From the AMERICAN.

Meſſrs. Pechin & Frailey,

The lengthy publication in your paper of the 23d ultimo, of A Friend to Candor; *from the different converſations the writer appears to have held, with every member of the executive council*, muſt be conſidered as at leaſt authoriſed by thoſe gentlemen: certainly its decent exterior is well contraſted with the ſignificant threats, and quaint remarks of the Spectator, who has alſo addreſſed the public againſt the governor, in your paper of the 25th.

Both theſe writers aſſume as a fact, that the original publication of a *Civil Officer*, in the Anti-Democrat, was the act of the governor. It is underſtood that when the letters of the governor and the council to the legiſlature, and ſome mutilated extracts from the proceedings of that body, had appeared in this and other papers, the governor was requeſted by a friend to commit to writing, *the ſubſtance of his verbal addreſs to the members of both houſes*; this was haſtily done, but that it was ſubſtantially correct (which is all it profeſſes to be) is fully eſtabliſhed, by the evidence of the council themſelves; and here the public will naturally reflect, that if the governor and council differ as to facts, known only to themſelves, the governor is precluded from all teſtimony but his own, or that of his opponents: natural reaſon would reject either as concluſive, and it is only from a comparative view of both ſtatements, that *a ſatisfactory inference can be deduced*. The facts and reaſoning of the Civil Officer will, it is believed, be avowed by the governor, but as to its publication in the Anti-Democrat, (a prominent feature of accuſation with both theſe writers,) it was no more the act of that officer, than it was the act of the *Friend to Candor*, or of his friend the *Spectator*--although it is now aſſerted from authority, that the governor had no intimation where the publication would appear, until he ſaw it in print; yet he muſt have then perceived the propriety of his friend's ſelection of that paper, and conſidered its inſertion as a mark of candor in its editor, *who had juſt before publiſhed an overflowing and virulent invective againſt him on the ſame ſubject*. If other federal printers have republiſhed the vindication, they have certainly, not neglected the abuſe; it is believed that they have never ſpared him; and in this ſolitary inſtance, their bittereſt adverſaries ſeem heartily diſpoſed to join them.

It muſt, no doubt, be very amuſing to this public officer, to be placed between two ſuch fires; and to be beſpattered by both parties; it is to be hoped that he regards it as it merits, and that it will not divert him from a full diſcloſure of every circumſtance, that may enable the public to judge correctly of his own conduct and that of others; and aid the conſtituent authority in the deciſion of an important conſtitutional queſtion.

The Friend to Candor has charged the Civil Officer with a *miſrepreſentation* of facts; or at leaſt his ſtatement is ſaid to be materially variant from that of every member of the council--this is a ſerious accuſation; but it will be recollected, that *a general allegation, unſupported by evidence, is a ſtronger proof of malevolence than candor*. It is now aſked with confidence, has a ſingle fact aſſerted by the Civil Officer, been yet *publicly* denied, either by the council, or the Friend to Candor? It is believed not. If the alledged variance reſpects the propoſed meeting of Saturday evening, let the letter written by the council, *under the impreſſion made by the recency of the tranſaction*, be compared with the aſſertion of a Friend to Candor, that *ſome of the council are poſitive that the governor propoſed the adjournment himſelf*; and it will be perceived that thoſe gentlemen *vary* more as to the fact, from each other, than they do from the governor. The following detail, aſſerted by the Officer to be correct, to the beſt of his recollection, may be tedious and is certainly unimportant, except as it tends to elucidate truth: the council had riſen without one word being mentioned of a meeting in the evening; the governor was cloaked, and leaving the room, when one of the members obſerved in his hearing, that as he expected to leave town next morning, he wiſhed a meeting in the evening; the governor returned towards the fire, entered into converſation on the ſubject, ſtanding, and finally agreed *conditionally* to meet in the evening—the expectation of this member, to leave town next morning—the material circumſtance relied on in the letter of the council, and now admitted by the Friend to Candor, as *one* of the motives for the evening ſeſſion, muſt ſatisfactorily prove whence the propoſition came—and that the aſſent of the governor was alſo *conditional*, muſt reſult from his *admitted* declaration of an intention, to converſe with the two members of the legiſlature then nominated; ſuch converſation could only from its nature be eventual, and as its object would be deciſive, it was eſſential. Conſcious as he had ſince publicly declared himſelf, of a perſonal attachment to one of thoſe members, and of a diſpoſition favorable to the other, he could not apprehend that they would ſuſpect him of a wiſh to wound the feelings or leſſen the reputation of either; he might have candidly ſtated his own impreſſions, how aukward would be their feelings, and how uneaſy thoſe of the intereſted, if an appointment, which muſt ſupport and protect the important and indiſpenſible right of the ſtate to grant the half toll, againſt the efforts of the Pennſylvania commiſſioners, inſtructed (as they muſt conſider themſelves) to deny and defeat that right, ſhould be made of commiſſioners on the part of Maryland, of whom the majority were, openly and avowedly, as hoſtile to the half toll, as the Pennſylvanians themſelves. Under theſe circumſtances, and as dinner was to intervene, which generally at that ſeaſon brings on the approach of night, the governor could hardly have expected an evening meeting at all; eſpecially *as there was no precedent of an adjournment of the council to meet in the evening ſince they had acted together*; but certainly he could have felt no ſuſpicion that ſo important an appointment would be precipitated; when a delay of ſix months could produce no inconvenience: if an appointment in the evening was conſidered as certain, to delay it in the morning was idle and abſurd—and under every circuſtance yet adduced, what poſſible *knowledge* could the governor have at the government houſe, of what was tranſacting at the ſtate-houſe, nearly half a mile diſtant, without the intervention of ſome ſupernatural agency? With theſe reflections it is now ſubmitted to an impartial public to decide, which party has been guilty of miſrepreſentation, in the inſtance examined. Queſtions relative to *frank* conduct, or even the palm of *good breeding* are perhaps immaterial, but thoſe which reſpect *common decency*, muſt reſt on the evidence which reſults from the tranſactions themſelves.

Has it been denied that the governor early apprized the council of his conſtruction of the conſtitution? No! on the contrary it is admitted: but the Friend to Candor ſtates, that they alſo apprized him of their conſtruction; not only by words but by deeds; for this writer who appears to have had frequent converſations with the council reſpecting the tranſactions *even* of the laſt year, himſelf ſtates the degree of reſpect they paid the governor's conſtruction; he tells us that they proceeded, notwithſtanding his proteſt, to ballot for an officer; from this and all balloting, it muſt be known that the governor is excluded; of what avail then, it is aſked, can the governor's concurrent right of nominating be, as it is termed by the council, if he cannot vote? If the perſon he nominates has little chance of obtaining even a ſingle ballot, where the council nominate and ballot among themſelves, the governor if diſcreet, will not expoſe himſelf to mortification; but keep his nomination to himſelf---and on a ballot, it may be aſked, what becomes of that fundamental proviſion of the conſtitution, that *the advice* of each counſellor ſhall, if deſired by the governor or a member, be entered on the journal? But this fact has been probably related to introduce the *aſtoniſhment* of the council that the governor on the Suſquehanna appointment, refuſed to put the queſtion on any nomination but his own. If the council really ſo informed the Friend to Candor, they were not ſerious; they were only amuſing themſelves with his credulity:—They muſt have recollected what the journals will prove, that as early as June laſt, they proceeded to conſider him as abſent, although preſent in the chair, and actually determined among themſelves, *without his putting the queſtion*, a ſubject confeſſedly without the line of their conſtitutional or legal authority—they changed a legal *order* of the governor, authorized and directed by the militia law of 1793, into their *requeſt* (a term ridiculous among military men) and ordered the clerk to copy the governor's letter verbatim in every other reſpect, and ſign it himſelf as a circular, to all the lieutenant-colonels and other commandants of militia corps throughout the ſtate; as this inſtance was not ſingular, and as they had appointed officers in his abſence, as the Friend to Candor ſtates, they could not have been really aſtoniſhed when the governor refuſed to act contrary to *his* ſenſe of duty and his oath of office; nor at a loſs how to proceed, after ſuch precedents eſtabliſhed by themſelves.

It is a known fact that ſoon after the qualification of the preſent governor, he had occaſion to explain himſelf on an appointment to which he ſtrongly objected from his perſonal knowledge of the character; the appointment was ultimately effected, and on the cloſe of the tranſaction he made a declaration, ſubſtantially to the following effect, that although he claimed no right to withhold a commiſſion from a perſon conſtitutionally appointed, yet as he conſidered the appointment of all officers but one, as veſted expreſsly by the conſtitution, under certain reſtrictions, in himſelf, he would never ſign a commiſſion again for a perſon appointed by the council, who from his own knowledge he believed to be an improper character; that in every other caſe he ſhould endeavor to accommodate to their opinion, but that he would not knowingly and againſt his conſcience violate his duty and his oath.—Whether it was from a belief that he would ſacredly adhere to this reſolution, or from his willingneſs to do the drudgery, or from a real conformity of opinion and a mutual wiſh to harmonize, it is certain that the governor was but little expoſed to farther mortifications on the ſubject, until the appointment of the Suſquehanna commiſſioners.

On that occaſion his uniform expreſſions of attachment to members of the council, and reſpect for the commiſſioners nominated by them, ought to have ſhielded him from the ſuſpicion of any other motive for his conduct, but that of an abſolute ſenſe of imperative duty and obligation: that conduct, however, according to the Spectator, has met the diſapprobation of republicans, and *he*, as their organ, denounces vengeance againſt him. His authority is perhaps no better than his facts. As to the meſſage to the ſenate now for the firſt time publiſhed, the governor muſt have underſtood this ſalvo, the equivocal offspring of conſternation and deſpair; the entire hiſtory of theſe reſolutions is prepared and may hereafter be ſubmitted to the public by the Civil Officer; but this will be avoided unleſs rendered neceſſary—At preſent a few of the miſrepreſentations of this writer will be noticed; in order to ſettle his character for accuracy. No. 1, he ſays the reſolutions were propoſed in the ſenate by Mr. Johnſton, *many years a counſellor, conſequently well acquainted with the practice*. The truth is, that Mr. Johnſton was but two years a counſellor, out of the twenty-ſeven nearly elapſed ſince the conſtitution was adopted. No. 2. The reſolution of the ſenate was rejected by every federal member—The fact is, that Mr. Solomon Frazier and Mr. Swearingen, both federal members, voted for it. No. 3 Out of 29 republican members, 23 voted for it—It is certain that excluding Mr. Swearingen and Mr. Frazier, only 21 could vote for it. No. 4. Inſtead of 29, there were actually but 28 members in the houſe of that party, and of Mr. Harwood, Mr. Hall, Mr. Can, Mr. Vanhorne, Mr. Thompſon, Mr. Lloyd, and Mr. Ridgely, who all voted againſt the reſolution, whom does the Spectator, with his plenary authority, mean to exclude and denounce? All this in eight ſhort lines is no bad ſpecimen of the talents of this writer.

It is true the ſword can always cut the gordian knot, and power and precedent are effectual, though coarſe refutations of fair as well as *fine-ſpun argument*; but if the rights of conſcience and the ſacred obligations impoſed by the conſtitution and the ſolemn oath of the governor, are to bend before practice; be that practice what it may! as the Spectator contends, it ſhould at leaſt be certain *what that practice is and how it may be aſcertained*; turning his back on the conſtitution and his oath, is he to ſeek it from former governors or former counſellors? if they communicate at all, and if they do not chooſe to tell, it might be difficult to compel them; it may happen and it actually does happen that they differ as to the practice; which of them then is to be believed? Perhaps there is no other point in which they all agree but that nothing like the conduct of the preſent council was ever practiſed before; all of them, it is believed, admit, that if the council met and the governor was abſent, but in town and able to attend, they ſent their meſſenger to inform him that the council was aſſembled, and requeſted his preſence before they proceeded to buſineſs, and that frequently when he was unable to attend from indiſpoſition, they met at his houſe. The idea however, is perfectly new, that vague and contradictory *oral tradition*, which under the ſanction of an oath in a court of juſtice could not counteract a common record, *may control the conſtitution of the ſtate*.—Where then is this uniform practice (eſtabliſhed and admitted from the adoption of the conſtitution according to the Spectator) to be found? Is it in the records of the proceedings of the council! Certainly not. During Mr. Johnſton's time, who was the firſt governor after the adoption of the conſtitution, and when its framers were its officers, his name never appears entered on the journals with the members of the board: The Friend to Candor terms the governor a member of the board, *but the conſtitution calls him governor, and calls them members of a council to the governor, and not members of the executive council of Maryland*. The conſtitution expreſsly veſts all executive powers in that governor; to be exerciſed either with or without the *concurrence*, not the *joint act* of his council: It is true that the conſtitution by the 35th ſection, (from which the conſtructed inference has been drawn to defeat its expreſs and fundamental proviſions) among his other functions, conſtitutes him preſident of the council when aſſembled to *tranſact buſineſs*; as this buſineſs is not there ſpecified, it can only be ſuch; 1ſt as they may tranſact immediately under the conſtitution *that is* principally to adviſe and conſent to ſuch executive acts of the governor as require their *concurrence*, for by ſect. 26, their journal ought to ſtate if he or any member requires it, *what they adviſe the governor to do, not their own acts as an executive of Maryland*. If it ſhall appear by thoſe proceedings, that the advice the council gave was wiſe and proper, the governor is reſponſible for all conſequences if he does not purſue it—but if it was unwiſe or if the governor propoſes wiſe meaſures or appointments and the council will not give their conſent, they, or the particular members refuſing, *are rendered by that article reſponſible to the legiſlature*; or 2dly they may tranſact ſuch buſineſs under the conſtitution as by ſome particular laws may require their *concurrence* expreſsly, and not their *joint act* with the governor. See ſect. 33. The ſame ſect. 35, requires him to give a caſting vote when the council are divided, and wiſely, otherwiſe he could not obtain their advice and conſent, and his own judgment would avail nothing, although half the council ſhould agree with him in opinion—his merely being preſident does not alter his powers derived from other parts of the conſtitution, nor authorize him to act as *another member of the board*, as the Friend to Candor terms him: the governor of Maryland acted as preſident of the council before the revolution, ſo did and ſo do all the governors of the different ſtates where there are councils, before and ſince our independence; but that does not conſtitute them members of the council. Indeed imagination can hardly conceive a propoſition more abſurd, than that a man ſhould be a member of a council, *to himſelf*, which the council of Maryland by the conſtitution, are to the governor. As the governor may by *abſence* out of the ſtate or at the head of the militia, or may by ſickneſs or other caſuality, be unable to execute the duties of the office; the laſt clauſe of the ſame ſection provides, that in caſe of ſuch abſence the firſt named of the council ſhall preſide, &c. This clauſe and the 34th ſection will be found on examination only to eſtabliſh by conſtitutional proviſion, what was alr. ady the law of the land, by the law of 1716, chap. 21, made during the ſickneſs of governor Hart, it was enacted that in all ſuch caſes of abſence of the governor thereafter, the firſt named of the council and ſo ſucceſſively the next eldeſt ſhould preſide, *and by and with the advice & conſent of council*, execute the duties of governor, &c. In reality theſe ſections and the whole conſtitution left the executive and judiciary departments, in a great meaſure as had been uſed, approved and underſtood before the revolution; but a reference is principally made to the laws exiſting when the conſtitution was formed, as the neceſſary, and perhaps the only legal mode of aſcertaining the true meaning of the terms and proviſions which the convention have uſed: in this view the following obſervation may perhaps prove deciſive of the preſent conſtitutional queſtion; the terms *by and with the advice and conſent* have been uſed perhaps in every *law* paſſed in Maryland from the ſettlement of the colony to the ſitting of the convention; their meaning had been uniform and was deſcriptive of a *concurrent* exerciſe of independent authorities, or powers, but never indicated a *joint act*; it is impoſſible to believe that the convention when they inſerted thoſe technical terms in the conſtitution, intended or expected they would convey any other meaning than what had been ſo long legally eſtabliſhed and underſtood. In each of the three years of governor Johnſton, his appointment, his qualification before the legiſlature and his appearance in council, are entered at large in the proceedings, but his name is entered in no other manner except to note when he was abſent; the whole then muſt be conſidered as his acts unleſs when he is ſtated to be abſent, and it will appear that great part of the buſineſs was actually tranſacted by him, when not a ſingle counſellor was preſent, what was tranſacted in his abſence, was chiefly formal and of a trifling nature, although in the midſt of the preſſure of the war, and when the aſſembly were conſtantly delegating ſpecial powers to the executive, in ſuch manner as circumſtances might require. For ſeveral years under ſucceeding governors, a ſtrict inveſtigation of the writer, has not diſcovered the appointment of any civil officer, during the abſence of the governor; it is true that where five men, acting with one, differ with him about their reſpective powers, if they put it to the vote, they will always out vote him; and it will not be denied that the council have been gradually gaining, and the governor looſing, until the degraded and humilitating ſituation to which the *nominal* chief magiſtrate was reduced, compelled Mr. Henry to retire from office, at the cloſe of his firſt year, *as he informed two of his confidential and very reſpectable friends in Annapolis*; but the office never reached the ultimatum of inſignificance, until the conſtruction of the preſent council was carried into full operation: under that, unleſs the governor ſhall keep watch at the ſtate houſe, and may chance to find *preciſely* the number of four counſellors aſſembled, he can have nothing to do with the general executive buſineſs of the ſtate, unleſs he volunteers to act as clerk: the extent of this abuſe was foreſeen and conſidered; and influenced by the moſt chaſtiſed judgment he could form of the ſolemn obligations impoſed upon him by the conſtitution and laws, the *preſent governor* had informed ſeveral of his connexions and friends of his determination to retire from office at the cloſe of his firſt year, when a report was ſpread of freſh and deciſive proof being obtained of his want of legal reſidence: it then became a duty to himſelf and perhaps to thoſe who elected him, not to ſhrink from the enquiry. After a re-election, which alone could teſt the truth of the report, to have quitted the office immediately (if to be avoided) would have incurred the imputation of a cenſurable verſatility; and during the receſs of the legiſlature, it would be inconvenient and expenſive to the ſtate, as among other extraordinary proviſions of our conſtitution; *on the reſignation of the governor*, although the preſident of the council ſhall qualify and act as governor, yet he muſt call the legiſlature within fourteen days thereafter, to elect with the moſt ſolemn formality of a particular oath the perſon beſt qualified in the ſtate to ſupply the place *for the reſt of the year* of this officer, whoſe duty the conſtitution intends ſhould be to do—what? Nothing! as is now contended.

It is well known to every man uſed to our public councils, that a few active partizans may by traverſing a town during the night, ſeeking and miſleading the eaſy, the credulous and unthinking, give the tone of *party*, perhaps by morning to a particular meaſure, and that then the informed and reflecting finding themſelves in a minority, frequently acquieſce, to avoid the bickerings and denunciations of the violent. The riſing light of political information will ſoon diſpel theſe miſts, that hover over the dawn of our empire, faſt burſting into meridian glory; to a proſpect like this, the eye of the true republican turns with hope and delight, from the antic geſtures and rude violence of *ſelf-created and ſelf-important organs of the public will*; and a benevolent mind will rejoice to ſpread the friendly mantle of oblivion over their folly and extravagance.

A Civil Officer of Maryland.

February 28, 1803.

Congreſs of the United States.

HOUSE OF REPRESENTATIVES.

Wedneſday, March 2—A. M.

An engroſſed bill to allow a drawback of duty on ſugar refined within the United States, was read a third time and paſſed—ayes 36, noes 29.

The bill was ſupported by Meſſrs. Mitchill and S. Smith; and oppoſed by Mr. Mott.

Mr. Randolph from the committee to whom were referred a letter from William Henry Harriſon, preſident of the convention held at Vincennes in the Indiana territory, relative to the ſuſpenſion of the 6th article of compact between the United States and the people of that territory, (which prohibits ſlavery)—alſo a memorial and petition of the inhabitants of the territory, made a report, which was referred to a committee of the whole, and ordered to be printed.

Mr. Nicholſon, from the committee to whom were referred the amendments of the ſenate to an act for the relief of inſolvent debtors within the diſtrict of Columbia, reported their agreement thereto; in which report the houſe concurred.

The houſe took into conſideration the amendments of the ſenate to the act to make proviſion for perſons that have been diſabled by known wounds received in the late ſervice of the United States, during the revolutionary war.

A motion was made to poſtpone the conſideration of the bill to the firſt Monday of November, which was ſupported by Mr. John C. Smith, and oppoſed by Mr. Helms.

Loſt—ayes 24, noes 38.

Mr. Griſwold moved the reference of the amendments to a ſelect committee.

Carried—ayes 35, noes 23; and referred to Meſſrs. Helms, Griſwold and Euſtis.

A meſſage was received from the ſenate, ſtating that the vice-preſident being abſent, the ſenate had made choice of Stephen R. Bradley, as preſident pro tempore.

The meſſage further ſtated that the ſenate had poſtponed to the 4th inſtant the further conſideration of the act for the relief of Paul Coulon.

On the motion of Dr. Mitchill, the houſe agreed, without a diviſion, to expunge from the journal of yeſterday ſo much thereof as related to the call of the houſe, and the minute of the abſent members.

The committee to whom were referred a petition in the French language, of ſundry inhabitants of St. Vincennes, were diſcharged from the further conſideration thereof, which was referred to the ſecretary of ſtate, with inſtruction to report thereon at the next ſeſſion.

The petition of Shandy Yard, a free black man, was read, praying relief for the loſs of property and for perſonal injuries which he had ſuſtained while in captivity in Tripoli.

Ordered to lie on the table.

Report of the Commiſſioners of the Sinking Fund.

About 1 o'clock, Mr. Griſwold roſe, and after a ſpeech of conſiderable length, moved the following reſolution:

Reſolved, That the committee of ways and means be directed to enquire whether the commiſſioners of the ſinking fund have, agreeably to the directions of the act entitled "An act making proviſion for the redemption of the whole of the public debt of the United States," applied the ſum of ſeven millions three hundred thouſand dollars, provided by the ſame, to the payment of the principal and intereſt of the public debt; and to enquire, generally, into the account and proceedings of the commiſſioners of the ſinking fund—and to report to the houſe.

Mr. Randolph ſeconded the motion, and replied to Mr. Griſwold.

Meſſrs. S Smith and Nicholſon next ſpoke, when Mr. Griſwold cloſed the debate.

All the gentlemen who ſpoke advocated the adoption of the reſolution, but on different grounds.

Mr. Griſwold attempted to ſhew that the commiſſioners of the ſinking fund had not appropriated, as directed by law, the ſum of ſeven millions three hundred thouſand dollars; and that the report of the commiſſioners varied conſiderably from the reports of the ſecretary of the treaſury previouſly made.

On the other hand, Meſſrs. Randolph, S. Smith, and Nicholſon, repelled the charges made by Mr. Griſwold, and inſiſted that the commiſſioners of the ſinking fund had rigidly complied with law, and that there was no hoſtility between their report and the reports of the ſecretary of the treaſury.

The queſtion was taken on the reſolution about 4 o'clock, and carried unanimouſly in the affirmative.

Mr. Randolph moved, and the houſe agreed, that the committee of ways and means have leave to ſit during the ſittings of the houſe.

Mr. Holland, a member of the committee, being abſent, Mr. Dickſon was appointed in his place.

Wedneſday, March 2—6 P. M.

A meſſage was received from the ſenate ſtating that they had poſtponed until the 4th inſt. (which is equivalent to a rejection) an act to reduce the marine corps of the United States.

The houſe took up the amendments of the ſenate to the act to revive and continue in force an act in addition to an act entitled an act in addition to an act regulating the grants of land appropriated for military ſervices, and for the ſociety of the United Brethren for propagating the goſpel among the heathen.

Mr. Dawſon obſerved that one of the amendments propoſed by the ſenate allowed general La Fayette 11,500 acres of land, inſtead of 15,000, which was the quantity an officer of his rank was entitled to.

The amendments were referred to a ſelect committee conſiſting of Meſſrs. Southard, Goddard and Dawſon.

On motion of Mr. Nicholſon the houſe, according to the order of the day, reſolved