

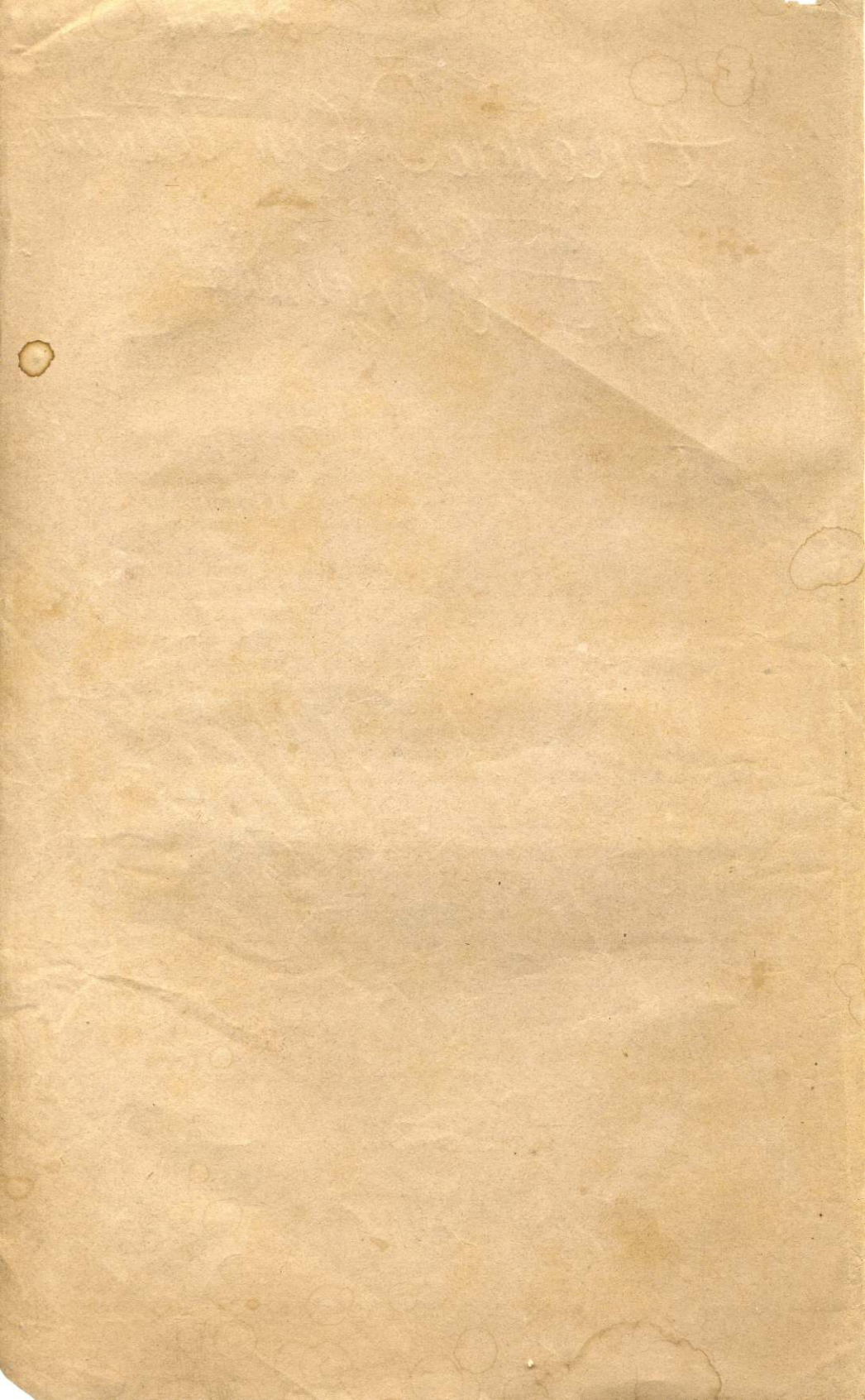
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1820

Amended Constitution

of  
West Virginia

Speeches





# AMENDED CONSTITUTION OF WEST VIRGINIA.

Adopted by the Convention February 18th, 1863.

## ARTICLE I.

### THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall also be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this Constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.



4. The Legislative, Executive and Judicial Departments of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under State authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the Government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

## ARTICLE II.

### BILL OF RIGHTS.

1. The privilege of the writ of *habeas corpus* shall not be suspended except when in time of invasion, insurrection or other public danger, the public safety may require it. No person shall be held to answer for treason, felony or other crime not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.

2. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be compelled to be a witness against himself, or be twice put in jeopardy for the same offence.

3. The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

4. No law abridging freedom of speech or of the press shall be passed; but the Legislature may provide for the restraint and punishment of the publishing and vending of obscene books, papers and pictures, and of libel and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel or defamation. Attempts to justify and uphold an armed invasion of the State, or an organized insurrection therein, during the continuance of such invasion or insurrection, by publicly speaking, writing or printing, or by publishing or circulating such writing or printing, may be, by law, declared a misdemeanor, and punished accordingly.



5. In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the verdict shall be for the defendant.

6. Private property shall not be taken for public use without just compensation. No person, in time of peace, shall be deprived of life, liberty or property, without due process of law. The military shall be subordinate to the civil power.

7. In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury, if required by either party, shall be preserved. No fact tried by a jury shall be otherwise re-examined in any case than according to the rules of the common law.

8. The trial of crimes and misdemeanors, unless herein otherwise provided, shall be by jury, and shall be held publicly and without unreasonable delay, in the county where the alleged offence was committed, unless upon petition of the accused and for good cause shown, or in consequence of the existence of war or insurrection in such county, it is removed to, or instituted in, some other county. In all such trials the accused shall be informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel for his defense, and compulsory process for obtaining witnesses in his favor.

9. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

10. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason shall be punished, according to the character of the acts committed, by the infliction of one or more of the penalties of death, imprisonment, fine, or confiscation of the real and personal property of the offender, as may be prescribed by law.



## ARTICLE III.

## ELECTIONS AND OFFICERS.

1. The white male citizens of the State shall be entitled to vote at all elections held within the election districts in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for thirty days, next preceding such offer, shall be permitted to vote while such disability continues.

2. In all elections by the people the mode of voting shall be by ballot.

3. No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process or be liable to attend any court or judicial proceeding as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

4. No persons, except citizens entitled to vote, shall be elected or appointed to any State, county or municipal office. Judges must have attained the age of thirty-five years, the Governor the age of thirty years, and the Attorney General and Senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State for five years next preceding, or at the time this Constitution goes into operation.

5. Every person elected or appointed to any office or trust, civil or military, shall, before proceeding to exercise the authority or discharge the duties of the same, make oath or affirmation that he will support the Constitution of the United States, and the Constitution of this State; and every citizen of this State may, in time of war, insurrection or public danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting and holding office under this Constitution.

6. All officers elected or appointed under this Constitution may be removed from office for misconduct, incompetence, neglect of duty, or other causes, in such manner as may be prescribed by general laws; and unless so removed, shall continue to discharge the duties of their respective offices, until their successors are elected or appointed and qualified.

7. The general elections of State and County officers, and of members of the Legislature, shall be held on the fourth Thursday of October. The terms of such officers and members, not elected or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January next succeeding their election. Elections to fill vacancies shall be for the unexpired term. Vacancies shall be filled in such manner as may be prescribed by law.



8. The Legislature, in cases not provided for in this Constitution, shall prescribe by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.

9. No extra compensation shall be granted or allowed to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

10. Any officer of the State may be impeached for maladministration, corruption, incompetence, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments. When sitting for that purpose, the Senators shall be on oath or affirmation; and no persons 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 any office of honor, trust or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

11. Any citizen of this State, who shall, after the adoption of this Constitution, either in or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do; or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit under this State.

12. The Legislature may provide for a registry of voters. They shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting.

#### ARTICLE IV.

##### LEGISLATURE.

1. The Legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, "*Be it enacted by the Legislature of West Virginia.*"

2. The Senate shall be composed of eighteen and the House of Delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained.

3. The term of office of Senators shall be two years, and that of Delegates one year. The Senators first elected shall divide themselves into two classes, one Senator from every district being assigned to each class; and of these classes, the first, to be designated by lot in such manner as the Senate may determine, shall



hold their offices for one year, and the second for two years; so that after the first election one-half of the Senators shall be elected annually.

4. For the election of Senators, the State shall be divided into nine Senatorial Districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two Senators, but after the first election both shall not be chosen from the same county. The districts shall be equal, as nearly as practicable, in white population, according to the returns of the United States census. They shall be compact, formed of contiguous territory, and bounded by county lines. After every such census, the Legislature shall alter the Senatorial Districts, so far as may be necessary to make them conform to the foregoing provisions.

5. Any Senatorial District may at any time be divided, by county lines or otherwise, into two sections, which shall be equal, as nearly as practicable, in white population. If such division be made, each section shall elect one of the Senators for the district; and the Senators so elected shall be classified in such manner as the Senate may determine.

6. Until the Senatorial Districts are altered by the Legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the first Senatorial District; Marshall, Wetzel and Marion the second; Monongalia, Preston and Taylor the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison the fourth; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the sixth; Mason, Putnam, Kanawha, Clay and Nicholas the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the ninth.

7. For the election of Delegates, every county containing a white population of less than half the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a Delegate District.

8. When two or more counties are formed into a Delegate District, the Legislature shall provide by law that the Delegates to be chosen by the voters of the District shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, to the white population of the several counties in the District.

9. After every census the Delegates shall be apportioned as follows:

The ratio of representation for the House of Delegates shall be ascertained by dividing the whole white population of the State by the number of which the House is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every Delegate District, and



of every county not included in a Delegate District, by the ratio thus ascertained, there shall be assigned to each a number of delegates equal to the quotient obtained by this division, excluding the fractional remainder.

The additional Delegates necessary to make up the number of which the House is to consist, shall then be assigned to those Delegate Districts, and counties not included in a Delegate District, which would otherwise have the largest fractions unrepresented. But every Delegate District and county not included in a Delegate District, shall be entitled to at least one Delegate.

10. Until a new apportionment is declared, the counties of Pleasants and Wood shall form the first Delegate District; Calhoun and Gilmer the second; Clay and Nicholas the third; Webster and Pocahontas the fourth; Tucker and Randolph the fifth; and McDowell, Wyoming and Raleigh the sixth. The first Delegate District shall choose two Delegates, and the other five, one each.

11. The Delegates to be chosen by the first Delegate District shall, for the first term, both be residents of the county of Wood; and for the second term, one shall be a resident of Wood, and the other of Pleasants county; and so in rotation. The Delegate to be chosen by the second Delegate District shall, for the first term, be a resident of Gilmer, and for the second, of Calhoun county. The Delegate to be chosen by the third Delegate District shall, for the first two terms, be a resident of Nicholas, and for the third term of Clay county. The Delegate to be chosen by the fourth Delegate District shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The delegate to be chosen by the fifth Delegate District shall, for the first three terms, be a resident of Randolph, and for the fourth term of Tucker county. And the Delegate to be chosen by the sixth Delegate District shall, for the first term, be a resident of Raleigh, for the second term of Wyoming, for the third term of Raleigh, for the fourth term of Wyoming, and for the fifth term of McDowell county; and so, in each case, in rotation.

12. Until a new apportionment is declared, the apportionment of Delegates to the counties not included in Delegate Districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one Delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia, and Preston counties, two Delegates each.

To Ohio county, three Delegates.

To Greenbrier and Monroe counties together, three Delegates: of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be



residents of Monroe and one of Greenbrier county; and so in rotation.

13. If the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth Senatorial District, and choose two Senators. And if the counties of Frederick, Berkeley and Jefferson become part of this State, they shall, until the next apportionment, constitute the eleventh Senatorial District and choose two Senators. And the number of the Senate shall be, in the first case twenty, and in the last twenty-two, instead of eighteen.

14. If the seven last named counties become part of this State, the apportionment of Delegates to the same shall, until the next apportionment, be as follows: to Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh Delegate District, and choose two Delegates; of whom, for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county; and so in rotation.

But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendleton, Hardy and Morgan counties shall each choose one Delegate and Hampshire two, until the next apportionment.

The number of the House of Delegates shall, instead of forty-seven, be in the first case fifty-seven, and in the last fifty-two.

15. The arrangement of the Senatorial and Delegate Districts, and apportionment of Delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the Legislature to be thereafter held, and shall continue in force, unchanged until such districts are altered and Delegates apportioned under the succeeding census.

16. Additional territory may be admitted into and become part of this State with the consent of the Legislature. And in such case, provision shall be made by law for the representation of the white population thereof in the Senate and House of Delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each branch of the Legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

17. No person shall be a member of the Legislature who shall not have resided within the district or county for which he was chosen one year next preceding his election; and if a Senator or Delegate remove from the district or county for which he was chosen, his office shall be thereby vacated.

18. No person holding an office of profit under this State or the United States, shall be a member of the Legislature.



19. No person who may have collected, or been entrusted with public money, whether State, county, township or municipal, shall be eligible to the Legislature, or to any office of honor, trust or profit, until he shall have duly accounted for and paid over such money according to law.

20. The Legislature shall meet once in every year, and not oftener, unless convened by the Governor. The regular sessions shall begin on the third Tuesday of January.

21. The Governor may convene the Legislature by proclamation, whenever in his opinion, the public safety or welfare shall require it. It shall be his duty to convene them on application of a majority of the members elected to each branch.

22. The Seat of Government shall be at the City of Wheeling, until a permanent Seat of Government be established by law.

23. When, for any cause, the Legislature, in the opinion of the Governor, cannot safely meet at the Seat of Government, the Governor, by proclamation, may convene them at another place.

24. No session of the Legislature, after the first, shall continue longer than forty-five days, without the concurrence of three-fourths of the members elected to each branch.

25. Neither branch, during the session, shall adjourn for more than two days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the Legislature is then sitting.

26. Each branch shall be the judge of the elections, qualifications and returns of its own members.

27. A majority of each branch shall constitute a quorum to do business. But a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner as shall be prescribed by law.

28. The Senate shall choose from their own body a President, and the House of Delegates one of their own number as Speaker: Each branch shall appoint its own officers and remove them at pleasure; and shall determine its own rules of proceeding.

29. Each branch may punish its own members for disorderly behavior; and, with the concurrence of two-thirds of the members present, expel a member, but not a second time for the same offence.

30. Each branch shall have the power necessary to provide for its own safety, and the undisturbed transaction of its business; and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence, obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threatening or abuse of a member for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence by the ordinary course of law.

31. For words spoken in debate, or any report, motion or prop-



osition made, in either branch, a member shall not be questioned in any other place.

32. Members of the Legislature shall, in all cases except treason, felony and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same.

33. Senators and Delegates shall receive for their services a compensation not exceeding three dollars a day during the session of the Legislature, and also ten cents for every mile they shall travel in going to and returning from the place of meeting by the most direct route. The President of the Senate and Speaker of the House shall, respectively, receive an additional compensation of two dollars a day.

34. Bills and resolutions may originate in either branch, to be passed, amended or rejected by the other.

35. No bill shall become a law until it has been fully and distinctly read on three different days in each branch; unless in cases of urgency, three-fourths of the members present dispense with this rule.

36. No law shall embrace more than one object, which shall be expressed in its title.

37. On the passage of every bill the vote shall be taken by yeas and nays, and be entered on the journal; and no bill shall be passed by either branch without the affirmative vote of a majority of the members elected thereto.

38. The presiding officer of each branch shall sign, before the close of the session, all bills and joint resolutions passed by the Legislature.

39. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, if called for by one-fifth of those present, shall be entered on the journal.

## ARTICLE V.

### EXECUTIVE.

1. The chief Executive power shall be vested in a Governor, who shall be elected by the voters of the State, and hold his office for the term of two years, to commence on the fourth day of March next succeeding his election. The person acting as Governor shall not be elected or appointed to any other office during his term of service.

2. The Governor shall reside at the Seat of Government; shall receive two thousand dollars for each year of his service, and during his continuance in office shall receive no other emolument from this or any other government.

3. The Governor shall be commander-in-chief of the military forces of the State; shall have power to call out the militia to repel invasion, suppress insurrection and enforce the execution of the laws; shall conduct in person, or in such manner as may be



prescribed by law, all intercourse with other States; and during the recess of the Legislature shall fill temporarily all vacancies in office, not provided for by this Constitution or the Legislature, by commissions to expire at the end of thirty days after the commencement of the succeeding session of the Legislature. He shall take care that the laws be faithfully executed; communicate to the Legislature at each session thereof the condition of the State, and recommend to their consideration such measures as he may deem expedient. He shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment; and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; but he shall communicate to the Legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons for remitting, commuting or granting the same.

4. The Governor may require information in writing from the officers of the Executive Department, upon any subject pertaining to their respective offices; and also the opinion in writing of the Attorney General upon any question of law relating to the business of the Executive Department.

5. Returns of the election of Governor shall be made, in the manner and by the persons designated by the Legislature, to the Secretary of the State, who shall deliver them to the Speaker of the House of Delegates on the first day of the next session of the Legislature. The Speaker shall, within ten days thereafter, in the presence of a majority of each branch of the Legislature, open the said returns, when the votes shall be counted. The person having the highest number of votes, if duly qualified, shall be declared elected; but if two or more have the highest and an equal number of votes, one of them shall thereupon be chosen Governor by the joint vote of the two branches. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

6. In case of the removal of the Governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of Government, or inability to discharge the duties of the office, the said office, with its compensation, duties and authority, shall devolve upon the President of the Senate; and in case of his inability or failure from any cause to act, on the Speaker of the House of Delegates. The Legislature shall provide by law for the discharge of the Executive functions in other necessary cases.

7. A Secretary of the State, a Treasurer and an Auditor shall be elected at the same time, and for the same term as the Governor. Their duties shall be prescribed by law. The Secretary of the State shall receive thirteen hundred, the Treasurer fourteen hundred, and the Auditor fifteen hundred dollars per annum.



8. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint all military officers above the rank of colonel.

## ARTICLE VI.

### JUDICIARY.

1. The judicial power of the State shall be vested in a supreme court of appeals and circuit courts, and such inferior tribunals as are herein authorized.

2. The State shall be divided into nine circuits. The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first; Monongalia, Preston, Tucker and Taylor, the second; Marion, Harrison and Barbour, the third; Wetzel, Tyler, Pleasants, Ritchie, Doddridge and Gilmer, the fourth; Randolph, Upshur, Lewis, Braxton, Webster and Nicholas, the fifth; Wood, Wirt, Calhoun, Roane, Jackson and Clay, the sixth; Kanawha, Mason, Putnam and Fayette, the seventh; Cabell, Wayne, Boone, Logan, Wyoming and Raleigh, the eighth; and Pocahontas, Greenbrier, Monroe, Mercer and McDowell, the ninth. If the counties of Pendleton, Hardy, Hampshire and Morgan become a part of the State, they shall constitute another circuit, to be called the tenth. And if the counties of Frederick, Berkeley and Jefferson become a part of this State, they shall constitute the eleventh circuit.

3. The Legislature may, from time to time, re-arrange the circuits; and after the expiration of five years from the time this Constitution goes into operation, and thereafter, at periods of ten years, may increase or diminish the number of circuits, or the number of courts in a year, as necessity may require.

4. For each circuit, a Judge shall be elected by the voters thereof, who shall hold his office for the term of six years. During his continuance in office he shall reside in the circuit of which he is Judge.

5. A circuit court shall be held in every county at least four times a year, unless otherwise provided by law in pursuance of the third section of this Article. The Judges may be required or authorized to hold the courts of their respective circuits alternately, and a Judge of one circuit to hold a court in any other circuit.

6. The circuit court shall have the supervision and control of all proceedings before justices and other inferior tribunals, by *mandamus*, *prohibition* or *certiorari*. They shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all matters at law, where the amount in controversy, exclusive of interest, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal.



They shall also have such other jurisdiction, whether supervisory, original, appellate or concurrent, as may be prescribed by law.

7. The Supreme Court of Appeals shall consist of three Judges, any two of whom shall be a quorum. They shall be elected by the voters of the State, and shall hold their offices for the term of twelve years; except that of those first elected, one, to be designated by lot in such manner as they may determine, shall hold his office for four years; another, to be designated in like manner, for eight years; and the third for twelve years; so that one shall be elected every four years after the first election.

8. The Supreme Court of Appeals shall have original jurisdiction in cases of *habeas corpus*, *mandamus* and *prohibition*. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than two hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, road, way, ferry, or landing, or the right of a corporation or county to levy tolls or taxes; and also in cases of *habeas corpus*, *mandamus* and *prohibition*, and cases involving freedom, or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a circuit court, and such other appellate jurisdiction in both civil and criminal cases as may be prescribed by law.

9. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point made and distinctly stated in writing in the cause, and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefor shall be concisely and briefly stated in writing, and preserved with the records of the case.

10. When any judge of the Court of Appeals is so situated in regard to any case pending before it, as to make it improper for him to aid in the trial of the same, or is under any other disability, the remaining Judges may call to their assistance a Judge of the circuit court, who shall act as a Judge of the Court of Appeals in the cases to which such disability relates.

11. Judges shall be commissioned by the Governor. The salary of a Judge of the Supreme Court of Appeals shall be two thousand, and that of a Judge of a circuit court eighteen hundred dollars per annum, and each shall receive the same allowance for necessary travel as members of the Legislature.

12. No Judge, during his term of service, shall hold any other office, appointment or public trust, under this or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

13. Judges may be removed from office for misconduct, incom-



petence or neglect of duty, or on conviction of an infamous offense, by the concurrent vote of a majority of all the members elected to each branch of the Legislature, and the cause of removal shall be entered on the journals. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the Legislature shall act thereon.

14. The officers of the Supreme Court of Appeals shall be appointed by the Court, or by the Judges thereof in vacation. Their duties, compensation and tenure of office, shall be prescribed by law.

15. The voters of each county shall elect a Clerk of the Circuit Court, whose term of office shall be four years. His duties and compensation, and the mode of removing him from office, shall be prescribed by law; and when a vacancy shall occur in the office, the Judge of the Circuit Court shall appoint a Clerk, who shall discharge the duties of the office until the vacancy is filled. In any case, in respect to which the Clerk shall be so situated as to make it improper for him to act, the Court shall appoint a substitute.

16. At every regular election of a Governor, an Attorney General shall also be elected. He shall be commissioned by the Governor; shall perform such duties, and receive such compensation as may be prescribed by law, and be removable in the same manner as the Judges.

17. The Legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to appeal to the Circuit Courts.

## ARTICLE VII.

### COUNTIES AND TOWNSHIPS.

1. Every County shall be divided into not less than three, nor more than ten townships, laid off as compactly as practicable, with reference to natural boundaries, and containing, as nearly as practicable, an equal number of white population, but not less than four hundred. Each Township shall be designated, "The Township of \_\_\_\_\_ in the county of \_\_\_\_\_," by which name it may sue and be sued.

2. The voters of each Township, assembled in stated or special Township meeting, shall transact all such business relating exclusively to their township as is herein, or may be by law, required or authorized. They shall annually elect a Supervisor, Clerk of the Township, Surveyor of Roads for each precinct in their Township, Overseer of the Poor, and such other officers as may be directed by law. They shall also, every four years, elect one Justice; and if the white population of their Township exceeds twelve hundred in number, may elect an additional Justice; and



every two years shall elect as many Constables as Justices. The Supervisor, or in his absence, a voter chosen by those present, shall preside at all Township meetings and elections, and the Clerk shall act as clerk thereof.

3. The Supervisors chosen in the Townships of each county shall constitute a Board, to be known as "the Supervisors of the County of \_\_\_\_\_," by which name they may sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet statedly at least four times in each year at the Court House of their county, and may hold special and adjourned meetings. At their first meeting after the annual Township election, and whenever a vacancy may occur, they shall elect one of their number President of the Board; and appoint a Clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation they shall fix by ordinance and pay from the county treasury.

4. The Board of Supervisors of each County, a majority of whom shall be a quorum, shall, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their County, including the establishment and regulation of roads, public landings, ferries and mills; the granting of ordinary and other licenses; and the laying, collecting and disbursement of the county levies; but all writs of *ad quod damnum* shall issue from the Circuit Courts. They shall from time to time appoint the places for holding elections in the several Townships of their County; and shall be the judges of the election, qualifications and returns of their own members, and of all County and Township officers.

5. The voters of every county shall elect a Sheriff, Prosecuting Attorney, Surveyor of Lands, Recorder, one or more Assessors, and such other county officers as the Legislature may from time to time direct or authorize; the duties of all of whom shall be prescribed and defined, as far as practicable, by general laws. All the said county officers shall hold their offices for two years, except the Sheriff, whose term of office shall be four years. The same person shall not be elected Sheriff for two consecutive full terms, nor shall any person who has acted as deputy of any Sheriff be elected his successor, nor shall any sheriff act as the deputy of his successor; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. The duties of all the said officers shall be discharged by the incumbents thereof in person, or under their superintendence. The Board of Supervisors shall designate one or more constables of their respective counties to serve process and levy executions, when the sheriff



thereof is a party defendant in a suit instituted therein, or is under any other disability.

6. The Recorder, in addition to the duties incident to the recording of inventories, and other papers relating to estates, and of deeds and other writings, the registering of births, marriages and deaths, and the issuing of marriage licenses, shall have authority, under such regulations as may be prescribed by law, to receive proof of wills and admit them to probate, to appoint and qualify personal representatives, guardians, committees and curators, to administer oaths, take acknowledgements of deeds and other writings, and relinquishments of dower.

7. The Legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article. They shall also provide for commissioning such of the officers therein mentioned as they may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over, as required by law, all money which may come to their hands by virtue thereof. They shall further provide for the compensation of the said officers by fees, or from the county treasury; and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws. When the compensation of an officer is paid from the county treasury, the amount shall be fixed by the Board of Supervisors, within limits to be ascertained by law.

8. The civil jurisdiction of a justice shall extend to actions of assumpsit, debt, detinue and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars, when the defendant resides, or, being a non-resident of the State, is found, or has effects or estate within his township, or when the cause of action arose therein; but any other justice of the same county may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township. In case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, any other justice or constable of the same county may discharge the duties of their respective offices within the said township. The manner of conducting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law; and the Legislature may give to justices and constables such additional civil jurisdiction and powers, within their respective townships, as may be deemed expedient.

9. Every justice and constable shall be a conservator of the peace throughout his county, and have such jurisdiction and powers in criminal cases therein as may be prescribed by law. Jurisdiction of all misdemeanors and breaches of the peace, punishable



by fine not exceeding ten dollars, or by imprisonment for not more than thirty days, may be, by law, vested in the Justices.

10. Either party to a civil suit brought before a Justice, where the value in controversy, or the damages claimed, exceeds twenty dollars; and the defendant, in such cases of misdemeanor or breach of the peace as may be made by law cognizable by a single Justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, if demanded, under such regulations as may be prescribed by law.

11. In all cases an appeal shall lie, under such regulations as may be prescribed by law, from the judgment or proceedings of a Justice or Recorder, to the Circuit Court of the county, excepting judgments of Justices in assumpsit, debt, detinue and trover, and for fines, where the amount does not exceed ten dollars exclusive of interest and costs, and where the case does not involve the freedom of a person, the validity of a law, or the right of a corporation or county to levy tolls or taxes.

12. No new county shall be formed having an area of less than four hundred square miles; or if another county be thereby reduced below that area; or if any territory be thereby taken from a county containing less than four hundred square miles. And no new county shall be formed containing a white population of less than four thousand; or if the white population of another county be thereby reduced below that number; or if any county containing less than four thousand white inhabitants be thereby reduced in area. But the Legislature may, at any time, annex any county containing less than four thousand white inhabitants to an adjoining county or counties as part thereof.

13. The Board of Supervisors may alter the bounds of a Township of their county, or erect new Townships therein, with the consent of a majority of the voters of each Township interested, assembled in stated Township meeting, or in a meeting duly called for the purpose, subject to the provisions of the first section of this article.

14. Nothing contained in this article shall impair or affect the charter of any municipal corporation, or restrict the power of the Legislature to create or regulate such corporations.

## ARTICLE VIII.

### TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.



2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations made by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

## ARTICLE IX.

### FORFEITED AND UNAPPROPRIATED LANDS.

1. All private rights and interests in lands in this State, derived from or under the laws of the State of Virginia, prior to the time this constitution goes into operation, shall remain valid and secure, and shall be determined by the laws heretofore in force in the State of Virginia.

2. No entry by warrant on land in this State shall be hereafter made; and in all cases where an entry has been heretofore made



and has been or shall be so perfected as to entitle the locator to a grant, the Legislature shall make provision by law for issuing the same.

3. The Legislature shall provide for the sale of all lands in this State heretofore forfeited to the State of Virginia for the non-payment of the taxes charged thereon for the year one thousand eight hundred and thirty-one, or any year previous thereto, or for the failure of the former owners to have the same entered on the land books of the proper county and charged with the taxes due thereon for the said or any year previous thereto, under the laws of the State of Virginia, and also of all waste and unappropriated lands, by proceedings in the Circuit Courts of the county where such lands are situated.

7. All lands within this State, returned delinquent for non-payment of taxes to the State of Virginia since the year one thousand eight hundred and thirty-one, where the taxes, exclusive of damages, do not exceed twenty dollars; and all lands forfeited for the failure of the owners to have the same entered on the land books of the proper county, and charged with the taxes chargeable thereon since the year one thousand eight hundred and thirty-one, where the tract does not contain more than one thousand acres, are hereby released and exonerated from forfeiture, and from the delinquent taxes and damages charged thereon.

5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the Sheriffs' sales for delinquent taxes, and not released or exonerated by the laws thereof, or by the operation of the preceding section, may be redeemed by the former owners, by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article.

6. The former owner of any tract of land in this State sold under the provisions of this article, shall be entitled to receive the excess of the sum for which such tract may be sold over the taxes and damages charged and chargeable thereon, and the costs, if his claim be filed in the Circuit Court which decreed the sale, within two years thereafter.

## ARTICLE X.

### EDUCATION.

1. All money accruing to this State, being the proceeds of forfeited, delinquent, waste and unappropriated lands; and of lands heretofore sold for taxes and purchased by the State of Virginia, if hereafter redeemed, or sold to others than this State; all grants, devises or bequests that may be made to this State for the purposes of education or where the purposes of such grants, devises or



bequests are not specified; this State's just share of the Literary fund of Virginia, whether paid over or otherwise liquidated, and any sums of money, stocks or property which this State shall have the right to claim from the State of Virginia for educational purposes; the proceeds of the estates of all persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation hereafter created; all monies that may be paid as an equivalent for exemption from military duty; and such sums as may from time to time be appropriated by the Legislature for the purpose, shall be set apart as a separate fund, to be called the School Fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the School Fund.

2. The Legislature shall provide, as soon as practicable, for the establishment of a thorough and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested school fund; the net proceeds of all forfeitures, confiscations and fines accruing to this State under the laws thereof; and by general taxation on persons and property, or otherwise. They shall also provide for raising, in each township, by the authority of the people thereof, such a proportion of the amount required for the support of free schools therein as shall be prescribed by general laws.

3. Provision may be made by law for the election and prescribing the powers, duties, and compensation of a General Superintendent of free schools for the State, whose term of office shall be the same as that of the Governor; and for a County Superintendent for each county; and for the election, in the several townships, by the voters thereof, of such officers, not specified in this Constitution, as may be necessary to carry out the objects of this article; and for the organization, whenever it may be deemed expedient, of a State Board of Instruction.

4. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

## ARTICLE XI.

### MISCELLANEOUS.

1. No lottery shall be authorized by law; and the buying, selling or transferring of tickets or chances in any lottery shall be prohibited.



2. No charter of incorporation shall be granted to any church or religious denomination. Provision may be made by general laws for securing the title to church property, so that it shall be held and used for the purposes intended.

3. The Circuit Courts shall have power, under such general regulations as may be prescribed by law, to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, but relief shall not be granted by special legislation in such cases.

4. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

5. The Legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, insuring or other purpose useful to the public, excepting banks of circulation and the construction of works of internal improvement, may become a corporation, on complying with the terms and conditions thereby prescribed; and no special act incorporating, or granting peculiar privileges to any joint stock company or association, not having in view the issuing of bills to circulate as money or the construction of some work of internal improvement, shall be passed. No company or association, authorized by this section, shall issue bills to circulate as money. No charter of incorporation shall be granted under such general laws, unless the right be reserved to alter or amend such charter at the pleasure of the Legislature, to be declared by general laws. No act to incorporate any bank of circulation or internal improvement company, or to confer additional privileges on the same, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law.

6. For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties and be compact. Each district shall contain, as nearly as may be, an equal federal number, to be determined according to the rule prescribed in the second section of the first article of the Constitution of the United States.

7. The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years, shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein.

8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State



until altered or repealed by the Legislature. All offences against the laws of Virginia heretofore committed within the boundaries of this State shall be cognizable in the Courts of this State, in the same manner they would be if hereafter committed within this State. All civil and criminal suits and proceedings pending in the County or Circuit Courts of the State of Virginia, held within the said boundaries, shall be docketed and thereafter proceeded in before the Circuit Court of the proper county; and all such suits and proceedings pending in the Supreme and District Courts of Appeals of the State of Virginia, if the defendant in the court below resides within the said boundaries, or the subject of the suit is land or other property situated or being therein, and the plaintiff is entitled to prosecute in this State, shall be docketed, and thereafter proceeded in before the Supreme Court of Appeals thereof.

9. The records, books, papers, seals and other property and appurtenances of the former Circuit and County Courts, within the State of West Virginia, shall be transferred to, and remain in, the care and custody of the Circuit Courts of the respective counties; to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending, or previously determined, in the said former Courts, may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former Courts shall be made and certified by the Courts having the care and custody of such records and proceedings, or the proper officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the said former Courts.

## ARTICLE XII.

### AMENDMENTS.

1. No Convention shall be called, having authority to alter the Constitution of the State, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the Legislature, and providing that polls shall be held throughout the State, on some day therein specified, which shall be not less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a Convention. And such Convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall members be elected to such Convention, until at least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of said Convention shall be submitted to the voters of the State for ratification, or rejection, and shall have no validity whatever, until they are ratified, and in no event shall they, by any shift or device, be made to have any retrospective operation or effect.

2. Any amendment to the Constitution of the State may be proposed in either branch of the Legislature; and if the same,



being read on three several days in each branch, be agreed to on its third reading, by a majority of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the Legislature at the first session to be held after the next general election; and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to during such session, by a majority of the members elected to each branch, it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State, for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the same time, the vote on the ratification or rejection, shall be taken on each separately.

Sec. 2. The Executive Commission, hereinafter named, shall appoint a person to be the chief clerk of the said forty-eight counties (and any of whom may be appointed in their own body) as representatives of the polls, and shall direct them with the proper books for every place of voting in said county, at which a regular election is to be held, to be kept in such county, and conduct the polls in each place, and shall direct them to take the proper books.

Sec. 3. In behalf of each amendment, for any county or places of voting, the officers who supervised and conducted the polls in that county at any place of voting in said forty-eight counties, shall attend in each place, and assist in the conduct of the polls, and shall be directed to do so.

Sec. 4. If there be any place of voting at the time the polls shall be opened, but no commissioner willing to act, the voters residing in that place as a commissioner may themselves or the holder of the county franchise, or any commissioner present willing to act, then any two franchise holders of the county present and agreeing to act shall be commissioners.

Sec. 5. The commissioners superintending the polls at any place of voting, are hereby authorized to admit the proper voters to each place, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one, and they may also appoint clerks to record the votes. They shall admit all persons to vote entitled to do so, and shall enter the votes of all on their books, and in all responses have the polls taken with accuracy according to law. They may award any person to receive a certificate in relation to any right to vote which is claimed; and the name of every person claiming to vote, but not appearing thereon, if notified by such person, shall be entered in a separate list on the poll book, showing the vote he desired to give.

Sec. 6. If the said polls shall be taken on the day the laws, sixth day of March next, they shall not be opened after that date, and shall be closed at sunset. And if it shall appear to the commissioners superintending the polls



## AN ORDINANCE

*To provide for submitting to the People of West Virginia the amended Constitution. Passed February 16, 1863.*

Sec. 1. Poll books, with the proper forms of oaths and returns attached, shall be prepared under the direction of the Executive Committee hereinafter named, for every place of voting in the forty-eight counties proposed to be included in the State of West Virginia; which books shall contain two columns, one to be headed, "For the Amended Constitution;" and the other, "Against the Amended Constitution;" and the names of all qualified voters who vote in favor of the ratification of the Amended Constitution of West Virginia, shall be written in the first column, and of those who vote against such ratification, in the second column, under the respective headings aforesaid.

Sec. 2. The Executive Committee, hereinafter named, shall appoint three persons in each of the said forty-eight counties, (any two of whom may act, and who may fill vacancies in their own body) as superintendents of the polls hereby directed to be taken in the county; and shall furnish them with the proper poll books for every place of voting in said county at which a separate poll is to be taken. The superintendents for each county shall appoint three commissioners (any two of whom may act) and a conductor for every place of voting in such county, to superintend and conduct the polls to be held at such place, and shall distribute to them the proper poll books.

Sec. 3. In default of such appointment for any county or place of voting, the officers who superintended and conducted the polls in April last on the question of the ratification of the Constitution of West Virginia, at any place of voting in said forty-eight counties, shall attend at such place, and superintend and conduct the polls hereby directed to be taken.

Sec. 4. If there be at any place of voting, at the time the polls should be opened, but one commissioner willing to act, he may associate with himself as a commissioner any freeholder of the county then present; and if there be no commissioner present willing to act, then any two freeholders of the county present, and agreeing to act, shall be commissioners.

Sec. 5. The commissioners superintending the polls at any place of voting, are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one, and they may also appoint clerks to record the votes. They shall admit all persons to vote entitled to do so, and shall reject the votes of all not entitled, and in all respects have the polls taken fairly, according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, but rejected by them, if required by such person, shall be entered in a separate list on the poll book, showing the vote he desired to give.

Sec. 6. The said polls shall be taken on Thursday, the twenty-sixth day of March next. They shall not be opened sooner than sunrise, and shall be closed at sunset. But if it shall appear to the commissioners superintending the polls



at any place of voting, that the persons entitled to vote thereat cannot all be polled before sunset, or that many of those entitled to vote were prevented from attending by rain, rise of water courses, or just apprehension of their personal safety, they shall keep the polls open for three days, including the first. And if on the day appointed for taking the polls there be a rebel force rendering it dangerous to hold the same at any place of voting in the said forty-eight counties, the voters may hold the said polls at any place within, or convenient to, their respective counties: and any voter prevented from voting on the said question in the county where he resides, by just apprehension of personal danger, or any other cause, may vote in any other county upon making oath that he is entitled to vote on the question of the ratification of the Amended Constitution of West Virginia, and that he has not voted, and will not vote, elsewhere on that question.

Sec. 7. Every superintendent, commissioner, conductor and clerk shall, before entering on the discharge of his duties, take the following oath or affirmation: "I do solemnly swear (or affirm) that in the polls about to be taken, I will faithfully, impartially and fairly discharge the duties pertaining to my office, according to law. And that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinance of the convention which assembled at Richmond on the thirteenth day of February, one thousand eight hundred and sixty-one, to the contrary notwithstanding."

Sec. 8. Immediately after the polls at any place of voting, shall be closed, the commissioners superintending such polls, and officers conducting the same, shall make and subscribe a certificate to the following effect: "We, A B and C D, commissioners, and E F, conductor, for taking the polls at —, in the county of —, do hereby certify that we have fairly and impartially taken the said polls, this — day of —, according to law, and that the result thereof, as more fully shown by the poll books hereto attached, is — votes for the Amended Constitution of West Virginia, and — votes against the same." In the said certificate the number of votes shall be written out in words at length. And the commissioners and conductors shall, within six days after the polls are closed, cause the poll books and certificates to be delivered to the superintendents of the polls for the county; who shall, as soon as possible thereafter, transmit their certificates of the number of votes cast within the county for and against the Amended Constitution, to the President of this convention, at the city of Wheeling, and deliver the poll books to the clerk of this county court, to be held subject to the order of the Executive Committee.

Sec. 9. All persons qualified to vote under the Amended Constitution shall be entitled to vote on the question of its ratification. And the Executive Committee shall provide, for taking at any time from the twelfth to the twenty-sixth of March next, including both of the said days, and for certifying and returning the votes of such persons, qualified as aforesaid, as may, at the time the polls are to be taken on the said question, be in the armies or service of the United States, whether within or beyond the boundaries of the proposed State of West Virginia; but any votes so taken beyond the said boundaries shall be distinctly so stated in the certificate of the returns thereof.

Sec. 10. The returns made as aforesaid to the President of this Convention,



shall be opened by him, and the result ascertained, in the presence of the Executive Committee. And if it shall appear that a majority of the votes cast at the polls to be taken as aforesaid, within the limits of the State of West Virginia, be in favor of the ratification of the said Amended Constitution, then the President of this Convention shall, under his hand, certify to the President of the United States, that the people of West Virginia, through this Convention, and by a vote taken at an election held within the limits of said State, at the time for that purpose provided by this Convention, have made and ratified the change in the Constitution of the said State of West Virginia, proposed in the act of the Congress of the United States, approved December 31, 1862, entitled "An Act for the admission of West Virginia into the Union and for other purposes," which certificate shall be countersigned by said Executive Committee.

Sec. 11. It shall be the duty of James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell, Ephraim B. Hall, and Daniel Lamb, who are hereby appointed a committee for the purpose, to be called the Executive Committee of this Convention, and who may fill vacancies in their own body, and a majority of whom may act, to take such measures and do all such things, not inconsistent with this Ordinance, as they may deem expedient, to cause the said polls to be fully, fairly and impartially taken in every part of the proposed State of West Virginia, and to procure the admission of the said State into the Union if the Amended Constitution thereof be ratified by the people. And the said Executive Committee shall have power, in their discretion, to re-convene the members of this Convention on such day as they shall prescribe; and if it be so re-convened, shall adopt proper measures to secure a representation therein from the counties proposed to be included in the said State not at present represented, and to fill any vacancies that may occur.



## AN ORDINANCE

*To provide for the Organization of the State of West Virginia. Passed*

*February 19, 1863.*

Sec. 1. When the President of the United States issues his proclamation under the Act of Congress, approved December, 31, 1862, entitled "An Act for the admission of the State of West Virginia into the Union and for other purposes," then an election shall be held on the Thursday next succeeding the thirty-fifth day from the date of said proclamation, at the several places of voting in the forty-eight counties to be included in the said State, for the election, under the Amended Constitution thereof, of Senators and Delegates, a Governor, Secretary of the State, Treasurer, Auditor, and Attorney General, three Judges of the Supreme Court of Appeals, a Judge for each Circuit, and the following officers for each county, that is to say, a Clerk of the Circuit Court, Sheriff, Prosecuting Attorney, Surveyor of Lands, and Recorder.

Sec. 2. The terms of office of the persons then to be elected shall commence on and include the sixty-first day from the date of said proclamation; but shall continue, and be computed, as if the same had begun on the first day of January, one thousand eight hundred and sixty-three; except that the terms of the Governor, Secretary of the State, Treasurer and Auditor, shall continue, and be computed, as if the same had begun on the fourth day of March, one thousand eight hundred and sixty-three.

Sec. 3. As soon as possible after the President of the United States issues his said proclamation, the Executive Committee of this Convention shall, by their proclamation, give notice of the election to be held as aforesaid, stating the time when the same is to be held, and the different offices to be filled. And the said Executive Committee, after the issuing of the said proclamation by the President of the United States, shall have authority to take such measures and do all such things, not inconsistent with the Amended Constitution or with this Ordinance, as may be requisite to cause the said election to be fairly and impartially held and returned in every part of the said forty-eight counties, and to carry into operation the said Amended Constitution. But the authority hereby granted to the said Executive Committee shall cease and determine as soon as the Legislature of West Virginia is assembled and organized.

Sec. 4. The said election shall be held, and the results thereof ascertained, certified and returned, according to the following directions, that is to say:

I. Poll books, with the proper forms of oaths and returns, shall be prepared under the direction of the Executive Committee of this Convention, for every place of voting in the said forty-eight counties.

II. The said Executive Committee, as soon as possible after the President of the United States issues his said proclamation, shall appoint three persons in each of the said counties as *Superintendents of the election for the county*, and furnish them with the proper poll books and forms. Any two of the superintendents for a county may act, and they may fill vacancies in their own body. The superin-



tendents for each county shall, for every place of voting in their county, appoint *three commissioners*, any two of whom may act, and a *conductor*, to superintend and conduct the elections at the place for which they are appointed; and shall furnish them with the proper ballot-boxes, poll books and forms.

III. In default of such appointment for any county, or place of voting, the officers who may superintend and conduct the polls to be taken on the twenty-sixth day of March next, on the question of the ratification of the Amended Constitution, at any place of voting in the said forty-eight counties, shall procure proper ballot-boxes, poll books and forms, and attend therewith at such place, and superintend and conduct the election, and make due return thereof.

IV. If at any place of voting there be, at the time the polls should be opened, but one commissioner willing to act, he shall associate with himself, as a commissioner, some freeholder of the county then present; and if there be no commissioner present willing to act, any two freeholders of the county present and willing to act, shall be commissioners.

V. The commissioners at any place of voting are hereby authorized to administer the proper oaths to each other, and to the conductor and clerks. If there be no conductor present willing to act, they may appoint one. They may also appoint clerks to record the names of the voters, assist in counting the ballots, ascertaining the result and making proper return thereof. They shall admit all persons to vote entitled to do so under the first section of the third article of the Amended Constitution, and shall reject the votes of all not so entitled, and in all respects have the said election fairly and impartially held and returned according to law. They may swear any person to answer questions in relation to any right to vote which is claimed; and the name of every person offering to vote, who is rejected by them, shall, if required by such person, be entered on a separate list on the poll books, under the heading, *Rejected votes*; and in such case the ballot offered shall be sealed up and endorsed on the envelope or cover as follows: "The ballot of A B, rejected this — day of —, 1863," and returned along with the other ballots.

VI. The polls shall not be opened sooner than sunrise, and shall be closed at sunset. But if it appear to the commissioners at any place of voting, that the persons present entitled to vote at such place cannot all be polled before sunset, or that many were prevented from attending by rain, rise of water courses, or just apprehension of personal danger, they may keep the polls open for three days, including the first.

VII. Every superintendent, commissioner, conductor and clerk, before entering on the discharge of his duties, shall take the following oath or affirmation: "I swear, (or affirm,) that in the election about to be held, I will faithfully, fairly and impartially discharge the duties of my office according to law; and that I will support the Constitution of the United States, and the laws made in pursuance thereof as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the Ordinances of the Convention which assembled at Richmond on the thirteenth day of February, eighteen hundred and sixty-one, to the contrary notwithstanding."

VIII. The superintendents of the election for each county shall cause to be delivered to the commissioners for every place of voting in said county, a proper ballot-box, with an aperture in the lid thereof, for the purpose of



receiving the ballots of those entitled to vote; which ballot-box, while the polls are open, shall be kept by the commissioners in a place where it may be seen by the voters. Every person desiring to vote, shall offer to the conductor a single ballot or piece of paper, on which there is printed or written the names of all the persons for whom he wishes to vote, with a proper designation of the office each is intended to fill. The ballot shall be rolled up or folded, so that the contents may not be seen. The conductor shall then proclaim the name of the person offering to vote, and deliver the ballot to one of the commissioners. The commissioners may inspect such ballot so far only as to ascertain if it be single, but without opening or unrolling it; and if satisfied it is single, and that the person offering the same is entitled to vote at the said polls, one of them shall put the ballot into the ballot-box through the aperture in the lid, and the name of the voter shall be entered on the poll books under the following heading: "Names of the voters at —, in the county of —, on the — day of —, 1863."

IX. As soon as the polls, at any place of voting, are finally closed, the names of the voters entered on the poll books shall be counted, and the number thereof set down in words at length, at the foot of the list; which shall then be signed by the commissioners and conductor, and countersigned by the clerk or clerks who kept such list. The ballot-box shall then be opened by the commissioners, and one of them shall take out the ballots, one at a time, and read therefrom, distinctly, the names of the persons voted for, and the designation of the office each is intended to fill, and deliver the same to the other commissioner or commissioners, who, having examined it, and being satisfied that the vote was correctly announced, shall pass it to the conductor, to be strung by him upon a thread, and carefully preserved. The ballots, as they are announced, shall be entered by the clerks, under the direction and supervision of the commissioners, in such manner as to show the number of votes received by each person for any office to be filled; and the said executive committee may prescribe proper forms and regulations for the purpose.

X. Whenever two or more ballots are found folded or rolled up together, they shall be rejected; and if a ballot be found to contain more than the proper number of names for any office, it shall not be counted as to said office.

XI. When the result is ascertained, the commissioners and conductor shall immediately make and subscribe two certificates to the following effect, viz: "We, the undersigned commissioners and conductor of the election held at —, in the county of —, this — day of —, 1863, do hereby certify that we have fairly and impartially held the said election according to law, and that the result thereof is as follows, that is to say: For Senator, A B received — votes, and C D — votes; For Delegate, E F received — votes, and G H — votes; For Governor, I J received — votes, and K L — votes;" and so on throughout, according to the truth, stating the name of every person voted for, and the number of votes received by each person for any office. The ballots shall then be delivered up to the commissioners, who shall seal up the same in an envelope or cover, writing their names across the seals and endorsing on the envelope or cover: "Ballots at the election held at —, in the county of —, on the —



day of \_\_\_\_\_, 1863." The ballots so sealed up, the poll books, and one of the certificates signed as aforesaid, shall be delivered by the commissioners and conductor, or one of them, within six days after the polls are closed, to the superintendents of the election for the county, or one of them; and the conductor shall retain and carefully preserve the other certificate subject to the order of the superintendents of the election for the county.

XII. The superintendents of the election for each county shall, as soon as the returns are received by them as aforesaid, carefully and impartially ascertain therefrom the result of the election in their county as to all the offices to be filled; for which purpose they may, if found necessary, open and examine the sealed packages of ballots delivered to them, but in such case they shall carefully seal up the same in another envelope or cover, enclosing the original envelope or cover, and write their names across the seals, and endorse on the outside, "Ballots at the election held at \_\_\_\_\_ in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 1863, opened by A B and C D, superintendents, this \_\_\_\_\_ day of \_\_\_\_\_, 1863."

XIII. The said superintendents shall, as soon as possible thereafter, cause to be delivered to each of the persons who shall appear to have received, within the county, the highest number of votes as Delegate, Clerk of the Circuit Court, Sheriff, Prosecuting Attorney, Surveyor of Lands, or Recorder, a certificate, signed by the said superintendents, to the following effect, viz: "We, the undersigned, superintendents of the election held in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 1863, having carefully and impartially examined the returns made to us of the said election, do hereby certify that for the office of Delegate for said county, (or Clerk of the Circuit Court for said county, Sheriff of said county, or otherwise, as the case may be,) A B received, at the said election, \_\_\_\_\_ votes, C D \_\_\_\_\_ votes, and E F \_\_\_\_\_ votes, and that the said A B having received the highest number of votes, is, therefore, duly elected to the said office. Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, 1863."

XIV. But where two or more counties are included in a district for the election of Delegates to the Legislature, under the tenth section of the fourth article of the Amended Constitution, the result of the election for Delegates in such District shall be ascertained and certified as follows: One of the superintendents of the election for each county in the Delegate district, shall meet together on the tenth day after the election, as follows, viz: The superintendents for Pleasants and Wood counties shall meet at the Court House of Wood county; those of Calhoun and Gilmer, at the Court House of Gilmer county; those of Clay and Nicholas, at the Court House of Nicholas county; those of Webster and Pocahontas, at the Court House of Pocahontas county; those of Tucker and Randolph, at the Court House of Randolph county, and those of McDowell, Wyoming and Raleigh, at the Court House of Wyoming county, or at such other convenient place as they may have previously agreed upon among themselves; and shall there together carefully and impartially examine the returns received by them of the election in their respective counties for delegate or delegates of the district, and give to the person or persons who shall appear to have received the highest number of votes in the district for that office, a certificate, signed by them, to the following effect, viz: "We, the undersigned, superintendents for the county of \_\_\_\_\_, and superintendents for the county of \_\_\_\_\_,



of the election held on the \_\_\_\_\_ day of \_\_\_\_\_, 1863, having together carefully and impartially examined the returns made to us of the election for Delegates of the district composed of the said counties, do hereby certify, that for the office of Delegate of said district A B received \_\_\_\_\_ votes, and C D \_\_\_\_\_ votes, and that the said A B having received the highest number of votes, is, therefore, duly elected to the said office. Given under our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 1863."

XV. If for any cause the superintendents of the election for the counties included in a delegate district fail to meet as aforesaid, then it shall be the duty of the superintendents of each of the said counties immediately to transmit their certificate of the result, within their county, of the election for Delegate of the district, to the Executive Committee of this Convention, observing, as far as possible, the directions specified in the said next succeeding paragraph of this Ordinance.

XVI. The superintendents of the election for each of the said forty-eight counties shall, as soon as possible after the returns of their county are received by them, carefully and impartially ascertain therefrom the result, within their county, of the election for Senator, Governor, Secretary of the State, Treasurer, Auditor, Attorney General, Judges of the Court of Appeals, and Judge for the Circuit, and forthwith make and sign two certificates thereof to the following effect, viz: "We, the undersigned, superintendents of the election held in the county of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1863, having carefully and impartially examined the returns made to us of the said election, do hereby certify that in our said county, for Senator of this district, A B received \_\_\_\_\_ votes, and C D \_\_\_\_\_ votes; for Judge for this Circuit, E F received \_\_\_\_\_ votes, and G H \_\_\_\_\_ votes; for Governor of the State, I J received \_\_\_\_\_ votes, and K L votes;" and so on throughout according to the truth; and concluding the certificate as follows: "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, 1863." And the said superintendents shall then, without delay, seal up one of their said certificates in an envelope addressed "To the Executive Committee, Wheeling, West Virginia," and write their names across the seals, and transmit the same by mail or some other speedy and safe conveyance to the Executive Committee of this Convention; and shall retain and carefully preserve the other certificate, subject to the order of the said Executive Committee, or of the Legislature of West Virginia.

XVII. In all the certificates herein before required to be made, wherever the number of votes for any person is to be stated, such number shall be written out in words at length, and also stated in figures.

XVIII. The Executive Committee shall carefully and impartially examine the returns made to them as aforesaid, and may, if necessary or proper, send for the poll books, ballots and duplicate certificates of any one or more counties. They shall give notice of their election to the persons appearing to be elected; but shall submit all the returns and evidences of the election in their hands to the Legislature of West Virginia as soon as it is organized; who shall, by joint resolution, declare the result, except that as to members of the Legislature, each branch, pursuant to the Amended Constitution, shall be the judge of the elections, qualifications and returns of its own members.

XIX. The poll books and ballots for each county shall be returned to and carefully preserved by the Clerk of the County Court for such county, to be transferred to the Recorder of the county when elected and qualified; or to



the Executive Committee at the City of Wheeling, in case there be no such clerk.

XX. If two or more persons have an equal and the highest number of votes, the person authorized to give the certificate or notice of election, shall decide by lot to whom the certificate or notice shall be given.

XXI. Any person in the service of the United States as a soldier, or officer of the Virginia militia, who has been a resident of the State of West Virginia for one year, and of the county in which he offers to vote, for thirty days before he entered such service, and is otherwise qualified, may send his ballot in a sealed envelope with his name endorsed thereon, to the superintendents of the election for the county in which he resided; and if a majority of the superintendents are satisfied that the person so transmitting his ballot is a citizen of the United States, and was, at the time he entered such service a resident as aforesaid of the State and county, and is at the time of the election qualified to vote, they shall deposit his ballot in the ballot-box at some place of voting in the county on the day of the election, and the name of the person so voting shall be entered on the poll books, to have the same effect as if the ballot had been given by the voter in person.

SEC. 5. The Senators and Delegates shall assemble at the city of Wheeling on the sixty-first day after the President of the United States shall have issued his said proclamation, at eleven o'clock in the forenoon, and proceed to organize themselves, in their respective branches, as the Legislature of West Virginia. It shall be the duty of the said Executive Committee to provide suitable rooms and accommodations for each Branch.

SEC. 6. All officers acting within the said forty-eight counties by the authority of the laws of Virginia at the time the Amended Constitution of West Virginia goes into operation, shall continue to exercise the powers and perform the duties of their respective offices, in the name and under the authority of the State of West Virginia, until the officers elected or appointed under the Amended Constitution for the discharge of similar duties be qualified.

SEC. 7. The schedule annexed to the original Constitution is hereby repealed; but such repeal shall not affect any act done in pursuance of said schedule.







