

Congressional Apportionment Amendment

The **Congressional Apportionment Amendment** (originally titled **Article the First**) is a [proposed amendment](#) to the [United States Constitution](#). It was one of twelve "articles of amendment" to the [United States Constitution](#) approved by the [1st Congress](#) on September 25, 1789. They were sent to the [legislatures](#) of the several [states](#) for [ratification](#). If adopted, it would establish a [formula](#) for determining the appropriate size of the [House of Representatives](#) following each constitutionally [required wikt:decennial census](#). It is the only one of the twelve proposed amendments that has not been [adopted](#), as it has not been ratified by enough states for it to become part of the Constitution.

Because Congress did not set a [time limit](#) for its ratification, the Congressional Apportionment Amendment is still technically [pending](#) before the states.^{[\[a\]](#)} Ratification by an additional 27 states is now necessary for this amendment to be adopted. The other 1789 article of amendment ("Article the Second") of the original 12, was belatedly ratified in 1992. It became the [Twenty-seventh Amendment](#).

Text

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After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than

one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.^[2]

Background

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The "ideal" number of seats in the House of Representatives has been a subject of [controversy](#) since the country's [founding](#). The [delegates](#) to the 1787 [Constitutional Convention](#) set the [representation ratio](#) at one representative for every 40,000 people. Upon the [suggestion](#) of [George Washington](#), the ratio was changed to 1:30,000.^[3] This was the only time Washington voiced an [opinion](#) on any of the actual issues debated during the convention.^[b]^[6]

In [Federalist No. 55](#), [James Madison](#) argued that the size of the House of Representatives has to balance the ability of the body to legislate with the need for legislators to have a relationship close enough to the people to understand their local circumstances, that such representatives' [social class](#) be low enough to sympathize with the feelings of the mass of the people, and that their power be diluted enough to limit their abuse of the public trust and interests.

"... first, that so small a number of representatives will be an unsafe depositary of the public interests; secondly, that they will not possess a proper knowledge of the local circumstances of their numerous constituents; thirdly, that they will be taken from that class of citizens which will sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few on the depression of the many;..."^[7]

[Anti-Federalists](#), who opposed the Constitution's ratification, noted that there was nothing in the document to guarantee that the number of seats in the House would continue to represent small constituencies as the general population of the states grew. They feared that over time, if the size remained relatively small and the districts became more expansive, that only well-known individuals with reputations spanning wide geographic areas could secure election. It was also feared that those in Congress would, as a result, have an insufficient sense of sympathy with and connectedness to ordinary people in their district.^[8]

This concern was evident in the various state ratifying conventions, where several specifically requested an amendment to secure a minimum size for the House of Representatives. Virginia's ratification resolution proposed,

That there shall be one representative for every thirty thousand, according to the Enumeration or Census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or encreased [[sic](#)] as the Congress shall direct, upon the principles fixed by the Constitution by apportioning the Representatives of each State to some greater number of people from time to time as population encreases [[sic](#)].^[9]

Anti-Federalist [Melancton Smith](#) declared at the New York ratifying convention that,

We certainly ought to fix, in the Constitution, those things which are essential to liberty. If anything falls under this description, it is the number of the legislature.^[10]

[Federalists](#), who supported the Constitution's ratification, placated those opposing its ratification by agreeing that the new government should immediately address Anti-Federalist concerns and consider amending the Constitution. The assurance that these issues would be addressed in the First Congress was essential to the ratification of the new form of government.^[11]

Legislative and ratification history

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An amendment establishing a formula for determining the appropriate size of the House of Representatives and the appropriate [apportionment](#) of representatives among the states was one of several proposed amendments to the Constitution introduced first in the [House](#) on June 8, 1789, by Representative [James Madison](#) of [Virginia](#). Madison's original intent was,

That in [Article I, Section 2, Clause 3](#), these words be struck out, to wit: "The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;" and in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to—, after which the proportion shall be so regulated by Congress, that the number shall never be less than—, nor more than—, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto".^[12]

This, along with Madison's other proposals, was referred to a committee consisting of one representative from each state. After emerging from committee, the full House debated the issue and, on August 24, 1789, passed it and sixteen other articles of amendment. The proposals went next to the [Senate](#), which made 26 substantive alterations. On September 9, 1789, the Senate approved a culled and consolidated package of twelve articles of amendment.^[13] Changed in this amendment was the apportionment formula to be followed once the number of House members reached 100.

At the time it was sent to the states for ratification, an affirmative vote by ten states would have made this amendment operational. That number rose to eleven on March 4, 1791, when Vermont joined the Union. By the end of 1791, the amendment was only one state short of the mark. However, when [Kentucky](#) attained statehood on June 1, 1792, the number climbed to twelve, and, even though Kentucky ratified the amendment that summer (along with the other eleven amendments), it was still one state short. No additional states ratified this amendment since. To become part of the Constitution, 27 additional ratifications are required.

Eugene Martin LaVergne, a former attorney claims to have found evidence that the entire proposed Bill of Rights, including this proposed amendment, was ratified by Connecticut in 1790. As such, Kentucky's 1792 ratification would have been sufficient for the amendment to meet the constitutional requirement to become part of the Constitution.^[14] However, according to LaVergne the Connecticut ratification was never forwarded to Congress for action.^[14] LaVergne argued the point in a lawsuit against a number of federal officials,^[c] but the case was dismissed.^[15] The dismissal was summarily affirmed *per curiam* by the [United States Court of Appeals for the Third Circuit](#),^[d] ending the case.^[16]

Related pages

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- [List of amendments to the United States Constitution](#)
- [Fourteenth Amendment, Section 2](#) (which modified the portion of Article I, Section 2, Clause 3 commonly known as the [Three-Fifths Compromise](#))
- [United States congressional apportionment](#)
- [Apportionment Act of 1792](#)
- [Apportionment Act of 1911](#)
- [Reapportionment Act of 1929](#)

Notes

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- a. [↑] The [Eighteenth Amendment](#) was the first to have a time limit for states to ratify the proposed amendment.^[1] Amendments before that time had no time limit. Those proposed afterwards have the same seven year limit.^[1]
- b. [↑] When the [Constitutional Convention](#) met in 1787, the first order of business was to elect George Washington the president of the convention.^[4] As president, Washington saw it was his job to keep order when the [debates](#) became too heated. He spoke very little, mostly to vote for or against proposed articles (amendments).^[5]
- c. [↑] *LaVergne v. Bryson, et al.*, [United States District Court for the District of New Jersey](#) (Dec. 16, 2011).^[15]
- d. [↑] *LaVergne v. Bryson, et al.*, no. 12-1171, Third Circuit (Sep. 20, 2012)

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1. [↑] [1.0 1.1 "Amending the Constitution"](#). ThisNation.com. Retrieved 13 March 2016.
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3. [↑] [George Will Called Me An Idiot Archived](#) 2009-02-13 at the [Wayback Machine](#), Jonah Goldberg, [National Review](#), January 15, 2001.
4. [↑] ["The Constitutional Convention of 1787"](#). Exploring Constitutional Conflicts. Retrieved 18 March 2016.
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15. ↑ [15.0 15.1](#) "[LaVergne v. Bryson et al](#)". Justia. Retrieved 18 March 2016.
16. ↑ David Hejmanowski (6 November 2015). "[David Hejmanowski: Not all amendments pass muster](#)". The Delaware Gazette. Retrieved 18 March 2016.

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