

IN THE SUPREME COURT OF THE STATE OF VERMONT
DOCKET NO. 2019-266

State of Vermont

v.

Max Misch

APPEAL FROM SUPERIOR COURT, CRIMINAL DIVISION (BENNINGTON)
Docket No. 172-2-19 Bncr

Brief for Appellant State of Vermont

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By: Benjamin D. Battles
Solicitor General
Ultan Doyle
David Boyd
Assistant Attorneys General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5500
benjamin.battles@vermont.gov
ultan.doyle@vermont.gov
david.boyd@vermont.gov

ISSUES PRESENTED

1. Does 13 V.S.A. § 4021 violate Chapter I, Article 16 of the Vermont Constitution?
2. Does 13 V.S.A. § 4021 violate Chapter I, Article 7 of the Vermont Constitution?

TABLE OF CONTENTS

| | Page |
|---|-------------|
| Issues Presented | i |
| Table of Authorities | iv |
| Introduction..... | 1 |
| Statement of the Case..... | 3 |
| A. The Legislature enacted S.55 in response to continued mass shootings in the United States and a threatened school shooting in Fair Haven, Vermont | 3 |
| B. Section 4021 restricts the ability to acquire and possess large-capacity magazines | 9 |
| C. Facts and Procedural History | 9 |
| Summary of the Argument..... | 11 |
| Standard of Review | 12 |
| Argument..... | 12 |
| I. The magazine law does not violate Article 16..... | 13 |
| A. Article 16 creates a limited right to bear arms in self-defense that is subject to reasonable public safety regulation | 13 |
| 1. Constitutional Text | 13 |
| 2. Historical Sources | 15 |
| 3. Vermont case law | 19 |
| 4. Case law from other jurisdictions..... | 21 |
| a. Federal..... | 22 |
| b. State | 24 |
| 5. Policy..... | 25 |

| | | |
|-----|--|-------|
| B. | 13 V.S.A. § 4021 does not violate the Article 16 right to bear arms in self-defense | 26 |
| 1. | The State has a compelling interest in reducing the likelihood and harm of a mass shooting in Vermont | 27 |
| 2. | Restricting magazine capacity is reasonable related to the State’s interest..... | 28 |
| 3. | Any burden on the right to bear arms in self-defense is, at most, minimal..... | 30 |
| II. | The magazine law does not violate the Common Benefits Clause..... | 31 |
| | Conclusion | 34 |
| | Certificate of Compliance | |
| | Appendix..... | APP 1 |

TABLE OF AUTHORITIES

| Cases | Page |
|--|--------------------|
| <i>Ass'n of N.J. Rifle and Pistol Clubs, Inc. v. Attorney General of N.J.</i> , 910 F.3d 106 (3d Cir. 2018) | 23, 27, 29, 30, 31 |
| <i>Badgley v. Walton</i> , 2010 VT 68, 188 Vt. 367, 10 A.3d 469 | 12, 25, 32 |
| <i>Baker v. State</i> , 170 Vt. 194, A.2d 864 (1999) | 21, 32 |
| <i>Benjamin v. Bailey</i> , 662 A.3d 1226 (Conn. 1995)..... | 24 |
| <i>Bleiler v. Chief, Dover Police Dep't</i> , 927 A.2d 1216 (N.H. 2007)..... | 24, 25, 26 |
| <i>City of New Orleans v. Dukes</i> , 427 U.S. 297 (1976) | 32, 33 |
| <i>City of Rutland v. McDonald's Corp.</i> , 146 Vt. 324, 503 A.2d 1138 (1985)..... | 27 |
| <i>Commonwealth v. Davis</i> , 343 N.E.2d 847 (Mass. 1976) | 24 |
| <i>Dist. of Columbia v. Heller</i> , 554 U.S. 570 (2008) | 22, 23, 24 |
| <i>Duncan v. Becerra</i> , 366 F. Supp. 3d 1131 (S.D. Cal. 2019) | 24 |
| <i>Duncan</i> , 2019 WL 1510340 (S.D. Cal. Apr. 4, 2019)..... | 24 |
| <i>Duncan</i> , No. 19-55376 (9th Cir. Apr. 4, 2019) | 24 |
| <i>Friedman v. City of Highland Park</i> , 784 F.3d 406 (7th Cir. 2015) | 23, 28 |
| <i>Fyock v. City of Sunnyvale</i> , 779 F.3d 991 (9th Cir. 2015) | 24, 27, 30, 31 |
| <i>Heller v. Dist. of Columbia</i> (“ <i>Heller II</i> ”), 670 F.3d 1244 (D.C. Cir. 2011) | 24, 28, 30, 31 |
| <i>Hightower v. Boston</i> , 693 F.3d 61 (1st Cir. 2012) | 33 |
| <i>Hilly v. City of Portland</i> , 582 A.2d 1213 (Me. 1990)..... | 24 |
| <i>In re A.D.</i> , 143 Vt. 432, 467 A.2d 121 (1983)..... | 27 |
| <i>In re One Church St.</i> , 152 Vt. 260, 565 A.2d 1349 (1989) | 21 |

| | |
|--|----------------|
| <i>In re Vt. Supreme Ct. Admin. Dir. No. 17</i> , 154 Vt. 392, 579 A.2d 1036 (1990) | 21 |
| <i>Kachalsky v. Cty. of Westchester</i> , 701 F.3d 81 (2d Cir. 2012)..... | 20 |
| <i>Kampfer v. Cuomo</i> , 643 F. App'x 43 (2d Cir. 2016)..... | 32, 33 |
| <i>Kolbe v. Hogan</i> , 849 F.3d 114 (4th Cir. 2017) | passim |
| <i>Kwong v. Bloomberg</i> , 723 F.3d 160 (2d Cir. 2013)..... | 33 |
| <i>Lehman v. Penn. St. Police</i> , 839 A.2d 265 (Pa. 2003) | 16 |
| <i>Mosby v. Devine</i> , 851 A.2d 1031 (R.I. 2004) | 24 |
| <i>Nat'l Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives</i> , 700 F.3d 185 (5th Cir. 2012) | 33 |
| <i>New York State Rifle & Pistol Association v. Cuomo</i> , 804 F.3d 242 (2d Cir. 2015)..... | passim |
| <i>Nordyke v. King</i> , 681 F.3d 1041 (9th Cir. 2012) | 33 |
| <i>OMYA, Inc. v. Town of Middlebury</i> , 171 Vt. 532, 758 A.2d 777 (2000)..... | 30, 31, 32, 33 |
| <i>Rocky Mountain Gun Owners v. Hickenlooper</i> , 2018 COA 149 (Colo. Ct. App. 2018) | 25, 28, 30, 31 |
| <i>S.F. Veteran Police Officers Ass'n v. City and Cty. of San Francisco</i> , 18 F. Supp. 3d 997 (N.D. Cal. 2014)..... | 24, 30, 31 |
| <i>Shields v. Gerhart</i> , 163 Vt. 219, 658 A.2d 924 (1995)..... | 15 |
| <i>State v. Curley-Egan</i> , 2006 VT 95, 180 Vt. 305, 910 A.2d 200 | 12, 14 |
| <i>State v. Duranleau</i> , 128 Vt. 206, 260 A.2d 383 (1969)..... | 13, 20 |
| <i>State v. Jewett</i> , 146 Vt. 221, 500 A.2d 233 (1985)..... | 13 |
| <i>State v. Kirchoff</i> , 156 Vt. 1, 587 A.2d 988 (1991)..... | 21 |
| <i>State v. Morris</i> , 165 Vt. 111, 680 A.2d 90 (1996) | 15 |
| <i>State v. Morse</i> , 84 Vt. 387, 80 A. 189 (1911) | 21 |

| | |
|--|----------------|
| <i>State v. Porter</i> , 164 Vt. 515, 671 A.2d 1280 (1996) | 13 |
| <i>State v. Rheaume</i> , 2004 VT 35, 176 Vt. 413, 853 A.2d 1259 | 13 |
| <i>State v. Rosenthal</i> , 75 Vt. 295 (1903) | 19 |
| <i>State v. Sawyer</i> , 2018 VT 43 | 3 |
| <i>State v. VanBuren</i> , 2018 VT 95 | 12 |
| <i>Wilson v. Cook Cty.</i> , 937 F.3d 2018 (7th Cir. 2019) | 23 |
| <i>Worman v. Healey</i> , 922 F.3d 26 (1st Cir. 2019) | 23, 27, 30, 31 |

Statutes & Rules

| | |
|--|--------|
| 10 V.S.A. § 4704 | 18 |
| 13 V.S.A. § 608 | 16 |
| 13 V.S.A. § 4010 | 16 |
| 13 V.S.A. § 4011 | 16 |
| 13 V.S.A. § 4021 | passim |
| 18 V.S.A. § 1882 | 9 |
| 23 Vt. Rev. Stat. §§ 7, 8, 16, 17 (1840) | 16 |
| 31 Vt. Rev. Laws. §§ 4122, 4123 (1880)..... | 16 |
| 34 Vt. Gen. Stat. § 28 (1863)..... | 17 |
| 1912 Vt. Acts & Resolves 310, § 1 | 16 |
| 1931 Ill. Laws 452-53..... | 18 |
| 1933 S.D. Sess. Laws 245-47 | 18 |
| 1934 S.C. Acts 1288 | 18 |

| | |
|--|----|
| 1934 Va. Acts 137-39..... | 18 |
| 1961 Vt., Bien. Sess. no. 119 § 1, 125..... | 18 |
| Act of July 7, 1932, no. 80, § 1, 1932 La. Acts 336..... | 18 |
| Acts of the General Assembly of the Commonwealth of Pennsylvania (1775–1781) 193 (Philadelphia 1782)..... | 16 |
| An Abridgment of the Laws of Pennsylvania, 1700–1811 (Philadelphia 1811)..... | 15 |
| Albany, Ny., Code § 193-15..... | 18 |
| Aurora, Ill. Code of Ordinances, § 29-49..... | 18 |
| Buffalo, Ny., Code § 180-1..... | 18 |
| Cal. Penal Code §§ 16350, 16740, 16890, 32310-32390..... | 18 |
| Chi., Ill. Muni. Code §§ 8-20-010, and 8-20-085..... | 18 |
| Colo. Rev. Stat. §§ 18-12-301, 18-12-303..... | 18 |
| Conn. Gen Stat. §§ 53-202w, 53-202x..... | 18 |
| Cook Cty., Ill. Code of Ordinances, § 54.212 (Ord. No. 13-O-32, 7-17-2013)..... | 18 |
| D.C. Code Ann. § 7-2506.01(b)..... | 18 |
| Denver, Co., Code of Ordinances, § 38-130..... | 18 |
| Franklin Park, Ill. Code of Ordinances, 3-13G-3..... | 18 |
| Haw. Rev. Stat. Ann. §134-8..... | 18 |
| Highland Park, Ill, Code of Ordinances, § 136.005..... | 18 |
| L.A, Cal. Muni. Code §§ 46.30, 55.13..... | 18 |
| Mass. Gen. Laws ch. 140 §§ 121, 131M..... | 18 |
| Md. Code Ann. § 4-305..... | 18 |
| N.J. Stat. Ann §§2C:39-1(y), 2C:39-3(j), 2C:39-9(h)..... | 18 |

| | |
|--|----|
| N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36, 265.37..... | 18 |
| New York City, N.Y. Admin. Code, tit. 10, ch. 3, § 10-301..... | 18 |
| Oak Park Ill. Muni. Code, § 27-2-1..... | 18 |
| Oakland, Cal. Code of Ordinances, § 9.38.030-9.38.040 (Ord. No.13352, § 1(C-D), 1-19-2016)..... | 18 |
| Rochester, N.Y., Muni. Code No. 47-5..... | 18 |
| S.F., Ca. Pol. Code Art. 9, § 619..... | 18 |
| Sunnyvale, Cal. Muni. Code § 9.44.050 | 18 |
| Vill. of Deerfield, Ill., Ordinances, § 15-90 (Ord. No. O-18-06) | 18 |
| Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 110103..... | 19 |
| V.R.A.P. 5(a)..... | 11 |

Other Authorities

| | |
|---|----|
| Adam Winkler, <i>The Reasonable Right to Bear Arms</i> , 17 Stan. L. & Pol’y Rev. 597 (2006) | 24 |
| Alejandro De La Garza & Michael Zennie, <i>Dayton Shooting Lasted Just 32 Seconds and Left 9 Dead</i> , TIME (Aug. 9, 2019) | 2 |
| Christine Hauser & Anahad O’Connor, <i>Virginia Tech Shooting Leaves 33 Dead</i> , N.Y. Times (Apr. 16, 2007) | 4 |
| E-mail from Bob Williamson to Rep. Maxine Grad, H. Judiciary Comm. (Mar. 15, 2018) | 5 |
| E-mail from David Cahill, Windsor County State’s Attorney, to Rep. Maxine Grad (Mar. 19, 2018)..... | 5 |
| E-mail from Emily Grimes (Mar. 23, 2018) | 6 |

| | |
|---|--------|
| E-mail from Grace Winslow (Mar. 2018) | 6 |
| E-mail from Gregory Nagourney to Rep. Maxine Grad (Feb. 16, 2018) | 5 |
| E-mail from John Devino to Rep. Maxine Grad (Mar. 13, 2018) | 6 |
| E-mail from Peter Geiss to H. Judiciary Comm. (March 16, 2018) | 5, 6 |
| E-mail to Rep. Harvey Smith (Mar. 26, 2018) | 6 |
| Evan Brune, <i>10 Affordable AR-15s Found under \$500</i> , www.shootingillustrated.com (Aug. 15, 2018) | 10 |
| Governor Phil Scott, Official Statement on S.55, S.221 & H.422 (Mar. 30, 2018) | 8 |
| Gun Violence Archive, gunviolencearchive.org | 3 |
| H. Judiciary Comm., S.55, Documents & Handouts, Copies Emails Supporting S.55 (Mar. 23, 2018) | 7 |
| H. Judiciary Comm., S.55, Documents & Handouts (Mar. 20, 2018) | 7 |
| John Walters, <i>Scott Shifts Gun Stance Following Fair Haven Threat</i> , Seven Days (Feb. 16, 2018) | 4 |
| Kyle Mizokami, <i>The Russian Military Is Getting New Assault Rifles</i> , Popular Mechanics (May 3, 2018) | 10 |
| Letter from Addison Cent. Sch. Bd. to Gov. Phil Scott (Feb. 18, 2018) | 4, 5 |
| Letter from Essex-Westford Sch. Bd. to Gov. Phil Scott (Mar. 8, 2018) | 5 |
| Malachy Brown et al., <i>Visual Investigations: 10 Minutes. 12 Gunfire Bursts.</i> <i>30 Videos. Mapping the Las Vegas Massacre</i> , N.Y. Times (Oct. 21, 2017) | 29 |
| Marjory Stoneman Douglas High Sch. Pub. Safety Comm'n, Initial Report 32 (Jan. 2, 2019) | 30 |
| Op. Vt. Att'y Gen., No. 75 (Sept. 5, 1968) | 17, 19 |
| S.55 (Act 94), Bill Status | 4 |
| VPR News, <i>Jolted Part 4: The Reversal (Transcript)</i> , Vt. Public Radio | 4 |

| | |
|--|----|
| Vt. Dep't of Fish & Wildlife, General Hunting Information, Machine Guns & Autoloading Rifles & Suppressors,..... | 18 |
| <i>Watch the videos students took during the Florida school shooting,</i> Wash. Post. (Feb. 15, 2018) | 29 |

Constitutional Provisions

| | |
|--|--------|
| Pa. Const. art. 1, § 21..... | 16 |
| Pa. Dec. of Rights art. XIII (1776)..... | 15 |
| U.S. Const., amend. II..... | 22 |
| Vt. Const. ch. I, art. XV (1777) | 15 |
| Vt. Const. ch. I, art. 3..... | 14 |
| Vt. Const. ch. I, art. 5..... | 14 |
| Vt. Const. ch. I, art. 7..... | 32 |
| Vt. Const. ch. I, art. 13..... | 14 |
| Vt. Const. ch. I, art. 14..... | 14 |
| Vt. Const. ch. I, art. 16..... | passim |
| Vt. Const. ch. II, § 2 | 15 |
| Vt. Const. ch. II, § 16 | 15 |
| Vt. Const. ch. II, § 17 | 15 |
| Vt. Const. ch. II, § 59 | 14 |

INTRODUCTION

The people of Vermont, through their elected representatives, have decided that limiting the capacity of ammunition magazines can save lives by reducing the likelihood and harm of a mass shooting. In April 2018, the Governor signed into law S.55, a bill that among other things bans possessing, selling, or importing into the State long-gun magazines that can hold more than 10 rounds of ammunition and handgun magazines that can hold more than 15 rounds of ammunition. Vermont's law is by no means novel. Large-capacity magazines were banned nationwide from 1994 to 2004 and are currently illegal in 9 States and the District of Columbia.

Defendant was charged with two counts of violating the magazine law, codified at 13 V.S.A. § 4021, after he drove to New Hampshire, purchased two 30-round magazines for his AR-15 style rifle, and returned with those magazines to his home in Vermont. Defendant moved to dismiss the charges on the theory that § 4021 violates Article 16 (the right to bear arms) and Article 7 (the Common Benefits Clause) of the Vermont Constitution. Defendant has not argued the law violates the United States Constitution.

The trial court rejected defendants' arguments and denied his motion. Because the issues involved are important, the parties jointly moved the trial court to certify the constitutional questions to this Court for interlocutory appellate review. This Court should now uphold § 4021.

Article 16 can and should be interpreted to both protect an individual right to use a firearm for self-defense and permit reasonable gun safety legislation like 13

V.S.A. § 4021. The Court should apply a well-established “reasonable regulation” test to Article 16 challenges, under which gun safety legislation is upheld so long as the burden on the right to use a firearm in self-defense is reasonable in light of the balance of interests at stake—specifically the State’s duty to protect the public from the danger of gun violence. This common-sense test is applied by other New England states when interpreting their own right-to-bear arms provisions and is consistent with Article 16’s text and Vermont’s historical and constitutional traditions.

Applying that test here, defendant’s Article 16 challenge should be rejected.

First, the State’s compelling interest in reducing the likelihood and harm of a mass shooting in Vermont can hardly be disputed. *Second*, Section 4021 furthers that interest. If a mass shooter can fire more rounds without having to reload, more people will be shot and killed. Recent history tragically confirms this. To take just one example, last August an Ohio man armed with an AR-15 style rifle and a 100-round magazine opened fire on a public street and shot 36 people—killing 9—in less than a minute before being stopped by police.¹ And *finally*, § 4021 does not impose a significant burden on the Article 16 right to use a firearm in self-defense. The law restricts permissible magazine capacity. It does not prevent law-abiding Vermonters from obtaining firearms and ammunition for self-defense.

¹ Alejandro De La Garza & Michael Zennie, *Dayton Shooting Lasted Just 32 Seconds and Left 9 Dead*, TIME (Aug. 9, 2019), <https://time.com/5643405/what-to-know-shooting-dayton-ohio/>.

Defendant's Common Benefits challenge to § 4021's grandfather clause also fails. Even if the challenge was viable without an underlying Article 16 violation (and it is not), a grandfather clause is a permissible and well-established legislative tool for mitigating the potential inconvenience of a new regulation.

STATEMENT OF THE CASE

A. The Legislature enacted S.55 in response to continued mass shootings in the United States and a threatened school shooting in Fair Haven, Vermont.

Mass shootings are a horrifying fact of life in this country. Columbine, Virginia Tech, Fort Hood, Tucson, Aurora, Sandy Hook, Charleston, San Bernardino, Orlando, Sutherland Springs, Las Vegas, Parkland, Pittsburgh, Thousand Oaks, Virginia Beach, Gilroy, El Paso, Dayton, Odessa—the list goes on. In the 18 months alone since Vermont's magazine law was enacted, there have been more than 40 incidents where a shooter killed at least four people.²

On February 15, 2018, the day after 17 people were murdered in a high school by a mass shooter in Parkland, Florida, the Vermont State Police arrested a Vermont teenager based on evidence he intended to commit a mass shooting at Fair Haven Union High School. *See State v. Sawyer*, 2018 VT 43, ¶¶ 5-10 (discussing the facts of the Fair Haven case). The teenager told police he had been planning to acquire the needed guns and ammunition and commit the shooting within several weeks, “that

² Sortable annual reports tracking shootings are available at <https://www.gunviolencearchive.org>.

he wanted to exceed the body count from the Virginia Tech shooting”—in which 33 people were killed—“and that he had chosen his ammunition accordingly.” *Id.*, ¶ 7.³

The next day Governor Phil Scott announced his willingness to consider new gun safety legislation, despite his previous opposition.⁴ In a press conference announcing the reversal, the Governor explained: “In the aftermath of Florida, this situation in Fair Haven has jolted me, especially after reading the [police] affidavit and realizing that only by the grace of God . . . did we avert a horrific outcome.”⁵ We “have an obligation to protect our citizens.”⁶ The Legislature promptly went to work on several gun safety bills, including S.55.

As the Legislature debated S.55, it considered testimony from dozens of witnesses, both for and against the legislation, and an extensive documentary record.⁷ This record included school board resolutions explaining that “Vermont school children” now spend more time “in lock-down and active shooter drills” than on “fire drills,” which understandably invokes “significant anxiety and fear.” Letter

³ Christine Hauser & Anahad O’Connor, *Virginia Tech Shooting Leaves 33 Dead*, N.Y. Times (Apr. 16, 2007), available at <https://www.nytimes.com/2007/04/16/us/16cnd-shooting.html>.

⁴ John Walters, *Scott Shifts Gun Stance Following Fair Haven Threat*, Seven Days (Feb. 16, 2018), available at <https://www.sevendaysvt.com/OffMessage/archives/2018/02/16/walters-scott-shifts-gun-stance-following-fair-haven-threat>.

⁵ VPR News, *Jolted Part 4: The Reversal (Transcript)*, Vt. Public Radio, <https://www.vpr.org/post/jolted-part-4-reversal-transcript#stream/0>.

⁶ Walters, *supra* note 3.

⁷ See generally S.55 (Act 94), Bill Status, <https://legislature.vermont.gov/bill/status/2018/S.55>. Unless otherwise noted, the legislative documents cited in this section were submitted to the House Judiciary Committee and are available at <https://legislature.vermont.gov/committee/document/2018/18/Bill/85082>.

from Addison Cent. Sch. Bd. to Gov. Phil Scott (Feb. 18, 2018); Letter from Essex-Westford Sch. Bd. to Gov. Phil Scott (Mar. 8, 2018). In a similar vein, one constituent expressed dismay about how “every single morning” when he sends his young children off to school, he thinks to himself “that may be the last time I ever see them alive.” E-mail from Gregory Nagourney to Rep. Maxine Grad (Feb. 16, 2018). The constituent questioned whether many parents in other developed countries were “having similar thoughts.” *Id.*

The legislative record also included evidence specifically explaining the danger inherent in large-capacity magazines, the purpose of which is to allow a shooter to fire more rounds (and thus potentially kill or injure more people) without having to reload. As one witness before the House Judiciary Committee noted, “the same split second that it takes to swap magazines could be used by innocent victims to escape a mass shooting and also could be used to attempt to disarm the shooter.” E-mail from David Cahill, Windsor County State’s Attorney, to Rep. Maxine Grad (Mar. 19, 2018); *see also id.* (“It is my professional opinion that a 10 round magazine limit fairly balances . . . competing rights and, if enforced, would offer victims and first responders a brief window to act during a mass shooting incident.”); E-mail from Bob Williamson to Rep. Maxine Grad (Mar. 15, 2018) (“Two testifiers today claim the 10-round ammo magazine was an arbitrary limit. I wish I could bring Christina Taylor-Green to testify, to tell you why it isn’t arbitrary, but I can’t: Christina is the 9-year-old child killed by Jared Loughner’s 13th bullet, according to FBI Reports, in Tucson, Jan. 8, 2011, the day Rep. Gabby Giffords was shot.”); E-mail from Peter

Geiss to H. Judiciary Comm. (March 16, 2018) (“[A] ban on high capacity magazines which only exist to make highly lethal assault weapons even more lethal” would be a “significant step” toward “reducing gun violence” and “saving innocent lives.”).

One Vermont teacher wrote that a large-capacity magazine ban would keep her “safer as a citizen” and her “children safer when they are at school, at the movies, in church, and at concerts.” E-mail from Emily Grimes (Mar. 23, 2018). She explained that “[t]he ease with which devastating action can be taken with a firearm requires that we have laws that promote responsible gun ownership and policies and practices that prioritize the safety and well-being of citizens.” *Id.* A safety officer for a childcare campus with 80 children and 34 staff on site explained that she “can picture clearly the difference” that a ban on high-capacity magazine “would make to who lives and how many die” if a mass shooting occurred at her workplace. E-mail from Grace Winslow (Mar. 2018). She explained “that if someone reached our front door with a semi-automatic assault weapon and multiple high-capacity clips, that person could kill 3 office staff and everyone in two classrooms in under 7 minutes before the rest of the building was able to react effectively: 34 children and 9 adults.” *Id.* Another constituent wrote that “[t]he potential to save even one life in exchange for an enthusiast having to reload more frequently at the gun range is, I believe, I trade-off well worth it.” E-mail to Rep. Harvey Smith (Mar. 26, 2018).

Another document in the legislative record was an essay by a doctor who treated Parkland victims. E-mail from John Devino to Rep. Maxine Grad (Mar. 13, 2018). The doctor explained the devastating trauma caused by bullets fired from an AR-15

assault rifle, the use of which “is the common denominator in many mass shootings.” *Id.* The bullets travel at a higher speed, displacing tissue several inches on either side of the bullet’s path, causing catastrophic bleeding, and leaving exit wounds “the size of an orange.” *Id.* Whereas handgun injuries to the liver are generally survivable, for example, a similar wound from an AR-15 bullet “would cause so much bleeding that the patient would likely never make it to a trauma center to receive [] care.” *Id.* The essay observed that an AR-15 outfitted with a large-capacity magazine “allows many more lethal bullets to be delivered quickly without reloading.” *Id.*

Many other documents in the record expressly reference the events in Fair Haven. *See, e.g.,* H. Judiciary Comm., S.55, Documents & Handouts, Copies Emails Supporting S.55 (Mar. 23, 2018).

The Legislature also considered recent federal court decisions upholding large-capacity magazine bans against federal constitutional challenges, including *New York State Rifle & Pistol Association v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), which upheld New York’s and Connecticut’s magazine limits, and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), which upheld Maryland’s magazine limits. *See* H. Judiciary Comm., S.55, Documents & Handouts (Mar. 20, 2018). The Second Circuit held that banning large-capacity magazines was substantially related to New York’s and Connecticut’s compelling interest in controlling crime. *N.Y.S. Rifle*, 804 F.3d at 263-64 (finding support for states’ position that large-capacity magazines are particularly dangerous, “are disproportionately used in mass

shootings, like the one in Newtown, in which the shooter used multiple large-capacity magazines to fire 154 rounds in less than five minutes,” and “result in more shots fired, persons wounded, and wounds per victim than do other gun attacks”). Likewise, the Fourth Circuit held that Maryland’s legislature acted reasonably by banning large-capacity magazines in order to reduce their availability “so that when a criminal acts, he does so with a less dangerous weapon and less severe consequences.” *Kolbe*, 849 F.3d at 140. The court found this was “precisely they type of judgment that legislatures are allowed to make without second-guessing by a court.” *Id.*

Governor Scott echoed the public safety concerns evident in the legislative record in his official signing statement for S.55. Governor Phil Scott, Official Statement on S.55, S.221 & H.422 (Mar. 30, 2018).⁸ The Governor explained that although “Vermont is currently one of the healthiest and safest states in America,” recent “tragedies in Florida, Las Vegas, Newtown and elsewhere—as well as the averted plot to shoot up Fair Haven High School—have demonstrated [that] no state is immune to the risk of extreme violence.” *Id.* The statement continues, “As Governor, I have a moral and legal obligation and responsibility to provide for the safety of our citizens. If we are at a point when our kids are afraid to go to school and parents are afraid to put their kids on a bus, who are we?” *Id.* The Governor reiterated his strong support for the people’s constitutional rights, including the right to bear

⁸ Available at <http://governor.vermont.gov/press-release/official-statement-s55-s221-h422>.

arms, and stated his belief that the new laws “uphold these rights, while taking reasonable steps to reduce the risk of violence.” *Id.*

B. Section 4021 restricts the ability to acquire and possess large-capacity magazines.

As enacted, Vermont’s magazine law provides that a “person shall not manufacture, possess, transfer, offer for sale, purchase, or receive or import into this State a large capacity ammunition feeding device.” 13 V.S.A. § 4021(a). These devices are defined to include long gun magazines holding more than 10 rounds of ammunition and hand gun magazines holding more than 15 rounds. 13 V.S.A. § 4021(e)(1). S.55 grandfathers devices lawfully possessed before April 11, 2018, and allowed licensed dealers until October 1, 2018, to sell off their existing stock. 13 V.S.A. § 4021(c)(1)-(2).

C. Facts and Procedural History

Unless otherwise noted, the facts below are summarized from the charging affidavit of Vermont State Police Detective Patrick Slaney. PC 1, 11-14.

In October 2018, defendant Max Misch’s ex-wife Lisa Shapiro disclosed to her therapist that she had concerns about defendant, “which involved Misch’s purchasing weapons, large capacity magazines, and stockpiling ammunition.” PC 11. “This, coupled with Shapiro’s knowledge of white supremacist and neo-Nazi affiliations of Misch, prompted the therapist to report the information to law enforcement.” *Id.*; see 18 V.S.A. § 1882 (describing mental health professionals’ duty to disclose protected health information to avert a serious risk of danger).

In January 2019, Detective Slaney interviewed Ms. Shapiro. PC 11. During that interview, Ms. Shapiro revealed that defendant had recently purchased an assault rifle in Vermont, and that in December 2018, she had driven defendant to a Runnings department store in Hillsdale, New Hampshire, so that he could purchase multiple 30-round magazines. PC 11-12. Ms. Shapiro reiterated her concerns about defendant. She noted he “has a predatory nature and tries to intimidate people,” “identifies as a White supremacist and neo-Nazi,” is “intelligent” but “has no loyalty and is arrogant,” previously “snapp[ed]” and strangled her,” and that his concerning behavior was “escalating” and now includes acquiring multiple firearms and large-capacity magazines. PC 11.⁹

On January 31, 2019, Detective Slaney traveled to the Runnings store. PC 12. A store employee provided Slaney with a receipt and surveillance footage from December 1, 2018, establishing that defendant visited the store with Ms. Shapiro, purchased two 30-round ammunition magazines, and left the store with the

⁹ Ms. Shapiro reported that defendant acquired an “AK-15” style rifle from the Bennington Armory. PC 11. An AK-15 is an assault rifle made by Kalashnikov for the Russian military. It is a modernized version of Kalashnikov’s “AK-47” rifle. Kyle Mizokami, *The Russian Military Is Getting New Assault Rifles*, Popular Mechanics (May 3, 2018), available at <https://www.popularmechanics.com/military/weapons/a20138224/russian-military-new-assault-rifles-ak-12-ak-15/>. Detective Slaney’s investigation revealed that in late September 2018, defendant purchased a Ruger 9mm pistol and two AK-47 30-round magazines from the Bennington Trading Post, and that in October 2018, defendant purchased an Anderson AM-15 rifle from the Bennington Armory. PC 12. An Anderson AM-15 is an “AR-15” style rifle, which is “the semiautomatic version of the M16 rifle used by [the U.S.] military.” *Kolbe*, 849 F.3d at 124; see Evan Brune, *10 Affordable AR-15s Found under \$500*, www.shootingillustrated.com (Aug. 15, 2018). The magazines defendant purchased in New Hampshire were compatible with the AM-15 rifle. PC 13. It is unclear from the record whether defendant actually purchased an AK-style weapon or what became of the AK-47 magazines he purchased in September 2018. In any event, those purchases did not give rise to any criminal charges.

magazines. PC 12-13. In a follow-up interview, Ms. Shapiro stated that after leaving the Runnings store, she drove defendant directly to his residence in Bennington where she dropped him off with the items he had purchased. *Id.*

On February 6, 2018, police executed a search at defendant's residence and located two 30-round magazines, consistent with what had been purchased at the Runnings store in New Hampshire. PC 13. Defendant was subsequently charged with two counts of possessing a large-capacity ammunition feeding device in violation of 13 V.S.A. § 4021(b). PC 1.

Defendant moved to dismiss the charges on the theory that 13 V.S.A. § 4021 violates the right to bear arms under Chapter I, Article 16, of the Vermont Constitution, and impermissibly discriminates against people who want to purchase large-capacity magazines after October 1, 2008, in violation of the Common Benefits Clause of Chapter I, Article 7, of the Vermont Constitution.

The trial court rejected both arguments in a decision filed June 28, 2018, and then granted the parties' joint motion for an appeal on report under V.R.A.P. 5(a), PC 10. This Court accepted the interlocutory appeal.

SUMMARY OF ARGUMENT

The trial court correctly rejected defendant's arguments that 13 V.S.A. § 4021 violates the Vermont Constitution.

First, § 4021 does not violate Article 16. Limiting magazine capacity to ten rounds does not significantly burden the right to use a firearm in self-defense. And even if it did, that burden is justified by the State's interest in protecting public

safety by reducing the likelihood and harm of a mass shooting in Vermont. The Court should apply a “reasonable regulation” standard to Article 16 challenges, but regardless of the standard applied, § 4021 should be upheld. *See below* Argument, Section I.

Second, defendant’s Common Benefits challenge to § 4021’s grandfather provision should also be rejected. It is well-settled that the Legislature may use a grandfather provision to mitigate the potential burden of a new regulation. *See below* Argument, Section II.

STANDARD OF REVIEW

The questions certified for appellate review involve only the facial constitutionality of 13 V.S.A. § 4021 under Article 16 and the Common Benefits Clause. “The facial constitutionality of a statute presents a pure question of law” that this Court reviews *de novo*. *State v. VanBuren*, 2018 VT 95, ¶ 19.

ARGUMENT

Because “statutes are presumed to be constitutional and . . . reasonable,” courts “must accord deference to the policy choices made by the Legislature.” *Badgley v. Walton*, 2010 VT 68, ¶¶ 20, 38, 188 Vt. 367, 10 A.3d 469. Under the Vermont Constitution, the Legislature is authorized “to pass measures for the general welfare of the people” and is “itself the judge of the necessity or expediency of the means adopted.” *State v. Curley-Egan*, 2006 VT 95, ¶ 11, 180 Vt. 305, 910 A.2d 200 (quotation omitted). Accordingly, “the proponent of a constitutional challenge has a very weighty burden to overcome.” *Badgley*, 2010 VT 68, ¶ 20. This burden is

heightened where a party argues that a state constitutional provision restricts the Legislature more than an analogous provision of the federal constitution. *State v. Porter*, 164 Vt. 515, 518, 671 A.2d 1280, 1282 (1996). Defendant cannot meet this burden.

I. The magazine law does not violate Article 16.

A. Article 16 creates a limited right to bear arms in self-defense that is subject to reasonable public safety regulation.

Although this Court has not considered Article 16's meaning in depth, it has instructed that the state constitution should be interpreted by consulting the constitutional text, historical sources, relevant caselaw from both within and outside Vermont, and policy considerations. *See, e.g., State v. Rheaume*, 2004 VT 35, ¶ 16, 176 Vt. 413, 853 A.2d 1259 (citing *State v. Jewett*, 146 Vt. 221, 225-27, 500 A.2d 233, 236-37 (1985)). These factors demonstrate that Article 16 protects a limited individual right to bear arms in self-defense that is not violated by reasonable restrictions like 13 V.S.A. § 4021's ban on large-capacity magazines.

1. Constitutional Text

Article 16 provides “[t]hat the people have a right to bear arms for the defense of themselves and the State.” Vt. Const., ch. I, art. 16.¹⁰ “[T]he language of the constitutional provision does not suggest that the right to bear arms is unlimited and undefinable.” *State v. Duranleau*, 128 Vt. 206, 210, 260 A.2d 383, 386 (1969).

¹⁰ The rest of the provision states that “as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power.”

Rather, it suggests the right exists for two purposes: self-defense (“defence of themselves”) and militia service (“defence . . . of the State”).

Nor does Article 16 guarantee the freedom to possess or use *any* type of weapon. The framers knew how to enshrine such freedom of choice. *Compare* Vt. Const. ch. I, art. 3 (protecting the people’s “natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings”); ch. I, art. 13 (protecting the people’s “right to freedom of speech, and of writing and publishing their sentiments”); ch. I, art. 14 (protecting “[t]he freedom of deliberation, speech, and debate, in the Legislature”). Any suggestion that Article 16 grants individuals absolute freedom to choose what arms could be used “for defence of themselves and the State,” Vt. Const. ch. I, art. 16, also cannot be squared with the constitution’s militia provision, which tasks the Legislature with enacting “regulations” and “restrictions” to govern how “[t]he inhabitants of this State shall be trained and armed for its defense,” Vt. Const. ch. II, § 59.

Moreover, the Article 16 right must be read in context with the Constitution’s grant of police and legislative powers to the General Assembly. “[T]he people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.” Vt. Const. ch. I, art. 5. “This provision expresses a ‘general distribution of powers to the Legislature, authorizing the Legislature to pass measures for the general welfare of the people and making the Legislature itself the judge of the necessity or expediency of the means adopted.’” PC 4 (quoting *Curley-Egan*, 2006 VT 95, ¶ 11). Chapter II of the

Vermont Constitution likewise vests the “Supreme Legislative power” in the General Assembly, whose members are sworn to act as “guardian of the people” according to “the best of [their] judgment and ability,” Vt. Const. ch. II, §§ 2, 16, 17.

2. Historical sources¹¹

Consideration of historical sources also supports interpreting Article 16 to permit reasonable regulations like 13 V.S.A. § 4021.

The text of Article 16 was originally adopted in 1777. *See* Vt. Const. ch. I, art. XV (1777). “Unfortunately, no record exists of any discussion or debate over the adoption of the Vermont Constitution.” *Shields v. Gerhart*, 163 Vt. 219, 225, 658 A.2d 924, 929 (1995). However, because Article 16 was copied verbatim from the Pennsylvania Constitution, it is possible to look to Pennsylvania to gain insight into the Article’s scope. *See Morris*, 165 Vt. 111, 127, 680 A.2d 90, 101-02 (1996) (noting that provisions that were “copied practically verbatim from other jurisdictions,” could be analyzed in part by looking to the historical record from other jurisdictions); Vt. Const. ch. I, art. XV (1777); Pa. Dec. of Rights art. XIII (1776).

Pennsylvania has long interpreted its constitutional right-to-bear arms provision as permitting reasonable firearms regulations. When the provision was first enacted in 1776, a special license was required to “fire any gun or other fire arms . . . within the city of Philadelphia.” Act of Aug. 26, 1721, *reprinted in* *An Abridgment of the Laws of Pennsylvania, 1700–1811* at 173 (Philadelphia 1811). Later, in 1779, Pennsylvania passed a significantly more invasive law, which provided that anyone

¹¹ Materials not widely available are included in the Appendix.

who refused to swear allegiance to Pennsylvania could be disarmed. Act of April 2, 1779, in Acts of the General Assembly of the Commonwealth of Pennsylvania (1775–1781) 193 (Philadelphia 1782).

Pennsylvania amended its right-to-bear arms provision in 1790 to include the seemingly more absolutist language that “the right of the citizens to bear arms in defence of themselves and the State *shall not be questioned*.” See Pa. Const. art. 1, § 21 (emphasis added). The Pennsylvania Supreme Court has nonetheless interpreted this language to permit reasonable gun safety legislation. See, e.g., *Lehman v. Penn. St. Police*, 839 A.2d 265, 273 (Pa. 2003) (“The right to bear arms, although a constitutional right, is not unlimited and may be restricted in the exercise of the police power for the good order of society and protection of the citizens.” (quotation omitted)).

Vermont has also long regulated firearms in the interest of public safety. Since the 1800s, Vermont has barred doing many things while in possession of a deadly weapon, including dueling, attending duels, robbery with intent to kill or maim if resisted, and assault with intent to steal or rob. See 23 Vt. Rev. Stat. §§ 7, 8, 16, 17 (1840) (current version at 13 V.S.A. § 608(b)). Vermont has also regulated pointing firearms towards other persons, 31 Vt. Rev. Laws. §§ 4122, 4123 (1880) (current version at 13 V.S.A. § 4011), and the manufacture, sale, and possession of silencers, 1912 Vt. Acts & Resolves 310, § 1 (current version at 13 V.S.A. § 4010). And Vermont’s 1863 gunpowder storage law, which among other things, required more than one pound of powder be securely stored in a metal canister, undoubtedly

placed a greater burden on the ability to rapidly prepare and fire multiple rounds of ammunition than the need to switch from one ten-round magazine to another. *See* 34 Vt. Gen. Stat. § 28 (1863).

The office of Vermont Attorney General James Oakes advised the Legislature in 1968 that Article 16 merely requires that gun safety legislation “provide appropriate standards to allow the people to possess firearms for the defense of themselves.” *Op. Vt. Att’y Gen., No. 75 (Sept. 5, 1968)*. Assistant Attorney General Louis Peck explained:

Clearly, the constitutional right to bear arms in Vermont is a limited one – for defense of themselves and the state and for no other purpose. The manner in which the people, as a collective body, are to exercise their right to bear arms for the defense of the state is set forth in [the Constitution’s militia clause]

The people have a right to bear arms for defense of themselves, the legislature however is not precluded from interdicting the possession or ownership of firearms by felons, persons convicted of crimes of violence or those with mental disorders. The legislature may properly require the obtaining of a license or permit and the posting of a bond as a condition precedent to the purchase, carrying or possession of a weapon providing the regulations are reasonable and not prohibitive. Legislation should not be such as to prohibit a person from possessing a weapon for the purpose of defending himself. . . .

Incidentally, neither the Constitution nor the cases in Vermont confer any right to possess a weapon to protect property. . . . One has no constitutional right to possess a weapon for defense of his house, car, horse or cow, or in fact, for hunting purposes other than during the hunting season. . . . The people may only possess weapons for protection of themselves and the state.

Id (citations omitted). As discussed below, this understanding that Article 16 permits reasonable gun safety legislation is entirely consistent with this Court’s

precedents and those of the overwhelming majority of other jurisdictions to have considered similar questions.

Vermont has also specifically regulated magazine capacity for decades, albeit in limited circumstances. It has long been illegal for any “person engaged in hunting for wild animals” to “use, carry, or have in his or her possession a machine gun of any kind or description or an autoloading rifle with a magazine capacity of over six cartridges, except a .22 caliber rifle using rim fire cartridges.” No. 119 § 1, p. 125 (1961 Vt., Bien. Sess.) (current version at 10 V.S.A. § 4704); Vt. Dep’t of Fish & Wildlife, General Hunting Information, Machine Guns & Autoloading Rifles & Suppressors.¹²

Magazine capacity also long been subject to regulation by other jurisdictions, having been restricted in some, or all, parts of the United States, since the 1930s.¹³ More than 25 jurisdictions currently have restrictions in place, including 9 states and the District of Columbia.¹⁴ And large-capacity magazines were banned

¹² Available at <http://www.eregulations.com/vermont/hunting/general-hunting-information/>. “Autoloading” is another term for “semiautomatic,” meaning “able to fire repeatedly through an automatic reloading process but requiring release and another pressure of the trigger for each successive shot.” *Autoloading, Semiautomatic*, Merriam-Webster.com.

¹³ See, e.g., 1933 S.D. Sess. Laws 245-47; 1934 Va. Acts 137-39; 1931 Ill. Laws 452-53; Act of July 7, 1932, no. 80, § 1, 1932 La. Acts 336; 1934 S.C. Acts 1288.

¹⁴ Rochester, N.Y., Muni. Code No. 47-5; Chi., Ill. Muni. Code §§ 8-20-010, and 8-20-085; Sunnyvale, Cal. Muni. Code § 9.44.050; L.A., Cal. Muni. Code §§ 46.30, 55.13; S.F., Ca. Pol. Code Art. 9, § 619; Oakland, Cal. Code of Ordinances, § 9.38.030-9.38.040 (Ord. No.13352, § 1(C-D), 1-19-2016); Cook Cty., Ill. Code of Ordinances, § 54.212 (Ord. No. 13-O-32, 7-17-2013); Aurora, Ill. Code of Ordinances, § 29-49; Franklin Park, Ill. Code of Ordinances, 3-13G-3; Oak Park Ill. Muni. Code, § 27-2-1; Highland Park, Ill, Code of Ordinances, § 136.005; Vill. of Deerfield, Ill., Ordinances, § 15-90 (Ord. No. O-18-06); Denver, Co., Code of Ordinances, § 38-130; Albany, Ny., Code § 193-15; Buffalo, Ny., Code § 180-1; New York City, N.Y., Admin. Code, tit. 10, ch. 3, § 10-301; Cal. Penal Code §§ 16350, 16740, 16890, 32310-32390; Colo. Rev. Stat. §§ 18-12-301, 18-12-303; Conn. Gen Stat. §§ 53-202w, 53-

nationwide from 1994-2004 under the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 110103.

3. Vermont case law

This Court has twice discussed Article 16. Though limited, this precedent—especially when considered alongside other cases interpreting the state constitution—shows that Article 16 permits reasonable firearm legislation.

First, in *State v. Rosenthal*, the Court considered a challenge to a Rutland ordinance barring carrying pistols and certain other weapons without written permission of the mayor or chief of police. 75 Vt. 295, 55 A. 610 (1903). The Court observed that Article 16 and the common law both allowed using a firearm for self-defense, but that other provisions of state law restricted when and where a firearm could be carried or used, such as in schools. *Id.* at 295, 55 A. at 610-11. *Rosenthal* found the ordinance exceeded the legislative power of the Rutland city council because it allowed local officials unlimited discretion to both prohibit what state law allowed (carrying a pistol for self-defense) and to allow what state law prohibited (carrying firearms in situations that, in the Legislature’s view, unreasonably threatened public safety). *Id.*; see Op. Vt. Att’y Gen., No. 75 (*Rosenthal* “holds the ordinance repugnant to the Constitution and the laws of the state because no proper standards were provided; all that was needed was permission without regard to intent or purpose. This case would not preclude the licensing of an individual or the

202x; D.C. Code Ann. § 7-2506.01(b); Haw. Rev. Stat. Ann. §134-8; Md. Code Ann. § 4-305; Mass. Gen. Laws ch. 140 §§ 121, 131M; N.J. Stat. Ann §§2C:39-1(y), 2C:39-3(j), 2C:39-9(h); N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36, 265.37.

registration of a weapon or in fact the requiring of people to make a proper showing of need to possess a weapon for protection of themselves.”). *Compare Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 92 (2d Cir. 2012) (suggesting New York handgun permitting law would violate Second Amendment if “licensing officials have unbridled discretion” to grant or deny permits). The Court did not question the Legislature’s established authority to place reasonable restrictions on the use and possession of deadly weapons.

Second, and more recently, in *State v. Duranleau*, the Vermont Supreme Court rejected an Article 16 challenge to a statute that prohibited carrying a loaded rifle or shotgun in a motor vehicle on a public highway. 128 Vt. at 209-10, 260 A.2d at 386. The Court acknowledged that the statute “somewhat conditions the unrestrained carrying and operation of firearms” but found that Article 16’s text “does not suggest that the right to bear arms is unlimited and undefinable.” *Id.* Accordingly, although the statute effectively prevented using a rifle or shotgun for self-defense while in a vehicle, the Court concluded that prohibition was “not such an infringement on the constitutional right to bear arms as to make the statute invalid.” *Id.* This conclusion was “conditioned upon the presumption that the statutory purpose is reasonable, as it must be assumed to be” and “on the necessary circumstance” that no facts demonstrating “an unconstitutional operation of the statute” were before the Court. *Id.* *Duranleau* makes clear that the Legislature may place reasonable conditions on the Article 16 right consistent with its constitutional “power to deal with matters of public . . . health, safety, and welfare.” *Id.* at 211.

Finally, interpreting Article 16 to allow reasonable gun safety regulations is consistent with cases interpreting other state constitutional provisions. *See, e.g., Baker v. State*, 170 Vt. 194, 214, 744, A.2d 864, 878-79 (1999) (Article 7 requires courts to evaluate whether a challenged provision “bears a reasonable and just relation to the governmental purpose”); *In re Vt. Supreme Ct. Admin. Dir. No. 17*, 154 Vt. 392, 399, 579 A.2d 1036, 1040 (1990) (rejecting an “absolutist view of the jury trial right” under Article 12 and finding it was not violated by delaying most civil jury trials for budgetary reasons); *In re One Church St.*, 152 Vt. 260, 266, 565 A.2d 1349, 1352 (1989) (under Article 9, taxpayer classifications must “bear a reasonable relation” to their purpose); *State v. Morse*, 84 Vt. 387, 80 A. 189, 192 (1911) (“When the Legislature, in a matter affecting the public health, adopts means and methods which are reasonable and appropriate, not oppressive or discriminatory, constitutional limitations are not transgressed.” (citations omitted)); *cf. State v. Kirchoff*, 156 Vt. 1, 587 A.2d 988 (1991) (applying a reasonableness standard to determine whether Article 11 requires police to obtain a warrant before searching private land).

4. Case law from other jurisdictions

Case law from other jurisdictions also supports interpreting Article 16 to allow reasonable firearms regulations like 13 V.S.A. § 4021. Large-capacity magazine bans repeatedly have survived federal Second Amendment challenges, and most other States have interpreted their own constitutional right-to-bear-arms provisions to allow reasonable gun safety regulations.

a. Federal

In *District of Columbia v. Heller*, the U.S. Supreme Court held for the first time that the Second Amendment protects an individual right to possess firearms that is not tied to military service. 554 U.S. 570 (2008).¹⁵ Since then, many large-capacity magazine bans have been challenged under the Second Amendment. Those challenges have repeatedly failed.

Heller interpreted the Second Amendment as codifying an existing right “inherited from our English ancestors” that was analogous to the right codified in contemporaneous state constitutions. See 554 U.S. at 599 (quotation omitted). The Court expressly considered Article 16—as well as parallel provisions in the early Pennsylvania, North Carolina, and Massachusetts Constitutions—and opined “that the most likely reading of all four of these pre-Second Amendment state constitutional provisions is that they secured an individual right to bear arms for defensive purposes” that was analogous to the right codified by the Second Amendment in 1789. *Id.* at 600-03. The Court described self-defense as “the *central component* of the right itself.” *Id.* at 599 (emphasis in original).

Based on that interpretation, the Court struck down a D.C. law that totally banned handgun possession in the home. Because the handgun is “the quintessential self-defense weapon” and “the most popular weapon chosen by

¹⁵ The Second Amendment provides: “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” U.S. Const., amend. II.

Americans for self-defense in the home,” the Court concluded that “a complete prohibition of their use is invalid” under the Second Amendment. *Id.* at 629.

Heller also made clear, however, that the Second Amendment right is limited and subject to regulation. The Court explained, in a list that expressly did “not purport to be exhaustive,” that nothing in its ruling “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27 & n.26. And although the right to keep and carry arms covers weapons “not in existence at the time of the founding,” it protects only “the sorts of weapons . . . in common use” and does not extend to “dangerous and unusual weapons” or to modern “weapons that are most useful in military service—M-16 rifles and the like,” which constitutionally “may be banned.” *Id.* at 582, 627 (quotation omitted).

Following *Heller*, many state and local magazine laws have been challenged under the Second Amendment. Federal courts repeatedly have upheld these laws, finding that they either do not burden the Second Amendment right at all or that any burden is adequately justified by the government’s interest in protecting public safety. *See, e.g., Wilson v. Cook Cty.*, 937 F.3d 1028 (7th Cir. 2019); *Worman v. Healey*, 922 F.3d 26 (1st Cir. 2019), *cert. pet. filed*, No. 19-404 (U.S. Sept. 25, 2019); *Ass’n of N.J. Rifle and Pistol Clubs, Inc. v. Attorney General of N.J.*, 910 F.3d 106 (3d Cir. 2018); *Kolbe*, 849 F.3d 114; *N.Y.S. Rifle*, 804 F.3d 242; *Friedman v. City of*

Highland Park, 784 F.3d 406 (7th Cir. 2015); *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015); *Heller v. Dist. of Columbia* (“*Heller II*”), 670 F.3d 1244 (D.C. Cir. 2011); *S.F. Veteran Police Officers Ass’n v. City and Cty. of San Francisco*, 18 F. Supp. 3d 997 (N.D. Cal. 2014).¹⁶

b. State

Most other States apply a deferential “reasonable regulation” standard to gun safety laws challenged on state constitutional grounds. See Adam Winkler, *The Reasonable Right to Bear Arms*, 17 *Stan. L. & Pol’y Rev.* 597, 598 (2006) (surveying cases decided under forty-two state right-to-bear-arms provisions and finding “the uniform application of a deferential ‘reasonable regulation’ standard to laws infringing on the arms right”).

Indeed, every other State in New England has interpreted its state constitutional right-to-bear-arms provision to permit reasonable firearms regulation. *Bleiler v. Chief, Dover Police Dep’t*, 927 A.2d 1216, 1221-23 (N.H. 2007); *Mosby v. Devine*, 851 A.2d 1031 (R.I. 2004); *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995); *Hilly v. City of Portland*, 582 A.2d 1213 (Me. 1990); *Commonwealth v. Davis*, 343 N.E.2d 847 (Mass. 1976). The New Hampshire Supreme Court, for example, recently held that, “[i]n light of the compelling state interest in protecting

¹⁶ *But see Duncan v. Becerra*, 366 F. Supp. 3d 1131 (S.D. Cal. 2019) (permanently enjoining enforcement of California law that requires persons who already possess large-capacity magazines to “dispossess” them or face criminal penalties). California has appealed the district court’s ruling in *Duncan*, No. 19-55376 (9th Cir. Apr. 4, 2019), and the district court has partially stayed enforcement of its order pending appeal, 2019 WL 1510340 (S.D. Cal. Apr. 4, 2019).

the public from the hazards involved with guns,” gun control legislation should be upheld so long as the burden on the right to bear arms is “reasonable” in light of “the balance of interests at stake.” *Bleiler*, 927 A.2d at 1221-23. And the Colorado Court of Appeals recently applied an analogous reasonableness standard to uphold that State’s ban on large-capacity magazines against a state constitutional challenge. *Rocky Mt. Gun Owners v. Hickenlooper*, 2018 COA 149 (Colo. Ct. App. 2018), *cert. granted*, No. 18SC817 (Colo. Apr. 22, 2019).

5. Policy

Policy considerations also support interpreting Article 16 to permit reasonable gun safety regulations like 13 V.S.A. § 4021. Vermont is not immune from the threat of a mass shooting. Many courts and legislatures have found that banning large-capacity magazines protects public safety by mitigating that threat. Contrary policy arguments have been aired, considered, and rejected by the political branches. *See above* Statement, Section A. The Legislature is better equipped than the Judiciary to wade through and evaluate conflicting data. Indeed this Court has suggested that, in a case involving a state constitutional challenge to a statute, “the very admission that the facts are arguable . . . immunizes from constitutional attack the [legislative] judgment represented by [the challenged] statute.” *See Badgley*, 2010 VT 68, ¶ 38 (quotation omitted). Deference is particularly important here because:

[T]he exact issues being debated in this litigation remain under active investigation and consideration in the political process. . . . A determination of unconstitutionality would end development of the issue in Vermont. The Legislature, by contrast, can experiment with different approaches to

protecting public safety, without irrevocably choosing one until the right approach is clear.

Id. ¶¶ 40-41. Provided that the ability to obtain and use a firearm for self-defense is preserved, deciding where to draw the line on contested public safety issues is “precisely the type of judgment that legislatures are allowed to make without second-guessing by a court.” *See Kolbe*, 849 F.3d at 140.

B. 13 V.S.A. § 4021 does not violate the Article 16 right to bear arms in self-defense.

Defendant’s Article 16 challenge should be rejected. This is true whether the Court applies the “reasonable regulation” standard, as the State suggests, or the intermediate scrutiny standard applied by some federal courts and urged by defendant below. *See* Defs.’ Mot. to Dismiss 14-23. The former asks whether any burden on the right to bear arms in self-defense is reasonable in light of the government interest behind the statute, *see, e.g., Bleiler*, 927 A.2d at 1221-23, whereas the latter asks whether the challenged statute is “substantially related to the achievement of an important government interest,” *see, e.g., N.Y.S. Rifle*, 804 F.3d at 261. Regardless of how the test is framed, 13 V.S.A. § 4021 easily survives. The State has a compelling interest in reducing the likelihood and harm of a mass shooting, restricting magazine capacity is reasonably related to that interest, and any burden on the right to bear arms in self-defense is, at most, minimal.

1. The State has a compelling interest in reducing the likelihood and harm of a mass shooting in Vermont.

Vermont's elected officials decided to restrict the possession and sale of large-capacity magazines in order to reduce the likelihood that Vermonters will be killed or injured in a mass shooting. *See above* Statement, Section A. The State's interest is compelling. *See City of Rutland v. McDonald's Corp.*, 146 Vt. 324, 330, 503 A.2d 1138, 1142 (1985) (noting "the state's paramount obligation to promote and protect the health, safety, morals, comfort and general welfare of the people"); *In re A.D.*, 143 Vt. 432, 435, 467 A.2d 121, 124 (1983) (State "has a legitimate and compelling interest in the safety and welfare" of children within its jurisdiction).

Indeed, numerous courts have found that States have a compelling interest in enacting large-capacity magazine bans to reduce the likelihood and harm of mass shootings within their borders. *See, e.g., Worman*, 922 F.3d at 39 ("Massachusetts indubitably has compelling governmental interests in both public safety and crime prevention." (quotation omitted)); *N.J. Rifle*, 910 F.3d at 119 ("The State of New Jersey has, undoubtedly, a significant, substantial and important interest in protecting its citizens' safety," which "clearly includes reducing the lethality of active shooter and mass shooting incidents." (quotation omitted)); *Kolbe*, 849 F.3d at 139 ("To be sure, Maryland's interest in the protection of its citizenry and the public safety is not only substantial, but compelling."); *N.Y.S. Rifle*, 804 F.3d at 261 ("It is beyond cavil that both [New York and Connecticut] have substantial, indeed compelling, governmental interests in public safety and crime prevention." (quotation omitted)); *Fyock*, 779 F.3d at 1000 (finding it "self-evident that . . .

promoting public safety and reducing violent crime” and “reducing the harm and lethality of gun injuries in general” are “substantial and important government interests” (quotation omitted); *Heller II*, 670 F.3d at 1262 (holding that District of Columbia has “important interests” in “protecting police officers and controlling crimes”); *Rocky Mt. Gun Owners*, 2018 COA 149, ¶ 19 (Colorado has legitimate government interest in “reduc[ing] th[e] number of people who are killed or shot in mass shootings”).

2. Restricting magazine capacity is reasonably related to the State’s interest.

Many courts have likewise concluded that a ban on large-capacity magazines is substantially or reasonably related to the government’s important public safety interests. A mass shooter using large capacity magazines can kill or injure more people without having to pause and reload. As the Seventh Circuit observed:

[A]ssault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in aggregate. Why else are they the weapons of choice in mass shootings? A ban on assault weapons and large-capacity magazines might not prevent shootings . . . but it may reduce the carnage if a mass shooting occurs.

Friedman, 784 F.3d at 411 (upholding Illinois municipality’s magazine law).

And in *N.Y.S. Rifle*, the Second Circuit found a reasonable fit between the Connecticut and New York magazine bans and those States’ compelling public safety interests:

Large-capacity magazines are disproportionately used in mass shootings, like the one in Newtown, in which the shooter used multiple large-capacity magazines to fire 154 rounds in less than five minutes. Like assault weapons, large-capacity magazines result in more shots fired, persons wounded, and wounds per victim than do other gun attacks. Professor Christopher Koper, a

firearms expert relied upon by all parties in both states, stated that it is “particularly” the ban on large-capacity magazines that has the greatest “potential to prevent and limit shootings in the state over the long-run.”

804 F.3d at 263-64 (quotations and alterations omitted). Likewise, in *Kolbe*, the *en banc* Fourth Circuit found a reasonable fit between Maryland’s large-capacity magazine ban and the State’s primary goal of “reduc[ing] the availability of . . . large-capacity magazines so that when a criminal acts, he does so with a less dangerous weapon and less severe consequences.” 849 F.3d at 140 (citation omitted). Notably, both the *N.Y.S. Rifle* and *Kolbe* decisions are part of the legislative record. *See above* Statement, Section A.

The Third Circuit recently discussed multiple incidents where pauses in shooting allowed people to flee or intervene and end a shooting. *See N.J. Rifle*, 910 F.3d at 119-20. For example, “[v]ideos from the Las Vegas shooting in 2017 show that concert attendees would use pauses in firing when the shooter’s high-capacity magazines were spent to flee,” *id.*, as a New York Times compilation of videos from that event demonstrates.¹⁷ An official report from the Parkland shooting, during which the shooter fired quite rapidly at times,¹⁸ similarly indicates that during a

¹⁷ Malachy Brown et al., *Visual Investigations: 10 Minutes. 12 Gunfire Bursts. 30 Videos. Mapping the Las Vegas Massacre*, N.Y. Times (Oct. 21, 2017), <https://www.nytimes.com/video/us/100000005473328/las-vegas-shooting-timeline-12-bursts.html?search-input-2=las+vegas+shooting+timeline>.

¹⁸ For example, the rate of fire approaches two shots per second beginning 18 seconds into a video compilation published by the Washington Post. *Watch the videos students took during the Florida school shooting*, Wash. Post. (Feb. 15, 2018), https://www.washingtonpost.com/video/national/see-the-videos-students-took-during-the-florida-school-shooting/2018/02/15/0d873fe2-1293-11e8-a68c-e9374188170e_video.html?utm_term=.8b1e27aa26e0.

13-second pause that began with the shooter reloading, 11 potential victims began to flee and nine were able to escape. Marjory Stoneman Douglas High Sch. Pub. Safety Comm'n, Initial Report 32 (Jan. 2, 2019).¹⁹ Requiring a shooter to more frequently stop and reload was an important justification for limiting magazine capacity in Vermont. *See above* Statement, Section A.

Other courts to consider challenges to large-capacity magazine bans have likewise found a reasonable fit between those bans and important governmental public safety interests. *Worman*, 922 F.3d at 39-40; *N.J. Rifle*, 910 F.3d at 119; *Fyock*, 779 F.3d at 1000; *Heller II*, 670 F.3d at 1262-64; *S.F. Veteran Police Officers Ass'n*, 18 F. Supp. 3d at 1003-04; *Rocky Mt. Gun Owners*, 2018 COA 149, ¶¶ 21-26.

This is so even though these laws inevitably will neither remove every large-capacity magazine from circulation nor prevent every mass shooting. “Legislation need not solve all gun problems to be constitutional.” *Rocky Mt. Gun Owners*, 2018 COA 149, ¶ 26. “Courts have consistently upheld less than comprehensive legislation out of a recognition that, for reasons of pragmatism or administrative convenience, the legislature may choose to address problems incrementally.” *OMYA, Inc. v. Town of Middlebury*, 171 Vt. 532, 534, 758 A.2d 777, 781 (2000).

3. Any burden on the right to bear arms in self-defense is, at most, minimal.

Section 4021 does not significantly burden the right to bear arms in self-defense. This Court may conclude that large-capacity magazines are not in fact “arms” that

¹⁹ Available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>.

are entitled to protected under Article 16. *Compare Kolbe*, 849 F.3d at 135-37; *Rocky Mt. Gun Owners*, 2018 COA, ¶ 34-36. But assuming Article 16 is implicated by a ban on large-capacity magazines, Section 4021 will not prevent anyone from acquiring a firearm or multiple compliant magazines. Nor will it require anyone to give up any firearm or magazine they lawfully possessed. Once again, the courts to have considered this question are in nearly universal agreement that a ban on large-capacity magazines does not significantly burden the ability to use a firearm for self-defense. *See, e.g., Worman*, 922 F.3d at 37; *N.J. Rifle*, 910 F.3d at 117; *N.Y.S. Rifle*, 804 F.3d at 260; *Heller II*, 670 F.3d at 1262; *Fyock*, 779 F.3d at 999; *S.F. Veteran Police Officers Ass'n*, 18 F. Supp. 3d at 1002-03; .

II. The magazine law does not violate the Common Benefits Clause.

Defendant also argued below that the grandfather provision of 13 V.S.A. § 4021(c) violates the Common Benefits Clause because allowing individuals to retain large capacity magazines acquired before April 2018 is arbitrary and will make enforcing § 4021 more difficult and expensive. This claim fails because it is well-settled in Vermont that the legislature “may choose to address problems incrementally” without violating the Common Benefits Clause. *See OMYA*, 171 Vt. at 534; 758 A.2d at 781.

The Common Benefits Clause “is intended to ensure that the benefits and protections conferred by the state are for the common benefit of the community and are not for the advantage of persons ‘who are a part only of that community.’”

Baker, 170 Vt. at 212-14, 744 A.2d at 878-89 (quoting Vt. Const. ch. I, art. 7).²⁰

Statutory distinctions that “bear[] a reasonable and just relation to the governmental purpose” at issue do not violate the clause. *Id.*

“Courts have consistently upheld less than comprehensive legislation out of a recognition that, for reasons of pragmatism or administrative convenience, the legislature may choose to address problems incrementally.” *OMYA*, 171 Vt. at 534 (citing *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)). When reviewing grandfather clauses, courts are “guided by the familiar principles that a statute is not invalid . . . because it might have gone further than it did, that a legislature need not strike at all evils at the same time, and that reform may take one step at a time.” *Dukes*, 427 U.S. at 305. Put another way, “[g]randfather clauses are a long-accepted legislative tool for mitigating the effect of new regulations on persons who have relied on existing law” both generally and in the specific context of firearms. *Kampfer v. Cuomo*, 643 F. App’x 43, 44 (2d Cir. 2016) (rejecting Equal Protection claim based on grandfather clause in New York law banning assault weapons and large-capacity magazines).

²⁰ The Common Benefits Clause reads in full:

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

Vt. Const. ch. I, art. 7.

Many courts have rejected combined Second Amendment and Equal Protection challenges where the challenged statute neither unconstitutionally burdens Second Amendment rights nor is based on a suspect classification. *See, e.g. Kwong v. Bloomberg*, 723 F.3d 160, 169-72 (2d Cir. 2013); *Nat'l Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 211-12 (5th Cir. 2012); *Hightower v. Boston*, 693 F.3d 61, 83 (1st Cir. 2012); *Nordyke v. King*, 681 F.3d 1041, 1043, n.2 (9th Cir. 2012).

Here, § 4021 does not violate Article 16 for the reasons described above. And the grandfather clause contained in § 4021(c) is “a long-accepted legislative tool” that “mitigate[s] the effect” of § 4021’s “new regulations on persons who have relied on existing law.” *Kampfer*, 643 F. App’x at 44. The Legislature was not required to go “further than it did” and require individuals to divest themselves of large-capacity magazines they lawfully acquired before § 4021 took effect. *Dukes*, 427 U.S. at 305. Rather, the legislature could “choose to address” the problems posed by large-capacity magazines “incrementally” by enacting § 4021 and including a grandfather clause. *OMYA*, 171 Vt. at 534.

CONCLUSION

For the reasons set forth above, this Court should answer both certified questions in the negative and hold that 13 V.S.A. § 4021 complies with Article 16 and the Common Benefits Clause of the Vermont Constitution.

Dated: October 14, 2019

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

by:



Benjamin D. Battles
Solicitor General
Ultan Doyle
David Boyd
Assistant Attorneys General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5500
benjamin.battles@vermont.gov
ultan.doyle@vermont.gov
david.boyd@vermont.gov

CERTIFICATE OF COMPLIANCE

Benjamin D. Battles, Solicitor General and Counsel of Record for the appellant State of Vermont, certifies that this brief complies with the word count limit in V.R.A.P. 32(a)(7)(A). According to the word count of the Microsoft Word processing software used to prepare this brief, the text of this brief contains 8,991 words.



Benjamin D. Battles
Solicitor General

APPENDIX

TABLE OF CONTENTS

| | Page |
|---|-------------|
| Vt. Const. art. 1, § 15 (1777)..... | APP 1 |
| Pa. Dec. of Rights art. XIII (1776)..... | APP 13 |
| An Abridgment of the Laws of Pennsylvania, 1700–1811 at 173 (Philadelphia 1811) | APP 24 |
| Acts of the General Assembly of the Commonwealth of Pennsylvania (1775–1781) 193 (Philadelphia 1782) | APP 26 |
| 23 Vt. Rev. Stat. §§ 7, 8, 16, 17 (1840) | APP 29 |
| 31 Vt. Rev. Laws. §§ 4122, 4123 (1880) | APP 33 |
| 34 Vt. Gen. Stat. § 28 (1863) | APP 36 |
| Op. Vt. Att’y Gen., No. 75 (Sept. 5, 1968) | APP 38 |
| 1933 S.D. Sess. Laws 245–47 | APP 40 |
| 1934 Va. Acts 137-39 | APP 42 |
| 1931 Ill. Laws 452-53..... | APP 43 |
| Act of July 7, 1932, no. 80, § 1, 1932 La. Acts 336 | APP 44 |
| 1934 S.C. Acts 1288 | APP 48 |
| Rochester, N.Y., Muni. Code No. 47-5 | APP 50 |
| Chi., Ill. Muni. Code §§ 8-20-010, and 8-20-085 | APP 56 |
| Sunnyvale, Cal. Muni. Code § 9.44.050 | APP 64 |
| L.A, Cal. Muni. Code §§ 46.30, 55.13 | APP 65 |
| S.F., Ca. Pol. Code Art. 9, § 619 | APP 69 |
| Oakland, Cal. Code of Ordinances, § 9.38.030-9.38.040 (Ord. No.13352, § 1(C-D), 1-19-2016) | APP 72 |
| Cook Cnty., Ill. Code of Ordinances, § 54.212 (Ord. No. 13-O-32, 7-17-2013)... | APP 73 |
| Aurora, Ill. Code of Ordinances, § 29-49..... | APP 74 |

| | |
|---|---------|
| Franklin Park, Ill. Code of Ordinances, 3-13G-3..... | APP 79 |
| Oak Park Ill. Muni. Code, § 27-2-1 | APP 81 |
| Highland Park, Ill, Code of Ordinances, § 136.005 | APP 83 |
| Vill. of Deerfield, Ill., Ordinances, § 15-90 (Ord. No. O-18-06)..... | APP 84 |
| Denver, Co., Code of Ordinances, § 38-130..... | APP 95 |
| Albany, Ny., Code § 193-15 | APP 98 |
| Buffalo, Ny., Code § 180-1 | APP 100 |
| New York City, N.Y., Admin. Code, tit. 10, ch. 3, § 10-301 | APP 105 |
| Cal. Penal Code §§ 16350, 16740, 16890, 32310-32390 | APP 107 |
| Colo. Rev. Stat. §§ 18-12-301, 18-12-303 | APP 115 |
| Conn. Gen Stat. §§ 53-202w, 53-202x | APP 118 |
| D.C. Code Ann. § 7-2506.01(b) | APP 124 |
| Haw. Rev. Stat. Ann. §134-8..... | APP 125 |
| Md. Code Ann. § 4-305..... | APP 126 |
| Mass. Gen. Laws ch. 140 §§ 121, 131M | APP 127 |
| N.J. Stat. Ann §§2C:39-1(y), 2C:39-3(j), 2C:39-9(h) | APP 133 |
| N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36, 265.37 | APP 146 |

Constitution of Vermont - July 8, 1777

WHEREAS, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

And whereas, the inhabitants of this State have (in consideration of protection only) heretofore acknowledged allegiance to the King of Great Britain, and the said King has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them; employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said King and his successors, are dissolved and at an end; and all power and authority derived from him, ceased in the American Colonies.

And whereas, the territory which now comprehends the State of *Vermont*, did antecedently, of right, belong to the government of *New-Hampshire*; and the former Governor thereof, viz. his Excellency *Benning Wentworth*, Esq., granted many charters of lands and corporations, within this State, to the present inhabitants and others. And whereas, the late Lieutenant Governor *Colden*, of *New York*, with others, did, in violation of the tenth command, covet those very lands; and by a false representation made to the court of Great Britain, (in the year 1764, that for the convenience of trade and administration of justice, the inhabitants were desirous of being annexed to that government,) obtained jurisdiction of those very identical lands, *ex-parte*; which ever was, and is, disagreeable to the inhabitants. And whereas, the legislature of *New-York*, ever have, and still continue to disown the good people of this State, in their landed property, which will appear in the complaints hereafter inserted, and in the 36th section of their present constitution, in which is established the grants of land made by that government.

They have refused to make regents of our lands to the original proprietors and occupants, unless at the exorbitant rate of 2300 dollars fees for each township; and did enhance the quit-rent, three fold, and demanded an immediate delivery of the title derived before, from *New-Hampshire*.

The judges of their supreme court have made a solemn declaration that the charters, conveyances, &c. of the lands included in the before described premises, were utterly null and void, on which said title was founded: in consequence of which declaration, writs of possession have been by them issued, and the sheriff of the county of Albany sent, at the head of six or seven hundred men, to enforce the execution thereof.

They have passed an act, annexing a penalty thereto, of thirty pounds fine and six months imprisonment, on any person who should refuse assisting the sheriff, after being requested, for the purpose of executing writs of possession.

The Governors, *Dunmore*, *Tryon* and *Colden*, have made re-grants of several tracts of land, included in the premises, to certain favorite land jobbers in the government of *New-York*, in direct violation of his Britannic majesty's express prohibition, in the Year 1767.

They have issued proclamations, wherein they have offered large sums of money, for the purpose of apprehending those very persons who have dared boldly, and publicly, to appear in defence of their just rights.

They did pass twelve acts of outlawry, on the 9th day of March, A. D. 1774, empowering the respective judges of their supreme court, to award execution of death against those inhabitants in said district, that they should judge to be offenders, without trial.

They have, and still continue, an unjust claim to those lands, which greatly retards emigration into, and the settlement of, this State.

They have hired foreign troops, emigrants from *Scotland*, at two different times, and armed them, to drive us out of possession.

They have sent the savages on our frontiers, to distress us.

They have proceeded to erect the counties of Cumberland and Gloucester, and establish courts of justice there, after they were discountenanced by the authority of Great Britain.

The free convention of the State of *New-York* at *Harlem*, in the year 1776, unanimously voted, "That all quit-rents, formerly due to the King of Great Britain, are now due and owing to this Convention. Or such future government as shall be hereafter established in this State."

In the several stages of the aforesaid oppressions, we have petitioned his Britannic majesty, in the most humble manner, for redress? and have, at very great expense, received several reports in our favor; and, in other instances, wherein we have petitioned the late legislative authority of *New-York*, those petitions have been treated with neglect.

And whereas, the local situation of this State, from *New-York*, at the extreme part, is upward of four hundred and fifty miles from the seat of that government, which renders it extreme difficult to continue under the jurisdiction of said State

Therefore, it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be, henceforth, a free and independent State; and that a just, permanent, and proper form of government, should exist in it, derived from, and founded on, the authority of the people only, agreeable to the direction of the honorable American Congress.

We the representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government, confessing the goodness of the Great Governor of the universe, (who alone, knows to what degree of earthly happiness, mankind may attain, by perfecting the arts of government,) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves, such just rules as they shall think best for governing their future society; and being fully convinced that it is our indispensable duty, to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever, -do, by virtue of authority vested in us, by our constituents, ordain, declare, and establish, the following declaration of rights, and frame of government, to be the CONSTITUTION of this COMMONWEALTH, and to remain in force therein, forever, unaltered, except in such articles, as shall, hereafter, on experience, be found

to require improvement, and which shall, by the same authority of the people, fairly delegated, as this frame of government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

CHAPTER I

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

I. THAT all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave or apprentice, after he arrives to the age of twenty-one Years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

II. That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money.

III. That all men have a natural and unalienable right to worship ALMIGHTY GOD, according to the dictates of their own consciences and understanding, regulated by the word of GOD; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner controul, the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of GOD.

IV. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

V. That all power being originally inherent in, and consequently, derived from, the people; therefore, all officers of government, whether legislative or executive, are their trustees and servants. and at all times accountable to them.

VI. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish, government, in such manner as shall be, by that community, judged most conducive to the public weal.

VII. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to

reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

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

IX. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law' but such as they have, in like manner, assented to, for their common good.

X. That, in all prosecutions for criminal offences, a man hath a right to be heard, by himself and his counsel-to demand the cause and nature of his accusation-to be confronted with the witnesses-to call for evidence in his favor, and a speedy public trial, by an impartial jury of the country; without the unanimous consent of which jury, he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

XI. That the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

XII. That no warrant or writ to attach the person or estate, of any freeholder within this State, shall be issued in civil action, without the person or persons, who may request such warrant or attachment, first make oath, or affirm, before the authority who may be requested to issue the same, that he, or they, are in danger of losing his, her or their debts.

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

XIV. That the people have a right to freedom of speech, and of writing and publishing their sentiments; therefore, the freedom of the press ought not to be restrained.

XV. That the people have a right to bear arms for the defence of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

XVI. That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free. The people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XVII. That all people have a natural and inherent right to emigrate from one State to another, that will receive them, or to form a new State in vacant countries, or in such countries as they can purchase? whenever they think that thereby they can promote their own happiness.

XVIII. That the people have a right to assemble together, to consult for their common good-to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition or remonstrance.

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

CHAPTER II PLAN OR FRAME OF GOVERNMENT

SECTION I. THE COMMONWEALTH or STATE of VERMONT, shall be governed, hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the Freemen of the same, in manner and form following.

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

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

SECTION IV. Courts of justice shall be established in every county in this State.

SECTION V. The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence, under such regulations, restrictions and exceptions, as the general assembly shall, by law, direct; preserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed.

SECTION VI. Every man of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behaviour, and will take the following oath (or affirmation) shall be entitled to all the privileges of a freeman of this State.

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

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

SECTION VIII. The members of the House of Representatives, shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever, (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled the

General Assembly of the Representatives of the Freemen of *Vermont*; and shall have power to choose their Speaker, Secretary of the State, their Clerk, and other necessary officers of the house-sit on their own adjournments-prepare bills and enact them into laws-judge of the elections and qualifications of their own members-they may expel a member, but not a second time for the same cause-They may administer oaths (or affirmations) on examination of witnesses-redress grievances-impeach State criminals-grant charters of incorporation-constitute towns, boroughs, cities and counties, and shall have all other powers necessary for the legislature of a free State; but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year, the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in *Windsor*, on the second Thursday of March next.

SECTION IX. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance herein after directed, as the following oath or affirmation, viz.

" I ____ do solemnly swear, by the ever living God, (or, I do solemnly affirm in the presence of Almighty God) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State; but will, in all things' conduct myself as a faithful, honest representative and guardian of the people, according to the best of my judgment and abilities."

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

" I ____ do believe in one God, the Creator and Governor of the Diverse, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the protestant religion."

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

SECTION X. Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superseded, at any time. by the General Assembly appointing another in his stead. No man shall sit in Congress longer than two years successively, nor be capable of re election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress.

SECTION XI. If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns, that do elect and send representatives, (provided they be a majority of the inhabited towns of the whole State) when met, shall have all the powers of the General Assembly, as fully and amply, as if the whole were present.

SECTION XII. The doors of the house in which the representatives of the Greene of this State, shall sit, in General Assembly, shall be and remain open for the admission of all persons, who behave decently, except only, when the welfare of this State may require the doors to be shut.

SECTION XIII. The votes and proceedings of the General Assembly shall be printed, weekly, during their sitting, with the yeas and nays, on any question, vote or resolution, where one-third of the members require it; (except when the votes are taken by ballot) and when the yeas and nays are so taken, every member shall have a right to insert the reasons of his votes upon the minutes, if he desire it.

SECTION XIV. To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of public nature, shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly, for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in case of sudden necessity) be passed into laws; and no other shall be passed into laws, until the next session of assembly. And for the more perfect satisfaction of the public, the reasons and motives for making such laws, shall be fully and clearly expressed and set forth in their preambles.

SECTION XV. The style of the laws of this State shall be, -" Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of Vermont, in General Assembly met, and by the authority of the same."

SECTION XVI. In order that the Freemen of this State might enjoy the benefit of election, as equally as may be, each town within this State, that consists, or may consist, of eighty taxable inhabitants, within one septenary or seven years, next after the establishing this constitution, may hold elections therein, and choose each, two representatives; and each other inhabited town in this State may, in like manner, choose each, one representative, to represent them in General Assembly, during the said septenary or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose each, one representative, forever thereafter.

SECTION XVII. The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. The Freemen of each town, shall, on the day of election for choosing representatives to attend the General Assembly, bring in their votes -for Governor, with his name fairly written, to the constable, who shall seal them up, and write on them, votes for the Governor, and deliver them to the representative chosen to attend the General Assembly; and, at the opening of the General Assembly, there shall be a committee appointed out of the Council and Assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count, the votes for the Governor, and declare the person who has the major part of the votes, to be Governor, for the year ensuing. And if there be no choice made, then the Council and General Assembly, by their joint ballot. shall make choice of a Governor.

The Lieutenant Governor and Treasurer, shall be chosen in the manner above directed; and each freeman shall give in twelve votes for twelve councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.

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

SECTION XVIII. The Governor, and in his absence, the Lieutenant or Deputy Governor, with the Council-seven of whom shall be a quorum-shall have power to appoint and commissionate all officers, (except those who are appointed by the General Assembly,) agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled, in the time and manner directed by law or this constitution. They are to correspond with other States, and transact business with officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the General Assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the justices of the supreme court; and shall have power to grant pardons, and remit fines, in all cases whatsoever, except cases of impeachment, and in cases of treason and murder-shall have power to grant reprieves, but not to pardon, until the end of the next session of the Assembly: but there shall be no remission or mitigation of punishment, on impeachments, except by act of legislation. They are also, to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by General Assembly; and they may draw upon the Treasurer for such sums as may be appropriated by the House: they may also lay embargoes, or prohibit the exportation of any commodity for any time, not exceeding thirty days, in the recess of the House only: they may grant such licenses as shall be directed by law, and shall have power to call together the General Assembly, when necessary, before the day to which they shall stand adjourned. The Governor shall be commander-in-chief of the forces of the State; but shall not command in person, except advised thereto by the Council, and then, only as long as they shall approve thereof. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

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

SECTION XX. Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for maladministration. All impeachments shall be before the Governor or Lieutenant Governor and Council, who shall hear and determine the same.

SECTION XXI. The supreme court, and the several courts of common pleas of this State shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to perpetuating testimony, obtaining evidence from places not within this State, and the care of persons and estates of those who are *non compos mentis*, and such other powers as may be found necessary by future General Assemblies, not inconsistent with this constitution.

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

SECTION XXIII. All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay; all their officers shall be paid an adequate, but moderate, compensation for their services; and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

SECTION XXIV. All prosecution shall commence in the name and by the authority of the freemen of the State of *Vermont*, and all indictments shall conclude with these words, " against the

peace and dignity of the same." The style of all process hereafter, in this State, shall be,-The State of *Vermont*.

SECTION XXV. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bone fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great.

SECTION XXVI. Excessive bail shall not be exacted for bailable offences: and all fines shall be moderate.

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

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

SECTION XXIX. All elections, whether by the people or in General Assembly, shall be by ballot, free and voluntary: and any elector who shall receive any gift or reward for his vote, In meat, drink, monies or otherwise' shall forfeit his right to elect at that time, and suffer such other penalty as future laws shall direct. And any person who shall, directly or indirectly, give, promise, or bestow, any such rewards to be elected, shall, thereby, be rendered incapable to serve for the ensuing year.

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

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

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

SECTION XXXIII. As every freeman, to preserve his independence (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants; faction, contention, corruption and disorder among people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it the profits ought to be lessened by the legislature.

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

SECTION XXXV. To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary; houses ought to

be provided for punishing, by hard labor, those who shall be convicted of crimes not capital; wherein the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons; and all persons, at proper times, shall be admitted to see the prisoners at their labor.

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

THE OATH OR AFFIRMATION OF ALLEGIANCE

" I ____ do solemnly swear by the ever living God, (or affirm in presence of Almighty God,) that I will be true and faithful to the State of *Vermont*; and that I will not, directly or indirectly do any act or thing, prejudicial or injurious, to the constitution or government thereof, as established by Convention."

THE OATH OR AFFIRMATION OF OFFICE

" I ____ do solemnly swear by the ever living God, (or affirm in presence of Almighty God) that I will faithfully execute the office of for the of ; and will do equal right and justice to all men, to the best of my judgment and abilities, according to law."

SECTION XXXVII. No public tax, custom or contribution shall be imposed upon, or paid by, the people of this State, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clear to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECTION XXXVIII. Every foreigner of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer, land or other real estate; and after one years residence, shall be deemed a free denizen thereof, and intitled to all the rights of a natural born subject of this State; except that he shall not be capable of being elected a representative, until after two years residence.

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

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

SECTION XLI. Laws for the encouragement of virtue and prevention of vice and immorality, shall be made and constantly kept in force; and provision shall be made for their due execution; and all religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be

encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations; as the General Assembly of this State shall direct.

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

SECTION XLIII. The declaration of rights is hereby declared to be part of the Constitution of this State, and ought never to be violated, on any presence whatsoever.

SECTION XLIV. In order that the freedom of this Commonwealth may be preserved inviolate, forever, there shall be chosen, by ballot, by the freemen of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty-five, and on the last Wednesday in March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chosen- except they shall not be out of the Council or General Assembly-to be called the Council of Censors; who shall meet together, on the first Wednesday of June next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a Convention, in which two-thirds of the whole number elected shall agree; mod whose duty it shall be to enquire whether the constitution has been preserved inviolate, in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people; or assumed to themselves, or exercised, other or greater powers, than they are entitled to by the constitution. They are also to enquire whether the public taxes have been justly laid and collected, in all parts of this Commonwealth-in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers and records; they shall have authority to pass public censures-to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election, and no longer. The said Council of Censors shall also have power to call a Convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this constitution which may be defective-explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

(1) Verified from "Vermont State Papers; Being a Collection of Records and Documents, Connected with the Assumption and Establishment of Government by the People of Vermont: together with the Journal of the Council of Safety, the First Constitution, the early Journals of the General Assembly, and the Laws from the year 1779 to 1786, inclusive. To which are added the Proceedings of the First and Second Councils of Censors. Compiled and Published by William Slade Jun. Secretary of State, Middlebury: J. W. Copeland, Printer. 1823." pp. 241-255.

The State of Vermont was originally claimed by Massachusetts, New Hampshire, and New York, and at the commencement of the revolutionary struggle she not only sought independence from British rule, but from the State of New York, which claimed sovereignty over the territory to the west bank of the Connecticut River, and from New Hampshire, which contested the claims of both New York and Vermont. In March, 1781, Massachusetts assented to the independence of Vermont, which adjusted her difficulties with New Hampshire in 1782, but it was 1790 before New York consented to her admission into the Union

This constitution was framed by a convention which assembled at Windsor, July 2, 1777, and completed its labors July 8, 1777. It was not submitted to the people for ratification. It was affirmed by the legislature at its sessions in 1780 and 1782, and declared to be a part of the laws of the State. The Convention subsequently met, on December 24, 1777, after the time of election and the day of meeting of the Assembly.

(2) The convention which met on July 2, 1777, " ordered that the first election should be holden in December, 1777, and that the General Assembly, thus elected should meet at Bennington, in January, 1778. The publick attention being arrested by the evacuation of Tyconderoga, and the progress of the enemy under General Burgoyne; the constitution was not printed, seasonable, to have the election holden in December. The convention was therefore, summoned, by the Council of Safety, to meet at Windsor, on the 24th of Dec. 1777." They met and revised the constitution in this particular.

(3) The Council of Safety.

Constitution of Pennsylvania - September 28, 1776

WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness. AND WHEREAS the inhabitants of this commonwealth have in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain; and the said king has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said king and his successors, are dissolved and at an end, and all power and authority derived from him ceased in these colonies. AND WHEREAS it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent States, and that just, permanent, and proper forms of government exist in every part of them, derived from and founded on the authority of the people only, agreeable to the directions of the honourable American Congress. We, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do, by virtue of the authority vested in use by our constituents, ordain, declare, and establish, the following Declaration of Rights and Frame of Government, to be the CONSTITUTION of this commonwealth, and to remain in force therein for ever, unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall by the same authority of the people, fairly delegated as this frame of government directs, be amended or improved for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OR STATE OF PENNSYLVANIA

I. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

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

vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.

III. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or soft of men, who are a part only of that community, And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

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

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure, and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted.

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

XII. That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

XIV. That a frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality are absolutely necessary to preserve the blessings of liberty, and keep a government free: The people ought therefore to pay particular attention to these points in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislatures and magistrates, in the making and executing such laws as are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance.

PLAN OR FRAME OF GOVERNMENT FOR THE COMMONWEALTH OR STATE OF PENNSYLVANIA

SECTION 1. The commonwealth or state of Pennsylvania shall be governed hereafter by an assembly of the representatives of the freemen of the same, and a president and council, in manner and form following-

SECT. 2. The supreme legislative power shall be vested in a house of representatives of the freemen of the commonwealth or state of Pennsylvania.

SECT. 3. The supreme executive power shall be vested in a president and council.

SECT. 4. Courts of justice shall be established in the city of Philadelphia, and in every county of this state.

SECT. 5. The freemen of this commonwealth and their sons shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the general assembly shall by law direct, preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed.

SECT. 6. Every freemen of the full age of twenty-one Years, having resided in this state for the space of one whole Year next before the day of election for representatives, and paid public taxes during that time, shall enjoy the right of an elector: Provided always, that sons of freeholders of the age of twenty-one years shall be intitled to vote although they have not paid taxes.

SECT. 7. The house of representatives of the freemen of this commonwealth shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every city and county of

this commonwealth respectively. And no person shall be elected unless he has resided in the city or county for which he shall be chosen two years immediately before the said election; nor shall any member, while he continues such, hold any other office, except in the militia.

SECT. 8. No person shall be capable of being elected a member to serve in the house of representatives of the freemen of this commonwealth more than four years in seven.

SECT. 9. The members of the house of representatives shall be chosen annually by ballot, by the freemen of the commonwealth, on the second Tuesday in October forever, (except this present year,) and shall meet on the fourth Monday of the same month, and shall be stiled, The general assembly of the representatives of the freemen of Pennsylvania, and shall have power to choose their speaker, the treasurer of the state, and their other officers; sit on their own adjournments; prepare bills and enact them into laws; judge of the elections and qualifications of their own members; they may expel a member, but not a second time for the same cause; they may administer oaths or affirmations on examination of witnesses; redress grievances; impeach state criminals; grant charters of incorporation; constitute towns, boroughs, cities, and counties; and shall have all other powers necessary for the legislature of a free state or commonwealth: But they shall have no power to add to, alter, abolish, or infringe any part of this constitution.

SECT. 10. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall each of them before they proceed to business take and subscribe, as well the oath or affirmation of fidelity and allegiance hereinafter directed, as the following oath or affirmation, viz:

I do swear (or affirm) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to be injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state; but will in all things conduct myself as a faithful honest representative and guardian of the people, according to the best of my judgment and abilities.

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

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

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

SECT. 11. Delegates to represent this state in congress shall be chosen by ballot by the future general assembly at their first meeting, and annually forever afterwards, as long as such representation shall be necessary. Any delegate may be superseded at any time, by the general assembly appointing another in his stead. No man shall sit in congress longer than two years successively, nor be capable of reelection for three Years afterwards: and no person who holds any office in the gift of the congress shall hereafter be elected to represent this commonwealth in congress.

SECT. 12. If any city or cities, county or counties shall neglect or refuse to elect and send representatives to the general assembly, two-thirds of the members from the cities or counties that do elect and send representatives, provided they be a majority of the cities and counties of the whole state, when met, shall have all the powers of the general assembly, as fully and amply as if the whole were present.

SECT. 13. The doors of the house in which the representatives of the freemen of this state shall sit in general assembly, shall be and remain open for the admission of all persons who behave decently, except only when the welfare of this state may require the doors to be shut.

SECT. 14. The votes and proceedings of the general assembly shall be printed weekly during their sitting, with the yeas and nays, on any question, vote or resolution, where any two members require it except when the vote is taken by ballot; and when the yeas and nays are so taken every member shall have a right to insert the reasons of his vote upon the minutes, if he desires it.

SECT. 15. To the end that laws before they are enacted may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all- bills of public nature shall be printed for the consideration of the people, before they are read in general assembly the last time for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws until the next session of assembly; and for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.

SECT. 16. The stile of the laws of this commonwealth shall be, " Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same." And the general assembly shall affix their seal to every bill, as soon as it is enacted into a law, which seal shall be kept by the assembly, and shall be called, The seal of the laws of Pennsylvania, and shall not be used for any other purpose.

SECT. 17. The city of Philadelphia and each county of this commonwealth respectively, shall on the first Tuesday of November in this present year, and on the second Tuesday of October annually for the two next succeeding years, viz. the year one thousand seven hundred and seventy-seven, and the year one thousand seven hundred and seventy-eight, choose six persons to represent them in general assembly. But as representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land; therefore the general assembly shall cause complete lists of the taxable inhabitants in the city and each county in the commonwealth respectively, to be taken and returned to them, on or before the last meeting of the assembly elected in the year one thousand seven hundred and seventy-eight, who shall appoint a representation to each, in proportion to the number of taxables in such returns; which representation shall continue for the next seven years afterwards at the end of which, a new return of the taxable inhabitants shall be made, and a representation agreeable thereto appointed by the said assembly, and so on septennially forever. The wages of-the representatives in general assembly, and all other state charges shall be paid out of the state treasury.

SECT. 18. In order that the freemen of this commonwealth may enjoy the benefit of election as equally as may be until the representation shall commence as directed in the foregoing section, each county at its own choice may be divided into districts, hold elections therein, and elect their representatives in the county, and their other elective officers, as shall be hereafter regulated by the general assembly of this state. And no inhabitant of this state shall have more than one annual vote at the general election for representatives in assembly.

SECT. 19. For the present the supreme executive council of this state shall consist of twelve persons chosen in the follow-in" manner: The freemen of the city of Philadelphia, and of the counties of Philadelphia, Chester, and Bucks, respectively, shall choose by ballot one person for the city, and one for each county aforesaid to serve for three years and no longer, at the time and place for electing representatives in general assembly. The freemen of the counties of Lancaster, York, Cumberland, and Berks, shall, in like manner elect one person for each county respectively, to serve as counsellors for two years and no longer. And the counties of Northampton, Bedford, Northumberland and Westmoreland, respectively, shall, in like manner, elect one person for each county, to serve as counsellors for one year, and no longer. And at the expiration of the time for which each counsellor was chosen to serve, the freemen of the city of Philadelphia, and of the several counties in this state, respectively, shall elect one person to serve as counsellor for three years and no longer; and so on every third year forever. By this mode of election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the council a number of persons acquainted with the proceedings of the foregoing Years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented. All vacancies in the council that may happen by death, resignation, or otherwise, shall be filled at the next general election for representatives in general assembly, unless a particular election for that purpose shall be sooner appointed by the president and council. No member of the general assembly or delegate in congress, shall be chosen a member of the council. The president and vice-president shall be chosen annually by the joint ballot of the general assembly and council, of the members of the council. Any person having served as a counsellor for three successive years, shall be incapable of holding that office for four years afterwards. Every member of the council shall be a justice of the peace for the whole common-wealth, by virtue of his office.

In case new additional counties shall hereafter be erected in this state, such county or counties shall elect a counsellor, and such county or counties shall be annexed to the next neighbouring counties, and shall take rotation with such counties.

The council shall meet annually, at the same time and place with the general assembly.

The treasurer of the state, trustees of the loan office, naval officers, collectors of customs or excise, judge of the admiralty, attornies general, sheriffs, and prothonotaries, shall not be capable of a seat in the general assembly, executive council, or continental congress.

SECT. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, judge of the admiralty, attorney general and all other officers, civil and military, except such as are chosen by the general assembly or the people, agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled in the time and manner directed by law or this constitution. They are to correspond with other states, and transact business with the officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges, to hear and determine on impeachments, taking to their assistance for advice only, the justices of the supreme court. And shall have power to grant pardons and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder, shall have power to grant reprieves, but not to pardon, until the end of the next sessions of assembly; but there shall be no remission or mitigation of punishments on impeachments, except by act of the legislature; they are also to take care that the laws be faithfully executed; they are to expedite the execution of such measures as may be resolved upon by the

general assembly; and they may draw upon the treasury for such sums as shall be appropriated by the house: They may also lay embargoes, or prohibit the exportation of any commodity, for any time, not exceeding thirty days, in the recess of the house only: They may grant such licences, as shall be directed by law, and shall have power to call together the general assembly when necessary, before the day to which they shall stand adjourned. The president shall be commander in chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. The president and council shall have a secretary, and keep fair books of their proceedings, wherein any counsellor may enter his dissent, with his reasons in support of it.

SECT. 21. All commissions shall be in the name, and by the authority of the freemen of the commonwealth of Pennsylvania, sealed with the state seal, signed by the president or vice-president, and attested by the secretary; which seal shall be kept by the council.

SECT. 22. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office, or after his resignation or removal for maladministration: All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

SECT. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for misbehaviour at any time by the general assembly; they shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor to hold any other office civil or military, nor to take or receive fees or perquisites of any kind.

SECT. 24. The supreme court, and the several courts of common pleas of this commonwealth, shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to the perpetuating testimony, obtaining evidence from places not within this state, and the care of the persons and estates of those who are non compotes mentis, and such other powers as may be found necessary by future general assemblies, not inconsistent with this constitution.

SECT. 25. Trials shall be by jury as heretofore: And it is recommended to the legislature of this state, to provide by law against every corruption or partiality in the choice, return, or appointment of juries.

SECT. 26. Courts of sessions, common pleas, and orphans courts shall be held quarterly in each city and county; and the legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the state. All courts shall be open, and justice shall be impartially administered without corruption or unnecessary delay: All their officers shall be paid an adequate but moderate compensation for their services: And if any officer shall take greater or other fees than the law allows him, either directly or indirectly, it shall ever after disqualify him from holding any office in this state.

SECT. 27. All prosecutions shall commence in the name and by the authority of the freemen of the commonwealth of Pennsylvania; and all indictments shall conclude with these words, "Against the peace and dignity of the same." The style of all process hereafter in this state shall be, The commonwealth of Pennsylvania.

SECT. 28. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering Up, bona fide, all his estate real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall beailable by sufficient sureties, unless for capital offences, when the proof is evident, or presumption great.

SECT. 29. Excessive bail shall not be exacted forailable offences: And all fines shall be moderate.

SECT. 30. Justices of the peace shall be elected by the freeholders of each city and county respectively, that is to say, two or more persons may be chosen for each ward, township, or district, as the law shall hereafter direct: And their names shall be returned to the president in council, who shall commissionate one or more of them for each ward, township, or district so returning, for seven years, removable for misconduct by the general assembly. But if any city or county, ward, township, or district in this commonwealth, shall hereafter incline to change the manner of appointing their justices of the peace as settled in this article, the general assembly may make laws to regulate the same, agreeable to the desire of a majority of the freeholders of the city or county, ward, township, or district so applying. No justice of the peace shall sit in the general assembly unless he first resigns his commission; nor shall he be allowed to take any fees, nor any salary or allowance, except such as the future legislature may grant.

SECT. 31. Sheriffs and coroners shall be elected annually in each city and county, by the freemen; that is to say, two persons for each office, one of whom for each, is to be commissioned by the President in council. No person shall continue in the office of sherlit more than three successive years, or be capable of being again elected during four years afterwards. The election shall be held at the same time and place appointed for the election of representatives: And the commissioners and assessors, and other officers chosen by the people, shall also be then and there elected, as has been usual heretofore, until altered or otherwise regulated by the future legislature of this state.

SECT. 32. All elections, whether by the people or in general assembly, shall be by ballot, free and voluntary: And any elector, who shall receive any gift or reward for his vote, in meat, drink, monies, or otherwise, shall forfeit his right to elect for that time, and suffer such other penalties as future laws shall direct. And any person who shall directly or indirectly give, promise, or bestow any such rewards to be elected, shall be thereby rendered incapable to serve for the ensuing year.

SECT. 33. All fees, licence money, fines and forfeitures heretofore granted, or paid to the governor, or his deputies for the support of government, shall hereafter be paid into the public treasury, unless altered or abolished by the future legislature.

SECT. 34. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each city and county: The officers to be appointed by the general assembly, removable at their pleasure, and to be commissioned by the president in council.

SECT. 35. The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SECT. 36. As every freeman to preserve his independence, (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in establishing offices of profit, the usual effects of which are dependence and servility unbecoming freemen, in the possessors and expectants; faction, contention, corruption, and

disorder among the people. But if any man is called into public service; to the prejudice of his-private affairs, he has a right to a reasonable compensation: And whenever an office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

SECT. 37. The future legislature of this state, shall regulate intails in such a manner as to prevent perpetuities.

SECT. 38. The penal laws as heretofore used shall be reformed by the legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.

SECT. 39. To deter more effectually from the commission of crimes by continued visible punishments of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons: And all persons at proper times shall be admitted to see the prisoners at their labour.

SECT. 40. Every officer, whether judicial, executive or military, in authority under this commonwealth, shall take the following oath or affirmation of allegiance, and general oath of office before he enters on the execution of his office.

THE OATH OR AFFIRMATION OF ALLEGIANCE

I do swear (or affirm) that I will be true and faithful to the commonwealth of Pennsylvania: And that I will not directly or indirectly do any act or thing prejudicial or injurious to the constitution or government thereof, as established by the-convention. -

THE OATH OR AFFIRMATION OF OFFICE

I-do swear (or affirm) that I will faithfully execute the office of for the of-and will do equal right and justice to all men, to the best of my judgment and abilities, according to law.

SECT. 41. NO public tax, custom or contribution shall be imposed upon, or paid by the people of this state, except by a law for that purpose: And before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECT. 42. Every foreigner of good character who comes to settle in this state, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected a representative until after two years residence.

SECT. 43. The inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed; and in like manner to fish in all boatable waters, and others not private property

SECT. 44. A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices: And all useful learning shall be duly encouraged and promoted In one or more universities.

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

SECT. 46. The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any presence whatever.

SECT. 47. In order that the freedom of the commonwealth may be preserved inviolate forever, there shall be chosen by ballot by the freemen in each city and county respectively, on the second Tuesday in October, in the Year one thousand seven hundred and eighty-three, and on the second Tuesday in October, in every seventh year thereafter, two persons in each city and county of this state, to be called the COUNCIL OF CENSORS; who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree: And whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are intitled to by the constitution: They are also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election and no longer: The said council of censors shall also have power to call a convention, to meet within too years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people: But the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

Passed in Convention the 28th day of September, 1776, and signed by their order.

BENJ. FRANKLIN, Prest.

(1) The Proceedings Relative to Calling the Conventions of 1776 and 1790 the Minutes of the Convention that formed the present Constitution of Pennsylvania together with the Charter to William Penn the Constitutions of 1776 and 1790 and a view of the Proceedings of the Convention of 1776 and the Council of Censors. Harrisburg: Printed by John S. Wiestling Market Street, 1825. pp. 3S4. Index.

The Constitution of the Commonwealth of Pennsylvania as established by the General Convention carefully compared with the original to which is added a Report of the Committee appointed to enquire Whether the Constitution has been preserved inviolate in every Part and whether the legislative and executive branches of Government, have performed their duty as Guardians of the People or assumed to themselves or exercised other or greater Powers. than they are entitled to by the Constitution.

As adopted by the Council of Censors Published by their Order. Philadelphia: Printed by Francis Bailey, at Yorick s Head in Market Street. M, DCC.LXXXIV. pp. 64.

This constitution was framed by a convention (called in accordance with the expressed wish of the Continental Congress) which assembled at Philadelphia July 15 1776 and completed its labors September 28 1776. It was not submitted to the people for ratification.

00
Pennsylvania Statutes.

AN
Abridgment
OF THE

Laws of Pennsylvania,

FROM THE YEAR ONE THOUSAND SEVEN HUNDRED, TO THE SECOND DAY
OF APRIL, ONE THOUSAND EIGHT HUNDRED AND ELEVEN.

WITH

References to Reports of Judicial Decisions

IN THE

SUPREME COURT OF PENNSYLVANIA.

BY JOHN PURDON, JUNR.

PHILADELPHIA:

PUBLISHED BY FARRAND, HOPKINS, ZANTZINGER, AND COMPANY.

Fry and Kammerer, Printers.

1811.

62

Fines and Recognizances.

173

(Act of 21st March 1806.)

right: *Provided*, The same shall not exceed the fine heretofore affixed by law.

ACT of 11th April 1807. 8 Bioren p. 362.

9. SECT. IV. It shall be the duty of the sheriff of each county in this commonwealth, to account for to the proper officers, and pay over yearly all fines and forfeitures by them respectively received by virtue of their offices, for the use of the commonwealth, under the penalty of double the amount by him or them received, and not paid over, for every neglect or refusal therein.

Fire. Firing of Guns.

| | | | |
|--|---|-----------------------------------|---|
| Penalty on chimnies taking fire | 1 | Or permitting it to be done | 6 |
| Or setting off fire works, &c. | 2 | Duty of constables, appeal, &c. | 7 |
| Extended throughout the state | 3 | Penalty for setting woods on fire | 8 |
| Chimnies on fire in Philadelphia | 4 | | |
| Firing guns on the last day of the year, &c. | 5 | | |

ACT of 26th August 1721. 1 Dallas p. 158. 1 Bioren p. 157. 1 Smith p. 130.

1. SECT. III. If any person or persons within the towns of Chester, Bristol, Germantown, Darby or Chichester, shall set on fire their chimnies to cleanse them, or shall suffer them or any of them to take fire, and blaze out at the top, and be duly convicted thereof, by one credible witness before any one justice of the peace of the said counties, such person or persons shall forfeit and pay for every such offence twenty shillings, for the use of the said towns respectively, where such offence shall happen.

2. SECT. IV. If any person or persons, of what sex, age, degree or quality soever, shall fire any gun or other fire arms, or shall make or cause to be made, or sell or utter, or offer to expose to sale any squibs, rockets or other fire works, or shall cast, throw or fire any squibs, rockets, or other fire works, within the city of Philadelphia, without the governor's special license for the same, of which license due notice shall first be given to the mayor of the said city, such person or persons so offending, and being thereof convicted before any one justice of the peace of the said city, either by confession of the party so offending, or by the view of any of the said justices, or by the oath or affirmation of one or more witnesses, shall for every such offence forfeit and pay the sum of five shillings; one half to the use of the poor of the said city, and the other half to the use of him or them who shall prosecute, and cause such offender to be as aforesaid convicted; which forfeitures shall be levied by distress and sale of the offender's goods as aforesaid; and for want of such distress, if the offender refuse to pay the said forfeiture, he shall be committed to prison, for every such offence, the space of two days, without bail or mainprize: *Provided*, That such conviction be made within ten days after such offence committed.

ACT of 9th February 1750-51. 1 Dallas p. 339. 1 Bioren p. 311. 1 Smith p. 208.

3. SECT. I. If any person or persons whatsoever, within any county town, or within any other town or borough in this province, already built and settled.

Matthews' Rough Enquire

T H E
A C T S

Wm. B. ...

O F T H E
General Assembly
O F T H E
Commonwealth of Pennsylvania,
Carefully compared with the ORIGINALS.

A N D A N
A P P E N D I X,

Containing the LAWS now in FORCE, passed between the 30th
Day of *September* 1775, and the REVOLUTION.

TOGETHER WITH
The Declaration of Independence; the Constitution of the State of
Pennsylvania; and the Articles of Confederation of the United
States of America.

33246

Published by order of the General Assembly.



P H I L A D E L P H I A :
PRINTED AND SOLD BY FRANCIS BAILEY,
IN MARKET-STREET.
M,DCC,LXXXII.

1779.
 The third Year
 of the Common-
 wealth.

A further supplement to the act, intituled, "An Act for settling the accounts of the late committee and council of safety."

Passed March 31st, 1779. Recorded in Law Book Vol. I. Page 258, &c.
 Repealed March 1st, 1780.

CHAPTER CI.

An ACT for repealing part of an act, intituled, "A further supplement to the act, intituled, An Act for the further security of government; and for disarming persons who shall not have given attestations of allegiance and fidelity to this state, or some other of the united states.

Preamble. SECTION 1. **W**HEREAS in and by an act, intituled, "*A further supplement to the act, intituled, An Act for the further security of government,*" passed on the fifth day of December last, it is enacted, That every person, now in office or place of trust under this government, shall on or before the first day of April next, and every person hereafter appointed or elected into any office of trust under this government whatsoever, shall, before he enters upon the execution or duties thereof, take and subscribe before the said commissioners, or one of them, the aforesaid oath or affirmation.

Replevins issued for goods seized by any officer, to be quashed. SECT. 2. *And whereas* it has been considered, that the officers of this state, who in the day of difficulty and danger accepted places of trust, and thereby exposed themselves in a particular manner to the resentment of the king of Great Britain; and that such persons, and all others who gave assurances of their allegiance to this state, and abjured the king of Great Britain and his successors, on or before the first day of June last, according to the form of the act, intituled, "*An Act for the further security of government,*" passed on the first day of April last, had thereby manifested their attachment to the community of this commonwealth in a satisfactory manner.

And treble costs awarded. SECT. 3. *Be it therefore enacted, and it is hereby enacted, by the representatives of the freemen of the commonwealth of Pennsylvania, in general assembly met, and by the authority of the same,* That the said recited clause is hereby repealed and declared null and void; and that no person who took and subscribed the said oath or affirmation of allegiance and abjuration

abjuration, as prescribed in and by the said act, intituled, "An Act for the further security of government," on or before the first day of June last; shall be under any obligation to take and subscribe the oath prescribed in and by the said act, intituled, "A further supplement to the act," intituled, "An Act for the further security of government," in order to qualify such person to hold or accept any office or place of trust in this government.

1779.

The third Year of the Commonwealth.

SECT. 4. *And whereas* it is very improper and dangerous that persons disaffected to the liberty and independence of this state should possess or have in their own keeping; or elsewhere, any fire arms; or other weapons used in war, or any gun powder.

SECT. 5. *Be it therefore enacted by the authority aforesaid,* That from and after the passing of this act, the lieutenant, or any sub lieutenant of the militia of any county or place within this state, shall be, and is hereby empowered to disarm any person or persons who shall not have taken any oath or affirmation of allegiance to this or any other state, and against whom information on oath shall be given before any justice of the peace, that such person is suspected to be disaffected to the independence of this state; and shall take from every such person any cannon, mortar, or other piece of ordnance, or any blunderbuss, wall piece, musket, fuscé, carbine or pistols, or other fire arms, or any hand gun; and any sword, cutlafs, bayonet, pike, or other warlike weapon, out of any building, house or place belonging to such person.

Lieutenants empowered to disarm the disaffected.

SECT. 6. *And be it further enacted by the authority aforesaid,* That a complete list of all arms which have been or shall be taken from any person or persons by any lieutenant, sub lieutenant, or by any other person or persons acting under his or their authority, shall be made out and lodged by such lieutenant or sub lieutenant, or other person, in the office of the clerk of the peace of the proper county, and the persons names from whom the same were taken, which shall be open to the inspection of any person requesting the same, paying two shillings and six pence therefor; and such lieutenant or sub lieutenant shall, and is hereby declared to be accountable to this state for the said arms.

List of the arms and of the persons disarmed, to be left with the clerk of the peace.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the justices of the peace within this commonwealth, and each and every of them, shall, and they are hereby authorized and empowered to administer all and every of the oaths and affirmations required to be taken by the act, intituled, "A further supplement to the act, intituled,

Justices empowered to administer the oath, &c.

C c c

"An

|



|











—

—






















































