

Control Versus Competition: The Courts' Enigmatic Journey in the Obscure Borderland Between the Twenty-First Amendment and Commerce Clause

Since the dawn of recorded history, alcohol has enriched our culinary experiences, social gatherings, and lives. When abused, however, it has also occasioned great harm. According to the Centers for Disease Control and Prevention, alcohol contributes to over 88,000 deaths each year in this country, and the estimated economic cost of excessive drinking in the United States is over \$224 billion annually. In order to mitigate the damage caused by abuse, federal, state and local governments regulate the sale and consumption of alcohol. Minnesota has long been at the forefront of the public debate over how we regulate alcohol. The National Prohibition Act, passed in 1919 to effectuate the Eighteenth Amendment, is also known as the Volstead Act because it was sponsored and shepherded through Congress by Representative Volstead from Minnesota. Currently, the Alcohol Epidemiology Program at the University of Minnesota's School of Public Health harbors some of the nation's foremost experts on alcohol control policies. Nearly every year, the Minnesota state legislature considers some of the most controversial alcohol regulations and policies.

In the last twenty years, there has been a significant increase in legal challenges to these regulations by litigants who have an interest in deregulating the industry. Michael Madigan recently authored an article published in April 2018 in the Mitchell Hamline Law Review entitled "Control Versus Competition: The Courts' Enigmatic Journey in the Obscure Borderland Between the Twenty-First Amendment and Commerce Clause". The Twenty-first Amendment of the U.S. Constitution repealed Prohibition and conferred the primary authority to regulate alcohol upon the states. In contrast, the Commerce Clause of the U.S. Constitution conferred upon the federal government the authority to "regulate commerce among the several States

Most of the recent legal challenges were brought under the Commerce Clause challenging state liquor regulations on the basis that they either discriminated against out-of-state entities, and thereby burdened interstate commerce, or that they were preempted by conflicting federal law, like the Sherman Antitrust Act. The article discusses the evolving jurisprudence concerning the Twenty-first Amendment and the Commerce Clause and analyzes the Supreme Court's attempt to reconcile the states' primary authority to regulate and control alcohol with the federal interest to promote competition and interstate commerce in the industry. The outcome of these cases have significant consequences for the industry, consumption patterns and consumer choice. Deregulation would return us to the days of the tied-house where suppliers owned the retail outlets. History teaches us that this would ultimately lead to a multiplicity of retail outlets because each supplier would require a sales outlet in each community. There is an undisputed correlation between the density of retail outlets and excessive alcohol consumption. It would also have the effect of dramatically reducing consumer choice and variety because small suppliers would lack the resources to overcome the barriers of entry and compete with global suppliers. The article, in its entirety can be found at the following link: [Control Versus Competition: The Courts' Enigmatic Journey in the Obscure Borderland Between the Twenty-First Amendment and Commerce Clause](#)