

BYSTANDER;

OR

A SERIES OF LETTERS

ON THE SUBJECT OF

THE "LEGISLATIVE CHOICE"

ELECTORS IN MARYLAND:

In which the Constitutional Right to a Legislative Choice
in that State, and the Necessity of adopting it, for
the present Election only, in order to counteract
the Artifices of the Anti-federalists in Virgi-
nia and other States, and to prevent a
President from being elected by the
MINORITY of the Nation, in-
stead of the MAJORITY,
are considered and
fully proved.

ADDRESSED TO THE PEOPLE OF MARYLAND.

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To the PEOPLE of MARYLAND.

FELLOW-CITIZENS,

THE following pieces were originally addressed to the Editors of the Federal Gazette in Baltimore, and published in that paper. It being thought, by some persons whose opinion deserves respect, that a republication of them, in a form more connected, and more convenient for circulation and perusal, might be of use, they are now presented again to your consideration.

Their author is a person residing among you, whose present lot in life, as well as his future hopes, is embarked in the same bottom with yours; and who, therefore, has a common interest with you, in the great subject to which he calls your attention. It is by no means necessary that you should know his name. It is not by the authority of names, but by truth, that the determinations of freemen ought to be guided. If opinions be founded in reason, and statements supported by fact, it is of no importance by whom they are advanced.

In attempting, however, to impress on your minds the necessity of adopting the legislative choice of electors, at this time, he thinks it important to declare to you, that he is decidedly in favor of district elections, whenever they can be permanently and universally established. This can be done only by an amendment of the constitution. Such an amendment, he knows it to be the intention of a federal member of congress, with whom he is well acquainted, to propose at the next session of that body. It may also be proposed by the legislature of Maryland. By instructing your members in the ensuing assembly to propose it, you may greatly promote its adoption by the other states. Should it be adopted, of

which I think there is little doubt, all the States will stand on equal ground, in the future elections of a chief magistrate for the nation. The people, in districts, will every where choose the electors. The mode cannot be altered by one State, as Virginia has lately done, in order to favor unduly the success of a particular candidate. And the chief magistrate of the nation will be the fair choice of a majority of the nation.

This will be the effect of establishing, universally and permanently, the choice of electors by the people in districts; and this is the wish of the federal party. They will exert themselves to obtain it. But till it is obtained, while the friends of Mr. Jefferson in one State abolish district elections to favor him, I trust that you will be convinced, by a candid perusal of the following papers, that it is both just and necessary for the friends of Mr. Adams, in this State, to employ the same weapon in defending themselves, and in preventing the rights of the majority from being usurped by the minority.

BYSTANDER.

No. I.

Messrs. YUNDT and BROWN,

THE alarm which the anti-federalists feel, at the idea of changing the mode of election in this state, so as to counteract the policy of their party in Virginia, is perfectly natural and well founded—And their conduct, in attempting to raise a clamor against the measure, is altogether consistent with the principles whereby their party has, at all times, been actuated. To change the mode of election in Virginia, so as to deprive the federalists in that state of all share in the choice of electors, was, as they well knew, the only step which could give their party a chance of success. Therefore they took it; and it was applauded by the party throughout the union, as a master-stroke of policy. Blind and foolish as they are, they did not recollect, or did not foresee, that the blow was capable of being retorted on their own heads.

Finding now that this retort is likely to be made, they wake from their short dream of success, and cry out against the measure, as in the highest degree unjust. They now affect a wonderful solicitude about the “rights of the people,” which they say would be invaded and even destroyed, by the measure of choosing electors by the legislature. Having first taken the step themselves, for their own benefit, they are now wonderfully alarmed lest the federal party should take it also, and thus restore the balance of fair choice.

But they do not recollect, that the rights of the people are as effectually preserved by a choice by the legislature, as in any other mode. The constitution is the work of the people; the expression of their will, and the fence placed by themselves round their rights. Nothing, therefore, which is expressly authorized by the constitution, can be contrary to the rights of the people. Whatever is done pursuant to the constitution, is their own act, flowing from their own authority, and therefore not only consistent with their rights, but even an exercise of those rights.

But the constitution provides, that the electors shall be appointed in such mode as the legislature of each state shall direct.—Consequently, any manner of choosing which the legislature shall direct, is conformable, and not contrary, to the rights of the people.

Virginia, they tell us, did not resort to a choice by the legislature, but only to a general ticket, which is still a choice by the people, and therefore fair and proper. Shallow pretext! Does not a general ticket in Virginia produce precisely the same effect, that a choice by the legislature would have produced? Does it not as effectually deprive the federalists, who are the minority in the state as well as in the legislature, of the six votes which they would have gained by the district election? Every man must see that it does, and that, therefore, there is no sort of difference between the two modes, except that the choice by the legislature is attended with the least trouble, tumult and inconvenience, and for that reason preferable to the other. The result is precisely the same; but by the choice by the legislature, it is produced with less inconvenience than by a general ticket.

Virginia, they further tell us, was not the first to take this step. She was forced into it, in self-defence, and in order to counteract the policy of other states. But this is a mistake in point of fact. Virginia set the example of choosing the mode, with a view to a *particular election*, and to this particular election.—Pennsylvania had no established mode—she had chosen in different ways at different elections. The law under which the last choice was made, was a temporary law, and had expired when the legislature of that state last met. The federal party contended for a district election; that mode of which the anti-federalists of this state are so greatly enamored. The anti-federalists in that state, acting in perfect concert with those of Virginia, opposed this fairest of all possible modes of election, and opposed it with such violence and obstinacy, that they prevented any law from passing, and seem fully resolved rather to leave their state without a vote, than to yield to district elections. So much for the attachment of the anti-federalists in Pennsylvania to this fairest of all possible modes, with which the same party here are so much in love.

Why are they in love with it here? Because they expect

to gain some votes to their party by it. Why are they opposed to it in Pennsylvania and Virginia? Because they expect their party to lose some votes by it there. The end therefore is the same, namely, to ensure the success of their party, although the means are different: and their great solicitude for the "rights of the people" turns out, in this case as in so many others, to be nothing more than a desire to promote their own views. Those rights are sacrificed without the least hesitation, whenever the sacrifice can promote a party purpose.

In all the other states, except Pennsylvania, the mode of election was fixed, and the federalists were well content to let it remain so. They were content that this election should be made, according to the same principles that governed the former. But the anti-federalists set the example of change, where it suited their purpose to make it. Having done so, they stickle violently to preserve the old mode, where that happens to suit them best.

It is said by their advocates, that they attempted to change the mode in New-York, and to introduce a district election, instead of a choice by the legislature. This example is unfortunate. The anti-federalists themselves introduced the choice by the legislature in New-York, in spite of the efforts of the federalists; and their object was to promote the election of general Clinton, as vice-president, in opposition to Mr. Adams. When they found that this work of their own hands was likely to operate against themselves, they wished to change it, and to resort again to district elections.

We are told that the legislature of Maryland, at its last session, had the general ticket scheme of Virginia before its eyes, and yet took no step to counteract it; and this is used as an argument against calling the legislature. But here again these ignorant persons mistake or mistate the fact. The legislature of this state never had the Virginia general ticket scheme before its eyes: It had adjourned long before that scheme was adopted in Virginia, and even before the intention to adopt it was publicly avowed. The law for carrying it into effect, was one of the last acts of the session. It was not introduced till a day or two before the adjournment, and then was hurried through with indecent haste. We all know the feint that was practised, most probably with a view

to deceive the legislature of Maryland, on the subject of this law. It was talked of; the pulse of the legislature was felt; the scheme was well matured and completed. Now in order to gain time, and to deceive the opposite party, by which means some of them might be prevailed on to go home, its authors gave out that it was abandoned. One of their chiefs, colonel Taylor, carried his duplicity so far as actually to go home, giving out that he was gone for the session. The scheme being ripe for execution, he suddenly returned, the bill was introduced, and pushed through the two houses with unprecedented celerity; and then the legislature adjourned. All this was some time after the legislature of this state had adjourned. Consequently, that body never had the measure under its eye, and nothing can be inferred from its omitting to take any countervailing step.

The truth of the whole matter is, and it need not be concealed, that while the mode of choosing electors remains on its present footing, variable according to the will of the state legislatures, variations will be made, in some states, to serve the candidate who may happen to be the favorite there. This has been done in Virginia. The anti-federalists began the game. Other states must play it against them, in order to prevent the election from becoming perfectly unfair; from being controlled by the minority. Massachusetts has set the example of this retort; and the anti-federalists, awaking from their golden dream of power and office, begin to quake and cry out. Maryland, I have no doubt, will follow up the blow; in which case their defeat is certain. This they well know; and hence their new found solicitude for the "rights of the people," which they utterly disregard, for district elections, which they first set aside.

Let an uniform and fixed mode of choosing electors be proposed, and the federalists will agree to it. They will even propose one themselves, at the next session of congress. All then will stand on the same ground; and the mode of choice cannot be changed to suit party purposes of the moment. But while this mode remains changeable, if one party be allowed to change it where it suits them, and to prevent change where the other party might gain by it, the election becomes manifestly unfair, in its general result, which is the only proper method of considering it; and the case put by

the "Marylander," at which your correspondent the "Voter," is so much displeas'd, the case of a man attacked with a bludgeon and defending himself with his fist, manifestly occurs.

Lest it should be pretended that such a step on the part of Maryland, as is in question, would render the general result of the election unfair, I pledge myself to shew, on a future occasion, and to shew from a fair and accurate survey of the continent, that if district elections were every where established, the result would be still more favorable to the federal party, who have a large majority in the nation at large, than it can be, supposing Maryland to follow the example of resort set by Massachusetts, and to adopt the mode of choice by the legislature. In the meantime I remain a dispassionate, though not an indifferent

BYSTANDER.

No. II.

ON a former occasion I pledged myself to prove, by a fair survey of the continent, and a statement of the strength of parties in each state, that if district elections for president and vice-president were universally established, which ought to be, and I trust will be, done by an amendment of the constitution, Mr. Jefferson could have no chance of being elected; but on the contrary, that the result, in that case, would be far less favorable to his party, than even in case Maryland, to counteract the measures of his supporters, should adopt, for this time, the plan of choosing by the legislature.

Col. Mercer indeed asserted, in a late public speech, that the democrats would come in, meaning that Mr. Jefferson would be elected, unless nineteen twentieths of the freemen of America should be prevented from expressing their sense in the election: but this assertion, like so many others of the same gentleman, served only to shew that he was utterly ignorant, or utterly regardless, of the facts. Let us see who these nineteen twentieths of the freemen of America are. We will begin with New-Hampshire, and counting the number of votes in each state as we pass, proceed to Georgia and Kentucky.

New-Hampshire has six votes. The elections there have always been by a general ticket. The anti federalists, who never could gain a vote in this mode, have asserted that they could get one by a district election. More than one they have never claimed. Let them have it.

The elections in Massachusetts, which has sixteen votes, have heretofore been of a mixt nature; the greater part of the electors being chosen by districts, the rest by the legislature. The anti-federalists do not pretend, that a district election would give them more than two in this state. They claim no more. The truth is that they would have very little chance for more than one: but we will give them all they claim.

Rhode-Island gives four votes, and Connecticut nine: The choice is by the legislature in the first, and by a general ticket in the last. The anti-federalists do not pretend, that, by any mode of election, they could get a vote in either of these states.

Vermont gives four votes—choice by the legislature. Here they might get one by a district election; though it is not very certain. We will however allow it to them.

New-York gives twelve votes—choice by the legislature. In no state are parties more equally divided than in this. The majority leans sometimes to one side, and sometimes to the other, and has generally been governed by the city election. Out of the city, there is, in the legislature recently chosen, a clear majority for the federal party. Were electors chosen by districts, there is, therefore, the utmost reason to suppose, that six votes would be on one side, and six on the other; and in that manner they may be safely counted.

New-Jersey gives seven votes—choice by the legislature. By districts three of these might be given to the anti-federal party; though no ground of probable calculation exists for more than two. We will, however, give them three.

Pennsylvania gives fifteen votes—choice sometimes by districts, and sometimes by a general ticket. The

federal party have always, till the present legislature, possessed a clear and even a large majority in both branches. Even now they have a majority in the whole legislature; their majority in the senate being seven, and that of the anti-federalists in the other house, only two. But if we take the votes on the election for governor, as a fair criterion of the strength of parties, we shall find that the anti-federalists are in the proportion of eight to seven. Mr. M'Kean had, I think, 38,000 votes, and Mr. Ross 33,000. The difference, I perfectly recollect, was about 5000, not more, and the whole number about 70,000. It must be recollected, moreover, that the majority of Mr. M'Kean was given by the two insurgent counties of Berks and Northampton, which were almost unanimous in his favor; and that in the rest of the state Mr. Ross had a clear majority. It is also to be remembered, that a majority of the counties was in favor of Ross; and that a vast number of the votes for M'Kean, were obtained by the impositions practised on the Germans, relative to the house tax; which have since been detected and done away by the actual assessment. From these data we may very safely conclude, that, by a district election, the anti-federalists could not gain more than nine votes in Pennsylvania—that number we will allow them*.

Delaware chooses by the legislature, and gives three votes; of which, by a district election, the anti-federalists might probably, though by no means certainly, obtain one.

Maryland chose first by a general ticket. The present established mode is by districts. She gives ten votes, of which the anti-federalists have not the least probability of getting more than three by the district election, should it continue. There are but two districts on which they count with confidence; that

* The fair calculation, indeed, is, that they could get but eight, eight to seven being their proportion, in the votes given for governor.

composed of Baltimore and Harford counties on the western, and that composed of Queen-Anne, Talbot and Caroline* counties on the eastern shore: And even in those they are by no means safe. They have hopes of two other districts. The cities of Baltimore and Annapolis, with the county of Anne-Arundel, compose one; the counties of Washington and Allegany the other. In the first of these they even affect to be confident; but their secret convictions are far different. They know that in the election between general Smith and Mr. Winchester, they had a majority in Baltimore town of only 300, and that many who supported gen. Smith, are now decidedly for the federal elector. They also know that in the election between Mr. Thomas and Mr. Sprigg, there was in the city of Annapolis and Anne Arundel county, a much greater majority for the federal candidate; and that, consequently, should things remain as they were, the latter majority must overpower the former, and the federal elector be carried. They therefore found their hopes, entirely, on the vain expectation of a change in their favor in the public sentiment; of which there is not the least prospect or appearance. As to Allegany and Washington, it is less certain. The former county is known to be nearly unanimous for the federal candidate, while the latter, which is much larger, and the strong ground of the anti-federalists, is much divided. From this state of things nothing certain can be concluded. At the last election, Mr. Lynn, of Allegany, who had but little strength in Washington, was the federal candidate. The election was extremely close, but he succeeded. In the present, Mr. Williams, of Washington, who is very strong in that county, and will be as strongly supported in Allegany, which is a most federal county, as Mr. Lynn himself, is the candidate; from which arrangement a much more

* *This appears to be a mistake, Caroline county belonging to another district. It need not, however, be remarked, that this mistake makes no difference in the calculation.*

favorable result than that of the last election, may be expected. Upon the whole we may conclude, that the anti-federalists have some chance, though but a small one, in these two districts; and that in the other two the probability is strongly in their favor. This will warrant the further conclusion, that no probable ground exists for the expectation, on their part, of more than three; and nothing like certainty of more than two. We will, however, allow them three.

Virginia gives twenty-one votes; and always chose by districts, till that mode was altered by the late legislature to serve the purpose of the present election, and silence the voice of the people in six or eight districts. It is well known, that had the district election been suffered to remain, the federalists had the utmost probability of gaining six votes, and very fair prospects of eight. We will take only six, and allow the other fifteen to the anti-federalists.

North-Carolina gives twelve votes—choice by districts. The most recent and authentic information, authorises the confident expectation of five votes, and gives solid ground for counting on seven. We will take five only, and leave the seven others to the anti-federalists.

South-Carolina gives eight votes, and has always chosen by the legislature, which is still the established mode. Out of the six representatives from that state, five are now decidedly federal—three have almost always been so. From this circumstance it may fairly be presumed, and I believe there can be no doubt of it, that on a district election, there would be at least four votes out of eight for the federal candidate. I believe that the number would be greater; but take it at four, and it leaves for the anti-federalists

Georgia gives four votes: choice by a general ticket. There is great reason to suppose that on a district election, there would be at least one for the federalists. We will, however, being uncertain on that point, give the whole four to the anti-federalists.

Tennessee gives three, and Kentucky four votes. The former chose last time by the legislature; what the present mode is I do not know. The latter, I believe, chooses by districts. We will give all these votes to the anti-federalists, though one in Tennessee might be hoped for.

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Thus it appears that were district elections universally established, the anti-federalists, on the most liberal allowance, could get but sixty-three votes in all the states, out of one hundred and thirty-eight, of which it requires seventy to make a majority. That is, that if the sense of the nation could be expressed, by the fairest of all possible modes, a general election by the people in districts, there would be a large majority of the nation against that candidate, whom his friends are now attempting to smuggle in, by changing the mode of election from districts to a general ticket, where it suits their views, and clamoring, at the same time, for district elections, where they hope to get something by them.

In Virginia they began the game. They took away the fair mode of district elections, and substituted a general ticket, whereby the voice of six federal districts was silenced in the election of president. In Pennsylvania they contended to the last for a general ticket, and refused to the federalists a district election, on the fairest division of the state, which was repeatedly offered to them. A person, indeed, under the signature of "A Pennsylvanian," who is said to be Mr. Dallas, has had the unaccountable effrontery to assert, in a paper of this city, that the anti-federalists in the Pennsylvania legislature, did not object to the principle of a district election, but to the mode of dividing the state; an assertion which that person himself, and every man in Pennsylvania, knows to be false. In Maryland, on the contrary, these same friends to Mr. Jefferson, hypocritically affect the most violent attachment to district elections, raise a loud clamor about the rights of the people, and contend, tooth and nail, for that very mode which their coadjutors have abolished in Virginia, and prevented in Pennsylvania; hoping by these means to cheat the federal party, who constitute the majority in Maryland, as well as in the nation at large,

out of their choice, out of their right, as a majority, to have a president of their choice, and to impose on the nation a chief magistrate to whom the majority is unquestionably opposed. In a subsequent number, I will examine, more at length, this pretence about the rights of the people, whereby they are attempted to be cheated, in fact, out of their rights; and the foundations of this clamor, by which the good sense of the majority is attempted to be imposed on, and a president to be chosen by a factious minority. In the meantime, I will ask the federalists in Maryland, who constitute the majority by the confession even of their opponents, what is the right which they hold most dear? Is it not to have a president of their own choice? If so, will they suffer themselves to be defrauded of this dear and substantial right, by a few cant phrases; by the artifices of the enemies of government in other states, aided by their noisy clamors in this? Should such be their conduct, I shall indeed be an acquiescent, but an astonished

BYSTANDER.

No. III.

IT has formerly been shewn, by a fair survey of the continent, and a reference to public and undeniable facts,* that were district elections established in Virginia, Pennsylvania, New-York, and throughout the union, Mr. Jefferson could not possibly get more than sixty-three votes, out of one hundred and thirty-eight; which is the whole number of votes for president and vice-president. This number is seven short of a majority. The majority of the nation is therefore opposed to Mr. Jefferson, and in favor of Mr. Adams, general Pinckney, or some other federal candidate.

The anti-federalists of Virginia, who are a majority in that state, knowing this to be the true state of the matter, abolished the district election in their state; where Mr. Adams and general Pinckney would, upon that plan, have

* See the preceding number, and the calculations and statements there made, which have not been denied or disputed.

got six votes at least. By this step they took six votes from those candidates, and gave them to Mr. Jefferson. Situated as the election actually is in the other states, these six votes, taken from Mr. Jefferson's opponents by depriving them of district elections, and added to him, will secure him the election, though the majority of the nation is against him; unless Maryland, where the federalists are a decided majority, should take the same step in her own defence. Unless by setting aside district elections, for the present, Maryland should deprive the anti-federalists of their influence in this state, as the federalists of Virginia have been deprived of their influence in Virginia, and should restore the election to its fair balance, the president of the United States will be chosen by the minority of the nation. This it is the determination of the federalists of Maryland, that is of the majority, to do; not by stealth and underhandedly, but openly, upon fair and avowed principles, and with the concurrence of a majority of the people.

The anti-federalists, alarmed at the idea of seeing their unjust advantage thus snatched out of their hands, and the election of president placed again under the controul of the majority, make a terrible outcry against this plan. They become, all at once, the zealous defenders of district elections; which they have so lately trampled under foot on the other side of the Potowmac, and do now obstinately oppose in Pennsylvania. They say that the right to district elections, which they themselves have abolished in Virginia in order to promote the election of Mr. Jefferson, and do now resist in Pennsylvania for the same purpose, is a most sacred right; and that an attempt to change them, even for this time alone and in order to counteract the plans of the same party in Virginia, ought to be treated by the people of Maryland, as an invasion of their dearest constitutional privileges.

The foundations of this clamor I now intend to examine. I intend to enquire into the nature and extent of this constitutional right. I intend to shew that the substantial constitutional right of the people of Maryland, which is a right to have a president whom they approve, is in fact invaded by those who make this clamor; and can be protected and secured by no other means, than a change in

the mode of choosing electors. I intend to shew that should the electors be appointed by the legislature, they will be, to all intents and purposes, chosen by the people of the state at large.

PART FIRST.

Of the Constitutional Rights of the People, relative to the Election of President.

Let us in the first place ask what is the constitutional right of the people, relative to the choice of president? I answer, their constitutional right is, to have the president chosen by electors appointed in each state, "in such manner as the legislature thereof shall direct." Hear the constitution.

"The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years; and, together with the vice-president, chosen for the same term, be elected as follows:

"Each *state* shall appoint, *in such manner as the legislature thereof 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, &c.

"The electors shall meet in their respective states, and vote by ballot for two persons," &c.

This is every word contained in the constitution, on the subject of appointing electors. Each *state*, we see, not the people of each state, but each *state* in its united political capacity as a state, is to appoint a certain number of electors. And how are they to be appointed? By districts? By a general ticket? By the legislature? No! But in such manner *as the legislature of the state shall direct*. So says the constitution. Such are its plain and express words. The legislature of each state, therefore, has a constitutional right, to direct the mode of appointing electors, and to direct it in whatever manner it shall think fit.

But no, say the anti-federalists, those skilful expounders of the constitution. When the constitution says that "each *state* shall appoint electors, it does not mean each state in its political capacity as a state—but the people of each state, as individuals." Let us try this explanation by the consti-

tution itself, and by the construction which it has received from the people of the several states.

When the constitution means that the *people* of the states shall act, it uniformly mentions the people. When it means to speak of the states in their political capacities, it always uses the word "*states*" alone.

Thus, in the 10th section of the 1st article: "*No state shall enter into any treaty of alliance,*" &c. *No state shall, without the consent of congress, lay imposts, &c. No state shall, without the consent of congress, lay any duty of tonnage,*" &c.

So in the 2d section of the 3d article: "The judicial power shall extend to controversies between two or more *states*, between a state and citizens of another *state*—and between a *state*, or the citizens thereof, and foreign states, citizens or subjects."

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a *state* shall be party, the supreme court shall have original jurisdiction."

So in section 3d of the 4th article: "New *states* may be admitted by 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," &c.

So in section 4th, same article: "The United States shall guarantee to every *state* in this union a republican form of government," &c. And in section 5th, "No *state*, without its consent, shall be deprived of its equal suffrage in the senate."

So in the 9th section of the 1st article: "The migration or importation of such persons as any of the *states* now existing shall think proper to admit, shall not be prohibited," &c.

In all these instances, it is perfectly clear, that the word *state* is used to signify, not the *people* of the state, but the state itself, in its collective capacity, as a community and body politic. When the constitution, therefore, using the same expression, says, that "*each state* shall appoint electors, in such manner as the legislature thereof shall direct," does it not evidently intend to convey the same meaning,

and to speak of the state in its political capacity? Does it, contrary to its constant tenor and meaning in every other part, intend to say that the *people* of each state, individually, shall appoint electors? When it means to introduce the *people* in their individual capacity, what is its language? Let it speak for itself.

Section 2. article 1. "The house of representatives shall be composed of members chosen every second year, by the *people of the several states*." Is this the same language? Does it convey the same meaning? If the constitution had meant that the electors, as well as the representatives, should be chosen by the *people* of the several states, would it not have said so, in express terms, in one case, as well as in the other? Certainly it would.

We are therefore warranted to conclude, that as the constitution has provided, not that the *people* of the several states should choose electors, but that each *state* should choose them, it meant, in this instance, as in every other where the same expression is used, to speak of the state in its collective political capacity, and to provide that there should be a certain number of electors for each state, and that the legislature thereof should direct, in whatever manner it might think fit, the mode of making the appointment.

"Each *state* shall appoint, in such manner as the legislature thereof may direct, a number of electors equal," &c. Is not this, when compared with the constitution itself, and the language used by it in every other part, so plain that he who runs may read?

What has been the construction put on it by the states? Surely their opinions, not warped by particular objects and the purposes of the moment, but deliberately and uniformly expressed, will be allowed to possess some weight in a question like this.

There have already been three elections of president. In all of them, South-Carolina has chosen the electors by the legislature. Tennessee having been but lately erected into a state, has chosen but once, and then it was by the legislature. In all three, Jersey and Delaware have chosen by the legislature. In the two last, certainly, and I believe in all three, New-York has chosen by the legislature. Every

choice that Rhode-Island has made, if I recollect aright, has been by the legislature. At the last election, and I think at some of the former, Massachusetts chose part of her electors by the legislature.

Thus we see, that out of sixteen states, seven, not under the influence of any particular project, not with a view to any party election, but freely and impartially, have adopted the mode of appointing electors by the legislature; thereby declaring, in the most authoritative manner, their opinion about the true meaning of the constitution. This declaration the people of those states have approved; for otherwise, they would have expressed their discontent; and by electing different persons into the legislature, would have caused the adoption of a different mode.

Two other states, New-Hampshire and Vermont, are said, and I believe truly, to have lately adopted the same mode; not in order to secure all the votes to the federal interest, for of that they were sure, by the established mode of a general ticket; but for the purpose of preventing votes from being thrown away from either of the federal candidates. Thus nine states have concurred in this construction of the constitution; which indeed, as we have seen, is so plain from the face of the instrument itself, that one is at a loss to conceive, how it could ever have been called into question.

PART SECOND.

That the substantial constitutional Right of the People of Maryland, the Right to have a President chosen by the Majority, is invaded by district Elections; and can be restored only by a Legislative choice of Electors.

I most readily admit that the people have a right, a most undoubted right, under the constitution, not indeed to vote immediately in the choice of electors, but to influence substantially, and direct, not only that choice, but the choice of president also. The president is the elective chief magistrate of the nation. He ought to be chosen by the majority of the nation. The sense of that majority ought to be fairly expressed. This is the real substantial right of the people. To have a chief magistrate who is the choice of the majority; not to choose electors in this,

BYSTANDER;

OR

A SERIES OF LETTERS

ON THE SUBJECT OF

THE "LEGISLATIVE CHOICE"

ELECTORS IN MARYLAND:

In which the Constitutional Right to a Legislative Choice
in that State, and the Necessity of adopting it, for
the present Election only, in order to counteract
the Artifices of the Anti-federalists in Virgi-
nia and other States, and to prevent a
President from being elected by the
MINORITY of the Nation, in-
stead of the MAJORITY,
are considered and
fully proved.

ADDRESSED TO THE PEOPLE OF MARYLAND.

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that or the other manner, or to vote for this, that or the other man as an elector. The latter is the shadow; about which none but children or blockheads can be solicitous, nor any but designing party-men would make a fuss. The former, to have a president of their choice, is the substance; and whatever tends to secure that substance, to promote that choice, promotes, instead of subverting, the "rights of the people."

People of Maryland, who is your choice as president? Whom do you wish to have as chief magistrate? You answer, at least a large majority of you, who must speak for the whole, answer, Mr. Adams or general Pinckney.— Whom do you wish to prevent from being elected president? The same majority answers, Mr. Jefferson. Who are they then, who wish to take from you your rights? Those who have destroyed district elections on the other side of the Potomak, in order to secure the election of Mr. Jefferson, while they loudly clamor for them here for the same purpose; or those who wish, by introducing the choice by the legislature, to replace the election in the hands of the majority, and continue Mr. Adams, the man of your choice, in the presidential chair? Turn then, with just disdain from the noisy, deceitful, designing demagogue, who proves that he holds your rights and your understandings in equal contempt, by endeavoring to impose on the one, in order to beguile you of the other; by endeavoring to pay you for substance with words; to persuade you that in order to preserve the right of voting in a particular mode, you must submit to have those votes rendered absolutely ineffectual, and a chief magistrate imposed on you, who are the majority, by the tricks and clamors of a profligate minority.

Is there any man in any district or county of Maryland, who wishes for the election of Mr. Adams, who prefers him to Mr. Jefferson, and yet does not see that his rights, which are to have a chief magistrate of his own choice, are substantially promoted and secured by whatever constitutional measure tends to secure the man of his choice? Is there any Marylander, who prefers Mr. Adams to Mr. Jefferson, and is yet so foolishly attached to voting at a particular election, as to sacrifice the former object in order to retain the latter? Is there any such Marylander, who can be per-

suaded by the advocates of Mr. Jefferson, to sell his birth-right for a mess of pottage? Why does he wish to vote? Is it that he may go to the polls, and pronounce the name of Jeremiah Townley Chase, of Philip Thomas, or of any other person; or that he may promote the election of Mr. Adams as president, in preference to that of Mr. Jefferson? If the latter be his object, surely the most effectual steps for attaining it, must be the most conformable to his wishes, and to his rights.

The president is the elective chief magistrate of the nation, and ought, therefore, to be the fair choice of a majority of the nation. District elections, I know, are, in themselves, the fairest mode of expressing that choice; but in order to be fair, they must be general and permanent. If one state can change from a district election to a general ticket, or a legislative choice, and not another, the election becomes unfair, and the minority may choose instead of the majority. Of this any one may be convinced, by a very simple illustration.

Suppose three neighboring states, like Delaware, Maryland and Virginia, to form a separate union, to have three votes each for president, and to elect by districts. There will be nine votes in all, and five will be a majority. Suppose that in Virginia two are for Mr. Jefferson and one for Mr. Adams, and in Maryland two for Mr. Adams and one for Mr. Jefferson, and in Delaware two for Mr. Adams and one for Mr. Jefferson. Or in figures thus:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	1	2
Maryland	2	1
Delaware	2	1
	—	—
	5	4

There will then, in the three states, be five votes, by district election, for Mr. Adams, and only four for Mr. Jefferson. Mr. Adams, therefore, will be the choice of the majority, by the fairest of all possible modes, the district election. Ought he not to be president? Every body must say yes.

But suppose that the friends of Mr. Jefferson, in Virginia, where they have the majority, should abolish the dis-

that election, and adopt a general ticket; whereby Mr. Adams would be deprived of his one vote in that state, and the whole three would be secured to Mr. Jefferson. Suppose further, that neither Maryland nor Delaware, in both of which Mr. Adams's friends are the majority, should follow the example. The election would then stand thus:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	0	3
Maryland	2	1
Delaware	2	1
	—	—
	4	5

Mr. Jefferson would get a majority, five votes, and would be president, to the exclusion of Mr. Adams; who would nevertheless, possess the wishes of a majority.

But if the friends of Mr. Adams in Maryland should retort on Virginia, by adopting a general ticket, or a legislative choice, the election would be restored to its true balance, and the majority of votes would be given back to Mr. Adams, to whom, he being the choice of the majority of the people, it properly belonged: Thus,

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	0	3
Maryland	3	0
Delaware	2	1
	—	—
	5	4

If after the friends of Mr. Jefferson in Virginia, had taken this step of abolishing district elections, in order to secure to him all the votes of that state, they, or their partizans here, should come and tell us, that it was contrary to the rights of the people to retort the blow, and restore the majority of votes to him who possessed the majority of wishes, should we hear them with patience? Should we suffer ourselves to be tricked out of our rights by so contemptible an artifice? If we did, we should richly deserve to become hewers of wood and drawers of water, for the first knave we might chance to meet.

This example needs no application. The very case has happened. The numbers indeed are different, but the

principle and the result are the same. Attend for a moment to the statement, and you will see it.

Pennsylvania will have no election. The federalists, friends of Mr. Adams, contend for a district election. The anti-federalists, friends of Mr. Jefferson, oppose it; and as they have a majority of two in one branch of the legislature, they, sooner than consent to district elections, prevent a law from passing and deprive the state of her vote. Take away her 15 votes, and there remain, in the rest of the union 123, of which 62 is a majority.

Of these 123 Virginia gives 21, Massachusetts 16 and Maryland 10—in all 47.

Of the remaining 76 Mr. Jefferson may get exactly one half, 38, but no more. That is, 4 in Georgia, 8 in South-Carolina, 7 out of 12 in North-Carolina, 3 in Tennessee, 4 in Kentucky and 12 in New-York—38. The other half will be for Mr. Adams and general Pinckney, viz. 6 in New-Hampshire, 4 in Rhode-Island, 9 in Connecticut, 4 in Vermont, 7 in Jersey, 3 in Delaware, and 5 out of 12 in North-Carolina—38. So that taking away Massachusetts, Maryland and Virginia, the rest of the states are equally divided between the two candidates; and the election, therefore, depends on these three states.

In a district election, (the mode established in those three states, before the friends of Mr. Jefferson in Virginia abolished it there, in order to promote his election,) those three states would, it is well known, stand as follows:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	6	15
Massachusetts	14	2
Maryland	7	3
	—	—
	27	20

In giving Mr. Jefferson 2 votes by districts in Massachusetts, and 3 in Maryland, we allow him the utmost to which his partizans lay claim. On the contrary, in giving Mr. Adams only 6 in Virginia, we take the lowest calculation that his opposers have ventured to make for him. The calculation is, therefore, as favorable to Mr. Jefferson as it can be made; and yet we see that it gives a majority of 7 votes against him in those three states. As the rest of the com-

inent is equally divided, those 3 states govern the election, and upon the whole vote Mr. Adams and gen. Pinckney get a clear majority of 7.

Virginia, understanding this matter, alters the mode of election, abolishes district elections, and thus takes from Mr. Adams his 6 votes in Virginia, and gives them to Mr. Jefferson. The poll, then in those 3 states, stands thus:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	0	21
Massachusetts	14	2
Maryland	7	3
	—	—
	21	26

And the majority of 5 is thus given to Mr. Jefferson, who becomes president; although upon a fair expression of the public voice, by district elections, there was a majority of 7 against him.

Here Massachusetts interposes, and does all that she can to restore the balance, and to throw back the election into the hands of the majority. She adopts the legislative choice, and by that step takes from Mr. Jefferson the two votes which he would get in that state, and gives them to Mr. Adams and general Pinckney. The election then stands thus:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	0	21
Massachusetts	16	0
Maryland	7	3
	—	—
	23	24

Still, however, the balance is not restored; for Mr. Jefferson has gained 6 votes in Virginia to which he was not entitled, and has lost but 2 in Massachusetts. He is still 4 gainer by the abolition of district elections. It depends on Maryland to restore the balance, and replace the election in the hands of the majority. Unless she does it, the president will be chosen by the minority of the nation.

Should she act with sense and vigor; should she despise the clamors of this minority, who are endeavoring by fraud and tricks to palm a spurious president on the nation; should she substitute the legislative choice instead of the district election, the poll will stand thus:

	<i>Mr. Adams.</i>	<i>Mr. Jefferson.</i>
Virginia	0	21
Massachusetts	16	0
Maryland	10	0
	—	—
	26	21

The balance, even then, will not be completely restored. The friends of Mr. Jefferson will have gained six by their manœuvre in Virginia, and will have lost but five by the counteraction of Massachusetts and Maryland. The majority will not be as much against Mr. Jefferson, as it certainly would be on a fair district election. But it will be against him. The man who is the choice of a majority of the people, will obtain a majority of votes; and will be elected president: and the fraudulent arts of the anti-federalists, for smuggling in a president who is not the choice of the majority, will be completely baffled.

But should the state of Maryland suffer itself to be bullied out of its rights as a state, by the clamors of the partizans of Virginia; should the majority of the people of Maryland, who are friendly to the administration, and desirous of the re-election of Mr. Adams, suffer themselves to be tricked out of their right to a president of their own choice, by the artifices of the minority, Mr. Jefferson's adherents; then will fraud be triumphant over right, the fair voice of the nation will be suppressed, and a man be placed in the presidential chair, contrary to the wishes of the American people.

This must be the consequence of suffering district elections to remain in Maryland, while they are abolished in Virginia. Yet this consequence, we are told, must be submitted to, because to change the mode of election, and adopt the legislative choice, would be an invasion of the rights of the people! In order to preserve their right of voting, their votes, when given, must be rendered ineffectual! In order to preserve their right of voting, they must be deprived of the right of having a president of their own choice, and compelled to take one who is the choice of the minority! A left-handed way this, of preserving the rights of the people!

PART THIRD.

That if the Electors are appointed by the Legislature, still both they and the President will be chosen by the people, who elect the members of the Legislature.

But how are the people deprived of their right of voting, by transferring the choice of electors, from districts to the legislature? Do not the people choose the members of that legislature by which the choice of electors is made? Do they not choose those members with a direct view to that choice of electors? And do they not, in this way, as effectually influence the election of president, as if they themselves chose the electors? Most certainly they do. Let us take Ann-Arundel county, as an instance, or Baltimore county. The people of Anne-Arundel county, a large majority of them at least, are in favor of Mr. Adams as president, in preference to Mr. Jefferson. They will vote for Mr. Chase, should district elections remain. Why will they vote for Mr. Chase? Because they know that he, as an elector, will vote for Mr. Adams. Their object, therefore, is to promote the election of Mr. Adams. If, therefore, instead of voting for Mr. Chase, in order that he may, if chosen, vote for Mr. Adams, they should vote for Dr. Wharfield, major Brogden, Mr. Worthington and Mr. Weems, who as members of the legislature will choose an elector that will vote for Mr. Adams, do they not as effectually influence and promote the election of Mr. Adams in one case as in the other? Is not the president as much chosen by them in one case as in the other? How then are they deprived of their right of voting in the election of president? In either case, they choose the men by whom the president is chosen. The only difference is, that in one case they vote for four men who will choose Mr. Adams as president, and in the other case they vote for one man who will choose Mr. Adams as president. The result is exactly the same, as far as respects the influence of the people in the election. In both cases they substantially choose the president, by choosing the men by whom he is to be chosen, and choosing them with an express view to that choice. In one case, moreover, they have the trouble of two elections; first for members of assembly and secondly for electors; whereas in the other, one election is sufficient.

And yet there are persons who hold the understandings of the people in such contempt, as to tell them, that they will be deprived of their votes in the election of president, by transferring the choice of the electors from themselves to the legislature, whose members they themselves are to choose!

There is one other argument of most conclusive force, for the legislative choice, to the people of Baltimore, Allegany and Anne-Arundel counties. In each of those three counties there is a majority of federalists. If, therefore, the electors are chosen by the legislature, the federal majorities in those three counties, will have their due weight in the election of electors and of president: for they will each choose four members of the legislature; and those members will have an equal vote with the members of any other counties in the choice of electors. Of consequence, those counties will have as much influence in the election of president, as any other three counties in the state.

But how will it be if the district election should continue? Allegany is united in the same district with Washington. In Washington there is an anti-federal majority, which may overbear the federal majority of Allegany; and in that case the county of Washington chooses the elector, and Allegany is deprived of all influence in the election of president. The same observation applies to Anne-Arundel county, which is united in the same district with Baltimore town; and to Baltimore county, which is united with Harford. In case of a district election, those two counties may be deprived of all influence in the choice of president; since their federal majorities may be overpowered by the anti-federal majorities of Baltimore town and Harford county: whereas should the legislature appoint the electors, their members will have their due weight in the appointment, and of course in the election of president.

The remark will also apply to the city of Annapolis, which is connected, in the district election, with Baltimore town: and perhaps to Talbot county; where there is reason to believe that the majority is federal, and will be overborne by the anti-federal county of Queen-Anne.

CONCLUSION.

Why then, people of Maryland, are the advocates of Mr. Jefferson so clamorous in favor of district elections here, af-

ter having abolished them in Virginia, and successfully opposed their establishment in Pennsylvania! Is it from affection to the rights of the people, about which they affect to have become, all on a sudden, so zealous! No, no. The veil is too thin to resist the most ordinary penetration. If they were indeed actuated by a sacred regard to the rights of the people, they would wish to see the sense of the majority prevail. If they were indeed actuated by a sacred regard to the rights of the people, they would make no attempts to deprive the people, under flimsy pretences, of their only valuable substantial right, their right to a president of their choice! If they were indeed of opinion that district elections are a sacred right of the people, they would not have abolished them in Virginia, and prevented them in Pennsylvania! They would not contend for one right on one side of the Potowmac, and for another right on the other side! Whence then their new-found and clamorous zeal for district elections; with the vital blood of which the hands of their friends beyond the Potowmac are still reeking? The secret lies here. They know that by district elections in this state, Mr. Jefferson might get two or three votes, and therefore they struggle to retain them. They knew that by district elections in Virginia, Mr. Adams would have obtained six or eight votes there; and therefore they exultingly abolished them in Virginia. They know that by district elections in Pennsylvania, Mr. Adams would divide that state with Mr. Jefferson, and probably get a majority: and therefore they oppose their establishment there; in hopes of at length wearying out the federalists, and obtaining a general ticket, whereby all the votes would be secured to their candidate. This is the true secret of their conduct, and not an attachment to district elections, or the rights of the people; for both of which they manifest the utmost contempt, whenever it suits their purpose to trample them under foot.

Their real object is to secure the election of their candidate, by all means, fair or foul; to impose him on the nation as president, contrary to the clear and known wish of the majority; to stifle the voice of that majority, by artifices in one state, clamors in another, and the violation of every right in a third; while district elections are their

stalking horse, and a clamor about the rights of the people is the instrument wherewith they work.

People of Maryland, distrust such clamors. When the wolf, with his jaws still red with the gore of the lamb, affects an extraordinary solicitude about the safety of the sheepfold, believe that he is as much in earnest, as the adherents of Mr. Jefferson are, when they affect an ardent attachment to district elections on one side of the Potowmac, after having just finished their destruction on the other side. The clamor about district elections and the rights of the people, coming from such a quarter, is most evidently intended as a cloak to conceal the most fatal attack that can be made on your rights; an attack on your right to a chief magistrate chosen by the majority of the nation. This is the great essential right, for the preservation of which, all subordinate rights are instituted. Distrust the men who advise you to adhere to the latter at the expence of the former. While that great right, the right of being governed by a chief magistrate chosen by the majority, shall remain to you unimpaired, your liberties will be safe. Let that once be snatched from you; let the choice of chief magistrate once be transferred from the majority to the minority; and whether it be done by fraud or by force, by the violence of strangers, or the artifices of some among yourselves; the effect is the same. Your solid valuable rights are annihilated; all that could distinguish you as freemen disappears; and your boasted liberty becomes an unsubstantial name, "the baseless fabric of a vision."

I have now, Messrs. printers, executed as well as I am able, the talk which I sometime ago undertook. I have executed it with a zeal inspired by truth, and warmed by the cause for which I contend, the rights of the majority, and the fair choice of a chief magistrate by the suffrage of the American people. Whatever success may attend my feeble exertions, I shall enjoy the satisfaction resulting from a consciousness of having discharged my duty, according to my station, and to the best of my abilities; and confiding the event to that Providence, which in so many trying emergencies, has watched over the destinies of the American nation, I shall remain a resigned, though anxious

BYSTANDER.