

The Eighteenth Amendment and National Prohibition, Part 5: Proposal and Ratification

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This Legal Sidebar post is the fifth in a seven-part series that discusses the [Eighteenth Amendment to the Constitution](#). Prior to its [repeal](#), the Eighteenth Amendment prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United States. Section 2 of the Amendment granted Congress and the state legislatures “concurrent power” to enforce nationwide Prohibition by enacting “appropriate legislation.” The Eighteenth Amendment was partly a response to the Supreme Court’s pre-Prohibition Era Commerce Clause jurisprudence, which limited [the federal](#) and [state governments’](#) power over the liquor traffic. As such, the Eighteenth Amendment’s history provides insight into the judicial evolution of the [Commerce Clause](#), which operates as both a positive grant of legislative power to Congress and a [limit on state authority](#) to regulate commerce. Additional information on this topic will be published in the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Proposal and Ratification of the Eighteenth Amendment

By 1917, the widespread proliferation of state restrictions on the liquor trade and Congress’s enactment of wartime prohibition measures had [laid the foundation](#) for nationwide Prohibition. The states’ ratification of the [Sixteenth Amendment](#) in 1913 boosted the Eighteenth Amendment’s prospects by empowering Congress to impose a nationwide income tax to offset the loss of federal alcohol excise tax revenue. With the Anti-Saloon League’s political influence at its peak, a wave of “dry” candidates swept into Congress in 1916. Although earlier nationwide prohibition efforts had [failed](#) to gain enough political support, advocates recognized that the political environment was favorable for Congress’s proposal of the Eighteenth Amendment.

On April 4, 1917, Senator Morris Sheppard of Texas [introduced](#) the joint resolution that would, as revised, become the Eighteenth Amendment. The Senate Judiciary Committee, to which the joint resolution was referred, reported it favorably. The committee’s report, relying on statements from prior Congresses, contended that the amendment should be submitted to the states because of popular support for Prohibition, the “evils” of alcoholic beverages, and the presumption that Congress lacked constitutional authority to regulate the intrastate manufacture and sale of alcoholic beverages comprehensively in peacetime. (In the decades leading up to the Eighteenth Amendment’s proposal and

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ratification, the Supreme Court [had adopted](#) a narrow view of Congress's power to regulate the local manufacture and sale of products under the Commerce Clause. After Prohibition's repeal, the Court [held](#) that Congress's power under the Commerce Clause and Necessary and Proper Clause extended to intrastate activities that, in the aggregate, substantially affect interstate commerce.)

During the summer of 1917, the Senate debated the draft Prohibition amendment. Supporters echoed the temperance movement, arguing that drinking was detrimental to the health and welfare of society. They contended that federal enforcement of nationwide Prohibition would prevent persons in "wet" states from smuggling alcoholic beverages into "dry" states, thereby undermining state prohibition laws. Opponents, on the other hand, argued that granting the federal government the power to police individuals' social habits would intrude upon the states' reserved powers and violate the American tradition of local self-governance. Senator Henry Cabot Lodge of Massachusetts predicted that Prohibition would become impossible for the federal government to enforce and widely disobeyed. Nonetheless, the Senate approved the joint resolution by the requisite two-thirds vote on August 1, 1917, sending it to the House for further action.

Four months later, the House considered the draft amendment. The House Judiciary Committee, to which the amendment had been referred, reported the joint resolution favorably with revisions. Among other changes, the House committee version of the amendment clarified that the states would maintain the power to enforce prohibition laws within their jurisdictions. In reporting the joint resolution, the committee declined to evaluate the merits of Prohibition, instead noting that popular support for the amendment, as evidenced by the prevalence of state prohibition laws, made it "incumbent upon the Congress, to submit the issue to the States in the manner requested." However, the amendment's opponents raised concerns about the federal government's intrusion on state sovereignty, loss of tax revenues, enforcement costs, and the creation of an illegal liquor traffic.

The House held a single day of debate on the amendment. Supporters echoed arguments made during the Senate debates, contending that the federal government should enforce a ban on alcoholic beverages and saloons in order to protect Americans' health, safety, and morals. They also noted that a majority of the states had adopted "dry" laws, which evidenced popular support for the amendment. Opponents raised concerns about state sovereignty and predicted that the federal and state governments would find it difficult to enforce a nationwide criminal prohibition on activities supported by popular majorities in many state and local jurisdictions.

The House approved the proposed amendment, as revised, by a vote of 282 to 128. After the Senate approved the revised version, Congress [submitted](#) the Eighteenth Amendment to the states for ratification on December 18, 1917. Although Congress imposed a seven-year deadline on the Eighteenth Amendment's ratification, the requisite three-fourths of the states approved it in little more than a year. On January 29, 1919, Acting Secretary of State Frank L. Polk certified that the Amendment had been ratified. By its terms, the Amendment did not become effective until January 17, 1920, which was one year after ratification.

The Volstead Act

Despite its broad scope, the Eighteenth Amendment [did not](#) "prescribe any penalties, forfeitures, or mode of enforcement." Instead, it empowered Congress and the state legislatures to enact "appropriate legislation" to enforce Prohibition. At the time of the Amendment's ratification, a majority of states [had enacted](#) laws prohibiting the liquor traffic within their jurisdictions. To enforce Prohibition nationwide and regulate beverage and non-beverage uses of alcohol, Congress enacted the National Prohibition Act or "[Volstead Act](#)" on October 28, 1919.

The Volstead Act prohibited the production, sale, transportation, and possession of beverages that contained 0.5% or greater alcohol by volume—a stringent definition that encompassed beer and light

wines in addition to distilled alcoholic beverages, such as whiskey or gin. Declaring every place where liquor was illegally manufactured, sold, or kept to be a “nuisance,” the Volstead Act established civil and criminal penalties, including property forfeiture, for violations of Prohibition. The Act also granted federal Prohibition agents the power to enforce its requirements throughout the United States.

Despite imposing a stringent ban on the liquor traffic, the Volstead Act allowed the licensed manufacture, production, use, and sale of alcohol for certain purposes (e.g., medicinal or religious), [subject](#) to valid state or local restrictions. The Act did not specifically prohibit drinking, and it allowed the private possession and consumption of intoxicating beverages that had been legally acquired.

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