

JEFFERSONIAN DEMOCRAT.

RICHARD JACOBS,

"The powers not delegated to the United States by the Constitution, nor prohibited by the States, are reserved to the States respectively, or to the people."—Constitution of the United States.

EDITOR & PROPRIETOR.

VOLUME I.

KOSCIUSKO, MISSISSIPPI, SATURDAY, MARCH 2, 1844.

NUMBER 8.

TERMS.

JEFFERSONIAN DEMOCRAT
 Published every Saturday, at Three Dollars
 per annum, invariably in advance.
 Any person who will procure us five subscrip-
 tions, and forward the amount, (\$15.) shall be
 entitled to a sixth copy gratis.
 Advertisements will be inserted at the fol-
 lowing rates, to wit: For every seven lines or
 less, insertion, fifty cents; and for each sub-
 sequent insertion, twenty-five cents, payable in
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 promptness, must be paid for free.
 Money may be sent by mail at our risk, if a
 receipt is first taken from the postmaster.
 No work must be paid for on delivery.

THE PHILADELPHIA DOLLAR NEWSPAPER.

COLUMBIA'S SHIPS AT SEA.
 BY THE AUTHOR OF THE
 "ARTICLE OF THE CONSTITUTION."
 "The nations in their hate
 are happy and impeach,
 they that proud eminence
 know they cannot reach;
 matters it, we've shown the world
 would, we must be free,
 to maintain that right, behold
 Columbia's ships at sea.

"Albion's oft times made her boast
 of rules upon the wave,
 and her sons, with loud bombast,
 the bravest of the brave."
 When her haughty crest it drooped,
 from Heaven's own decree,
 Britain winced when she beheld
 Columbia's ships at sea.

"Though Trafalgar and the Nile
 brought about our victories won,
 proud, ambitious Eng and boasts
 Nelson for her son;
 but point back with equal pride,
 to the fleet of the free,
 for Perry, Bainbridge had
 Columbia's ships at sea.

"Our naval history's page
 neither names can write,
 the deeds of arms upon the deep,
 Eng and's shine as bright;
 Jones, Decatur, Stewart, Hull,
 branches of freedom's tree,
 proved the force and daring of
 Columbia's ships at sea.

"Present, Heaven be praised, grim war
 has smoothed his wrinkled brow;
 a glance from time to time, behold
 our floating structures now;
 South, East, West, our banner floats;
 proud, we well may be,
 each nation envying
 Columbia's ships at sea.

"Oh, proud flag! 'tis yours to boast
 to have no spot or stain;
 upon your birthright, guard it then,
 and on the main:
 generations yet unborn
 will point with heartfelt glee
 to the flag that flutters from
 Columbia's ships at sea.

FORGET-ME-NOT.

BERNARD: BY FITZ-GREENE HALLECK.
 "It is a flower, a lovely flower,
 deep with Faith's unchanging hue;
 as the earth in its hour
 of sweetest and serene blue.
 streamlet's gentle side it seeks,
 the sun fount the shaded grove,
 sweetly to the heart it speaks
 forget-me-not, forget-me-not.

"In the azure of thine eyes,
 as the halo-beam above,
 thy whispers still I sighs,
 forget-me-not, my life my love!
 where thy last steps turned away,
 my eyes shall watch the faded spot,
 as a sweet flower be heard to say,
 ah, no! forget-me-not!

"Keep thy azure leaves within
 the brightening hue of care;
 that that secret grief hath been,
 a drooping stem may we decare.
 new drops on its leaves are tears,
 ask, "Am I so soon forgot?"
 amidst their fears,
 why love! forget-me-not!

REPORT OF MR. DOUGLASS, (OF ILLINOIS.)

From the Committee of Elections, relative to
 the right of members to their seats in the
 House of Representatives.

The Committee of Elections, having had
 under consideration the subjects embraced
 in the following resolution of the
 House: "Resolved, That the Committee
 of Elections be directed to examine and
 report upon the certificates of election or
 other credentials of the members returned
 to serve in this House; and that they in-
 quire, and report whether the several
 members of this House have been elected
 in conformity with the Constitution and
 laws," submit the following report:

The second section of the first article of
 the Constitution, provides that the Repre-
 sentatives shall be apportioned among the
 several States according to their respective
 numbers; and that an actual enumeration
 shall be made at regular periods of ten years,
 in such manner as Congress shall by law di-
 rect. The first section of "An act for the
 apportionment of Representatives among the
 several states, according to the sixth census,"
 approved June 25, 1842, makes the appor-
 tionment directed by the Constitution. It
 is a full and complete exercise of the power,
 and exhausts the entire authority invested in
 Congress by the Constitution, in regard to
 the apportionment of Representatives among
 the several states. The second section of
 the act, claims to derive its validity from an-
 other portion of the Constitution relating to
 a different subject, and having no appropri-
 ate and legitimate connexion with the appor-
 tionment of representation. Whilst the first
 section is the execution of the power to ap-
 portion the Representatives among the States,
 the second is supposed to be a partial execu-
 tion of the power to prescribe the times, places
 and manner of holding elections. Notwith-
 standing the different and distinct charac-
 ter of the two subjects, Congress deemed it
 advisable, for purposes of convenience, to
 embrace both in separate sections of the same
 act. No principle is better settled, than that
 one portion of an enactment may be Consti-
 tutional and valid, and the residue unconsti-
 tutional and void. To the constitutionality
 and validity of the first section of the act
 under consideration, no objections have been
 made. The second section is in the words
 following:

"And be it further enacted, That in each
 case where a State is entitled to more than
 one Representative, the number to which
 each State shall be entitled, under this ap-
 portionment, shall be elected by districts
 composed of contiguous territory, equal in
 number to the number of Representatives to
 which said State shall be entitled—no one
 district electing more than one Representative."

The Legislatures of Maine, Massachusetts,
 Rhode Island, Connecticut, Vermont, New
 Jersey, Pennsylvania, Virginia, North
 Carolina, South Carolina, Alabama,
 Louisiana, Tennessee, Kentucky, Ohio,
 Indiana, Illinois and Michigan, divided their
 respective States into as many districts as
 they were entitled to Representatives, and
 made provisions for the election of one mem-
 ber of Congress in each district; the States
 of Delaware and Arkansas were entitled to
 but one Representative each, and, of course,
 constituted districts of themselves, without
 further legislation. In each of the States en-
 numerated, the elections were held in con-
 formity with the State laws, and the members
 now occupying seats upon this floor, have
 presented satisfactory credentials, in the us-
 ual form, of their elections respectively.—
 No question arises, therefore, as to the legal-
 ity and validity of their elections, except
 the two contested cases from Virginia, in
 each of which a special report will be made
 in due time. In the State of Maryland, no
 elections for Representatives to Congress
 have been held. The four remaining States
 represent a different case, which requires the
 most anxious and deliberate consideration.
 The Legislatures of New Hampshire, Geor-
 gia, Mississippi and Missouri, many years
 ago, provided for the election of as many
 members of Congress as they should be en-
 titled to, respectively, by general ticket, and
 have continued that plan until the present
 time. Considering themselves under no
 constitutional obligation to alter their election
 laws, the constitutionality and validity of
 which having so often been recognized and
 sanctioned by Congress and the country, and
 never questioned, they deemed it unwise and
 inadvisable to change a system which was
 adapted to their condition and convenience,
 and had so long received the approbation of
 their people. Indeed, some of these States
 could not have conformed to the second sec-
 tion of the apportionment act, without in-
 curring the expense and trouble of special
 sessions of their Legislatures; for the rea-
 son that, by virtue of their Constitutions, no
 regular sessions of their Legislatures could

be held between the time of the pas-
 sage of the apportionment act and the
 period provided by the existing laws, for
 holding their Congressional elections. All
 the members from those States have been
 elected in strict compliance with the laws of
 their respective States, and according to the
 mode adopted in many of the States, for the
 election of Representatives to the first Con-
 gress which assembled under the Constitu-
 tion, and which has prevailed in the election
 of members from some of the States in
 every succeeding Congress, including the
 present.

It is apparent, therefore, that the second
 section of the apportionment act is an at-
 tempt, by the introduction of a new princi-
 ple, to subvert the entire system of legisla-
 tion adopted by several States of the Union,
 and to compel them to conform to certain rules
 established by Congress for their govern-
 ment. This new principle has produced a
 conflict between the laws under which the
 elections have been held in these four States,
 and the second section of the apportionment
 act. The conflict is so clear, so palpable,
 so direct, that both cannot stand; one or the
 other must yield. Either the State laws and
 all the proceedings under them are void, or
 the second section of the apportionment act
 is invalid and inoperative. The determina-
 tion of a question so delicate, so grave and
 momentous in its consequences, imposes
 upon the committee and the House, a high
 responsibility. The principles involved,
 and the force of the precedent to be estab-
 lished, give the subject an importance which
 elevates it far above the ordinary considera-
 tions affecting the right of twenty members
 to hold seats in this House. There is not
 only a conflict of law, but a conflict of right
 of power, of sovereignty, between the Fed-
 eral Government and four of the indepen-
 dent States of this Union.

Surely, these considerations will be suf-
 ficient to insure a fair and impartial decision
 of this question upon the true principles of
 the Constitution, preserving alike the just
 powers of the States, and of the General
 Government. The sixth article of the Con-
 stitution, provides that this Constitution and
 the laws of the United States which shall
 be made in pursuance thereof, shall be the
 supreme law of the Constitution or laws of
 any State to the contrary notwithstanding.
 This brings us directly to the point at issue.
 Is the second section of the apportionment
 act a law, which has been made in pursu-
 ance of the Constitution of the United States,
 valid, operative and binding upon the States?
 If the affirmative of this proposition can be
 successfully maintained, the State laws must
 yield to the paramount authority, and the elec-
 tions under them be declared void. But
 a position which annuls the laws of four
 States of this Union, destroys their elections,
 and deprives them of their representation in
 the national councils, must not be assumed
 until its correctness be incontrovertibly es-
 tablished. The authority for adopting that
 section, is supposed by its advocates to be
 derived from the fourth section of the first
 article of the Constitution of the United
 States, which is in these words:

"The times, places and manner of holding
 elections for Senators and Representatives,
 shall be prescribed in each State by the Leg-
 islature thereof; but the Congress may, at
 any time, by law, make or alter such regula-
 tions, except as to the places of choosing
 Senators."

It will be observed that the two clauses of
 this section differ materially in the tone in
 which they address the different Govern-
 ments. The one is commanded, and the
 other is permitted to act. The State Legis-
 lature shall prescribe the times, places and
 manner of holding elections; Congress may
 make or alter such regulations. An impera-
 tive duty rests upon the Legislatures, whilst
 a mere privilege is granted to Congress. In
 the performance of this duty, the Legisla-
 tures are clothed with a wide discretion, up-
 on which the Constitution imposes no re-
 straints. They may provide for elections
 by general ticket, or in districts; for voting
 by ballot or *visa voce*; for opening the polls
 and at one place one day, or at different
 places and on different days. These, and
 all things pertaining to the times, places and
 manner of holding elections, are confided to
 the wisdom and discretion of the several Leg-
 islatures, to be performed in such manner
 as they shall deem most favorable to popu-
 lar rights and just representation. The priv-
 ilege allowed Congress of altering State
 regulations, or of making new ones, if not
 in terms, is certainly in spirit and design, de-
 pendent and contingent. If the Legislatures
 of the States fail or refuse to act in the pre-
 mises, or act in such a manner as will be
 subversive of the rights of the people and
 the principles of the Constitution, then this
 conservative power interposes, and upon the
 principle of self-preservation, authorizes

Congress to do that which the State Legis-
 latures ought to have done.

The history of the Constitution, and es-
 pecially the section in question, shows con-
 clusively, that these were the considerations
 which induced the adoption of that provision.

When General Pinkney proposed in the
 convention which formed the Constitution,
 that the Representatives "should be elected
 in such manner as the Legislatures of each
 State should direct," he urged, among other
 reasons in support of his plan, "that this
 liberty would give more satisfaction, as the
 Legislature could then accommodate the
 mode to the convenience and the opinions
 of the people."

After the substance of this provision had
 been fully and ably discussed, maturely con-
 sidered, and unanimously adopted, the latter
 clause of the section conferring upon Con-
 gress the power to make regulations, or to
 alter those prescribed by the States, was
 agreed to, with an explanation at the time
 that, "this was meant to give to the National
 Legislature a power not only to alter the pro-
 visions of the States, but to make regulations
 in case the States should fail or refuse al-
 together."

In vindicating this provision, whilst ur-
 ging upon the people of the United States
 the ratification of the Constitution, General
 Hamilton, in one of the numbers of the Fed-
 eralist, placed its defence upon the same
 principle. "Its propriety rests upon the evi-
 dence of this plain proposition—that every
 Government ought to contain in itself the
 means of its own preservation." Notwith-
 standing the imperative provision that the
 States shall prescribe the laws of election,
 and the mere permissive clause that Con-
 gress may make or alter them, and the con-
 struction placed upon this section at the
 time, by its authors, limiting and restricting
 its exercise to the principle of self-preservation:
 yet this very clause created a more vi-
 olent and formidable opposition to the adop-
 tion of the Constitution than all other por-
 tions of that instrument, and greatly hazard-
 ed its final ratification by the requisite num-
 ber of States.

The conventions of the States of Virginia,
 Massachusetts, New Hampshire, New York,
 Rhode Island and South Carolina, accom-
 panied their ratifications with a solemn protest
 against the power of Congress over elections.
 The proposed amendments to the Constitu-
 tion, changing the obnoxious provision, and
 recorded on their journals perpetual instruc-
 tions to their Representatives in Congress to
 urge earnestly and zealously the adoption
 of those amendments. The amendment and
 instructions of the people of Virginia relat-
 ing to this subject are as follows:

"The Congress shall not alter, modify, or
 interfere in the times, places, or manner of
 holding elections for Senators and Represen-
 tatives, or either of them, except when the
 Legislature of any State shall neglect, re-
 fuse, or be disabled by invasion or rebellion
 to prescribe the same; and the convention do,
 in the name and behalf of the people of
 this commonwealth, enjoin it upon their
 Representatives in Congress to exert all their
 influence, and use all reasonable and
 legal methods, to obtain a ratification of the
 foregoing alterations and provisions in the
 manner provided by the fifth article of the
 said Constitution; and in all Congressional
 laws to be passed in the meantime to con-
 form to the spirit of these amendments, as
 far as the said Constitution will admit."

The amendment and the instructions adop-
 ted by the convention of Massachusetts are
 as follows:

"The convention do, therefore, recom-
 mend that the following alterations and pro-
 visions be introduced into the said Constitu-
 tion: That Congress do not exercise the
 powers vested in them by the fourth section
 of the first article, but in cases where a
 State shall neglect or refuse to make the regu-
 lations therein mentioned, or shall make
 regulations subversive of the rights of the
 people to a free and equal representation in
 Congress, agreeably to the Constitution.

"And the convention do, in the name and
 in behalf of the people of this common-
 wealth, enjoin it upon their Representa-
 tives in Congress, AT ALL TIMES, until the
 alterations and provisions aforesaid have
 been considered agreeably to the spirit of
 the Constitution, to exert all their influ-
 ence, and use all reasonable and legal
 methods, to obtain a ratification of the
 said amendments, and provisions, in the
 manner provided in the said Constitu-
 tion."

It is unnecessary to mention the
 amendments and provisions of the
 all of similar in
 Carolina refused,
 unless certain ad-
 convention should
 was as follow-
 "Th-
 inter-

holding elections for the Senators and repre-
 sentatives, or either of them, except when
 the Legislature of any state shall neglect,
 refuse, or be disabled by invasion or rebel-
 lion, to prescribe the same."

Thus we find seven of the thirteen States
 then composing the Union, being the major-
 ity of the whole number, solemnly protested
 against the authority of Congress to estab-
 lish regulations concerning the mode of elec-
 tion, or to alter those prescribed by the
 State: and that the constitution was adopted
 with the understanding (and probably never
 would have been adopted but for the under-
 standing) that it was never to be exerted ex-
 cept in a few specified cases.

From this brief review of the history and
 contemporaneous exposition of this portion of
 the constitution, it is evident that the con-
 vention which formed, and the people who
 ratified, that great charter of our liberties,
 intended that the regulation of the times,
 places and manner of holding the elections
 should be left exclusively to the Legislatures
 of the several States, subject to the condition,
 only that Congress might alter the State
 regulations, or make new ones, in the event
 that the States should refuse to act in the
 premises, or should legislate in such man-
 ner as would subvert the rights of the peo-
 ple to a free and fair representation.

The question now to be terminated, how-
 ever, is one of power and not the propriety
 of its exercise. Reference has been made to
 the proceedings of the forming and ratifying
 conventions, for the purpose of showing the
 reasons which induced the adoption of this
 clause, and the cases to which it was intend-
 ed to be applied, rather than to negative the
 ultimate power of Congress to legislate up-
 on the subject. If the power should be con-
 ceded to be plenary and supreme, to pre-
 scribe the times, places, and mode; to estab-
 lish the general ticket or district system; to
 adopt the *viva voce* or ballot form of voting;
 and, in short, to make all such regulations
 as should be deemed necessary and proper
 to the full enjoyment of the elective fran-
 chise: still the question arises, whether the
 second section of the appointment act is an
 exercise of this power in a manner contem-
 plated by the Constitution, and binding upon
 the State.

The act does not distract the States, nor
 provide for an election by general ticket;
 does not prescribe the mode of voting; does
 not fix the times, places, or manner of hold-
 ing elections; does not make such alterations
 in the State laws, or enact new ones, which
 would enable the people to elect their Repre-
 sentatives. It is entirely nugatory and in-
 operative without the aid of the State legis-
 lation; and even with that aid, it has no oth-
 er force or virtue than that which they im-
 part to it. True, it says that the elections
 shall be by districts, and that but one Repre-
 sentative shall be elected in each district; but
 how, when, and where the election are to be
 held, are not provided. These things are
 left to the Legislatures of the different States,
 and if those Legislatures had not passed
 necessary and appropriate laws, no elec-
 tions could have taken place. All the elec-
 tions which have occurred, since the passage
 of this act, have been held under the
 and in the pursuance of the provisions of
 the State laws. Every member of the
 floor is here by virtue of an election held
 under the authority of the Legislature of the
 State, or he has no legal right to sit upon
 this House. No elections could be held,
 and none could be held, but in confor-
 mity with the second section of the appor-
 tionment act, which prescribes no times, places,
 or manner of holding elections. It is
 clear, has been strenuously opposed to
 apportioning the Representatives among the
 several States, and electing in districts
 instructed the States to make laws
 mandating the States to make laws
 relating to the mode of electing elec-
 tions, whence
 to ir-
 to