basis that the amending process could not be used to work such a major change in the internal affairs of the states, but the protest was in vain.[4] Many years later the validity of both the Eighteenth and Nineteenth Amendments was challenged because of their content. The arguments against the former took a wide range. Counsel urged that the power of amendment is limited to the correction of errors in the framing of the Constitution and that it does not comprehend the adoption of additional or supplementary provisions. They contended further that ordinary legislation cannot be embodied in a constitutional amendment and that Congress cannot constitutionally propose any amendment that involves the exercise or relinquishment of the sovereign powers of a state.[5] The Nineteenth Amendment was attacked on the narrower ground that a state that had not ratified the amendment would be deprived of its equal suffrage in the Senate because its representatives in that body would be persons not of its choosing, *i.e.*, persons chosen by voters whom the state itself had not authorized to vote for Senators.[6] Brushing aside these arguments as unworthy of serious attention, the Supreme Court held both amendments valid.

Proposing a Constitutional Amendment

Thirty-three proposed amendments to the Constitution have been submitted to the states pursuant to this Article, all of them upon the vote of the requisite majorities in Congress and none by the alternative convention method.[7] In the Convention, much controversy surrounded the issue of the process by which the document then being drawn should be amended. At first, it was voted that "provision ought to be made for the amendment [of the Constitution] whensoever it shall seem necessary" without the agency of Congress being at all involved.[8] Acting upon this instruction, the Committee on Detail submitted a section providing that upon the application of the legislatures of two-thirds of the states Congress was to call a convention for purpose of amending the Constitution.[9] Adopted,[10] the section was soon reconsidered on the motion of Framers of quite different points of view. Some worried that the provision would allow two-thirds of the states to subvert the others,[11]

---

[4] 66 CONG. GLOBE 921, 1424–1425, 1444–1447, 1483–1488 (1864).

[5] *National Prohibition Cases*, 253 U.S. 350 (1920).

[6] Leser v. Garnett, 258 U.S. 130 (1922).

[7] A recent scholarly study of the amending process and the implications for our polity is R. BERNSTEIN, AMENDING AMERICA (1993).

[8] 1 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (rev. ed. 1937), 22, 202–203, 237; 2 id. at 85.

[9] Id. at 188.

[10] Id. at 467–468.

[11] Id. at 557–558 (Gerry).