

tives.”<sup>14</sup> This interpretation stemmed from the Court’s conclusion that the Twenty-first Amendment restored to states the powers that they had possessed prior to Prohibition “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.<sup>15</sup>

***Regulation of Transportation and “Through” Shipments.***—

When passing upon the constitutionality of legislation regulating the carriage of liquor interstate, a majority of the Justices seemed disposed to bypass the Twenty-first Amendment and to resolve the issue exclusively in terms of the Commerce Clause and state power. This trend toward devaluation of the Twenty-first Amendment was set in motion by *Ziffrin, Inc. v. Reeves*<sup>16</sup> in which a Kentucky statute that prohibited the transportation of intoxicating liquors by carriers other than licensed common carriers was enforced as to an Indiana corporation, engaged in delivering liquor obtained from Kentucky distillers to consignees in Illinois but licensed only as a contract carrier under the Federal Motor Carriers Act. After acknowledging that “the Twenty-first Amendment sanctions the right of a State to legislate concerning intoxicating liquors brought from without, unfettered by the Commerce Clause,”<sup>17</sup> the Court proceeded to found its ruling largely upon decisions antedating the Amendment that sustained similar state regulations as a legitimate exercise of the police power not unduly burdening interstate commerce. In light of the contemporaneous cases enumerated in the preceding topic construing the Twenty-first Amendment as according a plenary power to the states, such extended emphasis on the police power and the Commerce Clause would seem to have been unnecessary. Thereafter, a total eclipse of the Twenty-first Amendment was recorded in *Duckworth v. Arkansas*<sup>18</sup> and *Carter v. Virginia*,<sup>19</sup> in which, with-

<sup>14</sup> *Granholm v. Heald*, 544 U.S. 460, 487, 489 (2005) (invalidating Michigan and New York laws allowing in-state but not out-of-state wineries to make direct sales to consumers). This is the same test the Court applies outside the context of alcoholic beverages. See *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (once discrimination against interstate commerce is established, “the burden falls on the State to demonstrate both that the statute ‘serves a legitimate local purpose,’ and that this purpose could not be served as well by available nondiscriminatory means”) (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)).

<sup>15</sup> 460 U.S. at 484. According to Justice Kennedy’s opinion for the Court, these pre-Prohibition state powers were framed by the Wilson and Webb-Kenyon Acts, and the Twenty-first Amendment evidenced a “clear intention of constitutionalizing the Commerce Clause framework established under those statutes.” *Id.*

<sup>16</sup> 308 U.S. 132 (1939).

<sup>17</sup> 308 U.S. at 138.

<sup>18</sup> 314 U.S. 390 (1941).

<sup>19</sup> 321 U.S. 131 (1944). See also *Cartlidge v. Raincey*, 168 F.2d 841 (5th Cir. 1948), *cert. denied*, 335 U.S. 885 (1948).