the sale or use of liquor is concerned.'"[28] The holding on this point is "that the operation of the Twenty-first Amendment does not alter the application of the equal protection standards that would otherwise govern this case."[29] Other decisions reach the same result but without discussing the application of the Amendment.[30] Similarly, a state "may not exercise its power under the Twenty-first Amendment in a way which impinges upon the Establishment Clause of the First Amendment."[31]

The Court departed from this line of reasoning in *California v. LaRue*,[32] in which it sustained the facial constitutionality of regulations barring a lengthy list of actual or simulated sexual activities and motion picture portrayals of these activities in establishments licensed to sell liquor by the drink. In an action attacking the validity of the regulations as applied to ban nude dancing in bars, the Court considered at some length the material adduced at the public hearings which resulted in the rules demonstrating the antisocial consequences of the activities in the bars. It conceded that the regulations reached expression that would not be deemed legally obscene under prevailing standards and reached expressive conduct that would not be prohibitable under prevailing standards,[33] but the Court thought that the constitutional protection of conduct that partakes "more of gross sexuality than of communication" was outweighed by the state's interest in maintaining order and decency. Moreover, the Court continued, the second section of the Twenty-first Amendment gave an "added presumption in favor of the validity" of the regulations as applied to prohibit questioned activities in places serving liquor by the drink.[34]

A much broader ruling resulted when the Court considered the constitutionality of a state regulation banning topless dancing in

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[28] 429 U.S. at 206 (quoting P. Brest, Processes of Constitutional Decisionmaking—Cases and Materials 258 (1975).

[29] 429 U.S. at 209–210.

[30] *E.g.*, Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 178–97 (1972) (invalidating a state liquor regulation as an equal protection denial in a racial context); Wisconsin v. Constantineau, 400 U.S. 433 (1971) (invalidating a state law authorizing the posting of someone as an "excessive drinker" and thus barring him from buying liquor, as reconstrued in Paul v. Davis, 424 U.S. 693, 707–09 (1976)).

[31] Larkin v. Grendel's Den, 459 U.S. 116, 122 n.5 (1982).

[32] 409 U.S. 109 (1972).

[33] *Cf.* Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981) (ban on live nude dancing in Borough); Doran v. Salem Inn, 422 U.S. 922 (1975) (ban on nude dancing in "any public place" applied to topless dancing in bars).

[34] 409 U.S. at 114–19. In Doran v. Salem Inn, 422 U.S. 922, 932–33 (1975), the Court described its holding in *LaRue* more broadly, saying that "we concluded that the broad powers of the States to regulate the sale of liquor, conferred by the Twenty-first Amendment, outweighed any First Amendment interest in nude dancing and that a State could therefore ban such dancing as part of its liquor license control program."