

The Supreme Court upholds national prohibition, 1920

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.

The Supreme Court upholds national prohibition, 1920

Questions for Discussion

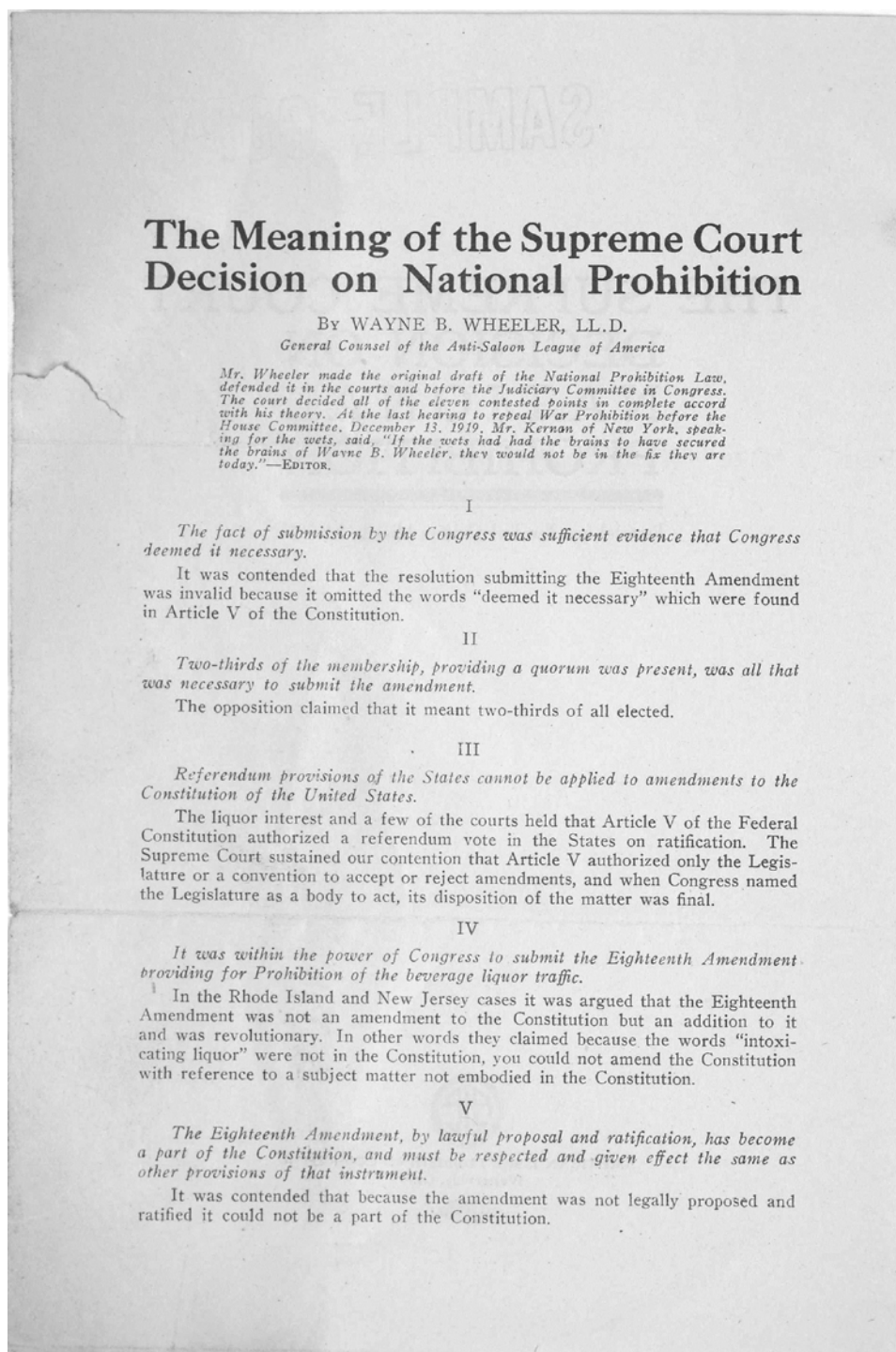
Read the introduction and view the image of the pamphlet. Then apply your knowledge of American history to answer the following questions:

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 Supreme Court upholds national prohibition, 1920

Image



Wayne B. Wheeler, *The Supreme Court Decision on National Prohibition*. Reprinted from *New York Christian Advocate*, July 1920. (Westerville, Ohio: American Issue Publishing Company, [1920]), page 1. Library of Congress Printed Ephemera Collection, Portfolio 138, Folder 24a.

The Supreme Court upholds national prohibition, 1920

VI

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.

VII

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.

VIII

The power is not joint and not divided. It does not require that legislation thereunder 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.

IX

The power confided to 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.

This 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.

X

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.

XI

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

Wayne B. Wheeler, *The Supreme Court Decision on National Prohibition*. Reprinted from *New York Christian Advocate*, July 1920. (Westerville, Ohio: American Issue Publishing Company, [1920]), page 2. Library of Congress Printed Ephemera Collection, Portfolio 138, Folder 24a, <http://hdl.loc.gov/loc.rbc/rbpe.1380240a>.

The Supreme Court upholds national prohibition, 1920

it clear that if prohibition is to be enforced effectively the standard adopted in the Prohibition Code must be maintained.

The liquor interests' last hope was that the court would construe concurrent power to mean contra-current power. We contended from the beginning that concurrent power meant cooperating power to carry out the purpose of the Eighteenth Amendment and not to nullify it; that either the State or Congress could enact any law prohibiting the beverage liquor traffic or pass any act having a reasonable relation to its enforcement. When such a law was enacted the other unit of Government could not legalize what was lawfully prohibited. If there should be a conflict between the State and a lawful act of Congress then Section Two of the Eighteenth Amendment and Article VI of the Federal Constitution would make the Federal law the supreme law of the land.

The opposition contended that concurrent power, which was inserted in the Constitution itself for the first time, was an anomaly and made the Federal Prohibition Code inoperative unless it was accepted by the States themselves. Chief Justice White in answering this contention, said: "I cannot accept this interpretation, since it would result simply in declaring that the provisions of the second section, avowedly enacted to provide means for carrying out the first, must be so interpreted as to practically nullify the first." Justice McKenna dissented from the decision of the court on concurrent power, and Justice McReynolds concurred with a reservation that certain questions of construction under the Eighteenth Amendment will inevitably arise and demand solution later on. The decision on the whole is conclusive and sweeping in its effect. It decides all the main contentions of the liquor interests against them and in favor of national prohibition. The Federal Prohibition Code was the first complete national prohibition law ever adopted by any great nation. In some respects it was experimental, but it was based upon fundamental principles sustained by the Supreme Court of the States in the enactment of similar laws. 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.

WASHINGTON, D. C.

138/24a

Wayne B. Wheeler, *The Supreme Court Decision on National Prohibition*. Reprinted from *New York Christian Advocate*, July 1920. (Westerville, Ohio: American Issue Publishing Company, [1920]), page 3. Library of Congress Printed Ephemera Collection, Portfolio 138, Folder 24a, <http://hdl.loc.gov/loc.rbc/rbpe.1380240a>.