

No. 85732-6

SUPREME COURT OF THE STATE OF WASHINGTON

**Court of Appeals No. 63572-I
COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON**

ROGELIO H.A. RUVALCABA and ELAINE H. RUVALCABA, husband
and wife,

Respondents,

v.

KWANG HO BAEK and LYUNG SOOK BAEK, husband and wife, and
ARNE S. IJPMAN and SIEW LOON, husband and wife, and JOHN A.
DYER and PAULINE T. DYER, husband and wife; and STEPHEN
KLEPPER and KAREN KLEPPER, husband and wife, and STEPHEN J.
DAY and CATHERINE L. DAY, husband and wife, and LIVINGSTON
ENTERPRISES, LLC, and Alabama limited liability company, KAREN
M. OMODT, a single woman, MATTHEW GOLDEN and JANE
BORKOWSKI, husband and wife, and CARL E. JOHNSON and
PHYLLIS JOHNSON, husband and wife,

Petitioners,

WILLIAM V. KITCHIN and CHERYL L. KITCHIN, husband and wife,
Respondents.

**BRIEF OF AMICI CURIAE JEANNE E. YODER, CHARLES W.
VALLETTE AND GRETCHEN E. VALLETTE**

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BY RONALD R. CARPENTER

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SUPREME COURT
STATE OF WASHINGTON

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TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF AMICI CURIAE1

II. INTRODUCTION AND SUMMARY OF ARGUMENT.....2

III. ARGUMENT3

A. The court should adopt the sound reasoning of other courts which have refused to subject statutory way of necessity claims to statute of limitations defenses.3

B. Statutory ways of necessity should be accorded the same treatment as other unused or dormant express or implied easements.5

C. Statutory way of necessity claims should be accorded the same treatment as quiet title claims, which are not subject to a statute of limitations or laches defense.....7

D. A new rule subjecting statutory way of necessity claims to a statute of limitations or laches defense would have broad and deleterious consequences.....9

E. Any decision by this court to apply a statute of limitations or the doctrine of laches to statutory way of necessity claims should be applied prospectively, rather than retroactively.....11

IV. CONCLUSION.....12

APPENDIX

Partial texts of the original constitutions of Washington, Colorado and Missouri

TABLE OF AUTHORITIES

Cases

<u>Beebe v. Swerda</u> , 58 Wn.App. 375, 793 P.2d 442 (1990)	5, 6
<u>Bushy v. Weldon</u> , 30 Wn.2d 266, 191 P.2d 302 (1948)	8
<u>Childers v. Quartz Creek Land Co.</u> , 946 P.2d 534 (Colo.App. 1997), <u>cert. dismissed</u> , 964 P.2d 509 (Colo. 1998), <u>cert. denied</u> , 525 U.S. 1104, 119 S.Ct. 869 (1999),	3, 4
<u>Cirelli v. Ent.</u> , 885 So.2d 423 (Fla.App. 2004)	4, 5
<u>Dreger v. Sullivan</u> , 46 Wn.2d 36, 278 P.2d 647 (1955)	8
<u>Granite Beach Holdings, LLC v. Dept. of Natural Resources</u> , 103 Wn.App. 186, 11 P.3d 847 (2000)	9
<u>Hellberg v. Coffin Sheep Co.</u> , 66 Wn.2d 664, 404 P.2d 770 (1965)	7, 8
<u>Lichty v. Sickels</u> , 149 Cal.App.3d 696, 197 Cal. Rptr. 137 (1983)	6
<u>Lunsford v. Saberhagen Holdings, Inc.</u> , 166 Wn.2d 264, 208 P.3d 1092 (2009).	11, 12
<u>Pencader Associates, Inc., v. Glasgow Trust</u> , 446 A.2d 1097 (Del. 1982) ..	6
<u>Petersen v. Schafer</u> , 72 Wn.App. 281, 709 P.2d 813 (1985)	7, 8
<u>Roberts v. Smith</u> , 41 Wn.App. 861, 707 P.2d 143 (1985)	7
<u>Robinson v. City of Seattle</u> , 119 Wn.2d 34, 830 P.2d 318 (1992)	11, 12
<u>Thompson v. Smith</u> , 59 Wn.2d 397, 367 P.2d 798 (1962)	5
<u>Van Sant v. Seattle</u> , 47 Wn.2d 196, 287 P.2d 130 (1955)	7
<u>Wagner v. Fairlamb</u> , 379 P.2d 165 (Colo. 1963), <u>cert. denied</u> , 375 U.S. 879, 84 S.Ct. 149	6

Constitutional Provisions

Wash. Const. Art. I, §164

Statutes

Ch. 8.24 RCW1, 9

RCW 8.24.02510

I. IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae Jeanne E. Yoder, Charles W. Vallette and Gretchen E. Vallette (identified hereinafter as “**Yoder/Vallette**”) own 20 acres of unimproved woodland in a sparsely developed area on southern Vashon Island, about three-quarters of a mile north-northwest of the Tahlequah ferry dock. The Yoder/Vallette family purchased the property in the 1960’s from the family that received the original patent from the U.S. government shortly after statehood. There is no feasible legal vehicular access to the property, nor has there ever been. Yoder/Vallette have been attempting for some years to negotiate with neighboring property owners for access to a public road, so far to no avail.

If, as is likely, Yoder/Vallette must soon resort to litigation to secure access, they would request condemnation of a private way of necessity under Ch. 8.24 RCW, because other theories that might achieve access are problematic or unavailable in their circumstances. Their longtime ownership of the property would naturally lure any defendant to assert a statute of limitations and/or laches defense.

If this court were to adopt Petitioner’s position that the statute of limitations and laches may be asserted as defenses in a private condemnation proceeding, there is a real possibility Yoder/Vallette could never obtain legal access to their Vashon property and its market value would be severely diminished.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

In the first appeal in this case, Division I recognized that the issue of whether a statute of limitations can be asserted as a defense to a private condemnation claim was one of first impression in Washington, and declined to decide the question in the absence of full briefing and argument. Ruvalcaba v. Baek, No. 58877-0-I (8/27/2007) (unreported opinion). The concurrence, while not explicitly stating that the issue of whether laches applies is also one of first impression, declined to rule on the laches issue as well for the same reason. Id.

In the second appeal below under review herein, neither of these issues was fully briefed again, because the Ruvalcabas did not address the issues either in their briefing below or in the instant review.

The issues are of such broad public importance that this court should be made aware of the implications of petitioner Day Group's position.

The weight of authority in other jurisdictions, based on persuasive reasoning, is that a statutory way of necessity claim is not subject to a statute of limitations defense, in part because the defense would defeat the strong public policy that land should be made accessible and thus available for use and maximum taxation.

Moreover, a statutory way of necessity is a presently existing, if dormant, property interest, similar to other unrecorded interests such as

ways of necessity implied from prior unity of title, which are not subject to statute of limitations or laches defenses.

Statutory way of necessity claims are substantively similar to quiet title actions brought to enforce implied easements. Quiet title actions are not subject to a statute of limitations or laches defense in this state, and the same rule should be extended to statutory way of necessity claims.

But even if this court should now adopt a rule allowing statute of limitations or laches defenses, it should do so prospectively, to allow landlocked property owners time to bring their claims to court before their properties are forever rendered inaccessible.

III. ARGUMENT

A. The court should adopt the sound reasoning of other courts which have refused to subject statutory way of necessity claims to statute of limitations defenses.

This court should adopt the holding and reasoning of the leading case of Childers v. Quartz Creek Land Co., 946 P.2d 534 (Colo.App. 1997), cert. dismissed, 964 P.2d 509 (Colo. 1998), cert. denied, 525 U.S. 1104, 119 S.Ct. 869 (1999), where the court held that “landowners have an existing claim of right to bring a condemnation action as long as they hold title to the benefitted property,” even after a statutory limitations period has passed. Id. at 537. The court determined that applying a limitations period to the claim of a way of necessity by private condemnation

would lead to the absurd result of landlocking property in perpetuity if the initial owner of such parcel does not bring a condemnation action within the statutory period. Such a result is contrary to the public policy of the state.

Id.

Quartz Creek is particularly persuasive because the right of private condemnation of ways of necessity in Colorado is grounded in a provision in the bill of rights in the original Colorado state constitution that is almost identical to our own original bill of rights provision in Art. I, §16, which was adopted only 13 years later than the Colorado constitution.¹ Indeed, it is very likely that the framers of our original constitution were familiar with and paraphrased the private condemnation clauses of the newly adopted Colorado and Missouri constitutions.²

Citing Quartz Creek, the court in Cirelli v. Ent, 885 So.2d 423 (Fla.App. 2004) also held that the statute of limitations does not apply to statutory way of necessity claims. The Cirelli court also based its decision in part on the public policy, reflected in the Florida private condemnation statute, of preventing landlocked property from remaining useless:

Hence, [the Florida private condemnation statute] serves the legitimate public purpose of allowing access to

¹ The original constitutional provisions in Washington, Colorado and Missouri are attached hereto as Appendix A. Links can be found at: <https://lib.law.washington.edu/content/guides/waconst>.

² See Prof. Charles M. Gates' foreword in The Journal of the Washington State Constitutional Convention 1889, Book Publ. Co. 1962 (B. Rosenow, ed.), at page v. See also Dolliver, J., Condemnation, Credits and Corporations in Washington, 12 Univ. of Puget Sound Law Rev. 163, 171, 175 (1989).

landlocked property so that it may be transformed from useless and unproductive land into valuable and productive property * * *. Moreover, turning fallow land into productive property promotes development and, as courts in other jurisdictions have observed, increases tax revenues. [citations omitted].

Id. at 430-31.

The rationale of both Quartz Creek and Cirelli is that a statutory way of necessity is a present and existing real property interest, not merely a chose in action. The Quartz Creek court observed that a statutory way of necessity is analogous to an interest acquired by adverse possession that, once established, is an existing property right which cannot later be cut off by the passage of a statute of limitations period. 946 P.2d at 537.

B. Statutory ways of necessity should be accorded the same treatment as other unused or dormant express or implied easements.

Under the reasoning of Quartz Creek and Cirelli, a statutory way of necessity is akin to an unused express easement. Mere nonuse or failure to assert one's easement rights cannot extinguish the easement, Thompson v. Smith, 59 Wn.2d 397, 407, 367 P.2d 798 (1962), nor can the owner of the dominant estate be forced to assert its unused easement rights within a limitations period, Beebe v. Swerda, 58 Wn.App. 375, 793 P.2d 442 (1990). Rather, the servient owner's use of the burdened property during the period of nonuse by the dominant estate is deemed to be merely privileged rather than adverse, and, in the absence of all the elements of

prescription,³ does not trigger the beginning of a limitations period. Id. at 384.

This rule has been applied to easements implied from necessity (also called implied ways of necessity), as well as to express easements. Thus a laches defense cannot be asserted against the enforcement of a hitherto dormant or unused way of necessity (i.e., one implied from the prior unity of title of the dominant and servient estates). Pencader Associates, Inc., v. Glasgow Trust, 446 A.2d 1097 (Del. 1982); Wagner v. Fairlamb, 379 P.2d 165 (Colo. 1963), cert. denied, 375 U.S. 879, 84 S.Ct. 149. Likewise, an easement implied from necessity is not subject to a statute of limitations defense. Lichty v. Sickels, 149 Cal.App.3d 696, 197 Cal. Rptr. 137 (1983).

The Lichty court identifies judicial economy as an additional reason not to require the owner of the dominant estate to enforce its dormant easement rights within a specified time:

there is no reason to put the party [i.e., the owner of the dominant estate] to the expense and inconvenience of litigation until the activity adverse to the easement by necessity, threatening to cut it off, occurs.

Id. at 703 (citation omitted).

A statutory way of necessity is so similar to an easement implied

³ In the typical case, such as the facts present in Thompson v. Smith, supra, the element of hostility is missing because the servient owner's use does not necessarily interfere with the prospective use by the easement holder.

from necessity⁴ that the same rules should apply to both. Both are implied by law, and reflect the same public policy of preventing land from becoming landlocked and useless. Hellberg v. Coffin Sheep Co., 66 Wn.2d 664, 666-67, 404 P.2d 770 (1965).

In light of the similarity of these two forms of implied easement, this court should carefully consider the implications of any decision in this case on the continued vitality of other implied easements such as easements implied by necessity, and those implied from prior use.

C. Statutory way of necessity claims should be accorded the same treatment as quiet title claims, which are not subject to a statute of limitations or laches defense.

Day Group makes a fatal error in arguing that a claim asserting a statutory way of necessity is subject to a statute of limitations. It concedes, correctly, that no specific statute of limitation applies by its terms to a statutory way of necessity claim. But then, without citation to any case authority, it categorically asserts that every action must be subject to some limitations statute.⁵

But of course quiet title actions are not subject to statutes of limitation, nor to the doctrine of laches. Van Sant v. Seattle, 47 Wn.2d 196, 200, 287 P.2d 130 (1955); Petersen v. Schafer, 72 Wn.App. 281, 284,

⁴ The primary difference between the two is that an easement implied from necessity cannot exist without past unity of title between the dominant and servient estates, Roberts v. Smith, 41 Wn.App. 861, 865, 707 P.2d 143 (1985), whereas unity of title is not a requisite for a statutory way of necessity.

⁵ Day Group Resp. Br. (Ct. App. No. 63572-7) at p. 35

709 P.2d 813 (1985). Implied easement claims are typically instituted as quiet title actions. See, e.g., Bushy v. Weldon, 30 Wn.2d 266, 191 P.2d 302 (1948). A statutory way of necessity claim is in essence a quiet title claim, in that it is substantively similar to a claim for an easement implied from necessity,⁶ and the two claims are often joined alternatively in one action, particularly where prior unity of title is less than certain. Indeed, a statutory way of necessity cannot be claimed at all when an implied easement from necessity exists. Dreger v. Sullivan, 46 Wn.2d 36, 38-39, 278 P.2d 647 (1955). Thus a statutory way of necessity claim can properly be viewed as a backstop or last ditch provision for avoiding the creation of permanently landlocked parcels, to be used only where no other theory can be asserted to obtain access to landlocked land. See Hellberg v. Coffin Sheep Co., 66 Wn.2d at 667.

In short, Day Group is asking this court to create a major new and artificial dichotomy between two closely related implied easements, a dichotomy that has not heretofore existed. If the court were to accept Day Group's argument, owners of landlocked properties sharing a prior common ownership with non-landlocked neighboring properties will continue to be entitled to bring quiet title claims to enforce implied ways of necessity to achieve access to public roads, without time limitations. On the other hand, owners of landlocked properties that have no prior

⁶ The only substantive difference between the two is that the amount of compensation must be determined by a jury in the case of a statutory way of necessity, Const. Art. I, §16, whereas the owner of the servient estate is not entitled to compensation in the case of an implied way of necessity.

unity of title with neighboring non-landlocked properties could not enforce their claims for statutory ways of necessity unless the land had been recently landlocked. There is no reason to create such distinction.

D. A new rule subjecting statutory way of necessity claims to a statute of limitations or laches defense would have broad and deleterious consequences.

It is likely that many landlocked properties would be permanently deprived of access if this court were to adopt Day Group's position.⁷ Many properties, such as Yoder/Vallette's property, have been landlocked for decades, sometimes as long as the parcels have been in private ownership. Day Group's position is that these parcels irretrievably lost any right to access shortly after their initial transfer from public ownership.

In effect, this court would be nullifying the constitutional right to private condemnation for the owners of many of those properties, and relegating their properties to permanent uselessness. The court should not restrict to the point of virtual abrogation such an important constitutional right.

⁷ No implied easement by necessity exists for many such properties, because prior common ownership by the government does not satisfy the unity of title element necessary to establish an implied way of necessity, at least when the government had previously conveyed away the neighboring non-landlocked property before having conveyed the landlocked property. Granite Beach Holdings, LLC v. Dept. of Natural Resources, 103 Wn.App. 186, 199, 11 P.3d 847 (2000).

It is no answer to contend, as Day Group does,⁸ that the owner of a landlocked parcel may obtain access to a public road, even in the absence of a right to condemn, by purchasing access from a neighbor. The neighbor could just refuse to sell. And even if, as apparently happened in the instant case, a neighbor with access should be willing to sell access or even the entire fee interest in its property to the landlocked owner, a rapacious neighbor could extract virtually the entire value of the landlocked property from its owner in the transaction. Surely an important purpose of the right to private condemnation is to obviate such extortionate behavior.

Moreover, any “uncertainty” Day Group claims⁹ arising from the right of private condemnation is simply inherent in the framers’ decision to create such a right in the constitution. The uncertainty is little different from the uncertainty arising from other implied but unrecorded easements such as those implied by necessity or prior use. Any uncertainty can be reduced by inspecting the chain of title of neighboring undeveloped parcels and by observing the presence or absence of existing access roads to those properties. Furthermore, in statutory way of necessity cases the trial court has broad authority under RCW 8.24.025 to ameliorate the burden on the condemnee’s property by selecting the least intrusive route,

⁸ Day Group Resp. Br. (Ct. App. No. 63572-7) at p. 38.

⁹ Day Group Resp. Br. (Ct. App. No. 63572-7) at p. 39.

as the trial court could do in the instant case on remand by locating the way of necessity over an existing private road.

In any event, such uncertainty pales beside the uncertainty that would be created if this court were to impose new time deadlines for the exercise of private condemnation rights.

E. Any decision by this court to apply a statute of limitations or the doctrine of laches to statutory way of necessity claims should be applied prospectively, rather than retroactively.

If this court adopts Day Group's position that a statute of limitations or laches applies to statutory way of necessity claims under Ch. 8.24 RCW, the decision will be one of first impression whose resolution has not been foreshadowed by previous decisions of this court. On the contrary, the court's prior rule that quiet title claims are not subject to a limitations statute nor to laches has foreshadowed just the opposite rule, namely that no statute of limitations or laches defenses would apply to similar statutory way of necessity claims.

Consequently, pursuant to Robinson v. City of Seattle, 119 Wn.2d 34, 830 P.2d 318 (1992), the court must determine whether its ruling is to apply prospectively or retroactively. Robinson allows the court to apply its ruling retroactively, either explicitly, or *sub silentio* by applying the ruling to the parties in the case. Alternatively, the court may apply the ruling prospectively only, but the prospective application must be announced within the opinion itself. Lunsford v. Saberhagen Holdings,

Inc., 166 Wn.2d 264, 279, 208 P.3d 1092 (2009). However, the court is not allowed to apply its decision by “selective” or “modified” prospectivity; that is, it may not apply the decision to the parties in the case, while not also applying it retroactively to all non-parties whose claims have already accrued but have not yet been litigated. Robinson, 119 Wn.2d at 77-78.

The court will consider prospective application particularly in property areas, where there are vested interests and parties may have relied on the previous rule. Lunsford, 166 Wn.2d at 273, and cases there cited.

If this court does decide that a statute of limitations or laches defense applies to statutory way of necessity claims, it should do so prospectively, not retroactively. Parties such as Yoder/Vallette who have been diligently, but non-litigiously, seeking access to their landlocked parcels should not be penalized for first seeking a consensual solution out of court, rather than rushing to the courthouse. They should now be given a window of time to file their cases before forever losing their opportunity to seek judicial relief.

Prospective application necessarily implies that the court’s new rule could not be applied to the litigants in this case either. Robinson, 119 Wn.2d at 77-78.

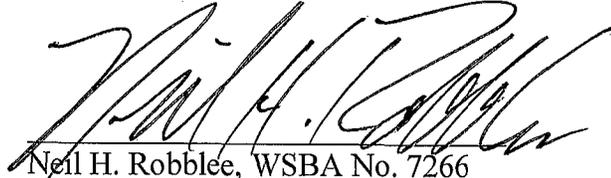
III. CONCLUSION

For the foregoing reasons, the court should hold that no statute of limitations applies to statutory way of necessity claims, and that such

claims are not subject to the defense of laches. But if the court does hold that such defenses are available, its decision should be applied prospectively.

DATED this 9th day of February, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neil H. Robblee", is written over a horizontal line.

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APPENDIX A

[partial texts of the original constitutions of Washington, Colorado and
Missouri]

CONSTITUTION of the

STATE of WASHINGTON

Preamble.

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

Article I.

Declaration of Rights.

Section 1. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Section 2. The Constitution of the United States is the supreme law of the land.

Section 3. No person shall be deprived of life, liberty, or property, without due process of law.

Sec. 4. The right of petition and of the people peaceably to assemble for the common good 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.

Sec. 6. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

Sec. 7. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Sec. 8. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the Legislature.

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

Sec. 10. Justice in all cases shall be administered openly, and without unnecessary delay.

Sec. 11. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated from or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, on account of his opinions on matters of religion.

questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Sec. 12. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Sec. 13. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

Sec. 14. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

Sec. 15. No conviction shall work corruption of blood, nor forfeiture of estate.

Sec. 16. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, or if a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial

question, and determined as such without regard to any legislative assertion that the use is public.

Sec. 17. There shall be no imprisonment for debt, except in case of absconding debtors.

Sec. 18. The military shall be in strict subordination to the civil power.

Sec. 19. All 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.

Sec. 20. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

Sec. 21. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury ^{in civil cases} where the consent of the parties interested is given thereto.

Sec. 22. In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the country in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

THE
CONSTITUTION
OF THE
STATE OF COLORADO,

ADOPTED IN
CONVENTION, MARCH 14, 1876;

ALSO THE
Address of the Convention

TO THE
PEOPLE OF COLORADO.

ELECTION, SATURDAY, JULY 1, 1876.

DENVER, COL.
TRIBUNE BOOK AND JOB PRINTING HOUSE.
1876.

DIVISION OF STATE ARCHIVES
AND PUBLIC RECORDS

Morgan
7-23-07

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PREAMBLE.

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquility; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the "State of Colorado."

CONSTITUTION.

ARTICLE I.

BOUNDARIES.

The boundaries of the State of Colorado shall be as follows: Commencing on the thirty-seventh parallel of north latitude, where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north on said meridian to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude to the place of beginning.

ARTICLE II.

BILL OF RIGHTS.

In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare:

SECTION 1. That all political power is vested in and derived from the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

SEC. 2. That the people of this State have the sole and exclusive right of governing themselves, as a free, sovereign and independent State; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States.

SEC. 3. That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

SEC. 4. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

SEC. 5. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SEC. 6. That courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and that right and justice should be administered without sale, denial, or delay.

SEC. 7. That the people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures; and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation, reduced to writing.

SEC. 8. That, until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases offenses shall be prosecuted criminally by indictment or information.

SEC. 9. That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the General Assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death.

SEC. 10. That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that all suits and prosecutions for libel, the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

SEC. 11. That no *ex post facto* law, nor law impairing the obliga-

tion of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the General Assembly.

SEC. 12. That no person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.

SEC. 13. That the right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

~~SEC. 14. That private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.~~

SEC. 15. That private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner. The property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public, shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SEC. 16. That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 17. That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security he shall be discharged; if he cannot give security, his deposition shall be taken by some Judge of the Supreme, District, or County Court, at the earliest time he can attend, at some convenient place by him appointed for that purpose, of which time and place the accused and the attorney prosecuting for the people, shall have reasonable notice. The accused shall have the right to appear in person and by counsel. If he have no counsel, the Judge shall assign him one

Missouri Const. 1875,
from:



**THE FEDERAL AND STATE
CONSTITUTIONS
COLONIAL CHARTERS, AND OTHER
ORGANIC LAWS
OF THE
STATES, TERRITORIES, AND
COLONIES
NOW OR HERETOFORE FORMING
THE UNITED STATES OF AMERICA**

Compiled and Edited
under the Act of Congress of June 30, 1906

By

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VOL. IV

Michigan—New Hampshire

**WASHINGTON
GOVERNMENT PRINTING OFFICE
1909**

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(Ratified November 3, 1874)

ART. II. SEC. 4. *So altered and amended as to read:* The general assembly may provide by law for registering all voters in cities and towns having a population of more than ten thousand.

CONSTITUTION OF MISSOURI—1875 *

PREAMBLE

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for his goodness, do, for the better government of the State, establish this Constitution.

ARTICLE I

BOUNDARIES

SECTION 1. The boundaries of the State as heretofore established by law, are hereby ratified and confirmed. The State shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the State, so far as the said rivers shall form a common boundary to this State and any other State or States; and the river Mississippi and the navigable rivers and waters leading to the same shall be common highways, and forever free to the citizens of this State and of the United States, without any tax, duty, impost or toll therefor, imposed by this State.

ARTICLE II

BILL OF RIGHTS

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

SECTION 1. That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

SEC. 2. That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness; *Provided*, such change be not repugnant to the Constitution of the United States.

SEC. 3. That Missouri is a free and independent State, subject only to the Constitution of the United States; and as the preservation of the States and the maintenance of their governments are necessary to an indestructible Union, and were intended to co-exist with

* Verified by "The Constitution of the State of Missouri, Adopted by a vote of the people, October 30, 1875. Went into operation November 30, 1875. Jefferson City, Mo.: Tribune Printing Company, State Printers and Binders, 1891." pp. 62.

it, the Legislature is not authorized to adopt, nor will the people of this State ever assent to, any amendment or change of the Constitution of the United States which may in anywise impair the right of local self-government belonging to the people of this State.

SEC. 4. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design.

SEC. 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

SEC. 6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

SEC. 7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof as such; and that no preference shall be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship.

SEC. 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages and cemeteries.

SEC. 9. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SEC. 10. The courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice should be administered without sale, denial or delay.

SEC. 11. That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by oath or affirmation reduced to writing.

SEC. 12. That no person shall, for felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in

time of war or public danger; in all other cases, offenses shall be prosecuted criminally by indictment or information as concurrent remedies.

SEC. 13. That treason against the State can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person can be attainted of treason or felony by the General Assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SEC. 14. That no law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

SEC. 15. That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly.

SEC. 16. That imprisonment for debt shall not be allowed, except for the non-payment of fines and penalties imposed for violation of law.

SEC. 17. That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called in question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.

SEC. 18. That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging.

SEC. 19. That no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable.

~~SEC. 20. That no private property can be taken for public use, with or without compensation, unless by the consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in such manner as may be prescribed by law; and that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public.~~

SEC. 21. That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be

ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of land taken for railroad tracks without consent of the owner thereof shall remain in such owner, subject to the use for which it is taken.

SEC. 22. In criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county.

SEC. 23. That no person shall be compelled to testify against himself in a criminal cause, nor shall any person after being once acquitted by a jury be again, for the same offense, put in jeopardy of life or liberty; but if the jury to which the question of his guilt or innocence is submitted fail to render a verdict, the court before which the trial is had may, in its discretion, discharge the jury and commit or bail the prisoner for trial at the next term of court, or if the state of business will permit, at the same term; and if judgment be arrested after a verdict of guilty on a defective indictment, or if judgment on a verdict of guilty be reversed for error in law, nothing herein contained shall prevent a new trial of the prisoner on a proper indictment, or according to correct principles of law.

SEC. 24. That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

SEC. 25. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

SEC. 26. That the privilege of the writ of *habeas corpus* shall never be suspended.

SEC. 27. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

SEC. 28. The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but a jury for the trial of criminal or civil cases in courts not of record, may consist of less than twelve men, as may be prescribed by law. Hereafter, a grand jury shall consist of twelve men, any nine of whom concurring may find an indictment or a true bill.

SEC. 29. That the people have the right peaceably to assemble for their common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

SEC. 30. That no person shall be deprived of life, liberty or property without due process of law.

SEC. 31. That there cannot be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

SEC. 32. The enumeration in this Constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.