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Legal Sidebar

The Twenty-First Amendment and the End of Prohibition, Part 6: State and Federal Regulation of Alcohol Sales

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This Legal Sidebar is the last in a six-part series that discusses the Twenty-First Amendment to the Constitution. The Twenty-First Amendment repealed the Eighteenth Amendment, which prohibited the manufacture, sale, or transportation of "intoxicating liquors" for "beverage purposes" within the United States. As interpreted by the Supreme Court, Section 2 of the Twenty-First Amendment recognizes that states may regulate or prohibit alcoholic beverages within their jurisdictions for legitimate, nonprotectionist purposes, such as health or safety.

Since the Twenty-First Amendment's ratification in 1933, the Supreme Court has grappled with difficult questions about how the Constitution allocates the power to regulate alcoholic beverages between the federal and state governments. Such questions implicate the concept of federalism, which refers to the division and sharing of power between the national and state governments. Accordingly, understanding how the Twenty-First Amendment interplays with other constitutional provisions may assist Congress in its legislative activities. Additional information on this topic is available at the Constitution Annotated: Analysis and Interpretation of the U.S. Constitution.

State and Federal Regulation of Alcohol Sales

Although the Twenty-First Amendment recognized that states may regulate or prohibit alcoholic beverages within their jurisdictions for legitimate, nonprotectionist purposes, such as health or safety, the Amendment did not completely oust Congress's Commerce Clause power over the manufacture, sale, and transportation of alcoholic beverages. After reviewing relevant post-Prohibition cases, the Supreme Court in a 1980 decision observed that "there is no bright line between federal and state powers over liquor. . . . Although States retain substantial discretion to establish [liquor] regulations, those controls may be subject to the federal commerce power in appropriate situations. The competing state and federal interests can be reconciled only after careful scrutiny of those concerns in a concrete case." Since the Twenty-First Amendment's ratification, the federal government has continued to tax or regulate activities involving alcoholic beverages, including aspects of beverage production, wholesale distribution, importation, labeling, and advertising.

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Under the Supremacy Clause, federal law may preempt conflicting state liquor law when the federal government's regulatory interests outweigh those asserted by the state, particularly in areas that do not implicate the state's core Twenty-First Amendment powers. For example, in its 1984 decision in *Capital Cities Cable, Inc. v. Crisp*, the Supreme Court held that various Federal Communications Commission rulings and regulations preempted Oklahoma statutes that prevented local cable television operators from retransmitting out-of-state alcoholic beverage advertisements to their subscribers. The Court determined that the Twenty-First Amendment granted the states broad power to regulate the "sale or use of liquor" within their jurisdictions, but that federal law would likely preempt conflicting state regulation outside of that field. The Court wrote that when the "times, places, and manner under which liquor may be imported and sold is not directly implicated, the balance between state and federal power tips decisively in favor of the federal law, and enforcement of the [clearly conflicting] state statute is barred by the Supremacy Clause." In *Capital Cities*, the federal government's interest in a "uniform national communications policy" aimed at "ensuring widespread availability of diverse cable services throughout the United States" outweighed the state's unsubstantiated interest in promoting temperance. The Court thus held the conflicting Oklahoma statute regulating cable signals to be preempted.

The Supreme Court has also weighed competing federal and state interests when deciding whether federal antitrust laws preempt conflicting state liquor laws. For example, in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, the Supreme Court held that the Sherman Antitrust Act, which prohibits "every contract, combination . . . , or conspiracy, in restraint of trade or commerce among the several states," preempted a California resale price maintenance law. The law required "all wine producers, wholesalers, and rectifiers" to "file fair trade contracts or price schedules with the State" and prohibited wine merchants from selling wine to retailers at a price higher than that in the filings. In holding that the Sherman Act preempted the state law, the Court determined that the federal interests in competition and free markets outweighed the state's asserted Twenty-First Amendment interests in promoting temperance and protecting small retailers. The Court determined that the Sherman Act prohibited producers from fixing the prices charged by wholesalers and retailers. It also rejected the state's attempt to rely on the state action immunity doctrine because the state merely enforced the prices set by private parties and did not exercise complete control over the establishment of prices, review "the reasonableness of the price schedules," or "regulate the terms of fair trade contracts."

State and Federal Regulation of Minimum Drinking Age

The Supreme Court has upheld a federal law related to the sale of alcoholic beverages in at least one case that did not specifically implicate federal preemption. In 1987, the Court upheld the National Minimum Drinking Age Act as a valid exercise of Congress's spending powers. The act conditioned each state's receipt of a small percentage of otherwise payable federal highway grant funds on the state's adoption of a minimum drinking age of 21. The Court held that the act did not infringe on the states' core Twenty-First Amendment powers to regulate alcoholic beverages because Congress was acting only "indirectly under its spending power to encourage uniformity in the States' drinking ages." Although the Court declined to decide whether the Twenty-First Amendment barred Congress from legislating a national minimum drinking age directly, it held that the threat of withholding 5% of highway funding from states that refused to adopt a minimum drinking age of 21 was not coercive but was instead only "relatively mild encouragement" to accept Congress's policy condition.

Additional Reference

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