

FRIDAY, AUGUST 24, 1787.

JOURNAL

Friday August 24. 1787.

The honorable Mr Livingston, from the Committee of eleven to whom were referred the two remaining clauses of the 4th section, and the 5th and 6th sections of the 7 article, informed the House that the Committee were prepared to report. The report was then delivered in at the Secretary's table, was once read, and is as follows.

“Strike out so much of the 4th section of the 7th article as “was referred to the Committee and insert “The migration “or importation of such persons as the several States now “existing shall think proper to admit, shall not be prohibited “by the Legislature prior to the year 1800 — but a Tax or “Duty may be imposed on such migration or importation at a “rate not exceeding the average of the Duties laid on Imports.”

“The 5th section to remain as in the report”

“The 6th section to be stricken out”

It was moved and seconded to reconsider the 1st clause 1st sect. 7 article

which passed in the affirmative

and to-morrow was assigned for the reconsideration [Ayes — 7; noes — 2.]

It was moved and seconded to postpone the consideration of the 2nd and 3rd sections 9 article.

which passed in the negative. [Ayes — 3; noes — 7.]

It was moved and seconded to strike out the 2nd and 3rd sections of the 9th article

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

Separate questions being taken on the 1st 2nd and 3rd clauses of the 1st section — 10th article, as reported,

they passed in the affirmative.

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It was moved and seconded to strike out the word "Legislature" and to insert the word "People" in the 1st section 10th article.

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

It was moved and seconded to insert the word "joint" before the word "ballot" in the 1st section of the 10th article

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

It was moved and seconded to add after the word "Legislature" in the 1st section 10th article the words "each State having one vote"

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

It was moved and seconded to insert after the word "Legislature" in the 1st sect. of the 10 article the words "to which election a majority of the votes of the Members present shall be required"

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

On the question to agree to the following clause

"and in case the numbers for the two highest in votes should be equal, then the President of the Senate shall have an additional casting voice"

it passed in the negative.

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

"shall be chosen by electors to be chosen by the People of the several States"

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

It was moved and seconded to postpone the consideration of the two last clauses of the 1st sect. 10 article

which passed in the negative

It was moved and seconded to refer the two last clauses of the 1st sect. 10 article. to a committee of a Member from each State.

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

On the question to agree to the following clause

"shall be chosen by electors"

it passed in the negative [Ayes — 4; noes — 4; divided — 2.]

The consideration of the remaining clauses of the 1st section

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10 article was postponed till to-morrow on the request of the Deputies of the State of New Jersey.

On the question to transpose the word "information" and to insert it after the word "Legislature" in the first clause of the 2 sect. 10 article

it passed in the affirmative

It was moved and seconded to strike out the words "he may" and to insert the word "and" before the word "recommend" in the second clause of the 2 sect. 10 article

which passed in the affirmative

It was moved and seconded to insert the word "and" after the word "occasions" in the 2 sect. 10 article;

which passed in the affirmative

It was moved and seconded to insert the word "shall" before the words "think proper" 2 sect. 10 article.

which passed in the affirmative

It was moved and seconded to strike out the words "officers" and to insert the words "to offices" after the word "appoint" in the 2 sect. of the 10 article

which passed in the affirmative

It was moved and seconded to insert the words "or by law" after the word "constitution" in the 2nd section of the 10th article

which passed in the negative. [Ayes — 1; noes — 9.]

It was moved and seconded to strike out the words "and shall" "appoint to offices in all cases not otherwise provided for by "this Constitution" and to insert the following

"and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for, and "to all offices which may here after be created by law."

which passed in the affirmative [Ayes — 6; noes — 4.]¹

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

"except where by Law the appointment shall be vested in "the² Executives of the several States"

¹ Vote 363, Detail of Ayes and Noes, which notes that it was "Mr. Dickinson's amendment".

² Crossed out "legislatures or", this striking out was an amendment. See Madison's record below.

which passed in the negative ³

It was moved and seconded to agree to the following order

“That the order respecting the adjournment at four be repealed, and that in future the House assemble at ten and adjourn at three

which passed in the affirmative [Ayes — 10; noes — 0.]

The House adjourned

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
[352]	no	aye	aye	aye	aye	aye	no	aye	no	aye	aye	aye	aye	To reconsider the 1st sec. 7 article to-morrow	7	2	
[353]	aye	no	no	no	no	no	no	no	no	aye	no	aye	aye	To postpone ye 2 sect. 9 article	3	7	
[354]	aye	aye	aye	aye	aye	aye	aye	aye	aye	no	aye	no	no	To strike out the 2 & 3 sections 9th article	8	2	
[355]	no	no	no	no	no	aye	aye	no	no	no	no	no	no	To strike out the word Legislature, and insert the word “People” 1st sect. 10 article	2	9	
[356]	aye	aye	no	no	no	aye	aye	no	aye	aye	aye	aye	no	To insert the word joint before the word ballot.	7	4	
[357]	no	no	aye	aye	no	aye	aye	aye	no	no	no	no	aye	“each State having One vote”	5	6	
[358]	aye	aye	aye	no	no	aye	aye	aye	aye	aye	aye	aye	aye	a majority of the votes of Members present required	10	1	
[359]	no	no	aye	aye	aye	aye	aye	no	aye	no	no	no	no	To be elected by the Electors.	5	6	
[360]	no	no	dd	aye	aye	aye	aye	aye	aye	aye	no	no	no	To commit ye 2 last clauses 1 sect. 10 art.	5	5	1
[361]	no	no	dd	aye	aye	aye	aye	dd	aye	no	no	no	no	To be elected by Electors.	4	4	2
[362]	no	no	aye	no	no	no	no	no	no	no	no	no	no	To add the words “or by law” 2 sect. 10 art.	1	9	
[363]	no	no	aye	aye	aye	no	aye	aye	aye	aye	no	aye	no	To agree to Mr. Dickinson’s amendment	6	4	
[364]	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	aye	To adjourn at 3 o’Clock			

³ See below note 12.

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Friday August 24. 1787. In Convention

Governour Livingston, from the Committee of Eleven, to whom were referred the two remaining clauses of the 4th. Sect & the 5 & 6 Sect: of the 7th. art: delivered in the following Report:

“Strike out so much of the 4th. sect: as was referred to the Committee and insert — “The migration or importation of “such persons as the several States now existing shall think “proper to admit, shall not be prohibited by the Legislature “prior to the year 1800, but a tax or duty may be imposed on “such migration or importation at a rate not exceeding the “average of the duties laid on imports.”

“The 5 Sect: to remain as in the Report”⁴

“The 6 Sect. to be stricken out”⁴

Mr. Butler, according to notice, moved that clause 1st. sect. 1. of art VII, as to the discharge of debts, be reconsidered tomorrow— He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders. Genl. Pinkney 2ded. him.

Mr. Randolph wished for a reconsideration in order to better the expression, and to provide for the case of the State debts as is done by Congress.

On the question for reconsidering

N—H. no. Mas: ay. Cont. ay N. J. (ay.)⁶ Pena. absent. Del. ay—Md. no. Va. ay—N. C. absent, S. C. ay. Geo. ay. [Ayes — 7; noes — 2; absent — 2.] — and tomorrow assigned for the reconsideration.

Sect: 2 & 3 of art: IX being taken up,⁶

Mr Rutledge said this provision (for deciding controversies

⁴ Article VII, Sect. 5. “No capitation tax shall be laid, unless in proportion to the Census hereinbefore directed to be taken.”

Sect. 6. “No navigation act shall be passed without the assent of two thirds of the members present in each House.”

⁵ New Jersey’s vote changed from “no” to “ay” to conform to *Journal*.

⁶ Relating to disputes between states and over land questions — modeled on procedure in Articles of Confederation.

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between the States) was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established, and moved to strike it out.

Docr. Johnson 2ded. the Motion

Mr. Sherman concurred: so did Mr Dayton.

Mr. Williamson was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the Judiciary were interested or too closely connected with the parties—

Mr. Ghorum had doubts as to striking out, The Judges might be connected with the States being parties — He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the Judiciary —

On the Question for postponing (the 2d and 3d Section, it passed in the negative)

N. H. ay. Masts. no. (Cont. no) N. J. no. Pena abst. Del. no. Md. no. Va no. N. C. (ay) S— C no. Geo. ay. [Ayes — 3; noes — 7; absent — 1.]⁷

Mr. Wilson urged the striking out, the Judiciary being a better provision.

On Question for striking out 2 & 3 Sections Art: IX

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

Art X. sect. I. “The executive power of the U— S— shall be vested in a single person. His stile shall be “The President of the U— S. of America” and his title shall be “His Excellency”. He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

On the question for vesting the power in a *single person* — It was agreed to nem: con: So also on the *Stile* and *title* —

Mr. Rutledge moved to insert “joint” before the word “ballot”, as the most convenient mode of electing.

Mr. Sherman objected to it as depriving the *States* represented in the *Senate* of the negative intended them in that house,

⁷ Vote of Connecticut inserted, and that of North Carolina changed to conform to *Journal*.

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Mr. Ghorum said it was wrong to be considering, at every turn whom the Senate would represent. The public good was the true object to be kept in view— Great delay and confusion would ensue if the two Houses shd vote separately, each having a negative on the choice of the other.

Mr. Dayton. It might be well for those not to consider how the Senate was constituted, whose interest it Was to keep it out of sight. — If the amendment should be agreed to, a *joint* ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no (doubt)⁸ of the two Houses separately concurring in the same person for President. The importance & necessity of the case would ensure (a concurrence).

Mr. Carrol moved to strike out, “by the Legislature” and insert “by the people” — Mr Wilson 2ded. him & on the question

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

Mr Brearly was opposed to the motion for inserting the word “joint”. The argument that the small States should not put their hands into the pockets of the large ones did not apply in this case.

Mr. Wilson urged the reasonableness of giving the larger States a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He remarked also that the Senate had peculiar powers balancing the advantage given by a joint balot in this case to the other branch of the Legislature.

Mr. Langdon. This general officer ought to be elected by the joint & general voice. In N. Hampshire the mode of separate votes by the two Houses was productive of great difficulties. The Negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting “joint” tho’ unfavorable to N. Hampshire as a small State.

Mr. Wilson remarked that as the President of the Senate

⁸ Crossed out “danger”.

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was to be the President of the U— S. that Body in cases of vacancy might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Mr. Madison. If the amendment be agreed to the rule of voting will give to the largest State, compared with the smallest, an influence as 4 to 1 only, altho the population is as 10 to 1. This surely cannot be unreasonable as the President is to act for the *people* not for the *States*. The President of the *Senate* also is to be occasionally President of the U. S. and by his negative alone can make $\frac{3}{4}$ of the other branch necessary to the passage of a law — This is another advantage enjoyed by the Senate.

On the question for inserting “joint”, (it passed in the affirmative)

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

Mr. Dayton then moved to insert, after the word “Legislatures” the words “each State having one vote” Mr Brearly 2ded. him, and on the question (it passed in the negative)

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

Mr. Pinkney moved to insert after the word “Legislature” the words “to which election a majority of the votes of the members present shall be required” &

On this question, (it passed in the affirmative)

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

Mr Read moved “that in case the numbers for the two highest in votes should be equal, then the President of the Senate shall have an additional casting vote”, which was disagreed to by a general negative.

Mr. Govr Morris opposed the election of the President by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his Station, as leading to Legislative tyranny. If the Legislature have the Executive dependent on them, they can perpetuate

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& support their usurpations by the influence of tax-gatherers & other officers, by fleets armies &c. Cabal & corruption are attached to that mode of election: so also is ineligibility a second time. Hence the Executive is interested in Court-ing popularity in the Legislature by sacrificing his Executive rights; & then he can go into that Body, after the expiration of his Executive Office, and enjoy there the fruits of his policy. To these considerations he added that rivals would be continually intriguing to oust the President from his place. To guard against all these evils he moved that the President "shall be chosen by Electors to be chosen by the people of the several States" Mr Carrol zded. him & on the question (it passed in the negative)

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

Mr. Dayton moved to postpone the consideration of the two last clauses of sect. 1. art. X. which was disagreed to without a count of the States.

Mr Broome moved to refer the two clauses to a Committee of a Member from each State. & on the question, (it failed the States being equally divided.)

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

On the question taken on the first part of Mr. Govr Morris's Motion to wit "shall be chosen by electors" as an abstract question, (it failed the States being equally divided —)

N— H— no. Mas. abst. Ct. divd. (N. Jersey ay)⁹ Pa ay. Del. ay. Md. divd. Va ay— N— C— no. S. C. no. Geo. no. [Ayes — 4; noes — 4; divided — 2; absent — 1.]

The consideration of the remaining clauses of sect 1. art X. was then postponed till tomorrow at the instance of the Deputies of New Jersey —

Sect. 2. Art: X¹⁰ being taken up. the word information was transposed & inserted after "Legislature"

⁹ Taken from *Journal*.

¹⁰ Relating to the powers and duties of the President.

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On motion of Mr Govr Morris, "he may" was struck out, & "and" inserted before "recommend" in the clause 2d. sect—2d art: X. in order to make it the *duty* of the President to recommend, & thence prevent umbrage or cavil at his doing it —

Mr. Sherman objected to the sentence "and shall appoint officers in all cases not otherwise provided for by this Constitution". He admitted it to be proper that many officers in the Executive Department should be so appointed — but contended that many ought not, as general officers in the Army in time of peace &c. Herein lay the corruption in G. Britain. If the Executive can model the army, he may set up an absolute Government; taking advantage of the close of a war and an army commanded by his creatures. James 2d. was not obeyed by his officers because they had been appointed by his predecessors not by himself. He moved to insert "or by law" after the word "Constitution".

On Motion of Mr Madison "officers" was struck out and "to offices" inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the Legislature.

On the question for inserting "or by law as moved by Mr. Sherman

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

Mr. Dickinson moved to strike out the words "and shall appoint to offices in all cases not otherwise provided for by this Constitution" and insert — "and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law."

Mr Randolph observed that the power of appointments was a formidable one both in the Executive & Legislative hands — and suggested whether the Legislature should not be left at liberty to refer appointments in some cases, to some State Authority.

Mr. Dickenson's motion, (it passed in the affirmative)

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N. H. no. Mas— no— Ct ay— N— J— ay. Pa. ay—
Del. no. Md ay. Va. ay— N— C. abst. S. C no. Geo— (ay)
[Ayes — 6; noes — 4; absent — 1.]¹¹

Mr. Dickinson then moved to annex to his last amendment “except where by law the appointment shall be vested in the Legislatures or Executives of the several States”. Mr. Randolph zded. the motion

Mr. Wilson— If this be agreed to it will soon be a standing instruction from the State Legislatures to pass no law creating offices, unless the appts be referred to them.

Mr. Sherman objected to “Legislatures” in the motion, which was struck out by consent of the movers.

Mr. Govr. Morris — This would be putting it in the power of the States to say, “You shall be viceroys but we will be viceroys over you” —

The motion was negatived without a Count of the States —¹²

Ordered (unanimously)¹³ that the order respecting the adjournment at 4 oClock be repealed, & that in future the House assemble at 10 OC. & adjourn at 3 oC.¹⁴

Adjourned

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2 and 3 sect. struck out. The 10 article give rise to various debate. Amended to read that the election of the president of the U. S. be by *joint ballot*. It was moved to add each State having one vote — Conn: Jer. Mar. Georg.¹⁵ ay. N. H. Mass. Penns. Vir. N. C. and S. C. no. It was moved

¹¹ Madison originally had Georgia recorded as voting “no”, which made the total vote a tie, and the determination of the question in the negative. This was changed to conform to *Journal* and the subsequent proceedings.

¹² McHenry is probably correct in stating that the house adjourned when the question was going to be put”, see August 25, note 15.

¹³ Taken from *Journal*.

¹⁴ See May 25, note 1.

¹⁵ Detail of Ayes and Noes (Vote 357) and Madison both include Delaware in the affirmative.

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that the president be elected by the people¹⁶ 3 states affirm — 7 neg.

On what respects his ineligibility Gov. Morris observed.

That in the strength of the Executive would be found the strength of America. Ineligibility operates to weaken or destroy the constitution.

The president will have no interest beyond his period of service.

He will for peace and emolument to himself and friends agree to acts that will encrease the power and agrandize the bodies which elect him.

The legislature will swallow up the whole powers of the constitution; but to do this effectually they must possess the Executive. This will lead them to tempt him, and the shortness of his reign will subject him to be tempted and overcome.

The legislature has great and various appointments in their power. This will create them an extensive influence which may be so used as to put it out of the power of the Executive to prevent them from arriving at supremacy.

On the other hand give the Executive a chance of being re-chosen and he will hold his prerogatives with all possible tenaciousness.

postponed the question.

Proceeded, and made some amendments to the 2 sect. Adjourned when the question was going to be put whether the legislature might enable the State Executives or legislatures to appoint officers to certain offices.¹⁷

¹⁶ According to the Journal, Detail of Ayes and Noes and Madison, this question was the first one upon Article X for which a vote was taken, and the vote is given as Ayes, 2; noes, 9.

¹⁷ Both the Journal and Madison report this motion as negatived, but McHenry is probably correct. See August 25, note 15.