No. 24-1024

IN THE

Supreme Court of the United States

CLARENCE COCROFT, ET AL.,

Petitioners,

v.

CHRIS GRAHAM, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE MISSISSIPPI DEPARTMENT OF REVENUE, ET AL.,

Respondents.

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

BRIEF OF WEED FOR WARRIORS PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Weed for Warriors Project (WFWP) is a non-profit veterans advocacy organization dedicated to supporting holistic rehabilitation for military veterans through community-based projects, proactive care advocacy, cannabis education, and compassion. Founded in 2014 by veterans who found relief through medical cannabis, WFWP has grown into a national grassroots movement with chapters across the United States.

WFWP's mission is to empower veterans by providing access to alternative treatments, including medical cannabis, which many veterans have found effective in managing service-related conditions such as chronic pain, post-traumatic stress disorder (PTSD), and depression. Through events, educational initiatives, and advocacy efforts, WFWP seeks to improve quality of life for veterans and to promote policies that recognize the therapeutic benefits of cannabis.

As an organization committed to the well-being of veterans, WFWP has a substantial interest in ensuring both that veterans have access to accurate information about medical cannabis, and that their rights to seek alternative treatments are protected. WFWP submits this brief in support of the petition because

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[1] No counsel for any party has authored this brief in whole or in part, and no person other than *amicus*, its members, or its counsel have made any monetary contribution intended to fund the preparation or submission of this brief. Amicus provided the parties with notice of its intent to file this brief inside the 10-day period provided for by Rule 37.2, but petitioners and respondents both consented to waiver of the notice period.

the Fifth Circuit's decision below threatens to undermine those rights by upholding a paternalistic and constitutionally flawed restriction on speech.

SUMMARY OF THE ARGUMENT

"Medical cannabis gave me back my life."

– A. Cooper, Air Force Veteran.[2]

Veterans across the country currently rely on medical cannabis as a means of managing chronic pain, PTSD, and other service-related conditions.[3,4] For

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[2] *A Medical Marijuana Testimonial from Ashley Cooper, U.S. Air Force Veteran*, VETERANS ALLIANCE FOR HOLISTIC ALTERNATIVES (July 18, 2022), https://www.vahahealth.com/medical-marijuana-testimonial-ashley-cooper/

[3] Niki Griswold, *Veterans Advocate for Medical Marijuana Expansion*, SPECTRUM (Sept. 1, 2019), https://spectrumlocalnews.com/tx/san-antonio/news/2019/09/01/veterans-advocate-for-medical-marijuana-expansion (testimonial of Army veteran Jason Walker: "Cannabis gave me my quality of life back. It gave my wife a husband back, gave my kids their dad back"); *id*. (veteran Joshua Raines stating that medical cannabis "allowed me to be a father again, and a husband").

[4] Katie Drummond, *Vet to Feds: Enough Stonewalling, Give Us Pot for PTSD*, WIRED (Nov. 16, 2011), https://www.wired.com/2011/11/pot-for-ptsd/ (Marine Corps veteran who "once took over 100 pills a day for his post-traumatic stress" but, by replacing the pills with marijuana, was able to "cut his dependency on prescriptions to zero," explaining that marijuana "makes my life manageable").

many, cannabis offers meaningful relief where conventional pharmaceuticals have failed.[5,6] In far too many cases, those conventional treatments included the liberal overprescription of opioids by well-intentioned physicians operating within a system that prioritized symptom suppression over long-term well-being. The result has been widespread addiction, with countless veterans left dependent on high-risk medications that provided diminishing returns and mounting harms. Medical cannabis has enabled a growing number of such veterans to break free from these cy-

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[5] *'Out of Options': Veterans With PTSD Hit Pot Underground*, NBC NEWS (Apr. 1, 2014), https://www.nbcnews.com/storyline/legal-pot/out-options-veterans-ptsd-hit-pot-underground-n64026 (testimonial of Marine veteran Logan Edwards: "The first time I used [cannabis], I wanted to cry. Because it took away my anxiety. Because it did everything for me that the Oxycontin, benzodiazepines and anti-depressants the VA prescribed me for three years did not do").

[6] *Compelling Stories Tie Medical Marijuana To Relief From Symptoms of Trauma, Disease*, CBS NEWS (March 11, 2014), https://www.cbsnews.com/detroit/news/compelling-stories-tie-medical-marijuana-to-relief-from-symptoms-of-trauma-disease/ (testimonial of Marine Corp veteran Dakota Serna: "I literally had a rifle in my hand, ready just to snap and lose it. . . . To simply put it, marijuana, cannabis, gave me my life back, and its not just me, this is veterans all across the country.").

cles—allowing them to taper off harmful drugs, regain stability, and reclaim their quality of life.[7,8] Their experiences are not merely anecdotal. A growing body of research has affirmed the therapeutic value of cannabis in treating chronic pain, anxiety, PTSD, and sleep disorders, as well as in reducing opioid dependency, and guarding against suicidal ideation.[9] These findings reinforce what many veterans already know firsthand: for those whose conditions have resisted traditional treatment, medical cannabis can be life-changing.

In recognition of this reality, voters in the 2020 Mississippi election overwhelmingly approved a bal-

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[7] *Hello, My name is Jennifer Baxter and I am a medically retired Air Force veteran*, VETERANS CANNABIS GROUP (Sept. 9, 2019), https://veteranscannabisgroup.com/hello-my-name-is-jennifer-baxter-and-i-am-a-medically-retired-air-force-veteran/ (testimonial of Air Force veteran who used cannabis to overcome prescription opioid addiction: "I now use medical cannabis on a daily basis and will barely take an over the counter pill for a headache. I don't reach for it the moment I open my eyes in the morning, like I did with the pills, nor do I want to put that handgun to my head.").

[8] Stephen Mandile, *Read: With the use of cannabis, I found healing and purpose*, IAVA BLOG (Apr. 8, 2023), https://iava.org/media/read-with-the-use-of-cannabis-i-found-healing-and-purpose (US Army National Guard Veteran describing his journey "overcoming a decade-long addiction to opioids, benzodiazepines, and sleeping pills, with the use of cannabis").

[9] *See, e.g.*, Marion McNabb et al., *The 2019 Veterans Health and Medical Cannabis Study*, 1 Cannabis Patient Care 1 (2020); Charles W. Webb and Sandra M. Webb, *Therapeutic Benefits of Cannabis: A Patient Survey*, 73 HAWAII J. MED. PUB. HEALTH 4, 109 (2014).

lot initiative to create a comprehensive medical cannabis program.[10] Faced with this clear electoral mandate, Mississippi's Governor ultimately signed into law the Mississippi Medical Cannabis Act, which forms the basis for the parties' present dispute. However, rather than fully embracing the broad measures that had been favored by the voting public, the Act reflected a politically expedient middle ground; while it did grant voters the access to medical marijuana that they desired, it also provided for a restrictive regulatory scheme empowering the State to address paternalistic concerns about harms it believed might follow from exposure of its electorate to information about cannabis use—namely, a fear that broader public awareness of cannabis could give rise to "a recreational marijuana program that could lead to more people smoking and less people working, with all of the societal and family ills that that brings."[11] And, using that regulatory power, Mississippi imposed a "near-total restriction on the advertising of medical marihuana." Pet. App. 2a.

As a content-based speech restriction that is unrelated to the preservation of a fair bargaining process, motivated by raw paternalism, and designed simply to keep people in the dark for what the government perceives to be their own good, Mississippi's medical marijuana advertising ban is wholly unsupportable under this Court's First Amendment jurisprudence.

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[10] *The road to Mississippi becoming the 37th medical cannabis state*, MARIJUANA POLICY PROJECT, https://www.mpp.org/states/mississippi/ (last updated Apr. 6, 2025).

[11] @tatereeves, X (Feb. 2, 2022, 5:12 PM), https://x.com/tatereeves/status/1489013880810582017/photo/1

See, e.g., *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011) (holding that, even in the commercial speech context, restrictions "based on the context of speech" are subject to "heightened judicial scrutiny"); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501 (1996) ("[W]hen a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands."); *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 790 (1988) (rejecting "the paternalistic premise that [entities]' speech must be regulated for their own benefit"); *44 Liquormart*, 517 U.S. at 503 ("The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good.").

Yet, in upholding the ban, the Fifth Circuit did not even consider the First Amendment implications of its decision. Instead, it rested its holding on a cursory and deeply flawed application of the Supremacy Clause, reasoning that the illegality of marijuana under federal law renders Mississippi's medical marijuana law a nullity. But that analysis fundamentally misapprehends the nature of our constitutional republic, in which the federal government and the states operate within a system of dual sovereignty. Under our dual-sovereign framework, federal supremacy applies only where state law *actually* conflicts with federal law—not merely where the two diverge. The Controlled Substances Act explicitly states that it does not preempt state law unless there

is a "positive conflict." 21 U.S.C. § 903. Yet the Fifth Circuit conducted no preemption analysis, cited no statutory language, and made no attempt to determine whether Mississippi's medical cannabis framework interferes with any federal enforcement objectives. It simply treated federal illegality as a trump card, rather than doing the doctrinal work the Constitution requires.

The Fifth Circuit's approach may stem from an implicit view that the speech in question—advertising for medical marijuana—is inherently of low value. Because the speech promotes a commercial transaction, and because that transaction involves cannabis, the court seems to have dismissed the speech as unworthy of meaningful First Amendment protection; and assumption that appears to have set in before the court even began any doctrinal analysis. That treatment underscores a broader and persistent problem: the *Central Hudson* framework allows courts to under-protect commercial speech by deferring too readily to governmental judgments—often at the expense of rigorous constitutional scrutiny. Where, as here, a court can so easily uphold a blanket ban on truthful, non-misleading speech about a medical treatment that is legal under state law, it raises serious questions about whether *Central Hudson*'s categorical treatment of commercial speech as "less valuable" than non-commercial speech remains a suitable test. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 431 (1993) (Blackmun, J., concurring). This case offers the Court an opportunity not only to correct the Fifth Circuit's constitutional error, but also to clarify and, if necessary, recalibrate its commercial speech

doctrine to ensure that the First Amendment continues to protect what it promises: the free flow of information in a democratic society.

WFWP urges the Court to grant certiorari and reverse.

ARGUMENT

A. Medical Cannabis Advertising Is Entitled To First Amendment Protection

The use of cannabis for medical purposes is legal under the laws of thirty-nine states, three territories, and the District of Columbia.[12] Over 3.6 million Americans are registered medical marijuana patients who legally use cannabis for treatment purposes under the laws of their states.[13] And, despite cannabis remaining illegal under the Controlled Substances Act (CSA) at the federal level, in every year since 2014, Congress has included the Rohrabacher-Farr Amendment within its annual Consolidated Appropriations Act, providing that "[n]one of the funds made available under this Act to the Department of Justice may be used" to prevent any state who has legalized medical cannabis "from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *See* Consolidated Appropriations Act, Pub. L. No. 118-42, §

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[12] *Report - State Medical Cannabis Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES (Mar. 6, 2025), https://www.ncsl.org/health/state-medical-cannabis-laws

[13] *Medical Cannabis Patient Numbers*, MARIJUANA POLICY PROJECT, https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/ (last visited Apr. 23, 2025).

531, 138 Stat. 25, 174 (2024).

Within this legal environment, individuals in states where medical cannabis is permitted can access this alternative treatment option without fear of prosecution, reflecting a broad and stable national consensus in favor of regulated medical cannabis programs. This is consistent with the views of nearly 90% of adults in the United States, who support such legalization of medical cannabis.[14]

Yet, despite the widespread and largely unencumbered access to medical cannabis that a majority of the States support, the Fifth Circuit below held that speech advertising medical cannabis is not entitled to First Amendment protection. That conclusion makes no sense. Speech about a legal and increasingly mainstream form of medical care cannot be dismissed as unprotected merely because of an unenforced federal law.

1. For Veterans Facing Chronic Pain, PTSD, and Other Service-Related Harms, Medical Cannabis Provides a Lifesaving Alternative

The experience of veterans—who disproportionately suffer from the very conditions medical cannabis is used to treat—underscores why access to accurate, lawful information about medical cannabis is not only valuable, but vital. Members of the military make

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[14] Ted Van Green, *Americans Overwhelmingly Say Marijuana Should Be Legal for Recreational or Medical Use*, PEW RSCH. CTR. (Nov. 22, 2022), https://www.pewresearch.org/fact-tank/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use/

profound sacrifices to defend our collective liberty. Those who return home from combat often carry lasting scars—both physical and psychological. Compared to their civilian counterparts, veterans experience significantly higher rates of chronic pain,[15] PTSD,[16] and suicide.[17]

For many, conventional treatment regimens have provided inadequate relief, and, in many instances, have exacerbated and prolonged their suffering. The opioid epidemic, in particular, has hit veterans disproportionally hard.[18] For years, opioids were liberally prescribed to service members and veterans as the default treatment for chronic pain and service-related injuries—often without adequate monitoring, patient education, or exploration of alternatives aimed at addressing the root cause of pain, rather

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[15] Marion McNabb et al., *The 2019 Veterans Health and Medical Cannabis Study*, 1 CANNABIS PATIENT CARE 1, 6 (2020) ("According to the VA, 60% of veterans returning from combat suffer from chronic pain, as compared to only 30% of Americans.").

[16] Müller, Jan et al. Risk factors associated with posttraumatic stress disorder in US veterans: A cohort study, 12 PLOS ONE, 7 (2017) ("The National Vietnam Veterans Readjustment Study reported a lifetime incidence of PTSD of 30% and a current prevalence of 15%, whereas the normal estimated lifetime occurrence of PTSD is 6.8%.").

[17] Rajeev Ramchand, *Suicide Among Veterans*, 9 Rand Health Q 3, 21 (2022) ("For the past 12 years, suicide rates have been consistently higher among veterans than nonveterans," and "since 2005, the suicide rate has risen faster among veterans than it has for nonveteran adults.").

[18] For instance, a 2020 survey of "1700 US Iraq and Afghanistan veterans" found that 32% were prescribed opioids, while a study led by the Department of Defense found that "nearly one in four active-duty members had at least one prescription for an opioid at some point in 2017." McNabb, *supra* note 15 at 6.

than merely masking it. The result has been widespread opioid dependency, addiction, and overdose deaths, all at levels markedly higher than seen in the general population.[19]

Against this backdrop, cannabis has emerged as a viable alternative to prescription opioids—offering effective relief for chronic pain, anxiety, and other service-related conditions, without the high risk of dependency, or the potential for fatal overdose.[20] As research into the impacts of medical cannabis legalization has demonstrated, access to medical cannabis reduces opioid use,[21] prevents opioid overdoses,[22] and decreases suicide rates in military-aged males.[23]

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[19] *See, e.g.*, *Id.* at 7.

[20] *Marijuana*, U.S. DRUG ENFORCEMENT ADMIN., https://www.dea.gov/factsheets/marijuana (last accessed Aprl. 23, 2025) ("No deaths from overdose of marijuana have been reported.").

[21] Mark Lieber, *Marijuana legalization could help offset opioid epidemic, studies find*, CNN HEALTH (April 26, 2018), https://www.cnn.com/2018/04/02/health/medical-cannabis-law-opioid-prescription-study/index.html (finding "about a 14.5% reduction in any opiate use when dispensaries were turned on")

[22] Jason Millman, *Is medical marijuana the answer to America's prescription painkiller epidemic?*, THE WASHINGTON POST (Aug. 25, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/08/25/is-medical-marijuana-the-answer-to-americas-prescription-painkiller-epidemic/ ("States with medical marijuana laws on the books saw 24.8 percent fewer deaths from painkiller overdoses compared to states that didn't have such laws.").

[23] D. Mark Anderson et al., *Medical Marijuana Laws and Suicides by Gender and Age*, 104 AM. J. PUB. HEALTH, Research and Practice 12, 2369 at 2373 (2014) ("[T]he legalization of medical marijuana was associated with a 9.2% to 10.8% decrease in the suicide rate of men aged 20 through 29 years, and a 9.4% to

Just like the majority of other states, Mississippi has approved use of cannabis for medical purposes, recognizing the medicinal benefits it can provide. Indeed, in signing into law the state's medical marijuana bill, the Governor made the state's rationale unmistakably clear: "There is no doubt that there are individuals in our state who could do significantly better if they had access to medically prescribed doses of cannabis."[24]

Where, as here, a state has determined that its residents would benefit from access to a legal medical product, it seems uncontroversial that truthful advertisements about that product should receive protection under the First Amendment. After all, if a state has chosen to legalize medical cannabis and to regulate its sale, then—far from being devoid of any value—speech conveying accurate information about how to obtain it, what conditions it may help treat, and where licensed providers are located would seem to be essential. *See, e.g.*, *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976) (explaining that, "[a]dvertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price," and that "the free flow of [such] commercial information is indispensable" to making "intelligent and well informed" purchasing decisions).

13.7% decrease in the suicide rate of men aged 30 through 39 years.").

[24] @tatereeves, X (Feb. 2, 2022, 5:12 PM), https://x.com/tatereeves/status/1489013880810582017/photo/1

2. Medical Cannabis Advertising Provides Valuable Information To Veterans

For veterans, who may have exhausted conventional therapies or seek alternatives to opioids and other high-risk pharmaceuticals, the informational value of medical cannabis advertisements is clear:

First, medical cannabis advertising often fills a critical gap left by federal healthcare providers such as the U.S. Department of Veterans Affairs, which is prohibited from recommending cannabis due to its classification under federal law.[25] Advertising thus becomes one of the few reliable ways veterans can learn which dispensaries are licensed, what forms of cannabis are available for medical use, how to distinguish between strains and delivery methods, and how to remain compliant with state laws.

Second, without access to advertising, veterans are left to navigate complex regulatory frameworks and evolving treatment options with incomplete or secondhand information. This lack of access not only impairs their ability to make informed medical decisions but also increases the risk that they turn to the black market, as an alternative, when they are unable to obtain cannabis through legal channels.[26] Black market marijuana, however, carries significant

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[25] *VA and Marijuana – What Veterans need to know*, U.S. DEPT. OF VETERAN AFFAIRS, Public Health, https://www.publichealth.va.gov/marijuana.asp (last visited Apr. 23, 2025).

[26] *See, e.g.*, Bruce Kennedy, *Federal Marijuana Policy Is Pushing Veterans into the Black Market*, POLITICO (May 27, 2020), https://www.politico.com/news/magazine/2020/05/27/federal-marijuana-policy-veterans-black-market-271197

health risks. Unlike state-regulated medical cannabis,[27] it is not subject to testing for contaminants like pesticides, mold, or heavy metals, and often contains inconsistent or inaccurately labeled levels of THC and CBD.[28] It also may be adulterated with dangerous additives or stored in unsanitary conditions, posing additional threats to patient safety.[29] Without the safeguards and transparency of legal access, veterans risk exposure to unsafe products that can undermine their health rather than support it.

Third, prohibiting medical cannabis advertisements deprives veterans of exposure to the widespread and increasing use of cannabis as a legitimate medical treatment—information that can play a powerful role in shaping perception. Many veterans are rule-followers by training and instinct, often hesitant to consider a therapy that remains federally prohibited and carries social stigma. Without visible, reliable information about how others—especially fellow

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[27] *Mississippi Cannabis Testing Labs*, MISSISSIPPI CANNABIS INFO., https://mississippistatecannabis.org/testing-lab (last accessed Apr. 23, 2025) (identifying the testing requirements for cannabis intended for sale or distribution within Mississippi).

[28] Dryburgh, Laura M. et al., *Cannabis contaminants: sources, distribution, human toxicity and pharmacologic effects*, 84 BRITISH J. CLINICAL PHARMACOLOGY 11, 2468, 2469 (2018).

[29] *Id*. at 2470 (explaining that "metals may be added to the preparation to increase weight and thereby appreciate its street value"); *E. Coli, Heavy Metals, Copyright Infringement, and 100 Percent Failure Rate: A look at New York City's illicit cannabis dispensaries*, NY MEDICAL CANNABIS INDUS. ASS'N (2022) (approximately 40% of the illicit cannabis tested failed at least one of the standard tests administered to legal cannabis products only available at legal medical cannabis dispensaries; finding E. Coli, salmonella, and pesticides in various products).

veterans—have successfully used cannabis to manage pain, PTSD, and other conditions, they may never seriously consider it as a viable option. Advertising can help normalize the use of medical cannabis by highlighting its prevalence, demystifying its use, and presenting it not as a fringe alternative but as a mainstream, state-sanctioned form of care. Access to such information can shift perceptions, opening the door for veterans to explore treatments they might otherwise dismiss out of deference to federal policy or fear of social judgment.

Finally, suppressing such advertising fails to account for its essential role in enabling lawful, informed participation in a state-regulated medical system. As the Court affirmed in *Central Hudson*, the First Amendment protects commercial speech not simply because it facilitates transactions, but because it promotes the free flow of information necessary for intelligent and autonomous decision-making. For veterans—many of whom rely on accurate information to weigh the risks and benefits of new therapies in the context of service-related trauma or chronic conditions—the constitutional protection of advertising empowers them to decide for themselves whether medical cannabis aligns with their needs, values, and health goals. Denying access to that information undermines their agency and autonomy, particularly when informed choice may mean the difference between continued suffering and meaningful relief.

B. Illegality of Cannabis Under Federal Law Does Not Nullify State Medical Cannabis Laws

In relying on *Central Hudson*'s "illegality" prong to

uphold Mississippi's medical cannabis ban, the Fifth Circuit appeared simply to assume, without any meaningful analysis, that the federal illegality of cannabis necessarily renders Mississippi's medical cannabis law a nullity. Indeed, the entirety of the Fifth Circuit's reasoning, is encompassed within the following few lines of its decision:

> Because unlawfulness is dispositive, the most natural reading of *Central Hudson*'s first prong makes quick work of this case: ***Marihuana transactions are illegal in every state by virtue of federal law***, so no commercial speech proposing such transactions "concern[s] lawful activity." *Cent. Hudson*, 447 U.S. at 566. Thus, the First Amendment poses no obstacle to a ban on such speech.

Pet. App. 7a-8a (emphasis added). Respectfully, the Fifth Circuit is wrong. Its analysis misses the mark on the Supremacy Clause, and also overlooks the very nature of our constitutional republic, which warrant this Court's review and correction.

The United States is a dual-sovereign system, under which both the federal and state governments may legislate on the same subject. *Printz v. United States*, 521 U.S. 898, 918 (1997) ("It is incontestible that the Constitution established a system of 'dual sovereignty.'"). This is why, for example, a person may be prosecuted under both federal law and state law for the same underlying act, without violating the Double Jeopardy Clause. *See, e.g.*, *United States v. Lanza*, 260 U.S. 377, 382 (1922). Thus, while it is true

that cannabis is illegal under federal law, it can also be true that medical cannabis is *legal* under Mississippi state law; the mere fact that a federal law applies to a subject does not necessarily mean that a differing state law on that subject is invalid under the Supremacy Clause.

The Supremacy Clause only comes into play when there is an *actual* conflict between the state and federal laws—i.e., when it is impossible to comply with both laws, or when the state law stands as an obstacle to the federal law. *See, e.g.*, *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (stating that preemption exists when "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (alterations in original)). In such circumstances, the Supremacy Clause dictates how to resolve such conflict: the state law is preempted by the federal law.

As support for its position that "marihuana is not a 'lawful activity' in Mississippi," the Fifth Circuit appears to rely on this Court's decision in *Gonzalez v. Raich*, 545 U.S. 1, 27-79 (2004). Pet. App. 17a-18a. But *Raich* simply held that, under the Commerce Clause, the CSA's reach extends not only to *inter*state but also *intra*state manufacturing and possession of medical cannabis. *Raich*, 545 U.S. at 22. And, under such circumstances, the legality of medical cannabis under state law cannot provide a defense to the federal government's enforcement of the CSA under federal law—a straightforward application of the Supremacy Clause. *Id*. at 29.

Raich did not, however, declare that the CSA rendered state marijuana laws invalid.[30] That is not what the Supremacy Clause requires.

A proper preemption analysis begins with the text of the CSA itself, which expressly provides that it does not preempt state law "unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903. That is a high bar, and one the Fifth Circuit did not even acknowledge. A conflict exists only where compliance with both laws is impossible, or where the state law would obstruct the objectives of Congress. Neither is true here. Mississippi's law does not require anyone to violate the CSA. It simply removes state-level penalties for certain medical uses of cannabis and establishes a regulatory framework for doing so lawfully within the state. The power to make that choice lies squarely within the state's traditional police powers to regulate medicine and public health. As such, the Fifth Circuit's analysis should have proceeded under an assumption *against* preemption, rather than taking it as a given. *See, e.g.*, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (explaining that, because "Congress legislated here in field which the States have traditionally occupied . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless

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[30] *See, e.g.*, Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 IOWA L. REV. 1449, 1490 (2006) ("[Raich] neither declared California's law invalid on preemption or any other grounds nor gave any indication that California officials must assist in the enforcement of the CSA.").

that was the clear and manifest purpose of Congress.").

Notably, a state law does not "stand as an obstacle" to a federal law merely because it does not actively support that law. To hold otherwise would violate the anti-commandeering doctrine. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 166 (1992) ("We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.") (internal citations omitted). Thus, Mississippi is entitled to permit cannabis use within its borders, and the federal government cannot command it otherwise.

Viewed in that light, Mississippi's decision to legalize medical cannabis and adopt a regulatory framework is not only permissible—it is entirely consistent with the structure of federalism. Mississippi's law functions as a clear statement of the state's enforcement priorities: it informs state officers, courts, and the public that individuals who use medical marijuana in accordance with state regulations are not subject to prosecution under state law. This is not interference; it is abstention. And it is precisely the sort of sovereign policy choice that our Constitution allows states to make.

Nor does Mississippi's law frustrate the objectives of the CSA. While the CSA reflects a federal policy of

prohibiting marijuana, its goal is to reduce abuse and illicit trafficking—not to target patients lawfully using medical cannabis under the supervision of a physician. Indeed, Congress's own direction prohibits the Department of Justice from using appropriated funds to interfere with the implementation of state medical cannabis laws, through the continued passage of the Rohrabacher-Farr Amendment; this reflects a consistent and bipartisan recognition that state medical cannabis programs can—and should—be allowed to function without federal disruption.. *See, e.g.*, *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (explaining that a proper preemption analysis "depends on the intent of Congress"). In fact, by legalizing and regulating medical cannabis use, Mississippi has arguably advanced federal objectives by reducing unregulated black market activity and redirecting it into a controlled and transparent system.[31] This is particularly true where, as here, evidence suggests that medical marijuana legalization does not significantly increase overall cannabis use, but instead provides a safer pathway for patients—including veterans—who would otherwise obtain marijuana through unlawful

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[31] *See, e.g.*, Aaron L. Sarvet et al., *Medical marijuana laws and adolescent marijuana use in the United States: a systematic review and meta-analysis*, 113 ADDICTION 6, 1003, 1013 (2018) (finding no increase in teen marijuana use in states that have legalized cannabis for medical purposes); Neal Doran, *Post-legalization changes in marijuana use in a sample of young California adults*, 115 ADDICTIVE BEHAVIORS (2021) ("In examining marijuana use before and after legalization of recreational sales in California, we found that frequency of use did not change significantly overall, including following legalization.").

means.

In short, Mississippi's medical marijuana law can coexist with the CSA. It does not command any conduct that federal law prohibits. It does not interfere with federal enforcement. And it respects Mississippi's sovereign interest in setting its own health policy. To treat such a law as a nullity for First Amendment purposes—as the Fifth Circuit did—is not only legally wrong, but constitutionally dangerous. It collapses the doctrine of preemption into a blunt instrument for suppressing speech, and overrides the careful balance of federalism that the Constitution demands.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, WFWP urges that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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