Introduction

After more than a century of activism, the temperance movement achieved its signal victory with the ratification of the Eighteenth Amendment to the US Constitution in 1919. The amendment abolished “the manufacture, sale, or transportation of intoxicating liquors,” and provided for “concurrent” federal and state authority to enforce the ban. It was controversial from its inception: it did not define “intoxicating liquors,” it did not specifically forbid the purchase of alcohol, it established “concurrent” state and federal enforcement but did not provide any means for enforcement, and its constitutionality was in question.

To provide for enforcement of the amendment, a powerful lobbying group called the Anti-Saloon League, led by its top lawyer, Wayne B. Wheeler, devised the National Prohibition Act, also known as the Volstead Act. Though the law’s wording was confusing, it defined intoxicating liquors as anything over 0.5% alcohol by volume. It also laid the groundwork for federal and state responsibility to prosecute violators. President Woodrow Wilson’s veto of the law was swiftly overridden by Congress in October 1919. The constitutionality of the new law and the amendment itself were challenged in a series of legal cases that were brought before the US Supreme Court as the National Prohibition Cases (1920). In this document, Wheeler reviewed the meaning of the Court’s decision to uphold the law:

The decision will go down in history as one of the great judicial landmarks in the progress of our civilization. There will be an effort in Congress and in the State Legislatures to nullify the law, and we will meet the practical problem of law enforcement for years to come, but this decision will be the judicial foundation upon which prohibition will rest through the ages.

Thirteen years later, the Twenty-first Amendment was ratified, overturning the Eighteenth Amendment and ending national prohibition in 1933.
Questions for Discussion

Read the introduction and view the image of the pamphlet. Then apply your knowledge of American history to answer the following questions:

1. For many years before the passage of the Volstead Act in 1919 there had been opposition by individuals and groups to the consumption of alcoholic beverages.
   - Develop a timeline noting prior attempts to limit or ban alcohol.
   - List the participants and their reasons for opposing alcohol.

2. Explain what Wayne B. Wheeler meant when he noted that “. . . we will meet the practical problem of law enforcement for years to come.” (*Additionally, research the involvement and growth of organized crime during the thirteen years of prohibition.)*

3. How flawed was the prediction by Wheeler that the decision of the Supreme Court upholding the Volstead Act “. . . will go down in history as one of the great judicial landmarks in the progress of our civilization?”

Extra Assignment: Why do we have a system now where national, state, and local laws regulate the sale and consumption of alcoholic beverages?
The Meaning of the Supreme Court Decision on National Prohibition

BY WAYNE B. WHEELER, LL.D.
General Counsel of the Anti-Saloon League of America

Mr. Wheeler made the original drafts of the National Prohibition Law, defended it in the courts and before the Judiciary Committee in Congress. The court decided all of the eleven contested points in complete accord with his theory. As the last history to repeal War Prohibition before the House Committee, December 11, 1919, Mr. Kean of New York, speaking for the section, said: "If the vote had had the brains to have retained the brains of Wayne B. Wheeler, they would not be in the fix they are today."—Bills.

I

The fact of submission by the Congress was sufficient evidence that Congress deemed it necessary.

It was contended that the resolution submitting the Eighteenth Amendment was invalid because it omitted the words "deemed it necessary" which were found in Article V of the Constitution.

II

Two-thirds of the membership, providing a quorum was present, was all that was necessary to submit the amendment.

The opposition claimed that it meant two-thirds of all elected.

III

Referendum provisions of the States cannot be applied to amendments to the Constitution of the United States.

The liquor interest and a few of the courts held that Article V of the Federal Constitution authorized a referendum vote in the States on ratification. The Supreme Court sustained our contention that Article V authorized only the Legislature or a convention to accept or reject amendments, and when Congress named the Legislature as a body to act, its disposition of the matter was final.

IV

It was within the power of Congress to submit the Eighteenth Amendment providing for Prohibition of the beverage liquor traffic.

In the Rhode Island and New Jersey cases it was argued that the Eighteenth Amendment was not an amendment to the Constitution but an addition to it and was revolutionary. In other words they claimed because the words "intoxicating liquor" were not in the Constitution, you could not amend the Constitution with reference to a subject matter not embodied in the Constitution.

V

The Eighteenth Amendment, by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

It was contended that because the amendment was not legally proposed and ratified it could not be a part of the Constitution.
The first section of the amendment applies to all the territory of the United States that is now in operation, binds all legislative bodies, courts, public officers and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by State legislature, or by territorial assembly, which authorizes or sanctions what the section prohibits.

This makes clear that Congress or a State legislature may carry out the purpose of the Eighteenth Amendment, but it cannot invalidate it by hostile or conflicting legislation. In other words Congress cannot define intoxicating liquor in a way to legalize a liquor actually intoxicating.

The second section of the amendment—the one declaring "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation"—does not enable Congress or the several States to defeat or thwart the Prohibition, but only to enforce it by appropriate means.

This conclusion of the court makes clear the power of legislative bodies to enforce the Prohibition by appropriate means. The State courts have already held that the purpose of the prohibition legislation is to prevent the means by which individuals get liquor for beverage use. It gives practically unlimited power to prohibit manufacture, sale, possession or other means by which individuals secure beverage liquor.

The power is not joint and not divided. It does not require that legislation hereunder by Congress to be effective shall be approved or sanctioned by the several States or any of them.

It was urged that the legislation adopted by Congress could not be effective until it was ratified by the States. Such a construction would permit the wet States to remain wet, and destroy the purpose of the amendment.

The power conferred on Congress by that section, while not exclusive, is territorially coextensive with the prohibition of the first section, embraces manufacture and other interstate transactions as well as importation, exportation and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several States or any of them.

It means that both Congress and the States may adopt prohibition laws, but the prohibition by Congress is not dependent upon the sanction or inaction on the part of the States.

The power conferred on Congress is constitutional and may be exerted against the disposal for beverage purposes of liquors manufactured before and after the amendment went into operation.

It was contended that the amendment could not operate upon liquors made before the Constitutional law went into effect.

The limits of the power of Congress were not transcended by the Volstead act, which prohibits liquors containing one-half of one per cent alcohol fit for beverage use.

The conclusion reaffirmed the decision in the New York Beer Case making...
The Supreme Court upholds national prohibition, 1920