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VOTERS. TO. Elector.

from the Constitution of Pennsylvania.] ICLE 1-Sac. 1,-In elections by the citi-very white freeman of the age of twenty-one the election district where he offers to having resided in this State one in the election district waves as one of the so-an days immediately preceding such election, which two years paid a State or County tax, whall have been assessed at least ten days the election, shall enjoy the right of an ar; but a clinzen of the United States, which ad only been a qualified water of this State, removed therefrom, and returned, and who in favor of the citizen. removed therefrom, and realized, and have resided in the election district, and faxes as a foregaid, shall be entitled to vote, residing in the State six months: *Provided*, white freemen, citizens of the United States, es the ages of twenty-one and twenty-two and having resided in the State one year, othe sketchen district ten days, as aliverated, in the election district ten days, as aforeand, be cutified to vote, although they shall not paid taxes.

act by which they attempt to disfran-Bill of Rights. chise a large number of voters, and

franchise him, nor can the Legislature the language of the statute) to return to answer for a capital or other infa- scribed penalty.

This is followed by a clause author- ment Congress may impose upon the They have no power to compel the ject, was governed by one spirit and no part of the penaltics prescribed for izing and requiring the President to criminal forfeiture of his citizenship attendance of witnesses, and their policy, and was intended to be consise guilt. On the other hand, if a record

It imposes forfeiture of citizenship and deprivation of the rights of citizen-ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the law of a State citizens of the ship as penalties for the commission by the ship as penalties f of a crime. Its avowed purpose is to may thus indirectly affect the number received notice of the draft, whether the infliction of any penalty, and him. No decision of a board of elec-Rights and Qualifications of an add to the penalties which the law of those entitled to the right of suf- he had deserted, and failed to return courts martial are constituted and tion officers will protect him against had previously affixed to the crime of frage. Yet, after all, the right is one to service. failed to report to a pro-regulated for such trials. The 20th the necessity of receiving his defense described from the military or naval which its possessor holds as a citizen vost marshal, and whether be had article of war, enacted on the 10th of at every subsequent election, and cach service of the United States, and it of a State, secured by the State Con- justifying reasons for such a failure, April, 1806, (Brightly's Dig. 75) is in time with increased difficulty arising denominates the additional sanctions stitution, and to be held on the torms and if after such a trial they were to these words : "All officers and soldiers from the possible death or absence of provided as penalties. Such being its prescribed by that Constitution alone. decide that he had not forfeited his who have received pay, or have been witnesses. In many cases this may character, it is, under the known rule It is an integral part of the State Goy- citizenship, all this would not amount duly enlisted in the service of the Un- prove a gross wrong. It cannot be of law, to receive a strict construction erament.

The constitutionality of the act has act of Congress now before us to re- and trial, it would not protect him death or such other punishment as by to service, or a report by persons regbeen assailed on three grounds. The gard it as an attempt to over-ride against trial and punishment, by court sentence of court martial, shall be in- istered as deserters by provest marfirst of these is that it is an ex post State Constitutions, or to prescribe martial. Surely that is no trial by flicted." Other enactments have been shals, that would have been held justifacto law, imposing an additional pun- the qualifications of voters. The act due process of law the judgment in made at different times respecting the fying reasons by a court marrial, or ishment for an offence committed be makes no change in the organic law which is not final, decides nothing, but punishment to be inflicted for the os- at least would have prevented an apfore its passage, and altering the rules of the State. It leaves that as before, leaves the accused exposed to another fence. The punishment of death in time proval of the court's sentence. It is of evidence so as to require different to confer the right of suffrage as it trial in a different tribunal, and to the of peace was abolished in 1889. Corpo- well known, also, that some who were and less proof of guilt than was re-quired at the time of the perpetration of the crime. The second objection is him for violation of the Federal law, that the act is an attempt by Congress by deprivation of his citizenship of Congress to confer upon such a tribu- was itself repealed, "so far as it ap- their duties to the Government. To this section of the Constitution can- to regulate the right of suffrage in the the United States, but it leaves the nal, which is exclusively of State cre- plies to any enlisted soldier who shall hold that the act of Congress imposes this section of the Constitution can-not be abrogated or set aside by any Election Board on earth. We admit that a corrupt Legislature, which sat at Harrisburg last winter, passed an conviction by due process of law, and of erime. Each State defines for it- 193, which was an action for penal- tion, and it was declared that "such be attributing to the national legislathat it is therefore prohibited by the self what shall be the consequences of ties, declared to be recoverable as oth- soldier shall and may be tried by a ture an intention not warranted by

wipe out this clause; but in doing so, case, and giving to the enactment the which restricts the right of suffrage the judicial power of the United States act of March 3, 1862, which declared It follows that the judgment of the

confer this power upon any one, ex- to said service, or to report to the mous crime; unless on a presentment, If therefore the act of March 8, cept as provided in the Constitution. provost marshal within sixty days or indictment, of a grand jury, except 1865, really contemplates the inflicthen, if the party presents a subse-quent pardon, he can still vote. We hope the reader will carefully We hope the reader will carefully peruse the following opinion of the Supreme Court bearing upon the subet. The election officers should give penalty. And as it is the duty of all criminal prosecutions certain rights, But such is not the fair construction forming a system devised for the punevery court to construe a statute, if among which are a speedy and public of the enactment. It is not to be pre- ishment of descrition, that the 21st them, except for future cases. their undivided attention to this ques possible, so "ut res magis valcat, quam trial, by jury of the vicinage, informa- sumed that Congress intended to trans- section of the act of March 3d, 1864, tion, until they comprehend it in all pareat," that the construction of this tion of the nature and cause of the gress its powers, and especially is this was added. It refers plainly to preits bearings; because every violation act must be adopted which is in har- accusation, face to face presence with true when the act admits of another existing laws. It has the single ob- disunion candidate for Governor, GEAof this clause of the Constitution by a mony with the acknowledged powers the witnesses against him, compulso- construction entirely consonant with ject of increasing the penalties, but av, says in the "piece" he spoke at of this clause of the Constitution by a member of an election board will be prosecuted to the full extent of the local constitution of congress, and which applies the ry process for his own witnesses, and the assistance of counsel. The spirit what then is the true meaning? As already observed, forfeiture of citizenship to the new of these constitutional provisions is all the provisions is the true meaning? As already observed, forfeiture of citizenship to the new of the constitutional provisions is the true meaning? to service, or to report to the provost briefly that no person can be made to zenship is prescribed as a penalty for mon rules of destruction demanded such a thing, but they could, and we suffer for a criminal offence unless the desertion, an additional penalty; not that it be read as if it had been incor- do not deny that we did, call him a The second objection also assumes penalty be inflicted by due process of for an offence committed before the porated into former acts. And if it hireling, for he was one in every more than can be conceded. It is not law. What that is has been often demarshal. to be doubted that the power to regu- fined, but never better than it was desertion and failure to return or re- supplements had prescribed that the a commission to go into the army; late suffrage in a State, and to deter- both historically and critically by port. It is not a new consequence of penalty for desertion or failure to re- he hired a newspaper correspondent mine who shall or who shall not be a Judge Curtis of the Supreme Court of a penalty, but it is an integral part port within a designated time after to puff him into notoriety; and he descriter, brought suit against Huber, voter, belongs exclusively to the State the United States in Den cs Murray of the thing itself. Nor is it the notice of draft, (which the act of 1863 was hired with the abolition nominaan election officer, for refusing him his itself. The Constitution of the Uni- et al 18 Howard 272 vote. Huber was convicted, the case ted States confers no authority upon It ordinarily implies and includes a had previously enacted to be the pen- ed on conviction of the same, with party. In a life time he has done was taken to the Supreme Court, and Congress to prescribe the qualifica- complainant, a defendant and a judge, alty of descrition as imprisonment is forfeiture of citizenship and death, or nothing, except hide in the ditch at the case was affirmed, and Huber was to preserve the qualinear complainant, a defendant and a judge, any of deserved as imprisonment is forefuted of the latter, such other pun- Chepullepeo, but what he was hired States that compose the Federal answer, and a trial according to some fine. It must have been intended ishment as by the sentence of a court to do. And to-day, would the Democ. Henry Reilly was a citizen of the Union. Congress is indeed empow- settled course of judicial proceeding, therefore that it should be incurred martial may be inflicted, would any racy stoop so low, he could be hired United States, owed military service, cred to make regulations for the time, It must be admitted there are a few in the same way, and imposed by the one contend that any portion of this with the promise of being made seeplace and manner of holding elections exceptional cases. Prominent among same tribunal that was anthorized to punishment could be inflicted without retary of state, or even of being plafor Senators and Representatives, or these are summary proceedings to re- impose the same penalties for the of- conviction and sentence? Assuredly cod on Gov. Clymer's staff to desert and failing to appear, was duly regis-tered in the Provost Marshal's office as a deserter, having neither furnished as a deserter, having neither furnished a substitute nor paid commutation. We annex the opinion of the Su-preme Court in that case. It settles what any man of sense would under stand should be the law, THAT NO MAN 18 IN LAW A DESERTER fore, the act now under consideration UNTIL HE IS CONVICTED, AND THAT THE ONLY EVIDENCE OF DESERTION IS THE RECORD OF DESERTION IS THE RECORD prescribe the conditions upon which upon it. And I cannot persuade my-that right may be exercised, it must self that a judge of elections or a board sertion could be inflicted. The conse-is the true meaning of the act, a con-Opinion and Jadgment of the supreme be held unwarranted by the Constitu- of election officers, constituted under quences of conviction may be noticed straction that cannot be denied to it tion. In the exercise of its admitted State laws, is such a tribunal. I can in either courts, but tribunal appoint without losing sight of all the previ- has recently caught in his garden HUBBER VS. Error to the Court of Com- powers, Congress may doubtless de- not think they have power to try ted by the law for that purpose is the ous legislation respecting the same with twenty-four wide monthed bot-The act of Congress under which prive an individual of the opportunity criminal offenders, still less to adjudge only one that can determine whether subject matter, no part of which does they prive an individual of the opportunity filled with molasses and the defendant below justifies his refu-sal to receive the vote of the plaintiff sal to receive the vote of the plaintiff is the one approved on the 3d day of March, 1865. The twenty-first see-tion is the only one applicable to this case, and is as follows : case, and is as follows : "Asd is in function to the rederat Government, a voter may be imprisoned for a series of the country, and thus deprived of a person offering to vote, the mail in view. This is an admitted view. It gives to the accused a trial of the privilege of exercising his right; or a voter may be imprisoned for a whether he has paid taxes, and whethcrime against the United States, but er, if born an alien, he has a certificate long ago as Rex vs. Laxdale, 1 Bur- lenge, an opportunity of defence, the visit to their families, it is a perversion of language to call of naturalization. These things per- rows, 147, Lord Mansfied said, when privilege of hearing the witnesses this impairing his right of suffrage, tain to the ascertainment of a political speaking of acts of Parl ament, "that against him, and calling the witnesses no Butler says the rattlesnake is Congress may provide laws for the right. But whether he has been guil- all which relate to the same subject, in his behalf. It preserves to him the no brother of his. This announcenaturalization of aliens, or it may re ty of a criminal offence, and has as a notwithstanding some of them may be common law presumption of innocence ment is favorable to the snake --- Bosfuse to provide such laws. Its action consequence, forfeited his right, is an expired or not, notice must be taken until he has been adjudged guilty, ac- ton Post.

In the view which we take of this with us it is still our own Constitution one that Congress cannot vest any of ly's Dig. 89. The 13th section of the enactment.

they have violated the fundamental construction which we think properly and confers it upon those only who in the courts of any other government that any person failing to report after the court below, upon the case stated, law of their State, perjured them. belong to it, it is unnecessary to con- are inhabitants of the State and citi- or sovereignty. Martin vs. Hunter's due service of notice that he had been was right. The plaintiff not having

and inspectors of our respective elec- the penalty of forfeiture of citizenship a very grave one, if the act does in ly, if this is so, Congress cannot make sent to the nearest post for trial by been sentenced to the penalties and tion boards to commit the same crime. imposed upon those who had descried reality impose pains and penalties be- a board of State election officers com- court martial unless, upon proper show- forfeitures of the law was entitled to The mere fact of publishing the the military or naval service, prior to fore and without a conviction by due petent to try whether a person has ing that he is not liable to military du- a vote. name of a voter as a deserter, or non-for the original desertion, but for per-the amendments to the Constitution United States, and if they find him lieve him from the draft." reporting drafted man, does not dis- sistence in the crime, for failure (in ordains "that no person shall be held guilty to enforce a part of the pre-

To prevent a deserter from voting. If this is so, the act of forces, or in the militin, when in ac-tor be part of it without due process of law, the act of 1806 provided for general for believe it to an expost facto law. the Election Board must have the Congress is in no sense ex post facto, that service, in time of war or public or if it attempts to confer upon the election officers of a State the power energy regulations for their organiza- in respect to all soldiers, except such and it is not for that reason in conflict arrested, tried and convicted; and with the Constitution. Its operation ject for same offence to be twice put to determine whether there has been tion, for the conduct of their proceed. as commit the crime of desertion after

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issue his proclamation, and we know judicionally that this was done on the 11th of March, 1865. The act of Congress is highly penal. The act of Congress is highly penal. to an acquittal. It would not protect ited States, and shall be convicted of doubted that in some instances there But it is not a correct view of the him against a subsequent accusation having deserted the same, shall suffer were causes that prevented a return the infliction of such penalties. And er debts, the doctrine seems a plain court martial and punished " Bright- the language and connection of the

selves, and, in their carnival of infamy and disgrace, they call upon the judges and inspectors of our respective clear of our

All these acts of Congress manifestly contemplate trial for desertion in the above opinion, and in most of the courts martial, and the infliction of no reasonings by which that conclusion punishment or forfeiture except upon is reached. conviction or sentence of such courts.

The judgment is affirmed. WOODWARD, C. J.

I concur in the conclusion stated in

But I do not concur in treating the courts martial, and made minute and for I believe it to an ex post facto law, "HIMELINGS."-The negro suffrage

DECISION OF THE SUPREME COURT OF PENN'A ON THE DESERTER LAW. History of the Case.

In Franklin county, Pa., Reilly, a punished.

and was duly enrolled, drafted and notified, and refused to report himself;

OF HIS CONVICTION.

port themselves to a provost marshal within sixty days after the proclamation hereafter mentioned, days after the preclamation hereafter mentioned, shall be meened and takan to have voluntarily re-linquished and forcisted their rights of eliteenship and their rights to become eliteous; and such de-serier shall forever be incapable of holding any office of trast or profit under the United States, or of excretioning any rights of eliteous therefor, and all pursons who shall hereafter desert the military or maval service, and all persons who, being duly en-rolied, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of in which he is enrolled, or go beyond the limits of the United States, with intent to avoid any draft into the milling or naval service, duly ordered, shall be liable to the penalties of this section."

whole. It is added to what the law declares desertion) should be punish- tion for Governor, to betray his own

Inse to provide such laws. Its action consequence, forfeited ins right, is an expired or hot, notice must be taken until he has been adjudged guilty, as for Post. or non-action may thus determine inquiry of a different character. Nei-whether individuals shall or shall not ther our Constitution nor our law has become citizens of the United States conferred upon our jadges of elections And I cannot doubt that as a penalty any such judicial functions. They for crime against the General Govern- are not sworn to try criminal cases. a code of statues relating to one sub-for crime against the General Govern- are not sworn to try criminal cases.

It may be added that this construct millers, &c. The bottles were hung