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Admission of South Dakota into the Union and for the organization of Territory of North Dakota

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ADMISSION OF SOUTH DAKOTA INTO THE UNION AND
FOR THE ORGANIZATION OF TERRITORY OF NORTH
DAKOTA.

FEBRUARY 24, 1888.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SPRINGER, from the Committee on the Territories, submitted the following

ADVERSE REPORT:

[To accompany bill H. R. 1679.]

The Committee on the Territories, to whom was referred the bill (H. R. 1679) to provide for the admission of South Dakota into the Union and for the organization of the Territory of North Dakota, having had the same under consideration, respectfully submit the following report :

A Senate bill containing substantially the same provisions was referred to the Committee on the Territories of the House of Representatives during the first session of the Forty-ninth Congress. After a careful consideration of the provisions of that bill, the committee were of the opinion that it ought not to pass, and on the 25th day of May, 1886, the following report thereon was submitted to the House :

The Committee on the Territories, to whom was referred the bill (S. 967) providing for the admission of the State of Dakota into the Union, and for the organization of the Territory of Lincoln, having had the same under consideration, respectfully submit the following report :

The admission of Dakota, or a portion of Dakota, into the Union as a State has been a subject much discussed in Congress and by the people of that Territory. The report of the Senate Committee on the Territories at this session, accompanying Senate bill No. 967, contains much valuable information as to the resources of Dakota, and also gives a history of the various steps taken in Congress and by the people of Dakota, with a view to their admission. It is not necessary to recapitulate the matter contained in the Senate report. That report and the bill favor the admission of what is known as the southern half of the Territory of Dakota, and the organization of a Territorial government for the northern half. The dividing line is on the forty-sixth parallel of north latitude. From the data contained in that report it appears that the population of Dakota, according to the census taken in the Territory in 1885, was 415,664; and, as divided by the proposed new State on the forty-sixth parallel, there were in North Dakota 152,199 inhabitants, and in South Dakota 263,465. The area of the Territory of Dakota as constituted is 149,100 square miles, and the area of the portion south of the forty-sixth parallel is estimated at 77,000 square miles.

The history of the movement for the organization of a new State is set forth in the Senate report already referred to. It seems that the Territorial legislature passed an act on the 9th of March, 1885, providing for the calling of a constitutional convention for the purpose of framing a constitution and State government for that part of the Territory lying south of the forty-sixth parallel and performing all other things essential to the preparation of the Territory for making application to the General Government for the admission of such part of Dakota into the Union. The election

was held as provided, and the convention assembled at Sioux Falls on the 8th of September, 1885. The constitution was framed and submitted to a vote of the people of that part of the Territory on the first Monday in November, 1885, the vote resulting as follows: For the constitution, 25,226; against, 6,565; showing a total vote of 31,791. There was a separate vote on the constitutional provision prohibiting the manufacture and sale of intoxicating liquors in the State of Dakota, which resulted as follows: For the prohibitory amendment, 15,570; against, 15,337; being a majority of 233 in favor thereof.

Another constitutional provision was voted upon separately, namely, the provision providing for minority representation in the election of members of the house of representatives of the State legislature. This provision received 11,273 votes; and there were 16,765 against it.

At the last general election in Dakota, November, 1884, Mr. Gifford, Republican candidate for Delegate in Congress, received in the whole Territory 71,579 votes; and Mr. Wilson, the Democratic candidate, received 15,124 votes; and 61 votes were cast for other candidates, making a total vote in the Territory at that time of 86,764.

As the total population in 1885 was 415,664, the number of votes in 1884 to each inhabitant would be 4.77 inhabitants to each voter. As there were 263,465 inhabitants in that part of Dakota which is organized by the Senate bill into the State of Dakota, upon the same ratio there would be 57,330 voters in the proposed State of Dakota; but of these, however, only 31,791 electors voted on the question of adopting the constitution, and of these but 25,226 voted in favor of the constitution, showing that 32,104 electors in the proposed State of Dakota either voted against the constitution or did not vote at all.

It also appears that 15,570 electors voted for adopting the constitutional provision prohibiting the manufacture and sale of intoxicating liquors in the proposed State, which shows that 41,560 electors in the proposed State either voted against that important provision, or were absent and not voting.

It must be remembered, however, that the census of 1885 was taken one year after the vote on election of Delegate in Congress in 1884, and that there had been a large increase in population during that year. It is safe to estimate that there were four inhabitants to each voter, according to the census of 1885. This would show a voting population in the proposed State of Dakota of 65,866 on November 3, 1885, when the constitution was submitted to a popular vote. The constitution, having received only 25,226 votes, there were at least 38,642 electors who either voted against the proposed constitution or absented themselves from the polls. The absence of so large a number of electors can not be accounted for other than upon the supposition that the electors were indifferent to the result, or took no interest in the subject. It appears that the Democratic Territorial committee published an address to the Democratic voters and people of Dakota, dated October 15, 1885, in which said committee declined to call a Democratic convention for the nomination of officers for the proposed State, and recommended that the Democrats of Dakota, and all law-abiding citizens generally, should decline to take any part whatever in the proposed election and proceedings looking to the formation of a State government for the southern half of the Territory. It may be safe to infer, therefore, that the great mass of the Democratic voters in that part of the Territory declined to participate in the election, and the result shows that a large number of Republicans also purposely declined to vote or were indifferent as to the result.

The most extraordinary efforts were used on the part of the friends of the new State movement to secure a large vote upon the question of ratifying the constitution. A full set of State officers was elected, and at the same time there were elected two Representatives in Congress, three justices of the supreme court, circuit judges for the several circuits in the proposed State, senators and representatives in the State legislature, and five places were voted upon as competing points for the location of the State capitol. The separate propositions in the constitution on prohibition and minority representation were also calculated, especially the former, to draw out a large vote; but, notwithstanding, all of these questions and the most strenuous efforts on the part of the friends of the new State movement to secure a large vote, the result shows that but 25,000 out of 63,000 electors in that part of the Territory came to the polls and voted for the proposed State constitution. But there were 86,000 electors in the whole Territory in November, 1884, over 100,000 electors in the whole Territory in November, 1885, and of the 100,000 electors in the whole Territory but 25,000 have indicated a desire for the admission of the southern half of Dakota into the Union as a separate State.

It can not be said, in view of these facts, that the people of Dakota, and especially of South Dakota, are in favor of admitting into the Union the southern part of the Territory as a State.

The movement having in view the formation of two States to be carved out of the Territory of Dakota originated in that Territory. Congress has in no way recognized or

authorized it. The rule for the admission of new States into the Union has not been uniform. Of the twenty-five new States admitted heretofore fifteen were admitted in pursuance of enabling acts passed by Congress. In the cases of the ten other States, there were peculiar circumstances attending the admission of each. While the movement resulting in their admission originated in the proposed States, yet there is not a single instance in which a Territory has inaugurated a movement looking to the formation of two or more States out of the area of which it was composed. There have, as in the cases of Iowa and Michigan, been some controversies as to the boundary lines, and, in the case of California, the boundaries had not been previously fixed by Congress, yet there has not been heretofore any precedent for the admission of a part of an organized Territory in to the Union as a State, under proceedings originating in the Territory.

The present statehood movement in Dakota is without precedent, and has no just claim to the favorable consideration of Congress. The right to create Territorial governments within the public domain, to fix their boundaries, and provide for their admission into the Union rests solely in Congress. Congress may, in its discretion, ratify proceedings taken in a Territory looking to its admission into the Union. But until such ratification all such proceedings are irregular and without binding force. Judge Cooley, in his work on Constitutional Limitations, lays down the law upon this subject as follows:

"The people of the several Territories may form for themselves State constitutions whenever enabling acts for that purpose are passed by Congress, but only in the manner allowed by such enabling acts, as through the action of such persons as the enabling act shall clothe with the elective franchise to that end.

"If the people of a Territory shall of their own motion, without such enabling act, meet in convention, frame and adopt a constitution and demand admission to the Union under it, such action does not entitle them as matter of right to be recognized as a State; but the power that can admit can also refuse, and the Territorial status must be continued until Congress shall be satisfied to suffer the Territory to become a State.

"There are always in these cases questions of policy as well as of constitutional law to be determined by the Congress before the admission becomes a matter of right—whether the constitution formed is republican, whether suitable and proper State boundaries have been fixed upon, whether the population is sufficient, whether the proper qualifications for the exercise of the elective franchise have been agreed to, whether any inveterate evil exists in the Territory which is now subject to control, but which might be perpetuated under a State government; these and the like questions, in which the whole country is interested, can not be finally solved by the people of the Territory for themselves, but the final decision must rest with Congress, and the judgment must be favorable before admission can be claimed or expected." (Constitutional Limitations, 4th ed., pp. 38, 39.)

Senator Edmunds, of Vermont, pending the discussion in the Senate on the bill for the admission of Nebraska into the Union, said:

"There is no inherent right in the people of any Territory to be constituted into a State. Congress may never organize a Territory at all; it may never dispose of its public lands there; when organized, it may keep it in the perpetual condition of a Territory if it pleases, because all the considerations which govern such questions are considerations which merely appeal to the ordinary legislative discretion of the law-making power, and therefore every circumstance and consideration which enters into the fitness of the thing itself, which is proposed to be done is a matter that we have no right to set aside." (Congressional Globe, 1866-'67, Part I, page 215.)

Much stress is laid by the Senate report upon the provisions of the ordinance of 1787, but it is not claimed even by that report that any of the Territories embraced within the provisions of that ordinance could become a State without sanction of Congress. It is conceded that the existence of a State is a political fact, and involves the admission of its Senators and Representatives to the Congress of the United States. It is contended by some that the people of the Territory of Dakota have the right to determine whether the Territory shall be divided in the manner proposed in the Senate bill. The right of local self-government, it is claimed, entitles the people of Dakota to have the question of division or admission as a whole submitted to them, and that their wishes should govern in the premises. This is a right denied by the Constitution to the people of the States even. Section 3 of article 4 of the Constitution is as follows:

"New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislature of the States concerned as well as of the Congress."

The question as to whether the present Territory of Dakota shall be divided so as to lay the foundation for two States to be admitted to the Union hereafter is one

which concerns the people of all the States quite as much as it does the people of Dakota. The people of the States have just as much right to have that subject submitted to them for their approval as have the people of the Territory. The Senators and Representatives from the future State or States will participate in legislation affecting the whole country, and in the electoral college the electors based upon the number of Senators will be counted equally in the election of President and Vice-President of the United States. There are already in the Union two States having larger areas than has the Territory of Dakota. Texas has 274,000 square miles, and California 189,000 square miles. The area of the Territories is as follows: Dakota, 149,100; Montana, 146,080; New Mexico, 122,580; Arizona, 113,020; Wyoming, 97,890. The other Territories have less than 100,000 square miles, but more than 80,000. If Dakota is divided so as to constitute two States or Territories, each State will have less area than Nevada, Colorado, and Oregon; and if admitted as a whole will have a less area than California and Texas, as before stated.

The population of Dakota certainly does not entitle her at this time to be admitted into the Union as two States. There are but eight States in the Union which have, according to the census of 1880, a less population than is now claimed for the whole Territory of Dakota. Thirty States of the Union, therefore, have a greater population than has Dakota at this time. The States of New York and Pennsylvania have nearly 10,000,000 of people, and but four Senators in the United States Senate. Illinois and Ohio have over 6,000,000 inhabitants, and twenty States in the Union have more than 1,000,000 inhabitants each.

The average population of all the States, according to the census of 1880, is 1,342,000. It will thus be seen that Dakota, having 415,000 inhabitants in the entire Territory, according to the Territorial census of 1885, has but one-third of the average population of the States of the Union. It would be manifestly unjust to all the people of the United States to carve two States out of the present Territory of Dakota. It is claimed, however, that Dakota is fast increasing in population, and that this fact should be taken into consideration; but it is very doubtful whether the population of the region now comprised within that Territory will ever reach the average population of the States. For, while Dakota may be increasing, the other portions of the country are also rapidly increasing in population. But, without any increase of population in the States, it may safely be assumed that it will be many years before Dakota will reach a population of 1,342,000.

Your committee are therefore of the opinion that the people of the southern half of Dakota are not entitled to admission into the Union on an equal footing with the original States, and therefore recommend that the Senate bill admitting the proposed State into the Union and organizing a Territorial government for the northern half of that Territory should not pass.

Since the foregoing report was submitted, in May, 1886, there has been no official census of the population taken. But at the November election, 1886, the votes cast for Delegate in Congress were as follows: Mr. Gifford received 66,932 and Mr. Day received 37,879 votes, making an aggregate of 104,811 votes. The probabilities are that the proportion of voters to population is greater in Dakota than in the States. The Secretary of the Interior and the governor of the Territory, in their annual reports for 1887, estimated the population of the Territory (October 15, 1887) at 568,477.

In November, 1887, there was submitted to the people of the Territory, in pursuance of an act of the legislature approved March, 1887, the question of division of the Territory. In that election there were cast upon the proposition of division 37,784 votes for division and 32,913 votes against division, making a majority in the whole Territory of 4,781 in favor of division. The official returns of that election by counties, as furnished by the governor of the Territory, are as follows:

Counties.	Whole number of votes cast upon question of division.	Whole number of votes cast for division.	Whole number of votes cast against division.	Counties.	Whole number of votes cast upon question of division.	Whole number of votes cast for division.	Whole number of votes cast against division.
Aurora	1,238	727	199	Lake	1,023	614	409
Barnes	2,334	274	944	La Moure	514	155	359
Beadle	2,339	2,334	65	Lawrence	1,695	1,054	641
Benson	149	56	93	Lincoln	1,181	689	491
Billings	40	9	31	Logan	43	4	39
Bon Homme	1,219	856	363	Marshall	704	144	560
Bottineau	304	129	175	McCook	916	669	247
Brookings	1,520	918	602	McHenry	95	45	50
Brown	2,902	456	2,446	McIntosh	5	5	213
Brulé	999	722	277	McLean	222	93	120
Buffalo	95	69	26	McPherson	130	15	115
Butte	97	37	60	Mercer	12	12	56
Campbell	57	57	152	Miner	840	640	180
Cass	3,954	1,327	2,627	Minnehaha	2,905	1,926	979
Cavalier	642	29	613	Moody	723	336	387
Charles Mix	706	665	41	Morton	382	78	304
Clark	779	643	136	Nelson	330	330	361
Clay	818	409	409	Oliver	42	6	36
Codington	1,342	977	361	Pembina	1,689	437	1,252
Custer	389	158	231	Pennington	846	373	473
Davison	1,192	1,013	179	Potter	391	391	143
Day	1,007	467	542	Ramsey	777	562	215
Deuel	622	269	353	Ransom	839	282	553
Dickey	959	79	880	Richland	1,782	96	1,686
Douglas	755	645	110	Roberts	232	69	163
Eddy	285	67	218	Rolette	122	40	82
Edmunds	763	132	630	Sanborn	856	744	95
Emmons	257	7	250	Sargent	835	72	763
Fall River	250	191	59	Spink	1,883	1,307	576
Faulk	968	836	74	Stark	301	74	227
Foster	252	99	153	Steele	335	123	212
Grand Forks	2,528	1,587	941	Stutsman	1,161	384	777
Grant	1,049	589	510	Sully	426	370	56
Griggs	553	190	453	Towner	120	89	81
Hamlin	505	228	377	Trall	1,542	437	1,105
Hand	1,069	809	260	Turner	1,148	969	159
Hanson	504	504	205	Union	877	587	290
Hughes	685	668	17	Walsh	2,339	786	1,553
Hutchinson	785	703	82	Watworth	No election held.		
Hyde	455	423	82	Ward	532	365	167
Jerauld	542	453	89	Wells	119	43	76
Kidder	326	63	263	Yankton	863	796	67
Kingsbury	1,120	826	147				
				Total	67,618	37,784	32,913

There was submitted to the people at the same time a proposition in reference to local option, which was intended to have the effect of bringing out a large vote. But, notwithstanding the advocates of division of Dakota have asserted that there was great unanimity in Dakota in favor of division, it appears that only 37,784 voters in the whole Territory appeared at the polls in November last to record themselves in favor of that proposition.

There were undoubtedly more voters in the Territory in November, 1887, than there were in November, 1886, at the time of the election of a Delegate to Congress. At the election of 1886 on the choice of a Delegate there was an aggregate of 104,811 votes polled in the whole Territory. If we deduct from the whole number of votes in the Territory at that time the number voting for division in 1887 we find that 67,027 voters were either opposed to division or were indifferent as to the result—so indifferent as not to turn out and vote on the proposition. This would indicate that nearly 30,000 majority of the voters of Dakota were

either opposed to division of the Territory or were indifferent upon this subject. If we are therefore to be guided in our course by the wishes of the people of that Territory, as expressed in the popular election in 1887 upon that question, we have a right to assume that a large majority of the people of that Territory do not desire division.

But there is another view of this matter which seems to your committee more controlling even than this. The proposition submitted to the popular vote was for a division of the Territory into two parts, nearly in the middle, on a line running east and west. The south part was to constitute the State of South Dakota and the north part the Territory of North Dakota, soon to be admitted presumably as a State into the Union as such. If we are to be governed by the wishes of the people of North and South Dakota as to whether they desire to be put into separate political divisions, the people of each political division should have an equal right to be consulted as to whether they shall be so set apart into separate governments. By an examination of the table herewith submitted of the vote cast at the election of 1887 upon the question of division, it will be seen that the counties to compose the proposed State of South Dakota cast a majority of 15,259 votes for division, while the counties to compose the proposed Territory of North Dakota cast a majority of 10,388 against division. In North Dakota every county, with two exception, gave a majority against division. Of the 83 counties in the Territory only 37 gave majorities in favor of division, and 46 counties gave majorities against division. From a further examination of the geographical area of the counties voting for division, it will be seen that a very small proportion of the area of the whole Territory of Dakota voted for division.

If the wishes of the people of Dakota are to be considered in determining the question of division, the people of North Dakota are entitled to as great consideration as are those of South Dakota. There can be no just grounds for asserting the right to a division of a State or of a Territory, unless the people of both of the sections to constitute the new political divisions are favorable thereto. A large majority of the people of North Dakota are opposed to being set off by themselves into a separate government. We are under greater obligations to regard their wishes, and thus preserve the existing union, than we have to regard the wishes of the people of South Dakota, who seek to dissolve the union of the Territory and set up a new and separate government for themselves.

Another reason for opposing a division of Dakota, as provided in the pending bill, is found in the fact that there are in that Territory at this time nine Indian reservations, the jurisdiction over which is reserved to the United States, and excluded from the Territory and from the proposed State, so long as the Indian titles exist. The State can not tax the lands in these reservations, or derive any advantages from them. These reservations comprise over 26,847,105 acres, or 41,984 square miles. The great Sioux Reservation itself contains over 21,000,000 acres of land. Nearly all of this reservation, and several entire small reservations, are comprised within the limits of South Dakota. At least 37,000 square miles of South Dakota are covered by Indian reservations. If you deduct this area from the 77,000 square miles comprised within South Dakota, it will leave an area upon which the government of South Dakota will operate of only 40,000 square miles.

This is just about the area of the State of Ohio, and is less than the area of twenty-three States now in the Union, some of which, as in the case of New York, Pennsylvania, Ohio, Illinois, and Missouri, are very

populous, but all of which have larger areas than will be comprised within the State of South Dakota, excluding Indian reservations. White population is prohibited upon all these Indian reservations, and so far as the government of the State of South Dakota is concerned the Indian reservations might be excluded entirely.

In view of the foregoing reasons, and many others which might be suggested, your committee are of the opinion that neither the interests of the people of Dakota, nor a sound public policy, require the division of that Territory.

Your committee therefore report the bill back, with the recommendation that it do not pass.

H. Rep. 3—21

VIEWS OF THE MINORITY.

Mr. BAKER, of New York, from the Committee on the Territories, presented the following as the views of the minority:

The undersigned, the minority of the Committee on the Territories, respectfully dissent from the conclusions reached by the majority regarding the bill (H. R. 1679) entitled "To provide for the admission of the State of South Dakota into the Union and the organization of the Territory of North Dakota," and herewith present our views.

This measure, in substance, was presented to the Senate early in the Forty-ninth Congress, and passed that body at its first session in February, 1886. That portion of Dakota embraced within the provision of that bill had many times previous pressed its claims to statehood, its claims growing more and more pressing with each effort, until now they appear to us imperative.

In view of the fact that a full and complete report has been made upon this measure to the Senate from the Committee on Territories, in which is contained, among other things, a complete history of the movement, the undersigned have appended it hereto as a part of their report.

The population, resources, area, intelligence, and wealth of the great Territory and her people demand that Congress should act at once, and her rights, so long withheld, should be granted in the full spirit of American liberty.

There are no precedents or parallels for the injustice that has been done Dakota in this matter of refusing her statehood. When comparisons are made with South Dakota, kept out of the Union, with States admitted into the Union the contrast is so great as to seem invidious.

No party, as a political measure, can afford to ignore the will of a people expressed in a just cause. And no individual with a fair respect for the rights of the American citizens can deny statehood any longer.

The history of the efforts of the people of South Dakota for admission into the Union is written in disappointed hopes and denial of just rights to as loyal and intelligent a people as live in our land.

The confidence they had a right to repose in America's love of liberty and fairness has been broken.

For ten years she has pressed herself a peerless beauty in resources, wealth, numbers, and intelligence. The pride of all America, yet ignored by Congress and denied the right to enter her "father's house!"

South Dakota contains a population of about 375,000 and an area of about 75,000 square miles. The undersigned believe that it has ever been and is still the strong desire of a great majority of the people of all Dakota that a division of the Territory upon an east and west line, practically in the center, should be made.

It seems these people have laid the whole foundation of their political system with this in view, and we ask, in all candor and sincerity, what objection is there or can there be urged against granting it?

There can be no question whatever regarding the adaptability of the soil, resources, and climate to supporting and maintaining as dense a population as any of the adjoining or Western States.

Think of the teeming millions of people which will be forced under one State government within a very few generations if Dakota is admitted as a whole.

Think of New York, Pennsylvania, Ohio, and West Virginia as one State. Think of one legislature for all these people and this area. Imagine one legislature for Ohio, Kentucky, Tennessee, and West Virginia. And yet in fertility of soil, great rivers, plains, and variety of climate Dakota exceeds them all.

This illustrates precisely what the condition of affairs in Dakota will be within a generation or two if, against her will, she is forced into the Union as one State.

It is said that Texas is a larger State than Dakota would be if admitted as a whole. As a matter of fact Texas furnishes no precedence whatever for Dakota; moreover, provision was made when Texas was admitted to the Union for a speedy division of her territory into five States whenever the people thereof desired it. And now, because these people do not ask for division is it any assurance that they will not, or any possible excuse for not granting what the people of Dakota clearly wish, and certainly, in the judgment of the undersigned, what is clearly for their future interests?

Regarding what the people of Dakota have done in anticipation of admission of the Territory, and as clearly demonstrating their wishes in that regard, the undersigned refers more particularly to the Senate report appended hereto, and also refers to said report for a history of the statehood movement and precedents therefor.

The fundamental doctrine of this Government is that majorities must rule. If there is any one principle more pronounced than any other in both Democratic and Republican creeds it is to submit to a vote of the people. This voting has been done by the people of Dakota upon this question of division at an election duly provided for by the legislature of that Territory, carried on and protected by law, and, so far as appears, was fairly conducted. Both the Democratic and Republican conventions of the Territory asked that it should be done, the legislature provided for the election, and the people voted, and the result was nearly 5,000 majority in the whole Territory for a division thereof; and yet we are told this means nothing.

The time has been in the history of this great Government when one vote on who should be President meant something, and while many regret the result, and criticise the methods by which it was brought about, no one regrets obedience to it and submission thereto.

Therefore the undersigned ask, Are these people children; are they to be dealt with simply as children? Are they called upon to go to the polls and vote and have nothing meant by it? They went to the polls and voted at a time when people could not afford to go; the weather was good and fine and the people could not afford to leave their plows and go to the polls and vote.

But still they did go to the polls and voted, notwithstanding these impediments; 70,000 voted out of 104,000 who voted at the election in 1885.

It seems to be the feeling of some that the question of admission is to depend upon the complexion of the politics of the Territory. Your minority find no such theory in the constitution, no such creed in any

party. Is this Government a sham? Are we to name colonies of our own flesh and blood and keep them so? The people of these Territories are our fathers, sons, and brothers.

The whole of Dakota is included within one Territory at this time simply because its area was so defined more than a quarter of a century ago, before its civilized inhabitants numbered 5,000.

Had it been divided into two Territories at any time previous hereto no one would advocate for an instant the idea of forcing both sections into the Union as one State.

Is there any serious intention of annexing Idaho to Montana, or Washington to Wyoming or Utah, and forcing the two into the Union as one State? And yet this would be just as reasonable and just as the proposition to admit Dakota as a whole.

The proposition to force the people of Dakota into one State against their expressed will, or to deny them their rights, is simply the exercise of arbitrary power, and can almost be compared with sheer brute force.

It is repugnant to the spirit as well as the letter of our law and government. Political parties change, but governments, if founded in equity, justice, and intelligence, stand.

How applicable to this Dakota question is the language of that peerless leader and statesman, Senator Douglas, who, speaking of the right that should be accorded the people of a Territory to regulate their own affairs, said:

If there is any one principle dearer and more sacred than all others in a free government it is that which asserts the exclusive right of a free people to form and adopt their fundamental law and to regulate and manage their own internal affairs and domestic institutions.

I deny their right (Congress) to force a good thing upon a people who are unwilling to receive it.

We aroused the patriotism of the country and carried the election in defense of that great principle which allowed all white men to form and regulate their domestic institutions to suit themselves.

The immortal Douglas, were he living, would not attempt to force Dakota into the Union as one State against her will. His patriotism would carry him far above partisan considerations.

The framers and those who secured the approval of the ordinance of 1787, and thereby secured the admission of five States—Ohio, Indiana, Michigan, Wisconsin, and Illinois—would never insist upon such an act of injustice as forcing admission as a whole upon Dakota.

Those who secured the approval of the Louisiana purchase would not urge the admission of Dakota as one State.

The people of South Dakota come with 75,000 square miles. They come with nearly 400,000 people, and will be quite that many before they can be admitted into the Union by the earliest and quickest method possible.

They possess resources of agriculture, mineral and manufacturing wealth capable of sustaining a population within their borders of 10,000,000.

They have contributed over \$35,000,000 of gold and silver to the public circulation and are adding nearly \$5,000,000 more annually. They come with our 700 best offices paying a revenue into the national Treasury over and above their support.

They come with over 60,000 farms, averaging over 200 acres to the farm. They come with more horses and cattle than any one of twenty States already in the Union.

They come with nearly 300 banks.

They offer to us 30 colleges, seminaries, academies, and a school system unsurpassed, as a guaranty of their education and serious intention of maintaining the same.

It is maintained and supported by wise, hardy sons of toil, on the most elaborate and extensive scale known to our people, and without a dollar of aid, so far, from the Government or the public lands or outside contributions.

The cattle and wheat of Dakota are choice and celebrated throughout the land. Time fails us, and patience tires, when we begin to recount the wrongs and enumerate the resources of the people and this country.

We append tables for the student and comparisons for the tower of justice, and appeal to Congress for the recognition of their rights, and if Congress refuses they will appeal to the country to hold responsible any men or any party who shall further thwart the rights and the liberties of these people.

We are told in the majority report of this committee during the Forty-ninth Congress, that all and every portion of the balance of the United States have as much right to say what boundaries and area the new State shall have as the people of such proposed State.

It is a pertinent inquiry as to what methods these gentlemen propose to adopt for ascertaining the wishes of the country upon the subject.

One thing appears quite manifest—the wishes of the people of the proposed State are to be disregarded if possible.

What would Jefferson say to this?

What would Douglas say to this?

What does the ordinance of 1787 say?

What does the Louisiana treaty say?

What did Michigan say when Congress undertook to prescribe her boundaries? and what did Iowa and California do regarding the boundaries of their respective States?

Iowa voted to stay out of the Union rather than adopt the boundaries marked out for her by Congress, and Congress conceded what she wished. All the answers have been one way, and that is the will of the people of the Territory and proposed State, expressed within the spirit and policy of the Government, the Constitution, ordinances, and treaties in supreme.

To thwart it is usurpation; to insist upon it is tyranny.

To adopt this principle would be the end of our Republic and the abolition of our State governments.

Regarding the resources of our proposed State and its development we herewith give a statement from the report of the commission of emigration of the Territory of Dakota in reference thereto and to substantiate the views herein expressed.

Table of statistics of South Dakota, 1886-'87.

Wheat.....	bushels..	32,080,000
Oats.....	do.....	25,924,267
Corn.....	do.....	23,000,000
Live stock, all kinds.....		\$34,655,000
Cattle.....	head..	745,000
Horses and mules.....	do.....	128,000
Sheep.....	do.....	224,000
Swine.....	do.....	389,000
Aggregate expenses of schools.....		\$2,046,000
Number of schools.....		2,800
Number of newspapers.....		231
Number of banks.....		200
Miles of railway.....		2,241

The undersigned deem it proper, as further evidence of the wishes of the people of the proposed State of South Dakota upon this subject of a division of the Territory, to incorporate the memorial adopted at a recent session of the constitutional convention of the proposed State addressed to Congress, and which we have reason to believe expresses the real sentiments and wishes of these people:

HURON, DAK., *January 10, 1888.*

To the Congress of the United States:

The constitutional convention of Dakota, elected under the act of the Territorial legislature approved by the governor March 9, 1885, with power under the act to adjourn from time to time, respectfully represents that it has maintained its organization and existence, and on this 9th day of January, 1888, again convened, pursuant to a previous adjournment, for the purpose of renewing and emphasizing the request of the people of South Dakota for a division of the Territory and their admission to the Union as a State.

That the people of all Dakota, north and south, have, during the past seventeen or eighteen years, contemplated division and the formation of two States you are well aware, and that the buildings and institutions of the Territory have been systematically duplicated, one of each class having been established in each division of the Territory. Nearly every legislature which has convened in the past eighteen years has either memorialized Congress or taken some action in behalf of a division of the Territory.

The last convention of the Republican party, held at Yankton, in September, 1886, for the nomination of a Delegate to Congress, adopted the following resolution:

“Resolved, That the will of the people of all Dakota in favor of division of the Territory on an east and west line has been so clearly and so often expressed during the past fifteen years that there is no reasonable doubt of the determined purpose of a large majority to hold on steadfastly till this purpose is accomplished, and we earnestly ask Congress to pass such a measure without delay, said division to be on the boundary line of the counties nearest the forty-sixth parallel of north latitude.”

The last convention of the Democratic party, which met at Aberdeen in 1886, to put in nomination a Congressional Delegate, adopted a resolution favoring a submission of the question of division to the voters of the Territory.

In accordance with the request of the foregoing resolutions and for the purpose of obtaining an authoritative and final expression of the whole people, the last legislature submitted the question of division to the people of the Territory, with the result of a decisive majority for division.

South Dakota has a population of more than 360,000 people, and an area of 77,000 square miles, with every requisite of a strong and safe State. Fair men will never claim that the division of Dakota will injure the nation.

Objection has been made to the division of Dakota on the ground that if divided into two States there would not be sufficient resources in each to sustain a population equal to the older States. In reply, this convention would call the attention of Congress to the report of the Hon. L. Q. C. Lamar, Secretary of the Interior, in which the following populations are given in the several Territories seeking admission into the Union: Dakota, 568,400; Montana, 130,000; New Mexico, 160,000; Washington, 142,391. Of this population of Dakota, 208,000 are in North Dakota and 360,000 in South Dakota, showing in the less populous portion from 48,000 to 68,000 more population than either of the other Territories asking admission, and larger than some States. The Dakotas will be agricultural States, whose population never decreases.

But it is now with the people of Dakota not a question whether division is desirable, but whether the majority or the minority of her people shall direct her local affairs. If Congress shall declare that the minority shall prevail, or that the will of the majority shall be ignored, it will be a severe blow to republican institutions. It will establish a precedent which may hereafter work disaster to the country. It is a declaration that the General Government is drifting away from the principles upon which States have heretofore been admitted.

On behalf of the people of South Dakota we invite the attention of Congress to our situation and repeat our request that our long-deferred rights be granted us by the admission of South Dakota to the Union. The people of South Dakota would be false to the cardinal principles of the Republic if they should now accept admission as a whole. We believe they will never do it. If they possess the endurance and courage of men who are fitted for self-government, they can never surrender. We can suffer Territorial government, with all its privations and denials of justice, indefinitely if it is forced upon us, but we can not abandon the principle upon which the States of the Republic are founded, that the legally expressed will of the majority shall prevail.

We further respectfully request that, in pursuance of the vote of the people on November 8 last, the Territory be divided on the seventh standard parallel, instead of the forty-sixth parallel of latitude, as contemplated in the constitution adopted by the people in November, 1885, and that the State be designated as "South Dakota," and the north half of the Territory be permitted to enjoy the name which they undoubtedly desire, "North Dakota."

A. J. EDGERTON,
President.
JOHN CAIN,
Secretary.

The undersigned therefore recommend the passage of House bill 1679.

Respectfully submitted.

CHARLES S. BAKER.
I. S. STRUBLE.
G. G. SYMES.
WM. WARNER.
GEO. W. E. DORSEY.

Senate Report No. 75, Fiftieth Congress, first session.

Mr. PLATT, from the Committee on Territories, submitted the following

REPORT:

[To accompany bill S. 185.]

The Committee on Territories, to whom was referred the bill (S. 185), entitled "A bill to provide for the admission of the State of Dakota into the Union, and for the organization of the Territory of Lincoln," having considered the same, respectfully report:

That the bill referred to the committee is in terms the same as a bill which received the careful consideration of the committee in the Forty-ninth Congress, and which, after full debate, was passed by the Senate. That bill divided the present Territory of Dakota into two nearly equal parts, the division being on the forty-sixth parallel of north latitude, and admitted the southern half into the Union under the name of Dakota, with a constitution adopted by the people of that part of the Territory at a constitutional convention held on the 8th day of September, 1885. And this convention was held in pursuance of an act authorizing and providing for a constitutional convention passed, with singular unanimity, by the Territorial legislature on the 9th day of March, 1885. This constitution was submitted to the people of the whole Territory for adoption or rejection, and was adopted by a large majority.

The history of the movement for Statehood, the proceedings of the constitutional convention, and the submission of the constitution to the people are fully set forth in the report of the Senate Committee on Territories presented to the Senate in the first session of the Forty-ninth Congress; and said report, with the documents and exhibits thereto attached, is made part of this report.

Since the adoption of the report of the committee and the passage of the bill admitting the people of the southern half of Dakota to the privileges of Statehood, nothing has taken place which, in the opinion of the committee, justifies a reversal of the action of the Senate in respect to the division of the Territory and the admission into the Union of a new State with substantially the same boundaries as those prescribed by the Senate in the bill which it approved. Indeed, the reasons for division of the Territory and the formation therefrom of two States, rather than the admission of the whole as a single State, become more convincing and potent as the unjustifiable delay of Congress in recognizing the right of the people in the Territory to self-government continues.

The people of North Dakota and South Dakota, in the interval since the former action of the Senate, have become, if possible, more completely two political units, until to-day they are as distinct in interests, in character, in associations and institutions as are the people of any

contiguous States. In everything, except compulsory union in a Territorial legislature, North Dakota and South Dakota are as separate political communities as Massachusetts and Connecticut. To insist upon their admission as one State is as repugnant to the sense of justice and national propriety as would be the enforced union of the States named. That this is absolutely true is shown by the fact that the institutions usually found in States have been duplicated in southern and northern Dakota by action of the Territorial legislature, as the following acts show :

By act of February 22, 1879, an insane asylum was located at Yankton, in South Dakota, for which bonds have been issued to the amount of \$215,900.

By act of March 9, 1883, the North Dakota Hospital for the Insane was located at Jamestown, in North Dakota, for which bonds have been issued to the amount of \$168,000.

By act of February 17, 1881, a penitentiary was located at Sioux Falls, in South Dakota, for which bonds have been issued to the amount of \$94,000.

By act of February 27, 1883, a penitentiary was located at Bismarck, in North Dakota, for which bonds have been issued to the amount of \$41,000.

By act of February 3, 1883, the University of Dakota was located at Vermillion, in South Dakota, and bonds to build the same were authorized to the amount of \$85,000.

By act of February 27, 1883, the University of North Dakota was located at Grand Forks, in North Dakota, and bonds for the same have since been issued to the amount of \$74,000.

By act of February 21, 1881, an agricultural college was established at Brookings, in South Dakota, for which bonds have been issued to the amount of \$100,000.

By act of February 27, 1883, an agricultural college was located at Fargo, in North Dakota, but the buildings have not yet been constructed.

By act of March 5, 1881, a normal school was located at Madison, in South Dakota, and bonds have been issued therefor to the amount of \$55,600.

By act of March 9, 1883, a normal school was authorized at Larimore, in North Dakota, the buildings for which are yet to be constructed.

In all of these acts authorizing the issue of bonds it was provided that the part of the Territory in which was located the institution for which bonds were issued should, upon the division of the Territory, assume all obligations incurred for the erection of such institutions.

Many other instances of legislation specifically adapted and made applicable to the different sections of the Territory might be adduced, but the above examples will suffice to illustrate and emphasize the separate and distinct interests of the people in the southern and northern portion of the Territory.

The completeness of this political division is further shown by the fact that the names of North Dakota and South Dakota have attached to the different portions of the Territory as have the names North Carolina and South Carolina to those States. And that this division of the Territory into a North Dakota and a South Dakota is not artificial and adopted for convenience only, but results from the natural condition of the Territory, is also evidenced by the organizations of the chief religious bodies in the Territory and the duplication of their institutions of learning. The South Dakota Congregational College is built

at Yankton, the North Dakota Congregational College at Fargo. The South Dakota Baptist College is at Sioux Falls, the North Dakota Baptist College at Tower City. The South Dakota Presbyterian College is at Pierre, the North Dakota Presbyterian College at Jamestown. The Episcopal Church has its diocese of North Dakota and South Dakota, each with its own bishop.

To admit North Dakota and South Dakota as States would not add to their distinctive character. To admit them as one State would be an attempt to unite two peoples, heterogeneous in interests, in associations, in characteristics, and in aspirations. If the welfare, the harmony, and the good of the people of the Territory are to be consulted, the argument in favor of two States instead of a single State seems overwhelming and conclusive. And they are to be consulted, unless interests of national concern require that they be treated as of secondary importance.

This leads to a consideration of the question whether, in the present case, national interests do require the compulsory union of already distinct communities whose material interests as well as their expressed wishes call for separate statehood.

The answer to this question, in the opinion of your committee, depends largely upon the further question whether the area of the country inhabited, the nature of the soil, its resources, the presence of the necessary elements for future development, and the character of the population give promise of two sufficiently large, prosperous and well-ordered States.

The Territory of Dakota is larger in extent than the States of New York, Pennsylvania, New Jersey, Maryland, Delaware, and Virginia together. It is 430 miles from its northern to its southern boundary, and 400 miles from its eastern to its western boundary. Its area, as given by the tenth census, is 149,100 square miles.

If admitted as one State it would, in size, be exceeded only by Texas and California. Texas, by the terms of its admission, is entitled to be divided into five States; and it is believed that Dakota is capable of supporting a much greater population of an agricultural character than California—certainly greater than California was supposed capable of supporting at the time of its admission.

If divided into two States, South Dakota will be exceeded in area by seven States only—California, Colorado, Kansas, Minnesota, Nevada, Oregon, and Texas. It would exceed in area the whole of New England, together with New Jersey. It is believed to be capable of supporting as large a population to the square mile as the State of Iowa, which, in 1880, was credited with over 1,600,000 people, and which, at no distant day, will doubtless have a population of 3,000,000 souls. Moreover, South Dakota would be one-third larger than the State of Iowa. And already, notwithstanding the presence within its borders of an Indian reservation covering half its area, South Dakota contains a population approximating 400,000, a number continually increasing with phenomenal rapidity.

Its natural resources are varied and abundant. The wheat crop of the whole Territory for 1887 was 60,000,000 bushels. The corn crop, grown largely in South Dakota, was 26,000,000.

Speaking of the whole Territory in his annual report for 1887, the governor of Dakota says, and probably without exaggeration:

If the grass growing on the prairies of Dakota could all be utilized and turned into beef it would supply the markets of the world.

South Dakota is rich in minerals. More than \$33,000,000 of gold and silver have been produced in the Black Hills since 1877. Coal is abundant, and other minerals and metals are found in quantities which assure diversified industries.

Not to particularize, we adopt the language of Governor Church's report:

Nature has distributed the valuable and useful minerals throughout the length and breadth of this vast Territory with the same bountiful hand that has provided the richest of soils and the most healthful climate in all the world.

Its inhabitants have been drawn thither from the older States, where they have learned the responsibilities and have been accustomed to the discharge of the duties of citizenship. It seems safe to assert that in no State or Territory can there be found so large a proportion of the people who fought the battles of the Union. Intelligent, enterprising, patriotic, why should 400,000 people be denied Statehood under such circumstances?

At the last session of the Territorial legislature an act was passed by which the question of Territorial division was submitted to the people of the whole Territory for an expression of opinion; and, in pursuance of the act, a vote was taken on the 8th day of November, 1887. No general election was held on that day, and the vote of the Territory was a light one. The result of the vote has not yet been officially declared, but from the most reliable information at hand it appears that the majority in favor of division in the whole Territory is between 4,500 and 5,000 in a total vote of about 70,000. The majority for division in South Dakota was about 15,000.

If the result of the vote in the whole Territory seems to indicate a less unanimous sentiment in favor of division than has been supposed to exist, the reasons for it are quite obvious.

The name Dakota is as dear to the people of North as of South Dakota. The residents of the northern section justly claim to have given that name to one of the principal productions of the Territory, and to have made "Dakota wheat" famous throughout the world. There is merit in the claim that they are as much entitled to the name "Dakota" as the residents in the southern half of the Territory.

The bill passed by the Senate at its last session gave the name Dakota to that portion of the Territory proposed to be admitted as a State, and organized the remainder of the Territory under the name of Lincoln. Division, therefore, seemed to North Dakota to imply the loss of the cherished name, and on this account many were induced to vote against division.

Another reason why many persons desiring division voted against it was because to them division seemed to portend indefinite postponement of the claims of North Dakota to be admitted into Union of States. The history of the movement for Statehood in the southern half of the Territory was so discouraging that the sentiment of Statehood at any cost and at any inconvenience is believed to account for the majority against division in North Dakota, and for many, if not for most, of the votes against division in South Dakota.

Had the people of North Dakota been assured that the cherished name would be preserved to them, and that North Dakota, with its now more than 200,000 inhabitants, might also hope for admission within a reasonable time, it is believed by your committee that the vote of North Dakota would have been in favor of division.

However that may be, the controlling factor in determining whether Dakota should be admitted as one State or as two States must always

be the national interest and welfare. And it seems to your committee that States of immense area, of great wealth and power, and with populations which entitle them to abnormally large representation in the House of Representatives are elements of national weakness rather than of national strength, and may in future prove a danger to the Republic.

Every consideration, therefore, national as well as local, seems to point to the wisdom, propriety, and necessity of division and the creation of two States out of the present Territory of Dakota.

In the report of the Senate Committee on Territories in the last session of Congress, already referred to, the history and method of the admission of most of the States received into the Union since the adoption of the Constitution are related and set forth. The circumstances under which Kentucky and Indiana were admitted were not stated, and the omission is here supplied.

KENTUCKY.

Kentucky was originally settled as a colony of Virginia. After the War of Independence the settlers demanded an independent government. The constitution of the State of Virginia contained a provision that, by act of the legislature, one or more governments might be established in its territory west of the Alleghany Mountains; and the legislature accordingly authorized the formation of a State government by Kentucky, thus relinquishing, it may be regarded, all claim on the part of Virginia to the territory included within the boundaries of the new State.

In 1791, by act of Congress, the State of Kentucky was admitted into the Union absolutely and without any limitations whatever, said act taking effect June 1, 1792. Neither the act admitting Kentucky into the Union nor any act relating thereto contained any provision that a constitution should be framed for said State, or that one should be framed with certain provisions, or that the constitution should be submitted to a vote of the people.

The constitution under which Kentucky came into the Union was framed in 1792. In April of that year a constitutional convention met at Danville, and the constitution there adopted became, without further action and without having been submitted directly or indirectly to a vote of the people, the constitution of the State of Kentucky, and continued to be until the year 1800, when a new constitution was adopted by a vote of the people.

INDIANA.

In 1816, in accordance with an enabling act passed by Congress, the people of the Territory of Indiana framed a constitution and organized a State government. At the election held in the fall of that year Mr. Hendricks was chosen a member of Congress from the proposed State. He was sworn in as a member of the House and took his seat the first day of the session, December 2, 1816, and doubtless was present and voted for the bill admitting Indiana as a State, which passed the House unanimously on December 6 of that year and became a law five days later.

Presidential electors were chosen by Indiana in the fall of 1816, and the vote of the State was counted.

Senators from Indiana were admitted December 12, 1816.

The propriety and regularity of the admission of a State under a constitution already formed are so completely shown by the precedents cited in the report above referred to that the argument there set forth is not here renewed.

It has been suggested, and the suggestion seems worthy of adoption, that a slight change should be made in the northern boundary of the proposed State of Dakota east of the Missouri River. In the bill referred to the committee the northern boundary follows the forty-sixth parallel of north latitude. The "seventh standard parallel," east of the Missouri River, is some 5 miles south of the forty-sixth parallel. The "seventh standard parallel" has been adopted as the boundary line of organized counties which are cut by the forty-sixth parallel. The committee recommend, therefore, a change in the northern boundary of the proposed State, east of the Missouri River, from the forty-sixth parallel of north latitude to the "seventh standard parallel."

As has been indicated already, the committee favors the name South Dakota for the proposed new State, and the name North Dakota for the territory which shall remain.

The committee also believes that, in justice to the new State, it should be represented in the House of Representatives by two Representatives until the next apportionment. The full ratio for two Representatives is 318,200. South Dakota has now nearly, if not quite, 400,000 people, and, at its present rate of increase, it may fairly be assumed that before the next apportionment it will have a population of 600,000. To give it only one Representative seems unjust.

The change of name and boundary involves resubmission of the constitution to the people.

The committee therefore recommend, by way of amendment, the adoption of a substitute bill providing for the changes suggested.

Amend by striking out all after the enacting clause and inserting the following:

That the State of South Dakota is hereby declared to be a State of the United States of America, and is hereby admitted into the Union on an equal footing with the original States in all respects whatever; and that the constitution which the people of South Dakota have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed, subject, however, to the provisos hereinafter contained.

SEC. 2. That the following shall be the boundaries of the said State of South Dakota, to wit: Beginning at the point of intersection of the western boundary-line of the State of Minnesota with the northern boundary-line of the State of Iowa, and running thence northerly along the western boundary-line of the State of Minnesota to its intersection with the seventh standard parallel, where in its easterly course it intersects said boundary line; thence west along the said seventh standard parallel to the easterly bank of the Missouri River at low-water mark; thence up the said Missouri River along the easterly bank thereof at low-water mark, to the point of intersection with the forty-sixth parallel of north latitude; thence west along the forty-sixth parallel of north latitude to its intersection with the twenty-seventh meridian of longitude west from Washington; thence south on the twenty-seventh meridian of longitude west from Washington to its intersection with the northern boundary-line of the State of Nebraska; thence easterly along the northern boundary-line of the State of Nebraska to its intersection with the western boundary-line of the State of Iowa; thence northerly along the western boundary-line of the State of Iowa to its intersection with the northern boundary-line of the State of Iowa; thence east along the northern boundary-line of the State of Iowa to the place of beginning.

SEC. 3. That the said State of South Dakota shall have concurrent jurisdiction of the river Missouri and of every other river bordering on the said State of South Dakota, so far as the said rivers shall form a common boundary to the said State and any other State or States or Territory or Territories now or hereafter to be formed, said rivers to be common to both; and that the said river Missouri shall be a common highway, and forever free as well to the inhabitants of said State as all other citizens of the United States, without any tax, duty, impost, or toll imposed by said State of South Dakota therefor.

SEC. 4. That until the next census and apportionment shall be made the said State of South Dakota shall be entitled to two Representatives in the House of Representatives of the United States Congress.

SEC. 5. That to defray the expenses of the constitutional convention held by the people of said State, and of elections held therefor and thereunder, the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the Treasury not otherwise appropriated, to be paid to the treasurer of said State upon the requisition of the legislature thereof, setting forth the items and particulars of such expenses so incurred.

SEC. 6. That sections sixteen and thirty-six in every township of the public lands of the United States, and where such sections, or any part thereof, shall be mineral lands, or shall have been sold or otherwise disposed of by the United States, other lands equivalent thereto, in legal subdivisions of not less than one quarter-section, are hereby granted to the said State for the support of common schools; and such sections shall not be subject to pre-emption or entry, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 7. That thirty entire sections of the unappropriated public lands within said State, to be selected and located by direction of the legislature thereof, with the approval of the President, shall be, and are hereby, granted, in legal subdivisions of not less than one-quarter section, to the said State for the purpose of erecting public buildings at the capital of said State for legislative and judicial purposes, in such manner as the legislature shall prescribe. The lands may be selected out of the public lands within the boundaries of said State, whether surveyed or unsurveyed.

SEC. 8. That so much of seventy-two sections of land granted by the act of February eighteenth, eighteen hundred and eighty-one, to the Territory of Dakota for the use of a university, as lies within the said boundaries of the State of South Dakota, is hereby granted and confirmed to said State for such purpose, and, in addition thereto, a sufficient number of sections to make a total of seventy-two. If any of the lands granted by said act of February eighteenth, eighteen hundred and eighty-one, and lying within the boundaries of said State, have been sold under the provisions thereof, then the proceeds thereof shall go to said State in lieu of the land sold.

SEC. 9. That ninety sections of land, to be selected and located as provided in section eight of this act, are hereby granted to said State for the use and support of an agricultural college in said State, and none of the lands granted by this act, or the proceeds thereof, shall be used for any other purpose than that for which the grant is specifically made whatever.

SEC. 10. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby, granted, together with twenty sections more of the unappropriated public lands, to be selected as herein provided, to the State of South Dakota for the purpose aforesaid.

SEC. 11. That five per centum of the net proceeds of sales of all public lands made by the United States within the limits of the said State, prior or subsequent to the passage of this act, after deducting all expenses incident to the same, be, and the same is hereby, granted to the said State of South Dakota for the support of public schools.

SEC. 12. That all mineral land shall be excepted from the grants provided for in this act.

SEC. 13. That immediately after the taking effect of this act the governor and the commissioner of school and public lands of said State shall proceed to ascertain the number of sections sixteen and thirty-six within the limits of said State which are mineral lands, or which have by any means been appropriated to private or other uses, or in any way diverted from school purposes; and the said officers shall then proceed to select, from any unappropriated public lands in said State, an equal number of sections to those thus diverted; and said officers shall also, in addition thereto, select a number of sections equal in number to the total number of sections granted in this act for common-school and other purposes; and when such selections shall have thus been made, said officers shall certify a list of the same to the Secretary of the Interior, and if the same shall be approved by him the title to the same shall vest in said State of South Dakota.

SEC. 14. That all lands herein granted for common-school purposes shall be sold only at public sale, and at a price not less than five dollars per acre, and in parcels not exceeding one quarter-section to any one person, the proceeds to constitute a permanent school fund, the interest of which only is to be expended in the support of common schools.

SEC. 15. That the State of South Dakota shall constitute one judicial district, which shall be called the district of South Dakota, and the circuit and district courts therefor shall be held at the capital of said State for the time being. The judge of said district shall receive a yearly salary of five thousand dollars, payable in four

equal installments, on the first days of January, April, July, and October of each year, and shall reside in his district. There shall be appointed clerks of said courts, who shall keep their offices at the capital of said State. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. The regular terms of said courts shall be held at the place aforesaid, on the first Monday in April and the first Monday in November in each year. For judicial purposes the district of South Dakota shall be attached to the eighth judicial circuit, and only one grand jury and one petit jury shall be summoned in both of said courts.

SEC. 16. That the circuit and district courts for the district of South Dakota, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties possessed and required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations.

SEC. 17. That the marshal, district attorney, and clerks of the circuit and district courts of the said district of South Dakota, and all other officers and other persons performing duty in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation allowed by law in the State of Nebraska to other similar officers and persons performing similar duties.

SEC. 18. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of the Territory of Dakota, or that may hereafter lawfully be prosecuted from said court, may be heard and determined by said Supreme Court of the United States; and the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require; and each of said last-mentioned courts, respectively, shall be the successor of the supreme court of the Territory of Dakota as to all such cases, with full power to proceed with the same and to award mesne or final process therein; and that from all judgments and decrees of the supreme court of the Territory of Dakota prior to the admission of said State the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 19. That in respect to all cases, proceedings, and matters pending in the supreme or district court of the Territory of Dakota at the time of the admission of the said State into the Union, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all cases, proceedings, and matters arising within the limits of the Territory of North Dakota, the courts of North Dakota Territory shall be the successors of the courts of the Territory of Dakota; and all the files, records, indictments, and proceedings relating thereto shall be transferred to said circuit, district, and Territorial courts, respectively, and the same shall be proceeded with therein in due course of law: *Provided, however,* That in all civil actions, causes, and proceedings in which the United States is not a party, such transfers shall not be made except upon the written request of one of the parties to such action or proceeding filed in the proper court.

SEC. 20. That the legislature provided for in said constitution shall have the power to provide, by an act to that effect, for the transfer of all actions, cases, proceedings, and matters pending in the supreme or district courts of the Territory of Dakota at the time of the admission of the said State of South Dakota into the Union, arising within that part of the said Territory of Dakota herein prescribed as the proposed new State, and not included within the provisions of the foregoing sections, to such courts as shall be established under the constitution of said State; and no indictment, action, or proceeding shall abate by reason of any change in the courts, but shall be proceeded with in the State courts according to the laws thereof.

SEC. 21. That the following division of the public debt of the former Territory of Dakota is made: All the public indebtedness thereof which has been incurred for the purpose of public institutions within the limits of the State of South Dakota shall be assumed and paid by the said State of South Dakota. The said State of South Dakota shall make immediate provision for the settlement of said indebtedness. All the remaining funded indebtedness of the former Territory of Dakota shall be and remain a debt of the Territory which by this act is organized out of the remaining portion of said former Territory. The legislature of said Territory shall make immediate provision for the settlement of said indebtedness. One-half of the funds remaining in the treasury of the Territory of Dakota at the passage of this act, and of all receipts from taxes imposed by former legislatures thereof, less the expense of collect-

ing, and after the payment of any unfunded indebtedness that may be a charge against the same, shall be paid by the treasurer of said Territory to the treasurer of the State of South Dakota. All archives and records of the former Territory of Dakota now in the custody of the secretary or governor of said Territory shall be turned over by said officers to the governor or the secretary of the said State of South Dakota: *Provided*, That the State of South Dakota shall furnish to the Territory of North Dakota full and accurate copies of all such archives and records at the cost of said State of South Dakota.

SEC. 22. That that portion of the Territory of Dakota not included within the boundaries of said State upon the admission of said State of South Dakota into the Union shall, until otherwise provided by act of Congress, continue as a Territory by the name of North Dakota; and all the provisions of the acts of Congress and of the legislative assembly of said Territory of Dakota, not locally inapplicable, shall continue therein in full force and effect the same as though no portion of the Territory of Dakota had been admitted into the Union; and the governor, secretary, United States marshal, and district attorney of the present Territory of Dakota shall continue to hold and exercise their respective offices within and for said Territory of North Dakota; and the chief justice and three of the associate justices, to be designated by the President, shall continue to hold and exercise their respective offices for and within said Territory of North Dakota; and temporarily, and until otherwise provided by the legislative assembly of said Territory of North Dakota, the governor, chief justice, and secretary thereof may divide said Territory into judicial districts and assign the judges thereto, and into twenty council and fifty representative districts, and apportion the representation therein to which each district shall be entitled in the legislative assembly: *Provided, however*, That the act of Congress approved March third, eighteen hundred and seventy-nine, creating the fourth judicial district for the Territory of Dakota, shall not apply to the Territory of North Dakota.

SEC. 23. That until otherwise provided by act of the legislative assembly of said Territory of North Dakota, the city of Bismarek shall be the place of holding the sessions of the legislative assembly therein, which place shall be the capital of said Territory until changed by such legislative assembly; and the governor thereof shall also have power to designate temporarily, and until otherwise provided by the laws of said Territory of North Dakota, the places in the first, second, and third judicial districts whereat the district courts shall exercise the jurisdiction of district and circuit courts of the United States.

SEC. 24. That in accordance with the stipulations contained in section five of article thirteen of said constitution of said State of South Dakota, there is hereby apportioned to the State of South Dakota, and said State shall assume, be liable for, and pay, all the indebtedness of the Territory of Dakota incurred for public buildings of the Territory which are built and situated, or which are provided by law to be built, within the limits of said State; and the Territory of North Dakota shall assume and be liable for all the indebtedness of the Territory of Dakota incurred for public buildings of the Territory which are built and situated, or which are provided by law to be built, within the limits of said Territory of North Dakota.

SEC. 25. That there is hereby granted to the Territory of North Dakota so many sections of the unappropriated public lands lying within said Territory, as will, with the other lands lying therein selected and set apart under the act of February eighteenth, eighteen hundred and eighty-one, make the full amount of seventy-two sections, such additional sections to be selected and set apart under the provisions of said last-named act and for the use therein mentioned; and any other grants heretofore made by act of Congress to the Territory of Dakota, for any purpose, of lands lying within the limits of said Territory of North Dakota, are hereby confirmed to said Territory of North Dakota for the same uses and in the same manner as the same were granted to said Territory of Dakota.

SEC. 26. *Provided, however*, That inasmuch as by this act the name of the State, which was adopted by the constitutional convention recited in the preamble hereto has been changed from that of the State of Dakota to the State of South Dakota, and the boundaries of said State have been modified in this act by the change thereof, east of the Missouri River from the forty-sixth parallel of north latitude to the seventh standard parallel, before said State of South Dakota shall be admitted by her Representatives to the Congress of the United States or be entitled to the other rights and privileges of a State in the Union, there shall be submitted to a vote of the people of the proposed State of South Dakota the question of the acceptance or the rejection of said amended boundaries and name; and to that end an election is hereby ordered to be held by the qualified electors of said portion of said Territory of Dakota included within the boundaries of said proposed State, on the twenty-eighth day of August, eighteen hundred and eighty-eight, upon which day there shall be submitted to said electors the following propositions: First, Is the name of the State of South Dakota accepted? Second, Is the proposed change in boundaries east of the Missouri River to the seventh standard parallel, accepted? The form of the ballots to be used

shall be as follows: Change of name to South Dakota accepted. Yes. Or, change of name to South Dakota accepted. No. Change of boundaries to seventh standard parallel east of the Missouri River accepted. Yes. Or, change of boundaries to seventh standard parallel east of the Missouri River accepted. No.

SEC. 27. That said election shall be governed in all respects by the laws of the Territory of Dakota governing elections and the canvass and return of the votes thereof. Within twenty days after the day of said election, the respective officers and county canvassers having by the law of the Territory of Dakota such duties in charge, shall make returns of the votes so cast for and against each of said propositions to the governor of said Territory of Dakota. And within ten days thereafter, or sooner, if the returns are all received by him, the said governor, calling to his assistance the auditor and chief justice of said Territory of Dakota, shall with them aggregate said vote, and immediately certify the result thereof to the President of the United States, who shall issue his proclamation announcing the result of said vote.

SEC. 28. That at the time of the election herein provided for the people of said proposed State of South Dakota shall have submitted to them for their ratification or rejection the constitution heretofore in the preamble of this act stated as having been formed and adopted, together with each of the separate articles thereof, in conformity with the schedule of said constitution, not including the selection of the temporary seat of government.

SEC. 29. That if a majority of the votes cast at said election shall be in favor of the acceptance of both the change of name and boundaries, and also for said constitution, regardless of the separate articles, then said State of South Dakota shall be deemed admitted into the Union of States on an equal footing with the original States in all respects whatever. And this act of admission shall then have full force and effect, and said constitution shall be deemed amended so as to conform to said changes. But if a majority of said votes so cast shall not be in favor of both of said propositions, and not in favor of the adoption of said constitution, then this act shall cease to have further force or effect.

[Senate Report No. 15, Forty-ninth Congress, first session.]

Mr. Harrison, from the Committee on Territories, submitted the following report (to accompany bill S. 967):

The Committee on Territories, to whom was referred the bill (S. 578) providing for the admission of the State of Dakota into the Union, and for the organization of the Territory of North Dakota, respectfully report an original bill upon that subject.

The main proposition of the bill is that the proceedings taken by the people of that part of the present Territory of Dakota lying south of the forty-sixth parallel of north latitude, which resulted in the adoption of a State constitution by a popular vote on the 3d day of November, 1885, shall be accepted and ratified by Congress, and the State of Dakota be admitted to the Union upon an equal footing with the other States.

HISTORY OF THE MOVEMENT.

The history of this movement for the organization of the new State is as follows: At the session of the Territorial legislature for 1885 sundry memorials from the people of South Dakota were presented praying for the passage of an act authorizing the holding of a constitutional convention for the purpose of organizing a State government for that part of the Territory lying south of the forty-sixth parallel. In response to the request of these memorials the legislature, on the 9th day of March, 1885, passed an act, entitled "An act providing for a constitutional convention and the formation of a State constitution preparatory to the admission of Dakota into the Union, and for other purposes." The vote upon this bill was as follows: In the council, ayes 20; noes, none; in the house, ayes 33; noes, 7.

The act provided for a convention of one hundred and eleven delegates, to assemble at Sioux Falls on the 8th day of September, 1885, and declared the object of the convention to be "for the purpose of framing a constitution, republican in form, and performing all other things essential to the preparation of the Territory for making application to the General Government for the admission of such part of Dakota into the Union of States."

The delegates were apportioned among the several counties of South Dakota, as near as might be, upon the basis of population, and provision was made for their selection at a popular election to be held on Tuesday, June 30, 1885. For the full text of this law see Appendix A.

It is not claimed that this act of the Territorial legislature was a necessary preliminary to the holding of a constitutional convention. If it were even admitted that it had no legal force whatever, and that the proceedings which followed are to be

treated as purely popular, still, whatever its legal force, it gave to the people the machinery necessary for the expression of the popular will in an orderly and effective way. It provided a fair apportionment and threw about the election of delegates and the proceedings of the convention the forms, if not the sanctions, of law. We pass, therefore, any discussion of the authority of the legislature to pass such a law. We may, however, remark that the conventions which formed the constitutions of Iowa, Michigan, Florida, and Oregon, and perhaps other States, were called and held under acts of the Territorial legislatures.

The election of delegates was held at the time fixed by the law, and on the 8th day of September, 1885, the convention assembled at Sioux Falls. It was at once organized by the election of Hon. A. J. Edgerton, formerly a senator in this body from the State of Minnesota, as president, and proceeded to the work of framing a constitution for the proposed State. The sessions of the convention were continued until the 25th day of September, when it adjourned, having finished its work by the preparation and adoption of a constitution for the State of Dakota. The number of delegates who attended the sitting of the convention was ninety-five.

The journal of the proceedings of the convention has been submitted to the Senate, and gives evidence of a high degree of intelligence, public spirit, and industry. Section 9 of the schedule and ordinance attached to the constitution is as follows:

"SEC. 9. This constitution shall be submitted for adoption or rejection to a vote of the electors, qualified by the laws of this Territory to vote at all elections, at the election to be held on the Tuesday after the first Monday in November, A. D. 1885."
* * *

At the time appointed a popular vote was taken upon the adoption or rejection of the constitution, and resulted in its adoption by a majority of 18,561. The vote was—for the constitution, 25,226; against, 6,565; making a total vote of 31,791. An abstract of the returns shows that there was a popular majority for the constitution in forty-five of the forty-eight counties voting. It is clear that an overwhelming majority of the people of South Dakota approve of the constitution and desire present admission into the Union of the States under it.

THE CONSTITUTION.

The committee do not deem it necessary to discuss the provisions of the constitution further than to say that it is republican in form and spirit, gives full recognition to the supremacy of the Constitution and laws of the United States, establishes absolute religious toleration, throws about the life and estate of the citizen the safeguards of law, provides in the most liberal way for a permanent system of free public schools, and organizes a symmetrical and effective system of government for the people. This constitution was framed by the people who are to live under it, in the exercise of the American principle of popular government. It meets their wishes, and, we must believe, their wants. It is not the province of Congress to frame constitutions for the new States. In some cases Congress has authorized the President to announce by proclamation the admission of a State, if he found the constitution adopted to be republican in form, and to contain certain articles of compact stipulated for in the enabling act. In such cases the State constitution was, of course, never laid before Congress.

All of the usual stipulations in the nature of a compact with the United States are incorporated in the article (22) entitled "Compact with the United States." A committee called a "State executive committee" was chosen by the convention, consisting of seven members, of which Hon. Hugh J. Campbell was made chairman. The duties of the committee are defined in the "schedule and ordinance" of the constitution. As neither the communication of Mr. Campbell transmitting the memorial and constitution to the Senate nor the memorial and constitution themselves have been printed, we make all of these papers part of this report in order that they may be before the Senate for convenient reference (Appendices B, C, and D).

ABSTRACT OF VOTE.

A certified abstract of the votes cast for and against the constitution, for and against the separate articles submitted, and for State, judicial, and legislative officers is also submitted (Appendix E).

EFFORTS FOR DIVISION AND ADMISSION.

Having thus briefly sketched the history of the movement which has resulted in the formation and presentation to Congress of a constitution for the proposed State of Dakota, we think it important to bring to the attention of the Senate some facts connected with the earlier efforts of the people of Dakota to secure the division of the

present Territory, the formation of a State government for South Dakota, and its admission under it to the Union of the States.

As early as January, 1871, a memorial was unanimously adopted by the Territorial legislature praying Congress to divide Dakota upon the forty-sixth parallel of latitude, and to organize two Territorial governments for the people. In December, 1872, another memorial asking a division of the Territory was adopted by the Territorial legislature, the vote in the council for the memorial being unanimous, and in the house 21 to 4. In December, 1874, the legislature again adopted a memorial to Congress, praying for the passage of a bill dividing the Territory upon the forty-sixth parallel, and organizing the north part thereof into a Territory, to be called Pembina. The vote upon this memorial was unanimous in the house, and in the council 12 to 1. In January, 1877, another memorial asking the same relief was passed without a dissenting vote in either branch of the legislature.

In 1881 the legislature adopted a memorial praying Congress to divide Dakota into three Territories. This was adopted in the house by a majority of one, and in the council by a majority of six.

In February, 1885, another memorial was adopted by the legislature praying for the passage of the bill for the division of the Territory upon the forty-sixth parallel, and the admission of that portion lying south of that line as a State. This memorial referred to the bill which passed the Senate in the Forty-eighth Congress. The vote in the Territorial legislature in favor of the adoption of this memorial was unanimous in both branches. We quote one paragraph of this memorial:

"And, although the people of all Dakota are earnestly in favor of admission of the southern half as a State, still they will hail with joy division only, and if asking for admission of the southern half as a State will in any manner delay division, then we earnestly request division, without the admission prayed for at the earliest possible time."

THE CONSTITUTION OF 1883.

In this sketch of the movements looking to division and the admission of South Dakota, which preceded the present constitution, we must also mention the constitutional convention of 1883.

In the winter of 1882-'83 a bill was passed, with practical unanimity, by the Territorial legislature, providing for a convention to form a constitution for South Dakota. The bill went to the governor so late that he was not required to return it to the legislature, and it was withheld by him, and so failed to become a law. A popular movement was then inaugurated, which was quite widely participated in by the people, and resulted in the election of delegates to a constitutional convention, to be held at Sioux Falls, in September, 1883. This convention framed a constitution which was submitted to a popular vote and adopted. This constitution, with a memorial praying for the admission of the State, and other accompanying papers, was presented to the Senate February 18, 1884, and referred to the Committee on Territories. As this memorial was not then printed, and contains many valuable facts, we attach a copy of it to this report (Appendix E). The Hon. Bartlett Tripp, who signs the memorial, and was president of the convention, was one of the ablest lawyers of the Territory, a Democrat in politics, and has recently been appointed chief-justice of the Territory. The certified abstract of the vote cast for and against the constitution showed that the total number of votes cast was 19,150, of which 12,336 were cast for the constitution and 6,814 against.

These are some of the more formal expressions of the people, through their delegated representatives, in favor of the division of the Territory upon the line proposed by the bill and the admission of South Dakota into the Union. The same sentiment has found expression in other less formal, but hardly less conclusive, ways. The political conventions of both of the great political parties have repeatedly declared in favor of division, and some of them in favor of the admission of the south half as a State. The newspaper press of the Territory has very generally voiced the same desire. There has been no division upon the question in the Territory upon party lines. Democrats as well as Republicans have taken part in all of the movements of the people to which we have referred.

Two questions are now presented for decision:

- (1) Are the steps taken by the people of Dakota, for the purpose of securing admission into the Union, conformable to the Constitution of the United States and to the precedents in such cases and expression of the will of her people; and
- (2) Do the necessary conditions exist in the case of Dakota as to area, productive capacity, population, and the loyalty and good disposition of her people?

THE ADMISSION OF STATES.

The policy of the United States from the time of the adoption of the Constitution, and even before, has been to encourage the settlement of the public lands lying outside the boundaries of the States, and to organize the communities thus formed into

States as soon as the requisite population was found within a suitable area. Territorial governments were always regarded as formative and temporary, to be superseded by State governments as soon as the necessary conditions existed. The vast domain acquired by cession from Virginia, by the treaty with Louisiana, and by conquest from Mexico, has been carved into States, which have been admitted to the Union as fast as sufficient population was found therein.

In the case of *Dred Scott v. Sandford*, 19 How., 446, the court (Chief Justice Taney delivering the opinion) said upon this subject:

"There is certainly no power given by the Constitution to the Federal Government to establish and maintain colonies bordering on the United States, or at a distance, to be ruled and governed at its own pleasure, nor to enlarge its territorial limits in any way except by the admission of new States. That power is plainly given, and if a new State is admitted it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be acquired and held permanently in that character.

"We do not mean, however, to question the power of Congress in this respect. The power to expand the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion."

ORDINANCE OF 1787.

The ordinance of 1787 gave to the Northwestern Territory at first a colonial form of government. The executive, legislative, and judicial powers were lodged in officers appointed by Congress. But this was of necessity and temporary. So soon as 5,000 inhabitants were found in the district, authority was given to the people to elect a legislature and to enact laws. The end to which these expedients of government looked was statehood. In the fifth article it was provided:

"And whenever any of the said States shall have 60,000 free inhabitants therein such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, The constitution and government so to be formed shall be republican and in conformity to the principles contained in these articles; and so far as it can be, consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period and when there may be a less number of free inhabitants in the State than 60,000."

By an act of Congress passed April 20, 1836 (5 Stat. L., p. 10), the Territory of Wisconsin was organized, and embraced within its limits a large, perhaps the larger, part of the present Territory of Dakota. Section 12 of that act extended all the rights, privileges, and advantages secured to the people of the Northwest Territory by the ordinance of 1787 to the inhabitants of the Territory of Wisconsin. A prior act of Congress, relating to the Territory of Michigan, which embraced all that part of Dakota east of the Missouri and White Earth Rivers, and a later act, relating to the Territory of Minnesota, which included the same region west of the Mississippi, also expressly guarantied to the people the privileges and advantages of the ordinance of 1787.

The ordinance of 1787 was a wise and beneficent compact. It guarantied certain rights to the people who should settle the western wilderness, and among the most valuable of these was the right to form a State government, and to be admitted on terms of equality to the Union of the States. The hardy men and women who pushed back our frontier, and developed the vast resources of the West, were to be also builders of States. We do not stop to discuss at any length the question whether one of these States, contemplated by the ordinance of 1787, could become *de jure* and *de facto* a State without the sanction of Congress. The existence of a State is a political fact, and involves the admission of its Senators and Representatives to the Congress of the United States. Again, by the terms of the compact the right of admission as a State was upon the condition that "the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles." Congress must judge whether these conditions have been complied with.

We have no doubt that there are other questions involved in the admission of a State which must be submitted to the enlightened and unbiased judgment of Con-

gress. Some of these will be considered in another part of this report. 'But the judgment and discretion of Congress must be a fair and impartial judgment and a wise discretion, having reference only to the public welfare and to the right of the people of these new communities to a full participation in the privileges of citizenship.

THE LOUISIANA TREATY.

The territory embraced within the boundaries of the proposed State of Dakota was acquired by the United States from France, under the treaty of April 30, 1803. The third article of that treaty is as follows:

"ART. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess." (8 Stat. L., p. 202.)

The people of Dakota have thus guaranteed to them by treaty the right to be admitted to the Union "as soon as possible, according to the principles of the Federal Constitution."

Whatever views may be entertained as to the strict legal effects of the ordinance of 1787, and of the Louisiana treaty upon the power of the people of Dakota to set up a State government, it must be admitted by all that by these compacts Congress has come under "an imperious moral obligation" to admit Dakota as a State, if the appropriate conditions as to area, productive capacity, population, and good disposition towards the Government and institutions of the country are found to exist.

PRECEDENTS.

No form of procedure for the organization of new States is prescribed by the Constitution or by any law of Congress. Each case has been dealt with as it presented itself. In some cases Congress has taken the initiative by the passage of enabling acts; in others, the movement has originated with the people of the proposed State, and Congress has by appropriate acts accepted and ratified the constitution and State government proposed. Twenty-five new States have been added to the original thirteen. In the cases of Vermont, Kentucky, Tennessee, Maine, Michigan, Arkansas, Florida, Iowa, California, and Oregon there were no enabling acts. In the case of Nevada a constitution was formed without any enabling act, but was rejected by the people. The second constitution was formed under an enabling act. In the case of Wisconsin the constitution framed under the enabling act was rejected by the people, and subsequently a new convention was called, which framed the constitution under which the State was finally admitted.

To deny to the people of any Territory the right to assemble in popular convention, and to propose to Congress the admission of such Territory or any part thereof into the Union as a State, is to deny rights which, we believe, are guaranteed by the Constitution. So long as the movement is subordinated to the Constitution of the United States and to the existing Territorial authorities; so long as the proposed State government is only such, and assumes no function of an existing government, but awaits the recognition of Congress, the proceedings are justified by safe and abundant precedents, and do not carry any suggestion of a disloyal spirit or involve any danger of a conflict of authority. Such is the attitude of Dakota. She has made herself ready, and now respectfully, but urgently asks to be endowed with the dignities and privileges of an American State.

It may not be without use to examine the proceedings adopted by the people of some of the States that have been admitted without enabling acts. The cases of Tennessee, Michigan, and California go much beyond the necessities of our argument.

TENNESSEE.

The following extract from Hough's American Constitutions (vol. 2, p. 318) shows the course taken by the people of Tennessee:

"A convention, elected for preparing a State constitution, met at Knoxville, January 11, 1796, and the next day a committee of two from each county was appointed to prepare a constitution. A bill of rights was reported on the 15th, and a frame of government on the 27th, by Daniel Smith, chairman of this committee. Their labors being completed, on the 6th of February an engrossed copy was read and passed; on the 19th an engrossed copy was forwarded to the President, *with a notification that on the 28th day of March, at which time the legislature would meet to act on the constitution, the temporary government established by Congress would cease.* This notification, with accompanying documents, was received by the President February 28, and laid by him

before Congress on the 8th of April. The claims of the new State for admission were not recognized by all, but after an energetic discussion the bill became a law on the 1st of June, 1796. The principal grounds of opposition were that the proceedings had not been authorized by an enabling act of Congress; that the census, being taken by those most interested in showing a large return, might be liable to error; and that it belonged to Congress to decide whether one or more States should be formed in the ceded Territory, and to establish the time and manner of organization."

The message of President Washington, transmitting the constitution to Congress, is so full of interest that we copy it in full:

"GENTLEMEN OF THE SENATE AND OF THE HOUSE OF REPRESENTATIVES: By an act of Congress passed on the 26th of May, 1790, it was declared that the inhabitants of the territory of the United States south of the river Ohio should enjoy all the privileges, benefits, and advantages set forth in the ordinance of Congress for the government of the territory of the United States northwest of the river Ohio; and that the government of said territory south of the Ohio should be similar to that which was then exercised in the territory northwest of the Ohio, except so far as was otherwise provided in the conditions expressed in an act of Congress passed the 2d of April, 1790, entitled 'An act to accept a cession of the claims of the State of North Carolina to a certain district of western territory.'

"Among the privileges, benefits, and advantages thus secured to the inhabitants of the territory south of the river Ohio appear to be the right of forming a permanent constitution and State government, and of admission as a State, by its delegates, into the Congress of the United States on an equal footing with the original States in all respects whatever when it should have therein 60,000 free inhabitants: *Provided*, The constitution and government so to be formed should be republican, and in conformity to the principles contained in the articles of the said ordinance.

"As proofs of the several requisites to entitle the territory south of the river Ohio to be admitted as a State into the Union, Governor Blount has transmitted a return of the enumeration of its inhabitants, and a printed copy of the constitution and form of government on which they have agreed, which, with his letters accompanying the same, are herewith laid before Congress.

"G. WASHINGTON.

"UNITED STATES, April 8, 1796."

This message, by what is said, and by what is not said, seems to justify the proceedings taken by the people of Tennessee. President Washington did not discover any trace of incipient rebellion in the movement. In the course of the debate in the House of Representatives, Mr. Macon said:

"The President having been duly informed from time to time with the proceedings of that Territory towards being admitted into the Union, if he had thought they had been doing wrong he would have set them right."

The debates upon the question of the admission of Tennessee will be found in volume 5 of the Annals of Congress, and are very full of interest. It was repeatedly said in the debate that the action of Congress in that case would be an authoritative precedent, and should be carefully considered. We give a few extracts from the remarks of some of the leading men who took part in the debate in the House. The debate in the Senate is not reported.

Mr. Madison said:

"The inhabitants of that district of country were at present in a degraded situation; they were deprived of a right essential to freemen—the right of being represented in Congress. Laws were made without their consent, or by their consent in part only. An exterior power had authority over their laws; an exterior power appointed their executive, which was not analogous to the other parts of the United States, and not justified by any thing but an obvious and imperious necessity. He did not mean by this to censure the regulations of this provisional government, but he thought where there was doubt Congress ought to lean towards a decision which should give equal rights to every part of the American people."

Mr. Macon said:

"There appeared to him only two things as necessary to be inquired into: First, was the new government republican? It appeared to him to be so; and, secondly, were there 60,000 inhabitants in the Territory? It appeared to him there were; and if so, their admission as a State should not be considered as a gift but as a right."

Mr. Gallatin said:

"The people of the Southwestern Territory became *ipso facto* a State the moment they amounted to 60,000 free inhabitants, and that it became the duty of Congress, as part of the original compact, to recognize them as such and to admit them into the Union whenever they had satisfactory proof of the fact. * * * Either you must acknowledge that their admission depends solely on the condition of the compact being fulfilled, to-wit, their having the number required, or you declare that it rests upon another act, which may be done or refused by the other party; that Congress have

the power, by neglecting to lay them out into one or more States, or by refusing to pass a law to take a census, to keep them forever in their colonial state."

Mr. Dayton, among others, opposed this view. He said:

"He could not consent to go further than he had stated, much less admit that by their own single act they had become a separate sovereignty, for, if such a principle was sanctioned, it was impossible to foresee all the consequences and extent of them. If they were, as had been represented, at this moment an independent State, they might offer or refuse at pleasure to become a party to this confederacy, or they might, in offering to enter into the Union, annex to the offer such terms and conditions as should give them advantages over the other States, and they might even treat and ally themselves with any foreign power. Although such a hostile or menacing measure was not to be apprehended on the part of a people so regardful of their true interests as those in question were, yet what security could there be for the prevalence of an equally good disposition through the whole extent of the other territory in which ten new States had been contemplated, and in a part of which resided many whose attachment to another Government was well known? The rule they were now about to establish must operate in future as a guide, and it needed no effort to believe that this country would on some future occasion, and that perhaps not distant, lament the adoption of the principles contained in the report."

The debate in the House was upon a resolution declaring the State of Tennessee to be one of the States of the Union, which was adopted by a vote of 43 to 30. In the Senate the committee to whom was referred the message of the President reported that before Tennessee could become a State Congress must decide whether the district ceded by North Carolina should, under the terms of the cession, be constituted into one or more States, and must provide for a census under national authority to determine whether 60,000 free inhabitants were found in the Territory. A bill embodying these principles was reported to the Senate, and, upon test votes to amend the bill so as to admit the State under the constitution already formed, the Senate divided—11 to 12. The bill as reported was passed and sent to the House, where it was so amended as to admit the State at once. The Senate disagreed to the amendments, but, May 31, 1796, receded from its disagreement, and the bill passed.

MICHIGAN.

The history of the formation of a State government in Michigan is very familiar. In the year 1833, and again in 1834, memorials were presented to Congress asking for the admission of the State. No action having been taken by Congress, the Territorial legislature, January 26, 1835, passed an act authorizing the holding of a convention to form a State constitution. The convention assembled at Detroit on the second Monday of May following, and proceeded to frame a constitution, which was submitted to a popular vote in October of the same year, and ratified, and at the same time State officers were elected. The schedule attached to the constitution provided that a certified copy thereof, together with an abstract of a census which had been taken, and a copy of the act of the legislature referred to, should be transmitted to the President. No memorial praying for the admission of the State was provided for or sent, nor was there, so far as we have seen, anything in the constitution staying the going into effect of the State government for any action of Congress thereon.

The communication to the President, which accompanied the copy of the constitution sent, was as follows:

WASHINGTON, December 9, 1835.

SIR: The undersigned, elected Senators and Representatives to Congress from the State of Michigan, have the honor to transmit to you, herewith, an additional authentic copy of the constitution adopted by the convention of Michigan on the 24th day of June, 1835, and ratified by the people of the same on the first Monday and the succeeding day in October, 1835.

We have the honor to be, with the highest respect, your most obedient servants,
 JOHN NORVELL.
 LUCIUS LYON.
 ISAAC E. CRARY.

The PRESIDENT OF THE UNITED STATES.

Andrew Jackson, then President of the United States, transmitted the documents to Congress, accompanied by the following message:

WASHINGTON, December 9, 1835.

To the Senate and House of Representatives:

GENTLEMEN: By the act of the 11th of January, 1805, all that part of the Indiana Territory lying north of a line drawn due "east from the southerly bend or extreme of Lake Michigan until it shall intersect Lake Erie, and east of a line drawn from the

said southerly bend, through the middle of said lake, to its northern extremity, and thence due north to the northern boundary of the United States," was erected into a separate Territory, by the name of Michigan.

The territory comprised within these limits, being part of the district of country described in the ordinance of the 13th of July, 1787, which provides that whenever any of the States into which the same should be divided should have 60,000 free inhabitants, each State should be admitted by its delegates "into the Congress of the United States on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government, provided the constitution and government so to be formed shall be republican and in conformity to the principles contained in these articles," etc., the inhabitants thereof have, during the present year, in pursuance of the right secured by the ordinance, formed a constitution and State government. That instrument, together with various other documents connected therewith, has been transmitted to me for the purpose of being laid before Congress, to whom the power and duty of admitting new States into the Union exclusively appertains; and the whole are herewith communicated for your early decision.

ANDREW JACKSON.

A dispute between Michigan on the one side and the States south of her on the other as to the boundary line complicated and delayed her admission as a State. But meantime the new State government was exercising the functions of government.

In the debates in Congress Michigan found many able defenders of her cause. Others denied her claim to be a State without some act of Congress authorizing or ratifying her proceedings. The result was the act of June 15, 1836, by which Congress ratified what Michigan had done and admitted the State into the Union upon the condition that her convention should consent to a change in the southern boundary.

In the proceedings of the Senate on December 10, 1835, the following appears :

"Mr. Benton presented the credentials of the Hon. Lucius Lyon and the Hon. John Norvell, elected by the legislature of Michigan Senators from that State, which were read. Mr. Benton then moved that seats be assigned to Mr. Lyon and Mr. Norvell on the floor of the Senate until the decision of the question of their admission as Senators. This [Mr. B. said] had been done by courtesy in similar cases."

The remarks of Mr. Benton upon this subject, a few days afterwards, are of present interest, as they refer to his own experience when he first appeared as a Senator from Missouri. He said :

"When a gentleman brought a letter to him from a respectable source he at least asked him to take a seat until he read it; and here (said he) these gentlemen have brought a letter from a State, *de facto*, signed by a high official functionary, and we are to hesitate before we extend to them an act of common courtesy! * * * But it had been said that the adoption of the resolution would prejudice the case of the admission of Michigan into the Union; that the mere courtesy of asking the gentlemen to sit down was to commit the Senate as to their admission as Senators. Are we of such treacherous memories as not to recollect what took place with regard to the admission of Missouri into the Union? Were the Senators from Missouri not sent back after having had seats assigned them? Was there one single Senator influenced in the vote he gave on that occasion by the fact that seats had been assigned to the Missouri Senators pending the question of their admission? He [Mr. B.] was here as one of those Senators, and was told by that accomplished gentleman and amiable man who then filled the chair [Mr. Gaillard] to take his seat; and he [Mr. B.] had all the incidental privileges of a Senator extended to him. He had the right to frank documents to wherever he pleased, and he had the privilege of using the stationery of the Senate, notwithstanding the question of right was decided against him and he was sent home. As to the question of the admission of Michigan he, for one, remained not only uncommitted but undecided as to the course he should take."

Afterwards Mr. Benton withdrew his resolution and offered another, which, on motion of Mr. Hendricks, of Indiana, was modified so as to extend to these gentlemen the same privileges on the floor of the Senate that were extended to members of the House, and in that form the resolution was adopted.

In the course of the debates in the Senate, Mr. Buchanan said :

"I think their course is clearly justifiable, but if there is anything wrong or unusual in it, it is to be attributed to the neglect of Congress.

"For three years they have been rapping at your door, and asking for the consent of Congress to form a constitution, and for admission into the Union; but their petitions have not been heeded, and have been treated with neglect. Not being able to be admitted in the way they have sought, they have been forced to take their own course, and stand upon their *rights*—rights secured to them by the Constitution and a solemn and irrevocable ordinance (of 1787).

"They have taken a census of the Territory; they have formed a constitution, elected their officers, and the whole machinery of a State government is ready to be put in operation; they are only awaiting your action. Having assumed this attitude they now demand admission as a matter of right; they demand it as an act of justice at your hands.

"Are they now to be repelled, or to be told that they must retrace their steps and come into the Union in the way they first sought to do, but could not obtain the sanction of Congress?

"In fear of the consequences of such a decision, I tremble at an act of such injustice." (Benton's Thirty Year's View, vol. 1, p. 629.)

As reference has been made in the Senate at this session to the case of *Scott v. Jones* (5 How., U. S., p. 343), it may be well enough to say that the case involved the validity of an act of incorporation granted by the legislature of Michigan, elected under their State constitution, and before the admission of the State into the Union. The only point decided was that the court did not have jurisdiction of the case. Justice McLean dissented, and in the course of his opinion says:

"Michigan was an organized Territory of the United States. Its governor, judges, and all other territorial officers were in the discharge of their various functions; the sovereignty of the Union extended to it. Under these circumstances the people of Michigan assembled, by delegates, in convention, and adopted a constitution, and under it elected members of both branches of their legislature, and governor and judges, and organized the State government. No serious objection need be made, in my judgment, to the assemblage of the people in convention to form a constitution, although it is the more regular and customary mode to proceed under the sanction of an act of Congress. But until the State shall be admitted into the Union by act of Congress the Territorial government remains unimpaired."

The statement of the learned judge as to the more usual methods of forming State governments was true at that time (1847), if only the cases of States that had a preliminary Territorial government are taken into account. But it will be noticed that he sees no objection to proceeding without an enabling act, provided only that the new government abides the action of Congress before assuming its functions.

CALIFORNIA.

This Territory, acquired from Mexico, was at first given a military government. During the year 1848 two efforts were made in Congress to provide a Territorial government for California, and a bill was also introduced for its admission as a State. These efforts were renewed in 1849, but without result. On the 3d day of June, 1849, the military governor issued a proclamation, the opening paragraph of which was as follows:

"Congress having failed at its recent session to provide a new government for this country, to replace that which existed on the acquisition of California by the United States, the undersigned would call attention to the means which he deems best calculated to avoid the embarrassments of our present condition."

The proclamation proceeded to call a constitutional convention and prescribe an apportionment for the selection of delegates. It was signed by Brevet Brigadier-General Riley, as governor of California, and certified by H. W. Halleck, brevet captain and secretary of state. The course taken was declared to be under the advice of the President of the United States, the Secretary of State, and Secretary of War.

Mr. Hough, in his *American Constitutions* (Vol. 1, p. 122), says:

"The treaty [Guadalupe Hidalgo] afforded some grounds for the organization of a State government without first seeking the consent of Congress. By article 9 of this instrument it was provided that 'Mexicans who, in the Territory aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution.'"

The convention called by General Riley assembled at Monterey at the time appointed, and proceeded to form a constitution for the State of California and to elect State officers. The governor-elect was inaugurated on the 20th of December following (1849), when General Riley, by proclamation, declared the constitution adopted and delivered the government into the hands of the officers of the newly-formed State, which then went into full operation.

The bill for the admission of California as a State did not become a law until September 9, 1850. On March 12, 1850, William M. Gwin, John C. Frémont, George W. Wright, and Edward Gilbert presented to Congress a memorial signed by them, the opening paragraph of which is as follows:

"The undersigned, Senators and Representatives elect from the State of California, have the honor, in pursuance of the requirement in the constitution recently adopted

by her people for her government as a State, to lay before your honorable bodies certified copies of said constitution, together with their credentials, and to request, in the name of the people of California, the admission of the State of California into the American Union."

We quote again from the memorial :

"The legislature elected in November assembled at San José, the capital of the State, on the 15th of December last. The governor elected by the people, Peter H. Burnett, esq., was inaugurated according to the requirements of the constitution, and on the 20th of the same month General Riley by proclamation delivered the civil government into the hands of the duly elected agents of the newly organized State. That State government, complete in all its elementary parts, is now exercising the power and performing the duties prescribed by the constitution of the State of California."

The concluding paragraph was as follows :

"The people request admission to the American Union as a State. They understand and estimate the advantages which will accrue to them from such a connection, while they trust they do not too highly compute those that will be conferred upon their brethren. They do not present themselves as suppliants, nor do they bear themselves with arrogance or presumption ; they come as free American citizens by treaty, by adoption, and by birth, and ask that they may be permitted to reap the common benefits, share the common ills, and promote the common welfare as one of the United States of America."

This memorial was presented to the Senate March 13 by Mr. Douglas. The record made in the Globe is as follows :

"Mr. Douglas presented the memorial of William M. Gwin and John C. Frémont, Senators, and George W. Wright and Edward Gilbert, Representatives, of the State of California, accompanied by a certified copy of the constitution of that State, and the credentials of the Senators elected by the legislature thereof, requesting, in the name of the people of California, admission as a State into the Union.

"Ordered, To lie on the table and be printed."

The message of President Taylor, transmitting to Congress a copy of the constitution of California, was in the following words :

To the Senate of the United States :

I transmit herewith to the Senate, for the information of that body, an authenticated copy of the constitution of the State of California, received by me from the Hon. William M. Gwin.

Z. TAYLOR.

WASHINGTON, D. C., February 13, 1850.

In the course of a report made by Mr. Clay, from the compromise committee of thirteen, we take the following extract in relation to the admission of California :

"There are various instances prior to the case of California of the admission of new States into the Union without any previous authorization by Congress. The sole condition required by the Constitution of the United States in respect to the admission of a new State is that its constitution shall be republican in form."

IOWA AND FLORIDA.

The admission of Iowa and Florida was at first included in a single act of Congress, approved March 3, 1845 (5 Stats. L., 742). The people of these States had repeatedly memorialized Congress for admission to the Union, but no action was taken. The preamble of the act admitting them to the Union is as follows :

"Whereas the people of the Territory of Iowa did, on the 7th day of October, 1844, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas the people of the Territory of Florida did, in like manner, by their delegates, on the 11th day of January, 1839, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States on an equal footing with the original States :

"Be it enacted, &c."

It will be noticed that the constitution of Florida was formed in 1839, six years before her admission. This convention assembled under authority of an act of the Territorial legislature passed February 2, 1838. There was not in the case of either State any authority from Congress for the holding of the constitutional convention that framed the constitution under which it was admitted. The act of Congress changed the boundaries of the State of Iowa, as defined in her constitution, and required the consent of the people to this change. This proposition was defeated at a popular

election. A second convention, called by the Territorial legislature, met and formed a new constitution in May, 1846, which was adopted by the people, and on December 28, 1846, an act of Congress admitting the State was passed.

ARKANSAS.

In the case of Arkansas the question of the right of the State to initiate proceedings to form a constitution and State government was elaborately discussed in both houses of Congress. The right of the State to take the initiative, as she had done, was defended by Messrs. Benton, Buchanan, Morris, of Ohio, and others. The vote upon the passage of the bill in the Senate, which was taken April 4, 1836, shows 31 in the affirmative to 6 in the negative.

John Quincy Adams, in the course of the debate in the House, said:

"I cannot, consistently with my sense of my obligations as a citizen of the United States, and bound by oath to support their Constitution, I cannot object to the admission of Arkansas into the Union as a slave State; I cannot propose or agree to make it a condition of her admission that a convention of her people shall expunge this article from her constitution. She is entitled to admission as a slave State, as Louisiana and Mississippi and Alabama and Missouri have been admitted, by virtue of that article in the treaty for the acquisition of Louisiana, which secures to the inhabitants of the ceded Territories all the rights, privileges, and immunities of the original citizens of the United States; and stipulates for their admission, conformably to that principle, into the Union."

WISCONSIN.

In the case of Wisconsin an act authorizing the people to form a constitution and State government was passed August 6, 1846. Under authority of this law a constitutional convention assembled at Madison on October 5 of that year. The constitution was laid before Congress, and a bill accepting and approving the constitution and for the admission of the State into the Union was passed on the 3d of March, 1847. This act required the constitution to be submitted to the popular vote of the people, which was provided for in the constitution itself. If the constitution was adopted the President was required to announce the fact by proclamation, and thereupon, without further proceedings, the admission of Wisconsin was to be complete. The constitution, however, was rejected by the people. Another convention, without further authority from Congress, assembled at Madison on the 15th of December, 1847, and adopted a constitution, which was ratified by the people at the popular election on the 2d of March, 1848. This constitution was accepted and ratified by an act of Congress approved May 29, 1848.

NEVADA.

In 1863, without any enabling act, the people of Nevada took steps to form a State government. A constitutional convention was elected and convened, and, as the result of its labors, a constitution was submitted to the people for approval or rejection. The vote resulted in a rejection of the constitution. On March 21, 1864, an enabling act was passed by Congress, under which proceedings were had for electing a constitutional convention, which assembled at Carson City December 4, 1864. The constitution adopted by this convention was ratified by the people, and in pursuance of the act of Congress the State was, by proclamation of the President, declared admitted into the Union on the 31st of October, 1864.

OREGON.

In the case of Oregon the claim was made in behalf of the people to originate a State government for themselves without authority of Congress under the ordinance of 1787, which had been extended to that Territory. In December, 1856, the Territorial legislature passed an act providing for a constitutional convention. The delegates were duly elected and the convention held. It met at Salem in August, 1857, and framed a constitution, which was ratified at a popular election. The boundaries, as provided for in that constitution, are the present boundaries of the State of Oregon, except that the territory lying north of the forty-sixth parallel of latitude and included between the Columbia and Snake Rivers was, by the act of Congress admitting the State, taken from the State of Oregon and attached to the Territory of Washington. There was no enabling act, the movement for admission having originated wholly with the people. The State was admitted to the Union on the 14th day of February, 1859.

There was quite a protracted debate in the House of Representatives upon the bill. The debate turned chiefly upon the question of population. In the English bill it had been provided in substance that if Kansas did not come in under the Lecompton

constitution she should not be admitted until her population equaled the existing unit of representation in the House of Representatives, which was then 93,492. The Republicans insisted that if this principle was correct, as many of them admitted, it should also be applied to Oregon, and that it was an unjust discrimination against Kansas to hold her off until her population should reach 93,492 and admit Oregon, whose population was claimed to be very much short of that limit. In the House Mr. Stephens, of Georgia, reported a bill for the admission of Oregon, and after quoting the provisions of the ordinance of 1787, he said :

"If there were any question as to whether there were 90,000 people there, if there were any question as to whether Oregon comes up to the ratio of representation, yet, sir, I hold that there is a solemn guaranty and a compact made with those people which we ought not to disregard. That there are more than 60,000 people there it seems to me no gentleman upon this floor can doubt."

Mr. Clark, of Missouri, in the course of the debate, also said upon the same subject :

"I claim that Oregon has a right to come in under the ordinance of 1787, and that it is the duty of Congress to admit her on the same principle and according to the same rule established in that ordinance for the Northwest Territory."

It is worthy of remark here that in this debate it was conceded on both sides that the possession of a population equal to the ratio of representation in the House of Representatives was all that could be demanded of a Territory applying for admission.

MISSOURI.

In the debate upon the resolution for the admission of Missouri in the Senate, on December 4, 1820, Mr. Smith, of South Carolina, who reported the resolution, said :

"While the resolution for the admission of Indiana was under progress in the Senate, the House of Representatives had a member from that State in his seat debating and voting. There was no reason why the Senate in the present case should wait for the other House. Let this branch go on and decide whether the new members had a right to their seats."

This resolution passed the Senate, but it was rejected by the House of Representatives.

At the Presidential election in 1820, Missouri, though not then admitted to the Union, voted for electors for President and Vice-President. The vote of Missouri was transmitted to the Vice-President with the votes of the States, and the question as to what disposition should be made of it became very embarrassing and was discussed in both branches of Congress. Mr. Clay, in the House, from the select committee appointed for that purpose, on the 13th of February, 1821, reported the following resolution, among others, regulating the counting of the electoral vote :

"Resolved, That if any objection be made to the votes of Missouri and the counting or omitting to count which shall not essentially change the result of the election, in that case they shall be reported by the President of the Senate in the following manner: Were the votes of Missouri to be counted, the result would be, for A. B. for President of the United States, — votes; if not counted, for A. B. as President of the United States, — votes; but in either event A. B. is elected President of the United States, and in the same manner for Vice-President."

The method provided for in this resolution was adopted, and the declaration of the election of Mr. Monroe was made according to the form prescribed by this resolution. (*Annals of Congress, Sixteenth Congress, second session, p. 1147.*)

DIVISION OF TERRITORIES.

It has been objected that there was no precedent justifying the movement on the part of any body of people less than the whole body of an organized Territory, for the formation of a constitution and State government as the basis of an application for admission to the Union. But, in fact, there are such precedents. California was never organized as a Territory. It was a part of the unorganized domain acquired from Mexico. No previous action of Congress had in any way indicated or suggested the boundaries of the State of California. The people themselves by their constitution proposed their own boundaries. In the case of Iowa the boundaries of the Territory as organized at the time of the formation of the first constitution embraced a large tract of country lying to the north of the present boundaries of the State and of the boundaries proposed in the first constitution. This constitution proposed to carve out of the limits of the Territory of Iowa a certain part thereof and organize it into a State. The boundaries as proposed in this constitution were not accepted by Congress, and the boundaries proposed by Congress were rejected by a popular vote. The second constitution, under which the State was admitted, proposed a new bound-

ary different from either of these, being the present boundaries of the State, and this constitution was accepted and ratified by Congress.

In the light of these precedents and authorities, the committee conclude that no just criticism can be made of the proceedings taken by the people of South Dakota, nor of the methods by which they have brought their requests to the attention of the Senate.

POPULATION.

It will appear, from what has already been said, that many of the most renowned statesmen of our country have insisted that as to new States organized out of territory originally embraced in the ordinance of 1787, or to which the provisions of that ordinance had been extended, no more than 60,000 inhabitants could be insisted upon as requisite to the admission of a State. But we do not need to insist upon that view in the case of Dakota.

Where a larger population has been insisted upon in argument by the opponents of the admission of a new State, they have not gone further than to claim that the territory should have a population equal to the unit of representation in the House of Representatives. In fact, three States, Florida, Oregon, and Nevada, were admitted when their population was less than the existing ratio of representation. In the case of Kansas, Congress in terms declared, in view of the contingency of the rejection of the Lecompton constitution, that—

“In that event the people of said Territory are hereby authorized and empowered to form for themselves a constitution and State government, by the name of the State of Kansas, according to the Federal Constitution, and may elect delegates for that purpose, whenever, and not before, it is ascertained by a census duly and legally taken that the population of said Territory equals or exceeds the ratio of representation required for a member of the House of Representatives of the Congress of the United States.” (11 Stats. L., 270.)

The friends of slavery did not venture to demand more, intent as they were upon the exclusion of Kansas as a free State.

In his message to Congress (December 6, 1858), President Buchanan gives his hearty support to this provision of the “English bill,” and urges that it be made general. He says:

“This excellent provision which Congress has applied to Kansas ought to be extended and rendered applicable to all Territories which may hereafter seek admission into the Union.”

But here Mr. Buchanan was reminded of Oregon, a promising young Territory, a majority of whose people were politically in accord with his administration, and though Oregon had less than half the population required by the rule, he suggests an exception in her case:

“Of course [he says] it would be unjust to give this rule a retrospective application and exclude a State which, acting upon the past practice of the Government, has already formed its constitution, elected its legislature and other officers, and is now prepared to enter the Union.”

The President's view was adopted, and in February following Oregon was admitted with a population of 44,630, while the existing ratio of representation was 93,492.

During the Forty-eighth Congress a bill embodying the requirement as to all States hereafter admitted that they should have a population equal to the ratio of representation was favorably reported in the House, but was not acted upon.

It may be said of this rule that it is not arbitrary, but founded on reason. It preserves an equality of representation. If we go beyond this, it becomes a matter of arbitrary caprice, of whim, or of party emergency.

CENSUS.

We are not left to conjecture or calculation as to the population of South Dakota. Under the provisions of section 22 of the act of March 3, 1879, a census was taken as of the date of June last, and the returns thereof duly certified to the Secretary of the Interior. In response to a request for information, the following has been received from the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1886.

SIR: I have the honor to acknowledge receipt of your communication of the 31st ultimo, in which you request, for the use of the Senate Committee on Territories, a statement showing the population, number of farms, agricultural products, and number of agricultural establishments in the Territory of Dakota, as returned at the interdecennial census of 1885, with the wish that the statement be so arranged as to give the information for both North and South Dakota, the line of division being the forty-sixth parallel.

In compliance with your request, I have the honor to transmit herewith a statement prepared from an abstract filed in this Department by the governor of the Territory of Dakota on August 29, 1885, showing for the Territory of Dakota the number of people, number of farms, number of manufacturing establishments, and number of deaths returned by the enumerators at the interdecennial census of 1885.

I have the honor to be, very respectfully,

H. E. MULDROW,
Acting Secretary.

Hon. BENJAMIN HARRISON,
United States Senate.

Interdecennial census of Dakota, June 1, 1885.

	Population.	Farms.	Manufacturing establishments.	Deaths.*
North Dakota	152,199	32,503	612	720
South Dakota	263,465	50,264	442	1,849
The Territory	415,664	82,767	1,054	2,569

* For the year, June 1, 1884, to May 31, 1885.

It thus appears that the population of the proposed State of Dakota was, on the 1st day of June last, 263,465. The present basis of representation in the House of Representatives is 151,911. No State ever organized from the public domain had at the time of admission anything like the present population of South Dakota. We reproduce here a table taken from the report of this committee upon the Dakota bill at the first session of the Forty-eighth Congress, showing the ratio of representation and the population at date of admission of all the States.

State.	Date of admission.	Representative ratio on previous census.	Population by previous census.			Population when admitted.			Population by following census.	Rate per cent. of increase during decade of admission.
			Free.	Slave.	Total.	Free.	Slave.	Total.		
Vermont	1791	33,000	85,425		85,425	85,425		85,425	154,446	80
Kentucky	1792	33,000	61,247	12,430	73,677	61,247	12,430	73,677	220,955	200
Tennessee	1796	33,000	32,274	3,417	35,691	*60,000	*7,000	*67,000	105,602	195
Ohio	1802	33,000	45,365		45,365	45,365		45,365	230,760	408
Louisiana	1812	35,000	41,896	34,660	76,556	41,896	34,660	76,556	152,923	100
Indiana	1816	35,000	24,520		24,520	63,897		63,897	147,178	500
Mississippi	1817	35,000							75,448	} 403
Alabama	1819	35,000	23,264	17,088	40,352	45,441	30,061	75,512	127,901	
Illinois	1818	35,000	12,282		12,282	34,620		34,620	55,162	350
Maine	1820	35,000	228,705		228,705	298,269		298,269	399,445	33
Missouri	1821	40,000	56,335	10,222	66,557	56,335	10,222	66,557	140,445	111
Arkansas	1846	47,700	25,812	4,576	30,388	*33,000	*9,240	52,240	97,574	221
Michigan	1837	47,700	31,639		31,639	*65,000		*65,000	212,267	570
Florida	1845	70,680	28,760	25,717	54,477	*34,000	*30,000	*64,000	87,445	60
Texas	1845	70,680				*105,000	*38,000	*143,000	212,592	
Iowa	1846	70,680	43,112		43,112	78,819		78,819	192,214	345
Wisconsin	1848	70,680	30,945		30,945	*180,000		*180,000	305,391	886
California	1850	93,423	92,597		92,597	92,597		92,597	379,994	310
Minnesota	1858	93,423	6,077		6,077	*120,000		*120,000	172,023	2,730
Oregon	1859	93,423	13,294		13,294	*50,000		*50,000	52,465	294
Kansas	1861	127,381	107,206		107,206	107,206		107,206	364,399	240
West Virginia	1863	127,381						*350,000	442,914	
Nevada	1864	127,381	6,857		6,857	*40,000		*40,000	42,491	520
Nebraska	1867	127,381	28,841		28,841	*100,000		*100,000	122,993	322
Colorado	1876	131,425	39,864		39,864	*100,000		*100,000	194,640	368

* Estimated.

AREA.

The Territory of Dakota was organized March 2, 1861. Its area, as given in the Tenth Census, is 149,100 square miles. Its greatest length, north and south, is about 430 miles, and its greatest width about 370 miles. If divided upon the forty-sixth parallel of latitude, as proposed in the bill, the State of Dakota would contain about 77,000 square miles. The areas of the existing States are as follows:

Summary of areas of States, Territories, etc., in square miles.

	Gross areas.	Coast waters (bays, gulfs, sounds, etc.).	Rivers and smaller streams.	Lakes and ponds.	Total water surface.	Total land surface.
Total	3, 025, 600	17, 200	14, 500	23, 900	55, 600	3, 970, 000
Alabama	52, 250	440	260	10	710	51, 540
Arizona	113, 020	-----	80	20	100	112, 920
Arkansas	53, 850	-----	540	265	805	53, 045
California	158, 360	540	240	1, 600	2, 380	155, 980
Colorado	103, 925	-----	270	10	280	103, 645
Connecticut	4, 990	25	80	40	145	4, 845
Dakota	149, 100	-----	610	790	1, 400	147, 700
Delaware	2, 050	30	60	-----	90	1, 960
District of Columbia	70	-----	10	-----	10	60
Florida	58, 080	1, 800	390	2, 250	4, 440	54, 240
Georgia	59, 475	150	300	45	495	58, 980
Idaho	84, 800	-----	200	310	510	84, 290
Illinois	56, 650	-----	515	135	650	56, 000
Indiana	36, 350	-----	330	110	440	35, 910
Indian Territory	64, 690	-----	600	-----	600	64, 090
Iowa	56, 025	-----	450	100	550	55, 475
Kansas	82, 080	-----	380	-----	380	81, 700
Kentucky	40, 400	-----	375	25	400	40, 000
Louisiana	48, 720	1, 060	540	1, 700	3, 300	45, 420
Maine	33, 040	545	300	2, 300	3, 145	29, 895
Maryland	12, 210	1, 850	500	-----	2, 350	9, 860
Massachusetts	8, 315	125	60	90	275	8, 040
Michigan	58, 915	-----	260	1, 225	1, 485	57, 430
Minnesota	83, 365	-----	360	3, 800	4, 160	79, 205
Mississippi	46, 810	30	340	100	478	46, 340
Missouri	69, 415	-----	630	50	680	68, 735
Montana	146, 080	-----	410	360	770	145, 310
Nebraska	76, 855	-----	630	40	670	76, 185
Nevada	110, 700	-----	35	925	960	109, 740
New Hampshire	9, 305	-----	80	220	300	9, 005
New Jersey	7, 815	205	120	35	360	7, 455
New Mexico	122, 580	-----	115	5	120	122, 460
New York	49, 170	350	300	900	1, 550	47, 620
North Carolina	52, 250	3, 260	250	160	3, 670	48, 580
Ohio	41, 060	-----	140	160	300	40, 760
Oregon	96, 030	50	500	920	1, 470	94, 560
Pennsylvania	45, 215	-----	200	30	230	44, 985
Rhode Island	1, 250	135	10	20	165	1, 085
South Carolina	30, 570	215	180	5	400	30, 170
Tennessee	42, 050	-----	200	100	300	41, 750
Texas	265, 780	2, 510	800	180	3, 490	262, 290
Utah	84, 970	-----	80	2, 700	2, 780	82, 090
Vermont	9, 655	-----	50	380	430	9, 135
Virginia	42, 450	1, 780	520	25	2, 325	40, 125
Washington	69, 180	1, 380	560	360	2, 300	66, 880
West Virginia	24, 780	-----	135	-----	135	24, 645
Wisconsin	55, 040	-----	420	1, 170	1, 590	54, 450
Wyoming	97, 890	-----	85	230	315	97, 575
Unorganized territory	5, 740	-----	-----	-----	-----	5, 740
Delaware Bay	620	620	-----	-----	620	-----
Raritan Bay and lower New York Bay	100	100	-----	-----	100	-----

It will be seen that the proposed State of Dakota would be the eighth State in area—only California, Colorado, Kansas, Minnesota, Nevada, Oregon, and Texas having a larger area—while the Territory of Lincoln would be only exceeded in area by one additional State, viz, Nebraska. The proposed State would be more than twice as large as Indiana; 20,000 square miles larger than Illinois; 23,000 square miles larger than Arkansas; 8,000 square miles larger than Missouri; more than two and a half times larger than South Carolina; and more than 10,000 square miles larger than the six New England States.

PRODUCTION.

The committee feel that the capacity of Dakota to sustain an increasing population may fairly be inquired into. For, not area, but population constitutes a State. In connection with the memorial which accompanies the constitution (Appendix) some selected statistics of agriculture are presented, drawn from the recent census made in 1885, but showing the crops of the previous year. It appears that there are in South Dakota 50,237 farms, containing 3,754,864 acres, and that the average size of the farms is 194 acres; that there was produced, in the year 1885, 7,553,030 bushels of corn, 12,829,578 bushels of wheat, and 2,257,491 bushels of flax. There were 142,322 horses and mules, and over a half million of cattle in South Dakota. Some additional statistics of production and wealth, not shown in the selected statistics of agriculture accompanying the memorial, are worthy of presentation, and are as follows:

Bushels of oats raised.....	11,783,727
Value of farms.....	\$87,131,050
Value of live stock.....	25,950,022
Value of farm products, 1884.....	17,095,805

The value of farm products for 1885 is largely increased over 1884—at least 50 per cent.—by reason of increased production and enhanced price.

Total assessed valuation of property for purposes of taxation in 1885 (exclusive of railroads, which are taxed upon their gross earnings).....	\$63,570,197
Number of miles of railroads.....	1,615

Average assessed valuation, as given in the auditor's report for the whole Territory, and which is approximately accurate for the proposed State, for 1885:

Land.....	per acre..	\$3.55
Horses.....	per head..	46.57
Mules.....	do.....	56.47
Cattle.....	do.....	14.09
Sheep.....	do.....	1.15
Swine.....	do.....	2.09

Number of banks:	
National.....	26
Capital employed in national banks.....	\$1,525,000
Surplus.....	*375,000
Number of post-offices.....	606

EDUCATIONAL.

Number of schools in 1884.....	1,535
Number of school-houses.....	1,340
Number of colleges, universities, and normal schools.....	12
Expended for school purposes in 1885.....	\$1,200,000

CHARITABLE AND PENAL INSTITUTIONS IN PROPOSED STATE.

Penitentiary.....	1
Insane hospital.....	1
School for deaf and dumb and blind.....	1

In response to an inquiry addressed to the Third Assistant Postmaster-General in reference to the postal revenue derived from the Territory, the following was received:

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., January 6, 1886.

SIR: Your letter of the 31st ultimo to the Third Assistant Postmaster-General having been referred to this office, I have the honor to inform you that the postal revenues collected at the offices in Dakota during the fiscal year ended June 30, 1885, the last date to which the accounts have been completely audited, are as follows:

South of the forty-sixth parallel.....	\$225,802.28
North of the forty-sixth parallel.....	150,534.85
Total for the Territory.....	376,337.13

* Estimated,

It is impracticable to give the transportation statistics for the Territory by subdivisions, or to separate the cost of transportation of mail originating in Dakota from that of the great through mails originating outside.

The postal revenues furnish the most accurate measure of the postal business in the Territory.

Very respectfully,

D. McCONVILLE,
Auditor.

Hon. BENJAMIN HARRISON,
United States Senate.

The people of Dakota were but lately citizens of the States. Every State is represented among her people and is favorably represented. For intelligence, industry, and a good disposition towards the institutions of our country no community can claim the precedence of this. It has been true of all our Northwestern States and Territories, and is true of Dakota, that a very large number of soldiers who served the country faithfully during the late war are found among her people. The respect of her people for the institutions of religion and learning is evidenced by the statistics already presented.

The committee recommends the passage of the bill.

APPENDIX.

EXHIBIT A.

CONSTITUTIONAL CONVENTION.

CHAPTER 33.

AN ACT providing for a constitutional convention and the formation of a State constitution preparatory to the admission of Dakota into the Union, and for other purposes.

Whereas experience has abundantly demonstrated that the welfare of the people is promoted by the establishment among them of a permanent government, sovereign in character and republican in form; and

Whereas the territorial system of government has no stability, is temporary in character, possessing no sovereign powers, and meets neither the requirements of the people, nor, in the case of Dakota, the rapidly increasing demands of its various and growing interests; and

Whereas it has ever been and still remains the wise policy of the parent government to foster and encourage the development and settlement of the Territories until such time as their population shall be sufficiently numerous to entitle the people to be admitted into and become a part of the United States, on an equal footing with the States which compose the Union; and

Whereas, that part of the Territory of Dakota south of the forty-sixth parallel of latitude now contains a population sufficient to entitle it to admission into the Union, and such population now being desirous of being fully enfranchised and enjoying all the privileges of American citizenship; and

Whereas, public opinion in the United States has decided, and the Congress of the United States by their action upon the bill for the admission of such part of Dakota into the Union has admitted, that that portion of Dakota south of the forty-sixth parallel does possess the requisite population and all other qualifications necessary to entitle it to admission into the Union as a State: Therefore,

Be it enacted by the legislative assembly of the Territory of Dakota, That for the purpose of enabling the people of that part of Dakota south of the forty-sixth parallel to organize and form a State government and make application for admission into the Union of States, a delegate convention is hereby called to meet at the city of Sioux Falls, in the county of Minnehaha, in said Territory of Dakota, on Tuesday, the 8th day of September, A. D. 1885, at 12 o'clock meridian, for the purpose of framing a constitution, republican in form, and performing all other things essential to the preparation of the Territory for making application to the General Government for the admission of such part of Dakota into the Union of States.

SEC. 2. The said convention shall be composed of one hundred and eleven delegates, who shall be apportioned among the several counties of that part of the Territory south of the forty-sixth parallel, as follows :

Counties.	Num-ber.	Counties.	Num-ber.
Aurora	2	Lincoln	2
Bon Homme	3	McPherson	1
Buffalo	1	Beadle	5
Brule	3	Brookings	3
Campbell	1	Brown	4
Charles Mix	1	Turner	4
Clay	2	Walworth	1
Custer	1	Moody	2
Day	2	Potter	1
Douglas	2	Sanborn	2
Fall River	1	Sully	2
Lawrence	8	Union	3
McCook	2	Yankton	4
Miner	2	Butte	1
Minnehaha	6	Clark	2
Pennington	2	Codington	2
Roberts	1	Davison	2
Spink	6	Deuel	1
Grant	2	Edmunds	1
Hand	3	Faulk	1
Hughes	3	Hamlin	1
Hyde	1	Hanson	2
Kingsbury	2	Hutchinson	3
Lake	2	Jerauld	2

Provided, That all organized counties in the Territory south of the forty-sixth parallel, at the time the election hereinafter provided for is held to choose members to said convention, and which counties are not above named, shall be entitled to one delegate, who shall be given a seat, and have a vote in said convention, as other members thereof, and said delegates shall be in addition to the one hundred and eleven heretofore provided for.

SEC. 3. An election for the purpose of choosing said delegates is hereby appointed to be held on the 30th day of June (Tuesday), 1885; at which time the delegates to the said constitutional convention shall be chosen. Said election shall be conducted in all respects as elections under the general laws of this Territory. And the several county clerks of the several counties of the Territory are hereby required to issue notice of such election, at least twenty days prior thereto, stating the object of such election, and the number and character of the officers to be chosen, and shall deliver the same to the sheriff, who is required to post the same, as the law now requires; and the several boards of county commissioners are required to establish precincts for such election, and to appoint polling places and judges of such election, and to do and perform all things that are now required of them by law in the case of general elections; and the canvass and return of the votes shall be as now required by law in the case of county officers. And it is hereby made the duty of the several county clerks to issue certificates of election to all persons who shall be declared elected: *Provided*, That the persons receiving the highest number of votes at such election shall be elected as such delegates. It shall be the further duty of such county clerks, within ten days after such election, to certify to the secretary of the Territory the names of all persons chosen as such delegates from their respective counties, and to transmit the same to said secretary by mail.

SEC. 4. The secretary of the Territory shall receive all certificates so transmitted to him by the several county clerks, and shall preserve the same, and it is hereby made his duty to enter the names of all persons so certified to him as such delegates in a book which he shall provide for that purpose.

SEC. 5. The delegates so elected at such election shall meet at the time and place appointed by this act, and in such room as the secretary of the Territory, or the convention, have provided; and at the hour heretofore named the secretary of the Territory, or some member elect of said convention, shall call the convention to order, and shall call the roll of the members from the book heretofore provided, if such book can be obtained, and if not, from the official returns of said election, and the certificate of election of each member, in such manner as the convention shall prescribe, and the several delegates, as their names are called, shall take their seats in said convention. When the calling of the roll of members shall be completed the several delegates shall be required to take and subscribe an oath to support the Constitution of the United States, and to faithfully and impartially discharge their duties as delegates to said

convention; said oath may be administered by said secretary or by any judicial officer of the Territory. The convention shall then proceed to organize by the election of a president, who shall be chosen from among the delegates, and the other officers herein provided for. Said convention shall adopt such rules and regulations for their government as are provided in the case of legislative bodies. It may adjourn from time to time, and shall be the sole judge of the election and qualifications of its members. The president and all officers of said convention shall take and subscribe an oath to faithfully and impartially discharge the duties of their respective offices.

SEC. 6. Said convention after its organization shall proceed to draught a constitution for that portion of Dakota south of the forty-sixth parallel, republican in form, in which shall be defined the boundaries of the proposed State south of the forty-sixth parallel. It shall be the further duty of said convention to provide for an election by the people of the proposed State, at which election the said constitution shall be submitted to the people for ratification, and at which election the State officers, member of Congress, members of the legislature, and all other officers provided for in said constitution shall be elected; and the said convention shall have power to provide all necessary means for holding said election, and for reassembling said legislature when elected, and for carrying into effect all the purposes of said constitution: *Provided*, That the expenses of all special elections under the provisions of this act, and of any ordinance of said convention, shall be paid by each county in said Territory, respectively.

SEC. 7. The delegates to the said constitutional convention shall each receive a per diem of \$2.50 for each day's attendance upon said convention, and 5 cents per mile for each mile necessarily traveled in going to and returning from said convention; said per diem and mileage to be paid by the Territorial treasurer upon the warrant of the Territorial auditor.

SEC. 8. The Territorial auditor is hereby authorized to audit and allow the accounts of the several delegates to said convention upon certificates of the presiding officer of said convention, countersigned by the secretary thereof.

SEC. 9. Said convention shall have power to elect a secretary, assistant secretary, employ stenographers, a chaplain, sergeant-at-arms, messengers and clerks, and janitor, each of whom shall receive such compensation as the said convention shall determine, to be audited and paid in the same manner as the accounts of the members of said convention are audited and paid: *Provided*, That said convention before its adjournment shall ascertain the entire expense of holding the same, including the per diem and mileage of its members, compensation of its officers, and all necessary expenses, and the same under the hand of the presiding officer of said convention and attested by the secretary thereof to the secretary of Territory, and which shall be filed by said secretary of the Territory in his office, and be kept as a record thereof; and it is hereby made the duty of the several boards of county commissioners of the counties named herein or represented in said convention, to cause to be levied and collected in the same manner as other taxes are levied and collected, a special tax sufficient to pay all of said expenses, which tax shall be apportioned among the said counties in proportion to the assessed valuation; and when said tax is collected in each of said counties, the same shall be paid by said counties into the Territorial treasury: *Provided*, That in case of the division of the Territory of Dakota, or the admission of the southern half as a State before the collection and payment of said tax into the Territorial treasury as herein provided, then the treasurer of said State or Territory formed from that portion of Dakota south of the forty-sixth parallel, as the case may be, shall pay over to the Territory of North Dakota such proportion of said moneys as the assessed valuation of the property in North Dakota bears to the assessed valuation of property in South Dakota, in said new State or Territory.

SEC. 10. The laws now in force governing elections, and the canvass and return of the votes cast therein, and the qualifications of voters, shall govern in any election that may be held under this act or under any ordinance of said convention; but said convention shall designate the board of State canvassers, and ordain the method by which the result of the State election shall be promulgated. The said convention shall also provide the manner of presenting the said constitution to the Congress of the United States, and do and ordain all things necessary to be done for the purpose of carrying into effect the government of the State, as soon as it shall be admitted into the Union of States.

SEC. 11. That the members of said convention shall not receive pay for a session of more than thirty days, but said convention may sit for a longer period, and may adjourn from time to time.

SEC. 12. That for the purpose of defraying the expenses of said convention, there is hereby appropriated out of any money in the Territorial treasury, not otherwise appropriated, a sum sufficient to defray the expenses of said convention, not to exceed in the aggregate the sum of \$20,000.

SEC. 13. This act shall take effect after its passage and approval.

Approved March 9, 1855.

(Session laws of Dakota, 1855.)

EXHIBIT B.

OFFICE OF STATE EXECUTIVE COMMITTEE,
Yankton, Dak., December 7, 1885.

SIR: We, the State executive committee of the State of Dakota, on this behalf appointed by a constitutional convention of that part of the Territory of Dakota south of the forty-sixth parallel of latitude, have the honor to herewith transmit to you a certified copy of the constitution of the State of Dakota and of a memorial from the constitutional convention to the President and Congress of the United States.

We have also forwarded through the hands of Hon. Benjamin Harrison, United States Senator, an engrossed and certified copy of the constitution for presentation to the Senate through the President thereof.

I am instructed, on behalf of the constitutional convention of Dakota, to request you to have the said memorial and constitution duly presented to the Senate of the United States for their consideration, and that the same be referred to the proper committee and acted upon as the application of said convention for and on behalf of the people of said State, for the admission of the State into the Union.

Yours, respectfully,

HUGH J. CAMPBELL,
President State Executive Committee.
 JOSEPH R. HANSON,
 E. P. BEEBE,
 A. J. SIMMONS,
 JOHN CAIN,
 JAMES A. WARD,
 STEPHEN G. UPDYKE,
Committee

*To the honorable President of the Senate of the Congress of the United States,
 Washington, D. C.*

EXHIBIT C.

*PRESENTATION OF DAKOTA'S CLAIMS AND MEMORIAL PRAYING FOR
 ADMISSION.*

To the President and Congress of the United States:

The people of that part of Dakota south of the forty-sixth parallel of north latitude, having adopted a constitution republican in form, and taken the necessary preliminary measures toward organizing a State government, now, through their properly constituted agents, present such constitution to the President and Congress of the United States, and, confidently relying upon the rights which pertain to American citizens like circumstanced, respectfully but earnestly pray to be admitted as a State into the Union of States.

A HISTORY OF THE STATE MOVEMENT.

For many years, as will more fully be shown hereinafter, Congress has been petitioned by the Territorial legislative assembly to divide the Territory upon or near the forty-sixth parallel of north latitude, and, since the census of 1880, to pass an enabling act for the south portion.

In the winter of 1881-'82, a large number of the prominent citizens of the Territory, from both sections thereof, being delegated thereto by their respective communities, visited the city of Washington and urged upon Congress the passage of an act enabling the people of South Dakota to form a constitution and State government, preparatory to admission into the Union, and continuing the Territorial organization for the northern part. Such an act was at that session favorably reported to their respective houses from the Committees on Territories of the Senate and House of Representatives, but was not finally acted upon in either.

At the next session of the Territorial legislative assembly, in the winter of 1882-'83, a bill passed both houses, with practical unanimity, providing for and calling a constitutional convention to frame and submit to the people, for ratification or rejection, a constitution for South Dakota. The bill reaching the executive too late in the session to secure his approval or its return before the close, was withheld by him, and thus failed to become a law. Shortly after such failure, a committee was formed to call a preliminary convention to consider the advisability of calling and holding

a constitutional convention, as contemplated by the bill withheld and defeated by the executive. Such preliminary convention was called, and held at the city of Huron, in June, 1883, and was composed of over three hundred delegates, representative men of both political faiths, duly selected by the people of the respective counties. That convention remained in session several days, and unanimously united in calling a constitutional convention, to be held at Sioux Falls in September of the same year (1883), composed of one hundred and fifty delegates, to be elected by the people by ballot under the forms provided by law for ordinary elections.

Congress having failed to act, an executive, appointed from abroad and not in accord with the people having defeated the legal measure passed by their representatives in the legislative assembly, nothing was left for action but the procedure, originating with, and carried forward by, the people concerned, acting in their primary capacity.

Such election was held, delegates were regularly elected, consisting of Democrats and Republicans. They assembled at the place and time named, remained in session sixteen days, framed a constitution, which was submitted to the electors at the November, 1883, election, and by them ratified, and, through a committee provided by the convention, the constitution was, at the session of 1883-'84, submitted to Congress and admission thereunder asked for South Dakota. Bills were submitted to both houses of Congress for this purpose, but, as is generally understood, because the convention was held and the elections were conducted without being clothed with the authority of a law of the Territory, the friends of Dakota therein preferred the passage of an enabling act, with which conclusion Dakota was content, and the result of this effort was the passage of an enabling act through the Senate, not acted upon in the House.

At the next succeeding session of the Territorial legislative assembly, in February, 1885, with the same unanimity which has characterized all legislative assemblies, and all gatherings of the representatives of the people, whether for the whole of the Territory or for that portion more immediately concerned upon this subject, another act was passed calling a constitutional convention for South Dakota, and the then executive being in full accord with the manifest wish of the people, approved the same. That act is found in session laws of Dakota, 1885, page 51. An election for delegates was held thereunder, who duly assembled at the time and place appointed therein, September 8, 1885, at Sioux Falls, remained in session eighteen days, framed and submitted to a vote of the people the constitution now presented, which was ratified at the regular November election by a vote of 25,226 for, to 6,565 against.

Such, in brief, is a history of the efforts of the people of that portion of Dakota south of the forty-sixth parallel of north latitude, aided by their brethren in the north portion as occasion offered, to form a constitution and State government, and gain admission into the Union of States.

More than four years of persistent effort, conducted in all the ways open to them, ought to convince the most skeptical of the earnest desire of Dakota's citizens to be clothed with the power of self-government.

THE RIGHT TO ADMISSION.

The right of the people of a Territory of the United States to form a constitution and State government, republican in form, and be admitted into the Union of States, is so self-evident that it will not be questioned by any enlightened citizen of any State, providing the requisite conditions for admission, heretofore recognized, have been complied with and exist.

Chief-Justice Taney, in pronouncing the opinion of the Supreme Court of the United States in the famous Dred Scott case, lays down this doctrine, which none will be so bold as to gainsay:

"There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States, or at a distance, to be ruled and governed at its own pleasure, nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given. But no power is given to acquire a territory to be held and governed permanently in that character.

"The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the Government it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority."

That such conditions have been complied with by the people of, and now exist in, that portion of Dakota proposed to be habilitated with statehood, can be shown beyond possible cavil, and by authentic evidence which can not be sincerely questioned.

METHOD OF APPLICATION.

First, however, the question of the regularity of the mode now adopted by this people in seeking admission may be mooted by those, if any there shall be, who are unwilling to hazard a direct denial to a people of their clear right of State government, but who would prefer delay for one or another reason.

Dakota has repeatedly and persistently petitioned Congress for an enabling act, under which to form a constitution and State government, and Congress has as often neglected to grant her petitions.

It is well known that in the history of the admission of new States into the Union two methods have been pursued, of equal sanction by the purest and greatest statesmen of the land; one through an enabling act, emanating from Congress, the other by the people of the Territory, without an enabling act, forming for themselves a constitution and State government, and seeking admission, as Dakota has and is now doing. Granted that the most frequent method has been through enabling acts, but notable precedents for the other method exist.

Eleven States have formed constitutions and State governments and been admitted into the Union without a previous enabling act, viz, Vermont, Kentucky, Tennessee, Maine, Michigan, Arkansas, Florida, Iowa, Wisconsin, California, and Oregon.

Wisconsin rejected her first constitution, under which Congress had proposed to admit the State, and then proceeded without further authority from Congress, and was admitted under the constitution thus formed without Congressional authority.

As able and patriotic men as the present generation witnesses were in Congress and advocated the admission of these States.

In at least two instances, that of Michigan and Arkansas, the point was distinctly made against them that the proceeding was revolutionary and not regular, and that an enabling act should have been first passed by Congress. Notwithstanding this objection, Michigan was admitted by a vote of 24 for to 18 against in the Senate, and 153 for to 45 against in the House; and Arkansas was admitted by a vote of 36 for to 6 against in the Senate, and 143 for to 50 against in the House; the negative vote being, of course, induced, in most part, by political considerations, and very slightly by a doubt of the regularity of the methods of proceeding to obtain admission.

In the discussion which ensued, Mr. Buchanan addressed the Senate upon this very question as follows:

"I think their course is clearly justifiable, but if there is anything wrong in it, it is to be attributed to the neglect of Congress. For three years they have been rapping at your door, and asking for the consent of Congress to form a constitution and for admission into the Union; but their petitions have not been heeded and have been treated with neglect. Not being able to be admitted in the way they sought, they have been forced to take their own course, and stand upon their rights, rights secured to them by the Constitution and a solemn irrevocable ordinance. They have taken the census of the Territory, they have formed a constitution, elected their officers, and the whole machinery of a State government is ready to be put in operation; they are only awaiting your action. Having assumed this attitude, they now demand admission as a matter of right; they demand it as an act of justice at your hands. Are they now to be repelled, or to be told that they must retrace their steps, and come into the Union in the way they at first sought to do, but could not obtain the sanction of Congress? Sir, I fear the consequences of such a decision; I tremble at an act of such injustice."

Mr. Morris, of Ohio, spoke more fully on the objectionable points than other Senators, justifying the right of the people of a Territory, when amounting to 60,000, to meet and form their own constitution. He said:

"I hold that any portion of American citizens, who may reside on a portion of the territory of the United States, whenever their numbers shall amount to that which would entitle them to a representation in the House of Representatives in Congress, have the right to provide for themselves a constitution and State government, and to be admitted into the Union whenever they shall so apply; and they are not bound to wait the action of Congress in the first instance, except there is some compact or agreement requiring them to do so. I place this right upon the broad and, I consider, indisputable ground that all persons living within the jurisdiction of the United States are entitled to equal privileges; and it ought to be a matter of high gratification to us here that in every portion, even the most remote, of our country our people are anxious to obtain this high privilege at as early a day as possible. It furnishes clear proof that the Union is highly esteemed and has its foundation deep in the hearts of our fellow-citizens.

"By the Constitution of the United States power is given to Congress to admit new States into the Union. It is in the character of a State that any portion of our citizens, inhabiting any part of the territory of the United States, must apply to be admitted into the Union; a State government and constitution must first be formed.

It is not necessary for the power of Congress, and I doubt if Congress has such power, to prescribe the mode by which the people shall form a State constitution; and for this plain reason, that Congress would be entirely incompetent to the exercise of any coercive power to carry into effect the mode they might prescribe. I can not, therefore, vote against the admission of Arkansas into the Union on the ground that there was no previous act of Congress to authorize the holding of her convention. As a member of Congress, I will not look beyond the constitution that has been presented. I have no right to presume it was formed by incompetent persons, or that it does not fully express the opinions and wishes of the people of that country. It is true that the United States shall guaranty to every State in the Union a republican form of government, meaning, in my judgment, that Congress shall not permit any power to establish in any State a government without the assent of the people of such State; and it will not be amiss that we remember here, also, that that guaranty is to the State, and not as to the formation of the government by the people of the State; but should it be admitted that Congress can look into the constitution of a State in order to ascertain its character, before such State is admitted into the Union, yet I contend that Congress can not object to it for the want of a republican form if it contains the great principle that all power is inherent in the people and that the government draws all its just powers from the governed.

"The people of the Territory of Arkansas having formed for themselves a State government, having presented their constitution for admission into the Union, and that constitution being republican in its form, and believing that the people who prepared and sent this constitution here are sufficiently numerous to entitle them to a Representative in Congress, and believing also that Congress has no right or power to regulate the system of police these people have established for themselves, and the ordinance of 1787 not operating on them, I can not, as a member of this body, refuse my vote to admit this State into the Union."

On this point Mr. Hamer, of Ohio, spoke in the House thus:

"One of the principal objections urged against their admission at this time is that their proceedings have been lawless and revolutionary; and that for the example's sake, if for no other reason, we should reject their application and force them to go back and do all the work over again. I can not assent to this proposition. Two ways are open to every Territory that desires to emerge from its dependent condition and become a State. It may either petition Congress for leave to form a State constitution, and, when that permission is given, proceed to form it, and present the new State constitution for our approbation, or they may meet, in the first instance, form the constitution and offer it for our approval. There is no impropriety in either mode. It is optional with Congress, at least, to admit the State or not, as may be thought expedient. If they wish to admit her they can do it by two acts of Congress: one to authorize the formation of a constitution, and the other to approve of it when made; or by one act, allowing the prayer of the petitioners to become a State and approving of their constitution at the same time. This latter course is the one adopted in the present case. There is nothing disrespectful in it. Indeed, there is much to justify the Territory in its proceeding. Year after year they petitioned for leave to form a constitution; it was refused or their application was treated with neglect. Wearied with repeated instances of this treatment, they have formed a constitution, brought it to us and asked us to sanction it and admit them into the Union. We have the authority to do this; and if their constitution is republican we ought to do it. There is no weight in this objection, and I will dismiss it without further remark."

(Benton's Thirty years in the United States Senate, Vol. I, pp. 629, 630, 634.)

The Constitution prescribes no method of admitting new States. No regulation of Congress exists upon the subject.

Is the requirement at least more than this—so far as the mere method of seeking admission is concerned—that it shall be made manifest to Congress that the people of the Territory have, in an orderly manner and with deliberation, asserted their desire to become a State, and assume the prerogatives of a State government in the Union, being clothed with those safeguards of law which enable them to exercise their deliberate judgment and make manifest their undoubted will? Can not this be accomplished just as effectually through a legislative act of the Territory as of Congress?

In Dakota's case, we submit, it would be unjust, unfair, and in every respect unwise to impose upon her the delay and added expense incident to compelling her to return and await the uncertain and slow action of Congress in first passing an enabling act. The proposed State has already more than double the population ever required of any State heretofore for admission into the Union. Her necessities demand immediate action at the hands of Congress. She has largely outgrown a Territorial form of government. The courts are wholly inadequate to the needs of her citizens.

The government is not responsible to the people. Her credit, her good name are imperiled. The restrictions which an orderly constitutional government impose is an imperative, immediate necessity. The State is ready for admission, and why the

people should be postponed in their undoubted right to statehood can not be made apparent by any unprejudiced or truthful argument.

CONDITIONS FOR ADMISSION COMPLIED WITH.

The following are submitted as certainly covering all of the conditions which can be demanded of a State seeking admission into the Union:

- (1) Has the desire for admission been authoritatively expressed?
- (2) Have such boundaries and area been selected as will insure a strong, substantial State?
- (3) In selecting such area and boundaries, has the policy of the Government respecting the Territories been disturbed, or the welfare of the people of the United States hazarded?
- (4) Do the conditions exist regarding present population and resources which would warrant the formation of a State, and such as will insure the support of a permanent State government, and do those conditions give promise of ability to justly share in the future with other States the duty of upholding and protecting the Union?
- (5) Is the constitution submitted and State government instituted republican in form?
- (6) Do the constitution and ordinances of the proposed State properly protect the property of the United States therein and make no unjust discriminations against citizens of other States?

(7) Do any conditions exist, either in the constitution, laws, or practices of the people which would render the State undesirable as a member of the Union or menacing to its welfare?

If Dakota can satisfactorily answer all these conditions, by what right or pretext of justice can she be denied the power of being governed by officers of her own selection, by laws which she has had her part in enacting, and of the inestimable privileges of a State in the American Union?

(1) The desire for admission, as before shown, has, upon every attainable occasion for more than four years, been authoritatively expressed, and is now emphasized by a larger vote than is usually polled in a new State upon the adoption of a constitution.

Compare the votes of some of the States:

- Dakota 25,226 for, 6,565 against.
 Iowa, first constitution, 7,235 for, 7,656 against.
 Iowa, constitution of 1846, 9,492 for, 9,036 against.
 Kansas, Topeka constitution, 1,731 for, 46 against.
 Leocompton constitution, 6,226 for, 589 against.
 Mineola and Leavenworth, 4,346 for, 1,257 against.
 Wyandotte constitution, under which the State was admitted, had 10,421 votes for, 5,530 against.
 Maine, 9,040 for, 796 against.
 Nebraska, 3,938 for, 3,838 against.
 Minnesota, 36,240 for, 700 against.
 Oregon, 7,195 for, 3,195 against.
 Wisconsin, the first constitution having been rejected, the second one of 1846 received 16,442 votes for, and 6,149 against.

(2) The boundaries and area include so much of the present Territory as is south of the forty-sixth parallel of north latitude, making about 77,000 square miles.

In all this vast area there are no mountain ranges, no waste or desert lands. All are susceptible of the highest cultivation and use, save an insignificant portion in the western part, termed buttes or peaks. With the exception of the extreme western part, including, say, 6,000 square miles of hilly country, this is one vast plain traversed by several considerable streams, the great Missouri River cutting it diagonally through the center from side to side. In the extreme western part the hill lands are usually rich in soil, and, wherever denuded of timber, capable of raising as fair crops of all the cereals and vegetables of this latitude as can be raised anywhere. In short, the entire of the proposed State will sustain as many people to the square mile as any one of the richest States in the Union. With an excellent soil, well watered by numerous rivers, lakes, and springs, a great navigable river traversing its entire width, a healthful climate, its yield of the precious and useful minerals in the western portion, with plenty of coal for fuel and manufacture, and pine and other timber sufficient for home use, a doubt of its capacity to support its full share of the increasing millions with which the States of the Union are to be peopled in their future history need not be indulged in by any one against Dakota, and will not be for any just purpose.

Compare Dakota, as proposed, with other States in area.
First with its near neighbors:

State.	Square miles.	State.	Square miles.
Dakota	77,000	Wisconsin	54,000
Nebraska	76,000	Kansas	81,000
Missouri	65,000	Minnesota	83,000
Iowa	55,000		

Then with the Middle and Southern States :

State.	Square miles.	State.	Square miles.
Dakota	77,000	Louisiana	41,000
Illinois	55,000	Mississippi	47,000
Indiana	34,000	Georgia	58,000
Ohio	40,000	Florida	59,000
Michigan	56,000	South Carolina	34,000
Arkansas	62,000	North Carolina	51,000
Kentucky	38,000	Virginia	38,000
Tennessee	45,000	West Virginia	23,000
Alabama	51,000	Maryland	11,000

Then with the more Eastern States :

State.	Square miles.	State.	Square miles.
Dakota	77,000	Maine	35,000
Pennsylvania	46,000	New Hampshire	9,280
Delaware	2,120	Connecticut	4,750
New Jersey	8,320	Vermont	10,212
New York	47,000	Rhode Island	1,306
Massachusetts	7,800		

Then with "exceptional States:"

State.	Square miles.	State.	Square miles.
Oregon	95,000	Nevada	104,000
Colorado	104,000	Texas	274,000
California	189,000		

Of course the last four are well known to be exceptional, and should form no precedent against Dakota's wishes. They are exceptions to the almost uniform policy in admitting new States from the public domain.

Prudence will suggest that the action now to be taken is for all time, and no narrow or partisan view should be taken of this question of area; for a policy which seems advantageous to a particular State or constituency to-day may be disastrous on the morrow.

It must, in the light of experience, be conceded that the area proposed is sufficient for a substantial State and consistent with the general welfare and former precedents.

The wisdom which experience brings, the necessities which a large aggregation of population reveals, no doubt will cause Texas, in the desire for a government closer to the people than is possible with so large an area, to take advantage of her compact for admission, and we shall have five States there in lieu of one.

The existence of extensive mountain ranges, not yet desirable for the purpose of population, in California, Colorado, and Nevada, seemed to justify including large areas under one jurisdiction. Conditions may change even there.

DIVISION OF THE TERRITORY.

(3) The policy of the Government toward the people of the Territories, when selecting areas for States, has been almost uniformly to allow the selection of reasonable limits by the people thereof and erect such into a State.

In Dakota's case the question of what is known as the division of the Territory is involved. With more propriety it should be termed taking from the area now under one Territorial government sufficient to form a State for admission.

Out of the territory which once constituted the great Northwest Territory, and of which Dakota formed a part, has been carved and admitted into the Union, exclusive of those formed from the Virginia cession, the States of Wisconsin, Iowa, and Minnesota, and successively, as States were admitted, the remaining portions were organized anew as Territories. It is now proposed to repeat this action, take a State from the Territorial area, admit it, and renew the Territorial organization for the remainder.

Of course the question of division is recognized by South Dakota, probably by every one, as the important question to be presented to Congress. The ungenerous thought will not be entertained by the loyal people of Dakota, unless cruel experience teaches them that Congress will deny nearly a half million of their fellow-citizens the right of self-government, and compel a continuance in a state of semi-vassalage, if disembarassed of other propositions. Therefore the necessity for a careful review and consideration of the important question of division. In it is involved not only the welfare and wishes of the proposed State, but of those who are still to remain under a Territorial government. It will be conceded by every candid man that in the formation of a State for admission out of the Territory, Congress should recognize the right of the people of the proposed State to select such area and boundaries as will constitute a substantial, strong, permanent State. Beyond that it is a question for the people of the United States. Due regard should also be paid to the wishes and the welfare of the people not incorporated into the new State.

Those who have peopled Dakota are American citizens, mostly from the States and districts represented by those honorable gentlemen to whom they are now appealing. They forfeited no right by removal to Dakota. They certainly are as competent to judge of what is for their welfare and for those who are to come after them, and of forming and expressing a deliberate judgment thereon, as are the people of the communities from whence they came, and have better opportunities of doing so. A decent regard for their expressed will ought to be entertained by those distinguished gentlemen, representatives of their former neighbors and friends, now possessing the power over their futures, with no chance for appeal but to the great heart of the nation. They are the ones directly in interest. They and their descendants are the ones to suffer by any mistake now made against their interest. Numerous precedents exist where Congress has wisely allowed the people of the projected Commonwealth to select for themselves their State's area and boundaries, and always has such selection proved the patriotism and sagacity of the people.

Notably does the great and prosperous State of Iowa show the wisdom of allowing a people to determine for themselves these important questions. They would have no such boundaries as proposed by Congress, voted down the constitution built thereon, and, Congress yielding to their expressed desire, they made Iowa what she is and what she ever will be, with constantly increasing grandeur, one of the most powerful States in the American Union.

Without intending the shadow of disrespect, with the utmost loyalty, but with the manliness of a people seeking to become wholly free and no longer semi-vassals, we do declare that not during this generation of men and women will Dakota accept boundaries and area so distasteful as are involved in the admission of all of Dakota Territory as one State.

EVIDENCE OF PUBLIC SENTIMENT UPON DIVISION.

As early as the Territorial legislative session of 1870-'71 the agitation of the question of division of Dakota upon the forty-sixth parallel of north latitude took form, and at that session a memorial to Congress, praying for such division, was passed in both houses unanimously and approved by the governor January 12, 1871.

Again, December 31, 1872, there was passed and approved a similar memorial, with four dissenting votes in the house and none in the council.

Again, December 19, 1874, another passed unanimously in the house, with one dissenting vote in the council.

Again, January 24, 1877, another passed unanimously, with no negative votes in either house.

In 1879 a protest against admission of the whole Territory as one State was passed.

In 1881 a memorial praying for a division into three Territories passed both houses, but received ten negative votes in the house and three in the council.

In 1883 the bill for the constitutional convention for South Dakota, to be held that year, was passed, as heretofore stated, which was withheld by the governor. (Since 1869 the legislative sessions have been biennial.)

In 1885, at the last session of the legislative assembly, there was an increased number of members of both houses, Congress having recognized the absurdity of governing this great Territory with the machinery of government usually allotted to an ordinary Territory. It will be observed, this was after the agitation of the question of division in Congress incident to the passage through the Senate of the enabling act for South Dakota. It will further be borne in mind that these members of the legislative assembly were just elected by the people of both sections of Dakota, the northern as well as the southern portion; that the questions of division and admission had been prominent subjects of discussion for years; that they were fresh in the minds of everybody. A bill for a constitutional convention for South Dakota had passed the previous session. It had been defeated by the executive, but the convention was nevertheless held, the constitution ratified and presented to Congress. Now, with all this agitation and with double the number of members elected to this legislative assembly formerly allowed, thus necessarily reflecting the public sentiment of both sections of the Territory, they passed unanimously, in addition to the act calling a constitutional convention for South Dakota, a memorial to Congress praying for the division of the Territory and the admission of the south part as a State, which was approved by the governor February 2, 1885, he thereby honorably recognizing public sentiment.

That memorial speaks so clearly and earnestly the facts and reasons why Congress should grant the prayer of this people, it is given entire here. All of the memorials spoken of, certified by the secretary of the Territory from the records in his possession, together with certified copies of the journals showing the vote thereon, are herewith presented.

JOINT RESOLUTION and MEMORIAL approved February 2, 1885.

A joint resolution and memorial to the Congress of the United States praying for the division of Dakota and for the admission of the southern portion of said Territory as a State.

To the honorable the Congress of the United States :

The legislative assembly of the Territory of Dakota respectfully represents: That the people of this Territory earnestly desire the passage of the bill now pending in the House of Representatives, providing for the admission of the southern portion of Dakota as a State and for the creation of a separate Territory from the northern portion thereof, dividing the same on the seventh standard parallel, according to Government survey, or the forty-sixth parallel of north latitude, in the discretion of Congress.

The desire for division is so universal, and the reasons for it so apparent, that the people of this Territory have believed and still believe that this measure of justice can not be refused them.

The probable division of the Territory has been considered in the Territorial conventions of both political parties at every meeting for the last thirteen years, and these conventions in almost every instance, without a dissenting voice, have universally declared in favor of division.

The legislative assembly of the Territory has repeatedly memorialized your honorable bodies for division.

Public institutions have been located and built with a view to division.

Conventions have been held in each section to promote division, and delegations have been appointed to go to the Capital of the United States to labor for division. The people of the Territory have employed every possible form of respectful petition for division.

The population and area of the Territory justify division, and refusing it leaves both sections in an unsettled condition and operates to the serious disadvantage of both. The area of the Territory is greater than the united areas of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland.

The population of the Territory, as shown by its vote, by the public lands occupied, by its postal and internal revenues, and by its banking and other business interests, is not less than 450,000, and there is good reason for believing it amounts to 500,000.

The population of the southern portion, for which admission is asked, can not now fall much short of 300,000, and will very soon exceed that figure.

The climate, surface, and soil of the Territory are as well adapted to agricultural pursuits and the ordinary industries of the North as are the climate, surface, and soil of Illinois and Iowa.

The people of the Territory have as great regard for the rights of others, and smart as keenly under a sense of injustice, as those of any other Territory or State.

The revenues paid into the United States Treasury by the people of Dakota, and all statistics attainable, prove that the population and material interests of the Territory are sufficiently great to justify this consideration at your hands.

No difficulty can arise as to the apportionment of the public debt of the Territory, as it was wholly created for the erection of public buildings, and the bonds clearly show for what purpose issued. Those issued for public buildings in that part of the Territory south of the forty-sixth parallel, should be paid by the southern division of the Territory, and those issued for public buildings erected north should be paid by the northern division of the Territory.

The union of the two sections in one State would be unnatural, and would lead to endless difficulties.

The division prayed for is wise. It will quiet unrest, prevent difficulties and misunderstandings, which will arise if it is not granted, and will promote the interests of both sections.

And although the people of all Dakota are earnestly in favor of the admission of the southern half as a State, still they will hail with joy division only; and if asking for admission of the southern half as a State will in any manner delay division, then we earnestly request division without the admission prayed for, at the earliest possible time.

And for your favorable consideration hereof your memorialists will ever pray.

Approved February 2, 1885.

The vote in the house upon this memorial was 48 in the affirmative, none in the negative. In the council 23 voting in the affirmative, none in the negative, 1 being absent.

Besides these continued, unvarying expressions of the people's will, thus promulgated through the only legally constituted tribunal in which they have any voice, both political parties at their biennial conventions, held for the whole Territory to select candidates for delegates to Congress, have, with a single exception, passed with the same unanimity resolutions favoring division on the same line substantially, sometimes using the seventh standard east of the Missouri River.

At the last convention held for the whole Territory, in 1884, such resolutions were passed by both party conventions, and are submitted herewith.

Besides all this, and as perhaps a more practical because more costly demonstration of the people's wish upon this subject, we find that governmental buildings for two governments have constantly been provided, and thus a penitentiary in the south is duplicated in the north. The same occurs with insane asylums, agricultural colleges, State universities, and other public buildings, with provisions usually found in the acts making necessary dispositions upon the division of the Territory occurring.

With all these expressions of the people's desire upon the subject of the division of the Territory, through every conceivable representative public assemblage, with two constitutions framed and adopted for the south part of Dakota, can it be doubted what the sentiment of the people of the Territory is and has been for years thereon? If any doubt does yet linger, we pray your honorable bodies to put it to a vote of the people of the whole Territory, and let the admission of the State of Dakota depend upon the result of that vote.

POPULATION AND RESOURCES.

4. Fortunately Dakota is not now compelled to rely upon comparisons and estimates, however conclusive, to establish conviction in the minds of the honorable gentlemen composing the tribunal appealed to, of the sufficiency and permanency of population and resources to entitle the State to admission into the Union.

Since the adjournment of the last Congress, a census and enumeration has been taken, under the laws of Congress, which has been filed with and is a part of the archives of the Interior Department, and open to the inspection of all who desire the information therein presented.

Certain important tables taken therefrom are incorporated herewith.

These but serve to supplement and establish the thoroughness of research made, and correctness of conclusions arrived at, and presented to the Senate at its last session by the distinguished Senator from Indiana, the chairman of the Committee on Territories, who so generously espoused the cause of Dakota, and gave to her citizens, and to the right of self-government everywhere, so candid consideration and able support.

We give first the tables for South Dakota:

Selected statistics of agriculture of South Dakota, 1885.

Counties.	Inhabitants.	Farms.	Average size of farms.	Improved land.	Horses and mules.	Oxen.	Cows.	Other cattle.	Sheep.	Hogs.	Corn.	Wheat.	Flax.	Sorghum molasses.
			<i>Acres.</i>	<i>Acres.</i>							<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>	<i>Gallons.</i>
Aurora	9,950	5,278	212	89,323	3,406	463	2,768	6,600	2,061	6,075	155,115	235,343	120,949	2,307
Beadle	10,318	1,823	213	135,834	4,050	551	3,961	6,663	5,814	7,305	207,016	611,197	36,473	1,491
Bon Homme	7,449	953	206	76,811	3,708			10,012			417,933	64,838	161,465	557
Brookings	8,288	1,472	209	155,556	4,586	614	3,973	9,892	6,074	8,549	51,790	831,707	23,742	10
Brown	12,241	2,438	247	248,346	5,925	1,108	3,136	5,761	1,157	4,813	169,072	1,807,801	25,678	
Brulé	7,524	1,226	195	71,411	3,389	241	2,802	6,767	1,532	6,394	170,810	264,550	22,393	656
Buffalo	864	247	187	8,305	454	105	400	554	116	780	12,133	4,436	1,979	374
Burdick	75			102		9	19	260						
Butte	1,081	312	193	24,743	1,594	107	715	16,335	5,476	960	13,710	14,387		171
Campbell	1,199	455	203	9,112	547	324	610	1,400	194	245	6,250	100	160	
Charles Mix	4,022	981	187	74,279	2,450	449	2,179	7,588	1,252	6,638	324,563	52,396	56,381	6,842
Clark	4,892	1,356	206	92,005	2,705	788	1,726	3,301	1,131	3,131	42,815	483,537	6,656	
Clay	6,201	1,025	184	114,466	4,138	82	6,996	19,742	3,230	20,433	908,743	71,787	26,471	5,510
Codington	5,648	825	201	78,307	2,749	287	1,652	2,999	1,487	3,739	8,282	629,394	780	300
Custer	1,292	224	103	4,689	1,581	163	966	27,705	7,713	481	1,500	945		
Davison	5,940	684	100	58,636	1,936	346	1,703	3,722	2,826	3,830	134,429	170,167	73,329	931
Day	5,601	1,407	155	74,717	2,108	1,599	1,951	2,962	1,099	1,512	39,884	363,369	2,534	
Deuel	4,403	841	217	59,663	2,222	531	2,216	1,369	3,382	3,206	14,581	369,832	1,400	70
Dicky (south of forty-sixth parallel)	447	132	240	8,381	259	79	152	311	98	121	20,777	34,216	102	
Douglas	3,801	873	218	71,654	2,197	490	2,022	4,200	923	4,285	188,025	56,790	158,214	1,682
Edmunds	2,422	653	176	26,101	992	269	473	597	140	672	16,620	65,032	1,280	400
Emmons (south of forty-sixth parallel)	179	64	174	1,430	74	40	115	230		198	2,300			
Ewing	50			79		7	8	757						
Fall River	472	80	248	15,182	1,363	15	204	61,088	5,483	72	735	43		
Faulk	3,120	1,223	217	54,036	1,834	410	993	1,905	1,007	1,480	46,095	144,308	2,990	1,010
Grant	6,793	1,039	188	88,474	2,918	569	2,259	4,642	2,273	3,846	72,518	732,899	294	261
Hamlin	3,757	672	282	64,110	1,833	432	1,783	3,580	1,471	3,887	14,110	434,937	405	
Hand	7,057	2,212												
Hanson	3,933	774	210	57,399	2,391	349	2,376	5,518	1,961	6,389	176,236	229,099	81,129	679
Harding	43			471				12,352						
Hughes	5,268	965	188	56,587	1,936	120	1,051	3,045	147	2,200	57,018	68,301	12,792	675
Hutchinson	9,006	1,404	286	110,830	6,167	1,102	5,807	17,050	39,607	9,133	252,533	235,347	332,688	6,453
Hyde	2,175	516	261	31,541	942	213	468	661	78	578	8,499	20,975	7,885	63
Jerauld	3,458	823	198	41,699	1,935	318	1,876	3,894	2,174	3,345	71,066	85,296	35,028	1,399
Kingsbury	7,345	1,700	173	130,068	4,014	988	3,460	6,870	1,257	6,090	68,698	672,791	74,724	657
Lake	5,432	1,025	226	79,520	2,808	680	3,399	8,352	5,177	4,973	28,366	245,232	42,335	300
Lawrence	10,326	732	163	94,850	5,729	208	3,762	33,209	32,171	2,559	2,706	37,975		3,130
Lincoln	7,598	1,106	169	93,536	4,552	102	7,534	16,261	4,814	15,355	561,853	81,962	106,025	398
McCook	5,641	998	208	88,177	2,697	625	2,996	7,315	1,602	7,039	175,917	217,122	119,197	1,258

Selected statistics of agriculture of South Dakota, 1885—Continued.

Counties.	Inhabitants.	Farms.	Average size of farms.	Improved land.	Horses and mules.	Oxen.	Cows.	Other cattle.	Sheep.	Hogs.	Corn.	Wheat.	Flax.	Sorghum molasses.
			<i>Acres.</i>	<i>Acres.</i>							<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>	<i>Gallons.</i>
McIntosh (south of forty-sixth parallel)	108	33	154	508	42	40	31	9		1				
McPherson	1,422	385		9,860	435	470	489	946	79	395	2,902	12,319	597	
Marshall	2,187	668	200	38,265	1,045	469	605	1,150	216	691	25,981	139,606	2,782	1
Miner	4,928	1,026	166	69,497	2,401	623	2,197	5,459	2,161	4,513	85,240	231,645	68,278	562
Minnehaha	13,857	1,753	226	220,429	5,811	956	7,579	18,882	10,765	16,311	313,943	229,449	212,920	759
Moody	5,157	905	205	87,338	3,362	315	3,326	6,750	2,226	6,369	52,185	369,561	91,108	5
Penni	3,224	352	136	28,386	2,053	319	1,430	7,603	4,668	591	6,315	13,115		
Potter	2,336	940	212	25,540	1,085	362	628	1,617	232	583	28,020	6,800	1,607	
Roberts	2,154	454	99	29,430	1,047	273	852	1,974	617	1,279	22,765	250,142		1,567
Sauborn	4,106	752	214	45,300	2,020	368	1,940	5,865	2,283	4,634	181,512	120,127	22,758	1,060
Sargent (south forty-sixth parallel)	216	79	270	4,412	142	63	72	148	15	130	1,100	16,972	175	
Spink	10,446	2,358	242	219,471	13,308	803	3,493	5,689	4,045	8,038	266,918	1,616,449	9,177	1,080
Sully	3,233	1,100	227	36,147	1,760	185	848	1,740	411	1,226	27,479	36,646	5,810	499
Turner	8,282	1,403	206	101,248	4,427	590	6,849	18,795	14,195	11,439	414,446	96,414	136,189	4,098
Union	8,017	1,356	175	160,281	5,434	47	8,058	20,305	3,223	30,066	1,279,050	131,979	7,988	3,179
Walworth	1,412	800	200	20,299	665	235	713	1,345	506	297	10,910	3,906	135	
Yankton	9,404	925	200	144,519	3,280	280	5,641	14,110	15,409	12,178	418,393	81,349	160,965	915
Strip of land lying between McPherson, Edmunds, and Brown Counties	1,055	349	170	14,186	557	123	299	343	6	342	2,993	72,111	2,064	
Sisseton Reservation	45	1	40	15	7		3	5						
Stanley County has no farm statistics	653													
Total	263,553	50,237		3,754,864	142,322	20,880	123,567	438,054	205,985	250,916	7,553,030	12,829,578	2,257,491	50,972

Selected statistics of agriculture of North Dakota, 1885.

Counties.	Inhabitants.	Farms.	Average size of farms.	Improved land.	Horses and mules.	Work oxen.	Milch cows.	Other cattle.	Sheep.	Hogs.	Corn.	Wheat.	Flax.
			Acres.	Acres.							Bushels.	Bushels.	Bushels.
Barnes.....	6,093	1,364	190	138,572	3,417	461	1,878	2,055	690	4,229	1,597	1,400,842	2
Benson.....	1,255	333	176	12,953	316	263	262	428	60	179	112	19,159	21
Billings.....	737	10	16	157	508	.....	261	57,523	.....	.....	.....	.....	.....
Bowman.....	162	.....	.....	.....	3,708	.....	.....	6,178	.....	.....	.....	.....	.....
Bottineau.....	818	261	197	7,215	211	214	348	665	830	310	139	8,016	75
Buford.....	524	16	198	2,930	83	4	23	202	.....	16	.....	1,200	.....
Burleigh.....	5,354	713	203	44,910	1,535	119	841	1,828	1,714	1,010	18,630	259,607	20
Cass.....	21,085	2,556	318	602,288	13,084	512	5,089	9,186	2,285	11,209	6,023	5,983,830	25
Cavalier.....	5,029	1,570	168	48,467	1,220	1,162	1,054	1,632	342	2,558	.....	340,028	.....
De Smet.....	50	37	160	393	34	.....	20	15	.....	.....	.....	.....	.....
Dickey (north of forty-sixth parallel).....	3,450	1,264	288	78,696	4,861	373	956	1,423	332	1,369	30,832	277,620	5,951
Dunn.....	32	4	160	640	15	42	97	97	.....	.....	.....	.....	.....
Eddy.....	825	197	187	8,796	280	117	189	429	13	175	370	.....	10
Emmons (north of forty-sixth parallel).....	866	291	181	15,766	857	64	614	2,411	3,559	160	28,780	8,773	112
Flannery.....	64	6	585	3,095	51	.....	.....	.....	.....	.....	.....	.....	.....
Foster.....	992	419	186	22,126	435	129	221	112	14	253	.....	183,992	.....
Grand Forks.....	20,454	2,885	175	315,611	8,715	873	5,266	8,005	4,687	9,471	4,480	5,615,741	.....
Griggs.....	2,093	612	267	57,137	1,024	523	959	1,676	1,563	1,451	240	428,714	.....
Hettinger.....	63	.....	.....	.....	.....	.....	.....	765	.....	.....	.....	.....	.....
Kidder.....	1,572	293	.....	64,923	712	44	310	497	1,384	581	3,100	241,593	1,567
LaMoure.....	2,072	772	236	45,359	1,067	360	502	531	118	687	2,706	279,176	326
Logan.....	336	155	157	4,472	268	2	171	160	.....	84	.....	.....	.....
McHenry.....	800	280	169	6,118	383	84	617	516	52	118	.....	285	.....
McIntosh (north of forty-sixth parallel).....	282	38	266	375	81	23	133	268	.....	14	.....	.....	.....
McLean.....	942	276	212	9,470	415	180	290	442	22	433	12,346	27,593	.....
Mercer.....	254	75	170	2,380	84	29	50	167	.....	45	4,593	3,197	.....
Morton.....	5,873	898	180	20,853	1,399	195	1,316	2,451	.....	1,036	50,228	29,681	276
Mountrail.....	37	5	348	381	22	.....	.....	.....	1,543	.....	.....	.....	.....
Nelson.....	3,031	1,141	180	70,532	1,327	651	803	1,243	.....	774	15	122,525	.....
Oliver.....	327	100	189	3,612	174	70	330	580	190	107	8,165	1,816	.....
Pembina.....	11,510	2,680	161	226,519	4,660	1,724	3,247	4,982	659	9,094	4,388	2,056,733	24
Ramsay.....	3,271	1,252	187	65,830	1,154	790	820	1,322	1,131	741	707	162,267	.....
Ransom.....	4,286	1,076	194	109,003	2,792	685	1,679	3,728	97	8,715	43,052	831,837	684
Renville.....	31	9	231	1,282	34	6	418	1,403	296	2	.....	.....	.....
Richland.....	9,055	1,418	220	144,862	4,820	811	3,444	7,225	11	5,136	19,438	1,510,015	1,006
Rolette.....	2,232	414	162	5,424	420	293	332	434	2,657	466	10	6,457	.....
Sargent (north of forty-sixth parallel).....	3,018	950	186	49,007	1,279	702	897	997	16	708	5,100	227,052	1,813
Stanton.....	322	150	808	11,910	270	16	120	291	167	81	100	67,928	859
Stark.....	1,507	419	243	11,480	609	115	497	1,104	649	461	4,776	18,538	.....
Steele.....	3,080	942	164	76,489	2,377	441	1,247	1,185	108	1,455	5,537	762,230	22
Stutsman.....	5,632	1,402	180	103,322	2,466	198	1,368	3,551	559	4,226	405	1,100,456	1,681

ADMISSION OF DAKOTA.

Selected statistics of agriculture of North Dakota, 1885—Continued.

Counties.	Inhabitants.	Farms.	Average size of farms.	Improved land.	Horses and mules.	Work oxen.	Milch cows.	Other cattle.	Sheep.	Hogs.	Corn.	Wheat.	Flax.
			<i>Acres.</i>	<i>Acres.</i>							<i>Bushels.</i>	<i>Bushels.</i>	<i>Bushels.</i>
Trail	8,119	1,247	307	223,967	6,006	414	2,955	5,354	1,529	4,160	2,392	2,726,447	2
Towner	368	108	306	8,445	221	87	82	86	1,313	177	40	8,455	
Villard	200	69	208	1,561	51	5	61	169	4	35	380	1,784	
Wallace	46	2	160	15	6	4	20	126	15				
Walsh	12,775	2,797	174	212,001	5,245	1,423	3,247	4,294		5,976	450	2,497,699	
Ward	257	89	158	3,208	58	93	187	480	2,412	28	730	2,445	
Wells	285	173	220	13,054	222	46	75	68	19	210	25	100,153	
Wynn	10	4	240	104	13	2	8	14		51			
Strip lying between Cavalier, Walsh, and Ramsey, not in any county	68	19	160	610	26	21	25	31					
The following counties have no farm statistics:													
Alred	13												
McKenzie	24												
Sheridan	40												
Stevens	55												
Williams	36												
Total	151,710	31,781		2,850,126	76,004	14,370	43,309	139,919	31,040	73,096	259,984	25,274,372	15,297

Please observe this census was taken in June, 1885. Months have elapsed since then, the natural growth during which in so rapidly growing a Territory adds materially to the showing, and necessarily the census would be under the full facts which exist, and not over.

With over 263,000 people, over 50,000 farms, an acreage of 3,755,000 of cultivated lands, and the other resources depicted in this census and in the report of the Hon. Gilbert A. Pierce, the governor of the Territory, which has been laid before you, and to which we ask your careful attention, fears can not be entertained of Dakota's population, or of the permanency of her State government.

For the future, with a steam-boat navigation on her great river, with railroads permeating every portion of her domain, let Congress sweep away the useless impediments in her path, and unquestionably she will be able not only to protect the integrity of her own free institutions, but to assist materially in the support of that great Government so dear to her people, and in whose behalf many of her inhabitants have already sacrificed some of their best years and energies, receiving, as citizens of Dakota, only neglect, or worse.

In this connection we present a like exhibit from the census of North Dakota, showing that with her 73,000 square miles of territory, in her own good time her people will be in condition to seek admission as a State, and abundantly able to maintain a permanent and powerful State government.

IS THE CONSTITUTION AND STATE GOVERNMENT REPUBLICAN IN FORM ?

(5) The affirmative of this theory is established by inspection of the instrument presented.

While the most searching, if candid and truthful, criticism is invited, it is submitted, with respect, that the details of the constitutional provisions are not a proper subject for Congressional research or consideration, beyond the ascertainment whether this fundamental law of a State is republican in form, contravenes the Constitution of the United States, protects, either by it or the proposed ordinances, the property of the United States situated within the State limits, guards the rights of citizens of the United States not residents of this State, and contains no clause which would be detrimental to the general welfare of the people of all the States.

Merely because some gentleman would, if a member of the convention which framed it, or of the body of people who ratified and adopted it, have objected to some of the policies therein affirmed, affords no ground for objecting to the admission of the State thereunder. The domestic policy embodied in the constitution is wholly, exclusively, the province of the people of the State, and not of Congress.

(6) An examination of the constitution will disclose that the property of the United States situated in the proposed State is amply protected, and that no unjust discrimination is made against the citizens of other States, but if any details are lacking therein in the judgment of Congress, they can be readily supplied by requiring the State, either through its legislative assembly or its constitutional convention, which adjourned to a day certain for the purpose of doing any thing which was required by Congress to be done, to pass such ordinances as may be desired.

(7) No one can truthfully allege that any circumstances exist, either in the provisions of the constitution, the laws which are continued in force by it, or in the practices of the people, which can render this State in any respect an undesirable member of the Union.

Forty-nine counties are already organized, and have complete county governments. The judgments and decrees of the courts are as readily obeyed and respected, and as due a regard to the laws of Congress and of the Territory is had as in any State in the American Union. The intelligence and morality of the people is nowhere excelled. All the evidences and elements of civilization and enlightenment exist to certainly as great an extent as can be found anywhere. The percentage of illiteracy, it will be seen by an examination of the census returns, is as small as in almost any State. Churches, schools, and newspapers are supported with as much liberality, to say the least, as is practiced in the most enlightened State in the Union. The people are mostly from communities represented in the tribunals to which our people are now appealing. The population therein, not natives of the United States, are certainly as intelligent, as industrious, and as prosperous as the like population anywhere. Indeed, it may be claimed truthfully that what is called the "foreign population" is, as a rule, much superior to the ordinary emigrants of a like class. They are found everywhere engaged in agricultural, mechanical, business, and professional pursuits, and no class of citizens is more desirable.

Dakota is not a wilderness, nor is it a wild country either in its population or its material conditions. It has 2,500 miles of railway more than any one of twenty-five States; it has 2,000 school-houses more in number than any one of eighteen States; it has 275 newspapers; it has a greater number of post-offices than any one of twenty-three other States and Territories, and pays more revenue to the Post-Office Depart-

ment than thirty-two of the States; it has colleges, universities, and normal schools endowed by the Territory or supported by denominational organizations; it expended for education in 1884 \$1,786,676.99; all the leading church denominations are represented in the Territory by large membership, and ministry, and well organized church societies, and by as many churches as can be found in any Christian community according to the population.

About the same proportion as the population, these civilizing influences exist in South and North Dakota. In 1833 the assessed valuation of Dakota was \$69,154,905; in 1884, \$85,664,946; in 1885 it is \$106,007,307. Something over half this assessed valuation is in South Dakota.

With all these evidences of civilization and enlightened sentiment, with the enterprise and liberality displayed in the support of schools, without having one farthing of assistance from the General Government—though it aids older and wealthier communities by liberal donations of land and revenue—it is an insult to allege the existence of any practices which would render the State undesirable as a member of the Federal Union. An inspection of the constitution and the laws continued in force thereby will satisfy any one that no conditions therein exist inimical to good government.

If the people of the proposed State of Dakota have, through their duly constituted agents, established to the satisfaction of the President and Congress of the United States the existence of all the requisite conditions for admission as a State—as we respectfully submit can not be reasonably doubted—it is respectfully but earnestly submitted that it is not a rightful exercise of the powers possessed by Congress to deny Dakota admission.

GUARANTIES OF ADMISSION BY CONGRESS.

Besides the guaranties of the Federal Constitution, the people of Dakota have a right to invoke the assurances held out to them by Congress itself, that it would admit Dakota to statehood as soon as it was fitted by population and resources to take upon itself the burdens and enjoy the benefits of a permanent State government.

By the compact contained in the ordinance of 1787 and thereafter confirmed under the Constitution, the people were invited to enter the territory northwest of the river Ohio, populate and subdue its wilderness, organize civilized and Christian communities, and, to induce them to accept the invitation, they were guarantied that when, within a reasonable area of country, there should gather sixty thousand free inhabitants, they should have the privilege of organizing themselves into a State government, and should be admitted into the Union upon an equal footing with the original States. Congress measurably carried out that guaranty by admitting State after State, as application was made therefor. With this compact then before them, fresh in the minds of the people of the growing nation, on four separate occasions, by distinct and separate enactments, Congress held out the same inducement to settle and populate this great Northwest Territory of which Dakota was and is a part.

Upon the organization of the Territory of Wisconsin, which then included all that portion of Dakota lying east of the Missouri and White Earth Rivers within its boundaries, like privileges and advantages were extended and guarantied to the people who settled in that Territory as had been extended, by compact, to the people of the territory northwest of the river Ohio.

By the act of Congress approved April 20, 1836, establishing the Territorial government of Wisconsin, enacted by the Twenty-fourth Congress at its first session, the boundaries of such Territory included all the country south of the northern boundary of the United States and east of the White Earth and Missouri Rivers, down to the line of Missouri, and by section 12 thereof it is enacted "That the inhabitants of the said Territory shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of compact contained in the organization of the government of said Territory, passed on the 13th day of July, 1787."

Again, by the act of Congress approved June 12, 1838 (Twenty-fifth Congress, second session), it being an act establishing the Territorial government of Iowa, all that part of the Territory of Wisconsin lying west of the Mississippi River, and of a line drawn due north from the headwaters of said river to the Territorial line, and including what is now Dakota, east of the Missouri and White Earth Rivers, was erected into a separate Territory, and by section 12 of that act it was provided "That the inhabitants of the said Territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants."

Now, the most sacred right, the highest privilege, the greatest advantage which was granted and secured to the people of the territory of the United States northwest of the river Ohio, by compact and by law, to the Territory of Wisconsin, was the right, the privilege, and the advantage, whenever a requisite number of free in-

habitants shall exist therein, to form a permanent constitution and State government, republican in form, and be admitted into the Congress of the United States on an equal footing with the original States in all respects whatever.

Besides these enactments, the same district of country west of the Mississippi River and east of the Missouri and White Earth Rivers, was attached to and made a part of the Territory of Michigan, which formed a party to said compact of 1787, and by such act attaching that country to Michigan, the inhabitants therein were guaranteed that they should be entitled to the same privileges and immunities in all respects as the other citizens of Michigan Territory.

Again, after the organization and admission of the State of Iowa, Congress reaffirmed this invitation and guaranty by the act approved March 3, 1849, establishing the Territorial government of Minnesota, that Territory including the same area as the Territory of Iowa, less the State which had been carved thereout. By section 12 of that act it is again provided "That the inhabitants of the said Territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the Territory of Wisconsin and to its people."

It will thus be seen that the policy of the Government, from its earliest history, has been directed toward rapidly peopling its great Territories, and has constantly held out the invitation to enter and possess the public domain, and as an inducement thereto, besides the enactment of beneficent and liberal laws for the disposal to actual settlers of its lands, has given them solemn assurance and guarantee that it would admit them into the Union of States on an equal footing with the original States whenever they were prepared to assume their share of the burdens of maintaining this great Government.

The people of Dakota invoke these guarantees to let a stronger light in upon the injustice of which they complain, by the neglect of Congress in failing to give them precedent authority to organize a State government, and that Congress may see with clearer view the justness of their claims to admission.

For the granting of the request herein your memorialists, the people of Dakota, will ever pray.

G. C. MOODY,
S. M. BOOTH,
J. H. MORF,
S. G. UPDYKE,
GEO. R. LAYBOURN,
Memorial Committee.

JOHN CAIN,
Secretary Constitutional Convention.
A. J. EDGERTON,
President Constitutional Convention.

THE CONSTITUTION.

PREAMBLE.

We, the people of Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquillity, provide for the common defense, promote the general welfare, and preserve to ourselves and our posterity the blessings of liberty, do ordain and establish this constitution for the State of Dakota.

ARTICLE I.

NAME AND BOUNDARY.

SECTION 1. The name of the State shall be Dakota.

SEC. 2. The boundaries of the State of Dakota shall be as follows: Beginning at the point of intersection of the western boundary line of the State of Minnesota with the northern boundary line of the State of Iowa, and running thence northerly along the western boundary line of the State of Minnesota to its intersection with the forty-sixth parallel of north latitude; thence west along the forty-sixth parallel of north latitude to its intersection with the twenty-seventh meridian of longitude west from Washington; thence south on the twenty-seventh meridian of longitude west from Washington to its intersection with the northern boundary line of the State of Nebraska; thence easterly along the northern boundary line of the State of Nebraska to its intersection with the western boundary line of the State of Iowa;

thence northerly along the western boundary line of the State of Iowa to its intersection with the northern boundary line of the State of Iowa; thence east along the northern boundary line of the State of Iowa to the place of beginning.

ARTICLE II.

DIVISION OF THE POWERS OF GOVERNMENT.

The powers of the government of the State are divided into three distinct departments—the legislative, executive, and judicial, and the powers and duties of each are prescribed by this constitution.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power shall be vested in a legislature, which shall consist of a senate and house of representatives.

SEC. 2. The number of members of the house of representatives shall not be less than seventy-five nor more than one hundred and thirty-five. The number of members of the senate shall not be less than twenty-five nor more than forty-five.

The sessions of the legislature shall be biennial, except as otherwise provided in this constitution.

SEC. 3. No person shall be eligible to the office of senator who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have attained the age of twenty-five years, and who shall not have been a resident of the State or Territory for two years next preceding his election.

No person shall be eligible to the office of representative who is not a qualified elector in the district from which he may be chosen, and a citizen of the United States, and who shall not have been a resident of the State or Territory for two years next preceding his election, and who shall not have attained the age of twenty-five years.

No judge or clerk of any court, secretary of state, attorney-general, State's attorney, recorder, sheriff, or collector of public moneys, member of either house of Congress, or person holding any lucrative office under the United States, or this State, or any foreign Government, shall be a member of the legislature; provided, that appointments in the militia, the offices of notary public and justice of the peace shall not be considered lucrative; nor shall any person holding any office of honor or profit under any foreign Government or under the Government of the United States, except postmasters whose annual compensation does not exceed the sum of \$300, hold any office in either branch of the legislature or become a member thereof.

SEC. 4. No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, nor any person who has been or may be collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the legislature or to any office in either branch thereof.

SEC. 5. The legislature shall provide by law for the enumeration of the inhabitants of the State in the year 1895, and every ten years thereafter; and at its first regular session after each enumeration made by authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, including Indians not taxed and soldiers and officers of the United States Army and Navy; provided, that the legislature may make an apportionment at its first session after the admission of Dakota as a State.

SEC. 6. The terms of the office of the members of the legislature shall be two years. They shall receive for their services the sum of \$5 for each day's attendance during the session of the legislature, and 10 cents for every mile of necessary travel in going to and returning from the place of meeting of the legislature on the most usual route.

Each regular session of the legislature shall not exceed sixty days, except in cases of impeachment, and members of the legislature shall receive no other pay or perquisites except per diem and mileage.

SEC. 7. The legislature shall meet at the seat of government on the first Tuesday after the first Monday of January, at 12 o'clock m., in the year next ensuing the election of members thereof, and at no other time, except as provided by this constitution.

SEC. 8. Members of the legislature and the officers thereof before they enter upon their official duties shall take or subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of the State of Dakota, and will faithfully discharge the duties of (senator, representative, or officer) according to the best of my abilities, and that

I have not knowingly or intentionally paid or contributed anything or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money, pass, or any other valuable thing from any corporation, company, or person for any vote or influence I may give or withhold on any bill or resolution or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court, or the presiding officer of either house in the hall of the house to which the member is elected, and the secretary of state shall record and file the oath subscribed by each member and officer.

Any member or officer who shall refuse to take the oath herein prescribed shall forfeit his office.

Any member or officer of the legislature who shall be convicted of having sworn falsely to or violated his said oath, shall forfeit his office and be disqualified thereafter from holding the office of senator or member of the house of representatives or any office within the gift of the legislature.

SEC. 9. Each house shall be the judge of the election returns and qualifications of its own members.

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

Each house shall determine the rules of its proceedings, shall choose its own officers and employés, and fix the pay thereof, except as otherwise provided in this constitution.

SEC. 10. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

SEC. 11. Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same; and for words used in any speech or debate in either house they shall not be questioned in any other place.

SEC. 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the State which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected, nor shall any member receive any civil appointment from the governor, the governor and senate, or from the legislature during the term for which he shall have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature during the time for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the State or any county thereof, authorized by any law passed during the term for which he shall have been elected.

SEC. 13. Each house shall keep a journal of its proceedings and publish the same from time to time, except such parts as require secrecy; and the yeas and nays of members on any question shall be taken at the desire of one-sixth of those present and entered upon the journal.

SEC. 14. In all elections to be made by the legislature the members thereof shall vote *viva voce* and their votes shall be entered in the journal.

SEC. 15. The sessions of each house and of the committee of the whole shall be open, unless when the business is such as ought to be kept secret.

SEC. 16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 17. Every bill shall be read three several times, but the first and second reading may be upon the same day, and the second reading may be by title of the bill, unless the reading at length be demanded. The first and third readings shall be at length.

SEC. 18. The enacting clause of a law shall be: "Be it enacted by the legislature of the State of Dakota," and no law shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon the final passage shall be taken upon its last reading, and the yeas and nays shall be entered upon the journal.

SEC. 19. The presiding officer of each house shall, in the presence of the house over which he shall preside, sign all bills and joint resolutions passed by the legislature, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered upon the journal.

SEC. 20. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

SEC. 21. No law shall embrace more than one subject, which shall be expressed in its title.

SEC. 22. No act shall take effect until ninety days after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall by a vote of two-thirds of all the members of each house otherwise direct.

SEC. 23. The legislature is prohibited from enacting any private or special laws in the following cases :

1. Granting divorces.
2. Changing the names of persons or places, or constituting one person the heir at law of another.
3. Locating or changing county seats.
4. Regulating county and township affairs.
5. Incorporating cities, towns, and villages, or changing or amending the charter of any town, city, or village, or laying out, opening, vacating, or altering town plats, streets, wards, alleys, and public grounds.
6. Providing for sale or mortgage of real estate belonging to minors or others under disability.
7. Authorizing persons to keep ferries across streams wholly within the State.
8. Remitting fines, penalties, or forfeitures.
9. Granting to an individual, association, or corporation any special or exclusive privilege, immunity, or franchise whatever.
10. Providing for the management of common schools.
11. Creating, increasing, or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

In all other cases where a general law can be applicable, no special law shall be enacted.

SEC. 24. The legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this state or to any municipal corporation therein.

SEC. 25. The legislature shall not authorize any game of chance, lottery, or gift enterprise, under any pretense or for any purpose whatever.

SEC. 26. The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, money, property, effects, whether held in trust or otherwise, or levy taxes or to select a capital site or to perform any municipal functions whatever.

SEC. 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the State.

SEC. 28. Any person who shall give, demand, offer, directly or indirectly, any money, testimonial, privilege or personal advantage, anything of value to any executive or judicial officer or member of the legislature, to influence him in the performance of any of his official or public duties, shall be guilty of bribery and shall be punished in such manner as shall be provided by law.

The offense of corrupt solicitation of members of the legislature, or of public officers of the State, or any municipal division thereof, and any efforts towards solicitation of said members of the legislature or officers to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

Any person may be compelled to testify in investigation or judicial proceedings against any person charged with having committed any offense or bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, but said testimony shall not afterwards be used against him in any judicial proceeding except for bribery in giving such testimony, and any person convicted of either of the offenses aforesaid, shall be disqualified from holding any office or position or office of trust or profit in this State.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive power shall be vested in a governor who shall hold his office two years; a lieutenant-governor who shall be elected at the same time and for the same term.

SEC. 2. No person shall be eligible to the office of governor or lieutenant-governor except a citizen of the United States and a qualified elector of the State, who shall have attained the age of thirty years, and who shall have resided two years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

SEC. 3. The governor and lieutenant-governor shall be elected by the qualified electors of the State at the time and places of choosing members of the legislature.

The persons respectively having the highest number of votes for governor and lieutenant-governor shall be elected, but if two or more shall have an equal and highest number of votes for governor and lieutenant-governor the two houses of the legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant-governor shall be made in such manner as shall be prescribed by law.

SEC. 4. The governor shall be commander-in-chief of the military and naval forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute laws, suppress insurrection, and repel invasion. He shall have power to convene the legislature on extraordinary occasions. He shall at the commencement of each session communicate to the legislature, by message, information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

SEC. 5. The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations, and pardons after conviction for all offenses except treason and cases of impeachment; provided, in all cases where the sentence of the court is capital punishment, imprisonment for life, or a longer term than two years, or a fine exceeding \$200, no pardon shall be granted, sentence commuted, or fine remitted, except upon the recommendation in writing of a board of pardons, consisting of the presiding judge, secretary of state, and attorney-general, after full hearing in open session, and such recommendation, with the reasons therefor, shall be filed in the office of the secretary of state, but the legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations, and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature at each regular session each case of remission of fine, reprieve, commutation, or pardon granted by him in the cases in which he is authorized to act without the recommendation of the said board of pardons, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon, or reprieve, with his reasons for granting the same.

SEC. 6. In case of the death, impeachment, resignation, failure to qualify, absence from the State, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant-governor.

SEC. 7. The lieutenant-governor shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant-governor shall be impeached, displaced, resign, or die, or from mental or physical disease, or otherwise, become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

SEC. 8. When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

SEC. 9. Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign; but if not, he shall return it, with his objection, to the house in which it originated, which shall enter the objection at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by its adjournment prevent its return, in which case it shall be filed, with his objection, in the office of the secretary of state, within ten days after such adjournment, or become a law.

SEC. 10. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in the following manner: If the legislature be in session, he shall transmit to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be sepa-

rately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 11. Any governor of this State who asks, receives, or agrees to receive, any bribe upon any understanding that his official opinion, judgment, or action shall be influenced thereby, or who gives, or offers or promises, his official influence in consideration that any member of the legislature shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislature, or who threatens any member that he, the said governor, will remove any person or persons from office or position with intent to in any manner influence the official action of said member, shall be punished in the manner now, or that may hereafter be provided by law, and upon conviction thereon shall forfeit all right to hold or exercise any office of trust or honor in this State.

SEC. 12. There shall be chosen by the qualified electors of the State at the times and places of choosing members of the legislature a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and attorney-general, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government.

SEC. 13. The powers and duties of the secretary of State, auditor, treasurer, superintendent of public instruction, commissioner of school and public lands, and attorney-general shall be as prescribed by law.

ARTICLE V.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial powers of the State, except as in this constitution otherwise provided, shall be vested in a supreme court, circuit courts, county courts, and justices of the peace, and such other courts as may be created by law for cities and incorporated towns.

SUPREME COURT.

SEC. 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

SEC. 3. The supreme court and the judges thereof shall have power to issue writs of habeas corpus. The supreme court shall also have power to issue writs of mandamus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same in such cases and under such regulations as may be provided by law, provided, however, that no jury trials shall be allowed in said supreme court, but, in proper cases, questions of fact may be sent by said court to a circuit court to a trial before a jury.

SEC. 4. At least two terms of the supreme court shall be held each year at the seat of government.

SEC. 5. The supreme court shall consist of three judges, to be chosen from districts by qualified electors of the State at large, as hereinafter provided.

SEC. 6. The number of said judges and districts may, after five years from the admission of this State under this constitution, be increased by law to not exceeding five.

SEC. 7. A majority of the judges of the supreme court shall be necessary to form a quorum or to pronounce a decision, but one or more of said judges may adjourn the court from day to day, or to a certain day.

SEC. 8. The term of the judges of the supreme court who shall be elected at the first election under this constitution shall be four years. At all subsequent elections the term of said judges shall be for six years.

SEC. 9. The judges of the supreme court shall by rule select from their number a presiding judge, who shall act as such for the term prescribed by such rule.

SEC. 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age, a citizen of the United States, nor unless he shall have resided in this State or the Territory at least two years next preceding his election, and at the time of his election be a resident of the district from which he is elected; but for the purpose of re-election, no such judge shall be deemed to have lost his residence in the district by reason of his removal to the seat of government in the discharge of his official duties.

SEC. 11. Until otherwise provided by law, the districts from which the said judges of the supreme court shall be elected shall be constituted as follows:

First district.—All that portion of the State lying west of the Missouri River.

Second district.—All that portion of the State lying east of the Missouri River and south of the second standard parallel.

Third district.—All that portion of the State lying east of the Missouri River and north of the second standard parallel.

SEC. 12. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law, and by the rules of the supreme court not inconsistent with law. The legislature shall make provision for the publication and distribution of the decisions of the supreme court, and for the sale of the published volumes thereof. No private person or corporation shall be allowed to secure any copyright to such decisions, but if any copyrights are secured they shall inure wholly to the benefit of the State.

SEC. 13. The governor shall have authority to require the opinions of the judges of the supreme court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

CIRCUIT COURTS.

SEC. 14. The circuit courts shall have original jurisdiction of all actions and causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law and consistent with this constitution; such jurisdiction as to value and amount and grade of offense may be limited by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same.

SEC. 15. The State shall be divided into judicial circuits, in each of which there shall be elected by the electors thereof one judge of the circuit court therein, whose term of office shall be four years.

SEC. 16. Until otherwise ordered by law, said circuits shall be six in number and constituted as follows, viz:

First circuit.—The counties of Union, Clay, Yankton, Bon Homme, Hutchinson, Charles Mix, and Douglas.

Second circuit.—The counties of Lincoln, Turner, Minnehaha, McCook, Moody, Lake, and Miner.

Third circuit.—The counties of Brookings, Kingsbury, Deuel, Hamlin, Codington, Clark, Grant, Marshall, Roberts, Day, and the Wahpeton and Sisseton Reservation, and all that strip of territory now included between the north line of the county of Day and Roberts and the forty-sixth parallel of north latitude.

Fourth circuit.—The counties of Beadle, Sanborn, Davison, Aurora, Brulé, Buffalo, Jerauld, and Hanson.

Fifth circuit.—The counties of Brown, Hand, Hyde, Hughes, Sully, Potter, Faulk, Edmunds, Walworth, Campbell, McPherson, and Spink, and all that portion of said State lying east of the Missouri River not included in any other judicial circuit.

Sixth circuit.—All that portion of the said State lying west of the Missouri River.

SEC. 17. The legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and the judges thereof, and divide the State into judicial circuits accordingly, taking care that they be formed of compact territory and be bounded by county lines, but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

SEC. 18. Writs of error and appeals may be allowed from the decisions of the circuit courts to the supreme court under such regulations as may be prescribed by law.

COUNTY COURTS.

SEC. 19. There shall be elected in each organized county a county judge, who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

SEC. 20. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, guardianship, and settlement of the estates of deceased persons, and such other civil and criminal jurisdiction as may be conferred by law, provided that such courts shall not have jurisdiction in any case where the debt, damage, claim, or value of property involved shall exceed \$1,000, except in matters of probate, guardianship, and the estates of deceased persons. Writs of error and appeal may be allowed from county to circuit courts, or to the supreme court, in such

cases and in such manner as may be prescribed by law, provided that no appeal or writ of error shall be allowed to the circuit court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities or towns.

SEC. 21. The county court shall not have jurisdiction in cases of felony, nor shall criminal cases therein be prosecuted by indictment; but they may have such jurisdiction in criminal matters, not of the grade of felony, as the legislature may prescribe, and the prosecutions therein may be by information or otherwise, as the legislature may provide.

JUSTICE OF THE PEACE.

SEC. 22. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of \$100, or where the boundaries or title to real property shall be called in question.

POLICE MAGISTRATE.

SEC. 23. The legislature shall have power to provide for creating such police magistrates for cities and towns as may be deemed from time to time necessary, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns, respectively, and such police magistrates may also be constituted *ex officio* justices of the peace for their respective counties.

STATE'S ATTORNEY.

SEC. 24. The legislature shall have power to provide for state's attorneys and to prescribe their duties and fix their compensation; but no person shall be eligible to the office of attorney-general or state's attorney who shall not at the time of his election be at least twenty-five years of age and possess all the other qualifications for judges of circuit courts as prescribed in this article.

MISCELLANEOUS.

SEC. 25. No person shall be eligible to the office of judge of the circuit or county courts unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States; nor unless he shall have resided in this State or Territory at least one year next preceding his election, and at the time of his election be a resident of the county or circuit, as the case may be, for which he is elected.

SEC. 26. The judges of the supreme court, circuit courts, and county courts shall be chosen at the first election held under the provisions of this constitution, and thereafter as provided by law, and the legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may, for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding, but not in any case more than six months. The term of office of all judges of circuit courts, elected in the several judicial circuits throughout the State, shall expire on the same day.

SEC. 27. The time of holding courts within said judicial circuits and counties shall be as provided by law; but at least one term of the circuit court shall be held annually in each organized county, and the legislature shall make provision for attaching unorganized counties for judicial purposes.

SEC. 28. Special terms of said courts may be held under such regulations as may be provided by law.

SEC. 29. The judges of the circuit courts may hold courts in other circuits than their own, under such regulations as may be prescribed by law.

SEC. 30. The judges of the supreme court, circuit courts, and county courts shall each receive such salary as may be provided by law, consistent with this constitution, and no such judge shall receive any compensation, perquisite, or emoluments for or on account of his office in any form whatever, except such salary, provided that county judges may accept and receive such fees as may be allowed under the land laws of the United States.

SEC. 31. No judge of the supreme court or circuit courts shall act as attorney or counselor at law, nor shall any county judge act as attorney or counselor at law in any case which is or may be brought into his court, or which may be appealed therefrom.

SEC. 32. There shall be a clerk of the circuit court in each organized county, who shall also be clerk of the county court, and who shall be elected by the qualified electors of such county. The duties and compensation of said clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law.

SEC. 33. Until the legislature shall provide by law for fixing the terms of courts, the judges of the supreme, circuit, and county courts, respectively, shall fix the terms thereof.

SEC. 34. All laws relating to courts shall be general and of uniform operation throughout the State, and the organization, jurisdiction, power, proceedings, and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of such of the proceedings, judgments, and decrees of such courts severally shall be uniform, provided, however, that the legislature may classify the county courts according to the population of the respective counties and fix the jurisdiction and salary of the judges thereof accordingly.

SEC. 35. No judge of the supreme or circuit courts shall be elected to any other than a judicial office, or be eligible thereto, during the term for which he was elected such judge. All votes for either of them during such term for any elective office, except that of judge of the supreme court, circuit court, or county court, given by the legislature or the people, shall be void.

SEC. 36. All judges or other officers of the supreme, circuit, or county courts provided for in this article, shall hold their offices until their successors, respectively, are elected or appointed and qualified.

SEC. 37. All officers provided for in this article shall respectively reside in the district, county, precinct, city, or town for which they may be elected or appointed, Vacancies in the elective offices provided for in this article shall be filled by appointment until the next general election, as follows: All judges of the supreme, circuit and county courts by the governor. All other judicial and other officers by the county board of the county where the vacancy occurs; in cases of police magistrates, by the municipality.

SEC. 38. All process shall run in the name of the "State of Dakota." All prosecutions shall be carried on in the name of and by authority of the "State of Dakota."

ARTICLE VI.

BILL OF RIGHTS.

SECTION 1. All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property, and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

SEC. 2. No person shall be deprived of life, liberty, or property without due process of law.

SEC. 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State. No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

SEC. 4. The right of petition and of the people peaceably to assemble to consult for the common good and make known their opinions shall never be abridged.

SEC. 5. Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right. In all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

SEC. 6. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but the legislature may provide for a jury of less than twelve in any court not a court of record, and for the decision of civil cases by three-fourths of the jury in any court.

SEC. 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 8. All persons shall be bailable by sufficient sureties, except for capital offenses, when proof is evident or presumption great. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

SEC. 9. No person shall be compelled in any criminal case to give evidence against himself or to be twice put in jeopardy for the same offense.

SEC. 10. No person shall be held for a criminal offense unless on the presentment or indictment of a grand jury, or information of the public prosecutor, except in cases of impeachment, in cases cognizable by county courts, by justices of the peace, and in cases arising in the Army or Navy or in the militia when in actual service in time of war or public danger; provided, that the grand jury may be modified or abolished by law.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

SEC. 12. No *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of privilege, franchise, or immunity, shall be passed.

SEC. 13. Private property shall not be taken for public use or damaged without just compensation, as determined by a jury, which shall be paid as soon as it can be ascertained, and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or damaged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

SEC. 14. No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment, or descent of property.

SEC. 15. No person shall be imprisoned for debt arising out of or founded upon a contract.

SEC. 16. The military shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 17. No tax or duty shall be imposed without the consent of the people or their representatives in the legislature, and all taxation shall be equal and uniform.

SEC. 18. No law shall be passed granting to any citizen, class of citizens, or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

SEC. 19. Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers in time of war may vote at their post of duty, in or out of the State, under regulations to be prescribed by the legislature.

SEC. 20. All courts shall be open, and every man for an injury done him in his property, person, or reputation shall have remedy by due course of law, and right and justice administered without denial or delay.

SEC. 21. No power of suspending law shall be exercised, unless by the legislature or its authority.

SEC. 22. No person shall be attainted of treason or felony by the legislature.

SEC. 23. Excessive bail shall not be required, excessive fines imposed, nor cruel punishments inflicted.

SEC. 24. The right of the citizens to bear arms in defense of themselves and the State shall not be denied.

SEC. 25. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SEC. 26. All political power is inherent in the people and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the State of Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

SEC. 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

ARTICLE VII.

ELECTIONS AND RIGHT OF SUFFRAGE.

SECTION 1. Every male person resident of this State who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to to either of the following classes, who shall be a qualified elector under the laws of the Territory of Dakota at the date of the ratification of this constitution by the people, or who shall have

resided in the United States one year, in this State six months, in the county thirty days, and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election.

(1) Citizens of the United States.

(2) Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States upon the subject of naturalization.

SEC. 2. The legislature shall at its first session after the admission of the State into the Union, submit to a vote of the electors of the State the following questions to be voted upon at the next general election held thereafter, namely, "Shall the word 'male' be stricken from the article of the constitution relating to elections and the right of suffrage." If a majority of the votes cast upon that question are in favor of striking out said word "male," it shall be stricken out, and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this State.

SEC. 3. All votes shall be by ballot, but the legislature may provide for numbering ballots for the purpose of preventing and detecting fraud.

SEC. 4. All general elections shall be biennial.

SEC. 5. Electors shall in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of elections, except in time of war or public danger.

SEC. 6. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State, or in the military or naval service of the United States.

SEC. 7. No soldier, seaman, or marine in the Army or Navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

SEC. 8. No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

SEC. 9. Any woman having the qualifications enumerated in section 1 of this article as to age, residence, and citizenship, and including those now qualified by the laws of the Territory, may vote at any election held solely for school purposes, and may hold any office in this State, except as otherwise provided in this constitution.

ARTICLE VIII.

EDUCATION AND SCHOOL LANDS.

SECTION 1. The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools, wherein tuition shall be without charge and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

SEC. 2. All proceeds of the sale of public lands that have heretofore been or may hereafter be given by the United States for the use of public schools in the State; all such per centum as may be granted by the United States on the sales of public lands; the proceeds of all property that shall fall to the State by escheat; the proceeds of all gifts or donations to the State for public schools or not otherwise appropriated by the terms of the gift; and all property otherwise acquired for public schools, shall be and remain a perpetual fund for the maintenance of public schools in the State. It shall be deemed a trust fund held by the State. The principal shall forever remain inviolate, and may be increased, but shall never be diminished, and the State shall make good all losses thereof which may in any manner occur.

SEC. 3. The interest and income of this fund, together with the net proceeds of all fines for violation of State laws and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the public schools of the State, and shall be for this purpose apportioned among and between all the several public school corporations of the State in proportion to the number of children in each, of school age, as may be fixed by law; and no part of the fund, either principal or interest, shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of public schools for the equal benefit of all the people of the State.

SEC. 4. After one year from the assembling of the first legislature the lands granted to the State by the United States for the use of public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the State, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

The commissioner of school and public lands, the State auditor, and the county superintendent of schools of the counties severally, shall constitute boards of appraisal, and shall appraise all school lands within the several counties which they may from time to time select and designate for sale at their actual value under the terms of sale. They shall take care first to select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same, in order that the largest price may be obtained therefor.

SEC. 5. No lands shall be sold for less than the appraised value and in no case for less than ten dollars an acre, unless, after the year A. D. nineteen hundred, two consecutive legislatures concur in a law otherwise directing. The purchaser shall pay one-fourth of the price in cash and the remaining three-fourths as follows: One-fourth in five years, one-fourth in ten years, one-fourth in fifteen years, with interest thereon at the rate of not less than six per centum per annum, payable annually in advance; but all such subdivided lands may be sold for cash, provided that upon payment of the interest for one full year in advance the balance of the purchase price may be paid at any time. All sales shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold and one at the seat of government. Such lands as shall not have been especially subdivided shall be offered in tracts of not more than eighty acres, and those so subdivided in the smallest subdivisions. All lands designated for sale not sold within four years after appraisal shall be reappraised by the board of appraisal as hereinbefore provided before they are sold.

SEC. 6. All sales shall be conducted through the office of the commissioner of school and public lands as may be prescribed by law, and returns of all appraisals and sales shall be made to said office. No sale shall operate to convey any right or title to any lands for sixty days after the date thereof, nor until the same shall have received the approval of the governor in such form as may be provided by law. No grant or patent for any such lands shall issue until final payment be made.

SEC. 7. All lands, money, or other property donated, granted, or received from the United States or any other source for a university, agricultural college, normal schools, or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such land as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses therefrom that shall in any manner occur.

SEC. 8. All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same officers and board under the same limitations, and subject to all the conditions as to the price, sale, and approval provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

SEC. 9. No lands mentioned in this article shall be leased except for pasturage and meadow purposes and at public auction after notice as hereinbefore provided in case of sale, and shall be offered in tracts not greater than one section. All rents shall be payable annually in advance, and no term of lease shall exceed five years, nor shall any lease be valid until it receives the approval of the governor.

SEC. 10. No claim to any public lands by any trespasser thereon by reason of occupancy, cultivation, or improvement thereof shall ever be recognized; nor shall compensation ever be made on account of any improvements made by such trespasser.

SEC. 11. The moneys of the permanent school and other educational funds shall be invested only in first mortgages upon good improved farm lands within this State, as hereinafter provided, or in bonds of school corporations within the State, or in bonds of the United States, or of the State of Dakota. The legislature shall provide by law the method of determining the amounts of said funds which shall be invested from time to time in such classes of securities respectively, taking care to secure continuous investments as far as possible.

All moneys of said funds which may from time to time be designated for investment in farm mortgages and in the bonds of school corporations shall for such purpose be divided among the organized counties of the State in proportion to population as nearly as provisions by law to secure continuous investments may permit. The several counties shall hold and manage the same as trust funds, and they shall be and remain responsible and accountable for the principal and interest of all such moneys received by them from the date of receipt until returned because not loaned; and in case of loss to any money so apportioned to any county, such county shall make the same good out of its common revenue. Counties shall invest said moneys in bonds of school corporations, or in first mortgages, upon good improved farm lands within their limits respectively; but no farm loan shall exceed \$500 to any one per-

son, nor shall it exceed one-half the valuation of the lands as assessed for taxation, and the rate of interest shall not be less than 6 per centum per annum, and shall be such other and higher rates as the legislature may provide, and shall be payable semi-annually on the first days of January and July; provided, that whenever there are moneys of said funds in any county amounting to \$1,000 that can not be loaned according to the provisions of this section and any law pursuant thereto, the said sum may be returned to the State treasurer to be intrusted to some other county or counties, or otherwise invested under the provisions of this section.

Each county shall semi-annually, on the first days of January and July, render an account of the condition of the funds intrusted to it, to the auditor of the State, and at the same time pay to or account to the State treasurer for the interest due on all funds intrusted to it.

The legislature may provide by general law that counties may retain from interest collected in excess of six per centum per annum upon all said funds intrusted to them, not to exceed one per centum per annum. But no county shall be exempted from the obligation to make semi-annual payments to the State treasury of interest at the rate provided by law for said loans, except only said one per centum; and in no case shall the interest so to be paid be less than six per centum per annum.

The legislature shall provide by law for the safe investment of the permanent school and other educational funds, and for the prompt collection of interest and income thereof, and to carry out the objects and provisions of this section.

SEC. 12. The governor may disapprove any sale, lease, or investment other than such as are intrusted to the counties.

SEC. 13. All losses to the permanent school or other educational funds of this State which shall have been occasioned by the defalcation, negligence, mismanagement, or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State in favor of the fund sustaining the loss upon which not less than six per centum of annual interest shall be paid. The amount of indebtedness so created shall not be counted as a part of the indebtedness mentioned in Article XIII, section 2.

SEC. 14. The legislature shall provide by law for the protection of the school lands from trespass, or unlawful appropriation, and for their defense against all unauthorized claims or efforts to divert them from the school fund.

SEC. 15. The legislature shall make such provisions by general taxation, and by authorizing the school corporations to levy such additional taxes, as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the State.

SEC. 16. No appropriation of lands, money, or other property or credits to aid any sectarian school shall ever be made by the State, or any county or municipality within the State, nor shall the State or any county or municipality within the State accept any grant, conveyance, gift or bequest of lands, money, or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the State.

SEC. 17. No teacher, State, county, township, or district school officer shall be interested in the sale, proceeds, or profits of any book, apparatus, or furniture used or to be used in any school in this State, under such penalties as shall be provided by law

ARTICLE IX.

COUNTY AND TOWNSHIP ORGANIZATION.

SECTION 1. The legislature shall provide by general law for organizing new counties, locating the county seats thereof, and changing county lines; but no new county shall be organized so as to include an area of less than twenty-four Congressional townships, as near as may be without dividing a township or fractional township, nor shall the boundaries of any organized county be changed so as to reduce the same to a less area than above specified. All changes in county boundaries in counties already organized, before taking effect, shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter, and be adopted by a majority of the votes cast in each county at such election. Counties now organized shall remain as they are unless changed according to the above provisions.

SEC. 2. In counties already organized, where the county seat has not been located by a majority vote, it shall be the duty of the county board to submit the location of the county seat to the electors of said county at a general election. The place receiving the majority of all votes cast at said election shall be the county seat of said county.

SEC. 3. Whenever a majority of the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been

located by a majority vote, specifying the place to which it is to be changed, said county board shall submit the same to the people of said county at the next general election, and if the proposition to change the county seat be ratified by two-thirds of the votes cast at said election, then the county seat shall be changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not again be submitted before the expiration of four years.

SEC. 4. The legislature shall provide by general law for organizing the counties into townships, having due regard for Congressional township lines and natural boundaries, and whenever the population is sufficient and the natural boundaries will permit, the civil townships shall be coextensive with the Congressional townships.

SEC. 5. In each organized county, at the first general election held after the admission of the State of Dakota into the Union, and every two years thereafter, there shall be elected a clerk of the court, sheriff, county auditor, register of deeds, treasurer, State's attorney, surveyor, coroner, and superintendent of schools, whose terms of office, respectively, shall be two years, and except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above-named offices.

SEC. 6. The legislature shall provide by general law for such county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township, and district officers.

SEC. 7. All county, township, and district officers shall be electors in the county, township, or district in which they are elected, provided that nothing in this section shall prevent the holding of school offices by any person, as provided in section 9, Article VII.

ARTICLE X.

MUNICIPAL CORPORATIONS.

SECTION 1. The legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that no such corporations shall have any powers or be subjected to any restrictions other than all corporations of the same class. The legislature shall restrict the power of such corporations to levy taxes and assessments, borrow money, and contract debts, so as to prevent the abuse of such power.

SEC. 2. Except as otherwise provided in this constitution, no tax or assessment shall be levied or collected or debts contracted by municipal corporations, except in pursuance of law, for public purposes specified by law; nor shall money raised by taxation, loan, or assessment for one purpose ever be diverted to any other.

SEC. 3. No street passenger railway or telegraph or telephone line shall be constructed within the limits of any village, town, or city without the consent of its local authorities.

ARTICLE XI.

REVENUE AND FINANCE.

SECTION 1. The legislature shall provide for an annual tax, sufficient to defray the estimated ordinary expenses of the State for each year, not to exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the State, to be ascertained by the last assessment made for State and county purposes. And whenever it shall appear that such ordinary expenses shall exceed the income of the State for such year, the legislature shall provide for levying a tax for the ensuing year sufficient with other resources of income to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying the public debt the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the State as ascertained by the last assessment made for State and county purposes.

SEC. 2. All taxes to be raised in this State shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisal and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property, as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.

SEC. 3. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

SEC. 4. The legislature shall provide for taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also for taxing the notes and bills discounted or purchased, moneys loaned and all other property, effects or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

SEC. 5. The property of the United States and of the State, county and municipal corporations, both real and personal, shall be exempt from taxation.

SEC. 6. The legislature shall, by general law, exempt from taxation property used exclusively for agricultural and horticultural societies, for schools, religious, cemetery and charitable purposes, and personal property to any amount not exceeding in value \$200 for each individual liable to taxation.

SEC. 7. All laws exempting property from taxation other than that enumerated in sections 5 and 6 of this article, shall be void.

SEC. 8. No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same, to which the tax only shall be applied.

SEC. 9. All taxes levied and collected for State purposes, shall be paid into the State treasury. No indebtedness shall be incurred or money expended by the State, and no warrants shall be drawn upon the State treasury except in pursuance of an appropriation for the specific purpose first made. The legislature shall provide by suitable enactment for carrying this section into effect.

SEC. 10. The legislature may vest the corporate authority of cities, towns, and villages with power to make local improvements by special taxation of contiguous property or otherwise. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such tax shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

SEC. 11. The making of the profit, directly or indirectly, out of the State, county, city, town, or school district money, or using the same for any purpose not authorized by law, shall be deemed a felony, and shall be punished as provided by law.

SEC. 12. An accurate statement of the receipts and expenditures of the public moneys shall be published annually, in such manner as the legislature may provide.

ARTICLE XII.

PUBLIC ACCOUNTS AND EXPENDITURES.

SECTION 1. No money shall be paid out of the treasury except upon appropriation by law and on warrant drawn by the proper officer.

SEC. 2. The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative, and judicial departments of the State, the current expenses of State institutions, interest on public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the legislature.

SEC. 3. The legislature shall never grant any extra compensation to any public officer, employé, agent, or contractor, after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the State, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during his term of office; *provided*, however, that the legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

SEC. 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the legislature shall provide, and such statement shall be submitted to the legislature at the beginning of each regular session by the governor with his message.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

SECTION 1. Neither the State nor any county, township, or municipality shall loan or give its credit or make donations to or in aid of any individual, association, or corporation, except for the necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, pay or become responsible for the debt or liability of any individual, association, or corporation; *provided*, that the State may assume or pay such debt or liability when incurred in time of war for the defense of the State. Nor shall the State engage in any work of internal improvement.

SEC. 2. For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits of failure in revenue, the State may contract debts never to exceed with previous debts in the aggregate \$500,000, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the State or the United States in war, and provision shall be made by law for the payment of the interest annually, and the principal when due, by tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest and principal by such tax or otherwise, shall be irrevocable until such debt is paid.

SEC. 3. The debt of any county, city, town, school district, or other subdivision shall never exceed 5 per centum upon the assessed value of the taxable property therein. In estimating the amount of indebtedness which a municipality or subdivision may incur, the amount of indebtedness contracted prior to the adoption of this constitution shall be included.

SEC. 4. Any city, county, town, school district, or any other subdivision incurring indebtedness, shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

SEC. 5. Consent is given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable, and this State shall assume and pay so much thereof as Congress may provide.

ARTICLE XIV.

STATE INSTITUTIONS.

SECTION 1. The charitable and penal institutions of the State of Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind, and a reform school.

SEC. 2. The State institutions provided for in the preceding section shall be under the control of a State Board of Charities and Corrections, under such rules and restrictions as the legislature shall provide, such board to consist of not to exceed five members, to be appointed by the governor and confirmed by the senate, and whose compensation shall be fixed by law.

SEC. 3. The State university, the agricultural college, the normal schools, and other educational institutions that may be sustained either wholly or in part by the State, shall be under the control of a board of nine members, appointed by the governor and confirmed by the senate, to be designated the regents of education. They shall hold their office for six years, three retiring every second year.

The regents in connection with the faculty of each institution shall fix the course of study in the same.

The compensation of the regents shall be fixed by the legislature.

SEC. 4. The regents shall appoint a board of five members for each institution under their control, to be designated the board of trustees. They shall hold office for five years, one member retiring annually. The trustees of each institution shall appoint the faculty of the same, and shall provide for the current management of the institution, but all appointments and removals must have the approval of the regents to be valid. The trustees of the several institutions shall receive no compensation for their services, but they shall be reimbursed for all expenses incurred in the discharge of their duties, upon presenting an itemized account of the same to the proper officer. Each board of trustees at its first meeting shall decide by lot the order in which its members shall retire from office.

SEC. 5. The legislature shall provide that the science of mining and metallurgy be taught in at least one institution of learning under the patronage of the State.

ARTICLE XV.

MILITIA.

SECTION 1. The militia of the State of Dakota shall consist of all able-bodied male persons residing in the State, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State.

SEC. 2. The legislature shall provide by law for the enrollment, uniforming, equipment, and discipline of the militia and the establishment of volunteers and such other organizations, or both, as may be deemed necessary for the protection of the State, the preservation of order, and the efficiency and good of the service.

SEC. 3. The legislature, in providing for the organization of the militia, shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

SEC. 4. All militia officers shall be commissioned by the governor, and may hold their commissions for such period of time as the legislature may provide, subject to removal by the governor for cause, to be first ascertained by a court-martial, pursuant to law.

SEC. 5. The militia shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at muster and elections, and in going to and returning from the same.

SEC. 6. All military records, banners, and relics of the State, except when in lawful use, shall be preserved in the office of the adjutant-general, as an enduring memorial of the patriotism and valor of Dakota; and it shall be the duty of the legislature to provide by law for the safe-keeping of the same.

SEC. 7. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace.

ARTICLE XVI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

SEC. 2. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant-governor is on trial, the presiding judge of the supreme court shall preside.

SEC. 3. The governor and other State and judicial officers, except county judges, justices of the peace, and police magistrates, shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the State. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

SEC. 4. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for drunkenness or gross incompetency in such manner as may be provided by law.

SEC. 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 6. On trial of an impeachment against the governor, the lieutenant-governor shall not act as a member of the court.

SEC. 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

SEC. 8. No person shall be liable to impeachment twice for the same offense.

ARTICLE XVII.

CORPORATIONS.

SECTION 1. No corporation shall be created or have its charter extended, changed, or amended by special laws, except those for charitable, educational, penal, or reformatory purposes, which are to be and remain under the patronage and control of the State; but the legislature shall provide by general laws for the organization of all corporations hereafter to be created.

SEC. 2. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

SEC. 3. The legislature shall not remit the forfeiture of the charter of any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

SEC. 4. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the legislature from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged.

or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.

SEC. 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate or distribute them upon two or more candidates as he may prefer.

SEC. 6. No foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

SEC. 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

SEC. 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days' notice given in pursuance of law.

SEC. 9. The legislature shall have the power to alter, revise, or annul any charter of any corporation now existing and revocable at the taking effect of this constitution, or any that may be created, whenever in their opinion it may be injurious to the cities of this State; in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

SEC. 10. No law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town, or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

SEC. 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph in this State, and to connect the same with other lines; and the legislature shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise any other competing line of telegraph.

SEC. 12. Every railroad corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of its stock shall be made, and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom; the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 13. The rolling-stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the legislature shall pass no laws exempting such property from execution and sale.

SEC. 14. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

SEC. 15. Railroads heretofore constructed or that may hereafter be constructed in this State are hereby declared public highways, and all railroad and transportation companies are declared to be common carriers and subject to legislative control; and the legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight, as such common carriers, from one point to another in this State.

SEC. 16. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination,

SEC. 17. The legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

SEC. 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury, or destruction. The legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury as in other civil cases.

SEC. 19. The term "corporations," as used in this article, shall be construed to include all joint-stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

ARTICLE XVIII.

BANKING AND CURRENCY.

SECTION 1. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of this State of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State treasurer, in the approved securities of the State or of the United States, to be rated at 10 per cent. below their par value, and in case of their depreciation the deficiency shall be made good by depositing additional securities.

SEC. 2. Every bank, banking company or corporation shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business, but shall have corporate capacity to sue or be sued until its business is fully closed; but the legislature may provide by general law for the reorganization of such banks.

SEC. 3. The shareholders or stockholders of any banking corporation shall be held individually responsible and liable for all contracts, debts, and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares or stock; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

ARTICLE XIX.

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

SECTION 1. Until otherwise provided by law, the members of the House of Representatives of the United States apportioned to this State shall be elected by the State at large.

SEC. 2. Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and representatives shall be apportioned, as follows:

SENATORIAL DISTRICTS.

District No. 1 shall consist of the county of Union and be entitled to one senator.

District No. 2 shall consist of the county of Clay and be entitled to one senator.

District No. 3 shall consist of the county of Yankton and be entitled to one senator.

District No. 4 shall consist of the county of Bon Homme and be entitled to one senator.

District No. 5 shall consist of the county of Lincoln and be entitled to one senator.

District No. 6 shall consist of the county of Turner and be entitled to one senator.

District No. 7 shall consist of the county of Hutchinson and be entitled to one senator.

District No. 8 shall consist of the counties of Douglas and Charles Mix and be entitled to one senator.

District No. 9 shall consist of the county of Minnehaha and be entitled to two senators.

District No. 10 shall consist of the county of Brulé and be entitled to one senator.

District No. 11 shall consist of the counties of Aurora and Jerauld and be entitled to one senator.

District No. 12 shall consist of the county of Davison and be entitled to one senator.

District No. 13 shall consist of the counties of McCook and Hanson and be entitled to one senator.

District No. 14 shall consist of the counties of Moody and Lake and be entitled to one senator.

District No. 15 shall consist of the counties of Sanborn and Minor and be entitled to one senator.

District No. 16 shall consist of the county of Brookings and be entitled to one senator.

District No. 17 shall consist of the county of Kingsbury and be entitled to one senator.

District No. 18 shall consist of the county of Beadle and be entitled to one senator.

District No. 19 shall consist of the counties of Hand and Buffalo and be entitled to one senator.

District No. 20 shall consist of the counties of Codington and Deuel and be entitled to one senator.

District No. 21 shall consist of the counties of Clark and Hamlin and be entitled to one senator.

District No. 22 shall consist of the counties of Grant and Roberts and the territory north thereof and south of the 46th parallel and be entitled to one senator.

District No. 23 shall consist of the counties of Marshall and Day and the territory north thereof and south of the 46th parallel and be entitled to one senator.

District No. 24 shall consist of the county of Spink and be entitled to one senator.

District No. 25 shall consist of the county of Brown and the territory north thereof and south of the 46th parallel and be entitled to two senators.

District No. 26 shall consist of the counties of McPherson, Edmunds, and Faulk and the territory north thereof and south of the 46th parallel and be entitled to one senator.

District No. 27 shall consist of the counties of Walworth, Potter, Sully, and Campbell and the territory north thereof and south of the 46th parallel and be entitled to one senator.

District No. 28 shall consist of the counties of Hyde and Hughes and be entitled to one senator.

District No. 29 shall consist of the counties of Lawrence and Butte and be entitled to two senators.

District No. 30 shall consist of the counties of Pennington, Custer, and Fall River and be entitled to one senator.

REPRESENTATIVE DISTRICTS.

District No. 1 shall consist of the county of Union and be entitled to three representatives.

District No. 2 shall consist of the county of Clay and be entitled to two representatives.

District No. 3 shall consist of the county of Yankton and be entitled to four representatives.

District No. 4 shall consist of the county of Bon Homme and be entitled to three representatives.

District No. 5 shall consist of the county of Lincoln and be entitled to three representatives.

District No. 6 shall consist of the county of Turner and be entitled to three representatives.

District No. 7 shall consist of the county of Hutchinson and be entitled to three representatives.

District No. 8 shall consist of the county of Douglas and be entitled to one representative.

District No. 9 shall consist of the county of Charles Mix and be entitled to one representative.

District No. 10 shall consist of the county of Minnehaha and be entitled to four representatives.

District No. 11 shall consist of the county of McCook and be entitled to two representatives.

District No. 12 shall consist of the county of Hanson and be entitled to two representatives.

District No. 13 shall consist of the county of Davison and be entitled to one representative.

District No. 14 shall consist of the county of Aurora and be entitled to two representatives.

District No. 15 shall consist of the county of Brulé and be entitled to three representatives.

District No. 16 shall consist of the county of Moody and be entitled to two representatives.

District No. 17 shall consist of the county of Lake and be entitled to two representatives.

District No. 18 shall consist of the county of Miner and be entitled to two representatives.

District No. 19 shall consist of the county of Sanborn and be entitled to two representatives.

District No. 20 shall consist of the county of Jerauld and be entitled to one representative.

District No. 21 shall consist of the county of Brookings and be entitled to three representatives.

District No. 22 shall consist of the county of Kingsbury and be entitled to two representatives.

District No. 23 shall consist of the county of Beadle and be entitled to five representatives.

District No. 24 shall consist of the counties of Hand and Buffalo and be entitled to three representatives.

District No. 25 shall consist of the county of Hyde and be entitled to one representative.

District No. 26 shall consist of the county of Hughes and be entitled to two representatives.

District No. 27 shall consist of the county of Sully and be entitled to one representative.

District No. 28 shall consist of the county of Deuel and be entitled to two representatives.

District No. 29 shall consist of the county of Grant and be entitled to two representatives.

District No. 30 shall consist of the county of Roberts and the territory north thereof and south of the forty-sixth parallel and be entitled to one representative.

District No. 31 shall consist of the county of Hamlin and be entitled to one representative.

District No. 32 shall consist of the county of Codington and be entitled to two representatives.

District No. 33 shall consist of the county of Clark and be entitled to two representatives.

District No. 34 shall consist of the county of Spink and be entitled to five representatives.

District No. 35 shall consist of the county of Faulk and be entitled to one representative.

District No. 36 shall consist of the county of Potter and be entitled to one representative.

District No. 37 shall consist of the county of Marshall and the territory north thereof and south of the forty-sixth parallel and be entitled to one representative.

District No. 38 shall consist of the county of Day and be entitled to two representatives.

District No. 39 shall consist of the county of Brown and the territory north thereof and south of the forty-sixth parallel and be entitled to four representatives.

District No. 40 shall consist of the county of Edmunds and be entitled to one representative.

District No. 41 shall consist of the county of Walworth and be entitled to one representative.

District No. 42 shall consist of the county of McPherson and the territory north thereof and south of the forty-sixth parallel and be entitled to one representative.

District No. 43 shall consist of the county of Campbell and the territory north thereof and south of the forty-sixth parallel and be entitled to one representative.

District No. 44 shall consist of the counties of Fall River and Custer and be entitled to one representative.

District No. 45 shall consist of the county of Pennington and be entitled to one representative.

District No. 46 shall consist of the county of Lawrence and be entitled to four representatives.

District No. 47 shall consist of the county of Butte and be entitled to one representative.

ARTICLE XX.

SEAT OF GOVERNMENT.

SECTION 1. The question of the location of the temporary seat of government shall be submitted to a vote of the electors of the proposed State of Dakota in the same manner and at the same election at which this constitution shall be submitted, and

that place receiving the highest number of votes shall be the temporary seat of government until a permanent seat of government shall be established as hereinafter provided.

SEC. 2. The legislature at its first session after the admission of this State shall provide for the submission of the question of a place for a permanent seat of government to the qualified voters of the State at the next general election thereafter, and that place which receives a majority of all the votes cast upon that question shall be the permanent seat of government.

SEC. 3. Should no place voted for at said election have a majority of all votes cast upon this question, the governor shall issue his proclamation for an election to be held in the same manner at the next general election to chose between the two places having received the highest number of votes cast at the first election on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving the majority of all votes cast upon this question shall be the permanent seat of government.

ARTICLE XXI.

MISCELLANEOUS.

SECTION 1. SEAL AND COAT OF ARMS.—The design of the great seal shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other pictures of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steam-boat. Properly divided between the upper and lower edges of the circle shall appear the legend, "Under God the People Rule," which shall be the motto of the State of Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part, the words, "State of Dakota." In the lower part the words, "Great Seal," and the date in Arabic numerals of the year in which the State be admitted to the Union.

SEC. 2. COMPENSATION OF PUBLIC OFFICERS.—The governor shall receive an annual salary of two thousand five hundred dollars; the judges of the supreme court shall each receive an annual salary of two thousand five hundred dollars; the judges of the circuit courts shall each receive an annual salary of two thousand dollars; *provided*, that the legislature may, after the year one thousand eight hundred and ninety, increase the annual salary of the governor and each of the judges of the supreme court to three thousand dollars, and the annual salary of each of the circuit judges to two thousand five hundred dollars.

The secretary of state, State treasurer, and State auditor shall each receive an annual salary of one thousand eight hundred dollars; the commissioner of school and public lands shall receive an annual salary of one thousand eight hundred dollars; the superintendent of public instruction shall receive an annual salary of one thousand eight hundred dollars; the attorney-general shall receive an annual salary of one thousand dollars; the compensation of lieutenant-governor shall be double the compensation of a State senator.

They shall receive no salary or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the legislature to increase the salaries of the officers named in this article, except as herein provided.

SEC. 3. OATH OF OFFICE.—Every person elected or appointed to any office in this State, except such inferior offices as may be by law exempted, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this State, and faithfully to discharge the duties of his office.

SEC. 4. EXEMPTIONS.—The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempting from forced sale a homestead, the value of which shall be limited and defined by law, to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general laws.

SEC. 5. RIGHTS OF MARRIED WOMEN.—The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband.

ARTICLE XXII.

COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of this State: First, that perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or

property on account of his or her mode of religious worship; secondly, that the people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands of the United States lying within the State, and that the same shall be and remain at the sole and entire disposition of the United States and that the lands belonging to citizens of the United States residing without this State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by, the United States.

ARTICLE XXIII.

AMENDMENTS AND REVISIONS OF THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and it shall be the duty of the legislature to submit such proposed amendment or amendments to the vote of the people at the next general election. And if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this constitution, provided that the amendment or amendments so proposed shall be published for a period of twelve weeks previous to the date of said election, in such manner as the legislature may provide; and provided, further, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution they shall recommend to the electors to vote at the next election for member of the legislature for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, and shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE XXIV.

PROHIBITION.

[To be submitted to a separate vote as provided by the schedule and ordinance.]

No person or corporation shall manufacture, or aid in the manufacture for sale, any intoxicating liquor; no person shall sell or keep for sale as a beverage any intoxicating liquor. The legislature shall by law prescribe regulations for the enforcement of the provisions of this section and provide suitable and adequate penalties for the violation thereof.

ARTICLE XXV.

MINORITY REPRESENTATION.

[To be submitted to a separate vote as provided by the schedule and ordinance.]

SECTION 1. The house of representatives shall consist of three times the number of the members of the senate, and the term of office shall be two years. Three representatives shall be elected in each senatorial district at the first general election held after this constitution takes effect, and every two years thereafter.

SEC. 2. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates as he shall see fit; and the candidates highest in votes shall be declared elected.

SCHEDULE AND ORDINANCE.

SECTION 1. That no inconvenience may arise from a change of the Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, claims and rights of individuals, and all bodies corporate, 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 Dakota, shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Dakota, which are not repugnant to this constitution, shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

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

SEC. 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, which may be taken before the organization of the judicial department under this constitution, shall remain valid and shall pass over to and may be prosecuted in the name of the State; and all bonds, obligations, or other undertaking executed by this Territory, or to any officer in his official capacity, shall pass over to the 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 which 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.

SEC. 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 exercise their respective offices and appointments until superseded under this constitution.

SEC. 6. The first meeting of the legislature shall be held at such time and place as shall be selected under the provisions of this constitution and ordinance and schedule.

SEC. 7. The legislature elected under the provisions of this ordinance shall assemble at the place fixed by the schedule and ordinance on the second Monday in December, in the year of our Lord one thousand eight hundred and eighty-five; and on the first day of their assemblage the governor and other State officers shall take the oath of office in the presence of the legislature. The oath of office shall be administered to the senators and representatives of the legislature and to the State officers by the chief justice of the Territory, or by the president of the State executive committee, or by any officer duly authorized by the law of the Territory to administer oaths.

SEC. 8. Immediately after the organization of the legislature and the qualification under oath of the State officers, both houses of the legislature shall then and there proceed to elect two Senators of the United States for the State of Dakota. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives shall be elected as such United States Senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house shall issue a certificate to each of said Senators certifying his election, which certificate shall also be signed by the governor and attested by the secretary of state.

SEC. 9. This constitution shall be submitted for adoption or rejection to a vote of the electors, qualified by the laws of this Territory to vote at all elections, at the election to be held on the Tuesday next after the first Monday in November, A. D. 1885. At the said election the ballots shall be in the following form:

For the constitution: Yes. No.

For prohibition: Yes. No.

For minority representation: Yes. No.

And as a heading to each of said ballots shall be printed on each ballot the following instructions to voters:

All persons desiring to vote for the constitution, or any of the articles submitted to separate vote, may erase the word "No."

All persons who desire to vote against the constitution, or against any article submitted separately, may erase the word "Yes."

Any person may have printed or written on his ballot only the words, "For the constitution" or "Against the constitution," and such ballots shall be counted for or against the constitution accordingly. The same provision shall apply to articles submitted separately.

In addition to the foregoing election for the constitution and for the articles submitted by this convention for a separate vote thereon, an election shall be held at the same time and places, by the said qualified electors, for the following State officers, to be voted for on the same ballot as is above provided for votes on the constitution and separate articles, to wit: A governor, a lieutenant-governor, and all other State and judicial officers which are provided for in this constitution.

At the same time and places of election there shall be held an election by the said qualified electors within their respective districts for representatives and senators for the State legislature, and for two Representatives in Congress.

All the aforesaid elections above provided for shall be held in the same manner and form as provided for the election for the adoption or rejection of the constitution. And the names of all such officers above specified to be voted for at such election shall be written or printed upon the same ballots as the vote for or against the constitution.

The judges of elections in counting the ballots voted at said election shall count all the affirmative ballots upon the constitution, as votes for the constitution; and

they shall count all the negative ballots voted at said election upon the constitution as votes against the constitution; and ballots voted at said election upon which neither of said words, yes or no, following the words "for the constitution" are erased, shall not be counted upon such proposition. And they shall count all affirmative ballots so voted upon the article on prohibition, separately submitted, as votes for such article. And they shall count all negative ballots so voted upon such article as votes against such article. And ballots upon which neither of the words, yes or no, following the words "for prohibition" are erased shall not be counted upon such proposition. And they shall count all affirmative ballots so voted upon the article on minority representation, separately submitted, as votes for such article. And they shall count all negative ballots so voted upon such article as votes against such article. And ballots upon which neither of said words, yes or no, following the words "for minority representation" are erased, shall not be counted upon such proposition.

If it shall appear, in accordance with the returns hereinafter provided for, that a majority of the votes polled at such election, for and against the constitution, are for the constitution, then this constitution shall be the constitution of the State of Dakota. If it shall appear, according to the returns hereinafter provided for, that a majority of all the votes cast at said election for and against "prohibition" are for prohibition, then said Article XXIV shall be and form a part of this constitution, and be in full force and effect as such from the date of said election.

But if a majority of said votes shall appear, according to said returns, to be against prohibition, then Article XXIV shall be null and void and shall not be a part of this constitution.

And if it shall appear, according to the returns hereinafter provided for, that a majority of all the votes cast at said election for and against minority representation are for minority representation, then Article XXV shall be and form a part of said constitution, and be in full force and effect as such from the date of said election, and all sections and parts of sections of said constitution which conflict with said article shall be thereby repealed, and be null and void.

But if a majority of said votes shall appear, according to said returns, to be against minority representation, then said Article XXV shall be null and void and shall not be a part of this constitution.

At such election the person voted for, for any one of the offices to be filled at such election, who shall receive the highest number of votes cast at said election, shall be declared elected to said office.

SEC. 10. At the same time and places of election there shall be held by said qualified electors an election for the place of meeting for the first legislature and for the temporary seat of government.

On each ballot, and on the same ballot on which are the matters voted for or against, as hereinbefore provided, shall be written or printed the words "for temporary seat of government."

(Here insert the name of the city, town, or place to be voted for.)

And upon the canvass and return of the vote made, as hereinafter provided for, the name of the city, town, or place which shall have received the largest number of votes for said temporary seat of government shall be declared by the State executive committee, together with the whole number of votes cast for each city, town, or place. And the State executive committee shall, immediately after the result of said election shall have been ascertained, issue a proclamation directing the legislature elected at said election to assemble at said city, town, or place so elected, on the day fixed by this schedule and ordinance.

SEC. 11. There shall be elected by this convention as soon as possible after the adoption of this schedule and ordinance a State executive committee, consisting of seven members, and the persons thus elected are H. J. Campbell, Joseph R. Hanson, E. P. Beebe, S. G. Updyke, John Cain, J. A. Ward, A. J. Simmons; one of whom, to wit, Hugh J. Campbell, who is elected by this convention as such, shall be president of the State executive committee. Said State executive committee shall exercise the powers and perform the duties hereinafter conferred upon it, and shall continue in office until the assembling and organization of the State legislature. The State executive committee herein provided for shall meet and organize in the city of Sioux Falls immediately and before this convention shall adjourn, by the election of a secretary and such other officers, excepting president, as may be necessary.

SEC. 12. Said State executive committee shall have full power to do and perform all things necessary to the carrying into effect of the provisions of this schedule and ordinance with regard to elections, and to this end they shall have full power to make all necessary rules and regulations for such purpose; they shall make and issue instructions and regulations with regard to the details not herein provided for, or not provided for by law, as to the elections held in pursuance of this schedule and ordinance. They shall have power to fill all vacancies in their own number, and they may in case of necessity call an adjourned meeting of this convention; they shall fix

their own times and places of meeting, and three members shall constitute a quorum, with power to transact business. Any member may in writing delegate his power to act on the committee to another member thereof.

SEC. 13. Should this constitution be adopted and ratified by the votes of the people at the election ordered by this ordinance, the State executive committee shall be vested with full power and authority to do and perform all things necessary to carry out the objects of this convention.

They shall make all necessary arrangements for rooms for the legislature and for the inauguration of the State government.

SEC. 14. Said committee shall have power to provide the necessary funds to defray all necessary expenses connected with the performance of their duties and to issue certificates therefor. But an itemized account of all such expenses, sworn to by the president and secretary of the committee, shall be presented by them to the legislature at its first meeting, and the legislature shall provide for the payment of so much thereof as they shall find to have been properly and necessarily expended in the due performance of their duties.

SEC. 15. The election provided for herein shall be conducted in all respects as elections are under the general laws of the Territory. The president of the State executive committee is hereby authorized, empowered, and required to issue notices of the election herein provided for, at least ten days prior thereto, by publication in the newspapers in each county, stating the object of such election and the officers to be chosen at the same, and shall otherwise conform, as near as may be, to the notices of election provided by law for general elections. Said notices shall also be posted by the several sheriffs and by the county boards of their respective counties, in the manner required by law. The election precincts and polling places shall be the same as now provided by law for the general election. The judges and clerks of election for said election shall be appointed in the manner now prescribed by law. But in case for any reason the said judges and clerks of election are not appointed as above provided, or in case of the refusal, neglect, or inability to act of said judges or clerks of election in the election herein provided for, the qualified electors present at the polls may elect said judges and clerks of election. No mere technicality or informality in the manner or form of the election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or avoid the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of Dakota as expressed by their votes at the polls.

SEC. 16. The president of the State executive committee shall appoint in each county a county board, consisting of three members, which county board shall have and exercise the powers and duties prescribed by this schedule and ordinance.

SEC. 17. The judges and clerks of election herein provided for shall have authority to do and perform all things with regard to said elections that are now required by law of such judges and clerks at general elections, and the canvass and return of the votes shall be in the manner and form now required by law in the case of general elections, or as provided herein.

SEC. 18. Immediately after the election herein provided for, the judges of election at each voting place shall make a true and complete count of all the votes duly cast at such election, and shall certify and return the result of the same, with the names of all the candidates and the number of votes cast for each candidate, and the number of votes cast for and against the constitution, and the number of votes cast for and against prohibition, and the number of votes cast for and against minority representation, and the number of votes cast for each city, town, or place as the "temporary seat of government," to the board of county canvassers of election, provided for by law, of their respective counties, and to the county boards provided by this schedule and ordinance, jointly, together with all the ballots, poll lists, and election books used in said election.

SEC. 19. Within ten days after such election the several boards of county canvassers provided by law for the canvassing of the results of elections, and the several county boards provided for by this schedule and ordinance, of their several counties, shall either or both make and certify under oath, to the president of the State executive committee, a true and honest return of the total number of votes cast for the constitution, and against the constitution, of the number of votes cast for and against "prohibition," and the number of votes cast for and against "minority representation," and the number of votes cast for each city, town, or place as the "temporary seat of government," and of the number of votes cast for each person voted for at such election, and shall transmit the same to the president of the State executive committee by mail, and shall file for record a duplicate and certified copy of said return with the county clerk of said county.

SEC. 20. The president of the State executive committee shall receive all returns of the election transmitted to him as above provided, and shall preserve the same. Within twenty days after said election the president of said State executive committee, together with such members of said committee as may assemble with him, and

with the secretary of the Territory, the chief justice of the Territory, if they will so act, and with such other officers of the Territory as he may associate with him who shall consent to act, shall canvass and compile the certificates and returns of such elections, and shall thereby ascertain the total number of votes cast at such election, the total number of votes cast for the constitution and against the constitution, the total number of votes cast for and against "prohibition," and the total number of votes cast for and against "minority representation," and the total number of votes cast for each city, town, or place as the "temporary seat of government," and the total number of votes cast for each person voted for for any office at the said election, and shall declare the result of said election in conformity with such vote, and shall make proclamation thereof in the newspapers of the Territory.

They shall also make and certify a list of votes so cast for senators and representatives to the legislature, and a list of the names of the senators and representatives who shall thus be ascertained to be duly elected, and also a list of the names of all officers who shall thus be ascertained to be duly elected. They shall also make and transmit to the State legislature, upon the first day of its assemblage, a true return of said election, and of the names of all officers and all representatives and senators of the legislature so elected, and of the number of votes cast for each. Said list of senators and representatives shall constitute the roll with which the senate and house of representatives shall be organized. They shall also make and transmit to the State legislature, immediately upon its organization, a list of all the State and judicial officers who shall thus be ascertained to have been duly elected, with a return of the number of votes cast for and against each. And it shall thereupon be the duty of the legislature in joint session to canvass and compile said returns for all the said officers, and to declare the result of said election as to said State and judicial officers.

SEC. 21. The president of the State executive committee shall issue certificates of election to all persons who shall be ascertained, as above provided, to have been duly elected to any office at such election. The persons receiving the highest number of votes at such election for each office herein named shall be declared elected to said office.

SEC. 22. Any vacancy in the office of the State executive committee shall be filled by the State executive committee or a quorum thereof, as soon as may be after said vacancy, at a meeting to be held at the place designated as the official quarters of the said committee.

SEC. 23. The apportionment made in this constitution shall govern the elections above provided for, for members of the State legislature. At the first election held under this ordinance for senators and representatives of the legislature, there shall be elected thirty-three senators and ninety-nine representatives, and these shall be the members of the senate and house of representatives of the State legislature respectively.

SEC. 24. The first legislature assembled after the adoption of this constitution shall have power to continue in session a longer time than sixty days, or to adjourn from time to time, and reassemble at the call of such officers as they may prescribe, until the State shall be admitted into the Union, or their term of office shall expire.

SEC. 25. The ordinance and schedule enacted by this convention shall be held to be valid for all the purposes thereof.

SEC. 26. The governor, Representatives to Congress, and Senators of the United States, whose election is provided for in this schedule and ordinance, shall, together with two other persons to be selected by the State executive committee, constitute a committee whose duty it shall be, in case of the ratification of this constitution by the people, to present this constitution to the President and Congress of the United States, and request admission of the State thereunder into the Union of States. And they shall have power to do and perform all things necessary and proper to carry into effect the purposes for which they are thus appointed.

SEC. 27. The first legislature elected under this constitution shall, at an early day, take steps to obtain an equitable and proper division of the Territorial funds, and the Territorial indebtedness existing at the time of the adoption of the constitution, between the State of Dakota and that portion of the Territory of Dakota not included within the boundaries of the State, such division to take into the account the value and cost of the various public institutions located in the two sections respectively, and consent is hereby given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable, and this State shall assume and pay so much thereof as Congress may provide.

SEC. 28. All the existing archives, records, and books belonging to the Territory of Dakota shall belong to and be a part of the public records of the State of Dakota, and be deposited at the seat of government of the said State with the secretary of State.

SEC. 29. This constitution shall be engrossed and deposited in the office of the secretary of state, and printed copies thereof shall be prefixed to the books containing the laws of the State and all future editions thereof.

Sec. 30. The following form of ballot is adopted:

CONSTITUTIONAL TICKET.

INSTRUCTIONS TO VOTERS.

All persons desiring to vote for the constitution, or for any of the articles submitted to a separate vote, may erase the word "No."

All persons who desire to vote against the constitution, or any articles separately submitted, may erase the word "Yes."

For the constitution. Yes. No.

For prohibition. Yes. No.

For minority representation. Yes. No.

For _____ as the temporary seat of government: _____.

For governor: _____.

For lieutenant-governor: _____.

For secretary of state: _____.

For auditor: _____.

For treasurer: _____.

For attorney-general: _____.

For superintendent of public instruction: _____.

For commissioner of schools and public lands: _____.

For judges of the supreme court:

First district: _____, Second district: _____, Third district: _____

For judge of the circuit court _____ circuit: _____.

For judge of the county court: _____.

For Representatives in Congress: _____.

For state senator: _____.

For representatives in the legislature: _____.

SEC. 31. The failure to use this form of the ballot herein prescribed shall not vitiate the vote, if the intent of the voter is clearly ascertainable therefrom.

SEC. 32. Nothing in this constitution or schedule contained shall be construed to authorize the legislature to exercise any powers except such as are necessary to its organization, to elect United States Senators, to provide and pass means and measures necessary, preliminary, and incident to admission to the Union, and to assemble and reassemble and adjourn from time to time; neither to authorize any officer of the executive or administrative departments to exercise any powers of his office except such as may be preliminary and incident to admission to the Union; nor to authorize any officer of the judiciary department to exercise any of the duties of his office until the State of Dakota shall have been regularly admitted into the Union, except such as may be authorized by the Congress of the United States.

A. J. EDGERTON, *president constitutional convention.*

HUGH J. CAMPBELL.

A. HAINES.

JOHN B. GODDARD.

E. P. BEEBE.

STEPHEN G. UPDYKE.

H. J. GRANT.

W. M. WRIGHT.

DANIEL WILCOX.

J. M. BAKER.

THEODORE ELFES.

W. H. LICHTENWALLNER.

C. BJECHLER.

DAVID BELLON.

JAMES H. MORE.

J. P. KENDALL.

FRED. F. B. COFFIN.

ELIHU I. OAKS.

CHAS. S. LOWE.

C. E. ANDRUS.

A. E. FRANK.

W. H. MURPHY.

ROBERT J. BROWN.

T. H. CONNIFF.

J. R. HANSON.

HUGH M. SMITH.

ANDREW J. BERDAHL.

R. C. TOUSLEY.

C. J. MAYNARD.

D. CORSON.

H. H. SHEETS.

FRANK ALEXANDER.

A. G. KELLAM.

JOHN A. OWEN.

FRANK I. FISHER.

J. D. MASON.

JERE. GEHON.

ISAAC M. WESTFALL.

L. H. WEEDON.

FRANK GAULT.

THEO. D. KANOUSE.

C. J. C. MACLEOD.

H. H. BLAIR.

C. M. REED.

N. TYCHSEN.

W. H. GODDARD.

S. T. HUNTLEY.

STEPHEN JONES.

MATT A. RYAN.

SAMUEL MILLER.

L. W. LANSING.

GEORGE G. CROSE.

W. W. BROOKINGS.

S. GIFFORD.

ROBERT DOLLARD.

MILES WHITE.

R. CRAVEN WALTON.

M. J. SCHULTZ.

GEO. R. LAYBOURN.

MANFORD E. WILLIAMS.

JOHN H. PATTEN.

JOSEPH WARD.

WM. H. PARKER.

JAMES A. WARD.

S. M. BOOTH.

J. T. DOW.

HENRY NEILL.

S. C. WEATHERWAX.

F. H. CRAIG.

GEO. L. WRIGHT.

WILLIS C. STONE.

J. K. P. MCCALLUM.

GEO. W. SNOW.

EDGAR M. JESSUP.

N. I. LOWTHIAN.

JAMES M. FOWLER.

ALBERT GUNDERSON.

GEORGE C. BRITTON.

C. M. GREGORY.

B. B. POTTER.

ISAAC GRAY.

R. A. PROUDFOOT.

G. C. MOODY.

JOHN DAHL.

W. G. ASHTON.

JOSEPH ALLEN.

H. F. FELLOWS.

Attest:

JOHN CAIN, *Secretary.*

SIoux FALLS, DAK., December 8, 1885.

I hereby certify that the foregoing is a true copy of the constitution of Dakota, as the same was formed by the constitutional convention, and ratified and adopted by the votes of the qualified electors of the State at the election held November 3, 1885, and also of the memorial to the President and Congress ordered by the convention.

HUGH J. CAMPBELL,
President State Executive Committee.

EXHIBIT D.

A MEMORIAL TO THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES, SETTING FORTH THE ESPECIAL REASONS AND FACTS UPON WHICH THE PEOPLE OF DAKOTA BASE THEIR ACTION AND THEIR CLAIM TO ADMISSION.

To the President and Congress of the United States :

In accordance with a resolution of a convention held at Huron, Dak., on the 19th day of June, A. D. 1883, to take into consideration the question of calling a constitutional convention and asking admission as a State of that portion of Dakota Territory lying south of the 46th parallel of latitude, the undersigned committee, appointed by said convention to present to the President and Congress the special reasons upon which the people base their action and their claim to admission as State, beg leave to present to your consideration :

That all portions of Dakota Territory, with few, if any, exceptions, desire a division of the Territory upon the 46th parallel, and all of that portion south of said parallel are, without exception, in favor of admission as a State.

The people of South Dakota ask this not as slaves and suppliants, but as free American citizens demanding their rights of an American Congress. They come not as colonies demanding separation from an unjust and tyrannical government, but they come as minor children attaining their majority, demanding the same rights and privileges accorded to their older brothers and sisters—and which rights ought to be on the part of the nation as much a privilege and pleasure to grant as on the part of the infant State to receive.

We recognize the fact, therefore, that our duty consists in presenting to the General Government that we have the desire and the ability to govern ourselves.

Do the people desire division and admission?

The question of division is almost as old as the Territory itself. The settlement of Dakota commenced almost simultaneously in the two extreme portions of the Territory, to wit: In what is now Union County, in the extreme southeast, and what is now Pembina County, in the extreme northeast corner of the Territory. These settlements gradually extended, encouraged by the early building of the Northern Pacific and the Dakota Southern Railroads and their tributaries, many hundred miles apart, and traversing districts of country as unlike and distinct in their general characteristics as the people who settled and occupied the same. The north has become, from climate and circumstances controlling its early settlement, one great wheat-field, rented and cultivated in large tracts, while the south is a pastoral and agricultural region, divided into small farms, occupied and cultivated by the owners of the soil.

The march of settlement has been directly west. The great trade centers of Saint Paul and Minneapolis have reached out directly for the great New Northwest, and the products of her soil have made necessary and built up the great flouring-mills of Minneapolis and the great commercial metropolis of Saint Paul, while the trade and commerce of southern Dakota connects her directly east with Chicago and more southerly with Saint Louis.

All the new lines of railroad projected and built into Dakota follow the same east and west course parallel with each other, with no roads running north and south except here and there a connecting link between friendly lines. There is not to-day, and for some time to come there will not probably be, any connection by rail between northern and southern Dakota except through Minneapolis and Saint Paul, Minn.

These people have settled Dakota, emigrating generally from the same parallel of latitude. They came with different tastes and habits of life; they settled countries unlike in climate and character; they early imbibed the prejudices of the two sections against each other, and have conceived and propagated the idea and belief that the two sections would become separate and independent States.

The legislation of Dakota has been marked from the beginning with this popular idea. The public institutions of the Territory have been located in southern Dakota until more recently, by action of the last legislature, similar institutions were provided for in the north, but all looking to a future separation.

Nearly every legislature of the Territory, fresh from the people, has memorialized Congress for a division of the Territory on the forty-sixth parallel. In 1870 we find the legislature making use of the following language in its memorial to Congress:

"Your memorialists would further represent, in evidence of this our petition, that while the said new Territory is remote from the main line of travel in Southern Dakota, and is separated therefrom by a broad extent of unoccupied and wild country, yet the Northern Pacific and Saint Paul and Pacific Railroads will traverse the entire length of the proposed new Territory, giving it direct and easy communication with Minnesota and other States, by means of which several thousand people have already settled in the valley of the Red River of the North and other portions of the proposed new Territory, in which are established towns at a distance of 1,500 miles by the nearest traveled route from the capital and courts of Dakota. * * * That no direct communication is now, or will for many years, be opened across the plains, connecting the two remote sections of Dakota, so long as the Pacific Railroad gives to the proposed new Territory such advantages of trade and travel with Minnesota, the lakes, and the East as is now possessed by that section of the Northwest.

"Your memorialists would further represent that said portion of Dakota comprises an area of territory equal to about 50,000,000 of square acres, or about one-half the present Territory of Dakota. * * * That all the guards of law and courts afforded by a separate Territorial government should be extended to the already populous settlements of the proposed new Territory. As in duty bound, your memorialists will ever pray."

And that substantially the same memorial was again presented to Congress by the legislatures of 1872-'73, 1874-'75, and others subsequent, and this without any remonstrance from any quarter; legislature after legislature has memorialized Congress to divide the Territory on the forty-sixth parallel; the press without dissent has advocated it; bill after bill has been introduced in Congress by our Delegates, backed by petitions of our people and memorials of our legislatures, for this purpose. So that it may be put down as a conceded fact that not only do the people desire a division of the Territory, but that nothing short of a division on the forty-sixth parallel will satisfy them, and it may be stated with safety that the people, whom we have no doubt the Congress desires to consult in a matter of so much interest to them, will not be satisfied nor content with any division of their territory that places a section of North and South Dakota under the same State government.

The question of admission is one of more modern date, but has been agitated for several years past.

It was freely discussed in the political campaigns of 1876, 1878, and 1880, throughout the Territory. County and Territorial resolutions were adopted during these years looking to the admission of southern Dakota as a State, and bills were introduced in Congress by the Delegates for the same purpose, but the first direct and general action taken on the part of the people was a convention held at Sioux Falls on the 25th day of January, 1882. This was a convention of about seven hundred of the representative men of that portion of Dakota south of the forty-sixth parallel. Enthusiastic speeches were made, resolutions were passed, and delegates were selected from every county of Southern Dakota to urge upon Congress the immediate necessity of division and admission of southern Dakota as a State.

A similar convention was held about the same time in northern Dakota, and similar resolutions adopted, and delegates were also selected to visit Washington for the same purpose. These delegates from both North and South Dakota did visit Washington and press the claims of all Dakota for immediate division on the forty-sixth parallel and the admission of the southern half as a State. The introduction of such bills into Congress and their subsequent failure of passage are now matters of history.

Dakota was neither admitted nor divided, but the same unity of feeling that was then exhibited between the north and the south for division on the forty-sixth parallel and the admission of the southern part as a State, so far as any public acts or public expression of opinion is known, still continues.

The next direct step taken by the people toward Statehood was a convention held at Canton, in Lincoln County, Dakota, on the 25th day of June, 1882. This convention was called by the people in view of the bill then pending in Congress for the admission of the southern portion of Dakota as a State, to take into consideration certain questions to be submitted as a part of the constitution of the new State. It was a convention of leading citizens, representative men of the various sections of Dakota south of the forty-sixth parallel. It passed a large number of resolutions and adjourned to meet at Huron, in the county of Beadle, subject to the call of an executive committee appointed by that convention.

This executive committee subsequently, in March, 1883, issued a call for a convention to assemble on the 19th day of June, 1883, composed of delegates from each county south of the forty-sixth parallel, apportioned according to population, to consider the question of calling a constitutional convention for that portion of Da-

kota south of the forty-sixth parallel, to draft a State constitution to be submitted to the people and presented to Congress, upon which to ask admission as a State.

This convention assembled at Huron on the 19th day of June, 1883, in accordance with such call, over four hundred delegates being present—every county south of the forty-sixth parallel, with perhaps the exception of three small counties, being represented. Even unorganized counties not embraced in the call availed themselves of the opportunity and sent delegates, who were admitted to seats.

The convention was composed of the best and ablest men in southern Dakota. No distinction in politics, religion, or class was observed in the call or composition of the convention, but the convention was composed of ministers, lawyers, doctors, mechanics, merchants, farmers, and a full representation of all classes, religious, and politics. Prominent politicians, as well as the rank and file of both political parties, composed the convention, and each vied with the other in promoting the objects for which it was called. Entire harmony and unanimity prevailed. The ordinance passed and the proceedings of this convention are hereto appended, marked Exhibit A, and made a part hereof.

It will be seen from the published proceedings that the object of the convention was to discuss the propriety of calling a constitutional convention to draft and submit to the people a constitution, which, if ratified, should be submitted to Congress, and an admission into the Union asked under such constitution.

The foreign newspaper articles, prompted by enemies of Dakota, to the effect that the convention was a revolutionary body seeking to set up a government in defiance of the National Government, is too absurd to need a passing reference. There was not in word or act, by the convention, a hostile expression toward the General Government, but on the other hand the speeches were of the most patriotic character. The old flag was flaunted aloft and the wings of the great American bird were extended wide in the eloquent perorations of those embryo Western statesmen. They were so far from wanting to secede or form an independent government that they were in haste to become a part of the old Government, to become a new star upon the old flag, and to hasten the time of such an event they favored the immediate formation of a State constitution, to the end that Congress could take immediate action thereon without the long delay of the usual enabling act.

No more loyal people exist than the new settlers of Dakota. A large proportion of them have carried the musket to the front in the darkest days of the rebellion. They have "beat their swords into plowshares"; they have availed themselves of the Government's bounty and have dotted the prairies of Dakota with soldiers' homes; they are cultivating the arts of peace, but the fires of liberty and love of country burn as brightly in their breasts here in these humble Western homes as they did when, at the nation's call, they bid adieu to comfort, home, and family, and offered up their lives in their country's defense.

Whole armies of these men are now petitioning you through us for that privilege of self-government they periled their lives to perpetuate. No, there was not a breath of disloyalty in the Huron convention. Not a hasty or impatient word was uttered by the most enthusiastic speaker, not an unkind word against Congress or any member thereof for any seeming neglect or delay; but every utterance and every act of the convention was aimed at the end of presenting to Congress such a case that the great representatives of the nation would be justified in admitting the new State, and as pleased in receiving her into the confederation of States as she would be in becoming a part of the great nation she has so looked to for aid and support.

It is unnecessary to refer to the fact that the plan proposed by the people in calling a constitutional convention, while adopted to gain time and secure an early admission, has no claims to originality with the people of Dakota. It is as old as the Government itself. It is the plan first known and adopted by our forefathers in admitting new States.

We take pleasure in here submitting an array of precedents and the opinions of learned judges, carefully collated by the Hon. Hugh J. Campbell, United States attorney for Dakota, hereto appended and marked Exhibit B, from which it will be observed that State constitutions have been formed and State governments set up outside of the General Government, which have been obeyed and recognized; a precedent that Dakota in no wise attempts or intends to follow; but that Dakota had the right and that under the circumstances it was her duty to take every step to hasten her admission into the Union no one unprejudiced and conversant with the facts will for a moment deny.

The convention at Huron was necessary to consider what was the sentiment of the people, to ascertain if there was any material opposition to admission as a State, and to provide some machinery for calling a constitutional convention.

The representatives of the people in the last legislature, 1883, for the Territory of Dakota, observing the rapid increase in population and the immediate necessity of an early admission, wisely passed an act in many respects similar to the ordinance passed

by the Huron convention, providing for a constitutional convention, a copy of which is hereto appended and marked Exhibit C, but which failed to become a law by reason of its not receiving the approval of the governor of the Territory. There was then no course open to the people but to act themselves through their representatives in convention assembled, which they proceeded to do in passing the ordinance providing for a constitutional convention to be held at Sioux Falls on the 4th day of September, 1883.

It then appearing that the people desire a division and admission as a State of that portion of Dakota south of the forty-sixth parallel, and that the steps taken are proper, legitimate, and within established precedent, it remains only to consider the ability of the people to govern themselves and the consequent policy and propriety of such division and admission.

We need hardly argue that southern Dakota (by the term "southern Dakota" we mean all that portion south of the forty-sixth parallel) has a sufficient population to admit her as a State. It is conceded by the enemies of admission that southern Dakota has at least 250,000, while the friends of admission claim at least 300,000; but taking the admission of our enemies as the standard, and she has a greater population than any Territory had when admitted as a State. She has almost twice as many as Alabama, Iowa, or Wisconsin had when admitted; more than twice as many as Kansas or Nebraska; about three times as many as Michigan or California; about four times as many as Mississippi, Missouri, Florida, or Colorado; five times as many as Ohio, Illinois, Arkansas, or Oregon; and six times as many as Indiana or Nevada, and more than any one of seven of the original thirteen States.

It will hardly be urged with these precedents that she has not the inhabitants requisite to admit her as a State, nor can it be urged by way of precedent that as the ratio of representation in Congress has increased Congress has increased the ratio for admission of States. Nevada was admitted in 1864 with a population that in 1870 was a little over 42,000, and Colorado was admitted in 1876 with a population of but 65,000. By any precedent established or basis of calculation, southern Dakota, in matter of population, would seem to be entitled to admission.

Will it be urged that the Territory should not be divided, but should be admitted as a whole?

Without repeating what has already been urged upon your attention as to the desire of this people for a division upon the forty-sixth parallel, and their innate feeling of right that in a Republic the new State should be heard in shaping its boundaries as well as its form of government, we desire to call your attention to the fact that the two prospective new States created by the division would be of about equal size, each being about 225 miles in width by 400 miles in length, corresponding in form and size with Kansas and Nebraska, and completing the tier of States of which they form the base. The proposed new State of Dakota would contain about 80,000 square miles, being larger than Nebraska, which contains 76,000, and nearly equal to Kansas, which contains 81,318 square miles, and Minnesota, which contains 83,531, leaving but five States in the Union containing a larger number of square miles, to wit, Texas, California, Colorado, Nevada, and Oregon, but capable of sustaining a population many times larger, when we consider the broken and mountainous character of the four last named States. Nearly every foot of the proposed new State, except some portions of the Black Hills, in the extreme southwest corner, are susceptible of cultivation and occupation, and is equal in fertility with the great States of Iowa and Illinois. An idea of the size of the proposed State will be obtained by comparing it with the older and more populous States of the Union. New York, well named the "Empire State," contains 47,000 square miles; Pennsylvania, 46,000; the great State of Illinois, 55,410; Iowa, 55,045; Wisconsin, 59,924; Ohio, 39,964; Indiana, 33,809. These are among the great, the wealthy, and the populous States of the Union; yet the proposed new State of Dakota is more than twice as large as the great State of Indiana or Ohio, and more than a third larger than the great State of Pennsylvania or New York, or any of the other great States of the West, while it would be equal in size to all New England, Delaware, and two States of the size of New Jersey, or nine States of the Union.

It would be two-thirds as large as Great Britain and Ireland, with her 32,000,000 population, and considerably more than two-thirds as large as Italy with her 27,000,000, and with the same population to the square mile which Italy, Germany, and the old countries of Europe now have, she would contain a population of more than 20,000,000.

No State should be so large in territory that her general laws shall be locally inapplicable; but the State should be of such size, and her people so homogeneous in character, customs, and occupations, that one set of laws may apply to all. The State should not be so small in size as to make the duties to the State and taxation for its support burdensome to the citizen. Nor should it be so large in size that all its localities are not fairly represented in the administration of public affairs.

In the light of history in the admission of new States, in view of the natural richness and capacity of the proposed new State in comparison with the great States already named, may we not urge that to admit Dakota as a whole would be a departure from the precedents set in the admission of all the new States of the West, and an experiment dangerous to the rights of local self-government.

Yours, etc.,

(Signed:) Bartlett Tripp, chairman; S. L. Baker, White Lake, Aurora County; A. B. Melville, Huron, Beadle County; Jno. Todd, Springfield, Bon Homme County; Wm. M. Brook, Brookings, Brookings County; W. Wynter, Frederick, Brown County; J. H. King, Chamberlain, Brulé County; S. H. Elrod, Clark, Clark County; A. B. Lucas, Flat Creek, Charles Mix County; H. Newton, Vermillion, Clay County; H. R. Peas, Watertown, Codington County; Dr. A. S. Stewart, Minnekata, Custer County; S. D. Cook, Mitchell, Davison County; A. C. Tuttle, Webster, Day County; Geo. H. Woolman, Grand View, Douglas County; H. B. Monaghan, Gary, Deuel County; J. W. Bell, Millbank, Grant County; G. O. Hudson, Miller, Hand County; C. F. Lake, Castlewood, Hamlin County; A. Marshall, Alexandria, Hanson County; J. C. Boyles, Olivett, Hutchinson County; C. D. Mead, Pierre, Hughes County; A. Owen, De Smet, Kingsbury County; C. P. Kennedy, Madison, Lake County; W. C. Kingsley, Deadwood, Lawrence County; E. Opsal, Canton, Lincoln County; S. H. Bronson, Howard, Miner County; W. F. Baxter, Forrestburg, Sanborn County; M. Grigsby, Sioux Falls, Minnehaha County; William Ramsdall, Flandrau, Moody County; J. E. Rutan, Salem, McCook County; J. C. Mariner, Worthville, Spink County; E. H. Judson, Hurley, Turner County; E. C. Errickson, Elk Point, Union County; George H. Hand, Yankton, Yankton County; David H. Clark, Rapid City, Pennington County; Eli Johnson, Highmore, Hyde County; J. M. Moore, Onida, Sully County; J. A. Decker, Faulk, Faulk County; O. S. Oliver, Gettysburgh, Potter County; N. G. Parker, Le Beau, Walworth County; J. H. Hauser, Aberdeen, Edmunds County; E. A. Herman, Eldorado, Buffalo County; William T. Hill, Elmer, Jerauld County; E. F. Drake, Wilmot, Roberts County.

A BILL for an act providing for a constitutional convention and the formation of a State constitution preparatory to the admission of Dakota into the Union, and for other purposes.

Whereas experience has abundantly demonstrated that the welfare of the people is promoted by the establishment among them of a permanent government, sovereign in character and republican in form; and

Whereas the territorial system of government has no stability, is temporary in character, possesses no sovereign powers, and meets neither the requirements of the people, nor, in the case of Dakota, the rapidly increasing demands of its various and growing interests; and

Whereas it has ever been and still remains the wise policy of the parent Government to foster and encourage the development and settlement of the Territories until such time as their population shall be sufficiently numerous to entitle the people to be admitted into and become a part of the United States, on an equal footing with the States which compose the Union; and

Whereas that part of the Territory of Dakota south of the forty-sixth parallel of latitude, now contains a population sufficient to entitle it to admission into the Union, and such population now being desirous of being fully enfranchised and of enjoying all the privileges of American citizenship; and

Whereas public opinion in the United States has decided, and the Congress of the United States by their action upon the bill for the admission of such part of Dakota into the Union, has admitted that that portion of Dakota south of the forty-sixth parallel does possess the requisite population, and all other qualifications necessary to entitle it to admission into the Union as a State: Therefore,

Be it enacted by the legislative assembly of the Territory of Dakota, That for the purpose of enabling the people of that part of Dakota south of the forty-sixth parallel to organize and form a State government and make application for admission into the Union of States, a delegate convention is hereby called to meet at the capital of the Territory of Dakota on the 15th day of December, A. D. 1883, at 12 o'clock meridian, for the purpose of framing a constitution, republican in form, and performing all other things essential to the preparation of the Territory for making application to the General Government for the admission of such part of Dakota into the Union of States,

SEC. 2. The said convention shall be composed of one hundred delegates, who shall be apportioned among the several counties of that part of the Territory south of the forty-sixth parallel, as follows:

Counties.	Number of delegates.	Counties.	Number of delegates.
Aurora	2	Hutchinson	2
Beadle	2	Hughes	1
Bon Homme	4	Inman	1
Brookings	4	Kingsbury	2
Brown	1	Lake	2
Brulé	2	Lawrence	12
Clark	1	Lincoln	4
Charles Mix	1	Miner	4
Clay	3	Minnehaha	7
Codington	3	Moody	3
Custer	1	McCook	3
Davison	3	McCauley	1
Day	1	Pennington	3
Douglas	1	Spink	3
Deuel	2	Turner	4
Edgerton	1	Union	4
Grant	4	Yankton	4
Hand	2		
Hamlin	1	Total	100
Hanson	1		

Provided, That all organized counties in the Territory south of the forty-sixth parallel at the time the election hereinafter provided for is held to choose members to said convention, and which counties are not above named, shall be entitled to one delegate, who shall be given a seat and have a vote in said convention as other members thereof, and said delegate shall be in addition to the one hundred heretofore provided for.

SEC. 3. An election for the purpose of choosing said delegates is hereby appointed to be held on the first Tuesday after the first Monday in November, A. D. 1883, at which time the delegates to said constitutional convention shall be chosen. Said election shall be conducted in all respects as elections under the general laws of the Territory; and the several county clerks of the several counties of the Territory are hereby required to issue notice of such election at least twenty days prior thereto, stating the object of such election, and the number and character of the officers to be chosen, and shall deliver the same to the sheriff, who is required to post the same as the law now requires; and the several boards of county commissioners are required to establish precincts for such election, and to appoint polling places and judges of such election, and to do and perform all things that are now required of them by law in the case of general elections, and the canvass and return of the votes shall be as now required by law in the case of county officers; and it is hereby made the duty of the several county clerks to issue certificates of election to all persons who shall be declared elected: *Provided*, That the persons receiving the highest number of votes at such election shall be elected as such delegates. It shall be the further duty of the several county clerks, within ten days after such election, to certify to the secretary of the Territory the names of all persons chosen as such delegates from their respective counties, and to transmit the same to said secretary by mail.

SEC. 4. The Secretary of the Territory shall receive all certificates so transmitted to him by the several county clerks, and shall preserve the same, and it is hereby made his duty to enter the names of all persons so certified to him as such delegates in a book which he shall provide for that purpose.

SEC. 5. The delegates so elected at such election shall meet at the time and place appointed by this act, and in such room as the secretary of the Territory or the convention may provide, and at the hour heretofore named the secretary of the Territory or some member elect of said convention shall call the convention to order, and shall call the roll of its members from the book heretofore provided, if such book can be obtained, and, if not, from the official returns of said election, and the certificate of election of each member, in such manner as the convention shall prescribe, and the several delegates, as their names are called, shall take their seats in said convention. When the calling of the roll of members shall be completed the several delegates shall be required to take and subscribe an oath to support the Constitution of the United States, and to faithfully and impartially discharge their duties as delegates to said convention. Said oath may be administered by said secretary or by any judi-

cial officer of the Territory. The convention shall then proceed to organize by the election of a president (who shall be chosen from among the delegates) and the other officers herein provided for. Said convention shall adopt such rules and regulations for their government as are provided in the case of legislative bodies; it may adjourn from time to time, and shall be the sole judge of the election and qualifications of its members. The president and all officers of said convention shall take and subscribe an oath to faithfully and impartially discharge the duties of their respective offices.

SEC. 6. Said convention, after its organization, shall proceed to draught a constitution for the State of Dakota, republican in form, in which shall be defined the boundaries of the proposed State of Dakota. It shall be the further duty of said convention to provide for a special election by the people of the proposed State, at which election the said constitution shall be submitted to the people for ratification; and at which election the State officers, members of Congress, members of the legislature, and all other officers provided for in said constitution, shall be elected, and the said convention shall have power to provide all necessary means for holding said election, and for assembling said legislature when elected, and for carrying into effect all the purposes of said constitution: *Provided*, That the expenses of all special elections held under the provisions of this act and of any ordinance of said convention shall be paid by each county in said Territory, respectively.

SEC. 7. The delegates to the said constitutional convention shall each receive a per diem of two dollars for each day's attendance upon said convention, and five cents per mile for each mile necessarily traveled in going to and returning from said convention, said per diem and mileage to be paid by the Territorial treasurer, upon the warrant of the Territorial auditor.

SEC. 8. The Territorial auditor is hereby authorized to audit and allow the accounts of the several delegates to said convention, upon certificate of the presiding officer of said convention, countersigned by the secretary thereof.

SEC. 9. Said convention shall have power to elect a secretary, assistant secretary, chaplain, sergeant-at-arms, messenger, and janitor, each of whom shall receive such compensation as the said convention shall determine, to be audited and paid in the same manner as the accounts of the members of said convention are audited and paid; *Provided*, That said convention before its adjournment shall ascertain the entire expense of holding the same, including the per diem and mileage of its members, compensation of its officers, and all necessary expenses, and shall, in such manner as they shall deem best, cause to be levied and collected in each county named herein or represented in said convention, a special tax, sufficient to pay all of said expense, which tax shall be apportioned among the said counties in proportion to their assessed valuation, and when said tax is collected in each of said counties it shall be paid by said counties into the Territorial treasury.

SEC. 10. The laws now in force governing elections and the canvass and return of the votes cast thereat, and the qualifications of voters, shall govern in any election that may be held under this act or under any ordinance of said convention; but said convention shall designate the board of State canvassers, and ordain the method by which the result of the State election shall be promulgated. The said convention shall also provide the manner of presenting the said constitution to the Congress of the United States, and do and ordain all things necessary to be done for the purpose of carrying into effect the government of the State as soon as it shall be admitted into the Union of States.

SEC. 11. That said convention shall remain in session for a period not to exceed forty days.

SEC. 12. That for the purpose of defraying the expenses of said convention there is hereby appropriated, out of any money in the Territorial treasury not otherwise appropriated, a sum not to exceed fifteen thousand dollars.

SEC. 13. This act shall take effect after its passage and approval.

UNITED STATES OF AMERICA,
Secretary's Office, Territory of Dakota.

I, James H. Teller, secretary of the Territory of Dakota, do hereby certify that I have carefully compared the foregoing copy of a bill for an act providing for a constitutional convention and the formation of a State constitution preparatory to the admission of Dakota into the Union, and for other purposes, the same having passed both houses of the legislature and failed to receive the governor's signature, with the original now on file in this office, and that the same is a correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory of Dakota, at Yankton, this 3d day of July, 1883.

[SEAL.]

JAMES H. TELLER,
Secretary of Dakota Territory.

EXHIBIT E.

Abstract of votes cast at the election held November 3, 1885, for the constitution, separate articles, State, judicial, and legislative officers.

Names of counties.	Constitution.		Prohibition.		Minority representation.	
	For.	Against.	For.	Against.	For.	Against.
Anrora	818	100	431	480	296	384
Beadle	2,071	280	1,201	1,130	1,462	747
Bon Homme	615	115	267	462	161	497
Brookings	382	294	409	265	203	419
Brown	351	415	319	350	266	295
Brulé	1,019	116	447	499	438	355
Buffalo	133	11	56	95	76	48
Butte	94	43	18	119	17	125
Campbell	96	129	96	128	97	97
Charles Mix	469	41	207	248	81	429
Clark	441	114	367	200	224	286
Clay	373	144	345	178	50	479
Codington	583	64	367	246	198	227
Custer	128	53	66	108	70	51
Davison	469	52	329	165	134	245
Day	360	221	287	234	238	153
Deuel	237	135	165	201	192	174
Douglas	716	32	267	440	282	364
Edmunds	175	123	185	111	168	88
Faulk	620	144	488	280	421	281
Fall River	14	.....	6	7	5	5
Grant	370	161	329	196	269	205
Hamlin	98	40	78	66	83	36
Hanson	478	111	351	249	172	379
Hughes	1,093	93	552	604	500	660
Hutchinson	797	122	260	635	247	588
Hyde	351	80	254	142	249	136
Hand	646	161	592	295	328	465
Jerauld	563	41	326	302	185	401
Kingsbury	588	170	512	276	508	207
Lake	260	141	206	199	112	228
Lincoln	496	271	464	298	91	630
Lawrence	1,003	467	103	1,004	84	1,009
McCook	405	121	281	249	209	268
Marshall	119	27	58	90	68	56
Miner	454	156	372	217	157	426
Minnehaha	1,298	515	901	886	525	1,170
Moody	484	119	251	334	86	456
McPherson	56	100	55	99	57	69
Potter	273	44	149	156	170	83
Pennington	540	54	126	439	32	529
Roberts	165	45	105	99	43	125
Spink	1,029	110	604	528	670	292
Sully	637	31	435	220	102	568
Sanborn	465	47	397	151	250	232
Turner	1,254	243	844	704	477	1,009
Union	501	396	395	498	438	344
Yankton	639	78	282	455	82	495
	25,226	6,565	15,570	15,337	11,273	16,765

ROOM OF THE STATE EXECUTIVE COMMITTEE,
Yankton, Dak., November 27, 1885.

We do hereby certify that the within and foregoing is a true, correct, and complete copy of the tally-list of the votes polled at the late election for the constitution and separate articles, November 3, 1885.

Attest:

C. M. REED,
Secretary.

HUGH J. CAMPBELL,
President State Executive Committee.