

THURSDAY, SEPTEMBER 6, 1787.

JOURNAL

Thursday September 6 — 1787.

It was moved and seconded to insert the following words after the words “may be entitled in the Legislature” in the 5. clause of the report entered on the Journal of the 4th instant.

“But no Person shall be appointed an Elector who is a “Member of the Legislature of the United States or who “holds any office of profit or trust under the United States” which passed in the affirmative

It was moved and seconded to insert the word “seven” instead of “four” in the fourth clause of the report.

which passed in the negative [Ayes — 3; noes — 8.]<sup>1</sup>

It was moved and seconded to insert the word “six” instead of “four”

which passed in the negative [Ayes — 2; noes — 9.]<sup>2</sup>

[To agree to the word “four” Ayes — 10; noes — 1.

To agree to the clause respectg Presidt & V. Presidt Ayes — 10; noes — 1.

To agree to the appointment of Electors. Ayes — 9; noes — 2.]<sup>3</sup>

It was moved and seconded to insert the words “under the seal of the State” after the word “transmit” in the sixth clause of the report

which passed in the negative.

[To agree to Ayes — 10; noes — 1.

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<sup>1</sup> Vote 453, Detail of Ayes and Noes.

<sup>2</sup> Vote 454, Detail of Ayes and Noes.

<sup>3</sup> Votes 455-457, Detail of Ayes and Noes. From this point on in this day's records it seems hopeless to determine the order of questions and votes. The editor has tried simply to remove some of the confusion by assigning votes from Detail of Ayes and Noes to their respective questions, and distributing the balance as seems probable.

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The person having the greatest number of votes shall be the President Ayes — 8; noes — 2; divided — 1

Provided that number be a majority of the

Ayes — 8; noes — 3.]<sup>4</sup>

It was moved and seconded to insert the words “and who shall have given their votes” after the word “appointed” in the 7 clause of the report.

which passed in the negative. [Ayes — 5; noes — 6.]<sup>5</sup>

[ Ayes — 10; noes — 1.]<sup>6</sup>

It was moved and seconded to insert the words “in presence of the Senate and House of representatives” after the word “counted”

which passed in the affirmative

It was moved and seconded to insert the word “immediately” before the word “choose”

which passed in the affirmative [Ayes — 9; noes — 2.]<sup>7</sup>

[and that not less than  $\frac{3}{4}$  of the whole number of Senators be present — (In presence of the S & Ho of representatives)

Ayes — 6; noes — 4.]<sup>8</sup>

It was moved and seconded to insert the words “of the Electors” after the word “votes”

which passed in the affirmative [Ayes — 11; noes — 0.]<sup>9</sup>

It was moved and seconded to agree to the following clause

“That the Electors meet at the seat of the general Government”

which passed in the negative. [Ayes — 1; noes — 10.]<sup>10</sup>

It was moved and seconded to agree to the following clause “But The election shall be on the same day throughout the United States” after the words “transmitting their votes”

which passed in the affirmative [Ayes — 8; noes — 3.]<sup>11</sup>

It was moved and seconded to strike out the words “The

<sup>4</sup> Vote 459-461, Detail of Ayes and Noes.

<sup>5</sup> Vote 462, Detail of Ayes and Noes.

<sup>6</sup> Vote 463, Detail of Ayes and Noes. Probably is the same as Madison reports on eventual choice of President by Senate.

<sup>7</sup> Vote 470, Detail of Ayes and Noes, probably belongs here although the wording is slightly different.

<sup>8</sup> Vote 464, Detail of Ayes and Noes.

<sup>9</sup> Vote 467, Detail of Ayes and Noes, probably belongs here.

<sup>10</sup> Vote 458, Detail of Ayes and Noes.

<sup>11</sup> Vote 468, Detail of Ayes and Noes.

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Senate shall immediately choose by ballot” &ca and to insert the words “The House of representatives shall immediately choose by ballot one of them for President, the Members from each State having one vote”

which passed in the affirmative [Ayes — 10; noes — 1.]<sup>12</sup>

[Ho of representatives to elect Ayes — 8; noes — 3.]<sup>13</sup>

It was moved and seconded to agree to the following amendment

“But a quorum for this purpose shall consist of a Member “or Members from two thirds of the States”

which passed in the affirmative [“Unanimous”]<sup>14</sup>

On the question to agree to the following amendment

“and also of a Majority of the whole number of the House of representatives”

it passed in the negative [Ayes — 5; noes — 6.]<sup>15</sup>

[and in every case after the choice of the Presidt the Person having the greatest number of votes Ayes — 10; noes — 1.]<sup>16</sup>

The several amendments being agreed to, on separate questions,

The first sect. of the report is as follows.

“He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected in the following manner.

Each State shall appoint, in such manner as it’s legislature may direct, a number of Electors equal to the whole number of Senators and Members of the House of representatives to which the State may be entitled in the Legislature.

“But no Person shall be appointed an Elector who is a member of the Legislature of the United States, or who holds “any office of profit or trust under the United States.

The Electors shall meet in their respective States and “vote by ballot for two Persons of whom one at least shall “not be an inhabitant of the same State with themselves. — “and they shall make a list of all the Persons voted for, and “of the number of votes for each, which list they shall sign

<sup>12</sup> Vote 465, Detail of Ayes and Noes.

<sup>14</sup> Vote 471, Detail of Ayes and Noes.

<sup>13</sup> Vote 469, Detail of Ayes and Noes.

<sup>15</sup> Vote 472, Detail of Ayes and Noes.

<sup>16</sup> Vote 466, Detail of Ayes and Noes.



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“and certify, and transmit sealed to the seat of the general Government, directed to the President of the Senate.

“The President of the Senate shall in the presence of the Senate and House of representatives open all the certificates and the votes shall then be counted.

The Person having the greatest number of votes shall be the President (if such number be a majority of the whole number of the Electors appointed) and if there be more than one who have such majority, and have an equal number of votes, then the House of representatives shall immediately choose by ballot one of them for President, the representation from each State having one vote — But if no Person have a majority, then from the five highest on the list, the House of representatives shall, in like manner, choose by ballot the President — In the choice of a President by the House of representatives a quorum shall consist of a Member or Members from two thirds of the States. and the concurrence of a majority of all the States, shall be necessary to such choice. — and, in every case after the choice of the President, the Person having the greatest number of votes of the Electors shall be the vice-President: But, if there should remain two or more who have equal votes, the Senate shall choose from them the Vice President”

“The Legislature may determine the time of chusing the Electors and of their giving their votes: and the manner of certifying and transmitting their votes — But the election shall be on the same day throughout the United States”

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Thursday Sepr. 6. 1787 — In Convention

Mr. King and Mr. Gerry moved to insert in the (5) clause of the Report (see Sepr 4) after the words “may be entitled in the Legislature” the words following — “But no person shall be appointed an elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.” which passed nem: con:

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Mr. Gerry proposed, as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature— This he said would relieve the President from his particular dependence on the Senate for his continuance in office.

Mr. King liked the idea, as calculated to satisfy particular members & promote unanimity; & as likely to operate but seldom.

Mr Read opposed it, remarking that if individual members were to be indulged, alterations would be necessary to satisfy most of them—

Mr Williamson espoused it as a reasonable precaution against the undue influence of the Senate.

Mr Sherman liked the arrangement as it stood, though he should not be averse to some amendments. He thought he said that if the Legislature were to have the eventual appointment instead of the Senate, it ought to vote in the case by States, in favor of the small States, as the large States would have so great an advantage in nominating the candidates—

Mr. Govr Morris thought favorably of Mr. Gerry's proposition. It would free the President from being tempted in naming to Offices. to Conform to the will of the Senate, & thereby virtually give the appointments to office, to the Senate.

Mr Wilson said that he had weighed carefully the report of the Committee for remodelling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate, They will have in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others the offices of the Judiciary Department. They are to make Treaties; and they are to try all impeachments. In allowing them thus to make the Executive & Judiciary appointments, to be the Court of impeachments, and to make Treaties which are to be laws of the land, the Legislative, Executive & Judiciary

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powers are all blended in one branch of the Government. The power of making Treaties involves the case of subsidies, and here as an additional evil, foreign influence is to be dreaded— According to the plan as it now stands, the President will not be the man of the people as he ought to be, but the Minion of the Senate. He cannot even appoint a tide-waiter without the Senate— He had always thought the Senate too numerous a body for making appointments to office. The Senate, will moreover in all probability be in constant Session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate sitting in Conclave, can by holding up to their respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves— Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of Which they make a part—<sup>17</sup>

Mr. Govr. Morris expressed his wonder at the observations of Mr. Wilson so far as they preferred the plan in the printed Report to the new modification of it before the House, and entered into a comparative view of the two, with an eye to the nature of Mr. Wilsons objections to the last. By the first the Senate he observed had a voice in appointing the President out of all the Citizens of the U. S. — by this they were limited to five candidates previously nominated to them, with a probability of being barred altogether by the successful ballot of the Electors. Here surely was no increase of power. They are now to appoint Judges nominated to them by the President. Before they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make Treaties as the plan now stands, the power was the same in the printed plan—

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<sup>17</sup> See Appendix A, CXLIX.

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If they are to try impeachments, the Judges must have been triable by them before. Wherein then lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House, was opposed to the exercise of it by the President alone; though it was not the case with himself — If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

Mr. Williamson. (replying to Mr. Morris: observed that)<sup>18</sup> The aristocratic complexion proceeds from the change in the mode of appointing the President which makes him dependent on the Senate.

Mr. Clymer<sup>19</sup> said that the aristocratic part to which he could never accede was that in the printed plan, which gave the Senate the power of appointing to Offices.

Mr. Hamilton said that he had been restrained from entering into the discussions by his dislike of the Scheme of Govt in General; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this the President was a Monster elected for seven years, and ineligible afterwards; having great powers, in appointments to office, & continually tempted by this constitutional disqualification to abuse them in order to subvert the Government — Although he should be made re-eligible, Still if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office — It seemed peculiarly desirable therefore that Some other mode of election should be devised. Considering the different views of different States, & the different districts Northern Middle & Southern, he con-

<sup>18</sup> Probably but not certainly a later insertion.

<sup>19</sup> Crossed out "observed that the parts of the Report ought to be regarded as distinct".

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curred with those who thought that the votes would not be centered, and that the appointment would consequently in the present mode devolve on the Senate. The nomination to offices will give great weight to the President — Here then is a mutual connection & influence, that will perpetuate the President, and aggrandize both him & the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. Spaight & Mr. Williamson moved to insert “seven” instead of “four” years for the term of the President —\*

On this motion

N. H. ay. Mas. no. Ct. no— N. J. no— Pa no. Del— no. Md. no. Va. ay. N. C— ay. S. C. no. Geo— no. [Ayes — 3; noes — 8.]

Mr. Spaight & Mr. Williamson then moved to insert “six” instead of “four”. On which motion

N. H. no. Mas. no. Ct no. N. J. no. Pa. no. Del. no. Md. no. Va. no, N. C— ay. S. C. ay— Geo. no [Ayes — 2; noes — 9.]

On the term “four” all the States were ay, except N. Carolina, no.

On the question ((Clause 4. in the Report)) for Appointing President by electors — down to the words, — “entitled in the Legislature” inclusive. ”See

N. H— ay— Mas: ay. (Cont: ay)<sup>20</sup> N. J. ay— Pa. ay. Del— ay. Md ay, Va ay. N. C. no— S— C— no— Geo— ay. [Ayes — 9; noes — 2.]

(It was moved that the Electors meet at the seat of the Genl. Govt. which passed in the Negative. N. C. only being ay.)<sup>21</sup>

\* An ineligibility wd. have followed (tho' it wd. seem from the vote not in the opinion of all.) this prolongation of the term.

<sup>20</sup> Taken from *Journal*.

<sup>21</sup> Taken from *Journal*. Madison is in error in copying this here, as he has the same question and vote in his own records a little farther on.

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It was moved to insert the words "under the seal of the State" after the word "transmit" (in 4th clause of the Report) which was disagreed to; as was another motion to insert the words "and who shall have given their votes" after the word "appointed" (in the 4th Clause of the Report) as added yesterday on motion of Mr. Dickinson.

On several motions. the words "in presence of the Senate and House of Representatives" were inserted after the word "Counted" and the word "immediately" before the word "choose"; and the words "of the Electors" after the word "votes".

Mr. Spaight said if the election by Electors is to be crammed down, he would prefer their meeting altogether and deciding finally without any reference to the Senate and moved "That the Electors meet at the seat of the General Government—"

Mr Williamson 2ded. the motion, on which all the States were in the negative except N: Carolina.

On motion the words "But the election shall be on the same day throughout the U—S—" were added after the words "transmitting their votes." N. H. ay. Mas. no. Ct. ay. N. J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [Ayes — 8; noes — 3.]<sup>22</sup>

On a question on the sentence in clause (4). "if such number be a majority of that of the electors" (appointed.)

N— H— ay— Mas. ay. Ct ay. N. J. ay— Pa no— Del— ay. Md. ay. Va no— N. C. no. S— C. ay Geo. ay. [Ayes — 8; noes — 3.]

On a question on the clause referring the eventual appointment of the President to the Senate

N— H— ay. Mas. ay. Ct. ay. N. J. ay. Pa ay. Del— ay— Va ay. N. C. no Here the call ceased.

Mr Madison made a motion requiring  $\frac{2}{3}$  at least of the Senate to be present at the choice of a President— Mr. Pinkney 2ded, the motion

Mr. Gorham thought it a wrong principle to require more than a majority in any case. In the present case it might

<sup>22</sup> It is possible that this vote was copied from *Journal*.

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prevent for a long time any choice of a President On the question moved by Mr M— & Mr. P.

N. H. ay: Mas. abst Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. ay. N— C. ay. S— C. ay. Geo. ay [Ayes — 6; noes — 4; absent — 1.]

Mr. Williamson suggested as better than an eventual choice by the Senate, that this choice should be made by the Legislature, voting *by States* and not *per capita*.

Mr. Sherman suggested the House of Reps. as preferable to “the Legislature”, and moved, accordingly,

To strike out the words “The Senate shall immediately choose &c.” and insert “The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote.”

Col: Mason liked the latter mode best as lessening the aristocratic influence of the Senate.

On the motion of Mr. Sherman

N. H. ay. Mas. ay— Ct. ay— N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N— C. ay— S— C. ay. Geo. ay, [Ayes — 10; noes — 1.]

Mr. Govr Morris suggested the idea of providing that in all cases, the President in office, should not be one of the five Candidates; but be only re-eligible in case a majority of the electors should vote for him— (This was another expedient for rendering the President independent of the Legislative body for his continuance in office)

Mr. Madison remarked that as a majority of members wd. make a quorum in the H— of Reps. it would follow from the amendment of Mr Sherman giving the election to a majority of States, that the President might be elected by two States only, Virga. & Pena. which have 18 members, if these States alone should be present

On a motion that the eventual election of Presidt. in case of *an equality* of the votes of the electors be referred to the House of Reps.

N. H. ay. Mas. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay. N— C. ay. S. C. ay— Geo— ay, [Ayes — 8; noes — 3.]

Mr. King moved to add to the amendment of Mr. Sherman

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“But a quorum for this purpose shall consist of a member or members from two thirds of the States,” and also of a majority of the whole number of the House of Representatives.”

Col Mason liked it as obviating the remark of Mr Madison — The motion as far as “States” inclusive was agd. to

On the residue to art. — “and also of a majority of the whole number of the House of Reps. (it passed in the Negative)

N. H. no. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. no. Md. no. Va. ay— N— C— ay— S— C— no— Geo— no. [Ayes — 5; noes — 6.]

The Report relating to the appointment of the Executive stands as amended, as follows,<sup>23</sup>

“He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner.

Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature:

But no person shall be appointed an Elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.

The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the Seat of the General Government, directed to the President of the Senate.

The President of the Senate shall in the presence of the Senate and House of Representatives open all the certificates & the votes shall then be counted.

<sup>23</sup> Upon the method of electing the president, see above June 1-2, June 9, July 17-26, August 24, September 4-5, also (mainly on the compromise) Appendix A, XLI, CXXXVII, CLII, CLVIII (74-77), CLXXIII, CXCVIII, CCXIII, CCXV, CCXXII, CCXXVII, CCXXXIV, CCLXIII, CCLXXXVI, CCLXXXVIII, CCXCI, CCC, CCCII, CCCIII, CCCV, CCCXVIII, CCCXLV-CCCXLIX, CCCLII.

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The person having the greatest number of votes shall be the President (if such number be a majority of the whole number of electors appointed) and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, the Representation from each State having one vote— But if no person have a majority, then from the five highest on the list, the House of Representatives shall in like manner choose by ballot the President— In the choice of a President by the House of Representatives, a Quorum shall consist of a member or members from two thirds of the States, (\* and the concurrence of a majority of all the States shall be necessary to such choice— )—And in every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the vice-president: But, if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President.

The Legislature may determine the time of choosing the Electors, and of their giving their votes; and the manner of certifying and transmitting their votes — But the election shall be on the same day throughout the U— States.”

Adjourned <sup>25</sup>

\* Note. this clause was not inserted on this day, but on the 7th Sepr. See Friday the 7th <sup>24</sup>

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*Sepr. 6.*

Spoke to Gov Morris Fitzimmons and Mr Goram to insert a power in the confederation enabling the legislature to erect piers for protection of shipping in winter and to preserve the navigation of harbours — Mr Gohram against. The other two gentlemen for it — Mr Gov: thinks it may be done under the words of the 1 clause 1 sect 7 art. amended — “and provide for the common defence and general welfare. — If this

<sup>24</sup> This may be a later insertion.<sup>25</sup> See further, Appendix A, CIII.

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comprehends such a power, it goes to authorise the legisl. to grant exclusive privileges to trading companies etc.

Mr. Willson remarked on the report of the committee considered together That it presented to him a most dangerous appearance. He was not affraid of names — but he was of aristocracy.

What was the amount of the report.

1. The Senate in certain events, (which by such management as may be expected would always happen —) is to chuse the President.

2. The Senate may make treaties and alliances.

3 They may appoint almost all officers.

4 May try impeachments.

Montesqu— says, an officer is the officer of those who appoint him. This power may in a little time render the Senate independent of the people.

The different branches should be independent of each other. They are combined and blended in the Senate.

The Senate may exercise, the powers of legislation, and Executive and judicial powers. To make treaties legislative, to appoint officers Executive for the Executive has only the nomination — To try impeachments judicial. If this is not ARISTOCRACY I know not what it is.

Gov. Morris observed that the report had lessened not increased the powers of the Senate. That their powers were greater in the printed paper.

Col Hamilton.

In general the choice will rest in the Senate — take this choice from them and the report is an improvement on the printed paper.

In the printed paper a destroying monster is created. He is not re eligible, he will therefore consider his 7 years as 7 years of lawful plunder. Had he been made re eligible by the legislature, it would not have removed the evil, he would have purchased his re election.

At present the people may make a choice — but hereafter it is probable the choice of a president would centre in the Senate.

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As the report stands — the President will use the power of nominating to attach the Senate to his interest. He will act by this means continually on their hopes till at length they will boeth act as one body. Let the election of the president be confined to electors, and take from the Senate the power to try impeachments, and the report will be much preferable to the printed paper.

He does not agree with those persons who say they will vote against the report because they cannot get all parts of it to please them — He will take any system which promises to save America from the dangers with which she is threatened. —

The report amended by placing the choice of the President in the house of representatives, each State having one vote.

Adjourned.