

Constitution of South Carolina (1776)

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Bei *Francis Newton Thorpe (Hrsg.)*, *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America. Compiled and Edited Under the Act of Congress of June 30, 1906, Band 6*, Washington 1909, S. 3241-3248, findet sich eine [gedruckte Fassung](#).

SOUTH CAROLINA

For organic acts relating to the lands now included within South Carolina see in other parts of this work :

Charter to Raleigh, 1584 (p. 53).

Charter of Virginia, 1606 (Virginia, p. 3783).

Charter of Virginia, 1609 (Virginia, p. 3790).

Charter of Virginia, 1612 (Virginia, p. 3802).

Ordinances for Virginia, 1621 (Virginia, p. 3810).

CONSTITUTION OF SOUTH CAROLINA—1776 * ^a

Whereas the British Parliament, claiming of late years a right to bind the North American colonies by law in all cases whatsoever, have enacted statutes for raising a revenue in those colonies and disposing of such revenue as they thought proper, without the consent and against the will of the colonists. And whereas it appearing to them that (they not being represented in Parliament) such claim was altogether unconstitutional, and, if admitted, would at once reduce them from the rank of freemen to a state of the most abject slavery; the said colonies, therefore, severally remonstrated against the passing, and petitioned for the repeal, of those acts, but in vain; and whereas the said claim being persisted in, other unconstitutional and oppressive statutes have been since enacted by which the powers of admiralty courts in the colonies are extended beyond their ancient limits, and jurisdiction is given to such courts in cases similar to those which in Great Britain are triable by jury; persons are liable to be sent to and tried in Great Britain for an offence created and made capital by one of those statutes, though committed in the colonies; the harbor of Boston was blocked up; people indicted for murder in the Massachusetts Bay may, at the will of a governor, be sent for trial to any other colony, or even to Great Britain; the chartered constitution of government in that colony is materially altered; the English laws and a free government, to which the inhabitants of Quebec were entitled by the King's royal proclamation, are abolished and French laws are restored; the Roman Catholic religion (although before tolerated and freely exercised there) and an absolute government are established in that province, and its limits extended through a vast tract of country so as to border on the free Protestant English settlements, with design of using a whole people

* Verified by—"Constitution" in "The Statutes at Large of South Carolina, Edited by Thomas Cooper, M. D.; LL. D. Vol. I. Columbia, S. C. 1836" pp. 128-134.

^a This constitution was framed by the "Provincial Congress" of South Carolina, and adopted March 26, 1776. It was not submitted to the people for ratification.

differing in religious principles from the neighboring colonies, and subject to arbitrary power, as fit instruments to overawe and subdue the colonies. And whereas the delegates of all the colonies on this continent, from Nova Scotia to Georgia, assembled in a general Congress at Philadelphia, in the most dutiful manner laid their complaints at the foot of the throne, and humbly implored their sovereign that his royal authority and interposition might be used for their relief from the grievances occasioned by those statutes, and assured His Majesty that harmony between Great Britain and America, ardently desired by the latter, would be thereby immediately restored, and that the colonists confided in the magnanimity and justice of the King and Parliament for redress of the many other grievances under which they labored. And whereas these complaints being wholly disregarded, statutes still more cruel than those above mentioned have been enacted, prohibiting the intercourse of the colonies with each other, restricting their trade, and depriving many thousands of people of the means of subsistence, by restraining them from fishing on the American coast. And whereas large fleets and armies having been sent to America in order to enforce the execution of those laws, and to compel an absolute and implicit submission to the will of a corrupt and despotic administration, and in consequence thereof, hostilities having been commenced in the Massachusetts Bay, by the troops under command of General Gage, whereby a number of peaceable, helpless, and unarmed people were wantonly robbed and murdered, and there being just reason to apprehend that like hostilities would be committed in all the other colonies. The colonists were therefore driven to the necessity of taking up arms, to repel force by force, and to defend themselves and their properties against lawless invasions and depredations. Nevertheless, the delegates of the said colonies assembled in another Congress at Philadelphia, anxious to procure a reconciliation with Great Britain upon just and constitutional principles, supplicated His Majesty to direct some mode by which the united applications of his faithful colonists might be improved into a happy and permanent reconciliation, that in the mean time measures might be taken for preventing the further destruction of their lives, and that such statutes as immediately distressed any of the colonists might be repealed. And whereas, instead of obtaining that justice, to which the colonists were and are of right entitled, the unnatural civil war into which they were thus precipitated and are involved, hath been prosecuted with unremitted violence, and the governors and others bearing the royal commission in the colonies having broken the most solemn promises and engagements, and violated every obligation of honor, justice, and humanity, have caused the persons of divers good people to be seized and imprisoned, and their properties to be forcibly taken and detained, or destroyed, without any crime or forfeiture; excited domestic insurrections; proclaimed freedom to servants and slaves, enticed or stolen them from, and armed them against their masters; instigated and encouraged the Indian nations to war against the colonies; dispensed with the law of the land, and substituted the law martial in its stead; killed many of the colonists; burned several towns, and threatened to burn the rest, and daily endeavor by a conduct which has sullied the British arms, and would disgrace even savage nations, to effect the ruin and destruction of the colonies; and whereas a

statute hath been lately passed, whereby, under pretence that the said colonies are in open rebellion, all trade and commerce whatsoever with them is prohibited; vessels belonging to their inhabitants trading in, to, or from the said colonies, with the cargoes and effects on board such vessels, are made lawful prize, and the masters and crews of such vessels are subjected by force to act on board the King's ships against their country and dearest friends; and all seizures and detention or destruction of the persons and properties of the colonists which have at any time been made or committed for withstanding or suppressing the said pretended rebellion, and which shall be made in pursuance of the said act, or for the service of the public, are justified, and persons suing for damages in such cases are, on failing in their suits, subjected to payment of very heavy expenses. And whereas large reënforcements of troops and ships have been ordered and are daily expected in America for carrying on war against each of the united colonies by the most vigorous exertions. And whereas in consequence of a plan recommended by the governors, and which seems to have been concerted between them and their ministerial masters to withdraw the usual officers and thereby loosen the bands of government and create anarchy and confusion in the colonies. Lord William Campbell, late governor, on the fifteenth day of September last, dissolved the general assembly of this colony, and no other hath been since called, although by law the sitting and holding of general assemblies cannot be intermitted above six months, and having used his utmost efforts to destroy the lives, liberties, and properties of the good people here, whom by the duty of his station he was bound to protect, withdrew himself from the colony and carried off the great seal and the royal instructions to governors. And whereas the judges of courts of law here have refused to exercise their respective functions, so that it is become indispensably necessary that during the present situation of American affairs, and until an accommodation of the unhappy differences between Great Britain and America can be obtained, (an event which, though traduced and treated as rebels, we still earnestly desire,) some mode should be established by common consent, and for the good of the people, the origin and end of all governments, for regulating the internal polity of this colony. The congress being vested with powers competent for the purpose, and having fully deliberated touching the premises, do therefore resolve:

I. That this congress being a full and free representation of the people of this colony, shall henceforth be deemed and called the general assembly of South Carolina, and as such shall continue until the twenty-first day of October next, and no longer.

II. That the general assembly shall, out of their own body, elect by ballot a legislative council, to consist of thirteen members, (seven of whom shall be a quorum,) and to continue for the same time as the general assembly.

III. That the general assembly and the said legislative council shall jointly choose by ballot from among themselves, or from the people at large, a president and commander-in-chief and a vice-president of the colony.

IV. That a member of the general assembly being chosen and acting as president and commander-in-chief, or vice-president, or one of the legislative council shall vacate his seat in the general assembly and

another person shall be elected in his room; and if one of the legislative council is chosen president and commander-in-chief or vice-president, he shall lose his seat and another person shall be elected in his stead.

V. That there be a privy council, whereof the vice-president of the colony shall of course be a member and president of the privy council, and that six other members be chosen by ballot, three by the general assembly, and three by the legislative council: *Provided always*, That no officer in the army or navy in the service of the continent, or of this colony, shall be eligible. And a member of the general assembly, or of the legislative council, being chosen of the privy council, shall not thereby lose his seat in the general assembly, or in the legislative council, unless he be elected vice-president of the colony, in which case he shall, and another person shall be chosen in his stead. The privy council (of which four to be a quorum) to advise the president and commander-in-chief when required, but he shall not be bound to consult them, unless in cases after mentioned.

VI. That the qualifications of president and commander-in-chief, and vice-president of the colony, and members of the legislative and privy council, shall be the same as of members of the general assembly, and on being elected they shall take an oath of qualification in the general assembly.

VII. That the legislative authority be vested in the president and commander-in-chief, the general assembly and legislative council. All money-bills for the support of government shall originate in the general assembly, and shall not be altered or amended by the legislative council, but may be rejected by them. All other bills and ordinances may take rise in the general assembly or legislative council, and may be altered, amended, or rejected by either. Bills having passed the general assembly and legislative council may be assented to or rejected by the president and commander-in-chief. Having received his assent, they shall have all the force and validity of an act of general assembly of this colony. And the general assembly and legislative council, respectively, shall enjoy all other privileges which have at any time been claimed or exercised by the commons house of assembly, but the legislative council shall have no power of expelling their own members.

VIII. That the general assembly and legislative council may adjourn themselves respectively, and the president and commander-in-chief shall have no power to adjourn, prorogue, or dissolve them, but may, if necessary, call them before the time to which they shall stand adjourned. And where a bill has been rejected, it may, on a meeting after adjournment of not less than three days of the general assembly and legislative council, be brought in again.

IX. That the general assembly and legislative council shall each choose their respective speakers and their own officers without control.

X. That if a member of the general assembly or of the legislative council shall accept any place of emolument or any commission except in the militia, he shall vacate his seat, and there shall thereupon be a new election, but he shall not be disqualified from serving upon being reelected.

XI. That on the last Monday in October next, and the day following, and on the same days of every second year thereafter, members

of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last Monday in October. The general assembly to consist of the same number of members as this congress does, each parish and district having the same representation as at present, viz: the parish of Saint Philip and Saint Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of Saint John, in Berkely County, six members; the parish of Saint Andrew, six members; the parish of Saint George Dorchester, six members; the parish of Saint James Goose Creek, six members; the parish of Saint Thomas and Saint Dennis, six members; the parish of Saint Paul, six members; the parish of Saint Bartholemew, six members; the parish of Saint Helena, six members; the parish of Saint James Santee, six members; the parish of Prince George, Winyaw, six members; the parish of Prince Frederick, six members; the parish of Saint John, in Colleton County, six members; the parish of Saint Peter, six members; the parish of Prince William, six members; the parish of Saint Stephen, six members; the district to the eastward of Wateree River, ten members; the district of Ninety-six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda Rivers, in three divisions, viz: the Lower district, four members; the Little River district, four members; the Upper or Spartan district, four members; the district between Broad and Catawba Rivers, ten members; the district called the New Acquisition, ten members; the parish of Saint Mathew, six members; the parish of Saint David, six members; the district between Savannah River and the North Fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the election act, and where there are no churches or church wardens in a district or parish, the general assembly, at some convenient time before their expiration, shall appoint places of election and persons to receive votes and make returns. The qualifications of electors shall be the same as required by law, but persons having property, which, according to the rate of the last preceding tax, is taxable at the sums mentioned in the election act, shall be entitled to vote, though it was no actually taxed, having the other qualifications mentioned in that act; electors shall take an oath of qualification, if required by the returning-officer. The qualification of the elected to be the same as mentioned in the election act, and construed to mean clear of debt.

XII. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in general assembly, those who do meet shall have the powers of a general assembly; not less than forty-nine members shall make a house to do business, but the speaker or any seven members may adjourn from day to day.

XIII. That as soon as may be, after the first meeting of the general assembly, a president and commander-in-chief, a vice-president of the colony and privy council, shall be chosen in manner and for the time above mentioned, and till such choice be made the former president and commander-in-chief and vice-president of the colony and privy council shall continue to act as such.

XIV. That in case of the death of the president and commander-in-chief, or his absence from the colony, the vice-president of the colony shall succeed to his office, and the privy council shall choose

out of their own body a vice-president of the colony, and in case of the death of the vice-president of the colony, or his absence from the colony, one of the privy council (to be chosen by themselves) shall succeed to his office, until a nomination to those offices, respectively, by the general assembly and legislative council for the remainder of the time for which the officer so dying or being absent was appointed.

XV. That the delegates of this colony in the Continental Congress be chosen by the general assembly and legislative council jointly by ballot in the general assembly.

XVI. That the vice-president of the colony and the privy council, or the vice-president and a majority of the privy council for the time being, shall exercise the powers of a court of chancery, and there shall be an ordinary who shall exercise the powers heretofore exercised by that officer in this colony.

XVII. That the jurisdiction of the court of admiralty be confined to maritime causes.

XVIII. That all suits and process depending in any court of law or equity may, if either party shall be so inclined, be proceeded in and continued to a final ending, without being obliged to commence *de novo*. And the judges of the courts of law shall cause jury-lists to be made, and juries to be summoned, as near as may be, according to the directions of the acts of the general assembly in such cases provided.

XIX. That justices of the peace shall be nominated by the general assembly and commissioned by the president and commander-in-chief, during pleasure. They shall not be entitled to fees except on prosecutions for felony, and not acting in the magistracy, they shall not be entitled to the privileges allowed to them by law.

XX. That all other judicial officers shall be chosen by ballot, jointly by the general assembly and legislative council, and except the judges of the court of chancery, commissioned by the president and commander-in-chief, during good behavior, but shall be removed on address of the general assembly and legislative council.

XXI. That sheriffs, qualified as by law directed, shall be chosen in like manner by the general assembly and legislative council, and commissioned by the president and commander-in-chief, for two years only.

XXII. That the commissioners of the treasury, the secretary of the colony, register of mesne conveyances, attorney-general, and powder-receiver, be chosen by the general assembly and legislative council, jointly by ballot, and commissioned by the president and commander-in-chief during good behavior, but shall be removed on address of the general assembly and legislative council.

XXIII. That all field-officers in the army, and all captains in the navy, shall be, by the general assembly and legislative council, chosen jointly by ballot, and commissioned by the president and commander-in-chief, and that all other officers in the army or navy shall be commissioned by the president and commander-in-chief.

XXIV. That in case of vacancy in any of the offices above directed to be filled by the general assembly and legislative council, the president and commander-in-chief, with the advice and consent of the privy council, may appoint others in their stead, until there shall be an election by the general assembly and legislative council to fill their vacancies respectively.

XXV. That the president and commander-in-chief, with the advice and consent of the privy council, may appoint during pleasure, until otherwise directed by resolution of the general assembly and legislative council, all other necessary officers, except such as are by law directed to be otherwise chosen.

XXVI. That the president and commander-in-chief shall have no power to make war or peace, or enter into any final treaty, without the consent of the general assembly and legislative council.

XXVII. That if any parish or district shall neglect to elect a member or members on the day of election, or in case any person chosen a member of the general assembly shall refuse to qualify and take his seat as such, or die or depart the colony, the said general assembly shall appoint proper days for electing a member or members of the said general assembly in such cases respectively; and on the death of a member of the legislative or privy council, another member shall be chosen in his room, in manner above mentioned, for the election of members of the legislative and privy council respectively.

XXVIII. That the resolutions of the Continental Congress, now of force in this colony, shall so continue until altered or revoked by them.

XXIX. That the resolutions of this or any former congress of this colony, and all laws now of force here, (and not hereby altered,) shall so continue until altered or repealed by the legislature of this colony, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

XXX. That the executive authority be vested in the president and commander-in-chief, limited and restrained as aforesaid.

XXXI. That the president and commander-in-chief, the vice-president of the colony, and privy council, respectively, shall have the same personal privileges as are allowed by act of assembly to the governor, lieutenant-governor, and privy council.

XXXII. That all persons now in office shall hold their commissions until there shall be a new appointment in manner above directed, at which time all commissions not derived from authority of the congress of this colony shall cease and be void.

XXXIII. That all persons who shall be chosen and appointed to any office or to any place of trust, before entering upon the execution of office, shall take the following oath: "I, A. B., do swear that I will, to the utmost of my power, support, maintain, and defend the constitution of South Carolina, as established by Congress on the twenty-sixth day of March, one thousand seven hundred and seventy-six, until an accommodation of the differences between Great Britain and America shall take place, or I shall be released from this oath by the legislative authority of the said colony: So help me God." And all such persons shall also take an oath of office.

XXXIV. That the following yearly salaries be allowed to the public officers undermentioned: The president and commander-in-chief, nine thousand pounds; the chief justice and the assistant judges, the salaries, respectively, as by act of assembly established; the attorney-general, two thousand one hundred pounds, in lieu of all charges against the public for fees upon criminal prosecutions; the ordinary, one thousand pounds; the three commissioners of the treasury, two thousand pounds each; and all other public officers shall have the

same salaries as are allowed such officers, respectively, by act of assembly.

By order of the congress, March 26, 1776.

WILLIAM HENRY DRAYTON, *President*.

Attested:

PETER TIMOTHY, *Secretary*.

CONSTITUTION OF SOUTH CAROLINA—1778 * ^a

An Act for establishing the constitution of the State of South Carolina.

Whereas the constitution or form of government agreed to and resolved upon by the freemen of this country, met in congress, the twenty-sixth day of March, one thousand seven hundred and seventy-six, was temporary only, and suited to the situation of their public affairs at that period, looking forward to an accommodation with Great Britain, an event then desired; and whereas the United Colonies of America have been since constituted independent States, and the political connection heretofore subsisting between them and Great Britain entirely dissolved by the declaration of the honorable the Continental Congress, dated the fourth day of July, one thousand seven hundred and seventy-six, for the many great and weighty reasons therein particularly set forth: It therefore becomes absolutely necessary to frame a constitution suitable to that great event.

Be it therefore constituted and enacted, by his excellency Rawlins Lowndes, esq., president and commander-in-chief in and over the State of South Carolina, by the honorable the legislative council and general assembly, and by the authority of the same:

That the following articles, agreed upon by the freemen of this State, now met in general assembly, be deemed and held the constitution and form of government of the said State, unless altered by the legislative authority thereof, which constitution or form of government shall immediately take place and be in force from the passing of this act, excepting such parts as are hereafter mentioned and specified.

I. That the style of this country be hereafter the State of South Carolina.

II. That the legislative authority be vested in a general assembly, to consist of two distinct bodies, a senate and house of representatives, but that the legislature of this State, as established by the constitution or form of government passed the twenty-sixth of March, one thousand and seven hundred and seventy-six, shall continue and be in full force until the twenty-ninth day of November ensuing.

* Verified by "A Collection of the Constitutions of the Thirteen United States of North America, Published by order of Congress. Philadelphia Printed: Glasgow Reprinted, John Bryce, 1783."

Also from Cooper's Statute of South Carolina, Vol. I, pp. 137-146.

^a This constitution was framed by the general assembly of South Carolina, by which it was passed as an "act" March 19, 1778, although it did not go into effect until November, 1778. It was soon afterwards declared by the supreme court of South Carolina that both the constitution of 1776 and the constitution of 1778 were simply acts of the general assembly, which that body could repeal or amend at pleasure.