

MODE OF AMENDMENT

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.

AMENDMENT OF THE CONSTITUTION

Scope of the Amending Power

When Article V was before the Constitutional Convention, a motion to insert a provision that “no State shall without its consent be affected in its internal policy” was made and rejected.¹ A further attempt to impose a substantive limitation on the amending power was made in 1861, when Congress submitted to the states a proposal to bar any future amendments which would authorize Congress to “interfere, within any State, with the domestic institutions thereof”² Three states ratified this article before the outbreak of the Civil War made it academic.³ Members of Congress opposed passage by Congress of the Thirteenth Amendment on the

¹ 2 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 630 (rev. ed. 1937).

² 57 CONG. GLOBE 1263 (1861).

³ H. AMES, *The Proposed Amendments to the Constitution of the United States During the First Century of Its History*, H. Doc. 353, pt. 2, 54th Congress, 2d Sess. (1897), 363.