

1835 amendments to the North Carolina Constitution

As you read...

By the 1830s, pressure for reform was building to a level that the legislature could not, or would not, address. Westerners remained frustrated with their lack of representation in the state government. They lacked access to education and transportation, they owned far fewer slaves than easterners, and their religious and ethnic diversity also made them a distinct region. During the election of 1833, a question was added to the ballot in thirty-one western counties, asking whether people supported holding a convention to amend the state constitution. The vote was 33,000 to 1,000 in favor of a convention!

By 1835, the Whigs had come to power in North Carolina, and backed by Whig votes, a convention was held at Raleigh to amend the state constitution. The amendments gave more direct power to the people, by providing for direct election of the governor and by giving greater representation to more populous counties. They also disfranchised — took the vote from — free blacks, a change that reflected new fears after Nat Turner's Rebellion.

This document contains only the **amendments** to the state constitution, not the entire new constitution. We've summarized the various changes in the left-hand column, and you can use those notes as a way to skim the document.

Article I.

SECTION 1.

Representation in the Senate¹. The Senate of this State shall consist of fifty Representatives, biennially chosen by ballot, and to be elected by districts; which districts shall be laid off by the General Assembly, at its first session after the year one thousand eight hundred and forty-one; and afterwards, at its first session after the year one thousand eight hundred and fifty-one; and then every twenty years thereafter, in proportion to the public taxes paid into the Treasury of the State, by the citizens thereof; and the average of the public taxes paid by each county into the Treasury of the State, for the five years preceding the laying off of the districts, shall be considered as its proportion of the public taxes, and constitute the basis of apportionment: Provided, That no county shall be divided in the formation of a Senatorial district. And when there are one or more counties having an excess of taxation above the ratio to form a Senatorial district, adjoining a county or

counties deficient in such ratio, the excess or excesses aforesaid shall be added to the taxation of the county or counties deficient, and if, with such addition, the county or counties receiving it, shall have the requisite ratio, such county and counties each, shall constitute a Senatorial district.

Representation in the House of
Commons²

- The House of Commons shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by counties according to their federal population, that is, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons, and each county shall have at least one member in the House of Commons, although it may not contain the requisite ratio of population.
3. This apportionment shall be made by the General Assembly, at the respective times and periods when the districts for the Senate are hereinbefore directed to be laid off; and the said apportionment shall be made according to an enumeration to be ordered by the General Assembly, or according to the census which may be taken by order of Congress, next preceding the period of making such apportionment.
 4. In making the apportionment in the House of Commons, the ratio of representation shall be ascertained by dividing the amount of Federal population in the State, after deducting that comprehended within those counties which do not severally contain the one hundred and twentieth part of the entire Federal population aforesaid, by the number of Representatives less than the number assigned to the said counties. To each county containing the said ratio, and not twice the said ratio, there shall be assigned one Representative; to each county containing twice, but not three times the said ratio, there shall be assigned two Representatives, and so on progressively, and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

SECTION 2.

Setting out temporary House of
Commons and Senate
districts.³

1. Until the first session of the General Assembly, which shall be had after the year eighteen hundred and forty-one, the Senate shall be composed of members to be elected from the several districts hereinafter named, that is to say, the 1st district shall consist of the counties of Perquimons and Pasquotank; the 2d district, of Camden and Currituck; the 3d district, Gates and Chowan; the 4th district, Washington and Tyrrell; the 5th district, Northampton; the 6th district, Hertford; the 7th district, Bertie; the 8th district, Martin; the 9th district, Halifax; the 10th district, Nash; the 11th district, Wake; the 12th district, Franklin; the 13th district, Johnston; the 14th district, Warren; the 15th district, Edgecomb; the 16th district, Wayne; the 17th district, Greene and Lenoir; the 18th district, Pitt; the 19th district, Beaufort and Hyde; the 20th district, Carteret and Jones; the 21st district, Craven; the 22d district, Chatham; the 23d district, Granville; the 24th district, Person; the 25th district, Cumberland; the 26th district, Sampson; the 27th district, New-Hanover; the 28th district, Duplin; the 29th district, Onslow; the 30th district, Brunswick, Bladen, and Columbus; 31st district, Robeson and Richmond; the 32d district, Anson; the 33d district, Cabarrus; the 34th district, Moore and Montgomery; the 35th district, Caswell; the 36th district, Rockingham; the 37th district, Orange; the 38th district, Randolph; the 39th district, Guilford; the 40th

district, Stokes; the 41st district, Rowan; the 42d district, Davidson; the 43d district, Surry; the 44th district, Wilkes and Ashe; the 45th district, Burke and Yancy; the 46th district, Lincoln; the 47th district, Iredell; the 48th district, Rutherford; the 49th district, Buncombe, Haywood and Macon; the 50th district, Mecklenburg: — each district to be entitled to one Senator.

2. Until the first session of the General Assembly after the year eighteen hundred and forty-one, the House of Commons shall be composed of members elected from the counties in the following manner, viz: The counties of Lincoln and Orange shall elect four members each. The counties of Burke, Chatham, Granville, Guilford, Halifax, Iredell, Mecklenburg, Rowan, Rutherford, Surry, Stokes, and Wake shall elect three members each. The counties of Anson, Beaufort, Bertie, Buncombe Cumberland, Craven, Caswell, Davidson, Duplin, Edgecomb, Franklin, Johnston, Montgomery, New-Hanover, Northampton, Person, Pitt, Randolph, Robeson, Richmond, Rockingham, Sampson, Warren, Wayne, and Wilkes shall elect two members each. The counties of Ashe, Bladen, Brunswick, Camden, Columbus, Chowan, Currituck, Carteret, Cabarrus, Gates, Greene, Haywood, Hertford, Hyde, Jones, Lenoir, Macon, Moore, Martin, Nash, Onslow, Pasquotank, Perquimons, Tyrrell, Washington and Yancy shall elect one member each.

SECTION 3.

- Property requirement for election to the Senate. Each member of the Senate shall have usually resided in the district for which he is chosen for one year immediately preceding his election, and for the same time shall have possessed and continue to possess in the district which he represents, not less than three hundred acres of land in fee⁴.
- Property requirement for voting for the Senate. All free men of the age of twenty-one years, (except as is hereinafter declared) who have been inhabitants of any one district within the State twelve months immediately preceding the day of any election, and possessed of a freehold within the same district of fifty acres of land, for six months next before and at the day of election, shall be entitled to vote for a member of the Senate.
- Free blacks banned from voting.⁵ No free negro, free mulatto, or free person of mixed blood, descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) shall vote for members of the Senate or House of Commons.

SECTION 4.

1. In the election of all officers, whose appointment is conferred on the General Assembly by the Constitution, the vote shall be viva voce⁶.
2. The General Assembly shall have power to pass laws regulating the mode of appointing and removing Militia Officers.
- Limiting private laws³. The General Assembly shall have power to pass general laws regulating divorce and alimony, but shall not have power to grant a divorce or secure alimony in any individual case.
4. The General Assembly shall not have power to pass any private law, to alter the name of any person, or to legitimate any persons not born in lawful wedlock, or to restore to

the rights of citizenship any person convicted of an infamous crime; but shall have power to general laws regulating the same.

5. The General Assembly shall not pass any private law, unless it shall be made to appear that thirty days notice of application to pass such law have been given, under such directions and in such manner as shall be provided by law.
6. If vacancies shall occur by death, resignation or otherwise, before the meeting of the General Assembly, writs may be issued by the Governor, under such regulations as may be prescribed by law.
7. The General Assembly shall meet biennially, and at each biennial session shall elect, joint vote of the two Houses, a Secretary of State, Treasurer and Council of State, who shall continue in office for the term of two years.

Article II.

Popular election of the governor⁸ The Governor shall be chosen by the qualified voters for the members of the House of Commons, at such time and places as members of the General Assembly are elected.

Popular election of the governor⁹ He shall hold his office for the term of two years from the time of his installation, and until another shall be elected and qualified; but he shall not be eligible more than four years in any term of six years.

3. The returns of every election for Governor shall be sealed up and transmitted to the Seat of Government, by the returning officers, directed to the Speaker of the Senate, who shall open and publish them in the presence of a majority of the members of both Houses of the General Assembly. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by joint vote of both Houses of the General Assembly.
4. Contested elections for Governor shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.
5. The Governor elect shall enter on the duties of the office on the first day of January next after his election, having previously taken the oaths of office in the presence of the members of both branches of the General Assembly, or before the Chief-Justice of the Supreme Court, who, in case the Governor elect should be prevented from attendance before the General Assembly, by sickness or other unavoidable cause, is authorised to administer the same.

Article III.

New rules for impeachment (removal from office) of state officers.

SECTION 1.

1. The Governor, Judges of the Supreme Court, and Judges of the Superior Courts, and all other officers of this State, (except Justices of the Peace and Militia Officers,) may be impeached for wilfully violating any Article of the Constitution, mal-administration or corruption.

2. Judgment, in cases of Impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party convicted may nevertheless be liable to indictment, trial, judgment and punishment according to law.
3. The House of Commons shall have the sole power of impeachment. The Senate shall have the sole power to try all impeachments. No person shall be convicted upon any impeachment, unless two-thirds of the Senators present shall concur in such conviction; and before the trial of any impeachment, the members of the Senate shall take an oath or affirmation truly and impartially to try and determine the charge in question, according to evidence.

SECTION 2.

1. Any Judge of the Supreme Court, or of the Superior Courts, may be removed from office for mental or physical inability, upon a concurrent Resolution of two-thirds of both branches of the General Assembly. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the General Assembly shall act thereon.
2. The Salaries of the Judges of the Supreme Court, or of the Superior Courts, shall not be diminished during their continuance in office.

SECTION 3.

Upon the conviction of any Justice of the Peace, of any infamous crime, or of corruption and mal-practice in office, the commission of such Justice shall be thereby vacated, and he shall be forever disqualified from holding such appointment.

SECTION 4.

The General Assembly, at its first session after the year one thousand eight hundred and thirty-nine, and from time to time thereafter, shall appoint an Attorney General, who shall be commissioned by the Governor, and shall hold his office for the term of four years; but if the General Assembly should hereafter extend the term during which Solicitors of the State shall hold their offices, then they shall have power to extend the term of office of the Attorney General to the same period.

Article IV.

New rules for amending the
state constitution.

SECTION 1.

1. No Convention of the People shall be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each House of the General Assembly.
2. No part of the Constitution of this State shall be altered, unless a Bill to alter the same shall have been read three times in each House of the General Assembly, and agreed

to by three-fifths of the whole number of members of each House respectively; nor shall any alteration take place until the bill so agreed to shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly shall be agreed to in the first session thereafter, by two-thirds of the whole Representation in each House of the General Assembly, after the same shall have been read three times on three several days, in each House, then the said General Assembly shall prescribe a mode by which the Amendment or Amendments may be submitted to the qualified voters of the House of Commons throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters have approved thereof, then, and not otherwise, the same shall become a part of the Constitution.

SECTION 2.

Religious test for office-holding¹⁰

The Thirty-second Section of the Constitution shall be amended to read as follows: No person who shall deny the being of God, or the truth of the Christian Religion, or the divine authority of the Old or New Testament, or who shall hold Religious principles incompatible with the freedom or safety of the State, shall be capable of holding any office or place of trust or profit in the Civil department within this State.

SECTION 3.

Capitation tax equalized¹¹.

- Capitation tax shall be equal throughout the State, upon all individuals subject to the same.
2. All free males over the age of twenty-one years, and under the age of forty-five years, and all slaves over the age of twelve years, and under the age of fifty years, shall be subject to capitation tax, and no other person shall be subject to such tax; provided, that nothing herein contained shall prevent exemptions of taxable Polls, as heretofore prescribed by law, in cases of bodily infirmity.

SECTION 4.

No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or any other State or Government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to Officers in the Militia or Justices of the Peace.

On the web

The North Carolina Constitution and Declaration of Rights

<http://www.learnnc.org/lp/pages/4330>

Full text of the 1776 state constitution of North Carolina, with historical commentary.

Exploring the relevance of North Carolina's State Constitution

<http://www.sog.unc.edu/programs/civiced/resources/docs/ExploringRelevanceofNCStateConst8.pdf>

In this lesson from the North Carolina Civic Education Consortium, students will learn how the North Carolina Constitution is relevant in today's world. They will view and take guided notes from a Power Point that explains the changes made to the state Constitution since its ratification in 1776, helping students understand that the state Constitution is a "living document" and that it can be updated to reflect the times while keeping its core principals the same.

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Notes

1. The Senate was fixed at 50 members. Representation in the Senate was by district, and the districts were not by population but by the taxes they paid into the state treasury — so that, in effect, each state Senator represented roughly the same amount of money, not the same number of people. How would you expect that to affect the way the Senate worked and voted?

Additionally, this and the next section provided for elections every two years (biennially), instead of every year. Proponents of democracy such as Nathaniel Macon argued against this change, believing that annual elections were a cornerstone of democracy. When this amendment was adopted, Macon said, "Democracy is dead in North Carolina."

2. The House of Commons, the lower house of the assembly, was fixed at 120 members. Each county had one or more representatives, depending on its "federal population" — the population defined by the U.S. Constitution for representation in the U.S. House of Representatives, as explained here.

Previously, each county had been represented equally, and so citizens in large counties in effect had less representation than those in small counties.

3. The General Assembly was to determine House and Senate districts, but of course the Assembly couldn't be elected until districts were drawn. This section assigns temporary districts, which are in force until after the census of 1840.
4. To possess land "in fee simple" is to own it outright.
5. Four years after Nat Turner's Rebellion, all African Americans were barred from voting for members of the state legislature. Note, too, how they are defined: Any person with a *single great-great grandparent* who was of African descent, even if all other ancestors had been white, was defined as a "mulatto." That definition prevailed throughout the South; the notion was that "one drop" of African blood was enough to make a person no longer white.
6. By voice (rather than by ballot).
7. A "private law" was a law affecting only a certain named person or people. The U.S. Constitution bars Congress from passing such laws.

8. The amendments to Article II made the Governor elected directly by the people, not by the legislature. This change increased the people's direct voice in government. It also made the Governor more powerful, since he was no longer subject to the will of the legislature.

The eligible voters were all those eligible to vote for the House of Commons, the lower house of the General Assembly. The House of Commons had lower qualifications for voting than the Senate.

Some leaders, such as Nathaniel Macon, opposed the change not because they opposed democracy in principle, but because they were appalled at the effects of party politics. They feared that political parties would corrupt the electoral process in popular elections for governor.

9. The Governor's term was now two years, instead of one.
10. Previously, only Protestants could hold public office in North Carolina. This amendment allowed any Christian to hold public office. The change was made at the urging of William Gaston, a judge on the state Supreme Court and former state legislator and U.S. Representative.

Gaston was himself Catholic, and was so widely respected that no one tried to enforce the law against him. Only once, in fact, had anyone tried to enforce that provision of the state constitution. In 1808, Jacob Henry, who was Jewish, was elected to the House of Commons from Carteret County, and the following year another representative tried to have him barred from his seat. But Gaston, then a member of the House of Commons, defended Henry, and the House decided to let him take his seat.

In fact, many of those who voted against the 1835 amendment opposed any religious test for office-holding at all. But North Carolina would remain, at least to this extent, legally a Christian state until after the Civil War.

11. The *capitation* tax was a *head tax*, a flat tax per person or "head." Each person pays the same amount of money, regardless of income or wealth. This amendment stated that the capitation tax must fall equally on all free men between the ages of 21 and 45 and on all slaves between the ages of 12 and 50. The age range for slaves reflected the range during which a slave could be expected to be a productive worker in the fields. Similarly, although free women were not expected to work and to produce income, slave women did work and thus produced income for their masters.

This kind of tax is now called a *poll tax* — not because it was used in the twentieth-century South to bar poor blacks from voting at the polls, but because the old English word *poll* once meant head.