

Friday 6<sup>th</sup> February 1789

The Council met

Present as on yesterday

Agreeably to the notice given by John Kelly Esquire on the 26<sup>th</sup> of January, he deliver his dissent to the determination of that Day as follows.

Dissentient

1<sup>st</sup> Because by Article 1. Sect 5<sup>th</sup> of the Constitution of the United States, it is declared that "each House shall be the Judge of the elections, returns, and qualifications of its Members"—from which it is plainly to be inferred that each House should be in possession of every material document that regards the elections and although such documents might be occasionally obtained, yet as it is probable that complaints of undue elections will rarely be preferred from remote States on account of the great inconvenience and expence attending them it is the more necessary that the legislative body should be furnished with whatever may lead to a correct and just determination in the first instance. To adapt measures to circumstances is an approved rule in Politics. The Government of the United States has like all others, certain consequent circumstances nearly as fixed as its written articles. If these qualities are mischievous and derogatory from the general intention and principle of the Government, the evil they induce should be counterbalanced by such expedients as the Constitution permits. The acquiescence of the people in undue elections is one undesirable consequence attached to this extensive Government; and should therefore be remedied by a more strict enquiry into the pretensions of the persons returned than has been usual in State Assemblies.

2<sup>nd</sup> Because the 4<sup>th</sup> Section of the said Article after saying that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof" further declares that "the Congress may at any time by Law make or alter such regulations except as to the places of choosing Senators"—

The most obvious intention of this clause is that Congress may establish an uniformity in elections; and as the several States have on this first occasion made such various regulations, it is probable that the authority of Congress will be very early exercised in this particular and I am further persuaded that when it shall be known in what a diversity of forms the several Certificates of election in a State are conceived, the Congress will think it expedient to prescribe the form