

Pennsylvania's Role in the Origin and Defeat of the First Proposed Amendment on Representation

ON MARCH 1, 1790, THE PENNSYLVANIA ASSEMBLY, by a vote of 32-27, rejected the first of twelve proposed Constitutional amendments submitted to the states by the First United States Congress.¹ The proposed amendment stated that:

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 no less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall

Support for research for this article came from the NEH Travel to Collections Program and from Iowa State University Graduate College. The author thanks the "vigilantes" of the Iowa State University Department of History who read and commented upon an early draft of this essay.

¹ As historians have long recognized, the debate over the nature of representation played a crucial role in directing American constitutional development from the Stamp Act crisis in 1765 through the Whiskey Rebellion nearly three decades later. Pennsylvania's often volatile political history has been a focal point for many studies on that debate. Yet scholars have rejected the events surrounding a significant aspect of the debate, Pennsylvania's role in the evolution and defeat of the first proposed amendment to the Constitution of 1787 concerning representation in the U. S. House of Representatives. See, for example, Gordon S. Wood, *Representation and the American Revolution* (Charlottesville, 1969); Thomas Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York, 1986), 1-175; Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969); Lance Banning, "Republican Ideology and the Triumph of the Constitution, 1789-1793," *William and Mary Quarterly* 31 (1974), 167-88, especially 173-78. Even when historians discuss the passage and ratification of the Bill of Rights, the topic of the two failed amendments is generally ignored: see, for example, Forrest McDonald, *E. Pluribus Unum: Formation of the American Republic* (Boston, 1965), 234; and Robert A. Rutland, *The Bill of Rights, 1776-1791* (Boston, 1955).

The second amendment, prohibiting members of Congress from receiving an increase of salary between elections, was also rejected by Pennsylvania and three other states. It also failed to become part of the Constitution of 1787.

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

The Constitution had established membership in the House at sixty-five representatives and provided for reapportionment after the first census in 1790 at the rate of one representative for each 30,000 inhabitants. The Constitution, however, did not require the House to be reapportioned as the population increased. The passage of the first proposed amendment on representation would have insured that the House be maintained with as small a constituency for each representative as feasible, thereby enhancing the radical republican view that a representative of the people ought to reflect the demography and ideology of his constituency rather than the representative's own principles. The defeat of this amendment ended a three-year struggle by Antifederalists, first to prevent ratification of the Constitution of 1787 and then, having failed in that endeavor, to make structural changes in the proposed frame of government.

The defeat of the amendment on representation by the Pennsylvania Assembly, however, was broader than a conflict over changes in the national government. It was also part of a long-standing struggle that erupted with the Stamp Act crisis in 1765, when the colonists attempted to define the relationship between colonial assemblies and the British Parliament, and intensified as revolutionaries debated the nature of representation in Pennsylvania's first constitution in 1776. The conflict continued unabated until a second state constitution was adopted in 1790; it emerged once again with the outbreak of the Whiskey Rebellion shortly thereafter.³

The political divisions within Pennsylvania that contributed much to the defeat of the amendment on representation took shape during the struggle for independence. The Whigs gained ascendancy over

² Linda Grant DePauw, et al., eds., *Documentary History of the First Federal Congress of the United States of America: Legislative Histories* (6 vols., Baltimore, 1977-87), 4:1.

³ Slaughter, *Whiskey Rebellion*, 111; Wood, *Creation of the American Republic*, 45; J.R. Pole, *Representation in England and the Origins of the American Republic* (New York, 1966), 250-80, 353-82; James Roger Sharp, "The Whiskey Rebellion and the Question of Representation," in Stephen R. Boyd, ed., *The Whiskey Rebellion: Past and Present Perspectives* (Westport, 1985), 119-33.

the "ultra conservatives" or Tories (a coalition of Quaker, German, and commercial interests) when they took control of the Pennsylvania Assembly in 1774 from the "ultra conservatives" led by Joseph Galloway who had sought to redress grievances against Great Britain through peaceful means. The Whigs, however, soon became divided between the moderates under the leadership of John Dickinson and James Wilson and a more radical group mostly consisting of less-known politicians who rose to power during the crisis with Great Britain. It was this latter group that wrote Pennsylvania's revolutionary Constitution of 1776.

The new frame of government came under attack almost immediately. Those who defended the Constitution of 1776 called themselves Constitutionalists. Their political base came from the Scots-Irish farming class in the western counties under the leadership of such men as George Bryan, and later William Findley, Robert Whitehill, and John Smilie. It was this group that later became the key members of the Pennsylvania Antifederalists.⁴ The moderates or reluctant revolutionaries, who, in Robert Brunhouse's words, had "led the revolutionary movement to the point of control and then lost control," opposed the new frame of government as too democratic and unworkable. They called themselves Republicans and were joined by the remnants of "the ultra conservative group" after the Revolutionary war.⁵ The Republicans represented the propertied men of Pennsylvania. Their political foundation was in the eastern counties

⁴ Donald Lutz, *Popular Consent and Popular Control* (Baton Rouge, 1980), 85-110; Jackson Turner Main, *The Sovereign States: 1775-1783* (New York, 1973), 186-221; Wood, *Creation of the American Republic*, 162-96; Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania, 1776-1790* (Harrisburg, 1942); Russell J. Ferguson, *Early Western Pennsylvania Politics* (Pittsburgh, 1938), 38-108; Harry Marlin Tinkcom, *The Republicans and Federalists in Pennsylvania, 1790-1801* (Harrisburg, 1950), 1-19; and Pole, *Representation*, 250-80, 350-82.

⁵ Thomas Slaughter, in his book, *The Whiskey Rebellion*, 133-38, designates those adhering to the radical and moderate agendas throughout the entire thirty-year period as the "Friends of Liberty" and the "Friends of Order." These are useful labels because they tie the entire thirty-year political struggle together. Contemporaries, however, labeled themselves and their opponents as Constitutionalists / Antifederalists or Republicans / Federalists in their writings, depending on whether the focus concerned national or state politics. At times these latter terms were used interchangeably as local and national issues were often fused together. On this point, see Ferguson, *Western Pennsylvania Politics*, 37, 73.

surrounding Philadelphia and formed the strength of the Federalists.⁶ While each group found allies among all classes and sections, political strength, as revealed in elections and votes by legislators on key issues, fell roughly along east-west geographic divisions.⁷

The debate over representation in 1776 centered on the relationship between constituents and their representatives. The radical group, or "Friends of Liberty" to use Thomas Slaughter's designation, sought to maximize the role played by constituents in political decision-making while the moderate group, or "Friends of Order," wanted to restrict the role of constituents to the electoral process.⁸

The "Friends of Liberty" wanted legislatures based upon what contemporaries called "actual representation." They sought frames of government that tied representatives closely to their constituents so that a representative would act as if the people had been assembled in one place.⁹ To achieve this closeness, proponents advocated such legislative devices as election districts with small constituencies, annual elections, universal white male suffrage, few qualifications for office, short terms for office, instruction of representatives, direct elections, a unicameral legislature sensitive to shifts in population, mandatory rotation of officeholders, and the right to recall officials. One proponent of actual representation argued, on the eve of the writing of Pennsylvania's Constitution of 1776, that no man is a true republican "or worthy of the name, that will not give up his single voice to that of the public, his private opinion he may retain; it is obedience only that is his duty."¹⁰ This same position was echoed in November 1789, on the eve of the writing of Pennsylvania's second constitution, by Samuel Bryan in a series of essays entitled, "Centinel Revived." Bryan defended the single legislature, a pivotal feature of Pennsyl-

⁶ Brunhouse, *Counter-Revolution*, 6-11.

⁷ See maps in *ibid.*, 321-25.

⁸ Slaughter, *Whiskey Rebellion*, 127-40.

⁹ Herbert Storing, ed., *The Complete Anti-Federalist* (7 vols., Chicago, 1981), 1:17-18. See also [Melancton Smith], *ibid.*, 4:155-60; *Anti-Federalists #1*, *ibid.*, 4:236-37; [Samuel Chase], "Objections to New Government," *ibid.*, 5:89-90.

¹⁰ Anonymous, "To the Public," Letter IV, Charles S. Hyneman and Donald Lutz, *American Political Writing During the Founding Era, 1760-1805* (2 vols., Indianapolis, 1983), 1:386; see also Anonymous, "The People the Best Governor: Or a Plan of Government Founded on Just Principles of Natural Freedom," *ibid.*, 1:390-400.

vania's 1776 constitution as follows: "If you vest all the Legislative power in one body of men . . . elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility, for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election."¹¹

The "Friends of Order," on the other hand, favored what was called "virtual representation" and wanted to insure that men with wisdom, good character, and honor would obtain office.¹² To achieve this, it was necessary to establish governments with officials elected from districts with large constituencies and to have infrequent elections, property qualifications for voters, high property qualifications for officeholders who served lengthy terms, indirect elections, bicameral legislatures, a voting but not an instructing constituency, and an unlimited number of terms with no provision for recall. John Adams, although acknowledging the importance of a lower house elected by the people, nevertheless argued in his *Thoughts on Government* (1776) in behalf of choosing "from the many . . . a few of the most wise and good," especially in the upper house. Adams viewed the latter as crucial in checking the whimsical nature of the lower house.¹³ Noah Webster, writing in 1790, defended the need for "virtual representation" when he attacked the practice of instructing representatives by local interests, which negated the very idea of representation by reducing a "Representative to a mere ma-

¹¹ [Samuel Bryan], "Centinel Revived," XXXVII *Independent Gazetteer or The Chronicle of Freedom*, #1222, Nov. 11, 1789. "Centinel Revived," XXXVII was also printed in the Dec. 1, 1789, issue.

¹² Storing, ed., *Complete Anti-Federalist*, 1:43-44. For example, [James Iredell], "Answer to Mr. Mason's Objections to the New Constitution," *ibid.*, 337; [Noah Webster], "Examination," *ibid.*, 23-43; [John Dickinson], "Letter II," *ibid.*, 170-71; [Alexander Contee Hanson], "Remarks," *ibid.*, 355; [Tench Coxe], "On the Safety of the People from nature of the House of Representatives," in Paul L. Ford, ed., *Pamphlets on the American Constitution* (New York, 1883, reprint 1968), 143-45; and Testor, "To the People of the United States," *Pittsburgh Gazette*, Aug. 26, 1786.

¹³ John Adams, "Thoughts on Government," in Hyneman and Lutz, eds., *Political Writing*, 1:401-9.

chine" and "by restraining the exercise of reason . . . subvert[ing] the very principles of republican government."¹⁴

The conflict between those who defended the Constitution of 1776 and those who wanted to replace the Constitution of 1776 focused on the nature of representation and closely mirrored the ideology and the participation in the national conflict in Pennsylvania between the Antifederalists and Federalists. An Antifederalist at the time described this connection as follows:

Of what complexion were the deputies of this state in the general [Constitutional] convention? Six out of eight were the inveterate enemies of our inestimable constitution [1776], and the principals of that faction that for ten years past have kept the people in continued alarm for their liberties and who are the advocates of the new Constitution in this state. They consist of the same faction, with the addition of a few deluded well-meaning men, but whose number is daily lessening.¹⁵

A Federalist, writing in more derogatory language, also characterized the connection between provincial and national politics when he wrote of the Antifederalists: "these filthy puppies have (to carry their point) beat it and our dead Constitution [of 1776] together which makes it kind of Sacralige [*sic*] to say a word in its favor to the very people it would most immediately help, the mechanics [*sic*]."¹⁶ For Pennsylvanians, the debate over representation was both a national and a parochial issue.

As Gordon Wood has argued, the writing and ratification of the Constitution of 1787 "raised all over again the distinction between actual and virtual representation."¹⁷ Pennsylvania's Antifederalists played a key role in the struggle to insure through amendment that

¹⁴ Noah Webster, "On Government" VI [New York, 1788], in Webster, *Collection of Essays and Fugitive Writings on Moral, Historical, Political and Literary Subjects* (Boston, 1790), 76-77. The reference to a representative as a "mere machine" was also used in 1786 by Hugh Brackenridge in a futile attempt to justify his vote against a bill sought by his constituents. See [Hugh Brackenridge], "Justification," *Pittsburgh Gazette*, April 21, 1787, and other issues for this extensive debate on the nature of representation. See also Wood, *Creation of the American Republic*, 372-77.

¹⁵ [Samuel Bryan], "Centinel X," *Carlisle Gazette*, March 5, 1788.

¹⁶ R. Butler to Wm. Irvine, Oct. 11, 1787, William Irvine Papers (Historical Society of Pennsylvania, hereafter HSP). See also Ferguson, *Western Pennsylvania Politics*, 98-100.

¹⁷ Wood, *Representation and the American Revolution*, 45.

the Constitution of 1787 would be based upon "actual" rather than "virtual" representation, if nowhere else, at least in the House of Representatives. They were the first to propose an amendment that would have required the Congress to increase representation in the House of Representatives.

Although the Antifederalists in Pennsylvania had initiated the movement for an amendment to insure a large representation in the House almost immediately after the Convention had adjourned on September 17, 1787, representation in the House had been hotly contended during the Constitutional Convention. After finally agreeing to the "Great Compromise" establishing a bicameral legislature that included a lower house based upon population and wealth, the delegates to the Constitutional Convention began considering several issues related to the debate over actual and virtual representation in the lower house. The delegates first debated whether members of the House should be elected directly or indirectly. They quickly decided that members of the House should be elected directly.¹⁸ The Convention then turned to the length of terms and eventually reached a compromise between those delegates, such as James Madison, who wanted a three-year term and others, such as Elbridge Gerry, who wanted annual elections.¹⁹

Most of the debate, however, focused on the size of the constituency for each representative in future Houses of Representatives and the number and distribution of representatives in the initial House. Many of the delegates wanted members of the House elected from large districts in order to insure that "men of virtue" would be elected,²⁰ while others wanted representatives elected from small districts so that the House would better reflect the character of the population.²¹ No specific limits on the size of each representative's constituency were established, however, until the Committee of Detail reported to the Convention on August 6. At that time the committee added the provision that after the first enumeration, representation should be

¹⁸ Arthur Taylor Prescott, *Drafting the Federal Constitution* (New York, 1968), 198, 200. The author has arranged the convention debates according to topics.

¹⁹ *Ibid.*, 211-12.

²⁰ *Ibid.*, 202.

²¹ *Ibid.*, 203.

established at one representative for each 40,000 inhabitants.²² On the last day of the Convention the delegates, at the urging of George Washington who engaged in a substantive debate for the only time during the Convention, lowered the size of each representative's constituency from 40,000 to 30,000.²³

The section in the Constitution on representation now read:

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, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Lowering the number of constituents to 30,000 was at best only a partial victory for those favoring actual representation in the House. The section was worded in such a way that although it established a lower limit on the size of each constituency, the Congress did not have the power to decrease the number of inhabitants for each representative further as sought by the Antifederalists. In addition, by not requiring representatives to be elected from districts, it enabled the states to elect representatives at-large, which Pennsylvania did in the first congressional election. The Constitution of 1787 thus made it possible for states to eliminate all actual representation in the House. This caused anxiety among supporters of actual representation; as a result, five ratification conventions proposed amendments to this section. Only four subjects were proposed as amendments by more states.²⁴

²² Ibid., 389. The figure forty thousand was evidently derived from an estimate of the population of Georgia and Delaware, the states with the smallest populations in 1787. James Wilson's notes from the Committee of Detail estimated the population of Georgia at 32,060 and Delaware at 44,886. These figures were considerably lower than those in the census of 1790, 82,548 and 59,096, respectively. See Vol. 2, Papers 1775-1792, p. 65, James Wilson Papers (HSP).

²³ Prescott, *Drafting the Federal Constitution*, 397. On Aug. 7, 1787, the Committee of Detail's report was amended to add the provision that each state have at least one representative.

²⁴ Edward Dumbald, *The Bill of Rights and What It Means Today* (Norman, 1957), 21, 161-65. Subjects receiving more consideration concerned jury trial in civil cases, reservation of powers, regulation of elections, and curbing taxing power.

The effort to insure adequate representation in the House through amendment began when Antifederalists stubbornly insisted on the need for this and other amendments during Pennsylvania's ratification convention and then used the amendment issue in a nearly successful campaign to elect Antifederalists to the First Congress. These efforts initiated a process that ultimately resulted in the inclusion by the First Congress of the amendment on representation among the twelve amendments submitted to the states for ratification in September 1789.

Even before the signatures on the Constitution had dried, the push for amendments began. Pennsylvania's Antifederalists were in the forefront of this movement as well. They were the first to propose amendments during the ratification process and, having failed to prevent ratification, introduced the need for amendments as a campaign issue in the election for the First Congress.

Pennsylvania had gotten the jump on the other states in the ratification process. The Constitution was read to the Pennsylvania Assembly by its Speaker, Thomas Mifflin, the day after the Constitutional Convention adjourned. Even before the Assembly received an official copy of the Constitution from the Confederation Congress, it passed, on September 29, 1787, just one day before adjournment, a bill providing for the election of delegates to a ratification convention. The first protest against ratification of the Constitution began at this time when eighteen assemblymen boycotted the Assembly in an attempt to deny it a quorum and thus prevent action on the bill calling for election of delegates to a ratification convention. Their effort failed when two members were rounded up by a mob and forcibly made to appear in the Assembly, thus assuring a quorum and the bill's passage.²⁵

The bitterness in this episode carried over to the forthcoming election of assemblymen and delegates to the ratification convention itself and even into subsequent assemblies. John Montgomery, a Federalist in Carlisle, wrote on October 9 that he hoped the Constitutionals' withdrawal from the Assembly would hurt them in the coming assembly election. This did not happen, however, because

²⁵ *Votes and Proceedings of Pennsylvania Assembly, Records, The States in the United States*, 12th Assembly, Sept. 29, 1787.

four days later Montgomery again wrote: "my fears are realized, the county has sent the same creatures to the assembly that disgraced themselves and the county in the last assembly[. Because] our ticket failed the same kind of animals will be sent to the convention."²⁶

Robert Whitehill, one of the "animals" referred to in Montgomery's letter, was responsible for raising the issue of amendments during Pennsylvania's ratification convention, which had begun meeting on November 20, 1787. Pennsylvania's Antifederalists had not acted independently, the Federalists claimed, but had been urged by a disaffected member from the Convention to press for amendments. This member was undoubtedly George Mason who had called for amendments in his *Objections* written during the concluding days of the Convention. But George Washington thought the real culprit was Richard Henry Lee, whom he saw as the ringleader of the Antifederalists. Lee, according to Washington, "had rendered himself obnoxious in Philadelphia by the pains he took to disseminate his objections amongst some of the leaders of the seceding members of the legislature."²⁷ Both Mason's and Lee's objections to the Constitution, like those of other dissenters from the Convention, addressed the issue of representation. Mason's second objection specifically argued the need for actual representation: "In the House of Representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people; the laws will therefore generally be made by men little concerned in, and unacquainted with their effects and Consequences."²⁸

Although outnumbered two to one at the state convention, Pennsylvania's Antifederalists insisted upon what many viewed as a futile

²⁶ John Montgomery to William Irvine, Oct. 9 and 13, 1787, *Papers of General William Irvine*, Vol. IX (HSP); also printed in Merrill Jensen, et al., eds., *The Documentary History of the First Federal Elections, 1788-1790* (3 vols. to date, Madison, 1976-), 1:175-76.

²⁷ Washington to James Madison, Oct. 10, 1787, Robert A. Rutland, et al., eds., *The Papers of James Madison* (15 vols. to date, Chicago, 1977-), 10:189.

²⁸ George Mason, "Objections," in Ford, ed., *Pamphlets*, 336-37; see also [Patrick Henry], "Address to the Virginia Ratification Convention," June 5, 1788, in Storing, ed., *The Complete Anti-Federalist*, 5:245; "Sidney" [probably Abraham Yates], in *ibid.*, 6:90; "A Republican Federalist" [probably James Warren], in *ibid.*, 4:181; Wood, *Creation of the American Republic*, 174-87; Walter Hartwell Bennet, ed., "Introduction," *Letters from the Federal Farmer to the Republican* (Birmingham, 1978), xxiv-xxx.

task of debating the merits of the Constitution. During the debate, the Antifederalist minority raised the issue of the need for a Bill of Rights and other amendments. James Wilson, a leading Federalist at the ratification convention, answered the Antifederalists' objections as he had done a few weeks earlier during the Constitutional Convention by claiming that not only was a Bill of Rights unnecessary for a government possessed of enumerated powers that has no "authority over individual rights," but it was "dangerous," since it implied possession of such power by the federal government.²⁹ When the Antifederalists introduced a proposed Bill of Rights, Wilson asked shrewdly, "but to who are we to report this bill of Rights, if we should adopt it?" The Federalists then argued that the convention had no authority to propose amendments. Nevertheless, on December 12, 1787, Robert Whitehill introduced fifteen proposed amendments to be recommended along with ratification of the Constitution. Whitehill's motion was defeated 46 to 23, and on the same day the convention ratified the Constitution by the same margin. Among the fifteen proposed amendments was the following statement regarding the size of the House of Representatives: "that the House of Representatives be properly increased in number."³⁰ This was the first formal reference to the article on representation.

The minority then issued "The Address and Reasons of Dissent of the Minority of the Convention" (first published in the *Pennsylvania Packet & Daily Advertiser*, Dec. 18, 1787). Besides repeating Whitehill's proposed amendments, the report elaborated on the reasons why an amendment was needed to guarantee that the House of Representatives be increased. The dissenters argued that a fair and just representation required that a legislature "have a competent knowl-

²⁹ Remarks by James Wilson, Nov. 28, 1787, Merrill Jensen, et al., eds., *The Documentary History of the Ratification of the Constitution* (4 vols. to date, Madison, 1976-), 2:388-90. Wilson's notes prepared for this debate list several arguments he anticipated would be used by those opposed to ratification. On representation he anticipated: "The Number of Representatives is too small, and may be made smaller, the districts will be too great, they may be bribed by the Senate." See Vol. 2, Papers 1775-1792, pp. 64 (quote), 73-78, Wilson Papers.

³⁰ "Remarks by Robert Whitehill," Dec. 12, 1787, Jensen, et al., eds., *History of the Ratification of the Constitution*, 2:598.

edge of its constituents, and enjoy their confidence.”³¹ To their minds, representation in the House had to be “sufficiently numerous to possess the same interests, feelings, opinions and views which people themselves would possess, were they all assembled.”³² The Antifederalists feared that the House would not keep pace with the increase in population and consequently would lose all attributes of actual representation. Although the Constitution specified that the House would be increased after the first election to one representative for every 30,000 inhabitants, “there was no assurance that this would be done.” After all, they argued, “this cannot be done without the consent of the senate,” and the increase in the size of the House would decrease the Senate’s power and prestige. The number of representatives would probably be continued at sixty-five, as specified in the Constitution, “although the population of the country may swell to treble what it now is, unless a revolution should affect a change.”³³ This became the essential argument supporting the need for an amendment on representation.

By issuing a dissenting report, Pennsylvania’s Antifederalists influenced later ratifying conventions in those states where the Antifederalists’ opposition was sufficiently strong to force Federalists to couple ratification with a call for amendments in order to counter Antifederalist criticism. Although Pennsylvania’s congressional delegation was less than enthusiastic about proposed amendments, Pennsylvania Antifederalists nevertheless could claim some impact on the final outcome in Congress. It was through their efforts that the call for amendments was initiated and ultimately gained sufficient strength in Massachusetts, Virginia, and New York to be taken seriously by the Federalist majority.

Pennsylvania’s Antifederalists also failed to get the Assembly to negate the ratification of the Constitution by the convention when the Assembly convened again in March 1788. Although they had gathered and presented petitions with more than 6,000 signatures urging the Assembly not to confirm ratification by the convention,

³¹ “The Address and Reason of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents,” in *ibid.*, 2:631.

³² *Ibid.*, 2:631-32.

³³ *Ibid.*, 2:632.

the Assembly merely ordered the petitions to lie on the table. No further action was taken. The approval of amendments by the Massachusetts ratification convention in February had taken much of the steam out of the effort to have the Assembly negate the ratification by the convention.³⁴

On June 26, 1788, bells began ringing in Philadelphia announcing New Hampshire's ratification five days earlier, giving the Constitution the needed approval by nine states. Bells rang out again a few days later when word came that Virginia had also ratified the Constitution.³⁵ The Antifederalists' last chance to forestall implementation of the new frame of government was gone. They now fell back to a second position, the forthcoming federal election of senators, representatives, and presidential electors.

Madison had expressed concern about the first federal election in a letter to Washington shortly after the Virginia convention had adjourned. Patrick Henry had stated at the conclusion of Virginia's convention that although he would abide by the Constitution, he would seize the first moment to take off the yoke in a constitutional way. This meant, according to Madison, a plan to "engage $\frac{2}{3}$ of the Legislatures in the task of undoing the work; or to get a congress appointed in the first instance that will commit suicide on their own authority."³⁶ Madison communicated this fear to others as he traveled to New York to resume serving in the Confederation Congress. Robert Smith of Maryland wrote to Tench Coxe, a frequent correspondent and one of Pennsylvania's leading Federalists, that Madison had mentioned that through "a regular correspondence between the Antifederalists of different states," opponents of the Constitution were

³⁴ See *ibid.*, 2:709-725 for documents related to this episode. Benjamin Rush wrote as early as 1787 that the "hopes of our junto [Antifederalists] now are in getting such a majority in the assembly next year to repeal the late act of our state convention." Benjamin Rush to William Irvine, Dec. 21, 1787, William Irvine Papers. See also Walter Stewart to William Irvine, Feb., 20, 1788, Irvine Papers, for similar comments.

³⁵ Diary of Christopher Marshal, 1782-1791, entries for June 26, 1788 and July 1, 1788 (HSP).

³⁶ Madison to Washington, June 27, 1788, *Madison Papers*, 11:182-83. See also Madison to Hamilton, June 27, 1788, *ibid.*, 11:181-82; and James McHenry to George Washington, July 27, 1788, Jensen, et al., eds., *The Documentary History of the First Federal Elections, 1788-1790*, 2:108.

“getting in concert” to elect Antifederalists to Congress.³⁷ Coxe replied that he had also talked with Madison and “found him strongly impressed with the opinions you mention.”³⁸ Madison’s fears about Antifederalists’ interstate activities had some foundation. Letters written by Pennsylvania Antifederalists describe such activity, including the need for secrecy.³⁹ Coxe also related an incident that had occurred in a discussion with an ardent Antifederalist on the type of amendments Virginia would propose to Congress. The Antifederalist pulled a “copy of them” out of his pocket, which Coxe said confirmed the “many symptoms of concert in this plan, which are daily presenting themselves.”⁴⁰

Ratification of the Constitution did not end in acquiescence by the general population, either. Samuel Preston traveled into western Pennsylvania for thirty-four days beginning on July 23, 1788—just after news of ratification had reached the area—and found considerable opposition. He commented in his journal on several heated discussions by Antifederalists against the Constitution. On one occasion in a tavern he reported that the “general conversation was against the new Constitution and that they will fight before they will submit to it, and the women threaten to thrattle any Persons that attempt to take their Liberties from them—their chief great expectations was from a Convention” that had been sitting at Harrisburg.⁴¹

The federal election in Pennsylvania was crucial in the movement to amend the Constitution because it was the first election battleground over amendments. The Antifederalists, although out-maneuvered and overwhelmingly defeated by the Federalists in Pennsylvania’s ratification convention, made the need for amendments the centerpiece of their campaign in the first federal election and nearly succeeded in sending opponents of the Constitution to the First Congress. More importantly, Pennsylvania’s federal election, the first held by any

³⁷ Robert Smith to Tench Coxe, July 31, 1788, Box 51, Tench Coxe Papers (HSP).

³⁸ Tench Coxe to Robert Smith, Aug. 5, 1788, Coxe Papers. See also Thomas Hartley to T. Coxe, Sept. 9, 1788, Coxe Papers.

³⁹ Letters to Col. Adam Orth, March 9, 1788; R. Smith to George Bryan, April 26, 1788; Arthur Campbell to Francis Bailey, March 3, 1788, all in George Bryan Papers, Folders, 1, 7, 2 (HSP).

⁴⁰ T. Coxe to R. Smith, Aug. 5, 1788, Coxe Papers.

⁴¹ Samuel Preston’s Journal, Sept. 8, 1788 (HSP). See also entries for Sept. 5, 16, 18.

state, set the pattern for other elections which resulted in pledges from Federalist candidates to support amendments.

So concerned were the Federalists in Pennsylvania about what they believed was a conspiracy by the Antifederalists to undermine the Constitution by winning the first election that, within days after receiving notification from the Confederation Congress to provide for federal elections, they rushed through a bill establishing procedures for electing members of the House and presidential electors. Since the election of assemblymen was soon to be held in Pennsylvania, the Federalists, who controlled the Assembly then in session and who were fearful of losing a majority in the next Assembly, quickly passed an election law enabling Pennsylvania to hold the new nation's first federal elections on November 26, 1788. Thomas FitzSimons, one of those elected to the First Congress, echoed this urgency when he wrote that the "representation of this state in the new Congress will in a great measure depend upon the plan that may be adopted for choosing them. A good mode might now, I believe, be obtained, which in another Assembly would not be practicable."⁴² The law provided for electing all eight as representatives at large, which the Federalists believed would enable them to control the entire Pennsylvania delegation to Congress. They also thought that electing representatives at large would result in the election of better people, a view long held by those supporting virtual representation. A notice appeared in the *Pittsburgh Gazette* reiterating this position by stating that "In this mode the characters most noted for wisdom and virtue will be brought forth—local prejudice will be destroyed and each member of the federal house of representatives will consider himself a servant (not of a county or district) but of the whole state."⁴³ The next day, after caucusing by Federalist members the previous evening, the Assembly also named its U.S. Senators (Robert Morris and William Maclay), making Pennsylvania the first state to do so.⁴⁴

Before the federal election on November 26, 1788, however, the

⁴² Thomas FitzSimons to Samuel Meredith, Aug. 20, 1788, in Jensen, et al., eds., *First Federal Elections*, 1:253.

⁴³ "Notice" *Pittsburgh Gazette*, Sept. 27, 1788.

⁴⁴ Diary of Jacob Hiltzheimer, Oct. 28 and 29, 1788 (American Philosophical Society, hereafter APS). See also E. McClain to General Irvine, Oct. 2, 1788, Irvine Papers, X, March 1788 to Feb. 1792.

election of members to the General Assembly was to take place on October 14. The Federalists saw a close connection between these two elections and established a committee in Philadelphia for the purpose of corresponding with other counties as a "certain way of communicating with our Federal friends" in each county. In a circular letter dated September 1788, the Federalists presented their position:

To have persons of the best qualifications elected to represent us in the general Assembly is at all times an objective of very great consequence, but at the present moment, when the new federal Constitution is to be carried into effect, it is a matter of the utmost importance. It is possible that the subject of Amendments may form a part of their deliberations. All these points will require representatives of undoubted integrity [and] sound judgment. But to revise the new Constitution, if that should be brought before them, they should be men of great candor, free from prejudices against it, well disposed to the continuance of an energetic power in our federal head.

The letter cited the Harrisburg convention as requiring "our most active exertions and vigilance and awaken all our caution." Too much secrecy on behalf of the Antifederalists had been observed, and "such extraordinary conduct was discovered in many places in procuring this meeting that very injurious impressions may have been clandestinely made on the minds of the people." The meeting at Harrisburg, the letter warned, was carefully crafted to affect both federal and state elections.⁴⁵ Amendments then had become an election issue in the state as well as the federal elections.

Having succeeded in winning a large majority in the Assembly, the Federalists turned their energies to the forthcoming federal election. The Federalists and Antifederalists each circulated a slate of candidates for representatives and presidential electors. Campaign rhetoric by the Federalists continued the previous theme. They insisted that the Antifederalists were attempting to "undermine what they could not openly and fairly destroy" by electing representatives to

⁴⁵ [Ye most Obed Servants], a circular letter found among the papers of Tench Coxe, dated Sept. 1788. This letter has several corrections that appear to be in Coxe's handwriting. It was probably a draft that was later recopied for distribution.

"impede the new government operations" through amendments.⁴⁶ James Wilson called the Antifederalists the "amendment ticket" and reminded his readers that the same group had opposed the Constitution and that its "pretense of amendment was a specious one."⁴⁷ Antifederalists, on the other hand, continued to argue the need for amendments in order to prevent the government from becoming aristocratic and despotic.⁴⁸

Pennsylvania's Antifederalists had wasted no time in putting their election plans into motion. Within days after having received information of Virginia's ratification, Antifederalists in Cumberland County met and on July 3 issued a circular letter calling for an Antifederalist convention to meet in Harrisburg on September 3, 1788, to "consider and devise a plan for obtaining the desired amendments" and to nominate candidates for Congress.⁴⁹

The Antifederalists' circular letter was followed by an Antifederalist celebration in Carlisle, the county seat for Cumberland. Many toasts were drunk, accompanied by a discharge of musketry. Their second toast was "May such amendments be speedily framed, and unanimously adopted, as may render the proposed Constitution of the United States truly democratical."⁵⁰

The Federalists responded to this Antifederalist activity with derision—and a measure of paranoia. An editorial in the *Pennsylvania Chronicle* derided the Carlisle meeting: "The entertainment began in a prayer to the Daemon of Anarchy as follows: O Thou who rides in the whirlwind, and directest the storm of intestine broil . . . whose throne is built on licentiousness, and supported by ignorance and discontent."⁵¹ As the date of the Harrisburg convention approached, Federalist rhetoric became more vitriolic. A letter to Francis Hop-

⁴⁶ "Cassius," *Federal Gazette*, Oct. 9, 1788, in Jensen, et al., eds., *First Federal Elections*, 1:311-12. See also "Lucullus to the Freemen of Pennsylvania," *Pennsylvania Gazette*, Nov. 5, 1788, in *ibid.*, 1:330-31.

⁴⁷ [James Wilson], "Report of the Proceedings," *Federal Gazette*, Nov. 25, 1788, in *ibid.*, 1:328.

⁴⁸ "Centinel XX," *Independent Gazetteer*, Oct. 23, 1788, in *ibid.*, 1:320-21. See also *ibid.*, 1:335, 339-45, 348-53, 358-60.

⁴⁹ Benjamin Blith to John Nicholson, July 3, 1788, in *ibid.*, 1:239. See also Cumberland County Circular Letter, July 3, 1788, in *ibid.*, 1:243.

⁵⁰ *Carlisle Gazette*, July 9, 1788, in *ibid.*, 1:243.

⁵¹ *Pennsylvania Chronicle*, July 16, 1788, in *ibid.*, 1:243.

kinson began, "An Alarm!" then went on to describe the danger in the forthcoming convention by using an old adage that "a spoonful of water will put out a fire at the beginning which if suffered to increase into a flame an ocean may prove inadequate to extinguish its raging violence." The writer concluded by comparing the Antifederalists to "shayites."⁵²

The Antifederalist pre-election convention met at Harrisburg on September 3, 1788, and adopted a slate of Antifederalist candidates for the House of Representatives and for presidential electors. They then proposed several amendments to the Constitution. The second of these resolutions concerned representation. It urged that representation be based upon 20,000 inhabitants until the size of the House reached 200 members, at which time the size of the constituency would change to 30,000 until the number again reached 200. This proposal, unlike future proposals, did not anticipate further population increases.⁵³ None of the twelve amendments proposed by the Harrisburg convention could be categorized as rights amendments. Federalist critics were quick to point out that the proposed amendments "said nothing about a bill of rights" because Antifederalists also acknowledged a "bill of rights" was not needed. But the Federalists claimed the delegates to the Harrisburg convention had to do "something to satisfy the people, just as a physician who has led a man to believe he is sick and make him think that he is well again" gives him a harmless remedy.⁵⁴ By not proposing rights amendments, the Pennsylvania Antifederalists made it clear that the real purpose of their campaign was aimed at more than merely attaching a "bill of rights" to the Constitution of 1787. They wanted to make structural changes in the new frame of government.

Tench Coxe wrote Madison that Antifederalist activity was not confined solely to western Pennsylvania but was being "promoted by some of their [Antifederalist] friends in the adjacent states to influence the elections for state and Federal representatives, not only in Penn-

⁵² Letter to Francis Hopkinson, Aug. 16, 1788, in *ibid.*, 1:243.

⁵³ "Proceedings of the Harrisburg Convention, Sept. 3-6, 1788," *ibid.*, 1:263-64. See also, "Observations of a Member of the Convention at Harrisburg," *Pittsburgh Gazette*, Sept. 20, 1788.

⁵⁴ "Observations."

sylvania but in those states also who elect about this season of the year.”⁵⁵ The *Pennsylvania Gazette* carried an article warning electors of a secret plan by the Antifederalists to seize the elections and urging the electorate to “exert themselves to get into offices men whom their judgments and consciences approve. Let them beware of the plan of amendments formed and promoted by the deceitful, dangerous and insulting means” for winning the election.⁵⁶

The Pennsylvania Federalists elected six out of the eight representatives to the House, but the election was closer than many thought it would be, partly because of a division within the Federalist camp over the number of Germans to be placed on their ticket. Although the Germans on the Antifederalist ticket were elected, they were moderately pro-Federalist. No strong Antifederalists were elected. The election debate over the role of amendments, however, would not soon be forgotten. When the Pennsylvania Assembly met to consider the twelve amendments proposed by the First Congress, bitterness and division remained. This discontent undoubtedly played an important role in the subsequent defeat a year later of the article on representation by the Pennsylvania Assembly.

Pennsylvania's delegation to Congress was quite adamant in its opposition to early consideration of amendments by Congress. Every letter written by representatives to correspondents in Pennsylvania on the subject of amendments complained about Madison's persistence in taking the Congress' valuable time to consider amendments when it should be dealing with more important issues. Especially important to the Pennsylvania delegation was the location of the new nation's capital.⁵⁷

On June 8, 1789, the day that Madison introduced his resolutions on amendments in the House, George Clymer of Pennsylvania wrote to Richard Peters, Speaker of the Pennsylvania Assembly, that Madison planned “this morning to make an essay toward amendments.” He wondered if Madison would be a “tub to the whale,” a reference

⁵⁵ Tench Coxe to James Madison, Sept. 10, 1788, Coxe Papers.

⁵⁶ “A Federal Centinel to the People of the United States, and Particularly Independent Electors of Pennsylvania,” *Pennsylvania Gazette*, Sept. 10, 1788.

⁵⁷ See, for example, Thomas Hartley to Jasper Yeates, Aug. 16, 1789, Yeates Papers (HSP); Thomas Hartley to T. Coxe, Aug. 9, 1789, Coxe Papers.

to the whaler's practice of throwing out a tub to divert the whale. In Madison's case, Clymer probably wondered whether Madison would merely make a declaration about the people's liberty of conscience or propose real amendments out of fear of "the anti-federalism of his own state." He hoped that Congress would be strong enough to postpone Madison's proposals. Afterwards he finished his letter and wrote that Madison was not just a tub—he was a "bunch of tubs."⁵⁸ This would seem to indicate that Clymer did not find Madison's amendments very threatening, just enough to divert the people from making "significant structural changes." On the other hand, Elbridge Gerry of Massachusetts, a delegate to the Constitutional Convention who had not signed the Constitution, was in Clymer's estimation "not content with these alone," and proposed to "treat us with all the Amendments of the anti-federalists in America." Gerry went on to propose much more than "rights amendments" to placate the people.⁵⁹

The Federalists, according to Thomas Hartley of Pennsylvania, were not the only ones seeking to delay consideration of amendments. The Antifederalists also opposed them, for they saw Madison's piecemeal approach as undermining an opportunity to make real changes in the Constitution at a second convention.⁶⁰ Hartley's observations are supported by Samuel Bryan's attack on the House's failure to pass amendments to eliminate the "obnoxious parts of the new constitution." Had they done so, he wrote, it would have been unnecessary to revive the "Centinel," an Antifederalist column that had filled Pennsylvania's newspapers during the ratification and election periods. He accused Madison of "parading a number of shewy superficial amendments," while preserving the "principal avenues to despotic power unobstructed."⁶¹

Some Federalists, like Fisher Ames of Massachusetts, wondered

⁵⁸ George Clymer to Richard Peters, June 8, 1789, Richard Peters Papers, IX, 2 (HSP); Remarks by Madison, June 8, 1789, *Annals of Congress*, in Bernard Schwartz, ed., *The Bill of Rights, A Documentary History* (2 vols., New York, 1971), 2:1016-33.

⁵⁹ Clymer to Peters, June 8, 1789, Peters Papers, IX, 2.

⁶⁰ Thomas Hartley to Jasper Yeates, Aug. 16, 1789, Burd-Yeates Correspondence (HSP). See also letter of Aug. 23 for similar comments.

⁶¹ [Samuel Bryan], "Centinel, Revived. No. XXVI," *The Independent Gazetteer and Chronicle of Freedom*, #1159, Aug. 29, 1789.

about Madison's true Federalism. "Madison," wrote Ames, "is a Federalist but so timid that he is more frequently opposed to good men and measures than I suspected."⁶² Ames was the leading opponent of Madison's proposed amendment on representation in the House. Time after time he attempted to increase the size of the constituency from thirty to forty thousand. While he failed in this effort, he ultimately did succeed in changing Madison's original proposal to provide for a gradual increase in the size of each representative's constituency as the nation's population expanded.⁶³

Despite the delay in the House, seventeen amendments were approved and sent to the Senate on August 29, 1789. The Senate acted with more dispatch than the House and returned amendments with modifications within days. After a conference committee agreed on differences, the Congress forwarded twelve amendments to the President for delivery to the states on September 24, 1789.⁶⁴ The first of these amendments—one that had started out as part of the Antifederalist minority report in the Pennsylvania ratification convention as a phrase stating, "That the house of representatives be properly increased in number"—had been expanded to include a gradual increase in the number of representatives as the population increased until the House reached 200. Most members of Congress probably saw this sufficient to take care of the need for orderly increases in the House of Representatives far into the future. In fact, it would have required some adjustment following the census of 1840.⁶⁵

⁶² Fisher Ames to John Lowell, July 28, 1789, Sol Feinstone Collection (APS). Schwartz, ed., *Bill of Rights*, 2:1078-87.

⁶³ Schwartz, ed., *Bill of Rights*, 2:1078-87. Madison's original proposal read "After the first actual enumeration, there shall be one representative for every thirty thousand, until the number shall amount to _____ after which the proportion shall be regulated by Congress, that the number shall never be less than _____ no more than _____ but each state shall after the first enumeration, have at least two representatives; and prior thereto."

⁶⁴ *Ibid.*, 2:1160-65; DePauw, et al., eds., *Documentary History of the First Federal Congress*, 3:228-29.

⁶⁵ On April 14, 1792, Congress reapportioned the House to include 105 representatives with a ratio of one to 34,436. On March 7, 1822, the number of representatives was set at 213, or 42,124 for each representative. On June 25, 1842, the House contained 223 representatives, or 71,338 each. See Table Series Y 150-154, "Apportionment of Representatives Among the States: 1790-1950," in *Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C., 1961), 692.

Robert Morris had written Richard Peters on August 11 not to expect amendments during the coming session of the Pennsylvania Assembly.⁶⁶ Had the national government acted with greater dispatch in forwarding them to the states for ratification, Morris's prediction would have been wrong, but the amendments did not arrive in Pennsylvania until after the elections to the new assembly on October 13, 1789.

Passage of all twelve amendments in the Pennsylvania would seem to have been assured. After all, they had survived the arduous journey that began in the Pennsylvania ratification convention, then through the election machinations of 1788, and finally through a reluctant House and Senate. Although Pennsylvania's congressional delegation had resented early consideration of amendments, they nevertheless viewed the final versions as harmless because the twelve amendments did not make any real changes in the operation of the new government. In fact, the guarantee that the House would increase as the population increased benefited those states, like Pennsylvania, with large and growing populations. Thomas Hartley wrote that the amendments would "give satisfaction to all good men." "The designing," meaning Antifederalists, he did not expect to be pleased.⁶⁷ But this would not be the case in Pennsylvania where sufficient opposition to the amendment on representation emerged to defeat it and deny its place as the First Amendment to the Constitution of 1787.

Although amendments to the Constitution of 1787 had been the focus of the first federal election, passage of the proposed twelve amendments was not an election issue during the fall 1789 campaign for seats in the Pennsylvania Assembly. But vigorous campaigns consisting of opposing tickets were circulated because, in addition to electing assemblymen, voters also chose delegates to a convention to revise the state constitution of 1776.

Constitutionalists in the western counties at first thought they ought to boycott the election of delegates to the convention in protest to what they viewed as an unconstitutional action by the Assembly in calling for the convention. But they dropped the boycott when John

⁶⁶ Robert Morris to Richard Peters, Aug. 24, 1789, Peters Papers, IX, Pf. 2.

⁶⁷ Thomas Hartley to Jasper Yeates, Aug. 23, 1789, Burd-Yeates Correspondence. See also Thomas Hartley to Tench Coxe, Aug. 23, 1789, Coxe Papers.

Smilie, a Constitutionalist leader, formed a ticket at the last minute and urged them to vote.⁶⁸ Many of the leading Antifederalists stood for election as delegates to the convention rather than for the Assembly because they saw the convention as the more important contest. Frank Bryan described the election campaign in the four western counties to his father, George Bryan, as being very heated:

I mentioned that fate of election in these four counties which you will have heard by now, was in favor of the liberties of the people, except in the little county of Alleghany [*sic*]: in that county every office had too many candidates, and each rode about and petitioned the assistance of the people to get in, even those who stood for the assembly and convention were among this number.⁶⁹

A writer in the *Pittsburgh Gazette* accused Jonathon Hoge of using unfair election tactics against his opponent Hugh Brackenridge by going around the county and telling voters that Brackenridge was about to leave the county and "only wished this compliment at his departure."⁷⁰

Republicans evidently worked equally hard in the eastern counties. Christopher Marshall and William Rawle both reported that tickets for the convention were prepared in Philadelphia.⁷¹ One group of Republicans called for a town meeting "to form a ticket" for the Assembly and convention.⁷² Letters supporting different lists of candidates were printed in the *Independent Gazetteer* and other Philadelphia newspapers just before the election on October 13. Some of

⁶⁸ Robert Mitchell to George Bryan, Aug. 3, 1789. George Bryan Papers. According to Pennsylvania's constitution, the Council of Censors, not the Assembly, had the power to call for a constitutional convention.

⁶⁹ Frank Bryan to George Bryan, Oct. 24, 1789, George Bryan Papers. See also Charles Smith to George Bryan, Oct. 16, 1789, George Bryan Papers.

⁷⁰ *Pittsburgh Gazette*, Oct. 24, 1789. Frank Bryan concluded his letter with a comment on the political fate of Hugh Brackenridge: "Poor Brackenridge was left out by a great majority." The memories of his ignoring his constituents' wishes on the land bill still haunted his political ambitions.

⁷¹ Diary of Christopher Marshall, 1782-1791, Oct. 14, 1789 (HSP). William Rawle, Journal of William Rawle, Sr., 1782-1826, Rawle Papers, Private Series (HSP), also describes writing tickets in Philadelphia and the necessity of having a conference to reconcile differences between various political factions; Charles Smith to Tench Coxe, Oct. 16, 1789, Coxe Papers, describes the election as very close.

⁷² "Electioneering. A Town Meeting Proposed," *Independent Gazetteer*, Oct. 8, 1789.

the attacks were quite personal. One letter satirized a candidate by pointing out his

many negative good qualities, which will naturally enable him to fill this important station better than most men. In the first place, he is one of the laziest of all possible being—hence he will make a most patient sitter and hearer. 2dly. He is an enormous eater and drinker, consequently, will be less able to make opposition to propositions dangerous to freedom, because he will be fast asleep during most of the debates.⁷³

Some attacked candidates for their pro-British stance nearly two decades earlier. This was undoubtedly aimed at those “ultra conservatives” who later became Federalists/Republicans and who had advocated a new state constitution. As one writer inquired: “Shall we already place those as rulers over us who would have made us hewers of wood, and drawers of water, to a British Ministry?”⁷⁴ Many of the letters called for the need to select those most capable of forming a new government.⁷⁵ There was no mention of the amendments in any of the campaign literature.

The fourteenth, and last, elected Assembly under the Constitution of 1776 that convened in October 1789 was still dominated by the Republicans. The Constitutionlists, however, had made some gains in the election of 1789. A comparison of the number of votes for or against certain key issues in the Fourteenth and Thirteenth Assemblies shows that the Republican majority of about twenty votes in the Thirteenth General Assembly had been reduced to fewer than ten votes in the Fourteenth.⁷⁶

The Fourteenth Assembly was inexperienced—not uncommon under the Constitution of 1776, as assemblymen could serve no more than four out of seven years, producing the desired effect of rotating members of the Assembly. Forty-three, or two-thirds, of the assem-

⁷³ [Whipstitch], “Mr. Printer,” *ibid.*, Oct. 10, 1789.

⁷⁴ [Anonymous], “Mr. Oswald,” *ibid.*, Oct. 9, 1789.

⁷⁵ See, for example, “To the Inhabitants of Philadelphia County,” *ibid.*, Oct. 8, 1789; [Atticus], “Friends and Fellow-Citizens,” *ibid.*, Oct. 6, 1789; [Eugenio], “To the Electors of the Eastern District of Philadelphia County,” *ibid.*, Oct. 5, 1789; and *ibid.*, Sept. 19, 1789.

⁷⁶ *Minutes of the Pa. Assembly*, 13th Assembly, 60, 177, 254; 14th Assembly, 155-56.

blymen had served in the previous Assembly. Fifteen favored the amendment on representation and twenty opposed it, with the remainder not recorded as voting. Nineteen would be serving for the first time and only six members had more than three years of total service. In addition, only fourteen assemblymen were serving in the fourth year of their seven-year rotation. This was a significant group since it meant only a small portion of the Assembly had been present during the volatile and partisan debates that accompanied the call for a ratification convention in 1787, establishment of federal election procedures in 1788, and the call for a convention to revise the Pennsylvania Constitution of 1776. All these actions were taken in the waning hours of each session, and all had provoked charges by Antifederalists/Constitutionalists of "undemocratic" tactics. The Fourteenth Assembly was also more inexperienced than the previous Assembly where forty-nine members had served previously and only nine were serving for the first time.

With so much inexperience and so few long-term holdovers, one might expect the Fourteenth Assembly to have been less partisan on issues than previous assemblies. Yet the Fourteenth Assembly continued to reflect the Federalist/Republican and Antifederalist/Constitutionalist division that had existed in previous assemblies.

The Assembly received the proposed twelve Constitutional amendments on Tuesday, November 3, 1789. They were transmitted by Thomas Mifflin, President of the Council, as part of a package of several messages sent to the states by President Washington during the Assembly's adjournment. Mifflin's message was referred by the Assembly, as was normal practice, to an ad hoc committee to recommend what action the Assembly should take on the various items presented in the message. Two days later, the committee recommended and the Assembly concurred that the amendments be referred to the Committee of the Whole. The Committee of the Whole took up the amendments on November 27 and approved the third through twelfth amendments but postponed the first two. Amendments were considered again on November 30, at which time a long debate occurred between Richard Peters, the Speaker, and William Rawle, both Federalists who argued against the amendment, and Thomas Kennedy, who favored it.⁷⁷ Although there is no record of what was

⁷⁷ Diary of Jacob Hiltzheimer, Nov. 27 and 30, 1789.

stated in the debate in Assembly minutes or in any letters by the participants, Herman Husbands, an assemblyman, later referred to their concerns:

I mean to offer an effectual plan to remedy all the evils now complained of, and foreseen by the members of your Committee, who object to the amendments as being as ineffectual to remove these difficulties, as the original constitution.

I mean by it to lessen the too numerous body of members in Congress in times to come, without lessening a full representation of all the people, be their numbers ever so large. . . . ⁷⁸

Peters and Rawle evidently opposed the amendment because they believed that the maximum number of constituents for each representative would eventually be fixed at 50,000, thus making the House too unwieldy. Whether or not others accepted their interpretation of the amendment cannot be ascertained. Some may have believed that the population would not increase sufficiently to make this a problem during the life of the new government. That the Speaker participated in the debate indicated its importance. No final action was taken, and it was postponed again. Although fifteen bills were passed before the first session of the Pennsylvania Assembly adjourned on December 10, 1789, the Assembly did not consider the proposed twelve amendments again. As with the Congress, other business seemed more urgent than ratifying Constitutional amendments.

The next session of the Pennsylvania Assembly convened on February 2, 1790, but it was not until February 24 that the Assembly resolved itself into the Committee of the Whole to consider the amendments again. There was no debate over any but the first proposed amendment. The evening before the Assembly considered the amendments, the amendment on representation had evidently been a topic of conversation among Federalists/Republicans at Robert Erwin's tavern. Jacob Hiltzheimer recorded in his diary that he met with thirteen gentlemen, including Peters and Rawle who had opposed the amendment on November 30, and "had some conversation concerning the mode of electing the members of Representatives for

⁷⁸ [Herman Husbands], *Dialogue Between an Assembly Man and a Convention Man* (1790).

Congress.”⁷⁹ Eleven of the thirteen “gentlemen” identified by Hiltzheimer later voted against the amendment on representation.

Objections to passage of the amendment on representation were voiced when it was taken up in the Assembly the following day. According to Hiltzheimer, Herman Husbands, from Bedford County and an ardent Antifederalist, “brought his objections to the first two articles in writing and read them. In his plan he had reference to Scripture mentioned the Gentiles, and in particular the Kings of David & Nebuchadnuzzar.”⁸⁰

Husbands’s objection to the amendment on representation deserves some mention since his Antifederalism should have made him a likely supporter of it. Husbands objected to the amendment because he was unwilling to support what he believed to be a sham of representation.⁸¹ The amendment did not go far enough. In a pamphlet entitled *Dialogue Between an Assembly Man and a Convention Man*, published after the debate, Husbands advocated representation that began at the township level. As mentioned earlier, he agreed with the objections raised by Rawle and Peters and therefore offered “an effectual plan to remedy all the evils now complained of . . . by dividing the government into proper and necessary districts—which divisions may be made on a plan that is already well proven in practice.” He then described his plan of government that eventually divided the country into four regions with governing councils that chose members of the national government. This, according to Husbands, would provide for greater representation. These views had been published previously and so the debate over the first amendment provided Husbands with a forum once again to advocate his plan of government. Husbands’s opposition must be viewed as an individual’s deviation from Antifederalist support for the amendment.⁸²

⁷⁹ Diary of Jacob Hiltzheimer, Feb. 23, 1790; *Minutes of the Pa. Assembly*, 14th Assembly, 9, 11, 13, 54, 58, 85.

⁸⁰ Diary of Jacob Hiltzheimer, Feb. 23, 1790.

⁸¹ [Husbands], *Dialogue*; Mark H. Jones, “Herman Husbands: Millenarian, Carolina Regulator, and Whiskey Rebel” (Ph.D. diss., Northern Illinois University, 1982), 333.

⁸² Husbands, *Dialogue*. See also *Proposals to Amend and Perfect the Policy of the Government* (Baltimore, 1782); Jones, “Herman Husbands,” 263-64, 275-79, 300-5, 315-17. The author writes that Husbands proposed amendments to the Constitution, which might have been the case, but the *Dialogue* also presented Husbands’s arguments against the first two proposed amendments to the U.S. Constitution.

During the evening of February 24, about forty members of the Assembly "met on the business mentioned . . . yesterday."⁸³ But no further action was taken until March 1, 1790, when the Assembly took up the report of the Committee of the Whole that had been debated on February 24. Opposition by Peters and Rawle must have had an effect in the Committee of the Whole, since the first and second articles were not included in its report to the Assembly. Consequently, there was an attempt at this time to add the first article to the committee's report. A motion to postpone consideration of the report was made in order to take up the first article. The motion lost 32-27. The Assembly then approved the third through twelfth articles.⁸⁴ Final action was taken on March 10.⁸⁵

The vote against the first amendment was consistent with the partisan voting pattern throughout the three sessions of the Fourteenth Assembly. Nearly 80 percent of the votes cast were consistent with the Federalist/Republican and Antifederalist/Constitutionalist split on the vote over the amendment on representation.⁸⁶ This partisanship was actually much greater since nine members accounted for nearly 60 percent of the inconsistency.

A comparison of the geographic distribution of the vote on the ratification of the first amendment and two other partisan issues—ratification of the United States Constitution and the vote to recharter the National Bank in 1787, both favored by the Federalists/Republicans—show an almost identical county-by-county distribution of delegates/assemblymen with that of the vote on ratification of the amendment.⁸⁷ This supports the contention that persistent political divisions in the Assembly tied parochial and national issues together.

A similar analysis can be made of votes on the ratification of the first amendment in the Fourteenth Assembly and two votes in the previous Assembly, one supporting Virginia's resolution urging a sec-

⁸³ Diary of Jacob Hiltzheimer, Feb. 24, 1790.

⁸⁴ *Minutes of the Pa. Assembly*, 14th Assembly, 155-56.

⁸⁵ *Ibid.*

⁸⁶ Total votes recorded during three sessions, adjusted, were 1,079. There were 218 inconsistent votes, or 21 percent of the total: *Minutes of the Pa. Assembly*, 14th Assembly, 90, 176, 191, 194-95, 208-9, 214-5, 219-20, 223, 226, 238-40, 244, 246-49, 261-62, 271.

⁸⁷ Maps in Brunhouse, *The Counter-Revolution in Pennsylvania*, 324-25, were compared with county representation on the vote taken on the First Amendment, for which see *Minutes of the Pa. Assembly*, 14th Assembly, 155-57.

ond Constitutional Convention and another calling for a convention to revise the state constitution. Of the thirty-two assemblymen who served in both assemblies and who also voted for these measures, only four votes out of a total of fifty-eight votes recorded (some assemblymen voted for only one of the two resolutions) were inconsistent with the voting pattern for each party.⁸⁸

The Fourteenth Assembly, although consisting of many inexperienced assemblymen, nevertheless reflected the highly charged political atmosphere of Pennsylvania politics. Defeat of the first amendment by the Pennsylvania Assembly can best be understood within this historical context rather than on the merits of the amendment, although Peters and Rawle evidently raised some concerns about the potential for too numerous a House. Whether their arguments concerned future Houses of Representatives is not clear. If the latter had been the case, one would expect to find more evidence of debate.⁸⁹ After all, Congress and the legislatures of nine other states approved the first amendment. The first amendment lost in Pennsylvania because it got caught in the cross fire between Constitutionists and Republicans over the necessity of adopting a new state constitution, a struggle closely tied to the movement for a new national consti-

⁸⁸ *Minutes of the Pa. Assembly*, 14th Assembly, 156-57; and 13th Assembly, 60, 177, 254.

⁸⁹ Although the Assembly minutes indicate numerous petitions were received by the Assembly during this period, not a single petition for and against the amendment on representation or any of the other proposed amendments was recorded. In addition, few diaries, journals, or letters by Pennsylvanians inside or outside of government writing during the period from Sept. 24, 1789 to March 10, 1790 that have been examined took much notice of the proposed amendments. For example, although Clement Biddle wrote Richard Smith in London on April 25, 1789, that he hoped "some amendments which may probably take place before long will reconcile the whole continent to" the Constitution, he made no mention of action on amendments by the Congress or the Pennsylvania Assembly in later letters: Clement Biddle Letterbook, 1789 (HSP). While there had been considerable discussion of amendments during the first federal election and some discussion by the congressional delegation during debate in Congress, their passage in Congress and ratification by the Pennsylvania Assembly went unnoticed in Pennsylvania. Newspapers and pamphlets published during this period contained no reference supporting or opposing passage of the first, or for that matter, any of the twelve proposed amendments after passage by the Congress. As indicated earlier, Samuel Bryan in two of his "Centinel Revived" essays that appeared in the Antifederalist paper, the *Independent Gazetteer*, commented on the amendments after the House had sent them to the Senate on Aug. 24, but not in any of the "Centinel Revived" essays written during the period they were being considered by the Pennsylvania Assembly. Evidently, ratification of these proposed amendments was not an important part of anyone's political agenda, even, by this time, of the Antifederalists.

tution.⁹⁰ James Hall wrote to Tench Coxe just before the 1789 election congratulating him and "every true Pennsylvanian upon the late resolve of our assembly for calling a convention—we shall now I hope be a happy people in this state—for I think the last sinew of skunk and anti-federalism is cut, provided we can carry good men who will make the proper alterations and amendments in the [1776] constitution."⁹¹ Politicians holding such views were certainly not beyond defeating out of spite an amendment whose roots could be traced to the Antifederalists/Constitutionalists of western Pennsylvania. Defeat of the amendment on representation provided too good an opportunity to execute a final *coup de grace* for the Federalist/Republican-dominated Assembly to pass up.

The Republican triumph in the writing of Pennsylvania's new constitution of 1790, however, was not total, for it failed to eliminate all vestiges of actual representation. In fact, some Republicans criticized the state constitutional convention of 1790 for creating a legislature too easily dominated by the people. George Clymer and other Republicans pointed to the clause in the new constitution providing for direct election of senators as a major weakness. The Senate, Clymer wrote, should "be the strong hold of the state, but far from bring an anchor it is to be made a weather cock, and may add to the expense . . . of government tho not much security."⁹²

Lack of adequate representation also lay at the center of the opposition to federal policy by westerners during the 1790s, more specifically the excise tax on whiskey.⁹³ The debate over representation between advocates of actual and virtual representation in Pennsylvania and the nation did not fade away with the defeat of the first proposed amendment to the Constitution. The issue of adequate representation continued well into the nineteenth century—and, one might argue, to the present.

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⁹⁰ Brunhouse, *The Counter-Revolution in Pennsylvania*, 191-227; Ferguson, *Western Pennsylvania Politics*, 38-108; Tinkcom, *The Republicans and Federalists in Pennsylvania*, 1-19.

⁹¹ John Hall to Tench Coxe, Sept. 24, 1789, Coxe Papers.

⁹² George Clymer to Tench Coxe, Jan. 18, 1790, Coxe Papers. For similar comments, see William Smith to Tench Coxe, Jan. 1790; Th. FitzSimons to Tench Coxe, Feb. 12, 1790; Jonathan Dawson to Tench Coxe, March 2, 1790, all in Coxe Papers.

⁹³ Slaughter, *The Whiskey Rebellion*, 11-28; and Sharp, "The Whiskey Rebellion and the Question of Representation," 119-31.