198/1864.

In the Supreme
Court of Balt. City

Samuel G. Miles
v.
Augustus W. Bradford
Governor of Maryland

"Box "R"-39"

Mr. Mace.
Please file &c.
Th. S. A.

Record made

Fd 24 Oct 1864

1

To The Honorable Robert N. Martin
Judge of the Superior Court of Baltimore City —

The Petition of Samuel G. Miles of the City of Baltimore humbly shows unto your Honor that a Convention of the People of Maryland recently assembled at the City of Annapolis did then and there agree upon and adopt a certain instrument or Act named by the said Convention "the Constitution of Maryland", and in divers parts of said Instrument or Act named the "New Constitution" to distinguish the same familiarly from the present or Existing Constitution or form of Government which is recognized in Maryland; and did therein, and by Article 12, Section 8 thereof, enact and provide that an election for ratifying or rejecting the said "New Constitution" shoned be held in the City of Baltimore on the 12th day of the present month of October, and in the several counties of this State, on the 12th and 13th of the present month of October; and that the said election shoned be held in the ~~several~~ several election districts or precincts at which other elections are required to be held by the present Constitution; and that all persons duly qualified to vote for —

Delegates to the General Assembly shoned
2 vote at said Election, and at the places
at which they shoned be severally and
respectively qualified to vote as afresaid,
Excepting Nevertheless, that in
and by sections 8 and 9 of Article 12th
afresaid it is provided, that no
person though duly qualified as afresaid,
shoned be permitted to vote at said
Election, unless he shoned first take
the oath prescribed by Article 1st
Section 4 of the said "New Constitution"
and that the taking of the said oath
shoned not be conclusive evidence
of his right to vote as afresaid; Whereby
in addition to the qualifications prescribed
by Article 1st of the present Constitution
(which your Petitioner is advised is
under the Constitution of the United
States the Supreme Law of the State
of Maryland) and as the condition,
on the performance of which only, the
citizen of the State of Maryland
shoned be entitled to vote, he is required
to take the following oath

I do swear (or affirm) that I am
a citizen of the United States, that I have
never given any aid countenance or support
to those in armed hostility to the United
States, that I have never expressed a
desire for the triumph of the said Enemies
over the arms of the United States; and

3

that I will bear true faith and allegiance to the United States and support the Constitution and laws thereof as the Supreme Law of the Land, any law or ordinance of any State to the contrary notwithstanding; that I will in all respects demean myself as a loyal citizen of the United States; and I make this oath or affirmation without any reservation or evasion, and believe it to be binding on me"

And by the said Article 12, sec. 9, of the said "New Constitution", it is provided that said Election shall be by ballot, and that each ballot shall have thereon the words "For the Constitution" or "Against the Constitution", as the voter may select; and that the Judges of Election shall certify the result thereof in the manner now prescribed by Law, and the Governor upon receiving such result, and ascertaining the aggregate vote throughout the State, including the "Soldiers vote", shall by Proclamation make the same known; and that if a majority of the votes cast shall be for the adoption of said New Constitution, it shall go into effect on the First day of November 1864 –

And by section 10 of said last mentioned Article, it was further provided ~~that~~

4

that the Governor shall exclude from count the votes of any County or City, the Return Judges of which shall fail to certify that all persons who have voted have taken the oath above recited. And your Petitioner also shows unto your Honor that in and by sections 11, 12, 13, 14 and 15 of said Article 12 of said "New Constitution" it is provided that voters of this State absent from their place of Residence by reason of being in the Military Service of the United States so as not to be able to vote at home, shall be entitled to vote at said election for the adoption or rejection of said Constitution; and that for the purpose of taking their votes, a Polls shall be opened in each company of every Maryland Regiment in the Service of the United States at the quarters of the Commanding officer thereof, and that the Commissioned officers of such Company, or such of them as are present, shall act as Judges of Election; and any one officer shall be competent so to act; ~~and~~ and if no officer be present, that then the voters in such company shall elect two of the voters present to act as Judges: together with other directions in detail in reference to the "Soldiers Vote" which will more fully appear by reference to said proposed

New Constitution, a copy of which marked "Exhibit A" is herewith filed as part of this Petition —

And Your Petitioner further shows that he is a Free-White person and upwards of twenty one years of age, and on the said 12th day of the present month of October was a citizen of the State of Maryland and of the United States and on said day and month aforesaid was and for many years next preceding said day continuously had been a resident of the City of Baltimore and of the 14th — Ward of said City and of the First — precinct of said Ward in which he tendered his ballot as hereinafter stated; and had not been at any time convicted of Bribery, false Swearing, larceny or other infamous crime or otherwise according to the form and effect of the Existing Constitution or any law made pursuant thereto rendered incapable of exercising his Elective Franchise as aforesaid; and being so qualified to vote at all elections to be held in the said precinct and Ward and city as aforesaid, he did on the said 12th day of the present month of October attend at the place appointed for the holding the aforesaid election in said precinct at the hour of — 12.30 or thereabouts in the forenoon of the day

6

aforesaid, and did then and there tender to the duly qualified Judges of the said election then and there acting as such Judges, a Ballot whereon was written "Against the Constitution", and did then and there require the said Judges to receive said ballot, and deposit the same in the Ballot-Box provided by the said Judges for the deposit therein of ballots tendered by persons qualified to vote at the said election; that the said Judges although they well knew that your Petitioner was duly qualified as aforesaid to vote at all elections held in said Ward, and especially at the election then holding as aforesaid, did then and there refuse to receive said ballot so as aforesaid tendered by your Petitioner, and did then and there require your Petitioner to answer whether he would take the oath so as aforesaid prescribed to be taken by the said New Constitution, and because, and only because, of the refusal of your Petitioner to take said oath the said Judges refused to deposit the said ballot in the Ballot Box aforesaid; but on the contrary took said ballot from him and deposited it in one other Box which they the said Judges had then and there provided for the deposit and safe keeping of Ballots received by them but rejected as having been

7

tendered by persons not qualified to Vote.

And your Petitioner further avers that on the 12th day of the present month of October in the City of Baltimore, and on the 12th and 13th days of said Month in the several Counties of the state of Maryland, between the hours of Eight in the forenoon and Five in the afternoon of said days divers white male persons of the ages of twenty one years and upwards, and being then and there citizens of the United States and residents of the several election Precincts of the City of Baltimore and the Election Districts of the said Counties in the said State, in which they respectively tendered their ballots as hereinafter mentioned, and having been residents thereof for several years next preceding the said days, and otherwise duly qualified agreeably to the present Constitution and Laws made pursuant thereto, respectively to Vote at all Elections in the said Precincts and Election Districts, did attend at the Polls for holding said Election in said precincts and Election Districts in which they were so respectively qualified to Vote, and before the respective Judges so holding said Election in said Precincts and Election Districts, and did then and there severally present their respective Ballots

8

thereon was written "against the Constitution", and did then and there require the said Judges in said Precincts and Election Districts to receive said Ballots so tendered and to deposit the same respectively in the Ballot Box provided by the said Judges in each of said Precincts and Election Districts for the deposit therein of Ballots tendered by persons ~~not~~ duly qualified to vote at said Election; but the said Judges in said several Election districts and precincts, although they well knew that said persons were, and each of them was, then and there duly qualified to vote at said Election at the precint or district where said ballots were respectively tendered, did refuse to receive said ballots so tendered and to deposit them in the said Ballot Box, as they were required to do, for the reason then and there confessed, and for that reason some that the persons so qualified to vote as aforesaid had refused to take the oath aforesaid so as aforesaid imposed by the said "New Constitution", and did refuse to receive at the said Ballots in some instances, and in others did take the said Ballots so tendered as aforesaid and did deposit them in another Box which they the said Judges then and there had severally provided in their respective precincts and districts for the deposit

9.

and safe keeping of Ballots received by them but rejected as having been tendered by persons not qualified to vote.

And your Petitioner avers that after said polls had been closed the said Judges did open the said ballot Boxes containing only the ballots of those who had taken the said oath prescribed by the said New Constitution, and did count the ballots therein deposited and did make return thereof; but they did not count or make return of the ballots of qualified Voters rejected as above stated because of their refusal of said Voters to take the said oath; and did not count the said ballots so as aforesaid, and for the reasons aforesaid, placed in said Boxes kept for the deposit of rejected ballots.

And your Petitioner avers that a considerable Majority of the Votes cast at said Election at the usual Voting places in the State of Maryland was against the adoption of the said New Constitution, which said Majority was, according to the best information in the possession of your Petitioner, at least Eighteen hundred; and that if the ballots "against the Constitution" so as aforesaid tendered by qualified Voters of the State and wrongfully placed by the Judges of Election in the afore-described Boxes for rejected Votes, were counted the said Majority would be so largely

10

increased as that the said New Constitution would be wanting in a majority in its favor of the votes cast at said Election, even if the "Soldiers vote which it professed to authorize and which were cast should be counted; And your Petitioner asks that should more over this be the case, if the votes ballots of any the duly qualified voters who tendered their votes at said election and whose votes were rejected because of their refusal to take the above-mentioned oath, were counted.

And your Petitioner further asks that many persons in Maryland Regiments in the Service of the United States have voted at said Election at places in the State of Virginia and Elsewhere out of this State, and at places not authorized by the present Constitution of the State and the laws passed pursuant thereto, and that returns of said votes have been made to his Excellency A. W. Bradford Governor of the State, and that the said Governor declares and insists that he will count said votes of persons in the Military Service given and returned to him, and will not exclude them from the count in ascertaining the aggregate vote cast at said Election; ~~and the said Governor also refuses to ascertain and count the votes of those persons qualified to vote under the existing Constitution of the State~~

11

And your Petitioner avers that even if the provisions of the said "New Constitution" allowing the taking of the "Soldiers Votes" out of the State of Maryland and away from the places where under the existing Constitution said Soldiers Votes could alone be taken, are in themselves liable to no Constitutional Objection, yet your Petitioner avers that the Governor is bound to exclude all the "Soldiers Votes", which have been returned to him, from Count in Estimating the Votes "for" or "against" the said "New Constitution"; because, as your Petitioner avers, the said New Constitution itself requires that the Soldiers who shall Vote on its adoption, shall, as well as those who are not Soldiers, take the aforesaid oath as a necessary preliminary to the exercise of the right to Vote on said Constitution: whereas, as your Petitioner avers, the ~~same~~ Returns, as made to the Governor, of said "Soldiers Votes", do not show that said Soldiers took, or were asked to take, the said oath; and your Petitioner avers that the fact is, that none of them, whose Votes are returned to the Governor, did take, nor were they required to take, the said oath. And he also avers, that if said "Soldiers Vote" should be excluded from ~~Votes~~ Count by the Governor the said "New Constitution" has failed to receive by at least 1800 Votes a majority of the Votes cast on the 12th and

18th of the present month of October at the said Election on the ~~or~~ adoption or rejection of the said Instrument, and that too even of the ~~sole~~ ballots tendered at the proper voting places in the State of Maryland by persons qualified to vote by the existing Constitution and Laws and which were not received by said Judges as the votes of persons qualified to vote, are excluded from the count.

And your Petitioner also avers that an inspection will show that many of said Returns of Soldiers Votes as made to said Governor are invalid because of the neglect on the part of those making them to observe the requirements of the said Instrument called the ~~sa~~ "New Constitution"; and your Petitioner therefore avers that on each and all of the afore-going grounds the said Governor is bound to exclude the said "Soldiers Votes" so as aforesaid returned ~~from~~ to him, in casting up the votes "for" and against the said New Constitution; but to exclude which as above ~~upon~~ avered the said Governor refuses; and the said Governor also refuses to ascertain and count the votes of those persons qualified to vote under the existing Constitution of the State

whose

13

whose votes were rejected because of their refusal to take the oath as hereinbefore recited; and refuses also to count the votes so as aforesaid placed in the before described "rejected Ballot" Boxes, which Boxes your Petitioner avers are by law required to be safely kept sealed up by the Police Commissioners until called for, and which are therefore readily accessible to the said Governor.

And your Petitioner is advised that the course which the Governor intends to pursue and is now pursuing by which he proposes to execute and carry into effect all the provisions of the said proposed "New Constitution" in reference to said Election or Voting, although on the day on which said vote was taken, the said Instrument had not been adopted but was then for the first time submitted for adoption or rejection by the people, and although some of said provisions conflict with the existing and only Constitution of the State of Maryland, is in violation of the rights of your Petitioner and others of his fellow citizens of the State of Maryland.

And your Petitioner further states that he is the owner of slaves of large value held and owned by him in this state under the Constitution and Laws thereof, and that by the 24th

Article of the Declaration of Rights prefixed to the said "New Constitution" Slavery is abolished in this State and all Slaves are declared to be free, so that your Petitioner will be deprived of his said Slave-property without any compensation therefor, if the said "New Constitution" shoned go into effect, because the 36th section of the 3d Article of the said proposed New Constitution declares that the General Assembly shall make no law, nor make any appropriation to compensate the masters or claimants of Slaves emancipated from servitude by the adoption of this Constitution.

And your Petitioner is advised that as a qualified Voter of this State as hereinbefore stated, and as the owner of Slaves in this State, he is entitled to demand of your Honor a Mandamus directed to the Governor of the State commanding him to do certain acts required by the Constitution of the State and the laws passed in pursuance thereof, and without the doing of which your Petitioner will be remediless in the premises

And your Petitioner also states that there is a vacancy at present existing and never since June 12th 1863 has existed in the office of Judge of the

15

cuit Court of Anne Arundel County;
and the said Governor of the State of
Maryland, Ar. W. Bradford Esq.,
passes much of his time in the City of
Baltimore where he transacts very
much of his official business, and
where he uses ~~an office~~ an office
or room for the discharge of official
business, and in which City he is
much more generally to be found
than in the City of Annapolis.

Your Petitioner therefore prays,
that the said Augustus W. Bradford
Governor of Maryland as aforesaid,
may be ruled by some early day to show
cause if any he has why a Writ
of Mandamus ought not to be
issued commanding him in ascertain-
ing the number of Votes cast at the
said late Election held as aforesaid
"for" or "in favor of" the said "New Constitution",
and the number of Votes cast at the
said late Election against the said
"New Constitution", to count such
Votes as shall appear, by the returns
made to him as aforesaid, to have been
cast or given by persons duly qualified
to vote at Elections according to the
form and effect of the First article
of the existing Constitution relating to
the Elective Franchise and at the
election districts, precincts or places

16

respectively where the said persons so casting or giving their votes as aforesaid are or were authorized severally and respectively as aforesaid to cast or give their said votes, and also all other votes or ballots as shall appear by evidence satisfactory to his judgment to have been ~~cast~~ tendered at the said election by persons duly qualified under the existing constitution, and at the several and respective precincts or districts or places where such persons were qualified to vote as aforesaid, and which ballots shall appear to him to have been rejected or excluded from the returns made him as aforesaid by reason or because of the refusal of the persons so tendering said ballots respectively to take the oath required to be taken by Article 1st Sec. 4 of the said "New Constitution"; and to exclude from his said count any and every vote which from the returns made him as aforesaid shall appear ~~to him~~ to have been cast at any place other than the election district, precinct or place at which the person so casting said vote ~~according~~ was qualified to vote according to the form and effect of the aforesaid article one of the existing Constitution; and to exclude all

17

votes cast at any place outside of the State of Maryland.

And if the said Augustus W. Bradford Governor of Maryland as aforesaid shall show for cause that the said ballots so as aforesaid supposed to have been rejected by reason or because of the refusal of the persons tendering the same to take the oath required by the 4th Section of Article 1st of the "New Constitution" were rightfully rejected as aforesaid; and that the ~~persons~~ votes cast by persons in the Military Service of the United States were not unlawfully cast because or by reason of the holding of the polls at which said votes were cast at places different from and out of the Election District, precinct or place at which the persons so voting as aforesaid, severally and respectively were qualified to vote by the Existing Constitution and the Laws passed in pursuance thereto; then and in such event, that the said A. W. Bradford, Governor of Maryland as aforesaid, do further show cause as aforesaid, wherefore he should not be commanded to exclude from his said count as aforesaid, any and every ballot which shall appear shall been ~~taken~~ cast by a person in the Military Service of the United States

18

Unless it shall appear affirmatively from the return made of said vote that the person casting said vote did before casting said vote take the oath prescribed to be taken by the said 4th section of the 1st Article of the said New Constitution; and unless the said Returns shall also show affirmatively ~~that~~ a compliance with all the other requirements for relating & taking and returning the votes of persons in the Military Service of the United States which are contained in the said "New Constitution".

W. G. Alexander
for pet.

State of Maryland – Baltimore City.
On this 24th day of October 1864 before the subscriber a Justice of the Peace of the State of Maryland in & for said City personally appeared Samuel G. Miles and made oath in due form of law that the matters & things stated in the foregoing petition are true according to the best of his knowledge information and belief.

William E. Forrester, J.P.

In the Superior Court of Baltimore city

24 October 1864

On consideration of the foregoing petition - the Court being of opinion that no sufficient ground is stated therein for the interposition of this Court in the matter thereof It is ordered that the same petition be and the same is hereby dismissed

N. H. Walworth

filed 24 Oct 1864

In the matter of the petition of Samuel H Miles for a writ of mandamus v. A. W. Bradford Governor &c

In the Superior Court of Baltimore City

Mr Marr - Enter an appeal from the order this day passed dismissing the petition in this case

H. S. Alexander
For petitioner

24 October 1864

Mr Marr is requested to make out the record as early as possible. I desire to have it by 4 P. M. of it can be prepared by that hour

H. S. A