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### Arkansas Constitutions, 1836-1874

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#### Recommended Citation

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# **Arkansas Constitutions**

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**Finding aid prepared by the Arkansas State Archives**

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Describing Archives: A Content Standard

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## Summary Information

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<b>Repository</b>	Arkansas State Archives
<b>Title</b>	Arkansas Constitutions
<b>Date [inclusive]</b>	1836-1874
<b>Extent</b>	6.25 Cubic feet 5 boxes, 1 reel microfilm
<b>Language</b>	English
<b>Language of Materials</b>	Materials entirely in English.
<b>Microform [Reel]</b>	MG00295

### Preferred Citation

Arkansas Constitutions, Arkansas State Archives, Little Rock, Arkansas.

## **Biographical/Historical Note**

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Arkansas has been governed by five constitutions. Each of the five constitutions symbolizes a change in the state's political status: statehood in 1836, joining the Confederate States of America during the Civil War in 1861, military occupation near the end of the Civil War in 1864, Reconstruction in 1868, and reaction to Reconstruction in 1874. Although several attempts have been made to draft a new constitution, the 1874 document remains the basis for state laws in Arkansas.

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## **Scope and Contents**

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Arkansas has been governed by five constitutions. This collection includes all five original documents.

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## **Administrative Information**

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### **Publication Information**

Arkansas State Archives

### **Conditions Governing Access**

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### **Immediate Source of Acquisition**

Arkansas Secretary of State, Little Rock, Arkansas, 1991.

## Collection Inventory

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**Box**

1836 Arkansas Constitution

1

**Biographical/Historical Note**

The question of Arkansas statehood surfaced in the early 1830s as the territory's population grew, approaching the required number of citizens. But, many felt that the economic strain the new state would face from the loss of federal funds would be financially crippling. Some feared that Arkansas statehood might be premature for the sparsely populated area.

Ambrose Sevier, a territorial delegate to Congress, believed that Arkansas should wait for statehood. However, when he learned Michigan planned to join the Union, he saw an opportunity. To preserve an even number of free and slave states, Arkansas needed to be paired with a northern territory. No state had been admitted since Missouri and Maine joined in 1821, and Sevier feared that it could be many years until Arkansas would have another chance become a state. On December 17, 1833, Sevier introduced an unsuccessful resolution in the U.S. House of Representatives to investigate the possibility of permitting the people of Arkansas to draft a constitution, form a state government, and seek admission to the Union. Although representatives attempted to admit both Michigan and Arkansas during 1834-1835 sessions of Congress, on March 4, 1835, Congress adjourned with neither territory joining the Union.

Sevier abandoned the idea of asking Congress for permission to draft a state constitution and turned to the "constitution in hand" approach. Territorial Governor William S. Fulton and others believed that Arkansas should wait until Congress specifically requested that a constitution be written. After much debate, a constitutional convention opened in Little Rock on January 4, 1836. The meeting took place in a church, since the territory had no capitol building. Delegates adopted a new state constitution on January 30, 1836, and a copy was sent to Washington, District of Columbia, for Congressional approval. Congress

delayed approving Arkansas's admission to the Union for several weeks. Then, after much political maneuvering, President Andrew Jackson signed the Act that admitted Arkansas as the twenty-fifth state of the Union on June 15, 1836.

The Arkansas Constitution of 1836 was similar to constitutions of other southern states. It outlined the basic laws of state government and defined the rights of Arkansas citizens. While not considered exceptional or innovative, the document achieved its goals by establishing a state government while allowing for growth and change.

The 1836 Constitution consisted of a preamble and seven articles. Of these, Article II was a "Declaration of Rights." At the time, the United States Constitution's Bill of Rights did not apply to state governments, making the protection of citizens a crucial element of the document. Other provisions allowed for a four-year term for the governor and a simple majority vote to override a governor's veto. The greatest political power resided with the legislature. The Constitution created a state militia, banned lotteries, encouraged internal improvements, and forbade the emancipation of slaves without an owner's consent. New laws also authorized the establishment of banks.

The 1861 Constitution replaced the 1836 document at the beginning of the Civil War. Delegates to later constitutional conventions made only minor adjustments to the 1836 Constitution when they crafted new laws in 1861 and 1864.

1861 Arkansas Constitution

2

### **Biographical/Historical Note**

After Abraham Lincoln was elected President of the United States in 1860, many southern states contemplated secession. In January of 1861, officials called for an election to decide whether Arkansas should hold a convention to consider secession from the Union. The February 18 election results favored such a convention.

Delegates met in Little Rock on March 4, 1861. David Walker of Fayetteville was elected chairman. Walker opposed secession at the time, and his selection foreshadowed the convention's decision. An election would place the matter before the voters in August. Arkansas was generally divided along geographical lines: the northwestern half of the

state was against secession, and the southeastern half favored it. However, other events intervened before voters could decide the issue.

On April 12, 1861, the Civil War began at Fort Sumter in South Carolina. President Lincoln called for a regiment of troops from Arkansas to help defend the United States against the rebellion. Governor Henry Rector refused, and David Walker asked convention delegates to reconvene in Little Rock. On May 6, 1861, a secession ordinance passed by a vote of sixty-five to five. Walker asked for unanimity, but one man refused. Isaac Murphy of Huntsville would not change his vote. Arkansas withdrew from the Union and later joined the Confederate States of America on May 20, 1861.

The Secession Convention also enacted a new constitution. Delegates drafted a document very similar to the 1836 Constitution. The government's basic structure remained the same, but the words "United States of America" were replaced with "Confederate States of America." Text in the Declaration of Rights article changed from "all free men" to "all free white men" or "all free white men, or Indian." Emancipation became legally impossible in Arkansas. The new constitution was adopted by the convention on June 1, 1861, but it was never submitted to a vote of the people.

## 1864 Arkansas Constitution

3

### **Biographical/Historical Note**

Following the occupation of Little Rock by Union troops in September of 1863, Governor Harris Flanagin moved the Confederate state capitol to Washington, in Hempstead County. Sentiment remained divided throughout the state: many in northwestern Arkansas supported the Union, while those to the south and in the Delta region continued to stand behind the Confederacy.

As the war drew to an end, President Abraham Lincoln became eager to re-establish governments loyal to the Union in the South. For a state government to be recognized and therefore receive financial support from the federal government, ten percent of 1860 voters had to complete an Oath of Allegiance to the United States. A move to form an Arkansas government sympathetic to the Union emerged in the state's northern counties.



Twenty-four counties elected delegates to a constitutional convention, and forty-five delegates met in Little Rock. During the convention's second week, a new constitution was drafted by a committee of thirteen delegates within a twenty-four-hour period. On January 19, 1864, members of the convention adopted the new document. The 1864 Constitution reflects few changes from the 1836 document. The new constitution's provisions varied from previous laws by calling for the popular election of the secretary of state, state auditor, state treasurer, and judges. New regulations abolished slavery, but failed to define the rights of former slaves.

In an election supervised by federal military officials, the constitution was ratified on March 14, 1864. Isaac Murphy was elected governor, and new legislators were chosen. Even though President Abraham Lincoln approved the Arkansas constitution, it was never recognized by the United States Congress.

1868 Arkansas Constitution

4

### **Biographical/Historical Note**

As the Civil War came to an end in 1865, a new era began. Reconstruction was a time of great political, social, and economic upheaval in Arkansas. President Lincoln authorized the military to allow states to begin establishing governments, but the United States Congress did not allow Arkansas's first Reconstruction-era congressmen and senators to participate in proceedings at the capitol.

Following the passage of the First Reconstruction Act in 1867, General E.O.C. Ord oversaw voter registration in militarily-governed Arkansas. By the time a new constitutional convention was held the following year, scalawags and carpetbaggers controlled the political scene. Both factions were considered to be "Radical Republicans," and they dominated the convention.

Between January 7 and February 14, 1868, delegates met in Little Rock to create a new constitution. The document they crafted went before voters in March, but former Confederates had little impact in the decision to approve the constitution, since they were not allowed to vote. In essence, carpetbaggers, scalawags, and African Americans

controlled the election and the government. Former Union general Powell Clayton was elected governor, and James M. Johnson, lieutenant governor.

Following congressional acceptance of the election's results and the new constitution on June 22, 1868, military rule ended in Arkansas and the state returned to the Union. Arkansas's 1868 Constitution contained many new provisions. While the state's first three constitutions varied little, the new document imposed several major changes. The 1868 Constitution continued a four-year term for the governor, added the office of lieutenant governor, and established greater power within the executive branch, weakening local control. Forward-thinking provisions promoted railroad construction, encouraged immigration, promoted economic development, protected the rights of African Americans, and created a state system of public schools. Alternatively, the new constitution prohibited changes to voting districts until 1876, made the amendment process difficult, and established strict criteria for voter eligibility, assuring that ex-Confederates did not regain power.

The new document called for the equality of all persons and that no citizen could be deprived of any right "on account of race, color, or previous condition." African American males were given the right to vote. Women could own and dispose of property. An education system brought uniform standards and offered all students an opportunity to attend school, regardless of color. Another educational improvement established a state-supported university in Fayetteville.

While portions of the new constitution took positive steps toward the future, the state failed to support the new initiatives over the long-term. In the aftermath of war, the disfranchisement of former Confederates created ill will throughout the general population, resulting in turmoil and even violence.

1874 Arkansas Constitution

5

### **Biographical/Historical Note**

Following adoption of the 1868 Constitution, the Republican government under Governor Powell Clayton took power. Republicans generated enormous state debt on construction projects. Criticism arose over new laws empowering former slaves and women while

disfranchising former Confederates. Conservatives formed secret organizations such as the Ku Klux Klan to intimidate Republican voters. Governor Clayton called out the militia to suppress Klan activities, but Republicans could not bring an end to the violence. Internal divisions further impacted the Republicans' control.

Conservatives accused Republicans of political corruption, and the Conservatives' power grew. The 1872 election proved to be a political nightmare for the Republicans. Governor Powell Clayton moved to the U.S. Senate in 1871, and by the time of the election of 1872, the Arkansas Republicans split into two factions. Elisha Baxter led one faction, known as the Minstrels. The other group, called the Brindletails, supported Joseph Brooks. Voter fraud and intimidation ran rampant at the election, but after two months of certifying results, the state election commission declared Baxter the winner. Brooks challenged the vote, but Baxter took office in January of 1873.

Baxter attempted to reconcile the Republicans and Conservatives, and as a result, began to lose support within his Republican party. Alternatively, during the campaign Brooks promised to restore voting rights and give amnesty to former Confederates, but later somewhat altered his thinking on the issue. As a result, Baxter's supporters turned to Brooks, and Brooks' supporters aligned with Baxter.

Brooks won a court decision and along with a group of armed men, physically removed Baxter from the State House on April 15, 1874. Fighting erupted on the streets of Little Rock with both men claiming the governorship. The incident and resulting skirmishing became known as the Brooks-Baxter War.

Finally, after several weeks' delay, President Ulysses S. Grant gave Baxter his support and asked Brooks' men to disband. Baxter returned to the State House, and in May 1874, the legislature called for a June 30 election to decide whether to hold a constitutional convention. A landslide victory in favor of drafting a new constitution paved the way for the formation of a new Arkansas government.

The Constitutional Convention assembled at the State House on July 14, 1874. Republicans who had supported Elisha Baxter and Conservative Democrats joined together in efforts to positively change laws implemented with the 1868 Constitution. Grandison Royston of Hempstead County was elected chairman of the convention, and was the only delegate who had also been a member of the 1836 convention. In his

acceptance speech, Royston called for a constitution providing for a government under which “the people shall be the source of power.” After two months of deliberations, the new constitution was completed. The voters of Arkansas ratified the document in an October 13, 1874, election.

The 1874 Constitution attempted to limit the power of state government. New laws restricted what government could do. Some refer to the document as the “Thou shalt not” constitution because many provisions are written in the negative. In financial matters for example, “Neither the State nor any city, county, town, or other municipality in this State shall ever loan its credit for any purpose whatever.” The constitution gave Arkansas citizens more control over public officials by reducing terms from four years to two and increasing the number of officials subject to election. Substantially weakened by many of the provisions, the governor’s office became largely an honorary position until the twentieth century.

The new constitution also tried to curtail corruption, largely in reaction to Reconstruction-era spending. The huge debt incurred in the years after the Civil War made financial issues extremely important. Salaries of state officials were fixed and had to be approved by the General Assembly. The number of offices was reduced to improve efficiency and reduce costs. And, taxes became more uniform throughout the state.

Enactment of the 1874 Constitution marked the end of Reconstruction in Arkansas. The document governs the state today.