

COUNTIES.	FOR CONSTITUTION.	AG'ST.
Linn	221	211
Davis	231	153
Lee	1150	705
Clinton	113	99
Jackson	301	318
Mahaska	200	375
Henry	335	654
Des Moines	744	788
Del. and Buchan,	74	58
Keokuk	193	185
Van Buren	917	839
	<u>7235</u>	<u>7656</u>
		<u>7235</u>
Majority against Constitution,		421,

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NUMBER VII.

INTRODUCTION.

WHEN the Legislative Assembly met in December, 1845, the Constitution of 1844 had been twice rejected by the people of the Territory.¹ In his message to the Assembly, the Governor deplored this result and promised his "hearty coöperation" in such action as might be directed toward admission into the Union.² The Assembly was not slow to act. On the 17th of January, 1846, an act was approved, which provided for the election of delegates to a convention to form a new Constitution.³ The delegates elected in accordance with this act met at the Capitol in Iowa City on Monday, the 4th of May.⁴ The Constitution which they drafted (properly termed the *Constitution of 1846*)⁵ was ratified by the people on the 3d day of August by a majority of 456 votes. On the 4th of August, the act of Congress defining the boundaries of the Commonwealth was approved by the President.⁶ And finally on the 28th day of December, 1846, the Common-

¹ See No. VI. of this series, pp. 177, 182.

² See No. VI. of this series, p. 182.

³ See p. 187 of this number.

⁴ Journal of Convention, p. 23.

⁵ See p. 190 of this number for text of this Constitution.

⁶ See No. V. of this series, p. 128.

wealth of Iowa was "declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever."¹

B. F. S.

¹ See No. V. of this series, p. 131.

NOTE

ON THE ORIGINAL MANUSCRIPT COPIES OF THE SEVERAL CONSTITUTIONS
OF THE COMMONWEALTH OF IOWA.

The original manuscript copy of the Constitution of 1844, with the signatures of the members of the convention, has been preserved in the office of the Secretary of the Commonwealth of Iowa.

No complete manuscript copy of the Constitution of 1846 seems to have been preserved. However, there is, in the office of the Secretary of the Commonwealth of Iowa, an incomplete manuscript copy of this Constitution. I have carefully examined this incomplete manuscript and find that it contains all of the Constitution from the "Preamble and Boundaries" to the article on "Amendments of the Constitution." The articles entitled "Amendments of the Constitution," "Miscellaneous," "Schedule," and the signatures of the members of the convention which drafted the Constitution are wanting. But the copy of the articles that have been preserved appears to be the authentic original manuscript copy as adopted in the convention.

The original manuscript copy of the Constitution of 1857, with the signatures of the members of the convention, has been preserved in the office of the Secretary of the Commonwealth of Iowa.

B. F. S.

THE CONVENTION OF 1846.

AN ACT TO PROVIDE FOR THE ELECTION OF DELEGATES
TO A CONVENTION TO FORM A CONSTITUTION AND
STATE GOVERNMENT.

SECTION. I. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be a poll opened at the township election in April next, for the election of Delegates to a Convention, to form a Constitution for the future State of Iowa; and the notice for said election for Delegates, shall be given at least twenty days before the holding thereof, and the manner of giving said notice, and all other proceedings connected with said election, shall be in accordance with the provisions of the law providing for the election of members of the Council and House of Representatives in this Territory, so far as the same may be applicable.

SEC. 2. That the Convention shall consist of thirty-two members; to be elected within the several organized counties in this Territory as follows, to-wit:

Des Moines,	3.
Lee,	3.
Van Buren,	3.
Jefferson,	2.
Henry,	2.
Davis,	1.
Appanoose and Kishkekosh,	1.
Wapello,	1.
Iowa, Marion, Polk and Jasper,	1.
Mahaska,	1.
Keokuk,	1.
Washington,	1.
Louisa,	1.
Muscatine,	1.
Johnson,	1.

Linn and Benton,.....	I.
Cedar,.....	I.
Scott,.....	I.
Clinton,.....	I.
Jackson,.....	I.
Jones,.....	I.
Clayton,.....	I.
Dubuque, Delaware, Buchanan, Fayette and Blackhawk,.....	2.

The said Delegates shall be citizens of the United States and shall have resided six months within this Territory, before the election aforesaid.

SEC. 3. That the judges of election, in the several townships and precincts shall certify the votes for Delegates, in the same manner, as is provided by law for the election of members of Council and House of Representatives, and shall send returns of said election, so certified to the clerk of the board of county commissioners, who shall open said returns, and certify the election of Delegates, in the same manner as is provided by law, for the election of members of the Legislative Assembly; and in case of a tie vote between any of the candidates for Delegates, it shall be the duty of the clerk of the board of county commissioners, to order a new election for the purpose of effecting an election in said tied vote, which election shall be held within twenty days after said first election.

SEC. 4. That the said Delegates elect, shall meet at Iowa City, on the first Monday of May, A. D. 1846, and proceed to form a Constitution, and State Government for the future State of Iowa.

SEC. 5. That when a Constitution, and form of State Government shall have been adopted by said Convention, they shall cause the same to be published, and at the next general election succeeding the formation of a Constitution and State Government by said Convention, the qualified electors who may have resided thirty days in this Territory next pre-

ceding said election, and who are entitled in all other respects to vote for members of the Legislative Assembly of said Territory, shall be, and they are hereby authorized, to vote for or against a Convention.¹ The vote for and against a Constitution shall be counted, and returned to the clerk of the board of county commissioners, who shall, in the same manner, transmit the returns of said votes for and against the Constitution, to the Secretary of the Territory; who shall open and count the same, as soon as they are all received from the several counties in this Territory, in the presence of the Governor; who shall issue his proclamation declaring the result.

SEC. 6. That all electors, qualified as aforesaid, may vote for or against said Constitution in any county in said Territory, whether a resident of such county or not. But in the election of Delegates to the Convention the said electors shall not vote out of the counties wherein they have their residence.

SEC. 7. That the several elections, provided for in this act, shall in all respects, be conducted in accordance with the provisions of an act regulating general elections in this Territory, so far as the same is applicable, and except as is herein specially provided for.

SEC. 8. That said Constitution and form of State Government, shall, if ratified at the election specified in the fifth section of this act, be presented to the Congress of the United States, at the next ensuing session thereof, for admittance into the Union upon an equal footing with the original States; and with such other provisions and conditions as may be provided for by the Convention, framing said Constitution, and form of State Government; but shall not be presented for admittance until the same shall be accepted and ratified, by the qualified electors of this Territory.

SEC. 9. That it shall be the duty of the Secretary of the Territory, to provide a suitable room for the meeting of the Convention; also to provide the same with furniture, stationary, and all other things necessary for the comfort and convenience of the Convention.

¹ Should read, Constitution.

SEC. 10. That the members of said Convention shall be entitled to three dollars for every twenty miles travel to and from the place of holding said Convention, and three dollars per diem for their services, to be paid in the way and manner as may hereafter be provided for by the Legislative Assembly of the Territory or State of Iowa.

SEC. 11. This act shall take effect, and be in force from and after its passage.

Approved, January 17th, 1846.

—*Reprinted from Laws of the Territory of Iowa, 1846, Ch. 37, p. 37.*

THE CONSTITUTION OF 1846.

CONSTITUTION.

ARTICLE I.

PREAMBLE AND BOUNDARIES.

We, the People of the Territory of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river, thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June 12th, 1820, crosses the said middle of the main

channel of the said Des Moines river; thence westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line, intersect the middle of the main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river, to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollett's map; thence up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said Mississippi river, to the place of beginning.

ARTICLE 2.

BILL OF RIGHTS.

1. All men are by nature free and independent, and have certain unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.
2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times, to alter or reform the same, whenever the public good may require it.
3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or for the maintenance of any minister or ministry.
4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from

the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

5. Any citizen of this State who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory before the fact, shall forever be disqualified from holding any office under the constitution and laws of this State.

6. All laws of a general nature shall have a uniform operation.

7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libellous was true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

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

9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts.

10. In all criminal prosecutions, the accused shall have a right to a speedy trial by an impartial jury, to be informed of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for his own witnesses, and to have the assistance of counsel.

11. No person shall be held to answer for a criminal offense, unless on presentment, or indictment by a grand jury, except in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger.

12. No person shall after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great.

13. The writ of Habeas Corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety require it.

14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

15. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, except in the manner prescribed by law.

16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

17. Excessive bail shall not be required. Excessive fines shall not be imposed; and cruel and unusual punishments shall not be inflicted.

18. Private property shall not be taken for public use without just compensation.

19. No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

20. The people have the right freely to assemble together to counsel for the common good, to make known their opinions to their representatives, and to petition for a redress of grievances.

21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

22. Foreigners who are, or who may hereafter become residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and descent of property, as native born citizens.

23. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

24. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE 3.

RIGHT OF SUFFRAGE.

1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to, and returning therefrom.

3. No elector shall be obliged to perform militia duty on the day of election, except in time of war, or public danger.

4. No person in the military, naval or marine service of the United States, shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this state.

5. No idiot, or insane person, or persons convicted of any infamous crime, shall be entitled to the privileges of an elector.¹

6. All elections by the people, shall be by ballot.

ARTICLE 4.

OF THE DISTRIBUTION OF POWERS.

1. The powers of the government of Iowa shall be divided into three separate departments; the legislative, the executive, and the judicial; and no person charged with the exercise

¹ In the manuscript copy of this section (see note to Introduction of this number) the following clause is added: unless restored to the right of suffrage by an act of the General Assembly.

of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

1. The Legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

2. The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State or Territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. Senators shall be chosen for the term of four years, at the same time and place as representatives, they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. The number of Senators shall not be less than one-third nor more than one-half the representative body, and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first

class shall be vacated at the expiration of the second year, so that one-half shall be chosen every year.

7. When the number of Senators is increased they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offense, and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

11. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

12. Senators and representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

13. When vacancies occur in either house, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

14. The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. Bills may originate in either house, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered, or rejected by the other, and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

17. Every bill which shall have passed the General Assembly shall, before it become a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly by adjournment prevent such return.

18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

20. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted or acquit-

ted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the General Assembly may provide.

21. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: Provided, That offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

23. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury, all sums for which he may be liable.

24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

25. Each member of the General Assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session: when convened in extra session by the Governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: Provided, however, That the members of the first General As-

sembly under this constitution shall receive two dollars per day for their services during the entire session.

26. Every law shall embrace but one object, which shall be expressed in the title.

27. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State, by authority. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state.

28. No divorce shall be granted by the General Assembly.

29. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

30. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability. And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

31. Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the General Assembly after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each, and [the General Assembly] shall also, at every subsequent regular session, apportion the House of Representatives, and every other regular session the Senate for eight years; and the House of Representatives shall never be less than twenty-six, nor greater than thirty-nine, until the

number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

33. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

34. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judges of the Supreme and District Courts, each one thousand dollars.

ARTICLE 5.

EXECUTIVE DEPARTMENT.

1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of Iowa.

2. The Governor shall be elected by the qualified electors, at the time and place of voting for members of the General Assembly, and shall hold his office four years from the time of his installation, and until his successor shall be qualified.

3. No person shall be eligible to the office of Governor, who has not been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in

presence of both houses of the General Assembly. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for Governor.

5. The Governor shall be commander-in-chief of the militia, the army, and navy of this state.

6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

7. He shall see that the laws are faithfully executed.

8. When any office shall from any cause become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

9. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

10. He shall communicate by message to the General Assembly, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

11. In case of disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next General Assembly.

12. No person shall, while holding any other office under the United States, or this State, execute the office of Governor, except as hereinafter expressly provided.

13. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

14. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

15. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

16. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the great seal of this state, signed by the Governor, and countersigned by the Secretary of State.

17. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all the papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

18. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the Secretary of State, until such disability shall cease, or the vacancy be filled.

19. If, during the vacancy of the office of Governor, the Secretary of State shall be impeached, displaced, resign, die, or be absent from the state, the powers and duties of the office of Governor shall devolve upon the President of the Senate; and should a vacancy occur by impeachment, death, resignation, or absence from the State, of the President of the Senate, the Speaker of the House of Representatives shall act as Governor till the vacancy be filled.

ARTICLE 6.

JUDICIAL DEPARTMENT.

1. The Judicial power shall be vested in a Supreme Court,

District Courts, and such inferior courts, as the General Assembly may from time to time establish.

2. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

3. The Judges of the Supreme Court shall be elected by joint vote of both branches of the General Assembly, and shall hold their courts at such time and place as the General Assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the Judges of the Supreme Court shall be conservators of the peace throughout the State.

4. The District Court shall consist of a Judge who shall be elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected and qualified, and shall be ineligible to any other office during the term for which he may be elected. The District Court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts. The first session of the General Assembly shall divide the State into four districts, which may be increased as the exigencies require.

5. The qualified voters of each county, shall at the general election, elect one Prosecuting Attorney and one Clerk of the District Court, who shall be residents therein, and who

shall hold their several offices for the term of two years and until their successors are elected and qualified.

6. The style of all process shall be "the State of Iowa" and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE 7.

MILITIA.

1. The Militia of this State shall be composed of all able bodied white male citizens between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

2. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

3. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE 8.

STATE DEBTS.

1. The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object, or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability

within twenty years from the the time of the contracting thereof, and shall be ir repealable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each judical district, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

ARTICLE 9.

INCORPORATIONS.

1. No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

2. Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide, by general laws, for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The State shall not directly or indirectly, become a stockholder in any corporation.

ARTICLE 10.

EDUCATION AND SCHOOL LANDS.

1. The General Assembly shall provide for the election, by the people, of a Superintendent of Public Instruction, who

shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the General Assembly may direct.

2. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved, A. D. 1841, and all estates of deceased persons, who may have died without leaving a will, or heir; and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the State.

3. The General Assembly shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

4. The money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several counties in which such money is paid or fine collected, among the several school districts of said counties, in the proportion to the number of inhabitants in such districts, to the support of common schools, or the establishment of libraries, as the General Assembly shall, from time to time, provide by law.

5. The General Assembly shall take measures for the

protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may hereafter demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE 11.

AMENDMENTS OF THE CONSTITUTION.

1. If at any time, the General Assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the General Assembly, in case a majority of the people vote in favor of a convention, said General Assembly shall provide for an election of Delegates to a convention, to be held within six months after the vote of the people in favor thereof.

ARTICLE 12.

MISCELLANEOUS.

1. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery and cases where the question of title to any real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding five hundred dollars.

2. No new county shall be laid off hereafter, nor old county reduced, to less contents than four hundred and thirty-two square miles.

3. The General Assembly shall not locate any of the public lands, which have been or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant so exempted shall not exceed three hundred and twenty acres.

ARTICLE 13.

SCHEDULE.

1. That no inconvenience may arise from the change of a Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, contracts, claims and rights, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Iowa, shall be as valid as if issued in the name of the State.

2. All the laws now in force in this Territory, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the General Assembly of this State.

3. All fines, penalties, and forfeitures, accruing to the Territory of Iowa, shall accrue to the use of the State.

4. All recognizances heretofore taken, or which may hereafter be taken, before the organization of the judicial department under this constitution, shall remain valid, and shall pass to, and may be prosecuted in the name of the State. And all bonds executed to the Governor of this Territory, or to any other officer in his official capacity, shall pass over to the Governor of the State, or other proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for, and recovered accordingly. All criminal prosecutions and penal actions, which have arisen, or may arise, before the organization of the judicial department under this constitution, and which shall then be

pending, may be prosecuted to judgment and execution in the name of the State.

5. All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of this Territory, shall continue to hold and execute their respective offices and appointments until superseded under this constitution.

6. The first general election under this constitution, shall be held at such time as the Governor of the Territory, by proclamation, may appoint, within three months after its adoption, for the election of a Governor, two Representatives in the Congress of the United States, (unless Congress shall provide for the election of one Representative,) members of the General Assembly, and one Auditor, Treasurer, and Secretary of State. Said election shall be conducted in accordance with the existing election laws of this Territory, and said Governor, Representatives in the Congress of the United States, Auditor, Treasurer, and Secretary of State, duly elected at said election, shall continue to discharge the duties of their respective offices for the time prescribed by this constitution, and until their successors are elected and qualified. The returns of said election shall be made in conformity to the existing laws of this Territory.

7. Until the first enumeration of the inhabitants of this State as directed by this Constitution, the following shall be the apportionment of the General Assembly:

The county of Lee shall be entitled to two Senators and five Representatives;

The county of Van Buren, two Senators and four Representatives;

The counties of Davis and Appanoose, one Senator and one Representative, jointly;

The counties of Wapello and Monroe, one Senator jointly, and one Representative each;

The counties of Marion, Polk, Dallas and Jasper, one Senator and two Representatives, jointly;

The county of Des Moines, two Senators and four Representatives;

The county of Henry, one Senator and three Representatives;

The county of Jefferson, one Senator and three Representatives;

The counties of Louisa and Washington, one Senator jointly, and one Representative, each;

The counties of Keokuk and Mahaska, one Senator jointly, and one Representative each;

The counties of Muscatine, Johnson and Iowa, one Senator and one Representative jointly, and Muscatine one Representative, and Johnson and Iowa one Representative jointly;

The counties of Scott and Clinton, one Senator jointly, and one Representative each;

The counties of Cedar, Linn and Benton, one Senator jointly, the county of Cedar one Representative, and the counties of Linn and Benton, one Representative jointly;

The counties of Jackson and Jones, one Senator and two Representatives;

The counties of Dubuque, Delaware, Clayton, Fayette, Buchanan and Blackhawk, two Senators, and two Representatives jointly;

And any country attached to any county for judicial purposes, shall, unless otherwise provided for, be considered as forming part of such county for election purposes.

8. The first meeting of the General Assembly under this Constitution shall be at such time as the Governor of the Territory may, by proclamation, appoint, within four months after its ratification by the people, at Iowa City, in Johnson county, which place shall be the Seat of Government of the State of Iowa, until removed by law.

Done in Convention, at Iowa City, this 18th day of May, in the year of our Lord, one thousand eight hundred and forty six, and of the Independence of the United States of America, the seventieth.

In Testimony Whereof, We have hereunto subscribed our names:

ENOS LOWE, President.

Thomas Dibble,	Josiah Kent,
Erastus Hoskins,	George Berry,
David Galland,	Socrates H. Tryon,
Sullifand S. Ross,	William Hubbell,
Shepherd Leffler,	Stewart Goodrell,
Curtis Bates,	Alvin Saunders,
William G. Coop,	Sylvester G. Matson,
John Ronalds,	S. A. Bissell,
S. B. Shelleday,	John Conrey,
David Olmsted,	William Steele,
Joseph H. Hedrick,	John J. Selman,
Sanford Harned,	James Grant,
G. W. Bowie,	Thomas McCraney,
George Hobson,	Francis K. O'Ferrall,
Wareham G. Clark,	J. Scott Richmam,
Henry P. Haun.	

Attest—WILLIAM THOMPSON, Secretary.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City, on the first Monday of May, 1846, p. iii.*

ORDINANCE.

Be it ordained by the Convention assembled to form a Constitution for the State of Iowa, in behalf of the people of said State, that the following propositions shall be made to the Congress of the United States, which, if assented to by that body, shall be obligatory on this State.

1. Section number sixteen in every surveyed township of public lands, and where such section has been disposed of, other lands equivalent thereto, and as contiguous as may be,

shall be granted to the State for the use of common schools.

2. The seventy-two sections of land set apart and reserved for the use and support of a University by an act of Congress, approved on the twentieth of July one thousand eight hundred and forty, entitled "An act granting two townships of land for the use of a University in the Territory of Iowa," shall be applied solely to the use and support of such University in such manner as the General Assembly may direct.

3. That one quarter section of land in each township be granted to the State for the purpose of purchasing a common school library for the use of such township.

4. That five per cent of the net proceeds of the sales of all public lands lying within this State, which shall be sold by Congress after the admission of the State into the Union, shall be granted to the State for the use of common schools.

That in consideration of the grants specified in the four foregoing propositions, it is declared that this State will never interfere with the primary disposal of the soil within the same, by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bonafide purchasers thereof, and that no tax shall be imposed on lands, the property of the United States, and that in no case shall nonresident proprietors be taxed higher than resident.

—*Reprinted from Journal of the Convention for the Formation of a Constitution for the State of Iowa, begun and held at Iowa City on the first Monday of May, 1846, p. xx.*

THE VOTE IN AUGUST, 1846, ON THE CONSTITUTION OF 1846.

Abstract of votes given for and against the Constitution in the different Counties in the Territory of Iowa on the first Monday to-wit on the 3rd day of August. A. D. 1846.

COUNTIES	FOR	AGAINST
Cedar	244	214
Jefferson	639	566
Jasper	33	29
Clayton	152	199
Jones	109	154
Munroe	112	70
Marion	188	89
Jackson	588	166
Benton	40	17
Mahaska	268	292
Linn	391	183
Scott	296	245
Wapello	550	437
Davis	339	225
Van Buren	841	872
Appanoose	88	6
Keokuk	333	191
Iowa	36	12
Washington	231	389
Henry	428	825
Polk	87	168
Du Buque	395	597
Clinton	167	155
Muscatine	309	424
Des Moines	801	954
Lee	1287	785
Louisa	182	458
Johnson	358	314
	<hr/>	<hr/>
	9492	9036

I certify that this abstract of votes from the different above named counties, has this day been carefully compared with the several returns from said counties made to the Secretary of the Territory and found to be a correct exhibit of the same. Executive Office,

Burlington, Iowa Territory, September 8th, A. D. 1846.

JAMES CLARKE.

—*Printed from the original manuscript as preserved in the office of the Secretary of the Commonwealth of Iowa.*

THE GOVERNOR'S PROCLAMATION.

PROCLAMATION.

Returns having been received at the office of the Secretary of the Territory of the votes taken for and against the Constitution, at the general election held on the third day of August last, in all the organized counties thereof except Delaware and Buchanan, in conformity to the provisions of "An act to provide for the election of Delegates to a Convention to form a Constitution and State Government," approved January 17, 1846; and the said votes so returned having been counted in the presence of the undersigned, Governor of the said Territory, and examined and compared as contemplated by law; It is hereby declared and made known, (in compliance with the spirit and intention of the provisions of said act,) that there were given, in the counties from which returns have been received, nine thousand, four hundred and ninety-two votes for the Constitution, and nine thousand and thirty-six votes against it, making a majority of *four hundred and fifty-six* votes in favor of the Constitution:

And Whereas, said majority exceeds by three hundred and seventy-nine votes the aggregate vote cast at the election held in August, 1845, for Delegate to Congress, in the counties not returned, thus making it manifest, in the absence of com-

plete returns, that a majority of the votes have been cast in favor of the adoption of the Constitution. It is therefore, conformably to the provisions of the statute, hereby proclaimed, that the Constitution for the State of Iowa, adopted in Convention on the eighteenth day of May, 1846, has been formally ratified and adopted by the people.

And Whereas, under the Constitution thus adopted, it is made the duty of the Governor of the Territory to designate, by proclamation, a day for the holding of the first general election for the selection of State officers, and members of the first State Legislature. Be it therefore known, that MONDAY, THE 26TH DAY OF OCTOBER NEXT, is the day fixed upon for the holding of said State election, at which time the qualified electors of Iowa will elect one Governor, two Representatives in Congress of the United States, one Secretary of State, one State Auditor, one State Treasurer, and such number of members of the Senate and House of Representatives of the State as are designated and provided for in article thirteen of said Constitution. Said elections, under said Constitution, are to be conducted in all respects according to the existing laws of the Territory, except only in such cases as the same may be found to conflict with the Constitution under which the election will be held.

In Testimony whereof, I have hereunto subscribed
L. S. my name, and caused the Seal of the Territory to
be affixed.

Done at Burlington, this ninth day of September, in the year of our Lord one thousand eight hundred and forty-six, and of the Independence of the United States the seventy-first.

JAMES CLARKE.

By the Governor,
JESSE WILLIAMS,
Secretary of the Territory.

—*Reprinted from the Bloomington Herald, New Series, Vol. I. No. 22, September 11th, 1846.*