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Legal Sidebar

The Twenty-First Amendment and the End of Prohibition, Part 1: Introduction

October 31, 2023

This Legal Sidebar is the first 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 The Twenty-First Amendment repealed the Eighteenth Amendment, which prohibited the manufacture, sale, or transportation of "intoxicating liquors" for "beverage purposes" within the United States. Section 2 of the Amendment provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." As interpreted by the Supreme Court, Section 2 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.

Historical Overview

The Twenty-First Amendment's proposal and ratification resulted from the United States' experience with Prohibition. From their inception, the Eighteenth Amendment and its implementing law, the Volstead Act, were controversial in part because they empowered the federal government to police activities that implicated individual social habits and morality—a role traditionally filled by state and local governments. Nationwide Prohibition quickly fell out of favor with the American public because of ineffective enforcement, harsh enforcement techniques, crime related to illegal liquor traffic, a need for tax revenue during the Great Depression, and widespread defiance of the law. The Twenty-First Amendment's framers sought to eliminate the Eighteenth Amendment's inflexible nationwide ban on the liquor trade while recognizing the states' authority to regulate or prohibit alcoholic beverages within their borders in accordance with local sentiment. However, it is unclear whether the Amendment's framers

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intended to give the states sweeping regulatory power over alcoholic beverages or merely sought to protect "dry" states from beverage imports that were illegal under state law.

In its early decisions interpreting the Twenty-First Amendment, the Supreme Court adopted an expansive view of the states' authority to regulate the importation, transportation, sale, distribution, and use of alcoholic beverages within their jurisdictions. The Court initially determined that Section 2 superseded some of the Constitution's limits on state action, including the Dormant Commerce Clause doctrine, which prohibits states from discriminating against interstate commerce. However, beginning later in the 20th century, the Court embraced a much narrower view of the states' Twenty-First Amendment powers. Viewing the Amendment as "one part of a unified constitutional scheme," the Court has held that Section 2 does not automatically override limits on state authority found in the Commerce Clause and other provisions of the Constitution, such as the First Amendment's Establishment and Free Speech Clauses and the Fourteenth Amendment's Due Process and Equal Protection Clauses.

In the decades after the Twenty-First Amendment's ratification, the Supreme Court also confirmed that Congress's constitutional authority over interstate and foreign commerce allows the federal government to regulate many aspects of the liquor trade. Generally, federal law may preempt conflicting state liquor laws when the federal government's regulatory interests outweigh those asserted by the states.

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Legal Sidebar

The Twenty-First Amendment and the End of Prohibition, Part 2: The Wickersham Commission and the Repeal Movement

October 31, 2023

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Wickersham Commission's Inquiry into the Problems with the Enforcement of the Eighteenth Amendment and Prohibition

From their inception, the Eighteenth Amendment and its implementing law, the National Prohibition Act, popularly known as the Volstead Act, were controversial in part because they empowered the federal government to police activities that implicated individual social habits and morality—a role traditionally filled by state and local governments. By the end of the "dry decade" of the 1920s, the Eighteenth Amendment had failed to eliminate the illegal manufacture and sale of alcoholic beverages within the United States. Shortly after entering office in 1929, President Herbert Hoover established an investigatory committee to identify obstacles to Prohibition's enforcement. Two years later, the "Wickersham Commission"—named for its chair, former Attorney General George W. Wickersham—released a report identifying a number of these obstacles.

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Observing that "[s]ettled habits and social customs do not yield readily to legislative fiats," the Wickersham Report detailed the American public's widespread defiance of Prohibition. Americans patronized clandestine retail liquor establishments, such as "speakeasies"; exploited loopholes in the Volstead Act to obtain medicinal liquor and sacramental wine for recreational purposes; and brewed alcoholic beverages at home, often without significant legal consequences.

The Wickersham Report also referred to significant problems with the federal and state governments' efforts to enforce Prohibition. Federal agencies responsible for investigating Volstead Act violations lacked the funds necessary for a serious enforcement effort. Many federal Prohibition agents received low salaries and had little formal training. This contributed to widespread corruption, as some agents ignored violations of the law in exchange for bribes from criminal organizations.

Although the Eighteenth Amendment granted the states "concurrent power" to enforce Prohibition, fewer than half of the states funded their own enforcement efforts. Instead, many states sought to preserve their limited fiscal resources for other priorities by relying on the federal government to enforce laws that were unpopular with a large number of state residents. During the 1920s, public support for Prohibition enforcement declined further as federal and state authorities employed harsh enforcement techniques, such as conducting violent police raids and wiretapping suspects' telephone lines, when investigating some alleged Volstead Act violations.

Public defiance of Prohibition and ineffective law enforcement fostered an illicit liquor traffic known as "bootlegging." Bootleggers smuggled alcoholic beverages into the United States through its expansive international borders, shore lines, and inland waterways. Bootleggers also produced and distributed alcoholic beverages within the United States. Organized criminal gangs, attracted by the illegal liquor trade's profitability, fought violent turf battles in Chicago, Detroit, and other major American cities.

Although the Wickersham Commission identified significant problems with Prohibition, it opposed the Eighteenth Amendment's repeal. However, a few individual commissioners wrote separately to advocate for the Eighteenth Amendment's revision or elimination.

The Repeal Movement and the 1932 Presidential Elections

The Wickersham Commission's 1931 report, which identified numerous problems with Prohibition, helped to encourage public support for the Eighteenth Amendment's repeal. Various social reform groups advocated for an end to Prohibition, including the Association Against the Prohibition Amendment and the Women's Organization for National Prohibition Reform. Pro-repeal advocates maintained that Prohibition intruded upon individual liberty, interfered with state sovereignty, and encouraged the growth of crime, among other objections.

Several influential business leaders also supported the Eighteenth Amendment's repeal in the late 1920s and early 1930s. These included newspaper publisher William Randolph Hearst, who viewed Prohibition as a failure, and philanthropist John D. Rockefeller Jr. Rockefeller revealed his opposition to Prohibition in a June 1932 letter to educator and philosopher Nicholas Murray Butler. Rockefeller wrote that Prohibition's benefits were "more than outweighed by the evils that have developed and flourished since its adoption, evils which, unless promptly checked, are likely to lead to conditions unspeakably worse than those which prevailed before."

Despite growing public opposition to the Eighteenth Amendment, incumbent President Herbert Hoover and the Republican Party adopted an equivocal approach toward Prohibition during the 1932 presidential campaign. The Republican Party platform attempted to appease both "dry" and "wet" supporters by opposing the Eighteenth Amendment's repeal while supporting Congress's proposal of a new amendment to the Constitution that would allow each state to decide whether to prohibit liquor or saloons within its jurisdiction.

By contrast, President Hoover's challenger, Democratic Party candidate Franklin D. Roosevelt, openly supported the Eighteenth Amendment's repeal. Speaking at a campaign event in August 1932, Roosevelt referred to Prohibition as a "complete and tragic failure" in many parts of the country that encouraged corruption and crime. He argued that vesting the state governments with primary regulatory authority over alcoholic beverages would better promote temperance goals if federal law protected dry states from illegal liquor imports. Campaigning during the depths of the Great Depression, Roosevelt contended that repealing the Eighteenth Amendment would also provide a much-needed source of tax revenue to the federal government. On November 8, 1932, Roosevelt won a landslide victory in the presidential election, signaling a potential end to Prohibition.

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Legal Sidebar

The Twenty-First Amendment and the End of Prohibition, Part 3: Drafting and State Ratification

October 31, 2023

This Legal Sidebar is the third 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.

Drafting of the Twenty-First Amendment

The November 1932 elections resulted in victories for many candidates who supported the Eighteenth Amendment's repeal, including President-elect Franklin D. Roosevelt. Shortly after the elections, the lame-duck 72nd Congress renewed its efforts to end nationwide Prohibition. On December 6, 1932, Senator John J. Blaine of Wisconsin introduced a joint resolution, S.J. Res. 211, that would, as modified, be ratified by the states as the Twenty-First Amendment.

As originally introduced in the Senate, the Blaine resolution did not clearly repeal the Eighteenth Amendment. Instead, the resolution barred Congress from authorizing the transportation or importation of intoxicating liquors into "dry" states in violation of state law while permitting federal legislation that would assist the states in enforcing their prohibition laws. During a January 1933 markup session, the Senate Judiciary Committee significantly revised the resolution. The revised resolution, which the

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committee reported favorably, specifically repealed the Eighteenth Amendment and protected dry states from illegal liquor imports.

During Senate debates over the draft Twenty-First Amendment, opponents argued that repealing the Eighteenth Amendment would permit licensed saloons and their negative societal impacts. Responding to such objections, Senator Blaine, the resolution's floor manager, observed that, during the 1932 elections, both major political parties had supported Congress's submission of an amendment to the states revising or repealing Prohibition.

Describing the Eighteenth Amendment as an "inflexible police regulation which might be appropriate in a municipal ordinance," Senator Blaine offered his interpretation of the draft Twenty-First Amendment's provisions.

Section 1 of the draft Twenty-First Amendment, which repealed the Eighteenth Amendment, did not require much explanation. However, Section 2 was more ambiguous and controversial. Section 2 provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." Senator Blaine contended that Section 2 would "restor[e] to the States" the power to regulate alcoholic beverages that they had exercised in the nation's early years. Observing that the Supreme Court's pre-Prohibition Era Commerce Clause jurisprudence had limited the states' power over liquor imports, Senator Blaine contended that Section 2 would "assure the so-called dry States against the importation of intoxicating liquor into those States [by writing] permanently into the Constitution a prohibition along that line." Several other Members of Congress echoed Senator Blaine's characterization of Section 2 as "protecting" dry states from liquor imports that a future Congress or Supreme Court majority might authorize after Prohibition's repeal. Nonetheless, a few remarks of Senator Blaine and other Senators suggest that some Members may have intended to grant the states even broader authority over alcoholic beverages.

During consideration of the draft Twenty-First Amendment, the Senate amended the joint resolution to provide for its submission to specially elected delegates in state ratifying conventions rather than state legislatures. At the time of its proposal, many politicians believed that state ratifying conventions, rather than state legislatures, should approve constitutional amendments governing individual rights and morals. In addition to seeking a ratification method deemed to better reflect the popular will, Congress may have also wished to bypass the temperance lobby, which remained powerful in state legislatures. According to this view, by requiring ratification from specially selected state delegates, rather than state legislators, Congress increased the Amendment's chances of successful ratification.

On February 16, 1933, the Senate agreed to the joint resolution, as amended, by a vote of 63-23. Four days later, after a short debate, the House passed the joint resolution under suspension of the rules by a vote of 289-121. With the House's approval, the Twenty-First Amendment was submitted to the states on February 20, 1933. In anticipation of the Eighteenth Amendment's repeal, on March 22, 1933, Congress enacted the Cullen-Harrison Act. The act legalized the manufacture and sale of beer and light wines with up to 3.2% alcohol by weight, except where prohibited by state law, effective April 7, 1933.

Ratification of the Twenty-First Amendment

Congress proposed the Twenty-First Amendment on February 20, 1933, requiring state ratifying conventions to approve it within seven years in order for it to become part of the Constitution. The requisite 36 state ratifying conventions approved the Twenty-First Amendment in less than a year. In general, the delegates at these state conventions, most of whom had pledged to vote for the Eighteenth Amendment's repeal, spent little time debating an issue that had already received strong popular support at the polls. On December 5, 1933, Acting Secretary of State William Phillips certified that the Amendment had been adopted, thereby ending almost 14 years of nationwide Prohibition.

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On the day of the Twenty-First Amendment's ratification, President Franklin D. Roosevelt proclaimed the end of nationwide Prohibition. Observing that the Twenty-First Amendment prohibited importing liquor into states in violation of their laws, Roosevelt urged Americans to ensure "that this return of individual freedom shall not be accompanied by the repugnant conditions that obtained prior to the adoption of the Eighteenth Amendment and those that have existed since its adoption." Roosevelt implored Americans to stop buying untaxed, bootlegged liquor and asked "that no State shall by law or otherwise authorize the return of the saloon either in its old form or in some modern guise."

With the Eighteenth Amendment's repeal, the states—and many local governments acting under delegated state authority—again assumed primary responsibility for regulating alcoholic beverages. Exercising this authority, a few states banned or significantly restricted liquor traffic statewide until the mid-20th century. Nearly all of the states that permitted the sale of alcoholic beverages adopted a three-tier distribution system, and some states granted an administrative agency a monopoly over the retailing or wholesaling of some types of alcoholic beverages sold for off-premises consumption. State and local jurisdictions adopted a variety of laws and policies governing the licensing, taxation, availability, prices, and production of alcoholic beverages. The federal government continued to regulate or tax activities involving alcoholic beverages, including aspects of beverage production, wholesale distribution, importation, labeling, and advertising.

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Legal Sidebar

The Twenty-First Amendment and the End of Prohibition, Part 4: State Power over Alcohol and the Commerce Clause

October 31, 2023

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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 Power over Alcohol and the Commerce Clause

Although Section 1 of the Twenty-First Amendment repealed nationwide Prohibition, Section 2 authorized states to regulate or prohibit the importation, transportation, sale, distribution, and use of alcoholic beverages within their borders. Questions about the extent of state authority to regulate beverages imported from other states or a foreign country have played a prominent role in the Supreme Court's Twenty-First Amendment jurisprudence.

In its early decisions interpreting the Twenty-First Amendment, the Supreme Court held that states could adopt legislation discriminating against alcoholic beverages imported from other states in favor of those of in-state origin without violating the Commerce Clause. Because Section 2 of the Amendment authorizes states to prohibit *all* imports of alcoholic beverages, the Court reasoned that states could impose "lesser" forms of regulation on such imports, including discriminatory regulations and taxes.

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More recent cases, however, have recognized that state regulation of alcoholic beverages is limited by the Dormant Commerce Clause doctrine. Absent contrary federal legislation, this doctrine restricts state power to discriminate against imported products and other out-of-state economic interests, including those of consumers, producers, and retail liquor-store license applicants. The Supreme Court has also held that the Commerce Clause and Import-Export Clause restrain state power to regulate international trade in alcoholic beverages, including imports and exports.

Modern Doctrine on State Power over Alcohol and Discrimination Against Interstate Commerce

In 2005, the Supreme Court confirmed that the Twenty-First Amendment does not authorize states to regulate alcoholic beverages contrary to general Dormant Commerce Clause principles. The Court held that discrimination in favor of local products can be upheld only if the state "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." This interpretation stemmed from the Court's conclusion that the Twenty-First Amendment restored the states' pre-Prohibition powers "to maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use" in a manner that did not discriminate against out-of-state goods.

Consequently, in *Granholm v. Heald*, the Supreme Court struck down regulatory schemes in Michigan and New York that discriminated against out-of-state wineries. Both states employed a "three-tier system" requiring separate state licenses for producers, wholesalers, and retailers. The Court first affirmed its prior cases holding that, as a general matter, "States can mandate a three-tier distribution scheme in the exercise of their authority" under the Twenty-First Amendment. However, within their three-tier systems, Michigan and New York accorded certain advantages to in-state wineries by creating special licensing systems allowing them to ship wine directly to in-state consumers. While recognizing that both states possessed significant authority to regulate the importation and sale of liquor, the Court wrote that the challenged systems "involve[d] straightforward attempts to discriminate in favor of local producers . . . contrary to the Commerce Clause," and that these schemes could not be "saved" by the Twenty-First Amendment.

The states argued in *Granholm* that their restrictions on out-of-state wineries' direct shipments passed muster under Dormant Commerce Clause principles because they advanced two legitimate local purposes: "keeping alcohol out of the hands of minors and facilitating tax collection." The Supreme Court rejected these claims, concluding that there was insufficient evidence to show that prohibiting direct shipments would solve either of these problems. The Court also suggested that states could achieve "their regulatory objectives . . . without discriminating against interstate commerce."

The Court struck down another discriminatory regulatory regime in *Tennessee Wine and Spirits Retailers Ass'n v. Thomas*. In that case, the Court considered specific aspects of Tennessee's three-tier system. In particular, Tennessee would issue new retail licenses only to individuals who had been residents of the state for the previous two years. In defense of the law, a trade association representing Tennessee liquor stores argued that the case was not governed by Granholm. In the trade association's view, Granholm's analysis was limited to laws that discriminate against out-of-state products and producers, whereas Tennessee's provision concerned "the licensing of domestic retail alcohol stores." The Court disagreed, explaining that instead, Granholm established that the Constitution "prohibits state discrimination against all 'out-of-state economic interests.'"

Ultimately, the Court concluded in *Tennessee Wine* that the challenged law was unconstitutional because its "predominant effect" was protectionism, writing that the law had "at best a highly attenuated relationship to public health or safety." The trade association argued that the provision was justified because it made retailers "amenable to the direct process of state courts," allowed the state "to determine an applicant's fitness to sell alcohol," and "promote[d] responsible alcohol consumption." In the Court's

view, however, there was no "'concrete evidence' showing that the two-year residency requirement actually promote[d] public health or safety; nor [was] there evidence that nondiscriminatory alternatives would be insufficient to further those interests."

Imports, Exports, Foreign Commerce, and Alcohol

Although the Twenty-First Amendment recognized the states' authority to control the "importation" of alcoholic beverages, it did not displace other provisions of the Constitution that restrict the states' power over international trade between the United States and foreign countries. One such provision, the Import-Export Clause, generally prohibits states from laying "imposts" or "duties" on imports or exports with foreign nations, absent congressional consent, except for purposes of covering charges associated with state inspection laws. In *Department of Revenue v. James B. Beam Distilling Co.*, the Supreme Court held that the Twenty-First Amendment had not repealed the Import-Export Clause with respect to alcoholic beverages. Thus, the State of Kentucky lacked authority to levy an excise tax on imported Scotch whiskey while the liquor remained in an unbroken package in the original importer's possession and had not been resold or used within the state.

The Commerce Clause, which gives Congress power to regulate interstate and foreign commerce, also limits the states' regulatory authority over international trade in alcoholic beverages. The Supreme Court has held that the Commerce Clause "operates with full force whenever one State attempts to regulate the transportation and sale of alcoholic beverages destined for distribution and consumption in a foreign country or another State." The Court thus nullified New York's attempt to prohibit the importation of out-of-state liquor for delivery to a retailer at John F. Kennedy Airport that sold the beverages duty-free to departing international airline passengers. In rejecting the state's argument that the Twenty-First Amendment authorized prohibition as a means of preventing the diversion of liquor into the state's local market, the Court observed that the transactions were supervised by federal customs authorities and destined for delivery to passengers upon their arrival in a foreign country.

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Legal Sidebar

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

October 31, 2023

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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

DANIEL OKRENT, LAST CALL: THE RISE AND FALL OF PROHIBITION (2010)

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