On December 15, 1991, this nation celebrated the bicentennial of the ratification of the Bill of Rights. The date actually commemorates ratification by the Virginia legislature of the second through twelfth of the amendments proposed by Congress over two years earlier. Little note has been made of the fact that on November 3, 1791, the Virginia legislature had passed, in a separate action, the first of the proposed amendments. Also overlooked has been Pennsylvania's earlier reconsideration and subsequent approval of the same amendment. The first proposed amendment concerned representation in the House of Representatives and was designed to insure that the House would increase in an orderly fashion as the nation's population increased and thus keep the House from becoming, like the Senate, an aristocratic institution. The amendment stated:

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

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1 Pennsylvania's reconsideration and subsequent approval of this first proposed amendment has gone unnoticed by historians, including the author who unfortunately discovered this information after an article on Pennsylvania's role in the evolution and defeat of the first proposed amendment had been published in this magazine. Clair W Keller, "Pennsylvania's Role in the Origin and Defeat of the First Proposed Amendment on Representation," Pennsylvania Magazine of History and Biography 112 (1988), 73-102. In the course of research for a more general article, I found a letter from Governor Thomas Mifflin of Pennsylvania to President George Washington reporting that the Pennsylvania legislature had considered the amendment again and passed it on September 21, 1791. See Governor Thomas Mifflin to President of the United States, Documentary History of the Constitution of the United States of America 1787-1870 (4 vols., Washington, 1894-1905), 2:367-70.
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.

James Madison believed that this first proposed amendment would, like the Bill of Rights, also become part of the Constitution.2 His conviction was undoubtedly prompted by action of the Pennsylvania legislature, which on September 10, 1791, had passed the amendment after first rejecting it a year earlier.3 Madison's optimism did not prevail. Despite subsequent approval by Virginia and Vermont, only ten states, not the eleven needed, ratified the proposed amendment.

The Pennsylvania legislature's passage of the first proposed amendment is significant because it was the first instance of reconsideration of an amendment to the U.S. Constitution, although the original vote had not been on the first proposed amendment outright but on a motion to include it among those amendments previously approved by the Pennsylvania legislature. It should also be noted that this action occurred under Pennsylvania's newly adopted Constitution of 1790 that had brought into being a bicameral in place of a unicameral legislature.

Reconsideration of the first proposed amendment began on August 24, 1791, when Albert Gallatin, an Antifederalist and rising political star near the end of his first term in the lower house, introduced a resolution urging that a committee be appointed to bring in a bill ratifying the first proposed amendment to the Constitution.4 The resolution was ordered to lie on the table, but on August 29 Gallatin again moved his resolution. While he preferred that his motion remain unopposed, he said, "if any objections were intended to be made to the measure," he hoped they "would be reserved for a later opportunity." The amendment, he continued, "would narrow the powers of Congress with respect to representation." The limits, as presently stated in the Constitution, in his opinion, were not confined enough because they were "only restricted to having no more than one representative for 30,000 souls, and each State to have

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3 Journal of the Pennsylvania House (Harrisburg, 1791), 470-90; Journal of the Pennsylvania Senate (Harrisburg, 1791), 80, 299, 308, 313, 490.
at least one representative.” The amendment would “prevent the liberty of the people being endangered by too small a representation, and on the other hand by fixing limits beyond which it could not extend to an enormous size,” thus avoiding the confusion found in such large bodies.  

Opponents first questioned the need to take up the amendment and urged that the measure be postponed. They accused Gallatin of rushing the resolution through the House without giving members adequate time to obtain more information on the “propriety of it since the wording of the constitution seemed sufficient.” They could see no harm in postponement. After all, one legislator concluded, proponents have “paid great attention to the subject, while their opponents, he admitted, were not well prepared.”  

Gallatin countered by stating that, because the session would be short, he had “given notice” on the amendment on the second day of the session, and it had been on the table for a full week, which he considered ample time. In addition, it had been two years since the amendment had been passed by Congress, and since every member knew it was coming before the legislature, each member “ought to have prepared himself accordingly.” Postponement, he concluded, was merely an attempt to defeat the amendment. Whether intentional or an oversight, Gallatin made no mention of its rejection by the previous assembly. The House again supported Gallatin and set debate in the Committee of the Whole for September 1, two days hence.  

Two newspapers took the unusual step of reporting these remarks and the lengthy debate on the amendment in the Committee of the Whole which began on September 1. Newspapers usually printed only the official minutes, which seldom recorded debate. In fact, the newspapers continued reporting the debate for several issues, although it was concluded on a single day. This unique coverage provides the only debate on the amendment that has been preserved and, in fact, the only debate recorded for any of the proposed twelve amendments. Could such lengthy and unusual coverage be attributed to widespread public interest? Perhaps, but Joseph Hiltzheimer, who commented in his diary on the debate in the previous

7 Ibid
8 Ibid
assembly, made no reference to discussion of the amendment or to Gallatin for that matter. Nor did any of Philadelphia's newspapers carry additional comment for or against the amendment.

Richard Wells and Cadwalder Evans, two representatives who had urged postponement earlier, spoke at some length against the amendment. Evans began by stating that he thought the limits in the Constitution provided sufficient safeguards and saw no reason for change. He thought that the amendment was of "little importance," and that its being ratified, postponed, or rejected did not appear to him to be very material. Wells focused on the ambiguity of the amendment. The amendment, he said, bore an "absurdity and contradiction." To illustrate his point, he presented a table showing the number of representatives in the House as the population increased from 4 million to 8 million, when the number of representatives in the house would reach 200. "Here was the contradiction, and a glaring absurdity; the amendment positively provided that for 8,000,000 of inhabitants the representation should amount to 200 and when it reached 9,000,000, should follow the ratio one to every 50,000 or should amount to 180—that is, that the lesser degree of population should have the greater representation, and the greater the less." He then used Franklin's population figures to show this "absurdity" would come into being around 1820. He concluded by arguing that large legislative bodies were not only expensive, they consisted of less qualified individuals who were expected to consider more than objects of local importance but the general interests of an extensive empire as well.10

Although Gallatin carried the bulk of the argument favoring the amendment, he was joined by two powerful allies, William Bingham, speaker of the house, and William Findley, the long-time and respected legislator. Like Wells and Evans, they had not been members of the previous assembly.

9 Diary of Jacob Hiltzheimer, Aug 24, 1791-Sept 21, 1791 (American Philosophical Society)
The most thorough account of the debate was reported in the General Advertiser (Sept 2, 3) and in Dunlap's American Daily Advertiser. The latter continued printing the debate for three issues, even though the debate was completed in a single session. In fact, this was one of the few debates reported during the period from August 15 through September 21 when the legislature met. No such coverage was made by the same newspapers when the previous assembly had first considered the proposed amendments.

10 General Advertiser, Sept 2, 3, 1791, Dunlap's Advertiser, Sept 2, 3, 5, 1791. Both Wells and Evans were serving their first terms in the House.
Gallatin countered Wells's calculations showing that the size of the House would decrease from 200 to 180 when the population reached 9 million by stating that the amendment made it clear that the change of representation of one for every 50,000 would not take place until the number of representatives had exceeded 200, so it would not change until the population reached 10 million. He then pointed out that large bodies were "generally more sparing of the public money than smaller" ones. A small body always thought "itself of more importance than a more numerous one and would be paid accordingly," citing the high per diem expenses of the present Congress.

Bingham joined the debate by pointing out that the amendment was brought forward in Congress upon the requisitions of several states that thought the provision in the Constitution was

clothed in ambiguous expression—that tho it said that the representation should not exceed one member for every 30,000 inhabitants—it did not positively say that 30,000 or any lesser number should have one representative. The probability was certainly, not withstanding the defect in the Constitution, [that] Congress would consult the spirit of the provision and do what was proper; but it was the general opinion and it was his, that the dearest privilege of the people would not be left to stand upon so flimsy a foundation as the whim or pleasure of their representatives.

Members of Congress, he went on, convinced of the propriety of objections by state ratification conventions, passed an amendment allowing on the "one hand a body sufficiently great to secure a full representation of interests and not so considerable [as] to be subject to the passions or prejudices which commonly actuate numerous assemblies."

Findley echoed Bingham's view that the amendment added "a constitutional barrier to prevent encroachments on the liberty of the people," that although he "approved of giving to a legislature ample legislative powers," he believed at the same time "their numbers as far as possible, should be fixed." Proponents who argued for the need to insure a Congress

11 General Advertiser, Sept. 3, 1791. In his notes Gallatin carried his calculations to 20 million, contrasting the number of representatives in the House with and without passage of the amendment. He calculated that when the population reached 20 million, the number of representatives could reach 666 or remain below 100, depending on the whims of the Congress. If the amendment was ratified the number would range from a minimum of 200 to a maximum of 400. The actual calculation was not recorded, although he might have given it to the House. Papers of Albert Gallatin, Baruch College of the City University of New York, Box 1:435.
numerous enough to provide adequate representation carried the day "by a considerable majority," and a committee to bring in a bill was appointed. The House passed the bill by a large majority, according to a newspaper account, and sent it to the Senate which quickly approved it and sent it to the governor who signed it on September 21, 1791.

Why did the Pennsylvania legislature pass the amendment after rejecting it in the previous assembly? The reason for the original failure, according to my earlier article, was because it got caught in the cross fire between Constitutionalists and Republicans over the need to adopt a new state constitution, a struggle closely tied to the movement for a new national constitution. Its defeat can also be attributed in some degree to spite, since defeating the amendment "provided too good an opportunity to execute a final coup de grace for the Federalist/Republican-dominated assembly to pass up."

Upon reconsideration passage resulted from discussion on the merits of the amendment led by an able and respected spokesman. Gallatin, according to his own memoirs, had acquired an extraordinary influence in the House. He was a rising political star who, it is believed, wrote the early version of the amendment at the Harrisburg Convention on September 5, 1788, and who in three years would gain sufficient popularity in the legislature to be elected, against his wishes, to the United States Senate by a Federalist-dominated legislature. The adoption of the Constitution of 1790 evidently dissipated the rancor that had dominated Pennsylvania politics between 1776 and 1790. Federalists now seemed willing to listen to reason on the first proposed amendment.

Of the sixty-three members in the House when the amendment was reconsidered, thirty-six had served in the previous assembly and had

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12 General Advertiser, Sept 2, 3, 1791, Dunlap's Advertiser, Sept 2, 3, 5, 1791
13 Journal of the Pennsylvania House, 470, 490, General Advertiser, Sept 10, 1791, Dunlap's Advertiser, Sept 17, 1791, Journal of the Pennsylvania Senate, 1790-1791, 80, 299, 308, 313, 490 Neither vote was recorded
14 Keller, "Pennsylvania's Role," 102
15 Albert Gallatin, "Autobiographical Sketch," in E. James Ferguson ed., Selected Writings of Albert Gallatin (Indianapolis, 1967), 10-11, Russell J Ferguson, "Albert Gallatin Western Pennsylvania Politician," Western Pennsylvania History Magazine 116 (1933), 187 It is interesting to note that while Gallatin mentioned several legislative achievements during his first term, getting approval of the first proposed amendment was not listed among them "Gallatin does not mention his support for the first proposed amendment in his correspondence but no letters are extant for the weeks in which the amendment was before the House." Elaine Weber Pascu, Acting Director, The Papers of Albert Gallatin, to author, April 30, 1990
voted on the amendment; they had divided evenly for and against the amendment in the previous session. Since the newspaper reported the amendment had passed by a considerable majority, many either changed their minds or, perhaps, if they had remained steadfast against the amendment, did not significantly augment their numbers from the newly elected members of the House. Wells and Evans, the two members recorded in opposition to the amendment, were, however, serving their first legislative terms. Probably some of the legislators who opposed the amendment in the previous assembly had been persuaded by arguments of the proponents to change their position. It seems curious that no mention was made by any of the speakers of the assembly’s previous vote on the amendment. This might be explained on the grounds that those who debated the amendment were all new members; still, one would expect someone to have brought it to the attention of the legislature. The acrimony that dominated the last assembly under the Constitution of 1776 was absent in the first legislature under the Constitution of 1790. For the first time the measure was apparently considered on its merits, not as part of the Federalist-Antifederalist debate that had dominated Pennsylvania politics since September 1787.

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16 While yeas and nays were recorded for almost every vote taken in the previous assembly, few votes were recorded in the 1790-91 legislature.