

The motion being lost by the equal division of votes, It was urged that it be put a second time, some such provision being too necessary, to be omitted. and on a second question it was agreed to nem. con.

Art II Sect. I. The words, “and not per capita” — were struck out as superfluous — and the words “by the Representatives” also — as improper, the choice of President being in another mode as well as eventually by the House of Reps—

Art: II. Sect. 2. After “Officers of the U. S. whose appointments are not otherwise provided for,” were added the words “and which shall be established by law.”

Art III. sect. 2. parag: 3. . Mr. Pinkney & Mr. Gerry moved to annex to the end. “And a trial by jury shall be preserved as usual in civil cases.”

Mr. Gorham. The constitution of Juries is different in different States and the trial itself is *usual* in different cases in different States,

Mr. King urged the same objections

Genl. Pinkney also. He thought such a clause in the Constitution would be pregnant with embarrassments

The motion was disagreed to nem: con:

Art. IV. sect 2. parag: 3. the term “legally” was struck out, and “under the laws thereof” inserted after the word “State,” in compliance with the wish of some who thought the term legal equivocal, and favoring the idea that slavery was legal in a moral view—

Art. IV. sect 3. “New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congs.”

Mr Gerry moved to insert after “or parts of States” the words “or a State and part of a State” which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the Committee.

Art. IV. sect. 4. After the word “Executive” were inserted the words “when the Legislature cannot be Convened”

Art— V. “The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the 1 & 4 clauses in the 9th section of article I.”

Mr. Sherman expressed his fears that three fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Col: Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.⁸

Mr. Govr. Morris & Mr. Gerry moved to amend the article so as to require a Convention on application of ? of the Sts

Mr Madison did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in Constitutional regulations ought to be as much as possible avoided.

The motion of Mr. Govr Morris and Mr. Gerry was agreed to nem: con (see: the first part of the article as finally past)

Mr Sherman moved to strike out of art. V. after “legislatures” the words “of three fourths” and so after the word “Conventions” leaving future Conventions to act in this matter, like the present Conventions according to circumstances.

On this motion

N— H— divd. Mas— ay— Ct ay. N— J. ay— Pa no. Del— no. Md no. Va no. N. C. no. S— C. no. Geo— no. [Ayes — 3; noes — 7; divided — 1.]

Mr Gerry moved to strike out the words “or by Conventions in three fourths thereof”

On this motion

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

M— Sherman moved according to his idea above expressed to annex to the end of the article a further proviso “that no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate”,

Mr. Madison. Begin with these special provisos, and every State will insist on them, for their boundaries, exports &c.

On the motion of Mr. Sherman

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

Mr. Sherman then moved to strike out art V altogether

Mr Brearley 2ded. the motion, on which

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

Mr. Govr Morris moved to annex a further proviso— “that no State, without its consent shall be deprived of its equal suffrage in the Senate”

This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no.⁹

Col: Mason expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, which he said would not only enhance the freight, a consequence he did not so much regard — but would enable a few rich merchants in Philada N. York & Boston, to monopolize the Staples of the Southern States & reduce their value perhaps 50 Per Ct — moved a further proviso “that no law in nature of a navigation act be passed before the year 1808, without the consent of ? of each branch of the Legislature¹⁰

On this motion

N. H. no. Mas— no. Ct no. N— J. no— Pa no. Del. no. Md ay. Va. ay. N. C abst S. C. no— Geo— ay. [Ayes — 3; noes — 7; absent — 1.]

Mr Randolph animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing “that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention”¹¹ Should this proposition be disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment—

Col: Mason 2ded. & followed Mr. Randolph in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt. but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or

vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.[12](#)

Mr. Pinkney. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans— And the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated— He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Congs over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the Sword, he should give the plan his support.[13](#)

Mr. Gerry, stated the objections which determined him to withhold his name from the Constitution.[14](#) 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3— the power of Congress over the places of election. 4 the unlimited power of Congress over their own compensations. 5 Massachusetts has not a due share of Representatives allotted to her. 6. ? of the Blacks are to be represented as if they were freemen 7. *Under* the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of Mr Randolph. All the States answered- no

On the question to agree to the Constitution. as amended,[15](#) All the States ay.

The Constitution was then ordered to be engrossed.

And the House adjourned[16](#)

McHENRY

15 Sepr.

Maryland moved.

No State shall be prohibited from laying such duties of tonnage as may be sufficient for improving their harbors and keeping up lights, but all acts laying such duties shall be subject to the approbation or repeal of Congress.