

THURSDAY, JUNE 21, 1787.

JOURNAL

June 21. 1787.

The honorable Jonathan Dayton Esquire, a Deputy of the State of New Jersey, attended and took his seat

The following credentials were produced and read.
(here insert Mr Dayton's credentials).¹

It was moved and seconded to agree to the second resolution reported from the Committee, namely,

Resolved that the Legislature consist of
Two Branches.

which passed in the affirmative. [Ayes — 7; noes — 3;
divided — 1.]

It was moved and seconded to amend the first clause of the 3d resolution reported from the Committee so as to read

Resolved that the Members of the first branch of the Legislature ought to be appointed in such manner as the Legislature of each State shall direct

On the question to agree to the amendment
it passed in the negative [Ayes — 4; noes — 6; divided — 1.]

It was then moved and seconded to agree to the first clause of the third resolution as reported from the Committee, namely,

Resolved that the Members of the first branch of the Legislature ought to be elected by the People of the several States.²
which passed in the affirmative [Ayes — 9; noes — 1; divided — 1.]

¹ See Appendix B.

² There seems to have been no formal action to strike out the word "National" in the 3d Resolution. In Wilson's copy of the Resolutions of the Convention used by the committee of Detail; see *Records*, July 27 — August 4), in the 3d Resolution "of the United States" is inserted after "Legislature" and above the line.

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It was moved and seconded to erase the word

“three” from the second clause of the third resolution, reported from the Committee

which passed in the affirmative [Ayes — 7; noes — 3; divided — 1.]

It was moved and seconded to insert the word

“Two” in the second clause of the third resolution reported from the Committee.

which passed unanimously in the affirmative and then the House adjourned till to-morrow at 11 o’Clock. A. M.

DETAIL OF AYES AND NOES

	New Hampshire	Massachusetts	Rhode Island	Connecticut	New York	New Jersey	Pennsylvania	Delaware	Maryland	Virginia	North Carolina	South Carolina	Georgia	Questions	Ayes	Noes	Divided
[70]	aye		aye	no	no	aye	no	dd	aye	aye	aye	aye	aye	That the Legislature consist of Two Branches.	7	3	1
[71]	no		aye	no	aye	no	aye	dd	no	no	aye	no	no	To agree to Genl Pinckney’s amendmt that the first branch be elected as the State Legislatures shall direct	4	6	1
[72]	aye		aye	aye	no	aye	aye	dd	aye	aye	aye	aye	aye	That the first branch of the Legislature be elected by the People of the several States	9	1	1
[73]	aye		aye	no	dd	aye	no	no	aye	aye	aye	aye	aye	To strike out the word three in the 2nd clause of the 4 resolution	7	3	1

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Thursday June 21.* in Convention

Mr. Jonathan Dayton from N. Jersey took his seat.

Doctr. Johnson. On a comparison of the two plans which

*{ From June 21 to July 18 inclusive not copied by Mr. Eppes. }

³ Madison’s notes were loaned to Jefferson, whose son-in-law, George W. Eppes, evidently copied portions of them. See Appendix A, CCLXXV, CCLXXXIV, CCCXI, CCCXII, CCCXVI.

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had been proposed from Virginia & N. Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from Va. did not profess to destroy this individuality altogether, but was charged with such a tendency. One Gentleman alone (Col. Hamilton) in his animadversions on the plan of N. Jersey, boldly and decisively contended for an abolition of the State Govts. Mr. Wilson & the gentleman from Virga. who also were adversaries of the plan of N. Jersey held a different language. They wished to leave the States in possession of a considerable, tho' a subordinate jurisdiction. They had not yet however shewn how this cd. consist with, or be secured agst. the general sovereignty & jurisdiction, which they proposed to give to the national Government. If this could be shewn in such a manner as to satisfy the patrons of the N. Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shewn their objections would have their full force. He wished it therefore to be well considered whether in case the States, as was proposed, shd. retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the Genl. Govt., without giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils.

Mr. Wilson's respect for Dr. Johnson, added to the importance of the subject led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked how the genl. Govt. and individuality of the particular States could be reconciled to each other; and how the latter could be secured agst. the former? Might it not, on the other side be asked how the former was to be secured agst. the latter? It was generally admitted that a jealousy & rivalry would be felt between the Genl. & particular Govts. As the plan now stood, tho' indeed contrary to his opinion, one branch of the Genl. — Govt. (the Senate or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the Genl. Govt. would have

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an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the Genl. Govt. of defending itself by having an appointment of some one constituent branch of the State Govts. If a security be necessary on one side, it wd. seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States from the Genl. Govt. In case a combination should be made by the large ones it wd. produce a general alarm among the rest; and the project wd. be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any proposition in the National Legislature to encroach on the State Legislatures, he conceived a general alarm wd. take place in the National Legislature itself, that it would communicate itself to the State Legislatures, and wd. finally spread among the people at large. The Genl. Govt. will be as ready to preserve the rights of the States as the latter are to preserve the rights of individuals; all the members of the former, having a common interest, as representatives of all the people of the latter, to leave the State Govts. in possession of what the people wish them to retain. He could not discover, therefore any danger whatever on the side from which it had been apprehended. On the contrary, he conceived that in spite of every precaution the General Govt. would be in perpetual danger of encroachments from the State Govts.⁴

(Mr. Madison) was of opinion that there was 1. less danger of encroachment from the Genl. Govt. than from the State Govts. 2. that the mischief from encroachments would be less fatal if made by the former, than if made by the latter. 1. All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than to usurpations of the federal head. Our own experience had fully illustrated this tendency. — But it will be said that the proposed change in the principles & form of the Union will vary the tendency, that the Genl. Govt. will have real & greater powers, and will be

⁴ See further Appendix A, CXLII.

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derived in one branch at least from the people not from the Govts. of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the Gen'l Legislature, and the States reduced to corporations dependent on the Genl. Legislature; why shd. it follow that the Gen'l Govt. wd. take from the States (any)⁵ branch of their power as far as its operation was beneficial, and its continuance desirable to the people? In some of the States, particularly in Connecticut, all the Townships are incorporated, and have a certain limited jurisdiction. Have the Representatives of the people of the Townships in the Legislature of the State ever endeavored to despoil the Townships of any part of their local authority? As far as this local authority is convenient to the people they are attached to it; and their representatives chosen by & amenable to them (naturally) respect their attachment to this, as much as their attachment to any other right or interest: The relation of a Genl. Govt. to State Govts. is parallel. 2. Guards were more necessary agst. encroachments of the State Govts. — on the Genl. Govt. than of the latter on the former. The great objection made agst. an abolition of the State Govts. was that the Genl. Govt. could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not agst. the probable abuse of the general power, but agst. the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable it could not in this view be improper; as far as it would be impracticable, the conveniency of the Genl. Govt. itself would concur with that of the people in the maintenance of subordinate Governments. Were it practicable for the Genl. Govt. to extend its care to every requisite object without the cooperation of the State Govts. the people would not be less free as members of one great Republic than as members of thirteen small ones. A citizen of Delaware was not more free than a citizen of Virginia: nor would either

⁵ Crossed out "one".

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be more free than a citizen of America. Supposing therefore a tendency in the Genl. Government to absorb the State Govts. no fatal consequence could result. Taking the reverse of the supposition, that a tendency should be left in the State Govts. towards an independence on the General Govt. and the gloomy consequences need not be pointed out. The imagination of them, must have suggested to the States the experiment we are now making to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

On the question ⁶ for resolving “that the Legislature ought to consist of two Branches”

Mass ay. Cont. ay. N. Y. no. (N. Jersey no)⁷ Pa. ay. Del. no. Md. divid.⁸ Va. ay. N. C. ay. S. C. ay. Geo. ay [Ayes — 7; noes — 3; divided — 1.]

The *third* resolution ⁹ of the Report taken into consideration.

Genl. Pinkney moved “that the 1st. branch, instead of being elected by the people, shd. be elected in such manner as the Legislature of each State should direct.” He urged 1. that this liberty would give more satisfaction, as the Legislature could then accomodate the mode to the conveniency & opinions of the people. 2. that it would avoid the undue influence of large Counties which would prevail if the elections were to be made in districts as must be the mode intended by the Report of the Committee. 3. that otherwise disputed elections must be referred to the General Legislature which would be attended with intolerable expence and trouble to the distant parts of the republic.

Mr. L. Martin seconded the Motion.¹⁰

Col. Hamilton considered the motion as intended manifestly to transfer the election from the people to the State Legislatures, which would essentially vitiate the plan. It would increase that State influence which could not be too

⁶ See further Appendix A, CXXXVII, CLXVI, CCCXXXI.

⁷ “N. Jersey no” taken from *Journal*, which is confirmed by Yates to this extent that he records three votes in the negative.

⁸ Martin voted in the negative, see Appendix A, CLVIII (11, 37).

⁹ On the composition of the lower house.

¹⁰ See Appendix A, CXCI.

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watchfully guarded agst. All too must admit the possibility, in case the Genl. Govt. shd. maintain itself, that the State Govts. might gradually dwindle into nothing. The system therefore shd. not be engrafted on what might possibly fail.

Mr. Mason urged the necessity of retaining the election by the people. Whatever inconveniency may attend the democratic principle, it must actuate one part of the Govt. It is the only security for the rights of the people.

Mr. Sherman, would like an election by the Legislatures, best, but is content with plan as it stands.

Mr. Rutledge could not admit the solidity of the distinction between a mediate & immediate election by the people. It was the same thing to act by oneself, and to act by another. An election by the Legislature would be more refined than an election immediately by the people: and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts it is not to be supposed that such proper characters would have been preferred. The Delegates to Congs. he thought had also been fitter men than would have been appointed by the people at large.

Mr. Wilson considered the election of the 1st. branch by the people not only as the corner Stone, but as the foundation of the fabric: and that the difference between a mediate and immediate election was immense. The difference was particularly worthy of notice in this respect: that the Legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the Genl. Govt. and perhaps to that of the people themselves.

Mr. King enlarged on the same distinction. He supposed the Legislatures wd. constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that wd. be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the Gen'l. Govt. and mentioned particularly a competition between the National & State debts, for the most certain & productive funds.

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Genl. Pinkney was for making the State Govts. a part of the General System. If they were to be abolished, or lose their agency, S. Carolina & other States would have but a small share of the benefits of Govt.

On the question for Genl. Pinkney motion to substitute election of 1st branch in such mode as the Legislatures should appoint, in stead of its being elected by the people

Masst. no. Cont. ay. N. Y. no. N. J. ay. Pa. no. Del. ay. Md. divd. Va. no. N. C. no. S. C. ay Geo. no. [Ayes — 4; noes — 6; divided — 1.]

Genl. Pinkney then moved that the 1st. branch be elected *by the people* in such mode as the Legislatures should direct; but waved it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for ye election of the 1st branch by the *people*"

Massts. ay. Cont. ay. N. Y. ay. N. J. no. Pa. ay. Del. ay. Md. divd. Va. ay. N. C. ay. S. C. ay Geo. ay. [Ayes — 9; noes — 1; divided — 1.]

Election of the 1st. branch "for the term of three years," considered ¹¹

Mr. Randolph moved to strike out, "three years" and insert "two years" — he was sensible that annual elections were a source of great mischiefs in the States, yet it was the want of such checks agst. the popular intemperance as were now proposed, that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the U. S. and the inconveniency which would result from them to the representatives of the extreme parts of the Empire. The people were attached to frequency of elections. All the Constitutions of the States except that of S. Carolina, had established annual elections.

Mr. Dickenson. The idea of annual elections was borrowed from the antient usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial: and in order to prevent the incon-

¹¹ Upon this question see above June 12, and for the debate following, with the final determination of the question, see Appendix A, CLXVIII,

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venience of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.

Mr. Elsworth was opposed to three years. supposing that even one year was preferable to two years. The people were fond of frequent elections and might be safely indulged in one branch of the Legislature. He moved for 1 year.

Mr. Strong seconded & supported the motion.

Mr. Wilson being for making the 1st. branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar & pleasing to the people. It would be not more inconvenient to them, than triennial elections, as the people in all the States have annual meetings with which the election of the National representatives might be made to coincide. He did not conceive that it would be necessary for the Natl. Legisl: to sit constantly; perhaps not half — perhaps not one fourth of the year.

Mr. M(adison) was persuaded that annual elections would be extremely inconvenient and apprehensive that biennial would be too much so: he did not mean inconvenient to the electors; but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expences. Besides, none of those who wished to be re-elected would remain at the seat of Governmt. confiding that their absence would not affect them. The members of Congs. had done this with few instances of disappointment. But as the choice was here to be made by the people themselves who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a Rival candidate than the Legislatures had been, it must be supposed that the members from the most distant States would travel backwards & forwards at least as often as the elections should be repeated. Much was to be said also on the time requisite for new members who would always form a large proportion, to acquire that knowledge of the affairs of the States in general without which their trust could not be usefully discharged.

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Mr. Sherman preferred annual elections, but would be content with biennial. He thought the representatives ought to return home and mix with the people. By remaining at the seat of Govt. they would acquire the habits of the place which might differ from those of their Constituents.

Col. Mason observed that the States being differently situated such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual the middle States would have a great advantage over the extreme ones. He wished them to be biennial; and the rather as in that case they would coincide with the periodical elections of S. Carolina as well as of the other States.

Coll. Hamilton urged the necessity of 3 years. there ought to be neither too much nor too little dependence, on the popular sentiments. The checks in the other branches of Governmt. would be but feeble, and would need every auxiliary principle that could be interwoven. The British House of Commons were elected septennially, yet the democratic spirit of ye Constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the States. In Virga. it had been lately found necessary to force the attendance & voting of the people by severe regulations.

On the question for striking out "three years"

Massts. ay. Cont. ay. N. Y. no. N J. divd. Pa. ay. Del. no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 7; noes — 3; divided — 1.]

The motion for "two years." was then inserted nem. con.

Adjd.¹²

YATES

THURSDAY, JUNE 21st, 1787.

Met pursuant to adjournment. Present 11 states.

Dr Johnson — It appears to me that the Jersey plan has for its principal object, the preservation of the state govern-

¹² See further Appendix A, XLVII.

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ments. So far it is a departure from the plan of Virginia, which although it concentrates in a distinct national government, it is not totally independent of that of the states. A gentleman from New-York, with boldness and decision, proposed a system totally different from both; and though he has been praised by every body, he has been supported by none. How can the state governments be secured on the Virginia plan? I could have wished, that the supporters of the Jersey system could have satisfied themselves with the principles of the Virginia plan and that the individuality of the states could be supported. It is agreed on all hands that a portion of government is to be left to the states. How can this be done? It can be done by joining the states in their legislative capacity with the right of appointing the second branch of the national legislature, to represent the states individually.

Mr. Wilson. If security is necessary to preserve the one, it is equally so to preserve the other. How can the national government be secured against the states? Some regulation is necessary. Suppose the national government had a component number in the state legislature? But where the one government clashed with the other, the state government ought to yield, as the preservation of the general interest must be preferred to a particular. But let us try to designate the powers of each, and then no danger can be apprehended nor can the general government be possessed of any ambitious views to encroach on the state rights.

Mr. Madison. I could have wished that the gentleman from Connecticut had more accurately marked his objections to the Virginia plan. I apprehended the greatest danger is from the encroachment of the states on the national government—This apprehension is justly founded on the experience of ancient confederacies, and our own is a proof of it.¹³

The right of negating in certain instances the state laws, affords one security to the national government. But is the danger well founded? Have any state governments ever encroached on the corporate rights of cities? And if

¹³ Cf. Genet's interpretation of this speech in Appendix A, CCCX.

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it was the case that the national government usurped the state government, if such usurpation was for the good of the whole, no mischief could arise. — To draw the line between the two, is a difficult task. I believe it cannot be done, and therefore I am inclined for a general government.

If we cannot form a general government, and the states become totally independent of each other, it would afford a melancholy prospect.

The 2d resolve was then put and carried — 7 states for — 3 against — one divided. New-York in the minority.

The 3d resolve was then taken into consideration by the convention.

Mr. Pinkney. I move *that the members of the first branch be appointed in such manner as the several state legislatures shall direct*, instead of the mode reported. If this motion is not agreed to, the other will operate with great difficulty, if not injustice — If you make district elections and join, as I presume you must, many counties in one district, the largest county will carry the election as its united influence will give a decided majority in its favor.

Mr. Madison. I oppose the motion — there are difficulties, but they may be obviated in the details connected with the subject.

Mr. Hamilton. It is essential to the democratic rights of the community, that this branch be directly elected by the people. Let us look forward to probable events — There may be a time when state legislatures may cease, and such an event ought not to embarrass the national government.

Mr. Mason. I am for preserving inviolably the democratic branch of the government — True, we have found inconveniencies from pure democracies; but if we mean to preserve peace and real freedom, they must necessarily become a component part of a national government. Change this necessary principle, and if the government proceeds to taxation, the states will oppose your powers.

Mr. Sherman thought that an amendment to the proposed amendment is necessary.

Gov. Rutledge. It is said that an election by represen-

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tatives is not an election by the people. This proposition is not correct. What is done by my order is done by myself. I am convinced that the mode of election by legislatures will be more refined, and better men will be sent.

Mr. Wilson. The legislature of the states by the proposed motion will have an uncontrollable sway over the general government. Election is the exercise of *original* sovereignty in the people — but if by representatives, it is only *relative* sovereignty.

Mr. King. The magistrates of the states will ever pursue schemes of their own, and this, on the proposed motion, will pervade the national government — and we know the state governments will be ever hostile to the general government.

Mr. Pinkney. All the reasoning of the gentlemen opposed to my motion has not convinced me of its impropriety. There is an *esprit de corps* which has made heretofore every *unfederal* member of congress, after his election, become strictly *federal*, and this I presume will ever be the case in whatever manner they may be elected.

Question put on Mr. Pinkney's motion and carried by 6 states against 4 — one divided.

Question then put on the resolve — 9 states for — 1 against — one divided.

Gov. Randolph. I move that in the resolve for the duration of the first branch of the general legislature, the word *three* be expunged, and the words *two years* be inserted.

Mr. Dickinson. I am against the amendment. I propose that the word *three* shall remain, but that they shall be removable annually in classes.

Mr. Sherman. I am for one year. Our people are accustomed to annual elections. Should the members have a longer duration of service, and remain at the seat of government, they may forget their constituents, and perhaps imbibe the interest of the state in which they reside, or there may be danger of catching the *esprit de corps*.

Mr. Mason. I am for two years. One year is too short. — In extensive states four months may elapse before the returns can be known, Hence the danger of their remaining too long unrepresented.

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Mr. Hamilton. There is a medium in every thing. I confess three years is not too long — A representative ought to have full freedom of deliberation, and ought to exert an opinion of his own. I am convinced that the public mind will adopt a solid plan — The government of New-York, although higher toned than that of any other state, still we find great listlessness and indifference in the electors; nor do they in general bring forward the first characters to the legislature. The public mind is perhaps not now ready to receive the best plan of government, but certain circumstances are now progressing which will give a different complexion to it.

Two years duration agreed to.

Adjourned till to-morrow morning.

KING

20 [21] June

Johnson — The Gentleman from NYk is praised by every gentleman, but supported by no gentleman — He goes directly to ye abolition of the State Governts. and the erection of a Genl. Govt. — All other Gentlemen agree that the national or Genl. Govt. shd. be more powerful — & the State Govts. less so. Provision is made in the Virginia Project to secure the Genl. Govt: but no provision is made for the security of the State Government — The plan from N Jersey provides for the security of the State & Genl. Govt. — If the advocates for the Genl. Govt. agreeably to the Virgin. Plan can show that the State Govts. will be secure from the Genl. Govt. we may all agree —

Wilson — We have provided that the States or yr. Legislatures shall appt. a Brh. of the national Govt. let the Natl. Govt. have a reciprocal power to elect or appoint one Br. of each State Govt — I dont see how the State Govts will be endangered — what power will the states possess, which the Genl. Govt. will wish to possess? their powers if added wd. not be of any considerable consequence — the attempt, how-

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ever to acquire these powers wd. alarm the Citizens, who gave them to the States individually, and never intended them for the Genl. Govt. — The people wd. not suffer it —

Madison — The history of antient Confedys. proves that there never has existed a danger of the destruction of the State Govts. by encroachments of the Genl. Govts the converse of the proposition is true — I have therefore been assiduous to guard the Genl. from the power of the State Governments — the State Govts. regulate the conduct of their Citizens, they punish offenders — they cause Justice to be administered and do those arts wh endear the Govt. to its Citizens. The Citizens will not therefore suffer the Genl. Govt. to injure the State Govts —

The Convention agreed yt the Legislature shd. consist of two Brs —

The Delegates of So. Car. moved yt. the Election of the Members of the House shd. be agreeable to such mode as the several Legislatures shd. judge proper —

Wilson & Madison

Agt. the Election by the Legislatures and in favor of one by the People — the Election by the States will introduce a State Influence, their interest will oppose yt of the Genl. Govt: the Legislators will be not only Electors of the members of the House, — but they will manage the affairs of the States — The mode of Election may be essential to the Election, this may be different in the several States — if the Legislatures apt. they will instruct, and thereby embarrass the Delegate — not so if the Election is by the people — there will be no difficulty in yr. Election. the Returns may be made to the Legislatures of the several States — They may judge of contested Elections — On the Quest. 4 ay 1 divid. 6 no —

Question whether the Members of the House shd. hold yr. Office three or two years —

Dickerson — annual Elections are favorite ideas in America —

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it suits Eng. they are a small Country — Annual or biennial or triennial are too short for America — I wd. agree on classing the house — let the Election be for 3 yrs and $\frac{1}{3}$ go out & come in annually —

Elsworth & Strong — The fixed habit throughtout our country except So. Carolina is in favor of annual Elections —

Wilson — Agrees in annual Elections —

Mason — I dont see but that an annual Election will give an advantage to some States over the others — in Virginia & Georgia from the sparse and remote situation of the Inhabitants, we cd. not ascertain the persons elected under three years — The States wh are most compact will be first on the Floor and those of the extensive States will be absent — Remark let the election be previous three or 6 months to the time of meeting —

Hamilton — I prefer three years to a longer or shorter duration — three soon becomes two & two one — The Dependence is sufficient, & the independence is as little as it ought to be — ¹⁴

HAMILTON ¹⁵

Mr. Pinckney is of opinion that the first branch ought to be appointed in such manner as the legislatures shall direct

Impracticable for general legislature to decide contested elections —

¹⁴ [Endorsed] 20 June | 1 or 2 Branches? | Election of Reps by whom?

¹⁵ This note is on the same sheet as the notes ascribed to June 19, but it probably refers to General Pinckney's remarks of this date.