

Oliver Ellsworth

Article the First

Submission Report

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Research Archive

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Oliver Ellsworth served as one of Connecticut's first two United States senators and as a member of the House–Senate conference committee that prepared the final twelve proposed amendments in September 1789.

On September 24, 1789, Ellsworth delivered the conference committee report to the Senate.

The report recommended changing the word “less” to “more” in Article the First.

The Senate Journal records the committee's recommendation:

“The managers were also of opinion, that it would be proper for both Houses to agree to amend the first article, by striking out the word ‘less,’ in the last line but one, and inserting in its place the word ‘more’...”

Both houses approved the conference report. The enrolled resolution consequently states “nor more than one Representative for every fifty thousand persons.”

**Connecticut—the state Ellsworth represented—
did not ratify Article the First.**

Oliver Ellsworth of Connecticut

Oliver Ellsworth was born in Windsor, Connecticut, on April 29, 1745. He attended Yale College and graduated from the College of New Jersey, now Princeton University, in 1766. He entered the Connecticut bar in 1771 and later served in the state legislature, the Continental Congress, the Confederation Congress, and the Connecticut Superior Court.

Ellsworth represented Connecticut at the Constitutional Convention of 1787. He participated in the Connecticut Compromise, served on the five-member Committee of Detail that prepared an early draft of the Constitution, and supported ratification after returning to Connecticut.

Connecticut selected Ellsworth and William Samuel Johnson as its first two United States senators. Ellsworth served from March 4, 1789, until March 8, 1796. He became the principal author of the Judiciary Act of 1789 and was appointed Chief Justice of the United States in 1796.

The Conference Committee

The House approved seventeen proposed amendments on August 24, 1789. The Senate revised the proposal, and the two chambers appointed a conference committee to reconcile their differences. James Madison served among the House managers; Oliver Ellsworth served among the Senate managers.

Ellsworth's report to the Senate on September 24 recommended that both houses reconsider Article the First and replace "less" with "more." The House Journal recorded the corresponding direction as replacing "less" "in the last place of the said first article."

The House accepted the conference report on September 24. The Senate approved the amendments on September 25 by the constitutionally specified two-thirds vote. The resulting twelve articles were transmitted to the states.

The Enrolled Wording

The original enrolled Joint Resolution preserved at the National Archives contains the final wording approved by Congress:

"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."

The Numerical Effect

The final wording establishes at least 200 representatives while also allowing no more than one representative for every 50,000 people. Those provisions conflict when the population is between 8 million and 10 million.

At a population of 8 million, one representative for every 50,000 people equals 160 representatives. At 9 million, it equals 180. Both results are below the stated minimum of 200. At 10 million, the ratio equals 200, and the two provisions can operate together.

Connecticut Did Not Ratify Article the First

The wording change was presented by Oliver Ellsworth, one of Connecticut's first two United States senators. Connecticut's own legislature subsequently considered the twelve amendments but did not complete ratification of Article the First.

On October 27, 1789, the Connecticut House of Representatives approved eleven of the twelve proposed amendments, including Article the First, while rejecting Article the Second concerning congressional compensation. Governor Samuel Huntington and the Council favored all twelve and rejected the House bill. A conference committee did not resolve the disagreement, and further consideration was postponed until May 1790.

On May 18, 1790, the Connecticut House adopted a different position: it rejected the first two proposed amendments and approved Articles Three through Twelve. Article the First was the apportionment amendment whose final wording Ellsworth had presented to the Senate. Three days later, the Council rejected the House bill and again favored all twelve. The chambers appointed another conference committee but remained unable to agree.

The Council rejected the conference report on May 24, and the House refused to alter its position on May 25. In October 1790, the House rejected all of the proposed amendments, and further consideration was postponed. No completed Connecticut ratification of Article the First resulted from these proceedings, and no exemplification of ratification was transmitted.

Connecticut's later symbolic ratification in April 1939 applied to the ten amendments that had become the Bill of Rights. It did not ratify Article the First. Thus, the historical record presents an important connection: Ellsworth delivered the conference recommendation that produced the final "more" wording, but the state he represented did not ultimately ratify Article the First.

Ellsworth and the Early Senate

Ellsworth was an influential member of the First Federal Congress. He chaired a committee assigned to prepare the Senate's early rules of procedure and played a major role in organizing the new federal government.

The first Senate conducted its sessions behind closed doors. Its adopted procedures protected the confidentiality of active deliberations while providing for the publication of 120 copies of the legislative journal once each month. Executive proceedings were entered in separate books.

The Senate remained closed to outside observers during its earliest years and began holding open legislative sessions in 1795. William Maclay's private diary supplies one of the principal surviving eyewitness accounts of the debates conducted during the closed-door period.

Documented Finding

Oliver Ellsworth presented the conference committee recommendation that changed the final wording of Article the First from "less" to "more." The House and Senate approved the recommendation, and the enrolled Joint Resolution contains that wording. The change produced the text submitted to the state legislatures for ratification.

The Clerical-Error Conjecture

Some later researchers have proposed that the conference committee intended the word “more” to be placed elsewhere in Article the First and that a congressional clerk changed the wrong occurrence of “less” while preparing the final text. This explanation is commonly described as a clerical, scrivener’s, or transcription error.

The surviving congressional record does not presently document that sequence of events. The Senate Journal records Ellsworth’s recommendation to change “less” in “the last line but one.” The House Journal describes the change as occurring “in the last place of the said first article.” The enrolled Joint Resolution then contains “more” in the final occurrence. No contemporaneous correction, clerk’s statement, or recorded objection has been located establishing that the final wording differed from the change approved by Congress.

The clerical-error explanation is plausible conjecture, but it cannot presently be established from the surviving congressional record. The documented record establishes the recommendation, the votes of both houses, and the final enrolled text, but it does not establish that a clerk independently introduced the wording by mistake.

Documentation

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