

THURSDAY, AUGUST 30, 1787.

JOURNAL

Thursday August 30. 1787.

[To commit the substitute offered to the 17 article Ayes — 3; noes — 8.]¹

It was moved and seconded to postpone the substitute for the 17 article, agreed to yesterday, in order to take up the following amendment.

The Legislature shall have power to admit other States into the Union, and new States to be formed by the division or junction of States now in the Union, with the consent of the Legislature of such states.

which passed in the negative. [Ayes — 5; noes — 6.]²

It was moved and seconded to strike out the words “the limits” and to insert the words “the jurisdiction” in the substitute offered to the 17 article.

which passed in the affirmative [Ayes — 7; noes — 4.]

It was moved and seconded to insert the words “hereafter formed or” after the words “shall be” in the substitute for the 17 article

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

It was moved and seconded to postpone the consideration of the substitute to the 17 article as amended in order to take up the following

“The Legislature of the United States shall have power “to erect new States within as well as without the territory “claimed by the several States or either of them and admit “the same into the Union: Provided that nothing in this

¹ Vote 403, Detail of Ayes and Noes.

² Vote 404, Detail of Ayes and Noes, which notes that the proposal was in order “to take up Mr Sherman’s motion”.

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“Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of Peace”

which passed in the negative [Ayes — 3; noes — 8.]⁸

On the question to agree to the substitute offered to the 17 article, amended as follows.

“New States may be admitted by the Legislature into this Union: but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States without the consent of the Legislature of such State as well as of the general Legislature

which passed in the affirmative [Ayes — 8; noes — 3.]

It was moved and seconded to add the following clause to the last amendment.

“Nor shall any State be formed by the junction of two or more States or parts thereof without the consent of the Legislatures of such States as well as of the Legislature of the United States”

which passed in the affirmative

It was moved and seconded to add the following clause to the last amendment

“Provided nevertheless that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late Treaty of peace.”

The last motion being withdrawn —

It was moved and seconded to agree to the following proposition.

Nothing in this Constitution shall be construed to alter the claims of the United States or of the individual States to the western territory but all such claims may be examined into and decided upon by the supreme Court of the United States

It was moved and seconded to postpone the last proposition in order to take up the following.

The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing

⁸ Vote 407, Detail of Ayes and Noes, which notes that this was a “proposition from Maryland”. See below, note 15.

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in this Constitution contained shall be so construed as to prejudice any claims either of the United States or of any particular State

It was moved and seconded to add the following clause to the last proposition

“But all such claims may be examined into and decided “upon by the Supreme Court of the United States”

which passed in the negative [Ayes — 2; noes — 8.]

On the question to agree to the following proposition

“The Legislature shall have power to dispose of and make “all needful rules and regulations respecting the territory or “other property belonging to the United States: and nothing “in this Constitution contained shall be so construed as to “prejudice any claims either of the United States or of any “particular State”

it passed in the affirmative ⁴

On the question to agree to the first clause of the 18 article — it passed in the affirmative

It was moved and seconded to strike out the word “foreign” in the 18 article

which passed in the affirmative [Ayes — 10; noes — 1.]⁵

It was moved and seconded to strike out the words “on the “application of it’s Legislature against”

which passed in the negative [Ayes — 3; noes — 8.]

It was moved and seconded to strike out the words “domestic violence” and insert the word “insurrections” in the 18 article

which passed in the negative [Ayes — 5; noes — 6.]

It was moved and seconded to insert the words “or Executive” after the word “Legislature”

which passed in the affirmative [Ayes — 8; noes — 2.]⁶

⁴ *Journal* (p. 311) assigns to this question Vote 410, Detail of Ayes and Noes. This is probably a mistake, for there is no reason in favor of it except that it follows Vote 409. It, however, also precedes Vote 411, and the latter position accords with Madison’s original record. See below, notes 18 and 20.

⁵ Vote 410, Detail of Ayes and Noes. See above note 4.

⁶ Vote 413, Detail of Ayes and Noes. In the Maryland column in the MS. “aye” is crossed out, and the summary gives an eleventh vote as divided. Madison records Maryland’s vote as divided.

DETAIL OF AYES AND NOES

| | New Hampshire | Massachusetts | Rhode Island | Connecticut | New York | New Jersey | Pennsylvania | Delaware | Maryland | Virginia | No Carolina | So Carolina | Georgia | Questions | ayes | noes | divided |
|--------|---------------|---------------|--------------|-------------|----------|------------|--------------|----------|----------|----------|-------------|-------------|---------|---|------|------|---------|
| [403] | no | no | | no | | aye | no | aye | no | no | no | no | no | To commit the substitute offered to the 17 article | 3 | 8 | |
| [404] | aye | aye | aye | aye | no | no | no | no | no | no | no | no | no | To postpone the substitute to take up Mr Sherman's motion | 5 | 6 | |
| [405] | aye | aye | aye | aye | aye | no | no | no | no | no | no | no | no | To add the words "hereafter formed or" | 9 | 2 | |
| [406] | aye | aye | aye | aye | no | no | no | no | no | no | no | no | no | To strike the words "limits" out & insert "jurisdiction." | 7 | 4 | |
| [407] | no | no | | no | no | aye | no | aye | no | no | no | no | no | To postpone the substitute to ye 17 article in order to take up the proposition from Maryland | 3 | 8 | |
| [408] | aye | aye | aye | aye | no | no | no | no | no | no | no | no | no | To agree to the substitute to ye 17 article as amended | 8 | 3 | |
| [409] | no | no | | no | no | aye | no | no | no | no | no | no | no | To agree to the amendmt offered by Maryland | 2 | 8 | |
| [410] | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | To strike out "on application of it's Legislature" | 10 | 1 | |
| [411] | no | no | | no | no | aye | no | no | no | no | no | no | no | To insert "insurrections" | 3 | 8 | |
| [412] | no | no | | no | no | aye | no | no | no | no | no | no | no | To insert "or Executive" | 5 | 6 | |
| [413]* | aye | no | | aye | no | no | no | no | no | no | no | no | no | in the recess of the Legislature | 8 | 2 | 1 |
| [414] | no | no | | no | no | no | no | no | no | no | no | no | no | To agree to ye 18 article as amended | | | |
| [415] | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | To agree to the 20 article | 8 | 1 | 2 |
| [416] | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | aye | To take up the report of the Committee of eleven | 3 | 8 | |
| [417] | no | no | | no | no | aye | no | aye | no | no | no | no | no | | | | |

* See footnote on p. 459.

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It was moved and seconded to add the following clause to the last amendment

“in the recess of the Legislature”

which passed in the negative. [Ayes — 1; noes — 10.]

Separate questions being taken on the several clauses of the 18 article as amended

they passed in the affirmative [Ayes — 9; noes — 2]⁷

On the question to agree to the 19 article as reported

it passed in the affirmative

It was moved or seconded to add the words “or affirmation” after the word “oath” 20 article

which passed in the affirmative.

On the question to agree to the 20 article as amended

it passed in the affirmative [Ayes — 8; noes — 1; divided — 2.]

It was moved and seconded to add the following clause to the 20 Article.

“But no religious test shall ever be required as a qualification to any office or public trust under the authority of the “United States”

which passed unan: in the affirmative

It was moved and seconded to take up the report of the Committee of eleven.

which passed in the negative [Ayes — 3; noes — 8.]

The House adjourned

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Thursday August 30th. 1787. In Convention

Art XVII resumed for a question on it as amended by Mr. Govr. Morris’s substitutes

Mr. Carrol moved to strike out so much of the article as requires the consent of the State to its being divided.⁸ He was aware that the object of this prerequisite might be to prevent domestic disturbances, but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no

⁷ Vote 415, Detail of Ayes and Noes. Madison records this vote as on the last clause.

⁸ Upon this debate, see Appendix A, CLVIII (92-99).

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guard was provided for the right of the U. States to the back lands. He suggested that it might be proper to provide that nothing in the Constitution should affect the Right of the U. S. to lands ceded by G. Britain in the Treaty of peace, and proposed a commitment to a member from each State. He assured the House that this was a point of a most serious nature. It was desirable above all things that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

Mr. L. Martin 2ded. the motion for a commitment.

Mr. Rutledge is it to be supposed that the States are to be cut up without their own consent. The case of Vermont will probably be particularly provided for. There could be no room to fear, that Virginia or N— Carolina would call on the U. States to maintain their Government over the Mountains.

Mr. Williamson said that N. Carolina was well disposed to give up her Western lands, but attempts at compulsion was not the policy of the U. S. He was for doing nothing in the constitution in the present case, and for leaving the whole matter in Statu quo.

Mr Wilson was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of New States as heretofore. He knew of nothing that would give greater or juster alarm than the doctrine, that a political society is to be torne asunder without its own consent—

On Mr. Carrol's motion for commitment

N. H. no⁹ Mas. no. Ct. no. N. J. ay. Pa. no. Del— ay—
Md. ay— Va. no— N— C. no. S. C. no. Geo. no. [Ayes — 3;
noes — 8.]

Mr Sherman moved to postpone the substitute for art: XVII agreed to yesterday in order to take up the following amendment "The Legislature shall have power to admit

⁹ New Hampshire's vote was changed from "ay" to "no". This may have been a later correction.

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other States into the Union, and new States to be formed by the division or junction of States now in the Union, with the consent of the Legislature of such State" (The first part was meant for the case of Vermont to secure its admission)

On the question, (it passed in the Negative)

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

Docr. Johnson¹⁰ moved to insert the words "hereafter formed or" after the words "shall be" in the substitute for art: XVII, (the more clearly to save Vermont as being already formed into a State, from a dependence on the consent of N. York to her admission.)

(The motion was agreed to Del. & Md. only dissenting.)¹¹

Mr Governr. Morris moved to strike out the word "limits" in the substitute, and insert the word "jurisdiction" (This also was meant to guard the case of Vermont, the jurisdiction of N. York not extending over Vermont which was in the exercise of sovereignty, tho' Vermont was within the asserted limits of New York)

On this question

N— H— ay— Mas— ay. Ct ay— N. J. no. Pa. ay. (Del. ay)¹² Md. ay. Va ay— N. C. no. S. C. no. Geo. no. [Ayes — 7; noes — 4.]

Mr. L. Martin, urged the unreasonableness of forcing & guaranteeing the people of Virginia beyond the Mountains, the Western people, of N. Carolina. & of Georgia, & the people of Maine, to continue under the States now governing them, without the consent of those States to their separation. Even if they should become the *majority*, the majority of *Counties*, as in Virginia may still hold fast the dominion over them. Again the majority may place¹³ the seat of Government entirely among themselves & for their own conveniency, and still keep the injured parts of the States in subjection, under the guarantee of the Genl. Government

¹⁰ A line preceding was crossed out: "The word 'limits' was struck out of". Notice the order of questions in the Journal.

¹¹ Taken from *Journal*.

¹² Crossed out "hold".

¹³ Probably taken from *Journal*.

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agst. domestic violence. He wished Mr Wilson had thought a little sooner of the value of *political* bodies.¹⁴ In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the Great States were to be affected, political Societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones. — It was said yesterday by Mr Govr Morris, that if the large States were to be split to pieces without their consent, their representatives here would take their leave. If the Small States are to be required to guarantee them in this manner, it will be found that the Representatives of other States will with equal firmness take their leave of the Constitution on the table.

It was moved by Mr. L. Martin to postpone the substituted article, in order to take up the following.¹⁵

“The Legislature of the U— S— shall have power to erect New States within as well as without the territory claimed by the several States or either of them, and admit the same into the Union: provided that nothing in this constitution shall be construed to affect the claim of the U— S. to vacant lands ceded to them by the late treaty of peace— which passed in the negative: (N. J. Del. & Md. only ay.)¹⁶

On the question to agree to Mr. Govr. Morris’s substituted article as amended in the words following,

“New States may be admitted by the Legislature into the Union: but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States without the consent of the Legislature of such State as well as of the General Legislature”

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

¹⁴ Crossed out “Counties”.

¹⁵ Crossed out after Martin’s name “(as understood)”. See above note 3.

Martin records this motion in quite different words and gives New Hampshire’s vote and Connecticut’s vote in the affirmative, see Appendix A, CLVIII (96).

¹⁶ Taken from *Journal*; see also note 15.

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Mr. Dickinson moved to add the following clause to the last —

“Nor shall any State be formed by the junction of two or more States or parts thereof, without the consent of the Legislatures of such States, as well as of the Legislature of the U. States”. which was agreed to without a count of the Votes.

Mr Carrol moved to add — “Provided nevertheless that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the Treaty of peace”. This he said might be understood as relating to lands not claimed by any particular States. but he had in view also some of the claims of particular States.

Mr. Wilson was agst. the motion. There was nothing in the Constitution affecting one way or the other the claims of the U. S. & it was best to insert nothing, leaving every thing on that litigated subject in statu quo.

Mr. Madison considered the claim of the U. S. as in fact favored by the jurisdiction of the Judicial power of the U—S— over controversies to which they should be parties. He thought it best on the whole to be silent on the subject. He did not view the proviso of Mr. Carrol as dangerous; but to make it neutral and fair, it ought to go farther & declare that the claims of particular States also should not be affected.

Mr. Sherman thought the proviso harmless, especially with the addition suggested by Mr. Madison in favor of the claims of particular States.

Mr. Baldwin did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that if Georgia has gained much by the Cession in the Treaty of peace, she was in danger during the war, of a *Uti possidetis*.

Mr. Rutledge thought it wrong to insert a proviso where there was nothing which it could restrain, or on which it could operate.

Mr. Carrol withdrew his motion and moved the following, “Nothing in this Constitution shall be construed to alter the claims of the U. S. or of the individual States to the West-

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ern territory, but all such claims shall be examined into & decided upon, by the Supreme Court of the U. States."

Mr Govr Morris moved to postpone this in order to take up the following. "The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. States; and nothing in this constitution contained, shall be so construed as to prejudice any claims either of the U— S— or of any particular State," — The postponem. agd. to nem. con.

Mr. L. Martin moved to amend the proposition of Mr Govr Morris by adding — "But all such claims may be examined into & decided upon by the supreme Court of the U— States".

Mr. Govr. Morris. this is unnecessary, as all suits to which the U. S— are parties— are already to be decided by the Supreme Court.

Mr. L. Martin, it is proper in order to remove all doubts on this point.

Question on Mr. L— Martin's amendatory motion

N— H— no. Mas— no. Ct. no. N. J. ay. Pa. no. Del. no. Md. ay. Va. no— States not farther called the negatives being sufficient & the point given up.¹⁷

The Motion of Mr. Govr. Morris was then agreed to, (Md. alone dissenting.)¹⁸

Art: XVIII being taken up,¹⁹ — the word "foreign" was struck out. (nem: con: as superfluous, being implied in the term "invasion")²⁰

Mr. Dickinson moved to strike out "on the application of its Legislature against" He thought it of essential impor-

¹⁷ See Vote 409, Detail of Ayes and Noes.

¹⁸ "nem. con.:" crossed out and this substituted from *Journal*. Probably a mistake, see below note 20, and above note 4.

¹⁹ Article XVIII. "The United States shall guaranty to each State a Republican form of Government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

²⁰ Madison originally recorded: "nem: con: Maryland being in the negative. It was thought to be superfluous as implied in the term invasion". Apparently when he saw *Journal* ascribing Maryland's negative vote to another question, Madison modified his records accordingly. See above note 18.

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tance to the tranquillity of the U— S. that they should in all cases suppress domestic violence, which may proceed from the State Legislature itself, or from disputes between the two branches where such exist

Mr. Dayton mentioned the Conduct of Rho. Island as shewing the necessity of giving latitude to the power of the U— S. on this subject.

On the question

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

On a question for striking out “domestic violence” (and insertg. “insurrections” — it passed in the negative.) N. H. no. Mas. no. Ct. no. N. J. ay. Pa. (no) Del no. Md. no. Va. ay. N. C. ay. S. C. ay. Geo. ay [Ayes — 5; noes — 6.]²¹

Mr. Dickinson moved to insert the words, “or Executive” after the words “application of its Legislature” — The occasion itself he remarked might hinder the Legislature from meeting.

On this question

N. H. ay. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. ay. Md divd. Va. no. N. C. ay. S. C. ay. Geo. ay. [Ayes — 8; noes — 2; divided — 1.]

Mr. L— Martin moved to subjoin to the last amendment the words “in the recess of the Legislature” On which question

N. H. no. Mas. no. Ct. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo— no. [Ayes — 1; noes — 9.]²²

On Question on the last clause as amended

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

Art: XIX taken up.²³

²¹ Madison originally recorded “Pa. ay.” which would have determined the question in the affirmative. Later he made his record conform to *Journal*.

²² The *Journal* includes New Jersey in the negative.

²³ Article XIX. “On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a Convention for that purpose.

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Mr. Govr. Morris suggested that the Legislature should be left at liberty to call a Convention, whenever they please.

The art: was agreed to nem: con:

Art: XX. taken up.²⁴ — “or affirmation” was added after “oath.”

Mr. Pinkney. moved to add to the art: — “but no religious test shall ever be required as a qualification to any office or public trust under the authority of the U. States”²⁵

Mr. Sherman thought it unnecessary, the prevailing liberality being a sufficient security agst. such tests.

Mr. Govr. Morris & Genl. Pinkney approved the motion,

The motion was agreed to nem: con: (and then the whole Article, N— C. only no — & Md. divided.)²⁶

Art: XXI. taken up. viz: “The ratifications of the Conventions of States shall be sufficient for organizing this Constitution.”

Mr. Wilson proposed to fill the blank with “seven” that being a majority of the whole number & sufficient for the commencement of the plan.

Mr. Carrol moved to postpone the article in order to take up the Report of the Committee of Eleven (see Tuesday Augst: 28) — and on the question

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

Mr. Govr. Morris thought the blank ought to be filled in a twofold way, so as to provide for the event of the ratifying States being contiguous which would render a smaller number sufficient, and the event of their being dispersed, which wd require a greater number for the introduction of the Government.

Mr. Sherman. observed that the States being now confederated by articles which require unanimity in changes, he

²⁴ Article XX. “The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.”

²⁵ See Pinckney’s proposal August 20, and Appendix A, CLVIII (100), CXCII, CXCVI, CCVIII.

²⁶ Taken from *Journal*, which gives Connecticut’s vote also as divided.

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thought the ratification in this case of ten States at least ought to be made necessary.

Mr Randolph was for filling the blank with "Nine" that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

Mr Wilson mentioned "eight" as preferable.

Mr. Dickinson asked whether the concurrence of Congress is to be essential to the establishment of the system, whether the refusing States in the Confederacy could be deserted — and whether Congress could concur in contravening the system under which they acted?

Mr. Madison. remarked that if the blank should be filled with "seven" eight, or "nine" — the Constitution as it stands might be put in force over the whole body of the people. tho' less than a majority of them should ratify it.

Mr. Wilson. As the Constitution stands, the States only which ratify can be bound. We must he said in this case go to the original powers of Society, The House on fire must be extinguished, without a scrupulous regard to ordinary rights.

Mr. Butler was in favor of "nine". He revolted at the idea, that one or two States should restrain the rest from consulting their safety.

Mr. Carrol moved to fill the blank with "the thirteen". unanimity being necessary to dissolve the existing confederacy which had been unanimously established.

Mr King thought this amendt. necessary, otherwise as the Constitution now stands it will operate on the whole though ratified by a part only.

Adjourned

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XVII article debated by Maryland obtained an alteration so that the claim of the U. S. to the Crown lands or Western territory may be decided upon by the supreme judiciary —

XVIII agreed to.

Endeavoured to recall the house to the reported propositions from maryland, to prevent the U. S. from giving preference to one State above another or to the shipping of one State above another, in collecting or laying duties. — The house averse to taking any thing up till this system is got through. XXI. adjourned on this article.

Proposed to have a private conference with each other to-morrow before meeting of the convention to take measures for carrying out propositions. etc —