved*, That the committee of the whole recommend to the Council of Censors not to make the alteration proposed in the said resolution introduced by Mr. NEWELL.

And the question, shall the report of the committee of the whole be adopted? having been taken, was decided in the affirmative.

So the Council resolved that it was inexpedient to make any alteration in the constitution relating to the election of Brigadier Generals.

Mr. CARPENTER introduced the following resolution.

*Resolved*, That the legislative committee be directed to examine the laws passed by the legislature at their session in 1841, and report thereon.

Which was read and passed.

Mr. FRENCH, from the executive committee, made the following report.

*"To the Council of Censors now in session;*

Your committee, who were directed "to inquire whether the executive has assumed or exercised other or greater powers than the constitution allows," respectfully report, that they have had the same under consideration and that they have discovered nothing which, to them, appears to be an infraction of the constitution or that requires the animadversion of this Council."

And the question, shall the said report be adopted? having been taken, was decided in the affirmative.

On motion of Mr. ALLEN,

*Ordered*, That a member be appointed on the committee to whom was referred a resolution proposing an amendment of the tenth section of the second part of the constitution, in the place of Mr. REED, who is absent.

The PRESIDENT appointed Mr. HIBBARD to fill such vacancy.

On motion of Mr. STARR, the Council took under consideration the report of the judiciary committee, on the resolution, referred to

said committee, recommending an amendment of the constitution, so as to give more permanency to the office of judges of the supreme court, stated on the journal of the 21st. of October last, and while said report was under consideration,

The council adjourned.

#### Afternoon.

MARTIN C. DEMING, a member of the Council, appeared and took his seat.

The PRESIDENT laid before the Council the following communication:

*"To the Honorable Council of Censors of the State of Vermont now in session:*

The undersigned would represent that he is an inhabitant of Burlington in said state, and that he belongs to school district, No. 14, in said town, and that he has been an inhabitant of said district for the term of seven years, and that the principle of keeping and supporting the schools in said district, during said time, was, to require that each scholar pay the instructor fifty cents during the first week of the winter school, and from twenty five to thirty seven and a half cents during the first week of the summer school; and the undersigned further states, that, in consequence of said tax, numbers of poor children have been deprived of their share of the public school money, although there has been always a surplus in the treasury of said district of from twenty five to one hundred dollars; and, for the support of the above representation, your honorable body is referred to the clerk, the Hon. Charles Russell, and F.M. Vansicklen, the present teacher, and to the parents of said scholars.

Caleb Richardson

Burlington, Feb. 10th, 1842."

Which communication was read and referred to the committee on Taxes and Expenditures.

The Council resumed the consideration of the report of the Judiciary committee, which they had under consideration at the time of their adjournment in the forenoon, which report is as follows:

"The Judiciary committee, to whom was referred the resolution recommending an amendment of the constitution, so as to give more permanency to the office of judges of the supreme court, respectfully report, that, having had said resolution under their consideration, they do not deem it expedient to recommend, at the present time, any alteration of the constitution in that respect."

On the question, shall the report of said committee be adopted? the yeas and nays, having been required by Mr. ALLEN, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. HIBBARD and PADDOCK--2.

Those who voted in the negative are,

Messrs. ALLEN, BIRCHARD, CARPENTER, DEMING, FARNSWORTH, FRENCH, MOTT, NEWELL, PRATT, and STARR--10.

So it was determined in the negative.

The resolution upon which said report was made was then taken up, and is as follows:

*Resolved*, That it is expedient so to amend the constitution of this state as to give more permanency to the office of judges of the supreme court.

And the question, shall the resolution pass? having been taken, was decided in the affirmative.

So the resolution passed.

On motion of Mr. PRATT,

*Ordered*, That said resolution be referred to the Judiciary committee, with instructions to report an article of amendment of the constitution in accordance with said resolution, leaving, in their report, a blank for the term of years during which the judges of the supreme court shall hold their offices.

Mr. HIBBARD, from the committee to whom was referred a resolution for amending the constitution so as to dispense with having the ballots for governor, lieutenant governor, and treasurer forwarded to the General Assembly, reported, that, in the opinion of said committee, it is expedient to adopt the resolution.

And the question, shall the report of said committee be adopted? having been taken, was decided in the negative.

The resolution, upon which said report was made, was then taken under consideration, and is as follows:

*Resolved*, That a committee of three be appointed to present an article of amendment to the tenth section of the second part of the constitution of this state, so that the certificate of the presiding officer, as to the number of votes given for governor, lieutenant governor and treasurer, shall be sufficient, without forwarding the ballots to the General Assembly, as is now required by said tenth section.

And the question, shall the resolution pass? having been taken, was decided in the affirmative.

So the resolution passed.

On motion of Mr. NEWELL,

*Ordered*, That said resolution be referred to the same committee, with instructions to report an article in amendment of said tenth section of the constitution, in accordance with said resolution.

On motion of Mr. PRATT,

The Council adjourned.

Friday, Feb. 11, 1842.

Prayer by the Rev. Mr. Converse.

The journal was read by the secretary.

Mr. STARR, from the Judiciary committee, to whom was referred a resolution for the amendment of the constitution so as to give more permanency to the office of judges of the supreme court, with instructions to report an article of amendment in accordance with the principle of said resolution, reported the following article of amendment.

"The judges of the supreme court of this state shall hereafter be chosen by the General Assembly for the term of \_\_\_\_ years, during which period they may be removed from office at any time by impeachment, or by a joint resolution of the Senate and House of Representatives, to be passed by not less than two thirds of each house voting in favor of such removal."

Mr. ALLEN moved to fill the blank in said article, preceding the word "years," with the word *fifteen*.

And the question, shall said amendment be adopted? having been taken, was decided in the negative.

Mr. PADDOCK moved to fill the blank with the word *ten*.

And on the question, shall said amendment be adopted? the yeas and nays having been required by Mr. PRATT, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. ALLEN, FARNSWORTH and PADDOCK--3.

Those who voted in the negative are,  
Messrs. BIRCHARD, CARPENTER, DEMING, FRENCH, HIBBARD, MOTT, NEWELL, PRATT and STARR--9.

So it was determined in the negative.

Mr. FRENCH moved to fill said blank with the word *seven*.

And on the question, shall said amendment be adopted? the yeas and nays having been required by Mr. ALLEN, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. ALLEN, BIRCHARD, FARNSWORTH, FRENCH, MOTT, NEWELL, PADDOCK, PRATT and STARR--9.

Those who voted in the negative are  
Messrs. CARPENTER, DEMING, and HIBBARD--3.

So it was determined in the affirmative.

Mr. PRATT moved to amend the said proposed article of amendment of the constitution by adding thereto the following words:

"And that said judges be ineligible to any other office in the gift of the people, or legislature of this state, during the time they respectively hold the office of judge, and for one year thereafter."

Mr. ALLEN moved to amend said amendment by striking out the following words: "and for one year thereafter."

On motion of Mr. PRATT,

*Ordered*, That said article of amendment, and the proposed amendments thereto, be laid on the table.

Mr. DEMING, from the committee on Taxes and Expenditures,

made the following report:

"Your committee on Taxes and Expenditures, who were instructed to inquire 'whether the public taxes have been justly laid and collected in all parts of the state, whether the public moneys have been honestly disbursed and economically expended, and whether the revenue laws have been duly executed,' having had the subject under consideration, beg leave to submit the following report:

That the inquiry 'whether the public taxes have been justly laid in all parts of the state,' would seem to involve an investigation into the revenue laws themselves, or, at least, into the proper execution of those laws; for, if we take it for granted that those laws are so framed that, under a just and enlightened administration of them, the burdens of taxation would bear equally in all parts of the state, still, it is obvious that, under an unjust or unwise administration of them, the taxes might bear very unequally in different parts of the state, and also upon different individuals of the same county, or even of the same town. And the committee conceive that, under the best and wisest system of revenue laws, the difficulties of their execution are such that taxes must bear unequally upon the different members of the community, and especially so, where the laws are executed by as many different boards of assessors as there are towns in the state. The committee, therefore, think it unwise, if not impracticable, to attempt such an investigation. Nor do the committee conceive that there is the least probability that such taxes as are authorized by the legislature will be assessed upon the people contrary to the provisions of existing laws, so long as every tax payer in the state has, within his reach, ample means of information whether the taxes he is called on to pay are legal or illegal. The committee, therefore, in the absence of all complaints, dismiss this branch of the subject with the single remark, that the Treasurer of the state has full authority to enforce the collection of all taxes and other sums of money due to the state, and that the legislature have power to investigate the matter, and call him to an account for any delinquency in the discharge of his official duties.

The second branch of inquiry, embraced in the instructions to the committee, involves an investigation into the accounts and doings of all disbursing officers of the state, and also, into all expenditures of the government for the last seven years, an investigation which would require much time and a great amount of labor, to enable the committee to arrive at any just conclusions. It would also be attended with great expense, as the committee would be under the necessity of exercising the power to send for persons, papers and records, to an almost indefinite extent, in the prosecution of the investigation. And, as the Council have no power to correct abuses, if any should be discovered, the committee do not conceive that the benefit of the investigation would warrant the labor and expense with which its prosecution would be attended.

In fine, the committee are the less inclined to go into so laborious and expensive an investigation, because the whole subject of it is within the legitimate province of the legislature, who can attend to it annually, and apply the necessary corrective whenever they find abuses in this important branch of the public service.

The committee, therefore, request to be discharged from the further consideration of the subject."

Which report was accepted.

And the question, shall said committee be discharged from the further consideration of the subject of said report? having been taken, was decided in the affirmative.

So the said committee were discharged from the further consideration of said subject.

Mr. DEMING, from the committee on Taxes and Expenditures, to whom was referred the communication of Caleb Richardson, stated on the journal of yesterday, reported, "that the subject matter of said communication does not, in the opinion of said committee, come within the scope of the constitutional duties of the Council of Censors."

Which report was accepted.

Mr. PRATT, from the legislative committee, who were instructed to inquire "whether the legislative branch of the 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," made the following report:

"Your legislative committee report, That they have examined the doings of the legislative branch of the government, so far as they have been able, and they are not aware that the legislature have exercised other or greater powers than they were entitled to by the constitution of this state, except in passing the act for regulating and governing the militia of this state, and in passing the act in addition to the same. And your committee believe that the legislature have, in other respects, performed their duty as guardians of the people, and that they have not, except in the above cases, exercised other greater powers than they were entitled to by the constitution."

Which report was accepted.

On motion of Mr. PRATT, the Council took under consideration the following resolution, introduced by him on the 28th day of October last:

*Resolved*, two thirds of this Council concurring herein, that it is expedient to call a convention to meet at the state house in Montpelier on the \_\_\_\_\_ day of January, A.D. 1843, for the purpose of taking into consideration the proposed amendments to the constitution which have been or may be agreed upon by this Council. The convention to consist of one member from each organized town in this state.

Mr. ALLEN moved to strike out the words, "the convention to

consist of one member from each organized town in this state," and insert the following:

"Which convention shall be composed of delegates as follows: each organized town shall be entitled to one; each organized town having a population of fourteen hundred inhabitants shall be entitled to two; each organized town having a population of twenty five hundred inhabitants shall be entitled to three; and each organized town having a population of thirty five hundred inhabitants, or over, shall be entitled to four. The population of each town to be ascertained by the the census of 1840."

And while said amendment was under consideration,

On motion of Mr. MOTT,

The Council adjourned.

#### Afternoon.

The Council resumed the consideration of the resolution and amendment thereto, relating to calling a convention to adopt proposed amendments to the constitution, which they had under consideration at the time of their adjournment in the forenoon.

And, on the question, shall the proposed amendment be adopted? the yeas and nays having been required by Mr. HIBBARD, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. ALLEN, BIRCHARD, DEMING, FARNSWORTH, NEWELL, PADDOCK, PRATT and STARR--8.

Those who voted in the negative are,

Messrs. CARPENTER, FRENCH, HIBBARD and MOTT--4.

So it was decided in the affirmative, and the said amendment was adopted.

On motion of Mr. PADDOCK,

*Ordered*, That said resolution, as amended, be laid upon the table.

The Council took under consideration the article of proposed amendment of the constitution relating to the election of judges of the supreme court, and the tenure of their office, and the proposed amendments thereto, stated on the journal of this forenoon.

Mr. PRATT asked leave to withdraw the amendment to said article, offered by him, stated on the journal this forenoon, and thereupon leave was granted to him to withdraw his said amendment, and the said amendment was withdrawn.

Mr. PRATT then moved to amend said article of amendment by adding thereto the following words: "And that the said Judges be ineligible to any other office in the gift of the people or Legislature of this state, during the term for which they were elected, unless they resign the office of Judge; in which case they shall be ineligible, as above, for one year from the date of their resignation."

And on the question, shall the said amendment to said article of

amendment to the constitution be adopted? the yeas and nays, having been required by Mr. PRATT, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. BIRCHARD, DEMING, HIBBARD and PRATT--4.

Those who voted in the negative are,  
Messrs. ALLEN, CARPENTER, FARNSWORTH, FRENCH,  
MOTT, NEWELL, PADDOCK and STARR--8.

So it was determined in the negative, and the said amendment to the said proposed amendment of the constitution was rejected.

The question, shall the said article of amendment to the constitution be adopted? was then taken, and decided in the affirmative.

So the said article of amendment of the constitution was adopted.

Mr. HIBBARD, from the committee to whom was referred the resolution relating to an amendment of the tenth section of the second part of the constitution, with instructions to report an article of amendment of the constitution, in accordance with said resolution, reported the following article of amendment, viz:

"The freemen of each town in this state shall, on the day of election for choosing representatives to the General Assembly, bring in their votes for Governor, with his name fairly written, to the constable, who shall make a certificate of the number of votes for each candidate, of which a record shall be made in the town clerk's office, which certificate shall be signed by such constable, and by him sealed up and superscribed, with the name of the town in which said votes were given, with these words, 'Certificate of votes for Governor,' and delivered to some representative chosen to attend the General Assembly, instead of delivering the votes as required by the tenth section of the second part of the constitution of this state.

The Lieutenant Governor and Treasurer shall be chosen in the manner above directed."

And the question, shall the said article of amendment be adopted? having been taken, was decided in the affirmative.

So the said article of amendment was adopted.

On motion of Mr. BIRCHARD,

The Council took under consideration the resolution for calling a convention, to consider proposed amendments to the constitution of this state.

Mr. PRATT moved to fill the blank, preceding the words "day of January" with the words "first Wednes," so that, as amended, the time for holding said Convention will be on *the first Wednesday of January, A.D. 1843.*

And the question, shall the said amendment be adopted? having been taken, was decided in the affirmative.

So the said amendment was adopted.



On the question, shall the resolution, as amended, pass? the yeas and nays, having been required by Mr. HIBBARD, were taken, and as follows:--

Those who voted in the affirmative are,

Messrs. ALLEN, BIRCHARD, CARPENTER, DEMING, FARNSWORTH, NEWELL, PRATT and STARR--8.

Those who voted in the negative are,

Messrs. FRENCH, HIBBARD, MOTT and PADDOCK--4.

So it was determined in the negative; the constitution of the state requiring a vote of two thirds of the council, to pass such resolution.<sup>15</sup>

Mr. PRATT moved to reconsider the vote of the Council adopting the amendment, proposed by Mr. ALLEN, to the resolution for calling a convention to consider amendments to the constitution of this state, stated on the journal of this forenoon.

On motion of Mr. PRATT,

*Ordered*, That said motion to reconsider be laid on the table.

The PRESIDENT laid before the Council a communication from Mr. REED, relating to time spent by him in making the journal of the last session of the Council, after the adjournment of said last session.

Which was referred to the committee on debentures.

On motion of Mr. ALLEN,

The Council adjourned.

#### Saturday, Feb. 12, 1842.

Prayer by the Rev. Mr. Converse.

The journal was read by the secretary.

On motion of Mr. PADDOCK,

*Ordered*, That the vote of yesterday, rejecting a resolution for a convention to consider proposed amendments to the constitution, be reconsidered.

And the question recurred, shall the resolution, as amended, pass?

On this question, the yeas and nays, having been required by Mr. ALLEN, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. ALLEN, BIRCHARD, CARPENTER, FARNSWORTH, NEWELL, PADDOCK and STARR--7.

Those who voted in the negative are,

Messrs. DEMING, FRENCH, HIBBARD, MOTT and PRATT--5.

So it was determined in the negative; a majority of two thirds of the Council not having voted in the affirmative. Mr. PRATT moved to reconsider the vote of yesterday, adopting the amendment of Mr.

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<sup>15</sup>Chapter II, Section 43. See pages 150-51.

ALLEN to said resolution, stated on the journal of yesterday.

And, on the question, the yeas and nays having been required by Mr. PRATT, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. ALLEN, CARPENTER, DEMING, FARNSWORTH, FRENCH, HIBBARD, MOTT, PRATT and STARR--9.

Those who voted in the negative are,

Messrs. BIRCHARD, NEWELL and PADDOCK--3.

Mr. Allen asked leave to withdraw the said amendment proposed by him to said resolution, and leave was granted him to withdraw said amendment, and the said amendment was withdrawn.

The Council took under consideration the original resolution which is as follows:

*Resolved*, two thirds of the Council concurring herein, that it is expedient to call a convention, to meet at the state house in Montpelier on the first Wednesday of January, A.D. 1843, for the purpose of taking into consideration the proposed amendments to the constitution, which have been, or may be agreed on by this Council. The convention to consist of one member from each organized town in this State.

And, on the question, shall the resolution pass? the yeas and nays, having been required by Mr. ALLEN, were taken, and were as follows,

Those who voted in the affirmative are,

Messrs. ALLEN, BIRCHARD, CARPENTER, DEMING, FARNSWORTH, FRENCH, HIBBARD, MOTT, PRATT, and STARR--10.

Those who voted in the negative are,

Messrs. NEWELL and PADDOCK--2.

So it was determined in the affirmative.

On motion of Mr. BIRCHARD,

The Council took under consideration the article of proposed amendment of the constitution abolishing the forty third section, and providing for future proposals of amendment of the constitution by the senate, stated on the journal of the 25th of October last, and while the said article was under consideration,

On motion of Mr. PRATT,

The council adjourned.

#### Afternoon.

The Council resumed the consideration of the article of proposed amendment of the constitution, abolishing the forty third section &c. which they had under consideration at the time of their adjournment in the forenoon.

And, on the question, shall the said article be adopted? the yeas and nays, having been required by Mr. ALLEN, were taken, and were as follows:

Those who voted in the affirmative are,  
Messrs. BIRCHARD, CARPENTER, DEMING, NEWELL, and  
PRATT--5.

Those who voted in the negative are,  
Messrs. ALLEN, FRENCH, FARNSWORTH, HIBBARD, MOTT,  
PADDOCK, and STARR--7.

So it was determined in the negative, and the said article was rejected.

On motion of Mr. STARR,

Ordered, That a committee of two be appointed to draft an ordinance, for a convention, to take into consideration the amendments of the constitution to be proposed by the Council of Censors.

The PRESIDENT announced the appointment of Mr. HIBBARD and Mr. NEWELL as such committee.

On motion of Mr. DEMING,

The council adjourned.

#### Monday, Feb. 14, 1842.

Prayer by the Rev. Mr. Sampson.

The journal was read by the secretary.

Mr. PRATT introduced the following resolution:

Resolved, That, Mr. ALLEN, with the secretary, be a committee to procure *seven hundred and fifty copies* of the journal of this Council to be printed, and that two hundred and fifty copies thereof be delivered to the sergeant at arms of this state, to be distributed among the members of the convention, when assembled, and that the remaining copies be delivered to the sheriffs of the several counties, to be by them distributed as follows;--to the Governor, ten copies; to the Lieutenant Governor, five copies; to the secretary of state, ten copies; to the state librarian, forty copies; to the clerk of the House of Representatives, ten copies; to the secretary of the Senate, five copies; to the secretary of civil and military affairs, five copies; to the late Governors and Lieutenant Governors and to the judges of the supreme court and to the town clerk of each organized town in this state, one copy each, and to each member of this Council, ten copies.

Which was read and passed.

Mr. NEWELL, from the committee appointed to draft an ordinance for a convention, reported the following

#### ORDINANCE.

#### STATE OF VERMONT,

IN COUNCIL OF CENSORS, Feb. 14, A.D. 1842.

The Council, having agreed to propose certain amendments to the constitution of this state, and having determined to call a convention to consider such amendments;--

*Therefore*, It is ordered by said Council, that a convention of the

people of the state of Vermont shall meet at the State House in Montpelier, on the first Wednesday of January, A.D. 1843, to consider of the amendments to the constitution proposed by this council and to adopt the same, or such parts thereof as the said convention shall judge will be most conducive to the good government, peace and happiness of the people of this state. And for the purpose of electing delegates to attend said convention, the first constable, or, in his absence, the town clerk, or in his absence, one of the selectmen of each town in this state, entitled to send a representative to the General Assembly, without further order, shall set up a notification, at such place or places as shall have been appointed before the third Tuesday of November next, warning the freemen of their respective towns to meet on the third Tuesday of November, A.D. 1842, at one o'clock in the afternoon, at the place where the last freemen's meeting was held in such town, for the purpose of electing delegates to represent the freemen of said town in said convention, at the opening of which meeting this order shall be publicly read.

And the first constable, or, in his absence or disability, the town clerk, or some one of the selectmen of each town, or a justice of the peace, shall preside at such meeting, whose duty it shall be to call on the freemen of such town, from time to time, for the space of four hours, to give in their votes for such delegate, which votes shall be given and received in the same manner and under the same regulations as is, by law, provided in the case of electing representatives to the General Assembly;--and, at the expiration of which time, the votes so taken shall, by said presiding officer, with the assistance of the selectmen and justices of the peace in such town, be sorted and counted, and if no person shall have a majority of all the votes, the said presiding officer shall notify the same, and again call upon the freemen as aforesaid, giving a reasonable time for receiving such votes, until an election shall be made. And after an election shall have been made, as aforesaid, the presiding officer of said meeting shall deliver to the person elected, a certificate of the following tenor, to wit:

STATE OF VERMONT,--At a freemen's meeting, warned and holden at ----- in pursuance of an order of the Council of Censors, on the third Tuesday of November, A.D. 1842, A. B. was elected a delegate, by a majority of the freemen present, to represent the inhabitants of ----- in Convention, to be holden on the first Wednesday of January, A.D. 1843, for the purpose of taking into consideration certain amendments to the constitution of this state, proposed by said Council of Censors, in February last.

Given under my hand at this day of A.D. 1842.

C. D. *first constable, or, presiding officer.*

Which certificate shall be a sufficient credential of such person's election.

Which ordinance was read and adopted.

On motion of Mr. ALLEN,

*Ordered*, That said ordinance be signed by the PRESIDENT and SECRETARY.

Mr. HIBBARD, from the committee to whom was referred a resolution introduced by him, stated on the journal of the twenty first of October last, relating to abolishing the twenty sixth section of the second part of the constitution, reported the following article of amendment, viz:

The twenty sixth section of the second part of the constitution of this state shall not be construed to prevent any post master from holding the office of justice of the peace.

And on the question, shall the said article be adopted, the yeas and nays, having been required by Mr. NEWELL, were taken, and were as follows:

Those who voted in the affirmative are,

Messrs. FRENCH and HIBBARD--2.

Those who voted in the negative are,

Messrs. ALLEN, BIRCHARD, CARPENTER, FARNSWORTH, MOTT, NEWELL, PADDOCK and PRATT--8.

So the said article was rejected.

On motion of Mr. NEWELL,

Mr. STARR had leave of absence from and after to-day.

On motion of Mr. PRATT,

*Ordered*, That a committee of two be appointed to make up the debentures of the Council of Censors.

The PRESIDENT announced as such committee,

Messrs. PRATT and FRENCH.

Mr. ALLEN, from the committee appointed to draft an address to the people of this state, reported the following

## ADDRESS.

*To the freemen of the State of Vermont:*

The Council of Censors, chosen on the last Wednesday of March, 1841, pursuant to the forty third section of the constitution of the state, about to close their official labors, present to the public the result of their deliberations in relation to the various subjects which have occupied their attention during the past year.

Among other things, it is made the duty of the Council to inquire whether the constitution has been preserved inviolate, in every part, during the last septenary; whether the legislative and executive branches of the 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; whether the public taxes have been justly laid and collected in all parts of the

state; in what manner the public money has been disposed of, and whether the laws have been duly executed; and they are empowered, also, to propose alterations and amendments of the constitution, and to call a convention to consider such alterations and amendments as the Council may deem it expedient to propose.

We have examined the various laws upon the statute book, and believe that, with few exceptions, they have been enacted with a due regard to the provisions and limitations contained in the constitution. Duty, however, constrained us to call the attention of the legislature to that portion of the militia law which related to the government of the militia when not in actual service, and to pronounce that part of it, which empowered the officers of the militia to impose and enforce the collection of fines and penalties by law-martial, and without the right of trial by jury, to be in contravention of the seventeenth section of the first chapter of the constitution. That section declared that "no person in this state 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 and the militia in actual service." Believing that the law, authorizing the imposition of fines by courts-martial for military neglects and offences, at ordinary militia trainings, was directly in violation of the above recited article of the constitution, we respectfully recommended to the legislature its repeal or modification, and we are gratified to find that the last legislature has so far amended this law as to repeal its objectionable parts, and to give the accused a trial before the ordinary civil tribunals.<sup>15</sup>

The Council have directed their earnest consideration to the tenure of office now given to the state senators. On viewing the several departments of legislation, and the purpose of each branch in its action, as a law-making power, we are struck with the impropriety presented by the relative periods for which the delegates to the several branches are respectively appointed. With the present mode of election and limitation of their services, it is but little better than giving the whole legislative power to a single body of men. They are all elected by the people at the same time, and for the same period. They go into office on the same day, and their public services terminate at the end of the year. As the members of the House of Representatives, come from every town in the state, and are elected for one session only, it cannot from the very nature of the case, be otherwise than that there should be, in many of them, a want of experience in legislation. In so numerous a body there will always be a liability to high excitements, and, as a consequence, to inconsiderate legislation. And, whenever an improper excitement, of a political cast, arises or exists amongst the people, it will be

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<sup>15</sup>*Laws of 1841*, No. 17, 17-9.

communicated to, and carried out by, the legislators in their official transactions.

The object of a Senate is to establish a more experienced, deliberative, and independent body than the House. Such a body, in the process of law-making, experience has shown to be absolutely necessary. But, as Senators and members of the House are now elected for the same term of time, and of the House are now elected for the same term of time, and as the Senate are a less numerous body, and dependent, in some measure, for a re-election, upon the representatives of their respective counties, who may be presumed to exercise an influence over their elections, it is believed that they cannot possess the independence requisite to a proper revision of the proceedings of the House of Representatives.

In order to secure this important object, the Council of Censors have recommended an amendment of the constitution, by giving to the Senators an official term of three years, and so classifying them as to have one third go out of office at the expiration of each year. We consider this the more necessary, inasmuch as the executive department has no other power over the enactments of law, in his duty of revision, than to return them to the body in which they originated, with his objections, after which, notwithstanding those objections, they may become the law of the land by a vote of a majority, only, of each house.

The Senate ought to possess a degree of permanency and stability of office, in order to prevent the necessity of the intervention of the executive veto, a power always viewed by the people with jealousy, and its exercise generally marked with disapprobation. By giving to the Senators a term of three years, you place them beyond the influence of the sudden excitements of the day, and yet leave them sufficiently responsible to their constituents. It is believed that, in selecting candidates for that office for the term of three years, more care will be taken to secure men worthy of the trust, than when the selection is made to fill the office but for the term of one year.

By a division of the Senate into three classes, by which a portion only will go out each year, there will remain a majority of old members, by whose experience the new ones will be greatly benefitted, and the whole together will form a salutary check upon the more numerous branch to the legislature. Besides, the Senator for three years will find a greater obligation resting upon himself to become acquainted with the duties of his station, than if he were appointed but for a single session, of four or five weeks. As his services and attainments will be known and appreciated by his constituents, so will he be stimulated by a laudable ambition to qualify himself for a faithful and honorable discharge of the important duties assinged him. Thus will the conservative power of the Senate be made to operate upon the government, and thus will that degree of stability in the law be preserved, so highly necessary in securing

the liberty and prosperity of the people.

The Council have also had in consideration the Judicial system of the state. They have much to admire in regard to the organization of this system. The plan of combining the supreme with the county courts for the trial of issues of fact, so far as to associate a judge of the supreme court with the judges of the county court, has proved by experience to fulfil every purpose which its most ardent advocates could have anticipated. The great improvements which the adoption of this system has introduced in the administration of justice must be apparent to all who will compare it with the system by which it was preceded. But this Council believe that the time has arrived when an additional advantage might be obtained by giving to the judges of the supreme court a greater degree of independence. This should be done by enlarging the tenure of their office.

As this is a subject fixed by the constitution, and cannot, like the organization of courts, come under the control of legislative enactment, it necessarily devolves upon us to recommend such an improvement. On the best reflection we can give the subject, connected with the present improvement of the age, we cannot do our duty to the state, without, at this time, recommending an amendment of the constitution so as to give to the judges an office to be held by them seven years from the date of their respective elections. This proposition has been brought into favor with the Council by considerations, some of which they will mention.

In no state in the union, with the exception of Vermont and Rhode Island, are the judges of the highest court elected annually.

The appointment being made by the joint ballot of the two houses of our legislature, it becomes highly necessary to place the supreme judges beyond the encroachments of that body. We cannot expect an impartial and secure administration of the laws without conferring upon the judges an independence which can never be realized under appointments annually made by the legislature.

The judicial power should be separated so far from the legislative and executive, as that neither should exercise the duties appertaining to the other. Each should be independent of the other. Neither should encroach upon the other; and, as the judicial is the weaker body, it should, in the exercise of its functions, be rendered as independent of the other as circumstances will admit.

It is an attribute of the supreme judicial tribunals to judge of the constitutionality of all laws passed by the legislature, when properly brought in review before them. They are always to regard the constitution as the fundamental law of the land, and superior to any legislative enactment. Consequently, if the law is not warranted, by, or is repugnant to, the provisions of the constitution, as is sometimes the case, the judges are bound to pronounce it inoperative and void. Can it be expected that judges, dependent every year upon the Legislature for their appointment, will possess the necessary firmness



to judge over the heads of that body, and declare their enactments void? The observation of every one, who has attended to this subject, proves that the contrary effect is the result.

This Council, then, are fully of the opinion that, to secure talent, experience, fidelity and independence, the tenure of the office of the judges should be enlarged.

Yet, it may happen that the judge may prove himself to be incompetent, or of a temperament unsuitable for so high a trust, and still not subject himself to impeachment,--a mode of trial extremely delicate, and one which would be resorted to with great reluctance. The Council have, therefore, recommended the principle of removal by resolution, on a vote of two thirds of each of the houses of the Legislature. It is believed that this will give a sufficient power over that judge who proves to the people, by his official conduct, that he is unworthy of their confidence.

The subject of altering the time for holding *freemen's meeting*, and the sessions of the Legislature, has been brought to our notice by the urgent solicitations of individuals from various parts of the state. The time for holding freemen's meeting is alleged to be too early in the season, especially for the accommodation of the farmer, as it most generally arrives before he has completed his harvest, and the early day of election not unfrequently prevents a full attendance of the freemen at the polls.<sup>16</sup>

As a remedy for these inconveniences, we have seen fit to propose to the people, for their consideration, the second Tuesday of October for the holding of freemen's meeting, and the first Thursday of January following for the convening of the Legislature, giving to that body the power to appoint, by law, a different day, for the meeting of the Legislature, if deemed advisable. Whether this is called for, is a question for your consideration and decision.

The manner of appointment of the officers of the county has been urged upon the Council from various parts of the state. Strong objections are made to the present mode of electing these local officers by the Legislature. The candidates cannot be supposed to be personally known to but few of that body. Consequently, imposition and intrigue have too frequently had more to do than merit in the appointment of these officers. The Council, therefore, have thought it advisable to give these appointments directly to the people, who will be best acquainted with the qualifications of those who are to serve them, and will be better enabled to select, and as well inclined to appoint, the best men to office, as the body whose duty it now is to make these appointments.

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<sup>16</sup>Section VIII of the Constitution of 1793 made the first Tuesday of September as the date of Freemen's meetings, today called the General Election.

As, in a free government, all appointments to office, as well as all laws, proceed directly or indirectly from the people, it cannot well be denied that, as far as is practicable, these powers should be retained by them. The Council, therefore, recommend that the election of sheriff and high bailiff be given to the freemen of the county. These are executive officers of the county, clothed, in the execution of their duties, with the power to control, not only the property, but the persons of individuals. Their authority is confined to and pervades the county, and their appointment ought, therefore, not to be taken from the people of the county.

In regard to the appointment of justices of the peace, by the freemen of their respective towns, although the office is for the county, yet, as their services are mostly confined to the town in which they reside; and inasmuch as, in the one case, they will be personally known to every elector, and in the other (if elected by the county) will be known to but few, it is the opinion of the Council that the whole public interest will be better subserved by giving the appointment of the justices of the peace to the freemen of the town in which they reside, than in any other way.

We have, therefore, proposed an amendment of the constitution giving the appointment of this officer directly to the freemen of the town; and we have likewise recommended that the number of justices, to be appointed for each town, be somewhat in proportion to the number of inhabitants of such town--no one town being allowed more than twelve.

We have proposed an amendment to the tenth section of the second chapter of the constitution, altering the manner of making returns of votes given for Governor, Lieutenant Governor, and Treasurer, authorizing the several presiding officers over the several freemen's meetings in this state to forward a certificate of the number of votes given, without transmitting the ballots themselves.

Under the present mode, considerable inconvenience has been experienced, while it is not known that any benefit has been derived. The certificate of the officer alone has been all the evidence required by the canvassing committee when ascertaining the number of votes cast for the respective candidates.

The subject of abolishing the Council of Censors, and giving the power to propose amendments of the constitution to one or both branches of the Legislature, has been presented to the deliberate consideration of this Council. It has been urged that it would be an important saving of expence to the state, and that the other duties of the Council, as now prescribed, have, by the progress of improvement in the legislative and judicial departments of the government, become unimportant and useless. But, after a full discussion of this subject we have not judged it expedient to recommend the abolishing of that body. We have reason to apprehend that if the power to propose amendments of the constitution were exercised by one or

both branches of the Legislature, there could be no saving of expense, considering the time that would thus be occupied by those bodies;--that party politics would too often mix with the discussions, and influence the decisions in relation to the proposals of amendment.

The Council have seen fit to place before you, for your consideration and decision, one other proposal of amendment to the constitution. This relates to the forty third section of the second part of that instrument. We propose so to alter and amend that section as to give directly to the people the adoption or rejection of such recommendation of amendments to the constitution as shall be proposed by the Council of Censors.

This measure will place the question of amendment before each individual, who will be dependent upon no one for the expression of his opinions. It commends itself to your favorable consideration, because it is in strict conformity with the first principles of a republican government. The constitution is the ground-work of the law of the land, and, as such, should proceed directly from those who are to be bound by it. This is the charter by which all the departments of the government are limited, and which declares, thus far shalt thou go and no farther. The people have the right to alter or amend the constitution for the promotion of their welfare, and that right is inalienable. A right so vitally important, which can with so little inconvenience be exercised by the freemen themselves, should never be entrusted to others.

The power to propose amendments must necessarily be delegated to some selected body. In the different states, different rules prevail. In some, it is given to the legislature, under certain restrictions; in others, to a convention elected by the people; in ours, to a Council of Censors, elected once in seven years. But the power of adopting or rejecting, ought always to be vested in the freemen themselves, and an opportunity is now offered to the people of Vermont to assert and secure for themselves and their posterity, this most invaluable and inalienable right.

In resolving to call a Convention, we have acted upon the full belief that the rights and interests of our fellow citizens will be advanced by the adoption of these amendments.

The several proposals of amendment are so framed as to leave it in the power of the convention to adopt any one or more of them, without adopting the others.

And we submit to our fellow citizens the result of our labors with full assurance of your candid and impartial examination, and with entire confidence that your decision upon the several amendments proposed, will be such as to promote the welfare and prosperity of the state.

Which was read and adopted.

On motion of Mr. PRATT,

The Council adjourned.

**Afternoon.**

Mr. PRATT, from the committee appointed to revise and redraft the articles and sections of proposed amendment of the constitution, and to report the articles of the present constitution proposed to be amended, altered or abolished, made the following report:

**ARTICLES**

*Of amendment, alteration, and addition to the Constitution of the State of Vermont, proposed by the Council of Censors, at their session in February, A.D. 1842.*

ARTICLE 1. The general state election shall hereafter be held on the second Tuesday of October, annually, forever. And the Legislature shall meet on the first Thursday of January, in the year of our Lord one thousand eight hundred and forty four, and on the first Thursday of January in every year thereafter, unless they shall, by law, appoint a different day.

ARTICLE 2. The Governor, Lieutenant Governor, Treasurer, Secretary of State, Judges of the Supreme, County and Probate Courts, Sheriffs, and High Bailiffs, shall hold their offices until others are elected and qualified in their stead.

ARTICLE 3. The Senate shall be composed of thirty Senators, to be of the freemen of the county for which they are elected, respectively, who shall have attained to the age of thirty years, and to be elected for three years, by the freemen of each county, respectively. Immediately after they shall be assembled, in consequence of the first election under this constitution, as amended, they shall be divided equally into three classes. The seats of the Senators of the first class, shall be vacated at the expiration of the first year, of the second class, at the expiration of the second year, and of the third class, at the expiration of the third year; so that one third may be chosen every year. And if vacancies happen by resignation, or otherwise, during the electoral year, the Governor may make temporary appointments until the next election, when the vacancies may be filled by the freemen.

ARTICLE 4. The Senators shall be apportioned to the several counties, according to the population, as ascertained by the census taken under the authority of congress, A.D. 1840, regard being always had, in such apportionment, to the counties having the greatest fraction, always giving to each county one Senator, at least. The legislature shall make a new apportionment of the Senators to the several counties, after the taking of each census of the United States, or after a census, taken for the purpose of such apportionment, by order of the government of this state, always regarding the above provisions in this article.

ARTICLE 5. Sheriffs and High Bailiffs shall be elected by the freemen of their respective counties, and shall hold their offices for the term of one year. And shall give bonds in such manner and

amount as the Legislature shall direct.

ARTICLE 6. The election of the several officers, mentioned in the preceding article, shall be made at the times, and in the manner now directed in the constitution for the choice of Senators. And the presiding officer, after the votes shall have been taken, sorted and counted, shall make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name, a record of which shall be made in the town clerk's office; and shall seal up said certificate, and shall write on the same the name of the town, with the words, "Certificate of votes for Sheriff," or "Certificate of votes for High Bailiff," as the case may be, and shall hand such certificate to some representative chosen to attend the General Assembly. And, at the opening of the General Assembly, there shall be a committee appointed out of the same, who shall be sworn, and whose duty it shall be to examine such certificates and ascertain the number of votes given for each candidate; and the highest in nomination for the respective offices shall be declared duly elected, and shall be commissioned by the Governor. And, if two or more persons, designated for any one such office, shall have received an equal number of votes, the General Assembly shall elect one of them to such office.

ARTICLE 7. Justices of the Peace, in each town, shall be annually elected by the freemen thereof, and, until otherwise directed, by law, their election shall be made on the day and in the manner now directed for the choice of representatives to the General Assembly.

No town, having less than one thousand inhabitants, by the then last census of the United States, shall have more than five justices of the peace; and no town having less than fifteen hundred inhabitants shall have more than seven justices of the peace; and no town shall have more than twelve justices of the peace. Any town may, at their annual March meeting, determine, by vote or resolution, to elect a less number of justices at their next freemen's meeting, than the number above limited.

Justices of the peace shall, in all cases, be elected by a plurality of votes. And it shall be the duty of the town clerk of each town, for the time being, to make a certificate of the names of such persons as shall have been duly elected to said office, directed to the Governor, who, on receiving such certificate, shall commission such justices.

ARTICLE 8. The Judges of the Supreme Court of this state shall hereafter be chosen, by the General Assembly, for the term of seven years, during which period they may be removed from office, at any time, by impeachment, or by a joint resolution of the Senate and House of Representatives, to be passed by not less than two thirds of each house voting in favor of such removal.

ARTICLE 9. The freemen of each town in this state shall, on

the day of election of representatives to the General Assembly, bring in their votes for Governor, with his name fairly written or printed, to the presiding officer of the meeting, who, after the votes shall have been taken, sorted, and counted, shall make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name, a record of which certificate shall be made in the town clerk's office; and shall seal up said certificate, and write thereon the name of the town, with the words "Certificate of votes for Governor," which certificate he shall hand to some representative elected to attend the General Assembly, instead of sealing up the votes, as required by the tenth section of the constitution of this state. The Lieutenant Governor and Treasurer shall be chosen in the same manner as the Governor.

ARTICLE 10. Whenever two thirds of the constitutional number of any Council of Censors shall propose any amendment, explanation, or addition to the constitution of this state, they shall propose the same directly to the people, for their adoption or rejection, instead of calling a convention therefor, in which case they shall, by an ordinance, to be by them promulgated for that purpose, call upon the freemen of the state, qualified to vote for representatives to the General Assembly, to meet at the place of the last freemen's meeting in their towns, respectively, on a day and hour to be designated in such ordinance, for the purpose of voting upon the amendments which the Council of Censors shall have proposed. And 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 for such freeman's meeting.

And the Council of Censors shall, in such ordinance, designate the method in which the freemen shall be supplied with ballots, the manner in which their votes shall be expressed, the time, place, and manner of their return, and how, and by whom, the result shall be ascertained and certified to the Governor; and when the result of such balloting shall have been certified to the Governor, or, in his absence or disability, to the Lieutenant Governor, he shall, by proclamation, make the same known to the people. And such article or articles as shall have been adopted by a majority of the freemen voting as aforesaid, he shall cause to be transcribed and certified under his hand and the seal of the state, and deposited in the office of the Secretary of State. And the Secretary of State shall record the same; and they shall thereupon become, and thenceforth be, a part of the constitution of this state, and, as such, binding on the inhabitants thereof forever.

Which articles were severally read.

Whereupon,

The Council resolved, unanimously, to adopt the same as articles of proposed amendment of the constitution of this state, to be

submitted to the convention, to be called under an ordinance of this Council, stated on the journal of this forenoon.

Mr. PRATT, from the same committee, also reported, that,

In the first part of the constitution, entitled, "A Declaration of the Rights of the Inhabitants of the State of Vermont," no article is altered, abolished, or superseded, by any of the proposed amendments of this Council of Censors.

In the second part, entitled, "Frame of Government," the following sections are altered, abolished, or superseded, either in whole or in part, viz.--<sup>17</sup>

Which report was read and adopted.

Mr. PRATT, from the committee to make up the debentures of this session, reported, that said committee had performed the service assigned them.

On motion of Mr. FARNSWORTH,

The Secretary was directed to receive and disburse the debentures of the present session.

Mr. NEWELL introduced the following resolution:

*Resolved*, That the thanks of this Council be tendered to the PRESIDENT for the able and impartial manner in which he has discharged his duties in presiding over their deliberations.

Which was read and passed by a unanimous vote of the Council.

On motion of Mr. FARNSWORTH,

The Council adjourned.

Tuesday, Feb. 15, 1842.

Prayer by the Rev. Mr. Converse.

The journal was read by the Secretary.

On motion of Mr. ALLEN,

The Council adjourned without day.

Wm. Weston, *Secretary*.

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<sup>17</sup>Eds. note. Here we have chosen not to reprint existing Sections 8, 9, 10, 43, or Article 4 of the Vermont Constitution. See Constitution of 1793 for these citations, pages 141-51.

### The Results of the 1841 Council

The Council objected to the militia law, and communicated its objections to the legislature then in session on October 21. On November 11, the legislature repealed the objectionable sections three through seven from Chapter XI of the militia act of 1837.<sup>18</sup> On November 11, the General Assembly resolved to appoint a committee to prepare a revision of the militia laws and report back to the 1842 session with its draft.<sup>19</sup> In 1842, the legislature completely redrafted the militia laws, removing the questionable elements from the law.<sup>20</sup>

Three acts involving authority to remove obstructions in Vermont streams were also subjects of initial objection by the Council, although the Committee to which the acts were referred found no reason to object on the grounds originally raised—that is, that by allowing the obstructions to be removed and providing compensation for the loss of private property, the legislature had not offended Article II of the Vermont Constitution. The Council did not object to the acts.<sup>21</sup>

After finding that deputy Postmasters were federal officers, the Council concluded that their election to the legislature or to a judicial office was a violation of section 26 of the Vermont Constitution.

The Council had considered several amendments that did not succeed in being proposed to the Constitutional Convention, including a proposal to require all voters to read the English language; to abolish the forty-three section entirely—turning over the power to propose amendments to the legislature and the power to ratify them to the electorate; the election of Brigadier Generals by the officers of the brigade; and the elimination of the last clause in Section 26 of the Constitution prohibiting state officers holding offices under the authority of Congress.

The Council proposed popular election of sheriff, high bailiff, and justices of the peace; three year terms for state senators; seven year terms for Supreme Court judges; changing the date of the General Election to the second Tuesday of October and the opening date of the General Assembly

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<sup>18</sup>*Laws of 1841*, No. 17, 179.

<sup>19</sup>"Resolution Authorizing the Appointment of a Committee to Revise the Militia Laws," *Laws of 1841*, 35-6.

<sup>20</sup>*Laws of 1842*, No. 28, 27-85. See *Barrett v. Crane et al.*, 16 Vt. 246 (1844), for a reflection of this same objection as expressed by the Vermont Supreme Court, involving an alien who was fined \$2.00 for delinquency of military duty while residing within Vermont.

<sup>21</sup>In 1867, the legislature adopted "An act to authorize improvements to be made in Nulhegan River and its tributaries." *Laws of 1867*, No. 193, 280-85. It authorized four individuals to widen, deepen and straighten the river and required them to pay damages to the landowners for harm caused to their interests during this process, with an appeal from any damage award to the county court. The act was to remain in force for fifteen years, and to remain under the control of the General Assembly. This law was repealed in 1868. *Laws of 1868*, No. 30, 34.





## The 1848 Council of Censors

By 1848 Vermont's political landscape was once again in a state of upheaval. The Whigs' electoral success at statewide contests remained unbroken, but their control was tenuous. From 1841 to 1848 only two of eight gubernatorial contests produced majority winners; the rest were thrown into the legislature for resolution.

Again national politics helped forge Vermont political alliances. The association of the Democratic Party with the tariffs of 1841 and 1846 focused blame on that party for the decline of sheep farming. The uncertain stands of the major national parties on slavery loosened local allegiances, and more outspoken opponents formed new political coalitions such as the Liberty and Free Soil parties. The Mexican War and the subsequent acquisition of substantial new territories heated up the question of the expansion of slavery.

The temperance debate was now fully in the political arena. In 1844 the Vermont Temperance Society called for some form of local option to allow communities to decide whether to be wet or dry. Starting in January, 1845 there were increasing numbers of votes called for on the temperance issue, starting with annual election of county liquor commissions, moving to statewide prohibition, and the back to a local option system. In addition to the liquor commission votes there were statewide referenda in 1847 and 1848, with more in the offing. These elections and referenda were often decided by tens of votes out of thousands cast. The result was constant politicking over the temperance issue.

Population emigration also continued. Vermont's population had increased just 4% during the 1830's and while the 1840's brought a 7.6% increase the growth patterns remained uneven. In an extreme case the 1848 Legislature simply annexed the Town of Mansfield, which encompassed the mountain of that name, to a neighboring town.

Rural depopulation also continued to raise concerns about town tax bases. This concern, particularly in terms of uniform appraisals, taxing of wild lands, and taxing property of non-residents, was repeatedly brought to the attention of the Councils of Censors. The 1848 Council would be no exception.

Nor was fair taxation the only familiar topic discussed by the Council. The House and Senate adopted a resolution in 1847 requesting the Council to once again propose the election of county and probate district officers.

The Council finished its first session on Friday, June 9; reconvened on October 4 in Montpelier and met until the 19th. The final session was at the Burlington Court House, from February 16-28.

*Note on text:* The text is from an 1849 publication of the Journal of the Council of Censors by the Free Press Office Printing in Burlington.



Journal  
of the  
Council of Censors

of the  
State of Vermont,  
in  
Montpelier and Burlington  
1848-9.

First Session, at Montpelier.

Senate Chamber,  
**Wednesday, 7th June, 1848.**

The Council of Censors, elected on the last Wednesday of March, in the year of our Lord 1848,<sup>1</sup> met in the Senate Chamber, at Montpelier, on the first Wednesday, being the 7th day of June, 1848, at 2 o'clock P.M., when the following named members appeared, produced their credentials, and took their seats, to wit:

CHARLES K. WILLIAMS,  
WILLIAM HEBARD,  
JAMES BELL,  
IRA H. ALLEN,  
AUGUSTUS BURT,  
JOHN DEWEY,  
KEYES P. COOL,  
DAVID CRAWFORD,  
JOHN N. POMEROY,  
SALMON F. DUTTON and  
HENRY F. JANES.

The Council were called to order by Mr. BELL, and CHARLES K. WILLIAMS was elected President *pro tem.*, and JOHN N. POMEROY, Secretary *pro tem.*

On motion of Mr. DEWEY,

*Resolved*, That the Sergeant at Arms be requested to attend on the Council by himself or deputy.

On motion of Mr. BURT,

*Resolved*, That a Committee of three be appointed by the Chair to draft rules for the government of the Council.

Mr. POMEROY, Mr. HEBARD and Mr. DUTTON, were appointed on this Committee.

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<sup>1</sup>"An act to regulate the choice of a Council of Censors," *Laws of 1847*, No. 49, 32-34.

On motion of Mr. BELL,

*Resolved*, That the Council adopt the rules of the last Council of Censors until new rules are prepared and adopted.

On motion of Mr. DEWEY,

*Resolved*, That a Committee of three be appointed to receive and report on the Credentials of members.

Mr. DEWEY, Mr. BELL and Mr. BURT were appointed.

On motion of Mr. DEWEY,

*Resolved*, That the President request some clergyman of this village to attend on the Council as Chaplain, and that the morning services of the Council be opened by prayer.

The petition of G. B. Armington and others requesting the Council to enquire, among other things, into the expediency of so amending the Constitution as to limit the amount of land hereafter to be acquired by purchase by any individual, and of securing from debts, hereafter to be contracted, a family homestead, was received, read and laid on the table.

On motion, the Council adjourned.

#### Thursday, 8th June, 1848.

Prayer by Rev. Mr. Scott.

Journal of yesterday read and approved.

On motion of Mr. HEBARD,

*Resolved*, That the Council do now proceed to the election of President and Secretary.

Whereupon the ballots having been taken and examined,

CHARLES K. WILLIAMS

was found to be unanimously elected President, and

JOHN N. POMEROY

was, in like manner, elected Secretary of the Council.

Mr. POMEROY, from the Committee on Rules, submitted the following Report:--which Report, on motion of Mr. DEWEY, was laid on the table:--

*To the Council of Censors:--*

Your Committee, to whom was referred the duty of reporting Rules for the government of the Council, submit the following Report to wit:--

I. The Council shall meet every day (Sundays excepted) at 9 o'clock A.M., and at 2 o'clock P.M., unless otherwise ordered.

II. The President shall take the Chair at the hour to which the Council stands adjourned, and call the Council to order for the prosecution of business.

III. All Committees shall be appointed by the President, but such appointments may, on motion of a member, be overruled by the Council and the vacancy filled by the Council on nomination of a member, or other members may be added to any Committee by vote of the Council.

IV. No member shall absent himself from the services of the Council unless he shall have leave.

V. The yeas and nays may be taken and entered upon the journals, upon the call of a member.

VI. The following standing Committees shall be appointed, to wit:--

1st. A Committee of three to enquire whether the Constitution has been preserved inviolate during the last septenary; which shall be called the *Committee on the Powers of the Constitution*.

2d. A Committee of three to enquire whether the legislative branch of the government have performed their duties as guardians of the People, or assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution, and whether the laws generally have been duly executed; which shall be called the *Legislative Committee*.

3d. A Committee of three to enquire whether the executive has assumed other or greater powers than the Constitution allows; which shall be called the *Executive Committee*.

4th. A Committee of three, who shall enquire whether the public taxes have been justly levied and collected, and in what manner the public money has been disposed of; which shall be called the *Committee on Taxes and Expenditures*.

VII. All motions shall, on request of the President, be reduced to writing.

VIII. A motion to adjourn shall be always in order.

IX. Motions on resolutions shall have precedence as follows:--

1st. To dismiss.

2d. To postpone to a day certain.

3d. To lie on the table.

4th. To commit.

5th. To amend.

Respectfully submitted by

JOHN N. POMEROY, *for Committee*.

*Senate Chamber, 8th June, 1848.*

Mr. BELL introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire into the constitutionality and expediency of the laws in relation of the School Fund;<sup>2</sup>

Which was read, and, on motion, was laid on the table.

Mr. POMEROY introduced the following resolution:

*Resolved*, That it is expedient so to amend the Constitution of this State, as to secure to the people a more equal representation in the House of Representatives;

Which was read and referred to a Committee of three members.

Mr. DUTTON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire into the expediency of so amending the Constitution as to give the election of Assistant Judges of the County Courts, Sheriffs, High Bailiffs, and State's Attorneys, directly to the Freemen of their respective Counties, and the election of the Judges of the Probate Courts directly to the Freemen of their respective Probate Districts;

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<sup>2</sup>*Revised Statutes*, Title IX, Ch. XVIII, 38-41.

Which was read and adopted.

Mr. HEBARD introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire and report upon the expediency of so amending the Constitution that, hereafter, all amendments to the Constitution shall be proposed by the Senate of the State of Vermont, and their adoption submitted directly to the Freemen of the State, to be by them adopted or rejected--under such regulations, and in such manner as shall be provided by law; and, in that case, to abolish the Council of Censors; Which was read and adopted.

Mr. DEWEY introduced the following resolution:

*Resolved*, That it is expedient so to alter the Constitution of this State, as to give the choice of the Clerks of Courts to the Freemen of their respective Counties, and so as to give the choice of Registers of Probate to the Freemen of the several Probate Districts--or to provide for the election of these officers in the same manner that other County and Probate officers are chosen;

Which was read and referred to the Committee to be raised on the resolution of Mr. DUTTON relative to the election of County Officers.

Mr. BURT moved the re-consideration of the resolution of Mr. DUTTON, which motion was laid on the table.

The Report of the Committee on Rules was, on motion of Mr. POMEROY, taken up and after some discussion, accepted, and the Rules, as reported, adopted as the Rules of the Council.

On motion of Mr. BELL, the Council adjourned.

#### **Afternoon.**

The Chair announced the appointment of the following Committees:--

On the resolution introduced by Mr. POMEROY, MR. POMEROY, MR. COOL and MR. ALLEN.

On the Powers of the Constitution, MR. HEBARD, MR. CRAWFORD and MR. BURT.

On the Legislative Committee, MR. DEWEY, MR. ALLEN and MR. DUTTON.

On the Executive Committee, MR. BELL, MR. CRAWFORD and MR. JANES.

On the Committee on Taxes and Expenditures, MR. JANES, MR. BURT and MR. COOL.

On the resolution introduced by Mr. HEBARD, MR. DUTTON, MR. HEBARD and MR. POMEROY.

The Committee on Credentials of members reported, and the report was read and accepted.

The Council, on motion of Mr. HEBARD, took up the motion to reconsider the resolution of Mr. DUTTON, and the same was reconsidered, and was, on motion of Mr. BURT, amended, and as

amended, was adopted as follows:--

*Resolved*, That a Committee of three be appointed to enquire into the expediency of so amending the Constitution as to give the election of Assistant Judges of the County Courts, Sheriffs, High Bailiffs, and State's Attorneys, directly to the Freemen of their respective Counties, and the election of Judges of the Probate Courts, directly to the Freemen of their respective Probate Districts, and of Justices of the Peace to the Freemen of the towns in which they reside.

A resolution was introduced by Mr. HEBARD, which after amendment, was adopted as follows:--

*Resolved*, That the Committee on the Powers of the Constitution enquire into the expediency of so amending the Constitution as to dispense with the office of County Judges.

On motion of Mr. CRAWFORD:

*Resolved*, That the Committee on the Powers of the Constitution enquire into the expediency of so amending the 8th Section of the second part of the Constitution, as to limit the elections, therein provided for, to the first Tuesday of September, annually.

The resolution of Mr. BELL, laid on the table in the morning, was, on motion, taken up and adopted.

The memorial of G. B. Armington and others, which was laid on the table, was on motion, taken up and referred to the President of the Council, to report at the next meeting of the Council.

On motion of Mr. DUTTON:

*Resolved*, That a Committee of three be appointed to enquire whether it is expedient so to amend the Constitution as to elect the State Senators for a longer term than one year, and to provide for classifying and arranging the Senate in case the term of office should be extended.

On motion of Mr. CRAWFORD:

*Resolved*, That the Committee, raised on the resolution of Mr. DUTTON relative to the election of Senators, be directed to enquire and report upon the expediency of an alteration and amendment of the 4th Article of the amendments of the Constitution, so as to provide for an apportionment of the Senators to the several Counties, according to their population--regard being always had, in such apportionment, to the Counties having the greatest fraction.

On motion of Mr. DEWEY:

*Resolved*, That the Legislative Committee enquire into the expediency of so amending the Forty-Third Section of the Constitution of this State, as to provide for the election of fourteen members of the Council of Censors.

And also the expediency of amending the Constitution so as to provide for the election, meetings and pay, of the said Council without the aid of any Legislative action.

On motion, the Council adjourned.



Friday, 9th June, 1848.

Prayer by the Rev. Mr. Scott.

The Journal of yesterday was read and approved.

The Chair announced the appointment of the following Committees:--

On the resolution of Mr. DUTTON, as to the election of County officers: MR. DUTTON, MR. DEWEY and MR. BURT.

On the resolution of Mr. BELL, as to School Fund: MR. BELL, MR. HEBARD and MR. DEWEY.

On the resolution of Mr. DUTTON, as to term of Senators: MR. CRAWFORD, MR. POMEROY and MR. JANES.

Mr. POMEROY introduced the following resolution, which was read and adopted:--

*Resolved*, That the Legislative Committee be requested to examine the present Listing Laws of this State, and report whether, in their opinion, the same are not defective and uncertain, and do not require further legislation.<sup>3</sup>

On motion of Mr. BURT,

*Resolved*, That a Committee of three members be raised to enquire into the expediency (should the Council see fit hereafter to call a Convention) of having the Delegates to said Convention elected by the several Counties, according to their respective population.

On motion of Mr. BURT,

*Resolved*, That when the Council adjourn, it adjourn to meet at the State House in Montpelier, on the first Wednesday of October next, at 2 o'clock P.M.

Mr. BELL introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution enquire into the expediency of so amending the Constitution, that no one of the civil authority of towns be permitted to exercise the duties appertaining to his office, while he is licensed to traffic in intoxicating liquors.

Which was read and adopted.

On motion of Mr. BURT,

*Resolved*, That the Secretary procure one hundred copies of the Journal of the Council, at its present Session, to be printed for the use of its members.

On motion of Mr. DEWEY,

*Resolved*, That the Secretary forward, by mail, one copy of the Journal of the present session of this Council to each of the publishers of a weekly or daily paper in this State, and five copies to each member of the Council.

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<sup>3</sup>*Revised Statutes*, No. 1, 539-52.

Mr. POMEROY was, on motion of Mr. DUTTON, added to the Legislative Committee.

The President was, on motion of Mr. BURT, added to the Committee on the Powers of the Constitution.

The Chair announced the following Committee on the resolution of Mr. BURT, as to calling a Convention: MR. BURT, MR. ALLEN and MR. COOL.

On motion,

*Voted*, That the Secretary be authorized to make up and certify the debentures of the Council and contingent expenses.

The journal of this day was read, and on motion, approved.

On motion of Mr. BELL,

The PRESIDENT then declared the Council adjourned to the first Wednesday of October next.

Attest, JOHN N. POMEROY,  
*Secretary.*

## Second Session, at Montpelier.

SENATE CHAMBER,

**Wednesday, 4th, October, 1848.**

The Council of Censors met agreeably to adjournment.

Present,

AUGUSTUS BURT,  
DAVID CRAWFORD, and  
JOHN N. POMEROY.

Whereupon, there being no quorum, the Council adjourned to to-morrow morning at 10 o'clock.

**Thursday, 5th October, 1848.**

The Council met agreeably to adjournment.

Present,

CHARLES K. WILLIAMS,  
AUGUSTUS BURT,  
WILLIAM HEBERT,  
JAMES BELL,  
DAVID CRAWFORD, and  
JOHN N. POMEROY.

Prayer by the Rev. Mr. Lord.

PETER STARR and HENRY STOWELL appeared, produced their credentials and took their seats.

The Journal of yesterday was read and approved.

On motion of Mr. BURT,

*Resolved*, That another member be added to the Committee on the subject of calling a Convention. Mr. STARR was appointed.

On motion of Mr. BELL,

*Resolved*, That another member be added to the Committee on Resolutions as to the School Fund. Mr. STOWELL was appointed. The Council adjourned.

#### Afternoon.

On motion of Mr. HEBARD,

*Resolved*, That the Committee on the Powers of the Constitution be instructed to enquire into the expediency of so amending the 8th Section of part 2d of the Constitution of this State as to provide for the election of representatives on some future day, in case the Freemen shall fail to elect on the first Tuesday of September, under such regulations as shall be provided by Law.

On motion of Mr. HEBARD,

*Resolved*, That the President request some clergyman of this village to attend on the Council as Chaplain, during the present session, and that the morning services be opened by prayer.

Mr. BURT, at his request, was excused from further service on the Committee on Taxes and Expenditures, and

Mr. STARR was appointed to fill the vacancy.

On motion of Mr. HEBARD,

*Resolved*, That the Sergeant at Arms be requested to attend by himself or deputy, on the present Session of this Council.

On motion of Mr. STARR,

*Resolved*, That a Committee of three, of whom the President shall be the Chairman, be appointed to consider and report to this Council whether it be expedient so to amend the Constitution of this State as to secure greater permanency to the office of Judges of the Supreme Court.

On motion of Mr. STARR,

*Resolved*, That the Treasurer of this State be requested to furnish to this Council, as soon as may be, a statement of balances due to the Treasury for taxes--therein designating the towns from which such balances are due, and the years in which they respectively accrued--and also, a statement of balances, if any are due, from the several Sheriffs, County Clerks, and State's Attorneys in the several Counties, and the years in which such balances accrued, and the names of such delinquent officers--and also, of any balances which may be due from any of the County Judges for Licenses, &c.

On motion of Mr. BURT,

*Resolved*, That the Committee on the Powers of the Constitution be directed to enquire whether the Act of the Legislature, passed 12th of November, 1847, entitled "An act relating to the election of

County Senators,"<sup>4</sup> be authorized by the Constitution.  
The Council adjourned.

**Friday, 6th October, 1848.**

Prayer be the Rev. Mr. Manser.

Mr. DEWEY and Mr. JANES, members of the Council appeared and took their seats.

The Journal of yesterday was read and approved.

Mr. BELL and Mr. STOWELL were appointed members of the Committee on the Resolution as to the permanency of the office of Judges of the Supreme Court.

The President made the following report on the petition of G. B. Armington and others, referred to him at the last Session of the Council:--

*To the Council of Censors Now in Session:*

The undersigned, to whom the petition of Geo. B. Armington and others was referred, respectfully reports,

That he has carefully examined the petition, has heard the several arguments in support of the same, offered by one of the petitioners who had paid particular attention to the subject therein embraced, and who supported the views of the petitioners with many able and ingenious arguments, yet the undersigned is not convinced that any further action of the Council is, at this time, required on the subject.

The prayer of the petition embraces two objects.

1. A limitation of the amount of land hereafter to be acquired by any individual.

2. To exempt from liability for any future debts, so much of the same, as may be necessary for a family homestead.

As to the first proposition, it is not perceived that any serious inconveniences in this State arise from the present structure of our laws so as to require any change or alteration of the fundamental laws. If there are evils or inconveniences existing from the disproportion between the avails of capital and labor, it is not from the investment of capital in land. And when we take into view the equal distribution of property which is usually made on the death of every individual, whether his estate consists of movable or immovable property, it is not apprehended that an undue influence of wealth will ever be created, by the accumulation of land in the hands of any one, or that there ever will be any serious difficulty to prevent the industrious and enterprising from acquiring a sufficiency of land either for agriculture, trade or manufactures.

Moreover, the object contemplated could not, in any event, be

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<sup>4</sup>Laws of 1847, No. 41, 28.

attained by a limitation of the quantity of land to be acquired, but must have regard to quality as well as quantity, a limitation which, if not impracticable, would be extremely inconvenient to be effected, and promises no adequate benefit for the great change which it would produce in the present relations in the social state.

As to the second object of the petition, viz: the exemption of a family homestead from liability for the debts of the owner, it is believed that the powers, now appertaining to the Legislature, are fully adequate to accomplish the object, asked for by the petitioners, if it is considered expedient for them. It has been the policy of most civilized nations for a long time to free landed property from all restrictions on the power of the owner to alienate, and to subject it to the payment of his debts. It is in the power of the Legislature to make such exemptions of property whether real or personal, from attachment or execution, as the exigencies or the welfare of its citizens require. Whether it is expedient to make any further exemptions, of what kind, and to what amount, it is appropriately the province of the Legislature to determine; and they are fully competent to decide whether any further restrictions on the power of alienation or any further exemption of property from liability for the debts of the owner are necessary, or required for the public welfare.

The undersigned, therefore, reports that no further order is required on the petition, and asks to be discharged from the further consideration thereof.

CHAS. K. WILLIAMS.

Which was read, and

On motion of Mr. STARR,

The report was accepted and entered upon the Journal of the Council.

Mr. HEBARD, from the Committee on powers of the Constitution, reported on the resolution as to dispensing with the office of County Judges adverse to any further action upon the subject, which report was read and accepted.

Mr. POMEROY introduced the following resolution:

*Resolved*, That the following additional rule be adopted for the government of the Council, to wit: The vote of this body accepting a report shall not be considered as the adoption and final disposition of the same; but the same may be called up for action of this body at any time.

Which Resolution was, on motion of Mr. HEBARD, laid upon the table, and made the order of the day for to-morrow morning.

Mr. CRAWFORD, on his request, had leave of absence for to-morrow.

The Council adjourned.

#### Afternoon.

Mr. ALLEN, a member of the Council, appeared and took his

seat.

On motion of Mr. POMEROY,

*Resolved*, That another member be added to the Committee raised on the resolution of Mr. DUTTON, as to the term of Senators.

The Council adjourned.

**Saturday, 7th October, 1848.**

Prayer by Rev. Mr. Lord.

The Journal of yesterday was read and approved.

Mr. COOL, a member of this Council, appeared and took his seat.

Mr. HEBARD, from the Committee on the Powers of the Constitution, to whom was referred the resolution directing them to enquire whether the act of the Legislature, passed 12th November, 1847, relating to the election of Senators, be authorized by the Constitution, made a report, accompanied by the following resolution:--

*Resolved*, That the Act of the Legislature, passed 12th November, 1847, entitled "An Act relating to the election of County Senators," is unauthorized by the Constitution of the State, and we recommend to the Legislature the repeal of the same.

*Resolved*, That the President of this Council cause to be transmitted to the presiding officer of the Senate and House of Representatives copies of the foregoing report and resolution.

Which report and resolutions were accepted, and, on motion of Mr. BURT, laid on the table.

The Council, on motion, took up the order of the day, being the resolution of Mr. POMEROY, recommending the adoption of the following additional rule:--

"The vote of this body, accepting a report, shall not be considered as the adoption and final disposition of the same; but the same may be called up for the action of this body at any time."

And on the question of the adoption of the same, the yeas and nays were demanded by Mr. JANES, and were as follows:--

Yeas--Messrs. ALLEN, BELL, BURT, COOL, DEWEY, HEBARD, and POMEROY.--(7.)

Nays--Messrs. JANES, STARR, STOWELL, and WILLIAMS.--(4.)

So the resolution was passed and the rule adopted.

The report of Mr. HEBARD as to the act relating to the election of County Senators was, on motion, taken up and the resolutions accompanying the same were, on motion of Mr. DEWEY, laid on the table, and made the order of the day for Monday morning.

The report of the President of the Council, on the petition of G. B. Armington and others, was, on motion, taken up, and after consideration it was adopted and the petitioners had leave to withdraw their petition.

The report of Mr. HEBARD, made and accepted yesterday, as to

dispensing with the office of County Judges, and adverse thereto, was taken up, and on motion of Mr. BELL adopted, and the committee discharged from the further consideration of the subject.

Mr. BURT offered the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution inquire whether the Constitution does not require an amendment in regard to the Treasurer of the State, and the Sheriffs of the several Counties giving their respective sureties.

Which was read and adopted.

The following resolution was offered by Mr. STOWELL:

*Resolved*, That the Committee on the Powers of the Constitution inquire into the expediency of so amending the Constitution, as to elect the Governor, Lieutenant Governor, and Treasurer of the State, by a plurality of the votes of the people.

Which resolution was read and adopted.

Mr. POMEROY, from the Legislative Committee, made the following report on the subject of the laws relative to the Grand List, "that they are of opinion that there is an uncertainty as to the basis upon which the several Town, County and State taxes are to be laid, and also an uncertainty as to the time of the meeting of the County Conventions of Listers and that this subject requires further legislation," accompanied by the following resolution:--

*Resolved*, That the President of the Council communicate to the Senate and House of Representatives a copy of said report.

Which report was accepted, and the report and resolution were, on motion, laid upon the table, and made the order of the day for Monday morning.

On motion of Mr. STOWELL:

*Resolved*, That when the Council adjourn, they adjourn to Monday morning.

The Sergeant-at-Arms was, on motion, charged with the duty of procuring the Court Room for the use of the Council after Tuesday next.

Mr. STARR introduced the following resolution:

*Resolved*, That in the judgment of the Council, the repeal, alteration, or modification of acts, or parts of acts of the Legislature, by a mere reference to the number of the chapter and the section of the revised Statutes, without any mention of the subject or nature of the provision to be repealed altered, or modified, introduces confusion into our laws, and greatly increases the difficulty of understanding the law.

Which resolution was, on motion of Mr. HEBARD, laid upon the table.

The Council adjourned.

**Monday, 9th October, 1848.**

Prayer by the Rev. Mr. Manser.

The Journal of Saturday was read and approved.

Mr. DUTTON, a member of this Council, appeared and took his seat.

The order of the day being the report of the Legislative Committee on the resolution of Mr. POMEROY as to the uncertainty of the laws relative to the Grand List, it was, on motion, taken up; and, after discussion, on motion of Mr. BURT, was laid on the table, and made the order of the day for to-morrow morning.

The following resolution was introduced by Mr. STARR:

*Resolved*, That the Committee on Taxes and Expenditures be directed to inquire whether by the present listing laws of this State an unjust and unequal burden is not imposed on the owners of wild lands in this State, and whether it be expedient to recommend to the Legislature so to modify those laws as to exempt from taxation wild lands under the appraised value of \$2 per acre, as estimated by the listers, except in the case of taxes for making and repairing roads and bridges imposed by special acts of the Legislature.

And said resolution was, on motion, adopted.

Mr. DUTTON was appointed by the Chair as a member of the Committee on the subject of the term of County Senators.

The Council adjourned.

#### Afternoon.

On motion of Mr. STARR, the vote adopting the report of Mr. HEBARD made on Saturday, relative to the unconstitutionality of the Act relating to County Senators, was re-considered and

On motion of Mr. STARR, voted to re-commit said report, and that the resolution of Mr. STARR of Saturday be referred to the same Committee.

Mr. DEWEY, from the Committee on the resolution of Mr. DUTTON of the 8th June, relating to the election of County officers, made a report, "that it is expedient so to amend the Constitution as to give the election of Assistant Judges of the County Court, Sheriffs, High Bailiffs, and State's Attorneys, severally to the freemen of their respective Counties, and the election of Judges of Probate to the freemen of their respective Probate Districts, and Justices of the Peace to the freemen of the town in which they reside," which was, on motion, ordered to lie on the table.

Mr. BURT introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution inquire whether Justices of the Peace have recorded their judicial proceedings as directed in Chap. 11, Sec. 63, of the Revised Statutes, and whether any action thereon be necessary and proper



for this Council.<sup>5</sup>

Which resolution was, on motion, adopted.

Mr. STOWELL introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution inquire as to the expediency of so amending the Constitution, that the Governor, Lieutenant Governor, and Treasurer of the State, hold their respective offices until their successors are duly qualified.

Which resolution was, on motion, adopted.

The Council adjourned.

### **Tuesday, 10th October, 1848.**

Prayer by the Rev. Mr. Lord.

The Journal of yesterday was read and approved.

On motion of Mr. STARR, it was voted that when the Council adjourn, this afternoon, they adjourn to meet in the Court House.

The President, from the Committee to whom was referred the resolution of Mr. STARR, in relation to the expediency of so amending the Constitution as to give more permanency to the office of Judges of the Supreme Court, reported "that they do not deem it expedient at this time to recommend any alteration of the Constitution in that respect."

Which report was accepted and ordered to lie upon the table.

The report of Mr. DEWEY, from the Committee on the Resolution of Mr. DUTTON, as to the election of County officers, was taken up and accepted; and, on motion of Mr. DEWEY, was referred to the Committee of the Whole, and made the order of the day for this afternoon, at half-past two o'clock.

The Council adjourned.

### **Afternoon.**

Mr. DEWEY, from the Legislative Committee, to whom was referred his resolution as to the increase on the number of the Council of Censors and providing for their election, meetings and pay, made report "that in the opinion of the Committee it is not expedient to make any amendments proposed by said resolution."

Which report was accepted and adopted.

The Council resolved itself into a Committee of the Whole, Mr. HEBARD in the Chair, on the report of the Committee on the resolution of Mr. DUTTON of the 8th June, as to the election of County officers; and, after discussion of the subject, the Committee rose, reported progress, and had leave to sit again to-morrow

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<sup>5</sup>*Revised Statutes*, Title XI, Ch. 26, § 63 provided, "Every justice shall keep a record of his judicial proceedings both in civil and criminal cases, and his books of record shall, at all times, be subject to the inspection of any person interested in such record."

morning, at half-past nine o'clock.

The Council adjourned.

**Wednesday, 11th October, 1848.**

Prayer by the Rev. Mr. Manser.

The Journal of yesterday was read and approved.

The report of the President on the resolution of Mr. STARR, as to the permanency of the Judiciary, was taken up, accepted, and, after discussion, was ordered to lie on the table.

The Council resolved itself into Committee of the Whole, Mr. HEBARD in the Chair, on the report of the Committee as to the election of County officers: and the Committee of the Whole, after having had said report under consideration, rose, reported progress, and, on motion had leave to sit again at two o'clock, P.M.

The Council adjourned.

**Afternoon.**

The Council in Committee of the Whole took into consideration the report which was before them in the forenoon; and, after discussion of the same, reported the same to the Council without amendment; and on the question of the adoption of the report of the Committee of the Whole, the yeas and nays were demanded by Mr. BELL, and were as follows:--

Yeas--Messrs. BURT, COOL, DUTTON, DEWEY, HEBARD, JANES, POMEROY and STOWELL.--(8.)

Nays--Messrs. ALLEN, BELL, CRAWFORD, STARR and WILLIAMS.--(5.)

So the report was adopted.

Mr. JANES offered the following resolution:

*Resolved*, That a Committee of three be raised to report articles of amendment of the Constitution agreeably to the report just adopted, therein limiting the number of Justices of the Peace, and providing for the election of all the officers therein named by ballot.

Which resolution was, on motion of Mr. HEBARD, amended, by striking out all after the word "*Resolved*," as follows--"that the report of the Committee on the subject of electing County officers by the Freemen of the Counties be referred to the same Committee with instructions to report articles of amendment of the Constitution, agreeably to the terms of said report, therein limiting the number of Justices, and providing for the election of all the officers therein named by ballot."

Which resolution, thus amended, was adopted, and

The Council adjourned.

**Thursday, 12th October, 1848.**

Prayer by Rev. Mr. Lord.

The Journal of yesterday was read and approved.

Mr. CRAWFORD introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution be directed to inquire as to the expediency of so amending the Constitution as to dispense with the requirement therein, of returning the ballots of the Freemen for Governor and Lieutenant Governor, and Treasurer, to the General Assembly.

Which resolution was adopted.

The report of Mr. POMEROY, as to the uncertainty of the laws relative to the Grand List, was taken up, and after discussion, was ordered to lie on the table.

The Council adjourned.

#### Afternoon.

Mr. CRAWFORD, from the Committee on the term of Senators, made a report "that the alteration contemplated in the Constitution, by said resolution, ought not to be made."

Which report was read and ordered to lie upon the table.

Mr. DUTTON, from the Committee on the resolution of Mr. HEBARD, as to amending the Constitution, so that all amendments shall be proposed by the Senate, reported "that in the opinion of said Committee it is inexpedient to amend the Constitution in the manner therein proposed."

Which resolution was accepted and ordered to lie upon the table.

The Council adjourned.

#### Friday, 13th October, 1848.

Prayer by the Rev. Mr. Manser.

The Journal of yesterday was read and approved.

The report of the President, from the Committee on the resolution as to the permanency of the office of Judges of the Supreme Court, and adverse to any change, was taken up and discussed; and, on the question as to the adoption of the report, the yeas and nays being demanded, were--

Yeas--Messrs. ALLEN, BELL, CRAWFORD, COOL, DUTTON, HEBARD, JANES, POMEROY, STOWELL, and WILLIAMS.--(10.)

Nays--Messrs. BURT, DEWEY, and STARR.--(3.)

So the report was adopted.

The Council adjourned.

#### Afternoon.

Mr. POMEROY introduced the following resolution:

*Resolved*, That this Council close its present session on Wednesday next; and that, when they adjourn, they adjourn to meet in the Senate Chamber, in Montpelier, on the last Wednesday of January next, at two o'clock, P.M.

Which resolution was ordered to lie on the table.

Mr. JANES, from the Committee on Taxes and Expenditures, to

whom was referred the resolution of Mr. STARR, as to the taxation of wild lands, made the following report:--

*To the Council of Censors Now in Session:*

Your Committee on Taxes and Expenditures, to whom was referred the resolution directing said Committee of enquire whether by the present listing laws of this State, an unjust and unequal burden is not imposed on the owners of wild lands in this State--and whether it be expedient to recommend to the Legislature a modification of the same, as specified in said resolution, have had the same under consideration, and now respectfully submit the following report:--

The resolution directs the Committee to make examination in relation to two subjects:--

1st. Whether the present listing laws impose unjust and unequal burdens on the owners of wild lands.

2d. The expediency of recommending to the Legislature a modification of said laws.

Whether the listing wild lands be constitutional or not, is not, by said resolution, made a subject for enquiry--there is supposed to be no doubt on that subject. But your Committee, it is believed, are unanimous in the opinion that listing and consequently taxing wild and wholly unproductive lands--such as are unsaleable and not increasing in value, but rather depreciating, does necessarily, impose on the owners, burdens unequal when compared with improved and productive lands or property of increasing value. Neither have they any doubt but injustice may, and probably has, in many cases, been done to owners of wild lands, especially non-residents, by an unequal appraisal and an assessment much higher than their real worth. In those cases, however, the remedy is not to be sought by a modification of the laws, but in the appointment of competent and honest administrators.

Your Committee, on a careful examination of the second matter of inquiry, have come to the conclusion that it is not expedient to make any recommendation to the Legislature on the subject. It is at least somewhat questionable whether it would come within the purview of our appropriate duties.

The Constitution has given the Council of Censors ample and extended powers, still they are circumscribed, and it would seem to demand great caution in those appointed as guardians and conservators of that instrument, that they do not themselves go beyond its boundaries, or trench upon the prerogatives of other departments of the government. They, therefore, report the accompanying resolution.

*Resolved*, That it is inexpedient to make any recommendation to the Legislature as to the modification of the laws in relation to taxing wild lands.

H. F. JANES, *for Committee.*

Which was read and ordered to lie on the table.

The report of Mr. POMEROY, from the Committee to whom was referred the subject of the uncertainty of the laws relative to the Grand List, was taken up and discussed; and on the question of its adoption, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, COOL, DUTTON, DEWEY, JANES, POMEROY, STARR, and STOWELL.--(8.)

Nays--Messrs. BURT, CRAWFORD, HEBARD, and WILLIAMS.--(4.)

So the report was adopted, and the resolution accompanying said report was ordered to lie upon the table.

The report of Mr. DUTTON, from the Legislative Committee to whom was referred the resolution of Mr. HEBARD, as to giving to the Senate the power of proposing amendments to the Constitution, and adverse thereto, was taken up and discussed; and, on the question of its adoption, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, BELL, BURT, COOL, DUTTON, DEWEY, JANES, POMEROY, STARR, STOWELL, and WILLIAMS.--(11.)

Nays--Messrs. CRAWFORD and HEBARD.--(2.)

So the report was adopted.

Mr. CRAWFORD's report, on the resolution as to the term of County Senators was taken up, considered, and ordered to lie on the table.

The Council adjourned.

### Saturday, 14th October, 1848.

Prayer by Rev. Mr. Lord.

The Journal of yesterday was read and approved.

The resolution accompanying the report of Mr. POMEROY, making it the duty of the President to communicate the report and resolution to the Senate and House of Representatives, laid on the table yesterday afternoon, was called up for consideration; and after discussion, on the question of its adoption, the yeas and nays being demanded, were as follows:

Yeas--Messrs. COOL, DEWEY, POMEROY, STARR, and STOWELL.--(5.)

Nays--Messrs. ALLEN, BELL, BURT, CRAWFORD, HEBARD, JANES, and WILLIAMS.--(7.)

So the resolution was not adopted.

Mr. DUTTON was at his request excused from voting.

The following report of the Treasurer of the State, on the application of the Council to him, as to arrearages for taxes, &c., was read and referred to the Committee on Taxes and Expenditures:--

*To the Hon. Council of Censors Now in Session:*

In compliance with a resolution of the Council of Censors, passed

Oct. 5th, calling upon the Treasurer to furnish them with a statement of the balances due the Treasurer to furnish them with a statement of the balances due, and the years in which they respectively accrued, and also a statement of the balances, if any due, from the several Sheriffs, County Clerks, and State's Attorneys, in the several Counties, also from Judges of the County for licenses sold, &c., I have the honor to report--

That there is no balance due the Treasury for Taxes raised previous to 1847. I do not report the balance due on that Tax, as the amount will be reduced very much before the close of the present session of the Legislature,--constables being allowed by custom and law, to let their balances remain until the time above named.

The balances due from Sheriffs, County Clerks, State's Attorneys, and Judges of the County, for Licenses sold, &c., I am unable to report, as the accounts of those officers are not kept on the Books of this office.

George Howes,  
*Treasurer.*

*Treasurers' Office, Montpelier,  
13th October, 1848.*

The report of Mr. CRAWFORD, as to the extension of the term of Senators, was taken up, discussed, and ordered to lie upon the table.

Mr. HEBARD introduced the following resolution, to wit:

*Resolved*, That the Committee on the Powers of the Constitution be instructed to inquire whether, by the Constitution of this State, there is any provision by which any Officer of the Government can exercise the office of Governor, in case of a vacancy of both the Governor and Lieutenant Governor; and whether the term during which the Governor and Lieutenant Governor shall exercise the duties of their respective offices is sufficiently defined by the Constitution.

Which resolution was adopted.

Mr. HEBARD, from the Committee raised on the resolution of Mr. BELL, as to the School Fund, reported, and the report was, on motion, referred back to said Committee.

Mr. HEBARD, from the Committee on the Powers of the Constitution, to whom was referred the resolution of Mr. BELL, proposing an inquiry as to the expediency of so amending the Constitution as to preclude the civil authority of towns from exercising their office, and at the same time traffic in intoxicating liquors, made report "that they did not deem it expedient to make the amendment proposed."

Which report was accepted and adopted.

Mr. HEBARD, from the Committee on the Powers of the Constitution, to whom was referred the resolution of Mr. STOWELL,

as to the expediency of so amending the Constitution as to elect the Governor, Lieutenant Governor, and Treasurer, by a plurality of votes, reported, "that in the opinion of said Committee it is not expedient to make the amendment proposed."

Which report was accepted and ordered to lie on the table.

Mr. HEBARD, from the Committee on the Powers of the Constitution, to whom was referred the resolutions of Messrs. CRAWFORD and HEBARD, as to "amending the 8th Section of the Second Part of the Constitution, so as to limit the elections of representatives on some future day, in case the Freemen fail to elect on the first Tuesday in September," made report that "it is not expedient so to amend the Constitution as to provide for the election of representatives on any day other than the first Tuesday of September," and recommended the following article as a substitute for the said 8th Section of the Second Part of the Constitution, to wit:--

"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 of the Freemen of every town in the State respectively on the first Tuesday of September annually forever, and no balloting for such representative shall be commenced after twelve o'clock at night of said first Tuesday, but a majority of the Freemen present may, by vote, dissolve the meeting at any time, notwithstanding no election of representative shall be made."

Which report was accepted and ordered to lie upon the table.

The resolution of Mr. POMEROY, as to the time of adjournment, was taken up, and Mr. BELL proposed to amend the same, by inserting for "Wednesday morning next," "Thursday morning next."

Which resolution and amendment were ordered to lie upon the table.

The report of the Committee on Taxes and Expenditures, as to the taxation of wild lands, was called up and accepted, and ordered to lie upon the table,

The Council adjourned.

#### Afternoon.

The report of Mr. JANES, from the Committee on Taxes and Expenditures, as to the taxation of wild lands, was taken up and re-committed.

The report of Mr. HEBARD, from the Committee on the Powers of the Constitution, to whom was referred the subject of the amendment of the 8th Article of the Constitution, was taken up, discussed, and ordered to lie upon the table.

The report of Mr. CRAWFORD, from the Select Committee, to whom was referred the subject of the amendment of the 4th Article of the amendments of the Constitution, as to the apportionment of Senators, and recommending the following amendment as a

substitute for said 4th Article, viz: "The Senate shall be composed of thirty Senators, to be of the Freemen of the County for which they are elected respectively, who shall have attained the age of thirty years, and to be annually elected by the Freemen of each County respectively. The Senators shall be apportioned to the several Counties according to the population, as ascertained by the census taken under the authority of Congress, A.D. 1840, regard being always had in such apportionment to the Counties having the largest fraction, and giving to each County one Senator at least. The legislature shall make a new apportionment of the Senators to the several Counties after the taking of each census of the United States, or after a census taken for the purpose of such apportionment by order of the Government of this State, always regarding the above provisions of this article."

Which was read, accepted, and ordered to lie upon the table.

The report of Mr. HEBARD, from the Committee on the Powers of the Constitution, as to the election of Governor, Lieutenant Governor, and Treasurer, by plurality of votes, and adverse thereto, was taken up, and, on motion, accepted and adopted.

Mr. HEBARD, from the Committee to whom was referred the subject of the School Fund, made report, "that the law of this State abolishing the School Fund is constitutional, but the expediency of the law your Committee deem to be the appropriate inquiry of the legislature, and therefore refrain from expressing any opinion upon that branch of the inquiry."

Which report was accepted and adopted.

Mr. POMEROY, from the Committee, to whom was referred a resolution by him introduced as to the equalization of representation in the House of Representatives, made a report, accompanied with the following resolutions:--

*Resolved*, That the representation in the House of Representatives is unequal and anti-republican.

*Resolved*, That the representation in the House of Representatives ought to be equalized.

*Resolved*, That for this purpose a Committee of \_\_\_\_ members of this Council be charged with the duty of considering and reporting to this Council the best mode of equalizing the representation in the House of Representatives, and report at this, or our next session, an article or articles of amendment of the Constitution for the purpose of carrying into effect that object.

Which report was accepted, laid upon the table, and made the order of the day for Tuesday morning next.

The Council adjourned.

**Monday, 16th October, 1848.**

Prayer by the Rev. Mr. Lord.

The Journal of Saturday was read and approved.



The resolution of Mr. POMEROY, as to the adjournment, was taken up and amended; and as amended adopted, as follows:--

*Resolved*, That the Council close their present session on Thursday morning next, and, when they adjourn at that time, they adjourn to meet at the Senate Chamber, in Montpelier, on the 16th day of February next, at two o'clock, P.M.

The report of Mr. CRAWFORD, as to the term of Senators and adverse to any change therein, was taken up; and on the question of its adoption, the yeas and nays, being demanded, were as follows:--

Yeas--Messrs. JANES, CRAWFORD, HEBARD, STARR, STOWELL and WILLIAMS.--(6.)

Nays--Messrs. ALLEN, BELL, BURT, COOL, DUTTON, DEWEY and POMEROY.--(7.)

So the report was not adopted; and Mr. DEWEY submitted the following proposition, to wit:--That the report be referred back with instructions to report articles of amendment to the Constitution providing for the election of Senators to serve three years, and for such arrangement of the Senatorial term of service as that the seats of one third of the Senators become vacant each year.

Which proposition was laid upon the table.

The report of Mr. CRAWFORD, on the subject of the apportionment of Senators, was called up, discussed and adopted.

The report of Mr. HEBARD, amending the 8th Article of the amendments of the Constitution, as to limiting the annual election to the first Tuesday in September, was taken up, and, with a proposition to re-commit, laid on the table, and

The Council adjourned.

#### Afternoon.

The report of Mr. HEBARD was again considered, and the motion to recommit the same was rejected.

Mr. POMEROY proposed the following amendment for the whole article proposed in the report as an amendment to said 8th Section:--"No balloting for Representative shall be commenced after twelve o'clock at night of the first Tuesday of September."

And on the adoption of the same, the yeas and nays were demanded and were as follows:--

Yeas--Messrs. ALLEN, COOL, DUTTON, POMEROY, and STOWELL.--(5.)

Nays--Messrs. BELL, BURT, CRAWFORD, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(8.)

So the amendment was rejected.

Mr. JANES proposed to amend the article reported by inserting, after the word "time," the words "after the third ballot."

Which amendment was rejected.

Mr. HEBARD proposed the following amendment to the article reported by adding thereto the words--"provided that no motion to

dissolve the meeting shall be entertained by the presiding officer while the balloting is going on, nor until after the result has been ascertained and declared."

Which amendment was rejected.

Mr. BURT moved to strike out from the article all after the words "after twelve o'clock at night of said first Tuesday."

And the yeas and nays being demanded were as follows:--

Yeas--Messrs. ALLEN, BURT, COOL, DUTTON, POMEROY and STOWELL.--(6.)

Nays--Messrs. BELL, CRAWFORD, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(7.)

So the amendment was lost, and

The Council adjourned.

### **Tuesday, 17th October, 1848.**

Prayer by the Rev. Mr. Lord.

The Journal of yesterday was read and approved.

Mr. STOWELL introduced the following resolution:

*Resolved*, That a Committee of three Members of the Council be appointed by the President to make up the debentures of the present session.

Which was adopted.

The report of Mr. CRAWFORD as to the extension of the term of Senators was taken up and re-committed, and the Committee enlarged by the addition of another member. Mr. DEWEY was appointed a member of said Committee.

The report of Mr. POMEROY, from the Committee on a resolution by him introduced, as to the equality of representation being the order of the day, was taken up; and on a motion of Mr. JANES to dismiss the same a discussion ensued, which continued until

The Council adjourned.

### **Afternoon.**

Messrs. STOWELL, ALLEN, and CRAWFORD were appointed the Committee of Debenture.

The following resolution was introduced by Mr. POMEROY and adopted:

*Resolved*, That a Committee of three members of this Council be appointed to be denominated the Committee of Revision and Engrossment, whose duty it shall be to revise and re-draft any articles or articles of amendment which may be recommended previous to the final adoption and publication of such article or articles.

Which resolution was, on motion, adopted, and the President elected Chairman of said Committee.

The report of Mr. HEBARD, from the Committee on the Powers of the Constitution, as to the act of the Legislature passed November

12th, 1847, entitled "An Act relating to the election of County Senators," accompanied by the following resolutions, to wit:--

*Resolved*, That the Act of the Legislature passed 12th November, 1847, entitled "An Act relating to the election of County Senators," is unauthorized by the Constitution of this State, and we recommend to the Legislature that the same be repealed.

*Resolved*, That the President of this Council cause to be transmitted to the presiding officers of the Senate and House of representatives copies of the foregoing report, and resolutions, which have been re-committed with the resolution of Mr. STARR as to improper legislation.<sup>6</sup>

<sup>6</sup>On October 19, 1848, the President's message was delivered to the Speaker of the House. It was in the form of a report from William Hebard for the Committee on the powers of the Constitution, a report which does not appear in the Council's Journal:

*"To the Council of Censors now in session:*

*"The Committee on the powers of the Constitution, to whom was referred the resolution directing them to inquire whether the act of the Legislature, passed Nov. 12, 1847, entitled 'An act relating to the election of Senators,' be authorized by the Constitution of this State, respectfully report:--*

*"That the Constitution, as amended, provides for a co-ordinate branch of the Legislature, called THE SENATE, and fixes the number of which the Senate shall be composed, and the time and mode of their election, and the time and place of counting the votes. The fifth article of amendments provides that the freemen of the several towns in each county shall give their votes for the Senators apportioned to such county at the same and under such regulations as are now provided for the election of 'Councillors,' which is the first Tuesday in September. The same section also provides that after the votes shall have been sorted and counted by the presiding officer, he shall make two lists of the names of each person, with the number of votes given for each, annexed to his name, one of which lists shall be given to the Representative, if there is any, and the other list, the presiding officer shall, within ten days, deliver to the Clerk of the County Court, for the same county, and the Clerk of each County Court, respectively, or in case of his absence or disability, some other officer of the county shall publicly open, sort and count said votes on the tenth day after such election.*

*"The Revised Statutes, in making provision for the election of Senators, and the time and mode of counting the votes, have enacted over the same provisions of the Constitution above referred to.*

*"The Legislature, at its session holden in October, 1847, changed the time in which the presiding officer shall deliver a list of the votes given for Senators, to the County Court, from ten days to four days, and the time of counting the votes by the clerk from the tenth day to the fourth day after the election.*

*"The time of electing and the time of delivering and counting the votes is fixed by the Constitution, and the Legislature have as much control over one as they have over the other. They can as well change the time of electing from the first Tuesday in September to some other day, as to change the*

Was presented and accepted, and the report and resolutions, without amendment, adopted.

The report of Mr. POMEROY, which was under discussion at the last adjournment, was taken up and further discussed, and the motion to dismiss withdrawn, and the report and resolutions were, on motion, re-committed.

The Council adjourned.

### Wednesday, 18th October, 1848.

Prayer by the Rev. Mr. Butler.

The Journal of yesterday was read and approved.

The President announced the appointment of Messrs. HEBARD and JANES as members of the Committee on Revision and Engrossment.

On motion of Mr. BURT, the resolution as to adjournment was re-considered, and it was proposed to amend the resolution by inserting "the Court House at Burlington," in the place of "Senate Chamber at Montpelier."

And on the question being taken, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, BELL, BURT, COOL, STARR, STOWELL, and WILLIAMS.--(7.)

Nays--Messrs. CRAWFORD, DUTTON, DEWEY, HEBARD, JANES and POMEROY.--(6.)

So the amendment was made, and the resolution adopted as follows:--

*Resolved*, That this Council close its present session on Thursday morning next, and that, when they adjourn at that time, they adjourn to meet at the Court House in Burlington, on the 16th day of February next, at two o'clock, P.M.

The report of Mr. HEBARD, from the Committee on the Powers of the Constitution, on the subject of the 8th Section of the Second Part of the Constitution was taken up; and on motion of Mr. BURT the Council reconsidered the vote refusing to strike out all after "twelve o'clock at night of said first Tuesday" in the article of amendments reported, by yeas and nays--

Yeas--Messrs. ALLEN, BELL, BURT, CRAWFORD, COOL, DUTTON, POMEROY and STOWELL.--(8.)

Nays--Messrs. DEWEY, HEBARD, JANES, STARR and

---

day for counting the votes, to a day different from the one fixed by the Constitution.

"We are therefore of the opinion that the act referred to in said resolution is not authorized by the Constitution of this State, and we recommend the adoption of the accompanying resolutions." *Vermont House Journal* (1848), 47-48.

WILLIAMS.--(5.)

The question then recurring on the motion to strike out, Mr. HEBARD moved to re-commit the report.

Mr. BELL moved to dismiss the report; and, on the question of dismissal of the report, the yeas and nays being demanded were as follows:--

Yea--Mr. BELL.

Nays--Messrs. ALLEN, BURT, CRAWFORD, COOL, DUTTON, HEBARD, JANES, POMEROY, STARR, STOWELL and WILLIAMS.--(12.)

So the motion to dismiss did not prevail.

Mr. HEBARD withdrew the motion to re-commit; and the question recurring upon the adoption of the motion to amend by striking out, the yeas and nays, being demanded were as follows:--

Yeas--Messrs. ALLEN, BURT, COOL, DUTTON, POMEROY, and STOWELL.--(6.)

Nays--Messrs. BELL, CRAWFORD, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(7.)

So the motion did not prevail.

Mr. STARR moved to re-consider the vote rejecting the amendment proposed by Mr. JANES, by inserting after the word "time" the words "after a third ballot;" and on this motion, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, BURT, CRAWFORD, COOL, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(9.)

Nays--Messrs. BELL, DUTTON, POMEROY and STOWELL.--(4.)

So the vote was re-considered; and on the question of the adoption of the amendment, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, BURT, CRAWFORD, COOL, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(9.)

Nays--Messrs. BELL, DUTTON, POMEROY AND STOWELL.--(5.)

On motion of Mr. Hebard, the Council re-considered the vote rejecting his amendment, "providing that no motion to dissolve the meeting shall be entertained by the presiding officer, while the balloting is going on, nor until after the result has been ascertained," by yeas and nays as follows:--

Yeas--Messrs. ALLEN, BURT, CRAWFORD, COOL, DEWEY, HEBARD, JANES, STARR and WILLIAMS.--(9.)

Nays--Messrs. DUTTON, POMEROY, STARR and STOWELL.--(4.)

The Council adjourned.

#### Afternoon.

The report of Mr. HEBARD, as amended and laid on the table on the adjournment, was taken up; and Mr. BURT offered the following as a substitution for the report and article proposed, and as an

amendment to the 8th Article of the Second Part of the Constitution, "Provided that after the second balloting for Representative without an election by a majority the person who may receive the greatest number of votes shall be elected."

Which was rejected by yeas and nays:--

Yeas--Messrs. BELL, BURT, COOL, POMEROY, STOWELL.--(5.)

Nays--Messrs. ALLEN, CRAWFORD, DUTTON, DEWEY, HEBARD, JANES, STARR, and WILLIAMS.--(8.)

Mr. CRAWFORD introduced the following resolution as a substitute for the report of Mr. HEBARD:--

*Resolved*, That the Constitution be amended by substituting for the 8th Article of the Second Part of the Constitution the following--"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: Provided no balloting for Representative shall be commenced after twelve o'clock at night of said first Tuesday of September."

Which resolution was adopted by yeas and nays, after rejecting an amendment proposed by Mr. HEBARD, limiting the balloting to the interval between nine o'clock in the morning and nine o'clock in the evening:

Yeas--Messrs. ALLEN, BURT, CRAWFORD, COOL, DUTTON, DEWEY, HEBARD, JANES, POMEROY, STARR, STOWELL and WILLIAMS.--(12.)

Nay--Mr. BELL.

Mr. JANES offered the following resolution:--

*Resolved*, That the Auditor of Accounts be requested to furnish this Council with a statement of the balances due, if any, from the several Sheriffs, County Clerks and State's Attorneys, in the several Counties of this State.

Which was adopted.

Mr. JANES, from the Committee on Taxes and Expenditures, to which was re-committed the report made on another day as to taxes on wild lands, presented the report without amendment, and the same was accepted and laid on the table.

Mr. STOWELL, from the Committee on Debentures, reported as follows:--

"Your Committee, appointed to make up the Debentures of this Council the present session respectively report, That they have performed the duties assigned them."

Which was accepted.

Mr. HEBARD introduced the following resolution:

*Resolved*, That the Secretary be instructed to cause to be printed so much of the proceedings of this session as he shall judge expedient, and forward to each Member five copies.

Which was adopted and the Council adjourned to to-morrow

morning at half-past six o'clock.

**Thursday, 19th October, 1848.**

Prayer by the Rev. Mr. Lord.

Reading of the Journal was dispensed with, and  
The Council adjourned.

**Third Session, at Burlington.**

Court House, Burlington,

**Friday, 16th, Feb., 1849, 2 o'clock, P.M.**

The Council of Censors met pursuant to adjournment.

Present

CHARLES K. WILLIAMS,  
JAMES BELL,  
AUGUSTUS BURT,  
DAVID CRAWFORD,  
JOHN DEWEY,  
PETER STARR, and  
JOHN N. POMEROY.

The Council was called to order by the President, and

On motion,

The Council adjourned.

**Saturday, 17th Feb., 1849.**

Prayer by the Rev. Mr. Parker.

The Journal of yesterday was read and approved.

Mr. ALLEN and Mr. STOWELL, members of the Council,  
appeared and took their seats.

Mr. DEWEY introduced the following resolution:

*Resolved*, That a Committee of three members be appointed to  
examine the Journals of the Council, and to report the unfinished  
business of the two past sessions.

Which was passed, and Mr. STOWELL, Mr. ALLEN and Mr.  
DEWEY were appointed said Committee.

On motion of Mr. POMEROY,

*Resolved*, That the Sheriff of the County of Chittenden be  
requested to attend, by himself or deputy, on the sessions of the  
Council.

Mr. DEWEY introduced the following resolution:

*Resolved*, Two-thirds of this Council concurring herein, that it is  
expedient to call a Convention of delegates of the freemen of this  
State, to meet at the State House, in Montpelier, on the first  
Wednesday of January, A.D. 1850, for the purpose of taking into  
consideration such amendments to the Constitution as have been or  
may be proposed by this Council.

Which resolution, on motion of Mr. STARR, was laid on the table.

On motion of Mr. DEWEY,

*Resolved*, That a Committee of three members be appointed to draft and report an address to the people, of which Committee the President shall be chairman.

Mr. DEWEY introduced the following resolution:

*Resolved*, That a standing Committee of three be appointed to take into consideration all matters referred to them in relation to the Judiciary, to be called the Judiciary Committee;

Which resolution, on motion of Mr. POMEROY, was laid on the table.

On motion,

*Voted*, When the Council adjourn, it adjourn to meet at 4 o'clock, P.M.

The Council adjourned.

### Afternoon.

Mr. STOWELL, from the Committee on unfinished business, made the following Report, which was read and accepted:

*To the Hon. Council of Censors Now in Session:*

Your Committee respectfully report, as the unfinished business of the Council,--

1st. The resolution offered by Mr. POMEROY in relation to so amending the Constitution as to secure a more equal representation of the people in the House of Representatives, and the report thereon recommitted.

2d. The resolution of Mr. DUTTON, in relation to the election of County and Probate officers. Amended and the report of Mr. DEWEY thereon. Adopted and recommitted with instructions.

3d. Resolution offered by Mr. DEWEY, in relation to the election of County Clerks and Registers of Probate. Referred.

4th. Resolution of Mr. DUTTON in relation to the election and term of Senators, and the report of Mr. CRAWFORD thereon and instructions of Mr. DEWEY. Recommited.

5th. The report of Mr. CRAWFORD, upon the subject of the apportionment of Senators. Adopted.

6th. The resolution offered by Mr. BURT, inquiring into the expediency, if the Council should call a Convention, of having the delegates to said Convention elected by the several counties according to their respective population.

7th. The resolution offered by Mr. CRAWFORD, in relation to an amendment of the 8th article of the 2d part of the Constitution, as to the choice of Representatives.

8th. The report of Mr. JANES from the Committee on Taxes and Expenditures.

9th. The resolution of Mr. BURT, in relation to the manner of the Treasurer of the State and the Sheriffs giving their respective



sureties.

10th. The resolution of Mr. STARR, in relation to the repeal, alteration or modification of Acts of the Legislature.

11th. The resolution of Mr. BURT in relation to the records of Justices of the Peace.

12th. The resolution of Mr. STOWELL, in relation to the Governor, Lieutenant Governor and Treasurer holding their offices until their successors are qualified.

13th. The resolution of Mr. CRAWFORD, in relation to returning the votes of Governor, Lieutenant Governor and Treasurer to the General Assembly.

14th. The resolution of Mr. HEBARD, in relation to the offices of Governor, Lieutenant Governor and Treasurer.

15th. The resolution offered by Mr. POMEROY, for the appointment of a Committee of three to revise and re-draft the articles of amendment proposed by the Council of Censors.

All which is respectfully submitted by

H. STOWELL, *for Committee.*

On motion of Mr. BELL,

*Resolved*, That the President request some clergymen of this village to attend on the Council as chaplain, the present session, and that the morning sessions of the Council be opened by prayer.

The proposition of Mr. DEWEY as to the term of Senators, which was laid upon the table on the 16th October last, was, on motion, taken up and referred to the Committee to whom was referred the report of Mr. CRAWFORD on the same subject.

The report of Mr. CRAWFORD on the subject of the apportionment of Senators was taken up and referred to the Committee of Revision and Engrossment.

The resolution of Mr. CRAWFORD, proposing an amendment to the 8th article of the second part of the Constitution, adopted at the last session, was referred to the Committee of Revision and Engrossment.

The Chair announced the appointment of Mr. DEWEY and Mr. STARR as members of the Committee to draft an address to the people.

The Council adjourned.

**Monday, 19th Feb., 1849.**

Prayer by the Rev. Mr. Parker.

The Journal of Saturday was read and approved.

The Resolution of Mr. DEWEY, laid on the table on Saturday, relative to the calling of a Convention, was called up, referred to the Committee of the Whole, and made the order of the day for Tuesday next at 2 o'clock, P.M.

Mr. POMEROY, from the Committee on the subject of unequal Representation, made the following Report:--

*To the Council of Censors:*

Your Committee, to whom was referred the Resolution of Mr. POMEROY as to the inequality of Representation in the House of Representatives, and to whom was also re-committed the Report of the same Committee at our last session, having had said matters under consideration, would respectfully report as follows:--

The whole number of towns in the State is two hundred and forty-one--the whole number of inhabitants by the census of 1840, was 291,948--there being one representative to each town, to wit, 241, it appears that there is one representative to a trifle over each 1,207 inhabitants. There are 101 towns having less than 1,000 inhabitants--there are 42 towns with less than 500--there are 22 towns with less than 300--15 towns with less than 200, and four towns with less than 100 inhabitants.

A majority of the Representatives are elected by towns which, in the aggregate, have but a little more than one quarter of the population--that is 121 towns, with a population of only 77,809, elect 121 representatives, while 120 towns, with 214,139 inhabitants, elect, of course, but 120 representatives!

The County of Grand Isle, with a population of 3,833, elects five representatives, (to say nothing of its Senator,) while the town of Montpelier, with a population of 3,725, elects but one representative!

The County of Essex is represented (to say nothing of its Senator) by 13 representatives, with a population less than the whole, and a grand list a little more than half that of the town of Burlington, which has, of course, but one representative!

There are 24 towns having (of course) 24 representatives, and yet, with a population and grand list each in the aggregate less than the town of Burlington with one representative!

Let us look at the ratio of representation in each County.

Bennington Co.,	17 towns,	pop. 16,872,	being a ratio of 1 to 992
Windsor Co.,	23 "	27,442,	" 1,148
Windsor Co.,	23 "	40,356,	" 1,754
Rutland Co.,	26 "	30,699,	" 1,180
Addison Co.,	22 "	23,583,	" 1,072
Orange Co.,	17 "	27,873,	" 1,639
Chittenden Co.,	15 "	22,977,	" 1,532
Washington Co.,	17 "	23,506,	" 1,324
Caledonia Co.,	17 "	21,891,	" 1,289
Franklin Co.,	14 "	24,531,	" 1,752
Orleans Co.,	19 "	13,634,	" 717
Lamoille Co.,	12 "	10,475,	" 873
Grand Isle Co.,	5 "	3,833,	" 766
Essex Co.,	13 "	4,266,	" 328

And let us compare the representation of some of the Counties in the Senate. Grand Isle, with a population of 3,833, less than one-tenth of the population of Windsor County, has one-fourth as

much power in the Senate.

Lamoille, Grand Isle and Essex Counties, with less than one-half the population of Windsor County, have three-quarters of the representation of Windsor County, and the Counties of Grand Isle and Essex, with a 37th of the population of the State, have a 15th part of the representation in the Senate.

This comparison might be continued with similar results to a much greater extent.

With these facts and views before us, we could not otherwise conclude than that the system of representation in this State, and, particularly, in the House of Representatives, is unequal, and at war with the principles of representative governments;--it is anomalous--being based upon territory independent of population, like that of no other State in the Union. And when it is considered that this form of representation was adopted "in order that the Freemen of this State might enjoy the benefit of election as *equally* as may be," we are disposed to place it with that other anomaly, the existence and protection of a system of slavery in a country whose government is based upon the declaration that "all men are born free and equal"! We would not, by this remark, be understood as questioning the sincerity of the professions of those pioneers of liberty either of the State or Nation, but as showing how far the force of circumstances may control the operation of the most sacred principles. For in the peculiar condition of Vermont, with her handful of people, struggling for existence against the assaults of a triple enemy, and endeavoring by every means and inducement to increase her limited population--we are not surprised that she, for the time being, with a simultaneous declaration of attachment to the principle of equal representation, and, securing by the Constitution itself a ready mode of alteration and correction, should have adopted as the most convenient mode of representation, and one calculated to encourage the settlement and organization of her towns, that of a representative to each, irrespective of population,--nor are we surprised that such a mode has been so quietly tolerated, when we reflect that the population of the several towns has hitherto been more nearly equal, the State has been almost exclusively agricultural, and all parts having, of course, very similar interests. But the times are changing, nay, are changed; we are becoming a commercial and manufacturing people as well as agricultural; large towns are growing up with great and peculiar interests, which ought to be represented, and it is worse than vain to say that the people of the large towns should be content to have these new and important interests controlled by a system of representation so unequal. The principle is too plain to admit of an argument--but what shall be done? Shall the representation be placed upon a strict popular basis? We say, under the circumstances, No--whatever we might say were it a new question--but let the representation be so modified that while it shall not materially

increase the number of representatives, it shall afford a reasonable relief to the large towns--or, at least, shall signify our respect for the great principle upon which is based the temple of civil liberty.

To accomplish this end, your Committee submit the following as a substitute for the 7th and 8th sections of the second part of the Constitution:--

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 several towns, respectively, as follows: to each town having more than one hundred inhabitants and less than three thousand inhabitants, there shall be one representative;--to each town having three thousand and less than seven thousand inhabitants, there shall be two representatives;--to each town having seven thousand and less than twelve thousand inhabitants, there shall be three representatives;--to each town having twelve thousand and less than eighteen thousand inhabitants, there shall be four representatives;--to each town having eighteen thousand and less than twenty-five thousand inhabitants, there shall be five representatives;--and to each town for every additional ten thousand inhabitants there shall be one representative;--and for each fifteen hundred of the fraction of the population for each County over and above the ratio of fifteen hundred inhabitants to one representative in said County, there shall be a representative chosen, at large, by such towns in said County as have not less than one thousand and more than three thousand inhabitants.

The effect of the foregoing amendment, under the present census, would be to add to the House of Representatives, five representatives from *towns* to wit, one from Bennington, one from Woodstock, one from Middlebury, one from Burlington, and one from Montpelier; and to the representation from the Counties it would add six representatives at large, to wit: three from the County of Windsor, elected by fifteen towns; one from the County of Orange, elected by thirteen towns, and two from the County of Franklin, elected by eleven towns,--making the whole addition to the present House of Representatives eleven,--from which, if we deduct the representation from the four towns having less than one hundred inhabitants, the number of the House will be increased, under the present census, by only seven members.

But what will its effect be under the coming census? If the increase of the population of the State for the current ten years be no greater than from 1830 to 1840, to wit: 11,271, which we think it fair to assume it will not be, considering the increasing inducements to emigration, the whole addition, under the proposed amendment, would be but fourteen members to the present House of Representatives--being seven for the additional eleven thousand inhabitants. Assuming the increase of population for the next fifty years, which amounts to 75,000; and assuming that only one-half

that number will be effective in increasing the representation, (the other half being exhausted in towns and counties below the ratio of increased representation,) and we shall have but an addition of twenty-five representatives, which, with the fourteen added after the next census, will make but thirty-nine members as the whole number to be added to the House of Representatives at the access of the *twentieth century*,--making the average addition to the House for the next fifty years a fraction over nineteen members.

Your Committee cannot suppose that it is contemplated by the Council, or by any body of sane men, that the present system of representation is to be continued through all time, however unequal the population in the towns may become, and, therefore, they hope, or rather presume, that the foregoing or a similar article of amendment will meet the approbation of the Council. It is moderate, it is conservative as forestalling any excitement on this subject, and it is in behalf of popular rights. That part of the article which provides relief to those towns having 1,000 inhabitants and less than 3,000, your Committee conceive to be, though somewhat peculiar, yet when understood, quite simple, affording a clear and distinct rule, and a form of representation the more valuable because it is peculiar, and does not (so to speak) fall into the track of any other representation; and, as such, may be a materially conservative element in high party times.

All which is respectfully submitted by  
JOHN N. POMEROY,  
*For Committee.*

19th Feb., 1849.

Which Report was read and accepted.

And on the motion of Mr. BURT to print one hundred copies of the Report, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. STOWELL, COOL, BELL, BURT, WILLIAMS.--5.

Nays--Messrs. STARR, DEWEY, ALLEN, CRAWFORD.--4.

So the motion to print was carried.

Mr. POMEROY did not vote.

On motion of Mr. STOWELL, the Report was referred to the Committee of the Whole, and made the order of the day for Wednesday morning.

Mr. POMEROY called up the Resolution of Mr. DEWEY as to the appointment of a Judiciary Committee, which, after discussion, was adopted by

Yeas--Messrs. STARR, BELL, DEWEY, CRAWFORD, BURT, WILLIAMS.--6.

Nays--Messrs. STOWELL, COOL, ALLEN, POMEROY.--4.

On motion of Mr. DEWEY,

*Resolved*, That the Judiciary Committee be instructed to make inquiry and report as to the expediency of so altering the Constitution as to give the election of Judges and Chancellors to the people.

The Council adjourned.

**Afternoon.**

Mr. HEBARD, a member of the Council, appeared and took his seat.

The Chair announced the appointment of Mr. STARR, Mr. BURT and Mr. BELL as the Judiciary Committee.

Mr. DEWEY from Committee on the Subject of the Term and Classification of Senators, made the following report:--

*To the Hon. The Council of Censors Now in Session:*

Your Committee to whom was re-committed the resolution of Mr. DUTTON as to extending the term of service of Senators, and the report of Mr. CRAWFORD thereon, and to whom was referred the proposition of Mr. DEWEY instructing the Committee in relation thereto, would respectfully report--

That they have had those matters under consideration, and report the following article and recommend that it be proposed as an amendment to the Constitution, viz:--

At the first session of the Senate held after September A.D. 1850, the Senators shall by their own body, by lot or draft in so far as the same may be necessary between Senators from the same County, be divided into three classes, as follows:

Two of the Senators from Windsor County, one Senator from each of the Counties of Windham, Rutland, Orange, Franklin, Bennington, Chittenden, Washington and Essex, shall constitute the first class.

One of the Senators from each of the Counties of Windsor, Windham, Rutland, Orange, Franklin, Bennington Addison, Washington, Caledonia and Orleans shall constitute the second class.

One of the Senators from each of the Counties of Windsor, Windham, Rutland, Orange, Franklin, Addison, Chittenden, Caledonia, Lamoille and Grand Isle, shall constitute the third class--such division into classes to be entered on the journals of the Senate, with the names of the Senators arranged in their respective classes, and the seats of the first class shall be vacated at the expiration of their first year's service--those of the second class at the expiration of the second year--and those of the third class at the expiration of the third year, and the election of Senators thereafter by the Freemen shall be for three years, or for any unexpired term if a vacancy should occur.

All which is respectfully submitted,

JOHN DEWEY,  
*For Committee.*

Which report was accepted and laid upon the table.  
The Council adjourned.

**Tuesday, 20th February 1849.**

Prayer by the Rev. Mr. Bush.

The Journal of yesterday was read and approved.

Mr. BURT, from the Committee on the Judiciary, made the following report:--

"Your Committee to whom was referred the resolution of Mr. DEWEY, in regard to the election of Judges and Chancellors, would report that they deem it inexpedient to alter the manner of electing the same."

Which report was read, accepted and laid upon the table.

The Secretary presented and read the following memorial from Ivory Luce, to wit:

*To the Hon. Council of Censors Now in Session:*

Your petitioner, Ivory Luce, in the town of Mansfield, in the State of Vermont, respectfully shows, that the Legislature of the State of Vermont, at their session in 1848, passed an act entitled "An Act to annex Mansfield to Stowe," in and by which act the town of Mansfield is annexed to and has become a part of the town of Stowe in the County of Lamoille.<sup>5</sup> That your petitioner has been an inhabitant and proprietor of land in the town of Mansfield since the year 1803, and is of the opinion that the Legislature has no power to blot out a town that has been legally chartered and organized by annexing it to another. And your petitioner further represents and shows that the town of Mansfield was legally incorporated and organized, and your petitioner further prays that your honorable body will examine as to the constitutionality of said law, annexing Mansfield to Stowe, and report thereon, and your petitioner will ever pray.

Ivory Luce.

February 19th, 1849.

Which memorial was, on motion, referred to the Committee on the Powers of the Constitution.

Mr. HEBARD from the Committee on the Powers of the Constitution "to whom was referred a resolution directing them to enquire whether Justices of the Peace have recorded their judicial proceedings as directed by law," made report, that in their judgment the subject matter of this resolution appropriately belongs to the duties of the Judiciary Committee, and they therefore ask leave to be discharged from the further consideration of this subject, and that the same be referred to the last named Committee.

Which report was accepted, the Committee discharged, and the subject was referred to the Judiciary Committee.

Mr. HEBARD, from the Committee on the Powers of the Constitu-

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<sup>5</sup>*Laws of 1848, No. 11, 11.*

tion, to whom was referred the resolution of Mr. CRAWFORD as to the expediency of so altering the 10th Section of the Constitution as to dispense with the requirement therein of returning the ballots of the Freeman for Governor, Lieutenant Governor, and Treasurer, to the General Assembly, made report that for the reasons therein stated, "it is not expedient to make the proposed alteration."

Which report was read, and accepted, and, on motion, adopted by the Council.

Mr. HEBARD from the same Committee, made the following report:--

*To the Council of Censors Now in Session:*

The Committee on the Powers of the Constitution, to whom was referred a resolution in relation to the present mode which the Legislature have adopted of referring to chapter and section of the acts which they alter or amend, without naming the subject matter of such alteration or amendment, respectfully report--

That they are fully impressed with the magnitude of the evil referred to, and of the importance of having it corrected. But the Committee do not consider that this Council have any power or control over the actions of the Legislature in this respect.

The mode of referring to, or designating the particular alterations or amendments of the laws by the Legislature, is with them a matter of taste or judgment, and does not come within the enumerated censures which this Council have the power to bestow.

This Committee, therefore, recommend that the subject matter of this complaint be brought to the notice of the Freeman of this State, through the action of the Committee who are appointed to draft an address, and leave it for the Freeman to take such measures to correct the evil, as they may deem proper.

All of which is respectfully submitted, by

WM. HEBARD, *For Committee.*

Which report was read and accepted, and on motion, adopted by the Council.

The Council adjourned.

#### **Afternoon.**

The Council resolved itself into a Committee of the Whole on the resolution of Mr. DEWEY relating to the calling of a Convention, Mr. CRAWFORD in the Chair, and the Committee, after consideration of the subject, rose, reported progress, and had leave to sit again on Wednesday afternoon at 2 o'clock.

The Council adjourned.

**Wednesday, 21st February, 1849.**

Prayer by the Rev. Mr. Converse.

The Journal of yesterday was read and approved.

The Council resolved itself into Committee of the Whole, Mr.



STARR in the Chair, on the report of Mr. POMEROY as to the inequality of representation.

The Committee, after consideration of the subject, rose, reported progress, and had leave to sit again at half-past six this evening.

The Council adjourned.

#### Afternoon.

The Council resolved itself into a Committee of the Whole on the resolution of Mr. DEWEY relating to the calling of a Convention, Mr. CRAWFORD in the Chair, and the Committee, after consideration of the subject, rose, reported progress, and had leave to sit again on Wednesday afternoon at 2 o'clock.

The Council adjourned.

#### Wednesday, 21st February, 1849.

Prayer by the Rev. Mr. Converse.

The Journal of yesterday was read and approved.

The Council resolved itself into Committee of the Whole, Mr. STARR in the Chair, on the report of Mr. POMEROY as to the inequality of representation.

The Committee, after consideration of the subject, rose, reported progress, and had leave to sit again at half-past six this evening.

The Council adjourned.

#### Afternoon.

Mr. BURT, from the Committee on the Judiciary, to whom was referred the subject of neglect of Justices of the Peace to make records of their proceedings, made the following report:--

*To the Council of Censors Now in Session:*

Your Committee would report, that in many instances, known to your Committee, Justices of the Peace have not complied with the requirements of the Statute, in keeping a book of records of their judicial proceedings.

When we reflect on the extent of the jurisdiction of Justices of the Peace, the amount of property involved, the title of land often at stake, and in criminal proceedings, the liberty of the citizen often in jeopardy, we deem it of the utmost importance that Justices of the Peace should, in all and every instance, comply with the requirements of the Statute in keeping a book of records of their judicial proceedings, in due and legal form. But to what extent this dereliction of duty has extended, your Committee are not informed, and as it would be impossible, during the existence of this Council to make a full examination into the subject, they ask to be discharged from its further consideration.

All which is respectfully submitted, by

AUGUSTUS BURT, *For Committee.*

Which report was read, accepted and adopted, and the

Committee discharged from the further consideration of the subject.

The Council in Committee of the Whole, Mr. CRAWFORD in the Chair, resumed the consideration of the resolution as to calling a Convention, and after considering the same, rose, reported progress, and had leave to sit again at 7 o'clock this evening.

On motion,

*Voted*, That when the Council adjourn, they adjourn to meet at half-past six this evening.

The Council adjourned.

### Evening.

The Council in Committee of the Whole, took up the report of Mr. POMEROY on the subject of unequal representation, Mr. STARR in the Chair, and after considering and discussing the subject, the Committee rose, reported progress, and had leave to sit again at 2 o'clock P.M. to-morrow.

The Council in Committee of the Whole, Mr. CRAWFORD in the Chair, took up the resolution of Mr. DEWEY as to the calling of a Convention, and after considering the same, rose and recommended the adoption of the same with the following amendment: "providing that the Convention be called on the same principles as former similar Conventions have been called."

The Council adjourned.

### Thursday, 22d February, 1849.

Prayer by the Rev. Mr. Smith.

The Journal of yesterday was read and approved.

The proposition of amendment before the Council on its adjournment last evening, was taken up and the amendment adopted, and the resolution as amended, laid upon the table.

A communication from the Auditor of Accounts was presented and read, and on motion, referred to the Committee on Taxes and Expenditures.

Mr. DEWEY introduced the following resolution which was adopted:--

*Resolved*, That the Committee on the Powers of the Constitution be instructed to enquire whether the act No. 1, of the Public Acts passed by the General Assembly at their session in 1848, entitled "An Act laying a tax on lands in Bradleyvale,"<sup>6</sup> is not an unjust and

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<sup>6</sup>*Laws of 1848*, No. 1, 1. This act provided a tax of six cents on each acre of Bradleyvale for the making and repairing of roads and bridges. The complaint was based on the lack of a proportional contribution of landowners, according to Chapter I, Article 9 of the *Vermont Constitution*. Bradleyvale was a town chartered in Essex County in 1791 and divided between Concord and Victory in 1856.

an unequal taxation of said lands, and therefore contrary to the true spirit of the Constitution.

Mr. DEWEY introduced the following resolution, which was read and referred to the Judiciary Committee:--

*Resolved*, That the Constitution ought to be so altered as to provide for the choice of the Secretary of State by the Freemen of the State.

Mr. STARR from the Committee on the Judiciary, made the following report upon the foregoing resolution: "that the Constitution ought not to be amended as contemplated in said resolution."

Which report was accepted and laid upon the table.

The report of Mr. BURT from the Committee on the Judiciary made on the resolution of Mr. DEWEY, as to the election of Judges and Chancellor by the Freemen, and adverse thereto, was called up and adopted by yeas and nays, as follows:--

Yeas--Messrs. ALLEN, BELL, CRAWFORD, COOL, HEBARD, POMEROY, STARR, STOWELL and WILLIAMS.--(9.)

Nay--Mr. DEWEY.--(1.)

The report of the Committee on the Resolution of Mr. DEWEY, recommending the election of Secretary of State by the Freemen of the State, and adverse thereto, was called up and adopted.

The report of Mr. JANES, from Committee on Taxes and Expenditures, which had been laid upon the table, was called up and after discussion, was again laid upon the table.

The report of Mr. DEWEY as to the term and classification of Senators, was called up, and the article of amendment to the Constitution therein proposed was, on motion of Mr. DEWEY, amended by adding, "upon any new apportionment of Senators, the Legislature may make a new classification of the Senators and all elections of Senators shall be made and held subject to such classification," and the report was again laid upon the table.

The Council adjourned.

#### Afternoon.

The Council in Committee of the Whole, Mr. STARR in the Chair, took up the report of Mr. POMEROY on the subject of unequal representation, and after considering the same during the afternoon, rose, reported progress, and had leave to sit again to-morrow at 2 o'clock P.M.

The Council adjourned.

#### Friday, 23d FEBRUARY 1849.

Prayer by the Rev. Mr. Parker.

The Journal of yesterday was read and approved.

The report of Mr. HEBARD from the Committee on the Powers of the Constitution, as to the mode of taking sureties for State Treasurer and Sheriffs, as follows:--

*To the Council of Censors Now Sitting:*

The Committee on the Powers of the Constitution, to whom was referred a resolution directing them to inquire whether the Constitution does not require an amendment in regard to the giving sureties by the Treasurer of the State and the Sheriffs of the several Counties, respectfully report--

That by the 27th Section of the Second Part of the Constitution of this State, the Treasurer of the State is required to give security to the Secretary of State in behalf of the General Assembly, *before the Governor and Council*, and each High Sheriff *before the FIRST JUDGE of the County Court*.

When this provision and phraseology was engrafted into the Constitution, one branch of the Government consisted of a Council, but by the amendments to the Constitution which were adopted in 1836, this Council was superseded by a Senate. And by the 8th Article of these amendments, all the duties vested in, or enjoined upon the Governor and Council, by the 27th section of said Second Part of the Constitution, are required to be performed by the Governor.

We are, therefore, of the opinion that the Constitution sufficiently provides for the taking security of the Treasurer, and in that particular needs no amendment.

Your Committee further report, that in their opinion, some uncertainty exists in regard to the proper mode for the giving securities by the Sheriffs of Counties, and that different practices prevail in different Counties. The uncertainty arises from the new formation of our Judiciary, since the adoption of the Constitution. As our Courts are now constituted, one Judge of the Supreme Court, and two Assistant Judges, appointed for the County, constitute the County Court. The uncertainty in the practical construction of the Constitution grows out of this feature in the County Courts. If the Judge of the Supreme Court, who shall preside at the County Court is to be regarded as the *first Judge of the County Court*, in this Constitutional sense, then there is a practical difficulty--the same Judge of the Supreme Court presides in more than one County.

We are, therefore, of the opinion that the great importance of having the sureties required of the Sheriffs, legally and Constitutionally taken, justifies an amendment of the Constitution in this particular, and we recommend the following as a substitute for said 27th Article of the Second Part of the Constitution, to wit:--

The Treasurer of the State shall, before entering upon the duties of his office, give sufficient security to the Secretary of State, on behalf of the State of Vermont, before the Governor of the State, or one of the Judges of the Supreme Court; and each Sheriff and High Bailiff, before entering upon the duties of his office, shall give sufficient security to the Treasurer of their respective Counties before one of the Judges of the Supreme Court, or the two Assistant

Judges of the County Court, of their respective Counties, in such manner and in such sums as shall be directed by the Legislature.

All which is submitted by

WM. HEBARD, *For Committee.*

Was read, accepted and laid upon the table.

Mr. HEBARD from the same Committee, made report on the resolution relative to the act of the Legislature laying a tax on Bradleyvale, which was read and re-committed.

The report of Mr. JANES as to taxation of wild lands, was called up by Mr. STARR, and was, on his motion, amended by the adoption of the following resolution in the place of the resolution recommended by the Committee:--

*Resolved*, That in the judgment of this Council, by the present listing laws of this State, a disproportionate share of the taxes is imposed upon real estate, and more especially upon wild lands, which are in most cases not only unproductive, but unsaleable and not increasing in value, and that an unjust, oppressive and unequal burden often falls upon the nonresident proprietors of such lands.

The yeas and nays being demanded were as follows:

Yeas--Messrs. ALLEN, BELL, CRAWFORD and STARR.--(5.)

NAYS--Messrs. BURT, COOL, STOWELL and WILLIAMS.--(4.)

And the report and resolution as amended were adopted.

Mr. DEWEY from the Committee on the resolution of Mr. DUTTON, as to the election of County and Probate officers, made the following report:--

*To the Hon. Council Now in Session:*

Your Select Committee to whom was referred the resolution of Mr. DUTTON in relation to the election of County and Probate officers, and to whom the same subject was re-committed, with instructions to report articles of amendment, &c., would respectfully report the following articles of amendment to the Constitution, agreeably to the terms of said report and instructions, viz:--

ART. 1st. The Assistant Judges of the County Court shall be elected by the Freemen of their respective Counties.

2d. Sheriffs and High Bailiffs shall be elected by the Freemen of their respective Counties.

3d. State's Attorneys shall be elected by the Freemen of their respective Counties.

4th. Judges of Probate shall be elected by the Freemen of their respective Probate Districts.

5th. Justices of the Peace shall be elected by the Freemen of their respective towns, not exceeding ten to any one town.

6th. All the officers named in the preceding five articles of amendment shall be annually elected by ballot, and shall hold their offices for one year, said year commencing on the first day of December next after their election.

7th. The election of the several officers mentioned in the

preceding six articles, shall be made at the times and in the manner now directed in the Constitution for the choice of Senators. And the presiding officer, after the votes shall have been taken, sorted and counted, shall in open Freeman's meeting, make a certificate of each person voted for, with the number of votes given for each, annexed to his name and designating the office for which the votes were given, a record of which shall be made in the Town Clerk's office, and he shall seal up said certificate and shall write on the same the name of the town and the words "certificate of votes for," and add thereto, in writing, the title of the office voted for, as the case may be, and shall deliver such certificate to some representative chosen to attend the General Assembly, whose duty it shall be to cause said certificate of votes to be delivered to the Committee of the General Assembly appointed to canvass the same;

And at the sitting of the General Assembly next after such balloting for the officers aforesaid, there shall be a Committee appointed of and by said General Assembly, who shall be sworn to the faithful discharge of their duty, and whose duty it shall be to examine such certificates and ascertain the number of votes given for each candidate, and the highest in nomination for the respective offices shall be declared duly elected, and by the Committee be reported to the General Assembly, and the officers so elected shall be commissioned by the Governor, and if two or more persons designated for any one such office, shall have received an equal number of votes, the General Assembly shall elect one of them to such office.

All which is respectfully submitted by  
JOHN DEWEY,  
*For Committee.*

Which was read, accepted and laid upon the table.  
The Council adjourned.

#### **Afternoon.**

Mr. COOL from Committee to whom was referred the communication of the Auditor of Accounts, made report "that it was not, in the opinion of the Committee, necessary for the Council to take further action thereon."

Which report was accepted and adopted.

The following petition of Levi Underwood and L. P. Blodgett was presented by Mr. COOL, read and referred to the Committee on the Powers of the Constitution:--

*To the Honorable Council of Censors:*

Your petitioners beg leave respectfully to call your attention to the act of the Legislature of Vermont, approved Nov. 3d, 1846, entitled

"An Act relating to licensing Innkeepers and Retailers."<sup>7</sup>

Your petitioners desire your consideration of Sections 9 to 14 inclusive, and beg leave to suggest that the 9th Sec. is in violation of Art. 3 of the amended articles of the Constitution of this State, by submitting a matter to the people which is vested in the Legislature by said Article. Also, because, by the terms of said 9th Sec., voters in town and Freeman's meeting are constituted voters upon a question of Legislation.

If the act is to be construed that a voter must have both the qualifications of voters in town and Freeman's meeting, then many Freeman will be disfranchised. If they need have but one qualification, then persons not naturalized, are authorized to exercise all the powers of Freeman in relation to this subject of Legislation. The other Sections are based upon this.

We therefore pray that you will give the subject your consideration, and as in duty bound your petitioners will ever pray.

Levi Underwood,  
L. P. Blodgett.

The Council, in Committee of the Whole, Mr. STARR in the Chair, took up the Report of Mr. POMEROY on the subject of unequal representation, and after considering the same, rose, reported progress, and had leave to sit again to-morrow morning at 9 o'clock.

The report of Mr. DEWEY, as to the election of County officers, was called up, and after several amendments, was laid upon the table.

The Council adjourned.

#### Saturday, 24th, February, 1849.

Prayer by the Rev. Mr. Bush.

The Journal of yesterday was read and approved.

Mr. HEBARD from the Committee on the Powers of the Constitution, made the following report:--

*To the Council of Censors:*

The Committee on the Powers of the Constitution, to whom was referred a resolution directing them to enquire whether the act of 1848, No. 1, laying a tax on the lands in Bradleyvale, is not unjust and unequal, and therefore contrary to the true spirit of the Constitution, beg leave to report--

That if the lands in Bradleyvale are in any degree similar to lands in the other towns in this State, with which this Committee are

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<sup>7</sup>*Laws of 1846*, No. 24, 18-23. This act gave voters the authority to decide whether to allow the sale of liquor in their towns. See also, Vo. 89, p. 33q of the Manuscript Vermont State Papers at the State Archives for a report on an error in the printed act.

acquainted, this tax must be very "unequal." This tax has no reference to the value of the land, but each acre of land is taxed equally, without regard to its productiveness or intrinsic value. This mode of raising taxes for the building of roads has, from the early formation of the Government, been adopted, and when the practice began to prevail, there might have been an occasion for it that does not now exist. There may be some reason to doubt the Constitutionality of that mode of raising taxes. It is clearly a departure from the ordinary mode, in two particulars. One is, that it is not a general law, affecting the whole community; and the other, is the one already named, that it is a specific tax upon the land without regard to its value. But it is a feature in the law-making history of the State, that has so long been acquiesced in by the people, without taking any measures to test its constitutionality, that it has thereby received a practical construction. And we are, therefore, the more unwilling to express any decided opinion upon the question of its constitutionality, but leave that question to be decided by the Supreme Court, to which any one having an interest in the question can conveniently resort.

The Committee therefore ask to be discharged from any further consideration of the subject.

WM. HEBARD,  
*For Committee.*

Which report was accepted and adopted, and the Committee discharged.

Mr. HEBARD from the same Committee, made the following report:--

*To the Council of Censors:*

The Committee on the Powers of the Constitution to whom were referred two resolutions, by which they were directed to enquire into the expediency of so amending the Constitution, that the Governor, Lieutenant Governor and Treasurer, shall hold their respective offices till others are chosen, and qualified;--and also to enquire whether there is any provision by which any officer of the Government can exercise the office of Governor in case of a vacancy of both the Governor and Lieutenant Governor;--and whether the term during which the Governor and Lieutenant Governor shall exercise their respective offices is sufficiently defined by the Constitution, respectfully report--

That by the Constitution the particular period of time when the several officers named shall cease to exercise the duties of their respective offices is not specifically defined.

These officers are to be voted for by the Freeman, on the first Tuesday in September in each year--of course the election is to be annual--but the result is not to be known till the Legislature shall convene, and this by a canvassing Committee of the two Houses; but what particular day or time in the session this is to be done, is



no where provided in the Constitution. When this canvassing Committee make their report, as they are to do, if it is ascertained that the Freemen have made an election, the individuals so elected, immediately enter upon the duties of their respective offices, and by the most natural conclusion we should say that the term of the previous year ceased, when the new one began. And although this is not specifically defined by the Constitution, yet it is a conclusion that is arrived at by a natural train of reasoning. If, by the report of the canvassing committee, it is ascertained that the Freemen have made no election, the Senate and House of Representatives by joint ballot, are required to make the election--but at what particular time in the session is not prescribed. And until an election shall be made by the House of Representatives and Senate, the office must be vacant unless the incumbent continues in office until his successor is elected.<sup>8</sup> And, therefore, to remedy any supposed difficulty or uncertainty in this particular, and to supply any supposed defect, the Committee recommend the adoption of the following article, to be added to, and to become a part of the Constitution, to wit:--

The term of office of the Governor, Lieutenant Governor and Treasurer, of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the Term of one year, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature, at which, by the Constitution and laws, their successors are to be chosen. And the Legislature shall provide by law, declaring what officer shall act as Governor whenever there shall be a vacancy in both the offices of Governor and Lieutenant Governor to discharge the powers and duties of the office of Governor. And such officer so designated, shall exercise the duties and powers appertaining to the office of Governor, accordingly, until the disability shall be removed, or a Governor shall be elected; and in case there shall be a vacancy in the office of Treasurer, by reason of any of the causes before enumerated, the Governor shall appoint a Treasurer for the time being, who shall act as Treasurer until the disability shall be removed, or a new election shall be made.

All which is submitted by

WM. HEBARD, *for Committee.*

Which report was read, accepted and laid upon the table.

The Council in Committee of the Whole, Mr. STARR in the Chair, took into consideration the report of Mr. POMEROY as to unequal

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<sup>8</sup>This was more than an academic question for Vermont in 1848. The offices of Governor, Lieutenant Governor and Treasurer had all been filled by vote of the General Assembly, because of a failure to elect these officers by a popular majority, in 1841, 1843, 1845, 1846, and 1847. The same would happen in 1848, 1849, 1852, and 1853.

representation, and after amending the same by striking out in the 7th, 8th and 9th line of the amendment proposed, as follows: "having more than one hundred inhabitants and less than three thousand inhabitants;" rose and made report that the article as amended ought not to be adopted.

Which report of the Committee of the Whole being before the Council, Mr. BURT moved the following as a substitute:--

The House of Representatives of the Freemen of this State shall consist of 100 persons most noted for wisdom and virtue, to be chosen by ballot by the Freemen of the several Counties of this State, on the first Tuesday of September, annually, forever. And until the next census of the United States Government, or a census taken by this State for this purpose, the representatives shall be proportioned among the several Counties in the following manner:--

The County of Bennington shall have six Representatives.

The County of Windham shall have nine Representatives.

The County of Windsor shall have fourteen Representatives.

The County of Rutland shall have ten Representatives.

The County of Addison shall have eight Representatives.

The County of Orange shall have nine Representatives.

The County of Chittenden shall have eight Representatives.

The County of Washington shall have eight Representatives.

The County of Caledonia shall have seven Representatives.

The County of Franklin shall have eight Representatives.

The County of Orleans shall have five Representatives.

The County of Lamoille shall have four Representatives.

The County of Essex shall have two Representatives.

The County of Grand Isle shall have two Representatives.

Mr. CRAWFORD moved so to amend the amendment as to have the whole number of representatives 150 instead of 100 members.

Which amendment of the amendment was adopted.

The Council adjourned.

#### Afternoon.

The Council considered the same subject which was before them on their adjournment and the proposition of Mr. BURT as amended was rejected by yeas and nays:

Yea--Mr. BURT.--(1.)

Nays--Messrs. ALLEN, BELL, CRAWFORD, COOL, DEWEY, HEBARD, POMEROY, STARR, STOWELL and WILLIAMS.--(10.)

An amendment to the article reported was then proposed by Mr. HEBARD, as follows--strike out all after "as follows" in the 7th line, and insert the following:--"To each town having less than twenty-five hundred inhabitants, one representative;--to each town having 2,500 inhabitants, two representatives, and for every 1,500 inhabitants beyond 2,500 in any one town, there shall be one additional representative,"--which amendment was amended on motion of Mr.

POMEROY, by adding thereto the following--"The number of inhabitants as referred to in the foregoing article to be ascertained from the latest census which may have been taken by this State or United States." And the amendment as amended was adopted by yeas and nays.

Yeas--(8.)

Nays--(2.)

And on the question of the adoption of the article as amended, the yeas and nays being demanded were as follows:--

Yeas--Messrs. BURT, COOL, POMEROY, STARR, STOWELL, and HEBARD.--(6.)

Nays--Messrs. ALLEN, BELL, CRAWFORD, DEWEY and WILLIAMS.--(5.)

So the article was adopted, and on motion, referred to the Committee of Revision and Engrossment.

The report of Mr. HEBARD as to the term of office of Governor, Lieutenant Governor and Treasurer, was taken up, and on the question of its adoption, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. ALLEN, BELL, BURT, COOL, CRAWFORD, POMEROY, STARR and STOWELL.--(8.)

Nay--Mr. DEWEY.--(1.)

So the report was adopted and the article of amendment therein proposed was referred to the Committee of Revision and Engrossment.

Mr. DEWEY made the following report as to the election of Clerks of Courts and Registers of Probate:--

*To the Hon. The Council of Censors Now in Session:*

The Committee to whom was referred the resolution of Mr. DEWEY as to the election of Clerks of Courts and Registers of Probate, would respectfully report--

That we have had that subject under consideration, and that we are of the opinion that Clerks of Courts are mere recording officers, not having or exercising any judicial power whatever, and that we do not think it expedient to recommend any change in the manner of their appointment.

Registers of Probate are not merely recording officers, but in certain cases act as and perform the duties of Judges of Probate--they are appointed by the Judge of Probate, and when the Judge of Probate is a party in interest in matters before the Probate Court, the Register of Probate adjudicates the same. We think the office one of too much importance to be in the gift of any single individual, and that individual the one often on trial before the Court of his own appointment. In case of a vacancy in the office of Judges of Probate, the Register succeeds to the office of Judge.

We would recommend to the Council the following article of amendment to the Constitution, viz:

"Registers of Probate shall be elected by the Freemen of their respective Probate Districts."

All which is respectfully submitted by

JOHN DEWEY,  
*For Committee.*

Which report was read, accepted and adopted, and the article of amendment proposed was referred to the Committee of Revision and Engrossment.

The Council adjourned.

**Monday, 26th, February, 1849.**

Prayer by the Rev. Mr. Converse.

The Journal of Saturday was read and approved.

Mr. DEWEY from the Legislative Committee made report:--

"That they have examined the laws passed by the General Assembly during the last septenary, and we do not find in them any thing which in our opinion requires the action of the Council, except in those cases to which the attention of the Council has already been particularly directed."

Which was accepted and adopted.

Mr. STOWELL introduced the following resolution:

*Resolved*, That this Council adjourn without day on Wednesday morning next. Which resolution was laid upon the table.

On motion of Mr. DEWEY,

*Resolved*, That a Committee of three be appointed to make up the debenture of this Council.

Mr. STOWELL, Mr. CRAWFORD and Mr. ALLEN were appointed said Committee.

On motion of Mr. HEBARD,

*Resolved*, That the Secretary audit, examine, adjust and certify the incidental expenses of this Council.

Mr. POMEROY called up the report of Mr. HEBARD as to the security to be given by the State Treasurer, Sheriffs and High Bailiffs, and the article of amendment therein recommended, after various amendments, was on motion adopted and referred to the Committee of Revision and Engrossment.

The report of Mr. DEWEY as to the election of County officers by the people, was taken up, and on motion of Mr. BURT, the fifth article thereof was amended by adding a restriction as to the number of Justices, as follows:--

"Towns having less than 1,000 inhabitants, may elect any number of Justices of the Peace not exceeding five; towns having 1,000 and less than 2,000 may elect seven; towns having 2,000 and less than 3,000 may elect ten; towns having 3,000 and less than 5,000 may elect twelve; and towns having 5,000 or over may elect fifteen, Justices of the Peace."

The Council adjourned.

**Afternoon.**

Mr. DEWEY offered the following resolution which was adopted:

*Resolved*, That the Committee of Revision and Engrossment examine the Constitution of this State, and report the articles of the present Constitution which this Council have proposed, or may propose, to amend, alter or abolish.

The Council took up and further considered the report of Mr. DEWEY, which was under consideration at the adjournment, relative to the election of County officers by the people, and adopted the same, article by article--on the 5th article as amended, the yeas and nays being demanded were as follows:--

Yeas--Messrs. BURT, CRAWFORD, COOL, DEWEY, HEBARD and POMEROY.--(6.)

Nays--Messrs. ALLEN, BELL, STARR, STOWELL and WILLIAMS.--(5.)

So that article was also adopted, and the whole referred to the Committee of Revision and Engrossment.

Mr. DEWEY introduced a resolution as to printing the journals, which was read and laid on the table.

Mr. DEWEY called up the report as to the term and classification of Senators, and on the question of its adoption the yeas and nays being demanded were as follows:--

Yeas--Messrs. ALLEN, BURT, DEWEY, POMEROY and STARR.--(5.)

Nays--Messrs. BELL, CRAWFORD, COOL, HEBARD, STOWELL and WILLIAMS.--(6.)

So the report was rejected.

Mr. STOWELL introduced the following resolution:

*Resolved*, That a Committee of two be appointed to draft an Ordinance for a Convention to take into consideration the amendments of the Constitution to be proposed by the Council of Censors.

Which was read and adopted.

Mr. HEBARD and Mr. STOWELL were appointed said Committee.

Mr. STOWELL introduced the following resolution:

*Resolved*, That the Constitution ought to be so amended that the alterations hereafter recommended by the Council of Censors may be submitted directly to the Freemen of the State.

Which was read and referred to a Committee of three, to wit:--

Mr. STOWELL, Mr. CRAWFORD and Mr. STARR.

Mr. STOWELL from said Committee, made report recommending the adoption of the following article of amendment to the Constitution, to wit:

"All propositions for the alteration or amendment of the Constitution of this State, made by any future Council of Censors, shall be submitted directly to the Freemen of the State for their consideration and adoption or rejection, in the mode and manner

hereafter to be provided by law."

Which report was accepted, and during its consideration  
The Council adjourned.

**Tuesday, 27th February, 1849.**

Prayer by the Rev. Mr. Parker.

The Journal of yesterday was read and approved.

Mr. HEBARD presented the following printed memorial from  
Charles Adams, President of the Vermont Temperance Society:--

*To the Honorable Council of Censors now in Session:*

The memorial of Charles Adams shows that he has the honor to be the President of the Vermont Temperance Society, and in their name and behalf he begs leave to ask the attention of your august body to the enquiry whether the Legislature, in the enactment of laws legalizing the traffic in intoxicating liquors, "have performed their duties as guardians of the people," and whether by the enactment of laws, the effect of which is to give to a few the exclusive privilege of vending such liquors, they have not "exercised other and greater powers than they are entitled to by the Constitution."

The true idea of Government is that it is an instrument for carrying into effect the principles on which it is founded. The best definition of republicanism is the application of the principles of Christianity to the business of life. These principles have for their object the highest elevation of man as an intellectual, moral and accountable being. All laws, therefore, to be justifiable, must be right in themselves, must secure men in the enjoyment of their rights as social beings, and must have a direct tendency to promote their prosperity and happiness. Laws thus characterized, are within the competency of a legislative body, but if not they cannot be justified, and their enactment is an assumption of power not warranted by the divine will, and their enforcement destructive of the legitimate object of government, and injurious to the people they are designated to protect.

The enquiry proposed is of a grave character, demanding great thought and patience in its investigation.

Is the traffic in intoxicating liquors right? As a moral question, none more solemn can be presented to the consideration of a body invested with the power of sitting in judgment upon the doings of the highest body known to the Constitution!

What makes any thing right, or any thing wrong? What gives character to human conduct? In what way shall we determine the moral character of a public measure? In other words, what is the great law of right and wrong? Without taking time to discuss the various theories that might be suggested, your memorialist begs leave to state in a few words what he believes is the true theory of right and wrong.

Every created thing is subject to some rule which may be said to

be the law of its creation. There is a law of the heavenly bodies, regulating their motions and prescribing their courses. There is a law of animated nature, giving life, energy and power and in all below man, breathing into them an instinct, perfect in its nature and sufficient for all the objects of their being. So in all things, we can discover a law, giving to the sea its tides, and to the lightning the limits of its force, while the flower that blooms at our feet gives evidence of a law of love as uniform as it is glorious.

While all other created things, in uttering a glorious voice of their heavenly origin, proclaim the existence of a law of being as perfect as it is great, and as sure as it is good, it would be a crime against the author of man's being to entertain a doubt that, in like manner, man, the head of all created intelligences here on earth, is also subject to a law of his being. But what is that great law, and where shall we find it? Shall we look to the heavens and see whether the sun-beams have written it there--or shall we turn to the earth and hear its voice in the roarings of the thunder and the earthquake? Or shall we listen to the still small voice whose whisperings cease not and whose teachings fail not--or shall we reverently bow down to the record of inspiration and learn the teachings that Omnipotence in his kindness vouchsafed to man from Sinai's consecrated mount! But while we listen to all, and learn from all, we must remember that conscience is improvable power, and that it is unerring only when it is cultivated, that man is older than the Scriptures, that the law of his being existed before the decalogue was given, that the Scriptures do not so much proclaim a new law as they are declaratory of that which existed before, then from the morning of creation, when the stars rejoiced in new-born light and the plastic earth began its never-ending course.

Whatever gave character to the first prayer that went up from the garden of Eden--whatever gave character to the first murder on the earth, is as true now as it was then, and the law of right, against which Cain offended, has its foundation now where it had then, in the deep foundation of man's nature, in that law of man's being against which no mortal can offend and be guiltless. Sin and selfishness have in all ages raised the enquiry, "Am I my brother's keeper?" and the echoes of the first terrible answer have reverberated from age to age, and will roll round the being, and wringing from the offender the reluctant confession that his punishment is greater than he can bear.

A law, intended for the regulation of human conduct, should be plain, obvious in its meaning and direct in its application. It must not depend on that profound research which only few can make, it must not be confined to the Scriptures, which are known to but a limited portion of earth, it must not be limited even to the declarations of conscience, for while the oracle may be uninstructed, its teachings may be wrong, but must result from considerations which, while they

force themselves upon our observance, will make themselves felt and heard and understood.

The love of happiness is universal. All feel its force and make it the business of life to attain it. Those who stop in their career and endeavor to analyze human conduct, soon perceive that happiness is a result, and being so, will be anxious to learn from what it is a result. They perceive intuitively that all possess certain well-defined powers of the body, powers of the mind and powers of the heart; that such powers are in their nature capable of cultivation and improvement, and that though they may not become perfect here, they are capable of an improvement as endless as the duration of man's existence, and that the honest endeavor to improve these powers, and to attain that perfection is sure to confer the most perfect happiness of which man is capable. From these facts the following principles may be deduced:

That man, as an immortal being, commences an existence here which shall endure forever. That God has kindly bestowed upon him bodily, intellectual and moral powers. That these powers are improvable in their nature, and that the improvement commenced on the earth may be continued in a higher and better world, until at length they become measurably perfect. That perfection of man's powers is the end and object of man's existence, and improvement the means of attaining it. That in the honest struggle for this improvement, man finds his only surety for that happiness of which his nature is capable.

From such views and considerations, the obvious result is that the law of man's being is the perfection of his bodily, intellectual and moral powers, and hence the rule of right and wrong becomes apparent, simple and plain. Whatever tends to the improvement of these powers is right, but that which has no such tendency is wrong.

Examined in the light of such a rule, how does the liquor traffic appear? If it has any tendency to improve any of the powers of man, it can easily be pointed out; and with the evils before our eyes that inflict humanity, we have a right to demand that such tendency, be pointed out, or that it be abandoned. It has no such tendency, but its influence is to destroy those powers, to paralyze the strong arm, to blunt the intellect, and make man a maniac, or an idiot; to tear from the heart its divine nature, and send man forth a brute and a savage!

The legislation on the subject of the liquor traffic is an anomaly in the history of man. It involves a dilemma from which no advocate of the traffic can escape. The use and traffic in liquor as a beverage is either right or wrong! Which is it? If right, then why restrain the use--why give exclusive privileges to deal in it? The use and traffic in corn, meat, milk, &c., is evidently right. Would any legislator dare to control the use and traffic in these things? to give exclusive privileges in the vending of them? Most assuredly not. The attempt



would be considered as an unwarranted assumption of power, and it would be put down. If, then, the use and traffic in liquor be right, it must be put on other and different grounds from that of corn, meat, milk, &c.; but the impossibility of drawing distinctions between the use and traffic in things all equally right, demonstrates that the use and traffic in liquor is not right.

If the traffic and use of liquor is wrong, how can the legislature be justified in authorizing licenses to sell it? A legislative license can have no tendency to change the character of the measure.

The whole legislation of the State, from the first act to the last, has been based on the idea that the general use was wrong, and therefore the attempt has always been to restrain the traffic. Believing that an unlimited traffic would be destructive they have attempted, through the intervention of licenses, to restrain it, and the result has shown the folly of allowing the introduction of an evil in the hope of restraint.

Your memorialist insists that the Legislature, as "guardians of the people," have transcended their powers in attempting to legalize a traffic which has no foundation in right, and which has produced an amount of evil beyond that of any public act that was ever sanctioned--that these evils will continue as long as Legislative sanctions can be offered. It is vain to hope that moral suasion can effectually prevent the evils of intemperance while the venders of liquor can show a legislative sanction. But why should good men be required to make giant efforts to check the evils of State Legislation? Is it not a strange infatuation that a State, calling itself moral, should allow a course of legislative enactment that requires resistance at every step, in order to roll back the flood that the laws bring upon the unwary and the vicious?

The State Temperance Society begs leave to come before your august body and request that, in behalf of the thousands made wretched by intemperance, you would take the subject into your consideration, that you would examine and determine whether the legislation on the subject of the traffic in liquor is consistent with right, and beneficial to the people; and if not that it may receive the public censure of your Honorable body.

All which is respectfully submitted by

Charles Adams.

Which memorial was read, and, on motion of Mr. HEBARD, referred to a Select Committee of three members.

Mr. STARR, Mr. BELL and Mr. COOL, were appointed said Committee.

The report of Mr. STOWELL from the Committee to whom was referred the resolution as to submitting, in future, amendments proposed by the Council of Censors, to the people, was taken up, and amended as follows:--Strike out after "rejection," and insert "by an Ordinance to be promulgated by the Council of Censors at the

time of submitting their propositions of amendment;" and on the question of the adoption of the article as amended, the yeas and nays being demanded, were as follows:--

Yeas--Messrs. CRAWFORD, COOL, HEBARD, POMEROY, STARR and STOWELL.--(6.)

Nays--Messrs. ALLEN, BELL, BURT, DEWEY and WILLIAMS--(5.)

So the article reported, as amended, was adopted, and on motion was referred to the Committee of Revision and Engrossment.

The resolution of Mr. DEWEY as to printing journals, &c., was called up, amended and referred to a Committee of one for further amendment.

Mr. DEWEY was appointed said Committee.

The Council adjourned.

### Afternoon.

Mr. DEWEY being the Committee to whom was referred the resolution by him submitted as to the printing and distribution of the Journals of this Council, reported the same amended as follows:--

*Resolved*, That the Secretary procure to be printed 750 copies of the Journal of this Council, and that two hundred and fifty copies thereof be delivered to the Sergeant-at-Arms of this State, to be distributed among the members of the Convention when assembled, and that the remainder of the copies be delivered to the Sheriffs of the several Counties, to be by them distributed as follows:--To the State Librarian fifty copies--to the Governor, the Lieutenant Governor, Secretary of State, Clerk of the House of Representatives, Secretary of the Senate, Secretary of Civil and Military Affairs, and to the members of this Council, each five copies,--to the ex-Governors and Lieutenant Governors of this State--to the Judges of the Supreme, County and Probate Courts--to the Clerks of the County Courts--to the Registers of Probate, and to the Town Clerks of each organized town in this State, each one copy.

Such parts of the Constitution as are proposed to be altered or amended, together with the alterations and amendments proposed by this Council, the Address of the Council to the people, and the Ordinance for calling a Convention, to be printed at the close of the Journal, and the Address and Ordinance to be signed by the President and Secretary of the Council.

And the resolution as amended and reported, was accepted and adopted.

Mr. HEBARD from the Committee on the Powers of the Constitution, submitted the following report on the memorial of Ivory Luce, as to the unconstitutionality of the Act of the Legislature annexing the town of Mansfield to Stowe, and on the petition of L. P. Blodgett and Levi Underwood, as to the unconstitutionality of the act of the Legislature as to licensing Innkeepers and Retailers:--

*To the Council of Censors Now in Session:*

The Committee on the Powers of the Constitution would respectfully report--

That they fully recognize the right of petition, memorial and remonstrance, and, in the cases here submitted, this Committee recognize the right of the petitioners to ask of the Council the consideration of the matters therein contained.

The idea of a petition presupposes an ability to grant the prayer, if it is found meritorious; and also a discretion to reject it, if, upon the whole, the exercise of a sound discretion would dictate that course. But this body are not invested with the power of "*redressing grievances*." The most that this Council can do is to advise or "recommend to the Legislature the repealing such laws as shall appear to have been passed contrary to the principles of the Constitution." But the Legislature is not bound to regard such recommendations.

This Committee are therefore of the opinion that, in most cases, it is better to leave the consideration of Constitutional questions growing out of the enactments of the Legislature, to the decision of the Supreme Court, where there is doubt, and which admit of such a disposition, without being embarrassed by the action or opinions of any single individual, or body of men,--whose action or opinions when expressed, are not in any manner conclusive or binding, and still whose judgement, as matter of courtesy, might be supposed to be entitled to some respect.

Your Committee, therefore most respectfully suggest that those acts are, both of them, such as can conveniently be submitted to the Supreme Court upon such cases as may arise under them; and ask to be discharged from the further consideration of said memorial and petition.<sup>9</sup>

WM. HEBARD, *for Committee.*

Which report was read and accepted, and on motion, adopted, and the Committee discharged from its further consideration.

Mr. BURT, from the Select Committee to whom was referred the resolution by him offered, as to calling a Convention in proportion to population, made report--

"That having had that subject under consideration, and as they cannot come to any agreement upon the same, ask to be excused from its further consideration."

Which report was read, accepted, and on motion adopted.

Mr. STARR from the Select Committee to whom was referred the memorial of Charles Adams, President of the Vermont Temperance

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<sup>9</sup>Ivory Luce persisted, focusing his attention on the General Assembly. In 1853 the legislature repealed Act 11 of 1848. See *Vermont House Journal*, 1849 and 1850, and *Laws of 1853*, No. 68, 59-61.

Society, made the following report:--

That they have had the said Memorial under consideration, and they regret that, at this late hour of the session of the Council, they have not been able to give it that deliberate and careful consideration which its importance demands. The Council are appealed to, in the Memorial, under the clause of the Constitution prescribing their duties, which directs them to inquire whether "the legislative and executive branches of the government have performed their duties as guardians of the people."

In matters of doubtful legislation, the Council did not deem it their duty, under the above provision, to express an opinion upon acts of the Legislature. The subject of granting licenses for the sale of intoxicating liquors as a beverage, or of prohibiting the sale entirely for that use, is a very difficult and delicate subject of Legislation. It is a balancing of evils. What would be proper and prudent legislation in one state of society, might be injudicious and mischievous in another, depending upon the habits and moral sentiments of the people.

It is revolting that practices, acknowledged to be demoralizing and mischievous in community, should be continued under the license or sanction of law, or that government should derive a revenue from the license of vice; but if an absolute prohibitory act of such practices, (from the temptations to the breach of it, or the difficulty or impossibility of executing it,) would produce greater evils, the Legislature may be justified in granting restricted licenses for such practices, and making them the means of revenue. The moral sentiment of the people must correct these evils; and as our laws are but the expression of the will of the people, when the declaration of that will is sufficiently strong and decided, the Council cannot doubt the laws will be conformed to it;--and the Council request to be discharged from the further consideration of the subject.

PETER STARR, *for Committee.*

Which report was read, accepted, and on motion adopted, and the Committee discharged.

Mr. STARR offered the following article of amendment to the Constitution:--

"There shall not be elected, nor appointed, more than five Justices of the Peace in any town having less than one thousand inhabitants;--nor more than seven Justices of the Peace in any town having one thousand, and less than two thousand inhabitants; nor more than ten Justices of the Peace in any town having two thousand, and less than three thousand inhabitants; nor more than twelve Justices of the Peace in any town having three thousand, and less than five thousand inhabitants; nor more than fifteen Justices of the Peace in any town having five thousand, or more, inhabitants."

Which article, after being considered, was adopted and referred to the Committee of Revision and Engrossment.

Mr. HEBARD from the Committee of Revision and Engrossment, reported the following fifteen articles of amendment adopted by the Council, revised and engrossed, which were read, accepted, and, article by article, adopted as proposed amendments of the Constitution of this State, to be submitted to a Convention to be called, under an Ordinance of this Council, for that purpose:--

ARTICLE 1.--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 the State, on the first Tuesday of September, annually forever; and the Representatives shall be apportioned to, and elected by, the several towns respectively as follows:--

To each town having less than twenty-five hundred inhabitants, one Representative; to each town having twenty-five hundred inhabitants, two Representatives, and for every fifteen hundred inhabitants above twenty-five hundred in any one town, there shall be one additional Representative.

The number of inhabitants referred to in this article, to be always ascertained from the latest census which may have been taken by this State, or by the United States.

ARTICLE 2.--No balloting for town Representatives shall be commenced after twelve o'clock of the night of the first Tuesday in September.

ARTICLE 3.--The Assistant Judges of the County Court shall be elected by the Freemen of their respective Counties.

ARTICLE 4.--Sheriffs and High Bailiffs shall be elected by the Freemen of their respective Counties.

ARTICLE 5.--State's Attorneys shall be elected by the Freemen of their respective Counties.

ARTICLE 6.--Judges of Probate shall be elected by the Freemen of their respective Probate Districts.

ARTICLE 7.--Justices of the Peace shall be elected by the Freemen of their respective towns; and towns having less than one thousand inhabitants may elect any number of Justices of the Peace not exceeding *five*; towns having one thousand, and less than two thousand inhabitants, may elect *seven*; towns having two thousand and less than three thousand inhabitants, may elect *ten*; towns having three thousand and less than five thousand inhabitants, may elect *twelve*; and towns having five thousand, or more, inhabitants, may elect *fifteen* Justices of the Peace.

ARTICLE 8.--Registers of Probate shall be elected by the Freemen of their respective Probate Districts.

ARTICLE 9.--All the officers named in the preceding articles of amendment shall be annually elected by ballot and shall hold their offices for one year, said year commencing on the first day of December next after their election.

ARTICLE 10.--The election of the several officers mentioned in

the preceding articles, excepting town Representatives, shall be made at the times and in the manner now directed in the Constitution for the choice of Senators. And the presiding officer of each Freeman's meeting, after the votes shall have been taken, sorted and counted, shall, in open meeting, make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name and designating the office for which the votes were given, a record of which shall be made in the Town Clerk's office, and he shall seal up said certificate, and shall write thereon the name of the town and the words, Certificate of votes for ----- and add thereto, in writing, the title of the office voted for, as the case may be, and shall deliver such certificate to some Representative chosen as a member of the General Assembly, whose duty it shall be to cause such certificate of votes to be delivered to the Committee of the General Assembly appointed to canvass the same. And at the sitting of the General Assembly next after such balloting for the officers aforesaid, there shall be a Committee appointed of and by the General Assembly, who shall be sworn to the faithful discharge of their duty and whose duty it shall be to examine such certificates and ascertain the number of votes given for each candidate, and the persons receiving the largest number of votes for the respective offices, shall be declared duly elected, and by such Committee be reported to the General Assembly, and the officers so elected shall be commissioned by the Governor. And if two or more persons designated for any one of said offices, shall have received an equal number of votes, the General Assembly shall elect one of such persons to such office.

ARTICLE 11.--The term of office of the Governor, Lieutenant Governor, and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of one year, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature, at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment. And the Legislature shall provide, by general law, declaring what officer shall act as Governor whenever there shall be a vacancy in both the offices of Governor and Lieutenant Governor, occasioned by a failure to elect, or by the removal from office, or by the death, resignation, or inability of both Governor and Lieutenant Governor, to exercise the powers and discharge the duties of the office of Governor; and such officer, so designated, shall exercise the powers and discharge the duties appertaining to the office of Governor accordingly until the disability shall be removed, or a Governor shall be elected. And in case there shall be a vacancy in the office of Treasurer, by reason of any of the causes enumerated, the Governor shall appoint a Treasurer for the time being, who shall act as Treasurer until the disability shall be removed, or a new election shall be made.

ARTICLE 12.--The Treasurer of the State shall, before entering upon the duties of his office, give sufficient security to the Secretary of State, in behalf of the State of Vermont, before the Governor of the State, or one of the Judges of the Supreme Court. And Sheriffs and High Bailiffs, before entering upon the duties of their respective offices, shall give sufficient security to the Treasurer of their respective Counties, before one of the Judges of the Supreme Court, or the two Assistant Judges of the County Court of their respective Counties, in such manner and in such sums as shall be directed by the Legislature.

ARTICLE 13.--All propositions for the alteration or amendment of the Constitution of this State, made by any future Council of Censors, shall be submitted directly to the Freemen of the State for their consideration and adoption, or rejection, by an Ordinance to be promulgated by the Council of Censors at the time of submitting their propositions of amendment.

ARTICLE 14.--The Senate shall be composed of thirty Senators, to be of the Freemen of the County for which they are elected respectively, who shall have attained the age of thirty years, and they shall be elected annually by the Freemen of each County respectively. The Senators shall be apportioned to the several Counties, according to the population, as ascertained by the census taken under the authority of Congress in the year 1840, regard being always had, in such apportionment, to the Counties having the largest fraction, and giving to each County at least one Senator.

The Legislature shall make a new apportionment of the Senators to the several Counties, after the taking of each census of the United States, or after a census taken for the purpose of such apportionment, under the authority of this State, always regarding the above provisions of this article.

ARTICLE 15.--There shall not be elected, nor appointed, more than five Justices of the Peace in any town having less than one thousand inhabitants;--nor more than seven Justices of the Peace in any town having one thousand, and less than two thousand inhabitants; nor more than ten Justices of the Peace in any town having two thousand, and less than three thousand inhabitants; nor more than twelve Justices of the Peace in any town having three thousand, and less than five thousand inhabitants; nor more than fifteen Justices of the Peace in any town having five thousand, or more, inhabitants.

Mr. HEBARD from the same Committee, made the following report--

"That they have examined the Constitution of this State, and find that the following Sections and Articles of the same will be altered, amended or superceded by the adoption of the proposed Articles of this Council, to wit:--

Section 8, by Article 2 of the proposed amendments.

" 9 and 10, by Articles 3 to 11 inclusive of the proposed amendments.

" 27, by Article 12 of the proposed amendments.

" 43, by Article 13 of the proposed amendments.

Article 4 of the amended Constitution, will be amended by the 14th Article of the proposed amended Articles."

Which was read and adopted.

Mr. DUTTON, a member of this Council, appeared and took his seat.

Mr. HEBARD called up the resolution for calling a Convention, and on the question of its adoption, the yeas and nays being demanded were as follows:--

Yeas--Messrs. BURT, CRAWFORD, COOL, DUTTON, DEWEY, HEBARD, POMEROY, STOWELL and WILLIAMS.--(9.)

Nays--Messrs. ALLEN, BELL and STARR.--(3.)

So the resolution was adopted by a vote of two-thirds of the Council.

Mr. HEBARD from the Committee to draft an Ordinance for a Convention to consider and act upon the amendments to the Constitution proposed by this Council, reported the following:--

#### ORDINANCE.

#### STATE OF VERMONT,

IN COUNCIL OF CENSORS, Feb. 1849.

The Council having agreed to propose certain amendments to the Constitution of this State, and having determined to call a Convention to consider such amendments--

Therefore, It is ordered by said Council, that a Convention of the people of the State of Vermont shall meet at the State House in Montpelier, on the first Wednesday in January A.D. 1850, to consider of the amendments to the Constitution proposed by this Council, and to adopt the same, or such parts thereof as the said Convention shall judge will be most conducive to the good government, peace and happiness of the people of this State. And for the purpose of electing delegates to attend such Convention, the first Constable, or in his absence, the town Clerk, or in his absence, one of the Selectmen of each town in this State, entitled to send a representative to the General Assembly, without further order, shall set up a notification, at such place or places as shall have been appointed for notifying town meetings in such town, at least ten days before the third Tuesday in November, A.D. 1849, warning the Freemen of their respective towns to meet on the said third Tuesday in November, 1849, at one o'clock in the afternoon, at the place where the last Freemen's meeting was held in such town, for the purpose of electing delegates to represent the Freemen of said town in said Convention, at the opening of which meeting this order shall be publicly read.

And the first Constable, or, in his absence or disability, the town



acts had been questioned, yet they considered that were rather proper subjects for judicial investigation than the animadversion of the Council.

It is true that one of the duties of this Council is "to recommend to the Legislature the repeal of such laws as shall appear to have been passed contrary to the principles of the Constitution," but it also appertains to the Judiciary to construe all statutes and laws, and this necessarily requires of them to determine whether any act of the Legislature claimed to be a law, contravenes the Constitution, and is for that reason invalid, and in violation of the rights of individuals. Whenever the question is doubtful and of difficult solution, whether a private or public act of the Legislature, affecting individual rights, is contrary to the Constitution, the Council think it is better for the individual to seek redress from the judicial tribunals, whose decision on the Constitutionality of such act is final, and can afford an adequate relief, than for this Council to express an opinion which may or may not procure its repeal. A memorial was presented to us on the subject of the laws legalizing the traffic in intoxicating liquors, but it came in at so late a period of our sitting that the Council could take no further order than to adopt the report of the Committee to whom it was referred, asking to be discharged from the further consideration of the subject, which report will appear in our journals.

In performing this part of our duty in relation to the duties of the Legislature, the Council cannot refrain from noticing the *great increase of the expenses of this State*, altogether beyond our increase in population, particularly in the judiciary department, and in the contingent expenses of the other branches of the government. We deem it worthy of a strict and searching inquiry, why these expenses have increased to so great an amount, and what measures can be adopted to remedy the evil. The Council would refer the legislature and the people to the 25th Section of the Constitution, which, while it assumes that any man called into public service to the prejudice of his private affairs, is entitled to a reasonable compensation, yet requires that "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." Whether by some action of the Legislature in conformity to the spirit and in pursuance of the direction of this article, some measures may not be adopted to diminish these expenses and prevent the further increase of what appears to be an increasing and alarming evil, is respectfully submitted to the Legislature and the people.

The Council have had their attention called to a practice which has prevailed in the Legislature, for some years past, in the repeal, alteration or modification of acts, or parts of acts, by a mere reference to the number of the Chapter and Section, without any mention of the subject or nature of the provision repealed, altered or

modified. The Council deem it of the highest importance that our statute laws should be plain and easily understood, that the subject matter of the acts should be indicated in their title, and especially that in the body of acts should be clearly expressed the subject or nature of the provision to which they relate; that the practice referred to above has already introduced confusion into our laws, and, if continued in future legislation, will not only embarrass our judges and professional men in understanding and expounding the laws, but will debar the mass of the community from gaining a knowledge of laws in which they have a deep interest, and will speedily compel the legislature to resort to an expensive revision and republication of our system of statute laws.

Another subject of inquiry, submitted by the Constitution to the Council is "whether the public taxes have been justly laid and collected in all parts of this commonwealth." The Council find no cause of complaint on this subject except in the following instances;--

1st. On learning the diversity of practice which has prevailed under the laws relative to the grand list, and the different opinions of professional men on the subject, the Council were of opinion "that there is an uncertainty as to the basis upon which the several town, County and State taxes are to be laid, and also an uncertainty as to the time of the meeting of the County Convention of listers." They did not think it advisable to communicate this to the Legislature, as the Council were not agreed whether the remedy, if any was wanted, should be had by judicial construction or further legislative action.

2d. The taxing of wild and unproductive land, as now provided for by the laws on this subject, the Council considered as imposing an unequal and unjust burden on the owners, particularly non-residents. The inequality and injustice of these taxes on wild and unproductive lands, has been clearly pointed out and condemned by one of the most eminent jurists of the present age, (Chancellor Kent.)<sup>11</sup> With

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<sup>11</sup>Ed. note. Kent wrote, "A just and perfect system of taxation is still a *desideratum* in civil government; and there are constantly existing well founded complaints, that one species of property is made to sustain an unequal and, consequently, an unjust pressure of the public burthens. The strongest instance in New-York, and probably in other states, of this inequality, is the assessment of taxes upon waste and unproductive lands; and the oppression upon this description of real property has been so great as to diminish exceedingly its value. This property is assessed in each town, by assessors residing in each town, and whose interest it is to exaggerate the value of such property, in order to throw as great a share as possible of the taxes to be raised within the town upon the nonresident proprietor. The unreclaimed lands, which the owner finds it impossible to cultivate, or even to sell, without great sacrifice, and which produce no revenue, are assessed, not only for such charges as may be deemed directly beneficial to the land, such as making and repairing roads and bridges, but

respect to those taxes which may be voted by towns, school districts, &c., the non-resident is taxed not only without his consent, but when he cannot by his voice or vote, or by his representative, be heard, either as to the propriety of laying the tax, the amount of the same, or as to the manner of the expenditure, the objects of which are almost exclusively for the benefit and purposes of the inhabitants and residents of the towns or districts. It has been considered as a fundamental principle of republican governments, that no one should be taxed without his own consent, i.e. the consent of a majority, given either by themselves or their representatives chosen by them. How far this principle is violated, by subjecting the non-resident owners of lands to taxes for town or district purposes, where they can have no vote, is certainly worthy of great and impartial consideration. But if it should be conceded that no principle of fundamental law is violated by taxing wild and unproductive lands, the Council are satisfied that, in practice, it has operated unequally, and produced great injustice, and cannot but hope the Legislature will provide some remedy for existing evils, some appeal from unjust appraisal, to a disinterested board of revision, some limit to the amount of taxes which towns may levy on a non-resident proprietor, or some provision by which the taxes he may have to pay may be expended more equally for the use of the town or district of which he is an inhabitant, as well as of the town where the land is situated.

The Council have had deliberately under their consideration that part of the article of the Constitution under which they were appointed, which requires them to examine whether there is "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." We believe there should be a very urgent and manifest necessity requiring it, before any alteration of the fundamental and organic laws should be made. Both in the Constitution of this State and of the United States, it is apparent that it was not intended they should be subject to the fluctuations of ordinary legislation. The manner of making amendments has been guarded by so many provisions, and made subject to so many conditions and forms, that they cannot frequently be

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for all the wants and purposes of the inhabitants. The lands are made auxiliary to the maintenance of the poor, and the destruction of wild animals; and the inhabitants of each town have been left to judge, in their discretion, of the extent of their wants. Such a power vested in the inhabitants of each town, of raising money for their own use, on the property of others, has produced, in many instances, very great abuses and injustice. It has corrupted the morals of the people, and led to the plunder of the property of non-resident landholders." *Kent's Commentaries*, II, 332.

made or hastily and inconsiderately adopted. There should at least be an urgent necessity, and a manifest and general expression of the wishes of the people for amendments, before they should be either proposed or adopted.

On this subject the Council have been by no means unanimous, either as to the propriety or necessity of proposing any alterations whatever, or if any, what amendments should be offered for the consideration of the people.

It appears to us expedient to explain some articles which are not clearly expressed or understood, and that they should not be liable to the evils or inconvenience arising from different expositions of either the legislative or judicial tribunals. This alone would not have required of us to subject the State to the expense of calling a Convention. There were other propositions, evidently of more importance, which were considered by a majority of the Council as "necessary for the preservation of the rights and happiness of the people."

The mode of representation in the General Assembly, and propositions for rendering it more equal have occupied the attention of former Councils. Articles of amendment to effect this purpose, were proposed by the first two Councils, which were chosen in 1785 and 1792, and also by the Council chosen in 1821, but were not adopted in Convention. It was strenuously urged before us, that our present system of representation is unjust, unequal, and not founded on a popular basis, and that towns having a large population were not equally represented. Several projects were discussed before us, and a majority of the Council at last agreed to submit to the consideration of a Convention, an amendment of the Constitution, giving to towns having a large population, an addition of one or more representatives, according to their population, and preserving to the inhabitants of each town a representative as by the present Constitution. An amendment to effect this object is the first now proposed, and is Article 1st.

Connected with this, is a proposition to limit the time for balloting for Representative to the General Assembly, to 12 o'clock on the night of the first Tuesday of September, the object of which is to define more accurately the time within which representatives shall be elected, to prevent the inconvenience of a protracted election extending to a late hour in the night, and sometimes even to a subsequent day, and to put an end to the questions which have arisen on this subject, and have led to decisions at variance with each other. This amendment is the second now proposed.

The Council have thought proper to submit an alteration of the Constitution in relation to the appointment of County and Probate officers, as one of the most important of the amendments which they have had under their consideration, and they think no apology is necessary for again presenting this subject to the consideration of

the people, notwithstanding a similar proposition was offered by the last Council of Censors and rejected by the Convention. Both branches of the Legislature, at their session in 1847, passed a resolution with great unanimity, expressing their opinion that an alteration should be made in the manner of appointing County officers, and that the power which had been exercised by them, could be better exercised by the Freemen.<sup>12</sup> This affords very strong evidence that the subject has been considered by the people, that there has been a change in the public sentiment since the last Convention, and that another opportunity should be afforded, of having it again considered by them. In offering this amendment, we accede to the request of the Legislature, with a full belief that the Freemen are safe depositories of this power of election, and will be likely to know and select suitable men for these offices. By one of the amendments, it is proposed to give the election of Registers of Probate to the people. This office is one of considerable importance; the Register often acts as Judge, may be called on to adjudicate the claims of the Judge who gives him the appointment, and, under certain circumstances, may be the Judge for a considerable part of the year. We also propose an amendment giving the appointment of Justices of the Peace to the Freemen of their respective towns, and limiting their number, and, although they are officers of the County, yet the services of most Justices are confined to their several towns, and may well be selected by the Freemen of the town where they reside. The Constitution now requires that they shall be elected by the Legislature, yet by courtesy and usage the appointment and selection has usually been accorded to the representative of the town in which they reside. We have also proposed in a separate article, to limit the number according to the population of the town, so that if the Convention should not think proper to alter the mode in which they have heretofore been appointed, they may have under their consideration the propriety of limiting the number. The office of Justice of the Peace, in our State, from their extensive jurisdiction in civil matters, as well as criminal, and in regulating the police of their respective towns, is a highly responsible and important one, but by their great multiplication in some towns, the responsibility of their office is greatly diminished, the difficulty of obtaining a legal board of the Civil Authority is increased, and in some instances it cannot be ascertained whether a competent board to act upon matters submitted to their decision is convened. From the great division of responsibility by the increase of numbers, the duties of these officers are neglected, or negligently discharged. In many cases, no record of their proceedings is kept, whereby the rights of the citizens are

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<sup>12</sup>"Resolutions requesting the Council of Censors to propose certain alterations of the Constitution," *Laws of 1847*, No. 64, 41.

put in jeopardy, and the business of these officers is so divided as not to afford a reasonable compensation for the prompt and faithful discharge of their duties. The Council believe that, by limiting the number of Justices in the towns, as proposed, with reference to their population, their responsibility will be increased, and a better performance of their duties secured.--Amendments to secure the foregoing objects constitute the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 15th Articles of amendment proposed by the Council.

Another amendment is proposed in relation to the time when the offices of Governor, Lieutenant Governor and Treasurer, shall expire. A difference of opinion has prevailed as to what time the persons holding these offices shall continue to exercise them. While it has been generally considered that the Governor and Lieutenant Governor cease to hold their offices on the day when the Legislature meet, who are to canvass the votes given for their successors, the Treasurer has been considered as holding his office until a successor is appointed, although the same expression is used in the Constitution as to each of them. The difficulties which have and may arise from an uncertainty in this particular, and the very obvious danger of considering either of these offices vacant, and especially the office of Treasurer, with no one responsible for the safe-keeping of the public funds, induced the Council to propose an amendment providing for such a contingency, and that the Legislature should declare by a general law, what officers should perform the duties of the Executive department, if both the office of Governor and of Lieutenant Governor should be vacant. This is the subject of the 11th proposed article of amendment.

The Council thought it expedient to propose a substitute for the article in the present Constitution, declaring before whom the Treasurer and the Sheriffs shall give the required security. By the 27th article of the existing Constitution, the security from the Sheriffs is to be given before the first judge of the County Court; and although there was no doubt or uncertainty on this subject when the Constitution was adopted, yet as one of the Judges of the Supreme Court is now by law made Chief Judge of the County Court, a diversity of practice has prevailed in different Counties, in taking the security from the Sheriffs. In some Counties the Chief Judge, and in others the first Assistant, has been considered as the Judge before whom the security of the Sheriff is, by the Constitution, required to be taken. To prevent any further doubt or uncertainty of this subject an amendment is proposed which is the 12th article of the proposed amendments.

The Council have also offered as an amendment, that all alterations or amendments proposed by any future Council shall be submitted directly to the Freemen and not to a Convention. Although an obvious feature in our system of government is that the people, in governing and regulating the police, are to act by their legal

representatives, yet it was thought by the Council that amendments and alterations in the fundamental and organic laws should be submitted to, and decided directly by, the people, when they have been matured and proposed by a Council as their agents. This is the subject of the 13th article of the proposed amendments.

It appeared to the Council that there was an ambiguity in the 4th article of the amendments of the Constitution heretofore adopted, in relation to the apportionment of Senators to the several Counties, which we believe should be removed, and its true meaning made certain. The literal construction of this article contemplates the assignment of one Senator to each County, and the remainder of the Senators to the several Counties, according to population, regarding always the largest fraction; while the construction placed upon it by the Council of Censors who proposed the article, and by the Legislature in the year 1841,<sup>13</sup> is to apportion the thirty Senators to the several Counties, according to population, giving to each County one Senator at least. The latter construction is believed to have been the one intended by the Council who formed, and the Convention who adopted, the article, a literal construction of which would have changed the number of Senators in four Counties in the State, from the present apportionment made by the Legislature of 1841. The Council believe the meaning of the Constitution should be plain and certain; the difference of opinion upon this article, in the Legislature of 1841, shows that it is not so. To remove this uncertainty, we have proposed an amendment, which is the 14th article of the amendments herewith submitted.

In presenting these several articles of amendment, it is proper for us to say, what the journals of our proceedings will clearly show, that we have been by no means unanimous in our action upon any of the important amendments proposed. Several of the Council have consented to offer to the consideration of a Convention, propositions to which they are individually opposed, believing that the freemen have a right to be heard thereon. The final action of the Council, which proposes these articles of amendment for examination, and for the consideration of a Convention, has probably been much influenced by a belief, that many have anxiously desired to have these matters laid before the freemen for discussion, in their primary assemblies. With this wish we have complied, willing to leave these important questions for their decision, to be by them disposed of as they may think most conducive to the welfare of the whole.

By order of the Council of Censors.

CHAS. K. WILLIAMS, *President*.

J. N. POMEROY, *Secretary*.

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<sup>13</sup>"An act to apportion Senators in the State Legislature," *Laws of 1841*, No. 15, 9.

### Results of the 1848 Council

The 1848 Council considered many issues but formally objected to only a few of them. Among those considered but not the subject of censure was the act abolishing the State School Fund. The State School Fund was established in 1839 from the "avails" of the late Vermont State Bank, as well as the amounts received from the six percent tax on net profits of state chartered banks, and all peddlers' fees, as well as sums appropriated specifically for the School Fund by the General Assembly.<sup>14</sup> It was to build up until the principal would "yield an annual interest or income sufficient to defray the current expenses of keeping a good, free common school, in each district in the several towns, for the period of two months." Unfortunately, the legislation also allowed it to be loaned out to the state or other individuals. By 1843, Governor John Mattocks, in his inaugural address, passed on the recommendations of the Auditor of Accounts that the fund, and the debts the state owed to the fund,--in 1843 amounting to over \$200,000--be cancelled.<sup>15</sup> The State School Fund was abolished in 1845, and all notes and moneys made the property of the state.<sup>16</sup> The fund was reestablished in 1906 and the money refunded as a moral obligation of the state.

The Committee that was given the responsibility to inquire into this subject concluded that the act abolishing the fund was constitutional but deferred on the question of whether the legislative decision was expedient or not, deciding that to be "the appropriate inquiry of the legislature."

The state's listing laws were also a source of concern for the Council. The Council wanted wild lands with a value of less than \$2.00 an acre exempted from all taxes except those for making and repairing roads and bridges. The Committee on Taxes and Expenditures was certain the laws were unconstitutional, but reluctant to make any recommendation to the Legislature on the subject, given the Council's own limited constitutional authority. For that reason, the Council decided to make no recommendation.

The Bradleyvale tax, assessing six cents per acre of land in that town regardless of its value, troubled the Council as a violation of the proportional contribution clause of the Vermont Constitution. As with other acts, however, the Committee on the Powers of the Constitution decided that the constitutionality of such an act should be left to the Supreme Court, and was not for the Council to decide. In 1856, Bradleyvale was divided between the towns of Victory and Concord. The records of the Vermont Supreme Court show no challenge to the Bradleyvale tax.

The same reluctance to interfere with the court's authority in constitutional affairs was expressed by the Council in the case of the act annexing Mansfield to Stowe.<sup>17</sup> The Committee on the Powers of the Constitution found that the Council did not have the power to redress grievances and that since only the courts had the power to rectify such problems, the issue of Mansfield would best be left to that institution.

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<sup>14</sup>*Revised Statutes*, Title IX, Chapter XVIII, §§ 27-41.

<sup>15</sup>*Journal of the Senate*, October 14, 1843; 21.

<sup>16</sup>*Laws of 1845*, No. 36, 24-5.

<sup>17</sup>*Laws of 1848*, No. 11, 11.



The sale of alcohol was another subject the Council reviewed in 1848. An 1846 law gave voters the right to decide whether liquor could be sold in their towns; the Council felt this decision should have been made by the legislature, not the voters, and that the act should not require voters to be qualified to vote in both town and Freeman's meetings, which would disqualify many voters.<sup>18</sup> Every male citizen of twenty-one years of age who had resided in Vermont for at least one year was qualified to vote in Freeman's meetings--today called the General Election.<sup>19</sup> Every male person of the age of twenty-one years, whose list had been taken in any town the year the year preceding his voting, and all persons exempt from taxation because they were 60 or over, while resident in the town, were voters at town meeting.<sup>20</sup> In 1851, this law was repealed and replaced by a local license law, authorizing selectmen to issue licenses to sell intoxicating liquors. Only two licenses were allowed per year, and then the sales would be limited to sales for medicinal, chemical, and mechanical purposes only. Victualing houses could sell only small beer and cider.<sup>21</sup> In 1852, this law was repealed in favor of an even more restrictive law.<sup>22</sup>

The November 3, 1846 law on licensing Innkeepers and Retailers received the same treatment by the Council, as did the memorial of Charles Adams, President of the Vermont Temperance Society. The Council was not about to waste its powers in recommendations that would not be respected by the legislature or where another body, the courts, had the real power to dispose of such complaints.

Not all of the Council's work was ignored. An act on electing county officers, for instance, approved November 12, 1847,<sup>23</sup> required that votes for senator would have to be transmitted to the president of the senate and the county clerk within four, instead of ten days from the date of the elections.<sup>24</sup> The fifth Article of Amendment to the Vermont Constitution, adopted in 1836, required ten days for delivery to the county clerk by town clerks and another ten days for the clerk to deliver certificates of election to the senate and to the person elected. On October 24, 1848, following the second session of

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<sup>18</sup>The Vermont Supreme Court also reviewed this question, and concluded that the laws were not unconstitutional. *Bancroft v. Dumas*, 21 Vt. 456 (1849).

<sup>19</sup>*Revised Statutes*, Title I, Chap. I, § 1.

<sup>20</sup>*Revised Statutes*, Title VII, Chapter XIII, § 1.

<sup>21</sup>*Laws of 1850*, No. 30, 20-24.

<sup>22</sup>*Laws of 1852*, No. 23, 18-30. This law included a referendum provision allowing voters a choice between enactment dates. If the later date was chosen, it was assumed the law would be repealed by the legislature, thus addressing the question of legislative delegation. The Vermont Supreme Court reviewed this act and found it not unconstitutional. *State v. Parker*, 26 Vt. 357 (1854).

<sup>23</sup>*Laws of 1847*, No. 41, 28.

<sup>24</sup>*Revised Statutes*, Chapter I, §§ 20 & 21, 40-1.

the Council, the General Assembly repealed this act.<sup>25</sup> This is the act mentioned in the Address: "In the single instance in which we were induced to recommend to the Legislature the repeal of a law repugnant to the Constitution, it appeared manifest that it was passed from inadvertence, and the Legislature had themselves discovered the error into which they had inadvertently fallen, and had anticipated our views by commencing a proceeding for the repeal, before they received a communication from us."<sup>26</sup>

The Censors urged the legislature to abandon the practice of referring to acts by name when they were amended or repealed, but rather by reference to the last compilation. The General Assembly agreed, and first started the modern method of adding, amending or repealing by reference to a compilation in 1851, the year following the latest publication of a compilation, in this case the *Compiled Statutes* (1850).

In fulfilling its duty to decide whether public taxes had been justly laid and collected in all parts of the state, the Council found wide disparity among the professionals on how assessments should be made and when the County Convention of Listers should be held. The Council was also concerned about the taxation of wild and uncultivated land, especially that owned by nonresidents. No action or response was made by the Legislature or the Supreme Court to either complaint.

The 1848 Council of Censors showed a marked deference to the other branches of government in resolving issues brought to its attention. Its lack of conviction reflected a growing awareness of its obsolescence.

#### The Constitutional Convention of 1850

The 1848 Council of Censors made its recommendations on amending the Vermont Constitution and called a constitutional convention to consider those fifteen amendments. The Convention met at Montpelier on January 2 and quickly elected Luther B. Hunt Chairman. It continued meeting until January 11.

Ten of the amendments were adopted by the Convention. The Convention did not agree to the proposals to apportion the House according to population, to prohibit balloting for representatives after midnight on the first Tuesday of September, to elect registers of probate, to permit popular referendum of constitutional amendments, or to a limitation on the number of justices of the peace. This last was adopted in substance by the passage of proposal number 5, however, which authorized the election of justices by the voters of towns and included a limitation on the number to be elected which was identical to proposal number 15. Number 15 was probably offered as an alternative to number 5, giving those who would prefer not to elect justices the option of limiting the total number to be appointed by the General Assembly.

The Convention voted to adopt proposals to amend the Constitution to require public elections of county and probate district officers, and justices; to specify the terms and filling of vacancies of governor, lieutenant governor and treasurer; to amend the law on bonds for treasurer, sheriffs and high bailiffs; and to reapportion the Vermont Senate according to population.

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<sup>25</sup>*Laws of 1848*, No. 13, 12.

<sup>26</sup>See page 505.

Before the Convention adjourned in the evening of January 11, the members resolved, "That this Convention recommend that the several officers to be elected by the people, named in the Articles of Amendment to the Constitution, adopted by this Convention, except Justices of the Peace, be voted for on the State Ticket, and in the same box, and that the Justices of the Peace be voted for in a separate box, to be provided by the several towns for that purpose."

As in other years, the Convention journal tells little about the debate or discussion on the various articles, other than reporting the roll call votes on the various resolutions.

The Convention Journal was published by George J. Stacy, Book and Job Printers, of Burlington, in 1856.

### The 1855 Council of Censors

The septenary preceding the 1855 Council witnessed a resolution of the disruptive temperance issue, the further discrediting on one major party, the demise of another, and the successful inauguration of a third.

In 1852 a closely divided legislature finally enacted a statewide prohibition measure which was ratified by the voters in 1853. The temperance law, which had been strongly backed by Governor Erastus Fairbanks, cost the Whigs dearly. In 1853 the Whig ticket once again failed to obtain a majority and the legislature, an amalgamation of Whigs, Democrats, and Free Soilers, selected the Democratic candidates after prolonged balloting. The Free Soil-Democratic coalition that brought about this result immediately fell apart and the legislature proved unable to fill one of Vermont's U.S. Senate seats. The paralysis of the legislature angered many commentators, the December 15, 1853 *Montpelier Watchman and State Journal* castigating it as "the longest, the most expensive, the worst managed, the most undignified and the most inefficient of any holden in our remembrance."

While temperance loosened Whig loyalties, slavery completed the discrediting of the Democrats. In reaction to the 1854 Kansas-Nebraska Act a new coalition of Whigs, Free Soilers, and some Democrats was formed in July, 1854. The new coalition, the Republican Party, immediately captured the state government and began a domination of Vermont politics which would last over one hundred years.

The prolonged success of the Republican Party was not immediately apparent as another challenger appeared--the American or Know-Nothing Party. The American Party, with strong nativist planks, had some local success in Vermont in 1854.

Though the Know-Nothings would soon founder on the slavery issue, the fluid political situation in Vermont provided some short term opportunities. One of these opportunities was the Council of Censors where the lack of strong party tickets, a host of special interest slates, and low voter interest allowed the Know-Nothings to capture the Council. As the April 6, 1855 *Montpelier Watchman and State Journal* noted, "As we predicted, the K.N. ticket is elected. The vote is very light. None but the K.N. tickets were furnished, except in a few localities. In some cases where Independent tickets were furnished, they were withheld, and in other cases were destroyed, by the persons who got possession of them."

The Know-Nothings, perhaps because they lacked a broad town-based organization, were willing to push the proportional representation further than any preceding Council. Several of the Know-Nothing Censors also hailed from commercial centers which had traditionally promoted proportional representation. For whatever reason, the 1855 Council not only called for proportional representation, it took steps to circumvent the fate of previous proposals by re-structuring the constitutional convention. In doing so it exacerbated resentments against the Council and started the trail of events which would lead to its demise.

*Note on text:* The text is from the 1856 Journal printed at the Register Book and Job Office, Middlebury.



Journal  
of the  
Council of Censors

First Session, at Montpelier.

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Senate Chamber,  
Wednesday, 6th June, 1855.

The Council of Censors, elected on the last Wednesday of March, in the year of our Lord 1855,<sup>1</sup> met in the Senate Chamber, at Montpelier, on the first Wednesday, being the 6th day of June, 1855; at ten o'clock, A.M.; when the following named members appeared, produced their credentials, and took their seats, to wit:

JOHN W. VAIL,  
EVELYN PIERPOINT,  
JAMES M. SLADE,  
DAVID FISH,  
WILLIAM C. WILSON,  
DAVID HIBBARD,  
WILLIAM W. WELLS,  
CHARLES S. DANA,  
JOHN B. HUTCHINSON,  
THOMAS F. HAMMOND,  
LAFAYETTE WARD,  
THOMAS GLEED,  
NATHANIEL P. NELSON.

The Council was called to order by Mr. WILSON, and DAVID HIBBARD was elected President *pro tem.*, and JAMES M. SLADE Secretary *pro tem.*

On motion of Mr. DANA,

*Resolved*, That the Sergeant-at-Arms be requested to attend on the Council by himself or deputy.

On motion of Mr. PIERPOINT,

*Resolved*, That a Committee of three be appointed by the Chair, to draft Rules for the government of the Council.

Mr. PIERPOINT, Mr. HUTCHINSON and Mr. DANA, were appointed on this Committee.

On motion of Mr. HUTCHINSON,

*Resolved*, That the Council adopt the Rules of the last Council of Censors, until new Rules are prepared and adopted.

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<sup>1</sup>"An act to regulate the choice of a council of censors," *Laws of 1854*, No. 6, 6-7.

On motion of Mr. VAIL,

*Resolved*, That the President request some clergyman of this village to attend on the Council as Chaplain, and that the morning services of the Council be opened by prayer.

On motion of Mr. PIERPOINT,

*Resolved*, That a Committee of three be appointed to receive and report on the credentials of members.

Mr. VAIL, Mr. WARD and Mr. WILSON were appointed this Committee.

On motion of Mr. WILSON,

*Resolved*, That the Council proceed at two o'clock, P.M., to elect permanent officers of the Council.

On motion of Mr. PIERPOINT, the Council adjourned until two o'clock, P.M.

#### Afternoon.

Committee on credentials of members reported, and the report was read and accepted.

On motion of Mr. PIERPOINT,

*Resolved*, That the Council do now proceed to the election of President and Secretary.

Whereupon, the ballots having been taken and examined,

DAVID HIBBARD

was found to be elected President, and

JAMES M. SLADE

was unanimously elected Secretary of the Council.

Mr. PIERPOINT, from the Committee on Rules, submitted the following report, which was read, accepted, and the Rules as reported adopted, as the Rules of the Council.

*To the Council of Censors:*

Your Committee, to whom was referred the duty of reporting Rules for the government of the Council, submit the following report, viz:

I. The Council shall meet every day (Sundays excepted) at nine o'clock, A.M. and two o'clock, P.M., unless otherwise ordered.

II. The President shall take the chair at the hour to which the Council stands adjourned, and call the Council to order for the prosecution of business.

III. All Committees shall be appointed by the President; but such appointments may, on motion of a member, be overruled by the Council, and the vacancy filled by the Council on nomination of a member, or other members may be added to any Committee by vote of the Council.

IV. No member shall absent himself from the services of the Council, unless he shall have leave.

V. The Yeas and Nays may be taken and entered upon the journals, upon the call of a member.

VI. The following Standing Committees shall be appointed, to wit:

1st. A Committee of three to enquire whether the Constitution has been preserved inviolate during the last septenary; which shall be called the

*Committee on the Powers of the Constitution.*

2d. A Committee of three to enquire whether the legislative branch of the government have performed their duties as guardians of the People, or assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution, and whether the laws generally have been duly executed, which shall be called the *Legislative Committee*.

3d. A Committee of three, to enquire whether the Executive has assumed other or greater powers than the Constitution allows, which shall be called the *Executive Committee*.

4d. A Committee of three, who shall enquire whether the public taxes have been levied and collected, and in what manner the public money has been disposed of, which shall be called the *Committee on Taxes and Expenditures*.

5th. A Committee of five, to propose and report such business for the consideration of the Council as they may think proper, which shall be called a *Committee on Arrangements*.

VII. All motions shall, on request of the President, be reduced to writing.

VIII. A motion to adjourn shall be always in order.

IX. Motions on resolutions shall have precedence as follows:

1st. To dismiss.

2d. To postpone to a day certain.

3d. To lie on the table.

4th. To commit.

5th. To amend.

Respectfully submitted,

EVELYN PIERPOINT, *for Committee.*

Mr. WILSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire and report upon the expediency of so amending the Constitution, that hereafter all amendments to the Constitution shall be proposed by the Senate of Vermont, and promulgated at least six months before the election of the members of the next session of the Legislature, for the previous consideration of the Freemen, that they may have an opportunity of instructing their members on the subject, and their adoption submitted to the Senate and House of Representatives, at the next annual session after the amendments have been proposed, to be by them in Joint Assembly adopted or rejected, and in that case to abolish the Council of Censors.

Which was read and adopted.

Mr. WILSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire and report upon the expediency of erecting a District Court in each County in the State, and provide for the election of Judges thereof.

Which was read and adopted.

Mr. GLEED introduced the following resolution:

*Resolved*, That a Committee of three be appointed to consider and report to this Council whether it be expedient so to amend the Constitution of this State, that the Legislature shall meet biennially.

Which was read and adopted.



Mr. WILSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire and report to the Council upon the expediency of so amending the Constitution, that the Judges of the Supreme Court shall be elected for the term of seven years, and such election be made by the freemen of the State.

Which was read and adopted.

Mr. HUTCHINSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire into the expediency of so amending the Constitution that the Judges of the Circuit Court, Judges of Probate, and Justices of the Peace be hereafter elected for the term of three years.

Which was read and adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution enquire into the expediency of so amending the Constitution as to elect the Governor, Lieutenant Governor and Treasurer of the State, and Town Representatives and all Town Officers, by a plurality of the votes of the freemen.

Which was read and adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire into the expediency of so amending the Constitution as to give the election of Secretary of State, Auditor of Accounts, and Bank Commissioner directly to the people.

Which was read and adopted.

Mr. WARD introduced the following resolution:

*Resolved*, That the Committee in the first resolution also take into consideration the expediency of so amending the Constitution, that all propositions for the amendment or alteration of the Constitution of this State made hereafter by the Council of Censors, be submitted directly to the freemen of the State for their consideration and adoption or rejection, by an ordinance to be promulgated by the Council of Censors at the time of submitting their propositions of amendment.

Which was read and adopted.

Mr. DANA introduced the following resolution:

*Resolved*, That the Committee on the Powers of the Constitution be directed to enquire as to the expediency of so amending the Constitution, as to dispense with the requirement therein, of returning the ballots of the freemen for Governor, Lieutenant Governor and Treasurer, to the General Assembly.

Which was read and adopted.

Mr. PIERPOINT introduced the following resolution:

*Resolved*, That the Treasurer of this State be requested to furnish this Council, at the commencement of its adjourned session, a statement of balances due from all officers, who by virtue of their

office, are required to account to him for the balances in their hands belonging to this State, the time when such balances accrued, and the names of such delinquents.

Which was read and adopted.

Mr. GLEED introduced the following resolution:

*Resolved*, That the Auditor of Accounts be requested to furnish this Council, at their adjourned session, a statement of balances due the State, if any, from the several Sheriffs, County Clerks, State's Attorneys, in the several counties--and the years in which such balances accrued, and the names of such delinquent officers.

Which was read and adopted.

On motion of Mr. DANA, the Council adjourned.

#### Thursday, June 7, 1855.

Prayer by Rev. Mr. Scott.

Journal of yesterday read and approved.

The Chair announced the appointment of the following Committees:

On the Powers of the Constitution, Mr. HUTCHINSON, Mr. WILSON, Mr. HAMMOND.

On the Legislative Committee, Mr. WARD, Mr. DANA, Mr. SLADE.

On the Executive Committee, Mr. PIERPOINT, Mr. GLEED, Mr. VAIL.

On the Committee on Taxes and Expenditures, Mr. WELLS, Mr. FISH, Mr. WILSON.

On the Committee of Arrangements, Mr. WILSON, Mr. SLADE, Mr. DANA, Mr. PIERPOINT.

The Chair further announced the appointment of the following Committees:

On the resolution of Mr. WILSON, providing for future amendments to the Constitution, and the abolishment of the Council of Censors, Mr. WILSON, Mr. WARD, Mr. WELLS.

On the resolution of Mr. WILSON, upon the expediency of erecting a District Court, and providing for the election of Judges thereof, Mr. WILSON, Mr. PIERPOINT, Mr. HUTCHINSON.

On the resolution of Mr. GLEED, providing for biennial sessions of the Legislature, Mr. GLEED, Mr. NELSON, Mr. HAMMOND.

On the resolution of Mr. WILSON, extending the term of office of Supreme Court Judges, and providing for the election thereof, Mr. VAIL, Mr. DANA, Mr. FISH.

On the resolution of Mr. HUTCHINSON, providing for the extension of the term of office of the Circuit Court Judges, Judges of Probate and Justices of the Peace, Mr. HUTCHINSON, Mr. NELSON, Mr. SLADE.

On the resolution of Mr. SLADE, providing for the election of Secretary of State, Auditor of Accounts and Bank Commissioner by

the people, Mr. SLADE, Mr. HAMMOND, Mr. DANA.

Mr. WILSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire and report upon the expediency of so amending the Constitution, as to elect the Executive and Legislative officers for a longer term than one year.

Which was read and adopted.

Mr. HAMMOND introduced the following resolution:

Whereas, By the fourth Article of "a declaration of the rights of the inhabitants of the State of Vermont," it is provided, "that every person within this State 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." And

Whereas, The unreasonable delay and costs which attend a large proportion of suits at law in this State, and the growing dissatisfaction and complaints of the people in that account, show conclusively that a wrong somewhere exists, which, if possible, should be ferreted out, and the true remedy applied;

Therefore,

*Resolved*, That a Committee of three be appointed to draft an address to the Legislature of this State, embodying these evils, and such others as may seem to said Committee proper to be remedied, and suggest such alterations in the existing laws as may to them seem most likely to effect the objects desired.

Provided, That such address be first submitted to the Council of Censors, for their inspection and approval.

Which was read and adopted.

Mr. WILSON introduced the following resolution:

*Resolved*, That the Council adjourn on Friday next, at eight o'clock, A.M., to meet at the State House, in Montpelier, on the first Tuesday in October next, at ten o'clock, A.M.

Which was read and adopted.

Mr. WILSON introduced the following resolution:

*Resolved*, That the Secretary procure one hundred and fifty copies of the Journal of the Council, at its present session, to be published for the use of its members, and that the Secretary forward by mail one copy of said Journal to each of the publishers of weekly or daily papers in this State, and six copies to each member of the Council.

Which was read and adopted.

Mr. WELLS introduced the following resolution:

*Resolved*, That the Secretary be authorized to make up and certify the debentures of the Council and contingent expenses.

Which was read and adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That it is expedient so to alter the Constitution of this State, as to give the choice of Registers of Probate to the freemen of the several Probate Districts, in the same manner that other County and Probate officers are chosen.

Which was read, and on motion of Mr. SLADE, referred to the Committee raised upon the resolution of Mr. HUTCHINSON, providing for the extension of the term of office of Circuit Court Judges, Judges of Probate, and Justices of the Peace.

Mr. HUTCHINSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to take into consideration Article 1, of the amendments of the Constitution, and report thereon.

Which was read and adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That the Legislative Committee are hereby directed to enquire whether the neglect of the Legislature to elect a State Superintendent of Common Schools is not a violation of the Statute Law of the State in such case made and provided.<sup>2</sup>

Which was read and adopted.

On motion of Mr. WILSON, the Council adjourned.

#### Afternoon.

The President announced the following Committees:

On the resolution of Mr. WILSON, providing for the election of the Executive and Legislative officers for a longer term than one year, Mr. WILSON, Mr. NELSON, Mr. FISH.

On the resolution of Mr. HAMMOND, providing for an address to the Legislature of the State, embodying the evils at present existing in the prosecution of Suits at Law, Mr. HAMMOND, Mr. VAIL, Mr. WARD.

On the resolution of Mr. HUTCHINSON, to take into consideration Article 1, of the amendments of the Constitution, Mr. HUTCHINSON, Mr. PIERPOINT, Mr. DANA.

Leave of absence was granted to Mr. PIERPOINT, from and after this afternoon's session, for the remainder of the session of the Council.

Mr. VAIL introduced the following resolution:

*Resolved*, That the Secretary of the Council is hereby directed to receive and disburse the debentures of the present session.

Which was read and adopted.

Mr. WARD introduced the following resolution:

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<sup>2</sup>The first law authorizing the appointment of a state superintendent of common schools was enacted in 1845. *Laws of 1845*, No. 37, § 3, 26; *C.S.*, 142, § 1.

*Resolved*, That the Committee appointed on the resolution of Mr. HUTCHINSON, providing for the extension of the term of office of the Circuit Court Judges, Judges of Probate and Justices of the Peace, be instructed to enquire into the expediency of so amending the Constitution as to give the election of Circuit Judges directly to the freemen of their respective Circuits.

Which was read and adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That it is expedient to amend the Constitution of this State so as to require, in addition to the qualifications now required, of a candidate for admission as a freeman, that he be able to read the English Language.

Which was read, adopted and referred to the Committee on the resolution of Mr. HUTCHINSON, "to take into consideration Article 1st, of the amendments of the Constitution."

The President of the Council was, on motion of Mr. WILSON, added to the Executive Committee, and also to the Committee on Taxes and Expenditures.

On motion of Mr. GLEED, the Council adjourned until tomorrow morning, at eight o'clock.

**Friday, June 8, 1855.**

Prayer by Rev. Mr. Scott.

Journal of yesterday read and approved.

On motion of Mr. HUTCHINSON,

The President then declared the Council adjourned to the first Tuesday of October next.

Attest,

JAMES M. SLADE, *Secretary*.

**Second Session, at Montpelier.**

Senate Chamber,

**Tuesday, 2d October, 1855.**

The Council of Censors met agreeably to adjournment.

Present,

JOHN W. VAIL,  
DAVID HIBBARD,  
CHARLES S. DANA,  
THOMAS F. HAMMOND,  
NATHANIEL P. NELSON,  
JAMES M. SLADE,  
JOHN B. HUTCHINSON.

On motion of Mr. SLADE,

*Resolved*, That the President request some clergyman of this village to attend on the Council as Chaplain during the present session, and that the morning services be opened by prayer.

On motion of Mr. VAIL,

*Resolved*, That the Sergeant-at-Arms be requested to attend by himself or deputy, on the present session of this Council.

On motion of Mr. DANA, the Council adjourned until tomorrow morning at ten o'clock.

### Wednesday, October 3, 1855.

Prayer by Rev. Mr. Lord.

Mr. WILSON, Mr. PIERPOINT and Mr. WELLS, members of the Council, appeared and took their seats.

The President laid before the Council a communication from William M. Pingrey, made in compliance with a resolution passed at the first session of the Council, which was read, and on motion of Mr. SLADE, ordered to be spread upon the Journals of the Council.

*To the Council of Censors of the State of Vermont:*

In compliance with your resolution requesting the Auditor of Accounts to furnish your "Council, at their adjourned session, a statement of balances due the State, if any, from the several Sheriffs, County Clerks and State's Attorneys in the several counties, and the years in which such balances accrued, and the names of such delinquent officers:" the undersigned submits the following:

The undersigned has no information of the delinquency of any Sheriff in the State.

There is no culpable delinquency of County Clerks in any of the counties in this State, within the knowledge of the Auditor, excepting in Bennington county.

The late Clerk of Bennington County, Henry Kellogg, Esq., has suffered a balance of \$39.65 to stand against him since June, 1854.

The present Clerk of Bennington County, Samuel H. Blackmer, Esq., is indebted to the State as Clerk in the sum of \$317.44. How long an indebtedness has existed, the undersigned is unable to state. By referring to the annual reports of the Auditor of Accounts, commencing with the year 1850, his indebtedness is found to be as follows:

For the year ending August 31, 1850,	\$145.54
" " 1851,	142.06
" " 1852,	358.34
" " 1853,	316.49
" " 1854,	208.34

In relation to the indebtedness of State's Attorneys, the Auditor has usually no information, excepting from returns made by themselves. When the present Auditor received the papers belonging to the Auditor's office, there were but few returns from State's Attorneys among them. He is therefore led to the belief that but few returns were made.

The undersigned wrote to all delinquents last year, and by that means obtained returns from all, accompanied in nearly all cases

with the Treasurer's receipt.

The undersigned is not aware of any delinquency of State's Attorneys for the year ending August 31, 1854, worthy of notice.

The Auditor's Report will show an estimated sum in the hands of State's Attorneys, which it is expected will be paid into the Treasury soon after the close of the fiscal year embraced in the Auditor's Report.

The undersigned has no certain knowledge of money being retained in the hands of State's Attorneys of former years, excepting in one case. George F. Houghton, Esq., late State's Attorney for Franklin County, retains in his hands \$556.32 of the State's money received by him, as early as 1851, under a claim that the State is indebted to him in about the same amount.

Respectfully submitted.

William M. Pingrey, Auditor of Accounts.

Auditor's Office, Bethel, Oct. 1, 1855.

Mr. DANA introduced the following resolution:

*Resolved*, That this Council enquire into the expediency of recommending that the Constitution be so altered, that the House of Representatives shall consist of no less than one hundred, nor more than one hundred and fifty members, to be elected in single districts, composed of contiguous territory, and of as equal population as practicable.

Which was read and adopted; and on motion of Mr. DANA, referred to the Legislative Committee.

Mr. DANA introduced the following resolution:

*Resolved*, That the Committee on the resolution of Mr. HUTCHINSON, be instructed to enquire into the expediency of so altering the Constitution in regard to the election of Justices of the Peace, that they may be elected at the annual town meetings, and in such manner as the Legislature may direct.

Which was read and adopted.

Mr. HAMMOND, from the Committee raised upon resolutions providing for an address to the Legislature of the State, embodying the evils at present existing in the prosecution of Suits at Law, reported an address, which was read, and on motion of Mr. DANA referred to the Committee of the Whole.

Mr. WILSON introduced the following resolution:

*Resolved*, That a committee of three be appointed to enquire and report upon the expediency of erecting a Justice Court (with stated sessions thereof) in each town in the State.

Which was read and adopted.

Mr. DANA introduced the following resolution:

*Resolved*, That this Council enquire into the expediency of recommending an amending to the Constitution so as to provide therein, that in all elections made directly by the Legislature or either branch thereof, the viva voce mode be adopted.

Which was read and adopted.

Mr. HUTCHINSON introduced the following resolution:

*Resolved*, That a Committee of three be appointed to take into consideration the method of submitting to the action of the people, for their adoption or rejection, the alterations and amendments of the Constitution of this State, proposed by this Council of Censors.

Which was read and adopted.

Mr. PIERPOINT introduced the following resolution:

*Resolved*, That this Council enquire into the expediency of recommending an alteration in the Constitution, so as to provide that in all applications to the Executive of the State for the exercise of the power to pardon or commute, public notice thereof, and of the time and place of hearing the same, shall be given by publication in some newspaper published in the county where the conviction was had.

Which was read and adopted.

On motion of Mr. SLADE, the Council adjourned.

#### Afternoon.

Council resolved itself into a Committee on the Whole on the address of Mr. HAMMOND, presented at the session of the Council this forenoon, Mr. WILSON in the Chair, and the Committee after consideration of the subject, rose, and reported progress, and had leave to sit again.

The Chair announced the appointment of the following Committee:

On the resolution of Mr. WILSON, providing for the erection of a Justice Court in each town in the State, Mr. WILSON, Mr. PIERPOINT, Mr. HAMMOND.

Mr. DANA introduced the following resolutions:

*Resolved*, That Article 43 of the Constitution be amended as follows:

ARTICLE 43.--MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to, or alteration of this Constitution, may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, the same having been read three times on three several days in each House, such proposed amendment, amendments or alteration shall be entered on the journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and published with the laws which may have been passed at the same session; and if such proposed amendment, amendments or alterations, after being so published shall be agreed to, in the first session thereafter by a majority of each House after the same shall have been three times read, it shall be the duty of the General Assembly to submit such proposed amendment, amendments or alterations to the freemen in such manner and at such time as the Legislature may prescribe; and



if the people shall approve and ratify all or several such amendment, amendments or alterations by a majority of the freemen qualified to vote for members of the Legislature, voting thereon, such amendment, amendments or alterations so approved and ratified shall become part of the Constitution.

SEC. 2. At the general election to be held in the year eighteen hundred and \_\_\_\_\_, and in each \_\_\_\_\_ year thereafter, the question "Shall there be a Convention to revise, alter and amend the Constitution?" shall be submitted to the freemen qualified to vote for members of the Legislature, and in case a majority of the freemen so qualified, voting at such election, shall decide in favor of a Convention for such purpose--the Legislature at its next session shall provide by law for the calling of such Convention and the election of delegates thereto, provided that no alteration shall be made in the Constitution until the same shall have been submitted to the freemen and approved by a majority of the electors qualified to vote for members of the Legislature voting on the subject.

Which were read, and on motion of Mr. DANA, referred to the Committee raised on the resolution of Mr. WILSON, providing for future amendments to the Constitution, and the abolishment of the Council of Censors.

On motion of Mr. HUTCHINSON, the Council adjourned until tomorrow morning at 10 o'clock.

#### Thursday, October 4, 1855.

Prayer by Rev. Mr. Lord.

Journal of yesterday read and approved.

Mr. GLEED, member of the Council, appeared and took his seat.

The President announced the appointment of the following Committee:

On the resolution of Mr. HUTCHINSON, to take into consideration the method of submitting to the people, alterations and amendments that may be proposed by the Council of Censors, Mr. HUTCHINSON, Mr. WILSON, Mr. GLEED.

On motion of Mr. PIERPOINT, the Communication from Hon. WILLIAM PINGREY, Auditor of Accounts, was referred to the Committee on Taxes and Expenditures.

Mr. HUTCHINSON, from the Committee to whom was referred the resolution of Mr. SLADE, providing for the election of Register of Probate by the people, made the following

#### REPORT.

*To the Council of Censors now in Session:*

Your Committee to whom was referred the resolution of Mr. SLADE, in relation to the expediency of so altering the Constitution of this State, as to give the choice of Registers of Probate to the freemen of the several Probate Districts, in the same manner that other County and Probate officers are chosen, respectfully report the

following article of amendment to the Constitution, viz.:

Registers of Probate shall be elected by the freemen of their respective Probate Districts.

Your Committee are unanimous in presenting the foregoing proposition, and nearly so in all their views in regard to the subject; otherwise we might have thought proper to offer some apology for again presenting a proposition which former Councils of Censors have offered and which has been rejected by the delegates of the people in Convention. We are convinced that this is a subject of sufficient importance to again present it for further consideration. Reforms are always the effect of progression, and change of sentiment. Registers of Probate are not merely recording officers, but oftentimes, and in case of the death or removal of the Judge, for a great portion of the term, perhaps, act as Judge and exercise a judicial power. At such times often arise questions of great magnitude and such as require a nice discrimination and a correct application of the principles of the common law with a due regard to all Statute laws regulating the settlement of estates. The Register should possess the same qualifications as the Judge. He is often brought in contact with the people in the transaction of his business, and is truly a public officer on whom the people rely to subserve, promote and protect impartially their interests. Formerly it has not been unfrequent in the settlement of estates, for the Judge to be on trial before a Register of his appointing. This was attempted to be remedied by the last Legislature,<sup>3</sup> by reference in certain cases to the first Assistant Judge of the County Court, but the remedy is very imperfect. The first Assistant Judge of the County Court may be a relative of the Judge of Probate, or what is more probable perhaps, may be interested in the question at issue as a creditor, legatee, heir or otherwise, and then there is no remedy. And although he is a person of sound common sense, and good judgment, and well fitted for performing the duties of Assistant Judge, he is generally unacquainted with the principles of law regulating Probate matters, and would actually be more unfit to decide upon the questions thus occasionally brought before him, than the Register. Therefore permit the people to have the power of selecting a Register in whose qualifications they have confidence, and let him feel that he and he alone, is directly accountable and subject to the scrutiny of the people in the performance of his duties.

Thus having briefly stated some of our reasons for the alteration proposed, the foregoing report is respectfully submitted by

J. B. HUTCHINSON, *for Committee.*

Which was read, accepted, and on motion of Mr. SLADE, ordered

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<sup>3</sup>Laws of 1854, No. 15, 18-19.

to lie on the table.

Mr. SLADE, from the Committee to whom was referred the resolution providing for the election of Secretary of State, Auditor of Accounts, and Bank Commissioner by the people made the following

REPORT.

*To the Hon. Council of Censors now in Session:*

Your Committee to whom was referred the resolution providing for an amendment of the Constitution, so that the Secretary of State, Auditor of Accounts, and Bank Commissioner shall be elected by the people, respectfully report:

That they have had the subject matter embraced in the resolution referred to them under consideration, and are clearly of the opinion that the public interests demand that the election of these officers should be taken from the Legislature and given to the people--the source of power.

We would therefore recommend to the Council the following articles of amendment to the Constitution, viz.:

Secretary of State shall be elected by the freemen, in the same manner as is now or may be provided for the election of Governor, Lieutenant Governor and Treasurer.

Auditor of Accounts shall be elected by the freemen, in the same manner as is now or may be provided for the election of Governor, Lieutenant Governor and Treasurer.

Bank Commissioner shall be elected by the freemen, in the same manner as is now or may be provided for the election of Governor, Lieutenant Governor and Treasurer.

All which is respectfully submitted.

JAMES M. SLADE, *for committee*

Which was read, accepted, and on motion of Mr. SLADE, laid upon the table.

On motion of Mr. HUTCHINSON, the above report of Mr. SLADE was taken up, and referred to the Committee of the Whole.

The Council resolved itself into a Committee of the Whole, upon the report of the Committee upon the resolution of Mr. SLADE, providing for the election of Secretary of State, Auditor of Accounts and Bank Commissioner by the people--Mr. HAMMOND in the Chair; and the Committee, after consideration of the subject, upon the motion of Mr. WILSON, rose and reported to the Council that it is expedient to adopt the amendments proposed.

Mr. PIERPOINT introduced the following resolution:

*Resolved*, That the vote of this Council accepting a report, shall not be considered as the adoption and final disposition of the same; but the same may be called up for action at any time prior to the adoption of such amendments, as may be submitted with an Address to the people of the State.

Which was read and adopted.

On motion of Mr. PIERPOINT, the Council adjourned.

**Afternoon.**

On motion of Mr. WILSON, voted to add one more member to each of the different Committees, upon which was placed the names of Mr. FISH and Mr. WARD, they not being present.

The Chair accordingly appointed on the Committee raised on the resolution of Mr. WILSON, providing for future amendments to the Constitution, and the abolishment of the Council of Censors, Mr. DANA.

Mr. DANA introduced the following resolution:

*Resolved*, That a Committee of three be appointed as a Committee of Revision and Engrossment, who shall report for the consideration of the Council, articles of the several amendments of the Constitution, which may be recommended by this Council.

Which was read and adopted.

The Council in Committee of the Whole, Mr. WILSON in the Chair, took up the Address of Mr. HAMMOND.

The Committee of the Whole, having had said Address under consideration, and through their Chairman made the following

**REPORT.**

The Committee of the Whole recommend to the Council of Censors the adoption of the Address of Mr. HAMMOND,

On motion of Mr. WILSON, the Address of Mr. HAMMOND was recommitted to the Committee raised on the resolutions providing for an Address to the Legislature of the State, embodying the evils at present existing in the prosecution of Suits at Law,

On motion, the Council adjourned until tomorrow morning at 10 o'clock.

**Friday, October 5, 1855.**

Prayer by Rev. Mr. Ballou.

Journal of yesterday read and approved.

Mr. GLEED, from the Committee to whom was referred the resolution "to consider and report to this Council whether it be expedient so to amend the Constitution of the State that the Legislature shall meet biennially," made the following

**REPORT.**

*To the Hon. Council of Censors:*

Your Committee, to whom was referred the resolution "to consider and report to this Council whether it be expedient so to amend the Constitution of this State, that the Legislature shall meet biennially," would beg leave to report: That they have had said resolution under consideration and consider said amendment expedient, and would recommend that the Constitution be so amended. Your Committee would therefore recommend the adoption of the following resolution:

*Resolved*, That a Committee of three be appointed to examine and report to the Council what part of the Constitution would need

amending, in case the amendment providing for "biennial sessions of the Legislature" should be adopted.

All which is respectfully submitted.

THOMAS GLEED, *for committee*

On motion of Mr. PIERPOINT, the Council adopted the resolution proposed by the Committee on biennial sessions of the Legislature.

On motion of Mr. HUTCHINSON, the report of the Committee on biennial sessions of the Legislature was laid upon the table.

The Chair announced the appointment of the following Committee:

On the resolution of Mr. DANA, providing for a Committee of Revision, Mr. DANA, Mr. GLEED, Mr. WILSON.

Mr. WILSON, from the Committee raised "on the resolution providing for future amendments to the Constitution and the abolishment of the Council of Censors," made the following

REPORT.

*To the Hon. Council now in session:*

The Committee to whom were referred several resolutions relating to future amendments to the Constitution, and the abolition of the Council of Censors, having had said matters under consideration would respectfully report:

That section forty-third of the Constitution should be amended to read as follows, viz:

In order that the freedom of this Commonwealth may be preserved inviolate forever, the Senate of the State at a session thereof next to be holden after the first day of October, in the year of our Lord one thousand eight hundred and sixty-two, and at a session thereof in each seven years thereafter, 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, shall propose all such alterations in and amendments to the Constitution 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 the Convention hereinafter provided, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject. And when the Senate propose amendments to the Constitution as herein provided, it shall be their duty to call a convention to consider such amendments, and by an *Ordinance* for that purpose, the Senate shall designate the time, place and mode of electing the delegates of such convention, and the time and place, when and where the convention shall meet. The convention to consider of the amendments proposed to the Constitution by the Senate, and to adopt the same, or such parts thereof as the convention shall judge will be most conducive to

the good government, peace and happiness of the State, shall be composed of ninety delegates, who shall be apportioned to the several counties according to the population, and agreeably to the Constitution and existing laws of the State, for the apportionment of Senators to the several counties thereof. The articles of the Constitution, which is proposed to be amended, makes it the duty of the Council of Censors to enquire whether the Constitution has been preserved inviolate in every part during the last septenary, and whether the Legislative and Executive branches of government have performed their duty as guardians of the people, and whether the public taxes have been justly laid, collected and disposed of, and whether the laws have been duly executed. The history of the past shows that the duties of the Council of Censors, except so far as relate to propositions of amendment to the Constitution, are merely nominal. It is the duty of the Supreme Court to decide all questions relating to the constitutionality of the acts and doings of the Legislature, and we believe it is within the power of the Legislature to make provision by law, for the punishment of any government officer, who shall exceed his authority, or be found guilty of a dereliction of duty. It has come within the knowledge of your Committee, that the question of abolishing the Council of Censors, has been, for several years, discussed by the freemen of the State, and have no doubt that some mode of proposing and adopting amendments to the Constitution, equally as safe as the existing mode, may be adopted. The Committee are unanimous in the opinion that the subject should be submitted to the Council for examination, and that the Council submit the same for the consideration of a convention.

All which is respectfully submitted by

WILLIAM C. WILSON, *for committee*

Which was read, accepted, and laid upon the table.

The Council resolved itself into a Committee of the Whole on the report of Mr. HUTCHINSON, relating to the election of Registers of Probate by the people.

The Committee, after consideration of the subject, rose, reported progress, and had leave to sit again at three o'clock this afternoon.

#### Afternoon.

Mr. HUTCHINSON introduced the following resolution:

*Resolved*, That this Council, when they adjourn at the close of the present session, adjourn to meet at the Court House, in Middlebury, on the second Tuesday of February next, at two o'clock, P.M.

Which was read, and on motion of Mr. WILSON, ordered to lie on the table.

Mr. WILSON introduced the following resolution:

*Resolved*, That this Council, when they close the present session,

adjourn to meet at the Court House, in St. Albans, on the first Tuesday of February next, at two o'clock, P.M.

Which was read, and on motion laid upon the table.

Upon motion of Mr. WELLS, the Council adjourned until Monday next, at two o'clock, P.M.

#### **Monday, October 8, 1855.**

Mr. FISH, member of the Council, appeared and took his seat.

Journal of yesterday read and approved.

The Council took up and further considered the report of Mr. SLADE, relative to the election of Secretary of State, Auditor of Accounts, and Bank Commissioner by the people, and adopted the amendments proposed, article by article, so the articles were adopted, and the whole referred to the Committee of Revision and Engrossment.

The Council, in Committee of the Whole, Mr. HAMMOND in the Chair, took into consideration the report of Mr. GLEED, relative to biennial sessions of the Legislature, and after considering the same, rose and reported to the Council that it is expedient to adopt the report of the Committee on the resolution of Mr. GLEED, providing for biennial sessions of the Legislature. On motion, the Council voted to concur in the recommendation of the Committee and adopt the report.

On motion of Mr. WILSON, voted, that the Committee on the resolution of Mr. GLEED, providing for biennial sessions of the Legislature, be and are hereby instructed to report to the Council an article of amendment to the Constitution, providing for biennial sessions of the Legislature.

Mr. DANA called up the resolution relative to the adoption of the viva voce mode on all elections made by the Legislature or either branch thereof, and on motion of Mr. GLEED, the said resolution was referred to the Legislative Committee.

The President announced the appointment of Mr. GLEED upon the Legislative Committee. Also the appointment of Mr. SLADE on the Committee raised on the resolution of Mr. HAMMOND, providing for an Address to the Legislature of the State, embodying the evils at present existing in the prosecution of Suits at Law.

On motion, the Council adjourned until to-morrow morning, at ten o'clock.

#### **Tuesday, October 9, 1855.**

Prayer by Rev. Mr. Ballou.

Mr. WARD, member of the Council, appeared and took his seat.

Journal of yesterday read and approved.

The President announced the appointment of the following Committee:

On the resolution introduced by the Committee, to whom was

referred the resolution of Mr. GLEED, providing for biennial sessions of the Legislature, Mr. GLEED, Mr. NELSON, Mr. HAMMOND.

Mr. GLEED, from the Committee to whom was referred the resolution providing for biennial sessions of the Legislature, also a resolution of instructions to report articles of amendment to the Constitution to that effect, presented the following

REPORT.

*To the Hon. Council of Censors:*

Your Committee, to whom was recommitted the report of the Committee upon the resolution of Mr. GLEED, relating to biennial sessions of the Legislature, with instructions to report amendments in accordance with said report, would beg leave to report and recommend the adoption of the following propositions:

I. 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, 1857, and on the first Tuesday of September, biennially, thereafter forever.

II. Senators shall be elected (in the manner now directed in the Constitution,) on the day of election for choosing Representatives to attend the General Assembly, and shall hold their offices for the term of two years next after such election.

III. "The General Assembly of the State of Vermont" shall meet on the second Thursday of October, 1857, and on the second Thursday of October, biennially, thereafter forever.

IV. The Governor, Lieutenant Governor and Treasurer shall be elected in the manner directed in the Constitution, on the day of election for choosing Representatives to attend the General Assembly, and the term of office of each respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.

V. Assistant Judges of the County Court, Sheriffs, High Bailiffs, State's Attorneys, Judges of Probate and Justices of the Peace shall be elected in the manner directed in the Constitution, on the day of election for choosing Representatives to attend the General Assembly, and shall hold their offices for the term of two years, said term to commence on the first day of December, next after their election.

Your Committee would say, that the foregoing propositions embrace all the officers whose election and term of office are at present regulated by the Constitution, and that they have had under consideration the 28th section of Part 2, of the Constitution, which is as follows: "The Treasurer's account shall be annually audited, and a fair statement thereof be laid before the General Assembly at their



session in October," and that they do not consider it necessary to alter or amend the same, as they deem it proper that the Treasurer's account should be audited annually, and that the legitimate result of the article as it now stands would be, that the Auditor would submit to the General Assembly a statement of the Treasurer's account for each previous year, at their biennial session in October.

All which is respectfully submitted

THOMAS GLEED, *for committee*

On motion of Mr. SLADE, the above report was accepted and laid upon the table.

Mr. DANA called up the report of the Committee (Mr. WILSON Chairman,) to whom was referred several resolutions "relating to future amendments to the Constitution and abolition of the Council of Censors."

The Council resolved itself into the Committee of the Whole, Mr. HAMMOND in the Chair, upon the above named report.

The Committee of the Whole having had said report under consideration, rose, reported progress, and on motion, had leave to sit again at three o'clock, P.M.

The Council adjourned.

#### Afternoon.

Mr. HUTCHINSON introduced the following resolutions:

*Resolved*, That the Secretary be authorised to make up and certify the debentures of the present session and contingent expenses thereof.

*Resolved*, That the Secretary of the Council is hereby authorised and directed to receive and disburse the debentures of the present session, together with the contingent expenses thereof.

Which were severally read and adopted.

Mr. HUTCHINSON, from the Committee on the Powers of the Constitution, submitted the following

#### REPORT.

*To the Council of Censors now in Session:*

The Committee to whom was referred the subject of so amending the Constitution as to dispense with the requirement therein of returning the votes of the freemen for Governor, Lieutenant Governor and Treasurer to the General Assembly, report that they have had the subject under consideration, and are of opinion that the amendment proposed is expedient, and recommend that the same be referred to the Committee of Revision and Engrossment.

All which is respectfully submitted.

J. B. HUTCHINSON, *for committee*

Which was read, accepted, and on motion of Mr. HUTCHINSON, laid upon the table.

Mr. WILSON, from the Committee to whom was referred the resolution of Mr. WILSON, providing for the election of the Executive

and Legislative officers for a longer term than one year, made the following

#### REPORT.

*To the Council of Censors now in Session:*

The Committee, to whom was referred the resolution of Mr. WILSON, providing for the election of the Executive and Legislative officers for a longer term than for year, having had said matters under consideration, would respectfully report:

That in their opinion the term of the respective offices named in said resolution should be extended; and your Committee recommend that the Constitution be so amended that all Executive and Legislative officers be elected and hold their respective offices for the term of four years.

Your Committee do not deem it necessary for them, at this time, to enter into a lengthy discussion of the reasons which require the adoption of said amendment.

The Committee believe that the proposed amendment is of vital importance to the people of this State. Under the present system of legislation, we cannot reasonably expect permanency in our laws, or uniformity in their execution. Our Constitution, in effect, provides for the election of one Legislature to make laws, and for another to amend or repeal them. It provides for the election of one Executive officer to commence the execution of a law, and for another to execute some amendment to the law or its substitute; consequently the most salutary and unobjectionable laws are liable to be amended or repealed in one year from their passage. One year at least is necessary for an Executive or Legislative officer to become acquainted with the business of his office, and under our present system he cannot have the advantage and benefit of long experience, which is indispensable, to qualify and enable him to discharge his duty.

In the opinion of your Committee, the principal defects in the existing system, are: 1st, Our ablest and most competent men will not consent to sacrifice their own private interests for the purpose of holding office for the term of one year. 2d, If able and competent men do accept of the offices named in said resolution, when they have qualified themselves by study and experience in the discharge of their duty, they are liable to be removed, and their places are filled by other men, whose views produce an entire change in legislation, and in the execution of our laws. 3d, Our laws are liable to be amended or repealed, before their practical operation can be tested by the people. The Committee believe that the adoption of the proposed amendment would improve our system of legislation, and render the execution of our laws more certain and uniform.

The subject of said resolution being connected with subjects embraced in other resolutions, now in the hands of other Committees, renders it inexpedient for this Committee to report

articles of amendment agreeably to the above recommendations, without further instructions from the Council.

All which is respectfully submitted by

WILLIAM C. WILSON, *for committee*

Which was read, accepted, and on motion of Mr. HUTCHINSON, laid upon the table.

Mr. HUTCHINSON, from the Committee on the Powers of the Constitution, made the following

REPORT.

*To the Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr. SLADE, in regard to the expediency of so amending the Constitution as to elect the Governor, Lieutenant Governor and Treasurer of the State, also Town Representatives and all town officers by a plurality of the votes of the freemen, would report that they deem the same expedient.

All which is respectfully submitted.

J. B. HUTCHINSON, *for committee*

Which was read, accepted, and on motion of Mr. HUTCHINSON, laid upon the table.

The report of Mr. GLEED, upon biennial sessions of the Legislature was taken up, and on motion adopted, and the same referred to the Committee on Revision and Engrossment.

Mr. FISH introduced the following resolution:

*Resolved*, That this Council close its present session on Wednesday morning, the 17th instant, and that when they adjourn at that time, they adjourn to meet at the Court House, in Middlebury, on the second Tuesday of February next, at two o'clock, P.M.

Which was read.

Mr. WILSON moved to amend said resolution, by striking out the word "Middlebury" and inserting the words "St. Albans," also by striking out the word "second" and inserting the word "first."

The question being stated and taken, said amendments were lost.

On motion of Mr. GLEED, said resolution was laid on the table.

Mr. HAMMOND introduced the following resolution:

*Resolved*, That when this Council of Censors adjourn, they adjourn to the last Tuesday in January, 1856, at two o'clock, P.M., then to meet at the Court House in Windsor.

Which was read, and on motion of Mr. GLEED, laid on the table.

The Committee to whom was recommitted the Address of Mr. HAMMOND, reported the same back to the Council amended.

Mr. HAMMOND moved to adopt the Address.

Mr. HUTCHINSON moved to amend said Address, by striking out all that part that relates to an act of the Legislature, passed in 1847,

entitled, "An act relating to the rights of married women."<sup>4</sup>

Mr. GLEED moved to lay the Address and amendment on the table.

The question being stated and taken, said motion was lost.

The question returned upon the adoption of the amendment proposed by Mr. HUTCHINSON, and being stated and taken, (the Yeas and Nays having been demanded by Mr. WILSON),

It was decided in the affirmative,--Yeas 7.

--Nays 6.

Those who voted in affirmative, are  
Messrs. PIERPOINT, FISH, WILSON, WELLS, DANA,  
HUTCHINSON, GLEED.--7.

Those who voted in the negative, are

Messrs. VAIL, SLADE, HIBBARD, HAMMOND, WARD, NELSON.--  
6.

So the motion to amend was carried.

Mr. DANA moved to dismiss the Address.

The Yeas and Nays being demanded by Mr. SLADE,

It was decided in the negative,--Yeas 3.

--Nays 10.

Those who voted in the affirmative, are

Messrs. PIERPOINT, DANA, GLEED.--3.

Those who voted in the negative, are

Messrs. VAIL, SLADE, FISH, WILSON, HIBBARD, WELLS,  
HUTCHINSON, HAMMOND, WARD, NELSON.--10.

So the motion to dismiss was lost.

On motion of Mr. HUTCHINSON, the Address was laid on the table until to-morrow morning.

On motion, the Council adjourned.

### Wednesday, October 10, 1855.

Prayer by Rev. Lord.

Journal of yesterday read and approved.

Mr. GLEED, from the Committee to whom was referred the resolution providing for an examination and report to the Council, what points of the Constitution would need amending, in case the amendments proposed for biennial sessions of the Legislature should

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<sup>4</sup>"An act relating to the rights of married women," *Laws of 1847*, No. 37, 26; C.S., Chapter 68, §§ 14 & 15, 403. This act provided that married women may devise real property by will. It also ensured that a married women's right to rents and profits of real estate owned by her prior to marriage or which she may have received during marriage were exempt from levy of execution for the sole debts of her husband. No conveyance of that property during marriage by the husband without her consent by her execution and acknowledgement would be valid.

be adopted, presented the following  
REPORT.

*To the Hon. Council of Censors:*

Your Committee, appointed to examine and report to the Council what parts of the Constitution must necessarily be amended in case the proposition for biennial sessions of the Legislature should be adopted, would beg leave to report, that in their opinion the following parts of the Constitution would need some alteration or amendment:

1. Sec. 8, of Part Second, which now provides that the House of Representatives be chosen on the first Tuesday of September, annually forever.

2. Sec. 9, which provides that the General Assembly "shall meet on the second Thursday of the succeeding October," after such annual election in September.

3. Sec. 10, which provides that the Governor, Lieutenant Governor and Treasurer shall hold their office for the year ensuing their election.

4. Article 4 of the amendments, which provides that Senators "be annually elected."

5. Article 6, which provides that "the freemen of the several towns in each county shall annually give their votes for the Senators."

6. Article 19, which provides that Assistant Judges of the County Court, Sheriffs, High Bailiffs, State's Attorneys, Judges of Probate, and Justices of the Peace, "shall be annually elected by ballot, and shall hold their offices one year."

7. Article 20, which provides that certain officers be elected at the times now directed in the Constitution for the choice of Senators.

8. Article 21, which provides that the term of office of the Governor, Lieutenant Governor and Treasurer, "shall continue for the term of *one year*."

9. Article 23, which provides that "Senators shall be elected *annually*."

Your Committee would beg leave to say, that they have reported all the parts of the original Constitution as well as of the amendments, and in so doing it will be seen that there is a repetition in some of the alterations suggested in the foregoing report, but your Committee believe that the report of your Committee yesterday, reporting propositions, to be considered by this Council, in regard to biennial sessions of the Legislature, embrace propositions making all the amendments necessary to be made, in case the proposition for biennial sessions of the Legislature should ultimately be adopted.

All which is respectfully submitted.

THOMAS GLEED, *for Committee*.

Which was read, accepted, and laid on the table.

The Council resolved itself into a Committee of the Whole, upon the report of Mr. WILSON, relating to future amendments of the

Constitution and abolishment of the Council of Censors.

The Committee of the Whole having had said report under consideration, rose, reported progress, and had leave to sit again this afternoon at three o'clock.

Mr. SLADE called up the Address of Mr. HAMMOND.

Mr. GLEED moved to amend the same by striking out all that part that refers to extending the final jurisdiction of Justices of the Peace.

Upon this question, Mr. PIERPOINT demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 7.

--Nays 6.

Those who voted in the affirmative, are

Messrs. VAIL, PIERPOINT, FISH, WILSON, DANA, HUTCHINSON, GLEED.--7.

Those who voted in the negative, are

Messrs. SLADE, HIBBARD, WELLS, HAMMOND, WARD, NELSON.--6.

So the amendment was adopted.

Mr. PIERPOINT moved to amend the Address, by striking out that part recommending to the Legislature to authorize the Courts to appoint referees in certain cases, and upon this motion demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 6.

--Nays 7.

Those who voted in the affirmative, are

Messrs. PIERPOINT, FISH, WILSON, DANA, HUTCHINSON, GLEED.--6.

Those who voted in the negative, are

Messrs. VAIL, SLADE, HIBBARD, WELLS, HAMMOND, WARD, NELSON.--7.

So the amendment was rejected.

Mr. GLEED moved to amend said Address, by striking out that part referring to the right of review, and upon this motion demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 4.

--Nays 9.

Those who voted in the affirmative, are

Messrs. PIERPOINT, WILSON, DANA, GLEED.--4.

Those who voted in the negative, are

Messrs. VAIL, SLADE, FISH, HIBBARD, WELLS, HUTCHINSON, HAMMOND, WARD, NELSON.--9.

So the amendment was lost.

On motion of Mr. WILSON, the Address of Mr. HAMMOND was recommitted to the Committee.

Mr. SLADE called up the resolution of Mr. FISH, providing for the final adjournment of the present session of the Council.

Mr. WILSON moved to amend said resolution, by striking out the

word "second" and inserting the word "first," which said motion was lost.

Mr. GLEED moved to strike out the words "Wednesday, the 17th inst.," from the resolution.

The question being stated and taken, said proposed amendment was adopted.

Mr. GLEED moved to lay said resolution on the table, which said motion was lost.

Mr. HUTCHINSON moved to amend said resolution, by striking out all after the word resolved, and inserting the following, viz: That when this Council adjourn its present session, it adjourn to meet at the Court House, in Middlebury, on the second Tuesday in February next, at two o'clock, P.M.

On motion of Mr. WILSON, the Council adjourned.

#### Afternoon.

The Council resolved itself into a Committee of the Whole, on the report of Mr. HUTCHINSON, upon electing Registers of Probate by the people.

The Committee of the Whole, having had said report under consideration, rose and reported to the Council that it is expedient to adopt the report.

On the question will the Council adopt the report from the Committee of the Whole for amending the Constitution, by giving the election of Registers of Probate to the people, the Yeas and Nays having been required, were taken, and

It was decided in the affirmative,--Yeas 11.

--Nays 2.

Those who voted in the affirmative, are  
Messrs. VAIL, PIERPOINT, SLADE, FISH, WILSON, HIBBARD, WELLS, HUTCHINSON, HAMMOND, WARD, NELSON--11.

Those who voted in the negative, are

Messrs. DANA, GLEED--2.

So it passed in the affirmative.

On motion of Mr. HUTCHINSON, the report and proposed amendment was referred to the Committee on Revision and Engrossment.

On motion of Mr. WILSON, the Council went into Committee of the Whole, on the report of Mr. WILSON, "relating to future amendments to the Constitution and abolition of the Council of Censors."

The Committee of the Whole having had said report under consideration, rose, and through their Chairman made the following

#### REPORT.

The Committee of the Whole recommend to the Council of Censors the adoption of the report of the Committee.

On motion of Mr. WILSON, the report was recommitted to the

Committee.

The Council adjourned until Friday morning, at 10 o'clock.

**Friday, October 12, 1855.**

Council met pursuant to adjournment.

Journal of Wednesday read and approved.

The Council, in Committee of the Whole, took up the report of Mr. WILSON, in regard to extending the term of Legislative and Executive officers.

The Committee of the Whole having had said report under consideration, recommended to the Council the adoption of said report, with the following amendments: Strike out the word "four" and insert the word "two."

On motion, the Council resolved to concur in the recommendation, adopted the amendments and report, and referred the same to the Committee on Revision and Engrossment.

Mr. DANA introduced the following resolution:

*Resolved*, That a Committee of three be appointed to enquire whether it is expedient to amend that part of the Constitution which relates to the apportionment of Senators to the several counties, and their term of office.

Which was read and adopted.

Mr. PIERPOINT called up the report of Mr. HUTCHINSON, from the Committee on the powers of the Constitution, to whom was referred the resolution of Mr. SLADE, in regard to electing State Officers, Town Representatives, and all Town Officers, by a plurality of the votes of the freemen.

Mr. DANA moved to amend the report by striking out the words "Town Representatives and all Town Officers," also strike out the word "inexpedient" and insert the word "expedient."

On motion of Mr. WILSON, the report and proposed amendment of Mr. DANA was postponed to Tuesday next.

Mr. SLADE introduced the following resolution:

*Resolved*, That the Secretary be instructed to cause to be printed the proceedings of the present session of the Council, in number of copies not exceeding six hundred.

Which was read and adopted.

On motion, the Council adjourned.

**Afternoon.**

Mr. WILSON introduced the following resolution:

*Resolved*, That this Council close its present session on Thursday next, October 18th inst.

Which was read and adopted.

Mr. VAIL, from the Committee to whom was referred the resolution of Mr. WILSON, extending the term of office of Supreme Court Judges, &c., and provide for the election thereof, presented the



following

### REPORT.

*To the Council of Censors now in Session:*

The Committee to whom was referred the resolution of Mr. WILSON, extending the term of office of Supreme Court Judges, and provide for the election thereof, would present the following report:

That in their opinion it is expedient to recommend an amendment of the Constitution, extending the term of office of Supreme Court Judges, so that they shall hold their appointment for six years, so classified that the election of one Judge shall take place biennially, and that such election be made by the freemen of the State.

All which is respectfully submitted.

J. W. VAIL, *Chairman.*

On motion, the report was accepted and ordered to lie on the table.

Mr. HAMMOND introduced the following resolution:

*Resolved*, That a Committee of three be appointed to take into consideration the propriety of so amending the Constitution of this State, as to give each county in the State two Senators; and also give to each county a certain number of Representatives in the House, proportioned to the number of inhabitants of each county respectively, so that the number of Representatives in the most numerous branch of the Legislature shall not exceed \_\_\_\_ in the whole.

Which was read and adopted, and referred to the Legislative Committee.

Mr. HAMMOND, from the Committee to whom was recommitted his Address to the Legislature, reported the same back to the Council amended as ordered.

Mr. GLEED moved to adopt said Address. On this question, the Yeas and Nays being demanded, were taken, and

It was decided in the affirmative,--Yeas 8.

--Nays 4.

Those who voted in the affirmative, are

Messrs. VAIL, SLADE, FISH, HIBBARD, WELLS, HAMMOND, WARD, NELSON--8.

Those who voted in the negative, are

Messrs. PIERPOINT, WILSON, DANA, GLEED--4.

So the Address was adopted.

Mr. WARD introduced the following resolution:

*Resolved*, That the Committee raised to examine and report upon the various amendments to the 43d Article of the Constitution, take into consideration the propriety of so amending said Article, that the day for the election of the Council of Censors take place upon the first Tuesday, instead of the last Wednesday of March; and that said Council of Censors consist of fourteen instead of thirteen members, as hitherto.

Which was read and adopted.

The President announced the appointment of the following named gentlemen as Committee on the resolution of Mr. WARD, providing for an amendment of the 43d Article of the Constitution, Mr. DANA, Mr. NELSON, Mr. GLEED.

The President announced the appointment of the following named gentlemen as Committee on the resolution of Mr. DANA, to enquire into the expediency of amending that part of the Constitution which relates to the apportionment of Senators to the several counties, and their term of office, Mr. DANA, Mr. NELSON, Mr. GLEED.

On motion, the Council adjourned until Tuesday next, at 9 o'clock, A.M.

#### **Tuesday, October 16, 1855.**

Council met. Quorum not being present, on motion of Mr. WILSON, the Council adjourned until 3 o'clock, P.M.

#### **Afternoon.**

Council met, and adjourned until 10 o'clock, to-morrow morning.

#### **Wednesday, October 17, 1855.**

Council met.

Journal of yesterday read and approved.

Mr. WILSON called up the report of Mr. VAIL, extending the term of office of the Judges of the Supreme Court, and moved to amend the same by striking out the words "and that such election be made by the freemen of the State," so that the proposed article of amendment shall read as follows, "that the Constitution be so amended that the Judges of the Supreme Court shall hold their office for the term of six years, and so classified that the election of one Judge take place biennially."

The report and proposed amendment was, after an extended discussion by Mr. WILSON, Mr. PIERPOINT, Mr. GLEED, Mr. HUTCHINSON and Mr. VAIL, on motion of Mr. PIERPOINT, laid on the table.

On motion of Mr. PIERPOINT, the report of Mr. HUTCHINSON, on the resolution of Mr. SLADE, in regard to the expediency of so amending the Constitution as to elect the Governor, Lieutenant Governor and Treasurer, also Town Representatives and all town officers by a plurality of the freemen, was taken up and discussed, and on motion of Mr. WILSON, recommitted to the Committee.

#### **Afternoon.**

Mr. WILSON presented the following  
REPORT.

*To the Council of Censors now in Session:*

Your Committee, to whom was referred the resolution directing

said Committee to enquire and report upon the expediency of erecting a District Court in each county in the State, have had the same under consideration, and submit the following report:

That they are convinced that the erection of the Court named in said resolution is expedient.

The subjects of litigation are numerous, some of which cannot be tried before our present Courts without an expense to the parties exceeding their ability to pay, and an expense which the subject of the controversy will not justify.

In actions of ejectment and trespass to recover damages for injuries to real and personal property, the right of property is the principal question to be tried, and the damages recovered ordinarily, are small. In such actions, in which real property is involved, division lines and boundaries are almost universally the important matters submitted for the examination and decision of Courts and jurors; and they should be tried in the immediate vicinity of their subject matter, before a Court having the power with or without jury, to examine the premises, and by inspection, together with other evidence, establish the rights of the parties, and the decision to be final, reserving to the parties the right of appeal to the Supreme Court in case of errors in law. District courts erected agreeably to the provisions of said resolution, with their powers and duties properly defined by law, could render substantial justice to the parties, and the costs of trial would, probably, be less than one-third of the costs of a trial of the same matter under our present system. Your Committee, if further instructed by the Council, will report for their consideration such articles as should be added to the Constitution, in the erection of said Court.

All which is respectfully submitted by

WILLIAM C. WILSON, *for committee*

The above report, after a protracted debate, was, on motion of Mr. GLEED, laid on the table.

On motion of Mr. WILSON, the Council adjourned.

**Thursday, October 18, 1855.**

Council met.

Journal of yesterday read and approved.

The Secretary, appointed to make up the debentures of this Council the present session, reported that he had performed the duty assigned him.

The Chair appointed the following named gentlemen to report to the next session of the Council the unfinished business of the two last sessions, Mr. DANA, Mr. WARD.

On motion of Mr. VAIL, the Council adjourned.

JAMES M. SLADE, *Secretary*.

### Third Session, at Middlebury.

Court House, Middlebury,

**Tuesday, February 12, 1856, 2 o'clock, P.M.**

The Council of Censors met pursuant to adjournment.

Present,

DAVID HIBBARD,  
THOMAS F. HAMMOND,  
JOHN W. VAIL,  
WILLIAM C. WILSON,  
JAMES M. SLADE.

The Council was called to order by the President, whereupon there being no quorum, the Council adjourned to to-morrow morning at nine o'clock.

### **Wednesday, February 13, 1856.**

Journal of yesterday read and approved.

Mr. PIERPOINT, Mr. GLEED and Mr. NELSON, members of the Council, appeared and took their seats.

On motion of Mr. VAIL,

*Resolved*, That the Sheriff of the County of Addison be requested to attend by himself or deputy on the sessions of this Council.

On motion of Mr. GLEED,

*Resolved*, That the President request some clergyman of this village to attend on the Council as Chaplain, and that the morning services of the Council be opened with prayer.

Mr. GLEED called up the report of the Committee to which was referred the resolution to enquire and report upon the expediency of erecting a District Court in each county in the State, and after discussion was again ordered to lie on the table.

Mr. WILSON introduced the following resolution:

*Resolved*, That a Committee of five be appointed to enquire whether it is expedient to add an article to the Constitution, which shall make it the duty of the County Court to refer all actions of ejectment, trespass and trespass on the case, relating to the title of land or to any interest therein, and actions to recover damages for the insufficiency of highways and bridges, and all proceedings to recover damages for land taken for highways, to three disinterested persons, at the request of either party to such action or proceeding.

Which was read and adopted.

The Chair announced the appointment of the following Committee, ordered to be raised in the resolution of Mr. WILSON, providing for reference of actions of ejectment, trespass and trespass on the case, &c., Mr. WILSON, Mr. GLEED, Mr. HAMMOND, Mr. VAIL, Mr. PIERPOINT.

Mr. PIERPOINT called up the report of Mr. HUTCHINSON, from

the Committee on the Powers of the Constitution, embracing the subject of dispensing with the requirement of the Constitution, that provides for returning the votes of the freemen for Governor, Lieutenant Governor and Treasurer to the General Assembly.

On motion of Mr. PIERPOINT, said report was adopted, and the amendment therein proposed was referred to the Committee of Revision and Engrossment.

On motion of Mr. WILSON, the Council adjourned until two o'clock, P.M.

#### Afternoon.

Mr. FISH, member of the Council, appeared and took his seat.

Mr. GLEED, from the Legislative Committee, presented the following

#### REPORT.

*To the Hon. Council of Censors:*

Your Committee, to whom was referred the resolution of Mr. HAMMOND, to take into consideration the propriety of so amending the Constitution of this State, as to give each county in the State two Senators--and also give to each county a certain number of Representatives in the House proportioned to the number of inhabitants of each county respectively, so that the number of Representatives in the most numerous branch of the Legislature shall not exceed \_\_\_\_ in the whole, would beg leave to report that they have had the said resolution under consideration, and consider the proposed amendment *inexpedient*.

THOMAS GLEED, *for committee*

Which was read, and on motion accepted.

Mr. WILSON moved to amend the report, by striking out therefrom the word "inexpedient," and substituting therefor the word "expedient."

The question being stated and taken, was decided in the affirmative. So said amendment was adopted.

Mr. WILSON moved that the report be ordered to lie on the table. Which said motion was adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, Two-thirds of this Council concurring herein, that it is expedient to call a Convention of delegates of the freemen of this State, to meet at the State House, in Montpelier, on the first Wednesday of January, A.D. 1857, for the purpose of taking into consideration such amendments to the Constitution as have been or may be proposed by this Council.

Which was read, and on motion of Mr. SLADE, ordered to lie on the table.

Mr. SLADE introduced the following resolution:

*Resolved*, That a Committee of three be appointed to prepare and report an address to the people.

Which was read and adopted.

Mr. WILSON, from Select Committee, presented the following  
REPORT.

*To the Hon. Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr. WILSON, directing said Committee to enquire and report upon the expediency of erecting a Justice Court (with stated sessions thereof) in each town in the State, having had the subject of said resolution under consideration, would report that in their opinion the erection of the Court named in said resolution is expedient.

WILLIAM C. WILSON, *for committee*

Which was read and accepted.

Mr. GLEED moved to amend the above report, by striking out therefrom the word "expedient," and substituting in lieu therefor the word "inexpedient."

And upon this question Mr. WILSON demanded the Yeas and Nays, and

It was decided in the affirmative,--Yeas 5.

--Nays 4.

Those who voted in the affirmative, are

Messrs. PIERPOINT, FISH, HIBBARD, GLEED, NELSON.--5.

Those who voted in the negative, are

Messrs. WILSON, VAIL, SLADE, HAMMOND.--4.

So said amendment was adopted.

On motion of Mr. WILSON, the above report as amended was ordered to lie on the table.

Mr. GLEED, from the Legislative Committee, presented the following

REPORT.

*To the Hon. Council of Censors:*

Your Committee, to whom was referred the resolution of Mr. DANA, enquiring into the expediency of recommending an amendment to the Constitution so as to provide therein that all elections made directly by the Legislature, or either branch thereof, the "viva voce" mode be adopted, have had said resolution under consideration and deem it inexpedient to recommend such an amendment.

THOMAS GLEED, *for committee*

Which was read and ordered to lie on the table.

On motion of Mr. SLADE, the Council adjourned until to-morrow morning at nine o'clock.

**Thursday, February 14, 1856.**

Prayer by Rev. Mr. Kendall.

Journal of yesterday read and approved.

Mr. DANA, member of the Council, appeared and took his seat.

Mr. DANA, from Committee on unfinished business, presented the

following

#### REPORT.

*To the Hon. Council now in Session:*

The Committee appointed at the second session of said Council, to report the unfinished business of the two last sessions, submit the following report:

1st. The resolution of Mr. WILSON, the resolutions of Mr. WARD, and the resolution of Mr. DANA, in relation to the amendment and alteration of Article 43d, of the Constitution, providing for future amendments of the Constitution, &c., and the report of the Committee thereon, recommitted. Mr. WILSON, Chairman of Committee.

2d. The resolution of Mr. WILSON, in relation to erecting a District Court in each county, &c., and report thereon laid upon the table.

3d. The resolution of Mr. GLEED, relating to biennial sessions of the Legislature, and report thereon referred to Committee of Revision and Engrossment.

4th. The resolution of Mr. WILSON, in relation to the election of Judges of the Supreme Court, and report of Committee laid upon the table.

5th. The resolution of Mr. HUTCHINSON, the resolution of Mr. WARD, and the resolution of Mr. DANA, relating to the election of Circuit Judges, Judges of Probate and Justices of the Peace. No report. Mr. HUTCHINSON, Chairman of Committee.

6th. The resolution of Mr. SLADE, in relation to electing Governor, Lieutenant Governor, Treasurer of the State, Town Representatives and all town officers by plurality vote and report of Committee, proposition of amendment, recommitted. Mr. HUTCHINSON, Chairman.

7th. The resolution of Mr. SLADE, in relation to giving the election of Secretary of State, Auditor of Accounts and Bank Commissioner to the people, report of Committee, referred to Committee of the Whole, report of, referred to Committee of Revision and Engrossment.

8th. The resolution of Mr. DANA, relating to returning ballots for Governor, Lieutenant Governor and Treasurer, and report of, Committee laid on the table.

9th. The resolution of Mr. PIERPOINT, requiring the Treasurer of the State to furnish the statement therein specified. No statement rendered.

10th. The communication of the Auditor of Accounts, in compliance with the resolution of Mr. GLEED, and referred to Committee on Taxes and Expenditures. Mr. WELLS, Chairman.

11th. The resolution of Mr. WILSON, relative to extending the term of office of Executive and Legislative officers, report of Committee referred to Committee of the Whole, and report of,

referred to Committee of Revision and Engrossment.

12th. The resolution of Mr. SLADE, in relation to giving the choice of Registers of Probate to the freemen of the several Probate Districts, report of Committee referred to Committee of the Whole, and report of, referred to Committee of Revision and Engrossment.

13th. The resolution of Mr. HUTCHINSON, and the resolution of Mr. SLADE, in relation to Article 1st of the amendments of the Constitution. No report. Mr. HUTCHINSON, Chairman.

14th. The resolution of Mr. SLADE, relating to the neglect of the Legislature to elect a State Superintendent of Common Schools, referred to the Legislative Committee. No report.

15th. The resolution of Mr. DANA, in relation to the organization of the House of Representatives, referred to Legislative Committee. No report.

16th. The resolution of Mr. WILSON, in relation to the expediency of erecting a Justice Court in each town in the State. No report. Mr. WILSON, Chairman.

17th. The resolution of Mr. DANA, relative to elections by the Legislature or either branch thereof being made by viva voce vote, referred to Legislative Committee. No report.

18th. The resolution of Mr. HUTCHINSON, in relation to the method of submitting to the people the alterations and amendments of the Constitution that may be proposed by this Council. No report. Mr. HUTCHINSON, Chairman.

19th. The resolution of Mr. PIERPOINT, relative to requiring public notice to be given of applications to the Executive, for the exercise of the power of pardon. No action of Council.

20th. Report of Committee, in relation to what parts of the Constitution would require amendment in case the proposed recommendation of biennial sessions of the Legislature should be adopted. Laid upon the table.

21st. The resolution of Mr. DANA, in relation to the apportionment of Senators to the several counties, and their term of office. No report. Mr. DANA, Chairman.

22d. The resolution of Mr. HAMMOND, as to the propriety of so amending the Constitution as to give each county in the State two Senators and a certain number of Representatives in the House of Representatives, proportioned to the number of inhabitants of each county, respectively.

All of which is respectfully submitted.

CHAS. S. DANA, *Chairman*.

The above report was accepted, and ordered to lie on the table.

Mr. PIERPOINT called up the report of Mr. VAIL, upon extending the term of office of Supreme Court Judges, &c., also the amendment proposed to said report by Mr. WILSON.

Mr. PIERPOINT moved to adopt the amendment proposed by Mr. WILSON, viz: Strike out the words "and that such election be made



by the freemen of the State."

Upon this question, Mr. VAIL demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 7.

--Nays 3.

Those who voted in the affirmative, are  
Messrs. PIERPOINT, FISH, WILSON, HIBBARD, HAMMOND, GLEED, NELSON.--7.

Those who voted in the negative, are

Messrs. VAIL, DANA, SLADE.--3.

So said amendment was adopted.

Mr. WILSON moved to adopt the report above named as amended, and upon this question demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 6.

--Nays 4.

Those who voted in the affirmative, are  
Messrs. PIERPOINT, SLADE, FISH, WILSON, HIBBARD, HAMMOND.--6.

Those who voted in the negative, are

Messrs. VAIL, DANA, GLEED, NELSON.--4.

So said report was adopted.

On motion of Mr. WILSON, the report was referred to the Committee on Revision and Engrossment.

On motion, the Council adjourned.

#### Afternoon.

On motion of Mr. DANA, the Committee appointed on the resolution of Mr. WARD, providing for an amendment of the forty third Article of the Constitution, were discharged from further consideration of the subject.

Mr. WILSON moved that another member be added to the Committee raised on the resolution of Mr. WILSON, providing for future amendments to the Constitution and the abolishment of the Council of Censors.

Which said motion was agreed to: and Mr. GLEED was appointed by the President as the additional member of said Committee.

Mr. GLEED called up the report of Mr. WILSON, from the Committee to which was referred the resolution to enquire and report upon the expediency of erecting a District Court in each county in the State.

Mr. GLEED moved to dismiss said report. Which said motion was disagreed to.

On motion of Mr. WILSON, said above named report was ordered to lie on the table.

Mr. PIERPOINT called up the report of Mr. GLEED, from Committee to which was referred the resolution of Mr. DANA,

providing for an amendment to the Constitution, to provide that the Legislature of either branch thereof, shall in all elections adopt the "viva voce" mode of ballot.

Mr. PIERPOINT moved to amend said report by striking out the word "inexpedient," and inserting in lieu thereof the word "expedient."

Upon this question, Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 7.

--Nays 3.

Those who voted in the affirmative, are Messrs. VAIL, PIERPOINT, FISH, WILSON, DANA, HAMMOND, GLEED.--7.

Those who voted in the negative, are

Messrs. SLADE, HIBBARD, NELSON.--3.

So said amendment was adopted.

Mr. PIERPOINT moved that the report as amended be adopted.

Which said motion was agreed to, and said report as adopted referred to the Committee of Revision and Engrossment.

Mr. GLEED called up the report of Mr. WILSON, upon the expediency of erecting a Justice Court in each town in the State, and moved the same be dismissed.

The question being stated and taken, said motion was agreed to, and said report dismissed.

Mr. DANA, from the Committee to which was referred the resolution of Mr. DANA, to enquire into the expediency of amending that part of the Constitution which relates to the apportionment of Senators to the several counties, and their term of office, asked the Council to discharge said Committee from further consideration of the subject.

The Council granted the request of the Committee, and they were discharged.

The Council took up the subject matter embraced in the resolution offered by Mr. PIERPOINT and adopted by the Council, providing for an enquiry into the expediency of recommending an alteration in the Constitution in reference to the pardoning power of the Executive, and on motion of Mr. DANA,

*Resolved*, That it is inexpedient to alter or amend the Constitution in this respect.

Mr. GLEED called upon the report of the Legislative Committee, upon the resolution of Mr. HAMMOND, providing for an amendment to the Constitution, changing the basis of representation for the House of Representatives, and allowing to each county in the State two Senators, and moved to dismiss the same.

Which said motion was disagreed to.

Mr. WILSON moved that the above named report be recommitted to the Legislative Committee, with instructions to report propositions of amendment to the Constitution, agreeable to the resolution of Mr. HAMMOND.

Upon this motion, Mr. SLADE demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 5.

--Nays 4.

Those who voted in the affirmative, are  
Messrs. VAIL, FISH, WILSON, DANA, HAMMOND.--5.

Those who voted in the negative, are  
Messrs. SLADE, HIBBARD, GLEED, NELSON.--4.

So said motion prevailed, and said report was then recommitted.

On motion, the Council adjourned.

Friday, February 15, 1856.

Council met.

Prayer by Rev. B. Labarree.

Journal of yesterday read and approved.

Mr. WILSON, from the Committee to which was referred several resolutions relating to future amendments to the Constitution and the abolishment of the Council of Censors, presented the following

REPORT.

*To the Council of Censors now in Session:*

The Committee, to whom were referred several resolutions relating to future amendments to the Constitution and the abolishment of the Council of Censors, having had said matters under consideration, would respectfully report:

That in their opinion section forty-third of the Constitution should be abolished. And your Committee recommend that the following article be added to the Constitution, viz:

In order that the freedom of this Commonwealth may be preserved inviolate forever, there shall be chosen by ballot, by the freemen of the respective counties in this State, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three, and on the first Tuesday in March in every ten years thereafter, *one person in each county*, who shall be chosen in the same manner the Senate is chosen, to be called the *Constitutional Council*, who shall meet together on the first Wednesday of June next ensuing their election, at the State House; 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 shall agree; and whose duty it shall be to enquire whether the Constitution of this State requires amendments made therein, or additions made thereto; and this power they shall continue to have for and during the space of six months from the day of their election, and no longer.

The said Council shall also have power to call a Convention to meet within eighteen months 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 of such Convention; for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject. And when said Council propose amendments to the Constitution as herein provided, it shall be their duty to call a Convention to consider such amendments, and by an *ordinance* for that purpose, said Council shall designate the time, place and manner of electing the delegates of such Convention, and the time and place, when and where the Convention shall meet.

The Convention to consider the amendments proposed by said Council, and to adopt the same or such parts thereof as the Convention shall judge will be most conducive to the good government, peace and happiness of the State, shall be composed of sixty delegates, who shall be apportioned to the several counties according to the population, and agreeably to the Constitution and existing laws of the State, for the apportionment of the Senators to the several counties thereof.

WILLIAM C. WILSON, *for committee*

Which was read and accepted.

On motion of Mr. DANA, the above named report was ordered to lie on the table.

On motion of Mr. WILSON, Mr. SLADE, and Mr. HAMMOND were added to the Committee of Revision and Engrossment.

Mr. GLEED called up the report of Mr. WILSON, relative to future amendments to the Constitution and the abolishment of the Council of Censors.

After a protracted discussion, Mr. GLEED moved to dismiss the report.

Upon this question, Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 1.

--Nays 9.

The one who voted in the affirmative, was

Mr. HIBBARD.--1.

Those who voted in the negative, are

Messrs. VAIL, PIERPOINT, SLADE, FISH, WILSON, DANA, HAMMOND, GLEED, NELSON.--9.

So said motion to dismiss was disagreed to.

On motion, the Council adjourned.

#### Afternoon.

The Council proceeded to the consideration of the report of Mr. WILSON, under consideration at the adjournment of the forenoon session.

Mr. SLADE moved to amend said report as follows: Insert after the words "whether the Constitution" the following, "has been preserved inviolate in every part during the last ten years, 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 enquire, whether the public taxes have been justly laid and collected in all parts of this Commonwealth; in what manner the public moneys 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 of such laws as shall appear to them to have been passed contrary to the principles of the Constitution.

It shall be their duty to enquire whether the Constitution require amendments made therein or additions made thereto, &c."

Upon this question, Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 4.

--Nays 6.

Those who voted in the affirmative, are  
Messrs. SLADE, HIBBARD, HAMMOND, GLEED,--4

Those who voted in the negative, are  
Messrs. VAIL, PIERPOINT, FISH, WILSON, DANA, NELSON,--6.

So the said amendment was rejected.

On motion of Mr. WILSON, the report and proposed amendment were postponed until Tuesday next, at two o'clock, P.M.

On motion of Mr. VAIL, the Council adjourned until Monday next, at two o'clock, P.M.

#### Monday, 18th February, 1856.

Council met.

No quorum being present, adjourned until to-morrow morning at nine o'clock.

#### Tuesday, 19th February, 1856.

Council met.

Prayer by Rev. W. T. Webbe.

Mr. WELLS, member of the Council, appeared and took his seat.  
Journal of Saturday and yesterday read and approved.

Mr. DANA presented the following report, which was read, accepted, and ordered to lie on the table.

#### REPORT.

*To The Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr.

DANA, and the resolution of Mr. HAMMOND, in relation to the apportionment of Senators and Representatives, and to whom the subject was recommitted with instructions to report articles of amendment, &c., report for the consideration of the Council, the following articles of amendment to the Constitution:

I. The Senate shall be composed of two Senators from each county, who shall have attained to the age of thirty years, and shall be elected for the term of four years, by the freemen of each county, respectively.

II. At the first session of the Senate, elected under this Constitution as amended, the Senators so elected shall be divided into two equal classes, to be determined by lot. The term of service of the Senators of the first class shall expire at the close of the second year, and that of the second class at the close of the fourth year, so that one-half shall be chosen biennially. And if vacancies shall happen during the electoral term, the Governor may make temporary appointments until the next election, when vacancies may be filled by the freemen.

III. The House of Representatives shall consist of one hundred and fifty members. Each county shall have at least two Representatives, and the remainder shall be apportioned by the Legislature among the several counties as as near as may be, according to the population of each. The Legislature, after the completion of the next federal census, or after a census taken by authority of the General Assembly, and every ten years thereafter, and not oftener, shall make a new apportionment of Representatives, due regard being always had in such apportionment to the counties having the largest fraction.

IV. The Legislature may, in its discretion, divide the counties into representative districts. Each district shall consist as nearly as may be of an equal number of inhabitants, and of convenient and contiguous territory within the respective counties, but no town or city shall be divided in the formation thereof.

V. The election of Representatives next to be holden after the adoption of this Constitution as amended, and until the Legislature shall otherwise provide by law, shall be held in the respective counties at the same time. The mode of balloting, the means by which the result of the balloting shall be ascertained and through which the Representatives shall be certified of their election, shall be, as near as may be, the same as is provided in the election of Senators. Until there shall be an apportionment by the Legislature, the Representatives are hereby apportioned among the several counties as follows, viz:

The county of Addison shall be entitled to twelve Representatives;

The county of Bennington shall be entitled to nine Representatives;

The county of Caledonia shall be entitled to eleven Representa-

tives;

The county of Chittenden shall be entitled to thirteen Representatives;

The county of Essex shall be entitled to four Representatives;

The county of Franklin shall be entitled to thirteen Representatives;

The county of Grand Isle shall be entitled to four Representatives;

The county of Lamoille shall be entitled to six Representatives;

The county of Orange shall be entitled to thirteen Representatives;

The county of Orleans shall be entitled to eight Representatives;

The county of Rutland shall be entitled to fifteen Representatives;

The county of Washington shall be entitled to twelve Representatives;

The county of Windham shall be entitled to thirteen Representatives;

The county of Windsor shall be entitled to seventeen Representatives.

Your Committee would further present, for the consideration of the Council, the following table of the present and the proposed ratio of representation in the several counties:

COUNTIES	Present No. of Reps.	Population	Present Ratio	Proposed Ratio	Proposed No. of Reps.	Present No. of Reps. & Sens.	Proposed No. of Reps. & Sens.
Addison	23	26,549	1,154	2,212	12	25	14
Bennington	17	18,589	1,093	2,065	09	19	11
Caledonia	17	23,595	1,388	2,145	11	19	13
Chittenden	15	29,036	1,935	2,233	13	18	15
Essex	14	4,650	332	1,162	04	15	06
Franklin	14	28,586	2,042	2,199	13	17	15
Grand Isle	05	4,145	829	1,036	04	06	06
Lamoille	10	10,872	1,087	1,812	06	11	08
Orange	17	27,296	1,605	2,099	13	19	15
Orleans	19	15,707	826	1,963	08	20	10
Rutland	25	33,059	1,322	2,203	15	28	17
Washington	18	24,654	1,369	2,054	12	20	14
Windham	23	29,062	1,263	2,736	13	26	15
Windsor	24	38,320	1,596	2,254	17	28	19

N.B. The variance in the apparent and actual basis on the proposed ratio of one hundred and fifty is occasioned by apportioning to Essex and Grand Isle two more Representatives than they would be entitled to by exact mathematical enumeration--to meet the provision that no county shall have less than two Representatives.

An adoption of the proposed amendment in regard to the House of Representatives, while it would partially relieve our Constitution of

a system of representation in that branch of the Legislature, the unequal and unjust character of which has for many years been acknowledged, and to which former Councils have called the attention of the freemen, would also reduce the expenses of the State government and be an act justified by a proper regard for economical administration. The present mode of representation in the House of Representatives violates the first principles of a republican form of government, and exhibits the strange contradiction of a body professedly the popular branch of the Legislature, created and recognized by the Constitution as such, and claiming to derive and exercise legislative authority as representatives of the people, a majority of which is elected by almost less than one quarter of the freemen. The reduction of the House of Representatives as proposed would lessen the annual amount of expenditures of the State at least ten thousand dollars, and under the necessity, as the State of Vermont is, of providing her revenue to defray governmental expenses by direct taxation, is it not economy to reduce such expenses to the lowest point consistent with the general welfare? And should the people suffer the burden of unnecessary taxation to support a system, which, perhaps, in the early history of the State may have been necessary, is now inconvenient, expensive and cumbersome, and is without a plausible reason to justify it, as well as being in utter violation of those principles for which the Constitution professes strong attachment.

The change in regard to the organization of the Senate, is the result of a compromise of views, and although in violation of the principle which is admitted as the only true one in establishing a basis of representation, viz: that population and representation should be equal, the legislative branch of the government as a whole will be more in accordance with the principle admitted than it now is.

All which is respectfully submitted.

CHAS. S. DANA, *for committee*

Mr. HAMMOND presented the following

REPORT.

*To the Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr. SLADE, as to "the expediency of so amending the Constitution as to elect the Governor, Lieutenant Governor and Treasurer of the State, and Town Representatives and all Town Officers, by plurality of the votes of the freemen," made report thereon that they deemed the same inexpedient, which was read and accepted, and on motion of Mr. HUTCHINSON, laid upon the table, and afterwards, at the same second session, on motion of Mr. PIERPOINT, the said report was taken up and discussed, and on motion of Mr. HUTCHINSON, recommitted to the Committee.

Your Committee now offer the following amendment to the resolution, to wit: Strike out the words "and Town Representatives



and all Town Officers," so that the resolution may read as follows:

*Resolved*, That the Committee in the Powers of the Constitution enquire into the expediency of so amending the Constitution, as to elect the Governor, Lieutenant Governor and Treasurer of the State, by a plurality of the votes of the freemen;

And being so amended, your Committee would respectfully recommend its adoption by the Council.

Respectfully submitted by

THOMAS F. HAMMOND, *for committee*

Which was read, accepted and ordered to lie on the table.

On motion of Mr. DANA, the Council adjourned.

#### Afternoon.

Mr. DANA called up the report of Mr. GLEED, from the Committee to whom was referred the resolution providing for an examination and report to the Council what points of the Constitution would need amending, in case the amendments proposed for biennial sessions of the Legislature should be adopted, and moved the adoption of the same.

The question being stated and taken, said report was adopted.

On motion of Mr. PIERPOINT, the report as adopted was referred to the Committee of Revision and Engrossment.

Mr. PIERPOINT called up the report of Mr. DANA, from the Committee to whom was referred the resolutions of Mr. DANA and Mr. HAMMOND, in relation to the apportionment of Senators and Representatives.

After a lengthy discussion by Mr. DANA, Mr. GLEED, Mr. HAMMOND, and Mr. SLADE, the report was, upon motion of Mr. SLADE, laid on the table.

Mr. DANA introduced the following resolution:

*Resolved*, That this Council proceed, at its morning session, on Thursday next, to take up the business now under consideration, in the order in which it lies on the Secretary's table, and finally dispose of the same, either by dismissal or by reference thereof to the Committee of Revision and Engrossment.

Which was read and adopted.

Mr. HAMMOND introduced the following resolution:

*Resolved*, That this Council take into consideration the expediency of so amending the Constitution, as to give County Courts, on application of either party, the power to refer, for final adjustment, all suits which, in the opinion of such Courts, are proper to be referred, under such regulations as the Legislature may make.

Which was read, adopted, and

On motion of Mr. DANA, referred to the Committee raised on the resolution of Mr. WILSON, Wednesday last, the 13th inst.

Mr. DANA called up the report of Mr. HAMMOND, made in the forenoon, upon the subject of providing for the election of Governor,

Lieutenant Governor and Treasurer, by a plurality of the votes of the freemen of the State, and moved the adoption of the same, together with the resolution reported as amended, and that the report be referred to the Committee of Revision and Engrossment.

Upon this question, Mr. GLEED demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 7.

--Nays 2.

Those who voted in affirmative, are  
Messrs. VAIL, PIERPOINT, SLADE, WELLS, DANA, HAMMOND, NELSON.--7.

Those who voted in the negative, are

Messrs. HIBBARD, GLEED.--2.

So said motion prevailed, and said report and resolution referred to the Committee of Revision and Engrossment.

Mr. SLADE, from the Legislative Committee, presented the following report, which was read, accepted and ordered to lie on the table:

#### REPORT.

*To the Council of Censors now in Session:*

The Committee, to whom was referred the resolution of Mr. SLADE, instituting the enquiry whether the neglect of the Legislature "to elect a Superintendent of Common Schools is not a violation of the statute law in such case made and provided," having had said subject under consideration, beg leave to report:

The Statute law makes it the imperative duty of the Legislature to elect, annually, a State Superintendent of Common Schools. It first provides for the existence of the office, and then declares that the officer "shall be annually appointed by the Joint Assembly." This is a part of the law that provides for the existence of the present system of Common School Education in our State. The law provides for the election of other officers by towns and School Districts, such as Town Superintendents, District Committees and Town Trustees, &c. The duties embraced in these several appointments are distinct and clearly defined. These duties the Legislature expect those concerned, will *fully and faithfully* discharge, and for a neglect, they are rendered liable to be dealt with according to law.

If the Legislature demand, at the hands of those entrusted with these duties, a strict compliance with the terms of the law, setting them forth and visiting those who violate its provisions with the rigor of law, have not the people a right to demand, *and expect*, that the Legislature shall fulfil, on their part, the provisions of a law they have made, making certain defined duties imperative upon them to discharge?

The *law-making power* should not assume the liberty of becoming the *law-breaking power*. If Statute law is binding upon individual citizens, and should govern in the ordinary business transactions of

life, it is equally binding upon the body who enacted it. If the body that makes laws for its own government, with impunity proceed to break those laws, or refuse to comply with their requirements while they remain in force, (which to say the least is a flagrant violation of their spirit, if not their letter,) and the people justify such a course, all laws may, upon the same ground, be violated and broken. *If tolerated* in the one instance, it should be in all. With equal propriety may the *Executive* of the State neglect to obey the law setting forth his duties, or the *Judiciary* neglect to discharge the functions of their office, or *subordinate officers* refuse to obey the law, as for the Legislature to utterly refuse to comply with a requirement of the Statute in *any case*, where its execution is demanded at their hands. This utter neglect of the Legislature to carry out the provisions of this Statute, may be cited by others as a precedent justifying any neglect to obey any Statute law. Indeed, in some instances, towns have refused to elect Town Superintendents, and have urged in justification of their course in thus violating the law, the precedent, that the Legislature had not on their part complied with the law, in the election of a State Superintendant. The inevitable tendency of such a course of policy will be, if not checked, to lay broad the ground upon which all our laws shall be *UTTERLY disregarded*, and the authority with which the executors of law are invested be not only *also disregarded*, but *set at defiance*.

It cannot be expected that a stream will rise higher than the fountain. Neither can we expect the people will take higher ground in the observance of laws, than those who *framed* and *passed them*.

If the Legislature, possessing the power of making laws, proceed in their legislative capacity to set the example to the people of violating law they should cease making penal enactments. They should not visit with punishment, or provide for its infliction upon the ignorant man, who violates law, when they themselves, embodying according to the Constitution, the "*wisdom of the State*," proceed annually with deliberation, to violate one of the plainest provisions upon the Statute book for them to observe.

In the Constitution it is set forth that "laws for the encouragement of virtue and prevention of vice, ought to be constantly kept in force and *duly executed*." This is a right imperatively demanded, and justly conceded. It is upon this principle and expressed right, that our Statute abounds with laws for the prevention of vice, and as a necessary result the encouragement of virtue.

It is a conceded axiom that a community *properly enlightened* is a *virtuous community*, while the reverse has ever shown ignorance and crime to be twin sisters.

There are various methods adopted to impart intelligence to the human mind. Various systems of education are followed, all aiming in their course of operation and results, to secure the highest cultivation of the intellect. But the one that comes most direct and

nearest to the mass of the people among us, is that embraced in our system of Common School education. Its importance is deemed so manifest and highly essential to the welfare of the State, as well as individuals, that laws are made for its encouragement and government. It is under the proper administration of well defined law, regulating the details of this system, that enables it to stand forth a blessing to the community in the impartation of knowledge to all who will avail themselves of its beneficent provisions. Our Common School law stands upon the Statute book as the expressed will of the people through their Representatives.

With much accuracy and detail, it marks out a definite and explicit course of action for the Legislature to pursue. It also demands of the towns in conformity with its provisions, the election of Town Superintendents. It extends its mandatory power to districts and to individuals acting under the authority and instructions of districts, and in some instances imposes a penalty for the nonperformance of duties required by the law. All this is just, and without it the system would be powerless. The system is so constructed that deprived of the practical operation of one part, the whole suffers to a greater or lesser extent.

District Committees are deemed necessary to carry on the affairs of a district, Town Superintendents to carry on the workings of the system in connection with District Committees, and a STATE SUPERINTENDENT to carry on in his appropriate sphere, the operations of the system of which he stands by law, the acknowledged head.

While thus the system was rendered in the estimation of the Legislature that framed the law, perfect in its parts, and as a whole, subsequent Legislatures have in violation of an express provision contained in the law, refused to elect a State Superintendent, the *legally constituted head of the system*. With equal propriety and legality may towns in open violation of the law, refuse to elect Town Superintendents, and districts refuse to elect Committees, or keep up the organization of District Schools. If power in the one case illegally exercised to *cripple the system* is tolerated, it also may be illegally exercised in the others with equal favor. The Legislature have in this instance set an example, which if imitated by others, would subject the aggressor to the penalties provided by the Statute.

The tendency of such a course of policy as has marked the Legislature upon this subject, is to weaken that regard for law, which all should feel.

If the Legislature can with impunity refuse to observe laws made for their government, no complaint should be made against individual citizens for pursuing the same course of policy.

Legislatures are trust bodies. Invested with certain constitutional powers clearly defined, embodied and set forth in the form of *Statute law*, they are to be exercised only in accordance with the Statute,

with a direct responsibility to the people for their observance or violation. They are supposed to be guardians of the rights of the people. This trust of guardianship is an acknowledged one of *great responsibility*. Particularly is it so, when assumed by a Legislature, to be exercised for the welfare and happiness of a State. Laws ostensibly based upon this principle are yearly enacted, the design of which is to advance the great and growing interests of a free people. When once the Legislature, the constitutional guardians of the people, so far *forget* their position and *responsibility*, as deliberately to refuse to execute laws made for promoting the happiness of the community while they stand *unrepealed* upon the Statute book, they stand forth to the world as having *violated the trust*, and *abused the power* conferred upon them by those for whom they are called to act. No plea of justification has ever been urged for this neglect of duty, but that of *expense to the State*. But that plea is unavailing, as effecting the principle of a faithful discharge of duty embraced in the trust, while the law stands *unrepealed*, and consequently is of *binding force morally and constitutionally*.

Its execution is, therefore, demanded by every consideration of law and justice; or its obliteration from the Statute book by repeal. If repealed *it ceases to be law*--UNREPEALED IT IS LAW, and as such should be sacredly observed and executed. It is upon this universally acknowledged correct principle that all laws stand, and the great interests of society preserved inviolate. So long as the LAW STANDS upon the Statute book, there is but one duty of the citizen or legislator--*respect and obedience*.

Your Committee, therefore, think that the Legislature have failed to perform their duty as guardians of the people, in neglecting to execute a plain Statute law; and have consequently assumed a power not granted by the Constitution.

Your Committee are also of the opinion that the refusal of the Legislature to carry out the law in the respect above named, is a direct violation of the Statute, and at war with the spirit and genius of the Constitution, the organic law of the Commonwealth.

All which is respectfully submitted.

JAMES M. SLADE, *for committee*

On motion of Mr. DANA, the Committee appointed upon the resolution of Mr. HUTCHINSON, providing for the extension to the term of office of the Circuit Judges, Judges of Probate and Justices of the Peace, and also the resolution of Mr. DANA, to enquire into the expediency of so altering the Constitution in regard to the election of Justices of the Peace, that they may be elected at the annual town meetings, in such manner as the Legislature may direct, were discharged from further consideration of the subject embraced in the above named resolutions.

Mr. DANA moved that two more members be added to the Committee raised upon the resolution of Mr. HUTCHINSON, to take

into consideration the method of submitting to the people alterations and amendments that may be proposed by the Council of Censors.

The question being stated and taken, said motion was adopted.

The following named gentlemen were added to the Committee above named, Mr. WELLS, Mr. NELSON.

On motion, the Council adjourned.

### Wednesday, 20th February, 1856.

Council met.

Prayer by Rev. Hiram Meeker.

Journal of yesterday read and approved.

Mr. HUTCHINSON, member of the Council, appeared and took his seat.

Mr. WILSON, from the Committee to whom were referred the resolutions of Mr. WILSON and Mr. HAMMOND, relating to the reference of Suits at Law, presented the following report, which was read and accepted:

#### REPORT.

*To the Hon. Council now in Session:*

The Committee, to whom were referred the resolutions of Messrs. WILSON and HAMMOND, relating to the reference of Suits at Law, having had the subject of said resolutions under their consideration, would respectfully report:

That in their opinion the addition and amendment proposed in said resolutions should be adopted. Therefore, your Committee recommend that the following article be added to the Constitution, viz:

The several County Courts, on application of either party, shall have power to refer all suits which, in the opinion of such Court are proper to be referred, under such regulations as the General Assembly shall direct.

WILLIAM C. WILSON, *for committee*

Mr. WILSON moved the above report be adopted and referred to the Committee of Revision and Engrossment.

Upon this question Mr. HUTCHINSON demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 7.

--Nays 5.

Those who voted in the affirmative, are

Messrs. HAMMOND, WELLS, DANA, VAIL, WILSON, FISH, SLADE.--7.

Those who voted in the negative, are

Messrs. HUTCHINSON, PIERPOINT, GLEED, NELSON, HIBBARD.--5.

So said report was adopted and referred to the Committee on Revision and Engrossment.

Mr. PIERPOINT called up the report of Mr. WILSON, relating to future amendments of the Constitution and the abolishment of the

Council of Censors, together with the amendment of Mr. SLADE.

Mr. GLEED moved to amend the motion of Mr. SLADE, by striking out the word "ninety," and insert in lieu thereof the words "two hundred and forty-one."

Upon this question Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 3.

--Nays 9.

Those who voted in the affirmative, are

Messrs. NELSON, GLEED, HIBBARD.--3.

Those who voted in the negative, are

Messrs. HAMMOND, WELLS, PIERPOINT, DANA, VAIL, HUTCHINSON, WILSON, FISH, SLADE.--9.

So the motion was lost.

The motion recurred upon the adoption of the amendment of Mr. SLADE.

Upon this question Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the affirmative,--Yeas 10.

--Nays 2.

Those who voted in the affirmative, are

Messrs. FISH, WILSON, VAIL, DANA, PIERPOINT, WELLS, HAMMOND, HIBBARD, SLADE, HUTCHINSON.--10.

Those who voted in the negative, are

Messrs. GLEED, NELSON.--2.

So said amendment was adopted.

Mr. GLEED moved to amend said report as follows: Strike out all after the word "several counties," and insert in lieu thereof the words "according to the number of Representatives that each county is now entitled to in the House of Representatives."

Upon this question Mr. WILSON demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 4.

--Nays 8.

Those who voted in the affirmative, are

Messrs. GLEED, NELSON, HIBBARD, SLADE.--4.

Those who voted in the negative, are Messrs. HAMMOND, DANA, WELLS, PIERPOINT, HUTCHINSON, FISH, WILSON, VAIL.--8.

So said motion was lost and said amendment rejected.

Mr. WILSON moved to amend the report by adding thereto the following proviso:

Strike out all after the words "ninety delegates," and insert--"Each county shall be entitled to two delegates at least, and the remainder of the delegates shall be apportioned to the several counties according to their population, as the same was ascertained by the last census taken under the authority of the United States, regard always being had in such apportionment to the counties having the

largest fraction. Provided, however, that the General Assembly shall have power to regulate by law the mode of balloting for delegates, within the several counties, and to prescribe the means and the manner by which the result of the balloting shall be ascertained, and through which the delegates shall be certified of their election, and for filling all vacancies in the Convention, which shall happen by death, resignation, or otherwise. But they shall not have power to apportion the delegates to the several counties, otherwise than according to the population thereof, agreeably to the provisions herein before ordained."

Pending the consideration of the above proposed amendment, the Council adjourned.

### Afternoon.

The Council resumed the consideration of the amendment proposed by Mr. WILSON, and under consideration at the adjournment of the morning session.

The question being upon the adoption of the amendment proposed by Mr. WILSON,

Mr. DANA moved to amend the amendment, by striking out all after the words "largest fraction."

On motion of Mr. WILSON, the report with proposed amendments were recommitted to the Committee.

Mr. PIERPOINT called up the report of Mr. SLADE, from the Committee to whom was referred the resolution of Mr. SLADE, instituting the enquiry whether the neglect of the Legislature to elect a State Superintendent of Common Schools is not a violation of the Statute law in such case made and provided, and moved the same be adopted.

The question being stated and taken, said motion was agreed to, and said report adopted.

Mr. SLADE introduced the following resolution:

*Resolved*, That the Legislative Committee be instructed to enquire into the expediency of so altering section fourteen of the Constitution, as to make it necessary for ten members of the House of Representatives to demand the Yeas and Nays upon any question, before they shall be taken by the House, and report to this Council by amendment to that effect otherwise.

Which was read and adopted.

Mr. PIERPOINT called up the report of Mr. DANA, from the Committee to whom was referred the resolutions of Mr. DANA and Mr. HAMMOND, in relation to the apportionment of Senators and Representatives.

Mr. GLEED moved to recommit the above report to the Committee, with instructions to amend the same in conformity with the following, viz:

"The House of Representatives of the freemen of this State shall



consist of one person, to be chosen by ballot by the freemen of every representative district of this State, respectively. Each representative district shall be composed of two regularly organized adjoining towns, to be formed, and the mode of balloting to be regulated, by the Legislature, at their session in 1857, and be subject to the subsequent action of the Legislature, and in case of an odd number of towns, the Legislature shall form one district to be composed of three adjoining towns."

Upon this question Mr. GLEED demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 3.

--Nays 9.

Those who voted in the affirmative, are  
Messrs. GLEED, NELSON, HIBBARD.--3.

Those who voted in the negative, are

Messrs. WILSON, HUTCHINSON, VAIL, FISH, DANA, WELLS,  
PIERPOINT, HAMMOND, SLADE.--9.

So said motion was disagreed to.

Mr. GLEED moved the report lay on the table until to-morrow morning at nine o'clock.

Which said motion was agreed to.

Mr. PIERPOINT introduced the following resolution:

*Resolved*, That the Secretary procure to be printed six hundred and fifty copies of the Journal of this Council, and that one hundred and twenty-five copies thereof be delivered to the Sergeant-at-Arms, to be distributed among the members of the Convention when assembled, and that the remainder be delivered to the Sheriffs of the several counties, to be by them distributed as follows: To the State Librarian fifty copies, to the Governor, Lieutenant Governor, Secretary of State, Clerk of the House of Representatives, Secretary of the Senate, Secretary of Civil and Military Affairs, and to the members of this Council each five copies, to the Ex-Governors and Lieutenant Governors of this State, to the Judges of the Supreme, Circuit, County and Probate Courts, to the Clerks of the County Courts, to the Registers of Probate, and to the Town Clerks of each organized town in this State, each one copy.

Such parts of the Constitution as are proposed to be altered or amended, together with the alterations and amendments proposed by this Council, the Address of the Council to the people, and the Ordinance for calling a Convention, to be printed at the close of the Journal, and the Address and Ordinance to be signed by the President and Secretary of the Council.

Which was read and ordered to lie on the table.

On motion of Mr. VAIL, the Council adjourned.

Thursday, 21st February, 1856.

Council met.

Prayer by Rev. W. T. Webbe.

Journal of yesterday read and approved.

Mr. WILSON introduced the following resolution:

*Resolved*, That the Convention to take into consideration the amendments of the Constitution to be proposed by the Council, be composed of ninety delegates; that the same be elected by the freemen of the several counties, and that said delegates be apportioned to the several counties as follows, viz:

Addison County	7
Bennington County	6
Caledonia County	7
Chittenden County	8
Essex County	3
Franklin County	8
Grand Isle County	3
Lamoille County	4
Orange County	7
Orleans County	5
Rutland County	8
Washington County	7
Windham County	8
Windsor County	9

Total 90

*Resolved*, That a Committee of two be appointed to draft an *Ordinance* for a Convention, agreeably to the instructions and limitations contained in the first resolution above named.

Which were read and ordered to lie on the table.

Mr. WELLS, from Committee on Taxes and Expenditures, presented the following report, which was read and accepted:

#### REPORT.

*To the Council of Censors now in Session:*

Your Committee on Taxes and Expenditures, to whom was referred the communication from Hon. William M. Pingrey, Auditor of Accounts, respectfully report:

That they have carefully examined said communication, and are of opinion that it is not necessary for this Council to take further action thereon.

Respectfully submitted.

WILLIAM W. WELLS, *for committee*

Mr. HUTCHINSON, from the Committee on the Powers of the Constitution, presented the following

#### REPORT.

*To the Hon. Council of Censors now in Session:*

The Committee on the Powers of the Constitution would respectfully report: That we have attended to the duties assigned us, and have discovered in some instances, during the last septenary,

where laws have been passed which we deem in part unconstitutional; yet as the more objectionable portions have been repealed, we think no action by the Council necessary; and for the further reason that we consider that all doubtful questions arising as to the constitutionality of legislative enactments will be more properly considered by the Supreme Court of the State, when occasion requires, we therefore request to be discharged.

J. B. HUTCHINSON, *for committee*

Which was accepted, and the Committee discharged from further consideration of the subject.

Mr. DANA, from the Legislative Committee, presented the following

#### REPORT.

*To the Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr. SLADE, to enquire into the expediency of so altering section fourteen of the Constitution, as to make it necessary for ten members of the House of Representatives to demand the Yeas and Nays upon any question before they shall be taken by the House, report that they have had said matter under consideration, and report that in their opinion said alteration should be made, and recommend the Council to instruct the Committee of Revision and Engrossment to propose an article of amendment embracing such alteration.

All which is respectfully submitted.

CHAS. S. DANA, *for committee*

The above report was read, accepted, and adopted.

Mr. WILSON called up the resolutions of Mr. WILSON, relative to calling a Constitutional Convention and the appointment of a Committee to draft an Ordinance, and the same were adopted by the Council.

Council adjourned.

#### Afternoon.

Mr. DANA called up the report of the Legislative Committee, in relation to the apportionment of Senators and Representatives, and moved its adoption.

Mr. GLEED moved to amend said report as follows: Add to section four the following words, "and shall not have more than one Representative."

The question being stated and taken, said motion was disagreed to.

Mr. GLEED moved to further amend said report as follows: Strike out, in section one, the word "four," and insert the word "two."

And upon this question demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 3.

--Nays 9.

Those who voted in the affirmative, are  
Messrs. GLEED, NELSON, WELLS.--3.

Those who voted in the negative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, HAMMOND,  
FISH, WILSON, SLADE, PIERPOINT.--9.

So said motion to amend was rejected.

The question recurred upon the adoption of the report--was stated  
and taken.

And upon this question Mr. GLEED demanded the Yeas and  
Nays, which being taken,

It was decided in the affirmative,--Yeas 10.

--Nays 2.

Those who voted in the affirmative, are  
Messrs. VAIL, DANA, GLEED, HUTCHINSON, HAMMOND,  
WELLS, FISH, WILSON, SLADE, PIERPOINT.--10.

Those who voted in the negative, are  
Messrs. HIBBARD, NELSON.--2.

So said report was adopted, and on motion, referred to the  
Committee of Revision and Engrossment.

Mr. HUTCHINSON presented the following report, which was read,  
accepted and laid on the table:

#### REPORT.

*To the Council of Censors now in Session:*

Your Committee, appointed to take into consideration Article one  
of the Amendments of the Constitution, and to whom was also  
referred the resolution of Mr. SLADE relative to the qualifications of a  
freeman, that he be able to read the English language, would report  
that we have had said subjects under consideration and deem any  
alteration in regard to the same inexpedient.

J. B. HUTCHINSON, *for committee*

Mr. WILSON presented the following

#### REPORT.

*To the Hon. Council of Censors now in Session:*

The Committee, to whom were referred several resolutions relating  
to future amendments to the Constitution and the abolishment of the  
Council of Censors, and to whom was recommitted the report of Mr.  
WILSON upon the same subject, having had said matters under  
consideration would report:

That in their opinion section forty-third of the Constitution should  
be abolished. And your Committee recommend that the following  
article be added to the Constitution, viz:

In order that the freedom of this commonwealth may be preserved  
inviolable forever, there shall be chosen by ballot, by the freemen of  
the respective counties in this State, on the first Tuesday in March,  
in the year of our Lord one thousand eight hundred and sixty-three,  
and on the first Tuesday in March in every ten years thereafter, one  
person in each county, who shall be chosen in the same manner the

Senate is chosen, to be called the Constitutional Council, who shall meet together on the first Wednesday of June next ensuing their election, at the State House, 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 of this State requires amendments made therein, or additions made thereto; and this power they shall continue to have for and during the space of six months from the day of their election, and no longer.

The said Council shall also have power to call a Convention, to meet within eighteen months 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 of such Convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

And when said Council propose amendments to the Constitution as herein provided, it shall be their duty to call a Convention to consider such amendments, and by an *Ordinance* for that purpose, said Council shall designate the time, place and manner of electing the delegates of such Convention, and the time and place, when and where the Convention shall meet.

The Convention to consider of the amendments proposed by said Council, and adopt the same or such parts thereof as the Convention shall judge will be most conducive to the good government, peace and happiness of the State, shall be composed of ninety delegates. Each county shall be entitled to two delegates at least, and the remainder of the delegates shall be apportioned to the several counties according to their population, as the same was ascertained by the (then) last census taken under the authority of the United States, regard always being had in such apportionment to the counties having the largest fraction.

And the persons, equal in number to the number of delegates apportioned to such county, having the greatest number of legal votes in such county, respectively, shall be the delegates of such county. And if two or more persons in any county, shall have received an equal number of votes for delegates, the Convention, when assembled, shall elect one or more of such persons (as the case may require,) as delegate or delegates to said Convention.

WILLIAM C. WILSON, *for committee*

The above report was accepted, adopted and referred to the Committee on Revision and Engrossment.

On motion, the Council adjourned.

**Friday, 22nd February, 1856.**

Council met.

Prayer by Rev. Mr. Kendall.

Journal of yesterday read and approved.

Mr. HUTCHINSON presented the following

**REPORT.**

*To the Council of Censors now in Session:*

Your committee, appointed to take into consideration the method of submitting to the action of the people, for their adoption or rejection, the alterations and amendments of the Constitution proposed by this Council, would report, that they fully concur in the method proposed by the resolution now before the Council for the same purpose, and deem no further action necessary on the part of the Committee.

J.B. HUTCHINSON, *for committee*

Which was read, accepted and adopted.

MR. WILSON introduced the following resolution:

*Resolved*, Two-thirds of this Council concurring herein, that the Council call a Convention of delegates of the freemen of this State, to meet at the State House, in Montpelier, on the first Wednesday of January, A.D. 1857, for the purpose of taking into consideration such amendments to the Constitution as have been or may be proposed by this Council; that said Convention be composed of ninety delegates, and that said delegates be apportioned to and elected by the freemen of the several counties in this State, agreeably to the resolutions introduced by Mr. WILSON and adopted by this Council in the 21st of this month.

Which was read and ordered to lie on the table.

The President announced the appointment of the following Committee, ordered to be raised on the resolution of Mr. SLADE, providing for an address to the people, Mr. WILSON, Mr. DANA, Mr. HAMMOND.

Mr. WILSON called up the resolution of Mr. PIERPOINT, providing for the printing of the Journal of this Council and its distribution, and on motion of Mr. WILSON, the same was adopted.

Mr. WILSON called up the report of Mr. HUTCHINSON, relative to article one of the amendments of the Constitution, and the subject matter embraced in the resolution of Mr. SLADE, providing for certain qualifications to render a person eligible to become a freeman of this State, and moved its adoption.

The question being stated and taken, said report was adopted.

The President announced the appointment of the following Committee, ordered to be raised on the resolution of Mr. WILSON, to draft an ordinance for a Convention, Mr. HUTCHINSON, Mr. GLEED.

In order that the Committee of Revision and Engrossment have

time to perfect the business referred to them, the Council adjourned until to-morrow morning, at nine o'clock.

**Saturday, 23rd February, 1856.**

Council met.

Prayer by Rev. B. Labaree.

Journal of yesterday read and approved.

Mr. SLADE introduced the following resolution:

*Resolved*, That the Committee of Revision and Engrossment be, and are hereby instructed, to report to this Council an article of amendment to the Constitution, providing that a plurality vote of the freemen shall elect members of the House of Representatives.

Which was read and adopted.

Mr. VAIL introduced the following resolutions:

*Resolved*, That the Secretary of this Council is authorized to make up and certify the debenture of the present session, and contingent expenses thereof.

*Resolved*, That the Secretary of the Council, is hereby authorized and directed to receive and disburse the debentures of the present session together with the contingent expenses thereof.

Which was read and adopted.

On motion, the Council adjourned.

**Afternoon.**

Mr. DANA, from Committee of Revision and Engrossment reported the following nineteen articles of amendment, adopted by the Council revised and engrossed which were read, accepted, and article by article, adopted as proposed amendments of the Constitution of this State, to be submitted to a Convention to be called under an ordinance of this Council, for that purpose.

**REPORT.**

*To the Council of Censors now in Session:*

Your Committee to whom has been referred the different propositions of amendment of the Constitution, recommended by said Council, report the following articles of amendment to be submitted to a Convention to be called under an Ordinance of said Council, for that purpose.

ARTICLE 1. The General Assembly shall meet on the second Thursday of October, biennially.

ARTICLE 2. The Governor, Lieutenant Governor, Treasurer of the State, House of Representatives and Senators, shall be chosen on the first Tuesday in September, biennially.

ARTICLE 3. The term of office of the Governor, Lieutenant Governor and Treasurer of the State, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session, of the Legislature, at which, by the

Constitution and Laws, their successors are required to be chosen, and not after such adjournment.

ARTICLE 4. Assistant Judges of the County Courts, Sheriffs, High Bailiffs, State's Attornies, Judges of Probate, and Justices of the Peace, shall be elected biennially, as provided by the Constitution and Laws, and shall hold their offices for two years commencing on the first day of December, next after their election.

ARTICLE 5. The House of Representatives shall consist of one hundred and fifty members. Each County shall have two, the remainder shall be apportioned to the several counties according to the population of each; due regard being always had in such apportionment to the counties having the largest fractions. The Legislature shall make a new apportionment after the taking of each census of the United States, or census taken by the authority of the General Assembly, regarding the above provisions of this article--and until there shall be an apportionment by the Legislature, the Representatives shall be apportioned to the several counties as follows, to wit:--Addison County twelve, Bennington County nine, Caledonia County eleven, Chittenden County thirteen, Essex County four, Franklin County thirteen, Grand Isle County four, Lamoille County six, Orange County thirteen, Orleans County eight, Rutland County fifteen, Washington County twelve, Windham County thirteen, Windsor County seventeen, and shall be elected, and their election certified, in the manner provided for the choice of Senators; and if two or more persons voted for in any county shall receive an equal number of votes, the House of Representatives, when assembled, shall elect one or more of such persons, as the case may require.

ARTICLE 6. The Legislature shall have power to divide the counties into representative districts, and regulate by law the mode of balloting for Representatives therein, and the means and the manner by which the result of said balloting shall be ascertained. Each district shall, so far as may be, consist of an equal number of inhabitants and of convenient and of contiguous territory, but no town or city shall be divided, and if any town or city shall be entitled to one or more Representatives, such town or city shall be made an entire district and may elect the number of Representatives to which it shall be entitled. The persons voted for in such districts, equal in number to that of Representatives apportioned thereto, having the greatest number of legal votes, shall be the Representative or Representatives, as the case may be, and if two or more persons in any district shall receive an equal number of votes, the House of Representatives shall elect one or more of such persons, as the case may require.

ARTICLE 7. The Senate shall be composed of two Senators from each county, and shall be elected for the term of four years. At the first session of the Senate elected under this Constitution, as amended, the Senators of each county shall be divided into two



classes to be determined by lot, the term of the first class shall expire at the close of the second year, of the second class at the close of the fourth year; one Senator from each county to be elected biennially thereafter. And if vacancies shall happen the Governor shall make temporary appointments until the next election, when all vacancies shall be filled by the freemen.

ARTICLE 8. The General Assembly, at its first session under this Constitution as amended, shall elect and classify the Judges of the Supreme Court in such manner that the term of office of one third of the whole number, as near as may be, shall expire biennially, and thereafter the term of office of such Judges shall be six years. If the office of any Judge shall become vacant, before the expiration of the regular term for which he was elected, the Governor shall make a temporary appointment until the meeting of the General Assembly, when such vacancy shall be filled.

ARTICLE 9. All elections by the General Assembly, or either branch thereof, shall be made by viva voce vote.

ARTICLE 10. The freemen of each town in this State, shall, on the day of election for choosing Representatives to the General Assembly, bring in their votes for Governor, Lieutenant Governor and Treasurer of the State, and the presiding officer of each freemen's meeting, after the votes shall have been taken, sorted and counted, shall, in open meeting, make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name, and designating the office for which the votes were given, a record of which shall be made in the town clerk's office, and he shall seal up said certificate, and shall write thereon the name of the town, and the words, "Certificate of votes for \_\_\_\_\_," adding thereto the title of the office voted for as the case may be, and shall deliver such certificate to some Representative chosen as a member of the General Assembly instead of delivering the votes as required by the tenth section of the second part of the Constitution. And it shall be the duty of such Representative to cause such certificates of votes to be delivered to the Committee of the General Assembly appointed to canvass the same.

ARTICLE 11. The votes for Governor, Lieutenant Governor, and Treasurer of the State shall be canvassed, and the result ascertained, and declared by a committee appointed by the Senate and House of Representatives, and the persons receiving the greatest number of legal votes for the respective offices, shall be declared duly elected. If at any time, two or more persons designated for any one of said offices, shall have received an equal number of votes the Senate and House of Representatives, shall, in joint assembly, elect to such office, one of the persons designated, for whom the greatest number of votes shall have been returned, and the person receiving, on a joint ballot, the greatest number of votes, shall be declared elected.

ARTICLE 12. The Secretary of State shall be elected at the time and in the manner, and the result of the balloting shall be ascertained, as provided in the election of Governor, and his term of office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 13. State Auditor of Accounts shall be elected at the time, and in the manner, and the result of the balloting shall be ascertained, as provided in the election of Governor, and his term of office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 14. Bank Commissioner shall be elected at the time, and in the manner, and the result of the balloting shall be ascertained as provided in the election of Governor, and his term of office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 15. Registers of Probate shall be elected by the freemen of the respective Probate Districts at the time, and in the manner, and the result of ballotings shall be ascertained, as provided in the election of Judges of Probate, and shall hold their offices for two years from the first day of December next after their election.

ARTICLE 16. The Yeas and Nays shall not be taken on any question in the House of Representatives, excepting upon reconsideration of a bill returned by the Governor, unless demanded by at least ten members.

ARTICLE 17. The several County Courts, on application of either party, shall have power to refer such civil suits as, in the opinion of such Court, are proper to be referred, under such regulations as the General Assembly shall direct, and not otherwise.

ARTICLE 18. In order that the freedom of this commonwealth may be preserved inviolate forever, there shall be chosen by ballot, by the freemen of the respective counties in this State, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three, and on the first Tuesday in March in every ten years thereafter, one person in each county, who shall be chosen in the same manner the Senate is chosen, to be called the *Constitutional Council*, who shall meet together on the first Wednesday of June next ensuing their election, at the State House, 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 of this State requires amendments made therein or additions made thereto, and this power they shall continue to have for and during the space of six months from the day of their election and no longer.

The said Council shall also have power to call a Convention to meet within eighteen months 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 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. And when said Council propose amendments to the Constitution as herein provided, it shall be their duty to call a Convention to consider such amendments, and by an ordinance for that purpose, said Council shall designate the time, place, and manner of electing the delegates of such Convention, and the time and place, when and where the Convention shall meet.

The Convention to consider of the amendments proposed by said Council, and to adopt the same, or such parts thereof as the Convention shall judge will be most conducive to the good government, peace and happiness of the State, shall be composed of ninety delegates.

Each county shall be entitled to two delegates at least, and the remainder of the delegates shall be apportioned to the several counties according to their population, as the same was ascertained by the (then) last census taken under the authority of the United States, regard always being had in such apportionment to the counties having the largest fraction. And the persons equal in number to the number of delegates apportioned to such county, having the greatest number of legal votes in such county, respectively, shall be the delegates of such county. And if two or more persons in any county shall have received an equal number of votes, the Convention, when assembled, shall elect one of such persons, as the case may require, as delegate or delegates of said Convention.

ARTICLE 19. This Constitution, as amended, shall take effect on the first day of January, eighteen hundred and fifty-eight.

Mr. DANA, from the Committee, made the following report:

Your Committee have also examined the Constitution of this State, and find that the following sections and articles of the same will be altered, amended, or superceded by the adoption of the proposed amendments, to wit:

Part 1, Article 12--by Article 17 of proposed amendments.

Part 2, section 7--by Article 5 and 6 of proposed amendments.

Part 2, section 8--by Article 2, 5 and 6 of proposed amendments.

Part 2, section 9--by Article 1, 2, 5, 6 and 8 of proposed amendments.

Part 2, section 10--by Article 10 and 11 of proposed amendments.

Part 2, section 14--by Article 16 of proposed amendments.

Part 2, section 31--by Article 17 of proposed amendments.

Part 2, section 43--by Article 18 of proposed amendments.

Article 4, Amended Constitution--by Article 7 of proposed amendments.

Article 5,	"	by Article 2 and 7	"
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Article 9,	"	by Article 11	"
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Article 12,	"	by Article 12, 13, 14	"
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Article 19,	"	by Article 4	"
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Article 20,	"	by Article 4	"
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Article 21,	"	by Article 3	"
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Article 23,	"	by Article 2 and 7	"
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All which is respectfully submitted.

CHAS. S. DANA, *for committee*

Mr. WILSON called up the resolution calling a Constitutional Convention, and on the question of its adoption, the Yeas and Nays being demanded, were taken, and

It was decided in the affirmative,--Yeas 10.

--Nays 2.

Those who voted in affirmative, are

Messrs. VAIL, GLEED, DANA, HAMMOND, WELLS, FISH, WILSON, HUTCHINSON, SLADE, PIERPOINT.--10.

Those who voted in the negative, are

Messrs. NELSON, HIBBARD.--2.

So the resolution was adopted by a vote of two thirds of the Council.

Mr. DANA moved to reconsider the vote adopting the articles of amendment, proposed by the Committee of Revision and Engrossment and that said motion lie on the table. Which said motion was agreed to.

On motion, the Council adjourned.

### Monday, February 25, 1856.

Journal of Saturday read and approved.

Mr. HUTCHINSON, from the Committee to draft an Ordinance for a Convention to consider and act upon the amendments to the Constitution, proposed by this Council, reported the following

#### ORDINANCE:

#### STATE OF VERMONT,

#### IN COUNCIL OF CENSORS, FEBRUARY, 1856.

The Council having agreed to propose certain amendments to the Constitution of this State, and having determined to call a Convention to consider such amendments:

Therefore, it is ordered by said Council, that a Convention of the people of the State of Vermont shall meet at the State House in Montpelier, on the first Wednesday, in January A.D. 1857, to

consider of the amendments to the Constitution proposed by this Council, and adopt the same or such parts thereof as the said Convention shall judge will be most conducive to the good government, peace and happiness of the people of the State. Said Convention may consist of ninety delegates, and no more; to be apportioned to the several Counties in the State, as follows, to wit: Addison county, seven; Bennington county, six; Caledonia county, seven; Chittenden county, eight; Essex county, three; Franklin county, eight; Grand Isle county, three; Lamoille county, four; Orange county, seven; Orleans county, five; Rutland county, eight; Washington county, seven; Windham county, eight; Windsor county, nine; to be elected by the freemen of said counties respectively.

The first constable, or, in his absence, the town clerk, or in his absence, one of the selectmen of each town in this State, entitled to send a representative to the General Assembly, without further order, shall set up a notification at such place or places as shall have been appointed for notifying town meetings in such town, at least six days before the first Tuesday in November, A.D. 1856, warning the freemen of their respective towns to meet on said first Tuesday in November, A.D. 1856, at one o'clock in the afternoon, at the place where the last freemen's meeting was held in such town, for the purpose of electing said delegates; at the opening of which meeting this order shall be publicly read.

The first constable, or, in his absence or disability, the town clerk, or some one of the selectmen of each town, or a Justice of the Peace, shall preside at such meeting, whose duty it shall be to call on the freemen of such town from time to time for the space of four hours, to give in their votes for such delegates and every person legally qualified to vote shall, in his own proper person, present to the presiding officer, on one ballot, his vote with the names of the persons whom he would elect, fairly written or printed thereon. Said votes shall be received in the same manner and under the same regulations, as is by law provided in the case of electing Senators to the State Senate. At the expiration of the time aforesaid, the votes shall be, by said presiding officer with the assistance of the selectmen and justices of the peace in such town, sorted and counted, and a list of the persons voted for, with the number of votes for each person, shall be made, which said list, signed by the presiding officer and the town clerk, if present, shall be recorded in the town clerk's office. And said presiding officer, at the same time, shall make another similar list, which, attested and signed by himself and the town clerk, if present at such meeting, he shall seal up and superscribe with the name of the town in which said votes were given, and the following words, *Votes for Delegates to the Constitutional Convention*, and shall deliver the same to the County Clerk for the same county within ten days from the time of holding said meeting.

It shall be the duty of the County Clerk of each county respectively, or in his absence or disability, the Sheriff of such county, or in the absence or disability of both, the High Bailiff of such county, on the tenth day after such election, to publicly open, sort and count said votes and make a record of the same in the office of the Clerk of the County Court, and shall within ten days thereafter transmit to each of the persons having the greatest number of votes a certificate of his election. And if two or more persons shall have received an equal number of votes, the County Clerk shall certify the same to said Convention and the Convention shall designate one of said persons to fill the vacancy.

The certificate of votes for delegates, to be delivered by the presiding officer to the County Clerk as aforesaid, shall be, as near as circumstances will admit, in the form following, to wit:

At a freemen's meeting, legally warned and holden at \_\_\_\_\_ in the State of Vermont, on the first Tuesday in November, A.D. 1856, the votes for Delegates to the Constitutional Convention, having been duly taken, sorted and counted, the following persons had the number of votes annexed to their names respectively. (Here insert the names of the persons voted for, and the number of votes given for each person.)

Attest, A.B., First Constable.

C.D., Town Clerk.

Which Ordinance was, on motion, unanimously adopted by the Council.

Mr. GLEED called up the motion of Mr. DANA, to reconsider the votes adopting the articles of amendments proposed, in the report of Mr. DANA, in the report of the Committee of Revision and Engrossment, and the same was adopted.

Mr. GLEED moved that section one of the proposed articles of amendments be adopted.

And upon this question, demanded the Yeas and Nays, which being taken,

It was decided in the affirmative, --Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.

So the article was adopted.

The question of adopting the second article came up, upon this question.

Mr. SLADE demanded the Yeas and Nays, which being taken,

It was decided in the affirmative, --Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.

So the second article was adopted.

Article third coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.

So article third was adopted.

Article fourth coming up for consideration and adoption,

The Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.

So article fourth was adopted.

Article fifth came up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 7

--Nays 3

Those who voted in the affirmative, are

Messrs. VAIL, DANA, HUTCHINSON, HAMMOND, WELLS, WILSON, PIERPOINT--7.

Those voting in the negative, are

Messrs. HIBBARD, GLEED, NELSON.--3.

So article fifth was adopted.

Article sixth coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 8

--Nays 2

Those who voted in the affirmative, are

Messrs. VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON.--8.

Those voting in the negative, are

Messrs. HIBBARD, PIERPONT.--2.

So article sixth was adopted.

Article seventh coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 8

--Nays 2

Those who voted in the affirmative, are

Messrs. VAIL, DANA, GLEED, HUTCHINSON, HAMMOND, WELLS, WILSON, PIERPONT.--8.

Those voting in the negative, are

Messrs. HIBBARD, NELSON.--2.

So seventh article was adopted.

Article eighth coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 8

--Nays 2

Those who voted in the affirmative, are

Messrs. VAIL, HIBBARD, DANA, HUTCHINSON, HAMMOND, WELLS, WILSON, PIERPONT.--8.

Those voting in the negative, are

Messrs. GLEED, NELSON.--2.

So eighth article was adopted.

Article ninth coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.--10.

So article ninth was adopted.

Article tenth coming up for consideration and adoption, the Yeas and Nays were demanded, which being taken,

It was decided in the affirmative,--Yeas 10

--Nays 0

Those who voted in the affirmative, are

Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON, NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.--10.

So article tenth was adopted.

Article eleventh coming up for consideration and adoption, Mr. GLEED moved to amend as follows:

Strike out the words "the then" and insert the word "such," and insert between the words "greatest and number" the word "equal."

And upon this question demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 5.

--Nays 6.

Those voting in the affirmative, are

Messrs. GLEED, NELSON, HAMMOND, WILSON, PIERPOINT.--5.

Those voting in the negative, are

Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, WELLS, SLADE.--6.

So said proposed amendment was rejected.

Mr. GLEED moved to further amend said article, as follows.

Strike out the words "greatest number of votes" and insert the words "a majority of the votes."

And upon this question demanded the Yeas and Nays, which being taken,

It was decided in the negative,--Yeas 1.

--Nays 9.



The one voting in the affirmative, was  
Mr. GLEED.--1.

Those voting in the negative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, NELSON,  
HAMMOND, WELLS, WILSON, PIERPOINT.--9.

So said proposed amendment was lost.

The question returned upon the adoption of article eleven, the  
Yeas and Nays being demanded, were taken, and  
It was decided in the affirmative,--Yeas 8.

--Nays 2.

Those voting in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, NELSON,  
HAMMOND, WELLS, WILSON.--8.

Those voting in the negative, are

Messrs. GLEED, PIERPOINT.--2.

So article eleven was adopted.

Upon the adoption of article twelve, the Yeas and Nays being  
demanded, were taken, and

It was decided in the affirmative,--Yeas 8.

--Nays 0.

Those voting in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, NELSON,  
HAMMOND, WELLS, WILSON.--8.

So article twelve was adopted.

Article thirteen. The Council proceeded to consider this article  
and the Yeas and Nays being demanded, upon its adoption,

It was decided in the affirmative,--Yeas 8.

--Nays 1.

Those voting in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, NELSON,  
HAMMOND, WELLS, WILSON.--8.

The one voting in the negative, was

Mr. GLEED.--1.

So article thirteen was adopted.

Article fourteen. The Council proceeded to consider the question  
upon the adoption of said article, and upon it the Yeas and Nays  
were demanded, which being taken,

It was decided in the affirmative,--Yeas 8.

--Nays 0.

Those voting in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, HUTCHINSON, NELSON,  
HAMMOND, WELLS, WILSON.--8.

So article fourteen was adopted.

Article fifteen was taken up, and considered, upon the question of  
its adoption, the Yeas and Nays being demanded, were taken, and

It was decided in the affirmative,--Yeas 5.

--Nays 3.

Those voting in the affirmative, are  
Messrs. HIBBARD, HUTCHINSON, NELSON, WELLS,  
WILSON.--5.

Those voting in the negative, are  
Messrs. VAIL, GLEED, HAMMOND.--3.

So said article fifteen was adopted.

Article sixteen was taken up, considered and upon the question of  
its adoption, the Yeas and Nays were demanded, which being taken,  
It was decided in the affirmative,--Yeas 10.

--Nays 0.

Those who voted in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON,  
NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.--10.

So article sixteen was adopted.

Article seventeen. Upon the question of adopting this article the  
Yeas and Nays being demanded, were taken and

It was decided in the affirmative,--Yeas 6.

--Nays 4.

Those voting in the affirmative, are  
Messrs. VAIL, DANA, NELSON, HAMMOND, WELLS,  
WILSON.--6.

Those voting in the negative, are

Messrs. HIBBARD, GLEED, HUTCHINSON, PIERPOINT.--4.

So said article seventeen was adopted.

Article eighteen. The question was stated and taken upon the  
adoption of article eighteen, the Yeas and Nays being demanded,  
were taken, and

It was decided in the affirmative,--Yeas 7.

--Nays 3.

Those voting in the affirmative, are  
Messrs. VAIL, DANA, HUTCHINSON, HAMMOND, WELLS,  
WILSON, PIERPOINT.--7.

Those voting in the negative, are

Messrs. HIBBARD, GLEED, NELSON.--3.

So said article eighteen was adopted.

Article nineteen. This article was taken up, and upon the question  
of adopting the same, the Yeas and Nays were demanded, which  
being taken,

It was decided in the affirmative,--Yeas 10.

--Nays 0.

Those voting in the affirmative, are  
Messrs. HIBBARD, VAIL, DANA, GLEED, HUTCHINSON,  
NELSON, HAMMOND, WELLS, WILSON, PIERPOINT.--10.

So said article nineteen was adopted.

Mr. WILSON moved to reconsider the several votes adopting the  
articles of amendment to the Constitution, which said motion was  
disagreed to.

On motion of Mr. HUTCHINSON, voted, that when this Council adjourn to-morrow morning, they adjourn without day.

Mr. HUTCHINSON introduced the following resolution:

*Resolved.* That the thanks of this Council be tendered to the President, for the able and impartial manner in which he has discharged his duties in presiding over their deliberations.

Which was read and unanimously adopted.

Mr. VAIL introduced the following resolution:

*Resolved.* That we appreciate the many kind attentions and the generous hospitality of the citizens of Middlebury, during the present session of this Council, and that we will not soon forget them.

Which was read and unanimously adopted.

Council adjourned.

#### **Afternoon.**

Mr. WILSON from committee to prepare an address to the freemen of the State, reported an address which was read and accepted.

On motion, the Council adjourned.

#### **Tuesday, 26th February, 1856.**

Council met pursuant to adjournment.

The reading of the journal was dispensed with, and, on motion, the Council adjourned without day.

JAMES M. SLADE,  
Secretary.

#### **ARTICLES OF AMENDMENT PROPOSED BY THE COUNCIL.**

ARTICLE 1. The General Assembly shall meet on the second Thursday of October, biennially.

ARTICLE 2. The Governor, Lieutenant Governor, Treasurer of the State, House of Representatives and Senators, shall be chosen on the first Tuesday in September, biennially.

ARTICLE 3. The term of office of the Governor, Lieutenant Governor and Treasurer of the State, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session, of the Legislature, at which, by the Constitution and Laws, their successors are required to be chosen, and not after such adjournment.

ARTICLE 4. Assistant Judges of the County Courts, Sheriffs, High Bailiffs, States Attornies, Judges of Probate, and Justices of the Peace, shall be elected biennially, as provided by the Constitution and Laws, and shall hold their offices for two years commencing on the first day of December, next after their election.

ARTICLE 5. The House of Representatives shall consist of one hundred and fifty members. Each County shall have two, the

remainder shall be apportioned to the several counties according to the population of each; due regard being always had in such apportionment to the counties having the largest fractions. The Legislature shall make a new apportionment after the taking of each census of the United States, or census taken by the authority of the General Assembly, regarding the above provisions of this article--and until there shall be an apportionment by the Legislature, the Representatives shall be apportioned to the several counties as follows, to wit:--Addison County twelve, Bennington County nine, Caledonia County eleven, Chittenden County thirteen, Essex County four, Franklin County thirteen, Grand Isle County four, Lamoille County six, Orange County thirteen, Orleans County eight, Rutland County fifteen, Washington County twelve, Windham County thirteen, Windsor County seventeen, and shall be elected, and their election certified, in the manner provided for the choice of Senators; and if two or more persons voted for in any county shall receive an equal number of votes, the House of Representatives, when assembled, shall elect one or more of such persons, as the case may require.

ARTICLE 6. The Legislature shall have power to divide the counties into representative districts, and regulate by law the mode of balloting for Representatives therein, and the means and the manner by which the result of said balloting shall be ascertained. Each district shall, so far as may be, consist of an equal number of inhabitants and of convenient and of contiguous territory, but no town or city shall be divided, and if any town or city shall be entitled to one or more Representatives, such town or city shall be made an entire district and may elect the number of Representatives to which it shall be entitled. The persons voted for in such districts, equal in number to that of Representatives apportioned thereto, having the greatest number of legal votes, shall be the Representative or Representatives, as the case may be, and if two or more persons in any district shall receive an equal number of votes, the House of Representatives shall elect one or more of such persons, as the case may require.

ARTICLE 7. The Senate shall be composed of two Senators from each county, and shall be elected for the term of four years. At the first session of the Senate elected under this Constitution, as amended, the Senators of each county shall be divided into two classes to be determined by lot, the term of the first class shall expire at the close of the second year, of the second class at the close of the fourth year; one Senator from each county to be elected biennially thereafter. And if vacancies shall happen the Governor shall make temporary appointments until the next election, when all vacancies shall be filled by the freemen.

ARTICLE 8. The General Assembly, at its first session under this Constitution as amended, shall elect and classify the Judges of the Supreme Court in such manner that the term of office of one third of

the whole number, as near as may be, shall expire biennially, and thereafter the term of office of such Judges shall be six years. If the office of any Judge shall become vacant, before the expiration of the regular term for which he was elected, the Governor shall make a temporary appointment until the meeting of the General Assembly, when such vacancy shall be filled.

ARTICLE 9. All elections by the General Assembly, or either branch thereof, shall be made by viva voce vote.

ARTICLE 10. The freemen of each town in this State, shall, on the day of election for choosing Representatives to the General Assembly, bring in their votes for Governor, Lieutenant Governor and Treasurer of the State, and the presiding officer of each freemen's meeting, after the votes shall have been taken, sorted and counted, shall, in open meeting, make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name, and designating the office for which the votes were given, a record of which shall be made in the town clerk's office, and he shall seal up said certificate, and shall write thereon the name of the town, and the words, "Certificate of votes for \_\_\_\_\_," adding thereto the title of the office voted for as the case may be, and shall deliver such certificate to some Representative chosen as a member of the General Assembly instead of delivering the votes as required by the tenth section of the second part of the Constitution. And it shall be the duty of such Representative to cause such certificate of votes to be delivered to the Committee of the General Assembly appointed to canvass the same.

ARTICLE 11. The votes for Governor, Lieutenant Governor, and Treasurer of the State shall be canvassed, and the result ascertained, and declared by a committee appointed by the Senate and House of Representatives, and the persons receiving the greatest number of legal votes for the respective offices, shall be declared duly elected. If at any time, two or more persons designated for any one of said offices, shall have received an equal number of votes the Senate and House of Representatives, shall, in joint assembly, elect to such office, one of the three persons designated, for whom the greatest number of votes shall have been returned, and the person receiving, on a joint ballot, the greatest number of votes, shall be declared elected.

ARTICLE 12. The Secretary of State shall be elected at the time and in the manner, and the result of the balloting shall be ascertained, as provided in the election of Governor, and his term of office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 13. State Auditor of Accounts shall be elected at the time, and in the manner, and the result of the balloting shall be ascertained, as provided in the election of Governor, and his term of

office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 14. Bank Commissioner shall be elected at the time, and in the manner, and the result of the balloting shall be ascertained as provided in the election of Governor, and his term of office shall commence when he shall be elected and qualified, and continue for the term of two years, or until the election and qualification of his successor.

ARTICLE 15. Registers of Probate shall be elected by the freemen of the respective Probate Districts at the time, and in the manner, and the result of ballotings shall be ascertained, as provided in the election of Judges of Probate, and shall hold their offices for two years from the first day of December next after their election.

ARTICLE 16. The Yeas and Nays shall not be taken on any question in the House of Representatives, excepting upon reconsideration of a bill returned by the Governor, unless demanded by at least ten members.

ARTICLE 17. The several County Courts, on application of either party, shall have power to refer such civil suit as, in the opinion of such Court, are proper to be referred, under such regulations as the General Assembly shall direct, and not otherwise.

ARTICLE 18. In order that the freedom of this commonwealth may be preserved inviolate forever, there shall be chosen by ballot, by the freemen of the respective counties in this State, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three, and on the first Tuesday in March in every ten years thereafter, one person in each county, who shall be chosen in the same manner the Senate is chosen, to be called the Constitutional Council, who shall meet together on the first Wednesday of June next ensuing their election, at the State House, 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 of this State requires amendments made therein or additions made thereto, and this power they shall continue to have for and during the space of six months from the day of their election and no longer. The said Council shall also have power to call a Convention to meet within eighteen months 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 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 any opportunity of instructing their delegates on the subject. And when said Council propose amendments to the Constitution as herein provided, it shall be their duty to call a Convention to consider such amendments, and by an ordinance for that purpose, said Council shall designate the time, place, and manner of electing the delegates of such Convention, and the time and place, when and where the Convention shall meet.

The Convention to consider of the amendments proposed by said Council, and to adopt the same, or such parts thereof as the Convention shall judge will be most conducive to the good government, peace and happiness of the State, shall be composed of ninety delegates.

Each county shall be entitled to two delegates at least, and the remainder of the delegates shall be apportioned to the several counties according to their population, as the same was ascertained by the (then) last census taken under the authority of the United States, regard always being had in such apportionment to the counties having the largest fraction. And the persons equal in number to the number of delegates apportioned to such county, having the greatest number of legal votes in such county, respectively, shall be the delegates of such county. And if two or more persons in any county shall have received an equal number of votes, the Convention, when assembled, shall elect one of such persons, as the case may require, as delegate or delegates of said Convention.

ARTICLE 19. This Constitution, as amended, shall take effect on the first day of January, eighteen hundred and fifty-eight.<sup>5</sup>

ORDINANCE.

STATE OF VERMONT,

IN COUNCIL OF CENSORS, FEBRUARY, 1856.

The Council having agreed to propose certain amendments to the Constitution of this State, and having determined to call a Convention to consider such amendments:

Therefore, it is ordered by said Council, that a Convention of the people of the State of Vermont shall meet at the State House in Montpelier, on the first Wednesday in January, A.D. 1857, to consider of the amendments to the Constitution proposed by this Council, and adopt the same or such parts thereof as the said Convention shall judge will be most conducive to the good government, peace and happiness of the people of the State. Said Convention may consist of ninety delegates, and no more; to be

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<sup>5</sup>Eds. note. Following this, the Journal lists the articles and sections to be affected by its proposals, including Article 7th; Sections 7, 8, 9, 10, 14, 31, and 43; and Articles of Amendment 4, 5, 9, 19, 20, 21, and 23. In the interests of space, we have not included them in the text.

apportioned to the several Counties in the State, as follows, to wit: Addison County, seven; Bennington county, six; Caledonia county, seven; Chittenden county, eight; Essex county, three; Franklin county, eight; Grand Isle county, three; Lamoille county, four; Orange county, seven; Orleans county, five; Rutland county, eight; Washington county, seven; Windham county, eight; Windsor county, nine; to be elected by the freemen of said counties respectively.

The first constable, or in his absence, the town clerk, or in his absence, one of the selectmen of each town in this State, entitled to send a representative to the General Assembly, without further order, shall set up a notification at such place or places as shall have been appointed for notifying town meetings in such town, at least six days before the first Tuesday in November, A.D. 1856, warning the freemen of their respective towns to meet on said first Tuesday in November, A.D. 1856, at one o'clock in the afternoon, at the place where the last freemen's meeting was held in such town, for the purpose of electing said delegates; at the opening of which meeting this order shall be publicly read.

The first constable, or in his absence or disability, the town clerk, or some one of the selectmen of each town, or a Justice of the Peace, shall preside at such meeting, whose duty it shall be to call on the freemen of such town from time to time for the space of four hours, to give in their votes for such delegates; and every person legally qualified to vote shall, in his own proper person, present to the presiding officer, on one ballot, his vote with the names of the persons whom he would elect, fairly written or printed thereon. Said votes shall be received in the same manner and under the same regulations, as is by law provided in the case of electing Senators to the State Senate. At the expiration of the time aforesaid, the votes shall be, by said presiding officer with the assistance of the selectmen and justices of the peace in such town, sorted and counted, and a list of the persons voted for, with the number of votes for each person, shall be made, which said list, signed by the presiding officer and the town clerk, if present, shall be recorded in the town clerk's office. And said presiding officer, at the same time, shall make another similar list, which, attested and signed by himself and the town clerk, if present at such meeting, he shall seal up and superscribe with the name of the town in which said votes were given, and the following words, "Votes for Delegates to the Constitutional Convention," and shall deliver the same to the County Clerk for the same county within ten days from the time of holding said meeting.

It shall be the duty of the County Clerk of each county respectively, or in his absence or disability, the Sheriff of such county, or in the absence or disability of both, the High Bailiff of such county, on the tenth day after such election, to publicly open, sort and count said votes and make a record of the same in the office of the Clerk of



the County Court, and shall within ten days thereafter transmit to each of the persons having the greatest number of votes a certificate of his election. And if two or more persons shall have received an equal number of votes, the County Clerk shall certify the same to said Convention and the Convention shall designate one of said persons to fill the vacancy.

The certificate of votes for delegates, to be delivered by the presiding officer to the County Clerk as aforesaid, shall be, as near as circumstances will admit, in the form following, to wit:

At a freemen's meeting, legally warned and holden at \_\_\_\_\_ in the State of Vermont, on the first Tuesday in November, A.D. 1856, the votes for Delegates to the Constitutional Convention, having been duly taken, sorted and counted, the following persons had the number of votes annexed to their names respectively. (Here insert the names of the persons voted for, and the number of votes given for each person.)

Attest, A.B., First Constable.

C.D., Town Clerk.

DAVID HIBBARD, *President*.

JAMES M. SLADE, *Secretary*

### Address of the Council.

#### *To the People of the State of Vermont:*

The Council of Censors elected on the last Wednesday of March, A.D. 1855, having closed their other labors, would submit to you this Address, referring briefly to the result of their deliberations.

The various subjects referred to the Council for consideration, and the duties and powers assigned us, are enumerated in the forty-third article of the Constitution.

We have made inquiry whether the Legislative and Executive branches of the government have performed their duty as guardians of the people, and believe that both of said branches of government, in the discharge of their respective duties, have endeavored to preserve the rights, and promote the peace and happiness of this Commonwealth. The attention of the Council, however, has been called to the fact, that the Legislature, for several years, has neglected to elect a State Superintendent of Common Schools, by reason of which neglect, an important office, for a long period of time, has been and still remains vacant. The laws now in force, which regulate our system of Common Schools, furnish satisfactory evidence that the people regard the subject of vital importance, on which depend the best interests and prosperity of the State. The passage of the act, by which the above named office was created, and the fact that several sessions of the Legislature have been held since its passage, at which its repeal might have been sought for

and obtained, if desired by the people, required the Legislature to fill the office agreeably to the provisions of a law, which they were under solemn obligation to support or repeal. In view of the facts, the Council feel impelled to say that the neglect of the Legislature to fill said office, or to repeal the law by which it was created, was in violation of the Constitution and Laws of the State; subversive of the rights of the people; and it has furnished a precedent in the history of legislative proceedings, which no subsequent Legislature should feel at liberty to follow.

The Council have made inquiry whether the public taxes have been justly laid and collected in all parts of this Commonwealth, and on this subject we find no cause of complaint.

The Council have had under their consideration that part of the article of the Constitution which requires them to examine whether there is an absolute necessity of amending, explaining or adding to the organic laws of the State, and they have endeavored to give the subject that attention which its importance demands. The Constitution of Vermont contains all provisions necessary to preserve it from the evil consequences of unnecessary innovation; and the care with which an instrument, so important, has been and should continue to be guarded, renders it manifest that the people should be fully satisfied that the Constitution is defective to their injury, before they introduce and adopt a new system. But when it is apparent that substantial defects do exist in the fundamental and organic laws of the State, the dread of innovation should not prompt us to retain a system which is inconsistent with the most sacred rights of the people. The framers of the Constitution of Vermont, at an early period in the political history of the State, made provisions for "the preservation of the rights and happiness of the people;" with more particular reference to the state of the people, and to the population of towns at that time, and they wisely provided for making such amendments to the Constitution as might, in the progress of society, become necessary to secure equal rights, both to towns and to individuals; and it is manifestly not less our duty than our interest to accommodate present institutions to the present rights and wants of the people.

The Council have had under their consideration several important propositions of amendment to the Constitution, which they respectfully offer for your consideration and decision.

The House of Representatives should be made a more accurate and immediate representative of the public mind. The present constitutional provision giving each organized town one representative without regard to population, is wrong in principle, unjust in its operation and unnecessarily expensive. The Council adhere to the more reasonable doctrine that population and representation should be equal, and can see no good reason why equal numbers should be unequally represented. They believe, and the justice of that belief

is irresistible, that if ten thousand inhabitants in one section are entitled to ten representatives, the same number of inhabitants in another section should not be represented by a greater number. But under the present system one quarter of the inhabitants of the State have nearly the same number of representatives as the other three quarters, thereby giving the controlling power of legislation to a minority. Such palpable injustice in a representative government, though submitted to with patient forbearance for a long period of years, is nevertheless injustice still, and should be remedied; and the Council believe that unless the people prefer to give the minority power over the majority, the Constitutional Convention will adopt the proposed amendment to make the representation more in accordance with the population of the State. The present number of representatives is altogether too large; a less number would facilitate the business of legislation, and legislate more to the satisfaction of the people in proportion as their individual responsibility would be increased.

Another advantage would also be secured by lessening the number of representatives, and by holding Biennial instead of Annual Sessions of the Legislature. This advantage, though of a pecuniary nature, and consequently of less importance, is not for this cause to be overlooked. It is estimated, after a careful examination, that twenty thousand dollars would be saved annually, by adopting biennial sessions of the legislature, and that ten thousand, at least, would be saved by lessening the number of representatives as recommended by the Council. This annual saving of thirty thousand dollars in the expenditures of a State having comparatively no public revenue, and where the expenses of the State are nearly all raised by direct taxation, although not regarded as of the first importance, should not be wholly without its influence in deciding upon the more weightier matters. It appears to us, that annual sessions of the Legislature, especially with the present number of representatives, have a direct tendency to render the system of legislation unstable. The laws of one session of the legislature are not unfrequently altered, amended or repealed by subsequent enactments, before their import is understood, and before their practical operation could be tested by the people. This has become so great an evil as to be almost universally felt and complained of by business men; even men who make the study of law their profession are compelled many times to look over years of enactments to ascertain what the law really is. The adoption of biennial sessions of the legislature would remedy many of the evils complained of, by giving the people time and opportunity to read, understand and test the utility of laws, before they are stricken from our statute books.

The Council have proposed an article of amendment to the Constitution under which the General Assembly will have power to authorize County Courts, on application of either party, to refer civil

suits, as in the opinion of such court, are proper to be referred, under such regulations as the legislature shall direct. No encroachment should be made on the right of trial by jury in prosecutions for criminal offences, and the right of trial by jury in all civil suits, proper for the cognizance of a jury, should be preserved inviolate; still it is believed that many causes of action arise, of a civil nature, which might be tried by referees more in accordance with the just right of the parties. In proposing this amendment we have more particular reference to acts of ejectment and trespass, in the trial of which, the referees should, generally, go upon the land or in the vicinity where the cause of action arose, and there hear the testimony and make personal examination of monuments and land marks, which would enable them to find the facts and to decide the matters in dispute; and at the same time the parties might reserve all questions of law for the decision of the County and Supreme Courts. It is of great importance that the remedy for the redress of wrongs be within the pecuniary means of every individual; and we believe that in the trial of such actions by referees, the rights of the parties would be decided more satisfactorily, in less time and with much less expense, than the same matters could, ordinarily, be tried by jury in the County Court.

In proposing to classify the judges of the Supreme Court, so as to elect one third of their number biennially, and to extend their term of office to six years, the Council have been actuated by a desire to furnish every reasonable guaranty for the permanency and ability of the most important court in the State. By the adoption of the amendment proposed by the Council, we shall have, at all times, a majority of experienced judges upon the bench, and thereby secure greater uniformity of decision and the confidence of the people.

The Secretary of State, Auditor of Accounts, and Bank Commissioner, being State officers, should be elected by the freemen, in the manner provided for the election of other State officers. Impressed with the propriety of the proposed measure, we have presented for your consideration, alterations in the Constitution in conformity with the views above expressed.

It was urged before us that evils, to some extent, have grown out of the present method of appointing Registers of Probate, and that they should be elected by the freemen of the respective Probate Districts; therefore we offer an amendment in favor of the latter method, and recommend the same to your deliberate consideration.

We have also offered an amendment to the Constitution by which, if adopted, all elections by the General Assembly, or by either branch thereof, will be made *viva voce*. The mode proposed would harmonize more with the independent spirit of freemen, and give the people an opportunity of knowing how the power delegated to their representatives had been exercised.

The Council believed that section 43 of the Constitution is

defective, and should be amended. It enjoins on the Council of Censors several duties, among which are, to "inquire whether the Constitution has been preserved inviolate in every part during the past septenary; whether the legislative and executive branches of the 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; and whether the public taxes have been justly laid and collected in all parts of this Commonwealth;" the discharge of which is of no practical benefit to the people. However much importance might have been attached to the discharge of such duties, during the period of years when the government was destitute of any efficient checks on inconsiderate or unconstitutional legislation, it is apparent that by the organization of the Senate as a co-ordinate and in many respects an independent branch of the Legislature, and the passage of laws regulating and enforcing the discharge of the duties of government officers, more efficient remedies for the evils which the framers of that section of the Constitution anticipated might exist, have been provided.

The more important duties and powers of the Council under the present Constitution and Laws relate to amendments of the Constitution and their power to call a Convention to adopt the same. The section provides that the Council shall have power to call a Convention, "if there appears 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 manner of calling the convention and the number of delegates of which it shall be composed rest entirely in the discretion of the Council. In order to prevent frequent and unnecessary amendments and alterations of the Organic Laws of the State, the Constitution wisely provides that two thirds of the whole number of the Council elected shall agree as to calling a Convention, which implies that two thirds of the freemen of the State (represented by the Council,) shall decide that there is an absolute necessity of amending the Constitution, before they call a Convention to consider of the same: and when the Council, in the discharge of the duties assigned them, propose amendments to the Constitution, and having decided by a two thirds vote to call a Convention, it would seem that a majority at least of the freemen should have an opportunity of adopting or rejecting such amendments. If the population of the towns in this State were nearly equal, so that a majority of the towns would necessarily represent a majority of the people, there might be no substantial injustice done by submitting propositions of amendment of the Constitution to a Convention composed of one delegate from each organized town. Such, however, is not the fact; there are one hundred and twenty one towns (a majority,) the aggregate population of which is less than

one third of the population of the whole State; consequently the practical effect of calling a Convention of one delegate from each town is to submit propositions of amendment of the Constitution, which by a two thirds vote were adjudged necessary to be adopted, to the decision of a Convention composed of delegates, a majority of whom represent less than one third of the people, thereby giving the minority power to decide what Constitution and Laws shall govern Vermont. It appears to us that no good reason can be given why a Constitutional Convention should consist of one delegate from each town, and in the proposed amendment we have limited the number to ninety, and have provided the manner of their election. And in order that such Convention may represent the views, interests, and wants of a majority of the people, the amendment provides that a majority of the delegates shall be apportioned to the several counties according to their population.

The Council, actuated solely by a desire that the Convention called by them to adopt the proposed amendments, or such parts as will be most conducive to the good government, peace and happiness of the people, shall represent the interests and views of a majority of the freemen and inhabitants of the State, have, in and by their Ordinance for the call of said Convention, limited the number of delegates to ninety, and have apportioned the same to the several counties in such manner as will, in our opinion, protect the just rights of all. And we submit to you whether the principle on which said Convention is based is not, under existing institutions, in accordance with your views of *right*, in matters relating to the fundamental and organic Laws of the State.

Fellow Citizens: Trusting in your intelligence and wisdom, and earnest desire to secure and preserve your rights and happiness, under a Republican and Representative Government, we submit the amendments, proposed by us, to your deliberate consideration, with confident belief that your decision thereon will be such as shall promote your own interests, and add to the prosperity of the State.

By order of the Council of Censors,

DAVID HIBBARD, *President*.

JAMES M. SLADE, *Secretary*.

## Address of the Council of Censors

to the  
General Assembly  
of the  
State of Vermont,  
October, 1855.

Hon. George W. Grandey,  
Speaker of the House of Representatives:

SIR:--I have the honor to enclose to you an address to the General Assembly, adopted by the Council of Censors, with the request that the same be laid before the Hon. House of Representatives.

Respectfully yours,  
DAVID HIBBARD,

President of the Council of Censors.

*To the Hon: the General Assembly of the State of Vermont:*

GENTLEMEN;--At the first session of the Council of Censors of the State of Vermont, holden at Montpelier in June, 1855, the following Preamble and Resolution were introduced, to wit:

"Whereas, by the fourth article of a declaration of the rights of the inhabitants of the State of Vermont, it is provided, "that every person within this State 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:" And, Whereas, the unreasonable delay and costs which attend a large proportion of suits at law in this State, and the growing dissatisfaction and complaints of the people on that count, show conclusively that a wrong somewhere exists, which, if possible, should be ferreted out, and the true remedy applied; therefore,

"Resolved, That a committee of three be appointed to draft an address to the Legislature of this State, embodying these evils, and such others as may seem to said committee proper to be remedied, and suggest such alterations in the existing laws, as may seem most likely to effect the object desired; Provided, that such address be first submitted to the Council of Censors for their inspection and approval:"

Which were read and adopted; and Mr. HAMMOND, Mr. VAIL and Mr. WARD were appointed said committee.

Whereupon, the said committee, at the present session of the Council of Censors, in compliance with the requirements of the said resolution, reported the following address for the inspection and approval of the Council:

Address to the Honorable, the General Assembly  
of the State of Vermont, now in session:

In addressing your honorable body, elected by the intelligent freemen of the State, as "persons most noted for wisdom and virtue," the Committee feel confident that the address will be received by you, in the same spirit of candor which actuated their labors.

It is the opinion of the Committee, and so far as their knowledge extends, the same opinion very generally prevails among the freemen of the State, that better justice would be obtained, and far less costs incurred, in prosecution of suits at law, if some few alterations of changes were made in the existing laws, regulating judiciary proceedings in County Courts. The Committee are strongly inclined to the opinion that parties to suits at law, as a general thing, obtain the most impartial judgments, and best justice, at the first trial; and that the provision of the law, giving parties the right, after trial, to review the same action, is altogether uncalled for, inasmuch as it tends to great delay, and creates useless costs, whilst the chances for impartial justice between the parties are thereby diminished; and if a review be given in any case, it should be only where justice clearly demands it, and then at the discretion of the Court, and on equitable terms.

When we take a retrospective view, and call to mind suits of minor consequence, which have been tried at the same Bar, three and even four times by as many different Juries, with an increased number of witnesses at each succeeding trial, and compare the amount of costs with the object first sought to be acquired, we are ready to exclaim in the language of the Resolution, "that a wrong somewhere exists, which, if possible, should be ferreted out, and the true remedy applied." Such suits, whilst they drain our Treasuries, retard the trial and increase the costs of other suits pending before the same Courts, and not unfrequently reduce both the parties from comfortable circumstances to a state of poverty. And where the law secures to parties the right of review, they are too prone to exercise that right with too little regard to attendant consequences. But however necessary to the furtherance of justice, the right of review may be, it is not extended to criminal trials. But why should the right of review be given to parties in civil actions, where only a few dollars are at stake, whilst liberty and even life itself are made dependent upon the result of a single trial? It seems to the Committee that there are too many unimportant suits in our County Courts, and that these suits are kept in court altogether too long. The parties do not obtain right and justice "promptly and without delay, conformably to the laws." The Committee are of opinion that the repeal of the law giving parties the right of review, or a positive enactment, that no review shall hereafter be granted, except as before suggested, would greatly lessen the labor of the County Courts, reduce public and individual expenses, and terminate suits at law before their merits



were lost sight of, in view of accumulating costs which must attach to the unsuccessful party.

The Committee are also of opinion that a law should be enacted, authorizing the Judges of the County Courts to refer to referees, all such suits as they may judge proper to be referred, under such regulations as the Legislature may deem just, and appoint referees for that purpose, where the parties themselves neglect or refuse to agree. Such authority, given to the Judges of the County Courts, and by them exercised with prudent discretion, would, it is believed, be of great service by ridding the Courts of a certain class of suits which are the most troublesome and expensive, and which might be tried by referees with far less expense, and with equal justice to the parties. Among the suits proper to be referred, and which are usually tried with great expense to the State, may be reckoned such as are brought for the recovery of damages sustained through the insufficiency of highways. Such trials should be had in the immediate vicinity, and the triers should go upon the ground where the damages happen, and after examining the witnesses, and seeing the insufficiency of the highway, they will be better prepared to render a just decision, than a jury of twelve men impaneled for that purpose. And so with actions of ejectment, where the right of possession and ownership depend mostly upon disputed boundaries, and where the strongest and most convincing evidence is to be obtained from the examination of original monuments and landmarks.

If it be objected that parties in suits at law have a constitutional right of trial by Jury, let provision be made by law for that purpose; and after the return of the report of the referees, if either party claim the right of trial by Jury, let the cause go to the Jury with the report, but let the costs of trial be restricted to an amount not exceeding the amount the party may obtain over and above the sum awarded by the referees; and should the party claiming a trial by Jury, recover no more than the amount awarded him by the referees, let him be subjected to the full costs of the Jury trial.

There is another subject which the Committee deem important, and to which they desire to call the attention of the Legislature. The Committee are ready to admit, that legislative enactments have made adequate provision for the protection of the pecuniary rights and interests of the rich, and for those who are in comparatively easy and comfortable circumstances; and have also, from time to time, thrown additional guards around the property of the poor, by protecting it from attachment and execution; whilst another class of our citizens, equally meritorious, and equally entitled to protection, seem to have been nearly overlooked, and left to struggle on as best they could, in a manner unaided by legislative enactments. These are an honest and industrious portion of the commonwealth, and emphatically the pioneers to improvement and wealth. They are generally young, muscular, persevering, confiding, and full of hope.

Here, then, are presented, three classes of citizens, each claiming and entitled to equal protection by the government and laws. The first or rich class, having a competency, and generally being men somewhat advanced in life, are satisfied to manage their own personal affairs in the easiest and safest manner, without any very strong desire of improvements, or for expending their means for public utility. The second or poor class, are generally, from age or other incapacity, or misfortune, men who are unable or unqualified to take the lead in business transactions. And the third class constitute the bone and muscle of the State. They have strong bodies and strong minds, but lack for capital to carry out their business designs, and are under the necessity of soliciting and obtaining pecuniary aid from men of more capital and less enterprise. They make investments with high hopes of becoming useful to the public, and of acquiring a living profit from their own industry and skill. They are necessarily burdened with debts, but their daily income pays the interest of those debts, and gradually reduces the principal. At length they are suddenly called to experience a reverse of fortune. Perhaps by some extraordinary pressure in the monied affairs of the Country, which none could foresee, and few provide against, they suddenly find themselves unable to meet their liabilities; or, by the casualty of fire or water, their shops or machinery are destroyed; or, perhaps more frequently, and equally destructive, some one of their creditors, more vigilant and less merciful than the rest, grabs, by attaching every thing subject to attachment which had been rescued from the destroying elements. The first attaching creditor, finding himself amply secured, is not very scrupulous, either as to the amount of cost which ensues, or the amount of property sacrificed to raise and satisfy his claim. And almost as a matter of course, other creditors attach as fast as the news reaches them. The consequence is, that some few of the first attaching creditors receive their pay in full; the balance of the debtor's substance is eaten up in cost, or sacrificed under the hammer of the sheriff; and the debtor himself becomes discouraged under the weight of liabilities which rest upon him, and retires a ruined man.

Here, then, arises a state of things which is all wrong, and which never should exist in any community. These adventurous men contracted their debts in good faith and honesty, and with fair prospects of meeting them at maturity. They are under equal obligations to each and all their creditors; and all their creditors have equal claims upon them; and if the debtors are unable to pay the full amount of their indebtedness, each creditor should receive a share in proportion to the amount of his just claim; and no creditor should be the gainer by first attaching.

If these equitable rules were recognized by the laws of the State, a mutual interest would thereby be created between debtor and creditor. The creditor would find it for his interest to aid and

encourage the debtor; and on the other hand, the debtor would feel encouraged, by the kindness and indulgence of the creditor, to persevere and overcome every obstacle to his success. Under such legal provisions, few would be the suits for the collection of debts; and comparatively few would be the failures and ruin of useful and worthy citizens.

As a remedy for these existing evils, (and they do exist in every part of the State,) the Committee would suggest the passage of a law very similar in substance, if not in detail, to the law of Massachusetts, entitled "an Act for the relief of Insolvent Debtors, and for a more equal distribution of their effects," which has been in force in that State, and from time to time amended as experience dictated, for seventeen years past, is now considered as one of the best statutory provisions of that State.

All of which is respectfully submitted,

THOMAS F. HAMMOND, *for Committee.*

In Council of Censors

Oct. 12, 1855.

Read and aproved, JAMES M. SLADE,

Secretary of Council of Censors.

### Results of the 1855-56 Council of Censors

The eleventh Council took issue with only three legislative acts and one lack of action.

The failure to appoint a state superintendent of schools was intolerable to the Council. The law mandating a state superintendent was adopted in 1845.<sup>6</sup> The joint assembly was to appoint a superintendent annually, but after Horace Eaton completed his five years as superintendent (1845-50), no appointment was made. In his inaugural address in 1856, Governor Ryland Fletcher also reminded the legislature of its failure to appoint a state superintendent and of the necessity of presenting "to the world a shining example of a Commonwealth, which lays in the minds of its youth the deep and strong foundations of a future prosperity, and whose most diligent care is freely to offer to every one of its people the blessings of a sound education."<sup>7</sup> In 1856, the legislature eliminated the position, replacing it with a new state board of education, appointed by the governor.<sup>8</sup> The board could appoint a secretary, whose duties were nearly identical to the office of superintendent.<sup>9</sup> The board appointed J. Sullivan Adams in 1857 and he served almost eleven years before his health broke under the weight of the office.<sup>10</sup>

The law authorizing parties in civil cases to have their causes reviewed at the next term of the county court was originally adopted in 1779.<sup>11</sup> Less than a month after the Council had criticized the practice in its address to the General Assembly in 1855, the legislature enacted, "An act prohibiting the review of actions at law."<sup>12</sup>

The Council thought that the delay in court proceedings could be relieved by giving the court the authority to appoint referees to hear some matters locally. The Council gave as an example suits involving the recovery of damages sustained through the insufficiency of highways. Governor Fletcher's inaugural message repeated the Council's criticism about judicial delay, but offered no suggestions for correction.<sup>13</sup> The legislature responded with, "An act providing for the reference of actions in the county court."<sup>14</sup> This act allowed the court to appoint commissioners to try questions raised in cases referred to them, who would then report to the court "such facts as

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<sup>6</sup>*Laws of 1845*, No. 37, § 3, 26. C.S., Chapter XX, § 1, 142.

<sup>7</sup>*Vermont House Journal* (1856), 457-58.

<sup>8</sup>The House and Senate appointed a joint committee to consider that part of Governor Fletcher's message relating to education. In its report, the committee recommended the appointment of a Board of Education. *Vermont House Journal* (1856), 557-560.

<sup>9</sup>*Laws of 1856*, No. 5, 7-10.

<sup>10</sup>John C. Huden, *Development of State School Administration in Vermont* (Montpelier: Vermont Historical Society, 1944), 71-78.

<sup>11</sup>*State Papers* XII, 172-73.

<sup>12</sup>*Laws of 1855*, No. 5, 10.

<sup>13</sup>*Vermont House Journal* (1856), 461.

<sup>14</sup>*Laws of 1856*, No. 6, 10-11.

they judge to be proved," with the report being treated as a *prima facie* statement of the facts. The right of trial by jury was guaranteed by the act. In 1857, however, this act was repealed.<sup>15</sup> After its repeal, the Vermont Supreme Court, reviewing a highway maintenance negligence action that had been referred under the 1856 law, declared it unconstitutional as a violation of Chapter I, Article 12.<sup>16</sup> "A trial by jury, within the meaning of the constitution, not only supposes that the controversy between the parties shall be submitted to twelve jurors, but that it shall be submitted to them for their minds to weigh the evidence, unaffected by the opinion or judgment of any other tribunal in regard to it. It is to be a *trial*, the hearing of evidence and argument, and the deciding upon them, not the acting upon conclusions which some other tribunal has drawn from the evidence and argument. It is to be a trial by *jury*. The jurors are to hear for themselves, to use their own judgment, and the verdict is to be the result of their deliberation and reflection upon the testimony and argument. If the judgment of some other body upon the same matters is substituted for and is to control the decision of their minds; their action upon the subject ceases to be a trial and become the mere recording of a verdict made for them by others."<sup>17</sup>

The Council also urged the legislature to enact a law like that of Massachusetts that would allow an equal distribution of an insolvent debtor's assets. In 1855, the General Assembly adopted, "An act in relation to assignments," providing that any assignment should be for the benefit of "all the creditors of the assignor, in proportion to their respective claims, anything in such assignment to the contrary notwithstanding."<sup>18</sup> In 1856, Governor Fletcher expressed his concern about the problem, concluding "that the interests of our State are seriously prejudiced by our present law upon this subject, and that they demand of you a careful consideration of the evil and the various remedies which may suggest themselves to your minds."<sup>19</sup> That year, after the legislature failed to adopt a proposed bill to cure the problem failed, the legislature adopted a joint resolution "for an act providing for an equal distribution of the avails of property attached," appointing J. D. Bradley, Esq. of Brattleboro to that task.<sup>20</sup> Mr. Bradley was not returned to the legislature in 1857, and no record is found on any bill on the subject. In 1867, however, "An act for the more equal distribution among creditors of property attached on mesne process" was adopted.<sup>21</sup> This act was repealed

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<sup>15</sup>*Laws of 1857*, No. 13, 15.

<sup>16</sup>*Plimpton v. Town of Somerset*, 33 Vt. 283 (1860).

<sup>17</sup>*Ibid.* at 293.

<sup>18</sup>*Laws of 1855*, No. 12, 15. For present law, see 9 V.S.A. § 2151.

<sup>19</sup>*Vermont House Journal* (1856), 461. The majority and minority reports of the select committee of the House, appointed to respond to this part of his message, are on pps. 182-87. The bill was finally dismissed on November 15. See p. 357.

<sup>20</sup>*Laws of 1856*, No. 102, 113.

<sup>21</sup>*Laws of 1867*, No. 1, 3-10.

in 1868.<sup>22</sup> In 1869, the *Vermont Watchman and State Journal* (January 27, 1869) pointed to this repeal as another good reason for biennial sessions, to ensure less legislation. Its editor described the repeal as a return to the "old grab law."

The Council's ordinance calling for a convention of ninety delegates apportioned by county by population received a sour reaction from the House of Representatives in 1856. On October 24, the House resolved, "That in the judgment of this House, the framers of our Constitution did not intend to give, and did not in fact give, to the Council of Censors the power to prescribe the districts or constituencies entitled to send delegates to the convention to be called by said Council, or to limit the number of such delegates, and thereby deprive the towns in the State from being represented by their delegates." It believed that the amendments were dangerous and destructive of the rights of the freemen, and recommended that the Convention, once met, reject the amendments proposed by the Council to "save the State from any difficulties, which might arise from their adoption."<sup>23</sup>

The House also resolved to instruct its Judiciary Committee to report a bill providing for the election of delegates by town to the Convention, but in spite of this instruction no bill was reported.<sup>24</sup> The House also considered a resolution to request the Vermont Supreme Court to review the Council's ordinance for its constitutionality, but when it came to a vote the resolution was dismissed by a vote of 141 to 61.<sup>25</sup>

The 1856 Council marked the apogee of Know-Nothing success in Vermont. The national party fractured over slavery and many of the Vermont leaders soon appeared among Republican ranks. James M. Slade, for example, was, as a Republican, Vermont's Lieutenant Governor, 1856-57.

### The 1857 Constitutional Convention

As the Council of Censors ordered, the Constitutional Convention met at Montpelier on January 7, 1857. The previous day, however, the State House had burned. Where the Convention met is still a mystery. The newspapers do not report on the location, although the Washington County Court House or one of the churches of Montpelier may have served this purpose.

Getting down to business on the 7th, the Convention promptly elected Loyal C. Kellogg of Benson as its President and D.W.C. Clarke of Shelburne as Secretary. The delegates attending the Convention were apportioned by county according to population, a principle that had made good sense to the Council of Censors but left the delegates with no small amount of insecurity about their legitimacy.

The Convention then adopted the rules of the 1850 Convention, with the exception of Rule XVII, which authorized the President to appoint a Door-

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<sup>22</sup>*Laws of 1868*, No. 29, 33.

<sup>23</sup>*Vermont House Journal* (1856), 541-53. On pp. 535-40, the House Committee on the Judiciary argues vehemently against the Council's proposals for the Convention.

<sup>24</sup>*Ib.* at 106.

<sup>25</sup>*Ib.* at 149.

Keeper and to request that the Sergeant-at-Arms attend the Convention. Then the Convention appointed a Doorkeeper of its own, a Sergeant-at-Arms, and four messengers and asked the President to invite resident clergymen of Montpelier to officiate as chaplains during their sessions.

The Convention adopted a motion to create a committee consisting of one member from each county to decide what to do with the proposals of amendment.

A telegraphic communication next appears in the record, as the selectmen of the town of Burlington offered the Town Hall for the Convention's use.

On Thursday, a committee on debentures was appointed, another member--Roger Bulkley (or Buckley, according to the *Watchman*)--appeared with his credentials, someone questioned his authority, he was given leave to speak to the Convention, and a motion to admit him was tabled. Bulkley was the nominee of the town of Moretown, and his presence clearly intimidated the delegates who were already uncertain about the constitutionality of a population-based convention. William Hebard of Chelsea said, according to the January 16 *Watchman*, "that on the face of the credentials, it does not appear that Mr. Buckley is elected as a member of this Convention. It may be that he is the only legal member of a *Constitutional Convention*, according to uniform usage, and he was inclined to believe that to be a fact; but this Convention is another thing--it may be it is a nullity,--and in that case, if Mr. Buckley is a legal delegate at all, it is not to *this* Convention, but he is himself *the* legal Constitutional Convention, and this body cannot properly interfere with him."

That afternoon the appointments of Door-Keeper et al. were announced, and the committee on the amendments made a formal, written report. The committee declined to express any opinion on the amendments, but instead directed its remarks to the Ordinance under which the Convention had been elected, calling it "strange and startling." One town-one vote seemed too deep a tradition to the committee to ignore, and it traced its origins to the 1777 Constitutional Convention in Windsor.

"At that day, towns, in their corporate and municipal character, were objects of special regard. They were the horn of strength to the then struggling commonwealth. There, men discussed their rights and prepared to maintain them; there and there only they could vote in the aggregate; there, express their sentiments on all subjects touching the general interest; there, give instructions to Delegates and perpetuate the same by record; and in all these particulars, towns, as such, should be no less the object of special regard now."

The committee concluded that the first Convention "neither *expected*, *intended*, nor even contemplated the possibility, that any future Convention should be called in a different manner from themselves; and their views and *intent* seem to have been entertained, approved and acted upon ever since." The committee then offered the following resolutions:

"1. *Resolved*, That in view of the language used by the original framers of the Constitution in a Convention held for that purpose; of the fact that the same Convention was composed of Delegates from the several towns in this State; that every Convention since held has been composed of members elected in a similar manner; that amendments when proposed were directed to 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 might have an opportunity of instructing their Delegates on the subject; that then as well as now the town were competent to hold meetings required by law, pass votes of instruction and certify the same through their regularly constituted officers, which the counties and mere territorial jurisdictions have never been authorized to do; in view of these and other reasons, this convention is satisfied that by creating a new constituency and transferring the right of delegation from the respective towns to the counties, the late Council of Censors acted unwisely, and exceeded the powers devolved upon them by the Constitution, as heretofore practically interpreted.*

"II. *Resolved*, That if there is no specific provision in the Constitution prescribing the whole manner of electing members to the Conventions, the principle of town representation is too fully indicated to be thus invaded or assailed, more especially as under it for more than seventy years the State has found order and stability, and the people have enjoyed prosperity and safety; and forasmuch as on various occasions the general provisions of the Constitution have been carried out in detail by legislative action, it is recommended to the coming legislature of this State to make some provision so that whenever any future Council of Censors shall decide upon calling a Convention, and fix the time of the meeting thereof, and of electing delegates thereto, the proper officers of each town may taken measures for holding the meetings in each town, electing the Delegate of such town, and certifying his election, as near as may be in the same manner now prescribed fro the election of the Representatives of such town in the General Assembly of the State.

"III. *Resolved*, That our constituents, in electing Delegates to this Convention in the manner prescribed by the Ordinance of the late Council of Censors, did not so do for the purpose of acknowledging the validity of, or confirming, the same Ordinance, but rather, by expressing themselves through organs chosen in the very manner selected by the Council, to express more emphatically their reprobation of the action of the Council in the premises.

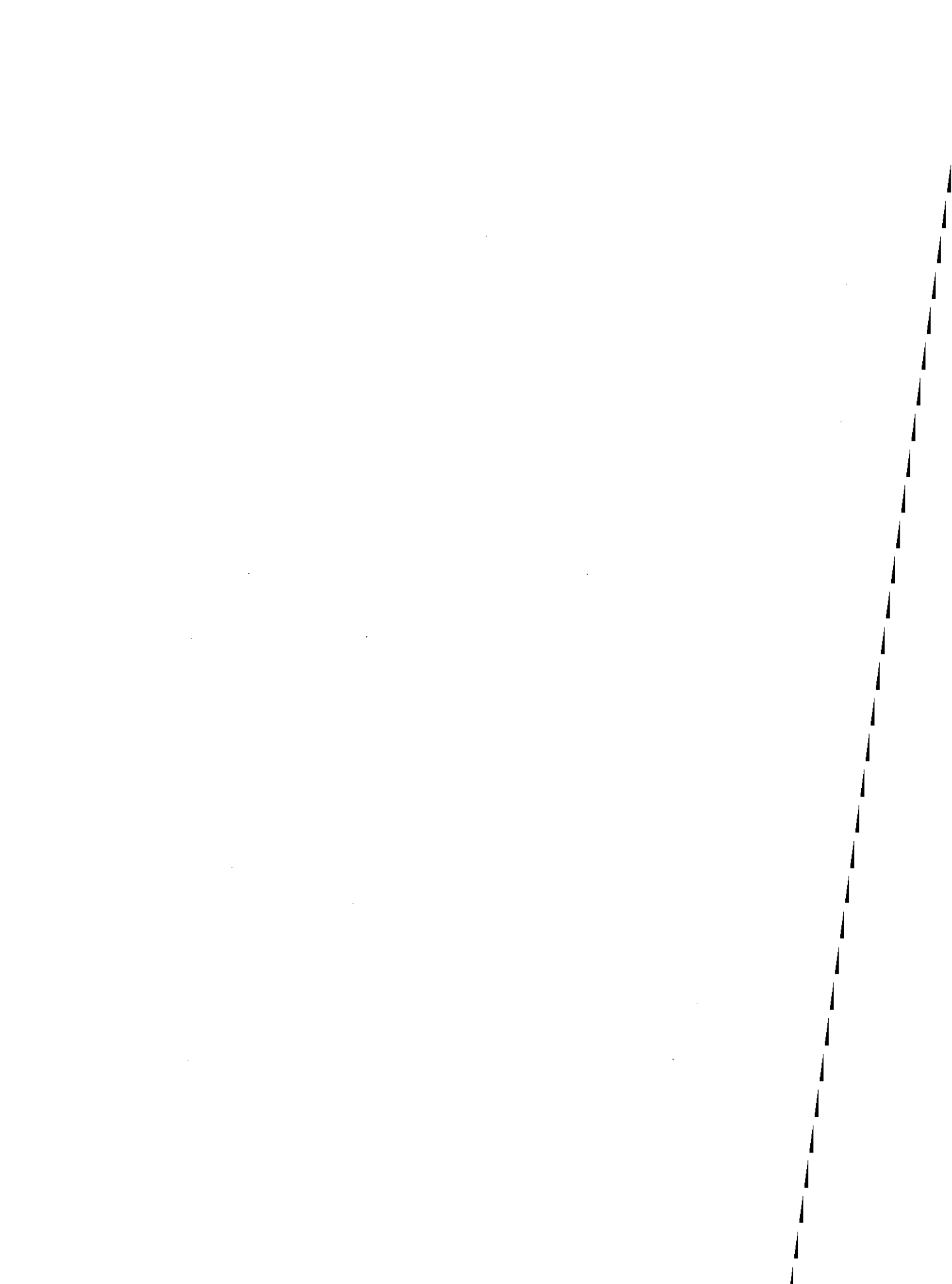
"IV. *Resolved*, That as the amendments proposed by the Council will necessarily fall and be virtually rejected by the people unless duly confirmed- this Convention sees no occasion to take any further action in relation thereto."

On Friday the Convention voted down a motion to adjourn. The Convention then took up the question of adopting the resolution, but before voting on it handled a few other matters. The Convention agreed to pay Roger Bulkley of Moretown his expenses. A member, Mr. Stoddard, stated that the Hon. Mr. Bradley, a Delegate from the County of Windham, wanted to have the record show he would have voted "yea" on all issues, and the Convention agreed.

The first Resolution then passed by vote of 76 to 11, the second by the same vote, the third by a vote of 72 to 17, and the fourth by 86 to 2. It then officially thanked its President, ordered 1,500 copies of its Journal printed, and adjourned without day Monday morning.

The Convention Journal was published by George J. Stacy of Burlington in 1857.





## The 1862 Council of Censors

The Civil War had been raging for more than a year when the 1862 Council met in June. The Republicans were in power. Abraham Lincoln was now President; Frederick Holbrook of Brattleboro was Governor. Several millions of dollars of state and town revenue, bonds and loans had been appropriated for the war effort, and tens of thousands of Vermonters were already serving in uniform. The "War of 1861" was no longer believed to be either short or easy to win. Vermonters had been killed and wounded on the battlefield, and disease had taken its share as well. With daily reports of the progress of the war and while the homefront was busy preparing clothing and food to be sent to their troops, the attention of the men elected to serve on the Council of Censors was easily distracted.

Twenty-five members of the Republican State Committee met in Burlington on March 12 to nominate a union slate of candidates for the Council. At least two Democrats, both of whom were present, were nominated (Needham and Bingham). The Committee appointed a subcommittee of three members to fill any vacancies on the ticket, in case those nominated refused to run. The Committee also adopted a political plank for the Council, including proposals to limit legislative sessions to forty days once every two years, to eliminate the rule against adjournment (now found in Chapter II, Section 6), and to abolish the Council of Censors and Convention, in favor of legislative proposal and popular ratification of amendments. The *Watchman* reported on March 21, 1862 that the ticket would "probably be elected, there being no other nomination having show of authority or indicating any concert of action by the people. The men composing that ticket are, as far as we know them, men of experience in legislative matters, and men to whom may safely be entrusted the important work of reviewing the laws of the State in reference to their constitutionality, and who are every way competent to consider whether or not the Constitution of the State can be amended for the benefit of the people of the State." Clearly, the Know Nothing Council of 1855 had yet to be forgiven for its offenses.

The *Watchman's* predictions came true, and the union ticket was elected on the last Wednesday of March. Seven of the councillors were lawyers. Five had previously served in the House, three in the Senate. The first session lasted two days, beginning on June 4. A four day session followed beginning October 21 and ending on the 25th, when the Council adjourned without censoring or proposing anything.

*Note on text:* The text is from the 1862 Journal published by Walton's Steam Printing Establishment of Montpelier.



Journal  
of the  
Council of Censors

Journal.

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First Session at Montpelier.

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Senate Chamber,  
**Wednesday, 4th June, 1862.**

The Council of Censors, elected on the last Wednesday of March, A.D. 1862, met in the Senate Chamber, at Montpelier, on the First Wednesday, being the 4th day of June, 1862. at 10 o'clock, A.M., when the following named members appeared, and took their seats, to wit:

LEONARD SARGENT,  
HORATIO NEEDHAM,  
IRA GOODHUE,  
S. M. DORR,  
H. H. REYNOLDS,  
NATHAN T. CHURCHILL,  
BURNAM MARTIN,  
E. A. CAHOON,  
JASPER RAND,  
JOHN L. EDWARDS,  
E. R. HARD,  
JOSEPH A. PRENTISS,  
W. H. H. BINGHAM.

The Council was called to order by Mr. NEEDHAM, and LEONARD SARGENT was elected President *pro tem.*, and W. H. H. BINGHAM Secretary *pro tem.*

On motion of Mr. NEEDHAM,

*Resolved*, That the members present their credentials to the Secretary.

On motion of Mr. HARD,

*Resolved*, That Mr. RAND and Mr. REYNOLDS be admitted as members of the Council without producing their credentials.

On motion of Mr. DORR,

*Resolved*, That the Council proceed at two o'clock this afternoon to elect permanent officers of the Council by ballot.

On motion of Mr. RAND,

*Resolved*, That the Sergeant-at-Arms be requested to attend on the Council by himself or deputy.

On motion of Mr. MARTIN,

*Resolved*, That a Committee of three be appointed by the Chair,

to draft rules for the government of the Council.

Mr. MARTIN, Mr. HARD and Mr. PRENTISS were appointed on this Committee.

On motion of Mr. MARTIN,

*Resolved*, That the Rules of the last Council be the Rules of this, until new ones are adopted.

On motion of Mr. GOODHUE,

The Council adjourned until two o'clock this afternoon.

#### Afternoon.

The Council proceeded to the election of President and Secretary agreeably to a resolution adopted this morning. The ballots having been taken and examined, Mr. DORR and Mr. CAHOON acting as tellers,

LEONARD SARGENT,

was found to be elected President, and

W. H. H. BINGHAM,

was elected Secretary of the Council.

Mr. RAND introduced the following resolution:

*Resolved*, That when this Council adjourn to-morrow, it adjourn to meet at the State House, at Montpelier, on Tuesday the 21st day of October next, at ten o'clock, A.M.

Which was read and adopted.

Mr. DORR introduced the following resolution:

*Resolved*, That the President request some clergyman of this village to attend upon the Council, and open the morning sessions with prayer.

Which was read and adopted.

Mr. MARTIN, from the Committee on Rules, submitted the following report:

*To the Council of Censors:*

The Committee to prepare Rules for the Government of this Council, submit the following report:

I. The Council shall meet every day (Sundays excepted) at 10 o'clock A.M. and at 2 o'clock, P.M., until otherwise ordered.

II. The President will take the Chair at the hour to which the Council stands adjourned, and call the Council to order for the prosecution of business.

III. All Committees shall be appointed by the President; but such appointment may, on motion of a member, be overruled by the Council, and the vacancy filled by the Council on nomination of a member, or other members may be added to any Committee by vote of the Council.

IV. No member shall absent himself from the services of the Council, until he shall have leave.

V. The yeas and nays may be taken and entered upon the Journals, upon the call to a member.

VI. The following Standing Committees shall be appointed to wit:

1st. A Committee of three to inquire whether the Constitution has been

preserved inviolate during the last septennary; which shall be called the *Committee on the Powers of the Constitution*.

2d. A Committee of three to inquire whether the legislative branch of the government have performed their duties as guardians of the People, of assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution, and whether the laws generally have been duly executed; which shall be called the *Legislative Committee*.

3d. A Committee of three to inquire whether the Executive has assumed other or greater powers than the Constitution confers; which shall be called the *Executive Committee*.

4th. A Committee of three, who shall inquire whether the public taxes have been levied and collected, and in what manner the public money has been disposed of; which shall be called the *Committee on Taxes and Expenditures*.

5th. A Committee of five, to propose and report such business for the consideration of the Council as they may think proper; which shall be called the *Committee of Arrangements*.

VII. All motions shall, on request of the President, be reduced to writing.

VIII. A motion to adjourn shall always be in order.

IX. Motions and resolutions shall have precedence as follows:

1. To dismiss.
2. To postpone to a day certain.
3. To lie on the table.
4. To commit.
5. To amend.

Respectfully submitted.

BURNHAM MARTIN, *for Committee*.

Which was read, and on motion of Mr. RAND, said report was amended by striking out the following section, being the 5th clause of Rule VI, viz:

"5th. A Committee of five, to propose and report such business for the consideration of the Council as they may think proper; which shall be called the Committee of Arrangements."

After which amendment, said report was accepted, and the Rules adopted as the Rules of the Council.

Mr. HARD introduced the following resolution:

*Resolved*, That a Committee of three be appointed to inquire into the expediency of so amending the Constitution of the State, as to enlarge the term of office of State Senators and Representatives; to require less frequent sessions of the Legislature, a smaller number of Representatives, and to secure equality among the people in the basis of representation.

Which was read and adopted.

Mr. EDWARDS introduced the following:

*Resolved*, That a Committee of three be appointed, to inquire into the expediency of so amending the Constitution of this State as to dispense with the office of Assistant Judge of the County Court.

Which was read and adopted.

Mr. CAHOON introduced the following resolution:

*Resolved*, That a Committee of three be appointed, to consider the expediency of abolishing the Council of Censors, and imposing their duties on the Legislature of the State, and suggesting such amendments to the Constitution as such change may demand.

Which was read and adopted.

Mr. RAND introduced the following resolution:

*Resolved*, That the Treasurer of this State be requested to furnish this Council, at the commencement of its adjourned session, a statement of balances due from all officers, who by virtue of their office are required to account to him for balances in their hands, belonging to the State; the time when such balances accrued, and the name of such delinquents.

Which was read and adopted.

Mr. GOODHUE introduced the following resolution:

*Resolved*, That a Committee of three be appointed to consider the expediency of so amending the Constitution as to provide for holding the sessions of the General Assembly of this State on the first Wednesday of January of each year.

Mr. EDWARDS introduced the following resolution:

*Resolved*, That the Secretary procure 150 copies of the Journal of this Council at its present session, to be published for the use of its members, and that he forward by mail one copy of said Journal to each of the publishers of weekly or daily papers in this State, and six copies to each member of the Council.

Which was read and adopted.

Mr. REYNOLDS introduced the following:

*Resolved*, That the Secretary of this Council make up and certify the debentures of the Council of Censors, and the officers and attendants employed by them during their sessions.

Which was read and adopted.

On motion of Mr. EDWARDS, the Council took a recess for one hour.

At the expiration of the time for recess, the Council reassembled, when the President announced the appointment of the following Committees under the Rules:

On the Powers of the Constitution, Mr. EDWARDS, Mr. DORR, Mr. PRENTISS.

On the Legislative Committee, Mr. MARTIN, Mr. RAND, Mr. CAHOON.

On the Executive Committee, Mr. NEEDHAM, Mr. GOODHUE, Mr. BINGHAM.

On the Committee on Taxes and Expenditures, Mr. HARD, Mr. REYNOLDS, Mr. CHURCHILL.

The Chair further announced the appointment of the following Special Committees:

On the resolution of Mr. HARD, providing for altering the Constitution so as to enlarge the term of office of Senators and

Representatives, less frequent sessions of the Legislature, and smaller number of Representatives, Mr. HARD, Mr. PRENTISS, Mr. GOODHUE.

On the resolution of Mr. EDWARDS, providing for the abolishing of the office of Assistant Judges of the County Court, Mr. EDWARDS, Mr. REYNOLDS, Mr. MARTIN.

On the resolution of Mr. GOODHUE, relative to changing the time of the Meeting of the General Assembly, Mr. GOODHUE, Mr. RAND, Mr. CHURCHILL.

On the resolution of Mr. CAHOON, relative to the abolishing of the Council of Censors, Mr. CAHOON, Mr. NEEDHAM, Mr. DORR.

Mr. DORR introduced the following resolution:

*Resolved*, That this Council of Censors will limit its action in proposed alterations of the Constitution of the State to the following changes, to wit:

1st. To a proposition to abolish the Council of Censors, and recommend some more expeditious and economical way, by which changes in the organic laws of the State may be accomplished, when necessary.

2d. To a proposition for biennial sessions of the Legislature, and the necessary changes to the Constitution to harmonize with such alteration.

Which was read, and, on motion of Mr. DORR, laid on the table and made the special order for the 21st day of October next.

On motion of Mr. RAND, the Council adjourned to meet at 8 o'clock to-morrow morning.

**Thursday, 5th June, 1862.**

Journal of yesterday was read and approved.

On motion of Mr. MARTIN,

The President declared the Council adjourned to the 21st day of October next.

Attest,

W. H. H. BINGHAM, *Secretary*.

## Second Session

October, 1862.

Second Session at Montpelier.

**Tuesday, Oct. 21, 1862.**

The Council of Censors met agreeably to adjournment.

Present:

HORATIO NEEDHAM,  
LEONARD SARGENT,  
JASPER RAND,



H. H. REYNOLDS,  
BURNAM MARTIN,  
S. M. DORR,  
JOSEPH A. PRENTISS,  
IRA GOODHUE,  
W. H. H. BINGHAM.

The Council was called to order by the President.

Mr. DORR introduced the following resolutions:

*Resolved*, That the Council of Censors have heard with painful regret of the death of the HON. EDWARD A. CAHOON, a member of this body from Caledonia County, and that in his death we realize that we have lost one of our most valuable members, one whose counsels were always wise and prudent, whose comprehension was quick, clear and methodical, and whose intercourse was always that of the agreeable and polished gentleman.

*Resolved*, That we tender to the family and friends of Mr. CAHOON our heartfelt sympathy in their great bereavement, and while we feel and know that no words of ours can dispel the gloom and sadness of family ties forever dissevered, we hope that the bright record of a well spent life, and the endearing memories that cluster around his name, will do something to mitigate the sorrows of those who mourn his loss.

*Resolved*, That these resolutions be entered at length upon our Journal, and a copy, attested by our President and Secretary, be transmitted to the family of the deceased.

Which were unanimously adopted.

The President presented to the Council the following communication:

Lyndon, Vt., Oct. 9, 1862.

TO THE HON. LEONARD SARGENT,

*President of the Council of Censors of Vermont:*

SIR,--A disease which has recently assumed a type fatal in its character, compels me to inform you of my inability to attend the adjourned session of the Council, at Montpelier, on the 21st instant. The same cause leads me to resign the position I hold as a member of said Council, and to restore to the people an unfulfilled trust so generously bestowed.

With respect, I remain your ob't servant,  
EDWARD A. CAHOON.

On motion of Mr. NEEDHAM,

*Resolved*, That the President be requested to notify the Governor of the death of Mr. CAHOON, a member of this Council.

On motion of Mr. DORR, the Council, as a further mark of respect for the memory of Mr. CAHOON, adjourned until 10 o'clock tomorrow morning.

**Wednesday, 22nd October, 1862.**

Council called to order by the President.

Prayer by Rev. Mr. Lord.

Mr. CHURCHILL, Mr. EDWARDS and Mr. HARD, members of the Council, appeared and took their seats.

Journal of yesterday read and approved.

Vacancies in Committees, occasioned by the death of Mr. CAHOON, were filled by the President, as follows:

On Legislative Committee, Mr. HARD.

Committee on the resolution relative to the abolishing the Council of Censors, Mr. GOODHUE.

The President announced the special order, being the resolution of Mr. DORR, at the former session, to wit:

*Resolved*, That this Council of Censors will limit its action in proposed alterations of the Constitution of the State, to the following changes, to wit:

1st. To a proposition to abolish the Council of Censors, and recommend some more expeditious and economical way, by which changes in the organic laws of the State may be accomplished when necessary.

2d. To a proposition for biennial sessions of the Legislature, and the necessary changes of the Constitution to harmonize with such alteration.

On motion of Mr. RAND, said resolution was ordered to lie.

Mr. RAND introduced the following resolution:

*Resolved*, That in the opinion of this Council, it is inexpedient (under existing circumstances,) to call a Convention to act on any proposed amendments to the Constitution of this State.

On motion of Mr. GOODHUE, said resolution was ordered to lie, and be made the special order for to-morrow morning.

Mr. DORR called up the resolution introduced by him at a former session, which had been ordered to lie, and said resolution was under consideration, when,

On motion of Mr. RAND, the Council adjourned.

**Afternoon.**

The Council again had under consideration the resolution of Mr. DORR, and on his motion, the first proposition in said resolution was referred to the special Committee raised on the resolution by Mr. CAHOON relative to the abolishing of the Council of Censors; and also, on Mr. DORR's motion, the second proposition was referred to the special Committee raised on the resolution of Mr. HARD, relative to enlarging the term of office of Senators and Representatives, less frequent sessions of the Legislature, and smaller number of Representatives.

On motion of Mr. REYNOLDS, the vote laying Mr. RAND's resolution on the table was reconsidered; and said resolution was

taken up for consideration.

Mr. MARTIN offered the following as an amendment:

*Resolved*, That in the opinion of the Council of Censors, no such "absolute necessity" as is contemplated by the Constitution of this State, exists, as to require or justify the calling of a Convention to alter or amend the same.

On motion of Mr. DORR, the Council adjourned.

#### Thursday, 23rd October, 1862.

Council called to order by the PRESIDENT.

Prayer by Rev. Mr. Lord.

The Journal of yesterday was read, and, after correction, approved.

The Council took up for consideration the unfinished business of yesterday, being the resolution of Mr. RAND, and the amendment offered thereto by Mr. MARTIN.

On motion of Mr. DORR, they were ordered to lie.

On motion of Mr. DORR, *Resolved*, That a Committee of three be appointed by the President, to draft and report an address to the people of this State.

Mr. GOODHUE, from the Special Committee raised on the resolution of Mr. CAHOON, relative to the abolishing of the Council of Censors, presented the following

#### REPORT

*To the Council of Censors now in Session:*

Your Committee, to whom was referred the resolution of Mr. CAHOON, relative to the abolishing of the Council of Censors, respectfully report, That in their opinion it is expedient to abolish the Council of Censors, and impose their duties on the Legislature of the State, and we do hereby suggest the following amendments to the Constitution as necessary and proper to carry the same into effect:

Article Forty-Three of the Constitution shall be so amended as to read as follows:

"Any amendment, or amendments, or alteration of this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, the same having been three times read, on three several days, in each House, such proposed amendment, amendments, or alterations, shall be entered on the Journal of each House, with the yeas and nays taken on the passage thereof, and referred to the Legislature then next to be chosen, and published with the laws which may have been passed at the same session of the General Assembly; and if such proposed amendment, amendments, or alterations, after being so published, shall be agreed to in the first session thereafter, by a majority of such House, after the same shall have been three times read, it shall be the duty of the General Assembly to submit such proposed

amendment, amendments or alterations, to the freemen of this State, in such manner and at such time as the Legislature may prescribe; and if the people shall approve and ratify all or several such amendment, amendments, or alterations, by a majority of the freemen qualified to vote for members of the Legislature voting thereon, then such amendment, amendments or alterations, so approved and ratified, shall become part of the Constitution."

All of which is respectfully submitted,

IRA GOODHUE, *for Committee.*

Which report was accepted, and on motion of Mr. HARD, ordered to lie.

Mr. NEEDHAM, moved that the Council do now adjourn.

Which motion was not agreed to.

The Council took up for consideration the resolution of Mr. RAND, and the amendment thereto offered by Mr. MARTIN, and while the same was under consideration,

On motion of Mr. DORR, the Council adjourned.

#### Afternoon.

The President announced the Committee to prepare and report an address to the people of this State, Mr. DORR, Mr. EDWARDS, Mr. GOODHUE.

The Council took up the unfinished business of the forenoon, being the resolution of Mr. RAND, and the amendment of Mr. MARTIN; and the question being taken on the adoption of the amendment, it was not agreed to.

The question recurring, Shall the resolution be adopted? and being stated, the yeas and nays being demanded by Mr. RAND, were taken, and it was decided in the affirmative--Yeas 7, Nays 5.

Those who voted in the affirmative are:

Messrs. SARGEANT, HARD, RAND, MARTIN, EDWARDS, PRENTISS, BINGHAM--7.

Those who voted in the negative are:

Messrs. NEEDHAM, REYNOLDS, DORR, GOODHUE, CHURCHILL--5.

So the resolution was adopted.

Mr. PRENTISS introduced the following resolution:

*Resolved*, That this Council adjourn without day on Saturday morning next, at 8 o'clock.

On motion of Mr. DORR, said resolution was ordered to lie.

On motion of Mr. RAND, the Council adjourned.

#### Friday, 24th October, 1862.

Council called to order by the President.

Prayer by Rev. Mr. Lord.

Journal of yesterday read and approved.

Mr. DORR, from the Special Committee to draft and report an

address to the people of the State, made the following report:

*To the Council of Censors now in Session:*

Your Committee, appointed to draft and report an Address to the people of the State, respectfully report:

## Address

*To the People of the State of Vermont:*

The Council of Censors, elected on the last Wednesday of March, 1862, having closed their labors, have deemed it proper to address you on the subject of the performance of the duties that have devolved upon them.

At the the time provided by the Constitution for the election of this body, the people of this State, in Common with others, were hastening to put on their armor and rush to the contest which is to determine the existence and perpetuity of our Union or its destruction.

To you who had so long pursued the paths of peace, it was a new and fearful experience, and so startling and absorbing was the thought of civil strife--so entirely did it engross the heads and hearts of all classes in community that this body, without any opposition, and yet with a comparatively small vote, was elected to the position of responsibility and trust which they now occupy.

Since that period there has been no abatement of the interest or excitement growing out of the fact of war. This state of feeling has been so intense and universal as to overshadow and absorb the interest in most questions of State policy and constitutional law. The indications of what the people demanded or expected of us, or what they desired us to do, in the discharge of our constitutional duties, have, from this cause, been somewhat limited. We are convinced of the great and controlling fact, and have endeavored to keep this in mind in our deliberations, that amendments or alterations of the Constitution should be clearly and conclusively what the people demand, and no other. We have had the most full and elaborate discussion of the various questions which properly presented themselves for our consideration. The conclusion of our deliberations has been that it was inexpedient to propose to you any amendment or alterations in the organic law of our State.

It devolved upon us to inquire whether the Legislative and Executive branches of the government gave performed their duties as guardians of the people; and as far as we have been able to discover, we are satisfied that their intention has been to discharge with fidelity to the people, the trusts that have, from time to time, been reposed in them. It is further made our duty to inquire, whether the public taxes have been justly laid and collected in all parts of the commonwealth. A thorough investigation of this branch

of our duty would require a large range of investigation and more time than we could properly devote to it, in so short a session as we have deemed it advisable to have.

An unjust distribution or collection of taxes would be immediately felt by those on whom such unequal burdens were imposed, and as we have been unable on inquiry and investigation to learn of any such occurrence, we think ourselves justified in saying that no oppressions of this kind have been imposed upon or borne by any portion of the people except in individual cases, which have been brought to the attention of your Legislature, and have been, or are, in the process of correction.

To the people of this commonwealth, who have commissioned us to act for them, we hand back our fulfilled trusts, with the most earnest desire that the *liberty, prosperity and happiness* of the people may be *forever preserved*, and the Union, now baptized anew in the blood of its *patriot defenders*, be as *enduring as Time*.

SENECA M. DORR, *for Committee*.

MONTPELIER, OCT. 24, 1862.

Which report was read and on motion of Mr. RAND, unanimously adopted.

The resolution for adjournment was called up, and, on motion of Mr. SARGENT, (Mr. MARTIN being in the Chair,) it was adopted.

On motion of Mr. GOODHUE,

*Resolved*, That a Committee of three be appointed to report the number of copies of the Journal to be printed and their distribution.

The PRESIDENT appointed as such Committee, Mr. GOODHUE, Mr. PRENTISS, Mr. DORR.

On motion of Mr. REYNOLDS,

*Resolved*, That the standing and special committees who have not reported, be discharged from further consideration of the several matters for their consideration.

Mr. GOODHUE, from the special Committee on printing the Journal, made the following

#### REPORT

*To the Council of Censors now in Session:*

Your Committee to whom was referred the subject of printing and distributing the Journal of this Council, respectfully Report: That we have had the same under consideration, and hereby recommend the adoption of the following resolution:

*Resolved*, That the Secretary procure one thousand copies of the Journal of this Council to be published, and that he forward one copy thereof to each of the publishers of daily and weekly newspapers in this State, twenty-five copies to each member of this Council, one to each County and Town Clerk in this State, one to the Governor and one to the Lieut. Governor, one to each member of the Senate and House of Representatives, and that he deposit the remainder in the State Library.

Respectfully submitted,  
IRA GOODHUE,  
*for Committee.*

Which report was unanimously adopted.

On motion of Mr. EDWARDS, the Council adjourned.

#### Afternoon

Mr. MARTIN introduced the following resolution--(Mr. RAND in the Chair,):

*Resolved*, That the thanks of this Council are due, and are hereby tendered to the Hon. LEONARD SARGENT, for the dignity, ability and impartiality with which he has presided over the deliberations of this body.

Which was unanimously adopted.

The President responded to the resolution in a feeling and appropriate manner, thanking the Council for its uniform courtesy to him, and wishing all a safe return to their families and friends, and long and happy lives.

Mr. DORR introduced the following resolution:

*Resolved*, That this Council hereby tender to the Hon. W. H. H. BINGHAM their thanks for the fidelity, industry and promptness with which he has invariably discharged the duties of Secretary of our Council.

Which was unanimously adopted.

The same was appropriately responded to by the Secretary.

On motion of Mr. GOODHUE, the Council adjourned until 8 o'clock to-morrow morning.

**Saturday, 25th October, 1862. 8 o'clock, A.M.**

On motion, the COUNCIL was declared adjourned without day.

Attest,

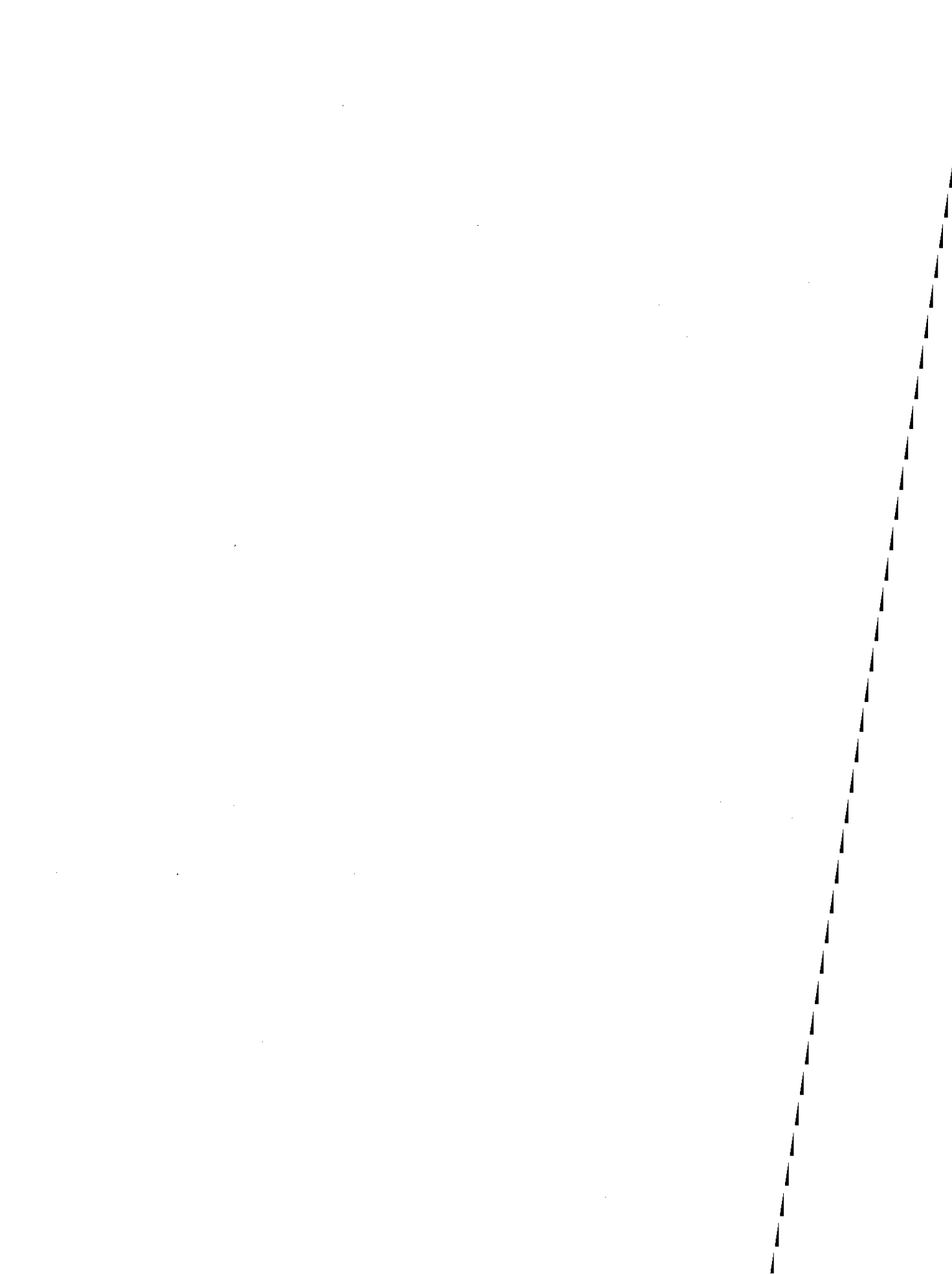
W. H. H. BINGHAM, *Secretary.*

### Results of the 1861 Council of Censors

Unlike other councils, there is nothing to report on the 1861 Council's work. It was the first Council which made virtually no inquiry into the propriety of any legislative or executive acts, nor did it provide any reports on the investigations of its legislative and executive committees. For the first time since 1806, a Council did not call for a constitutional convention. The Civil War was cited as the rationale for truncating its responsibilities. This is in contrast to the 1785 and 1813 Councils which met when Vermont's enemies were literally at the border. Continuing resentment of the 1855 Council may have played as great a role as war in restraining the Council.

Proposals were made to abolish the Council of Censors and invent some new way of making changes in the Constitution and to establish biennial sessions for the legislature, proposals that were made and adopted in 1869. Reducing the number of representatives and enlarging the terms of senators and representatives was also considered, but in the end the only business of the 1862 Council was to wrap up their session and go home, which the Council did in a total of seven days--two in June and five in October of 1862.





## The 1869 Council of Censors

By time the thirteenth Council of Censors met Vermont had weathered many of the crises that had distinguished preceding decades. The Civil War ended the agitation that had marked the anti-slavery movement. Statewide prohibition remained in effect, muting the issue that had helped ruin the Whigs. Association with secession in the South and anti-war sentiment in the North left the Democratic Party without credibility.

The dominance of the Republican Party was complete, anchored by strong town-level organization and the support of Civil War veterans. The Republicans adopted and modified informal rotation in office principles, notably limiting governors to two one-year terms and restricting the candidate pool for any given year through geographic eligibility requirements. This system, with its many variations at different levels of government, kept a relatively fluid political situation and muted factionalism.

Indeed, factionalism posed the only potential threat to Republican dominance. The Republicans saw two possible sources of disruption: annual elections and the Council of Censors. Many of the earlier parties came to grief because annual elections, particularly when coupled with reform crusades, constantly agitated the public.

The Council of Censors was the most persistent champion of proportional representation, a system which would have weakened the Republicans' unmatched town-level organization. The Council, elected at large, was itself a threat since it could be captured by competing political interests, as had happened in 1855.

The 1869 Council presented an opportunity to eliminate both threats. The Republicans, however, were not willing to risk dismantling a system as old as the state itself solely on the grounds of political expediency. Consequently, on February 24, 1869 they convened a "mass" convention in Montpelier to nominate candidates for the Council. By inviting Democrats to participate--three were ultimately nominated--the Republicans could claim bi-partisan support for abolishing the Council.

Though some Republicans had a hard time accepting Democratic participation, they were willing to share their power if it meant, as one delegate put it, "abolishing the bungling machinery of the Council of Censors." An attempt to instruct the nominees to vote for abolishing the Council was defeated as inappropriate.

The slate was elected in a contest that reportedly attracted only one in ten voters. While some commentators opined that the low turnout indicated the lack of interest in, and support for, the Council, others thought it a sign that people were unwilling to elect a "suicide Council."

The desire to restrict opportunities for political factionalism was clear in many of the proposals considered by the Council, notably biennial elections and a more complex amendment process that could only be engaged every ten years. As the Council's deliberations wore on, however, it became clear that the Censors were not unanimous on the "suicide" proposal. After first rejecting the proposal, the Censors deadlocked over the other proposals and for a while it appeared that the required two-thirds vote for calling a convention would not be obtained. In a last minute compromise the Council agreed to submit all the proposals, leaving it to the constitutional convention

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<sup>1</sup> *Vermont Watchman and State Journal*, March 3, 1869.

to decide the fate of the measures.

*Note on text:* The text is from the 1869 Journal of the Council of Censors published by the Freeman Steam Printing House and Bindery in Montpelier.

Journal  
of the  
Council of Censors  
of the  
State of Vermont

at its several sessions held in  
Montpelier  
1869

Journal  
First Session.

Senate Chamber,  
**Montpelier, Wednesday, June 2, 1869**

The Council of Censors, elected on the last Wednesday of March, A.D. 1869,<sup>1</sup> convened in the Senate Chamber, at Montpelier on the first Wednesday, being the 2d day, of June, 1869, at 10 o'clock, A.M., when the following named members appeared and took their seats, to wit:

HENRY LANE,  
J. B. HOLLISTER,  
WILLIAM HARMON,  
JASPER RAND,  
H. HENRY POWERS,  
J. R. CLEAVELAND,  
NATHANIEL W. FRENCH,  
CHARLES C. DEWEY,  
CHARLES K. FIELD,  
TIMOTHY P. REDFIELD,  
CHARLES REED,  
JOSEPH W. COLBURN.

The Council was called to order by Mr. RAND, and on motion of Mr. COLBURN,

CHARLES K. FIELD was elected President *pro tem.*, and on motion of Mr. REED,

H. HENRY POWERS was elected Secretary *pro tem.*

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<sup>1</sup>"An Act Regulating the Choice of Septennial Council of Censors," *Laws of 1868*, No. 1, 3.

Mr. RAND introduced the following resolution, which was read and adopted:

*Resolved*, That the Rules of the last Council be the Rules of this Council until new ones are adopted.

On suggestion of the President *pro tem.*, the members of the Council presented their credentials to the Secretary.

On motion of Mr. LANE, Mr. COLBURN was admitted to his seat as a member of the Council without producing his credentials.

On the motion of Mr. REED, Mr. HARMON and Mr. HOLLISTER were admitted to their seats as members of the Council without producing their credentials.

On motion of Mr. DEWEY, Mr. RAND was admitted to his seat as a member of the Council without producing his credentials.

Mr. Dewey introduced the following resolution, which was read and adopted:

*Resolved*, That a committee of three be appointed by the Chair to prepare rules for the government of the Council.

Mr. REED introduced the following resolution, which was read and adopted:

*Resolved*, That the Council proceed at 2 o'clock this afternoon to elect a President and Secretary of the Council by ballot.

Mr. LANE introduced the following resolution:

*Resolved*, That the President request some clergymen of Montpelier to attend on the Council as Chaplain, and that the morning sessions of the Council be opened by prayer.

The President announced as the Committee to prepare Rules of the Council, provided for by the resolution of Mr. DEWEY, Mr. DEWEY, Mr. REED, Mr. HARMON.

Mr. RAND introduced the following resolution, which was read and adopted:

*Resolved*, That the Sergeant-at-Arms be requested to attend on the Council during its session, by himself or deputy.

On motion of Mr. LANE, the Council adjourned until 2 o'clock this afternoon.

#### Afternoon

The Council proceeded to the election of President and Secretary, agreeably to a resolution adopted at the morning session. The ballots for the President having been taken, examined and counted, Mr. COLBURN and Mr. FRENCH acting as tellers, it appeared that

HON. CHARLES K. FIELD

was elected President; and the ballots for Secretary having been taken, examined and counted, Mr. CLEAVELAND and Mr. LANE acting as tellers, it appeared that

Arthur Culver,  
of Royalton, was elected Secretary.

Mr. DEWEY, from the Committee on Rules, submitted the following report, which was read, accepted and adopted:

*To the Council of Censors:*

The Committee appointed to prepare Rules for the government of the Council, respectfully submit the following, and recommend their adoption:

RULES.

I. The Council shall meet daily (Sundays excepted) at 10 o'clock in the forenoon, and at 2 o'clock in the afternoon, until otherwise ordered.

II. The President shall take the chair at the hour to which the Council stands adjourned, and call the Council to order, and direct the members to the transaction of business.

III. No member, without leave first obtained, shall absent himself from the sessions of the Council.

IV. Upon the demand of a member, the yeas and nays shall be taken upon any pending question, and recorded upon the journal of the Council.

V. The Standing Committees of the Council shall be as follows:

1. A Committee consisting of three members, whose duty it shall be to inquire whether the Constitution has been preserved inviolate during the last septenary; which shall be called the *Committee on the Powers of the Constitution*.

2. A Committee consisting of three members, whose duties it shall be to inquire whether the legislative branch of the government has performed its duty as guardian of the people, or has assumed to itself or exercised other or greater powers than are conferred upon it by the Constitution, and particularly whether the laws have been duly executed; which Committee shall be called the *Legislative Committee*.

3. A Committee consisting of three members, whose duty it shall be to inquire whether the Executive Department of the government has performed its duty as guardian of the people, or has assumed or exercised other or greater powers than the Constitution confers upon it; which Committee shall be called the *Executive Committee*.

4. A Committee consisting of three members, whose duty it shall be to inquire whether the public taxes have been justly laid and collected, and in what manner the public money has been expended; which Committee shall be called the *Committee on Taxes and Expenditures*.

VI. The committees shall be appointed by the President; but such appointments may, on motion of a member, be overruled and the vacancy filled by the Council on nomination; and members may be added to a committee by vote of the Council.

VII. Motions, on request of the President, shall be reduced to writing by the member making the same.

VIII. A motion to adjourn shall always be in order.

IX. Motions and resolutions shall have precedence as follows:

1. To dismiss.
2. To postpone to a day certain.
3. To lie on the table.
4. To commit.
5. To amend.

Respectfully submitted,

CHARLES C. DEWEY

*for the Committee*

Mr. COLBURN introduced the following resolution, which was read and adopted:

*Resolved*, That a committee of three be appointed to take into consideration the expediency of changing the mode of amending the Constitution, so as to refer to legislative action for propositions, and refer directly to the people for a final decision, as more appropriate and less expensive than the present system, and more in accordance with republican ideas and democratic equality.

Mr. RAND introduced the following resolution, which was read and ordered to lie:

*Resolved*, That the Committee on the Powers of the Constitution be directed to inquire into the expediency of so amending the Constitution of this State as to extend the right of suffrage to all the citizens of this State without regard to sex.

Mr. DEWEY introduced the following resolutions, which were read and adopted:

*Resolved*, That a committee of three members be appointed to inquire into the expediency of so amending the Constitution as to enlarge the term of office of the Judges of the Supreme Court, and to fix their salaries; and also to inquire into the expediency of changing the mode of their election.

*Resolved*, That the same committee be also instructed to inquire and report as to whether evils and defects exist in the present chancery system of the State; and whether the action of this Council under the provisions of the Constitution may and should be invoked to remove or ameliorate such evils and defects if found to exist.

On motion of Mr. REED, the Council took a recess for one half hour.

At the expiration of the time for recess, the Council was again called to order, and the President announced the following special committees:

On the resolution of Mr. COLBURN, relating to the mode of amending the Constitution, Mr. COLBURN, Mr. LANE, Mr. POWERS.

On the resolution of Mr. DEWEY, relating to the Judiciary, Mr. DEWEY, Mr. REDFIELD, Mr. RAND.

On the motion of Mr. REED, the resolution of Mr. RAND, relating to woman suffrage, was called up and so amended as to read as follows:

*Resolved*, That a committee of three be appointed to inquire into the expediency of so altering the Constitution as to extend the right of suffrage to all the citizens of this State without regard to sex.

And the resolution as amended was adopted.

Mr. DEWEY introduced the following resolution, which was read and withdrawn by leave:

*Resolved*, That when this Council shall adjourn to-morrow, it adjourn to meet at the State House, at Montpelier, on Tuesday, the 19th day of October next, at ten o'clock in the forenoon.

Mr. COLBURN introduced the following resolution, which was read and adopted:

*Resolved*, That a committee of three be appointed to consider the expediency of biennial sessions of our legislature instead of annual, and of electing officers for two years; leaving the executive power to call extra sessions as it is now.

Mr. LANE introduced the following resolution, which was read and ordered to lie:

*Resolved*, That a committee of three be appointed to inquire and report upon the expediency of so amending the Constitution that corporations may be formed under general laws, but shall not be created by special acts.

On motion of Mr. RAND, adjourned.

#### Thursday, June 3, 1869

Prayer by Rev. Dr. W. H. Lord, of Montpelier.

Journal of Wednesday read and approved.

The President announced the appointment of the following standing committees:

*On the Powers of the Constitution*, Mr. DEWEY, Mr. RAND, Mr. CLEVELAND.

*The Legislative Committee*, Mr. REDFIELD, Mr. FRENCH, Mr. HARMON.

*The Executive Committee*, Mr. REED, Mr. COLBURN, Mr. POWERS.

*On Taxes and Expenditures*, Mr. ROSS, Mr. HOLLISTER, Mr. LANE.

The President also announced the appointment of the following special committees:

On the resolution of Mr. COLBURN, relating to biennial sessions and elections, Mr. RAND, Mr. COLBURN, Mr. HARMON.

On the resolution of Mr. RAND, relating to woman suffrage, Mr. RAND, Mr. REED, Mr. POWERS.

Mr. DEWEY introduced the following resolution, which was read:

*Resolved*, That when this Council adjourns to-morrow, it will adjourn to meet at the Capitol in Montpelier, on the 3d day of August next, at ten o'clock in the forenoon.

Mr. POWERS moved to amend the resolution by substituting in place of the words "3d day of August," the words *last Tuesday in July*, which motion was by leave withdrawn.

Mr. DEWEY, by leave, amended his resolution by substituting in place of the words "3d day of August," the words *27th day of July*.

Mr. LANE moved to amend the resolution of Mr. DEWEY, by substituting in place of the words, "27th day of July," the words *19th day of October*.

The question being, Shall the amendment be adopted? the yeas and nays were demanded by Mr. RAND.



The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN, LANE--2.

Those members who voted in the negative are Messrs.

CLEAVELAND,	FRENCH,	POWERS,
DEWEY,	HARMON,	RAND,
FIELD,	HOLLISTER,	REED--9.

So the motion to amend was lost.

Mr. LANE moved to amend this resolution by substituting for the word "to-morrow," the words *Friday, at 8 o'clock*, which was withdrawn by leave, and the resolution as amended was, on motion of Mr. REED, ordered to lie.

Mr. CLEAVELAND introduced the following resolution, which was read and adopted:

*Resolved*, That the committee on the resolution relating to the mode of proposing and adopting amendments to the Constitution of this State, be instructed to inquire into the expediency of so amending the Constitution as to abolish the Council of Censors, and to provide some other method of amending the Constitution of this State.

Mr. POWERS introduced the following resolution, which was read and adopted:

*Resolved*, That the Committee on the Powers of the Constitution be instructed to make inquiry whether section nineteen of part second<sup>2</sup> of the Constitution has been violated by any member of the Legislature during the past septenary, and that such committee have leave to sit at any time during the term of office of this Council, and have power to send for persons, papers and records.

Mr. RAND introduced the following resolution, which was read, and on motion of Mr. CLEAVELAND, ordered to lie:

*Resolved*, That the Legislative Committee be directed to inquire why the ninety-fourth chapter of the General Statutes of this State (relating to the traffic in intoxicating drinks),<sup>3</sup> has not been executed, and report their opinion of the causes of the failure of the execution of the same.

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<sup>2</sup>Chapter II, Section 19 provided that, "No member of the [council,] (*senate*,) or house of representatives, shall directly or indirectly receive any fee or reward to bring forward or advocate any bill, petition, or other business to be transacted in the legislature, or advocate any cause as counsel in either house of legislation, except when employed in behalf of the state."

<sup>3</sup>Chapter 94 prohibited the private sale of intoxicating beverages. It was enacted after a statewide referendum on the subject in 1853. Town agents could purchase liquor for towns and sell it "for medicinal, chemical, and mechanical purposes only." *General Statutes*, 588-604.

Mr. REED called up the resolution of Mr. DEWEY, relating to the time of adjournment of this Council, which had been read and ordered to lie, and moved to amend the same by striking out all of said resolution after the word "*Resolved*," and inserting in lieu thereof the following: *That when this Council shall close its present session, it shall adjourn to meet and hold its second session at the Capitol, in Montpelier, on the 27th day of July next, at 10 o'clock in the forenoon.*

And this motion to amend prevailed, and the resolution as amended was adopted.

The resolution of Mr. LANE relating to corporations was called up by Mr. LANE, considered, and again ordered to lie.

On motion of Mr. POWERS, adjourned.

#### Afternoon.

Mr. RAND called up the resolution introduced by him relating to chapter ninety-four of the General Statutes, and upon his motion, the resolution was so amended to read as follows:

*Resolved*, That the Legislative Committee be instructed to inquire whether the provisions of the ninety-fourth chapter of the General Statutes, relating to the traffic in intoxicating drinks, have been duly enforced; and if it be found that said provisions have not been so enforced, that said committee report as to the causes of said failure.

And the resolution as amended was adopted.

Mr. DEWEY called up the resolution of Mr. LANE, relating to corporations, and moved to amend the same so as to read as follows:

*Resolved*, That a committee consisting of three members be appointed to inquire into the expediency of so amending the Constitution as to prohibit the creation of private corporations by special enactment; and that said committee have liberty to report such amendment or addition to the Constitution in respect thereto as they may deem to be necessary.

Which was agreed to, and the resolution as amended was thereupon adopted.

Mr. LANE introduced the following resolution, which was read and adopted:

*Resolved*, That the Secretary be authorized to make up and certify the debentures of the Council, and the officers and attendants employed by them during their present session.

Mr. POWERS introduced the following resolution, which was read:

*Resolved*, That the select committee appointed to consider the expediency of abolishing the Council of Censors, be instructed to consider the expediency of increasing the number of the Council to thirty, to be apportioned to the different counties in the same manner as senators are.

The question being, Shall the resolution be adopted? the yeas

and nays were demanded by Mr. COLBURN.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEAVELAND,	FRENCH,	RAND,
DEWEY,	LANE,	REED--8.
FIELD,	POWERS,	

Those members who voted in the negative are Messrs.

COLBURN, HARMON--2.

So the resolution was adopted.

Mr. CLEAVELAND introduced the following resolution, which was read and adopted:

*Resolved*, That the Secretary procure one hundred and fifty copies of the Journal of this Council at its present session to be printed, and that he forward by mail one copy thereof to the publishers of each daily and weekly paper in this State, and five copies to each member of this Council.

Mr. DEWEY introduced the following resolution, which was read and adopted:

*Resolved*, That the Treasurer of this State be requested to furnish to this Council at the commencement of its adjourned session a statement of balances due, if any, from officers who, by virtue of their office, are required to account to him for balances in their hands belonging to the State, and the time such balances accrued.

The President announced as a special committee on the resolution of Mr. LANE, relating to corporations, Mr. LANE, Mr. HOLLISTER, Mr. FRENCH.

Mr. COLBURN introduced the following Resolution, which was read and adopted:

*Resolved*, That the Legislative Committee be instructed to inquire whether the laws of this State regulating the rates of interest<sup>4</sup> have been disregarded and violated, and that for this purpose they have power to send for persons and papers, and that said committee report the causes of such violation, if found to have existed, and whether it be within the province of the powers of this Council to provide a remedy.

Mr. REED introduced the following resolution, which was read and adopted:

*Resolved*, That each Committee of the Council to which has been referred any proposed amendment of the Constitution or subject of

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<sup>4</sup>The general rule on interest provided that, "No person shall take, directly or indirectly, more than the value of six dollars for the forbearance of one hundred dollars for one year, and at the same rate for the greater or less sum, and for a longer or a shorter time." *General Statutes*, Chapter 79, § 3, 507. Banking associations, savings companies, and banks were also limited by more specific legislation to six percent.

consideration, notwithstanding the instructions of said committee may be specific, is hereby requested and authorized to report such amendment to the Constitution or other proceeding pertaining to the general subject committed to it, as any committee shall deem the public interest requires.

On motion of Mr. REED, the Council took a recess of ten minutes, after which

Mr. DEWEY introduced the following resolution, which was read and adopted:

*Resolved*, That the Committee on the Powers of the Constitution be instructed to inquire whether the legislative branch of the government, in the enactment of certain statutes enabling towns to grant aid to railroad corporations, has assumed to itself and exercised greater power than it is entitled to by the Constitution.<sup>5</sup>

Mr. CLEAVELAND introduced the following resolution, which was read and adopted:

*Resolved*, That at the close of the session of this Council tomorrow morning, the Council adjourn to meet on the 27th day of July next, as heretofore ordered.

Mr. LANE introduced the following resolution, which was read and adopted:

*Resolved*, That the Auditor of Accounts be requested to furnish this Council, at their adjourned session, a statement of balances due the State, if any, from the Judges of Probate and County Clerks in the several Counties and Districts, and the years in which such balances accrued, and the names of such delinquent officers.

On motion of Mr. HARMON, adjourned.

### Friday, June 4, 1869.

Prayer by Rev. Dr. W. H. Lord.

Journal of Thursday read and approved.

On motion of Mr. REED, the Council adjourned, to meet at the Capitol, in Montpelier, on the 27th day of July next at 10 o'clock, A.M., agreeably to a resolution of the Council.

## Second Session

### Tuesday, July 27, 1869

Prayer by Rev. S. Holman.

On motion of Mr. FRENCH, Mr. ROSS was admitted to his seat as a member of the Council without producing his credentials.

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<sup>5</sup>"An act to enable the towns therein mentioned to aid in obtaining necessary railroad communications," *Laws of 1867* (Sp. Sess.), No. 1, 335-39.

The following communications in response to resolutions adopted by this Council at its first session were read and referred to the Committee on Taxes and Expenditures:

STATE OF VERMONT,  
Office of the State Treasurer,  
Montpelier, July 27, 1869.

*To the Honorable Council of Censors::*

In response to the resolution of your body passed on the third day of June last, requesting the Treasurer of this State to furnish a statement of balances due from officers, who by virtue of their office are required to account to him for balances in their hands belonging to the State, and the time when such balances accrued, I have the honor to report: There are balances due from the following named officers on account of the State tax assessed under the authority of the act of 1868, as follows:

Irving Dunshee, Collector of Taxes, Bristol	\$424.77
L.A. Drew, " " Burlington	1,291.49
R.J. Morse, " " Bolton	450.93
Charles S. Clark, " " Jamaica	552.28
E. Emerson, 2d, " " Rochester	65.57
Thomas Failey, " " St. Albans	3,085.80
D.H. Beattie, Col'r of Taxes unorg'd towns in Essex Co.	9.72
Making a total of	\$5,993.19

The balances above named, all became due on the first day of June last.

Respectfully submitted,  
J.A. Page, State Treasurer.

Auditor's Office  
Middlebury, VT., July 23, 1869

*To the Honorable Council of Censors::*

In response to a resolution of your honorable body, I have the honor to report that there is no balance due the State from any judge of probate, and that there is no balance due from any county clerk which accrued in any former year, and only such balances are outstanding as arise from money advanced under the statute to the clerks of Bennington, Lamoille and Orleans counties, to pay debentures of court, jurors and witnesses, at the last term of the county court, in their respective counties, in respect to which returns have not yet been received.

Dugald Stewart,  
Auditor of Accounts.

On motion of Mr. CLEVELAND, adjourned.

**Afternoon.**

On motion of Mr. DEWEY, the Council resolved itself into a

committee of the whole.

The committee of the whole having arisen, and no report being made, Mr. HOLLISTER introduced the following resolution, which was read and adopted:

*Resolved*, That the Committee on the Powers of the Constitution be directed to inquire into the expediency of so amending the constitution of this State, as to authorize the Legislature to enact laws giving to the Judges of the Supreme and County Courts, the right in their discretion to refer civil causes pending in said courts.

On motion of Mr. LANE, adjourned.

### Wednesday, July 28, 1869.

Prayer by Rev. S. Holman.

Journal of Tuesday read and approved.

Mr. DEWEY introduced the following resolution, which was read and referred to the Special Committee on Woman Suffrage:

*Resolved*, That the Committee on Woman Suffrage be instructed to inquire into the expediency of amending the twenty-second section of part second of the Constitution, so as to read as follows:

Sec. 22. The inhabitants of this State, without distinction of sex, shall be trained and armed for its defense, under such regulations, restrictions, and exceptions as Congress, agreeably to the Constitution of the United States, and the Legislature of this State, shall direct. The several companies of militia shall, as often as vacancies happen, elect their captain and other officers, and the captains and subalterns shall nominate and recommend the field officers of their respective regiments, who shall appoint their staff-officers. And no person shall be disqualified to hold any military office on account of sex.

Mr. REED from the Special Committee on Woman Suffrage submitted the following report, which was read and accepted:

*To the Honorable Council of Censors:* now in session:

The Special Committee appointed under the following resolution,

*Resolved*, That a committee of three be appointed to inquire into the expediency of so altering the Constitution as to extend the right of suffrage to all citizens of the State, without regard to sex,

Having duly considered the same, report:

The Declaration of Independence asserts that "*all men are created equal*," that "*governments derive their just powers from the consent of the governed*."

The first clause of our own State Constitution declares that "*all men are born equally free and independent, and have certain natural, inherent and inalienable rights, among which are the defending and enjoying of life and liberty, acquiring, possessing and protecting property, and pursuing and happiness and safety*."

"*Taxation and representation are inseparable*," cried the fathers of the Revolution.

We all believe these to be self-evident propositions, and that they apply to all mankind, man and woman alike.

Suffrage is an expression of opinion by ballot. The qualifications are, capacity to understand the effect of public measures and a desire for the public welfare. And it is the right of any one person who possesses these qualifications, as much as it is the right of any other.

But one-half of the people of our State are denied this right, and woman has no vote. Yet she has all the qualifications--the capacity, the desire for public welfare. She is among the governed. She pays taxes.

Even-handed justice, a fair application of the principles of the Declaration of Independence and of our State Constitution, above quoted, give woman the ballot, and do not shut out from it one-half of the intelligence and more than one-half of the moral power of the people. Custom and prejudice alone stand in the way. There is no reason why woman should not be allowed to do what she is so eminently fit to do. We have seen no objection to woman suffrage that has not been successfully met. We know no good reason why the most ignorant *man* should vote, and the intelligent *woman* be refused.

Our present political institutions were formed and shaped when men had their chief interests and pursuits out of doors, and women remained the humble slaves at home. The social change has been immense. Now woman sits by the side of man, is his companion and associate in his amusements, and in all his labors, studies, pursuits and interests, save the one of governing the country. And it is time that she should be his associate in this.

Some of the best minds of the English race have been fathoming this subject. It is so extensive that we cannot present it within the limits which would secure the attention of even members of this Council. For statements of some of the views of woman suffrage entertained by your committee, the Council is referred to the Speech of John Stuart Mill in the British Parliament, May 20, 1867, the address of Henry Ward Beecher at the Cooper Institute, New York, and to the recent report of the Joint Special Committee on Woman Suffrage to the Senate of Massachusetts, May 24, 1869.

We fully concur in the sentiments of the following extracts from the address of Mr. Beecher:

"Look, for a moment, at some of the results that would accrue from the granting of the liberty of suffrage to women. What would be the effect of their votes in the selection of men for offices--town, state, and national? Do you not know, does not every politician know, does not every man that is at all conversant with public affairs know, that you are obliged to choose men for office with reference to those who are to vote for them, and that if men were selected whose election depended as much upon the votes of women as upon the votes of men, not one bad man would be put up where there

are fifty selected now? The voting of women would be the sifting of men throughout the nation.

"Now, the moment you bring into our public affairs woman's influence, her stronger moral sentiment, her love of disinterested kindness, her deep and ineradicable sentiment of purity, her moral courage, and faith in all that is good, her yearnings and aspirations for the higher, serener, and more heavenly truths and knowledges; the moment you bring together in public affairs virile strength and female refinement,—then you will have God's foundation for moral purity and public peace; and great moral interests and questions of humanity will take the place of selfishness and miserable quarreling expedients. Then, principles will be discussed and applied, and legislation will grow heroic again. . . .

"If women were to vote there would be an end of indecent voting places.

If father and mother, husband and wife, brother and sister, man and woman, inspired by the sanctity of patriotism, were to go forth together to vote, do you suppose that our elections would be characterized by the vulgarity and violence which now defile them?

"What is there in depositing a vote that would subject a woman to such peculiar exposure? A woman, in dropping a letter into the post office, is made more public, and is full as much indelicate as in depositing her vote. A vote is the simplest, the neatest, the most unobtrusive thing imaginable. This white slip of paper drops as quietly and gently as a snow flake on the top of the Alps; but, like them, when collected, they descend in avalanches. Woe be to the evil which they strike! Let the man who is the most fastidious, who prides himself most on his refinement, find fault, if he can, with the vote of a woman—a thing that is so easy, so simple, but that would carry into human affairs a power almost like the right hand of the Almighty. .

"To-day, the proudest throne on the globe is honored by a woman. No person is shocked that she is at the head of empire. Every reason urged against a larger liberty for woman is illustriously confuted by the dignity, purity and womanly propriety with which Victoria stands before her empire, and before the world.

"It is only woman *without a title*, that must have no privileges. Woman, in her own simple self, with nothing but what God gave her, plain, democratic woman, is not deemed worthy of honor and publicity. With a crown on her brow, she may enter parliaments, and govern empires. With only her own simple personal virtues, she may not lift up her hand to cast a vote! If she represents a power, a state, an art, a class, if she only stand upon an aristocratic base, she is indulged. But woman, in her own nature, and representing her own self, is disowned and rebuffed! Now, as a Christian democrat, I assert for her every right and every privilege that aristocracy accords her."

George W. Curtis, in the New York Constitutional Convention, says:

It seems to be thought that if woman practically took part in politics, the home would be left a howling wilderness of cradles, and a chaos of undarned stockings and buttonless shirts. But how is it with the men? Do they desert their workshops, their plows and offices, to pass their time at the polls? Is it a credit to a man to be called a professional politician? The pursuits of men in the world, to which they are directed by the natural



aptitude of sex, and to which they must devote their lives, are as foreign from political functions as those of women. To take an extreme case: there is nothing more incompatible with political duties in cooking and taking care of children than there is in digging ditches or making shoes, or in any other necessary employment, while in every superior interest of society growing out of the family, the stake of women is not less than men, and their knowledge is greater. In England, a woman who owns shares in the East India Company may vote. In this country she may vote as stockholder upon a railroad from one end of the country to another. But if she sells her stock, and buys a house with the money, she has no voice in the laying out of the road before her door, which her house is taxed to keep and pay for. And why, in the name of good sense, if a responsible human being may vote upon specific industrial projects, may she not vote upon the industrial regulation of the State? There is no more reason that men should assume to decide participation in politics to be unwomanly than that women should decide for men that it is unmanly.

The position of woman in regard to the common schools of the State is the most absurd and unjust that can be imagined. She must always be the chief instructor of the young in point of time and influence. She is their best teacher at home and in school. And her share in this ever expanding work is becoming vaster every day. Woman as mother, sister, teacher, has an intelligence, a comprehension of the educational needs of our youth, and an interest in their development, far in advance of the other sex. She can organize, control and teach the most difficult school in the State; yet she has no vote in the selection of teachers, the building, arrangements and equipment of school-houses, neither in the method and extent of instruction. She can pay her share of the expenses of the schools, but can have no legal voice in their management. She can teach, but she can have no vote in determining what shall be taught. She is the very corner-stone of institutions which she has no lawful vote in shaping.

Suffrage alone can carry woman's equal right and privilege into the district school. And especially let us have her open, avowed and public responsibility and co-operation,--always safer than indirect influence--always more honest and efficient than a kitchen cabinet.

This subject is one that promises to engross the thoughts of this generation, and it will be agitated till in the progress of events the right of woman to vote will not be questioned. This result is just as certain as it is that in the end the cause of truth ever triumphs.

We believe that woman, married or unmarried, was made to be the companion of man and not his mere servant; that she has the same right to control her property that he has to control his; that she has the same right to aspire to any occupation, profession, or position, the duties of which she is competent to discharge, that he has. A right is worth nothing without the power to protect it. The ballot alone can do this.

When the black man of the South was made a free man, the

ballot was given him as the only sure mode of protecting his freedom and the equal rights freedom confers.

And we should glory in seeing Vermont, first of all lands, accord to woman her equal rights before the law, and invest her with their only sure safeguard, the right of suffrage.

After abolishing human slavery, the next great conquest of the United States over wrong and error, will be to take woman from the feet of man and place her by his side, invested with every right and privilege of her present 'lord and master' that the law can confer. And in this is involved his highest interests. Whatever will elevate her will elevate him. That they rise or sink together all history shows.

The form of an article of amendment to the constitution is appended, the adoption of which your committee recommend.

Respectfully submitted,

JASPER RAND,

CHARLES REED,

H. HENRY POWERS,--*Committee.*

Montpelier, July 27, 1869.

*Proposed Article of Amendment*

Article No. 24. Hereafter women shall be entitled to vote, and with no other restrictions than the law shall impose on men.

On motion of Mr. POWERS,

Ordered that the report lie and that the Secretary procure the printing of five hundred copies for the use of the Council.

On motion of Mr. REED, adjourned.

**Afternoon**

Mr. LANE from the Special Committee on the resolution relating to corporations submitted the following report, which was read and accepted:

*To the Honorable Council of Censors::*

The committee appointed to inquire into the expediency of so amending the Constitution as to prohibit the creation of private corporations by special enactments, report that they have had the same under consideration, and recommend the adoption of the following amendment:

**ARTICLE \_\_\_\_**

SEC. 1. Corporations may be formed under general laws. They shall not be created, nor their powers increased or diminished by special acts except for municipal purposes. All such laws may be altered or repealed. The Legislature shall not authorize the consolidation of railroad corporations owning parallel or competing lines of road.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. The term corporation, as used in this article, shall be construed to include all associations and joint stock companies having any of the privileges or powers of corporations not possessed by partnerships or individuals. Corporations shall have the right to sue and may be sued in all courts by their corporate names.

HENRY LANE *for the Committee.*

On motion of Mr. ROSS,

Ordered that the report lie, and that the Secretary procure the printing of one hundred copies for the use of the Council.

Mr. POWERS submitted the following report, which was read, accepted, and ordered to lie:

*To the Honorable Council of Censors: now in session:*

A majority of your committee to whom was referred the resolution of Mr. COLBURN favoring an amendment to the Constitution, abolishing the Council of Censors, and referring to legislative action for changes in the Constitution; and also the resolution of Mr. POWERS to increase the number of the Council of Censors to thirty, respectfully report that in their judgment both of the propositions above named are unwise and inexpedient.

Respectfully submitted,

HENRY LANE,

H. HENRY POWERS,--*Committee.*

On the motion of Mr. DEWEY, adjourned.

**Thursday, July 29, 1869.**

Prayer by Rev. S. Holman.

Journal of Wednesday read and approved.

Mr. RAND from the Special Committee on Biennial Sessions and Elections submitted the following report which was read and accepted:

*To the Council of Censors:*

Your committee, appointed to consider the resolution in relation to biennial sessions of the Legislature and elections, respectfully report that, upon consideration of the subject, they recommend that the Council propose the following amendment to the Constitution, viz:

ARTICLE.

[left blank in printed journal]

Your committee submit the following among the reasons which induce them to make this recommendation:

They are of opinion that it is not always necessary that there should be an annual session of the General Assembly.

The business transacted by the General Assembly is properly considered under the two classes of public and private enactments. So far as our public laws are concerned, it is to be noticed that ours is an inland State with a homogeneous population, that our territorial limits are small, our people law-abiding and intelligent, that with such a State and such a people we do not require the amount of legisla-

tion that is required in some other States. Your committee are of the opinion that a careful scrutiny of the history of our State Legislature for the past twenty years will show that in most cases our public legislation has been confined to trivial matters, and that no important changes have been made in our laws as often as once in two years, nor indeed for much longer periods. Such scrutiny will also show that in many instances, such changes as have been made, have been had unadvisedly, so that no inconsiderable part of the business has been to undo and repeal what had been so hastily done the year before. In this view your committee are of opinion that we have had too much legislation; that the continual tinkering of the laws, by making amendments one year and repealing them the next, and the numerous minor modifications of our statute which our legislation has produced, have not been profitable to the State. Such legislation has increased litigation instead of diminishing it. Our Reports show that a very large proportion of the disputes settled in the Supreme Court, grow out of the construction of newly enacted statutes. No legislature can form a statute so perfectly but the interests of parties, and the ingenuity of counsel can raise questions as to its construction. When therefore, a statute has been enacted and its construction settled, nothing but a clear and strong reason should cause its change.

Now, therefore, if we change the sessions of our General Assembly from annual to biennial, the result will be not only that there will be less opportunity for unimportant and unnecessary change, but from having a longer public consideration before coming before the General Assembly, such propositions of amendment as are made will be examined more carefully and determined more judiciously.

So far as private legislation is concerned, most of it is quite unimportant, being simply the creation of minor corporations, and, whether we have annual or biennial sessions will soon be disposed of as in other States, by general enactments for creating private associations, by which the rights of the public will be secured, and at the same time corporate power be granted whenever needed. We have now upon our books hundreds of acts creating private corporations which have not been of benefit to any party sufficient to pay for the white paper upon which they were printed.

Occasionally, it is true, there come up grave questions as to granting corporate rights and public franchises which deserve the attention of the Assembly, but these do not arise every year, and when they do come up, it most usually happens that many years elapse from the first start to the final perfection of the enterprise, so that a delay of a year in the legislation would not retard the public benefit. In most of the questions of importance that arise in practice, the General Assembly is made to serve not the part of a legislature, deliberating for the public good, but the arena in which rival and

hostile private interests seek to gain advantage over each other. With all such matters, the less we have to do the better for the public.

From these considerations, your committee are of opinion that the interest of the State would be advanced by having the sessions of the General Assembly less frequent; that at least the expense of some of the sessions could be saved. This last, though a minor is by no means an unimportant consideration.

At the same time, whenever the public good requires it, the Assembly can be convened the same as now, either for adjourned sessions or upon call of the Governor. The effect of the amendment recommended would not be to deprive the State of any needed sessions, but only to give us the power to dispense with such as are found to be unnecessary.

Another consideration to be regarded in this connection is the effect of the proposed change upon the character of the officers to be elected. In this respect your committee are of opinion that the proposed change will not materially modify the represent state of affairs. Under the present system it is almost the universal practice to give a second election, and so practically we now select our officers for terms of two years. If it should result that under the change, officers should then be re-elected, so giving a four years' term of office where we now have but two, the effect would of course be to lessen the number of men holding offices in the State, and this, if it produced any difference, would improve the character and qualifications of the officers, for as a general rule more care is had in the selection of a few than of many.

It is no valid ground of objection that officers will act more carefully and with better judgment when they know their actions are to be subjected to the scrutiny of their constituents on their re-election.

Such views are libels on our officers and people. A judge who would vary his judgments for the sake of influencing his re-election, would be doing wrong and deserve impeachment. A legislator who has no higher motive for good conduct than the hope of a re-election is unfit for his place. Such would be unworthy motives to influence their action. It would then be a strangely inconsistent course of reasoning that should claim that the conduct of men in official positions would be improved by seeking to give them unworthy inducements. It would be as if some one should recommend that every suitor having the right of a case should bribe the jury to further justice.

Our experience is an abundant refutation of this objection. We uniformly elect our officers twice. It is generally expected that all our officers will have one re-election, and it is generally understood that they are not to have another. Now if there were force in the objection we should find that officers did better in their first than in

their second years of office. This is not so. Your committee submit that the observation of every intelligent citizen will confirm the statement that if there be any difference it is in favor of the second year, on account of the increased knowledge and experience given by the first year's service. Another objection to the proposed change is that a long term of office lays open the incumbents, and more especially the members of the General Assembly, to improper influences before the sessions, and that we ought not to have a long time intervene between their election and their active service, on the same principle that jurymen are selected but a short time before the terms of court to which they are returned.

This objection is answered practically by the same facts we have just been considering.

In theory there would be force in the objection if all our members were venal. They are not such, and although rare instances are found of individual shortcomings, our General Assemblies never have been carried by corrupt means, and with our present basis of representation there is little fear they ever will be. The great majority of our members are honest men, and we may safely expect they will continue such.

Now if a biennial election gives greater opportunities to approach the one venal member, it must at the same time give the ten or twenty honest members to be found for every corrupt one a better opportunity for honest study and careful information as to their official duties, and give more wisdom to them, which is the controlling action of these Assemblies.

Another very important consideration is the expense of annual elections. We have, say 40,000 to 50,000 votes cast at every State election. The time of each of these voters in attending the election is just as much a tax on the community as if each voter were assessed the value of that time, and the money paid over to some tax-gatherer. Add to this the time spent in attending primary meetings, caucuses, and conventions, and in canvassing and soliciting votes, and it is safe to say that every election costs the State at least as much as a full day's work of each voter, or \$100,000. For this we get no return unless we get it in the benefit of the election.

We have already seen that most of our officers serve two years. Probably not five in every hundred fail of their re-election. The result then is in effect that every other year we have the expense of a general election to change five per cent. of our officers. The difference in value between the services of the five per cent. who are not re-elected and those who take their places is very poor return for this expense.

But the pecuniary cost of our elections is by far the least of its expense. Our elections, accompanied as they are by local contests, the intrigues of cliques, and the struggle of hungry aspirants, have in them much that is demoralizing. Not to mention the corrupt

appliances which unscrupulous men bring to bear more or less in every close contest, there are influences which cannot be stigmatized as immoral which have yet an unhealthy tendency. Our frequent elections bring about an eagerness for place and a consequent courting of popularity that works evil in our society. Our leading men in such conditions, instead of being manly and outspoken in their convictions, become timid in rebuking evil and cautious in sustaining the right. Instead of being public teachers, advocating wise counsels and combating prejudices and striving to turn public thought into higher and better courses, our public leaders flatter the vanity and stimulate the prejudices of the multitude, and follow wherever the passions or interests of the many may lead them. Instead of big statesmen they become demagogues.

So too this eagerness for place brings about an unhealthy ambition. Men forsake stations of greater credit and usefulness for the glittering allurements of office. It is a very poor bargain for the State to change a useful private citizen into a hungry office-seeker.

These, to be sure, are necessary evils, the legitimate results of our form of government, but in the judgment of your committee are aggravated by the frequency of our elections. While they are not sufficient reasons for doing away with elections entirely, they are reasons for having them as unfrequently as is consistent with the public good in other respects.

Your committee might refer to the practice in other States as showing that the judgment of our best men, those who have sat as reviewers of their own State constitutions, or who having lived under the constitutions of older States, have assisted in establishing new States, is tending to a concurrence with the views here expressed, but they have preferred to discuss the matter upon principle and our own experience. From all the considerations they have been able to give the subject your committee are of the opinion that while they would not recommend such lengthy terms of office as are found in other countries, and some States in our own country, they are satisfied that annual elections are unnecessary, and regard the term of two years as a judicious mean which both reasoning founded on principle and the experience of other States concur in recommending.

JASPER RAND,  
J.W. COLBURN, *Committee*  
WILLIAM HARMON.

On motion of Mr. ROSS,

Ordered that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

Mr. POWERS introduced the following resolution, which was read, and on the motion of Mr. ROSS, ordered to lie:

*Resolved*, Two-thirds of this Council concurring herein, that it is expedient to call a Convention of delegates of the freemen of this State, to meet at the State House in Montpelier, on the 2d

Wednesday of June, A.D. 1870, for the purpose of taking into consideration such amendments to the Constitution as have been or may be proposed by this Council.

On motion of Mr. ROSS, the report of the Special Committee on Corporations was taken up, and made the special order for 2 1/2 o'clock this afternoon.

On motion of Mr. ROSS, the report of the Special Committee on Woman Suffrage was taken up, and made the special order for Friday afternoon next at 2 1/2 o'clock.

Mr. REED from the Executive Committee submitted the following report, which was read:

*To the Honorable Council of Censors:*

The Executive Committee respectfully report:

That it has been brought to the notice of your committee that the pardoning power of the Governor has in some cases been exercised without notice to the prosecuting officer by whom a sentence had been obtained, and that, if such notice had been given, such representations would have been made that the Governor would doubtless have withheld his action.

While your committee would not restrict the pardoning power of the Governor, we are compelled to suggest that it is hardly fair to a State's Attorney, after having used his best efforts to convict some scamp deserving punishment, that the execution of the sentence should be prevented by a pardon from the Governor, obtained by an *ex parte*, and perhaps false representation.

We believe it would be a salutary rule if the Governor would always notify the prosecuting officer of an application for pardon.

It has also been brought to our notice that justices of the peace, who have collected fines and costs under the provisions of Chap. 94, Sec. 9, of the General Statutes, do not always account for them.<sup>6</sup> The law now provides that these fines shall be paid in to the several county clerks, thence to the State treasury: General Statutes, Chap. 12, Sec. 51, page 92.

County clerks have only the power to receive these fines and costs from the justices. They have no power to inquire into the correctness of the amount paid them by the justices, and to ascertain

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<sup>6</sup>"If any person, by himself, clerk, servant, or agent, shall sell, furnish, or give away any intoxicating liquor in violation of this chapter, he shall forfeit and pay for each offence to the treasurer of the state, upon the first conviction, ten dollars and costs of prosecution; on the second conviction, he shall forfeit and pay for each offence, as aforesaid, twenty dollars and the costs of prosecution; on the third conviction, he shall forfeit and pay for each offence, as aforesaid, twenty dollars and the costs, and shall be imprisoned in the county jail no less than three months, nor more than six months." *General Statutes*, Chapter 94, Sec. 9, 592.



whether the sum paid is the full amount collected. There is no officer whose duty it is by law to do this. And when a justice of the peace is authorized to collect and receipt for a fine, he is so far an executive officer, and should be treated as such. And there ought to be some person whose duty it shall be to examine into and ascertain the correctness and sufficiency of the payment made by the justice.

On the part of the justice, there is in this matter, a neglect of his executive duty in not paying in all fines collected, and a defect in the law in not providing for a yearly or semi-annual settlement with the justice.

From the information laid before us, we are satisfied that a considerable amount of money is each year lost to the State from this failure of the justices to account, and that thereby the execution of the provisions of Chap. 94, is made unduly expensive to the State.

Your committee, in the discharge of their duties, have not heard of any complaint from any source, that during the last septenary, "*the Executive branches of the Government have assumed to themselves, or exercised other or greater powers than they are entitled to by the Constitution,*" nor that any State officers have not "performed their duty as guardians of the people," except as above specified.

All which is respectfully submitted.

CHARLES REED,  
J.W. COLBURN, *Executive Committee*  
H.H. POWERS,

Montpelier, July 28, 1869.

On motion of Mr. LANE, the report was recommitted, with instructions to amend.

Mr. REED moved to reconsider the vote whereby the report was recommitted.

The question being, Shall the vote be re-considered? the yeas and nays were demanded by Mr. POWERS.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HARMON,	POWERS,
CLEVELAND,	HOLLISTER,	REED--7.
FIELD,		

Those members who voted in the negative are Messrs.

DEWEY,	LANE,	ROSS--5.
FRENCH,	RAND,	

So the motion prevailed.

The question recurring, Shall the report be re-committed with instructions to amend? the yeas and nays were demanded by Mr. REED.

The vote being taken, those members who voted in the affirmative are Messrs.

LANE,	ROSS--2.
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Those members who voted in the negative are Messrs.

COLBURN,	FRENCH,	POWERS,
CLEAVELAND,	HARMON,	RAND,
DEWEY,	HOLLISTER,	REED--10.
FIELD,		

So the motion to recommit was lost, and the report was thereupon accepted.

On motion of Mr. DEWEY,

Ordered that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

Mr. POWERS introduced the following resolution, which was read and adopted:

*Resolved*, That a committee of three members of this Council be appointed, to be denominated the Committee on Revision and Engrossment, whose duty it shall be to revise and re-draft any article or articles of amendment to the Constitution, which may be recommended by this Council previous to the final adoption and publication of such article or articles.

The President announced as the Committee on Revision and Engrossment: Mr. POWERS, Mr. ROSS, Mr. REED.

On motion of Mr. ROSS, adjourned.

#### Afternoon.

The report of the Special Committee on Corporations was taken up, being the special order, and on motion of Mr. ROSS was amended by striking out the clause "all such laws may be altered or repealed," in the first section of the proposed article of amendment.

Mr. POWERS moved to strike out all after the first clause in said article, and pending this motion, Mr. DEWEY moved to amend the proposed amendment so as to strike out all after the second clause in said article.

The question being, Shall the motion of Mr. POWERS be so amended? the yeas and nays were demanded by Mr. DEWEY.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEAVELAND,	FRENCH,	RAND,
DEWEY,	HARMON,	REED,
FIELD,	HOLLISTER,	ROSS--9.

Those members who voted in the negative are Messrs.

LANE,	POWERS--2.
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So the amendment to the proposed amendment of Mr. POWERS was adopted.

The question recurring, Shall the amendment as amended be adopted? the yeas and nays were demanded by Mr. DEWEY.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEAVELAND,	HARMON,	RAND,
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DEWEY,  
FIELD,

HOLLISTER,  
POWERS,

REED,  
ROSS--9.

Those members who voted in the negative are Messrs.

FRENCH,

LANE--2.

So the amendment as amended was adopted.

The question then being shall the report as amended be adopted? Mr. REED proposed to amend by substituting in lieu of all of said articles the following:

*"No corporations shall be created by the Legislature except for railroad and municipal purposes; but they shall be formed under general laws passed by the Legislature."*

Mr. POWERS moved to amend the amendment after the word "railroad," by inserting the words *religious and musical*.

On motion of Mr. DEWEY, the report and proposed amendments were

*Ordered* to lie and made the special order for Friday at ten and one-half o'clock in the forenoon.

On the motion of Mr. DEWEY, the report of the Special Committee to inquire into the expediency of abolishing the Council of Censors was called up and recommitted.

On motion of Mr. RAND, adjourned.

#### Friday, July 30, 1869

Prayer by Rev. Charles A. Allen.

Journal of Thursday read and approved.

Mr. RAND from the Committee on the Powers of the Constitution submitted the following report, which was read, accepted, and ordered to lie:

*To the Council of Censors now in session:*

The Committee on the Powers of the Constitution, to whom was referred the resolution of Mr. HOLLISTER "in relation to so amending the Constitution as to authorize the courts to refer suits at their discretion,"

Report, that they have had the same under consideration, and are of the opinion that it is inexpedient to make the amendment proposed.

All of which is respectfully submitted.

J. RAND, *for Committee.*

The report of the Special Committee on Corporations, being the special order, was taken up, and the question being on the adoption of the amendment of Mr. POWERS to the proposed amendment of Mr. REED, it was decided in the negative.

Pending the question, Shall the amendment of Mr. REED be adopted? Mr. DEWEY moved to amend this amendment so as to insert the following words after the first clause in said article: *Subject to such restrictions and regulations applicable to corporations in general, or to any particular class of corporations, as the Legislature*

*may deem expedient.*

And the question being Shall this amendment be adopted? the yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HARMON,	RAND,
DEWEY,	HOLLISTER,	REDFIELD,
FIELD,	LANE,	REED,
FRENCH,	POWERS,	ROSS--12.

And no member voting in the negative, the amendment prevailed.

The question then being, Shall the amendment as amended be adopted? it was decided in the affirmative.

The question recurring, Shall the report as amended be adopted? on motion of Mr. RAND,

*Ordered* that the report lie, and be made the special order for two o'clock this afternoon.

Mr. DEWEY introduced the following resolution, which was read, and on motion of Mr. ROSS, ordered to lie:

*Resolved*, That the President be directed to employ a reporter of the proceedings of this Council, during the remainder of this session.

Mr. ROSS from the Committee on Taxes and Expenditures submitted the following report, which was read and accepted:

*To the Honorable Council of Censors:*

The committee "to inquire whether the public taxes have been justly laid and collected, and in what manner the public money has been expended," respectfully report, that in prosecuting the inquiry "whether the public taxes have been justly laid," they have endeavored to be guided by that provision of the Constitution which declares "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." When the public taxes are laid in accordance with the spirit of this provision of the Constitution, the committee judge they are "justly laid." From the information which has come to the committee, as well as from their own observation, they are forced to the conclusion that the public taxes have not been, and are not, justly laid. In different parts of the State the same class of property is assessed at different valuations, and rarely if ever at its true value in money, as required to be assessed by the statute. Real estate is assessed usually at from one-half to two-thirds of its true value in money, unless it happens to consist of wild lands owned by non-residents, which are frequently assessed for more than they will bring in market. Personal property is usually assessed at nearer its value in money, but rarely above two-thirds that value, unless it consists of stocks returned to the town clerk, which generally are assessed their full par value. This inequality in valuation has arisen not so much from an honest difference of judgment as to the value of the property

entertained by different listers, as from their establishing a rule for valuing property different from that required by statute law. Public opinion seems to be morally depraved in regard to this matter. It is hardly considered a stain upon one's character to make any statement, however false, in regard to the amount of his property. Citizens who would revolt at the thought of withholding aught from a fellow citizen, deem it no dishonor to secrete and by every means withhold their property from taxation. Listers, though sworn to set in the list real and personal property at one per cent. of its true value in money, knowing that they will be sustained by those from whom they receive their election only so long as they keep the valuation of the property of their respective towns as low or lower than the valuation of the same property in other towns, constantly and designedly assess the property in their towns at less than its full value in money, and have continued this practice to such an extent that the assessed value of the property in the State is but little if any above half its true value in money.

This under-valuation if uniform renders the apparent taxation in the State higher than the real, and thus tends to keep capital out of the State. But it is not uniform. Rather, the under-valuation grows out of the attempt of some, and we might say every, portion of the State to shirk its full proportion of the expense of protecting life, liberty and property. Whether this evil can be better corrected by penalties imposed upon listers, or by adopting some other method for ascertaining the valuation of property, we leave for the Legislature to decide.

That provision of the statute which allows the owner of personal property to deduct from its valuation the amount of his debts, but does not allow the owner of real estate the like privilege, appears to the committee to impose an undue proportion of the expense of protecting property upon the owner of the latter class of property. While the personal property is assessed at from half to two-thirds its true value in money, the deductions for debts are for the full amount, and sometimes double the amount; in fact, it is believed that fictitious debts are frequently contracted for the express purpose of obtaining these deductions.

It is claimed that real estate forms the great bulk of the property of the State, is stable and imperishable, and furnishes the only sure basis for taxation, and therefore no deductions should be allowed to the owners of this class of property for their indebtedness. The stability and imperishable character of real property makes the expense of its protection less than that of moveable, perishable, personal property. If the Constitution requires every class of property to be taxed to pay its proportion of the expense of protection, it would seem that equal if not weightier reasons exist for allowing deductions for debts to the owners of real, than for such allowance to the owners of personal property.

The Constitution seems to contemplate a tax upon the person together with the obligation of personal service in the time of war, to defray the expense of protecting life and liberty, and a tax upon property to defray the expense of protecting property. If this be so, why should not all property, without deductions for debt, be taxed upon the basis of its "true value in money"? But if deductions for debts are to be allowed, are there any good reasons why this allowance should be conceded to the owners of one class of property and denied to the owners of another class of property? and can it be said that taxes levied upon this basis are "justly laid"?

Within the last twenty-five years there have been created within the State various railroad, telegraph and express companies, corporate bodies extending their franchises and property through several towns, which have received their existence, their rights and privileges from the hand of the State; the granting of whose charters, the settling of whose rights and privileges, and the protection of whose property, have occupied no inconsiderable portion of the time and attention of the Legislature and of the courts, and largely increased the expenses and taxes of the State. These, it would seem, under the provision of the Constitution, should contribute their proportion toward the expenses and the taxes of the State. Such has not been the case except to a very limited extent. This result has been due to various causes. In their inception the moneyed value of the franchises and property of these corporations was supposed to be represented by their capital stock. The Legislature seems to have proceeded upon the theory that it is preferable to tax the stock of these corporations to the owners thereof, rather than tax the corporations directly. Soon, however, the franchise and property of these corporations, in many cases, passed from the hands of the stockholders into the hands of the bondholders, and the stocks of such corporations became worthless. No attempt was made to tax that proportion of these stocks owned by non-residents until 1854. During that year the Legislature provided that stock owned by non-residents, yielding to such owner a profit or dividend of six per cent. on its par value, should pay a specific tax of one per cent. of that value to the State Treasurer.

It is difficult to see why property of this class, having a moneyed value, yielding a less profit or dividend than six per cent. on its par value, should go untaxed, while all other classes of property are taxed on their value in money regardless of whether they yielded a profit or dividend to the owner; or how taxes imposed upon this basis are justly laid.

It was claimed that this law imposing this specific tax upon this

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<sup>7</sup>*Laws of 1854, No. 24, 26-27.*

class of property--thus taxing it in a manner different from what the other property of the State was taxed--was unconstitutional, and the payment of the tax resisted. The recent decision of the Supreme Court of the United States has substantiated this claim.<sup>8</sup> Hence, up to the present time only resident owners of this class of property have been taxed. Probably not over one-hundredth part of the cash value of the property and franchises of these corporations has thus far contributed to the expenses of the State.

The estimated value of this class of property in the State is from fifteen to twenty millions of dollars. Receiving their existence, rights and privileges, their own protection, and that of their property from the State, the Constitution requires these corporations to contribute their proportion of the expenses of that protection. The property and franchises of these corporations, valued on the same basis on which the real property of the State is now valued, would amount to not less than five millions of dollars, and taxed as other property is taxed, would pay in taxes an annual sum of not far from one hundred thousand dollars. Nearly this sum has been, thus far, annually lost to the State, and consequently a heavier burden of taxation imposed upon other classes of property, and that, too, while, under the fostering care of the State, the earnings of these corporations have been steadily and yearly increasing.

In the opinion of the committee the system of taxing the stocks representing this class of property is unequal and unjust. If the resident owners of stock alone are taxed, the non-resident stockholder not only has his property protected at the expense of the State, and contributes nothing towards that expense, but has an undue advantage over the resident stockholder. If both resident and non-resident stock should be taxed alike, not only innumerable difficulties and complications will arise in the collection of the taxes against non-resident stockholders, but all those corporations whose franchises and property have fallen into the hands of bondholders will escape, rendering the latter class of corporations more inviting to capitalists than the former. In the opinion of the committee the best way of effecting a just contribution from these corporations, towards the expense of their protection, is for the State to treat them in this respect as it treats individuals; tax them directly and not through their stockholders; constitute the first lister of each town through which the franchise and property of the corporation extends, or a select number of men, a board of assessors to appraise the franchise and property of such corporation at its value in money, and to distribute the same between such towns in proportion to the comparative value of the same in each town. Let the sum thus distributed to each town be

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<sup>8</sup>*Paul v. Virginia*, 8 Wallace 168 (1868); see also *Liverpool Insurance Co. v. Massachusetts*, 9 Wallace 410 (1870).

re-distributed by the listers of that town for school district and highway purposes.

The committee are aware that it is urged that the Legislature in chartering the Vermont Central Railroad Company, exempted the stock, franchise and property of that company perpetually from taxation.<sup>9</sup> If that exemption is constitutional and valid, it furnishes an objection as forcible against taxation of the stock of other similar corporations as against the taxation of the corporations as such.

The committee would respectfully raise the question whether the Legislature in granting that exemption did not step beyond its constitutional power? Whether so long as the Constitution provides that protection furnished by the State, imposes the duty of contributing to the expense of that protection the Legislature has the power to breathe life into a corporation, endow it with rights and privileges, clothe it with the power of holding and acquiring property protect it in its life, rights, privileges, and property, and relieve it of the duty and burden of contributing its proportion to the expense of that protection?

The committee find no occasion for a change in the Constitution to effect the just assessment of taxes, but a more thorough and rigid application of the principles of the Constitution by proper legislative enactments for that purpose. From the report of the State Treasurer, the taxes constitutionally laid, appear to have been justly collected. The committee have received no information, tending to show that the public money has not been properly and lawfully expended.

All of which is respectfully submitted.

JONATHAN ROSS, *for Committee.*

On motion of Mr. DEWEY,

Ordered that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

On motion of Mr. RAND, adjourned.

#### Afternoon.

The report of the Special Committee on Corporations was taken up, being the special order, and the question being, Shall the report as amended be adopted? the yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,

CLEAVELAND,

DEWEY,

FIELD,

FRENCH,

HARMON,

HOLLISTER,

LANE,

REED,

ROSS--10.

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<sup>9</sup>*Laws of 1843*, No. 53, § 17, 49-50.



Those members who voted in the negative are Messrs.

POWERS, RAND--2.

So the report was adopted.

Mr. DEWEY called up the resolution relating to the employment of a reporter, and the question being, Shall the resolution be adopted? it was decided in the affirmative.

Mr. RAND submitted the report of the Special Committee on Biennial Sessions and Elections which had been recommitted for the purpose of filling the blank in said report, said blank being filled with the following words:

ARTICLE 1. The General Assembly shall meet on the second Thursday of October biennially.

ARTICLE 2. The Governor, Lieutenant Governor, State Treasurer, Senators, and Town Representatives shall be chosen on the first Tuesday in September biennially.

ARTICLE 3. The term of office of the Governor, Lieutenant Governor and Treasurer shall continue two years, or until their successors are chosen and qualified, from the time when they shall be chosen and qualified.

ARTICLE 4. All officers required by law to be appointed by the Governor or elected by the Legislature, shall hold their offices for the term of two years.

ARTICLE 5. County and probate officers and justices of the peace shall hold their offices for the term of two years.

On motion of Mr. RAND, this report was:

*Ordered* to lie, and made the special order for Saturday forenoon next at ten and one-half o'clock.

The report of the Special Committee on Woman Suffrage was taken up, being the special order, and after consideration, Mr. REED moved that the report lie and be made the special order for Wednesday next at two and one-half o'clock.

And the question being, Will the Council so order? the yeas and nays were demanded by Mr. COLBURN.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEVELAND,	FRENCH,	RAND,
DEWEY,	LANE,	REED,
FIELD,	POWERS,	ROSS--9.

Those members who voted in the negative are Messrs.

COLBURN,	HOLLISTER,	REDFIELD--4.
HARMON,		

So the motion of Mr. REED prevailed.

By unanimous consent the report of the Special Committee on Biennial Sessions and Elections was taken up.

Mr. COLBURN moved to amend by striking out the words, "second Thursday," in the first article therein proposed, and inserting in lieu thereof the words, *first Wednesday*.

And the question being, Shall this amendment be adopted? the yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HOLLISTER,	REDFIELD,
CLEAVELAND,	POWERS,	ROSS--7.
FIELD,		

Those members who voted in the negative are Messrs.

DEWEY,	HARMON,	RAND,
FRENCH,	LANE,	REED--6.

So the amendment was adopted.

On motion of Mr. ROSS,

*Ordered* that the report lie, and be made the special order for to-morrow morning at ten and one-half o'clock, and that the Secretary procure the printing of one hundred copies of the articles of amendment proposed in said report for the use of the Council.

On motion of Mr. FRENCH, adjourned.

### Saturday, July 31, 1869.

Prayer by Rev. C. A. Allen.

Journal of Friday read and approved.

Mr. COLBURN submitted the following report which was read and accepted:

The minority of the committee on changing the mode of proposing amendments to the Constitution, beg leave to report:

In the opinion of the minority of this committee, there were good reasons for adopting the present system of amending the Constitution in 1793, seventy-six years ago, that do not now exist. Then but very few newspapers, if any, existed in the State; but few books; our free schools were extremely limited in their means to impart education to the rising generation, and it is not to become a wonder that the leaders of that day considered it unsafe, or at least not best, to trust the amending of the Constitution in the hands of the people directly.

They looked about them, and at last borrowed and adopted a system from Pennsylvania, never adopted by another State except Vermont, and long ago discarded in the former State and a better mode substituted therefor. It is evident that the people at the present time take but little interest in amending their Constitution, nor have they since 1850. They have become so indifferent that it is a matter of doubt whether *one* in *ten* really knows and understands what our Constitution is, or how it is amended; and the question arises, is it best or expedient to perpetuate and continue a system so little understood, and in which so little interest is manifested? It should be brought home nearer to the people; they should have a direct influence, instead of an indirect and remote one. This is an age of improvement, and a republican government is never wiser nor

better, in our State, at least, and at the present time, than the people who elect it; and such a government fails to answer its design when the people become indifferent to its workings.

The people of Vermont are at the present time vastly more intelligent, better informed, better educated than formerly, and no good reason exists in the opinion of the minority for not trusting them directly in the final amendments to their Constitution. They are capable of self-government, and it is eminently proper and in accordance with republican principles and democratic ideas to suffer the people to manage and control their own political affairs in their own way. They need no Council of thirteen, nor any Convention of two hundred and forty in number, the smaller number to prescribe to them what is for their interest, and the larger to say to them whether they shall have it or not. We propose to let them judge for themselves once in ten years, whether their fundamental law needs revising, and the privilege to do it by their own Legislature, and by their own votes at the ballot-box.

At the formation of our governments, both state and national, we were divided into two political parties--*Federal* and *Republican*. The former took the ground that the people were not to be trusted with the powers of self-government; the latter contended that they were safe depositaries of this power. In the first twelve years of our national government, the former, the old Federal party, ran its race, and was superseded by the latter, the Republican party, which has ever since retained its ascendancy, though some more radical ideas under the name of Democracy have from time to time been ingrafted on to the old Republican stock of principles. The Federal party in Vermont soon shared the fate of the National party, to be, however, temporarily revived for two or three years in the last war with Great Britain, when it sank out of existence and became among the things that were, but not again to be. And how it has happened that one of the *old relics* of the old Federal times has been retained until this day, so anti-republican in its provisions, can be accounted for only by the indifference and apathy of the people, and by suffering it, as it were, to pass out of memory; for it is self-evident, by the meagre vote given for this Council, and by other incidents that might be mentioned, that the people know and care but little about the changes of their Constitution.

It may be said that the Council has other duties besides amending the Constitution: they are to review the legislation of the last septennial period. But is this a sufficient reason for retaining the present system? How much has this amounted to? True, in the war of 1812, when party spirit ran to a fever heat, the Council censured some acts of our Legislature; but the acts had been passed and the effects gone by. It undid nothing, it righted nothing, so far as the action of the Council went, but the obnoxious acts themselves helped the party making them out of power, as always will be the case; and

this is a sufficient remedy against wrong legislation. The people will change their rulers if they are found unfaithful, and the ballot box is considered a sufficient remedy in other States, together with the powers of the Supreme Court, to right any unconstitutional legislation. The question again recurs, is it necessary, is it expedient, to keep up this cumbersome system for the purpose of reviewing past legislation? Past experience proves that this has not been of much value throughout more than three-fourths of a century that we have practiced it.

Fourteen years ago the Council had several sessions, and proposed some important amendments, which were voted down by the Convention and all went for naught, though not so to the tax-payers. They had to foot the bills, including the building of a new State House, a serious matter to the people for which they received no benefit, except settling the question of territory instead of population, as a basis for representation in the lower House. This cannot now be altered; the small towns will not give up this, nor does the change here proposed contemplate meddling with it. The small towns are guarded and protected in their rights by the first and second votes of the Legislature, and by a two-thirds vote at each time, and this to take place only once in ten years.

Seven years ago the Council, having the fate of the measures proposed by their predecessors, acted wiser and called no Convention. There were, however, calls from some parts of the State to abolish the Council, and to prevent committing suicide, as it is termed by some, this may have been a reason for not calling a Convention; but is there not danger that the Legislature will someday turn upon the Council with an act of homicide, as they did in Pennsylvania, when it shall appear that this is the only remedy to rid themselves of what may be deemed a useless body? There was a strong squinting that way fourteen years ago, by the Legislature passing a vote of censure upon the Council for exceeding, as they called it, their powers, thus assuming to review the acts of the Council, reversing the order of things, and forestalling the coming Convention, which took the instruction and voted all acts of the Council down forthwith and with very little ceremony. Thus all ended in a farce, and to the disgust of that portion of the people who understood and thought much upon the subject. Shall it be said at this day, in this enlightened age, that we distrust the people, and dare not trust them with the final vote of approval or disapproval in changing their fundamental law? Shall we assume to know what is for their best interests better than they know themselves? I know it is said that it is well enough now, and let well enough alone. The same argument would have applied with equal force to our old turnpike wagon-roads, to the old farm machinery, against sewing-machines, in favor of spinning-wheels and hand-loom. We lived comfortably with the use of all these things, and, had we felt no

desire for change and improvement, railroads, factories, the horse-mowers, rakes, tedders, and ladies' sewing-machines, would have been unknown to us, and we should have been plodding on under the old primitive system that existed at the time of the formation of this provision of our Constitution. Other Councils have sought and effected improvements. In 1835 the old State Council was abolished, and the Senate substituted. Fourteen years later our county officers were ordered to be elected by the people, instead of by the Legislature. These were recognitions of the improved intelligence of the people; and can we say there has been no improvement since those periods, and that the people are not now fit to be trusted with this proposed change? But, says one, they do not desire it; they are satisfied as it is. And why is it so? The reason is obvious. It has thus far been so remote from them, having no direct action in the matter, they have concerned themselves but little about it, and, so far as they are concerned, have let it go by default. And now I repeat, is it not desirable to educate the people to know their Constitution, to take an interest in its revision, and have a final action in this revision? Other States do it. Even in the South, where there is not supposed to be a moiety of the intelligence and education there is in Vermont, the governments require a submission of their constitutions to a vote of the people. And shall it be said that here in enlightened Vermont, a Council of Censors of thirteen men refused to submit amendments to the State Constitution to a final vote of the people? Such action seems to the minority of your committee to be preposterous and unjust. The greatest objection to the proposed change that has come to the knowledge of the minority of your committee, is *enhanced cost*, by leaving it with the Legislature to be continually tampering with constitutional questions, prolonging the sessions at great expense to the State, &c. Now we do not propose that the Legislature shall have any power over the question oftener than once in ten years, which may lengthen that session one week, and the reference to the next Legislature may consume one-half week, as the second vote is merely to approve or reject by articles or sections. This is just about the same length of time that the conventions have been in session, and at about the same expense; costing in each *ten years* what is now expended in *seven years*. Then there is an additional cost in each seven years of the several sessions of the Council, and the two primary meetings of the people to choose the Council and the members of the Convention, which by the estimate of the Committee on Biennial Sessions would be a *large item*, two days' work to each voter.

But no time is lost in the proposed change by voting at home, for it is done at the time and place of the voting for State and county officers. And the expense of the proposed change must be considerably less than the present system. Of this fact the minority of your committee have not the least particle of doubt. The object of

referring amendments to a second Legislature, is to give the newspapers a full year to discuss the subject proposed, and the people time to know and understand the whole matter, and they can then elect members in reference to their vote on the amendments, instruct them if they please, and afford every facility to the people to know and understand what their fundamental law is, and whether or not they desire any change.

In conclusion, the minority of your committee would appeal to the honor and sense of justice of those of the Council who do not like the change personally, to suffer it to go to the people through their Convention, if one is to be called. Let the people say by their Convention whether they want the change or not. If they vote it down there will be the end of it, and it will become a settled question. Otherwise it will be agitated again at the next septennial Council. The people will not be satisfied without an opportunity to express an opinion through a Convention, and it seems to a minority of your committee, that it is their right to have it so referred. To deny it to them, when perhaps other questions may be referred that no part of the people have asked for, would appear so manifestly improper and unjust that the minority of this committee feel bound respectfully to protest against such action.

All of which is respectfully submitted to your consideration.

J. W. COLBURN, for minority of Committee.

Proposed Article of Amendment Submitted With the  
Foregoing Report.

#### ARTICLE 24.

Sec. 1. The 43d section of part 2d of the Constitution is hereby abrogated, and in lieu thereof, in order that the freedom of the people may be preserved inviolate, at the annual session of the Legislature, at the beginning of each decade of years commencing A.D. 1880, the Senate are hereby empowered by a vote of two-thirds of all the members present to propose amendments to our State Constitution, and send them to the House of Representatives, with a request of concurrence, which shall have the power to concur or non-concur, to amend, alter or reject, and return the same to the Senate; this action to be by a two-thirds vote of the all members present; and whenever a concurrence of both houses is effected by a like two-thirds vote, the proposed amendments shall be referred to the next annual Legislature, with no power to alter or amend, to add to or to take from, but shall within the first twenty days after its organization, vote to sanction or reject any or all the proposed amendments. This vote in each House to be a two-thirds vote of *all* the members elected to each House respectively.

Sec. 2. Whenever proposed amendments are thus perfected, it shall be the duty of the Secretary of State to send printed copies thereof to the clerk of each town and city in the State, whose duty it shall be to procure printed slips numbered to correspond with the

articles of amendments and at the next freemen's meeting to make known to the legal voters thereof by reading these proposed amendments publicly in said meeting, and notify the electors of their privilege to write each his name on the back of a slip and against each article the word *yea* or *nay*, as he may elect, and when voting for State and county officers, deposit each his slip thus written on, in a box prepared by the clerk purposely to receive them.

Sec. 3. The selectmen, town and city authorities shall count these yea and nay votes the day they are taken, the constable, clerk or one of the selectmen proclaiming the result; and the clerk shall certify by his oath that to his best knowledge and belief it is a true and correct statement, and forward the same by mail or otherwise to the Secretary of State within ten days after said meeting, whose duty it shall be to canvass these statements, and verify by his oath the true and correct result to the Governor of the State as soon as may be; and if it shall appear that a majority of the voters have said yea to the proposed amendments, or to any of them, this action shall be final, and the Governor shall forthwith issue his proclamation declaring the fact, and that the Constitution is thus amended.

Sec. 4. The House of Representatives shall have all the power now possessed by the Council of Censors to order impeachments which shall in all cases be by a two-thirds vote.

On motion of Mr. LANE,

*Ordered* that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

Mr. DEWEY, from the Special Committee on the Judiciary submitted the following report, which was read and accepted:

*To the Hon. Council of Censors:*

The committee appointed to inquire into the expediency of so amending the Constitution as to enlarge the term of office of judges of the Supreme Court, and to fix their salaries, and also to inquire into the expediency of changing the mode of their election, have had the subject under consideration, and ask leave to submit the following report:

Under the admirable working of the government devised by our forefathers, experience has shown that its functions were wisely allotted to three departments; the Legislative, the Executive, and the Judiciary; each acting independently of the others in its particular sphere, except only as there exists an inter-dependence essential to the coherence and unity of the whole.

Three important things are essential to the proper and efficient discharge of the duties distributed to the judiciary department. These are: 1st, Superior intellectual abilities, eminent learning, and moral purity in the judges; 2nd, Their exaltation above the reach of the demoralizing influences which attend upon periods of partisan strife, and which are an inherent evil in all popular governments; 3d, Permanency of official tenure: or, as more tersely stated by Mr.

Justice Story: the judiciary "must possess wisdom, learning, integrity, independence, firmness:" or, as more stated in the forcible language of Mr. Burke, in his *Reflections on the French Revolution*: "Whatever is supreme in a state ought to have, as much as possible, its judicial authority so constituted as not only not to depend upon it, but in some sort to balance it. It ought to give security to its justice against its power. It ought to make its judicature, as it were, something exterior to the State;" a doctrine which Justice Story remarks, "Every republic should steadily sustain, and conscientiously inculcate."<sup>10</sup>

By what means this is to be accomplished, is the question to be solved. It depends upon the mode of appointment, the tenure of office, the compensation of the judges, and the distribution of the jurisdiction confided to the department in its various branches, in properly constituted courts.

1. As to the mode of appointment.

The Constitution of the United States provides that the judges of the Federal Courts shall be appointed by the President, by and with the advice and consent of of the Senate.<sup>11</sup> This provision was adopted by the wise framers of that instrument upon very grave and thorough deliberation. And no proposal of amendment in that respect has ever been made, or even suggested, to the knowledge of your committee, since the foundation of the government. On the contrary, its wisdom has been universally recognized. And most of the States of the Union have, with more or less exactness, followed the example of the parent Constitution in this particular.

The advantages of this mode of appointment, as being peculiarly fit and proper in respect to the judiciary department, are thus clearly stated by Chancellor Kent: "The just and vigorous investigation and punishment of every species of fraud and violence, and the exercise of the power of compelling every man to the punctual performance of his contracts, are grave duties; not of the most popular character, though the faithful discharge of them will most certainly command the calm approbation of the judicious observer. The fittest men would probably have too much reservedness of manners, and severity of morals, to secure an election, resting on universal suffrage. Nor can the mode of appointment by a large deliberative assembly be entitled to unqualified approbation. There are too many occasions and too much temptation for intrigue, party prejudice, and local interests, to

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<sup>10</sup>Mr. Dewey's report includes quotes from Justice Story, Edmund Burke, and Chancellor Kent on this and the following page. They are all from the same source--Joseph Story, *Commentaries on the Constitution of the United States*, Book III, Chapter XXXVIII, § 1577. The fifth edition, published in 1891 by Little, Brown, & Co. of Boston, includes these quotes from all three writers in Volume II, pages 400 and 415.

<sup>11</sup>U.S. Constitution, Article II, § 2.



permit such a body of men to act, in respect to such appointments, with a sufficiently single and steady regard for the general welfare." And Chancellor Kent, in his *Commentaries*, speaks of experiments previous to the time of his writing, in some of the States, of electing the judges by a popular assembly, as having been unsatisfactory in their results. And it is matter of general knowledge that the experiment of popular elections of these officers in some of the States at the present time, as in New York and Pennsylvania, has tended to the demoralization, in some striking instances, of the bench and the courts. And the recent convention of the State of New York has proposed an amendment to the constitution, providing for the appointment of the judges by the Governor, by and with the advice and consent of the Senate after having once abandoned that mode for the elective system, and seen its failure conspicuously illustrated.

It is doubtless true that the jealousy, which has been manifest in some degree in a portion of the people of this country, of placing the power to appoint the judges in the Executive, and a select advisory body of wise men, had its origin in the well-known fact of history that for centuries the English judges had been appointed by the Sovereign, and were in many instances the vilest and most abandoned creatures of his caprice and will, in upholding unconstitutional encroachments upon the rights of the subject people, as illustrated in the life of the notorious Jeffries.<sup>12</sup> But our forefathers, in framing the Constitution under which we live, did not fail to perceive that the theory of our system of government is the very opposite of that of Great Britain. While they preserved in the frame of our government some of the principles and even modes of the latter, they nevertheless knew that while under the British Constitution all sovereignty resides in the King, the very reverse is true as to the government erected for America. The American idea being that the people are sovereign, and that while all supreme human power is lodged in the people, the ruler, for the time being, is nothing but their servant. Under a government, therefore, established upon such a theory, there could no longer exist any cause for apprehension that the judges, though appointed by the Executive, would be the creatures rather of his will and caprice, than the faithful servants of the people in whom all sovereignty reposes, and whose creature the Executive is, as fully as are the judges themselves. And this reasoning brought them to the conclusion that while no evil results need be apprehended from reposing the appointing power of

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<sup>12</sup>George Jeffreys (1645-89) conducted the "bloody assizes" of 1686, resulting in the execution of 150-200 people and the transportation of many others to the colonies. He sold pardons and personally benefitted from the process. He has been called the prototype of the brutal and subservient English judge.

the judges in the Executive and Senate, as there might be under the British system of government the whole value of that manner of appointment in securing in the judges that cluster of shining qualifications enumerated by Chancellor Kent: wisdom, learning, integrity, independence and firmness, remained intact and unimpaired by any apprehended encroachments of a sovereign ruler.

It is doubtless true that the early settlers of Vermont, who framed the original constitution of the State, owing to reasons peculiar to their situation and trials, encroached upon as they were, not only by the parent government across the sea, in common with all the other colonists, but also by a neighboring State, imbibed the democratic idea more fully, and carried it to a greater extent in all the details of governmental provision than the people of any other State; and this is doubtless the explanation of the adoption by them of the mode of electing judges as it now exists, instead of following the wiser method adopted by the great and patriotic men who framed the Federal Constitution, and who loved liberty no less than did the hardy pioneers of our State, and were no less jealous of all possible encroachments upon it.

And it is obvious to remark that while the method of electing judges by popular assemblies and by universal suffrage has worked disastrously in other States that have tried those methods, the State of Vermont has hitherto in the main, though with some exceptions, been singularly exempt from the consequences which the experience of other States might have led us to apprehend. But this exemption is owing not so much to the wisdom of the mode of election as a general rule, as to circumstances which have been strikingly peculiar to Vermont, and not found in any other State. Those peculiarities inhered in the steady good sense, the industry, frugality, simplicity in all the appointments of domestic life, and the virtue and intelligence of the whole mass of the population, who were mainly emigrants from among the most enterprising citizens of the older New England States. But though these characteristics have continued in a large measure to distinguish the inhabitants of the State, and though we may point with pride to the previous working of the present mode of electing the judges, and to many illustrious names of those who have adorned the bench, in the apprehension of your committee the time has arrived in the growth of the State in population and wealth, when we may not expect to be exempt from the evils which have usually resulted in other States from the popular election of the judges. Our population is not so homogeneous. There is no reasonable prospect that we shall be so distinguished as we have been in the past, with the exception of one or two memorable instances, from the bitterness which attends party strifes. And what is more, there has been a great change in the quiet simplicity of the pursuits of the people. While those pursuits are still mainly agricultural, vast corporations have traversed the State from border to border with railroads, and

capital is armed with that power which comes from concentration, and which, when thus wielded, is all powerful in accomplishing the selfish purposes of its owners.

It is too well known that none of our legislatures are now free as formerly from the powerfully corrupting influences which have thus grown up within the State. And these influences are becoming more and more powerful, and unless firmly resisted by the stalwart firmness of a virtuous people, will invade with their malign power--malign when thus perverted--every department of the government in which their interests are involved, or are on trial. That these corporations could and would, on occasion arising, exercise a very controlling influence on the Legislature in making and unmaking our judges, and so indirectly on the judges themselves; as the office may become, ere long, the foot ball to be kicked about in party contentions, and the judges thus become the victims of the infirmities of human nature that belong to even the best of men through exposure to many temptations, it is the judgment of your committee that these apprehended evils should be avoided by an amendment of the Constitution which shall give their appointment to the Governor and Senate.

Another obvious advantage of the proposed method of appointing the judges consists in the better opportunities which would be possessed by the Governor to ascertain the fitness of individuals proposed for the office in respect to each and all the various rare qualifications, hereinbefore enumerated, that can be possessed by a body of men whose very election under which they will be called upon to discharge this duty, occurs only a few weeks before they are required to exercise it, very many of whom, though men of practical judgment, and good sense, and uprightness of intention, will be wholly unacquainted, it may be, with the candidates proposed for judges, or with their qualifications, simply from the want of opportunity, their pursuits in life rarely bringing them in contact with the courts or its practitioners. And under the present system it may happen that some person, amiable in respect to all that constitutes the pleasing gentleman, but yet deplorably destitute of all, or of many of the essential qualifications of an excellent, or even moderately efficient judge, will become ambitious for the place, and procure himself to be elected to the Legislature for the very purpose of influencing its members to bestow, by the usual appliances and arts of pleasing address, and adroit supplication, the very mask of apparent indifference which it often wears, making it still more effective in procuring the bestowment of the office upon himself. Or if not done through his own personal efforts, it may be done by an irresponsible friend, more anxious to do a good turn to his neighbor, than to secure a well qualified officer for the State. But in the case of the appointment by the Governor, the circumstances are bravely altered. He is to be responsible to all his constituents for the faithful,

honest and fearless discharge of this the most important of all his duties. He will know that if he makes a bad appointment, the curses will fall upon his head, rather than upon the appointee. Should he attempt to elect some favorite, destitute of the qualifications required of an efficient judge, he would know that he would have the indignant frowns of all the wisest and best men in the State to meet. This condition of things, therefore, would constitute an irresistible motive to a good man,--and we elect no others to our chief executive office in this State, and do not expect to do so,--to be overcircumspect, if anything, in making the most searching inquiry into all the things that should be required to enable him to form a correct judgment, in respect to the fitness of the candidate to be proposed by him for the office. And so of the Senate. If an instance should possibly occur, of the nomination by the Governor of an unfit person, seduced so to do by the over importunity of interested parties with whom he is closely related by ties of kindred or of interest, the Senate would well know that if they confirmed the appointment they must share the responsibility of it equally with the Executive. And this consciousness would be a most powerful motive to restrain their action. Indeed, these advantages of the proposed method of appointment have been universally conceded and recognized by the wisest and best men in our country, from the organization of its government to the present time, and needed not to have been enforced at such length even, as we have attempted to do.

On the other hand, the motive arising from this sense of responsibility is almost entirely lost under a system of annual elections in a popular assembly, and where the responsibility, instead of being concentrated upon a few, is attenuated and dissipated, by distribution, to a body so large as the General Assembly of Vermont.

The notion that by conferring the appointment of the judges upon the Governor and Senate, the people will surrender up, in any degree, the exercise of their essential sovereign power, is based upon no other foundation than the mere unsubstantial creation of the imagination. It is a function, conferred by the people for good reasons upon their own servants, the Governor and senators, servants who are required to be, by a provision of the Constitution, "men most noted for wisdom and virtue,"<sup>13</sup> and to be discharged under a fearful responsibility, that of the abiding execration of the people while living, and of the historian, it may be, after their decease, if not most faithfully, ably, and honestly performed.

The people are busily employed about their personal affairs, and accumulating a provision for old age. They say to their servant, the Governor, go and find us the best man in the State to discharge the

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<sup>13</sup>Actually, town representatives were "men most noticed for wisdom and virtue," not governors and senators, according to Chapter II, Section 8th.

duties of the office of judge, and be careful that you discharge this duty faithfully. And to the senators: we have employed you because of your peculiar qualifications and opportunities to judge as to the fitness of persons to fill the office of judge, to act as an advisory body to the Governor, in their selection and appointment, and we direct you to make exhaustive inquiry into the fitness, in all particulars, of such persons as the Governor may nominate, and we will hold to you a stern accountability likewise in the performance of this important trust. Is this not the attitude rather of sovereigns toward their subjects, than of menials toward their lords?

But there is still another aspect in which this objection may be viewed, and which will, if possible, still more strikingly illustrate its utter fallaciousness. Under the present mode of choosing judges, the people themselves do not exercise any direct voice. They are elected by a body of representatives constituting the two branches of one department only of the government. This is not, then, a question as to the surrender by the people of the privilege of electing the judges by their own ballots, but as to whether it is wise to transfer the appointing power *from one class of the people's representatives, and from a class not elected upon the basis of popular representation, except in small part, to another which is elected upon that basis.* It is to leave with one co-ordinate branch of the Legislature the same power to participate in the election of judges it now possesses, only that its power is to be exercised negatively in case its choice does not accord with that of the Executive. And then in place of the other co-ordinate branch of the Legislature, there is substituted for the performance of this important function, the Chief Magistrate of the whole people--the head of an entire co-ordinate and co-equal department of the government,--thus virtually securing the united action and concurrence of two departments, instead of one, in the selection of those who shall fill the offices in the judicial department. The advantage of dividing this responsibility between two departments is obvious in the restraint which each will exercise over the action of the other, thus preventing hasty and unfit appointments. And it is not to be forgotten that it has always been regarded a serious objection to reposing the choice of judges solely in that department which makes the laws, the constitutionality of which the judges who are dependent upon the body that enacted them, and on which they must rely for the seats they hold, will be called upon to pass.

Still another thing in this connection, peculiar to our own State will demonstrate the entire absence of any basis whatever upon which to place the objection under consideration. Under our present frame of government, while each voter has an equal voice in the election of the Governor and senators, it is far otherwise in the election of the members of the House of Representatives. The members of the latter body, instead of being elected *by the people,*

in the sense of each voter exercising an equal voice, are elected by a congeries, so to speak, of municipal corporations, each corporation having an equal voice. The one of them, as for instance, Goshen, may have no more than five hundred inhabitants, while another, as for instance the town of Rutland, has fifteen thousand. It is plain to be seen that under this unequal system of representation, the five hundred inhabitants of Goshen may neutralize by the vote of its representative, for judge, the choice of the fifteen thousand inhabitants of Rutland; in other words, setting the five hundred inhabitants of the former town against an equal number of the inhabitants of the latter, leaves fourteen thousand five hundred inhabitants of Rutland without any voice whatever in the choice of the judges who are to sit in final judgment upon her vastly greater interests, that frequently become involved in litigation, while the inhabitants of Goshen rarely have use for a judge at all. Thus Goshen, with a population of only five hundred souls, with scarcely ever a law-suit before the Supreme Court, virtually casts *thirty votes for each of our judges, making one hundred and eighty votes* for the six comprising the present bench, while Rutland, with a population of about fifteen thousand, having interests so vast and complicated as to require the frequent adjudication of the judges of the last resort, casts but *ONE vote for each judge, and SIX votes for all!* And this only illustrates the uniform inequality of the system, the only difference being in the degree. So that practically, by this method of electing judges, they are chosen by corporations, greatly unequal in membership and wealth, through the action of their agents, called--or rather mis-called--the representatives of the people. Is there any sense, therefore, in claiming that by the proposed change of the mode of electing the judges, the equal and popular rights of the people are to be invaded? On the contrary, will they not be secured? While, then, the towns are not asked to yield up the principle of equal representation as corporations in that branch of the government entrusted with the entire power of making the laws, shall it be thought a matter of complaint that it be asked that *the people* shall have an equal voice, through their popularly elected Governor and Senate, in the election of the judges who are to sit, it may be, upon their dearest rights? Shall the corporation with five hundred inhabitants not only have thirty votes to one for the corporation with fifteen thousand in the making of the laws, but also thirty votes, to one for the other, in the choice of the judges who are to sit in judgment upon those laws? Will any one have just cause for complaint that this unequal power shall in one of these two instances in which it is now exercised, be placed in the hands of others who are elected by the free and equal voice of the people?

The population of the State by the census of 1860 was 315,098. Of this number only 93,157 resided in a majority of one, of the small towns, and 221,941 resided in a minority of one, of the larger towns

thus giving the power to 93,157 of the whole population of 315,098 to control in the election of judges.

Your committee, to avoid any possible misapprehension, beg leave to say, that they do not intend this report shall be regarded as an assault upon the system of town representation. Though that system is copied from the old English borough system, and the representation is of communities composed of populations of unequal numbers, and does not represent the equal voice of the people, as already seen; yet it stands at present upon defensible reasons growing out of traditional usage, local town pride, unification of the interests of the people inhabiting the same town, and having corporate interests demanding legislative protection or encouragement. But the point we are making is, that while this mode of representation, for the reasons given, is defensible in respect to the power of the Legislature to make the laws, it is wholly indefensible, being unequal and corrupting, in respect to its power to create the judges who shall sit in judgment upon the laws made by a body so constituted. It is clear to the apprehension of your committee, that the true way to keep the one-half of the towns, having the largest relative population, satisfied with the present system of representation--that is, the giving the half of the towns, having the minority of the population nevertheless, an equal voice with the larger towns, having a vast majority of the population, in the legislation of the State,--is the graceful relinquishment, by the smaller towns, of a right to a like controlling voice in the election of the judges who are to sit in judgment, not only in all cases affecting the people at large and individually, but also upon the laws enacted by the minority of the people. Should the small towns, therefore, show a disposition to grasp and hold on to this double power of making the laws and of interpreting them likewise, over the heads and against the clear natural rights of the majority, it would, in the opinion of your committee, create in the minds of the majority such a sense of wrong and injustice, that at last both the borough system of representation, and its power of appointment, will be swept away before the rising and irrepressible indignation of the people at the manifest wrong. On the other hand, with this concession made, thus giving the people an equal voice in the election of the officers of one co-ordinate department of the government, of which they are now deprived, the town system of representation may remain undisturbed for years to come, and until the population of the towns shall become so very unequal as to lead to universal conviction that justice demands a change.

For the reasons hereinbefore set forth, and others of minor importance not necessary to allude to in this report, your committee are unanimously of the opinion that the Constitution should be so amended, as to provide for the appointment of the judges of the Supreme Court by the Governor, by and with the advice and consent

of the Senate.

2. The second condition to be secured, depending for its accomplishment upon the method of filling these high judicial offices, namely, the exaltation of the bench above the reach of the demoralizing influences which attend upon periods of partisan strife, and influences of a kindred sort, has already been sufficiently considered in the discussion of the mode of appointment. It is the judgment of your committee that this desirable end will be attained by adopting the mode recommended.

3. The third condition, that of permanency of official tenure, remains for brief consideration. In the judgment of your committee the office should be in some degree permanent. The independence of the judges is essential to the fearless discharge of their duty, and can be secured in no other way. In the language of Chancellor Kent: "It is salutary in protecting the Constitution and laws from the encroachments and tyranny of faction. Laws, however wholesome or necessary, are frequently the object of temporary aversion, and sometimes of popular resistance. It is requisite that the courts of justice should be able, at all times, to present a determined countenance against all licentious acts; and to deal impartially and truly, according to law, between suitors of every description, or whether the cause, the question, or party, be popular, or unpopular. To give the firmness and the courage to do it, the judges ought to be confident of the security of their station. Nor is an independent judiciary less useful as a check upon the legislative power, which is sometimes disposed with the force of passion, or the temptations of interest, to make a sacrifice of constitutional rights; and it is a wise and necessary principle of our government that legislative acts are subject to the severe scrutiny and impartial interpretation of the courts of justice, who are bound to regard the Constitution as the paramount law, and the highest endeavor of the will of the people." Upon this subject your committee would call the attention of the council to an article of great force and clearness contained in the *Federalist*. We find room in this report for only a single extract: "There is yet a further and weighty reason for the permanency of judicial offices, which is deducible from the nature of the qualifications they require. It had been frequently remarked with great propriety that a voluminous code of laws is one of the inconveniences necessarily connected with the advantages of a free government. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them. And it will readily be conceived, from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent



knowledge of them. Hence it is that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the station of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit characters; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able and less qualified to conduct it with ability and dignity."<sup>14</sup>

Every line of the foregoing extract from the *Federalist*, the production of the pen of John Jay, who afterwards made the bench of the Supreme Court of the United States forever illustrious by his occupancy of it as Chief Justice, is as applicable to our State as to any other, and it has never been denied or called in question by any jurist or statesman, worthy of the name, who was either contemporaneous with, or has succeeded him.

Fully concurring in these views, your committee have adopted them as a guide in fixing upon the tenure of office of the judges of the Supreme Court. But your committee have not thought best to recommend that the tenure should be for life, as is the case in respect to the Federal Judiciary. They are of the opinion that a shorter period will best meet our peculiar condition, and best accord with the prevailing judgment of our people. Your committee recommend the period of six years as being the proper mean; and that the appointments shall be so made, as that the terms of two of the judges shall expire in every alternate year, in the event that a provision for biennial sessions of the Legislature shall be adopted, or one in every year if not adopted.

Closely connected with this branch of the subject is the question of compensation. Your committee think it proper to recommend that the Constitution be so amended as to provide that the judges of the Supreme Court shall, at stated times, receive for their services a reasonable compensation, which shall not be diminished during their continuance in office. The reason for which is thus, in substance, succinctly stated in the article in the *Federalist*, before referred to: "In the general course of human nature, a power over a man's substance amounts to a power over his will. And one can never hope to see realized in practice the complete separation of the judicial from the legislative power, in any system which leaves the

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<sup>14</sup>Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Bantam Books, 1982), No. 78, 398-99. More recent research has determined that Alexander Hamilton was the author of No. 78.

former dependent for pecuniary resource on the occasional grants of the latter. The enlightened friends of good government in every State, have seen cause to lament the want of precise and explicit precautions in the State constitutions on this head."<sup>15</sup>

It is not to be forgotten that judges are subject to the infirmities of human nature, after being placed upon the bench, the same as they were before. An appointment to office changes nothing that is inherent in the nature of human beings. A judge ought to be able to treat the parties to a cause, be they president or beggars, with the same indifference with respect to being influenced by them, that the mathematician does the algebraic signs with which he works out his problem. But we have no reason to suppose that judges will be altogether uninfluenced, under the elective system, by the consciousness that they may be dependent for a re-election upon the caprice of men to be humored, upon partiality bestowed on the great and influential, and upon sycophantic fawnings lavished upon those who strut in the silly worn plumes of brief authority. It is true a man of honor would scorn these practices; but the danger is that in scorning them he runs the risk of losing his position, to make way for one more pliant to such practices.

While your committee have thought it proper to provide, by an amendment, that the salary of the judges shall not be diminished during their continuance in office, they have not thought best to fix the amount by constitutional provision. The fluctuations in the value of money and in the price of articles of merchandise, render a fixed compensation inadmissible. But your committee feel warranted in saying that, in the opinion of your committee, the present salary of the judges is inadequate. It is true that in exceptional instances, as when the judge has no family, or possesses a large fortune, it might be called sufficient. But it is usually the case that the judges are not composed of persons belonging to these classes. They are, or should be, when appointed, in the earlier middle period of life, before they have been permitted to reap the rewards of professional labor to the extent to place them in a position of pecuniary independence. If one be called to the bench at that period of his life, it will put upon him the necessity of giving up all the pecuniary rewards, into the enjoyment of which he is about to enter, and from which he hopes to save a reasonable competence for old age. To induce such a lawyer to leave his professional walk, and accept a seat upon the bench, the compensation must be sufficient to enable him to do so with a reasonable confidence that it will cover all the expenses of current life, including the maintenance and education of his children suitably to his station, and to enable him to lay by a sufficiency for

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<sup>15</sup>This is from No. 79. *Ibid.* at 400.

that day when, having served the State with eminent ability in his high office, he must lay aside its robes, and sit down in the decrepitude of age to enjoy until his final departure, full of honors, the well earned fruits of his toils. Without holding out this prospect in the form of an adequate salary, the best talent and accomplishments cannot be secured. By making it, not lucrative, but simply remunerative, the ablest lawyers,--those in all respects best qualified for the bench,--can be secured. When corporations and princely merchants have large interests involved in litigation, they wisely employ the ablest counsel that money can procure, to guard, protect and defend their rights. The State has more vast and laborious duties to be performed than any private individual can impose upon a counsellor, involving greater interests, and requiring the ability of those most eminent for talent, experience, learning and integrity, whose services can be procured by the same means that secure them to the corporation or the merchant. The judge needs to be at least the peer of any lawyer who appears before him. What assurance has an humbled and honest man, dragged into court by the oppression of an influential and powerful adversary, who employs the most distinguished counsel to be found within the range of the State, if the judge, instead of being the equal of the attorney in talent, learning and fearlessness in the discharge of his duties, is weak, and has acquired but a smattering of the knowledge of the law? He is simply overpowered by the superior force of the intellect and will that is brought to bear upon him, and if a correct decision is arrived at, it will be a providential escape of the humble suitor from causes he may thank a good Providence for, but which cannot be explained in the light of human experience. Place an inferior lawyer on the bench, and one of two things will inevitably follow. He is still what he was before his appointment. His regalia of judge has not added one iota to his stature, nor to the powers of his mind. It is certain that his highest ambition will be to win the favor of the influential and powerful members of the bar, and to stand in good favor with those in the community who control the disposition of the prize which by some accident he holds. Since he has not the qualities to win the respect and the fear of these, he will at least win their favor by being gracious, and pliant and fawning towards them beyond the verge of that dignity and decency which should ever adorn the bench. When a farmer looks for a workman for the season, he selects the best he can get, at the highest going price, as a matter of economy, which he has learned by experience. If he wishes to build a mansion, he enquires for and employs the best architect and the best builders that the place affords, and he sees the economy of doing so, in the regular progression of the work from foundation stone to pinnacle, in the regular architectural order of the different parts of the building, and the steady, rapid progress of its construction. And he never doubts the economy of paying the

highest price, though he knows there are plenty of architects and workmen who could have been hired for half the price, it may be, but who would have erected for him a building scarcely worth half the money. There is necessity, too, for erecting a harmonious structure of jurisprudence. In its rearing we should obey certain lines and laws absolutely as the architect obeys the law of architectural proportion and beauty. Not a column should be leaning, not a window misplaced, and then the whole should be properly adorned and furnished with all the shining qualities of purity and independence that blanch not in the face of wrong, though armed with weapon or bribe. Why not, then, observe the same rule in the selection of the architect of this imperishable structure that is observed when you employ an architect to build your material and perishable dwelling? Is there any reason?

Moreover, it is undoubtedly true that the money saved by a prompt, energetic, efficient discharge of the duties of the office, thus limiting the duration of the terms of court, and saving the expense of the attendance of jurors, officers, and other attendants, witnesses in State causes, fuel, etc., would compensate the State, ten times over, for what shall be paid in an increased salary. It is a shortsighted, narrow and miserly policy to exclude from the bench the men best qualified for the performance of its weighty duties, by fixing the salary so low that to accept it would involve the sin of negligence of that first of all duties which a man is bound to regard, the duty of maintaining, educating and preparing for life, those whom God in his providence has made dependent upon him by the closest and dearest of human ties. Such a policy can only properly be characterized as being that of saving at the spiggot and wasting at the bung. A more careful husbandry of time on the part of the members of the Legislature for the past few years, less frequent adjournments to meet their own mere convenience, would be better far in the matter of the practice of a wise economy, than grudgingly eking out a salary to their hard-working servants on the bench, so small that they are, some of them, compelled from very necessity to disclose to the committees of that body that their children go barefooted to school for the want of a salary adequate, with the greatest observance of economy possible, to enable them to purchase shoes for their feet. These things have been true, and are disgraceful to the State which suffers them to be. In the discharge of the duties of the office, the judge is obliged for a considerable portion of every year, to be away from home at a constant expense. In his absense he must employ some competent man to have the care of his family, and his affairs. It necessitates the adding of one servant at least to his help, the year around, and reduces the salary by so much as it takes to pay for it. Surely a competent and hard working judge,--no public servants are called upon to perform such difficult and wearying and exhausting labor,--should receive such a

salary as will enable him to have all the essential enjoyments of life, and the competence for the later years of his existence that he would have enjoyed had he not consented, at the call of the State, to serve her in her highest and most important interests. And then the harrassing forbodings of evil days to come, the minute calculation as to how to make a penny go farthest in supplying the actual wants of current life, from day to day, and from hand to mouth, has a tendency greatly to impair his usefulness and efficiency in his office.

Every consideration requires that this wrong should no longer continue. Careful not to make the office one of such emolument as to be sought after by any man competent for the place, from motives of gain, the Legislature should be equally careful, on the other hand, to see that it is a reasonable and just compensation for the service rendered.

In conclusion, as peculiarly applicable to the plan herein recommended for adoption, your committee would commend to the special attention of this Council, the wisdom of the following words of a most learned jurist of great eminence in both hemispheres: "To those who are alive to the just interpretation of the Constitution; those who, on the one side, are anxious to guard it against usurpations of power, injurious to the states; and those who, on the other side, are equally anxious to prevent the prostration of any of its great departments to the authority of the others; no language can ever be unseasonable that shall warn us of the facility with which public opinion may be persuaded to yield up some of the barriers of the Constitution under temporary influences, and to teach us the duty of an unsleeping vigilance to protect the branch, which, though weak in its powers, is yet the guardian of the rights and liberties of the people."

Your committee append hereto an article embracing the proposed amendments.

CHARLES C. DEWEY, *for the Committee.*

ARTICLE-----

SEC.-----

On motion of Mr. REED,

*Ordered* that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

The report of the Special Committee on Biennial Sessions and Elections was taken up, being the special order, and on motion of Mr. RAND, the report was amended by adding to the articles therein proposed, the following:

"Article 6. The Legislature shall provide by law for filling vacancies in office happening from any cause, during the term of office of the incumbent."

On motion of Mr. POWERS, Article 5 was amended by inserting before the words, "country and probate officers," the words, *senators and town representatives.*

On motion of Mr. LANE,  
*Ordered* that the report lie.

Mr. POWERS moved that when this Council adjourn it adjourn to meet on Monday next at 2 o'clock, P.M.;

Which was agreed to.

On motion of Mr. POWERS, adjourned.

### Monday Afternoon, August 2, 1869.

Journal of Saturday read and approved.

On motion of Mr. POWERS, a call of the Council was ordered, and the roll being called, the following named members answered to their names, to wit: Messrs.

CLEAVELAND,	FRENCH,	POWERS--5.
FIELD,	HOLLISTER,	

The following named members failed to answer to their names: Messrs.

COLBURN,	LANE,	REED,
DEWEY,	RAND,	ROSS,--8.
HARMON,	REDFIELD,	

The absentees being summoned, by order of the Council, Messrs. REDFIELD and REED appeared and took their seats.

A quorum being present, further proceedings under the call were abandoned, and Mr. CLEAVELAND called up the report of the Special Committee on Biennial Sessions and Elections.

On motion of Mr. CLEAVELAND, the fifth article of the proposed articles of amendment was amended by striking out the words, "and probate officers," and inserting in lieu thereof, the words, *officers, judges of probate.*

Mr. CLEAVELAND moved to strike out Article 4 of the proposed articles of amendment, and pending this motion, the report was, on motion of Mr. FRENCH,

*Ordered* to lie, and made the special order for to-morrow morning at ten o'clock.

Mr. FRENCH, from the Legislative Committee, submitted the following report, which was read, accepted, and ordered to lie:

*To the Hon. Council of Censors:*

Your committee, who were instructed by a resolution of this body to enquire whether the provisions of the 94th Chapter of the General Statutes, relating to the traffic in intoxicating drinks, have been duly enforced, and if it be found that said provisions have not been so enforced, to report as to the causes of said failure, report:

That they have attended to the duty assigned them, and find that the law is not and has not been duly enforced. As to the cause, your committee find that this law, like many others on our statutes, is one whose execution the public does not demand; and officers, whose duty it is to enforce the law, are very willing to be relieved of that duty if the public does not demand its enforcement.

N. W. FRENCH, *for Committee.*

On motion of Mr. FRENCH, adjourned.

**Tuesday, August 3, 1869.**

Prayer by Rev. C. A. Allen.

Journal of Monday read and approved.

The President announced that, under a resolution of the Council providing therefor, he had appointed

Col. A.C. Brown, Reporter.

The report of the Special Committee on Biennial Sessions and Elections was taken up, being the special order, and the question being upon the motion of Mr. CLEAVELAND to strike out the fourth article of amendment therein proposed, the report was, on motion of Mr. CLEAVELAND,

*Ordered to lie.*

Mr. COLBURN introduced the following resolution, which was read and adopted:

*Resolved*, That the Special Committee on Woman Suffrage be instructed to enquire into the justice and expediency of so amending the Constitution, as to require that every voter shall be able to write and read his or her vote, intelligibly, no person to exercise this franchise without such qualification.

Mr. RAND, from the Special Committee on Woman Suffrage, submitted the following report, which was read and accepted:

*To the Council of Censors now in session:*

The Committee on Woman Suffrage, to whom was referred the following resolution, viz:

*Resolved*, That the Committee on Suffrage be instructed to inquire into the expediency of amending the twenty-second section of Part Second of the Constitution, so as to read as follows:

"SEC. 22. The inhabitants of this State, without distinction of sex, shall be trained and armed for its defense, under such regulations, restrictions, and exceptions as Congress, agreeably to the Constitution of the United States and the Legislature of this State shall direct. The several companies of militia shall, as often as vacancies happen, elect their captain and other officers, and the captains and subalterns shall nominate and recommend the field officers of their respective regiments, who shall appoint their staff officers. And no person shall be disqualified to hold any military office on account of sex;"

Having considered the same, respectfully report:

Your committee are aware that this resolution was introduced for the purpose of trying the effect of ridicule upon the claim of woman to suffrage, and in the dearth of substantial argument against it. But, as the Council has entertained the resolution, and referred its consideration to this committee, we have given it that attention that the dignity of the Council and the subject seem to require.

The idea that the right of voting, and the ability to bear arms have any necessary connection has come down to us, like many other antiquated and absurd notions of prejudice and folly, from the feudal times of our ancestors; and it has for its foundation all the reasons of feudal servitude and no other. The condition upon which the tenant held his lands of his superior, was that the tenant should serve his master in the field. None but males could perform this service. So when the tenant became a freeman and a voter, by virtue of the ownership of his land, the idea of military service continued to be attached to the new relation.

But in our days, men do not have to bear arms in order to own land or vote. The mover of the resolution may never have shouldered a musket in the militia, or volunteered to fight Southern rebels, yet he votes unchallenged. Quakers do not fight, yet they vote. When the rule has not been applied to men for more than a hundred years, it is quite as far removed from the chivalrous as it is from all logical sequence, to claim that as women cannot fight, therefore they can not vote.

A nation would be foolish, when in war, to put women in the ranks, and not avail itself of the superior strength of muscle of its men, and the peculiar aptitudes of its women, where they tell most against the enemy. And in war women render a service to their country as necessary as that of men. They care for the families at home. They tend and nurse the sick in hospital. They brave contagions more dangerous than the bullets of a battle. What woman does, at the backs of soldiers in the field, is as essential to sustain them in heart and vigor as the provision train itself.

The services of Florence Nightingale in the Crimea were of more value to the British army, than those of the whole six hundred who charged at Balaklava.

Miss Nellie Gillson, of Chelsea, contributed as much to the success of our armies against Southern rebellion, as any score of the stalwart soldiers of the old Bay State.

In peace or war, our country has better use for her women than to marshal them for the field. It can educate them as they have a right to be educated; it can give them the ballot equally with men. It can then avail itself of their rare insight, virtuous aspirations, and disinterested patriotism in the government of our country. It can thus rid politics of much of their virulence and corruption. For this service we think we can see in woman an eminent fitness, and one not inconsistent with the peculiarities or employments of her sex.

Your committee therefore do not recommend the adoption of the proposed amendment.

J. RAND,  
CHARLES REED,  
H. HENRY POWERS,--*Committee.*

Montpelier, August 3, 1869.



On motion of Mr. DEWEY,

*Ordered* that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

The report of the Special Committee on Biennial Sessions and Elections was again taken up, and Mr. CLEVELAND, by leave, withdrew his motion to amend by striking out the fourth article of amendment therein proposed.

On motion of Mr. REED, the report was amended by substituting for all of said articles of amendment, the following:

ARTICLE OF AMENDMENT NO. ---

SEC. 1. The General Assembly shall meet on the first Wednesday of October, biennially; the first election shall be on the first Tuesday of September, A.D. 1870; and the first session of the General Assembly on the first Wednesday of October, A.D. 1870.

SEC. 2. The Governor, Lieutenant Governor, Treasurer of the State, senators, town representatives, assistant judges of the county court, sheriffs, high bailiffs, state's attorneys, judges of probate and justices of the peace shall be elected biennially, on the first Tuesday of September, in the manner prescribed by the Constitution of the State.

SEC. 3. The term of office of the Governor, Lieutenant Governor and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.

SEC. 4. The term of office of senators and town representatives shall be two years from the day of their election.

SEC. 5. The term of office of the assistant judges of the county court, sheriffs, high bailiffs, state's attorneys, judges of probate and justices of the peace, shall be two years, and shall commence on the first day of December next after their election.

SEC. 6. The Legislature may provide by law for filling any vacancy that shall happen in any of the above-named offices.

On motion of Mr. REED, section six of the proposed article of amendment was amended by striking out the words "above named," in the second line, and inserting after the word "offices," the words, "*named in this article.*"

Mr. POWERS moved that the Council resolve itself into a Committee of the Whole for the purpose of considering this report.

And the question being Will the Council so order? the yeas and nays were demanded by Mr. COLBURN.

The vote being taken, those members who voted in the affirmative are Messers.

COLBURN,	REED,	POWERS,
CLEVELAND,	HARMON,	RAND,

FIELD, HOLLISTER, REDFIELD,--10.  
Those members who voted in the negative are Messrs.  
DEWEY, LANE--2.

So the Council resolved itself into a Committee of the Whole.

The Committee of the Whole having arisen, reported by their chairman, Mr. REED, that they had considered the subject referred to them, and made some progress; and asked leave to sit again at 2 1/2 o'clock this afternoon, and the report was accepted, and leave granted.

On motion of Mr. RAND, adjourned.

#### Afternoon.

Mr. POWERS submitted the following supplemental report, which was read and accepted:

*To the Honorable Council of Censors, now in session:*

The majority of the special committee to whom was recommitted the report heretofore made upon the subject of abolishing the Council of Censors, would respectfully submit the following supplemental report:

The only mode of proposing amendments to the Constitution suggested by the minority of your committee, is to refer the same to the Legislature; and it is argued that the Legislature is a safer, cheaper and more democratic tribunal than the Council of Censors for this purpose. Our Constitution was framed for the *whole* people. It is the organic law which governs not *municipalities*, but *the people* of municipalities, and as such, ought to be beyond the reach of municipalities to control. The Council, as now constituted, are elected by *the people*, on a general ticket; and a small town with one hundred voters cannot neutralize the voice of a town with ten thousand inhabitants in selecting the Council. Theoretically, then, the Council created by the people themselves more emphatically represents the popular voice than any other tribunal in our frame of government. This was unquestionably the idea of the "fathers" on creating the Council. In the opinion of your committee they ought to have gone one step further, and provided that the Council should submit proposed amendments to the people directly or to a Convention chosen in some manner that would represent the people, and not the towns of the commonwealth. Under the existing Constitution it is questionable whether the Council can order a Convention called on any basis other than that of *town* representation. Such has been the usual practice, and Conventions have been composed only of delegates chosen by the several towns; and thus a small town with fifty voters has the same voice in saying what the organic law of the whole people shall be, as the town of Rutland has with its fifteen hundred or two thousand voters. If this construction of the Constitution is correct, it is obviously unjust and wrong; but your committee are of opinion that the Council of Censors have the power

to call a Convention composed of delegates chosen on the basis of population--in other words, the delegates may be apportioned to the different counties as senators are, and thus the voice of the people at large may be heard. If this view is correct, it will be seen that the existing plan of proposing amendments to the Constitution is one that brings proposed changes nearer to the people themselves than the one suggested by the minority of your committee.

The Senate is not in fact chosen on the basis of population, as is usually claimed. Each county has one senator at least,--no matter whether it have one town or twenty--one thousand voters or two hundred,--so that in the first instance the idea of *municipality* is recognized in the composition of the Senate. As at present constituted, we have fourteen senators, (a fraction less than one-half,) who represent fourteen counties. The other sixteen senators represent the people of the larger counties. The House of Representatives simply represents the several town corporations as corporations, without any regard to the number of people composing such corporations.

It is proposed by the minority of the committee to submit proposed changes in the organic law to these two tribunals thus constituted, upon the ground that it will bring them *nearer* to the people. It is submitted that the result aimed at is not brought about under this plan.

Again it is urged that the Council of Censors is a body unknown to sister states, and has arrived at that "respectable old age" in our own that entitles it to funeral honors. We are unable to see any force in this argument. The very *soul* of an organic law--of a constitution for a commonwealth, is *permanency*. The people demand some permanent law so that legislatures of partisan bias shall not trample upon the rights of minorities. Again, Vermont has very many institutions not enjoyed by sister states, and this fact furnishes no argument against them.

Nor is the plan recommended by the minority of your committee cheaper than the existing mode. We are of opinion if the Legislature once in ten years have power to reach the Constitution that a large portion of their time will be occupied in "tinkering" it. No member will think he can subserve the interests of his constituents unless he strikes some blow at the Constitution which his fancy may dictate, and thus, if no unwise changes are made, much time will be taken up, and great expense to the State incurred.

The other powers delegated by the people to the Council of Censors ought not to be surrendered. Through them the people hold a check over the different departments of the government. Executives may become usurpers, legislatures may become corrupt, and both become unfaithful "guardians" of the people. Public taxes may be unjustly "laid" and public moneys squandered, and impeachments may be demanded in cases where a corrupt Legislature would

screen offenders.

The proposition to abolish the Council has been agitated several times before, but without success; and although in deference to the wishes of a portion of our people who call for this change we may be constrained to vote to submit the proposed amendment of the minority to a Convention, still in justice to ourselves we are bound to express our views against the wisdom of such a change.

Respectfully submitted,

H. HENRY POWERS, for majority of Committee.

On motion of Mr. RAND,

*Ordered*, that the report lie, and that the Secretary procure the printing of five hundred copies for the use of the Council.

Leave having been granted, and the hour having arrived, the Council again resolved itself into a Committee of the Whole further to consider the report of the Special Committee on Biennial Sessions and Elections, (at half past two o'clock).

And at half-past four o'clock, the Committee of the Whole having arisen, reported by their chairman, Mr. REED, recommending the adoption of section one of the article proposed in said report, and asked leave to sit again at ten o'clock to-morrow morning.

And this report was accepted, and leave granted.

Mr. POWERS moved to adopt section one of the article proposed in said report, and the question being, Shall said section be adopted? The yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	FRENCH,	POWERS,
CLEVELAND,	HARMON,	RAND--8.
DEWEY,	HOLLISTER,	

Those members who voted in the negative are Messrs.

FIELD,	REDFIELD,	REED--4.
LANE,		

On motion of Mr. POWERS, the remaining sections of said article, being sections two, three, four, five and six, were adopted.

On motion of Mr. FRENCH, adjourned.

### Wednesday, August 4, 1869.

Prayer by Rev. J. Edward Wright.

Journal of Tuesday read and approved.

Mr. RAND moved to reconsider the votes whereby sections one, two, three, four, five and six of the article of amendment proposed in the report of the Special Committee on Biennial Sessions and Elections, as amended, were adopted, and the question being, Shall said votes be reconsidered? it was, on motion of Mr. RAND,

*Ordered* to lie.

By leave of the Council, Mr. CLEVELAND recorded his vote in the affirmative on the adoption of section one of the article of

amendment proposed in the report of the Special Committee on Biennial Sessions and Elections.

Mr. REED introduced the following proposed amendment to the Constitution, which was adopted:

ARTICLE ---

The judges of the Supreme Court shall be elected biennially, and their term of office shall be two years.

Mr. Dewey from the Special Committee on the Judiciary submitted the following proposed amendment to the Constitution:

ARTICLE ---

SEC. 1. The judges of the Supreme Court shall be appointed by the Governor, by and with the advice and consent of the Senate.

SEC. 2. The term of office of the judges of the Supreme Court shall be six years; provided, that under the first appointment made in pursuance of this section, one-third of the whole number of judges shall hold their office for the period of six years, one-third for the period of four years, and one-third for the period of two years.

SEC. 3. Whenever the number of the judges of the Supreme Court shall exceed six, the Legislature shall fix the time when the term of office of the judges in excess of that number shall commence.

On motion of Mr. COLBURN this article was recommitted with instructions to amend.

Mr. CLEVELAND called up the report of the minority of the Special Committee on changing the mode of amending the Constitution, and moved to substitute for the articles of amendment proposed therein the following:

ARTICLE ---

SEC. 1. At the annual session of the General Assembly of this State, in the year of our Lord one thousand eight hundred and seventy-eight, and at the annual session thereof in every eighth year thereafter, the Senate may propose any specific and particular amendments to the Constitution of this State that may be necessary for the preservation of the rights and happiness of the people; and the same being agreed to by two-thirds of the members of the Senate and of the House of Representatives, respectively, such proposed amendment or amendments shall be entered on the journals of the two Houses, and referred to the General Assembly then next to be chosen, and shall be published in the principal newspapers in this State; and if at the General Assembly next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of the members of the Senate and of the House of Representatives respectively, then it shall be the duty of the General Assembly to submit such amendments to a direct vote of the freemen of this State at their Freemen's Meeting next to be holden for the choice of State and county officers; and if said amendments, of any of them, shall be approved and ratified by a

majority of the qualified voters then voting thereon, they shall become part of the Constitution of this State.

SEC. 2. The General Assembly shall direct the manner of voting by the people upon the proposed amendments, and enact all such laws as shall be necessary to procure a free and fair vote upon each amendment proposed, and to carry into effect all the provisions of the preceding section.

SEC. 3. The House of Representatives shall have all the powers now possessed by the Council of Censors, to order impeachments, which shall in all cases be by a vote of two-thirds of its members.

SEC. 4. The forty-third section of the second part of the Constitution of this State, is hereby abrogated.

Mr. REED proposed to amend the proposed substitute in the third line, by striking out the words "seventy-eight," and inserting in lieu thereof the word *eighty*, and by striking out the word "eighth," and inserting in lieu thereof the word *tenth*, and the question being, Shall this amendment be adopted? the yeas and nays were demanded by Mr. REED.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HOLLISTER,	RAND,
FIELD,	LANE,	REDFIELD,
FRENCH,	POWERS,	REED--10.
HARMON,		

Those members who voted in the negative are Messrs.

CLEAVELAND, ROSS--2.

So the proposed substitute was amended.

On motion of Mr. CLEAVELAND, the proposed substitute was amended by striking out the word "annual," in the first and third lines of section one:

The question recurring, Shall the proposed substitute be adopted? The yeas and nays were demanded by Mr. COLBURN.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HARMON,	RAND,
CLEAVELAND,	HOLLISTER,	REDFIELD,
FIELD,	LANE,	REED,
FRENCH,	POWERS,	ROSS--12.

And no member voting in the negative, the proposed substitute as amended was adopted, and on motion of Mr. POWERS,

*Ordered* that the report and proposed article, as amended, lie, and that the Secretary procure the printing of one hundred copies of the amended article for the use of the Council.

On motion of Mr. ROSS the resolution relating to the expediency of calling a convention was taken up, and made the special order for two o'clock this afternoon.

On motion of Mr. LANE, adjourned.

**Afternoon.**

The resolution of Mr. POWERS relating to the expediency of calling a convention was taken up, being the special order.

Mr. COLBURN moved to amend by striking out the words, "second Wednesday," and inserting in lieu thereof the words, *first Tuesday*;

Which was disagreed to.

On motion of Mr. RAND,

*Ordered* that the resolution lie.

The report of the Special Committee on Woman Suffrage was taken up, being the special order, and while the same was under consideration, and pending the question, Shall the proposed article of amendment relating to Woman Suffrage be adopted?

On motion of Mr. HARMON, adjourned.

**Thursday, August 5, 1869.**

Prayer by Rev. J. Edward Wright.

Journal of Wednesday read and approved.

Mr. HARMON from the Legislative Committee submitted the following report, which was read, accepted and ordered to lie:

*To the Council of Censors:*

The Legislative Committee to whom was referred the resolution instructing them to inquire whether the laws of the State, regulating the rate of interest have been disregarded and violated, etc., and that said committee report the causes of such violation, and whether it be within the province of this Council to provide a remedy, report:

That we have considered the matter submitted to us by said resolution, and state that the laws of the State regulating the rate of interest have been very generally disregarded. The cause of such violation is the proclivity of the citizens of this State, "moved and instigated by the love of money," to evade the law to gain important ends. But we think that a matter so variable as the use of money should be under the control of the Legislature, whose flexible legislation can be better adapted to the varied value of money and the various exigencies and wants of the people, than a stiff and inflexible provision of organic law; and we, therefore, think that it is not within the legitimate province of the Council of Censors to provide a remedy.

TIMOTHY P. REDFIELD, *for Committee.*

The report of the Special Committee on Woman Suffrage was again taken up, and the question being, Shall the proposed article of amendment be adopted? The yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEVELAND, POWERS, REED,

HOLLISTER,            RAND,            ROSS--6.  
 Those members who voted in the negative are Messrs.  
           COLBURN,            FRENCH,            LANE--5.  
           FIELD,            HARMON,

So the proposed article of amendment was adopted.

Mr. POWERS moved that this vote be reconsidered, and the question being, Shall the vote be reconsidered? it was, on motion of Mr. POWERS,

*Ordered to lie.*

On motion of Mr. CLEVELAND the minority report of the Special Committee in changing the mode of amending the Constitution was taken up.

Mr. ROSS moved to amend section one of the proposed article of amendment by substituting the following:

SEC. 1. At the session of the General Assembly of this State, A.D. 1880, and at the session thereof, every tenth year thereafter, the Senate may, by a vote of two-thirds of its members, make proposals of amendment, to the Constitution of the State, which proposals of amendment, if concurred in by a majority of the members of the House of Representatives, shall be entered on the journals of the two Houses and referred to the General Assembly then next to be chosen, and be published in the principal newspapers of the State; and if a majority of the members of the Senate and of the House of Representatives of the next following General Assembly shall, respectively, concur in the same proposals of amendment or any of them, it shall be the duty of the General Assembly to submit such proposals of amendment to a direct vote of the freemen of the State; and such of said proposals of amendment as shall receive a majority of the freemen voting thereon, shall become a part of the Constitution of this State.

On motion of Mr. ROSS,

*Ordered that the report and proposed amendment lie.*

Mr. POWERS called up the motion to reconsider the vote whereby the proposed article of amendment relating to Woman Suffrage was adopted.

And the question being, Shall the vote be reconsidered? it was decided in the affirmative.

And the question recurring, Shall the proposed article of amendment be adopted: the yeas and nays were demanded by Mr. POWERS.

The vote being taken, those members who voted in the affirmative are Messrs.

CLEVELAND,    POWERS,            REED,  
           HOLLISTER,    RAND,            ROSS--6.  
 Those members who voted in the negative are Messrs.  
           COLBURN,            FIELD,            HARMON,  
           DEWEY,            FRENCH,            LANE--6.



The vote being a tie, it was decided in the affirmative by the casting vote of the PRESIDENT.

Mr. DEWEY from the Committee of the Judiciary submitted the following report, which was read and accepted:

*To the Council of Censors:*

The Special Committee on the Judiciary, to whom was recommitted the proposed article of amendment in relation to the appointment of the judges of the Supreme Court, with leave to amend the same, report the same back to the Council, amended in certain respects, as follows:

#### ARTICLE-----

SEC. 1. The judges of the Supreme Court, and the presiding judges of the county courts, shall be appointed by the Governor, by and with the advice and consent of the Senate.

SEC. 2. The term of office of the judges of the Supreme Court and the presiding judges of the county courts shall be six years; provided, that under the first appointment made in pursuance of this section the two judges first appointed shall hold their offices for the period of six years; the two next in the order of appointment shall hold their offices for the period of four years; and the two next in the order of appointment shall hold their offices for two years.

SEC. 3. Whenever the number of the judges of the Supreme Court shall exceed six, the Legislature shall fix the time when the term of office of the judges in excess of that number shall commence.

SEC. 4. The judges of the Supreme Court, and the presiding judges of the county courts, shall at stated times receive a reasonable compensation for their services, which shall not be diminished during the term of their offices.

CHARLES C. DEWEY, *for the Committee.*

On motion of Mr. LANE,

*Ordered* that the report lie, and that the Secretary procure the printing of one hundred copies for the use of the Council.

The report of the Special Committee on changing the mode of amending the Constitution, was again taken up, and the question being, Shall the amendment proposed by Mr. ROSS as a substitute for section one of the article of amendment proposed in said report be adopted? it was decided in the affirmative.

And the question being, Shall the article as amended be adopted? the yeas and nays were demanded by Mr. POWERS.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN, FRENCH, HARMON--4.

CLEVELAND,

Those members who voted in the negative are Messrs.

DEWEY, LANE, REED,

FIELD, POWERS, ROSS--8.

HOLLISTER, RAND,  
So the article was rejected.

Mr. RAND moved to reconsider this vote, and the question being, Shall this vote be reconsidered? it was, on motion of Mr. RAND, *Ordered to lie.*

The report of the Special Committee of the Judiciary was taken up, and on motion of Mr. DEWEY, it was

*Ordered to lie*, and made the special order for two o'clock this afternoon.

On motion of Mr. REED,

*Ordered* that the Secretary procure the printing of one hundred copies of the article of amendment proposed in the minority report of the Special Committee on changing the mode of amending the Constitution, as finally amended for the use of the Council.

Mr. DEWEY introduced the following resolution, which was read and adopted:

*Resolved*, That a Convention being called, the President be instructed to appoint a committee, consisting of three members, to prepare an address to the people, and also a committee, consisting of three members, to draft an ordinance.

On motion of Mr. ROSS, adjourned.

#### Afternoon.

The report of the Special Committee on the Judiciary was taken up, being the special order, and the question being, Shall the amendment proposed by the committee be adopted? it was decided in the affirmative.

The question recurring, Shall the article as amended be adopted: the yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	FRENCH,	POWERS,
CLEVELAND,	HARMON,	RAND,
DEWEY,	HOLLISTER,	REED,
FIELD,	LANE,	ROSS--12.

And no member voting in the negative, the article as amended was adopted.

Mr. RAND introduced the following resolution, which was read and adopted:

*Resolved*, That when this Council shall adjourn to-morrow, it adjourn to meet at the Capitol in Montpelier, on Tuesday, the 19th day of October next, at ten o'clock in the forenoon.

The President announced that, under the resolution of Mr. DEWEY so instructing him, he had appointed as Committee to prepare an Address to the People, Mr. DEWEY, Mr. ROSS, Mr. COLBURN.

Committee to Draft an Ordinance, Mr. REED, Mr. RAND, Mr.

## HOLLISTER.

Mr. DEWEY from the Committee on the Powers of the Constitution submitted the following report, which was read, accepted and ordered to lie:

*To the Council of Censors now in session:*

The Committee on the Powers of the Constitution, to whom was referred a resolution instructing them to make inquiry whether section seven of part second of the Constitution has been violated by any member of the Legislature during the last septenary, and that said committee have leave to sit at any time during the term of office of this Council, and have power to send for persons, papers and records, respectfully submit the following report:

That the attention of the committee has not been called to any instance, during the last septenary, of the violation, by any member of either branch of the Legislature, of said section; nor have your committee any knowledge of such violation. And for this reason your committee ask to be discharged, until instructed otherwise by the Council, from the further consideration of the resolution.

CHARLES C. DEWEY,

JASPER RAND,

JOHN R. CLEVELAND,--*Committee.*

Mr. DEWEY from the Committee on the Powers of the Constitution submitted the following report, which was read, accepted and ordered to lie:

*To the Council of Censors now in session:*

The Committee on the Powers of the Constitution, to whom was referred a resolution instructing them to inquire whether the legislative department of the government, in enacting certain statutes enabling towns to grant aid to railroad corporations, has assumed to itself and exercised greater power than it is entitled to by the Constitution, have had the same under consideration and ask leave to report:

That in their opinion the said statutes cannot be said to be so clearly in violation of the Constitution as to warrant your committee in finding that they fall without its pale. In the opinion of your committee, it was not the intention of the framers of the Constitution that this body should censure the action of the Legislature, unless in case where it is clear to the apprehension of the body that they have overleaped the boundaries of the Constitution. There being conflict in the decisions of the courts upon this subject, your committee are of the opinion that this is a question which may be more appropriately settled in the Supreme Court than by any action which could be recommended by this body. If permissible within the spirit of the authority conferred upon this Council, your committee would suggest that it would perhaps be a proper subject for consideration whether it would not be expedient, in any future legislation upon the subject that two-thirds of the taxpayers and two-thirds of the grand list, both

in number of taxpayers and amount of grand list, should be required to enable the towns to aid such corporations. And also whether future legislation of this kind shall not be general instead of partial, as it has heretofore been.

CHARLES C. DEWEY,  
JASPER RAND,  
JOHN R. CLEAVELAND,--*Committee.*

Mr. DEWEY from the Committee on the Powers of the Constitution submitted the following report, which was read, accepted and ordered to lie:

*To the Council of Censors now in session:*

The Committee on the Powers of the Constitution ask leave to report: That upon consideration of the subjects submitted to them, they have no knowledge of any clear violation of the provisions of the Constitution during the last septenary. They would refer to special reports submitted by them, and ask leave to be discharged.

CHARLES C. DEWEY,  
JASPER RAND,  
JOHN R. CLEAVELAND,--*Committee.*

Mr. CLEAVELAND moved to reconsider the vote whereby the article of amendment proposed by the Special Committee on the Judiciary was adopted, the question being, Shall the vote be reconsidered? it was, on motion of Mr. CLEAVELAND,

*Ordered to lie.*

The motion to reconsider the vote rejecting the article of amendment relating to the mode of amending the Constitution, was taken up, and the question being, Shall the vote be reconsidered? it was decided in the affirmative.

And the question recurring, Shall the proposed article of amendment be adopted? it was decided in the affirmative.

Mr. REED moved that this vote be reconsidered? It was, on motion of Mr. REED,

*Ordered to lie.*

Mr. ROSS moved that the vote whereby the proposed article of amendment relating to Woman Suffrage was adopted, be reconsidered, and the question being, Shall the vote be reconsidered? it was, on motion of Mr. ROSS,

*Ordered to lie.*

The resolution of Mr. POWERS, relating to the expediency of calling a Convention, was taken up, and on motion of Mr. RAND, unanimously adopted.

Mr. ROSS moved to reconsider this vote, and the question being, Shall the vote be reconsidered? it was, on motion of Mr. ROSS,

*Ordered to lie.*

By unanimous consent, Mr. Ross moved to reconsider the vote whereby the proposed article of amendment relating to Corporations was adopted, and the question being, Shall the vote be reconsider-

ed? it was, on motion of Mr. ROSS,

*Ordered to lie.*

On motion of Mr. CLEVELAND,

*Ordered* that the Secretary procure the printing of one hundred copies of all proposed articles of amendment pending in this Council, and transmit five copies thereof to each member.

On motion of Mr. ROSS, adjourned.

### Friday, August 6, 1869.

Prayer by Rev. J. Edward Wright.

Journal of Thursday read, corrected and approved.

On motion of Mr. REED, the Council adjourned to meet at the Capitol in Montpelier, on Tuesday, the 19th day of October next, at ten o'clock in the forenoon.

## Third Session

### Tuesday, October 19, 1869

Prayer by Rev. William Fitz.

Mr. REED from the Committee appointed to Draft an Ordinance, reported the following, which was read, accepted and ordered to lie:

Ordinance of Council.

State of Vermont.

### In Council of Censors, October, A.D. 1869

The Council having determined to propose certain amendments to the Constitution of the State, and to call a Convention to consider such amendments; therefore,

It is Ordered by said Council that a Convention of the people of the State of Vermont shall meet at the State House, in Montpelier, on the second Wednesday of June, A.D. 1870, at ten o'clock in the forenoon, to consider the said proposed amendments and adopt the same or such parts thereof as the said Convention shall deem necessary to preserve the peace and happiness of the people of this State.

And for the purpose of electing delegates to attend said Convention, the first constable of each organized town in this State, or in his absence the town clerk, or in the absence of both, one of the selectmen of each town, without further order, shall set up a notification in writing, at such place or places as shall have been designated by such town for notifying town meetings, at least twelve days before the second Tuesday of May, A.D. 1870, warning the freemen of said town to meet on the said second Tuesday of May, A.D. 1870, at ten o'clock in the forenoon, at the place where the last Freeman's Meeting was held in such town, for the purpose of electing a delegate to represent the freemen of such town in said Convention; and at the opening of such meeting this order shall be

publicly read.

And the first constable, or in his absence one of the selectmen of such town, shall preside at said meeting, and shall call on the freemen of said town for the space of four hours to give in their votes for such delegate; which votes shall be given and received in the manner and under the same regulations as are by law provided for electing representatives to the General Assembly. And at the expiration of said time the votes so taken shall be sorted and counted by the presiding officer and such of the selectmen and justices of the peace of such town as shall be present. And if no person shall have a majority of all the votes given, the presiding officer shall so inform the freemen and call on them as aforesaid, giving a reasonable time only for receiving their votes, and so continue from time to time to receive and count the votes until an election of a delegate shall be made.

And when an election shall be made as aforesaid, it shall be the duty of the presiding officer of the meeting to declare the same, and to deliver to the person elected a certificate of the following tenor, to wit:

STATE OF VERMONT,       ) At a Freeman's Meeting,  
County, ss.                ) warned and holden at  
                                  , in pursuance of an ordinance of the Council of Censors, on the  
second Tuesday of May, A.D. 1870,                                was elected a  
delegate by a majority of the freemen present to represent the  
people of the town of                                in a State Convention, to be held at  
Montpelier, on the second Wednesday of June, A.D. 1870, to  
consider certain amendments to the Constitution of this State,  
proposed by the said Council of Censors in October last.

Given under my hand at                                , this       day of May, A.D.  
1870.

First Constable  
(or Selectman) and  
Presiding Officer.

And the said certificate shall be a sufficient credential of the election of such person.

*Done in Council at Montpelier, the day and year above written.*  
President.

Secretary.

On motion of Mr. POWERS, adjourned.

#### Afternoon

No quorum being present,

On motion of Mr. RAND, adjourned.

#### Wednesday, October 20, 1869.

Prayer by Rev. William Fitz.

Journal of Tuesday read and approved.

The proposed article of amendment relating to Corporations was taken up, and the question being, Shall the vote adopting the same be reconsidered? it was decided in the affirmative.

And the question recurring, Shall said article be adopted? it was, on motion of Mr. ROSS,

*Ordered to lie.*

The proposed article of amendment relating to Biennial Sessions and Elections was taken up, and the question being, Shall the vote adopting the same be reconsidered? the yeas and nays were demanded by Mr. DEWEY.

The vote being taken, those members of who voted in the affirmative were Messrs.

COLBURN,	FIELD,	LANE--3
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Those members who voted in the negative were Messrs.

CLEAVELAND,	HOLLISTER,	REDFIELD,
DEWEY,	POWERS,	REED,
FRENCH,	RAND,	ROSS--10.

So the motion to reconsider was lost.

The proposed article relating to Woman Suffrage was taken up, and the question being, Shall the vote adopting the same be reconsidered? it was decided in the affirmative.

And the question recurring, Shall said article be adopted? the yeas and nays were demanded by Mr. RAND.

The vote being taken, those members who voted in the affirmative are Messrs.

COLBURN,	HOLLISTER,	REDFIELD,
CLEAVELAND,	POWERS,	REED,
FRENCH,	RAND,	ROSS--9.

Those members who voted in the negative are Messrs.

DEWEY,	HARMON,	LANE--4
FIELD		

So the proposed article was adopted.

The proposed article of amendment relating to the Judiciary was taken up, and the question being, Shall the vote adopting the same be reconsidered? it was decided in the affirmative.

The question then being upon the adoption of the article, by unanimous consent, Mr. CLEAVELAND moved to recommit the proposed article to the Special Committee on the Judiciary;

Which was agreed to.

The proposed article of amendment relating to the mode of amending the Constitution was taken up, and the question being, Shall the vote adopting the same be reconsidered? it was decided in the negative.

Mr. POWERS called up the proposed article relating to Corporations, and moved to commit to a member with instructions to amend the same so as to read as follows, viz.:

*Corporations shall not be created, nor their powers increased or*

*diminished by special laws, except for municipal purposes;*

Which was agreed to.

And the President designated Mr. POWERS as the member for whom said article should be committed to amend.

Mr. POWERS reported that he had amended said article as instructed by the Council; which report was accepted.

And thereupon the amended proposed by Mr. POWERS was adopted.

Pending the questions, Shall the proposed article as amended be adopted?

On motion of Mr. POWERS, adjourned.

### Afternoon.

The proposed article relating to Corporations was taken up, and the question being, Shall said article as amended be adopted? it was decided in the affirmative.

Mr. DEWEY from the Special Committee on the Judiciary submitted the following report, which was read and accepted:

*To the Council of Censors:*

The Committee on the Judiciary, to whom was recommitted the proposed article relating to the Judiciary, ask leave to report:

That they have considered the same and have amended the second section of said article as follows: Strike out all after the word "provided," and insert the following: *that under the first appointment made in pursuance of this section, one-third of the judges first appointed shall hold their offices for the period of six years; one-third thereof, second in the order of appointment, shall hold their offices for the period of four years; and one-third thereof, last in the order of appointment, shall hold their offices for the period of two years.* Strike out section three.

And the amendment proposed by said committee was adopted.

Mr. DEWEY moved to commit said article to a member with instructions to amend the same by striking out from sections one, two and four of said article, the words, "and the presiding judges of the county courts;"

Which was agreed to.

And the President designated Mr. REED as the member to whom said article should be committed to amend.

Mr. REED reported that he had complied with the instructions of the Council, and submitted said article amended according to instruction.

And the report of the committee was accepted, and the proposed amendment was adopted.

And the question being, Shall the article as amended be adopted? was decided in the affirmative.

The resolution of Mr. POWERS relating to the expediency of calling a Convention was taken up, and the question being, Shall the



vote unanimously adopting the same be reconsidered? the yeas and nays were demanded by Mr. DEWEY.

The vote being taken, those members who voted in the affirmative are Messrs.

LANE,

REDFIELD--2

Those members who voted in the negative are Messrs.

COLBURN,

FRENCH,

RAND,

CLEAVELAND,

HARMON,

REED,

DEWEY,

HOLLISTER,

ROSS--11

FIELD,

So this motion to reconsider was lost.

Mr. REED introduced the following resolution which was read and adopted:

*Resolved*, That the Committee on Revisions and Engrossment be instructed to report the Council an engrossed copy of the articles of amendment to the Constitution of the State of Vermont, proposed by the Council of Censors; and of the articles of the Constitution proposed to be added to, abolished, or altered thereby; and of the ordinance adopted by the Council, in a form to be signed by the President and Secretary, and officially promulgated.

On motion of Mr. DEWEY, adjourned.

#### Thursday, October 21, 1869.

Prayer by Rev. William Fitz.

Journal of Wednesday read and approved.

Mr. DEWEY from the Committee appointed to prepare an Address to the People submitted an address, which was read, accepted, amended, and on motion of Mr. CLEAVELAND, referred to the Committee on Revisions and Engrossment.

Mr. POWERS from the Committee on Revision and Engrossment reported that said committee had complied with a resolution of the Council so instructing them, and submitted an engrossed copy of the articles of amendment to the Constitution proposed by the Council, the articles of the present Constitution affected by said proposed amendments, and the ordinances referred to said committee;

Which report was accepted, amended, and on motion of Mr. CLEAVELAND, recommitted.

Mr. CLEAVELAND moved that when the Council adjourn, it adjourn to meet this afternoon at four o'clock;

Which was agreed to.

On motion of Mr. ROSS, adjourned.

#### Afternoon.

Mr. REED from the Committee on Revision and Engrossment submitted the following report, which was read and accepted:

*To the Council of Censors now in session:*

The Committee on Revision and Engrossment, to whom was

recommitted a former report of this committee, containing an engrossed copy of the articles of amendment to the Constitution, the articles of the present Constitution affected by said proposed amendments, and the ordinance referred to said committee, submit the following:

*Articles of Amendment to the Constitution of the State  
of Vermont, proposed by the Council of Censors on  
the 22nd day of October, A.D. 1869*

ARTICLE 1.

Corporations shall not be created, nor their powers increased or diminished by special laws, except for municipal purposes.

ARTICLE 2.

SEC. 1. The General Assembly shall meet on the first Wednesday of October, biennially; the first election shall be on the first Tuesday of September, A.D. 1870; the first session of the General Assembly on the first Wednesday of October, A.D. 1870.

SEC. 2. The Governor, Lieutenant Governor, Treasurer of the State, senators, town representatives, assistant judges of the county court, sheriffs, high bailiffs, State's attorneys, judges of probate and justices of the peace, shall be elected biennially, on the first Tuesday of September, in the manner prescribed by the Constitution of the State.

SEC. 3. The term of office of the Governor, Lieutenant Governor and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.

SEC. 4. The term of office of senators and town representatives shall be two years, commencing on the first Wednesday of October following their election.

SEC. 5. The term of office of the assistant judges of the county court, sheriffs, high bailiffs, State's attorneys, judges of probate and justices of the peace, shall be two years, and shall commence on the first day of December next after their election.

ARTICLE 3.

Whenever the office of senator or town representative shall become vacant from any cause, the Legislature may provide by law for filling such vacancy.

ARTICLE 4.

SEC. 1. The judges of the Supreme court shall be appointed by the Governor, by and with the advice and consent of the Senate.

SEC. 2. The term of office of the judges of the Supreme Court shall be six years; provided, that under the first appointment made in pursuance of this section, one-third of the judges first appointed shall hold their offices for the period of six years; one-third thereof, second

in the order of appointment, shall hold their offices for the period of four years; and one-third thereof, last in the order of appointment, shall hold their offices for the period of two years.

SEC. 3. The judges of the Supreme Court shall at stated times receive a reasonable compensation for their services, which shall not be diminished during the terms of their offices.

ARTICLE ---

*Proposed for adoption if article two is adopted and  
article four is rejected.*

The judges of the Supreme Court shall be elected biennially, and their term of office shall be two years.

ARTICLE 5.

Hereafter women shall be entitled to vote, and with no other restrictions that the law shall impose on men.

ARTICLE 6.

SEC. 1. At the session of the General Assembly of this State, A.D. 1880, and at the session thereof, every tenth year thereafter, the Senate may, by a vote of two-thirds of its members, make proposals of amendment to the Constitution of the State, which proposals of amendment, if concurred in by a majority of the members of the House of Representatives, shall be entered on the journals of the two Houses, and referred to the General Assembly then next to be chosen, and be published in the principal newspapers of the State; and if a majority of the members of the Senate and of the House of Representatives of the next following General Assembly shall respectively concur in the same proposals of amendment, or any of them, it shall be the duty of the General Assembly to submit the proposals of amendment so concurred in to a direct vote of the freemen of the State; and such of said proposals of amendment as shall receive a majority of the votes of the freemen voting thereon shall become a part of the Constitution of this State.

SEC. 2. The General Assembly shall direct the manner of voting by the people upon the proposed amendments, and enact all such laws as shall be necessary to procure a free and fair vote upon each amendment proposed, and to carry into effect all the provisions of the preceding section.

SEC. 3. The House of Representatives shall have all the powers now possessed by the Council of Censors to order impeachments, which shall in all cases be by a vote of two-thirds of its members.

SEC. 4. The forty-third section of the second part of the Constitution of this State is hereby abrogated.<sup>16</sup>

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<sup>16</sup>Eds. note. Sections of the existing constitution affected by the proposed amendments appeared next in the journal. In the interests of space, they are not reproduced here.

State of Vermont  
In Council of Censors  
Montpelier, Oct. 22, A.D. 1869.

We hereby certify that the above Articles of Amendment to the Constitution of the State of Vermont proposed by said Council, and Articles of the present Constitution, affected by said proposed amendments; and the same are hereby promulgated by order of said Council.

President.

Secretary.

#### ORDINANCE

State of Vermont,  
In Council of Censors,  
Montpelier, Oct. 22, A.D. 1869.

The Council having determined to propose certain amendments to the Constitution of the State, and to call a *Convention* to consider such amendments; therefore,

IT IS ORDERED by said Council that a Convention of the people of the State of Vermont shall meet at the State House in Montpelier, on the second Wednesday of June, A.D. 1870, at ten o'clock in the forenoon, to consider the said proposed amendments and adopt the same, or such parts thereof as the said Convention shall deem necessary to preserve the peace and happiness of the people of this State. And for the purpose of electing delegates to attend said Convention, the first constable of each organized town in this State, or in his absence, the town clerk, or in the absence of both, one of the selectmen of each town, without further order, shall set up a notification in writing, at such place or places as shall have been designated by such town for notifying town meetings, at least twelve days before the second Tuesday of May, A.D. 1870, warning the freemen of said town to meet on the said second Tuesday of May, A.D. 1870, at ten o'clock in the forenoon, at the place where the last Freemen's Meeting was held in such town, for the purpose of electing a delegate to represent the freemen of such town in said Convention; and at the opening of such meeting this order shall be publicly read.

And the same officer shall preside at said meeting, and shall call on the freemen of said town for the space of four hours to give in their votes for such delegate; which votes shall be given and received in the manner and under the same regulations as are by law provided for electing representatives to the General Assembly. And at the expiration of said time the votes so taken shall be sorted and counted by the presiding officer and such of the selectmen and justices of the peace of such town as shall be present. And if no person shall have a majority of all the votes given, the presiding officer shall so inform the freemen and call on them as aforesaid, giving a reasonable time only for receiving their votes, and so

continue from time to time to receive and count the votes until an election of a delegate shall be made.

And when an election shall be made as aforesaid, it shall be the duty of the presiding officer of the meeting to declare the same, and to deliver to the person elected a certificate of the following tenor, to wit:

STATE OF VERMONT,     ) At a Freeman's Meeting,  
County, ss.             ) warned and holden at             , in  
pursuance of an ordinance of the Council of Censors, on the second  
Tuesday of May, A.D. 1870,             was elected a delegate by a  
majority of the freemen present to represent the people of the town  
of             in a State Convention, to be held at Montpelier, on the  
second Wednesday of June, A.D. 1870, to consider certain  
amendments to the Constitution of this State, proposed by the said  
Council of Censors in October last.

Given under my hand at             , this       day of May, A.D.  
1870.

First Constable  
[or             ] and  
Presiding Officer.

And the said certificate shall be a sufficient credential of the  
election of such person.

*Done in Council at Montpelier, the day and year above written.*  
President.

Secretary.

All which is respectfully submitted,

H. HENRY POWERS,     )  
JONATHAN ROSS,        ) *Committee*  
CHARLES REED,         )

And the question being, Shall the proposed articles of  
amendment, the articles of the present Constitution affected thereby,  
and the ordinance, submitted by said committee for promulgation, be  
adopted? it was decided in the affirmative.

Mr. ROSS from the Committee on Revision and Engrossment  
submitted the following report, which was accepted:

*To the Council of Censors:*

The Committee on Revision and Engrossment, to whom was  
referred a proposed address to the people, respectfully report:

That they have had the same under consideration, and  
recommend the adoption of the following:

## Address

State of Vermont,  
In Council of Censors,  
Montpelier, October 22, 1869,

*To the people of the State of Vermont:*

The Council of Censors elected by the freemen of the State, on the last Wednesday of March, A.D. 1869, have concluded their labors, and have called a Convention, to be holden on the second Wednesday of June, A.D. 1870, to act upon certain amendments to the Constitution which they have promulgated.

The Council are not unanimous upon the policy of adopting all the proposed amendments. They have submitted those propositions of amendment on which they believe the people desire to act.

The reasons for making the proposals of amendment have been substantially set forth in the reports of the several committees which have been so extensively published that it is not deemed necessary to repeat those reasons here. The integrity and intelligence of the people are a sufficient guaranty that none of these proposals of amendment will find a place in the Constitution, except "such as are necessary for the preservation of the rights and happiness of the people."

The Council have also performed the other duties imposed on them by the Constitution, and their action and recommendations will be found in the reports of their committees and in the published proceedings of the Council, to which the people are most respectfully referred.

J. ROSS, *for the Committee.*

And the question being, Shall the address proposed by said committee be adopted? it was decided in the affirmative.

Mr. REED from the Special Committee on Woman Suffrage, submitted the following report, which was read and accepted:

*To the Council of Censors:*

The Special Committee on Woman Suffrage who were instructed by a resolution adopted by this Council "to inquire into the justice and expediency of so amending the Constitution as to require that every voter shall be able to write and read his or her vote intelligibly, no person to exercise this franchise without such qualification," respectfully report:

That they have had said resolution under consideration, and that such an amendment as is therein contemplated would, in their opinion, be inexpedient at the present time.

Said committee therefore ask to be discharged from the further consideration of the subject.

CHARLES REED, *for Committee.*

Mr. POWERS introduced the following resolution, which was read and adopted:

*Resolved*, That the thanks of this Council are due and are hereby tendered to the President, for the courteous and satisfactory manner in which he has discharged the duties of the chair during the three sessions of the Council.

Mr. ROSS introduced the following resolution, which was read

and adopted:

*Resolved*, That the Secretary procure one thousand copies of the Journal of this Council to be printed, and that three hundred copies thereof be delivered to the Sergeant-at-Arms of this State to be distributed among the members and officers of the convention, when assembled, and that three hundred and fifty copies be delivered to the sheriffs of the several counties, to be by them distributed as follows: to the Governor, ten copies; to the Lieutenant Governor five copies; to the Secretary of State ten copies; to the Clerk of the House of Representatives ten copies; to the Secretary of the Senate five copies; to the Secretary of Civil and Military Affairs five copies; to the late Governors and Lieutenant Governors, to the judges of the Supreme Court, and to the town clerk of each organized town in the State, on copy each; and the Secretary shall deliver to the Vermont Historical Society fifty copies; to each member of this Council ten copies, and the residue to the State Librarian for the use of the State.

Mr. REED introduced the following resolution, which was read and adopted:

*Resolved*, That the Secretary procure to be printed as soon as may be, seven hundred copies of the proposed amendments to the Constitution, the articles of the present Constitution to be affected thereby, the ordinance of the Council, and its address: that the Secretary be directed to mail one copy of the same to the town clerk of each town in the State; and deliver one copy to each member of the General Assembly, and ten copies to the Governor of the State; five copies to each member of the Council, and the balance to the State Librarian for the use of the State.

Mr. CLEVELAND introduced the following resolution, which was read and adopted:

*Resolved*, That the thanks of the Council be tendered to the Secretary for the prompt and faithful manner in which he has discharged his arduous duties during the sessions of this Council.

Mr. REED introduced the following resolution, which was read and adopted:

*Resolved*, That the Secretary be directed to transmit to his Excellency, the Governor of the State, a certified copy of the articles of amendment to the Constitution proposed by this Council, the articles of the present Constitution to be affected thereby, the ordinances of the Council, and its address, and signify to him the request of the Council that he lay the same before the Convention called by said ordinance, when assembled.

On motion of Mr. LANE, adjourned.

**Friday, October 22, 1869.**

Journal of Thursday read, corrected and approved.

On motion of Mr. REDFIELD, the Council adjourned without day.

### Results of the 1869 Council

The address of the 1869 Council did not include specifics of legislative and executive failures. Instead, these matters were left to the individual reports of the committees appointed to review them.

The committee investigating the state's failure to enforce the laws regulating the sale of intoxicating drinks reported that the lack of enforcement reflected a lack of popular support for the measure. Nevertheless, the General Assembly in 1870 amended the law to require sellers of intoxicating drinks seized in violation of the law to post bonds, pay costs, and to forfeit the beverages if on review they were found guilty.<sup>17</sup> An 1872 amendment held prosecutors liable for failing to include all known prior convictions of offenders in the complaint, information, or indictment, required courts to give precedence to these cases over all other trials except those in criminal cases where the respondents were under arrest, and prohibited the prosecutor or the court to enter a *nolle prosequi* order or a continuance in all liquor law violation case.<sup>18</sup> No change was made to the laws on interest in the years following the Council's identification of the lack of conviction with which the statute was enforced.

The state first taxed corporate franchises in 1882.<sup>19</sup> While it is unlikely that this was directly related to the committee report on taxation, the franchise tax did respond to the same discomfort the Council had felt back in 1869. As part of this effort, the section of the 1843 charter of the Vermont Central Railroad exempting its "stock, property, and effects" from taxation was effectively repealed by *Laws of 1882*, No. 6, 23-24. "No person or corporation operating the Vermont Central railroad, as trustee of any mortgage bondholders, as receiver or manager appointing by any court, as a reorganized corporation after foreclosure of any mortgage or lien, as lessee, or in any other character or right (excepting only the Vermont Central railroad company), shall be entitled to claim or have any exemption from taxation under the charter of said Vermont Central railroad company . . . ."

Eight years after the Council wondered about the legality of acts authorizing towns to aid railroads, the Vermont Supreme Court settled this question, finding the special acts not unconstitutional.<sup>20</sup> Three members of the 1869 Council of Censors--Ross, Redfield and Powers--were members of the Supreme Court when that decision was made.

### The 1870 Constitutional Convention

The Council had proposed six amendments to the constitution--a general corporation law; biennial elections and terms; authority to fill legislative vacancies; six year appointive terms for judges (or, in the alternative, two year elective terms); woman suffrage; and popular ratification of constitutional amendments, proposed by the legislature under a ten year time lock (abolishing the Council and Convention). Three of these were adopted by the Convention.

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<sup>17</sup>*Laws of 1870*, No. 56, 95-96.

<sup>18</sup>*Laws of 1872*, No. 24, 63-64.

<sup>19</sup>*Laws of 1882*, No. 1, 3-11.

<sup>20</sup>*Bennington v. Park*, 50 Vt. 178 (1877).



The Convention convened at the State House on Wednesday, June 8, 1870, and elected George Nichols of Northfield as President and D. W. C. Clarke as Secretary. Among its members were John R. Cleaveland, Charles K. Field, William Harmon, and H. Henry Powers, members of the 1869 Council of Censors; former Governor Paul Dillingham of Waterbury; E. P. Walton of Montpelier, the editor of *The Vermont Watchman*; and Charles Perkins Marsh of Woodstock.

After adopting rules and appointing committees on the second day, the Convention received numerous petitions from women of various counties in support of or opposed to the extension of the right of suffrage to women. That afternoon, it took up the corporations proposal, which was defeated 62 to 167.

On Friday, the second proposal--the system of biennial elections and legislative sessions--was adopted 119 to 114. Article 3, authorizing the legislature by law to decide how vacancies in the House and Senate should be filled, was defeated on Saturday morning, 47 to 188, as was the proposal to permit the Governor to appoint Judges of the Supreme Court to six year terms, 2 to 231. Women suffrage was rejected 1 to 233 as the next order of business.

Saturday the 11th of June saw the Convention reconsider its decision on biennial terms and sessions. It again passed, this time by a vote of 118 to 115. The abolishment of the Council and popular ratification of constitutional amendments came next. It passed on June 15 by a vote of 123 to 85. With that, the Convention adjourned.

Later that year, Harvey Howes, the sole delegate to vote for women suffrage, published *A Last Resort* (Fair Haven: D. Lyman Crandall, 1870). This pamphlet amplified Howes' position on the movement to get women the vote. He recounts that women were often in the State House during the convention.

Woman suffrage for statewide offices only became the law in Vermont after the ratification of the Nineteenth Amendment on August 20, 1920. In 1880, however, by statutory amendment, Vermont women of majority age could be elected to the office of town clerk or superintendent of schools, and could vote in school district meetings and in the election of school commissioners in towns and cities.<sup>21</sup> In 1919, taxpaying women were allowed to vote in town meetings.<sup>22</sup> In 1920, Governor Percival Clement refused to call a special session of the legislature, which would have given Vermont the honor of being the last state needed to ratify the Nineteenth Amendment, arguing that federal constitutional amendments should first be put to a national referendum. Tennessee became the 36th state to ratify in August, and Vermont's own ratification came the following February.<sup>23</sup> The Vermont Constitution was amended in 1924 to recognize woman suffrage.<sup>24</sup>

The General Assembly did take steps to broaden the ability of

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<sup>21</sup>*Laws of Vermont* (1880), No. 103, 102 and No. 104, 102. *Revised Laws*, Chapter 30, § 524, 163; Chapter 130, § 2659, 525.

<sup>22</sup>*Laws of Vermont* (1919), No. 95, 102.

<sup>23</sup>Crockett, Vol. IV, 546-48.

<sup>24</sup>Art. Amend. 40.

corporations to form by voluntary association rather than legislative act, beginning in 1870.<sup>25</sup> The corporations proposal, with different language, became part of the constitution in 1913, and is now Chapter II, Section 69.<sup>26</sup>

In 1924, the authority of the legislature to provide by general law for the filling of legislative vacancies also became part of the Vermont Constitution.<sup>27</sup>

The six year term for judges became part of the Vermont Constitution in 1974, with the governor having the power to appoint, subject to the advice and consent of the senate, and the legislature having the right to vote on retention at the end of the term.<sup>28</sup>

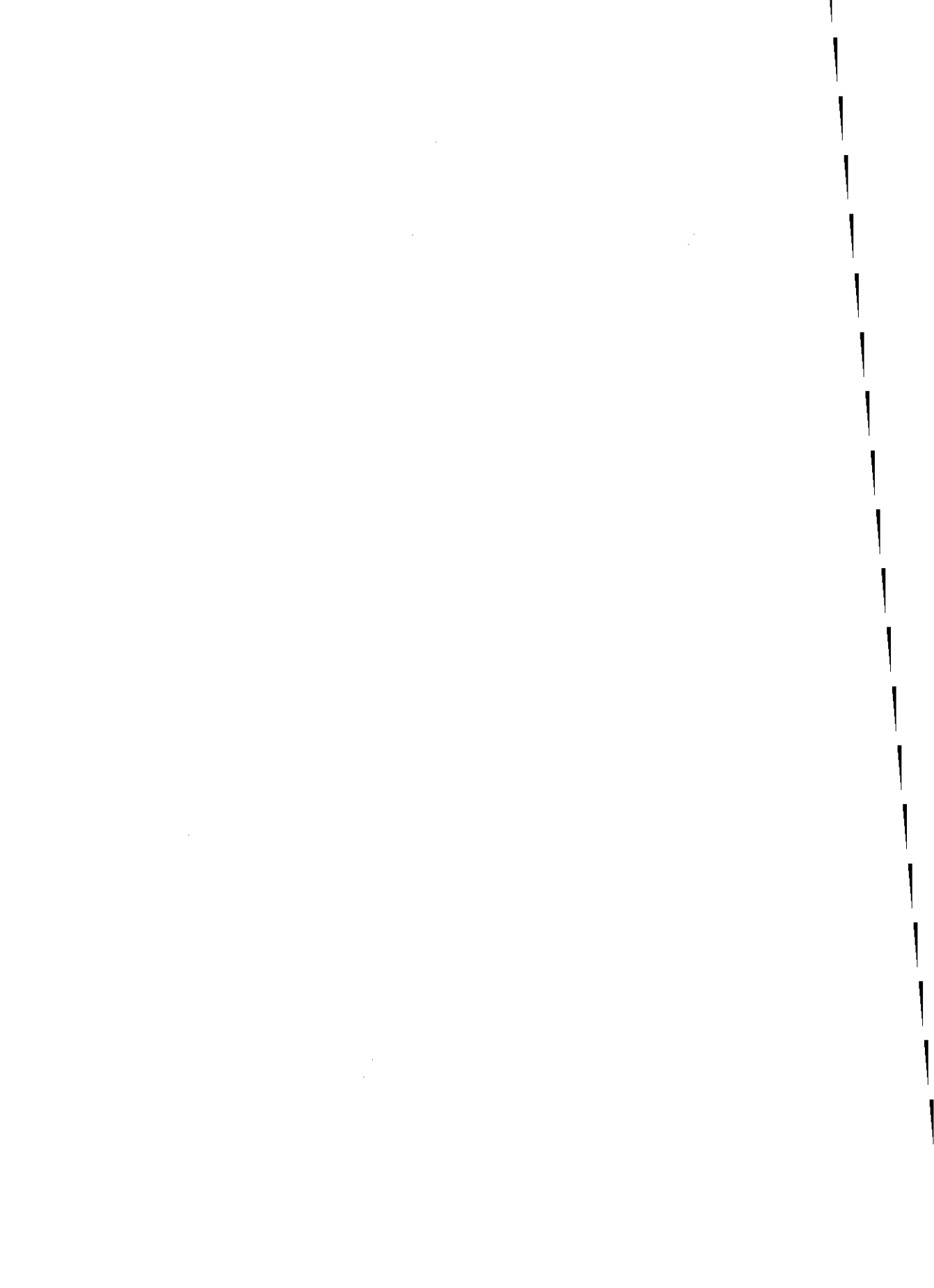
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<sup>25</sup>*Laws of 1870*, No. 6, 26-32; *Laws of 1872*, No. 2, 22-30; No. 21, 60-61; No. 22, 61-62; and *Laws of 1874*, No. 19, 40-41; No. 20, 41; No. 21, 42; No. 24, 46-49. The 1874 acts were passed with H. Henry Powers as Speaker of the House.

<sup>26</sup>Art. Amend. 33.

<sup>27</sup>Art. Amend. 34.

<sup>28</sup>Art. Amend. 46. *Vermont Constitution*, Chapter II, Sections 33 and 34.



# The Annotated Vermont Constitution (1991)

## [Preamble]

[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 dominion 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 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 inhabitants 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 continued 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 of 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 2300 dollars fees for each township; and did enhance the quitrent, three fold, and demanded an immediate delivery of the title derived before, 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 regrants of several tracts of land, included in the premises, to certain favorite land jobbers in the government of New-York, in direct violation of his Britannic majesty's express prohibition, in the year 1767.

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 publicly, to appear in defence of their just rights.

They did pass twelve acts of outlawry, on the 9th 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, and the 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 quit-rents 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 favor; 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, at the extreme part, is upwards of four hundred and fifty miles from the seat of that government, which 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 honorable 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.]

History: Con. 1777, Preamble. Con. 1786, Preamble.

This article was first adopted in December of 1777, at the second constitutional convention of that year. It was drafted by Ira Allen. On July 3, 1793, the journal of the Constitutional Convention reported, "The Convention then proceeded to take under consideration the Preamble to the old Constitution. Ordered that the same be omitted in the present Constitution agreeable to the doings of the Council of Censors." No record of a recommendation to expunge the Preamble appears in the records of the Council of Censors of 1785.

## CHAPTER I A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

**Article 1st.** 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 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, unless he is bound by his own consent, after he arrives to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.

History: Con. 1777, Ch. 1, Art. I. Con. 1786, Ch. 1, Art. I. Con. 1793, Art. I. Art. Amend. 37 (1924).

Article I as first adopted in 1777 provided, "That all men are born equally free and independent, and have certain natural and inherent 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."

A proposal to change the words, "debts, damages, fines, costs, or the like" at the end of the last sentence to "public or private demands," made by the 1785 Council of Censors, was rejected by the 1786 Constitutional Convention.

The present wording was proposed at the 1921 legislative session, concurred in by the session of 1923, ratified by the people on November 4, 1924, and proclaimed by the Governor on April 8, 1925.

**Annotations:** "An act suspending civil process against the persons and property of the officers and soldiers of this State, while in service," passed on November 6, 1812, violates this article, "[i]n that it has a tendency to deprive the citizens of this state, and the citizens of the United States, who come

among us, of the unalienable rights of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing happiness and safety." 1813 Council, 203.

**Article 2nd.** That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

History: Con. 1777, Ch. 1, Art. 2. Con. 1786, Ch. 1, Art. 2. Con. 1793, Ch. 1, Art. 2nd.

In the 1777 Constitution, Article II provided, "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." The change of "any particular man's" to "any person's" was made at the 1793 Constitutional Convention.

**Article 3rd.** That all men have a natural and unalienable 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 to, 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 whatever, 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.

History: Con. 1777, Ch. 1, Art. 3. Con. 1786, Ch. 1, Art. 3. Con. 1793, Ch. 1, Art. 3rd.

In the 1777 Constitution, Article 3 provided, "That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, 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 who professes the protestant religion be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiment, 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 people ought to observe the Sabbath or the 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 present wording comes from an

amendment proposed by the 1785 Council of Censors and adopted at the 1786 Constitution Convention. This included pluralizing the word "understanding" in the first sentence, and adding the words, "as in their opinion, shall be"; deleting the words "who professes the protestant religion"; replacing "whatsoever" with "whatever" following "any power"; replacing "people" with the word "christians"; deleting "the" before "Lord's day"; and deleting "and support" following "keep up."

*Annotations:* An act to support the gospel, passed Oct. 26, 1797, is violative of this article. "The framers of the bill of rights, by this article, indisputably meant to convey the idea, that man necessarily possesses natural knowledge, or simple reason, which they have designated by the name of conscience. This they declare is inalienable, clearly conveying the idea, that one man cannot convey to another man his individual right of worshipping God according to the dictates of his conscience, any more than he can convey to him his right of breathing; for it is impossible in the nature of things, that one person can be profited intellectually, by a conveyance to him of another person's right of thinking; and if these premises are correct, it certainly follows, that the rights of conscience cannot be deputed; that religion is a concern personally and exclusively operative between the individual and his God; and that whoever attempts to control this sacred right, in any possible way, does it by usurpation and not by right.

"[C]onscience is made the only criterion by which a man can possibly be bound, in the execution of such designs; in opposition to which, the law we hereby propose to have repealed, expressly binds the citizens of this state, indiscriminately, to erect and support places of public worship, and to maintain ministers, contrary to this clearly defined right, provided they are so unfortunate as to be in the minority of any town, who may act under the authority of this law, and who are not at the time of taking the vote, possessed of a certain prescribed certificate.

"[I]n no case have civil power any constitutional right to interfere in religious concerns, except to bind persons or communities to discharge their civil contracts, individually entered into, for the mutual support of religious social worship." 1799 Council, 157-58.

"We have compared the third article of the Bill of Rights, being a part of the Constitution, with the laws now in force, for the purpose of supporting Ministers of the Gospel, and building meeting houses for divine service. We consider all the laws now in force on the subject, except the first and last sections of an act, entitled an act for the support of the Gospel, passed October 26th, A.D. 1797, to be contrary to the said article.

"This article very plainly declares, that our right to worship Almighty God, is truly inalienable, that it cannot be given to others, nor taken from ourselves: and that this is the case with every man.

"Man therefore being possessed of knowledge, or reason, which is generally called conscience, and which, by the assistance of scripture, he regards as his rule of faith and manners, considers himself, in the important concerns of religion, the only judge for himself, and on this principle, he believes that his right to worship God undisturbed, and without inconvenience, is an inalienable right. On this principle too, he believes 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 own



conscience.

"Man being his own judge, agreeably to this article, feels himself accountable to none but his God: And as this right was given him by his maker, as a talent for improvement, and for which he only must be accountable, it follows that all restraint in one case, or compulsion in another, is contrary to the nature of the thing itself, and the above recited article.

"This council therefore, impressed with a sense of the importance of the rights of conscience, and of maintaining those rights, are of opinion that the aforementioned sections of laws are repugnant to the constitution: and that the legislature in enacting them, have assumed to themselves and exercised greater powers, than they were entitled to by the constitution of this state. Under these impressions the council have recommended their repeal." 1806 Council, 179-82.

**Article 4th.** Every person within this state 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.

History: Con. 1786, Ch. 1, Art. 4. Con. 1793, Ch. 1, Art. 4.

As adopted in 1786, the word "Commonwealth" appeared where "state" now does in the first sentence. The switch came with the 1793 Constitution.

*Annotations:* "An act suspending civil process against the persons and property of the officers and soldiers of this State, while in service," passed on November 6, 1812, violates this article, "[i]n that it is an unnecessary delay, and even denial of recourse to the laws and of justice, to the citizens of this and the United States." 1813 Council, 203.

**Article 5th.** That the people of this State by their legal representatives, have the sole, inherent and exclusive right of governing and regulating the internal police of the same.

History: Con. 1777, Ch. 1, Art. 4. Con. 1786, Ch. 1, Art. 5. Con. 1793, Ch. 1, Art. 5th.

The words, "by their legal representatives," were added at the 1786 Constitutional Convention, and the words "exclusive and inherent" rearranged to read "inherent and exclusive."

**Article 6th.** 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.

History: Con. 1777, Ch. 1, Art. 5. Con. 1786, Ch. 1, Art. 6. Con. 1793, Art. 6th. The words, "in a legal way," were added at the 1786 Constitutional Convention.

**Article 7th.** 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 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 most conducive to the public weal.

History: Con. 1777, Ch. 1, Art. 6. Con. 1786, Ch. 1, Art. 7. Con. 1793, Ch. 1, Art. 7th.

The preamble, expunged in 1793, contains an echo of this sentiment, in its use of the words, "the people have right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness," in the first paragraph, and "without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever," in the last paragraph. In 1786, the phrase, "to reform or alter government," replaced the phrase, "to reform, alter, or abolish government."

[Article 8th. 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.]

History: Con. 1777, Ch. 1, Art. 8. Con. 1786, Ch. 1, Art. 8.

In 1777, this article read, "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 to supply the vacancies, by certain and regular elections." The words, "by their legal Representatives, to enact laws for" and "in a constitutional manner," were added, and the words "and certain" deleted, at the 1786 Constitutional Convention. At the 1793 Convention, the article was abolished.

**Article 8th.** That all elections ought to 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, agreeably to the regulations made in this constitution.

History: Con. 1777, Ch. 1, Art. 7. Con. 1786, Ch. 1, Art. 9. Con. 1793, Ch. 1, Art. 8th.

The phrase "and elected into office" replaced "or elected into office" in 1786. At the 1793 Convention, the words, "agreeably to the regulations made in this constitution," were added.

*Annotations:* "In the sixth section of 'An act directing the mode of elections,' passed October 26th, 1796, according to the 1799 Council, "the supreme court are empowered to disfranchise a freeman for any *evil practice*

*which shall render him notoriously scandalous.* This part of the section, independent of its vague and uncertain meaning, is against the letter and spirit of the eighth article of the bill of rights, and the 34th section of the form of government, the former only declares *That all elections ought to be free and without corruption*, the latter, points out what constitutes the crime of bribery in elections, and the punishment therefor, leaving to the legislature the right of adding farther penalties for the crime, as therein ascertained.

"The Council are fully of opinion, that the framers and adopters of the constitution, contemplated to preserve inviolate the right of suffrage to every freeman, unless he should in fact forfeit the right, by acting wickedly and corruptly, relating only to that inestimable privilege." 1799 Council, 156.

"We . . . find on the journals of the house repeated instances of resolutions, passed by the house, authorizing different towns on various occasions, to elect representatives to represent them in the general assembly, and that in consequence of such resolutions, representatives have been elected on days not appointed for their election by the constitution, who have taken their seats accordingly." This is a violation of Article 8th, according to the Council. 1799 Council, 159.

**Article 9th.** 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 any person'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 are 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 community than the money would be if not collected.

History: Con. 1777, Ch. 1, Art. 9; Ch. 2, Sec. 37. Con. 1786, Ch. 1, Art. 10. Con. 1793, Ch. 1, Art. 9th.

In the 1777 Constitution, Art. 9 provided, "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 the 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 law, but such as they have, in like manner, assented to, for their common good. Section XXXVII of the 1777 Constitution provided, "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 clear 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." The 1786 Council proposed, and the Convention adopted, an amalgamation of these two parts. This change included the substitution of "that" for "the" before the word "protection," the substitution of "or that of the Representative body of the Freemen" for "or that of his legal representatives," and the deletion of the words, "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 "which being well observed, taxes can never be burthens." In 1793, the phrase "no part of a man's property" became "no part of any person's property."

*Annotations:* The 1785 Council objected to "the last clause of a statute passed 23d February, 1779, entitled, 'An act making the laws of this State temporary;' by which it is enacted, 'That no court or justice, shall take cognizance of any matter or thing, in which the title of land is concerned, or in any action of contract, where the parties appear to have made a bargain or contract, by note, bond, debts, or agreement in writing, or otherwise; any act or law to the contrary notwithstanding.' This statute, together with those others passed from time to time, prohibiting the trial of the titles to land, appears to this Council to militate against the ninth article in the Bill of Rights, which is expressive of the design of forming social compacts." 1785 Council, 63-64.

"The committee are aware that it is urged that the Legislature in chartering the Vermont Central Railroad Company, exempted the stock, franchise and property of that company perpetually from taxation. If that exemption is constitutional and valid, it furnishes an objection as forcible against taxation of the stock of other similar corporations as against the taxation of the corporations as such.

"The committee would respectfully raise the question whether the Legislature in granting that exemption did not step beyond its constitutional power? Whether so long as the Constitution provides that protection furnished by the State, imposes the duty of contributing to the expense of that protection the Legislature has the power to breathe life into a corporation, endow it with rights and privileges, clothe it with the power of holding and acquiring property protect it in its life, rights, privileges, and property, and relieve it of the duty and burden of contributing its proportion to the expense of that protection?" 1869 Council, 657.

**Article 10th.** That in all prosecutions for criminal offenses, a person 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 favor, 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 person be justly deprived of his liberty, except by the laws of the land, or the judgment of his peers; provided, nevertheless, in criminal prosecutions for offenses not punishable by death, the accused, with the consent of the prosecuting officer entered of record, may in open court or by a writing signed by him and filed with the court, waive his right to a jury trial and submit the issue of his guilt to the determination and judgment of the court without a jury.

History: Con. 1777, Ch. 1, Art. 10. Con. 1786, Ch. 1, Art. 11. Con. 1793, Ch. 1, Art. 11th. Art. Amend. 48 (1974).

This provision remained unchanged from its creation in 1777 until 1793, when the word "person" in the first line replaced "man," and "any person" in the phrase "nor can any person be justly deprived of his liberty" replaced "he." In 1974, the words, "provided, nevertheless, in criminal prosecutions the consent of the prosecuting officer entered of record, may in open court or by a writing signed by him and filed with the court, waive his right to a jury trial and submit the issue of his guilt to the determination and judgment of the court without a jury," were added. This amendment had been proposed by the General Assembly of 1971-72, concurred in by the session of 1973, ratified by the people on November 5, 1974, and proclaimed by the Governor on April 9, 1974.

*Annotations:* An Act passed in February, 1779, entitled "An Act to prevent unseasonable night-walking, and for the punishing of Disorders committed in the night season" is contrary to the tenth Article in the Bill of Rights. 1785 Council, 27, 37.

"The act entitled 'An act directing the deed of Job and Theoda Wood to be given in evidence,' passed the 20th October, 1812, violated this article, according to the 1813 Council of Censors.

"The said act is unconstitutional--In that it appears in the recitative clause of the said act, that the said deed, for want of a proper acknowledgment endorsed thereon, and recorded at length with the said deed, was, by the existing law of this state, absolutely void; and that in consequence thereof remained vested in the said Theoda Wood, and might have become, at the time of passing the said act, vested in her heirs, or subsequent grantee.

"The enacting clause of the said act therefore tends to divest one individual of a private right and title, and to invest the same in another individual, by a sovereign act of the legislature:--whereas the constitution does not confer on the legislature any power to decide on rights of individuals; and every attempt thus to decide on, and destroy the rights of individuals, by the legislature, is an assumption of power not warranted by the constitution." 1813 Council, 205.

**Article 11th.** 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.

History: Con. 1777, Ch. 1, Art. 11. Con. 1786, Ch. 1, Art. 12. Con. 1793, Ch. 1, Art. 11.

The 1785 Council of Censors proposed to delete Article 12 and amend Article 11 to read, "Warrants, without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be authorised or required to search suspected places, or to seize any person or persons, his, her, or their property, not therein particularly described, ought not to be granted in any criminal matter or complaint," but the 1786 Convention dismissed it. In 1793 "oaths and affirmations" became singular nouns.

*Annotations:* "We find by the fourth section of the act under consideration, that every person travelling through this state, under suspicious circumstances, is liable to have his trunk opened and searched--his papers, of whatever kind, searched and seized, by any and every justice of the peace, within whose jurisdiction he may happen to be; and this without any warrant obtained therefor.

"We need only refer you to the eleventh article of the bill of rights to prove the repugnancy of this act to our sacred constitution." 1813 Council, 198, 205.

**Article 12th.** That when any 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.

History: Con. 1777, Ch. 1, Art. 13. Con. 1786, Ch. 1, Art. 14. Con. 1793, Ch. 1, Art. 13.

The 1777 Constitution provided, "That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury; which ought to be held sacred." In 1786, the words "in controversies respecting property" were deleted and "when an issue in fact, proper for the cognizance of a jury, is joined in a Court law" added to this Article.

*Annotations:* "An act to secure Daniel Marsh in the possession of a certain farm until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him," passed June 18, 1785, violates this article "because it divests one subject of [a man's, later person's] possession to land, already determined to be his right, by a court and jury, and arbitrarily vests it in another, without the intervention of a jury." 1785 Council, 31, 41.

An act passed October 22, 1782, entitled, "An act for the regulation and establishment of town lines," and its subsequent amendments; an act passed February 26th, 1782, entitled, "An act to ascertain the boundaries of the towns therein mentioned;" an act passed October 23, 1783, entitled, "An act for the purpose of enabling the Surveyor-General to complete the survey of the town lines in this State;" and an act passed March 8, 1784, entitled, "An act for the purpose of cutting roads in the northern parts of this State" appear to be unconstitutional "because they appear to authorise the Legislature to determine the right of property, held under different titles, and thereby preclude the aggrieved proprietors their remedy at law, contrary to the true intent and meaning of the 13th article in the Bill of Rights." 1785 Council, 40.

"It is the opinion of this Council, that the General Assembly, in all the instances where they have vacated judgments, recovered in due course of law, (except where the particular circumstances of the case evidently made it necessary to grant a new trial) have exercised a power not delegated, or intended to be delegated, to them, by the Constitution. This mode of proceeding is an assumption of the judicial power in the last resort, and renders nugatory that important article in the Bill of Rights which provides, 'That in all suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred.' It supercedes the necessity of any other law than the pleasure of the Assembly, and of any other court than themselves: for it is an imposition on the suitor, to give him the trouble of obtaining, after several expensive trials, a final judgment agreeably to the known established laws of the land; if the Legislature, by a sovereign act, can interfere, reverse the

judgment, and decree in such manner, as they, unfettered by rules, shall think proper. If such is their constitutional authority, it would be a mercy to prohibit any other persons than themselves the exercise of judicial powers. The legislative body is, in truth, by no means competent to the determination of causes between party and party, nor was, by our Constitution, or that of any other country who make pretences to freedom, ever considered so (not taking into view the amazing expense it would bring upon the public, and the disadvantage of its engrossing that time which ought to be occupied in their more important and proper employment of legislating.)

If one set of men are to enact and execute our laws, and when they do not find one to answer a particular purpose, to make it *instantier*, or in other words, if they are to possess all the authority as judges, which they, as legislators, are pleased, from time to time, to confer on themselves, unhappy indeed is the lot of the people." 1785 Council, 68-69.

A statute passed February 23, 1779, entitled, "An act making the laws of this State temporary," in which the legislature prohibited the trial of land titles by any court, was violative of this article. 1785 Council, 64.

[Article 13th. 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.]

History: Con. 1777, Ch. 1, Art. 12. Con. 1786, Ch. 1, Art. 13.

This article, originally part of the 1777 Constitution, was deleted from the Constitution in 1793.

**Article 13th.** That the people have a right to 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.

History: Con. 1777, Ch. 1, Art. 14. Con. 1786, Ch. 1, Art. 15. Con. 1793, Ch. 1, Art. 13th.

In 1786, the words, "concerning the transactions of government," were added to this Article. Section 32 of the 1777 Constitution was also repealed that year. It provided that, "The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government."

**Article 14th.** The freedom of deliberation, speech and debate in the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

History: Con. 1786, Ch. 1, Art. 16. Con. 1793, Ch. 1, Art. 14th.

This article was added to the Constitution in 1786.

**Article 15th.** 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 as this constitution, or the Legislature shall provide for.

History: Con. 1786, Ch. 1, Art. 17. Con. 1793, Ch. 1, Art. 15th.

This article was added to the Constitution in 1786, and read, "The power of suspending laws, or the execution of them, ought never to be exercised by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provided for." In 1793, the word "but" was added before the words, "by the Legislature"; the word "only" deleted; the words, "this constitution, or" added following "cases"; and "expressly" deleted.

**Article 16th.** That the people have a right to bear arms for the defence of themselves and 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.

History: Con. 1777, Ch. 1, Art. 15. Con. 1786, Ch. 1, Art. 18. Con. 1793, Ch. 1, Art. 16th.

This article is identical to the original 1777 Constitution. In 1786, the Council proposed replacing the words, "themselves and the State" with "the community"; replacing "kept up" with "supported"; and adding the words, "unless there shall be imminent danger of an invasion, insurrection or rebellion, and the, only during the existence of these causes," following "kept up." These proposals were not adopted by the Convention of 1786. The 1786 Convention did, however, delete, on the Council's recommendation, former Section XLII, which provided, "All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly."

*Annotations:* "[T]he Commander in Chief, and the members of the court martial, have assumed to themselves new and unheard of jurisdictional powers, by which they have broken down that sacred principle, which is now incorporated with the very essence of freedom, *That the military shall be kept under strict subordination to, and governed by the civil power*, by arraigning a citizen before an unconstitutional military tribunal, subjecting him to an illegal trial, and passing an ignominious martial sentence upon him, for crimes and misdemeanors, not one of which are even alledged to have been committed while he was acting in a Military capacity, and for which of consequence he could only be amenable before a civil tribunal.

"The council are therefore obliged to declare, that they esteem the proceedings in the case of Major General Whitney, to be a bold attempt, to extend the authority of the military over the civil power, and that it is truly alarming, as its ultimate tendency must appear to be, to overwhelm our civil jurisprudence, in the vortex of military tribunals, abridging the right of trial by jury, and giving the commander in chief an undue influence and authority over the liberties and privileges of his fellow citizens." 1799 Council, 169.

"An act suspending civil process against the persons and property of the



officers and soldiers of this State, while in service," passed on November 6, 1812, "[i]n that it exempts the military from the constitutional subordination of the civil power; and subjects the citizens of this and the United States to injury, abuse, and deprivation of civil liberty, by the said officers and soldiers, and leaves them without redress by suits at the common law, contrary to the sixteenth article in the bill of rights of the said constitution." 1813 Council, 198, 203.

The 1841 Council was concerned about "that portion of the militia law which related to the government of the militia when not in actual service, and to pronounce that part of it, which empowered the officers of the militia to impose and enforce the collection of fines and penalties by law-martial, and without the right of trial by jury, to be in contravention of the seventeenth section of the first chapter of the constitution. That section declared that 'no person in this state 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 and the militia in actual service.' Believing that the law, authorizing the imposition of fines by courts-martial for military neglects and offences, at ordinary militia trainings, was directly in violation of the above recited article of the constitution, we respectfully recommended to the legislature its repeal or modification, and we are gratified to find that the last legislature has so far amended this law as to repeal its objectionable parts, and to give the accused a trial before the ordinary civil tribunals." 1841 Council, 429.

**Article 17th.** That no person in this state 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, and the militia in actual service.

History: Con. 1786, Ch. 1, Art. 19. Con. 1793, Ch. 1, Art. 17th.

This article was added in 1786. In 1793, "state" replaced "commonwealth" in the first line.

*Annotations:* "An act regulating and governing the militia of this State," passed Nov. 10, 1818, "provides rules and articles, by which the militia of this state shall be governed, *when not in actual service*; which rules and articles impose various 'pains and penalties' on 'persons in this State.'"

"It has been made to appear to your committee that there is considerable complaint against the said rules and articles, and much doubt of their constitutionality. And your committee are of opinion, that if the words '*Law Martial*' in the aforesaid article of the Constitution were intended, according to their more general and vulgar acceptation, to embrace all laws for the government of the army and militia, the said provisions of the act aforesaid are clearly unconstitutional.

"But the committee are further of opinion, that the words, '*Law Martial*,' in the said article of the Constitution, were intended to be taken in their more limited and technical sense, as 'the arbitrary will of a military commander.' And that the said article of the Constitution was not intended to limit the powers of the Legislature in the enactment of laws regulating the militia not in actual service, but to secure the citizens from an infringement of their rights by military commanders in *actual service*. The committee are confirmed in this opinion by considering the absolute necessity of laws, imposing penalties for regulating the

militia, and from observing that the 22d section of the Constitution empowers the Legislature to enact such laws.

"The committee therefore report, that the provisions of the act, entitled 'an act regulating and governing the militia of this State,' are consistent with the Constitution." 1820 Council, 248.

**Article 18th.** 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 making and executing such laws as are necessary for the good government of the State.

History: Con. 1777, Ch. 1, Art. 16. Con. 1786, Ch. 1, Art. 20. Con. 1793, Ch. 1, Art. 20th.

The 1786 Convention added the words, "in a legal way," to the article as it appeared in the 1777 Constitution. In 1793, "the" disappeared from its former place before the word "making" in the last clause.

**Article 19th.** That all people have a natural and inherent right to emigrate from one State to another that will receive them.

History: Con. 1777, Ch. 1, Art. 17. Con. 1786, Ch. 1, Art. 21. Con. 1793, Ch. 1, Art. 19th.

The article as it appeared in the 1777 Constitution included, "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." This was removed in 1786.

**Article 20th.** 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.

History: Con. 1777, Ch. 1, Art. 18. Con. 1786, Ch. 1, Art. 22. Con. 1793, Ch. 1, Art. 20th.

The 1785 Council proposed adding the words, "in their respective town," following the word "together," but the Convention dismissed it.

*Annotations:* "The Committee on the Powers of the Constitution would respectfully report--

"That they fully recognize the right of petition, memorial and remonstrance, and, in the cases here submitted, this Committee recognize the right of the petitioners to ask of the Council the consideration of the matters therein contained.

"The idea of a petition presupposes an ability to grant the prayer, if it is found meritorious; and also a discretion to reject it, if, upon the whole, the exercise of a sound discretion would dictate that course. But this body are not

invested with the power of "*redressing grievances*." The most that this Council can do is to advise or "recommend to the Legislature the repealing such laws as shall appear to have been passed contrary to the principles of the Constitution." But the Legislature is not bound to regard such recommendations." 1848 Council, 498.

**Article 21st.** That no person shall be liable to be transported out of this State for trial for any offence committed within the same.

History: Con. 1777, Ch. 1, Art. 19. Con. 1786, Ch. 1, Art. 23. Con. 1793, Ch. 1, Art. 21st.

There was a minor change in 1786, replacing the words "within the State" with "within the same."

## CHAPTER II PLAN OR FRAME OF GOVERNMENT

### Delegation and Distribution of Powers<sup>15</sup>

**Section 1.** The Commonwealth or State of Vermont shall be governed by a Governor (or Lieutenant Governor), a Senate and a House of Representatives of the freemen of the same, in manner and form following:

History: Con. 1777, Ch. 2, Sec. 1. Con. 1786, Ch. 2, Sec. 1. Con. 1793, Ch. 2, Sec. 1. Arts. Amend. 2, 3, 8 (1836).

Originally, the Lieutenant Governor was a Deputy Governor (1777), but this was amended in 1786. From 1777 to 1836, the word "Council" was included in this section, but was replaced by "Senate" in 1836, when the legislature became a coordinate body. In 1836, "Assembly" became "House of Representatives."

**Section 2.** The Supreme Legislative power shall be exercised by a Senate and a House of Representatives.

History: Con. 1777, Ch. 2, Sec. 2. Con. 1786, Ch. 2, Sec. 2. Con. 1793, Ch. 2, Sec. 2. Art. Amend. 3 (1836).

In 1777, this section read, "The supreme legislative power shall be vested in a House of Representatives of the Freemen or Commonwealth or State of Vermont." It was amended in 1836 to include the Senate and delete "of the Freemen or Commonwealth or State of Vermont."

**Section 3.** The Supreme Executive power shall be exercised by a Governor, or in his absence, a Lieutenant-Governor.

History: Con. 1777, Ch. 2, Sec. 3. Con. 1786, Ch. 2, Sec. 3. Con. 1793,

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<sup>15</sup>The titles of the various sections of Chapter II of the Constitution were added by the Supreme Court, as part of its powers of revision, in 1913.

Ch. 2, Sec. 3. Art. Amend. 8 (1836).

The 1777 Constitution provided, "The supreme executive power shall be vested in a Governor and Council." The words, "(or in his absence a Lieutenant-Governor)," were added in 1786. The 1836 amendments abolished the Executive Council (Governor and Council), leaving the Governor alone in the responsibility for executive power.

**Section 4.** The judicial power of the State shall be vested in a unified judicial system which shall be composed of a Supreme Court, a Superior Court, and such other subordinate courts as the General Assembly may from time to time ordain and establish.

History: Con. 1777, Ch. 2, Sec. 4. Con. 1786, Ch. 2, Sec. 4. Con. 1793, Ch. 2, Sec. 4. Art. Amend. 46 (1974).

Section IV of the 1777 Constitution provided, "Courts of justice shall be established in every county in this State." Section XXIII provided that, "All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay." These sections were wedded and extra language added to form a new section 4 in 1786--"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 causes as may be appealed to the county court.)" In 1793, the word "open" in the first sentence was changed to "opened."

In 1974, the present language was added as part of the reorganization of the judiciary of that year.

[Section 5. 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; and also a court to correct the errors of the supreme court of judicature: provided they do not constitute themselves the judges of either of said courts.]

History: Con. 1786, Ch. 2, Sec. 5. Con. 1793, Ch. 2, Sec. 5th.

This section was added in 1786. Following the revision of Chapter II in 1913, this became section 29. In 1974, the provision was removed from the Constitution in the wake of the reorganization of the judiciary.

**Section 5.** The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.

History: Con. 1786, Ch. 2, Sec. 6. Con. 1793, Ch. 2, Sec. 6.

This section was added in 1786.

*Annotations:* "An Act Directing the Deed of Job and Theoda Wood," adopted October 20, 1812, "is unconstitutional--In that it appears in the recitative

clause of the said act, that the said deed, for want of a proper acknowledgment endorsed thereon, and recorded at length with the said deed, was, by the existing law of this state, absolutely void; and that in consequence thereof remained vested in the said Theoda Wood, and might have become, at the time of passing the said act, vested in her heirs, or subsequent grantee.

"The enacting clause of the said act therefore tends to divest one individual of a private right and title, and to invest the same in another individual, by a sovereign act of the legislature:--whereas the constitution does not confer on the legislature any power to decide on rights of individuals; and every attempt thus to decide on, and destroy the rights of individuals, by the legislature, is an assumption of power not warranted by the constitution." 1813 Council, 207.

In 1820, the Council reviewed the practice of private acts, authorizing new trials and other special privileges for individuals. The Council's committee believed that "the intention of the framers of [the Constitution was] to refer to the prior usage of this, and other countries, for the definition of those powers.

"And it is believed, the granting of new trials is as well understood to be a judicial act, as the enforcing of the payment of debts, or the infliction of penalties for the commission of crimes.

"If there be any exceptions to this principle, they must relate to courts unknown to the 'common law,' and peculiar to our own institutions; and in regard to such, if any there be, it is believed by the committee, that the authority to grant new trials, should rather be exercised by some judicial tribunal, to be designated by the Legislature, than by that body." 1820 Council, 241.

[Section VII. The House of Representatives of the Freemen of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every town in this State, respectively. And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.]

History: Con. 1777, Ch. 2, Sec. 7. Con. 1786, Ch. 2, Sec. 8. Con. 1793, Ch. 2, Sec. 8. Arts. Amend. 30 (1836), 36 (1974).

This section was adopted in 1777 and renumbered in 1786 as Section 8, after the addition of the separation of powers clause. That year the last sentence was deleted. In 1793, the words "by ballot" were added following "chosen," and "on the first Tuesday of September, annually, forever," following "respectively." In 1913, Section 8 was renumbered as Section 38 by the Supreme Court, during its revision of Chapter II, with a change in the date of the General Election to the first Tuesday following the first Monday of November. In 1974, the Supreme Court revised the Constitution a second time, under the authority of Article of Amendment 36 (1913), and deleted this section from this Constitution.

## Legislative Department

**Section 6.** The Senate and House of Representatives shall be styled, *The General Assembly of the State of Vermont*. Each shall have and exercise the like powers in all acts of Legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the

concurrence of the other. *Provided*, That all Revenue bills shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as on other bills. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting; and in case of disagreement between the two Houses with respect to adjournment, the Governor may adjourn them to such time as he shall think proper. They may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, subject to the provisions of section 69, constitute towns, boroughs, cities and counties; 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.

History: Con. 1777, Ch. 2, Sec. 8. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Arts. Amend. 2, 3 (1836) and 36 (1913).

The 1777 Constitution provided that, "The members of the House of Representatives shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled, *The General Assembly of the State of Vermont*: and 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 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, but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in Windsor, on the second Thursday of March next." In 1786, the Convention eliminated the words, "members of the House of" in the sentence and added the parenthetical phrase, "(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)." This may have been an attempt to restore part of the meaning of deleted Section XI of the 1777 Constitution, which had provided, "If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns that do elect and send representatives (provided they be a majority of the inhabited towns 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."

In 1786, the prohibition against removing members for a second time for the same cause was also deleted, in place of a restriction against removal for "causes known to their constituents antecedent to their election." The Convention authorized the administration of oaths by members in matters depending before them," and added, "they may annually, in the first session

after their election, and at other times, when vacancies happen, choose delegates to Congress (subsequent to the admission of this State into confederation with the United States;) and shall also, in conjunction with the Council, annually (or oftener 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 there shall be occasion." It also added the words, "and sovereign" before the word "state" in the last sentence. These changes came from a reorganization of the Constitution involving parts of Sections 8, 10, 27 and 42.

This section remained in effect until the amendments of 1836 creating a Vermont Senate. See page 760 for that amendment. Articles of Amendment 2 and 3 were not physically merged with Section 6 until 1913, when Article of Amendment 36 authorized the judges of the Supreme Court to revise Chapter 2 of the Constitution. The addition of the words, "subject to the provisions of section 65" is their contribution to this section, in light of Article of Amendment 33, relating to the legislature's authority to adopt and amend municipal charters. In the revisions of 1913, the House's power to conduct elections, expel its own members, administer oaths, and impeach were moved to Section 14, and "concur in" replaced "concur with."

*Annotations:* In 1799, the Council of Censors objected to the "admission of Stephen Buchannon to a seat, in the house of representatives in October 1796, who was not elected on the day pointed out by the Constitution . . . as there is no article in that instrument to warrant the house in such a procedure," citing the last clause of this section, "but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution." 1799 Council, 159.

**Section 7.** The General Assembly shall meet biennially on the first Wednesday next after the first Monday of January, beginning in A.D. 1915.

History: Con. 1777, Ch. 2, Sec. 8. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Arts. Amend. 24, Sec. 1 (1870); 30 (1913).

From 1777 until 1870, the Constitution provided that the General Assembly should convene on the second Thursday of October, annually. In 1870, biennial sessions became the law, although the starting date for the biennium remained on the first Thursday of October every second year. For many years, a single session lasting a few weeks in the first year of the biennium was the rule. In 1913, with the date of the General Election moved to the first Tuesday after the first Monday of November, the opening day of the legislature became the first Wednesday after the first Monday of January.

**Section 8.** 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.

History: Con. 1777, Ch. 2, Sec. 12. Con. 1786, Ch. 2, Sec. 13. Con. 1793, Ch. 2, Sec. 13.

This section was amended in 1786 by deleting "and remain" following "shall be"; replacing "representatives of the freemen of the State" with the present

"General Assembly of this commonwealth"; and changing "the doors" at the end of the sentence to "them."

**Section 9.** The votes and proceedings of the General Assembly shall be printed (when one-third of the members of either House think it necessary) as soon as convenient after the end of the session, with the yeas and nays of the House of Representatives on any question required by five members, and of the Senate when required by one Senator (except where the votes shall be taken by ballot), in which case every member of either House shall have a right to insert the reasons of his vote upon the minutes.

History: Con. 1777, Ch. 2, Sec. 13. Con. 1786, Ch. 2, Sec. 14. Con. 1793, Ch. 2, Sec. 14. Art. Amend. 31 (1913).

According to the 1777 Constitution, the votes and proceedings of the General Assembly had to be printed weekly. In 1786, "as soon as convenient" replaced weekly publication. The 1785 Council of Censors proposed a qualification, allowing no publication for parts "as may require secrecy," but the Convention dismissed this without comment. In 1913, as part of the revision of the Constitution by the Supreme Court, Section 9 was changed to include a similar provision for the Senate.

[Section 10. Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superceded, 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 re-election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress.]

History: Con. 1777, Ch. 2, Sec. 10. Con. 1786, Ch. 2, Sec. 27.

This section was adopted in 1777. In 1786, this was amended, along with new material, to become Section 27, which read, "Any delegate to Congress may be superceded 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." This new section was deleted in 1793.

**Section 10.** The style of the laws of this State shall be, It is hereby enacted by the General Assembly of the State of Vermont.

History: Con. 1777, Ch. 2, Sec. 15. Con. 1786, Ch. 2, Sec. 15. Con. 1793, Ch. 2, Sec. 15.

Aside from a minor change in spelling "style" (formerly "stile") in 1913, this section has remained the same since 1777.

**Section 11.** Every bill which shall have passed the Senate and



House of Representatives shall, before it becomes a law, be presented to the Governor; if he approves, he shall sign it; if not, he shall return it, with his objections in writing, to the House in which it shall have originated; which shall proceed to reconsider it. If, upon such reconsideration, two-thirds of the members present of that House shall pass the bill, it shall, together with the objections, be sent to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of the members present of that House, it shall become a law.

But, in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the Governor, as aforesaid, within five days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it; unless the two Houses by their adjournment, within three days after the presentation of such bill shall prevent its return; in which case it shall not become a law.

History: Con. 1777, Ch. 2, Sec. 14. Con. 1786, Ch. 2, Sec. 16. Con. 1793, Ch. 2, Sec. 16. Arts. Amend. 11 (1836), 29 (1913).

The 1777 Constitution provided that, "To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determination as much as possible prevented, all bills of public nature shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people before they are read in General Assembly for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in the case of sudden necessity) be passed into laws; and no other shall 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 and set forth in their preambles."

In 1786, the words "of public nature" in the first sentence were replaced with "which originate in the Assembly" and "perusal" was replaced with "revision." The requirement that all bills would be printed "for the consideration of the people before they are read in General Assembly for the last time of debate and amendment" was eliminated, and new language added requiring the Governor and Council to return the bill to the Assembly with their proposals of amendment, with the right to suspend the bill's passing until the next session of the legislature. The requirement that the reasons and motives for making the law be fully and clearly expressed in a preamble was repealed that year, and a new section added giving the Governor and Council until the rising of the next legislature to return the bill to avoid it becoming a law.

In 1836, when the Executive Council was abolished and a Senate created, the Governor was given authority to veto bills. The bills, if the legislature were still in session, would then be reconsidered and if a majority passed it in each chamber the bill would become a law without the Governor's signature. In 1913, the section was amended to require a two-thirds vote in each change to override a veto.

**Section 12.** No member of the General Assembly shall, directly or indirectly, receive any fee or reward, to bring forward or advocate any bill, petition, or other business to be transacted in the Legislature; or advocate any cause, as counsel in either House of legislation, except when employed in behalf of the State.

History: Con. 1793, Ch. 2, Sec. 19.

This section, enacted in 1793, has not changed since that time.

**Section 13.** The House of Representatives shall be composed of one hundred and fifty Representatives. The freemen of each representative district established by law shall elect one or two Representatives from that district, the number from each district to be established by the General Assembly.

In establishing representative districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.

History: Con. 1777, Ch. 2, Sec. 16. Con. 1786, Ch. 2, Sec. 7. Con. 1793, Ch. 2, Sec. 7. Arts. Amend. 39 (1924), 38 (1974), 50 (1986).

The 1777 Constitution provided that, "In order that the Freemen of this State might 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 years, 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." This section remained in effect until 1924, when the following provision took effect: "In order that the freemen of the state may enjoy equally the benefit of election as equally as may be, each inhabited town in this state may, forever hereafter, hold elections therein and choose each one representative to represent them in the House of Representatives. Provided, however, that the General Assembly shall the power to regulate by law the mode of filling all vacancies in the House of Representatives which shall happen by death, resignation or otherwise."

In 1974, following a federal court order that required population-based apportionment of the House of Representatives, the 150 member House was first made a feature of the Constitution. Reapportionment would occur following each second Presidential election, based on checklist size. In 1986, the section was amended to provide for a decennial reapportionment based on population, using the U.S. Census as a guide. See Section 73 *infra*.

**Section 14.** 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 as required by section 7, and shall be styled the

House of Representatives: they shall have power to choose their Speaker, their Clerk and other necessary officers, sit on their own adjournments subject to the limitations of section 6, 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, administer oaths and affirmations in matters depending before them, and impeach state criminals.

History: Con. 1777, Ch. 2, Sec. 8, 9. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Art. Amend. 2 (1836).

See notes to Section 6 *supra*. The quorum requirement for the House was two-thirds in 1777, according to Section 9. The Council proposed and the Convention amended this section to a majority in 1786.

*Annotations:* Under former Section 43 (1793 Constitution), the Council's powers included the right to "order impeachments." When the House decided against the impeachment of Sheriff William Coley, the Council responded in censorious objection: "To admit that the house have a right to investigate the facts on which impeachments are founded, when ordered as aforesaid, admits the further idea, that they have the right of deciding whether they will comply with the order of the council of censors, constitutionally directed to them, or not.

"It will not be contended that the house have a right to try impeachments, their power only extending, when ordered as aforesaid, to the act of impeaching: But in the present existing instance, the house, unconstitutionally entered upon the trial of facts, in an important cause, and made a decision in the case." 1799 Council, 162.

**Section 15.** No person shall be elected a Representative or a Senator until he has resided in this State two years, the last year of which shall be in the legislative district for which he is elected.

History: Con. 1793, Ch. 2, Sec. 18. Art. Amend. 48 (1974).

Added in 1793, this section remained unchanged until it was rewritten to merge the requirements for Representative and Senator during the revision of 1974.

**Section 16.** 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 theretofore 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 or 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.*

History: Con. 1777, Ch. 2, Sec. 9. Con. 1786, Ch. 2, Sec. 12. Con. 1793, Ch. 2, Sec. 12.

In 1777, the oath was called an oath of fealty and allegiance, and included swearing and affirming that "*I do believe in one God, the creator and governor of the universe, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the Protestant religion.*" The section included the promise that "no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State." Continued in 1786, after changing the "I" form to "you," the religious oath was deleted in 1793.

**Section 17.** The Representatives having met on the day appointed by law for the commencement of a biennial session of the General Assembly, and chosen their Speaker, and the Senators having met, shall, before they proceed to business, take and subscribed the following oath, in addition to the oath prescribed in the foregoing section:

You \_\_\_\_\_ do solemnly swear (or affirm) that you did not at the time of your election to this body, and that you do not now, hold any office of profit or trust under the authority of Congress. So help you God. (Or in case of an affirmation) Under the pains and penalties of perjury.

The words, "office of profit or trust under the authority of Congress" shall be construed to mean any office created directly or indirectly by Congress, and for which emolument is provided from the Treasury of the United States, other than that of a member of the commissioned or enlisted personnel in the reserve components of the armed forces of the United States while not on extended active duty.

History: Arts. Amend. 27 (1883), 42 (1954).

Added in 1883, this section was amended in 1954 to include the words of exception, "other than that of a member of the commissioned or enlisted personnel in the reserve components of the armed forces of the United States while not on extended active duty."

**Section 18.** The Senate shall be composed of thirty Senators to be of the freemen of the senatorial district from which they are elected. The freemen of each senatorial district established by law shall elect one or more Senators from that district, the number from each district to be established by the General Assembly.

In establishing senatorial districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.

History: Arts. Amend. 4 (1836), 23 (1850), 48 (1974).

Originally the Senate was apportioned by county by population, with each county guaranteed at least one member. A decennial reapportionment was completed following the U.S. Census by the General Assembly. The 1836 provision named the counties and the number of their members, and for the reapportionment process. The 1850 amendment simply named the process. In 1974, the Constitution changed the basis from counties to senatorial districts, and added the standards found in the second paragraph.

**Section 19.** The Senate shall have the like powers to decide on the election and qualifications of, and to expel any of its members, make its own rules, and appoint its own officers, as are incident to, or are possessed by, the House of Representatives. A majority shall constitute a quorum. The Lieutenant-Governor shall be President of the Senate, except when he shall exercise the office of Governor, or when his office shall be vacant, or in his absence, in which cases the Senate shall appoint one of its own members to be President of the Senate, *pro tempore*. And the President of the Senate shall have casting vote, but no other.

History: Con. 1793, Ch. 2, Secs. 9, 11. Art. Amend. 6 (1836).

There was no Senate in 1793, but the constitutional provisions relating to the House provided an analogue for the Senate, once it was created in 1836. The predecessor of the Senate was the Executive Council, which needed a majority to make a quorum (Section 11)(1793).

### Executive Department

**Section 20.** The Governor, and in his absence, the Lieutenant Governor, shall have power to commission 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 every vacancy in any office, occasioned by death, or otherwise, until the office can be filled in the manner directed by law or this Constitution. He is to correspond with other States; transact business with officers of government, civil and military, and prepare such business as may appear to him necessary, to lay before the General Assembly. He shall have power to grant pardons and remit fines in all cases whatsoever, except in treason in which he shall have power to grant reprieves, but not to pardon, until after the end of the next session of the General Assembly; and except in cases of impeachment, in which he shall not grant reprieve or pardon, and there shall be no remission, or mitigation of punishment, but by act of legislation. He is also to take care that the laws be faithfully executed. He is to expedite the execution of such measures as may be resolved upon by the General Assembly. And he may draw upon the Treasury for such sums as may be appropriated by the General Assembly. He may also lay embargoes, or prohibit the

exportation of any commodity, for any time not exceeding thirty days, in the recess of the General Assembly only. He 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, in time of war, or insurrection unless by the advice and consent of the Senate, and no longer than they shall approve thereof. And the Lieutenant Governor shall, by virtue of his office, be Lieutenant-General of all the forces of the State.

History: Con. 1777, Ch. 2, Sec. 17, 18. Con. 1786, Ch. 2, Sec. 11. Con. 1793, Ch. 2, Sec. 11. Art. Amend. 8 (1836).

Before 1836, the Governor and Council was the supreme executive power, and all of the functions now listed in Section 20 belonged to that body. Section 18 in the 1777 Constitution provided, "The Governor, and in his absence, the Lieutenant or Deputy Governor, with the Council--seven of whom shall be a quorum--shall have power to appoint and commissionate all officers (except those who are appointed by the General Assembly) 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 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--shall have power to grant reprieves, but not to pardon, until after the end of the next session of Assembly; but there shall be no remission or mitigation of punishment, except 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 General Assembly; and they may draw upon the Treasurer for such sums as may 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 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 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. The Governor and Council shall have a secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it."

In 1786, in an amended form, it became Section XI. The amendments included replacing the seven member quorum with a majority quorum rule, counting the Governor or Lieutenant Governor. The power to appoint all officers was limited to exclude officers appointed in some other manner by the law. The Governor became the Captain-General, as well as Commander-in-Chief of the forces of the State, with the Lieutenant Governor becoming Lieutenant-

General. The Lieutenant-Governor's powers to serve on the Council were clarified. The limitation of a casting vote on the Council was also added that year. And the provision that each member of the Council was a Justice of the Peace for the whole State was moved from Section 17 of the 1777 Constitution. In 1793, the word "commissionate" was changed to "commission" in the first sentence; the word "legislation" at the end of the fourth sentence was changed to "legislature"; and "treasurer" to "treasury" on where the Governor and Council (later Governor) may draw such sums as appropriated. In 1836, the Executive Council was abolished, and the Governor inherited its powers, although with some changes. The Governor could pardon the crime of murder after 1836, for instance, unlike the Governor and Council. The power of sitting as a Judge in impeachments was moved to the newly-created Senate. The Governor was no longer a Justice of the Peace for the whole State after 1836.

**Section 21.** The Governor may have a Secretary of Civil and Military Affairs, to be by him appointed during pleasure, whose services he may at all times command; and for whose compensation provision shall be made by law.

History: Con. 1777, Ch. 2, Sec. 18. Con. 1786, Ch. 2, Sec. 11. Con. 1793, Ch. 2, Sec. 11. Art. Amend. 8 (1836).

Originally, the Governor and Council had a Secretary, who would help keep fair books of their proceedings and where any Councillor could "enter his dissent, with his reasons to support it." This section was retained from 1777 to 1836, when the present section was added.

**Section 22.** 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 by the Lieutenant-Governor, and attested by the Secretary; which Seal shall be kept by the Governor.

History: Con. 1777, Ch. 2, Sec. 19. Con. 1786, Ch. 2, Sec. 20. Con. 1793, Ch. 2, Sec. 23.

The only change, other than the number of the section, came in 1793, when the Seal was to be kept by the Governor, not by the Council, as it had been since 1777.

**Section 23.** No person shall be eligible to the office of Governor or Lieutenant-Governor until he shall have resided in this State four years next preceding the day of his election.

History: Con. 1793, Ch. 2, Sec. 20.

**Section 24.** The Legislature shall provide by general law what officer shall act as Governor whenever there shall be a vacancy in both the offices of Governor and Lieutenant-Governor, occasioned by a failure to elect, or by the removal from office, or by the death or resignation of both Governor and Lieutenant-Governor, or by the inability of both Governor and Lieutenant-Governor to exercise the

powers and discharge the duties of the office of Governor; and such officer so designated shall exercise the powers and discharge the duties appertaining to the office of Governor accordingly until the disability shall be removed, or a Governor shall be elected. And in case there shall be a vacancy in the office of Treasurer, by reason of any of the causes enumerated, the Governor shall appoint a Treasurer for the time being, who shall act as Treasurer until the disability shall be removed, or a new election shall be made.

History: Art. Amend. 21 (1850).

**Section 25.** The Treasurer of the State shall, before entering upon the duties of his office, give sufficient security to the Secretary of State, in behalf of the State of Vermont, before the Governor of the State or one of the Justices of the Supreme Court. And sheriffs, before entering upon the duties of their offices, shall give sufficient security in such manner and in such sums as shall be directed by the Legislature.

History: Con. 1786, Ch. 2, Sec. 24. Con. 1793, Ch. 2, Sec. 27. Arts. Amend. 22 (1850), 46 (1974).

In 1786, this section provided, "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." The 1850 amendment changed the witness from the Governor and Council to the Governor or one of the Judges of the Supreme Court and the beneficiary of the security from the General Assembly to the State of Vermont. It also added High Bailiffs to Sheriffs (changing the name of this office from High Sheriff) as officers who would also be required to give securities. In 1974, "Judges" became "Justices," in keeping with the change in the title of that office, and High Bailiffs were dropped from this section.

*Annotations:* "The Council thought it expedient to propose a substitute for the article in the present Constitution, declaring before whom the Treasurer and the Sheriffs shall give the required security. By the 27th article of the existing Constitution, the security from the Sheriffs is to be given before the first judge of the County Court; and although there was no doubt or uncertainty on this subject when the Constitution was adopted, yet as one of the Judges of the Supreme Court is now by law made Chief Judge of the County Court, a diversity of practice has prevailed in different Counties, in taking the security from the Sheriffs. In some Counties the Chief Judge, and in others the first Assistant, has been considered as the Judge before whom the security of the Sheriff is, by the Constitution, required to be taken. To prevent any further doubt or uncertainty of this subject an amendment is proposed which is the 12th article of the proposed amendments." 1848 Council, 511.

**Section 26.** The Treasurer's accounts shall be annually audited, and a fair state thereof laid before the General Assembly at its biennial



session in January.

History: Con. 1786, Ch. 2, Sec. 25. Con. 1793, Ch. 2, Sec. 28. Art. Amend. 36 (1913).

First adopted in 1786, this section remained unchanged until 1913. Annual audits were originally required by the Constitution, during the years the legislature met annually. Although biennial sessions first began in 1870, this section was not changed to reflect the two year cycle until the revision of 1913. Section 20 above contains a flavor of this restriction.

**Section 27.** No money shall be drawn out of the Treasury, unless first appropriated by act of legislation.

History: Con. 1793, Ch. 2, Sec. 17.

### Judiciary Department

**Section 28.** The Courts of Justice 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.

History: Con. 1777, Ch. 2, Secs. 4, 23. Con. 1786, Ch. 2, Sec. 4. Con. 1793, Ch. 2, Sec. 4. Art. Amend. 46 (1974).

Section 4 of the 1777 Constitution provided that, "Courts of justice shall be established in every county in this State." Section 23 provided, "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 laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State." In 1786, these two sections were merged to read, "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 causes as may be appealed to the county court.)" In 1793, the word "open" in the first sentence was amended to "opened."

The present Section 28 is a product of the amendments of 1974.

*Annotations:* "An act to secure Daniel Marsh in the possession of a certain farm until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him," passed June 18, 1785, violates this section "because it divests one subject of [a man's, later person's] possession to land, already determined to be his right, by a court and jury, and arbitrarily vests it in another, without the intervention of a jury." 1785 Council, 31, 41.

Discussing its reaction to, "An act making the laws of this State temporary," enacted February 23, 1779, the 1785 Council wrote, "We would ask how property is to be legally protected, if not by the several courts administering

justice, according to the known laws of the land? How parties can be said to enjoy their right of trial by jury, when the Legislature prohibit a trial of any kind? And how courts can with propriety be called open, within the meaning of the Constitution, or justice be administered therein impartially, without unnecessary delay, when they are disenabled to take cognizance of any matter wherein the title of land is concerned, and of any action founded upon a contract; which are nine tenths of the causes where justice is sought? How far the singular condition of real property within this commonwealth, and our peculiar political situation, ought to extenuate shutting the courts of justice with respect to landed property, is with you to decide: but a Legislature's preventing suits being brought *upon all private contracts*, is an unheard of transaction, and one which we presume will not be accounted for by the impartial world, and by posterity, upon principles very honorable to the promoters of it." 1785 Council, 64.

**Section 29.** The Supreme Court shall consist of the Chief Justice of the State and four associate justices of the Supreme Court.

History: Art. Amend. 46 (1974).

The number of seats of the Supreme Court was not expressly enumerated by the Vermont Constitution prior to 1974. It was a creature of statute prior to that date.

**Section 30.** The Supreme Court shall exercise appellate jurisdiction in all cases, criminal and civil, under such terms and conditions as it shall specify in rules not inconsistent with law. The Supreme Court shall have original jurisdiction only as provided by law, but it shall have the power to issue all writs necessary or appropriate in aid of its appellate jurisdiction. The Supreme Court shall have administrative control of all the courts of the state, and disciplinary authority concerning all judicial officers and attorneys at law in the State.

History: Art. Amend. 46 (1974).

**Section 31.** All other courts of this State shall have original and appellate jurisdiction as provided by law. All courts except the Supreme Court may be divided into geographical and functional divisions as provided by law or by judicial rules adopted by the Supreme Court not inconsistent with law. The jurisdiction of geographical and functional divisions shall be as provided by law or by judicial rules not inconsistent with law. The courts of this state may exercise equity jurisdiction as well as law jurisdiction in civil proceedings as may be provided by law or by judicial rules not inconsistent with law.

History: Con. 1786, Ch. 2, Sec. 5. Con. 1793, Ch. 2, Sec. 5. Art. Amend. 46 (1974).

Section 5 of the 1786 Constitution provided that, "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 either of said courts." The problem of how to exercise equity jurisdiction in the law courts had already caused trouble for the Council of Censors. In the 1785 Address, the Council had objected to an act of 1779 that had a tendency "to exalt the legislative, at the expense of the judicial department; as the former gives the Governor, Council, and Assembly, the powers of a court of chancery, in all causes exceeding four thousand pounds consequence, and the latter erects them into a court for the decision of all disputes between proprietors holding under different charters issued by the same authority."

**Section 32.** The Governor, with the advice and consent of the Senate, shall fill a vacancy in the office of Chief Justice of the State, associate Justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented to him by a judicial nominating body established by the General Assembly having authority to apply reasonable standards of selection.

History: Con. 1786, Ch. Sec. 9. Con. 1793, Ch. 2, Sec. 9. Art. Amend. 46 (1974).

Section 9 of the 1786 Constitution provided that the House of Representatives, with the Governor and Council, had the authority to "annually (or oftener if need be) elect judges of the supreme and several county and probate courts . . . ." The present section is a product of the amendments of 1974.

**Section 33.** When the Senate is not in session, the Governor may make an interim appointment to fill a vacancy in the office of chief justice, associate justice of the Supreme Court or judge of any other court, except the office of Assistant Judge and of Judge of Probate, from a list of nominees presented by the judicial nominating body. A justice or judge so appointed shall hold office, with all the powers incident to the office, until the Senate convenes and acts upon the appointment submitted by the Governor. Thereafter, the appointee shall continue in office if the Senate consents to the appointment. If the appointment is not confirmed upon vote of the Senate, the appointment shall be terminated and a vacancy in the office will be created.

History: Art. Amend. 46 (1974).

**Section 34.** The justices of the Supreme Court and judges of all subordinate courts, except Assistant Judges and Judges of Probate, shall hold office for terms of six years except when holding office under an interim appointment. At the end of the initial six year term and at the end of each six year term thereafter, such justice or judge may give notice in the manner provided by law of his desire to continue in office. When such justice or judge gives the required notice, the question of

his continuance in office shall be submitted to the General Assembly and he shall continue in office for another term of six years unless a majority of the members of the General Assembly voting on the question vote against his continuing in office.

History: Art. Amend. 46 (1974).

**Section 35.** All justices of the Supreme Court and judges of all subordinate courts shall be retired at the end of the calendar year in which they attain seventy years of age or at the end of the term of election during which they attain seventy years of age, as the case may be, and shall be pensioned as provided by law. The chief justice may from time to time appoint retired justices and judges to special assignments as permitted under the rules of the Supreme Court.

History: Art. Amend. 46 (1974).

**Section 36.** The justices of the Supreme Court and the judges of all subordinate courts shall hold office during good behavior for the terms for which they are appointed. The Supreme Court in the exercise of its disciplinary power over the judiciary of the state may suspend justices of the Supreme Court and judges of all subordinate courts from the judicial function for such cause and in such manner as may be provided by law.

The General Assembly may establish procedures for the implementation of the provisions of sections thirty-two through thirty-six.

History: Art. Amend. 46 (1974).

**Section 37.** The Supreme Court shall make and promulgate rules governing the administration of all courts, and shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. Any rule adopted by the Supreme Court may be revised by the General Assembly.

History: Art. Amend. 46 (1974).

**Section 38.** Trials of issues, proper for the cognizance of a Jury as established by law or by judicial rules adopted by the Supreme Court not inconsistent with law, in the Supreme Court, the Superior Court and other subordinate 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.

History: Con. 1777, Ch. 2, Sec. 22. Con. 1786, Ch. 2, Sec. 28. Con. 1793, Ch. 2, Sec. 31. Art. Amend. 46 (1974).

The 1777 Constitution provided that, "Trials shall be by jury; and it is

recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries." This was amended in 1786 to read, "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, and appointment of Juries." The present section is a product of the amendments of 1974.

**Section 39.** 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 proportioned to the offences.

History: Con. 1777, Ch. 2, Secs. 24, 26. Con. 1786, Ch. 2, Sec. 29. Con. 1793, Ch. 2, Sec. 32.

Section 24 of the 1777 Constitution provided that, "All prosecutions shall commence in the name and by the authority of the freemen of the State of Vermont, 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 State of Vermont." Section 26 provided, "Excessive bail shall not be exacted for bailable offences; and all fines shall be moderate." In 1786, these two sections were merged to read, "All proportions 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." The present section was adopted in 1793. It highlighted the words, "By the authority of the State of Vermont," and changed "proportionate" to "proportioned" in the second sentence.

**Section 40.** Excessive bail shall not be exacted for bailable offenses. All persons, unless sentenced, or unless committed for offenses punishable by death or life imprisonment when the evidence of guilt is great, shall be bailable by sufficient sureties. Persons committed for offenses punishable by death or life imprisonment, when the evidence of guilt is great, shall not be bailable as a matter of right. No person shall be imprisoned for debt.

History: Con. 1777, Ch. 2, Secs. 25, 26. Con. 1786, Ch. 2, Sec. 30. Con. 1793, Ch. 2, Sec. 33. Art. Amend. 49 (1982).

Section 25 of the 1777 Constitution provided that, "The person of a debtor, where this 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." Section 26 provided, "Excessive bail shall not be exacted for bailable offences, and all fines shall be moderate." In 1786, the two were merged to read, "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." In 1982, the present section was added.

*Annotations:* The fourth Clause of an Act passed March 2, 1784 entitled "An Act to prevent the spreading of the small-Pox" is unconstitutional, "the same being in the Opinion of this Council contrary to the humane Spirit manifested in the twenty-sixth Section of the frame of Government" because of "the unusual severity of the said clause." The Council explained that, "by directing corporal punishment to be inflicted for offences not infamous in their natures, that chastisement is rendered less disgraceful to the delinquent, and less beneficial to society, where the crimes require it." 1785 Council, 28, 40, 68.

**Section 41.** The Writ of Habeas Corpus shall in no case be suspended. It shall be a writ issuable of right; and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefor.

History: Art. Amend. 12 (1836).

### Qualifications of Freemen

**Section 42.** Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, 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 favor of any person.*

History: Con. 1777, Ch. 2, Sec. 6. Con. 1786, Ch. 2, Sec. 18. Con. 1793, Ch. 2, Sec. 21. Arts. Amend. 1 (1828), 29 (1924), 47 (1974).

The freeman's oath, as found in the 1777 Constitution, provided, that "Every man of the full age of twenty-one years, having resided in this State for the space of one full year, next, before the election of representatives, and who 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.

*"I \_\_\_\_\_ solemnly swear, by the ever living God (or affirm in the presence of Almighty God), that whenever I am called to give my vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man."*

In 1786, the "I" and "my" forms were changed to "you" and "your." In 1828, in the first amendment to the Vermont Constitution following the adoption of the 1793 Constitution, only natural born and naturalized citizens were allowed to become freemen. In 1924, the 1793 language was returned to the

Constitution, and "man" became "person." The 1974 change eliminated the one year residency in place of a period of residency to be established by the General Assembly.

*Annotations:* "Whether a person not owing allegiance to the United States, can or cannot be made a freeman under the constitution of this state, is a question which we have not known to be settled, by any authority whose decisions would extend through the state. The constitution, in the terms of it, we consider equivocal, and we are informed that different constructions of it and different practices prevail in different parts of the state. We have thought it expedient, with a view of settling this question, to propose the annexed article. Doubting as we do whether any person can legally be made a freeman of this state, who owes no allegiance to the United States, especially as the power of naturalization, is by the constitution of the United States vested exclusively in Congress, and considering the gross impropriety of admitting those to participate in the elective franchise, who owe no allegiance to the country, we have submitted the article in its present form;—at the same time the article is so framed, that no person, now a legal freeman of the state, will be disfranchised by it." 1827 Council, 318-19.

#### Elections--Officers--Terms of Office.

**Section 43.** The Governor, Lieutenant-Governor, Treasurer, Secretary of State, Auditor of Accounts, Senators, Town Representatives, Assistant Judges of the County Court, Sheriffs, High Bailiffs, State's Attorneys, Judges of Probate and Justices of the Peace, shall be elected biennially on the first Tuesday next after the first Monday of November, beginning in A.D. 1914.

History: Con. 1777, Ch. 2, Secs. 8, 17. Con. 1786, Ch. 2, Secs. 9, 10. Con. 1793, Ch. 2, Secs. 9, 10. Arts. Amend. 5 (1836); 14, 15, 16, 17, 18 and 20 (1850); 24, Sec. 2 (1870); 28 (1883); 30, Sec. 2 (1913).

The date of the General Election was first established as the first Tuesday of September by Section 8 of the 1777 Constitution. Election of Representatives, the Governor, Lieutenant-Governor, and a twelve member Executive Council was held on that date. In 1786, the date was deleted from the Constitution, although the first Tuesday in September continued to serve as the date of Freemen's meetings. The Council was abolished in 1836, and the election of a Senate set for the day on which the other officers were elected. County officers were first elected in 1850, and an provision added to allow the General Assembly to set the day of election. In 1870, biennial elections replaced annual. The Secretary of State and Auditor of Accounts became popularly elected officers after 1883, and in 1913 the day of election was changed to the first Tuesday after the first Monday of November, beginning in 1914.

**Section 44.** Senators and Representatives shall be elected to office at a general election to be held biennially on the first Tuesday next after the first Monday of November, A.D. 1974.

History: Con. 1777, Ch. 2, Sec. 7, 8. Con. 1786, Ch. 2, Sec. 8. Con. 1793, Ch. 2, Sec. 8. Art. Amend. 24, Sec. 2 (1870); 48 (1974).

See discussion under Section 43. The 1974 amendment reflects the change of title from Town Representative to Representative, in light of the population-based, apportioned House.

**Section 45.** The manner of election, certification, and filling of vacancies in office of Senators and Representatives shall be as established by law.

History: Art. Amend. 48 (1974).

The power to adopt election laws and methods for filling vacancies was expressed in various sections of the Constitution, in addition to statute. Section 10 of the 1793 Constitution dictates how ballots should be handled after the polls close, for instance. Article of Amendment 5 (1836) describes how the Legislature may regulate by law the mode of balloting for Senators. An overall grant of constitutional authority to decide these matters, including in particular the power to fill vacancies, was adopted when this section became part of the Constitution in 1974.

**Section 46.** The term of office of Senators and Representatives shall be two years, commencing on the first Wednesday next after the first Monday of January following their election.

History: Art. Amend. 24, Sec. 4 (1870); 30, Sec. 4 (1913); 48 (1974).

In 1870, two year terms were first adopted. Legislators convened on the second Thursday of October following their election. The first Wednesday next after the first Monday of January became the opening day of the legislative session and the day on which legislators were qualified, beginning in 1914, following the amendments of 1913. The present language of the section was adopted in 1974.

**Section 47.** 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 Governor, and deliver them to the Representatives chosen to attend the General Assembly; and at the opening of the General Assembly, there shall be a committee appointed out of the Senate and House of Representatives, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count the votes for Governor, and declare the person who has the major part of the votes, to be Governor for the two years ensuing. The Lieutenant-Governor and the Treasurer shall be chosen in the manner above directed.

The votes for Governor, Lieutenant-Governor, and Treasurer, of the State, shall be sorted and counted, and the result declared, by a committee appointed by the Senate and House of Representatives.

If, at any time, there shall be no election, by the freemen, of Governor, Lieutenant-Governor, or Treasurer, of the State, the Senate



and House of Representatives shall by a joint ballot, elect to fill the office, not filled by the freemen as aforesaid, one of the three candidates for such office (if there be so many) for whom the greatest number of votes shall have been returned.

History: Con. 1777, Ch. 2, Sec. 17. Con. 1786, Ch. 2, Sec. 10. Con. 1793, Ch. 2, Sec. 10. Arts. Amend. 9 (1836); 24, Secs. 2, 3 (1870).

Specific directions on how ballots should be sorted and counted, and by whom, was established by Section 17 of the 1777 Constitution, in its description of the handling of the election of the Governor, Lieutenant-Governor, Treasurer, and Executive Council. The substance of these directions did not change in 1786 or 1793. In 1836, the Council was abolished and references to its election eliminated from the Constitution. The 1870 change reflected the arrival of the two year term.

**Section 48.** The Secretary of State and the Auditor of Accounts shall be elected by the freemen of the State upon the same ticket with the Governor, Lieutenant-Governor and Treasurer; and the Legislature shall carry this provision into effect by appropriate legislation.

History: Con. 1777, Ch. 2, Sec. 8. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Art. Amend. 28 (1883).

**Section 49.** The term of office of the Governor, Lieutenant-Governor and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.

History: Arts. Amend. 21 (1850); 24, Sec. 3 (1870).

This section was added in 1850 to respond to the uncertainty about the identity of the Governor when no election had been made by the electorate, due to the lack of a majority for a candidate. The 1870 change reflected the two year term.

**Section 50.** The Assistant Judges shall be elected by the freemen of their respective districts as established by law. Their judicial functions shall be established by law. Their term of office shall be four years and shall commence on the first day of February next after their election.

Sheriffs shall be elected by the freemen of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their election.

State's Attorneys shall be elected by the freemen of their respective districts as established by law. Their term of office shall be four years and shall commence on the first day of February next after their

election.

History: Con. 1777, Ch. 2, Sec. 27. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, 9. Arts. Amend. 14, 15, 16 (1850), 24 (1870), 46 (1974).

The 1777 Constitution provided, "That the General Assembly, when legally formed, shall appoint times and places for county elections, and at times and places, the freemen in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probate, commissioned by the Governor and council, during good behavior, removable by the General Assembly upon proof of maladministration." In 1786, the General Assembly was authorized to elect all judges, sheriffs, and justices of the peace. The one year term for these officers was changed to two years in 1870, and in 1974 the four year term became the rule when the present language was adopted.

**Section 51.** Judges of Probate shall be elected by the freemen of their respective districts as established by law. The General Assembly may establish by law qualifications for the election to and holding of such office. Their term of office shall be four years and shall commence on the first day of February next after their election.

History: Con. 1777, Ch. 2, Sec. 27. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Art. Amend. 17 (1850), 24 (1870), 46 (1974).

Until 1850, Judges of Probate were elected by the General Assembly. The one year term for these officers was changed to two years in 1870, and in 1974 the four year term became the rule when the present language was adopted.

**Section 52.** Justices of the Peace shall be elected by the freemen of their respective towns; and towns having less than one thousand inhabitants may elect any number of Justices of the Peace not exceeding five; towns having one thousand and less than two thousand inhabitants, may elect seven; towns having two thousand and less than three thousand inhabitants, may elect ten; towns having three thousand and less than five thousand inhabitants, may elect twelve; and towns having five thousand, or more, inhabitants, may elect fifteen Justices of the Peace. Justices of the Peace shall not exercise judicial powers, except that they may serve as magistrates when so commissioned by the Supreme Court.

History: Con. 1777, Ch. 2, Sec. 27. Con. 1786, Ch. 2, Sec. 9. Con. 1793, Ch. 2, Sec. 9. Arts. Amend. 18 (1850), 24 (1870), 46 (1974).

See description under Section 50 for origins. In 1850, popular elections by the voters of each town, based on the population of the town, were first adopted. In 1870, the term was changed to two years, and in 1974 to four years.

**Section 53.** The manner and certification of election and filling of vacancies in the offices of Assistant Judges, Sheriffs, State's Attorneys, Judges of Probate and Justices of the Peace shall be as established

by law.

History: Arts. Amend. 5 (1836); 20 (1850), 24, Sec. 2 (1870); 46 (1974).

These officers were first popularly elected in 1850. Details of their election were established by law and by analogy to the election of Senators. The 1870 amendment extended the terms to two years, and the 1974 changes gave the legislature the authority to adopt laws on these matters, particularly the filling of vacancies.

**Section 54.** No person in this State shall be capable of holding or exercising more than one of the following offices at the same time: Governor, Lieutenant-Governor, Justice of the Supreme Court, Treasurer of the State, member of the Senate, member of the House of Representatives, Surveyor-General, or Sheriff. Nor shall any person holding any office of profit or trust under the authority of Congress, other than a member of the commissioned or enlisted personnel in the reserve components of the armed forces of the United States while not on extended active duty, be eligible to any appointment in this Legislature, or to any executive or judiciary office under this State.

History: Con. 1786, Ch. 2, Sec. 23, 27. Con. 1793, Ch. 2, Sec. 26. Art. Amend. 42 (1954).

The 1786 Constitution prohibited a person from serving as Governor, Lieutenant-Governor, Judge of the Supreme Court, Treasurer, Member of the Council, Member of the General Assembly, Surveyor-General, or Sheriff at the same time. The 1793 Constitution added that no person holding "any office of profit or trust under the authority of Congress, [can] be eligible to any appointment in the Legislature, or of holding any executive or judiciary office under this State." The words of exception, "other than a member of the commissioned or enlisted personnel in the reserve components of the armed forces of the United States while not on extended active duty, be eligible to any appointment in this Legislature, or to any executive or judiciary office under this State," were added in 1954. An "office of profit and trust under the authority of Congress" is defined in Section 17.

Former Section 27 of the 1786 Constitution, an analogous provision, was deleted in 1793. As originally enacted in 1777, it provided, "Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superceded, 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 re-election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress." This was amended in 1786 to read, "Any delegate to Congress may be superceded 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."

The 1777 Constitution included another provision, Section XXVIII, providing,

"That no person, shall be capable of holding any civil office, in this State except he has acquired, and maintains a good moral character." This was deleted in 1786.

*Annotations:* "The other instance in which the constitution has, in our opinion, been violated, consists in the fact, that persons holding offices of profit and trust under the authority of Congress have been permitted to hold seats in the legislative body, and have been appointed to and held judiciary offices under the authority of this state. That such has been the fact, the Council are fully satisfied. At the same time it is proper to remark, that we know of no instance, in which the legislature have expressly sanctioned the procedure, and we are also aware that the General Assembly did at their last session, by an explicit resolution, declare such persons ineligible to seats in that house. But it must be admitted that many instances of the kind have passed unnoticed. The Council therefore feel themselves bound to express their opinion: It is, first, that the provision of the constitution is too clear and explicit to admit of doubt as it respects persons holding offices of profit and trust, created by act of Congress; and, secondly, that the reason and propriety of the provision, are too obvious, and its importance too manifest to admit of its being disregarded.

"The Council deem it their duty to go further, and to say that the practice, (if such practice has obtained in the state,) of depositing a resignation of an office incompatible with a seat in the legislature, in the hands of a friend, with a view to obtain a seat in the house, and, with a view to withdraw such resignation after the session shall have terminated, is to be regarded, for the most obvious reasons, as a mere evasion of the constitution." 1820 Council, 317-8. See similar comments, 1841 Council, 393, 400.

**Section 55.** All elections, whether by the people or the Legislature, shall be free and voluntary: and any elector who shall receive any gift or reward for his vote, in meat, drink, moneys or otherwise, shall forfeit his right to elect at that time, and suffer such other penalty as the law 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 the Legislature shall direct."

History: Con. 1777, Ch. 2, Sec. 29. Con. 1786, Ch. 2, Sec. 31. Con. 1793, Ch. 2, Sec. 29.

This section, with the exception of the last clause--"and be subject to such further punishment as the Legislature shall direct"--was adopted in 1777. The last clause was added in 1786.

*Annotations:* "In the sixth section of the 58th chapter of the laws, entitled *"An act directing the mode of elections,"* &c. passed October 26th, 1796, the supreme court are empowered to disfranchise a freeman for any *evil practice which shall render him notoriously scandalous.* This part of the section, independent of its vague and uncertain meaning, is against the letter and spirit of the eighth article of the bill of rights, and the 34th section of the form of government, the former only declares *That all elections ought to be free and without corruption,* the latter, points out what constitutes the crime of bribery in

elections, and the punishment therefor, leaving to the legislature the right of adding farther penalties for the crime, as therein ascertained.

"The Council are fully of opinion, that the framers and adopters of the constitution, contemplated to preserve inviolate the right of suffrage to every freeman, unless he should in fact forfeit the right, by acting wickedly and corruptly, relating only to that inestimable privilege." 1799 Council, 156.

#### Oath of Allegiance--Oath of Office

**Section 56.** Every officer, whether judicial, executive, or military, in authority under this state, before he enters 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 military officers and such as shall be exempted by the Legislature viz:--

##### The oath or 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 or 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 or 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 an oath) So help you God. (If an affirmation) under the pains and penalties of perjury.*

History: Con. 1777, Ch. 2, Sec. 36. Con. 1786, Ch. 2, Sec. 26. Con. 1793, Ch. 2, Sec. 29.

The original 1777 oath of allegiance and oath of office used "I" instead of "You," and injected "by the ever living God" after the word "swear." The officer swore not to do any act or thing "prejudicial or injurious" to the constitution or government. The present language was adopted in 1786.

#### Impeachments

**Section 57.** The House of Representatives shall have the power to order impeachments, which shall in all cases be by a vote of two-thirds of its members.

History: Con. 1777, Ch. 2, Secs. 20, 44. Con. 1786, Ch. 2, Secs. 21, 39. Con. 1793, Ch. 2, Secs. 24, 43. Arts. Amend. 7 (1836); 25, Sec. 3 (1870).

The Council of Censors, from 1777 to 1870, had the power to order impeachments. Before the creation of the Senate, the General Assembly would actually perform the act of impeachment, with the Governor or Lieutenant Governor and Council sitting as judges. After 1836, the Senate took over the role of the Governor and Council. In 1870, the Council of Censors was

abolished and the House given its powers to order impeachments by a vote of two-thirds of its members.

**Section 58.** Every officer of State, whether judicial or executive, shall be liable to be impeached by the House of Representatives, either when in office or after his resignation or removal for maladministration.

The Senate shall have the sole power of trying and deciding upon all impeachments. When sitting for that purpose, they shall be on oath, or affirmation, and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold or enjoy any office of honor, or profit, or trust, under this State. But the person convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

History: Con. 1777, Ch. 2, Sec. 20. Con. 1786, Ch. 2, Sec. 21. Con. 1793, Ch. 2, Sec. 24. Arts. Amend. 7, 8 (1836).

See discussion under Section 57.

### Militia

**Section 59.** The inhabitants of this State shall be trained and armed for its defense, under such regulations, restrictions, and exceptions, as Congress, agreeably to the Constitution of the United States, and the Legislature of this State, shall direct.

History: Con. 1777, Ch. 2, Secs. 5, 42. Con. 1786, Ch. 2, Sec. 19. Con. 1793, Ch. 2, Sec. 22. Art. Amend. 43 (1954).

Section 5 of the 1777 Constitution required that the "freemen of this Commonwealth, and their sons," were to be trained for the State's defense. In 1777, only the legislature had the authority to adopt regulations, restrictions and exceptions governing the militia. The section went on to say, "reserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed." Section 42 of the 1777 Constitution provided that, "All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly." Section 42 was deleted from the 1786 Constitution, and "freeman of this Commonwealth, and their sons," changed to "inhabitants." In 1793, the present first sentence was adopted as part of Section 22, along with the following sentence: "The several Companies of Militia shall, as often as vacancies happen, elect their Captain and other Officers, and the Captains and Subalterns shall nominate and recommend the field officers, of their respective regiments, who shall appoint their staff Officers." This sentence was deleted in 1954.

*Annotations:* See notes under Article 17th *supra*.

### General Provisions

**Section 60.** No person ought in any case, or in any time, to be declared guilty of treason or felony, by the Legislature, nor to have his sentence upon conviction for felony commuted, remitted or mitigated by the Legislature.

History: Con. 1786, Ch. 2, Sec. 17. Con. 1793, Ch. 2, Sec. 20. Art. Amend. 43 (1954).

At the recommendation of the 1785 Council of Censors, former Section 17 was added in 1786 to read that, "No person ought, in any case, or in any time, to be declared guilty of treason or felony by the Legislature." This became Section 20 in the 1793 Constitution.

**Section 61.** 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 effect of which are dependance and servility, unbecoming freemen, in the possessors or expectants, and faction, contention, 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 profit ought to be lessened by the Legislature. And if any officer shall wittingly and willfully take greater fees than the laws allow him, it shall ever after disqualify him from holding any office in this State, until he shall be restored by act of legislation.

History: Con. 1777, Ch. 2, Secs. 23, 33. Con. 1786, Ch. 2, Sec. 22. Con. 1793, Ch. 2, Sec. 25.

Section 23 of the 1777 Constitution provided in part that all court 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 allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State." Section 22 was identical to the first two sentences of the present section. The two were merged in 1786. In 1793, the word "corruption" was deleted from its place just after "contention"; the last sentence was amended to add, "wittingly and willfully," before the words, "And if any office shall," deleting the words, "directly or indirectly"; the words "or greater" deleted just between "greater" and "fees"; and "until he shall be restored by act of legislation" added at the end of the sentence.

**Section 62.** 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 of the same county.

History: Con. 1777, Ch. 2, Sec 31. Con. 1786, Ch. 2, Sec. 32. Con. 1793, Ch. 2, Sec. 35.

The 1777 Constitution provided that, "All deeds and conveyances of land shall be recorded in the town clerk's office, in their respective towns." In 1786, the rest of the present section was added.

*Annotations:* "An Act for authenticating Deeds and Conveyances" (1779) is contrary to [this] Section of the frame of Government." The act, "where there is no town clerk in the town, admits of so many different offices for recording deeds, as renders it difficult and expensive for the purchaser to inform himself of the safety of his title." 1785 Council, 26, 37, 75.

**Section 63.** The Legislature shall regulate entails in such manner as to prevent perpetuities.

History: Con. 1777, Ch. 2, Sec. 34. Con. 1786, Ch. 2, Sec. 33. Con. 1793, Ch. 2, Sec. 36.

This section was added in 1777 and left unchanged in the subsequent constitutions.

**Section 64.** 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 labor, those who shall be convicted of crimes not capital, whereby the criminal shall be employed for the benefit of the public, or for the reparations of injuries done to private persons: and all persons at proper times ought to be permitted to see them at their labor.

History: Con. 1777, Ch. 2, Sec. 35. Con. 1786, Ch. 2, Sec. 34. Con. 1793, Ch. 2, Sec. 37.

The 1777 Constitution provided that "houses"--as opposed to "means"--ought to be provide for this purpose. All persons were permitted to see "the prisoners" at their labor. The present words "means" and "them" were added as substitutes in 1786.

**Section 65.** The estates of such persons as may destroy their own lives shall not, for that offence, be forfeited, but shall 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 deemed a deodand, or in any wise forfeited, on account of such misfortune.

History: Con. 1786, Ch. 2, Sec. 35. Con. 1793, Ch. 2, Sec. 38.

This section was added in 1786 and unchanged in 1793.

**Section 66.** 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 of a natural born subject of this state, except the privileges of a freeman, the right to which is herein elsewhere determined, and except also that he shall not be capable of being elected Governor, Treasurer or Representative in Assembly, until after two years residence, nor be



eligible to the office of Governor or Lieutenant-Governor until he shall have resided in this State as required by Section 23 of this Constitution.

History: Con. 1777, Ch. 2, Sec. 38. Con. 1786, Ch. 2, Sec. 36. Con. 1793, Ch. 2, Sec. 39. Art. Amend. 30 (1913).

The 1777 Constitution covered every "foreigner," rather than "person," and required only representatives to be resident for two years. The core of the present language was adopted in 1786, but the last lines were rewritten substantially by the Supreme Court in 1913.

*Annotations:* "We consider the first clause of the second section of an act, entitled an act to empower the Judges of the Supreme court to grant bills of divorce, and to repeal parts of certain acts therein mentioned, passed November 7th, 1805, to be contrary to [this section].

"Upon a careful reading of this section in the constitution, and the clause of the above mentioned act, there appears to be a great and visible contrast. That which is granted by this constitution to the citizens of this state, is explained by those privileges which are enjoyed by the natural born subject, with this difference only; by the natural born subject, the privileges of this law may be immediately enjoyed, but by him, who comes from abroad to settle here, this privilege cannot be enjoyed, says the constitution, till after one year's residence; but by this law, the privileges enjoyed by the natural born citizen without limitation, cannot be enjoyed by the emigrant until after three year's residence. This inequality is evident, when we bring into view two persons, the one a natural born subject, the other a person who has migrated hither, and been a resident in the state one year, and who each have reason, and equal reason, to be divorced.

"The unconstitutionality of this law will appear in this; that the natural born subject may take the immediate benefit of this law, while the subject by emigration, though he or she have already been resident one year, must wait two years more before they can receive this benefit.

"The contrast therefore, in this case, between the constitution and the above-mentioned law, is great and visible, and justifies this council, as we apprehend, in saying that the law is unconstitutional." 1806 Council, 182-83.

**Section 67.** 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 enclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be hereafter made and provided by the general assembly.

History: Con. 1777, ch. 2, Sec. 39. Con. 1786, Ch. 2, Sec. 37. Con. 1793, Ch. 2, Sec. 40.

The original section, as found in the 1777 Constitution, began with the word, "That." This word was deleted in 1786.

**Section 68.** 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 unless the General Assembly permits other provisions for

the convenient instruction of youth; and one or more grammar schools be incorporated, and properly supported in each county in this State. All religious societies, or bodies of men that may be 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.

History: Con. 1777, Ch. 2, Secs. 40, 41. Con. 1786, Ch. 2, Sec. 38. Con. 1793, Ch. 2, Sec. 41. Arts. Amend. 41 (1954), 44 (1964).

Section 40 of the 1777 Constitution provided that, "A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly." Section 41 provided the language of the present Section 68, except for the phrase, "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." In 1786, Section 40 was changed and merged with Section 41 by inserting "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" following the words "duly executed." That same year the phrase "shall be made and" became "ought to be", and the words "and provision shall be made for their due execution" struck. This section was amended in 1954 by changing the 1786 insert to read, "an a competent number of schools ought to be maintained in each town, or by towns jointly with the consent of the General Assembly, for the convenient instruction of youth," deleting the language about grammar schools. In 1964, the inset was amended one more time to read as it does today.

**Section 69.** No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are to be and remain under the patronage or control of the State; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time or repealed.

History: Art. Amend. 33 (1913).

**Section 70.** The General Assembly may pass laws compelling compensation for injuries received by employees in the course of their employment resulting in death or bodily hurt, for the benefit of such employees, their widows or next of kin. It may designate the class or classes of employers and employees to which such laws shall apply.

History: Art. Amend. 35 (1913).

**Section 71.** 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.

History: Con. 1777, Ch. 2, Sec. 43. Con. 1786, Ch. 2, Sec. 39. Con. 1793, Ch. 2, Sec. 42.

In 1777, this section began, "The declaration of the rights is . . . ." The phrase "The declaration of the political rights and privileges of the inhabitants of this State . . ." was added in 1786, and "state" replaced with "commonwealth."

**Section 72.** At the biennial session of the General Assembly of this State which convenes in A.D. 1775, and at the biennial session convening every fourth year thereafter, the Senate by a vote of two-thirds of its members, may propose amendments to this Constitution, with the concurrence of a majority of the members of the House of Representatives with the amendment as proposed by the Senate. A proposed amendment so adopted by the Senate and concurred in by the House of Representatives shall be referred to the next biennial session of the General Assembly; and if at that session a majority of the members of the Senate and a majority of the House of Representatives concur in the proposed amendment, it shall be the duty of the General Assembly to submit the proposal to a direct vote of the freemen of the state. Any proposed amendment submitted to a vote of the freemen of the state in accordance with this section which is approved by a majority of the freemen voting thereon shall become part of the Constitution of this State.

Prior to the submission of a proposed amendment to a vote of the freemen in accordance with this section, public notice of the proposed amendment shall be given by proclamation of the Governor.

The General Assembly shall provide for the manner of voting by the freemen on amendments proposed under this section, and shall enact legislation to carry the provisions of this section into effect.

History: Con. 1777, Ch. 2, Sec. 44. Con. 1786, Ch. 2, Sec. 40. Con. 1793, Ch. 2, Sec. 43. Arts. Amend. 25, Secs. 1, 2 (1870), 45 (1974).

In 1777, the Constitution provided that, "In order that the freedom of this commonwealth may be preserved inviolate for ever, 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 of 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; a 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 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 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 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 of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject."

This section was amended in 1786 by the addition of the words, "whether the Constitution has been preserved inviolate in every part, during the last septenary (including the year of their service)," following "to enquire," with "duty" becoming pluralized and "it" deleted. This remained the process for amending the Vermont Constitution until 1870, when the Council was abolished and the present system of legislative proposal, beginning in the Senate, and popular ratification was adopted. At that time amendments could only be proposed and voted on once in a ten year period. In 1974, the present four year process now in effect became effective.

**Section 73.** The General Assembly shall establish senatorial districts, within and including all of the state, and shall further establish representative districts within and including all of the state.

At the biennial session following the taking of each decennial census under the authority of Congress, and at such other times as the General Assembly finds necessary, it shall revise the boundaries of the legislative districts and shall make a new apportionment of its membership in order to maintain equality of representation among the respective districts as nearly as is practicable. The General Assembly may provide for establishment of a legislative apportionment board to advise and assist the General Assembly concerning legislative apportionment. If the General Assembly fails to revise the legislative districts as required in this section, the Supreme Court in appropriate legal proceedings brought for the purpose may order reapportionment of the districts.

History: Arts. Amend. 48 (1974), 50 (1986).

The first apportionment of the Vermont House came in 1965, pursuant to a federal court order. The first constitutional amendment on apportionment

provided for reapportionment following every second Presidential election, but in 1986 the system was amended to coincide with the decennial census.

*Annotations:* "It appeared to the Council that there was an ambiguity in the 4th article of the amendments of the Constitution heretofore adopted, in relation to the apportionment of Senators to the several Counties, which we believe should be removed, and its true meaning made certain. The literal construction of this article contemplates the assignment of one Senator to each County, and the remainder of the Senators to the several Counties, according to population, regarding always the largest fraction; while the construction placed upon it by the Council of Censors who proposed the article, and by the Legislature in the year 1841, is to apportion the thirty Senators to the several Counties, according to population, giving to each County one Senator at least. The latter construction is believed to have been the one intended by the Council who formed, and the Convention who adopted, the article, a literal construction of which would have changed the number of Senators in four Counties in the State, from the present apportionment made by the Legislature of 1841. The Council believe the meaning of the Constitution should be plain and certain; the difference of opinion upon this article, in the Legislature of 1841, shows that it is not so. To remove this uncertainty, we have proposed an amendment, which is the 14th article of the amendments herewith submitted." Relates to Art. Amend. 23 (1850). 1848 Council, 512.

### Temporary Provisions

**Section 74.** The persons severally elected in 1912 to the offices mentioned in section 43 shall hold such offices until the term of their successors elected the first Tuesday next after the first Monday of November, A.D. 1914, shall begin as herein provided.

History: Art. Amend. 30, Sec. 6 (1913).

**Section 75.** The Justices of the Supreme Court are hereby authorized and directed to revise Chapter II of the Constitution by incorporating into said Chapter all amendments of the Constitution that are now or may be then in force and excluding therefrom all sections, clauses and words not in force and rearranging and renumbering the sections thereof under appropriate titles as in their judgment may be most logical and convenient; and said revised Chapter II as certified to the Secretary of State by said Justices or a majority thereof shall be a part of the Constitution of this State in substitution for existing Chapter II and all amendments thereof.

Articles of Amendment  
to the Constitution of 1793  
1828-1870

**Article I (1828)<sup>1</sup>**

**Article [1.]** No person, who is not already a freeman of this state, shall be entitled to exercise the privileges of a freeman, unless he be a natural born citizen of this, or some one of the United States or until he shall have been naturalized agreeably to the acts of Congress.<sup>2</sup>

**Article II (1836)<sup>3</sup>**

**Article [2.]** The most numerous branch of the Legislature of this State shall hereafter be styled the House of Representatives.<sup>4</sup>

**Article III (1836)**

**Article [3.]** The Supreme Legislative power of this State shall hereafter be exercised by a Senate and the House of Representatives; which shall be styled, "The General Assembly of the State of Vermont." Each shall have and exercise the like powers in all acts of Legislation; and no bill, resolution, or other thing which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other. **Provided,** That all Revenue bills shall originate in the House of Representatives,--but the Senate may propose or concur with amendments, as on other bills. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that, in which the two Houses shall be sitting,--and in case of disagreement between the two Houses, with respect to adjournment, the governor may adjourn them to such time as he shall think proper.<sup>5</sup>

**Article IV (1836)**

**Article [4.]** The Senate shall be composed of thirty Senators, to be of the freemen of the County for which they are elected, respectively, who are thirty years of age or upwards, and to be annually elected by the freemen of each County respectively.--Each County shall be entitled to one Senator, at least, and the remainder of the Senators shall be apportioned to the several Counties according to their population, as the same was ascertained by the last Census, taken under the authority of

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<sup>1</sup>See page 322 for more details on the Constitutional Convention of 1828.

<sup>2</sup>Adopted by Convention, June 27, 1828. This article is now Section 42 as amended by Article of Amendment 40.

<sup>3</sup>See page 383 for more details on the Constitutional Convention of 1836.

<sup>4</sup>Adopted by Convention and certified, January 14, 1836. This article is now embodied in Sections 6 and 14.

<sup>5</sup>This article is embodied in Sections 1, 2 and 6.

the United States,--regard being always had, in such apportionment, to the Counties having the greatest fraction.---But the several counties shall, until after the next Census of the United States, be entitled to elect, and have their Senators, in the following proportion, to wit:

Bennington County, two; Windham County, three; Rutland County, three; Windsor County, four; Addison County, three; Orange County, three; Washington County, two; Chittenden County, two; Caledonia County, two; Franklin County, three; Orleans County, one; Essex County, one; Grand Isle County, one.

The Legislature shall make a new apportionment of the Senators to the several Counties, after the taking of each Census of the United States, or Census taken, for the purpose of such apportionment, by order of the Government of this State---always regarding the above provisions of this article.<sup>6</sup>

#### Article V (1836)

**Article [5.]** The freemen of the several towns in each County shall annually, give their votes for the Senators, apportioned to such County, at the same time, and under the same regulations, as are now provided for the election of Councillors.---And the person or persons equal in number to the number of Senators, apportioned to such County, having the greatest number of legal votes, in such County respectively, shall be the Senator or Senators of such County.--At every election of Senators, after the votes shall have been taken, the Constable or presiding officer, assisted by the Selectmen and civil authority present, shall sort and count the said votes, and make two lists of the names of each person, with the number of votes given for each annexed to his name, a record of which shall be made in the Town Clerk's office, and shall seal up said lists, separately, and write on each the name of the town, and these words, "Votes for Senator," or "Votes for Senators," as the case may be, one of which lists shall be delivered, by the presiding officer, to the Representative of said town, (if any) and if none be chosen, to the Representative of an adjoining town, to be transmitted to the President of the Senate;---the other list, the said presiding officer, shall within ten days, deliver to the Clerk of the County Court, for the same County,---and the Clerk of each County Court, respectively, or in case of his absence, or disability, to the Sheriff of such County, or in case of the absence or disability, of both, to the High Bailiff of such County, on the tenth day after such election, shall publicly, open, sort, and count said votes;---and make a record of the same in the office of the Clerk of such County Court, a copy of which he shall transmit to the Senate:---and shall also within ten days thereafter, transmit to the person or persons elected, a certificate of his or their election.

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<sup>6</sup>This article was superseded by Article of Amendment 23.

**Provided,** However, that the General Assembly shall have power to regulate by Law the mode of balloting for Senators, within the several Counties, and to prescribe the means, and the manner by which the result of the balloting shall be ascertained, and through which the Senators chosen shall be certified of their election, and for filling all vacancies in the Senate, which shall happen by death, resignation or otherwise. But they shall not have power to apportion the Senators to the several Counties, otherwise, than according to the population thereof agreeably to the provisions herein before ordained.<sup>7</sup>

#### **Article VI (1836)**

**Article [6.]** The Senate shall have the like powers to decide on the election and qualifications of, and to expel any of its members, make its own rules, and appoint its own officers, as are incident to, or are possessed by, the House of Representatives. A majority shall constitute a quorum. The Lieut. Governor shall be President of the Senate, except when he shall exercise the force of Governor, or when his office shall be vacant, or in his absence, in which cases the Senate shall appoint one of its own members to be President of the Senate, **pro tempore**. And the President of the Senate shall have a casting vote, but no other.<sup>8</sup>

#### **Article VII (1836)**

**Article [7.]** The Senate shall have the sole power of trying and deciding upon all impeachments---when sitting for that purpose, they shall be on oath, or affirmation, and no person shall be convicted, without the concurrence of two thirds of the members present. Judgment in cases of impeachment, shall not extend farther than to removal from office---and disqualification to hold or enjoying any office of honor, or profit, or trust, under this State. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to Law.<sup>9</sup>

#### **Article VIII (1836)**

**Article [8.]** The Supreme Executive power of the State shall be exercised by the Governor, or, in case of his absence, or disability, by the Lieut. Governor; who shall have all the powers, and perform all the duties vested in, and enjoined upon the Governor and Council, by the Eleventh and Twenty-seventh Sections of the Second Chapter of the Constitution, as at present established, excepting that he shall not sit

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<sup>7</sup>This article is now embodied in Sections 43, 45, and 53. See also Article of Amendment 24, Sections 2 and 4.

<sup>8</sup>This article is now Section 19.

<sup>9</sup>This article is now Section 58.



as a judge, in case of impeachment, nor grant reprieve or pardon in any such case; nor shall he command the forces of the State in person, in time of war, or insurrection; unless by the advice and consent of the Senate; and no longer than they shall approve thereof. The Governor may have a Secretary of civil and military affairs, to be by him appointed during pleasure, whose services he may at all times command; and for whose compensation provision shall be made by law.<sup>10</sup>

#### **Article IX (1836)**

**Article [9.]** The votes for Governor, Lieut. Governor, and Treasurer, of the State, shall be sorted and counted, and the result declared, by a committee appointed by the Senate and House of Representatives. If, at any time, there shall be no election, by the freemen, of Governor, Lieut. Governor, and Treasurer, of the State, the Senate and House of Representatives shall, by a joint ballot, elect to fill the office, not filled by the freemen as aforesaid, one of the three candidates for such office, (if there be so many) for whom the greatest number of votes shall have been returned.<sup>11</sup>

#### **Article X (1836)**

**Article [10.]** The Secretary of State, and all officers, whose elections are not otherwise provided for, and who under the existing provisions of the Constitution, are elected by the Council and House of Representatives, shall, hereafter, be elected by the Senate and House of Representatives, in joint assembly, at which the presiding officer of the Senate, shall preside; and such presiding officer in such joint assembly shall have a casting vote, and no other.<sup>12</sup>

#### **Article XI (1836)**

**Article [11.]** Every bill which shall have passed the Senate and House of Representatives, shall, before it become a law, be presented to the Governor; if he approve, he shall sign it; if not, he shall return it, with his objections, in writing, to the House, in which it shall have originated; which shall proceed to reconsider it. If upon such reconsideration a majority of the House shall pass the bill, it shall, together with the objections, be sent to the other House, by which, it shall, likewise, be reconsidered, and if approved by a majority of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for or against the bill, shall be entered on the journal of each House,

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<sup>10</sup>This article is now embodied in Sections 1, 3, 20, 21, and 58.

<sup>11</sup>This article is now Section 47, second and third paragraphs.

<sup>12</sup>This article is now Section 48. See also Article of Amendment 28.

respectively. If any bill shall not be returned by the Governor, as aforesaid, within five days, (Sundays excepted) after it shall have been presented to him, the same shall become a law, in like manner, as if he had signed it; unless the two Houses, by their adjournment, within three days after the presentment of such bill, shall prevent its return; in which case, it shall not become a law.<sup>13</sup>

#### **Article XII (1836)**

**Article [12.]** The Writ of Habeas Corpus shall in no case be suspended.---It shall be a writ, issuable of right; and the General Assembly shall make provision to render it a speedy and effectual remedy in all cases proper therefor.<sup>14</sup>

#### **Article XIII (1836)**

**Article [13.]** Such parts and provisions only of the Constitution of this State, established by Convention on the ninth day of July, one thousand seven hundred and ninety-three, as are altered or superseded by any of the foregoing amendments, or are repugnant thereto, shall hereafter cease to have effect.<sup>15</sup>

#### **Articles XIV, XV and XVI (1850)<sup>16</sup>**

**Article [14.]** The Assistant Judges of the County Court shall be elected by the Freemen of their respective Counties.<sup>17</sup>

**Article [15.]** Sheriffs and High Bailiffs shall be elected by the Freemen of their respective Counties.

**Article [16.]** State's Attorneys shall be elected by the Freemen of their respective Counties.

#### **Article XVII (1850)**

**Article [17.]** Judges of Probate shall be elected by the Freemen of their respective Probate Districts.<sup>18</sup>

#### **Article XVIII (1850)**

**Article [18.]** Justices of the peace shall be elected by the Freemen

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<sup>13</sup>This article was superseded by Article of Amendment 29.

<sup>14</sup>This article is now Section 41.

<sup>15</sup>This article was a temporary provision, disposing of superseded parts of the Constitution.

<sup>16</sup>See page 515 for more details about the Constitutional Convention of 1850.

<sup>17</sup>The amendments of 1850 were adopted at the Convention of that year and certified by the President and Secretary of the Convention on January 12, 1850. This article is now, along with the following two articles, Section 50.

<sup>18</sup>This article is now part of Section 51.

of their respective towns; and towns having less than one thousand inhabitants may elect any number of Justices of the Peace not exceeding **five**; towns having one thousand, and less than two thousand inhabitants, may elect **seven**; towns having two thousand and less than three thousand inhabitants, may elect **ten**; towns having three thousand and less than five thousand inhabitants; may elect **twelve**; and towns having five thousand, or more inhabitants, may elect **fifteen** Justices of the Peace.<sup>19</sup>

#### Article XIX (1850)

**Article [19.]** All the officers named in the preceding articles of amendment shall be annually elected by ballot and shall hold their offices for one year, said year commencing on the first day of December next after their election.<sup>20</sup>

#### Article XX (1850)

**Article [20.]** The election of the several officers mentioned in the preceding articles, excepting town Representatives, shall be made at the times and in the manner now directed in the Constitution for the choice of Senators. And the presiding officer of each Freeman's meeting, after the votes shall have been taken, sorted and counted, shall, in open meeting, make a certificate of the names of each person voted for, with the number of votes given for each, annexed to his name and designating the office for which the votes were given, a record of which shall be made in the Town Clerk's office, and he shall seal up said certificate, and shall write thereon the name of the town and the words, **Certificate of Votes for .....** and add thereto, in writing, the title of the office voted for, as the case may be, and shall deliver such certificate to some Representative chosen as a member of the General Assembly, whose duty it shall be to cause such certificate of votes to be delivered to the Committee of the General Assembly appointed to canvass the same. And at the sitting of the General Assembly, next after such balloting for the officers aforesaid, there shall be a Committee appointed of and by the General Assembly, who shall be sworn to the faithful General Assembly, who shall be sworn to the faithful discharge of their duty and whose duty it shall be to examine such certificates and ascertain the number of votes given for each candidate, and the persons receiving the largest number of votes for the respective offices, shall be declared duly elected, and by such Committee be reported to the General Assembly and the officers so elected shall be commissioned by the Governor. And if two or more persons designated

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<sup>19</sup>This article is now Section 52.

<sup>20</sup>This article was amended by Article 24, Sec. 5, and is now embodied in Section 43.

for any one of said offices, shall have received an equal number of votes, the General Assembly shall elect one of such persons to such office.<sup>21</sup>

#### **Article XXI (1850)**

**Article [21.]** The term of office of the Governor, Lieutenant Governor, and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of one year, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature, at which, by the constitution and laws, their successors are required to be chosen, and not after such adjournment. And the Legislature shall provide, by general law, declaring what officer shall act as Governor whenever there shall be a vacancy in both the offices of Governor and Lieutenant Governor, occasioned by a failure to elect, or by the removal from office, or by the death, resignation, or inability of both Governor and Lieutenant Governor, to exercise the powers and discharge the duties of the office of Governor; and such officer, so designated, shall exercise the powers and discharge the duties appertaining to the office of Governor accordingly until the disability shall be removed, or a Governor shall be elected. And in case there shall be a vacancy in the office of Treasurer, by reason of any of the causes enumerated, the Governor shall appoint a Treasurer for the time being, who shall act as Treasurer until the disability shall be removed, or a new election shall be made.<sup>22</sup>

#### **Article XXII (1850)**

**Article [22.]** The Treasurer of the State shall, before entering upon the duties of his office, give sufficient security to the Secretary of State, in behalf of the State of Vermont, before the Governor of the State or one of the Judges of the Supreme Court. And Sheriffs and High Bailiffs, before entering upon the duties of their respective offices, shall give sufficient security to the Treasurer of their respective Counties, before one of the Judges of the Supreme Court, or the two Assistant Judges of the County Court of their respective Counties, in such manner and in such sums as shall be directed by the Legislature.<sup>23</sup>

#### **Article XXIII (1850)**

**Article [23.]** The Senate shall be composed of thirty Senators, to be of the Freemen of the County for which they are elected, respectively, who shall have attained the age of thirty years, and they shall be

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<sup>21</sup>This article is now Section 53. See also Article of Amendment 24.

<sup>22</sup>The first part of this article was amended by Sec. 3 of Article of Amendment 24, and is now Section 49. The second part is now Section 24.

<sup>23</sup>This article is now Section 25.

elected annually by the Freemen of each County respectively.

The Senators shall be apportioned to the several Counties, according to the population, as ascertained by the census taken under the authority of Congress in the year 1840, regard being always had, in such apportionment to the Counties having the largest fraction, and giving to each County at least one Senator.

The Legislature shall make a new apportionment of the Senators to the several Counties, after the taking of each census of the United States, or after a census taken for the purpose of such apportionment, under the authority of this State, always regarding the above provisions of this article.<sup>24</sup>

#### **Article XXIV (1870)<sup>25</sup>**

**Article [24.] Section 1.** The General Assembly shall meet on the first Wednesday of October, biennially; the first election shall be on the first Tuesday of September, A.D. 1870; the first session of the General Assembly on the first Wednesday of October, A.D. 1870.

**Section 2.** The Governor, Lieutenant Governor, Treasurer of the State, senators, town representatives, assistant judges of the county court, sheriffs, high bailiffs, State's attorneys, judges of probate and justices of the peace, shall be elected biennially, on the first Tuesday of September, in the manner prescribed by the Constitution of the State.

**Section 3.** The term of office of the Governor, Lieutenant Governor and Treasurer of the State, respectively, shall commence when they shall be chosen and qualified, and shall continue for the term of two years, or until their successors shall be chosen and qualified, or to the adjournment of the session of the Legislature at which, by the Constitution and laws, their successors are required to be chosen, and not after such adjournment.

**Section 4.** The term of office of senators and town representatives shall be two years, commencing on the first Wednesday of October following their election.

**Section 5.** The term of office of the assistant judges of the county court, sheriffs, high bailiffs, State's attorneys, judges of probate and justices of the peace, shall be two years, and shall commence on the first day of December next after their election.<sup>26</sup>

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<sup>24</sup>Article of Amendment 23 supersedes Article of Amendment 4, and is now Section 18. See also Article of Amendment 24.

<sup>25</sup>See page 705 for more details about the Constitutional Convention of 1870.

<sup>26</sup>Sections 1, 2, 4 and 5 of Article 24 were superseded by Article of Amendment 30. Section 3 was not amended, and is now Section 49.

**Article XXV (1870)**

**Article [25.] Section 1.** At the session of the General Assembly of this State, A.D. 1880, and at the session thereof every tenth year thereafter, the Senate may, by a vote of two-thirds of its members, make proposals of amendment to the Constitution of the State, which proposals of amendment, if concurred in by a majority of the members of the House of Representatives, shall be entered on the journals of the two Houses, and referred to the General Assembly then next to be chosen, and be published in the principal newspapers of the State; and if a majority of the members of the Senate and of the House of Representatives of the next following General Assembly shall respectively concur in the same proposals of amendment, or any of them, it shall be the duty of the General Assembly to submit the proposals of amendment so concurred in to a direct vote of the freemen of the State; and such of said proposals of amendment as shall receive a majority of the votes of the freemen voting thereon shall become a part of the Constitution of this State.<sup>27</sup>

**Section 2.** The General Assembly shall direct the manner of voting by the people upon the proposed amendments, and enact all such laws as shall be necessary to procure a free and fair vote upon each amendment proposed, and to carry into effect all the provisions of the preceding section.<sup>28</sup>

**Section 3.** The House of Representatives shall have all the powers now possessed by the Council of Censors to order impeachments, which shall in all cases be by a vote of two-thirds of its members.<sup>29</sup>

**Section 4.** The forty-third section of the second part of the Constitution of this State is hereby abrogated.<sup>30</sup>

**Article XXVI (1870)**

**Article [26.]** The judges of the Supreme Court shall be elected biennially, and their term of office shall be two years.<sup>31</sup>

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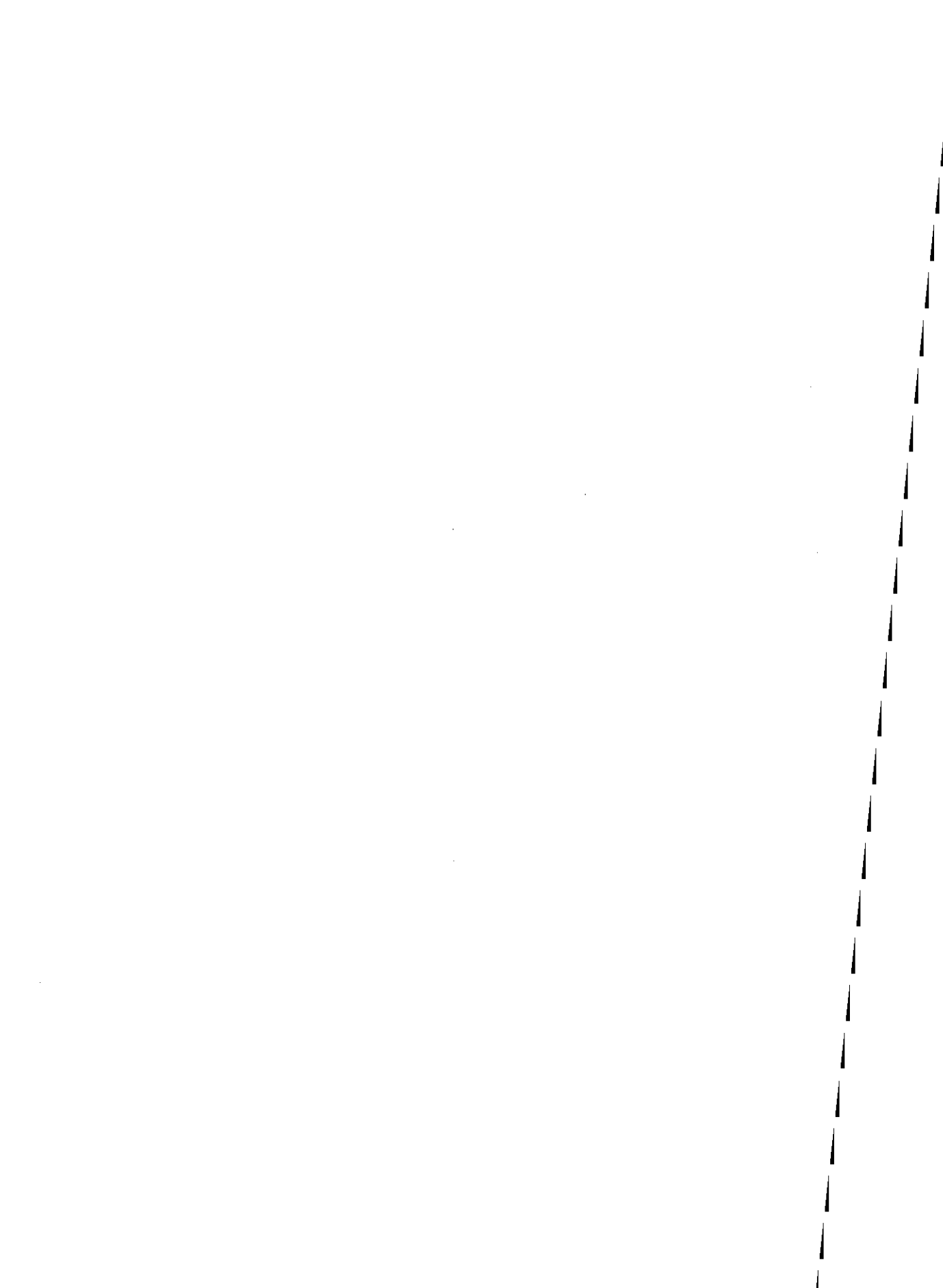
<sup>27</sup>Section 1 is now Section 72, first paragraph.

<sup>28</sup>Section 2 is now Section 72, second paragraph.

<sup>29</sup>Section 3 is now Section 57.

<sup>30</sup>Section 4 was a temporary provision, abrogating Section 43 of 1793.

<sup>31</sup>This article became Section 44, repealed in 1974.



## Biographical Sketches of the Censors

### 1785 Council

**Lewis Beebe** (1749-1816): Arlington. Manchester State Representative, 1781. Bennington County Clerk, 1782-1787. Ordained Congregational minister, 1787. Pastor of the church in Pawlet; dismissed in 1791, and then abandoned his clerical position.

**Jonathan Brace** (1754-1837): Manchester. Originally a judge of the supreme court of Connecticut. Lawyer and Federalist. Auditor to the State Treasurer, 1781. Bennington County Assistant Judge, 1783. Bennington State's Attorney, 1785. After service on the Council, returned to Connecticut, where he served as a member of the Assembly, as a County and Probate Judge, Representative to Congress, 1798-1800, and as a member of the State Senate.

**Benjamin Carpenter** (1726-1804): Guilford. Served as a magistrate in Rhode Island in 1764. Moved to Guilford in 1770. Lieutenant Colonel in the Lower Regiment of Cumberland County, 1776 and a field officer in the Revolutionary War, a member of the Westminster Convention of 1775 and the Dorset and Windsor Conventions of 1777, a member of the Council of Safety, 1777-78, Guilford Town Representative, 1778, 1783, 1788, Lieutenant Governor, 1779-81, a member of the Court of Confiscation, 1778, and a prisoner of Yorkers, 1783. Deacon in the Baptist Church.

**Ebenezer Curtis** (?-?): Windsor. Delegate to the 1776 Windsor Convention, a member of the Committee of Safety, 1776, and an ensign in the Upper Regiment of Cumberland County. Commissioner of Sequestration and Sales in 1779 and State Representative from Windsor, 1778-80, 1782-3. Windsor Probate Judge, 1783-86.

**Jonathan Hunt** (1738-1832): Vernon. Assisted in the first clearing of land in Guilford in 1758. Town Clerk of Hinsdale (Vernon) and a Yorker loyalist, whose land was confiscated and sold by the new Republic. Sheriff of Windham County, 1781. Vernon Town Representative, 1783, 1802. Executive Council, 1786-93, Lieutenant Governor, 1794-96, and member of the 1799 Council of Censors.

**Stephen Jacob** (1755-1817): Windsor. Attorney and Federalist. Windsor State Representative, 1781, 1788 and 1794. Vermont Commissioner to settle New York boundary controversy, 1789. Clerk of the House, 1788 and 1789. First U.S. District Attorney for Vermont, 1791-97, a member of the 1793 Constitutional Convention, Windsor County Judge, 1797-1801, and a Vermont Supreme Court Judge, 1801-02.

**Joseph Marsh** (1726-1811): Hartford. Lieutenant-Colonel in the Upper Regiment of Cumberland County in 1775 and Colonel in 1776. Member of the provincial Congress of New York in 1776. Member of the Windsor Conventions of 1777. Vermont's first Lieutenant Governor, 1778-79, also 1787-90. Chairman of the Court of Confiscation for eastern Vermont, represented Hartford in the Assembly in 1781 and 1782, and served as Windsor County Chief Judge, 1787-95. Member of the Constitutional



Convention of 1791, that ratified the U.S. Constitution.

**Ebenezer Marvin** (1741-1820): Tinmouth. Physician. Captain of volunteers who marched in support of Ethan Allen at Ticonderoga. Judge of Rutland County Court, 1786, 1788-1794. Moved to Franklin in 1794. Judge of Chittenden County Court, 1794-1802 and again, 1808-9. Represented Tinmouth in the Assembly, 1783, 1786-91. Executive Council, 1791-1802.

**Increase Mosely** (1712-1795): Clarendon. President of the Council of Censors. Member of the Connecticut Legislature for 36 years, beginning in 1751. Early supporter of independence. Moved to Clarendon in 1779, and represented that town in the Assembly in 1782, serving as Speaker of the House. Judge of the Supreme Court in 1780 and Chief Judge of the Rutland County Court, 1781-1787.

**Elijah Robinson** (1735-1809): Weathersfield. Fought in the French and Indian War and the Revolutionary War, on the side of the colonies. Weathersfield's Representative to the Assembly, 1782, 1783, and 1792-94. Member of the Board of War in 1783; Lieutenant-Colonel in suppressing the Windsor County insurrection of 1786. Judge of the Windsor County Court, 1782-87, 1788-1801, and Chief Judge in 1802. Executive Council, 1794-1802.

**John Sessions** (1741-1820): Westminster. Delegate to the 1774 Windsor Convention, a delegate to the New York Provincial Congress in 1776. He represented Westminster in the Assembly in 1787.

**Micah Townsend** (1749-1832): Brattleboro. Secretary of the Council of Censors. Attorney. Captain of a militia company during the Revolutionary War. Moved to Brattleboro in 1777. Judge and registrar of probate for Windham County from 1781 until 1787. Secretary of State from 1781 to 1788. Moved to Quebec in 1802.

**Ebenezer Walbridge** (1738-1819): Bennington. Adjutant in the battle of Bennington, and eventually Brigadier General in the militia. Bennington Town Representative, 1778, 1780, member of the Executive Council, 1786-96. Erected the first paper mill in Vermont.

### 1792 Council

**Orlando Bridgman** (1743?-1813): Vernon. One of the original proprietors of the west part of Hinsdale [Vernon], where his father built a fort in 1737, which was burned by native Americans in 1747. Member of the Council of Safety from Hinsdale (Vernon) in 1778. In 1784, professed himself a citizen of New York in a petition to Governor Chittenden to release two men captured by the Vermonters and delay sending more troops south.

**Daniel Buck** (1753-1816): Norwich. Attorney. Delegate to 1791 Constitutional Convention. Orange State's Attorney, 1783-85, county clerk 1783-84. Lost an arm in the Revolutionary War, was married in 1786 and had 11 children. Vermont Attorney General, 1793-4, during the time he

served in the Vermont House as Speaker; Representative to Congress, 1795-7, State's Attorney for Windsor County, 1802-3, and State Representative from Norwich, 1806-7.

**Benjamin Burt** (1739-1835): Westminster. Imprisoned after the Westminster Massacre as a member of the court party but soon joined the Vermont party, served as Westminster selectman in 1785 and 1791 and the first overseer of highways for the town. Assistant Judge of Windham County, 1783-85; 1791-1803, State Representative from Westminster, 1796-99, a member of the Executive Council, 1789-1799.

**Elijah Dewey** (1744-1818): Bennington. Federalist. Company captain at Ticonderoga, 1775, and at the Battle of Bennington, 1777. Served as Representative from Bennington, 1786-88; 1796; 1812; 1813.

**Jonas Galusha** (1753-1834): Shaftsbury. Jeffersonian Republican, farmer, innkeeper, Bennington County sheriff (1781-87), represented Shaftsbury at the Constitutional Conventions of 1814 and 1822 (and served as President), Executive Council, 1793-97; 1800-1807; Bennington County Assistant Judge, 1795-98; 1800-07; State Representative, 1800; Supreme Court Judge, 1807-08; Governor, 1809-13; 1815-20.

**Anthony Haswell** (1756-1816): Bennington. Jeffersonian Republican. Established *Vermont Gazette*, Bennington, 1783; served as Vermont Postmaster General, 1784-1791; started *Herald of Vermont* at Rutland, 1792, *Monthly Miscellany or Vermont Magazine*, 1794, among others. Indicted in 1800 for writing two articles, one about Matthew Lyon's imprisonment, the other criticizing President Adams' appointments, and sentenced to two months imprisonment and a \$200 fine.

**Roswell Hopkins** (1757-1829): Vergennes. Secretary of the Council of Censors. Federalist. Secretary of State, 1788-1802; Clerk of the House, 1779-1788; Clerk of the Addison County Court, 1786-1803. One of the first aldermen of Vergennes, 1794, and Mayor, 1795-8.

**Samuel Knight** (1730-1804): Brattleboro. President of the Council of Censors. First and only lawyer commissioned by the Crown to become a judge in the Vermont courts. Delegate to 1793 Constitutional Convention. Brattleboro Town Clerk, 1773-74; 1776-83; State Representative from Brattleboro, 1781; 1783-85; 1789; Windham County Judge, 1786, 1787; 1794-96; 1801-02; State's Attorney, 1788, 1789; Supreme Court Judge, 1791-93. On the Yorker side of the Westminster Massacre in 1775, and then fled across the river and did not return for a year.

**Beriah Loomis** (1753-1819): Thetford. Housewright (carpenter) and farmer. State Representative, 1782-85; 1787-89; 1817; Assistant Judge of Orange County, 1796-1812; 1813-18; Executive Council, 1801-07; 1809-13; and a delegate to the 1791 Constitutional Convention.

**Samuel Mattocks** (?-1804): Tinmouth. Tinmouth Town Representative, 1781-84; Rutland County Assistant Judge, 1783-88; 1794-95; member of the

Executive Council, 1785; State Treasurer, 1786-1800; Chief Judge of Rutland County, 1788-89. Father of Gov. John Mattocks.

**Elijah Paine** (1757-1842): Williamstown. Manufacturer, road builder and scientific farmer, among other enterprises. Williamstown Town Representative, 1787-90; Judge of Probate of the Randolph District, 1788-91; Supreme Court Judge, 1791; 1792-93; U.S. Senator, 1795-1801, and U.S. District Judge, 1801-42. Fought in the Revolutionary Army, 1775; built the highway from Brookfield to Montpelier, 1784; pioneered the raising of Merino Sheep; Secretary of the 1786 Constitutional Convention; personal friend of George Washington; co-founder of the Bank of Montpelier; Postmaster in Williamstown, 1815-42.

**Isaac Tichenor** (1754-1838): Bennington. Federalist. Studied law; served as Bennington Representative, 1781-84; Commissary of State Purchases, 1781; 1784; Auditor of Public Accounts, 1781-82; 1788-90; Delegate to the U.S. Congress, 1782-83, 1787-89; Speaker of the House, 1783-84; Executive Council, 1786-91; Supreme Court Judge, 1791-93; U.S. Senator 1796-97, 1815-21; and Governor, 1797-1807, 1808. Known as the Jersey Slick, for his insinuating address.

**John White** (?-?): Georgia. Democratic Republican. Delegate to the Constitutional Convention of 1791 and 1793; Assistant Judge from Arlington, 1783-87, and from Georgia, 1796-97; Town Representative from Georgia, 1790, 1794, 1800; Executive Council, 1794-97, 1801-06.

### 1799 Council

**Elias Buel** (1737-1824): Huntington. Assistant Judge of Chittenden County, 1798-1799. Member of Assembly from Huntington, 1801-2, 1804, 1814. Member from Huntington to 1814 Constitutional Convention.

**Noah Chittenden** (1753-1835): Jericho. Oldest son of Governor Thomas Chittenden, a resident of Cambridge and then Jericho. Member of Assembly from Jericho, 1796, 1812-15; Sheriff of Addison County (then including Jericho, and extending north to Canada), 1785, and Chittenden County, 1787-90; Assistant Judge, Chittenden County, 1804-11; Judge of Probate, 1804. Executive Council, 1801-12. Represented Jericho in Constitutional Conventions of 1822 and 1828.

**Elijah Dewey** (1744-1818): Bennington. See 1792 Council sketch.

**Benjamin Emmons** (?-1811): Woodstock. Member of the Council of Safety, 1775. Lieutenant of the upper regiment of Cumberland County (New York). Attended Westminster Conventions (1776) and Windsor Convention. Delegate from Woodstock at Constitutional Convention in June 1777, where the first Vermont Constitution was framed. Executive Council, 1778-86. Judge of the Court of Confiscation for Cumberland County (the eastern side of the state), 1778. Assistant Judge of Windsor County for a short time in 1781. Member of the General Assembly for eleven years, between 1779 and 1803. Noted for arranging to have Woodstock declared shire town of

Windsor County. Member of the U.S. Constitutional Convention of 1791.

**David Fay** (1761-1827): Bennington. Attorney. Secretary of the Council of Censors. Served at Battle of Bennington at age 16. Admitted to the bar, 1794. State's Attorney, Bennington County, 1795-8, 1800-1. U.S. District Attorney, 1801-9. Supreme Court Justice, 1809-1812. Executive Council, 1817-20. Judge of Probate, 1819-20.

**Lot Hall** (1757-1809): Westminster. Represented Westminster in Assembly, 1789, 1791-2, 1808. Member of Constitutional Convention, 1793. Windham County State's Attorney, 1793-4. Supreme Court Justice, 1794-1800.

**Jonathan Hunt** (1738-1823): Vernon. See 1785 Council sketch.

**John Leverett** (1758-1829). Windsor.

**Nathaniel Niles** (1741-1828). West Fairlee. Inventor, manufacturer, poet, preacher. Supreme Court Justice, 1784-1787. Executive Council, 1785, 1789-90, 1803-7. Speaker of the House, 1784-5. Member of Assembly from West Fairlee, 1784-5, 1800-2, 1812-4. First Vermont Representative in Congress, 1791-7. Member of the 1814 Constitutional Convention.

**Samuel Knight** (1730-1804). Brattleboro. See 1792 sketch.

**Moses Robinson** (1741-1813): Bennington. President of 1799 Council of Censors. Son of Samuel Robinson, founder of Bennington. Bennington's first Town Clerk, 1762-81. Attended September 1776 Dorset Convention, as Bennington's representative. Colonel of Militia, 1777. Member, Council of Safety, 1777-8. Supreme Court Justice, 1778-80, 1782-3, 1785-8. Executive Council, 1778-85. Member of 1786 Constitutional Convention. Second Governor of Vermont (elected by General Assembly), 1789-90. U.S. Senator, 1791-96. Member of Assembly from Bennington, 1802. Member of 1806 Council of Censors.

**John White** (? - ?). Georgia. See 1792 Council sketch.

**John Willard** (1758-1825). Middlebury. Physician. Member of 1793 Constitutional Convention. U.S. Marshall, 1801-11.

#### 1806 Council

**Apollos Austin** (1762-1843). Orwell. Executive Council, 1809. Member of Assembly from Orwell, 1819. Paid Matthew Lyons' fine under the Sedition Act conviction.

**Ezra Butler** (1763-1838). Waterbury. Second settler and first Town Clerk of Waterbury. Member of Assembly from Waterbury, 1794-7, 1799-1804, 1807. Judge of Chittenden County, 1806-11, and of Washington County, 1811-13, 1815-18, and 1819-25. U.S. Representative, 1813-5. Assistant Judge, Washington County, 1825-6. Executive Council, 1807, 1809-12, 1815-25. Member of 1822 Constitutional Convention. Governor, 1826-8.

**Loyal Case** (1776-1808). Middlebury. Attorney. State's Attorney, Addison County, 1805-8.

**Isaac Clark** (1749-1822). Castleton. Representative to the Assembly from Castleton, 1784, 1787, 1796-9. Expelled from Assembly 1798, and immediately reelected by Castleton (but not admitted to Assembly). Son in law of Thomas Chittenden. Judge of Rutland County Court, 1806-11. Fought at Fort Defiance and Bennington, 1777. General in U.S. Army, who was arrested in June of 1815 when his regiment was discharged (his officers said, unfairly treated).

**Thomas Gross** (1759-1843). Hartford. First settled minister in Hartford (Congregational), twenty-two years.

**Udney Hay** (1739-1806). Underhill. Colonel in continental army. Said "to have been highly educated and distinguished for his talents." Described as "a gentleman, an imposing man, rather of the Matthew Lyon cast." Member of Assembly from Underhill, 1798-1803. Democratic-Republican candidate for U.S. Representative, 1802-03.

**William Hunter** (1754-1827). Windsor. Representative to Assembly from Windsor, 1795, 1807-8. Windsor County Probate Register, 1798-1801 and Probate Judge, 1801-16. Assistant Judge, Windsor County, 1805-16. Executive Council, 1809-13. U.S. Representative, 1817-9. Member of 1820 Council of Censors.

**Samuel Huntington** (1759-1823). Shaftsbury.

**John Noyes** (1764-1841). Brattleboro. Represented Brattleboro in the Assembly, 1808, 1810-2. Teacher, merchant. U.S. Representative, 1815-17.

**Mark Richards** (1760-1844). Westminster. Windham County Sheriff, 1806-11. Merchant. Councillor, 1813, 1815. U.S. Representative, 1817-21. Represented Westminster in the Assembly, 1824, 1826, 1828, 1832. Lieutenant Governor, 1830-1.

**Moses Robinson** (1741-1813). Bennington. See 1799 Council sketch.

**James Tarbox** (1759-1841). Randolph. Merchant. Representative to the Assembly from Randolph, 1797, 1800-1, 1803-4, 1813. Orange County Assistant Judge, 1806-12. Executive Council, 1815.

### 1813 Council

**Isaac Bayley** (1767-1850). Newbury. Orange County Clerk, 1788-1810, 1814-15. Newbury Town Representative, 1805.

**Nicholas Baylies** (1768-1847). Montpelier. Born Uxbridge, Massachusetts. Member of the Executive Council, 1814. Wrote *A Digested Index to Law Reports in England and the United States*, 1814. Washington County State's

Attorney, 1825-26. Vermont Supreme Court, 1831-33. Moved to Lyndon.

**Solomon Bingham** (1767-1839). Fairfield. Attorney. No indication in the Journal or other records that he ever attended the Council's sessions. Fairfield Town Representative, 1804. Berkshire Town Representative, 1810-11.

**Nathaniel Chipman** (1752-1843). Tinmouth. Attorney. Rutland State's Attorney, 1781-85. Tinmouth Town Representative, 1784-5, 1805-10. Vermont Supreme Court, 1786, 1789-90 (Chief Justice), 1796 (C.J.), 1813-14 (C.J.). Member of the 1791 Constitutional Convention. U.S. District Judge, 1791-93. U.S. Senator, 1797-1803.

**Ebenezer Clark** (? - ?) Lunenburg. Lunenburg Town Representative, 1809. Essex County Assistant Judge, 1813-15.

**David Edmond** (1778-1824). Vergennes. Attorney. No evidence he attended the Council's sessions. Vergennes City Representative, 1808-9, 1813-15, 1817, 1821. Member of the 1814 Constitutional Convention. Addison County State's Attorney, 1808-10, 1813-15, 1819-24.

**Daniel Farrand** (1760-1825). Newbury. Attorney. Orange County State's Attorney, 1785-97. Member of the 1791 Constitutional Convention. Newbury Town Representative, 1792-3, 1796, 1798. Speaker of the House, 1798. Bradford Probate Judge, 1796-97. Windham County State's Attorney, 1801-4. Rockingham Town Representative, 1802. Vermont Supreme Court, 1813-14.

**William Hall, Jr.** (1774-1831). Rockingham. Grafton Town Representative, 1799. Member of the Executive Council, 1814. Rockingham Town Representative, 1826-27.

**Luther Jewett** (1772-1860). St. Johnsbury. Born Caterbury, Connecticut. Caledonia County Assistant Judge, 1813-14. U.S. Representative, 1815-17. Member of the 1836 Constitutional Convention.

**Charles Marsh** (1765-1849). Woodstock. Attorney. U.S. District Attorney, 1797-1801. U.S. Representative, 1815-17.

**Elijah Strong** (1762-1838). Brownington. Tavernkeeper. Orleans County Assistant Judge, 1799.

**Robert Temple** (1783-1834). Rutland. Attorney. Secretary of the Council. Rutland County Clerk, 1804-20. Secretary to the Governor and Council, 1820-23. Rutland Town Representative, 1824-26.

**Isaac Tichenor** (1754-1838). Bennington. President of the Council. See 1792 sketch.

## 1820 Council

**Asa Aldis** (1770-1847). St. Albans. Attorney. Vermont Supreme Court, 1785. Franklin County State's Attorney, 1804-6. Anti-Masonic candidate for U.S. Representative, 1832.

**Joel Brownson** (? - ?). Richmond. Richmond Town Representative, 1799, 1802-3, 1805, 1807, 1810, 1813, 1817. Chittenden Probate Judge, 1809-11. Chittenden County Assistant Judge, 1811-14, 1815-20; Chittenden County Judge, 1820-22.

**Augustine Clarke** (1782-1841). Montpelier. Danville Town Representative, 1824, 1828. Caledonia County Assistant Judge, 1824-25. State Treasurer, 1833-37.

**Isaac C. Cushman** (1788-1843). Woodstock. Attorney. Captain of Militia. Lecturer at Woodstock Medical School. National Republican candidate for U.S. Representative, 1833.

**William Hunter** (1754-1827). Windsor. President of the Council. See 1806 sketch.

**Jedediah Hyde** (1760-1824). Grand Isle. Surveyor, school teacher. Grand Isle County Clerk, 1807-08, 1809-1824. Assessor of Internal Revenue, 1814-21. Grand Isle Town Representative, 1824.

**William Nutting** (1779-1863). Randolph. Attorney. Town Clerk, 1811-30. Justice of the Peace, 23 years. Randolph Town Representative, 1816-18. Orange County State's Attorney, 1822-30.

**John Phelps** (1777-1849). Guilford. Attorney. Ran office, mill and smith shop, 1812-32. Guilford Town Representative, 1814, 1818. Member of the 1814 Constitutional Convention. Anti-Masonic candidate for U.S. Representative, 1830, 1832, 1833. Member of the Executive Council, 1831, 1832. Windham County Senator, 1837.

**Joel Pratt** (1775-1861). Manchester. Storekeeper. Bennington County Clerk, 1803-1828. Manchester Town Representative, 1808-11, 1813, 1817. Member of the Executive Council, 1821-23.

**Charles Rich** (1771-1824). Shoreham. Born Warwick, Massachusetts. Shoreham Town Representative, 1800-2, 1804-12, 1815. Addison County Assistant Judge, 1807-13, 1815-16. Delegate to the 1814 Constitutional Convention. U.S. Representative, 1813-15.

**Joseph Scott** (1761-1841). Craftsbury. Craftsbury Town Representative, 1794, 1817, 1825. Orleans County Sheriff, 1799-1814. Orleans Probate Judge, 1815-21. Delegate to the 1822 and 1836 Constitutional Conventions.

**Amos Thompson** (1770-1849). Poultney. Ferrisburgh Town Representative, 1800. Poultney Town Representative, 1804-08, 1813-14, 1816. Rutland County Assistant Judge, 1808-20; Rutland County Judge, 1820-24.

**Joshua Y. Vail** (1784-1854). Montpelier. Secretary of the Council. School teacher. Secretary, Vermont Mutual Fire Insurance Co., 23 years. Washington County Clerk, 1819-39.

#### 1827 Council

**Asa Aikens** (1788-1863). Windsor. President of the Council. Born in Barnard, Vermont. Windsor County State's Attorney, 1818-20. Windsor Town Representative, 1818, 1821. Vermont Supreme Court, 1823-24. Member of the 1836 Constitutional Convention.

**Joel Allen** (1788-1868). North Hero. Farmer. Grand Isle County Assistant Judge, 1817-23. Grand Isle Sheriff, 1824-47. Grand Isle Probate Judge, 1828-44. Grand Isle Town Representative, 1823. North Hero Town Representative, 1830, 1832. Grand Isle County Senator, 1837-8.

**John W. Dana** (1777-1850). Cabot. Farmer and merchant. Cabot Town Representative, 1804, 1807, 1810, 1818-20, 1836. Caledonia County Assistant Judge, 1819-21. Member of the 1828 and 1836 Constitutional Conventions.

**William Gates** (1786-1842). Lunenburg. Essex County Clerk, 1817-22, 1826-40. Lunenburg Town Representative, 1822-25. Member of the 1822 Constitutional Convention. Essex County Assistant Judge, 1822-23; Essex County Judge, 1823-25. Essex Probate Judge, 1823-28. Essex County Senator, 1836.

**William A. Griswold** (1775-1863). Danville. Attorney. Caledonia County State's Attorney, 1803-13, 1815-20. Danville Town Representative, 1807-10, 1813-17, 1819. Speaker of the House, 1815-17. Member of the 1814 and 1822 Constitutional Conventions. Member of the Executive Council, 1834. Burlington Town Representative, 1841.

**Jedediah H. Harris** (1784-1855). Strafford. Justice of the Peace, 32 years. Farmer. Strafford Town Representative, 1810-12, 1814. Delegate to the 1814 Constitutional Convention. Orange County Assistant Judge, 1820-23. Member of the Executive Council, 1828-30.

**William Howe** (1774-1828). Derby. Derby Town Representative, 1813-19. Member of the 1814 Constitutional Convention. Orleans County Assistant Judge, 1827-28.

**Daniel Kellogg** (1791-1875). Rockingham. Secretary of the Council. Westminster Probate Judge, 1819-21. Secretary to the Governor and Council, 1823-28. Windham County State's Attorney, 1827-28. Democratic-Republican candidate for U.S. Representative, 1833; 1840 (as Democrat). Member of 1843 Constitutional Convention. Democratic candidate for Governor, 1843-45. Rockingham Town Representative, 1845. Vermont Supreme Court, 1845-50. Windham County Senator, 1866-67.

**Obadiah Noble, Jr.** (1777-1864). Tinmouth. Justice of the Peace, 38



years. Attorney. Tinmouth Town Representative, 1811-12, 1815-16, 1820. Rutland Probate Judge, 1814-31. Member of the Constitutional Conventions of 1828 and 1836. Rutland County Assistant Judge, 1839-43. Rutland County Senator, 1838-39.

**Samuel S. Phelps** (1793-1855). Middlebury. Attorney. Vermont Supreme Court, 1831-37. Member of the Executive Council, 1831. U.S. Senator, 1839-51.

**Leonard Sargent** (1793-1880). Manchester. Attorney. Manchester Probate Judge, 1829-31, 1842-45, 1850-52. Manchester Town Representative, 1830-1, 1836, 1841. Bennington County State's Attorney, 1834-37. Bennington County Senator, 1843, 1854. Delegate to the 1836 and 1850 Constitutional Conventions.

**Bates Turner** (1760-1847). St. Albans. Attorney. Fairfield Town Representative, 1813. Vermont Supreme Court, 1827-28.

**Ezekiel P. Walton** (1789-1855). Montpelier. Born in Canterbury, N.H. Apprenticeship with Samuel Goss, Editor of the *Green Mountain Patriot* at an early age. Editor, *Vermont Watchman* 1810-30. Book seller and printer until 1853. "General" through his military career.

#### 1834 Council

**Joel Doolittle** (1773-1841). Middlebury. President of the Council. First tutor of Middlebury College. Attorney. Member of the Executive Council, 1815-17. Vermont Supreme Court, 1817-22. Middlebury Town Representative, 1824. Candidate for Governor, 1824, 1826-29.

**Alvan Foote** (1776-1856). Burlington. Attorney. Burlington Selectman, 1817-28. Chittenden County Assistant Judge, 1828-30.

**Nathaniel Harmon** (1779-1845). Pawlet. Attorney. Member of the 1836 Constitutional Convention.

**Robert Harvey** (1804-1872). Barnet. Caledonia County Senator, 1838, 1839. Caledonia County Assistant Judge, 1847-48. Barnet Town Representative, 1853-54.

**William Hebard** (1800-1875). Randolph. Secretary of the Council. Attorney. Orange County State's Attorney, 1832-33, 1834-35, 1836-37. Randolph Town Representative, 1835, 1840-42. Orange County Senator, 1836, 1838. Randolph Probate Judge, 1838-39, 1840-42. Vermont Supreme Court, 1842-44. U.S. Representative, 1849-53. Member of the 1857 Constitutional Convention. Chelsea Town Representative, 1858-59, 1864-65, 1872.

**David Hibbard, Jr.** (1780-1852). Concord. Farmer, attorney. Essex County Sheriff, 1812-15. Concord Town Representative, 1822-23. Essex County State's Attorney, 1828-32, 1840-41. Essex County Assistant Judge, 1838-39,

1850-52. Essex County Senator, 1846, 1847.

**John Phelps** (1777-1849). Guilford. See 1820 sketch.

**Samuel W. Porter** (1792-1882). Springfield. Springfield Town Representative, 1827-28. Windsor County Assistant Judge, 1828-38. Windsor County Senator, 1836, 1837.

**Joseph Reed** (1766-1859). Montpelier. Storekeeper. County treasurer, 30 years. Thetford Town Representative, 1814-16, 1818-19, 1822. Member of the 1814 Constitutional Convention. Orange County Assistant Judge, 1818-20. Washington County Probate Judge, 1830-33.

**Stephen Robinson** (1781-1852). Bennington. Bennington Town Representative, 1815, 1818. Bennington County Assistant Judge, 1818-21, 1827-28.

**Joseph Smith** (1791-1878). Berkshire. Farmer, attorney. Franklin County Assistant Judge, 1830-38, 1842-43. Berkshire Town Representative, 1838-39, 1842.

**Elisha Starkweather** (? - ?). Irasburg. Attorney. Irasburg Town Representative, 1828-31. Member of the Executive Council, 1835. Orleans County State's Attorney, 1835-36.

**William Strong** (1763-1840). Hartford. Born Lebanon, Connecticut. Hartford Town Representative, 1798-99, 1801-2, 1815-18. Windsor County Sheriff, 1802-10. U.S. Representative, 1810-15. Windsor County Assistant Judge, 1816-17; Windsor County Judge, 1817-18.

#### 1841 Council

**Heman Allen** (1777-1844). Burlington. Attorney. Milton Town Representative, 1810-14, 1816-17, 1822, 1824-6. Member of the 1822 Constitutional Convention. U.S. Representative (from Milton), 1827-29; (from Burlington), 1831-39. (died 12-11-44). (Known as Allen of Milton, not "Chile Allen").

**Austin Birchard** (1793-1879). Newfane. Storekeeper, 35 years. Treasurer, Windham County Savings Bank, 1854-74. Member of the Executive Council, 1833-34. Windham County Senator, 1846.

**Luther Carpenter** (1778-1861). Orange. Orange Town Representative, 1812-4, 1818-20, 1822-8, 1836. Orange County Assistant Judge, 1833-34. Member of the 1850 Constitutional Convention. Orange Selectmen, 17 years. Justice of the Peace, 35 years.

**Martin C. Deming** (1789-1851). Arlington. Arlington Town Representative, 1830-1. Member of 1850 Constitutional Convention. Manchester Probate Judge, 1836-8.

**Joseph D. Farnsworth** (1771-1857). Fairfax. Physician. President of the Council. Fairfield Town Representative, 1807-10, 1816-21, 1823. Franklin County Assistant Judge, 1807-9; Franklin County Judge, 1809-15, 1816-24 (all from Fairfield).

**Alvah R. French** (1798-1876). Craftsbury. Orleans County Assistant Judge, 1843-44.

**David Hibbard, Jr.** (1780-1852). Concord. See 1834 sketch.

**Wallis Mott** (1791-1875). South Hero. South Hero Town Representative, 1842. Grand Isle County Senator, 1843. Grand Isle Assistant Judge, 1845-46, 1848-50.

**Gordon Newell** (1778-1865). Pittsford. Secretary of the Council. Attorney. Pittsford Town Representative, 1818-19. Rutland County Assistant Judge, 1847-49.

**Epharim Paddock** (1780-1859). St. Johnsbury. Attorney. St. Johnsbury Town Representative, 1821, 1823-6. Member of the 1828 Constitutional Convention. Vermont Supreme Court, 1828-30.

**John A. Pratt** (1781-1854). Woodstock. Attorney. Selectman, 1829-30.

**Hezekiah Reed** (1795-1856). Montpelier. Attorney. President, Vermont Bank, 1849-56. Montpelier Town Representative, 1851-2.

**Peter Starr** (1778-1860). Middlebury. Attorney. Middlebury Town Representative, 1815. Addison County Senator, 1842, 1843.

#### 1848 Council

**Ira H. Allen** (1790-1866). Irasburg. Attorney. Orleans County Clerk, 1816-36. Irasburg Town Representative, 1818-20, 1822-3, 1826-7, 1835, 1837-8, 1840. Orleans Probate Judge, 1821-23. Member of the Executive Council, 1828-30. Orleans County Bank President, 1833-47.

**James Bell** (1776-1852). Walden. Attorney. Walden Town Representative, 1815, 1818-27. Delegate to the 1822 Constitutional Convention. Caledonia County Senator, 1846.

**Augustus Burt** (1781-1870). Sheldon. Attorney. Franklin County Assistant Judge, 1839-42. Franklin State's Attorney, 1849-51.

**Keyes P. Cool** (1795-1889). Bennington. Born in Vergennes, moved to Glens Falls in 1827. Manufacturer of lime. Moved to a farm in Bennington in 1848, delegate to Whig Convention in 1850. Returned to Glens Falls in 1856, to mercantile and lime business.

**David Crawford** (1789-1871). Putney. Putney Town Representative, 1828-9, 1832-3. Member of the Executive Council, 1835. Windham County

Senator, 1841. Member of the 1843 Constitutional Convention.

**John Dewey** (1794-1862). Guildhall. Physician. Essex County Assistant Judge, 1825-27. Guildhall Town Representative, 1828, 1830, 1832-3, 1836-7-8, 1841. Delegate to the 1836 and 1857 Constitutional Conventions. Essex County Senator, 1850, 1851.

**Salmon F. Dutton** (1803-1857). Cavendish. Windsor State Senator, 1842-43. Delegate to the 1843 Constitutional Convention. Windsor Probate Judge, 1849-57.

**William Hebard** (1800-1875). Randolph. See 1834 sketch.

**Henry F. Janes** (1792-1879). Waterbury. Attorney. Member of the Executive Council, 1830-34. U.S. Representative, 1835-37 (as Anti-Mason). State Treasurer, 1838-41. Waterbury Town Representative, 1854.

**John N. Pomeroy** (1792-1881). Burlington. Attorney. Secretary of the Council. Delegate to the 1836 and 1850 Constitutional Conventions. Chittenden State's Attorney, 1836-38.

**Peter Starr** (1778-1860). Middlebury. See 1841 sketch.

**Henry Stowell** (1798-1872). Cambridge. Attorney. Member of the 1836 Constitutional Convention. Assistant Judge of Lamoille County, 1849-51.

**Charles K. Williams** (1782-1853). Rutland. President of the Council. Attorney. Born Cambridge, Massachusetts. Rutland Town Representative, 1809, 1811, 1814-5, 1820-1. Rutland State's Attorney, 1813-15. U.S. Collector of Customs, 1826-30. Vermont Supreme Court, 1829-45 (Chief Justice, 1834-45). Governor, 1850-52.

#### 1855 Council

**Charles S. Dana** (1815-1888). St. Johnsbury. St. Johnsbury Town Representative, 1861-62. Caledonia County Senator, 1864. Caledonia County Clerk, 1857-66. Caledonia Probate Judge, 1846-47.

**David Fish** (1807-1876). Jericho. Jericho Town Representative, 1845-46. Chittenden County Assistant Judge, 1858-60.

**Thomas Gleed** (1827-1861). Morristown. Attorney. Lamoille County State's Attorney, 1853-55. Lamoille County Senator, 1857, 1858. Morristown Town Representative, 1859-60.

**Thomas F. Hammond** (1783-1865). Windsor. Windsor District Probate Judge, 1835-49. Windsor Town Representative, 1844-5.

**David Hibbard 3rd** (1810-1889). Concord. President of the Council. Concord Town Representative, 1838-40, 1843-4, 1858-9, and 1867-8.

**John B. Hutchinson** (1819-1867). Randolph. Attorney. Probate Judge, 1853-55. Orange County Senator, 1857, 1864, 1865.

**Nathaniel P. Nelson** (1803-1873). Craftsbury.

**Evelyn Pierpoint** (1816-1896). Rutland. Mercantile businessman.

**James M. Slade** (1812-1875). Middlebury. Secretary of the Council. Born Middlebury. Clerk of the House, 1853-56. American (Know Nothing) candidate for Governor, 1855. Lieutenant Governor, 1856-58. Addison County Assistant Judge, 1867-69. Middlebury Town Representative, 1870. Member of the 1870 Constitutional Convention.

**John W. Vail** (1800-1880). Bennington.

**LaFayette Ward** (1824-1882). Westminster. Westminster Town Representative, 1864.

**William W. Wells** (1805-1869). Waterbury. Trained as lawyer. Career in business (grist mill, dry goods). Waterbury Town Representative, 1863-6.

**William C. Wilson** (1812-1882). Bakersfield. Attorney. Member of the 1843 and 1850 Constitutional Conventions. Franklin County State's Attorney, 1843-45. Assistant Judge of Franklin County, 1848-51. Franklin County Senator, 1858-9. Bakersfield Town Representative, 1863-5. Vermont Supreme Court 1865-69.

### 1862 Council

**William H. H. Bingham** (1813-1894). Stowe. Secretary of the Council. Lamoille County State's Attorney, 1842-44, 1849-51. Stowe Town Representative, 1853. President, Vermont Mutual Fire Insurance Co., Montpelier. Democratic candidate for U.S. Representative, 1856; for Governor, 1876, 1878. Member of the 1870 Constitutional Convention.

**Edward A. Cahoon** (1819-1862). Lyndon. Attorney. Caledonia County Senator, 1856-57. Caledonia State's Attorney, 1854-56. Lyndon Town Clerk, 1856.

**Nathan T. Churchill** (1795-1883). Woodstock. Woodstock Town Representative, 1845, 1846.

**Seneca M. Dorr** (1821-1884). Rutland. Rutland Town Representative, 1863-64. Rutland County Senator, 1865, 1866. Rutland Assistant Judge, 1876-78.

**John L. Edwards** (1819-1895). Derby. Attorney. Orleans County State's Attorney, 1849-50. Member of the 1850 and 1857 Constitutional Conventions.

**Ira Goodhue** (1803-1890). Westminster. Westminster Town Representative, 1843, 1845, 1847. Windham County Senator, 1851-52. Windham County

Assistant Judge, 1858-64.

**Eleazer R. Hard** (1824-1899). Burlington. Attorney. Chittenden County Senator, 1867, 1868. State's Attorney, 1869-70.

**Burnam Martin** (1811-1882). Chelsea. Attorney. Orange County State's Attorney, 1852-53. Orange County Clerk, 1855-58. Chelsea Town Representative, 1857, 1876. Lieutenant Governor, 1858-60. Orange County Senator, 1866-67.

**Horatio Needham** (1797-1863). Bristol. Attorney. Bristol Town Representative, 1835-7, 1839, 1847-8, 1852-3. Speaker of the House, 1853. Member of the 1843, 1850 and 1857 Constitutional Conventions. Free Soil Democrat candidate for Governor, 1849, 1854.

**Joseph A. Prentiss** (1820-1907). Montpelier. Schoolmaster. Attorney.

**Jasper Rand** (1811-1894). St. Albans. Attorney. From Berkshire, member of 1843 and 1850 Constitutional Conventions.

**Henry H. Reynolds** (1801-1871). Alburg. Physician. State Senator from Grand Isle County, 1844. Assistant Judge of that county, 1846-49, 1856-58. Member of the 1870 Constitutional Convention.

**Leonard Sargent** (1793-1880). Manchester. President of the Council. See 1827 sketch.

#### 1869 Council

**John R. Cleaveland** (1820-1899). Brookfield. Brookfield Town Representative, 1865-7. Member of the 1870 Constitutional Convention.

**Joseph W. Colburn** (1800-1871). Springfield. Windsor State Senator, 1848-50. Assistant Judge of that county, 1859-63.

**Charles C. Dewey** (1830-1871). Rutland. Attorney. Orange County State's Attorney, 1856-59.

**Charles K. Field** (1803-1880). Brattleboro. President of the Council. Wilmington Town Representative, 1835-8. Newfane Town Representative, 1860. Member of the 1836, 1843, 1850, 1857, and 1870 Constitutional Conventions.

**Nathaniel W. French** (1807-1876). Lunenburg. Storekeeper. Sheriff, Essex County, 1853-55. Essex County State Senator, 1858. Assistant Judge, Essex County, 1862-64.

**William Harmon** (1812-1874). Shelburne. Shelburne Town Clerk and Treasurer. Shelburne Town Representative, 1845-6. Member of the 1870 Constitutional Convention.

**J. Burton Hollister** (1831-1907). Manchester. Manchester Town Representative, 1862-3. Bennington County Senator 1864.

**Henry Lane** (1824-1887). Cornwall. Cornwall Town Representative 1864-5-6. Addison County Assistant Judge, 1884-86.

**H. Henry Powers** (1835-1913). Morristown. Secretary of the Council. Attorney. Hyde Park Town Representative 1858. Lamoille County State's Attorney 1861-63. Member of 1870 Constitutional Convention. Lamoille County Senator 1872. Morristown Town Representative 1874. Vermont Supreme Court 1874-90. Republican candidate for U.S. Representative, 1878, 1880. U.S. Representative 1891-1901.

**Jasper Rand** (1811-1882). St. Albans. See 1862 sketch.

**Timothy P. Redfield** (1812-1888). Montpelier. Attorney. Irasburg Town Representative, 1839. Orleans County Senator, 1848. Montpelier legal practice, 1848-70. Free Soil Democratic candidate for Governor, 1851. Democratic candidate for Governor, 1863-64. Vermont Supreme Court, 1870-84.

**Charles Reed** (1814-1873). Montpelier. Attorney. Washington County State's Attorney, 1847-48. Montpelier Town Representative, 1862-63. Rutland County Senator, 1864-66.

**Jonathan Ross** (1826-1905). St. Johnsbury. Attorney. Caledonia County State's Attorney 1862-65. St. Johnsbury Town Representative 1865-7. Caledonia County Senator 1870-71. Vermont Supreme Court 1870-98 (Chief Justice 1890-98). U.S. Senator 1899-1900.

## Remnants of the Address of 1786

These are the paragraphs, included in the original draft of the 1786 Address of the Council of Censors, located in the Vermont Room of the State Library, which we mentioned in the Preface. The references are to the pages in this volume of the Address. We happily reprint here:

**1. In the section of the Address on the errors committed by the Executive Council, just before the paragraph that begins, "On the 17th June . . .," on page 60 *supra*:**

On the 14th January 1778 they adjudge Azariah Rude guilty of inimical Conduct against the United States of America & vote that he pay a Fine of 30 for the use of this State & stand committed until Judgment be complied with --<sup>1</sup>

Being ignorant of Mr. Rude; Demerits we presume not to censure his Punishment but the infliction of it by wrong Authority. ---

This same Mr. Rude was also on the same day complained of for defrauding & endeavouring to cheat Capt. Samuel Robinson of seventy seven Dollars billeting money -- Whereupon the Council resolve that the said Rude pay said Robinson 77 Dollars being his Demand for billet Money, pay Cost, & stand committed until Judgment be complied with ---

On the 21st January 1778 the Council upon hearing the Complaint of Witheril Wittum &c. "are of opinion that William Wheeler pay Witheril Wittum 2:16:0 lawful money which is the [..... line missing, see original.....] for cost &c. and pay Costs of Suit amounting to 2:12:0 lawful Money, ---<sup>2</sup>

On the 29th of said January, upon application from the Officers of the Rangers they resolve (in a legislative way, "that all persons be and are thereby notified to bring Information or Evidence to the Council of the Effects plundered or taken from them & by whom or what Party, attested on oath before the Chairman of any Com' of Safety, the 25th day of Febry then next And that all persons neglecting to exhibit their Complaint on the said Day should be forever foreclosed bringing in such complaints: and reports to the Prejudice of any Officer or soldier or any other persons relating to the Premises --- should not be noticed but treated as scandalous Libels" With a Proviso that nothing in that resolve be construed to exclude Complaints against persons who should be discovered after the raid 25th Febry. ---<sup>3</sup>

If this Act or Resolution had been passed by a Body having competent Authority we conceive the substance of it would have been justly censurable -- but it is the Encroachment upon the legislative & judicial Departments which we principally wish to have noticed. ---

On the 10th Febry 1778 on the Complaint of Zadock Everist on behalf of the United States agt. John Gail for inimical conduct against the United States of America, the Council, without adjudging him guilty, order him to pay a Fine of 30 -- Costs taxed at 16:8:0 & stand committed &c.<sup>4</sup>

The Instances in which the Council have assumed the right of judging upon Complaints made to them occur so frequent that it would be irksome to

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<sup>1</sup> *Governor and Council* I, pp. 206-8.

<sup>2</sup> *Governor and Council* I, p. 209.

<sup>3</sup> *Governor and Council* I, p. 212.

<sup>4</sup> *Governor and Council* I, p. 220.



enumerate them; but their proceeding so far as to order corporal Punishment to be conditionally inflicted for disobeying their Order (viz. upon Watts Hubbard and Titus Simons in the year 1779)<sup>5</sup> when the Laws had made no such provision, ought not to pass unnoticed.

**2. Discussing the grant of Lunenburgh to John Wheeler, in a paragraph originally located just before the paragraph on page 63 that begins, "We beg your attention in a retrospective view . . .":**

This Proceeding so plainly contrary to the 8th Section of the frame of Government & at so late a period calles for the severest Censure of this Council & the Freemen of this Council.

**3. Remarks following the paragraphs on the act in favor of Mr. Farnsworth, at the end of the paragraph of page 67 that begins, "It behooves the freemen, . . .":**

it is undoubtedly the Duty of a Legislature when there is a necessity of substituting Credit for Money to do it with as great caution as a prudent man would in his private affairs & as carefully to guard agst . . .

**4. Following the sentence on page 67 that begins, "We cannot dissolve this Council . . .," discussing "An Act for settling disputes respecting landed property":**

This Act may be justly said to settle the Disputes in the same manner as a Giant would settle a Combate between two school boys by felling the strongest to the Ground with his Cudgell.

**5. Inserted ahead of the first full paragraph on page 72, following the words, ". . . future system of Taxation":**

Before we leave the Proceedings of the Assembly we find ourselves necessitated to notice a matter which will undoubtedly give offence to many of the principal Freemen in the state it is the little respect paid to the Grants made by the late Government of New York of vacant land within the Bounds of this State — previous to the Revolution the Province of New York was thought not only impolitic but very cruel and unjust (& they were really so in treating as null Grants made by a Government which then had this Territory under their rule & regranteeing the same Land to other Proprietors -- their Proceedings were much exclaimed against & in fact occasioned the Separation of this District from the Jurisdiction of New York. -- For us now we have or think we have, the Power to tread in the same steps which we have so severely & justly reprobated in others is censurable if we are to be our own Judges; & what will the world say of such Conduct -- it is better to imagine than express it -- The old Story of the York Grants being made contrary to a Prohibition of the Crown will doubtless when proved have its proper Weight.

---

<sup>5</sup>Governor and Council I, pp. 290-1.

**6. Just before the last full paragraph of the Address, on page 73:**

For this Council to inquire whether "the Laws have been duly executed" by the judicial Courts, is a task (in the situation our Court now are) beyond our Ability to perform: -- But we ---- conclude from the apparent general satisfaction with respect to their Proceedings that there are few or no causes of Complaint



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