and some thought that Congress would be the first to perceive the need for amendment and that to leave the matter to the discretion of the states would mean that no alterations but those increasing the powers of the states would ever be proposed.[12] Madison's proposal was adopted, empowering Congress to propose amendments either on its own initiative or upon application by the legislatures of two-thirds of the states.[13] When this provision came back from the Committee on Style, however, Gouverneur Morris and Gerry succeeded in inserting the language providing for a convention upon the application of the legislatures of two-thirds of the states.[14]

Proposals by Congress.—Few difficulties of a constitutional nature have arisen with regard to this method of initiating constitutional change, the only method, as we noted above, so far successfully resorted to. When Madison submitted to the House of Representatives the proposals from which the Bill of Rights evolved, he contemplated that they should be incorporated in the text of the original instrument.[15] Instead, the House decided to propose them as supplementary articles, a method followed since.[16] It ignored a suggestion that the two Houses should first resolve that amendments are necessary before considering specific proposals.[17] In the *National Prohibition Cases*,[18] the Court ruled that, in proposing an amendment, the two Houses of Congress thereby indicated that they deemed revision necessary. The same case also established the proposition that the vote required to propose an amendment was a vote of two thirds of the Members present—assuming the presence of a quorum—and not a vote of two-thirds of the entire membership.[19] The approval of the President is not necessary for a proposed amendment.[20]

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[12] Id. at 558 (Hamilton).

[13] Id. at 559

[14] Id. at 629–630. "Mr. Madison did not see why Congress would not be as much bound to propose amendments applied for by two-thirds of the state as to call a Convention on the like application. He saw no objection however against providing for a Convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum etc. which in Constitutional regulations ought to be as much as possible avoided."

[15] 1 ANNALS OF CONGRESS 433–436 (1789).

[16] Id. at 717.

[17] Id. at 430.

[18] 253 U.S. 350, 386 (1920).

[19] 253 U.S. at 386.

[20] In Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378 (1798), the Court rejected a challenge to the Eleventh Amendment based on the argument that it had not been submitted to the President for approval or veto. The Court' s brief opinion merely determined that the Eleventh Amendment was "constitutionally adopted." Id. at 382. Apparently during oral argument, Justice Chase opined that "[t]he negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." Id. at 381. *See*