

In 1798, Thomas Jefferson and James Madison penned the *Kentucky and Virginia Resolutions*, formally detailing the principles of nullification for the first time. Standing alone, the resolutions make a strong case for nullification. But they don't reveal the whole story.

The resolutions were actually just a first step in the strategy Madison and Jefferson developed for dealing with the unconstitutional *Alien and Sedition Acts*. Correspondence between the two men, and other players involved in the fight to block this early example of federal overreach, provide a much clearer picture of what they were trying to accomplish in the long run.

During the summer of 1798, Congress passed four laws together known as the *Alien and Sedition Acts*. These laws violated several constitutional provisions and represented a gross federal usurpation of power.

The first three laws dealt with the treatment of resident aliens. The *Alien Friends Act* gave the president sweeping power to deport "dangerous" aliens, in effect elevating the president to the role of judge, jury and "executioner." *The Alien Enemies Act* allowed for the arrest, imprisonment and deportation of any male citizen of a nation at war with the U.S., even without any evidence that the individual was an actual threat. These laws unconstitutionally vested judicial powers in the executive branch and denied the accused due process.

The most insidious of the laws was the *Sedition Act*. It essentially criminalized criticism of the federal government, a blatant violation of the First Amendment.

Recognizing the *Alien and Sedition Acts* represented a serious threat to the constitutional system, and with few options for addressing the overreach due to Federalist Party control of the federal government, Jefferson and Madison turned to the states.

Jefferson secretly drafted the [Kentucky Resolutions](#), and the Kentucky legislature passed a revised version on Nov. 10, 1798. Asserting that "the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government," Jefferson proclaimed that nullification was the proper way to deal with unconstitutional acts.

*"Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (casus non fœderis) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them."*

On Dec. 24, 1798, the Virginia Senate passed [resolutions](#) penned by Madison, asserting not only the right, but the duty, for states to step in and stop unconstitutional actions.

*“In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.”*

Taken together, the *Kentucky and Virginia Resolutions* lay out the principles of nullification. But they did not actually nullify the *Alien and Sedition Acts*. These non-binding resolutions merely made the case for nullification and set the stage for further action in the future.

As Jefferson and Madison strategized on how to address the *Alien and Sedition Acts*, they corresponded by mail, discussing their ideas. Ten key letters give further insight into their strategy. Their correspondence reveals that the resolutions were merely intended to serve as a starting point, setting the stage for additional, more aggressive steps to stop the federal overreach.

Wilson Cary Nicholas was also involved in the effort. He was an important figure in the Virginia ratifying convention that approved the Constitution, and at the time the *Alien and Sedition Acts* passed, he served as a member of the Virginia House of Delegates. He was a close and trusted friend of Jefferson, and delivered Jefferson’s draft of the Kentucky Resolutions to John Breckinridge, who eventually introduced them in the Kentucky House.

Following, you will find the ten letters between these three men reprinted in their entirety. Some of the letters also address other issues. In those cases, the relevant passages have been bolded.

### **Letter 1: To Thomas Jefferson from Wilson Cary Nicholas, 4 October, 1798**

*In this letter, Nicholas informs Jefferson he has delivered a draft copy of the resolutions to John Breckinridge. The letter also reveals they planned to keep Jefferson’s authorship a secret. This shows the political danger involved in confronting federal overreach at the time, and Jefferson’s difficult political position as the sitting vice president. After all, the Sedition Act made it a crime to criticize the president or Congress. Interestingly, the law did not include the vice president among the federal offices immune from criticism.*

Warren Octr. 4th. 1798

Dear Sir

I have taken the liberty to put into the hands of Mr. John Breckinridge a copy of the resolutions that you sent me, he says he is confident that the legislature of Kentucky (of which he is a member) will adopt them. he was very anxious to pay his respects to you but we both thought it

was best that he shou'd not see you, as we believed if he did the resolutions wou'd be attributed to you. I ventured to inform him that they came from you, I did this both because, I knew him to be worthy of confidence, and suppos'd he cou'd not mistake the source from whence they came. I thought it best to be frank with him, and to prevent his mentioning his conjectures even, he has given me the most Solemn assurances upon the subject. I flatter myself you will not disapprove of my conduct I shall not be perfectly reconciled to it myself, until I receive your approbation, be assur'd Sir, my chief inducement was to shield you from the invective, that I feared you might be exposed to if I had pursued a different course. I thought the opportunity a happy one, to have the subject taken up in the way that you seemed to think most advis'able. B, says we may expect their proceedings by the commencement of our session.

I am Dear Sir with the greatest respect your hum. Servt.

Wilson Cary Nicholas

If any thing new shou'd have ocured to you I can communicate it to Breckinridge, he does not leave Buckingham until the 10th. instant.

**Letter 2: From Thomas Jefferson to Wilson Cary Nicholas, 5 October, 1798**

*In this reply, Jefferson acknowledges Nicholas' delivery of the resolutions to Breckinridge. He also notes he originally thought they should be introduced in North Carolina. But the Republicans lost big in the congressional elections of 1798, indicating a change in the political climate in the state that would not bode well for fighting the Federalist Party-dominated federal government. On an interesting side-note, Jefferson misspelled Breckinridge's name.*

Dr. Sir

I entirely approve of the confidence you have reposed in mr Brackenridge, as he possesses mine entirely. I had imagined it better those resolutions should have originated with N. Carolina. but perhaps the late changes in their representation may indicate some doubt whether they would have passed. in that case it is better they should come from Kentuckey. I understand you intend soon to go as far as mr Madison's. you know of course I have no secrets for him. I wish him therefore to be consulted as to these resolutions. the post boy waiting at the door obliges me to finish here with assurances of the esteem of Dr. Sir

Your friend & servt

Th: Jefferson

**Letter 3: From Thomas Jefferson to James Madison, 17 November, 1798**

*Jefferson sent this letter to Madison along with a copy of the Kentucky Resolutions after their passage by the Kentucky legislature. Here, Jefferson provides the first hint that the resolutions made up part of a larger strategy. A reply from Madison dated Nov. 19 and recorded in Jefferson's summary journal of letters as received Nov. 20 has never been found.*

Monticello Nov. 17. [1798]

Th:J. to J.M.

Mr. Richardson has been detained by several jobs indispensable to the progress of the carpenters, & to the securing what is done against the winter. when will Whitton be done with you? or could you by any means dispense with his services till I set out for Philadelphia? my floors can only be laid while I am at home, and I cannot get a workman here. perhaps you have some other with you or near you who could go on with your work till his return to you. I only mention these things that if you have any other person who could enable you to spare him a few weeks, I could employ him to much accomodation till my departure in laying my floors. but in this consult your own convenience only.—I **inclose you a copy of the draught of the Kentuckey resolves. I think we should distinctly affirm all the important principles they contain, so as to hold to that ground in future, and leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, & yet may be free to push as far as events will render prudent.** I think to set out so as to arrive at Philadelphia the Saturday before Christmas. my friendly respects to mrs Madison, to your father & family. health, happiness & Adieu to yourself.

40. lb. of IVy. nails @ 14 ½ d per lb were sent this morning, being all we had. they will yield (according to the count of a single pound) 314 x 40 = 12,560.

#### **Letter 4: From Thomas Jefferson to Wilson Cary Nicholas, 29 November, 1798**

*Jefferson sent this letter to Nicholas after reading over the resolutions Madison had drafted for introduction in the Virginia legislature. In the original draft, Madison wrote of the Alien and Sedition Acts, "the acts aforesaid are unconstitutional." Jefferson wanted stronger language and made this suggestion to Nicholas in this letter. As a result, Nicholas added the phrase "and not law, but utterly null, void and of no force or effect."*

*John Taylor introduced the resolutions with the suggested changes on Dec. 10, and they were published in the Philadelphia Aurora 12 days later. During the debates in Richmond, the House of Delegates cut the added words and passed the resolutions with Madison's original, more moderate language.*

*It's important to note that it was widely understood that declaring a law unconstitutional effectively meant it was null and void. Alexander Hamilton had emphatically made this point in Federalist #78, writing, "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."*

*However, the issue of including those words in the resolutions was fraught with **political** considerations. Madison and others in the Virginia legislature were trying to strike a balance between making their point and maintaining a moderate tone. By striking Jefferson's more aggressive language, they essentially made the same point in a less "in your face" manner.*

Nov. 29. 98

Th:J to Colo. W. C. Nicholas

The more I have reflected on the phrase in the paper you shewed me, the more strongly I think it should be altered. suppose you were to instead of the invitation to cooperate in the annulment of the acts, to make it an invitation: 'to concur with this commonwealth in declaring, as it does hereby declare, that the said acts are, and were ab initio—null, void and of no force, or effect' I should like it better. health happiness & Adieu.

#### **Letter 5: From James Madison to Thomas Jefferson 29, December, 1798**

*This letter provides unique insight into the process Madison was working through in his own mind as he considered the power of the states. He speculates that the ultimate authority does not reside in the state legislatures, but in specially-called conventions. Madison also mentions the debates in Richmond surrounding the resolutions he drafted. He apparently had not received word that the resolutions had passed with the more moderate language he preferred. This letter provides a glimpse at the political implications relating to the resolution language Madison and Jefferson were wrestling with.*

Decr. 29. 1798

Dear Sir

I inclose a draught on Genl. Moylan out of which you will be pleased to pay yourself the price of the Nails £48–11.3. Va. Cy. to let Barnes have as much as will discharge the balance I owe him, & to let what may remain lie till I write you again.

The P.'s speech corresponds pretty much with the idea of it which was preconceived. It is the old song with no other variation of the tune than the spirit of the moment was thought to exact. It is evident also that he rises in his pitch as the Echoes of the S. & H. of R. embolden him, & particularly that he seizes with avidity that of the latter flattering his vigilance & firmness agst. illusory attempts on him, without noticing, as he was equally invited, the allusion to his pacific professions. The Senate as usual perform their part with alacrity in counteracting peace by dextrous provocations to the pride & irritability of the French Govt. It is pretty clear that their answer was cooked in the same shop, with the Speech. The finesse of the former calculated to impose on the public mind here, & the virulence of the latter still more calculated to draw from France the war, which can not be safely declared on this side, taste strongly of the genius of that subtle & malignant partizan of England who has contributed so much to the public misfortunes. It is not difficult to see how A. could be made a puppet thro' the instrumentality of creatures around him, nor how the Senate could be managed by similar artifice. **I have not seen the Result of the discussions at Richmond on the Alien & Sedition laws. It is to be feared their zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the State, & that of the Legislature, on questions relating to the federal pact. On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the latter is the legitimate organ; especially as a Convention was the organ by which the Compact was made. This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the Genl. Assembly agst. the charge of Usurpation in the very act of protesting agst the usurpations of Congress.** I have not forgot my promise of McGeehee's prices, but cd. not conveniently Copy them for the present mail. Always affy yrs.

Js. MADISON JR

#### **Letter 6: From Thomas Jefferson to James Madison, 30 January, 1799**

*This letter primarily addresses the tensions between the United States and France, along with some analysis of Republican electoral politics. But sandwiched in the middle, Jefferson informs Madison that several petitions and remonstrances against the Alien and Sedition Acts came out of areas in New Jersey, Pennsylvania and New York. This was significant because it indicated support for resisting the acts outside of Kentucky and Virginia. Jefferson also indicated that this would likely lower the prospects of federal government attempts to punish Virginia for its stand.*

*On Jan. 30, Franklin Davenport presented and read an address to the Senate from a meeting held in Essex County, New Jersey. It called for the repeal of the Alien and Sedition Acts based on their unconstitutionality and because they were "bad policy."*

*There were also petitions presented by Suffolk County, New York; Northampton, York, Dauphin, and Washington counties in Pennsylvania; and Amelia County, Virginia around the same time.*

Jan. 30. 99.

My last to you was of the 16th. since which yours of the 12th. is received and its contents disposed of properly. these met such approbation as to have occasioned an extraordinary impression of that day's paper. Logan's bill is passed. the lower house, by a majority of 20. passed yesterday a bill continuing the suspension of intercourse with France, with a new clause enabling the President to admit intercourse with the rebellious negroes under Toussaint, who has an agent here, & has thrown off dependence on France. the H. of R. have also voted 6. 74s. & 6. 18s. in part of the additional navy: say 552. guns, which in England would cost 5000. D. a gun, & here 10,000. consequently more than the whole 5. millions for which a loan is now opened at 8. per cent. the maintenance is estimated at £1000. lawful a gun annually. a bill has been this day brought into the Senate for authorising the P. *in case of a declaration of war or danger of invasion by any European power, to raise an eventual army of 30. regiments, infantry, cavalry & artillery, in addition to the additional army, the provisional army, & the corps of volunteers, which last he is authorised to brigade, officer, exercise, & pay during the time of exercise. and all this notwithstanding Gerry's correspondence recently read & demonstrating the aversion of France to consider us as enemies. all depends on her patient standing the measures of the present session, & the surrounding her islands with our cruisers & capturing her armed vessels on her own coasts. if this is borne a while, the public opinion is most manifestly veering in the middle states, & was even before the publication of Gerry's correspondce. in New York, Jersey & Pensylvania every one attests this, & Genl. Sumpter, just arrived, assures me the republicans in S.C. have gained 50. per cent in numbers since their election which was in the moment of the XYZ. fever. I believe there is no doubt the republican Governor would be elected here now, & still less for next October. the gentlemen of N.C. seem to be satisfied that their new delegation will furnish but 3. perhaps only 2. antirepublicans. if so we shall be gainers on the whole. but it is on the progress of public opinion we are to depend for rectifying the proceedings of the next congress. the only question is whether this will not carry things beyond the reach of rectification. **petitions & remonstrances against the alien & sedition law are coming from various parts of N.Y. Jersey & Pensva.; some of them very well drawn. I am in hopes Virginia will stand so countenanced by those states as to repress the wishes of the government to coerce her, which they might venture on if they supposed she would be left alone. firmness on our part, but a passive firmness is the true course. any thing rash or threatening might check the favorable dispositions of these middle states & rally them again round the measures which are ruining us.**—Buonaparte appears to have settled Egypt peaceably & with the consent of the inhabitants, & seems to be looking towards the E. Indies where a most formidable cooperation has been prepared for demolishing the British power. I wish the affairs of Ireland were as hopeful, and the peace with the North of Europe.—nothing new here as to the price of tobo. the river not having yet admitted the bringing any to this market. Spain being entirely open to ours,*

& depending on it for her supplies during the cutting off of her intercourse with her own colonies by the superiority of the British at sea, is much in our favor.—I forgot to add that the bill for the *eventual* army authorises the President to borrow 2. millions more. present my best respects to Mrs Madison. health & affectionate salutations to yourself. Adieu.

### **Letter 7: From Thomas Jefferson to James Madison, 23 August, 1799**

*This is arguably the most significant of the letters surrounding the Kentucky and Virginia Resolutions. In it, Jefferson emphasizes the importance of Kentucky and Virginia moving forward in a unified way and then lays out a strategy, asserting they must not allow opposition to the resolutions from other states to go unanswered.*

*Jefferson proposes a four-part strategy.*

*First, Jefferson advises that they should answer the objections. It seems clear from his tone he feels confident their reasoning will win the day.*

*Second, he says they should make it clear they believe the federal government has overstepped its authority. He infers that by forcefully making their case, they will clear the path so “that we may hereafter do, what we might now rightfully do.” Jefferson doesn’t specify what these actions might entail, but based on the resolutions, it follows that they would involve actively blocking the unconstitutional acts.*

*Third, Jefferson advises taking a conciliatory tone, affirming their commitment to the union, their patience and their confidence that “the American people” will rally to their cause. In fact, this was the ultimate outcome. The people swept the Federalist Party out of power in the 1800 elections, and Jefferson became president. That was effectively the end of the Alien and Sedition Acts.*

*Finally, Jefferson suggested that secession was an option in the last resort.*

*This letter makes it clear that the Kentucky and Virginia Resolutions were intended to set the stage for aggressive action at the state level to stop enforcement of the Alien and Sedition Acts – up to and including leaving the union. It cannot be understated that Jefferson recommended considering the political landscape strategically. While he noted that immediate action could rightfully be taken, he advised waiting until “passions and delusions shall have passed” so as to ensure enough popular support for success.*

Monticello Aug. 23. 99.

Th:J. to J.M.



With this you will receive the IVd. nails desired in your memorandum, that is to say 25. lb weighing about 2½ lb to the M. probably they yield something more than a thousand to that weight, not being so uniform as they ought to be. we are now working up some remnants of hoops of different breadths till the arrival of a supply of proper size from Philadelphia. they are ⅓ pr. lb. consequently come cheap. the error in the nails sent before was Mr McGehee's, as I entered the memorandum in my book from his dictation, and he saw them weighed out according to that.

Mrs. Madison tells me that Lumsden, your plaisterer lives about 10. or 15. miles from you & that an opportunity may perhaps be found of conveying him a letter. I trouble you with one, open, which when read be so good as to seal & forward by any opportunity you approve.

**I inclose you a letter I received from W. C. Nicholas three days ago. it is so advantageous that Virginia & Kentucky should pursue the same tract on this occasion, & a difference of plan would give such advantage to the Consolidationers that I would immediately see you at your own house, but that we have a stranger lying ill here, whose state has been very critical, & who would suffer in spirits at least if not substantially by my absence. I shall not answer Mr. N's letter till Thursday next. perhaps you could take a ride about that time, so as to have a meeting here with him on Sunday sennight, the day preceding our court. I dare say he will not go before court, and if you could drop him a line by post he would certainly meet you, and let us consider a little together what is to be done. not that I should prepare any thing, but the opportunity is certainly a valuable one of producing a concert of action. I will in the mean time give you my ideas to reflect on. that the principles already advanced by Virginia & Kentucky are not to be yielded in silence, I presume we all agree. I should propose a declaration or Resolution by their legislatures on this plan. 1st. answer the reasonings of such of the states as have ventured into the field of reason, & that of the Commee of Congress. here they have given us all the advantage we could wish. take some notice of those states who have either not answered at all, or answered without reasoning. 2. make a firm *protestation* against the principle & the precedent; and a *reservation* of the rights resulting to us from these palpable violations of the constitutional compact by the Federal government, and the approbation or acquiescence of the several co-states; so that we may hereafter do, what we might now rightfully do, whenever repetitions of these and other violations shall make it evident that the Federal government, disregarding the limitations of the federal compact, mean to exercise powers over us to which we have never assented. 3. express in affectionate & conciliatory language our warm attachment to union with our sister-states, and to the instrument & principles by which we are united; that we are willing to sacrifice to this every thing except those rights of self government the securing of which was the object of that compact; that not at all disposed to make every measure of error or wrong a cause of scission, we are willing to view with indulgence to wait with patience till those passions & delusions shall have passed over which the federal government have artfully & successfully excited to cover it's own abuses & to conceal it's designs; fully confident that the good sense of the American people and their attachment to those very rights**

which we are now vindicating will, before it shall be too late, rally with us round the true principles of our federal compact; but determined, were we to be disappointed in this, to sever ourselves from that union we so much value, rather than give up the rights of self government which we have reserved, & in which alone we see liberty, safety & happiness.

These things I sketch hastily, only as topics to be enlarged on, and wishing you to consider on them or what else is best to be done, at any rate let me hear from you by the post or before it if you can. Adieu affectionately.

#### **Letter 8: From Thomas Jefferson to Wilson Cary Nicholas, 5 September, 1799**

*In this letter, Jefferson summarizes the strategic points he had outlined in his previous letter to Madison. Most significantly, he backs off the idea of putting secession on the table as an option, agreeing with the wisdom of Madison's more moderate tone. Jefferson concedes "we should never think of separation but for repeated and enormous violations." Nevertheless, Jefferson clearly believed secession was a viable option in the most extreme cases.*

*Jefferson also notes he was not willing to write new resolutions or a declaration because he felt there were already suspicions he was involved in the Kentucky Resolutions. As vice president, he found himself in a very politically precarious situation.*

*Ultimately, Madison ended up penning a response approved by the Virginia legislature known as the [Virginia Report of 1800](#). (Less commonly the date of 1799 is used.)*

Monticello Sep. 5. 99.

Dear Sir

Your's of Aug. 30. 99. came duly to hand. it was with great regret we gave up the hope of seeing you here, but could not but consider the obstacle as legitimate. I had written to mr M. as I had before informed you, and had stated to him some general ideas for consideration & consultation when we should meet. I thought something essentially necessary to be said in order to avoid the inference of acquiescence. that a resolution or declaration should be passed

1. answering the reasonings of such of the states as have ventured into the field of reason, & that of the Committee of Congress, taking some notice too of those states who have either not answered at all, or answered without reasoning.
2. making firm protestation against the precedent & principle, & reserving the right to make this palpable violation of the federal compact the ground of doing in future whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient.
3. expressing in affectionate & conciliatory language our warm attachment to union with our sister states & to the instrument &

principles by which we are united, that we are willing to sacrifice to this every thing but the rights of self government in those important points which we have never yielded & in which alone we see liberty, safety & happiness; that not at all disposed to make every measure of error or of wrong a cause of scission we are willing to look on with indulgence & to wait with patience till those passions & delusions shall have passed over which the federal government have artfully excited to cover it's own abuses & conceal it's designs, fully confident that the good sense of the American people, and their attachment to those very rights which we are now vindicating, will before it shall be too late rally with us round the true principles of our federal compact.—this was only meant to give a general idea of the complexion & topics of such an instrument. mr M. who came as had been proposed, does not concur in the reservation proposed above; and from this I recede readily, not only in deference to his judgment, but because, as we should never think of separation but for repeated and enormous violations so these, when they occur, will be cause enough of themselves. to these topics however should be added animadversions on the new pretensions to a common law of the US. I proposed to mr M. to write to you; but he observed that you knew his sentiments so perfectly from a former conference, that it was unnecessary. as to the preparing any thing, I must decline it, to avoid suspicions (which were pretty strong in some quarters on the last occasion) and because there remains still (after their late loss) a mass of talents in Kentucky sufficient for every purpose. the only object of the present communications is to procure a concert in the general plan of action. besides, how could you better while away the road from hence to Kentucky than in meditating this very subject and preparing something yourself, than whom nobody will do it better. the loss of your brother and the visit of the apostle Marshal to Kentucky excite anxiety. however we doubt not that his poisons will be effectually counter-worked. wishing you a pleasant journey & happy return I am with great and sincere esteem Dear Sir Your affectionate friend & servt

Th: Jefferson

### **Letter 9: To James Madison from Thomas Jefferson, 22 November, 1799**

*In this letter, Jefferson reveals his distrust of the postal system and fear that confidential correspondence could be compromised and used against them. Madison and Jefferson both suspected their mail was being opened and read. This posed a very real danger since the federal government could conceivably charge them under the Sedition Act.*

Monticello Nov. 22. 99.

Dear Sir

I have never answered your letter by mr. Polk, because I intended to have paid you a visit. This has been postponed by various circumstances till yesterday, being the day fixed for the departure of my daur. Eppes, my horses were ready for me to have set out to see you. An accident postponed her departure to this day & my visit also. But Colo. Monroe dined with us

yesterday, and on my asking his commands for you, he entered into the subject of the visit, and dissuaded it entirely, founding the motives on the espionage of the little wretch in Charlottesville, who would make it a subject of some political slander, & perhaps of some political injury. I have yielded to his representations, & therefore shall not have the pleasure of seeing you till my return from Philadelphia. I regret it sincerely, not only on motives of affection but of affairs. **Some late circumstances change considerably the aspect of our situation, and must affect the line of conduct to be observed. I regret it the more too, because from the commencement of the ensuing session, I shall trust the post offices with nothing confidential, persuaded that during the ensuing twelve-month they will lend their inquisitorial aid to furnish matter for new slanders. I shall send you as usual printed communications, without saying any thing confidential on them. You will of course understand the cause.**

In your new station let me recommend to you the jury system: as also the restoration of juries to the court of Chancery, which a law not long sinc[e] repealed because 'the trial by jury is troublesome & expensive.' If the reason be good they should go through with it, & abolish it at common law also. If P. Carr is elected in the room of W. N. he will undertake the proposing this business and only need your support. If he be not elected, I hope you will get it done otherwise. My best respects to mrs. Madison, and affectionate salutations to yourself

Th: Jefferson

### **Letter 10: To Thomas Jefferson from James Madison, 4 January, 1800**

*In this final letter, Madison brings Jefferson up to speed on the debate over the Virginia Report of 1800. It centers around two issues.*

*The first revolves around the concept of the states as parties to the Constitution. In the report, Madison argued the term "states" has different meanings.*

*"It sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments, established by those societies; sometimes those societies as organized into those particular governments; and lastly, it means the people composing those political societies, in their highest sovereign capacity. "In the present instance the fact itself shews that the sense last mentioned, must be that intended by the General Assembly: because in that sense, the constitution was submitted to the 'States.'"*

*The Virginia assembly amended this passage to read: "In the present instance whatever different constructions of the term 'States,' in the resolution may have been entertained, all will at least concur in that last mentioned; because in that sense, the Constitution was submitted to the 'States'"*

*The second issue related to an opposition report that asserted the impropriety of the Virginia Resolutions of 1798. It declared that protests by the state against particular acts of Congress were "an unauthorized assumption of power." This was ultimately defeated before passage of Madison's report.*

Richmond Jany. 4. 1800

Dear Sir

My last covered a copy of the Report on the Resolutions of last year. I now inclose a copy of certain resolutions moved by Mr. Giles, to which he means to add an instruction on the subject of the intercourse law which has been so injurious to the price of our Tobo. It is not improbable that the Resolutions when taken up, may undergo some mollifications in the spirit & air of them. **The Report has been under debate for two days. The attacks on it have turned chiefly on an alledged inconsistency between the comment now made, and the arguments of the last Session; and on the right of the Legislature to interfere in any manner with denunciations of the measures of the Genl. Govt. The first attack has been parried by an amendment admitting that different constructions may have been entertained of the term "States" as "parties" &c but that the sense relied on in the report must be concurred in by all. It is in fact concurred in by both parties. On examination of the debates of the last Session, it appears that both were equally inaccurate & inconsistent in the grounds formerly taken by them. The attack on the right of the Legislature to interfere by declarations of opinion will form a material point in the discussion. It is not yet known how far the opposition to the Report will be carried into detail. The part relating to the Common law it is said will certainly be combated. You will perceive from this view of the matter, that it is not possible to guess how long, we shall be employed on it. There will in the event be a Considerable majority for the Report in the House of Delegates, and a pretty sure one in the Senate.—Can you send me a copy of Priestly's letters last published.** Adieu.

Js. M. Jr