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;

There Is NO Ratification Safeguard That Secures the Voice of State Legislatures

Unlike the calling of an Article V Convention to *propose* amendments—where we are completely in the dark as to the quorum, the form, and the extent of Congressional control due to the absence of clear historical precedent—we *do* have a clear historical precedent for what happens when Congress chooses ratification by "conventions in three fourth (of the states)." That precedent should serve as a stark warning to every state legislator who assumes that state legislatures will retain the final say over whether proposed amendments are ratified. History has already established that state legislatures may have nothing to say about it.

The 1933 ratification of the 21st Amendment, which repealed Prohibition, provides a revealing case study. Before and since that moment, every Constitutional amendment has been ratified by state legislatures. In this instance, however, Congress deliberately chose ratification by state conventions. At the time, the legislatures of many western states, including both Utah and Idaho, were firmly anti-liquor, making ratification through legislatures appear impossible. By shifting to conventions, Congress bypassed those legislatures—and succeeded.

How did Utah and Idaho—states whose legislatures were dominated by anti-liquor sentiment—nevertheless produce ratification conventions that *unanimously* supported repeal of Prohibition? How were those conventions organized? And what does this historical record reveal about Congressional control over ratification conventions?

We do not have to look beyond state statute to answer these questions. Both Utah and Idaho adopted statutes in 1933 governing ratification conventions, and both statutes remain on the books today. Idaho's appears in Title 34, Chapter 22, "The Constitutional Convention Act." Utah's is found in Title 20A, Chapter 15, "Convention to Ratify Amendments to the Constitution of the United States."

Utah's statute opens with a candid acknowledgment of federal supremacy:

> *"If Congress prescribes the manner in which the conventions shall be constituted and does not except those states that have established procedures for constituting*

> *ratification conventions:* ***(a) this chapter is inoperative; (b) the convention shall be constituted and shall operate as the congressional resolution or Act of Congress directs;*** *and (c) all state officers who are authorized or directed to take any action to constitute a ratification convention in Utah shall do so.*

Idaho's statute concludes with nearly identical language:

> *"**Federal statute to control.** If at or about the time of submitting any such amendment, Congress shall either in the resolution submitting the same or by statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions,* ***the preceding provisions of this act shall be inoperative, the convention shall be constituted and shall operate as the said resolution or Act of Congress shall direct,*** *and all officers of the state who may by the said resolution or statute be authorized or directed to take any action to constitute such a convention for this state are hereby authorized and directed to act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this state."*

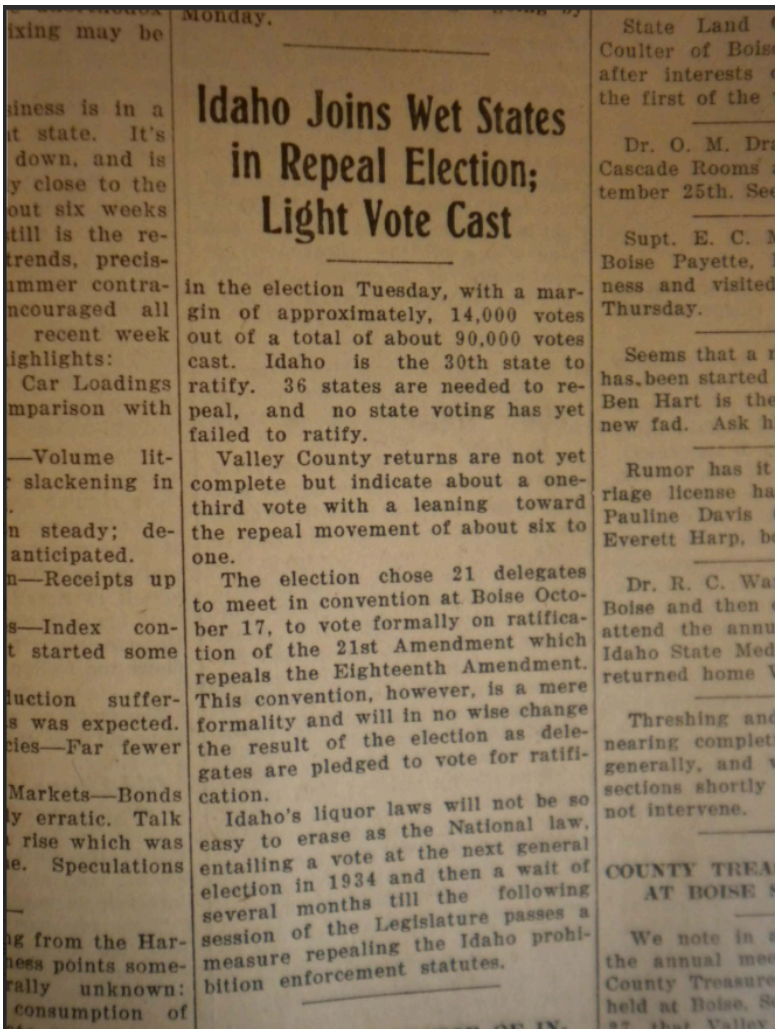
These provisions make the point unmistakable: when Congress chooses ratification by convention, federal control prevails. This is entirely consistent with the doctrine of *Necessary and Proper* powers. If Congress is authorized under Article V to select ratification by conventions, it must also possess the authority to define their composition and governing rules. States have a voice in the process ONLY to the extent Congress permits.

So how were ratification conventions in Utah and Idaho structured; and how did they both produce unanimous votes? In both states, the process of delegate selection ensured that the convention functioned as a one-sided rubber stamp.

State statutes directed the governor to proclaim a special election date, which did not need to coincide with any regular election. Potential delegates were required to declare in advance whether they supported or opposed ratification. These delegates appeared on the ballot not as individual candidates, but as competing slates, one for repeal and one against. Voters could only choose between the two positions; they had no ability to vote for individual delegates.

This structure effectively stripped the convention of any deliberative role. The substantive decision was made through a simple popular majority in a low-turnout, off-cycle election, and the convention itself became a procedural formality. If repeal advocates could mobilize a bare majority of favorable voters to show up, unanimous convention approval was guaranteed.

The historical record confirms just that outcome, as evident in this newspaper article published by "Cascade News" on September 22, 1933:



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Idaho Joins Wet States in Repeal Election; Light Vote Cast

in the election Tuesday, with a margin of approximately, 14,000 votes out of a total of about 90,000 votes cast. Idaho is the 30th state to ratify. 36 states are needed to repeal, and no state voting has yet failed to ratify.

Valley County returns are not yet complete but indicate about a one-third vote with a leaning toward the repeal movement of about six to one.

The election chose 21 delegates to meet in convention at Boise October 17, to vote formally on ratification of the 21st Amendment which repeals the Eighteenth Amendment. This convention, however, is a mere formality and will in no wise change the result of the election as delegates are pledged to vote for ratification.

Idaho's liquor laws will not be so easy to erase as the National law, entailing a vote at the next general election in 1934 and then a wait of several months till the following session of the Legislature passes a measure repealing the Idaho prohibition enforcement statutes.

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Note that this article specifically identified a light voter turnout and characterized the actual convention as a "mere formality."

State legislators who assume that they will have a guaranteed voice in ratification of proposed constitutional amendments should take heed. Article V authorizes Congress to select ratification by conventions, placing the process firmly under federal control. In practice, this could allow Congress to reduce ratification to a bare-majority popular vote in an off-cycle election—one that selects pre-committed delegates for a non-deliberative body that functions as little more than a formality. This is anything but a robust safeguard!

https://www.lib.uidaho.edu/digital/cccidaho/items/cccidaho1473.html

If the purpose of calling a convention to propose amendments is to reign in Congress, risks which undermine state control over the outcome cannot be ignored. The ratification process meant to vet proposed amendments can itself be shaped—and effectively controlled—by the very Congress we are purporting to constrain. Nothing in Article V prevents Congress from adopting convention rules that favor its preferred outcome.