No. 17-1408

In the

Supreme Court of the United States

BRECKINRIDGE HEALTH, INC. et al.,

Petitioners,

v.

ALEX M. AZAR, II, SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether state Medicaid payments to hospitals that provide services to disproportionately low income patients constitute a refund of costs those hospitals incurred in paying state taxes ordinarily reimbursable by Medicare, such that those taxes are no longer "actually incurred" costs for purposes of Medicare reimbursement.

2. Whether courts should defer to agency interpretation of statutes or regulations that involved embedded questions of state law.

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INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is widely respected as an experienced advocate of constitutional boundaries, including the separation of powers.[1] PLF has participated as lead counsel or amicus curiae in several cases before this Court involving the relationship between the judicial power and the administrative state, including *Berninger v. FCC*, Nos. 17-498 & 17-504 (U.S. filed Nov. 2, 2017); *Lucia v. SEC*, No. 17-130 (U.S. filed Aug. 25, 2017); *Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (2017); *Nat'l Rest. Ass'n v. Dep't of Labor*, No. 16-920 (U.S. filed Feb. 21, 2016); *U.S. Army Corps of Eng'rs v. Hawkes*, 136 S. Ct. 1807 (2016); *Sturgeon v. Frost*, 136 S. Ct. 1061 (2016); and *Sackett v. EPA*, 566 U.S. 120 (2012). PLF is particularly interested in the second question presented by this case—the extent to which federal courts should defer to federal agency interpretation of state laws, including state laws that work in conjunction with federal statutes. Given the expansiveness of the federal administrative state, entrenched largely due to the deference granted to its policies, PLF urges this Court to accept this case to establish firm boundaries to prevent judicial

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

deference to federal agency interpretations of state law.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

"Critical access hospitals" in rural Kentucky serve indigent patients in isolated areas of the state. To help these cash-strapped facilities remain open and provide healthcare to underserved populations, Congress enacted subsidies for these hospitals via the Medicare and Medicaid laws and regulations to reimburse reasonable costs. In 2009, the Department of Health and Human Services (HHS) enacted a new policy to administer these subsidies by interpreting Kentucky tax laws in a way that effectively reduced the amount of reimbursement. *Breckinridge Health, Inc. v. Price*, 869 F.3d 422, 424-25 (6th Cir. 2017). Several rural health providers sued, but the district court and Sixth Circuit applied *Chevron* deference[2] to the agency's interpretation of the state tax laws and ruled that HHS's policy decision was not "arbitrary, capricious, or manifestly contrary to the Medicare statute." *Id.* at 424.

Chevron deference applies only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States v. Mead Corp.*, 533 U.S. 218, 226-27 (2001), and when the agency has "the degree of regulatory expertise necessary to [the] enforcement"

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[2] *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

of the provision at issue. *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 703-04, 708 (1995). Neither justification applies when a federal agency interprets state law that the agency neither enforces nor administers.

The Sixth Circuit in this case deferred not only to the HHS interpretation of the Medicaid and Medicare laws and regulations (which *Chevron* sometimes permits),[3] but also to the agency's interpretation of related Kentucky statutes, holding that the agency's view of those statutes "seems plausible." *Breckinridge*, 869 F.3d at 427. As noted in the Petition for Writ of Certiorari at 22-23, circuit courts are split as to whether *Chevron* deference ever applies with regard to agency interpretation of state laws. The issue is of national importance because it extends well beyond the Medicare and Medicaid statutes considered here. As shown below, agencies are called upon to interpret state laws and regulations in a variety of contexts, raising significant federalism concerns. Given the serious constitutional questions about *Chevron* deference's compliance with the separation of powers, this Court should not permit it to expand.

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[3] Whether broadly or narrowly construed, the *Chevron* doctrine has its exceptions and limits. *See, e.g.*, *Motor Vehicle Mfrs. Ass'n of the U.S. Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212-13, (1988) ("We have never applied [*Chevron* deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice . . . Congress has delegated to the administrative official and not to appellate counsel . . . ." (internal quotation marks omitted)).

This Court should grant the petition and, on the merits, hold that no deference is warranted when federal agencies interpret state law.

REASONS TO GRANT THE PETITION

I.

THE PETITION RAISES A SIGNIFICANT QUESTION OF NATIONAL IMPORTANCE BECAUSE AGENCIES INTERPRET STATE LAW IN MANY CONTEXTS

In this case, the Sixth Circuit deferred to the Department of Health and Human Services' interpretation of a Kentucky law when determining the law's effect under federal Medicare and Medicaid statutes. *Breckinridge*, 869 F.3d at 425. Medicaid, like many wide-ranging statutes, incorporates "cooperative federalism" that depends on state laws and regulations to further the federal statute's goals. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 625 (2012) (Ginsburg, J., dissenting) ("Medicaid is a prototypical example of federal-state cooperation in serving the Nation's general welfare."). The first question presented asks this Court to interpret those statutes in a way that protects critical access hospitals' reimbursements. But the second question presented, challenging the federal court's invocation of *Chevron* to defer to a federal agency's interpretation of state law, transcends the particular Medicare and Medicaid statutes at issue in this case. In fact, many federal statutes are administered within the context of state law. These include the following, which have generated considerable published case law, and multiple cases in conflict with the decision below.

A. Federal Immigration Laws Incorporate State Law Definitions of Crimes to Determine Deportability

The federal Board of Immigration Appeals (BIA) interprets the Immigration and Nationality Act (INA) in the regular course of its duties. These interpretations typically receive *Chevron* deference. *Scialabba v. Cuellar de Osorio*, 134 S. Ct. 2191, 2203 (2014) (plurality). In some cases, the court must determine whether conviction of a state law crime is a deportable offense as defined by federal statutes, at which point the federal court must decide whether to defer to the BIA's interpretation of the state law. Some circuit courts do; most do not.

For example, in *Santos v. Gonzales*, the Second Circuit accorded *Chevron* deference to the BIA's interpretation of the federal immigration act in determining the meaning of "sexual abuse of a minor," but refused to defer to the BIA's decision that a conviction under state law meets that definition. 436 F.3d 323, 325 (2d Cir. 2006). The court reviewed the interpretation of state law de novo. *Id.* The Fifth Circuit applied the same rule when considering the BIA's determination that, under state law, an alien had committed an "aggravated felony" rendering him ineligible for cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act. *Contreras v. Holder*, 754 F.3d 286, 289 (5th Cir. 2014) ("While we owe deference to the BIA's interpretation of the INA, pursuant to *Chevron USA, Inc. v. NRDC*, we review de novo whether an offense constitutes an aggravated felony.") (footnotes omitted); *Efagene v. Holder*, 642 F.3d 918, 921 (10th Cir. 2011) ("[T]he BIA is owed no deference to its

interpretation of the substance of the state-law offense at issue, as Congress has not charged it with the task of interpreting a state criminal code.").

Similarly, the INA allows for deportation of aliens who commit a "crime involving moral turpitude," but the federal statute does not define that term, leaving it to the BIA to do so. *Rodriguez-Castro v. Gonzales*, 427 F.3d 316, 319-20 (5th Cir. 2005). *See also* 22 C.F.R. § 40.21 (2006) (defining crimes with reference to the jurisdiction in which they occurred); *Hamdan v. I.N.S.*, 98 F.3d 183, 186 (5th Cir. 1996) (citing BIA decisions interpreting phrase). The regulation and BIA decisions are entitled to *Chevron* deference only to the extent they interpret the ambiguous phrase in the INA. Multiple circuits refuse to accord such deference to the BIA's interpretation and evaluation of state law in deciding whether a particular state law is a crime involving moral turpitude. *See, e.g.*, *Rodriguez-Castro*, 427 F.3d at 320; *Lovano v. Lynch*, 846 F.3d 815, 817 (6th Cir. 2017) ("The BIA's interpretation of a state criminal statute, . . . is not entitled to deference and is reviewed de novo.").

In *Shaya v. Holder*, 586 F.3d 401, 406 (6th Cir. 2009), the Sixth Circuit considered Michigan's mandatory sentencing laws that obligated the courts, when confronted with an indeterminate sentence, to set the maximum penalty provided by the state law as the maximum term. Because the BIA measures all indeterminate sentences by their maximum possible term, *Cole v. U.S. Att'y Gen.*, 712 F.3d 517, 531 (11th Cir. 2013) (citing *In re S–S–*, 21 I. & N. Dec. 900, 902-3 (B.I.A. 1997)), the Sixth Circuit reasoned that "determining the length of [a] sentence is less an exercise in interpreting

the INA provision than it is interpreting state sentencing law." *Shaya*, 586 F.3d. at 406. *Shaya* therefore held that "these kinds of [state law] determinations by the BIA are not entitled to *Chevron* deference," *id.*, and conducted a de novo review of Michigan law to determine how to measure an indeterminate sentence. *Id.* at 406-08. *See also Knapik v. Ashcroft*, 384 F.3d 84, 88 (3d Cir. 2004) ("[I]n determining what the elements are of a particular criminal statute deemed to implicate moral turpitude, we do not defer to the BIA."); *Michel v. I.N.S.*, 206 F.3d 253, 262 (2d Cir. 2000) (when "the BIA is interpreting state or federal criminal laws, we must review its decision de novo").

Most recently, in *Ramirez v. Sessions*, _ F.3d _, 2018 WL 1802391 (4th Cir. Apr. 17, 2018), the Fourth Circuit applied the rule that it should defer under *Chevron* "to BIA decisions interpreting the INA but not the agency's interpretations of state criminal law and other statutes that lie beyond the BIA's authority and expertise." *Id.* at *4 (citing *Soliman v. Gonzales*, 419 F.3d 276, 281 (4th Cir. 2005)). This case is significant because its holding extends beyond state criminal laws (*see Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638 (1990)) to any state law that extends beyond the scope of delegation to the agency. *See also De Lima v. Sessions*, 867 F.3d 260, 264 (1st Cir. 2017) (*Chevron* "not implicated" in the "interpretation of a state statute").

B. Federal Environmental Laws Depend on Federal-State Cooperation That Is Undermined by Federal Court Deference to Federal Agency Interpretation of State Law

Chevron itself accorded deference to the Environmental Protection Agency's interpretation of an ambiguous Clean Air Act provision defining the word "source." *Chevron*, 467 U.S. at 840 n.1, 860. The extent to which courts apply *Chevron* deference to agency actions under wide-ranging environmental laws also demonstrates the nationwide importance and scope of the question presented in this case.

Although modeled on "cooperative federalism," the Clean Air Act is "a source of persistent federal-state conflict." Jonathan H. Adler & Nathaniel Stewart, *Is the Clean Air Act Unconstitutional? Coercion, Cooperative Federalism and Conditional Spending After NFIB v. Sebelius*, 43 Ecology L.Q. 671, 672 (2016). For example, in *Sierra Club v. Adm'r, U.S. E.P.A.*, 496 F.3d 1182, 1186-88 (11th Cir. 2007), the Eleventh Circuit applied *Chevron* deference to the EPA's interpretation of an ambiguous Georgia state regulation that imposed certain permit conditions on applicants who owned or operated any existing non-compliant "major stationary sources" of pollution. But in *Luminant Generation Co., LLC v. U.S. E.P.A.*, 675 F.3d 917, 926 (5th Cir. 2012), the Fifth Circuit held that the EPA acted arbitrarily and capriciously by relying on state law standards to invalidate a permit application, rather than focusing solely on the statutory requirements of the Clean Air Act, in making its decision. *Id.* (State law is a "factor[ ] which

Congress has not intended [the EPA] to consider.") (citing *State Farm*, 463 U.S. at 43).

Like the Clean Air Act, the Clean Water Act, 33 U.S.C. §§ 1251-1388, depends on "cooperative federalism" to effect its goals. *See Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992) ("The Clean Water Act anticipates a partnership between the States and the Federal Government . . . ."); Damien Schiff, *Keeping the Clean Water Act Cooperatively Federal—Or, Why the Clean Water Act Does Not Directly Regulate Groundwater Pollution*, 42 Wm. & Mary Envtl. L. & Pol'y Rev. 447, 456-58 (2018) (describing crucial state responsibilities in regulating and permitting decisions, particularly as regards nonpoint source pollution). In *Arkansas*, this Court effectively "federalized" agency-approved state law water quality standards, noting that once these standards are approved by the EPA, they "are part of the federal law of water pollution control." 503 U.S. at 110. *But cf. Bragg v. W. Va. Coal Ass'n*, 248 F.3d 275, 289 (4th Cir. 2001), *cert. denied*, 534 U.S. 1113 (2002) (after agency approval of state laws and regulations under Surface Mining Control and Reclamation Act of 1977, federal law "drop[s] out" and no longer regulates the approved mining activities).[4]

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[4] Not all "cooperative federalism" statutes involve environmental law. While acknowledging *Chevron*'s policy underpinnings emphasizing the need for expertise and uniformity when administering federal environmental statutes, the Second Circuit distinguished federal welfare assistance programs as lacking any expectation of "unitary or uniform application from state to state." *Turner v. Perales*, 869 F.2d 140, 141 (2d Cir. 1989). For this reason, federal courts had no reason under *Chevron* to defer to an agency on the question of whether state

A decision in the present case is needed to clarify the federal courts' role in interpreting state laws that work in conjunction with federal environmental laws.

C. Federal Courts Conflict as to Whether to Defer to Agency Determinations That Federal Law or Regulations Preempt State Law

This Court's decision in *Watters v. Wachovia Bank, N.A.,* 550 U.S. 1, 20 (2007), did not decide whether a federal agency is entitled to *Chevron* deference when the agency states that its regulations preempt state law. Justice Stevens' dissenting opinion,[5] however, underscored the tension between *Chevron* deference and preemption created by the fact that members of Congress can be counted upon to reflect their constituents' interests with "a healthy respect for state sovereignty," while federal agencies have no such interest or accountability. *Id.* at 41 (Stevens, J., dissenting). *Cf. New York v. F.E.R.C.*, 535 U.S. 1, 18 (2002) (A "federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority[,] . . . [for] an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.", (quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)). Nonetheless, the agencies

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law and implementing regulations complied with the federal law. *Id. Accord Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1495 (9th Cir. 1997).

[5] Joined by Chief Justice Roberts and Justice Scalia.

can, "with relative ease . . . promulgate comprehensive and detailed regulations that have broad pre-emption ramifications for state law." *Watters*, 550 U.S. at 20 (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 512 (1996) (O'Connor, J., concurring in part and dissenting in part) ("It is not certain that an agency regulation determining the pre-emptive effect of any federal statute is entitled to deference")). *Cf. Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 744 (1996) (assuming, without deciding, that the question of "*whether* a statute is pre-emptive . . . must always be decided *de novo* by the courts").[6]

In *Teper v. Miller*, 82 F.3d 989, 998 (11th Cir. 1996), the Eleventh Circuit pondered the "inherent tension between *Chevron* deference, which only obtains where a statute is 'silent or ambiguous,' and preemption doctrine, which maintains that state law will not be preempted unless that is 'the clear and manifest purpose of Congress[.]'" (citations omitted.) It further highlighted that while *Chevron* may "counsel in favor" of deference to resolve questions raised by ambiguous statutes, "countervailing federalism concerns offset this rationale" in preemption cases. *Id.* At bottom, the court noted, "[a]lthough federal agencies are more democratically accountable than courts, state legislatures are

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[6] The Court was more concrete in its refusal to extend *Auer* deference to agency preemption decisions. In *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011), with regard to deference under *Auer v. Robbins*, 519 U.S. 452, 461-62 (1997), this Court held that, although it would "defer to the agency's interpretation of its regulations, we do not defer to an agency's ultimate conclusion about whether state law should be pre-empted." *PLIVA*, 564 U.S. at 613 n.3 (citing *Wyeth v. Levine*, 555 U.S. 555, 576 (2009)).

arguably yet more politically accountable." *Id.* For this reason, the court argued that "it is not at all clear that a state's view that a federal statute does not preempt state law should give way to a federal agency's view that the statute does preempt." *Id. See also* Thomas W. Merrill, *Preemption and Institutional Choice*, 102 Nw. U. L. Rev. 727, 755 (2008) ("[I]n terms of their capacity to engage in good faith interpretation of state regulatory law, including both state common law and state legislation, it is doubtful that agencies can match the capabilities of the courts.").

Yet this Court *does* defer in some—but not all—preemption cases, and it is not always clear why one approach prevails over the other. Professor William Eskridge lists 131 cases decided by this Court between the date of the *Chevron* decision in 1984 and the close of the 2005 Term in which preemption of state law was at issue and a federal agency rule, order, or interpretation was relevant to the Court's decision. William N. Eskridge, Jr., *Vetogates, Chevron, Preemption*, 83 Notre Dame L. Rev. 1441, 1442, App. A (2008). These cases covered a panoply of issues, including pensions, civil rights, Indian law, transportation policy, public health and safety law, taxation, and energy policy. *Id.* Despite this prevalence of agency preemption cases, this Court has not yet resolved whether it is "appropriate to defer to an agency that is seeking to expand federal power at the expense of the states through a generous construal of a preemption clause." *Commonwealth Edison Co. v. Vega*, 174 F.3d 870, 875 (7th Cir. 1999) (citing additional circuit cases in conflict).

The Sixth Circuit itself is in conflict on this point. Contrary to its approach in this case, in

Tennessee v. FCC, 832 F.3d 597, 611 (6th Cir. 2016), that court carefully avoided treading on state prerogatives by refusing to grant *Chevron* deference to a Federal Communication Commission's interpretation of the Telecommunication Act of 1996 that intermeddled in core state functions by preempting state law relating to the power and discretion of political subdivisions (*e.g.*, municipalities). While under state law, Tennessee retained discretion to make decisions applicable to its political subdivisions, the FCC interpreted the Telecommunications Act to devolve that discretion to the political subdivisions themselves. The Sixth Circuit invalidated the FCC's interpretation. *Id.* ("Any attempt by the federal government to reorder the decision-making structure of a state and its municipalities trenches on the core sovereignty of that state.").

The doctrine of *Chevron* deference as applied to federal agency interpretation of state law is difficult to square with the respect for state sovereignty present in the preemption rules. A decision in this case could clarify that while the Supremacy Clause demands that state laws not interfere with federal law, at least federal courts—not agency bureaucrats—will make the determination of "what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

II.

THIS COURT SHOULD GRANT CERTIORARI TO CONSTRAIN ANY FURTHER EXPANSION OF THE CONSTITUTIONALLY SUSPECT *CHEVRON* DOCTRINE

"The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 629 (1952) (Douglas, J., concurring) (citation omitted). The constitutional preclusion of arbitrary power is necessary to preserve and protect individual liberty. *See NLRB v. Noel Canning*, 134 S. Ct. 2550, 2559 (2014); *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991) (The "ultimate purpose of th[e] separation of powers is to protect the liberty and security of the governed."). The arbitrariness is magnified because, even when agencies may change their interpretations at will and take inconsistent positions, courts nonetheless apply *Chevron* deference. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

All or most *Chevron* applications are unconstitutional (or at least highly questionable) because they violate a federal judge's Article III duty to render independent rulings. *See Gonzales v. Oregon*, 546 U.S. 243, 264 (2006) (noting "obvious constitutional problems" if the Attorney General could "authoritatively interpret" state and local laws). *See also Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1149 (10th Cir. 2016) (Gorsuch, J., concurring) (*Chevron* "permit[s] executive bureaucracies to swallow huge

amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design."); *Egan v. Delaware River Port Authority*, 851 F.3d 263, 280 (3d Cir. 2017) (Jordan, J., concurring in the judgment) (agencies govern, "not merely by enforcing laws passed by the people's representatives, but through their own vast and largely unaccountable power" and deference weakens the constitutional "brakes" on federal government). Raymond M. Kethledge, *Ambiguities and Agency Cases: Reflections After (Almost) Ten Years on the Bench*, 70 Vand. L. Rev. En Banc 315, 324 (2017) ("There is no getting around the fact that *Chevron* deference has created a palpable sense of entitlement among executive agencies, particularly when they show up in court.").[7]

In this case, the usual justification for deference does not apply when a federal agency interprets state law that the agency neither enforces nor administers. Hence, the Court should not expand *Chevron* deference, especially when its own theory cannot support it.

> Agencies know a great deal about one federal regulatory scheme, and they may know quite a bit about the pros and cons of making that particular scheme the

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[7] Bureaucrats interpret their power more aggressively when they believe that courts will defer to their interpretations. *See* Christopher J. Walker, *Inside Agency Statutory Interpretation*, 67 Stan. L. Rev. 999, 1063 (2015) (In a survey of agency rule drafters, 80% strongly agreed or somewhat agreed "that a federal agency is more aggressive in its interpretive efforts if it is confident that *Chevron* deference . . . applies.").

> exclusive source of legal obligation, as opposed to one that exists concurrently with state and local regulation. But they are unlikely to have much knowledge—or even care—about larger questions concerning the division of authority between the federal government and the states.

Merrill, *Preemption and Institutional Choice*, 102 Nw. L. Rev. at 755. *See also Stern v. Marshall*, 564 U.S. 462, 503 (2011) (the Administrative State's "slight encroachments create new boundaries from which [its] legions of power [] seek new territory to capture." (quotation marks and citation omitted)).

Moreover, Congress does not have any of the state's legislative power so it cannot delegate such power to a federal agency. In fact, the anti-commandeering doctrine serves in part as a bulwark to prevent Congress from legislating for the states. *Printz v. United States*, 521 U.S. 898, 926-27 (1997) (citing *New York v. United States*, 505 U.S. 144, 175-76 (1992)); *see also NFIB*, 567 U.S. at 584-85 (striking down commandeering of states "into the national bureaucratic army" for Medicaid expansion) (citation omitted). By applying *Chevron* deference in this case, the Sixth Circuit improperly and implicitly presumed that the Medicare and Medicaid statutes effectively determine the content of related state laws. This approach raises important constitutional questions that should be reviewed by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: May, 2018.

Respectfully submitted,

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