

TUESDAY, AUGUST 14, 1787.

JOURNAL

Tuesday August 14. 1787.

It was moved and seconded to postpone the consideration of the 9. section of the 6 article in order to take up the following

“The members of each House shall be incapable of holding any Office under the United States for which they, or any other for their benefit, receive any salary, fees, or emoluments of any kind — and the acceptance of such office shall vacate their seats respectively”

which passed in the negative. [Ayes — 5; noes — 5; divided — 1.]

It was moved and seconded to amend the 9 section of the 6 article by adding the following clause after the words “be elected”

“except in the army or navy thereof, but in that case their seats shall be vacated”

Before the question was taken on the last amendment

It was moved and seconded to postpone the consideration of the 9th section of the 6 article until the powers to be vested in the Senate are ascertained

which passed unanimously in the affirmative

It was moved and seconded to strike out the latter clause of the 10 sect. of the 6 article and to insert the following

“to be paid out of the Treasury of the United States”

which passed in the affirmative [Ayes — 9; noes — 2.]

It was moved and seconded to agree to the following amendment to the 10 sect. of the 6 article

“five dollars or the present value thereof per diem during their attendance & for every thirty miles travel in going to and returning from Congress”

which passed in the negative [Ayes — 2; noes — 9.]

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It was moved and seconded to agree to the following amendment to the 10th sect. of the 6 article

“to be ascertained by law”

which passed in the affirmative

On the question to agree to the 10 section of the 6 article as amended it passed 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
[291]	aye	no		no	no	aye	aye	aye	aye	aye	no	no	dd	To postpone the considn of the 9 sect. of the 6 article	5	5	1
[292]	aye	no		aye	aye	aye	aye	aye	aye	aye	no	aye		To be paid out of the Treasury of the United States.	9	2	
[293]	no	no		aye	no	no	no	no	aye	no	no	no		To agree to five dollars per diem	2	9	

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Tuesday Aug. 14. In Convention

Article VI. sect. 9. taken up.¹

Mr. Pinkney argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the Legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a School of Public Ministers, a nursery of Statesmen: that it was *impolitic*, because the Legislature would cease to be a magnet to the first talents

¹ Article VI, Sect. 9. “The members of each House shall be ineligible to, and incapable of holding any office under the authority of the United States; during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.”

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and abilities. He moved (to postpone the section in order to take up the following proposition viz — “the members of each House shall be incapable of holding any office under the U. S. for which they or any of others for their benefit receive any salary, fees, or emoluments of any kind — and the acceptance of such office shall vacate their seats respectively”)²

Genl. Mifflin 2ded. the motion

Col. Mason ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American Soil — for compleating that Aristocracy which was probably in the contemplation of some among us. and for inviting into the Legislative service, those generous & benevolent characters who will do justice to each other’s merit, by carving out offices & rewards for it. In the present state of American morals & manners, few friends it may be thought will be lost to the plan, by (the opportunity) of giving premiums to a mercenary & depraved ambition.

Mr Mercer. It is a first principle in political science, that whenever the rights of property are secured, an aristocracy will grow out of it. Elective Governments also necessarily become aristocratic, because the rulers being few can & will draw emoluments for themselves from the many. The Governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the Governors, not of the people. The people are dissatisfied & complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability & uncertainty to their other evils. — Governmts. can only be maintained by *force* or *influence*. The Executive has not *force*, deprive him of influence by rendering the members of the (Legislature) ineligible to Executive offices, and he becomes a mere phantom of authority. The Aristocratic part will not even let him in for a share of the plunder. The Legislature must & will

² Revised from *Journal*.

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be composed of wealth & abilities, and the people will be governed by a Junto. The Executive ought to have a Council, being members of both Houses. Without such an influence, the war will be between the aristocracy & the people. He wished it to be between the Aristocracy & the Executive. Nothing else can protect the people agst. those speculating Legislatures which are now plundering them throughout the U. States.

Mr. Gerry read a Resolution of the Legislature of Massts. passed before the Act of Congs. recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the 5th. art: of Confederation, nor to agree in any case to give to the members of Congs. a capacity to hold offices under the Government. This he said was repealed in consequence of the Act of Congs. with which the State thought it proper to comply in an unqualified manner. The Sense of the State however was still the same. He could not think with Mr. Pinkney that the disqualification was degrading. Confidence is the road to tyranny. As to Ministers & Ambassadors few of them were necessary. It is the opinion of a great many that they ought to be discontinued, on our part; that none may be sent among us, & that source of influence be shut up. If the Senate were to appoint Ambassadors as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they are once appointed, the House of Reps. will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the Legislature without a prospect of such offices, our situation is deplorable indeed. If our best Citizens are actuated by such mercenary views, we had better chuse a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one Gentleman (Mr. Mercer) our Government it seems is to be a Govt. of plunder. In that case it certainly would be prudent to have but one rather than many to be employed in it. We cannot be too circumspect in the formation of this System. It will be examined on all sides

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and with a very suspicious eye. The People who have been so lately in arms agst. G. B. for their liberties, will not easily give them up. He lamented the evils existing at present under our Governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands it is as compleat an aristocracy as ever was framed. If great powers should be given to the Senate we shall be governed in reality by a Junto as has been apprehended. He remarked that it would be very differently constituted from Congs. 1. there will be but 2 deputies from each State, in Congs. there may be 7. and are generally 5. — 2. they are chosen for six years. those of Congs. annually. 3. they are not subject to recall; those of Congs. are. 4. In Congs. 9 *states* are necessary for all great purposes — here 8 *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the H. of Reps. as well as of the Senate ineligible not only during, but for one year after the expiration of their terms. — If it should be thought that this will injure the Legislature by keeping out of it men of abilities who are willing to serve in other offices it may be required as a qualification for other offices, that the Candidate shall have served a certain time in the Legislature.

Mr Govr. Morris. Exclude the officers of the army & navy, and you form a band having a different interest from & opposed to the civil power: you stimulate them to despise & reproach those “talking Lords who dare not face the foe”. Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and though the Civil authority be “entrenched in parchment to the teeth” they will cut their way to it. He was agst. rendering the members of the Legislature ineligible to offices. He was for rendering them eligible agn. after having vacated their Seats by accepting office. Why should we not avail ourselves of their services if the people chuse to give them their confidence. There can be little danger of corruption either among the people or the Legislatures who are to be the Electors. If they say, we see

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their merits, we honor the men, we chuse to renew our confidence in them, have they not a right to give them a preference; and can they be properly abridged of it.

Mr. Williamson; introduced his opposition to the motion by referring to the question concerning "money bills". That clause he said was dead. Its ghost he was afraid would notwithstanding haunt us. It (had been) a matter of conscience with him, to insist upon it as long as there was hope of retaining it. He had swallowed the vote of rejection, with reluctance. He could not digest it. All that was said on the other side was that the restriction was not *convenient*. We have now got a House of Lords which is to originate money-bills. To avoid another *inconveniency*, we are to have a whole Legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills he did not wish to make it worse by expunging the present Section. He had scarcely seen a single corrupt measure in the Legislature of N- Carolina, which could not be traced up to office hunting.

Mr Sherman. The Constitution shd. lay as few temptations as possible in the way of those in power. Men of abilities will increase as the Country grows more populous and, and the means of education are more diffused.

Mr. Pinkney- No State has rendered the members of the Legislature ineligible to offices. In S- Carolina the Judges are eligible into the Legislature. It cannot be supposed then that the motion will be offensive to the people. If the State Constitutions should be revised he believed restrictions of this sort wd be rather diminished than multiplied.

Mr. Wilson could not approve of the Section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting & responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own Judgment in a case where they author-

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ized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort: did you suppose the people of Penna. had not good sense enough to receive a good Government? Under this impression he should certainly follow his own Judgment which disapproved of the section. He would remark in addition to the objections urged agst. it. that as one branch of the Legislature was to be appointed by the Legislatures of the States, the other by the people of the States, as both are to be paid by the States, and to be appointable to State offices; nothing seemed to be wanting to prostrate the Natl. Legislature, but to render its members ineligible to Natl offices, & by that means take away its power of attracting those talents which were necessary to give weight to the Governnt. and to render it useful to the people. He was far from thinking the ambition which aspired to Offices of dignity and trust, an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards, which might engage it in the career of public service. He observed that the State of Penna. which had gone as far as any State into the policy of fettering power, had not rendered the members of the Legislature ineligible to offices of Govt.

Mr Elsworth did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve 2 years or 7 years in the Legislature for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the Legislature, although whilst members they should be ineligible to Public offices. Besides, merit will be most encouraged, when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

Mr. Mercer was extremely anxious on this point. What led to the appointment of this Convention? The corruption & mutability of the Legislative Councils of the States. If the plan does not remedy these, it will not recommend itself: and we shall not be able in our private capacities to support

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& enforce it: nor will the best part of our Citizens exert themselves for the purpose. — It is a great mistake to suppose that the paper we are to propose will govern the U. States? It is The men whom it will bring into the Govern. and interest in maintaining it that is to govern them. The paper will only mark out the mode & the form— Men are the substance and must do the business. All Govt. must be by force or influence. It is not the King of France — but 200,000 janisaries of power that govern that Kingdom. There will be no such force here; influence then must be substituted; and he would ask whether this could be done, if the members of the Legislature should be ineligible to offices of State; whether such a disqualification would not determine all the most influential men to stay at home, and & prefer appointments within their respective States.

Mr. Wilson was by no means satisfied with the answer given by Mr. Elseworth to the argument as to the discouragement of merit. The members must either go a second time into the Legislature, and disqualify themselves — or say to their Constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and have answered this purpose we do not chuse to be again elected.

Mr. Govr. Morris put the case of a war, and the Citizen the most capable of conducting it, happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the Course of the late contest for our liberties?

On question for postponing in order to take up Mr. Pinkneys motion, (it was lost.)

N- H- ay- Mas. no. Ct no. N. J- no. Pa ay. Del. ay. Md. ay. Va. ay. N. C. no. S- C. no. Geo. (divd.) [Ayes — 5; noes — 5; divided — 1.]³

Mr Govr Morris moved to insert, after “office”, except offices in the army or navy: (but in that case their offices shall be vacated)⁴

³ Revised from *Journal*. Madison originally recorded “Geo. ay.”, which would have determined the question in the affirmative.

⁴ Taken from *Journal*.

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Mr. Broome 2ds. him

M. Randolph had been & should continue uniformly opposed to the striking out of the clause; as opening a door for influence & corruption. No arguments had made any impression on him, but those which related to the case of war, and a co-existing incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Govr. Morris.

Mr. Butler & Mr Pinkney urged a general postponemnt. (of 9 Sect. art. VI)⁵ till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the Officers of State to be chosen out of that body. — A general postponement was agreed to nem. con.⁶

Art: VI. sect. 10. taken up — “that members be paid by their respective States.”⁷

Mr. Elseworth said that in reflecting on this subject he had been satisfied that too much dependence on the States would be produced by this mode of payment. He moved (to strike out and insert) “that they should” be paid out of the Treasury (of the U. S.) an allowance not exceeding ((blank))⁸ dollars per day or the present value thereof,

Mr. Govr Morris. remarked that if the members were to be paid by the States it would throw an unequal burden on the distant States, which would be unjust as the Legislature was to be a national Assembly. He moved that the payment be out of the Natl. Treasury; leaving the quantum to the discretion of the Natl. Legislature. There could be no reason to fear that they would overpay themselves.

Mr. Butler contended for payment by the States; particularly in the case of the Senate, who will be so long out of their respective States, that they will lose sight of their Constituents unless dependent on them for their support.

Mr Langdon was agst. payment by the States. There would

⁵ Taken from *Journal*.

⁶ See further references under September 3, note 7.

⁷ Upon this debate, see above June 12, June 22, and Appendix A, CCX.

⁸ Crossed out “four”.

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be some difficulty in fixing the sum; but it would be unjust to oblige the distant States to bear the expence of their members in travelling to and from the Seat of Govt.

Mr (Madison.) If the H. of Reprs. is to be chosen *biennially* — and the Senate to be *constantly* dependent on the Legislatures which are chosen *annually*, he could not see any chance for that stability in the Genl Govt. the want of which was a principal evil in the State Govts. His fear was that the organization of the Govt supposing the Senate to be really independt. for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the State Govts. which separately had been found insufficient. The Senate was formed on the model of that of Maryland. The Revisionary check, on that of N. York. What the effect of A union of these provisions might be, could not be foreseen. The enlargement of the sphere of the Government was indeed a circumstance which he thought would be favorable as he had on several occasions undertaken to show. He was however for fixing at least two extremes not to be exceeded by the Natl. Legislre. in the payment of themselves.

Mr. Gerry. There are difficulties on both sides. The observation of Mr. Butler has weight in it. On the other side, the State Legislatures may turn out the Senators by reducing their salaries. Such things have been practised.

Col. Mason. It has not yet been noticed that the clause as it now stands makes the House of Represents. also dependent on the State Legislatures; so that both Houses will be made the instruments of the politics of the States whatever they may be.

Mr. Broom could see no danger in trusting the Genl. Legislature with the payment of themselves. The State Legislatures had this power, and no complaint had been made of it—

Mr. Sherman was not afraid that the Legislature would make their own wages too high; but too low, so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be to fix a moderate allowance to be paid out of the Natl. Treasy. and let the States make such additions as they might judge fit. He moved that

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5 dollars per day be the sum, any further emoluments to be added by the States.

Mr. Carrol had been much surprised at seeing this clause in the Report. The dependence of both houses on the State Legislatures is compleat; especially as the members of the former are eligible to State offices. The States can now say: if you do not comply with our wishes, we will starve you: if you do we will reward you. The new Govt. in this form was nothing more than a second edition of Congress in two volumes, instead of one, and perhaps with very few amendments —

Mr Dickenson took it for granted that all were convinced of the necessity of making the Genl. Govt. independent of the prejudices, passions, and improper views of the State Legislatures. The contrary of This was effected by the section as it stands. On the other hand, there were objections agst taking a permanent standard as Wheat which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the Natl. Legislature. He proposed that an Act should be passed every 12 years by the Natl. Legislre settling the quantum of their wages. If the Genl. Govt. should be left dependent on the State Legislatures, it would be happy for us if we had never met in this Room.

Mr. Elseworth was not unwilling himself to trust the Legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, tho' perhaps not insuperable objections. He thought changes in the value of money, provided for by his motion in the words, "or the present value thereof."

Mr. L. Martin. As the Senate is to represent the States, the members of it ought to be paid by the States —

Mr. Carrol. The Senate was to represent & manage the affairs of the whole, and not to be the advocates of State interests. They ought then not to be dependent on nor paid by the States.

On the question for paying the Members of the Legislature out of the Natl Treasury, ÷

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

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Mr. Elsworth moved that the pay be fixed at 5 dollrs. (or the present value thereof per day during their attendance & for every thirty miles in travelling to & from Congress.)⁹

Mr. Strong preferred 4 dollars, leaving the Sts at liberty to make additions

On question for fixing the pay at 5 dollars.

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

Mr. Dickenson proposed that the wages of the members of both houses sd. be required to be the same.

Mr. Broome seconded him.

Mr Ghorum. this would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the Senates in the States are allowed more, than those of the other house.

Mr Dickenson withdrew his motion

(It was moved & agreed to amend the Section by adding— “to be ascertained by law”)⁹

The Section (Art VI. sec. 10) as amended— agreed to nem. con.

Adjd.

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Sect. 8 agreed to, premising the words “during the session of the legislature”.¹⁰

Sect. 9. postponed.

Sect. 10. altered, that the members of both branches be paid out of the treasury of the United States, their pay to be ascertained by law.

⁹ Taken from *Journal*.

¹⁰ According to the *Journal* this action was taken on August 11.