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James Madison to George Washington, Orange, 5 December 1789 (excerpts)

... The fate of the Amendments proposed by Congress to the Genl Government is still in suspense. In a Come. of the whole House the first ten were acceded to with little opposition; for on a question taken on each separately, there was scarcely a dissenting voice. On the two last a debate of some length took place, which ended in rejection. Mr. E. Randolph who advocated all the others stood in this contest in the front of opposition. His principal objection was pointed agst. the word 'retained' in the eleventh proposed amendment, and his argument if I understood it was applied in this manner—that as the rights declared in the first ten of the proposed amendments were not all that a free people would require the exercise of, and that as there was no criterion by which it could be determined whether any other particular right was retained or not, it would be more safe and more consistent with the spirit of the 1st & 17th. amendts. proposed by Virginia that this reservation agst. constructive power, should operate rather as a provision agst. extending the powers of Congs. by their own authority, than a protection to rights reducible to no definitive certainty. But others, among whom I am one, see not the force of the distinction; for by preventing an extension of power in that body from which danger is apprehended, safety will be ensured, if its powers be not too extensive already, & so by protecting the rights of the people & of the States, an improper extension of power will be prevented & safety made equally certain. If the House should agree to the Resolution for rejecting the two last I am of opinion that it will bring the whole into hazard again, as some who have been decided friends to the ten first think it would be unwise to adopt them without the 11 & 12th. Whatever may be the fate of the amendments submitted by Congress, it is probable that an application for further amendments will be made by this Assembly, for the opposition to the federal Constitution is in my opinion reduced to a single point, the power of direct taxation—those who wish the change are desirous of repeating the application, whilst those who wish it not are indifferent on the subject, supposing that Congs. will not propose a change which would take from them a power so necessary for the accomplishment of those objects which are confided to their care. Messrs. Joseph Jones & Spencer Roane are appointed Judges of the Genl. Court to fill the vacancies occasioned by the death of Mr. Cary & the removal of Mr. Mercer to the Court of appeals.”

The difficulty started agst. the amendments is really unlucky, and the more to be regretted as it springs from a friend to the Constitution. It is a still greater cause of regret, if the distinction be, as it appears to me, altogether fanciful. If a line can be drawn between the powers granted and

the rights retained, it would seem to be the same thing, whether the latter be secured, by declaring that they shall not be abridged, or that the former shall not be extended. If no line can be drawn, a declaration in either form would amount to nothing. If the distinction were just it does not seem to be of sufficient importance to justify the risk of losing the amendts. of furnishing a handle to the disaffected, and of arming N. C. with a pretext, if she be disposed, to prolong her exile from the Union. . . .

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