

borders.<sup>9</sup> In such a situation the Twenty-first Amendment demands wide latitude for regulation by the state.<sup>10</sup> The Court added that there was nothing in the Twenty-first Amendment or any other part of the Constitution that required state laws regulating the liquor business to be motivated exclusively by a desire to promote temperance.<sup>11</sup>

More recent cases undercut the expansive interpretation of state powers in *Young's Market* and the other early cases. The first step was to harmonize Twenty-first Amendment and Commerce Clause principles where possible by asking "whether the interests implicated by a state regulation are so closely related to the powers reserved by the Twenty-first Amendment that the regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies."<sup>12</sup> Because "[t]he central purpose of the [Amendment] was not to empower States to favor local liquor industries by erecting barriers to competition," the "central tenet" of the Commerce Clause will control to invalidate "mere economic protectionism," at least where the state cannot justify its tax or regulation as "designed to promote temperance or to carry out any other purpose of the . . . Amendment."<sup>13</sup> But the Court eventually came to view the Twenty-first Amendment as not creating an exception to the commerce power. "[S]tate regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause," the Court stated in 2005. 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 alterna-

<sup>9</sup> 384 U.S. at 35. See, e.g., *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 330 (1964) and *State Bd. of Equalization v. Young's Market Co.*, 299 U.S. 59 (1936).

<sup>10</sup> 384 U.S. at 35. The Court added that it was not deciding then whether the mode of liquor regulation chosen by a state in such circumstances could ever constitute so grave an interference with a company's operations elsewhere as to make the regulation invalid under the Commerce Clause. *Id.* at 42–43.

<sup>11</sup> 384 U.S. at 47.

<sup>12</sup> *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 714 (1984). "[T]he central power reserved by § 2 of the Twenty-first Amendment [is] that of exercising 'control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.'" 467 U.S. at 715 (quoting *California Retail Liquor Dealers Ass'n v. Midcal Aluminum*, 445 U.S. 97 (1980)).

<sup>13</sup> *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 276 (1984). See also *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986) (attempt to regulate prices of out-of-state sales); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (state's limited interest in banning wine commercials carried on cable TV while permitting various other forms of liquor advertisement is outweighed by federal interest in promoting access to cable TV); and *324 Liquor Corp. v. Duffy*, 479 U.S. 335 (1987) (retail price maintenance in violation of Sherman Act).