

My name is Catherine M. Burns. I live in Falmouth and hold a PhD in US history. In 2021, I published an article in *Maine History* explaining why Maine decided to exclude the Articles of Separation—also known as Article X, Section 5—from printed copies of the Maine Constitution while also keeping Section 5 in “full force.” I am here to summarize my findings.

The fifth subsection of Article X, Section 5 contains Maine’s duty to uphold and defend Native treaties made with Massachusetts. I concluded that in 1875 Maine officials devised the redaction of Article X, Section 5 in hopes of evading costly outlays expected with a ruling on *Joseph Granger v. Peter Avery*, a Maine Supreme Judicial Court case heard in the April 1874 session. *Granger v. Avery* concerned an 1854 land dispute triggered by Joseph Granger, a lawyer, who claimed to own an island included in the Passamaquoddy Tribe’s 1794 treaty with Massachusetts.

In accordance with Article X, Section 5, Maine was obligated to pay Granger’s costs and damages should he win his case. It also required that Maine compensate the Passamaquoddy Tribe for fifteen treaty islands it would lose if Granger prevailed. Granger’s victory was all but assured. In 1870 the Maine Supreme Judicial Court ruled that government title was superior to aboriginal or Indian title. Granger’s title stemmed from a deed recorded by Massachusetts in 1794. In short, Joseph Granger was bound to win.

But the Governor of Maine’s call for constitutional amendments in January 1875 provided an opportunity for Maine to avoid payments. The governor named Frederick Pike, a lawyer associated with Joseph Granger, to the Constitutional Commission convened to devise amendments for the legislature’s consideration. Frederick Pike presented the proposed redaction of Article X, Section 5 in February 1875. The commission accepted it. I surmise that Pike took the opportunity to get the ball rolling on the redaction while a decision on *Granger v. Avery* was still pending. It’s important to note here that Granger had been waiting for the court to recognize his claim since 1855. I think Pike hoped to encourage the court to decide sooner on *Granger v. Avery* by making it less likely that its ruling would create a financial burden for the state.

Pike could not propose that Article X, Section 5 be deleted or that the fifth subsection containing Maine’s Native treaty duties be expunged. That’s because subsection 9 of Article X, Section 5 prohibits Maine from altering the Articles of Separation without the consent of Massachusetts and requires Maine to include the Articles in its constitution. To get around this, I am confident, Pike proposed keeping Article X, Section 5 in “full force” although not printed.

I cannot claim to know the thinking of the justices, but the Maine Supreme Judicial Court issued its rescript and decided in Granger’s favor shortly after the legislature agreed to put the redaction before voters. The voters approved the redaction—described as a codification amendment—on September 13, 1875. A month later, final judgment in *Granger v. Avery* was recorded, inclusive of Granger’s costs and damage. So, when the redaction took effect on January 1, 1876, Maine’s constitutional duty to pay Granger and to compensate the Passamaquoddy Tribe was conveniently hidden from view. Ultimately the state forced the Passamaquoddy Tribe to cover

Granger's costs and damages and Maine never paid the tribe for the islands. Based on the extant evidence, I concluded that redacting Article X, Section 5 was part of a plan to help Maine sidestep such financial obligations