



PICKING THE PRESIDENT

understanding the electoral college

EDITED BY ERIC BURIN

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*Understanding the
Electoral College*

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Table of Contents

Prefacei

Introduction: A Brief History of the Electoral College
Eric Burin iii

Section One

The Electoral College in Comparative Perspective

Ancient States and Representative Government:
Greek and Roman Models for the Electoral College
William Caraher 1

The Electoral College as American Aristocracy
Donald F. Johnson 5

America’s Rotten Electoral College System
Manisha Sinha 9

The South (or the North, or the West...)
Will Rise Again, and Again, and Again:
Viewing the Electoral College from
the Perspective of Chinese History
Andrew Meyer 11

Section Two

The Electoral College in Historical Perspective

What the Founders Were Thinking:
Why We have the Electoral College
Andrew Shankman..... 17

Did Disenfranchisement Give the South an Electoral Advantage?
Patrick Rael..... 21

Citizenship, Civil Rights, and Electoral Politics
Cynthia Culver Prescott.....27

Quantifying a Candidate’s Advantage in the Electoral College
Timothy Prescott.....31

Section Three
The Future of the Electoral College

If the Electoral College Can Contradict the
Popular Vote Sometimes, Why Would It Be
Wrong for Them To Do It Every Single Time?
Jack Russell Weinstein.....37

Electoral College is Fixable; Senate is Not.
Mark Trahan.....47

Long Habits and Legitimacy
Mark Stephen Jendrysik.....49

In Defense of the Electoral College
Allen Guelzo and James H. Hulme.....53

Electoral College Alternatives: Tradeoffs
Benjamin J. Kassow57

Section Four
Teaching the Electoral College

“Empathy for the Unicorn”:
Teaching About the Electoral College
Brad Austin63

Documents

The Constitutional Convention	75
U.S. Constitution: Article II.....	101
<i>Federalist Paper</i> No. 68.....	105
<i>Anti-Federalist Paper</i> No. 68	109
<i>Anti-Federalist Paper</i> No. 72	113
Amendment 12	117
Timothy Pickering Speech in Favor of the Twelfth Amendment.....	119
James Madison to George Hay	121
James Madison to John Hillhouse	125
Contributors	129

Preface

The 2016 presidential election has sparked an unprecedented interest in the Electoral College. In response to Donald Trump winning the presidency despite losing the popular vote, numerous commentators have weighed in with letters-to-the-editor, op-eds, blog posts, and the like, and thanks to the revolution in digital communications, these items have reached an exceptionally wide audience. In short, never before have so many people had so much to say about the Electoral College.

This remains a high-stakes debate, and historians, political scientists, philosophers, and other scholars have an important role to play in it. They can enrich discussions about the Electoral College by situating the system within the history of America and other societies; untangling the intricacies of republicanism, federalism, and democracy; articulating different concepts of political morality; and discerning, through statistical analysis, whom the Electoral College benefits most. In spotlighting the Electoral College from various vantage points, this volume aims to empower citizens to make clear-eyed decisions about it.

If one of this volume's goals is to illuminate the Electoral College, another is to do so while many people are still focused on the topic. This project came together quickly. The entire enterprise went from conception to completion in a mere five weeks. That swiftness was made possible by working with The Digital Press at the University of North Dakota, which embraces a cooperative, transparent model of publication with the goal of producing open-access, electronic works that can attract local and global audiences. Likewise, this volume came to fruition speedily because the contributors agreed to pen brief essays in short order. As a result, while their works have the hallmarks of scholarly articles, they do not constitute an exhaustive examination of the Electoral College. Indeed, many germane subjects are not addressed. Even so,

these learned ruminations can enhance the ongoing debate about the Electoral College.

Essays of this sort are much-needed, for the post-election dialogue about the Electoral College has been warped by partisanship. Republicans who reckon that Electoral College benefits their party usually have defended the system. Conversely, Democrats, smarting from the fact that in a span of sixteen years they have twice lost the presidency despite popular vote triumphs, typically have denounced it. This mode of assessment is unfortunate, for it impairs our ability to analyze the Electoral College on its own merits, as opposed to how it affects one party or another. Put another way, the Electoral College is an inherently political institution, but appraisals of it need not be invariably partisan.

To facilitate and expand the conversation about the Electoral College, this volume offers short essays that examine it from different disciplinary perspectives, including philosophy, mathematics, political science, communications, history, and pedagogy. Along the way, the essays address a variety of questions about the Electoral College: Why was it created? What were its antecedents? How has it changed over time? Who benefits from it? Is it just? Should we alter or abolish the Electoral College, and if so, what should replace it? In exploring these matters, *Picking the President* provides timely insights on one of America's most high-profile, momentous issues.

Documents

Documents

To prepare for the Constitutional Convention, James Madison studied the governmental and legal histories of other societies, focusing in particular on why past confederacies had failed. Yet despite all this research, about a month before the convention began, Madison confessed to George Washington that he had “scarcely ventured” to fashion an opinion about the form and powers that a “National executive” might have under a new constitution. As it turned out, many of the longest-running disputes at the convention concerned the executive branch, and, as Madison later remarked, the “difficulty of finding an unexceptionable” method for electing the president was “deeply felt” by the delegates. Document 1 (The Constitutional Convention) illuminates the philosophical and political issues that shaped the delegates’ debates about the executive branch, while Document 2 (Article II of the U.S. Constitution) showcases the method of election they ultimately chose. Document 3 (*Federalist Paper* No. 68) is Alexander Hamilton’s famous defense of the so-called Electoral College, while Document 4 (*Anti-Federalist Paper* No. 68) and Document 5 (*Anti-Federalist Paper* No. 72) represent the Anti-Federalist critique of the system. The ratification of the Constitution was not the end of the story, however. The partisan battles of the 1790s soon prompted an overhauling of the Electoral College, as illustrated by Document 6 (the 12th Amendment to the U.S. Constitution) and Document 7 (Timothy Pickering’s 1803 speech in favor of the 12th Amendment). Nevertheless, as shown by Document 8 (Madison’s 1823 letter to George Hay), Madison continued to perceive defects in the electoral process, lamenting that many states had embraced winner-take-all systems for selecting presidential electors, and that each state was accorded one vote when presidential elections devolved to the House of Representatives. Finally, as evident in Document 9 (Madison’s 1830 letter to James Hillhouse), over forty years after the Constitutional Convention, Madison remained “duly sensible to the evils incident to the existing” system for picking the presi-

dent, and welcomed efforts to improve it. However, even with the system's shortcomings, Madison was confident that "it will be a rare case that the Presidential contest will not issue in a choice that will not discredit the Station, and not be acquiesced in by the unsuccessful party, foreseeing as it must do, the appeal to be again made at no very distant day, to the will of the Nation."

In addition to the documents provided in this volume, many useful resources concerning the Electoral College can be found on the web. Wikipedia, for example, has interesting charts showing how states picked presidential electors during the early American republic and how each state's allotment of electoral votes has changed over time ([https://en.wikipedia.org/wiki/Electoral_College_\(United_States\)](https://en.wikipedia.org/wiki/Electoral_College_(United_States))). As was the case during the nation's initial years, the 1960s witnessed extensive debates about the Electoral College. One of the most striking episodes occurred in 1966 when Delaware filed suit against New York, charging that the latter's winner-take-all system for awarding electoral votes hurt the less populous states (<https://www.scribd.com/document/331930037/Delaware-v-New-York-1966>). Also noteworthy during this period was President Lyndon B. Johnson's 1966 speech in favor of reform, and comparable addresses in 1969 by Congressman Gerald Ford and President Richard Nixon, all three of which can be found here (<http://archive.fairvote.org/index.php?page=2054>). More recently, the supporters of the National Popular Vote Interstate Compact have attempted to effectively replace the Electoral College with a national popular vote (<http://www.nationalpopularvote.com>), but their prospects for success appear uncertain, since a 2016 Gallup poll showed support for the Electoral College to be at a fifty-year high (<http://www.gallup.com/poll/198917/americans-support-electoral-college-rises-sharply.aspx>).

Document 1

The Constitutional Convention

*Debates Concerning the Method of Selecting the Executive
(June 1 - September 6, 1787)*

FRIDAY June 1, 1787

William Houston from Georgia took his seat.

The Committee of the whole proceeded to Resolution 7. “that a national Executive be instituted, to be chosen by the national Legislature-for the term of ----- years &c to be ineligible thereafter, to possess the executive powers of Congress &c.”

Mr. PINKNEY was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace & war &c., which would render the Executive a monarchy, of the worst kind, to wit an elective one.

Mr. WILSON moved that the Executive consist of a single person.

Mr. C PINKNEY seconded the motion, so as to read “that a National Ex. to consist of a single person, be instituted.

A considerable pause ensuing and the Chairman asking if he should put the question, Doctr. **FRANKLIN** observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.

Mr. RUTLIDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, tho’ he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

Mr. SHERMAN said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depositary of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed but that the legislature should be at liberty to appoint one or more as experience might dictate.

Mr. WILSON preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of Legislative nature. Among others that of war & peace &c. The only powers he conceived strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.

Mr. GERRY favored the policy of annexing a Council to the Executive in order to give weight & inspire confidence. **Mr. RANDOLPH** strenuously opposed a unity in the Executive magistracy. He regarded it as the foetus of monarchy. We had he said no motive to be governed by the British Governmt. as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixt genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, despatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

Mr. WILSON said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it. **Mr. Wilson's** motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the

first part of the clause agreed to, viz—"that a National Executive be instituted."

Mr. MADISON thought it would be proper, before a choice shd. be made between a unity and a plurality in the Executive, to fix the extent of the Executive authority; that as certain powers were in their nature Executive, and must be given to that department. whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to the powers of the Executive shd. be struck out & that after the words "that a national Executive ought to be instituted" there be inserted the words following viz. "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers "not Legislative nor Judiciary in their nature," as may from time to time be delegated by the national Legislature." The words "not legislative nor judiciary in their nature" were added to the proposed amendment in consequence of a suggestion by Genl. Pinkney that improper powers might otherwise be delegated.

Mr. WILSON seconded this motion-

Mr. PINKNEY moved to amend the amendment by striking out the last member of it; viz: "and to execute such other powers not Legislative nor Judiciary in their nature as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "power to carry into effect the national laws."

Mr. RANDOLPH seconded the motion.

Mr. MADISON did not know that the words were absolutely necessary, or even the preceding words-"to appoint to offices &c. the whole being perhaps included in the first member of the proposition. He did not however see any inconveniency in retaining them, and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of Mr. Pinkney, the question on Mr. Madison's motion was divided; and the words objected to by Mr. Pinkney struck out; by the votes of Connecticut, N. Y. N. J. Pena. Del. N. C. & Geo. agst. Mass. Virga. & S. Carolina the preceding part of the motion being first agreed to; Connecticut

divided, all the other States in the affirmative. The next clause in Resolution 7, relating to the mode of appointing, & the duration of, the Executive being under consideration,

Mr. WILSON said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say however at least that in theory he was for an election by the people. Experience, particularly in N. York & Massts., shewed that an election of the first magistrate by the people at large, was both a convenient & successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

Mr. SHERMAN was for the appointment by the Legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing.

Mr. WILSON moves that the blank for the term of duration should be filled with three years, observing at the same time that he preferred this short period, on the supposition that a reeligibility would be provided for.

Mr. PINKNEY moves for seven years.

Mr. SHERMAN was for three years, and agst. the doctrine of rotation as throwing out of office the men best qualified to execute its duties.

Mr. MASON was for seven years at least, and for prohibiting a re-eligibility as the best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment.

Mr. BEDFORD was strongly opposed to so long a term as seven years. He begged the committee to consider what the situation of the Country would be, in case the first magistrate should be saddled on it for such a period and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment he said would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

On the question for seven years, Massts. dividd. Cont. no. N.

Y. ay. N. J. ay. Pena. ay. Del. ay. Virga. ay. N. C. no. S. C. no. Geor. no. There being 5 ays, 4 noes, 1 divd., a question was asked whether a majority had voted in the affirmative? The President decided that it was an affirmative vote.

The mode of appointing the Executive was the next question.

Mr. WILSON renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the Legislature from the people, without the intervention of the State Legislatures but the Executive also; in order to make them as independent as possible of each other, as well as of the States;

Col. MASON favors the idea, but thinks it impracticable. He wishes however that Mr. Wilson might have time to digest it into his own form.-the clause "to be chosen by the National Legislature"-was accordingly postponed.-

Mr. RUTLIDGE suggests an election of the Executive by the second branch only of the national Legislature.

The Committee then rose and the House

Adjourned.

Thursday July 19, 1787
IN CONVENTION

On reconsideration of the vote rendering the Executive re-eligible a 2d. time, Mr. MARTIN moved to reinstate the words, “to be ineligible a 2d. time.”

Mr. GOUVERNEUR MORRIS. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy & utility of the Union among the present and future States. It has been a maxim in Political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach the extreme parts of it. Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, agst. Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind & to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the 2d. branch was not meant as a check on Legislative usurpations of power, but on the abuse of lawful powers, on the propensity in the 1st. branch to legislate too much to run into projects of paper money & similar expedients. It is no check on Legislative tyranny. On the contrary it may favor it, and if the 1st. branch can be seduced may find the means of success. The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people. -It is the duty of the Executive to appoint the officers & to command the forces of the Republic: to appoint 1. ministerial officers for the administration of public affairs. 2. officers for the dispensation of Justice. Who will be the best Judges whether these appointments be well made? The people at large, who will know, will see, will feel

the effects of them. Again who can judge so well of the discharge of military duties for the protection & security of the people, as the people themselves who are to be protected & secured? -He finds too that the Executive is not to be re-eligible. What effect will this have?

1. it will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword.

2. It will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends.

3. It will produce violations of the very constitution it is meant to secure. In moments of pressing danger the tried abilities and established character of a favorite Magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establishment be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be re-eligible. It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they can not possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire. As to the danger from an unimpeachable magistrate he could not regard it as formidable. There must be certain great officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the public Justice. Without these ministers the Executive can do nothing of consequence. He

suggested a biennial election of the Executive at the time of electing the 1st. branch, and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large throughout so great an extent of country could not be influenced, by those little combinations and those momentary lies which often decide popular elections within a narrow sphere. It will probably, be objected that the election will be influenced by the members of the Legislature; particularly of the 1st. branch, and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the Legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another: that if the administration of the Executive were good, it would be unpopular to oppose his re-election, if bad it ought to be opposed & a reappointment. prevented; and lastly that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature but either to give him his office for life, or make him eligible by the people-Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the Country would secure his re-election agst. the factions & discontents of particular States. It deserved consideration also that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish & move that the whole constitution of the Executive might undergo reconsideration.

Mr. RANDOLPH urged the motion of Mr. L. Martin for restoring the words making the Executive ineligible a 2d. time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought & contended as he still did that the danger apprehended by the little States was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the Executive be appointed, as has been determined, by the Legislature, he will probably be appointed either by joint

ballot of both houses, or be nominated by the 1st. and appointed by the 2d. branch. In either case the large States will preponderate. If he is to court the same influence for his re-appointment, will he not make his revisionary power, and all the other functions of his administration subservient to the views of the large States. Besides, is there not great reason to apprehend that in case he should be re-eligible, a false complaisance in the Legislature might lead them to continue an unfit man in office in preference to a fit one. It has been said that a constitutional bar to reappointment will inspire unconstitutional endeavours to perpetuate himself. It may be answered that his endeavours can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless: to which may be added that this argument supposes him to be more powerful & dangerous, than other arguments which have been used, admit, and consequently calls for stronger fetters on his authority. He thought an election by the Legislature with an incapacity to be elected a second time would be more acceptable to the people than the plan suggested by Mr. Govr. Morris.

Mr. KING. did not like the ineligibility. He thought there was great force in the remark of Mr. Sherman, that he who has proved himself to be most fit for an Office, ought not to be excluded by the constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would chuse wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole he was of opinion that an appointment by electors chosen by the people for the purpose, would be liable to fewest objections.

Mr. PATTERSON's ideas nearly coincided he said with those of Mr. King. He proposed that the Executive should be appointed by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States. **Mr. WILSON.** It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered in-eligible a 2d. time: he perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.

Mr. MADISON. If it be a fundamental principle of free

Govt. that the Legislative, Executive & Judiciary powers should be separately exercised, it is equally so that they be independently exercised. There is the same & perhaps greater reason why the Executive shd. be independent of the Legislature, than why the Judiciary should: A coalition of the two former powers would be more immediately & certainly dangerous to public liberty. It is essential then that the appointment of the Executive should either be drawn from some source, or held by some tenure, that will give him a free agency with regard to the Legislature. This could not be if he was to be appointable from time to time by the Legislature. It was not clear that an appointment in the 1st. instance even with an eligibility afterwards would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know & vote for some Citizen whose merits had rendered him an object of general attention & esteem. There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to fewest objections.

Mr. GERRY. If the Executive is to be elected by the Legislature he certainly ought not to be re-eligible. This would make him absolutely dependent. He was agst. a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive by Electors to be chosen by the State Executives. The people of the States will then choose the 1st. branch: The legislatures of the States the 2d. branch of the National Legislature, and the Executives of the States, the National Executive. This he thought would form a strong attachnt. in the States to the National System. The popular mode of electing the chief Magistrate would certainly be the worst of all. If he should be so elected & should do his duty, he

will be turned out for it like Govr. Bowdoin in Massts. & President Sullivan in N. Hamshire.

On the question on Mr. Govr. Morris motion to reconsider generally the constitution of the Executive. Mas. ay. Ct. ay. N. J. ay & all the others ay.

Mr. ELSEWORTH moved to strike out the appointmt. by the Natl. Legislature, and insert "to be chosen by electors appointed, by the Legislatures of the States in the following ratio; tow-it-one for each State not exceeding 200,000 inhabts. two for each above yt. number & not exceeding 300,000. and three for each State exceeding 300,000.

Mr. BROOME 2ded. the motion

Mr. RUTLIDGE was opposed to all the modes except the appointmt. by the Natl. Legislature. He will be sufficiently independent, if he be not re-eligible.

Mr. GERRY preferred the motion of Mr. Elseworth to an appointmt. by the Natl. Legislature, or by the people; tho' not to an appt. by the State Executives. He moved that the electors proposed by Mr. E. should be 25 in number, and allotted in the following proportion. to N. H. 1. to Mas. 3. to R. I. 1. to Cont. 2. to N. Y. 2. N. J. 2. Pa. 3. Del. 1. Md. 2. Va. 3. N. C. 2. S. C. 2. Geo. 1.

The question as moved by Mr. Elseworth being divided, on the 1st. part shall ye. Natl. Executive be appointed by Electors? Mas. divid. Cont. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

On 2d. part shall the Electors be chosen by State Legislatures? Mas. ay. Cont. ay. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. no. N. C. ay. S. C. no. Geo. ay.

The part relating to the ratio in which the States sd. chuse electors was postponed nem. con.

Mr. L. MARTIN moved that the Executive be ineligible a 2d. time.

Mr. WILLIAMSON 2ds. the motion. He had no great confidence in the Electors to be chosen for the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of Govt. They would be liable to undue influence, which might the more readily be practised as some of them will probably be in appointment 6 or 8 months before the object of it comes on.

Mr. ELSEWORTH supposed any persons might be appointed Electors, excepting solely, members of the Natl. Legislature.

On the question shall he be ineligible a 2d. time? Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. no.

On the question Shall the Executive continue for 7 years? It passed in the negative Mas. divd. Cont. ay. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. divd. S. C. ay. Geo. ay.

Mr. KING was afraid we shd. shorten the term too much.

Mr. Govr. MORRIS was for a short term, in order to avoid impeachs. which wd.. be otherwise necessary.

Mr. BUTLER was agst. a frequency of the elections. Geo. & S. C. were too distant to send electors often.

Mr. ELSEWORTH was for 6. years. If the elections be too frequent, the Executive will not be firm eno'. There must be duties which will make him unpopular for the moment. There will be outs as well as ins. His administration therefore will be attacked and misrepresented.

Mr. WILLIAMSON was for 6 years. The expence will be considerable & ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.

On question for 6 years? Mas. ay. Cont. ay. N. J. ay. Pa ay. Del. no. Md

. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned

Tuesday July 24, 1787
IN CONVENTION

The appointment of the Executive by Electors reconsidered.

Mr. HOUSTON moved that he be appointed by the "Natl. Legislature," instead of "Electors appointed by the State Legislatures" according to the last decision of the mode. He dwelt chiefly on the improbability, that capable men would undertake the service of Electors from the more distant States.

Mr. SPAIGHT seconded the motion.

Mr. GERRY opposed it. He thought there was no ground to apprehend the danger urged by Mr. Houston. The election of the Executive Magistrate will be considered as of vast importance and will excite great earnestness. The best men, the Governours of the States will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a 2d. time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

Mr. STRONG supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a 2d. time; as new elections of the Legislature will have intervned; and he will not depend for his 2d. appointment on the same sett of men as his first was recd. from. It had been suggested that gratitude for his past appointment wd. produce the same effect as dependence for his future appointment. He thought very differently. Besides this objection would lie agst. the Electors who would be objects of gratitude as well as the Legislature. It was of great importance not to make the Govt. too complex which would be the case if a new sett of men like the Electors should be introduced into it. He thought also that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

Mr. WILLIAMSON was for going back to the original ground; to elect the Executive for 7 years and render him ineligible a 2d. time. The proposed Electors would certainly not be men of the 1st. nor even of the 2d. grade in the States. These would all prefer a seat either in the Senate or the other branch of the Legislature. He did not like the Unity in the Executive. He had wished

the Executive power to be lodged in three men taken from three districts into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interests between the N. & S. States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the Kingdom. Another objection agst. a single Magistrate is that he will be an elective King, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible. -Ineligibility a 2d. time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than 7 years. He would go as far as 10 or 12 years.

Mr. GERRY moved that the Legislatures of the States should vote by ballot for the Executive in the same proportions as it had been proposed they should chuse electors; and that in case a majority of the votes should not center on the same person, the 1st. branch of the Natl. Legislature should chuse two out of the 4 candidates having most votes, and out of these two, the 2d. branch should chuse the Executive.

Mr. KING seconded the motion-and on the Question to postpone in order to take it into consideration. The noes were so predominant, that the States were not counted.

Question on Mr. Houston's motion that the Executive be appd. by Nal. Legislature

N. H. ay. Mas. ay. Ct. no. N. J. ay. Pa. no. Del. ay. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

Mr. L. MARTIN & **Mr. GERRY** moved to re-instate the ineligibility of the Executive a 2d. time.

Mr. ELSEWORTH. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be reelected if his conduct proved him worthy of it. And he will be more likely to render himself, worthy of it if he be rewardable with it. The most eminent characters also will be more willing to accept the trust

under this condition, than if they foresee a necessary degradation at a fixt period.

Mr. GERRY. That the Executive shd. be independent of the Legislature is a clear point. The longer the duration of his appointment the more will his dependence be diminished. It will be better then for him to continue 10, 15, or even 20, years and be ineligible afterwards.

Mr. KING was for making him re-eligible. This is too great an advantage to be given up for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

Mr. L. MARTIN, suspending his motion as to the ineligibility, moved “that the appointmt. of the Executive shall continue for Eleven years.

Mr. GERRY suggested fifteen years

Mr. KING twenty years. This is the medium life of princes.

Mr. DAVIE Eight years

Mr. WILSON. The difficulties & perplexities into which the House is thrown proceed from the election by the Legislature which he was sorry had been reinstated. The inconveniency of this mode was such that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election; unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance in life, a continuance in office would cease to be agreeable to the officer, as well as desirable to the public. Experience had shewn in a variety of instances that both a capacity & inclination for public service existed-in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was 80 years of age. The popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at 35. years of age, which he presumes may happen & his continuance should be fixt at 15 years. at the age of 50. in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British Jurisprudence have sustained, had the age of 50. been fixt there as the ultimate limit of capacity or readiness to serve

the public. The great luminary [Ld. Mansfield] held his seat for thirty years after his arrival at that age. Notwithstanding what had been done he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation he wd. move that the present question be postponed till tomorrow.

Mr. BROOM seconded the motion to postpone.

Mr. GERRY. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the Executive to the Committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Mr. WILSON. As the great difficulty seems to spring from the mode of election, he wd. suggest a mode which had not been mentioned. It was that the Executive be elected for 6 years by a small number, not more than 15 of the Natl. Legislature, to be drawn from it, not by ballot, but by lot and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not he said a digested idea and might be liable to strong objections.

Mr. Govr. MORRIS. Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment but was now convinced that impeachments must be provided for, if the appt. was to be of any duration. No man wd. say, that an Executive known to be in the pay of an Enemy, should not be removeable in some way or other. He had been charged heretofore [by Col. Mason] with inconsistency in pleading for confidence in the Legislature on some occasions, & urging a distrust on others. The charge was not well founded. The Legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their Constituents, as happens in many of their Acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature can not be too much distrusted. In all public bodies there are two parties. The

Executive will necessarily be more connected with one than with the other. There will be a personal interest therefore in one of the parties to oppose as well as in the other to support him. Much had been said of the intrigues that will be practised by the Executive to get into office. Nothing had been said on the other side of the intrigues to get him out of office. Some leader of party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real King, the Minister. This was the way in which Pitt [Ld. Chatham] forced himself into place. Fox was for pushing the matter still farther. If he carried his India bill, which he was very near doing, he would have made the Minister, the King in form almost as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something had been said of the danger of Monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited Monarchy. In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineligible a 2d. time had been devised. This was as much as to say we shd. give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a 2d. time-and prolong his duration even to 15- years, will he by any wonderful interposition of providence at that period cease to be a man? No he will be unwilling to quit his exaltation, the road to his object thro' the Constitution will be shut; he will be in possession of the sword, a civil war will ensue, and the Commander of the victorious army on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system be curable. It is the most difficult of all rightly to balance the Executive. Make him too weak: The Legislature will usurp his powers: Make him too strong. He will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan: it ought to do so. He shd. himself be afraid to trust it. He was not prepared to decide on Mr. Wilson's mode of election just hinted by him. He thought it deserved consideration It would be

better that chance sh. decide than intrigue.

On a question to postpone the consideration of the Resolution on the subject of the Executive

N. H. no. Mas. no. Ct. ay. N. J. no. Pa. ay. Del. divd. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

Mr. WILSON then moved that the Executive be chosen every ----- years by ----- Electors to be taken by lot from the Natl Legislature who shall proceed immediately to the choice of the Executive and not separate until it be made."

Mr. CARROL 2ds. the motion

Mr. GERRY. this is committing too much to chance. If the lot should fall on a sett of unworthy men, an unworthy Executive must be saddled on the Country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

Mr. KING. The lot might fall on a majority from the same State which wd. ensure the election of a man from that State. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed

Mr. WILSON did not move this as the best mode. His opinion remained unshaken that we ought to resort to the people for the election. He seconded the postponement.

Mr. Govr. MORRIS observed that the chances were almost infinite agst. a majority of electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative; 7. ays. 4 noes.

On the question of postponement. it was agreed to nem. con.

Mr. CARROL took occasion to observe that he considered the clause declaring that direct taxation on the States should be in proportion to representation, previous to the obtaining an actual census, as very objectionable, and that he reserved to himself the right of opposing it, if the Report of the Committee of detail should leave it in the plan.

Mr. Govr. MORRIS hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge to assist us over a certain gulph; having passed the gulph the bridge may be removed. He thought the principle laid down with so much strictness, liable to strong objections

On a ballot for a Committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were Mr. Rutledge, Mr. Randolph, Mr. Ghorum, Mr. Elseworth, Mr. Wilson-

On motion to discharge the Come. of the whole from the propositions submitted to the Convention by Mr. C. Pinkney as the basis of a constitution, and to refer them to the Committee of detail just appointed, it was agd. to nem: con.

A like motion was then made & agreed to nem: con: with respect to the propositions of Mr. Patterson

Adjourned.

Tuesday July 25, 1787
IN CONVENTION

Clause relating to the Executive again under consideration.

Mr. ELSEWORTH moved “that the Executive be appointed by the Legislature,” except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, & be reeligible, in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose.” By this means a deserving magistrate may be reelected without making him dependent on the Legislature.

Mr. GERRY repeated his remark that an election at all by the Natl. Legislature was radically and incurably wrong; and moved that the Executive be appointed by the Governours & Presidents of the States, with advice of their Councils, and where there are no Councils by Electors chosen by the Legislatures. The executives to vote in the following proportions: viz-

Mr. MADISON. There are objections agst. every mode that has been, or perhaps can be proposed. The election must be made either by some existing authority under the Natil. or State Constitutions-or by some special authority derived from the people-or by the people themselves. -The two Existing authorities under the Natl. Constitution wd. be the Legislative & Judiciary. The latter he presumed was out of the question. The former was in his Judgment liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, 1. the election of the Chief Magistrate would agitate & divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. 2. the candidate would intrigue with the Legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. 3. The Ministers of foreign powers would have and make use of, the opportunity to mix their intrigues & influence with the Election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our Governmt. a man attached to their respective poli-

tics & interests. No pains, nor perhaps expense, will be spared, to gain from the Legislature an appointment favorable to their wishes. Germany & Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, altho' the elective Magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive & Judiciary. The appointment of the Natl. Executive by the first, was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the Natl. Legislature was to controul this propensity. One object of the Natl. Executive, so far as it would have a negative on the laws, was to controul the Natl. Legislature, so far as it might be infected with a similar propensity. Refer the appointment of the Natl. Executive to the State Legislatures, and this controuling purpose may be defeated. The Legislatures can & will act with some kind of regular plan, and will promote the appointment of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures at the time of election have the same object, or different objects of the same kind, The Natl. Executive would be rendered subservient to them. -An appointment by the State Executives, was liable among other objections to this insuperable one, that being standing bodies, they could & would be courted, and intrigued with by the Candidates, by their partizans, and by the Ministers of foreign powers. The State Judiciarys had not & he presumed wd. not be proposed as a proper source of appointment. The option before us then lay between an appointment by Electors chosen by the people-and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged agst. it, and greatly preferable to an appointment by the Natl. Legislature. As the electors would be chosen for the occasion, would meet at once, & proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption. As a farther precaution, it might be required that they should meet at some place,

distinct from the seat of Govt. and even that no person within a certain distance of the place at the time shd. be eligible. This Mode however had been rejected so recently & by so great a majority that it probably would not be proposed anew. The remaining mode was an election by the people or rather by the qualified part of them, at large: With all its imperfections he liked this best. He would not repeat either the general argumts. for or the objections agst. this mode. He would only take notice of two difficulties which he admitted to have weight. The first arose from the disposition in the people to prefer a Citizen of their own State, and the disadvantage this wd. throw on the smaller States. Great as this objection might be he did not think it equal to such as lay agst. every other mode which had been proposed. He thought too that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the N. & S. States, and the disadvantages which this mode would throw on the latter. The answer to this objection was 1. that this disproportion would be continually decreasing under the influence of the Republican laws introduced in the S. States, and the more rapid increase of their population. 2. That local considerations must give way to the general interest. As an individual from the S. States he was willing to make the sacrifice.

Mr. ELSEWORTH. The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the Candidate within the State; and the largest States wd. invariably have the man.

Question on Mr. Elseworth's motion as above.

N. H. ay. Mas. no. Ct ay. N. J. no. Pa. ay. Del. no. Md. ay. Va. no. N. C. no. S. C. no. Geo. no.

Mr. PINKNEY moved that the election by the Legislature be qualified with a proviso that no person be eligible for more than 6 years in any twelve years. He thought this would have all the advantage & at the same time avoid in some degree the inconvenience, of an absolute ineligibility a 2d. time.

Col. MASON approved the idea. It had the sanction of experience in the instance of Congs. and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election, and opened the way at the same time for the advantage of his future services. He preferred on the

whole the election by the Natl. Legislature: Tho' Candor obliged him to admit, that there was great danger of foreign influence, as had been suggested. This was the most serious objection with him that had been urged.

Mr. BUTLER. The two great evils to be avoided are cabal at home, & influence from abroad. It will be difficult to avoid either if the Election be made by the Natl. Legislature. On the other hand: The Govt. should not be made so complex & unwieldy as to disgust the States. This would be the case, if the election shd. be referred to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was agst. are-eligibility at all events. He was also agst. a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive as in that of the Legislature.

Mr. GERRY approved of Mr. Pinkney's motion as lessening the evil.

Mr. Govr. MORRIS was agst. a rotation in every case. It formed a political School, in wch we were always governed by the scholars, and not by the Masters. The evils to be guarded agst. in this case are 1. the undue influence of the Legislature. 2. instability of Councils. 3. misconduct in office. To guard agst. the first, we run into the second evil. We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pena. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Soloman. 2. the Rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man, formed by his benevolent author no doubt for wise ends, that altho' he knows his existence to be limited to a span, he takes his measures as if he were to live for ever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre

where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. 3. To avoid the third evil, impeachments will be essential, and hence an additional reason agst. an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of Mr. Wilson, of introducing a mixture of lot. It will diminish, if not destroy both cabal & dependence.

Mr. WILLIAMSON was sensible that strong objections lay agst. an election of the Executive by the Legislature, and that it opened a door for foreign influence. The principal objection agst. an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for 3 candidates, One of these he observed would be probably of his own State, the other 2. of some other States; and as probably of a small as a large one.

Mr. Govr. MORRIS liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own State.

Mr. MADISON also thought something valuable might be made of the suggestion with the proposed amendment of it. The second best man in this case would probably be the first, in fact. The only objection which occurred was that each Citizen after havg. given his vote for his favorite fellow Citizen, wd. throw away his second on some obscure Citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might moreover be provided in favor of the smaller States that the Executive should not be eligible more than times in years from the same State.

Mr. GERRY. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union & acting in Concert to delude them into any appointment. He observed that such a Society of men existed in the Order of the Cincinnati. They are respectable, United, and influential. They will in fact elect the chief Magistrate in every instance, if the election be referred to

the people. His respect for the characters composing this Society could not blind him to the danger & impropriety of throwing such a power into their hands.

Mr. DICKENSON. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay agst. an election of the Executive by the Natl. Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people which he regarded as the best & purest source. Objections he was aware lay agst. this mode, but not so great he thought as agst. the other modes. The greatest difficulty in the opinion of the House seemed to arise from the partiality of the States to their respective Citizens. But, might not this very partiality be turned to a useful purpose. Let the people of each State chuse its best Citizen. The people will know the most eminent characters of their own States, and the people of different States will feel an emulation in selecting those of which they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the Natl. Legislature, or by Electors appointed by it.

On a Question which was moved for postponing Mr. Pinkney's motion; in order to make way for some such proposition as had been hinted by Mr. Williamson & others: it passed in the negative.

N. H. no. Mas. no. Ct. ay. N. J. ay. Pa. ay. Del. no. Md. ay. Va. ay. N. C. no. S. C. no. Geo. no.

On Mr. Pinkney's motion that no person shall serve in the Executive more than 6 years in 12. years, it passed in the negative.

N. H. ay. Mas. ay. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay.

On a motion that the members of the Committee be furnished with copies of the proceedings it was so determined; S. Carolina alone being in the negative.

It was then moved that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative. N. H. no. Mas. no. Con: ay. N. J. ay. Pa. no. Del. ay. Maryland. no. Va. ay. N. C. ay. S. C. no. Geo. no.

Mr. GERRY & Mr. BUTLER moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Committee of detail

Mr. WILSON hoped that so important a branch of the System wd. not be committed untill a general principle shd. be fixed by a vote of the House.

Mr. LANGDON, was for the Commitment-Adjd.

Document 2

U.S. Constitution : Article II

Section 1- President: his term of office. Electors of President; number and how appointed. Electors to vote on same day. Qualification of President. On whom his duties devolve in case of his removal, death, etc. President's compensation. His oath of office.

1. The Executive power shall be vested in a President of the United States of America. He shall hold office during the term of four years, and together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. *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 each; which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, 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 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; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from*

each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. 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 by ballot the Vice President. (The clause in italics was superseded by Amendment XII)

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born Citizen, or a Citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. (This clause has been modified by Amendment XX and Amendment XXV)

6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the

office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Section 2 - President to be Commander-in-Chief. He may require opinions of cabinet officers, etc., may pardon. Treaty-making power. Nomination of certain officers. When President may fill vacancies.

1. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have the power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section 3 - President shall communicate to Congress. He may convene and adjourn Congress, in case of disagreement, etc. Shall receive ambassadors, execute laws, and commission officers.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he may receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4 - All civil offices forfeited for certain crimes.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Document 3

Federalist Paper No. 68

*The Mode of Electing the President from the NEW YORK PACKET.
Friday, March 14, 1788.*

To the People of the State of New York:

THE mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded.¹ I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so import-

ant an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to

embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who

are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says: "For forms of government let fools contest That which is best administered is best," yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President.

PUBIUS.

Document 4

Anti-Federalist Paper No. 68

On the Mode of Electing the President

From a speech by William Grayson given to the Virginia ratifying convention on June 18, 1788.

Mr. [William] GRAYSON. Mr. Chairman, one great objection with me is this: If we advert to..... [the] democratical, aristocratical, or executive branch, we shall find their powers are perpetually varying and fluctuating throughout the whole. Perhaps the democratic branch would be well constructed, were it not for this defect. The executive is still worse, in this respect, than the democratic branch. He is to be elected by a number of electors in the country; but the principle is changed when no person has a majority of the whole number of electors appointed, or when more than one have such a majority, and have an equal number of votes; for then the lower house is to vote by states. It is thus changing throughout the whole. It seems rather founded on accident than any principle of government I ever heard of. We know that there scarcely ever was an election of such an officer without the interposition of foreign powers. Two causes prevail to make them intermeddle in such cases:—one is, to preserve the balance of power; the other, to preserve their trade. These causes have produced interferences of foreign powers in the election of the king of Poland. All the great powers of Europe have interfered in an election which took place not very long ago, and would not let the people choose for themselves. We know how much the powers of Europe have interfered with Sweden. Since the death of Charles XII, that country has been a republican government. Some powers were willing it should be so; some were willing her imbecility should continue; others wished the contrary; and at length the court of France brought about a revolution, which converted it into an absolute government. Can America be free from these interferences? France, after losing

Holland, will wish to make America entirely her own. Great Britain will wish to increase her influence by a still closer connection. It is the interest of Spain, from the contiguity of her possessions in the western hemisphere to the United States, to be in an intimate connection with them, and influence their deliberations, if possible. I think we have every thing, to apprehend from such interferences. It is highly probable the President will be continued in office for life. To gain his favor, they will support him. Consider the means of importance he will have by creating officers. If he has a good understanding with the Senate, they will join to prevent a discovery of his misdeeds. . . .

This quadrennial power cannot be justified by ancient history. There is hardly an instance where a republic trusted its executive so long with much power; nor is it warranted by modern republics. The delegation of power is, in most of them, only for one year.

When you have a strong democratical and a strong aristocratical branch, you may have a strong executive. But when those are weak, the balance will not be preserved, if you give the executive extensive powers for so long a time. As this government is organized, it would be dangerous to trust the President with such powers. How will you punish him if he abuse his power? Will you call him before the Senate? They are his counsellors and partners in crime. Where are your checks? We ought to be extremely cautious in this country. If ever the government be changed, it will probably be into a despotism. The first object in England was to destroy the monarchy; but the aristocratic branch restored him, and of course the government was organized on its ancient principles. But were a revolution to happen here, there would be no means of restoring the government to its former organization. This is a caution to us not to trust extensive powers. I have an extreme objection to the mode of his election. I presume the seven Eastern States will always elect him. As he is vested with the power of making treaties, and as there is a material distinction between the carrying and productive states, the former will be disposed to have him to themselves. He will accommodate himself to their interests in forming treaties, and they will continue him perpetually in office. Thus mutual interest will lead them reciprocally to support one another. It will be a government of a faction, and this observation will apply to every part of it; for, having a majority, they may do what they please. I

have made an estimate which shows with what facility they will be able to reelect him. The number of electors is equal to the number of representatives and senators; viz., ninety-one. They are to vote for two persons. They give, therefore, one hundred and eighty-two votes. Let there be forty-five votes for four different candidates, and two for the President. He is one of the five highest, if he have but two votes, which he may easily purchase. In this case, by the 3d clause of the 1st section of the 2d article, the election is to be by the representatives, according to states. Let New Hampshire be for him,-a majority of its

3 representatives is	2	
Rhode Island	1	1
Connecticut	5	3
New Jersey	4	3
Delaware	1	1
Georgia	3	2
North Carolina	5	3

A majority of seven states is 15 Thus the majority of seven states is but 15, while the minority amounts to 50. The total number of voices (91 electors and 65 representatives) is . .

156 Voices in favor of the President are, 2 state electors and 15 representatives 17

139 So that the President may be reelected by the voices of 17 against 139.

It may be said that this is an extravagant case, and will never happen. In my opinion, it will often happen. A person who is a favorite of Congress, if he gets but two votes of electors, may, by the subsequent choice of 15 representatives, be elected President. Surely the possibility of such a case ought to be excluded.

Document 5

Anti-Federalist Paper No. 72

On the Electoral College; On ReEligibility of the President

By an anonymous writer "REPUBLICUS," appearing in THE KENTUCKY GAZETTE on March 1, 1788.

. . . I go now to Art. 2, Sec. 1, which vest the supreme continental executive power in a president-in order to the choice of whom, the legislative body of each state is empowered to point out to their constituents some mode of choice, or (to save trouble) may choose themselves, a certain number of electors, who shall meet in their respective states, and vote by ballot, for two persons, one of whom, at least, shall not be an inhabitant of the same state with themselves. Or in other words, they shall vote for two, one or both of whom they know nothing of. An extraordinary refinement this, on the plain simple business of election; and of which the grand convention have certainly the honor of being the first inventors; and that for an officer too, of so much importance as a president - invested with legislative and executive powers; who is to be commander in chief of the army, navy, militia, etc.; grant reprieves and pardons; have a temporary negative on all bills and resolves; convene and adjourn both houses of congress; be supreme conservator of laws; commission all officers; make treaties; and who is to continue four years, and is only removable on conviction of treason or bribery, and triable only by the senate, who are to be his own council, whose interest in every instance runs parallel with his own, and who are neither the officers of the people, nor accountable to them.

Is it then become necessary, that a free people should first resign their right of suffrage into other hands besides their own, and then, secondly, that they to whom they resign it should be compelled to choose men, whose persons, characters, manners, or principles they know nothing of? And, after all (excepting some

such change as is not likely to happen twice in the same century) to intrust Congress with the final decision at last? Is it necessary, is it rational, that the sacred rights of mankind should thus dwindle down to Electors of electors, and those again electors of other electors? This seems to be degrading them even below the prophetic curse denounced by the good old patriarch, on the offspring of his degenerate son: "servant of servants". . .

Again I would ask (considering how prone mankind are to engross power, and then to abuse it) is it not probable, at least possible, that the president who is to be vested with all this demiomnipotence - who is not chosen by the community; and who consequently, as to them, is irresponsible and independent-that he, I say, by a few artful and dependent emissaries in Congress, may not only perpetuate his own personal administration, but also make it hereditary? By the same means, he may render his suspensive power over the laws as operative and permanent as that of G. the 3d over the acts of the British parliament; and under the modest title of president, may exercise the combined authority of legislation and execution, in a latitude yet unthought of. Upon his being invested with those powers a second or third time, he may acquire such enormous influence-as, added to his uncontrollable power over the army, navy, and militia; together with his private interest in the officers of all these different departments, who are all to be appointed by himself, and so his creatures, in the true political sense of the word; and more especially when added to all this, he has the power of forming treaties and alliances, and calling them to his assistance-that he may, I say, under all these advantages and almost irresistible temptations, on some pretended pique, haughtily and contemptuously, turn our poor lower house (the only shadow of liberty we shall have left) out of doors, and give us law at the bayonet's point. Or, may not the senate, who are nearly in the same situation, with respect to the people, from similar motives and by similar means, erect themselves easily into an oligarchy, towards which they have already attempted so large a stride? To one of which channels, or rather to a confluence of both, we seem to be fast gliding away; and the moment we arrive at it-farewell liberty. . . .

To conclude, I can think of but one source of right to government, or any branch of it-and that is THE PEOPLE. They, and

only they, have a right to determine whether they will make laws, or execute them, or do both in a collective body, or by a delegated authority. Delegation is a positive actual investiture. Therefore if any people are subjected to an authority which they have not thus actually chosen—even though they may have tamely submitted to it—yet it is not their legitimate government. They are wholly passive, and as far as they are so, are in a state of slavery. Thank heaven we are not yet arrived at that state. And while we continue to have sense enough to discover and detect, and virtue enough to detest and oppose every attempt, either of force or fraud, either from without or within, to bring us into it, we never will.

Let us therefore continue united in the cause of rational liberty. Let unity and liberty be our mark as well as our motto. For only such an union can secure our freedom; and division will inevitably destroy it. Thus a mountain of sand may be removed by the feeble hands of a child; but if consolidated into a rock, it mocks the united efforts of mankind, and can only fall in a general wreck of nature.

REPUBLICUS.

Document 6

Amendment 12

Manner of Choosing a President and Vice-President

This Amendment altered Article 2 Section 1 Part 2

Passed by Congress December 9, 1803. Ratified July 27, 1804.

1. The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, 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 for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. *And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.* (The words in italics were superseded by Amendment XX)

3. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such numbers be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Documents 7

Timothy Pickering, Speech in Favor of the Twelfth Amendment

Timothy Pickering, [Speech in favor of the twelfth amendment], circa October 17, 1803. (The Gilder Lehrman Institute of American History, GLC05321.02)

Mr Speaker -,

The People, by their Electors shall elect the President, this is undoubtedly the meaning and the true construction given the Constitution,- then to carry this fully into effect is doubtless pursuing the wishes of the framers of that Instrument: - and I contend that the Amendment under consideration is calculated to accomplish this object and without this amendment, a person not having the confidence of the Nation may be elected - can it be said with this contingent, that the Constitution will inspire so full confidence as if [inserted: the] difficulty was removed. -Confidence in a Republican government is important, confidence cannot be placed in such a government if the majority cannot govern. - , But, Sir, we are told that certain great States are determined to use up all authority and bear down the constitution; that the very place where we are now [at] is to become Virginia property, and therefore we must not tutch that sacred instrument the constitution. - and, Sir if this be so: Suppose at the time of the late Presidential [sic] election, no President had been elected untill after the fourth of March - who would answer for the consequences? would not the great States then have refused (in agreeing to a new Constitution which must then have been formed) to give the small States an equal vote with the larger in the Senate, - and this precious article in the present Constitution cannot ever be altered - privilages enjoyid under the present constitution are much greater than could be expected were

a new Constitution now to be formed, - to prevent the Constitution from running out by the present amendment is of more importance to the Small States, than can possibly ever be gained to them by, electing a President under the Constitution as it now is. -

[2] I believe, Sir we outfit not to calculate to turn, or have a wish for the election of a President, in any other way than by the Electors, for without this popular privelage the constitution would not have been adopted - again four small States which send but Eight members to the House of representatives have a right to Sixteen votes for President while a great State, having a right to send say from 18 to 25 Members can add but two to her number in the choice of a President is [inserted: not] this advantage great enough for small States in that particular, under such an institution. -, On the subject of innovation, great clamour is made. I am not infavor of innovation or amendments except for important and mighty considerations; - but were not amendments expected: most certainly they were expected and I will venture & say that without this provision, the constitution would never have been adopted. - And will any Gent.n Say that amendments have as yet injured the constitution: it is a well known fact that the amendments already incorporated into the constitution have greatly increased its friends. - One Gentn afraid this amendment will also increase its friends, and stability and in that way prevent and destroy a favorite object with [Lernes], namly , a division of the Union between the northern and southern States}- I will not accuse any gentn. In this house with such base motion but Sir I believe there are men base enough in New England to wish for such a measure., Under an impression that the proposed amendment if adopted will give Stability and duration to the Constitution I shall give it my hearty support - ,

[docket], Legislature 1804

Document 8

James Madison to George Hay

from The Writings of James Madison. Edited by Gaillard Hunt. 9 vols. New York: G. P. Putnam's Sons, 1900-1910.

23 Aug. 1823

I have received your letter of the 11th, with the Newspapers containing your remarks on the present mode of electing a President, and your proposed remedy for its defects. I am glad to find you have not abandoned your attention to great Constitutional topics. The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U.S. was deeply felt by the Convention; and as the final arrangement of it took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such Bodies, tho' the degree was much less than usually prevails in them.

The part of the arrangement which casts the eventual appointment on the House of Reps. voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate. The agency of the H. of Reps. was thought safer also than that of the Senate, on account of the greater number of its members. It might indeed happen that the event would turn on one or two States having one or two Reps. only; but even in that case, the representations of most of the States being numerous, the House would present greater obstacles to corruption than the Senate with its paucity of Members. It may be observed also, that altho' for a certain period the evil of State votes given by one or two individuals would be extended by the introduction of new States, it would be rapidly diminished by growing populations within extensive territories. At the present

period, the evil is at its maximum. Another Census will leave none of the States existing or in Embryo, in the numerical rank of R.I. & Del, nor is it impossible, that the progressive assimilation of local Institutions, laws & manners, may [Volume 3, Page 557] overcome the prejudices of those particular States against an incorporation with their neighbours.

But with all possible abatements the present rule of voting for President by the H. of Reprs. is so great a departure from the Republican principle of numerical equality, and even from the federal rule which qualifies the numerical by a State equality, and is so pregnant also with a mischievous tendency in practice, that an amendment of the Constitution on this point is justly called for by all its considerate & best friends.

I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the H. of Reprs. The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative election, as the only expedient for baffling the policy of the particular States which had set the example. A constitutional establishment of that mode will doubtless aid in reconciling the smaller States to the other change which they will regard as a concession on their part. And it may not be without a value in another important respect. The States when voting for President by general tickets or by their Legislatures, are a string of beads; when they make their elections by districts, some of these differing in sentiment from others, and sympathizing with that of districts in other States, they are so knit together as to break the force of those geographical and other noxious parties which might render the repulsive too strong for the cohesive tendencies within the Political System.

It may be worthy of consideration whether in requiring elections by districts, a discretion might not be conveniently left with the States to allot two members to a single district. It would manifestly be an important proviso, that no new arrangement of districts should be made within a certain period previous to an ensuing election of President.

Of the different remedies you propose for the failure of a majority of Electoral votes for any one Candidate, I like best that

which refers the final choice, to a joint vote of the two Houses of Congress, restricted to the two highest names on the Electoral lists. It might be a question, whether the three instead of the two highest names might not be put within the choice of Congress, inasmuch as it not unfrequently happens, that the Candidate third on the list of votes would in a question with either of the two first outvote him, and, consequently be the real preference of the voters. But this advantage of opening a wider door & a better chance to merit, may be outweighed by an increased difficulty in obtaining a prompt & quiet decision by Congress with three candidates before them, supported by three parties, no one of them making a majority of the whole.

The mode which you seem to approve, of making a plurality of Electoral votes a definitive appointment would have the merit of avoiding the Legislative agency in appointing the Executive; but might it not, by multiplying hopes and chances, stimulate intrigue & exertion, as well as incur too great a risk of success to a very inferior candidate? Next to the propriety of having a President the real choice of a majority of his Constituents, it is desirable that he should inspire respect & acquiescence by qualifications not suffering too much by comparison.

I cannot but think also that there is a strong objection to undistinguishing votes for President & Vice President; the highest number appointing the former the next the latter. To say nothing of the different services (except in a rare contingency) which are to be performed by them, occasional transpositions would take place, violating equally the mutual consciousness of the individuals, & the public estimate of their comparative fitness.

Having thus made the remarks to which your communication led, with a frankness which I am sure you will not disapprove, whatever errors you may find in them, I will sketch for your consideration a substitute which has occurred to myself for the faulty part of the Constitution in question

“The Electors to be chosen in districts, not more than two in any one district, and the arrangement of the districts not to be alterable within the period of ----- previous to the election of President. Each Elector to give two votes, one naming his first choice, the other his next choice. If there be a majority of all the votes on the first list for the same person, he of course to be President; if

not, and there be a majority, (which may well happen) on the other list for the same person, he then to be the final choice; if there be no such majority on either list, then a choice to be made by joint ballot of the two Houses of Congress, from the two names having the greatest number of votes on the two lists taken together." Such a process would avoid the inconvenience of a second resort to the Electors; and furnish a double chance of avoiding an eventual resort to Congress. The same process might be observed in electing the Vice President.

Your letter found me under some engagements which have retarded a compliance with its request, and may have also rendered my view of the subject presented in it more superficial than I have been aware. This consideration alone would justify my wish not to be brought into the public discussion. But there is another in the propensity of the Moment, to view everything, however abstract from the Presidential election in prospect, thro' a medium connecting it with that question; a propensity the less to be excused as no previous change of the Constitution can be contemplated, and the more to be regretted, as opinions and commitments formed under its influence, may become settled obstacles at a practicable season.

Document 9

James Madison to John Hillhouse

*from The Writings of James Madison. Edited by Gaillard Hunt. 9 vols.
New York: G. P. Putnam's Sons, 1900-1910.*

*Montpr
May 1830.*

Dear Sir

I have received your letter of the 10th inst: with the pamphlet containing the proposed amendments of the Constitution of the U. States, on which you request my opinion & remarks.

Whatever pleasure might be felt in a fuller compliance with your request, I must avail myself of the pleas of the age I have reached, and of the controul of other engagements, for not venturing on more than the few observations suggested by a perusal of what you have submitted to the public.

I readily acknowledge the ingenuity which devised the plan you recommend, and the strength of reasoning [367] with which you support it. I cannot however but regard it as liable to the following remarks:

1. The first that occurs is, that the large States would not exchange the proportional agency they now have in the appointment of the Chief Magistrate, for a mode placing the largest & smallest States on a perfect equality in that cardinal transaction. N. York has in it, even now more than 13 times the weight of several of the States, and other States according to their magnitudes wd decide on the change with correspondent calculations & feelings.

The difficulty of reconciling the larger States to the equality in the Senate is known to have been the most threatenng that was encountered in framing the Constitution. It is known also that

the powers committed to that body, comprehending, as they do, Legislative, Ex. & Judicial functions, was among the most serious objections, with many, to the adoption of the Constitution.

2. As the President elect would generally be without any previous evidence of national confidence, and have been in responsible relations only to a particular State, there might be danger of State partialities, and a certainty of injurious suspicions of them.

3. Considering the ordinary composition of the Senate, and the number (in a little time nearly 50) out of which a single one was to be taken by pure chance; it must often happen, that the winner of the prize would want some of the qualities necessary to command the respect of the nation, and possibly be [368] marked with some of an opposite tendency. On a review of the composition of that Body thro' the successive periods of its existence, (antecedent to the present which may be an exception) how often will names present themselves, which would be seen with mortified feelings at the head of the nation. It might happen, it is true, that, in the choice of Senators, an eventual elevation to that important trust might produce more circumspection in the State Legislatures. But so remote a contingency could not be expected to have any great influence; besides that there might be States not furnishing at the time, characters which would satisfy the pride and inspire the confidence of the States & of the People.

4. A President not appointed by the nation and without the weight derived from its selection & confidence, could not afford the advantage expected from the qualified negative on the act of the Legislative branch of the Govt. He might either shrink from the delicacy of such an interposition, or it might be overruled with too little hesitation by the body checked in its career.

5. In the vicissitudes of party, adverse views & feelings will exist between the Senate & President. Under the amendments proposed, a spirit of opposition in the former to the latter would probably be more frequent than heretofore. In such a state of things, how apt might the Senate be to embarrass the President, by refusing to concur in the removal of an obnoxious officer; how prone would be

a refractory [369] officer, having powerful friends in the Senate, to take shelter under that authority, & bid defiance to the President; and, with such discord and anarchy in the Ex. Department, how impaired would be the security for a due execution of the Laws!

6. On the supposition that the above objection would be overbalanced by the advantage of reducing the power and the patronage now attached to the Presidential office; it has generally been admitted, that the Heads of Depts at least who are at once the associates & the organs of the Chief Magistrate, ought to be well disposed towards him, and not independent of him. What would be the situation of the President, and what might be the effect on the Executive business, if those immediately around him, and in daily consultation with him, could, however adverse to him in their feelings & their views, be fastened upon him, by a Senate disposed to take side with them? The harmony so expedient between the P. & Heads of Departments, and among the latter themselves, has been too liable to interruption under an organization apparently so well providing against it.

I am aware that some of these objections might be mitigated, if not removed; but not I suspect in a degree to render the proposed modification of the Executive Department an eligible substitute for the one existing. At the same time, I am duly sensible of the evils incident to the existing one, and that a solid improvement of it is a desideratum that ought to be welcomed by all enlightened patriots.

In the mean time, I cannot feel all the alarm you express at the prospect for the future as reflected from the mirror of the past. It will be a rare case that the Presidential contest will not issue in a choice that will not discredit the station, and not be acquiesced in by the unsuccessful party, foreseeing, as it must do, the appeal to be again made at no very distant day to the will of the nation. As long as the country shall be exempt from a military force powerful in itself and combined with a powerful faction, liberty & peace will find safeguards in the elective resource and the spirit of the people. The dangers which threaten our political system least remote are perhaps of other sorts and from other sources.

I will only add to these remarks, what is indeed sufficiently evident, that they are too hasty & too crude for any other than a private, and that an indulgent eye.

Mrs. M. is highly gratified by your kind expressions towards her, & begs you to be assured that she still feels for you that affectionate friendship with which you impressed her many years ago. Permit me to join her in best wishes for your health & every other happiness.

James Madison
May 1830 Montpellier
M. L. Hurlbert