

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

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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 The Twenty-First Amendment repealed the [Eighteenth Amendment](#), which prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United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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