

The Twenty-First Amendment and the End of Prohibition, Part 3: Drafting and State Ratification

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This Legal Sidebar is the third in a six-part series that discusses the [Twenty-First Amendment to the Constitution](#). The Twenty-First Amendment repealed the [Eighteenth Amendment](#), which prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United States. As interpreted by the Supreme Court, Section 2 of the Twenty-First Amendment [recognizes](#) that states may regulate or prohibit alcoholic beverages within their jurisdictions for legitimate, nonprotectionist purposes, such as health or safety.

Since the Twenty-First Amendment’s ratification in 1933, the Supreme Court has grappled with difficult questions about how the Constitution allocates the power to regulate alcoholic beverages between the federal and state governments. Such questions implicate the concept of [federalism](#), which refers to the division and sharing of power between the national and state governments. Accordingly, understanding how the Twenty-First Amendment interplays with other constitutional provisions may assist Congress in its legislative activities. Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Drafting of the Twenty-First Amendment

The November 1932 elections [resulted](#) in victories for many candidates who supported the Eighteenth Amendment’s repeal, including President-elect Franklin D. Roosevelt. Shortly after the elections, the lame-duck 72nd Congress renewed its efforts to end nationwide Prohibition. On December 6, 1932, Senator John J. Blaine of Wisconsin [introduced](#) a joint resolution, S.J. Res. 211, that would, as modified, be ratified by the states as the Twenty-First Amendment.

As originally introduced in the Senate, the Blaine resolution [did not clearly repeal](#) the Eighteenth Amendment. Instead, the resolution barred Congress from authorizing the transportation or importation of intoxicating liquors into “dry” states in violation of state law while permitting federal legislation that would assist the states in enforcing their prohibition laws. During a January 1933 markup session, the Senate Judiciary Committee significantly revised the resolution. The [revised resolution](#), which the

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committee reported favorably, specifically repealed the Eighteenth Amendment and protected dry states from illegal liquor imports.

During Senate debates over the draft Twenty-First Amendment, [opponents argued](#) that repealing the Eighteenth Amendment would permit licensed saloons and their negative societal impacts. Responding to such objections, Senator Blaine, the resolution's floor manager, [observed](#) that, during the 1932 elections, both major political parties had supported Congress's submission of an amendment to the states revising or repealing Prohibition.

[Describing](#) the Eighteenth Amendment as an "inflexible police regulation which might be appropriate in a municipal ordinance," Senator Blaine [offered](#) his interpretation of the draft Twenty-First Amendment's provisions.

Section 1 of the draft Twenty-First Amendment, which repealed the Eighteenth Amendment, did not require much explanation. However, [Section 2](#) was more ambiguous and controversial. Section 2 provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." Senator Blaine [contended](#) that Section 2 would "restor[e] to the States" the [power](#) to [regulate](#) alcoholic beverages that they had exercised in the nation's [early years](#). Observing that the Supreme Court's [pre-Prohibition Era Commerce Clause jurisprudence](#) had limited the states' power over liquor imports, Senator Blaine [contended](#) that Section 2 would "assure the so-called dry States against the importation of intoxicating liquor into those States [by writing] permanently into the Constitution a prohibition along that line." Several other Members of Congress [echoed](#) Senator Blaine's characterization of Section 2 as "[protecting](#)" dry states from liquor imports that a future Congress or Supreme Court majority might authorize after Prohibition's repeal. Nonetheless, a [few remarks](#) of Senator Blaine and [other Senators suggest](#) that some Members may have intended to grant the states even broader authority over alcoholic beverages.

During consideration of the draft Twenty-First Amendment, the Senate [amended](#) the joint resolution to provide for its submission to specially elected delegates in state ratifying conventions rather than state legislatures. At the time of its proposal, many politicians [believed](#) that state ratifying conventions, rather than state legislatures, should approve constitutional amendments governing individual rights and morals. In addition to seeking a ratification method deemed to better reflect the popular will, Congress may have also [wished to bypass](#) the temperance lobby, which remained powerful in state legislatures. According to this view, by requiring ratification from specially selected state delegates, rather than state legislators, Congress increased the Amendment's chances of successful ratification.

On February 16, 1933, the Senate [agreed](#) to the joint resolution, as amended, by a vote of 63-23. Four days later, after a short debate, the House [passed](#) the joint resolution under suspension of the rules by a vote of 289-121. With the [House's approval](#), the Twenty-First Amendment was submitted to the states on February 20, 1933. In anticipation of the Eighteenth Amendment's repeal, on March 22, 1933, Congress enacted the [Cullen-Harrison Act](#). The act legalized the manufacture and sale of beer and light wines with up to 3.2% alcohol by weight, except where prohibited by state law, effective April 7, 1933.

Ratification of the Twenty-First Amendment

Congress proposed the Twenty-First Amendment on February 20, 1933, [requiring](#) state ratifying conventions to approve it within seven years in order for it to become part of the Constitution. The requisite 36 state ratifying conventions [approved](#) the Twenty-First Amendment in less than a year. In general, the delegates at these state conventions, most of whom had pledged to vote for the Eighteenth Amendment's repeal, [spent little time](#) debating an issue that had already received strong popular support at the polls. On December 5, 1933, Acting Secretary of State William Phillips [certified](#) that the Amendment had been adopted, thereby ending almost 14 years of nationwide Prohibition.

On the day of the Twenty-First Amendment’s ratification, President Franklin D. Roosevelt [proclaimed](#) the end of nationwide Prohibition. Observing that the Twenty-First Amendment prohibited importing liquor into states in violation of their laws, Roosevelt urged Americans to ensure “that this return of individual freedom shall not be accompanied by the repugnant conditions that obtained prior to the adoption of the Eighteenth Amendment and those that have existed since its adoption.” Roosevelt implored Americans to stop buying untaxed, bootlegged liquor and asked “that no State shall by law or otherwise authorize the return of the saloon either in its old form or in some modern guise.”

With the Eighteenth Amendment’s repeal, the states—and many local governments acting under delegated state authority—again assumed primary responsibility for regulating alcoholic beverages. Exercising this authority, a few states banned or significantly restricted liquor traffic statewide until the mid-20th century. Nearly all of the states that permitted the sale of alcoholic beverages adopted a [three-tier distribution system](#), and [some states](#) granted an administrative agency a monopoly over the retailing or wholesaling of some types of alcoholic beverages sold for off-premises consumption. State and local jurisdictions adopted a [variety of laws and policies](#) governing the licensing, taxation, availability, prices, and production of alcoholic beverages. The federal government continued to [regulate](#) or [tax](#) activities involving alcoholic beverages, including aspects of beverage production, wholesale distribution, importation, labeling, and advertising.

Click [here](#) to continue to Part 4.

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