

**James Madison to James Monroe, December 28,
1820. Transcription: The Writings of James Madison,
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,
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TO JAMES MONROE. MAD. MSS.

Montpellier, Decr. 28, 1820

Dear Sir, —I have received your two favors of the 10th & 23d inst. The prospect of a favorable issue to the difficulties with Spain, is very agreeable. I hope the ratification will arrive without Clogs on it; and that the acquisition of Florida will give no new stimulus to the Spirit excited by the case of Missouri. I am glad to learn that a termination of this case, also is not despaired of. If the new State is to be admitted with a proviso, none better occurs than a declaration that its admission is not to imply an opinion in Congress that its Constitution will be less subject to be tested & controuled by the Constitution of the U. S. than if formed after its admission, or than the Constitutions of other States now members of the Union.

It is a happy circumstance that the discussions renewed by the offensive clause introduced by Missouri, are marked by such

mitigated feelings in Congress. It argues well as to the ultimate effect which you anticipate. The spirit and manner of conducting the opposition to the new State, with the palpable efforts to kindle lasting animosity between Geographical divisions of the nation will have a natural tendency, when the feverish crisis shall have passed, to reunite those who never differed as to the essential principles and the true policy of the Govt.. This salutary reaction

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will be accelerated by candor & conciliation on one side appealing to like dispositions on the other; & it would be still farther promoted by a liberality with regard to all depending measures, on which local interests may seem to be somewhat at variance, and may perhaps be so for a time.

Your dispositions towards Mr. T. Coxe are such as I had counted on. I shall regret, if it so happen, that nothing can properly be done for him. I feel a sincere interest in behalf of Doct Eustis.¹ The expedient at which you glance would I suppose be in itself an appropriate provision; but I am sensible of the delicacy of the considerations which I perceive weigh with you. I wish he could have been

¹ William Eustis was elected to Congress from Massachusetts in 1820 and served till 1823, when he was elected Governor of Massachusetts, holding the office until his death in 1825.

made the Govr. of his State. It would have closed his public career with the most apt felicity.

Is not the law vacating periodically the described offices an encroachment on the Constitutional attributes of the Executive?¹ The creation of the office is a legislative act, the appointment of the officer, the joint act of the President & Senate; the tenure of the Office, (the judiciary excepted,) is the pleasure of the P. alone; so decided at the commencement of the Govt. so acted on since, and so expressed in the commission. After the appointment has been made neither the Senate nor H. of Reps. have any power relating to it; unless in the event of an impeachment by the latter, and a judicial decision by the former; or unless in the exercise of a legislative power by both, abolishing the office itself, by which the officer indirectly loses his place; and

¹ The act of May 15, 1820, "to limit the term of office of certain officers," provided that district attorneys, collectors of customs, naval officers, surveyors of customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary general, the assistant apothecaries general and the commissary general

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of purchases should be appointed for a term of four years, but should be removable at pleasure.

On this subject Madison wrote to Jefferson, January 7, 1821:

In the late views taken by us, of the Act of Congress, vacating periodically the Executive offices, it was not recollected, in justice to the President, that the measure was not without precedents. I suspect however that these are confined to the Territorial establishments, where they were introduced by the Old Congs. in whom all powers of Govt. were confounded; and continued by the new Congress, who have exercised a like confusion of powers within the same limits. Whether the Congressional code contains any precedent of a like sort more particularly misleading the President I have not fully examined. If it does, it must have blindly followed the territorial examples.— *Mad. MSS.*

even in this case, if the office were abolished merely to get rid of the tenant, and with a view, by its reestablishment, to let in a new one, on whom the Senate would have a negative, it

would be a virtual infringement of the constitutional distribution of the powers of Government. If a law can displace an officer at every period of 4 years, it can do so at the end of every year, or at every session of the Senate, and the tenure will then be the pleasure of the Senate, as much as of the President, & not of the P. alone. Other very interesting views might be taken of the subject. I never read if I ever saw the debates on the passage of the law. Nor have I looked for precedents which may have countenanced it. I suspect that these are confined to the Territories, that they had their origin in the ordinance of the old Congress in whom all powers of Govt. were confounded; and that they were followed by the New Congs. who have exercised a very undefined and irregular authority within the Territorial limits; the Judges themselves being commissioned from time to time, and not during good behaviour, or the continuance of their *offices*.