

ARTICLE V: THE AMENDMENT PROCESS — WHAT IS YOUR 28TH AMENDMENT?



Article V: The Amendment Process



If you were to introduce a
new Amendment—
the 28th Amendment—what
would you propose?



Article V: The
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BIG QUESTIONS

- Why did the Founding generation include a formal process for amending the Constitution?
- How does the Constitution's amendment process work, and why did the Founders make it so hard to amend the Constitution?
- What's the relationship between the Constitution's Article V amendment process and key foundational principles like popular sovereignty and the rule of law?
- What key changes have the American people made to the Constitution over time and what does that tell us about the key constitutional issues in American history?



Article V: The Amendment Process

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.



Article V: The Amendment Process

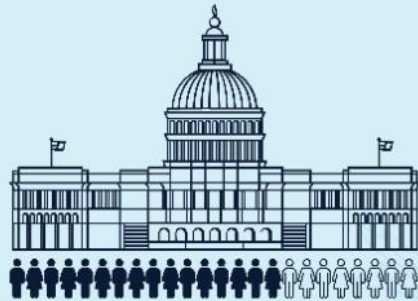


THE AMENDMENT PROCESS

Proposal Phase



An amendment to the Constitution is proposed



OR



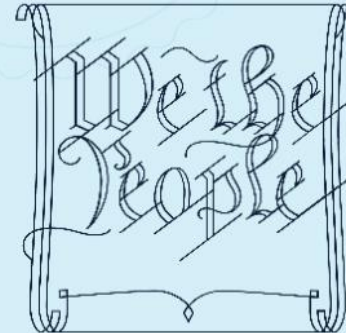
The proposed amendment must be approved by **2/3 of the members of both houses of congress** or **2/3 of the states.**

Ratification Phase



The proposed amendment must be ratified by **3/4 of the states.**

States can ratify via a **vote in their state legislature,** or **a ratifying convention.**

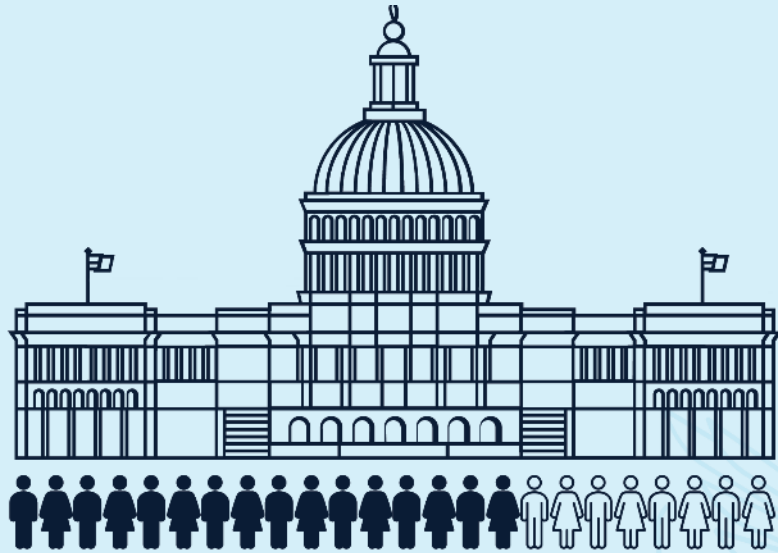


The Amendment is Now Part of the Constitution

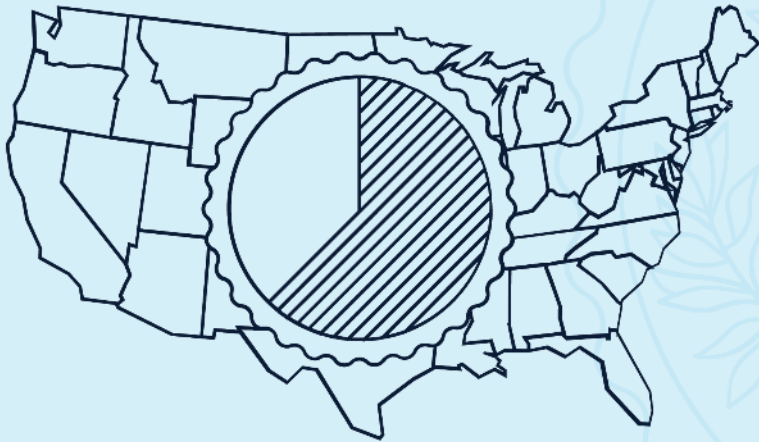


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PROPOSAL PHASE



OR



The proposed amendment must be approved by:

2/3 of the members of *both* houses of Congress

(this has been the pathway of every amendment, so far)

or

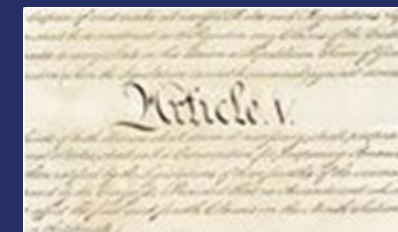
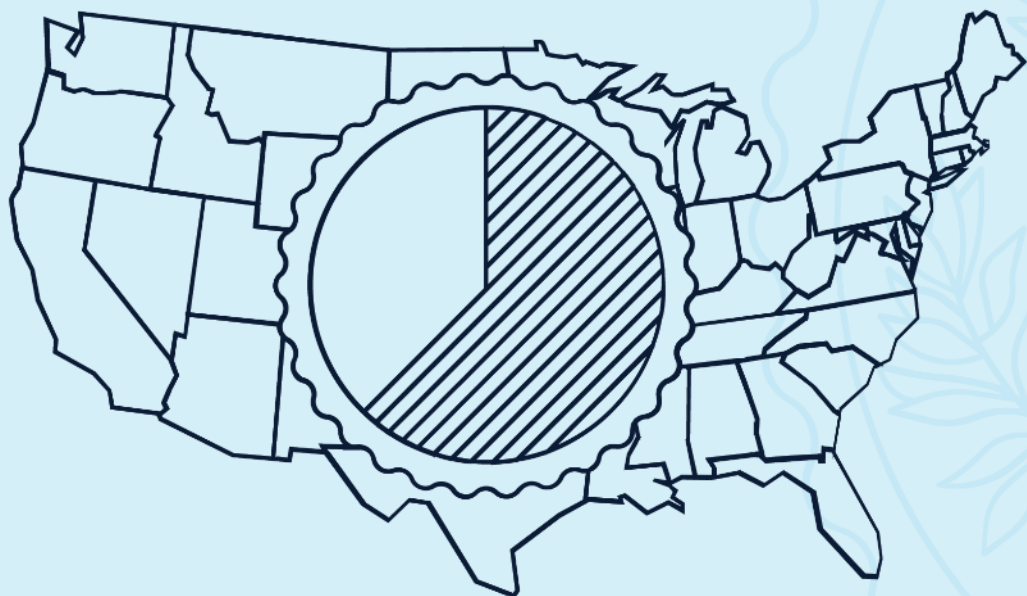
2/3 of the states.



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PROPOSAL PHASE

If Congress refuses to act on proposals for constitutional reform, state legislatures have the power under Article V to force Congress to “call a Convention for proposing Amendments” whenever “the Legislatures of two thirds of the Several States” apply for one. So far, no amendment has triggered this process.



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RATIFICATION PHASE



The proposed amendment must be ratified by $\frac{3}{4}$ of the states.

Article V sets out two pathways for state ratification—with *Congress* having the power to choose which pathway to use:

- **Votes in the state legislatures**
(Used to ratify 26 out of the 27 amendments)
- **A ratifying convention**
(Used once—to ratify the 21st Amendment)



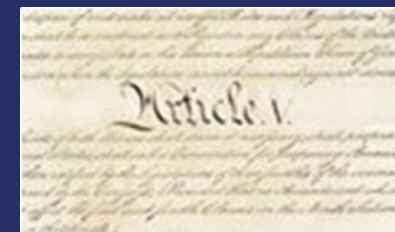
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POPULAR SOVEREIGNTY

The Article V amendment process is rooted in the Founding generation's commitment to popular sovereignty.

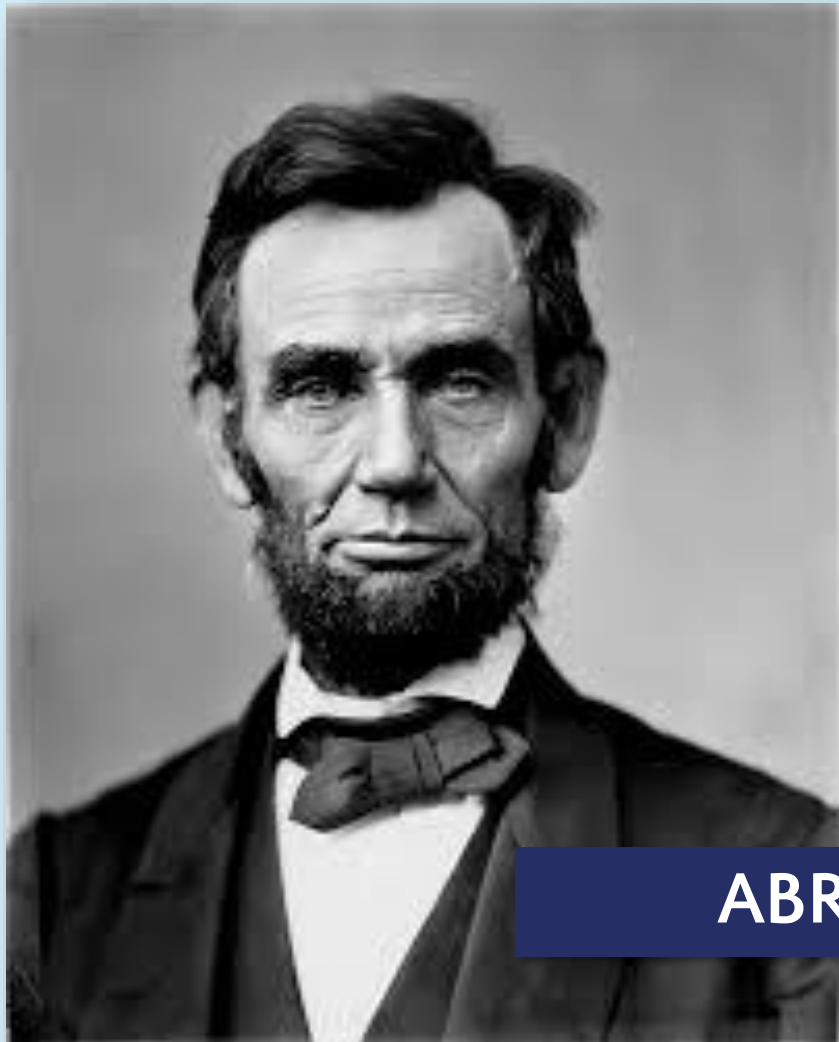
Popular Sovereignty: Beginning with the words “We the People,” the Constitution establishes a government that's driven by us—not a monarch and not an aristocracy—but by us, the American people.



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POPULAR SOVEREIGNTY



ABRAHAM LINCOLN

“government
of the people,
by the people,
for the
people.”



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WHEN HAVE WE AMENDED THE CONSTITUTION?

- **Historical events**
- **Social movements**
- **Critics of the Constitution**
- **Controversial Supreme Court decisions**
- **Lessons learned over time**



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WHEN HAVE WE AMENDED THE CONSTITUTION?



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Historical events

The Civil War led to the Reconstruction Amendments; the 13th, 14th, and 15th Amendments.

Critics of the Constitution

Anti-Federalists pushed for the Bill of Rights

WHEN HAVE WE AMENDED THE CONSTITUTION?



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Social movements

- The Women's Suffrage Movement led to 19th Amendment.
- The Civil Rights Movement led to the 24th Amendment, ending the poll tax.

WHEN HAVE WE AMENDED THE CONSTITUTION?



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Controversial Supreme Court Decisions

- The *Dred Scott* decision led to the 13th and 14th Amendments.
- *Chisholm v. Georgia* decision led to the 11th Amendment
- *Pollock* decision led to the 16th Amendment.

WHEN HAVE WE AMENDED THE CONSTITUTION?



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Lessons Learned Over Time

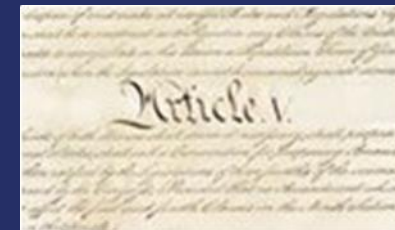
- FDR's unprecedented four terms in office showed the need for presidential term limits and led to the 22nd Amendment.
- The Election of 1800 showed the need for revisions to the Electoral College, leading to the 12th Amendment.
- The assassination of JFK showed the need for an amendment to deal with presidential incapacity, leading to the 25th Amendment.

BILL OF RIGHTS AMENDMENTS

The first ten amendments were proposed by the First Congress and ratified shortly thereafter.

These **Bill of Rights** amendments protect some of our most cherished liberties, including **free speech, a free press, religious freedom, and the right to a jury trial**—among many others.

These amendments originally applied to the national government only—not the states. (The 14th Amendment would later extend many of these rights to protect us against state abuses. Scholars call this process “incorporation.”)



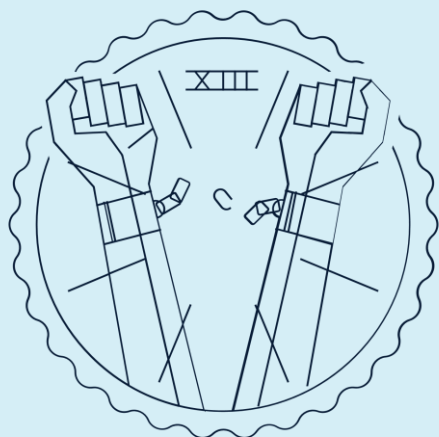
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RECONSTRUCTION AMENDMENTS

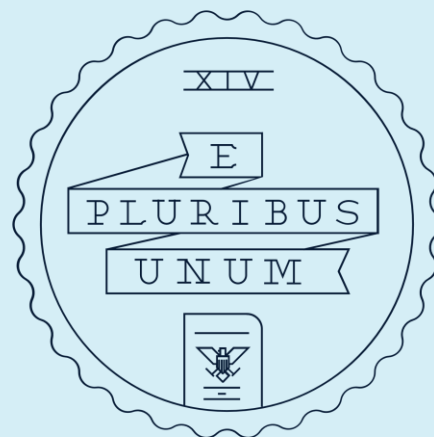
After the Civil War, we ratified a series of three amendments that transformed the Constitution forever. Many scholars refer to these transformational amendments as our nation's "Second Founding."

13TH AMENDMENT



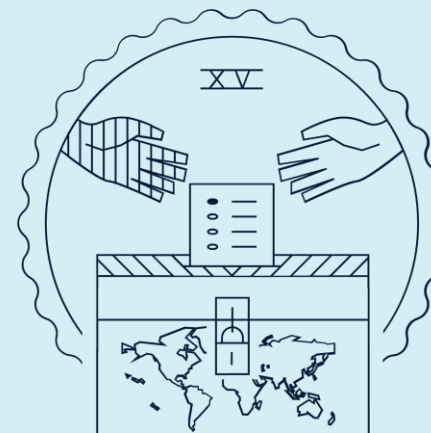
Abolished slavery
1865

14TH AMENDMENT

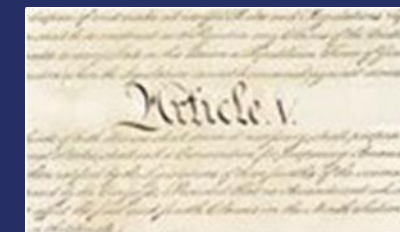


Wrote promises of freedom and
equality into the Constitution
1868

15TH AMENDMENT



Banned racial
discrimination in voting
1870

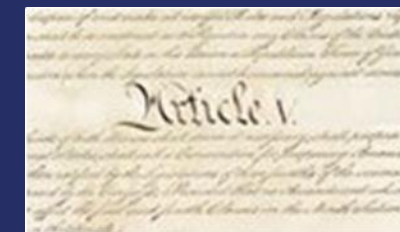


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OTHER AMENDMENTS

19th Amendment: Protected women against discrimination at the ballot box



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OTHER AMENDMENTS



18th Amendment: Banned the sale, manufacture, and transportation of alcohol throughout the nation

21st Amendment: Repealed that failed experiment in Prohibition



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OTHER AMENDMENTS

12th Amendment: Altered the Electoral College

16th Amendment: Gave the national government the power to collect an income tax

17th Amendment: Gave the American people the power to vote directly for their Senators

22nd Amendment: Limited the President to two terms

23rd Amendment: Gave D.C. voters the power to vote for President

24th Amendment: Abolished poll taxes in national elections

26th Amendment: Protected the voting rights of those 18 and older from age discrimination



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BIG IDEA

The Founding generation didn't believe that it had a monopoly on constitutional wisdom. Therefore, the Founders set out a formal amendment process that allowed later generations to revise our nation's charter and "form a more perfect Union." They wrote this process into Article V of the Constitution.

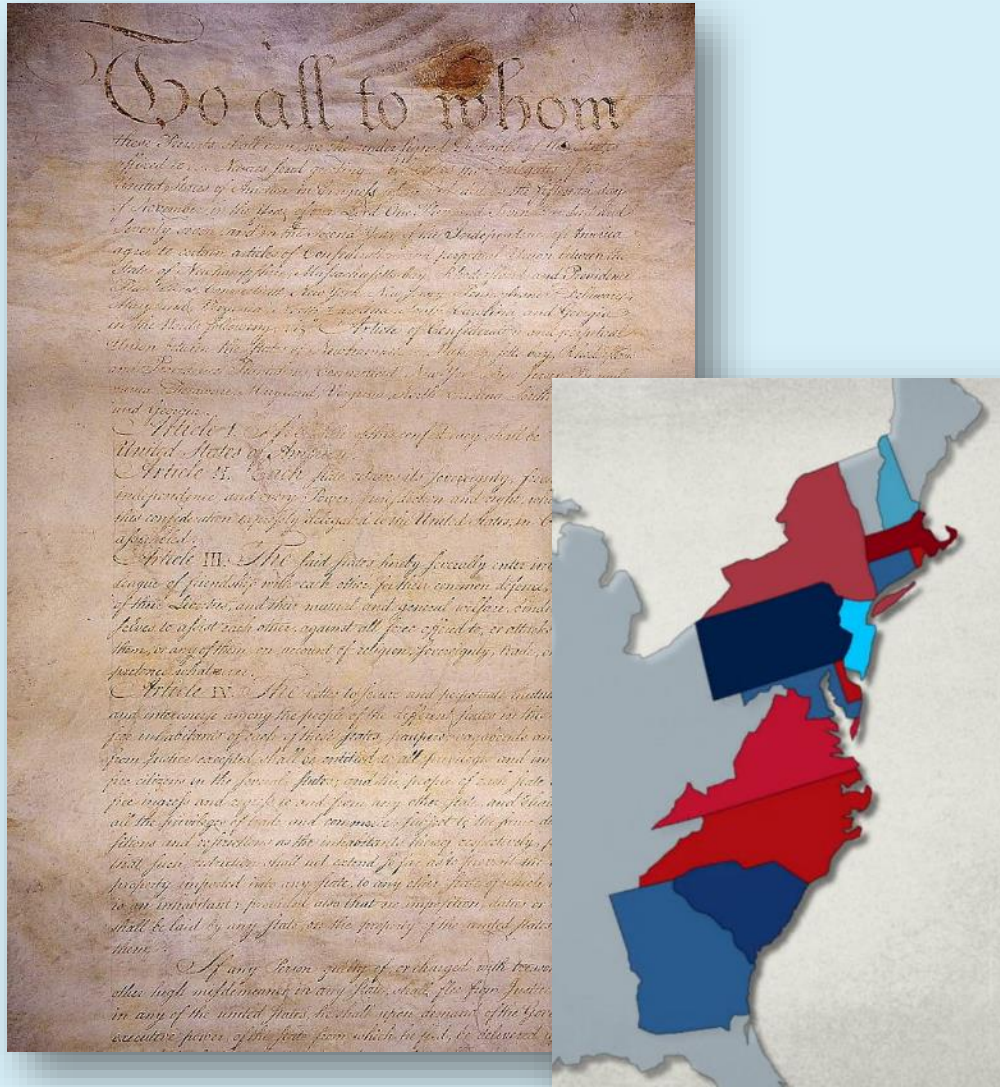


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THE ARTICLES OF CONFEDERATION



Under the Articles, any amendment required the unanimous vote of all thirteen states.

Practically speaking, this made the Articles impossible to amend.



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CONSTITUTIONAL CONVENTION

May to September 1787, Philadelphia, PA



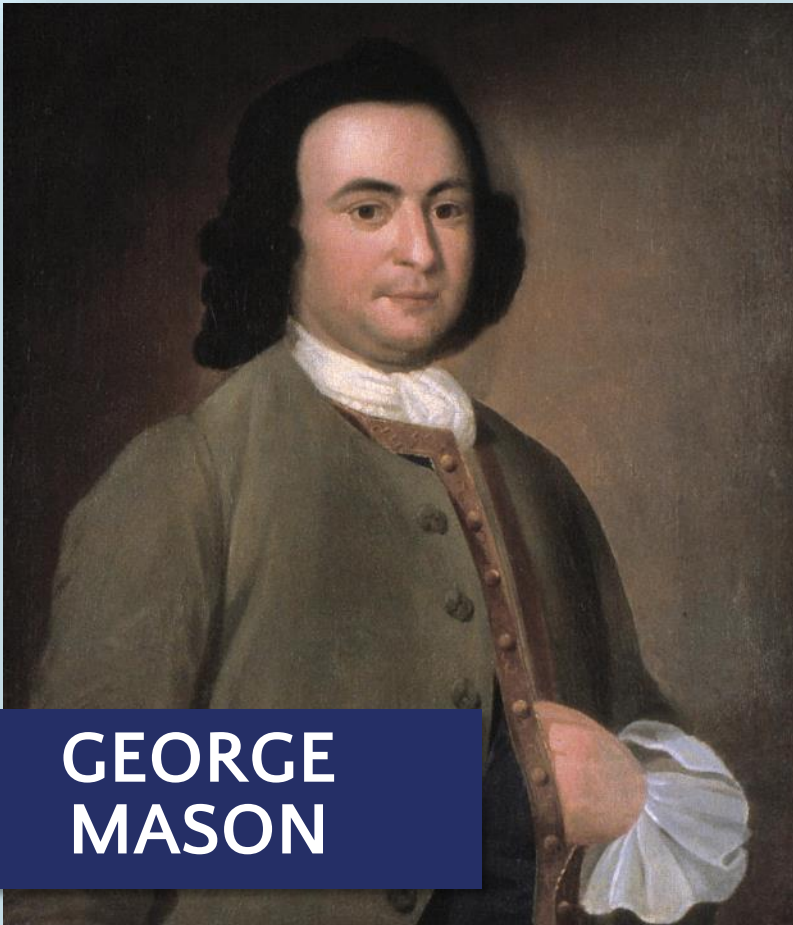
At the Convention, the delegates looked to write into the new Constitution an amendment process that was still demanding—but also much easier to meet than the unanimity requirement of the Articles of Confederation.



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CONSTITUTIONAL CONVENTION



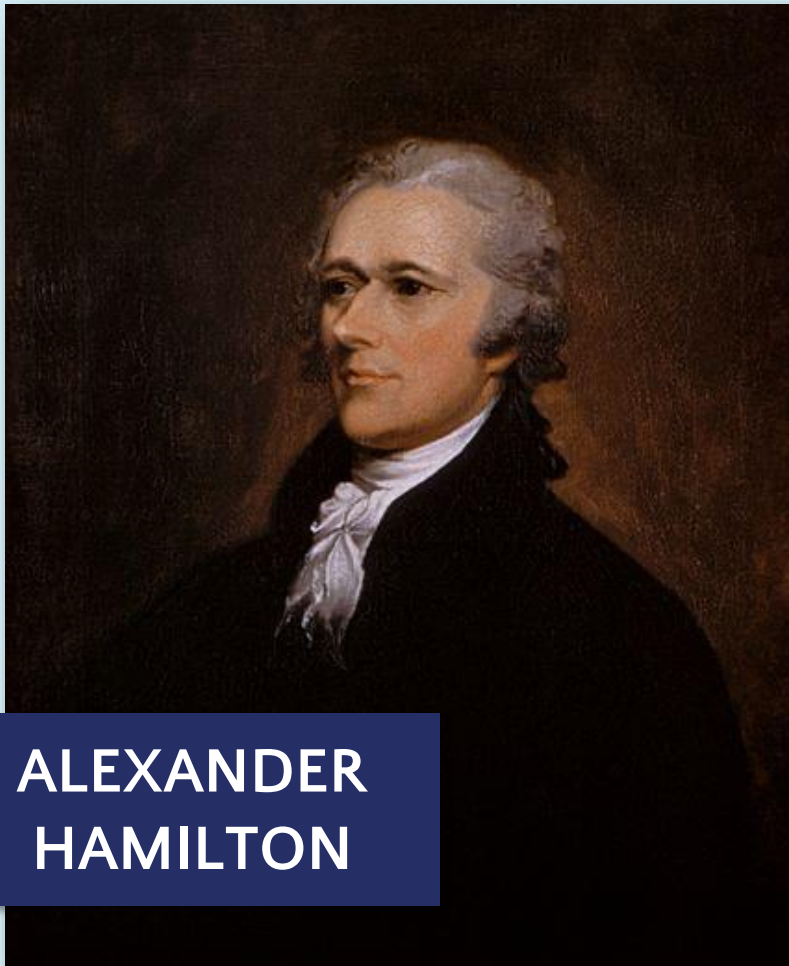
GEORGE
MASON

As George Mason explained at the Convention, the delegates wrote Article V to ensure **“an easy, regular[,] and Constitutional way”** of amending the Constitution. He hoped that the Constitution might be **“altered with as much regularity, and as little confusion, as any act of Assembly.”**



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CONSTITUTIONAL CONVENTION



ALEXANDER
HAMILTON

The Article V amendment process advanced a “**fundamental principle of republican government**”—“**the right of the people to alter . . . the established constitution whenever they find it inconsistent with their happiness.**”

-Federalist #78



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CONSTITUTIONAL CONVENTION

Framers wrote a few different ways of amending the Constitution into our nation's charter.

- They **abandoned the unanimity requirement** of the Articles of Confederation's, but reforms do **require more than majority** support.
- They also wanted reformers in the states to have a way of getting around Congress. They feared that Congress may seize too much power and block efforts to check it—the delegates rejected a proposal to give Congress a veto over any proposed amendment.



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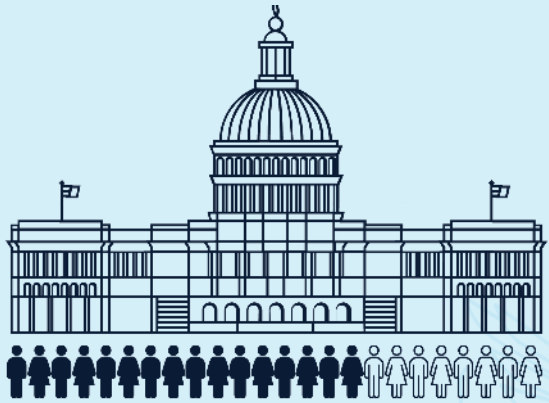
CHECKS ON CONGRESS IN THE AMENDMENT PROCESS



Article V: The Amendment Process

Proposal Phase

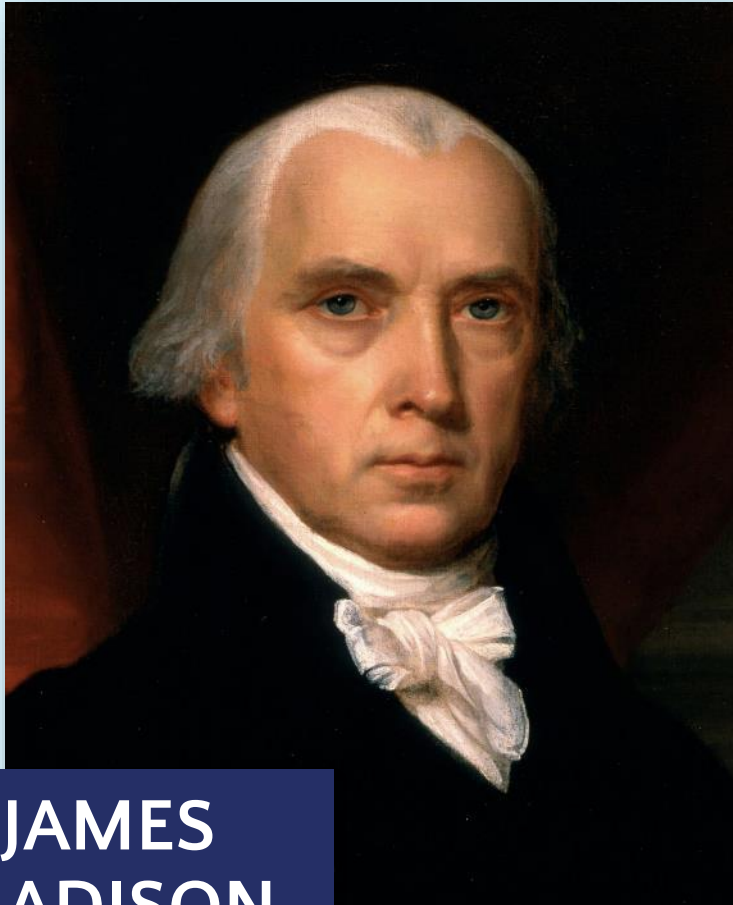
Congress *can* propose an amendment if reformers secure $2/3$ votes in *both* Houses of Congress. But even then, **Congress doesn't get a final say.** Congress must still send the proposed amendment to the states for ratification.



The state legislatures the power to force Congress to “call a **Convention for proposing Amendments**” whenever “the Legislatures of two thirds of the Several States” apply for one.



CHECKS ON CONGRESS IN THE AMENDMENT PROCESS



JAMES
MADISON

Article V “equally enables the general and state governments, to originate the amendment of errors, as they may be pointed out by the experience on one side or on the other.”

-Federalist #43



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CHECKS ON CONGRESS IN THE AMENDMENT PROCESS

Ratification Phase



The delegates also set out two pathways for ratifying a new amendment—with Congress having the power to choose which pathway to use—ratification “by the Legislatures of three fourths of the several States, or by Convention in three fourths thereof.”

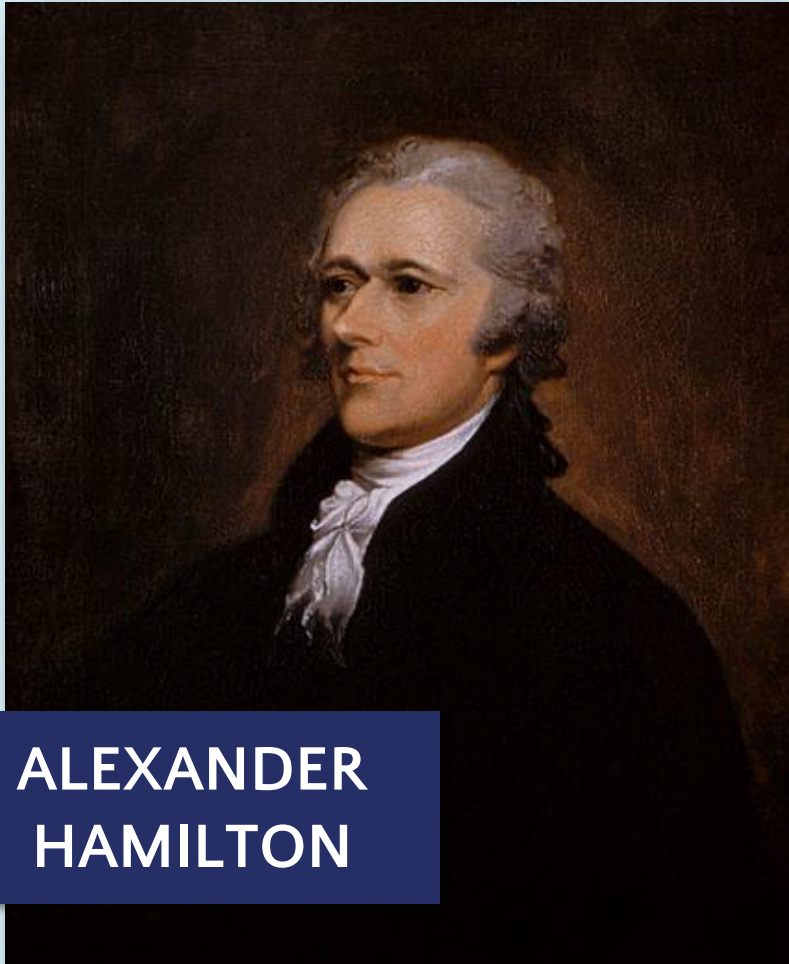
Congress disappears from the process after choosing the mode of ratification. **The ultimate ratification decision falls to the states.**



Article V: The Amendment Process



CHECKS ON CONGRESS IN THE AMENDMENT PROCESS



ALEXANDER
HAMILTON

The “national authority” would have “no option” but to go along with the states whenever they used their powers under the proposal or ratification stages of the Article V process.

-Federalist #85



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LIMITS ON THE ARTICLE V AMENDMENT PROCESS

Protection of a state's equal representation in the Senate.



Article V

...no State, without its consent, shall be deprived of its equal Suffrage in the Senate.



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LIMITS ON THE ARTICLE V AMENDMENT PROCESS

Protection of the “Slave Trade” Clause

Article I, Section 9:

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

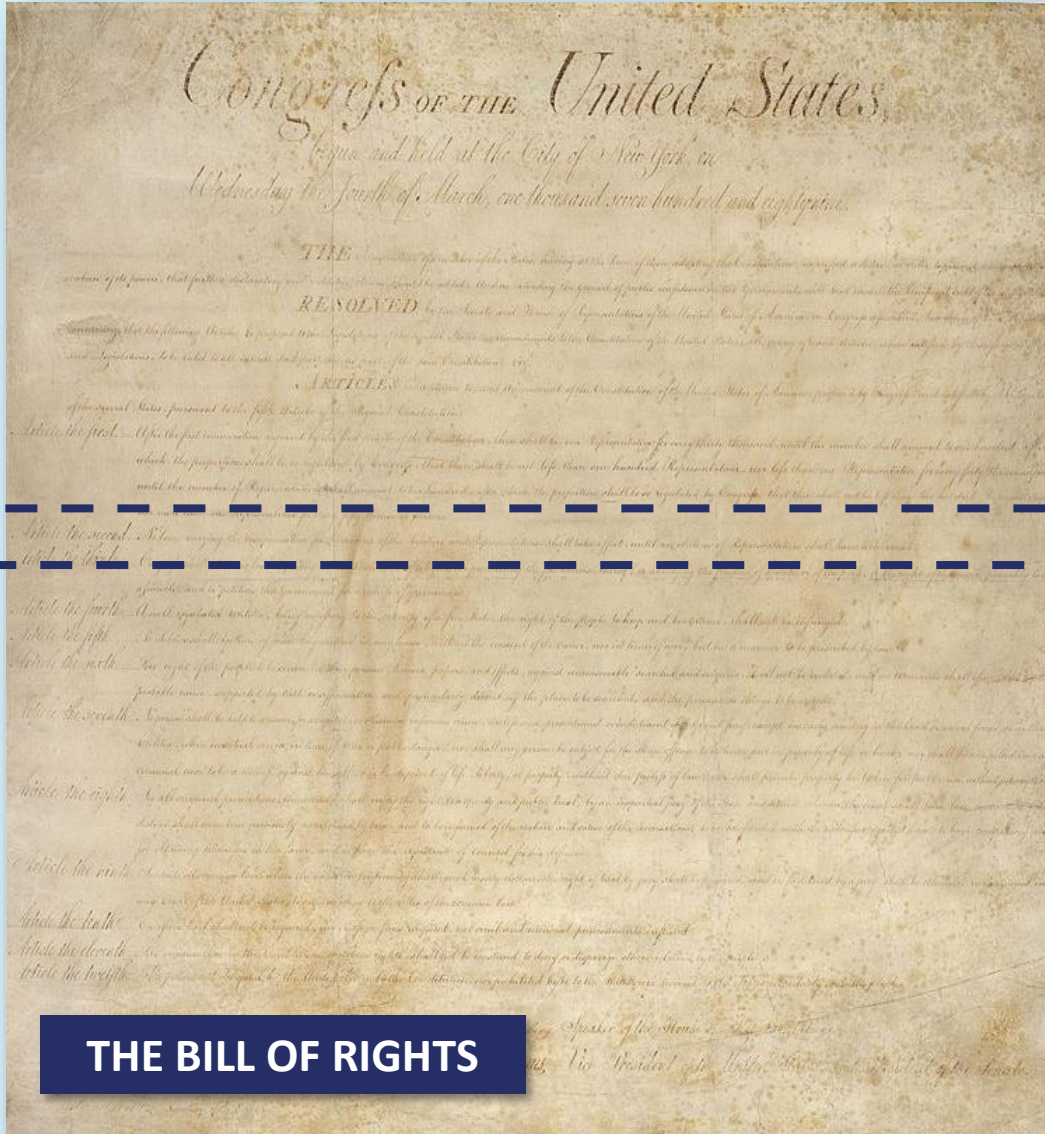
Article V:

...no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article.



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27TH AMENDMENT, 1789-1992



THE BILL OF RIGHTS

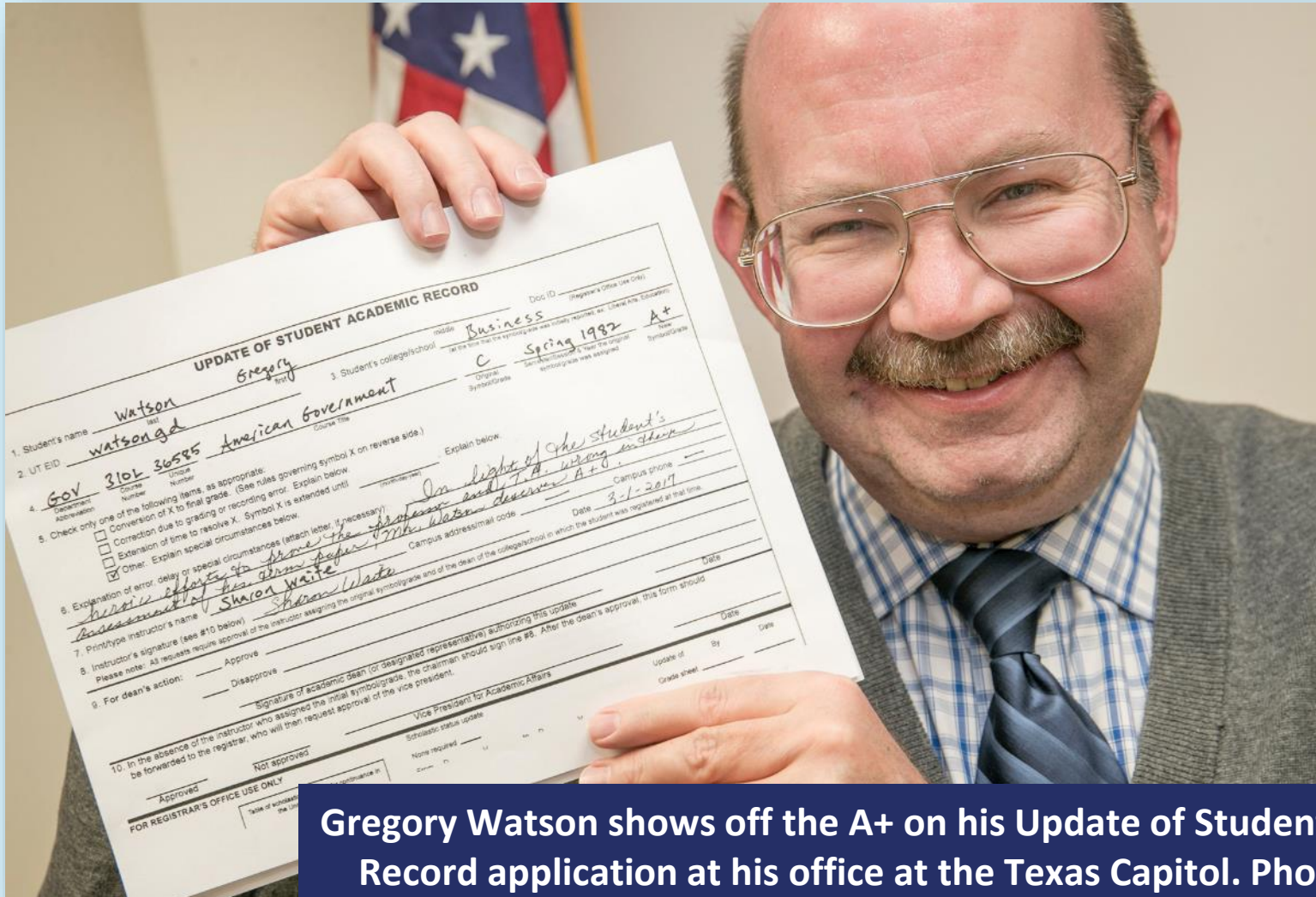
No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.



Article V: The Amendment Process



27TH AMENDMENT, 1789-1992



Article V: The Amendment Process

Gregory Watson shows off the A+ on his Update of Student Academic Record application at his office at the Texas Capitol. Photo by Jay Janner / Austin American-Statesman.

18TH AMENDMENT, 1919



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18TH AMENDMENT, 1919

Section 1

After one year from the ratification of this article **the manufacture, sale, or transportation of intoxicating liquors** within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes **is hereby prohibited.**



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18TH AMENDMENT, 1919



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21ST AMENDMENT, 1933

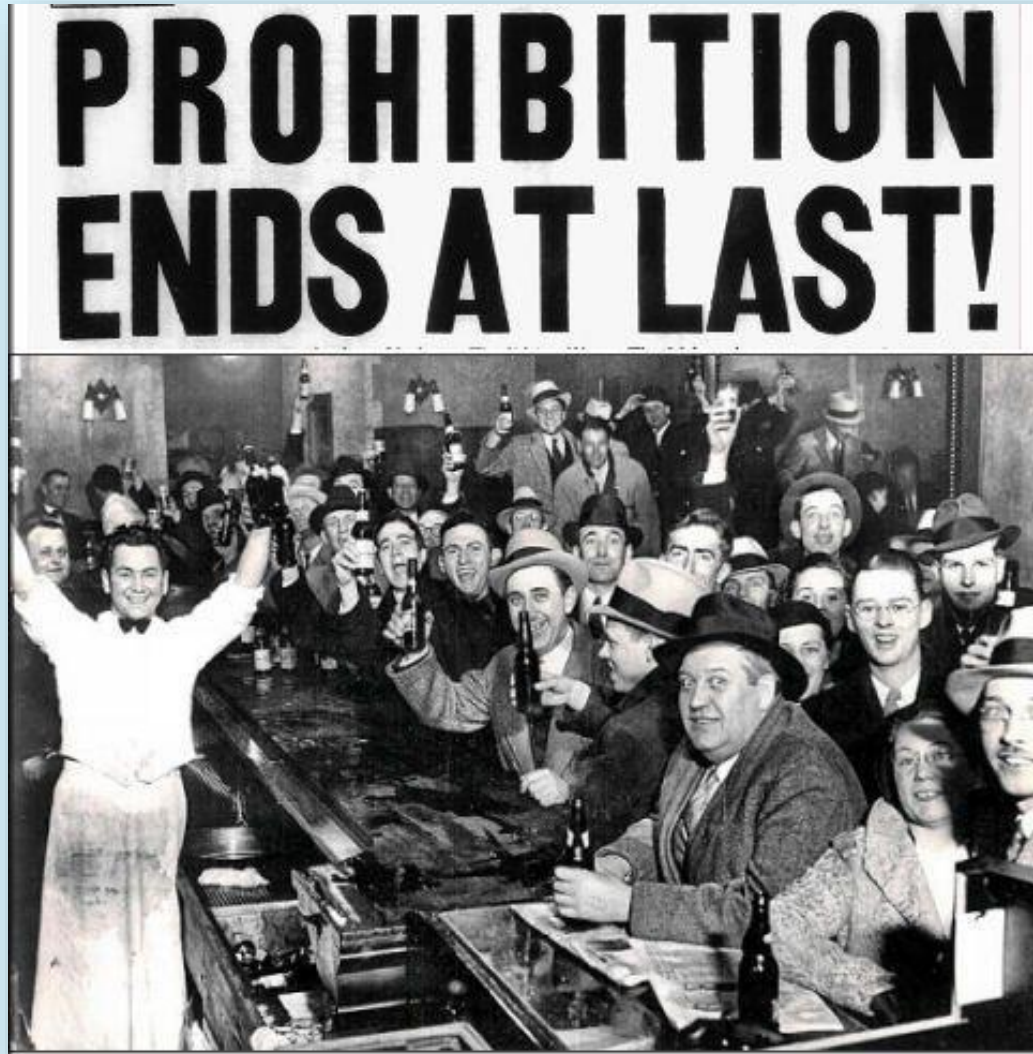
Section 1

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.



**Article V: The
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21ST AMENDMENT, 1933



Article V: The Amendment Process

