

the act of 1802, directing the  
the President for the choice of  
and directed that the electors  
of President and Vice-Presi-  
dents shall be appointed by Joint Ballot of  
both Houses of the General Assembly. And  
in this form it passed into a law.

The misrepresentation of the contents of  
this law render it proper in this place, ex-  
plicitly to declare that it contains no provision  
for the appointment of Representatives by the  
Assembly. It may not perhaps be known to  
all, but the truth is, that a report has been in-  
stitutionally circulated, that the law does con-  
tain such a provision. The writer does not  
recollect that he has met with such a charge  
published in the papers, but he has frequently  
heard the same in conversation; & he  
is sensible from whom he had expected  
to receive information of the contents of the act.

One thing more relative to the choice of Re-  
presentatives. Neither the friends nor ene-  
mies of the bill while before the legislature,  
seem to have considered it possible, that its  
intention or effect could be so far mistaken or  
perverted as to prevent filling a vacancy oc-  
casioned by the death of one of the Represen-  
tatives previously elected for the state. The  
Journal of the House of Commons, shews that  
Mr. J. Cameron's motion on the second read-  
ing of the bill, voted for by all its enemies as  
well as by some of its friends, contemplated re-  
turning so much of the bill as repealed the act  
of 1802, dividing the state into districts for  
the choice of Representatives. And Mr.  
Patterson's motion on the third reading, sup-  
ported by very nearly the same votes, expres-  
sly contained these words, "That the afore-  
said act directing the election of representa-  
tives to Congress, be and the same is hereby  
repealed." So that all the Members of the  
House of Commons, without a single excep-  
tion, appear by their votes to have consid-  
ered that the provisions in the constitution,  
"when vacancies happen in the representa-  
tion from any state the Executive Authority  
thereof shall issue writs of election to fill  
such vacancies," does not require the aid of  
the legislature to point out to what counties  
writs of election should issue to fill a vacancy  
occasioned for example by the death of Gen-  
eral Blount, chosen by the Counties of Edge-  
comb, Pitt, Beaufort, Hyde, Tyrrell & Wash-  
ington. So far otherwise that it does not ap-  
pear a reason can readily be given, why, even  
if the legislature had passed an act expressly  
to prohibit the Executive from issuing such  
writs, a Governor understanding his rights &  
duty, and possessing a moderate share of man-  
ly independent spirit, should hesitate to obey  
the Constitutional injunction, the legislative  
prohibition to the contrary notwithstanding.

But to pass on to that part of the act which  
directs the appointment of Electors by the  
next General Assembly. It will not be  
here contended that this direction would be  
right if in opposition to the letter or spirit of  
the Constitution. But before sentence of con-  
demnation shall be passed by you against this  
law as unconstitutional, I deem too highly of  
your candor and good sense to doubt your  
willingness to examine the subject.

The second article of the Constitution of the  
United States after declaring that the execu-  
tive power shall be vested in a President,  
and the term for which he shall hold his office,  
proceeds, "Each State shall appoint in such  
manner as the legislature thereof may direct a  
number of Electors equal to the whole num-  
ber of Senators and Representatives to which  
the State may be entitled in Congress." Up-  
on the passage here quoted it has often been  
observed by the enemies to the present law for  
appointing Electors, that the Convention which  
framed the Constitution did not intend that  
the Assembly but that the people should ap-  
point the Electors. Because in directing the  
choice of Senators, a choice intended to be  
confined to the Legislatures, that body expres-  
sed themselves differently thus, "The Senate  
of the United States shall be composed of two  
Senators from each State chosen by the Leg-  
islature thereof for six years." To the infer-  
ence made from hence it is a sufficient answer  
to state that when the Convention meant to  
confine the choice to the people as of Represen-  
tatives and to exclude a choice by the  
Legislatures they have used a form of  
expression calculated precisely to obtain  
their object. Thus, "The House of Represen-  
tatives shall be composed of Members  
chosen every second year by the people of the  
several States." It therefore evidently ap-  
pears that it was not the intention of the Con-  
vention that the choice of Electors should neces-  
sarily be made by the people.

But an examination of the words and form  
of expression used by the Constitution in pro-  
viding for the appointment of Electors will  
conduct us more immediately to our object in  
our endeavors to arrive at a correct construc-  
tion of the part now to be considered. The  
words, "Each State shall appoint in such  
manner as the legislature thereof may direct" ap-  
pear in their more obvious meaning and con-  
sidered independently of their connection  
with other provisions to contain no limitation  
upon the Legislatures in directing the manner  
of that appointment.

Take them in connection with other parts of  
the Constitution and let us examine what  
change is produced. They contain an injunc-  
tion upon the States, respectively to perform an  
act. And if it shall appear upon looking thro'

the Constitution that in all other parts of that  
instrument where a state is expressed to ap-  
point or choose from among themselves and or  
preference from among those and or pre-  
ferred, it applies in precisely the same man-  
ner to the people, we certainly  
have soon to conclude that the word State  
is necessarily used in this instance in a sense  
different from that in which the same word  
is used in the same instrument on every other  
similar occasion. The Constitution does not  
contain many instances in which the States are  
commanded to act. Almost the only one be-  
sides that at present under consideration is  
that part of 10th Section of the first article  
which provides that the net produce of all  
duties and imposts, laid by any state on imports  
and exports, shall be for the use of the Treas-  
ury of the United States which manifestly  
applies as an injunction upon the State Legis-  
latures who with the consent of Congress  
shall lay such duties and imposts. There are  
many instances in which the states are prohib-  
ited from acting; of which the same 10th  
Section contains a number. "No state shall  
enter into any Treaty, alliance or confeder-  
ation; grant Letters of Marque and Reprisal;  
coin money; emit Bills of Credit; make any  
thing but gold and silver coin a tender in the  
payment of debts &c. &c." in all of which and  
in every other that can be cited the prohibi-  
tions to the states manifestly apply to their  
Legislatures as the organs by which the states  
act upon these subjects. But the word ap-  
point, in the expression "Each state shall ap-  
point," is still more forcible to shew the Con-  
stitution does not intend the selection of Elec-  
tors shall be confined to the people. Be-  
cause it may be asserted with confidence that  
the word appoint is not used in any instance  
either in the Constitution of the United States  
nor in the Constitution of any one of the in-  
dividual States as descriptive of a selection of  
persons to be made by the people for any pur-  
pose whatever. When a selection or choice  
is directed to be made by the people the words  
descriptive of the operation are invariably  
choose and elect—Is it not therefore fair to  
presume that the word appoint is in the in-  
stance used in the sense universally and with-  
out exception appropriated to it in all the  
Constitutions as well of the U. S. as of the in-  
dividual states. And that instead of an injunc-  
tion to choose or elect the Electors by the people  
as contended for by the opponents to our El-  
ectoral law, the Convention intended the Leg-  
islatures should be left at liberty to direct that  
the electors should be appointed by joint ballot  
of the General Assembly as appointments are  
usually made under the State Constitution of  
North-Carolina and some others: Or by the  
Governor and Council as appointments are  
made in New Hampshire, Massachusetts, &c.  
or by the Council as appointments as in New-  
York; or by the Governor as in Pennsylvania;  
or by the Governor and Senate as in Ken-  
tucky, Delaware, &c. or by any other consti-  
tuted organ, established and used in the States  
for the purpose of making appointments: or  
perhaps as has been done in some cases that  
the Legislatures may create an organ for the  
purpose of making the appointments of Electors  
unknown to the Constitutions. In conform-  
ity with this last Idea the act of the Legisla-  
ture of South-Carolina of the 4th Novem-  
ber 1788 directing the appointment of Elec-  
tors provides "that they shall be appointed  
by the Legislature of this State on the first  
Wednesday of January next, or by such per-  
sons as shall be returned members thereof, and  
shall attend on that day." So the appointment  
of Electors for the State of North-Carolina  
in the year 1792 was by the members of the  
Legislature divided into sections and not by  
them collectively as a Legislature.

A further evidence of the meaning of the  
Convention. It will not be conceding too  
much to the fidelity and enlightened patri-  
otism of those distinguished men among whom  
were Washington and Franklin convened by  
the resolution of Congress of the 21st of Feb-  
ruary 1787 for the—"express purpose of re-  
vising the articles of confederation" and who  
framed the Constitution of the United States,  
to suppose they were well acquainted with  
the provisions of the articles of confederation  
and with the practice under them; nor to  
their prudence to suppose that when by long  
and uniform practice under a provision of the  
articles of confederation a particular form of  
expression had acquired a settled and known  
practical meaning, the Convention would not  
adopt the same form of expression into the  
Constitution of the United States and intend  
it should convey an entirely different meaning.  
The fifth of the articles of confederation and  
perpetual Union begins in these words, "For  
the more convenient management of the Gen-  
eral interests of the United States Delegates  
shall be annually appointed in such manner as  
the Legislature of each state shall direct to  
meet in Congress, &c." Under this provi-  
sion, exactly in the words of the Constitution,  
the Legislatures appointed the Delegates to  
Congress. They authorized the Executives to  
appoint them, &c. But in no instance is it  
known or believed that the people chose the  
delegates to congress under the confederation.  
It cannot then be fair to suppose that the  
Convention meant to confine the choice of  
Electors to the people when they adopted a  
form of expression in prescribing the manner  
in which those appointments should be direct-  
ed long universally received & practiced un-  
der differently.

As further evidence of the meaning of this  
provision of the constitution, we may cite the  
understanding and practice of the states since  
its establishment. Many very respectable states  
have invariably appointed their Electors by  
their legislatures. And it is believed that all  
states which were in the Union, when the  
first President was chosen. Massachusetts,  
Connecticut, Vermont, New-York, Delaware,  
South-Carolina and Georgia, appointed their  
Electors by their legislatures at the last Elec-  
tion. Pennsylvania has repeatedly so ap-  
pointed her Electors. In the year 1792  
North-Carolina appointed by the members of  
the legislature as before described, and it has  
not been till lately discovered to be uncon-  
stitutional that Electors should be so appointed.  
The votes of Electors appointed by the leg-  
islatures have been uniformly received and  
have determined the choice of President—  
Washington, Adams, Jefferson and Madison,  
have all been elected by Electors appointed  
by the legislatures of the states, and never was  
it seriously alleged till by the minority of  
North-Carolina, that these things were done  
in direct opposition to the constitution.

Therefore from the words of the constitu-  
tion directing the appointment of Electors;  
from their analogy as used in this provision  
with the indubitable meaning of them in other  
parts of the same instrument, as well as in the  
constitutions of the states, and in the articles  
of confederation; from the invariable prac-  
tice of many of the states under the constitu-  
tion the occasional practice of others; and  
the universal practice under the confeder-  
ation, and from hitherto universal acquiescence  
it is pronounced not to be unconstitutional, that  
the Electors of President and Vice-President  
of the United States should be appointed by  
Joint Ballot of both Houses of the General  
Assembly.

### A NORTH-CAROLINIAN FOR THE STAR.

Some person, who is ashamed to  
own he subscribes his name, has come forward  
in the Raleigh Register, under the appellation  
of "One of the People," and directed a letter to "Col.  
Wm. Porter." I suppose myself to be the per-  
son had in view, but should not, perhaps, have  
noticed the publication were it not to let my friend  
see I have not altogether neglected him; to a-  
void which charge I have thought proper to send  
you the following for publication. When I say  
"my friend," I do not mean say well wisher, but  
my indirect friend; for I have often seen it hap-  
pen, that where one sets out to expose another and  
goes beyond the bounds of truth, reason and com-  
mon decency, he adds to the character which he  
fain would deride. Let me ask the gentleman if  
fact and good sense, and argument would not  
have had much greater weight with society, in  
convincing their understandings that the conduct  
of the last assembly was improper; and my ad-  
dress unwise, than a tissue of degrading and un-  
justifiable expressions thrown out against me as  
an individual. Investigation and illustration may  
have some good effect upon sensible minds, but  
declamation can only gratify such as are prejudic-  
ed.

My friend supposes that my object was to pre-  
vent my colleague, Daniel Gold, esq. from being  
re-elected in the county of Rutherford. In this  
my friend must be widely mistaken; because Mr.  
Gold informed Major Green and myself, before  
we left Raleigh, that he should not be a candidate  
at the next election; and I have never heard that  
he has altered his determination.

I am blamed for not telling the people that the  
electoral law was considered by the assembly as  
only a temporary expedient. There was no more  
necessity for that explanation, than in the first  
instance there was for the act itself. The terms of  
the law held out that idea to the people. But the  
design was to continue it; for the assembly re-  
jected General Jones' amendment, which was in  
these words,

"And be it further enacted, That this act shall  
continue in force until the first day January, 1813,  
and no longer."

There were 47 for this amendment, and 53 a-  
gainst it, in the Commons; and some of the lead-  
ers of the party said at the time, that they had the  
power to take away the privilege of election from  
the people, and that the power they had they  
should certainly exercise.

My friend wonders that I am not afraid of meet-  
ing the fate of Genet and Col. Pickens, who  
likewise appealed to the people. I will ask the  
gentleman, whether, because one or two brave  
generals have fallen in endeavoring to take Que-  
bec, that furnishes a reason for never again assail-  
ing the place? I think not. Genet was a for-  
eigner, and had no right to appeal to the people;  
and as for Col. Pickens, if he is not still in pub-  
lic life, yet his information is with the people.  
The writer in the Register says he is despised.  
As to that I am not so good a judge: I only know  
that he was held in high estimation by General  
Washington, however, for my own part I have  
never yet been so high in station as that a fall  
could do me much harm. Indeed, if the liberties  
of my fellow citizens and my own are to be taken  
away, I care not how soon my political existence  
may be brought to a close.

"One of the people" commends Mr. Gold for  
his silence. I think if he had taken a little of that  
prescription himself, he might have avoided much  
pain and confusion in which he must now be in-  
volved. Why does he not show that the asser-  
tions offered in my first address are false?

I have avowed that the privileges of the people  
have been unwarrantably taken away. And how  
does the writer attempt to controvert me? By ad-  
vancing certain expressions of Messrs. M'Lean,  
Davis and Spaight. I confess I cannot see that  
the language of these excellent characters has a  
single bearing on the question—at least that it has  
any in favor of the electoral law. Their opinions,  
it is true, should have great weight. The two lat-  
ter were both members of the convention which

framed the federal constitution, & of the  
which were the facts in that case? The  
came forward to North-Carolina while the  
body was in session, but the late to what a possi-  
ty of an immediate choice, by the people, of  
number of electors they were entitled  
state was then divided into districts, and the  
representatives from each of these chose one  
member of the electoral college. This was  
being the only feasible mode in which the  
could participate in the choice of the first  
elect and vice president of the union. I  
statement to be correct; because I was a  
member, and voted for the elector for Massa-  
chusetts. Besides, without the dissenting voice of  
very same session the assembly passed a law  
to divide the state into districts in order that the  
people might in future vote for electors; and the  
people the assembly passed the law at that time  
being then no absolute necessity, as another elec-  
tion for president and vice president would not  
be for four years, was for the purpose of doing  
the belief of the legislature that the constitution  
meant to establish the right of voting the electors  
in the people alone. This, therefore, instead  
controversy, confirms the principles maintain-  
ed by the minority of last session and supported  
by the precedents of the several grand juries.

My correspondent asserts that no question  
excited less interest in the convention than that  
concerning the choice of electors of president and  
vice president of the United States. This I admit  
but whence did this indifference arise? Why  
cause no member ever dreamt that any legislature  
would so abuse the power entrusted to it, as to  
convert the privilege of fixing the mode of elect-  
ing into a right of making the appointment. How  
less was it imagined that one legislature would  
attempt to control or direct another, over which it  
could have no control, and declare it to be its  
duty to appoint electors by joint ballot. Such a  
departure from principle should give the highest  
keenly wound the feelings of every true republican  
in the United States.

The chief argument brought forward by the  
friends of the electoral law, is deduced from the  
practice of other states. This appears to me to  
resemble the pretext resorted to by France and  
England in defending their blocking systems,  
each seeking her excuse in the conduct of the  
other, while neither could find a justification in  
the principles of law or the dictates of reason. It was  
never suggested, at the adoption of the consti-  
tution, that we were to contend by states, for a  
preference. There are some questions intended to be  
settled in the Senate of the United States, where  
each state is to have an equal vote. Hence it is  
believed to be peculiarly proper that the sena-  
tors should be chosen by the state legislatures; and that  
the other two branches of the general government  
should spring more immediately from the people.  
Any thing which would overthrow this maxim,  
contrary to the true principles of republican gov-  
ernment and founded in the heat of party and the  
spirit of faction.

The writer who has addressed me says that  
party will own me. I assure him that I never  
aspired to be ranked as one of a French faction or  
British faction. I have still thought that every  
true American ought to hold himself aloof from  
both; that we ought to stand firmly fixed in the  
righteousness of our cause, and defend ourselves  
against the attack of any nation that may seek our  
injury; but cultivate friendship with all disposed  
to be friendly. I was always of Jefferson's opinion,  
that "we are all federalists, all republicans," and  
of General Washington's, "that party is never  
truly our greatest and worst enemy." I do not  
think that every hot-headed partisan is an indiffer-  
ent enemy to our happy confederation; and that  
perhaps unconsciously, he is laboring with all his  
might to overthrow the very government he  
desires to support.

It is remarkable, that while General Davis and  
similar characters were in the assembly, such a  
proposition as the electoral law was never dream-  
ed of. The constitution was never attempted to be  
altered until those were out of the way who assisted  
at its formation. But now Spaight is dead and Dav-  
y has removed, a new set of law makers have  
sprung up who know nothing about the principles  
of our admirable government. The privileges of  
the people must be taken away and the provisions  
of our sacred constitution trampled under foot,  
and for what? To gratify men whose breath is  
in their nostrils, and who will soon be no more.

The friend who has addressed me seems to be  
pleased with the conduct of one of the judges  
in refusing to send legislation with his public  
functions. Why then is he so much in love with  
the admirature of three distinct powers in the leg-  
islature, whose members are certainly no more  
enlightened than the judiciary, or more competent  
to a faithful discharge of complicated duties than  
if I were in his honor's place, I should not be very  
grateful for that oblique compliment, which could  
not be introduced without alluding to an attempt  
for former errors.

I am terrified by the writer's "counter-revolu-  
tion." I have often heard it remarked that the  
ills, that their being old and nearly worn out  
use was pretty good evidence of a government's  
may not, however, be so with regard to me. If  
my enemies alone were the judges, I should make  
no doubt of being condemned, whether of heat or  
counterfeit pain.

The gentleman, in doing my rest assured that  
I have often stood the heavy fire of the British  
cannon. I am not to be disconcerted by the  
peepers of children, particularly when assailed  
by the people. But the battle must be fought  
all on his side. I can pay no further respect to  
him or his performances.

It is believed that there is now no danger of the  
matter. The rights of the people will not be again  
invaded. For, like corrected opinion, most of the  
members who opposed the electoral law will not  
do so any more.

W. M. PORTER.  
Rutherford, May 30, 1812.