

No. 25-

IN THE
Supreme Court of the United States

CANNA PROVISIONS, INC.; GYASI SELLERS;
WISEACRE FARM, INC.; VERANO HOLDINGS CORP.,

Petitioners,

v.

PAMELA J. BONDI, IN HER CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

BOIES SCHILLER FLEXNER LLP

JOSHUA I. SCHILLER
44 Montgomery Street,
41st Floor
San Francisco, CA 94104

DAVID BOIES
Counsel of Record
333 Main Street
Armonk, NY 10504
(914) 749-8200
dboies@bsflp.com

JONATHAN D. SCHILLER
MATTHEW L. SCHWARTZ
DAVID BARILLARI
KELLY WALDO
JACK G. TUBIO
55 Hudson Yards
New York, NY 10001

Attorneys for Petitioners

QUESTIONS PRESENTED

Petitioners brought this case to challenge the validity of the Court’s ruling in *Gonzales v. Raich*, 545 U.S. 1 (2005), that Congress may prohibit the purely local production, distribution, and possession of marijuana that is authorized by state law. A narrow majority held that the Court “need not determine whether” those “activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a ‘rational basis’ exists for so concluding,” *id.* at 22, and that Congress could rationally conclude that those activities would frustrate its goal of eliminating interstate marijuana.

Multiple developments have undermined *Raich*’s rationale and outcome. Following *Raich*, the Court has applied a more rigorous standard to Congress’s regulation of traditionally local concerns. See, e.g., *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 560 (2012) (opinion of Roberts, C.J.) (holding that the individual mandate was not incidental to interstate regulation). Technological advances have made state-regulated marijuana distinguishable from interstate marijuana, and Congress and the Executive Branch have embraced that distinction with legislation and policies against prosecuting state-regulated marijuana activities. Dozens more states—38 total—have enacted marijuana programs, and interstate commerce in marijuana has dropped.

Question 1: Should the Court overrule *Raich*’s holding that Congress can regulate purely local economic activity if there is any “rational basis” that

such activity substantially affects interstate commerce?

Question 2: Has Congress validly prohibited the purely local growing, distribution, and possession of state-regulated marijuana under the Commerce Clause and Necessary and Proper Clause?

PARTIES TO THE PROCEEDING

Petitioners (plaintiff-appellants below) are Canna Provisions, Inc., Gyasi Sellers, Wiseacre Farm, Inc., and Verano Holdings Corp.

Respondent (defendant-appellee below) is Pamela J. Bondi, in her capacity as Attorney General of the United States.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court, Petitioner Canna Provisions, Inc. is 100% owned by Better Provisions, LLC, a Delaware Limited Liability Company. Better Provisions LLC has no parent corporation, and no publicly held corporation owns 10% or more of its stock. Petitioner Gyasi Sellers is an individual. Petitioner Wiseacre Farm, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of its stock. Petitioner Verano Holdings Corp. is a publicly held corporation with no parent corporation, and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

Canna Provisions, Inc., et al. v. Bondi, No. 24-1628, U.S. Court of Appeals for the First Circuit. Judgment entered May 27, 2025.

Canna Provisions, Inc., et al. v. Garland, No. 3:23-cv-30113-MGM, U.S. District Court for the District of Massachusetts. Judgment entered July 1, 2024.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	iii
CORPORATE DISCLOSURE STATEMENT	iii
RELATED PROCEEDINGS	iv
TABLE OF CONTENTS	v
APPENDICES	viii
TABLE OF AUTHORITIES	ix
OPINIONS BELOW	1
JURISDICTION	1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS	1
INTRODUCTION	2
STATEMENT OF THE CASE	8
REASONS FOR GRANTING THE PETITION	14
I. RAICH PERMITS A DRAMATIC INTRUSION ON THE EXERCISE OF THE STATES' POLICE POWERS	16
A. <i>Raich</i> Addressed the Critically- Important Issue of When Congress Can Intrude on States' Traditional Policymaking.	16
B. The CSA's Intrusion Is of Even Greater Importance Today.	18
II. <i>RAICH'S</i> RATIONAL BASIS STANDARD WAS WRONG WHEN DECIDED AND SHOULD BE OVERRULED	19

A.	<i>Raich’s “Rational Basis” Standard Is, as Justice Scalia and Justice Thomas Warned, “Misleading,” and It Deviated from the Court’s Longstanding Precedents.</i>	20
1.	<i>Raich Misread Wickard, Lopez, and the Court’s Other Modern Era Precedents.</i>	21
2.	<i>Raich Is Inconsistent with the Court’s Commerce Clause and Necessary and Proper Clause Precedents.</i>	26
B.	<i>Raich’s Rationale Has Been Undermined by Subsequent Cases.</i>	30
C.	<i>The States’ and Federal Government’s Lack of Reliance on Raich Favors Overruling It.</i>	34
III.	REGARDLESS OF THE STANDARD, THE PROHIBITION OF STATE-REGULATED MARIJUANA IS NOT NECESSARY AND PROPER TO EFFECTING THE CSA’S INTERSTATE GOALS.	35
A.	<i>Each of Raich’s Premises Is No Longer True Today.</i>	36
B.	<i>Given These Changes, Raich’s Conclusion Is No Longer Tenable Under Any Analysis.</i>	38

IV. THIS CASE PRESENTS AN IDEAL VEHICLE FOR REVISITING <i>RAICH</i>	40
CONCLUSION	41

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED MAY 27, 2025.....	1a
APPENDIX B — MEMORANDUM AND ORDER REGARDING DEFENDANT’S MOTION TO DISMISS, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, FILED JULY 1, 2024.....	20a
APPENDIX C — CONSTITUTIONAL AND STATUTORY PROVISIONS	40a

TABLE OF AUTHORITIES

Cases

<i>Agostini v. Felton</i> , 521 U.S. 203 (1997)	34
<i>Bankers Life & Cas. Co. v. Crenshaw</i> , 486 U.S. 71 (1988)	3, 24
<i>Bond v. United States</i> , 564 U.S. 211 (2011)	18
<i>Bond v. United States</i> , 572 U.S. 844 (2014)	17, 18
<i>Borges v. Cnty. of Mendocino</i> , 144 S. Ct. 186 (2023)	40
<i>Borges v. Cnty. of Mendocino</i> , 2023 WL 2363692 (9th Cir. Mar. 6, 2023).....	40
<i>Campbell v. Hussey</i> , 368 U.S. 297 (1961)	28
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022)	14, 16, 20
<i>F.E.R.C. v. Mississippi</i> , 456 U.S. 742 (1982)	25
<i>Fowler v. United States</i> , 563 U.S. 668 (2011)	17
<i>Franchise Tax Bd. of Cal. v. Hyatt</i> , 587 U. S. 230 (2019)	20, 33, 34
<i>Garcia v. San Antonio Metro. Transit Auth.</i> , 469 U.S. 528 (1985)	20

<i>Gibbons v. Ogden</i> , 22 U.S. 1 (1824)	5, 6, 15, 26, 27, 33, 38
<i>Gonzales v. Raich</i> , 545 U.S. 1 (2005)	2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40
<i>Heart of Atlanta Motel, Inc. v. United States</i> , 379 U.S. 241 (1964)	24, 25, 34, 38
<i>Hodel v. Indiana</i> , 452 U.S. 314 (1981)	25
<i>Hodel v. Virginia Surface Mining & Reclamation Assn.</i> , 452 U.S. 264 (1981)	4, 21, 24, 25, 34
<i>Houston, E. & W. T. R. Co. v. United States</i> , 234 U.S. 342 (1914)	23
<i>Jones v. United States</i> , 529 U.S. 848 (2000)	7, 16
<i>Katzenbach v. McClung</i> , 379 U.S. 294 (1964)	4, 24, 25, 34
<i>M'Culloch v. Maryland</i> , 17 U.S. 316 (1819)	15, 26, 27, 31, 32
<i>Mulford v. Smith</i> , 307 U.S. 38 (1939)	28
<i>Nat'l Fed'n of Indep. Bus. v. Sebelius</i> , 567 U.S. 519 (2012)	5, 27, 30, 35, 38
<i>Perez v. United States</i> , 402 U.S. 146 (1971)	4, 24, 25

<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020)	20, 30, 34
<i>Reimers v. United States Citizenship & Immigr. Servs.</i> , 144 S. Ct. 563 (2024)	41
<i>Reimers v. United States Citizenship & Immigr. Servs.</i> , 2023 WL 3773644 (9th Cir. June 2, 2023).....	40
<i>Shelby County, Ala. v. Holder</i> , 570 U.S. 529 (2013)	37
<i>Siegel v. Fitzgerald</i> , 596 U.S. 464 (2022)	5, 33, 35
<i>Simpson v. Shepard</i> , 230 U.S. 352 (1913)	27, 28
<i>Standing Akimbo, Inc. v. United States through Internal Revenue Serv.</i> , 2023 WL 569405 (10th Cir. Jan. 27, 2023).....	40
<i>Standing Akimbo, LLC v. United States</i> , 141 S. Ct. 2236 (2021)	6, 19, 37, 40
<i>United States ex rel. Attorney General v. Delaware & Hudson Co.</i> , 213 U.S. 366 (1909)	7, 16
<i>United States v. Carolene Prods. Co.</i> , 304 U.S. 144 (1938)	22
<i>United States v. Comstock</i> , 560 U.S. 126 (2010)	27, 30, 32
<i>United States v. Guess</i> , 216 F. Supp. 3d 689 (E.D. Va. 2016)	40

<i>United States v. Kebodeaux</i> , 570 U.S. 387 (2013)	32
<i>United States v. Lopez</i> , 514 U.S. 549 (1995)	4, 21, 22, 24, 29
<i>United States v. Lubetsky</i> , 145 S. Ct. 548 (2024)	40
<i>United States v. Lubetsky</i> , 2024 WL 577543 (11th Cir. Feb. 13, 2024).....	40
<i>United States v. Morrison</i> , 529 U.S. 613 (2000)	22
<i>United States v. Skrmetti</i> , 145 S. Ct. 1816 (2025)	24
<i>United States v. Vaello Madero</i> , 596 U.S. 159 (2022)	3, 24
<i>United States v. Wrightwood Dairy Co.</i> , 315 U.S. 110 (1942)	23, 28, 29
<i>Wickard v. Filburn</i> , 317 U.S. 111, 120 (1942).....	2, 3, 15, 21, 22, 23, 24, 31, 34, 38

Statutes

21 U.S.C. § 801(5).....	36
21 U.S.C. § 812(c)	9
21 U.S.C. § 841(a).....	1, 9
28 U.S.C. § 1254(1).....	1
7 U.S.C. § 1301(b)(6)	23

Consolidated Appropriations Act of 2024, Pub. L. No. 118-42, 138 Stat. 25	2, 13
--	-------

Constitutional Provisions

U.S. Const. Article I, § 8	1, 2, 3, 4, 5, 9, 10, 20, 21, 22, 25, 26, 28, 29, 30, 31, 33, 35, 38
----------------------------------	---

Other Authorities

Gary Lawson et. al., <i>The Fiduciary Foundations of Federal Equal Protection</i> , 94 B.U. L. Rev. 415 (2014)	27
<i>Taxation of Marihuana: Hearings on H.R. 6385 Before the H. Comm. on Ways and Means</i> , 75th Cong. (1937)	8

OPINIONS BELOW

The First Circuit's opinion is reported at 138 F.4th 602 and reproduced at App. 1a-19a. The District Court's opinion is reported at 738 F. Supp. 3d 111 and reproduced at App. 20a-39a.

JURISDICTION

The First Circuit issued its opinion on May 27, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). On August 15, 2025, Justice Jackson granted Petitioners' Application (No. 25A180) to extend the deadline to file a petition for a writ of certiorari to October 24, 2025.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8 of the U.S. Constitution provides:

The Congress shall have Power . . . To
regulate Commerce with foreign
Nations, and among the several States,

and with the Indian Tribes; . . . And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 841(a) of Title 21 of the United States Code provides:

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance

The above provisions, together with Section 531 of the Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 531, 138 Stat. 25, 174 (2024), are reproduced at App. 40-44a.

INTRODUCTION

Gonzales v. Raich is an aberration in the Court’s Commerce Clause and Necessary and Proper Clause precedents and a drastic departure from the federalism principles those clauses embody. 545 U.S. 1 (2005). *Raich* took up a question that the Court had, for almost two hundred years, treated as profoundly serious: when can Congress intrude on the States’ traditional police powers to regulate purely local economic activity, *i.e.*, activities “where no part of the product is intended for interstate commerce or

intermingled with the subjects thereof.” *Wickard v. Filburn*, 317 U.S. 111, 120 (1942).

Instead of addressing that question with the seriousness it deserves, *Raich* reduced it to a mere rational basis inquiry. *Raich* instructs that even when Congress prohibits a purely local economic activity that occupies an area of traditional state concern and that a State has chosen to permit, “We need not determine whether respondents’ activities, taken in the aggregate, substantially affect interstate commerce *in fact*, but *only whether a ‘rational basis’ exists for so concluding.*” 545 U.S. at 22 (opinion of Stevens, J., joined by Kennedy, Souter, Ginsburg, and Breyer, JJ.) (emphasis added). *Raich* employed that test to uphold the Controlled Substances Act (“CSA”) prohibition on marijuana—a plant that the States had regulated since the Colonial period—even as applied to purely local marijuana grown and possessed by patients, or distributed by their caregivers, for medical use pursuant to California law. *Id.* at 7, 9.

Under *Raich*, the Court’s “most deferential standard of review,” *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 83 (1988), the “deferential rational-basis test,” *United States v. Vaello Madero*, 596 U.S. 159, 165 (2022), became the test for when Congress can intrude, under the Commerce Clause and Necessary and Proper Clause, on the most traditional areas of State control. No case prior to *Raich* had gone so far, nor has any case since.

The Court’s stare decisis factors favor overruling *Raich*. First, *Raich*’s constitutional analysis was wrong when decided on an issue of

exceptional importance. *Raich* traced its “rational basis” standard to *Wickard*, 545 U.S. at 19, but *Wickard* never used that phrase. Instead, *Wickard* examined the “actual effects of the activity in question”—homegrown wheat consumed on a farm selling dairy and poultry products—to determine whether it had “such a close and substantial relation to interstate traffic that the control is essential or appropriate” to Congress’s regulation of interstate wheat prices. 317 U.S. at 120, 123. That standard is deferential to Congress but it is not a rational basis test.

Raich also cited prior Commerce Clause decisions of the Court that did rely on a “rational basis” standard, but those cases concerned activities *that were intended for or intermingled with interstate commerce*, such as the local production of coal that “moves in interstate commerce,” *Hodel v. Virginia Surface Mining & Reclamation Assn.*, 452 U.S. 264, 281 (1981), discrimination in a restaurant “serving food that has come from out of the State,” *Katzenbach v. McClung*, 379 U.S. 294, 304 (1964), and loan sharking controlled by interstate criminal organizations, *Perez v. United States*, 402 U.S. 146, 155 (1971). These cases did not involve purely local intrastate activity, *Raich* misapplied their holdings to such activity, and overruling *Raich* would not call their holdings into question. See *United States v. Lopez*, 514 U.S. 549, 557 n.2 (1995) (“Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.” (quoting *Hodel v. Virginia*,

452 U.S. at 311 (Rehnquist, J., concurring in judgment))).

Second, *Raich*'s analysis—which Justice Scalia criticized as “misleading and incomplete”—has not stood the test of time. 545 U.S. at 34 (Scalia, J., concurring in judgment). (Justice Scalia concurred only in judgment, based on the assumptions, undisputed at the time, that state-regulated marijuana was indistinguishable from interstate marijuana and thus would be readily diverted into interstate commerce, *see id.* at 40; those assumptions, as discussed below, are no longer true today.)

Seven years after *Raich*, five justices of the Court refused to apply *Raich*'s rational basis standard to the Affordable Care Act's individual mandate, and instead inquired whether that mandate was “incidental” to and an “essential component of,” *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559–60 (2012) (opinion of Roberts, C.J.), or “the only practicable way of enabling,” Congress's interstate goals, *id.* at 654 (Scalia, Kennedy, Thomas, and Alito, JJ., concurring and dissenting).

Sebelius was thus consistent with Justice Marshall's warning (which *Raich* failed to heed) that Congress may not “regulat[e] the internal commerce of a State,” unless doing so is expressly enumerated or “clearly incidental” to Congress's execution of an enumerated power. *Gibbons v. Ogden*, 22 U.S. 1, 203–04 (1824).

Raich was undermined again when the Court unanimously rejected the Government's *Raich*-based argument that Congress can create “nonuniform

bankruptcy laws” under the Necessary and Proper Clause. *Siegel v. Fitzgerald*, 596 U.S. 464, 474 (2022). *Siegel* held that the nothing in the “Necessary and Proper Clause permits Congress to circumvent the limitations set by the Bankruptcy Clause.” *Id.* That same anti-circumvention principle applies to the limitations of the Commerce Clause, which authorizes Congress to regulate “Commerce . . . among the several states,” but *not* the purely internal commerce (in form and effect) of a State in a domain traditionally regulated by the States in the exercise of their police power. *Gibbons*, 22 U.S. at 194–95.

Third, this is a rare case where the Court’s precedent has generated negative reliance interests. Following *Raich*, the number of States regulating marijuana more than *quadrupled* to at least thirty-eight that regulate the growing, distribution, and possession of the plant within their borders. App. 24a. Since 2014, Congress has enacted appropriations legislation barring the Department of Justice (“DOJ”) from enforcing the Controlled Substances Act against state-regulated medical marijuana programs. App. 25a. The DOJ, in turn, has desisted from prosecuting participants in both medical *and* adult-use state-regulated marijuana programs. App. 25a; *see Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236, 2237–38 (2021) (statement of Thomas, J., respecting denial of certiorari) (“[T]he Federal Government’s current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable

state of affairs strains basic principles of federalism and conceals traps for the unwary.”).

In short, *Raich* extended the rational basis standard to Congress’s prohibition of a local economic activity, not intended for or intermingled with interstate commerce, that for centuries had been a matter of State concern, that at least thirty-eight states have chosen to permit, and that the Federal Government has not seriously regulated for over a decade. The rational basis standard is not appropriate for the “grave and doubtful constitutional questions” those circumstances raise. *Jones v. United States*, 529 U.S. 848, 857–58 (2000) (quoting *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)).

If the Court resolves the first question and overrules *Raich*’s extension of the rational basis standard, the Court can simply remand to the First Circuit to consider again Petitioners’ Complaint.

In the alternative, the Court could proceed to determine that the Complaint states an as-applied challenge to the CSA concerning Petitioners’ purely local participation in state-regulated medical marijuana and adult-use marijuana programs. The District Court held that the Complaint has “alleged persuasive reasons for a reexamination of the way the Controlled Substances Act (‘CSA’) regulates marijuana,” including allegations establishing that the critical premises in *Raich* are not true today. App. 22a. As the First Circuit recognized, Petitioners have alleged facts showing that state-regulated marijuana *is distinguishable* from interstate marijuana, that

state-regulated marijuana has resulted in a reduction—rather than *Raich*’s feared increase—in interstate marijuana, and that Congress no longer regulates marijuana. App. 9a, 13a. These changed circumstances show that—regardless of what standard the Court applies—Congress’s prohibition on purely local, state-regulated marijuana can no longer be justified.

Petitioners respectfully request that the Court grant the petition.

STATEMENT OF THE CASE

Marijuana has been cultivated in the United States since at least 1619: each of the thirteen colonies enacted laws concerning the plant, including to promote it. *See* App. 17a-18a; Complaint ¶ 46, *Canna Provisions, Inc. v. Garland*, No. 3:23-cv-30113-MGM, ECF 1 (D. Mass.) (“Compl.”). In the 19th Century, marijuana’s medicinal properties were recognized in the United States Pharmacopeia, and marijuana was widely advertised and used for medical and recreational purposes. Compl. ¶¶ 7, 47–48.

States responded to these new uses by regulating marijuana as a drug. *Id.* ¶ 49. These efforts began in the 19th Century, and by 1970, marijuana was criminalized in all fifty states. *Id.* ¶ 53. Until then, the Federal Government had limited its marijuana laws to interstate regulations and taxes, *Id.* ¶¶ 50–53. Congress had opted to tax, rather than ban, marijuana out of concern that the latter would intrude upon the “subject matter reserved to the States under the tenth amendment.” *Id.* ¶ 52

(quoting *Taxation of Marihuana: Hearings on H.R. 6385 Before the H. Comm. on Ways and Means*, 75th Cong. at 12 (1937)).

In 1970, however, Congress broke new ground: banning, with the CSA, all marijuana commerce, interstate *and intrastate*. App. 23a-24a. The CSA labeled marijuana a Schedule I controlled substance, making it a federal crime to “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense” marijuana for any purpose, except as part of a federally approved research program. 21 U.S.C. §§ 812(c), 841(a); App. 43a.

Following the CSA, the States began to shift their policies back to regulating, rather than prohibiting, marijuana. Compl. ¶¶ 54–58. By 2005, nine states had established programs permitting their residents to use marijuana for medical purposes. *See Raich*, 545 U.S. at 5. The Federal Government reacted by vigorously enforcing the CSA against these state-regulated activities. *See id.* at 7. In *Raich*, a divided Court upheld the CSA’s ban on intrastate marijuana, rejecting an as-applied challenge brought by patients participating in California’s marijuana program and by two caregivers who distributed marijuana to one of the patients. 545 U.S. at 5–9. The five-justice majority held that the *Raich* plaintiffs’ marijuana activities were “economic” and that courts—when applying the Commerce Clause and Necessary and Proper Clause—“need not determine whether respondents’ activities, taken in the aggregate, substantially affect interstate commerce in

fact, but only whether a ‘rational basis’ exists for so concluding.” *Id.* at 22, 25–26.

Raich determined that a rational basis existed, *id.* at 19, based on assumptions about marijuana drawn from the general findings in the CSA (not specific to marijuana) and that the parties did not appear to dispute (“the parties and the numerous *amici* all seem to agree”), *id.* at 21–22. Those assumptions were that (1) state-regulated marijuana was indistinguishable from interstate marijuana, thereby creating enforcement problems; (2) state-regulated marijuana would increase the supply of interstate marijuana; and (3) Congress intended to eradicate marijuana from interstate commerce. *Id.* at 19–22.

Justice Scalia criticized the majority’s rationale as “misleading and incomplete” because it did not properly apply the Necessary and Proper Clause. *Id.* at 34 (Scalia, J., concurring in judgment). Justice Scalia posited that the correct standard was whether regulating purely local marijuana was essential to making the CSA effective, *id.* at 38, and concluded that this standard was met given the impossibility of distinguishing state-regulated marijuana and the resulting diversion risks, *see id.* at 40.

The three dissenting justices shared Justice Scalia’s concerns with the majority’s legal standard and concluded that the record was not sufficient to satisfy the Commerce Clause and Necessary and Proper Clause. *Id.* at 51–57 (O’Connor, J., dissenting,

joined by Rehnquist, C.J. and Thomas, J.), 59–66, 71 (Thomas, J., dissenting).

Following *Raich*, dozens of additional states chose to legalize and regulate marijuana. App. 24a. Today, thirty-eight states have medical marijuana programs, and twenty-four of those states have adult-use marijuana programs. *Id.*¹

Petitioners operate licensed medical and adult-use businesses in Massachusetts. App. 26a-28a. Massachusetts’ marijuana regime, like those in other States today, is vastly different from the relatively informal medical marijuana program that the Court reviewed in *Raich*. Petitioners’ marijuana products are subject to strict tracking, testing, labelling, and auditing processes that follow those products from seed-to-sale, incorporating both physical and advanced electronic processes. Compl. ¶¶ 59–74.

These strict processes ensure that Petitioners’ marijuana products, and those of state-regulated marijuana businesses in other states, can be traced back through each stage of the supply chain to the immature seeds from which they were grown, *id.* ¶ 65. State-regulated marijuana is therefore distinguishable both from interstate marijuana and other state-regulated marijuana. App. 13. These processes also serve to prevent diversion of state-

¹ Ohio became the twenty-fourth after the Complaint was filed. Plfs. Br. 25 n.9, *Canna Provisions, Inc.*, No. 3:23-cv-30113-MGM, ECF 36. Even more states (beyond the above thirty-eight) permit low-THC marijuana products that are nonetheless illegal under the CSA. *Id.*

regulated marijuana from regulated to unregulated channels. Compl. ¶ 65.

Petitioners' licensed medical and adult-use marijuana activities are purely intrastate. Petitioner Wiseacre Farm, Inc. grows marijuana on a farm in Western Massachusetts and sells that marijuana solely to licensed marijuana retailers in Massachusetts, which in turn sell it to customers in Massachusetts. *Id.* ¶¶ 5, 42–43.

Petitioner Verano Holdings Corp. operates medical and adult-use marijuana businesses in Massachusetts, App. 28a, that cultivate, process, possess, and sell marijuana entirely in Massachusetts, Compl. ¶ 45. Petitioner Canna Provisions, Inc. likewise retails local marijuana to qualifying customers in Massachusetts. *Id.* ¶ 32. Petitioner Gyasi Sellers operates a logistics business that delivers marijuana solely from licensed marijuana retailers in Massachusetts to their customers in Massachusetts. *Id.* ¶¶ 3, 37–40.

Petitioners' class of activities has not increased interstate commerce in marijuana. App.13a. Instead, federal data shows that since at least 2012, when Massachusetts adopted its intrastate marijuana program, state-regulated marijuana programs have resulted in *reduced* traffic in interstate marijuana. Compl. ¶¶ 54, 77; App. 13a.

The Federal Government responded to this second wave of state-regulated marijuana programs by abandoning its formerly comprehensive regulation of marijuana. In 2010, Congress permitted the

District of Columbia to enact a medical marijuana program. App. 5a. Starting in 2013, Compl. ¶ 82, the DOJ has followed “either a formal or informal policy not to prosecute individuals or companies under the CSA for conduct that complied with state” marijuana programs—medical *or* adult-use, App. 25a. In 2014, Congress transformed this DOJ policy into legislation by enacting the Rohrabacher-Farr Amendment, which prohibits the DOJ from using appropriated funds to enforce the CSA over persons participating in state-regulated medical marijuana programs. App. 4a. Congress has renewed that limitation on the DOJ every year since. *Id.*; see App. 44a.

In 2023, Petitioners sued Respondent alleging an as-applied challenge to the CSA. App. 5a. After Respondent moved to dismiss, the District Court entered an order holding:

- (1) that Petitioners have standing to challenge the CSA based on both the “credible threat of prosecution” they face and the “economic injuries” Petitioners have suffered that are “fairly traceable” to the “risks and uncertainties the CSA imposes on transactions with state-regulated marijuana businesses,” App. 31a-34a;
- (2) that “the Complaint has alleged persuasive reasons for a reexamination of the way the Controlled Substances Act (‘CSA’) regulates marijuana,” App. 22a; and
- (3) that the District Court was powerless to make that reexamination because, under

Raich, its role was limited to “inquiring only whether Congress could rationally conclude the plaintiffs’ conduct had a substantial affect on interstate commerce, rather than whether the plaintiffs could prove that it did not,” App. 36a.

On May 27, 2025, the First Circuit affirmed. App. 1a. The First Circuit accepted Petitioners’ allegations that state-regulated marijuana was distinguishable from interstate marijuana and that Petitioners’ class did not increase commerce in interstate marijuana. App. 13a. The First Circuit also noted that Congress was no longer comprehensively regulating all marijuana. App. 8a. Nonetheless, the court concluded that those factors were immaterial under *Raich*’s rational basis test. App. 13a.

REASONS FOR GRANTING THE PETITION

The Court should grant the Petition and take this opportunity to overrule or clarify *Raich*.

I. The “nature of” *Raich*’s “error” warrants re-examination under the Court’s stare decisis analysis. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 268 (2022). *Raich* concerns an exceptional, and ongoing, intrusion into the States’ police powers. The CSA’s significance to the exercise of the States’ police powers is massive and even greater today than it was in *Raich*’s time, when only nine states had legalized marijuana. Thirty-eight states have now decided that the health and safety of their citizens is better served by making marijuana available through regulated channels than through prohibition. The CSA displaces those states’ choices and imposes Congress’s

own views on intrastate policy. The serious federalism questions raised by that intrusion warrant the Court’s attention now, as they did in *Raich*.

II. The remaining *stare decisis* factors all favor overruling *Raich*’s “rational basis” standard, which was wrong when decided. *Raich* took a grave constitutional question—when Congress can intrude on a traditional area of State concern—and reduced it, contrary to long-standing precedents, to a rational basis inquiry. *Raich*’s flawed reasoning was based on misreading *Wickard*, as a “rational basis” decision, *Raich*, 545 U.S. at 19, when *Wickard* never used that term and instead directed courts to analyze the “actual effects of the activity in question,” 317 U.S. 120. By misreading *Wickard*, *Raich* created a standard at odds with the Court’s federalism practices going back to *M’Culloch v. Maryland*, 17 U.S. 316 (1819), and *Gibbons*. Subsequent cases of the Court have adhered to the Court’s pre-*Raich* precedents rather than *Raich*’s deviation from them.

No reliance interests favor perpetuating *Raich*’s constitutional error, where, as here, the States and the Federal Government have taken action in spite of *Raich* and the CSA: permitting, or in the Federal Government’s case not prosecuting, state-regulated marijuana.

III. After resolving the first question presented, the Court could simply remand this case to the First Circuit. The Court could also determine that the CSA’s prohibition on local, state-regulated marijuana cannot be upheld under Petitioners’ allegations, which show that the factual assumptions that

provided the critical premises for *Raich* are now undisputedly false. Those material changes render the prohibition on state-regulated marijuana untenable, even under *Raich*'s rational basis standard.

IV. This Petition presents a direct vehicle for overruling *Raich*. This case comes before the Court at the motion to dismiss stage, where Plaintiffs' well-pleaded allegations provide "persuasive reasons for a reexamination of the way the Controlled Substances Act ('CSA') regulates marijuana." App. 22a.

I. RAICH PERMITS A DRAMATIC INTRUSION ON THE EXERCISE OF THE STATES' POLICE POWERS.

Some constitutional errors "are more damaging than others"; here, the exceptionally important "nature of" *Raich*'s "error" makes revisiting it appropriate under the Court's *stare decisis* analysis. *Dobbs*, 597 U.S. at 268.

A. *Raich* Addressed the Critically-Important Issue of When Congress Can Intrude on States' Traditional Policymaking.

The as-applied challenge to the CSA in *Raich*, 545 U.S. at 8–9, posed an issue of critical importance to the States and the Federal Government: the "grave and doubtful constitutional questions" that "arise" when Congress regulates "traditionally local criminal conduct," thereby invading an area of "traditional state concern." *Jones*, 529 U.S. at 857–58 (quoting

Delaware & Hudson Co., 213 U.S. at 408); *see id.* (declining to read the federal arson statute as applying to any building that bears a “trace of interstate commerce”).

The marijuana plant and its regulation have been, since the colonial period, an area of State concern. *See* App. 17a-18a; Compl. ¶¶ 46–52. Even after the CSA’s enactment, the Court has observed that the vast majority of marijuana crimes “*as a practical matter, are purely state in nature*” and that in 2008, for example, only “.07% of arrests for marijuana offenses were made by federal law enforcement officers.” *Fowler v. United States*, 563 U.S. 668, 677 (2011) (emphasis added).

In *Raich*, several of those states (now the vast majority) had determined, in their sovereign capacity, that the health and safety of their citizens is better served by abandoning prohibition and making marijuana available through regulated local channels. These State programs address purely local concerns, including protecting their residents from adulterated products, protecting minors by restricting marijuana to regulated channels that enforce age requirements, and reducing the risks of residents self-medicating with marijuana. Compl. ¶ 56.

The CSA overrides those policy choices by banning the “manufacture, distribution, or possession of marijuana,” even when those activities are purely intrastate and are performed pursuant to state law. *Raich*, 545 U.S. at 14. By policing “purely local crimes”—indeed local activities that the vast majority of States now do not consider crimes—the CSA

“intrudes on the police power of the States.” *Bond v. United States*, 572 U.S. 844, 860 (2014) (*hereinafter* “*Bond II*”) (emphasis added).

In holding that such an intrusion should be assessed under the extremely deferential rational basis standard, *Raich* shifted the boundary between what is truly local and what is of federal concern. 545 U.S. at 22. Where the Court draws that line is central to preserving the basic structure of the Constitution, under which the States may “enact legislation for the public good—what we have often called a ‘police power,’” while the Federal Government “has no such authority.” *Bond II*, 572 U.S. at 854.

B. The CSA’s Intrusion Is of Even Greater Importance Today.

Following *Raich*, two developments have rendered the CSA’s intrusion into the States’ police power more important and more stark.

First, thirty-eight states have now chosen to legalize and regulate the local production, distribution, and possession of marijuana. App. 24a; Compl. ¶ 55. Each of those states permits medical marijuana and twenty-four permit adult use. *Id.*; see p. 10 n.1, *supra*. Even more states permit low-THC marijuana that is still illegal under federal law. *Id.* Thus, the “*public policy* of the Commonwealth of Massachusetts, and the dozens of other States that have chosen to regulate marijuana, each “*enacted in its capacity as sovereign, has been displaced by that of the National Government.*” *Bond v. United States*, 564 U.S. 211, 224 (2011) (emphasis added).

Second, following *Raich* the Federal Government has undermined the notion of any link between the CSA’s interstate goals and its intrastate prohibitions. Since 2014, Congress has barred enforcement against state-regulated medical marijuana but not adult-use marijuana (while leaving both prohibited under the CSA). App. 25a. State-regulated medical marijuana is therefore less regulated, from a federal perspective, than the least-controlled Schedule V substances in the CSA. *See* 21 U.S.C. § 812(c). The DOJ has taken non-enforcement even further, with a policy of not enforcing the CSA as to either state-regulated medical *or* adult-use marijuana. App. 25a.

The Federal Government is therefore no longer regulating marijuana under a “closed regulatory system.” *Raich*, 545 U.S. at 13. In its place is a “contradictory” “half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana.” *Standing Akimbo*, 141 S. Ct. at 2236–37 (statement of Thomas, J., respecting denial of certiorari).

This long period of desuetude has severed any link between controlling state-regulated marijuana and regulating interstate commerce, thereby rendering the CSA’s intrusion on the States’ policymaking even more stark. (It also factors strongly against the *stare decisis* reliance factor, *see* Part II.C, *infra*.) The federalism issues that warranted the Court’s review in *Raich* have thus taken on even greater importance today.

II. RAICH'S RATIONAL BASIS STANDARD WAS WRONG WHEN DECIDED AND SHOULD BE OVERRULED

When confronted with the CSA's groundbreaking intrusion on States' police powers, *Raich* held, "We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding." *Raich*, 545 U.S. at 22. That test was unsuited to the profound task *Raich* faced. The time has come for overruling *Raich*.

The Court does "not lightly overrule" its precedents but, "We have not hesitated, however, when it has become apparent that a prior decision has departed from a proper understanding of congressional power under the Commerce Clause." *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 557 (1985). *Raich* is such a case. The "quality of the decision's reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision" all favor overruling *Raich*. *Ramos v. Louisiana*, 590 U.S. 83, 105–06 (2020) (listing *stare decisis* factors) (quoting *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U. S. 230, 232 (2019)).

A. *Raich*'s "Rational Basis" Standard Is, as Justice Scalia and Justice Thomas Warned, "Misleading," and It Deviated from the Court's Longstanding Precedents.

"*Stare decisis* require[s] an assessment of the strength of the grounds on which" *Raich* "was based." *Dobbs*, 597 U.S. at 234. *Raich*'s reasoning was criticized by Justice Scalia as "misleading and incomplete," 545 U.S. at 34 (Scalia, J., concurring), and by Justice Thomas as "misleading," *id.* at 68 n.6 (Thomas, J., dissenting). Those criticisms were apt: *Raich* misread the Court's prior holdings and crafted a standard inconsistent with the Court's precedents applying the Commerce Clause and Necessary and Proper Clause.

1. Raich Misread Wickard, Lopez, and the Court's Other Modern Era Precedents.

For almost two hundred years leading up to *Raich*, regulations of intrastate activity in areas of traditional State concern warranted careful consideration by the Court. *Wickard* observed that before *Wickard*, there had been "*no decision of this Court that such activities may be regulated where no part of the product is intended for interstate commerce or intermingled with the subjects thereof*"—i.e., economic activities that are purely local. 317 U.S. at 120 (emphasis added).

Wickard held that Congress could control one such activity—"[c]onsumption on the farm" "of homegrown wheat" *id.* at 127—involving a farm

engaged in “selling milk,” “poultry,” and “eggs,” *id.* at 114. *Wickard* reached that conclusion only after analyzing the “actual effects” of homegrown wheat consumption by farms, and concluding that absent its regulation, Congress’s interstate goals would be substantially undermined. *Id.* at 120, 124. That careful consideration had been a central aspect of this Court’s federalism jurisprudence since *Wickard*: “Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.” *Lopez*, 514 U.S. at 557 n.2 (quoting *Hodel v. Virginia*, 452 U.S. at 311 (Rehnquist, J., concurring in judgment)). “Rather, whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.” *United States v. Morrison*, 529 U.S. 598, 614 (2000) (quoting *Lopez*, 514 U.S. at 557 n.2 (internal alteration and quotation marks omitted)).

Raich, however, expressly misread *Wickard* as a rational basis case: “In *Wickard*, we had no difficulty concluding that Congress *had a rational basis* for believing that, when viewed in the aggregate, leaving home-consumed wheat outside the regulatory scheme would have a substantial influence on price and market conditions.” 545 U.S. at 19 (emphasis added). *Wickard*, however, *never used the term* “rational basis.” The *Wickard* Court was intimately familiar with the “rational basis” test, *see, e.g., United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 (1938), but

Wickard never suggested it was applying that test to assess the boundaries of Congress’s Commerce Clause authority.

Instead, *Wickard* instructed that when dealing with a purely intrastate “product,” the Court’s focus should be on the “*actual effects* of the activity in question upon interstate commerce.” 317 U.S. at 120 (emphasis added). Those “economic effects” should be analyzed, *Wickard* held, to determine whether the intrastate activities have “such a close and substantial relation to interstate traffic that the control *is essential or appropriate to*” Congress’s interstate goals. *Id.* at 123 (emphasis added) (quoting (*Houston, E. & W. T. R. Co. v. United States*, 234 U.S. 342, 351 (1914))).

Wickard’s application of that standard cannot be confused with a rational basis inquiry. The statute in *Wickard* imposed a quota on wheat available to be “dispose[d] of ‘by feeding (in any form) to poultry or livestock’” intended for sale, barter, or exchange. *Id.* at 118–19 (quoting 7 U.S.C. § 1301(b)(6)(A), (B)). To assess Congress’s authority to impose that quota on the “consumption of homegrown wheat,” *id.* at 127, *Wickard* analyzed, in detail, the “actual effects” of that consumption, based on “a summary of the economics of the wheat industry” to which the parties had “stipulated,” *id.* at 120, 125; *see id.* at 128–29. The Court’s economic analysis spanned numerous factors, including “world conditions,” the percentage “concentration of this crop”, “average harvest” size, how farming practices differed across the United States, and variations in the amount of “consumption

of home-grown wheat” and its “effect” on “interstate commerce.” *Id.* at 125–27.

Based on that analysis, *Wickard* concluded that Congress’s wheat regulation fell into the category of cases where Congress may regulate “intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.” *Id.* at 124 (quoting *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942)); *see id.* at 128–29 (“*This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.*” (emphasis added)).

Wickard’s reasoning therefore cannot be confused with a “rational basis” standard, under which courts must “uphold a statutory classification so long as there is ‘any reasonably conceivable state of facts that could provide a rational basis for the classification.’” *United States v. Skrametti*, 145 S. Ct. 1816, 1835 (2025) (emphasis added) (internal quotation omitted). That “deferential rational-basis test,” *Vaello Madero*, 596 U.S. at 165, is the Court’s “most deferential standard of review,” *Bankers Life & Cas. Co.*, 486 U.S. at 83 (emphasis added).

By treating *Wickard* as simply a rational-basis case, *Raich* misread *Wickard* and deviated from its admonition against using formalistic standards to “foreclose consideration of the *actual effects of the activity* in question upon interstate commerce.” *Wickard*, 317 U.S. at 120 (emphasis added).

Raich cited five other decisions of the Court to support its holding that a mere rational basis is sufficient for Congress to regulate purely local economic activity. *Raich*, 545 at 22 (citing *Hodel v. Virginia*, 452 U.S. at 276–80; *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252–53 (1964); *Perez*, 402 U.S. at 155–56; *Katzenbach*, 379 U.S. at 299–301; and *Lopez*, 514 U.S. at 557). None of those cases supports *Raich*’s holding.

Those cases demonstrate that when a local activity *is* part of the stream of interstate commerce, Congress need only have a rational basis for concluding that it affects interstate commerce. The *Hodel* cases concerned Congress’s regulation of the local “production of coal for interstate commerce.” *Hodel v. Indiana*, 452 U.S. 314, 329 (1981); *see Hodel v. Virginia*, 452 U.S. at 281 (“Appellees do not dispute that coal is a commodity that moves in interstate commerce.”). *Katzenbach* concerned discrimination in restaurants “serving food that has come from out of the State.” 379 U.S. at 304. *Heart of Atlanta* concerned “a motel which concededly serves interstate travelers.” 379 U.S. at 261. *Perez* concerned loan sharking, a practice that “is controlled by organized criminal syndicates” acting in interstate commerce. 402 U.S. at 155; *see also F.E.R.C. v. Mississippi*, 456 U.S. 742, 756–57 (1982) (applying “rational basis” to Commerce Clause challenge to federal electricity regulation, where the utilities involved “sell their retail customers power that is generated in part beyond Mississippi’s borders, and offer reciprocal services to utilities in other States,” where “it is

difficult to conceive of a more basic element of interstate commerce than electric energy,” and where “[n]o State relies solely on its own resources in this respect”). None of those cases dealt with, as *Raich* did, purely local economic activity. 545 U.S. at 17, 25.

Lopez referred to the rational basis standard in those same cases, 514 U.S. at 557, but refused to apply it to a noncommercial intrastate crime, and cautioned that “the question of congressional power under the Commerce Clause ‘is necessarily one of degree,’” *id.* at 565–66 (quoting *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)), rather than a brightline test of what Congress “could rationally conclude,” *id.* at 565 (quoting *id.* at 629 (Breyer, J., dissenting, joined by Stevens, Souter, and Ginsberg, JJ.)).

In none of these cases did the Court hold, as *Raich* did, that a purely local economic activity—not intermingled with or intended for interstate commerce—could be regulated based on a mere rational basis.

2. *Raich Is Inconsistent with the Court’s Commerce Clause and Necessary and Proper Clause Precedents.*

By misreading the Court’s precedents, *Raich* overrode the requirements of the Commerce Clause and Necessary and Proper Clause.

Since *McCulloch*, this Court has cautioned that while the Necessary and Proper Clause confirms Congress’s “right to legislate on that vast mass of *incidental powers* which must be involved in the constitution,” the power “of regulating commerce” is

“a great substantive and independent power, which *cannot be implied as incidental to other powers, or used as a means of executing them.*” *M’Culloch*, 17 U.S. at 411, 421 (emphases added). Thus, the Necessary and Proper Clause does not permit Congress to regulate a state’s internal commerce in the same manner that Congress might create a “corporation” or a “bank,” *i.e.*, when doing so “is convenient, or useful” to the exercise of a granted power. *Id.* at 413, 422.

Instead, as Chief Justice Marshall explained five years later in *Gibbons v. Ogden*, “regulating the internal commerce of a state” is outside Congress’s authority, except where doing so is expressly enumerated or “is *clearly incidental* to some power which is expressly given.” *Gibbons*, 22 U.S. at 203–04 (emphasis added).

These decisions placed the regulation of purely intrastate commerce *outside* the “mass of incidental powers” that Congress can employ when “‘convenient, or useful’ or ‘conducive’” to the granted power. *Sebelius*, 567 U.S. at 559 (opinion of Roberts, C.J. (quoting *M’Culloch*, 17 U.S. at 418, then *United States v. Comstock*, 560 U.S. 126, 133–34 (2010))).

Because general control over intrastate commerce “cannot be implied as incidental to other powers,” *M’Culloch*, 17 U.S. at 411, it must be “proved,” *id.* at 421, that the particular control Congress seeks to impose on intrastate commerce is “clearly incidental” to Congress’s enumerated authority, *Gibbons*, 22 U.S. at 203–04; see Gary Lawson et. al., *The Fiduciary Foundations of Federal*

Equal Protection, 94 B.U. L. Rev. 415, 432–33 (2014) (explaining that Chief Justice Marshall “spent seven pages of United States Reports trying to prove that the power to incorporate was a power of lesser dignity (that is, subordinate to) those expressly enumerated in the Constitution”).

This Court applied the “clearly incidental” standard to Congress’s regulation of intrastate commerce in *Simpson v. Shepard* (U.S. Reps. Title: *Minnesota Rate Cases*), 230 U.S. 352, 399, 411 (1913). *Simpson* held that Congress could regulate rates on intrastate traffic when “interstate rates *cannot be maintained* without imposing requirements with respect to their intrastate rates which substantially affect the former.” *Id.* at 432–33 (emphasis added).

Simpson’s careful analysis carried through into the Court’s post-New Deal Commerce Clause cases, which inquired whether Congress’s authority over purely intrastate commerce was “*necessary and appropriate* to make the regulation of the interstate commerce effective.” *Wrightwood Dairy*, 315 U.S. at 121 (emphasis added); see *N.L.R.B.*, 301 U.S. at 37 (holding that Congress can regulate local activities that “have such a close and substantial relation to interstate commerce that their control is *essential or appropriate* to protect that commerce” (emphasis added)); see also *Campbell v. Hussey*, 368 U.S. 297, 298–99 (1961) (“In markets where tobacco is sold to both interstate and intrastate purchasers *it is not known, when the grower places his tobacco on the warehouse floor for sale, whether it is destined for interstate or intrastate commerce. Regulation to be*

effective, must, and therefore may constitutionally, apply to all sales.” (quoting *Mulford v. Smith*, 307 U.S. 38, 47 (1939)) (emphasis added)).

The standard articulated in these cases is not reducible to a rational basis test, as “the scope of this power must be considered in the light of our dual system.” *N.L.R.B.*, 301 U.S. at 37. Careful attention to context is therefore required. In *Wrightwood Dairy*, for example, the Court upheld a federal control over milk farmed and sold locally in Illinois (and that was *not* “intermingled with that which has crossed state lines”), only after concluding that “the record shows” that “the marketing of intrastate milk which competes with that shipped interstate would tend seriously to break down price regulation of the latter.” 315 U.S. at 117–18, 120–21. “*Study of the order which we have summarized makes clear* that the unregulated handler selling fluid milk,” *Wrightwood Dairy* concluded, “could force his competitors dealing in interstate milk to surrender the market.” *Id.* (emphasis added); *see also Lopez*, 514 U.S. at 561 (“Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.”).

Notably, the *Raich* concurring and dissenting opinions—but not *Raich* itself—embraced this traditional and more rigorous analysis under the Commerce Clause and Necessary and Proper Clause. “[T]he power to enact laws enabling effective regulation of interstate commerce can only be exercised in conjunction with congressional regulation

of an interstate market, and it *extends only to those measures necessary to make the interstate regulation effective.*” *Raich*, 545 U.S. at 38 (Scalia, J., concurring) (emphasis added). “Whatever additional latitude the Necessary and Proper Clause affords, *the question is whether Congress’ legislation is essential to the regulation of interstate commerce itself*—not whether the legislation extends only to economic activities that substantially affect interstate commerce.” *Id.* at 67–68 (Thomas, J., dissenting) (emphasis added) (internal citation omitted). “Similarly, *it is neither self-evident nor demonstrated that regulating such activity is necessary to the interstate drug control scheme.*” *Id.* at 49 (O’Connor, J., dissenting, joined by Rehnquist, C.J. and Thomas, J.) (emphasis added).

Thus, while the *Raich* concurrence and dissents disagreed over the assumed facts in *Raich* (a disagreement now rendered moot because those assumptions are no longer true, see p. 18–19, *supra*; Part III, *infra*) they uniformly pressed for a more rigorous standard than *Raich*’s rational basis test.

B. *Raich*’s Rationale Has Been Undermined by Subsequent Cases.

Subsequent “legal developments” have substantially undermined *Raich*’s rational basis test, making overruling *Raich* all the more appropriate. *Ramos*, 590 U.S. at 105–06.

In *United States v. Comstock*, Justice Kennedy—a member of *Raich*’s five-justice majority—seemingly walked away from *Raich*’s holding. He

insisted that Congress’s authority under the Commerce Clause requires “a demonstrated link *in fact*, based on empirical demonstration,” rather than a mere hypothetical basis. *Comstock*, 560 U.S. at 152 (Kennedy, J., concurring) (emphasis added).

Two years later, Justice Kennedy and four other justices of the Court refused to uphold the Affordable Care Act’s individual mandate under *Raich*’s rational basis test. *See Sebelius*, 567 U.S. at 653–55 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting); *see id.* at 560–61 (opinion of Roberts, C.J.); *cf. id.* at 603–04 (Ginsburg, Breyer, Sotomayor, and Kagan, JJ., dissenting in part) (applying rational basis review). Those justices, across two opinions, articulated a Necessary and Proper Clause standard far more rigorous than in *Raich*.

The Chief Justice’s opinion highlighted a prerequisite to Congress’s Necessary and Proper Clause authority that *Raich* elided: whether Congress’s intrastate regulation was among the “incidental powers which must be involved in the constitution” or instead was one of the “great substantive and independent power[s]’ beyond those specifically enumerated.” *Id.* at 559 (opinion of Roberts, C.J.) (quoting *M’Culloch*, 17 U.S. at 411, 420–21). Because the individual mandate could not be considered “‘incidental’ to the exercise of the commerce power,” it was not Necessary and Proper, regardless of whether it was useful or convenient to Congress’s interstate goals. *Id.* at 560 (quoting *M’Culloch*, 17 U.S. at 418).

The Chief Justice then proceeded to summarize *Raich* without once raising its rational basis standard. *See id.* at 560–61. The Chief Justice’s summary refers to *Raich* in narrower terms more consistent with *Wickard*: “Congress’s attempt to regulate the interstate market for marijuana would therefore have been substantially undercut if it could not also regulate intrastate possession and consumption.” *Id.*

The opinion of Justices Scalia, Kennedy, Thomas, and Alito likewise recast *Raich* as a case where “the growing and possession prohibitions *were the only practicable way of enabling the prohibition of interstate traffic in marijuana* to be effectively enforced.” *Id.* at 654 (Scalia, Kennedy, Thomas, and Alito, JJ., concurring) (emphasis added). They further opined that “this Court has insisted on *careful scrutiny* of regulations that do not act directly on an interstate market or its participants.” *Id.* at 653 (emphasis added). *Raich* dealt with just that type of regulation, but it did not provide for careful scrutiny.

A year later, in *United States v. Kebodeaux*, 570 U.S. 387 (2013), the Chief Justice emphasized that the Necessary and Proper Clause cannot be used as a backdoor to impose a federal police power over areas traditionally left to the States. In his concurring opinion, he opined that “*Chief Justice Marshall was emphatic* that no ‘great substantive and independent power’ can be ‘implied as incidental to other powers, or used as a means of executing them,’” and warned that, “*It is difficult to imagine a clearer example of such a ‘great substantive and independent power’ than the power to ‘help protect the public . . . and alleviate*

public safety concerns.” *Kebodeaux*, 570 U.S. at 402–03 (Roberts, C.J., concurring) (quoting *McCulloch*, 316 U.S. at 411) (emphasis added) (ellipsis in original).

The Chief Justice further opined, “It is of fundamental importance to consider whether essential attributes of state sovereignty are compromised by the assertion of federal power under the Necessary and Proper Clause.” *Id.* (quoting *Comstock*, 560 U.S. at 153 (Kennedy, J., concurring in judgment)). *Raich*’s rational basis test leaves no room for those considerations.

In 2022, *Raich* was dealt a further blow, when the Court rejected the Government’s *Raich*-based argument that Congress could enact “nonuniform bankruptcy laws” under the Necessary and Proper Clause. *Siegel*, 596 U.S. at 474. In *Siegel*, the U.S. Trustee had argued, citing *Raich*, that not “every limit on an enumerated power applies to the incidental laws that Congress is permitted to enact under the Necessary and Proper Clause in service of that power.” Brief for Respondent at 29, *Siegel*, 596 U.S. 464 (No. 21-441), 2022 WL 943378, at *29. In response, the Court held that the “Court has never suggested” that “the “Necessary and Proper Clause permits Congress to circumvent the limitations set by the Bankruptcy Clause.” *Siegel*, 596 U.S. at 474. By the same logic, the Necessary and Proper Clause does not permit Congress to circumvent the limits of the Commerce Clause, *i.e.*, that it applies to “Commerce among the several states,” not “the exclusively internal commerce,” in form and effect, “of a State.” *Gibbons*, 22 U.S. at 194–95.

**C. The States' and Federal Government's
Lack of Reliance on *Raich* Favors
Overruling It.**

Raich has led to *negative* “reliance interests” that underscore why it should be overruled. See *Franchise Tax Bd.*, 587 U.S. at 249. Here, the Federal Government, and the vast majority of the States, have largely proceeded as if *Raich* had been decided differently.

Following *Raich*, dozens of States have decriminalized and regulated marijuana, while *no* States have recriminalized it. See Part I.B, *supra*. The DOJ has chosen not to enforce the CSA against adult-use or medical state-regulated marijuana, and Congress has forbidden such enforcement as to medical marijuana. See *id.* Thus, the States and the Federal Government have elected marijuana policies on the understanding that *notwithstanding Raich*, the CSA should not be enforced against state-regulated marijuana.

The main reliance interest here is therefore not with *Raich*, but rather “the reliance the American people” and the States “place in” the “[C]onstitution[].” *Ramos*, 590 U.S. at 111; see *Franchise Tax Bd.*, 587 U.S. at 248 (noting that *stare decisis* “is ‘at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment’” (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997))).

Nor are there any other “reliance interests” that would justify adhering to *Raich*’s “incorrect

resolution of an important constitutional question.” *Franchise Tax Bd.*, 587 U.S. at 249. Overruling *Raich* would merely restore the pre-*Raich* analysis that has guided the Court, and shaped legislation, from the New Deal era on—an analysis that *Raich* misread. The prior jurisprudence from which *Raich* deviated gives Congress all the flexibility it needs to exercise actual federal interests. Overruling *Raich* would therefore not disrupt the numerous federal regimes that have been upheld, or could be upheld, under *Wickard*, *Heart of Atlanta*, *Katzenbach*, *Perez*, and *Hodel v. Virginia*. See Part II.B.1, *supra*.

Where Congress has attempted to rely on *Raich* to push the boundaries of its own authority beyond the Court’s pre-*Raich* precedents, the Court has not hesitated to reject it, as the Court did in *Sebelius* and *Siegel*. See Part I.C, *supra*.

III. REGARDLESS OF THE STANDARD, THE PROHIBITION OF STATE-REGULATED MARIJUANA IS NOT NECESSARY AND PROPER TO EFFECTING THE CSA’S INTERSTATE GOALS.

If the Court overrules *Raich*, it can simply remand for the First Circuit to apply this Court’s precedents unrestricted by *Raich*’s rational basis test.

In the alternative, the Court could hold that Petitioners have stated a claim that the CSA is unconstitutional as-applied to their purely local state-regulated activities. Because the factual assumptions

that provided the critical premises for *Raich* are now undisputedly false, that conclusion can be reached under *Raich*'s standard *or* the proper pre-*Raich* standards.

A. Each of *Raich*'s Premises Is No Longer True Today.

Raich's holding was based on the premises that (1) California's regulated marijuana was "fungible" with illicit interstate marijuana, and therefore would present "enforcement difficulties" because the two could not be distinguished; (2) state-regulated marijuana would lead to an increase in interstate marijuana, through diversion; and (3) Congress's interstate goal was to comprehensively control all marijuana in interstate commerce:

Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C. § 801(5), and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.

545 U.S. at 22 (footnote omitted).

The First Circuit's decision shows that none of these premises is true today.

First, unlike in *Raich*'s time, "state-regulated marijuana *is distinguishable* from illicit interstate

marijuana” today. App. 13a (emphasis added). State-regulated marijuana products now can be readily traced back to the seeds from which they were grown—thereby differentiating them from interstate marijuana. Compl. ¶¶ 9, 65. State-regulated marijuana therefore no longer poses “the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere.” *Raich*, 545 U.S. at 22.

Second, “the availability of regulated markets for marijuana in individual states has decreased interstate commercial activity involving marijuana.” App. 13a. Thus, contrary to *Raich*’s assumption that “high demand in the interstate market will draw such marijuana into that market,” *Raich*, 545 U.S. at 19, state-regulated marijuana has not led to any substantial increase in interstate commerce, *see* Compl. ¶¶ 57–58.

Third, Congress no longer “regulates all marijuana” comprehensively. App. 9a (emphasis omitted). Congress has chosen to permit medical marijuana in the District of Columbia and has, for over a decade, barred the DOJ from prosecuting persons for participating in state-regulated marijuana programs. *See* Part I.B, *supra*. In other words, Congress has prevented the agency tasked with enforcing the CSA—the DOJ—from enforcing it at all as to medical marijuana. Congress’s “closed regulatory system” for marijuana, 545 U.S. at 13, has thus been replaced with a “half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana.” *Standing Akimbo*, 141 S. Ct. at 2236–37

(statement of Thomas, J., respecting denial of certiorari).

B. Given These Changes, *Raich*'s Conclusion Is No Longer Tenable Under Any Analysis.

The CSA “imposes current burdens and must be justified by current needs” to uphold its “departure from basic principles of federalism.” *Shelby County, Ala. v. Holder*, 570 U.S. 529, 535–36 (2013) (striking down the coverage formula in the Voting Rights Act because “the conditions that *originally justified these measures no longer* characterize voting in the covered jurisdictions” (emphasis added)). When measured against “the present state of commerce,” as it must be, the CSA’s ban on purely local, state-regulated marijuana cannot be justified. *Heart of Atlanta*, 379 U.S. at 251.

The facts today show that Petitioners’ participation in state-regulated marijuana—as a class of activity—is not “*intended for interstate commerce or intermingled with the subjects thereof*,” and the “actual effects of the activity in question” do not “in a substantial way interfere with or obstruct” Congress’s regulation of interstate marijuana in the CSA. *Wickard*, 317 U.S. at 120, 124 (emphasis added). Given these changes, and the about-face in Federal Government policy, banning state-regulated medical and adult-use marijuana cannot be deemed “incidental” to Congress’s interstate goals. *Sebelius*, 567 U.S. at 560 (opinion of Roberts, C.J.), let alone “clearly incidental” to them, *Gibbons*, 22 U.S. at 204.

These post-*Raich* developments have also erased the dividing line between Justice Scalia's concurrence and the dissenting Justices in *Raich*. Justice Scalia concurred in judgment after concluding, under the Necessary and Proper Clause, that controlling state-regulated marijuana was "necessary" to make the CSA "effective." *Raich*, 545 U.S. at 38 (Scalia, J., concurring in judgment). That conclusion was based on assumptions that state-regulated marijuana was indistinguishable from interstate marijuana and would thus be readily diverted into interstate commerce. *Id.* at 40. Without those facts, and without the Federal Government seriously enforcing the CSA against state-regulated marijuana activities, prohibiting local, state-regulated marijuana is by no means "necessary to make the interstate regulation effective." *Id.* at 38.

Even under the *Raich* majority's test, the changed circumstances leave nothing left to maintain a "rational basis" for prohibiting state-regulated marijuana. Congress *itself* has created the "gaping hole in the CSA" that *Raich* was concerned of, by forbidding enforcement, 545 U.S. at 22; yet contrary to *Raich*'s expectations, interstate commerce in marijuana did not increase, even as the number of states with regulated marijuana programs more than quadrupled from nine to thirty-eight. *See* App. 13a.

Put differently, *Raich* held that "Congress could have rationally rejected" the "notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market," 545 U.S. at 30, but that

reasoning no longer suffices when Congress has accepted that “notion,” *id.*, and enacted appropriations legislation barring enforcement of state-regulated medical marijuana. Congress has thus rejected the very assumptions that *Raich* held Congress could rationally make. As has the DOJ, which has effectively ceased enforcing both medical and adult-use state-regulated marijuana. App. 25a.

State-regulated marijuana cannot be considered an essential part of the CSA when the Federal Government does not treat it as such. This “contradictory” “half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana” is neither consistent with *Raich* nor, with basic principles of rule of law. *Standing Akimbo*, 141 S. Ct. at 2236–37. The current federal marijuana regime is “an untenable grey area,” that no longer can be considered rational. *United States v. Guess*, 216 F. Supp. 3d 689, 695 (E.D. Va. 2016).

IV. THIS CASE PRESENTS AN IDEAL VEHICLE FOR REVISITING *RAICH*.

Petitioners brought this case to challenge the ongoing validity of *Raich*. The Petition comes to the Court at the motion to dismiss stage, where the “Complaint has alleged persuasive reasons for a reexamination of the way the Controlled Substances Act (‘CSA’) regulates marijuana,” App. 22a, and those allegations, accepted by both the District Court and the First Circuit, must be taken as true, with all inferences drawn in Petitioners’ favor. After

substantial review, Petitioners are aware of no other Petition that has cleanly presented this question.²

CONCLUSION

The Court should grant the petition.

October 24, 2025

Respectfully submitted,

Joshua I. Schiller
BOIES SCHILLER
FLEXNER LLP
44 Montgomery Street,
41st Floor
San Francisco, CA
94104

DAVID BOIES
Counsel of Record
BOIES SCHILLER FLEXNER
LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200

² Cf. *Standing Akimbo, Inc. v. United States through Internal Revenue Serv.*, 2023 WL 569405, at *5–6 (10th Cir. Jan. 27, 2023) (plaintiffs waived arguments challenging the CSA, having improperly raised them in an “eleventh-hour” filing), *cert. denied*, 143 S. Ct. 2613 (2023); *United States v. Lubetsky*, 2024 WL 577543, at *1 (11th Cir. Feb. 13, 2024) (affirming conviction for “carelessly and unnecessarily prescribing oxycodone and morphine”), *cert denied*, 145 S. Ct. 548 (2024); *Borges v. Cnty. of Mendocino*, 2023 WL 2363692, at *1 (9th Cir. Mar. 6, 2023) (challenge to rezoning decision based on claimed substantive due process right to grow marijuana), *cert denied*, 144 S. Ct. 186 (2023); *Reimers v. United States Citizenship & Immigr. Servs.*, 2023 WL 3773644, at *1–2 (9th Cir. June 2, 2023) (challenge to denial of citizenship application, where applicant failed the “good moral character” standard by operating a marijuana business), *cert. denied*, 144 S. Ct. 563 (2024).

DBoies@BSFLLP.com

Jonathan D. Schiller
Matthew L. Schwartz
David Barillari
Kelly Waldo
Jack G. Tubio
BOIES SCHILLER FLEXNER
LLP
55 Hudson Yards
New York, NY 10001

Attorneys for Petitioners

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, FILED MAY 27, 2025.	1a
APPENDIX B — MEMORANDUM AND ORDER REGARDING DEFENDANT’S MOTION TO DISMISS, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, FILED JULY 1, 2024	20a
APPENDIX C — CONSTITUTIONAL AND STATUTORY PROVISIONS	40a

1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT, FILED MAY 27, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1628

CANNA PROVISIONS, INC.; GYASI SELLERS;
WISEACRE FARM, INC.;
VERANO HOLDINGS CORP.,

Plaintiffs, Appellants,

v.

PAMELA J. BONDI, ATTORNEY GENERAL*,

Defendant, Appellee.

Decided: May 27, 2025

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

[Hon. Mark G. Mastroianni, *U.S. District Judge*]

Before

Barron, *Chief Judge*,
Montecalvo and Rikelman, *Circuit Judges*.

Appendix A

BARRON, Chief Judge. The appellants are four businesses that allege that they cultivate, manufacture, possess, and/or distribute marijuana wholly within Massachusetts in full compliance with its laws and regulations. In 2023, they sued the Attorney General of the United States. They claimed that the Controlled Substances Act (“CSA”), 21 U.S.C. § 801 *et seq.*, “as applied to [their] intrastate cultivation, manufacture, possession, and distribution of marijuana pursuant to state law,” exceeded Congress’s powers under Article I of the United States Constitution and violated the Due Process Clause of the Fifth Amendment to the Constitution. They sought a declaratory judgment to that effect. They also sought an injunction prohibiting the enforcement of the CSA as to them, “in a manner that interferes with the intrastate cultivation, manufacture, possession, and distribution of marijuana, pursuant to state law.” The District Court dismissed the appellants’ claims for failing to state a claim on which relief could be granted. We affirm.

I.**A.**

Congress enacted the CSA in 1970, as part of the Comprehensive Drug Abuse Prevention and Control Act. *Gonzales v. Raich*, 545 U.S. 1, 10-12, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). “The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” *Id.* at 12. To do so, “Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense,

Appendix A

or possess any controlled substance except in a manner authorized by the CSA.” *Id.* at 13 (citing 21 U.S.C. §§ 841(a)(1), 844(a)).

The CSA grouped all controlled substances into five “schedules” based on their “accepted medical uses, the potential for abuse, and their psychological and physical effects on the body.” *Id.* Each schedule imposed “a distinct set of controls regarding the manufacture, distribution, and use of the substances listed therein.” *Id.* at 14.

The CSA classified marijuana as a Schedule I drug, which made “the manufacture, distribution, or possession of marijuana . . . a criminal offense,” except as authorized by the CSA. *Id.* “Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug.”¹ *Id.* at 15.

In *Raich*, the Supreme Court of the United States ruled on a claim that the CSA exceeded Congress’s Article I powers under the Commerce Clause and the Necessary and Proper Clause insofar as that statute applied to possession and cultivation of marijuana for personal medical use in compliance with state law. *Id.* at 7-8. There, the plaintiffs were two individuals who wished to grow and possess marijuana for personal medical use based on a physician’s recommendation in accord with a California law that, notwithstanding the CSA, authorized such activity as a matter of state law. *Id.*

1. In May 2024, the Attorney General issued a notice of proposed rulemaking that contemplates transferring marijuana from Schedule I to Schedule III. 89 Fed. Reg. 44597 (May 21, 2024). The administrative process remains pending.

Appendix A

Raich rejected the constitutional challenge on the ground that Congress had a rational basis for concluding that the failure to regulate “the intrastate cultivation and possession of marijuana for medical purposes based on the recommendation of a physician would substantially affect the larger interstate marijuana market.” *Id.* at 21-22. The Court explained that the CSA’s criminalization of the cultivation and possession of marijuana for personal medical use in compliance with state law was “an essential part of a larger regulatory scheme” for regulating marijuana that the CSA establishes. *Id.* at 30.

Beginning roughly a decade later, however, Congress each year has attached a rider to its annual appropriations bill. The rider concerns the authority of the U.S. Department of Justice with respect to state-regulated medical marijuana. It provides:

None of the funds made available under this Act to the Department of Justice may be used, with respect to any of [the listed states and territories] to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 531, 138 Stat. 25, 174 (2024); *see also United States v. Sirois*, 119 F.4th 143, 145 (1st Cir. 2024) (noting the same). This rider—often referred to as the “Rohrabacher-Farr Amendment”—“places a practical limit on federal prosecutors’ ability to enforce the CSA with respect to certain conduct involving medical marijuana.” *United*

Appendix A

States v. Bilodeau, 24 F.4th 705, 709 (1st Cir. 2022). In addition, in 2010, Congress permitted the District of Columbia to enact a medical marijuana program.

B.

In advancing their as-applied challenge to the CSA, the appellants refer in their complaint to the post-*Raich* federal legislative developments just mentioned. They also allege that, as of the time of the complaint's filing, twenty-three states had created regulated intrastate markets for non-medical, adult-use marijuana. Their complaint asserts that, in consequence of these developments, *Raich's* rationale for upholding the CSA against the challenge in that case provides no basis for upholding it against their challenge to the CSA based on Congress having exceeded its Article I powers. Their complaint separately alleges that the CSA is unconstitutional as applied to their activities under the Due Process Clause of the Fifth Amendment.

The government moved to dismiss the complaint for, among other things, “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). As to the claim based on Article I, the government contended that “*Raich's* holding that the CSA is within Congress'[s] power under the Commerce Clause and Necessary and Proper Clause, even as applied to intrastate marijuana activity compliant with state law, forecloses” the challenge. As to the claim based on substantive due process, the government argued that there is no fundamental right “to cultivate, manufacture, possess, and distribute marijuana,

Appendix A

subject only to state health, safety, and public welfare regulations,” and that “the CSA easily satisfies rational basis scrutiny.”

The District Court granted the government’s motion. The District Court reasoned that, because *Raich* held that “an aggregation of limited, non-commercial marijuana activity” provided a “rational basis” for Congress’s conclusion that such activity would “substantially affect interstate commerce,” it was bound by that precedent to “find the same to be true of [p]laintiffs’ larger-scale, commercial activities.” It also reasoned that “[t]here [was] simply no precedent for concluding that [p]laintiffs enjoy a fundamental right to cultivate, process, and distribute marijuana,” and “[i]n the absence of a fundamental right to engage in the cultivation, processing, and distribution of marijuana, [p]laintiffs cannot prevail on their substantive due process claim.”

This appeal timely followed.

II.

The appellants bear the burden of demonstrating that the CSA, as applied to their conduct, exceeds Congress’s power under the Commerce Clause and the Necessary and Proper Clause as well as that the CSA violates the Due Process Clause of the Fifth Amendment. *See Dep’t of State v. Muñoz*, 602 U.S. 899, 903, 144 S. Ct. 1812, 219 L. Ed. 2d 507 (2024). “We review de novo an order dismissing a complaint for failure to state a claim. . . .” *Lee v. Conagra Brands, Inc.*, 958 F.3d 70, 74 (1st Cir. 2020).

*Appendix A***III.**

The Commerce Clause of the United States Constitution provides that “Congress shall have [the] [p]ower . . . [t]o regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. The appellants do not dispute that they are engaged in commercial activity through their cultivation, manufacture, possession, and/or distribution of marijuana. They nonetheless contend that this commercial activity is purely “local” or “intrastate” in the sense that it takes place entirely within Massachusetts. They then go on to contend that Congress’s power under the Commerce Clause and the Necessary and Proper Clause does not extend to this activity, notwithstanding that it is commercial in nature.

In pressing this contention, the appellants assert that “myriad changes, both in federal legislation and the markets for marijuana, mean that the new marijuana regime today cannot satisfy the standard set out in *Raich*.” We begin with their contention insofar as it rests on post-*Raich* changes in “federal legislation.” We then consider their contention insofar as it rests on post-*Raich* changes in “the markets for marijuana.”

A.

In asserting that changes in federal legislation render *Raich* inapposite, the appellants focus chiefly on the Rohrabacher-Farr Amendments. They contend that those amendments show that “Congress has abandoned its goal of controlling all marijuana in interstate

Appendix A

commerce” and thus that “[t]he current regime . . . lacks the comprehensiveness that was a predicate for *Raich*’s upholding of the CSA.” They further contend that those amendments show that “not even Congress believes that prohibiting state-regulated marijuana is ‘essential to the effective control of the interstate incidents’ of marijuana.” (Quoting *Raich*, 545 U.S. at 12 n.20). As a result, they contend that *Raich* no longer “directly controls” because these post-*Raich* federal legislative developments reveal that regulating their activity—given that it occurs wholly intrastate, subject to state regulatory regimes—is not “an essential part of the larger regulatory scheme” for regulating marijuana that the CSA establishes. (Quoting *Raich*, 545 U.S. at 27).

As an initial matter, we observe that the Rohrabacher-Farr Amendments are of limited scope. They restrict the U.S. Department of Justice only from using federal funds “to prevent any of [the listed states and territories] from implementing their own laws that authorize the use, distribution, or cultivation of *medical marijuana*.” Consolidated Appropriations Act, 2024 § 531 (emphasis added). The appellants are challenging the CSA, however, insofar as it applies to their cultivation, manufacture, possession, and distribution of marijuana without regard to whether that activity is for a medical purpose. And the appellants do not explain why, under *Raich*, the regulation of such activity is not “an essential part of the larger regulatory scheme” that the CSA establishes, even accounting for the Rohrabacher-Farr Amendments. *Raich*, 545 U.S. at 27. After all, notwithstanding those

Appendix A

appropriation riders, the CSA remains fully intact as to the regulation of the commercial activity involving marijuana for non-medical purposes, which is the activity in which the appellants, by their own account, are engaged.

It may be that the appellants mean to suggest that *Raich* may not be understood to treat any legislative scheme regulating marijuana as “comprehensive” for purposes of triggering its “essential part” rationale unless that scheme regulates *all* marijuana. But even if we were to accept that questionable premise, it would not help the appellants, given the commercial nature of their activity.

The Court did not suggest in *Raich* that Congress may rely on its Article I powers under the Commerce Clause and the Necessary and Proper Clause to regulate any activity involving marijuana only as part of its regulation of all activity involving marijuana. Instead, the Court there relied on the comprehensiveness of the CSA’s regulatory regime and the “essential part” rationale only in the context of a challenge to the CSA as applied to the cultivation and possession of marijuana for personal medical use—and thus as applied to what was in and of itself a non-commercial activity. *See id.* at 18-22. The appellants’ challenge, by contrast, concerns the CSA’s application to activity that the appellants do not dispute is commercial in nature. Yet, they identify nothing in *Raich* that indicates that even when an activity that the CSA covers is commercial in nature, its regulation must be an “essential part” of the CSA for Congress to have the

Appendix A

Article I power to cover that activity via the CSA. Nor do we see anything in *Raich* that so indicates.²

The other “change[] . . . in federal legislation” to which the appellants point in challenging the ruling below based on the “essential part” test is Congress’s choice in 2010 to permit the District of Columbia to enact laws legalizing medical marijuana within the District. That federal legislative change, however, also solely concerned medical marijuana. The appellants’ argument regarding this federal legislative development thus would appear to suffer from precisely the same defects as their contentions pertaining to the Rohrabacher-Farr Amendments. And, insofar as the appellants mean to suggest that this federal legislative change demonstrates some problem with the application of the CSA to their conduct that the Rohrabacher-Farr Amendments do not, they do not explain what that problem might be. Any such contention is therefore waived for lack of development. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.”).

2. The appellants’ reliance on *Hobby Distillers Association v. Alcohol & Tobacco Tax & Trade Bureau*, 740 F. Supp. 3d 509 (N.D. Tex. 2024), is unavailing for the same reason. While that case understood *Raich* to require “an established, comprehensive regulatory regime,” *id.* at 532, it did so in considering an as-applied challenge to the regulation of non-commercial activity—there, “home-distilling beverage alcohol for personal consumption,” *id.* at 516-17.

*Appendix A***B.**

The appellants also contend that post-*Raich* changes in “the markets for marijuana” mean that Congress may no longer regulate their marijuana activity under the Commerce Clause and Necessary and Proper Clause. Here, the appellants rely on *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 62 S. Ct. 523, 86 L. Ed. 726 (1942), for the proposition that Congress may regulate intrastate activities—even those that are commercial in nature—only if they “in a substantial way interfere with or obstruct the exercise of the granted power” to regulate interstate commerce, *id.* at 119.

The appellants contend that “there is no longer any reason to assume that state-regulated marijuana activities ‘in a substantial way interfere with or obstruct the exercise of the granted power’ to regulate interstate commerce in marijuana,” (quoting *United States v. Lopez*, 514 U.S. 549, 556, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1995)), because “the decades since *Raich* have shown Congress’s former concerns about swelling interstate traffic and enforcement difficulties can no longer be supported.” In that regard, the appellants emphasize the allegations in their complaint that “states’ medical and adult-use marijuana programs have drastically reduced illicit interstate and international commerce in marijuana” and that “state-regulated marijuana products are distinguishable (from each other and from illicit interstate marijuana) based on the labelling and tracking requirements that states impose.”

Appendix A

Of course, for purposes of assessing Congress’s power under the Commerce Clause and the Necessary and Proper Clause to regulate an activity, the question that we must ask is not “whether [appellants’] activities, taken in the aggregate, substantially affect interstate commerce in fact.” *Raich*, 545 U.S. at 22. The question is “whether a ‘rational basis’ exists for so concluding.” *Id.*

In addition, *Raich* held that Congress had a rational basis for concluding that failing to regulate “the intrastate cultivation and possession of marijuana for medical purposes based on the recommendation of a physician would substantially affect the larger interstate marijuana market.” *Id.* at 21. And, in so ruling, the Court explained that the activity at issue there was not beyond Congress’s reach under Article I because

[o]ne need not have a degree in economics to understand why a nationwide exemption for the vast quantity of marijuana . . . locally cultivated for personal use (which presumably would include use by friends, neighbors, and family members) may have a substantial impact on the interstate market for this extraordinarily popular substance.

Id. at 28. *Raich* also observed that “[t]he notion that [state] law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.” *Id.* at 30; *see also United States v. Nascimento*,

Appendix A

491 F.3d 25, 42 (1st Cir. 2007) (“*Raich* teaches that when Congress is addressing a problem that is legitimately within its purview, an inquiring court should. . . . respect the level of generality at which Congress chose to act.”).

Against that backdrop, we find it significant that the “exemption” that is being sought via the asserted limits on Article I here would allow for more than the possession and cultivation for personal medical use of marijuana—as was the case in *Raich* itself. The “exemption” would allow for the commercial cultivation, manufacture, possession, and distribution of marijuana for both medical and non-medical purposes. The appellants, in other words, are asking for a “nationwide exemption” that is much broader than the one that *Raich* held Article I did not require, both in the kinds of conduct and the “quantity of marijuana” that would be exempted. 545 U.S. at 28.

True, the appellants allege that, as of the time of their complaint, the availability of regulated markets for marijuana in individual states has decreased interstate commercial activity involving marijuana. They allege, too, that state-regulated marijuana is distinguishable from illicit interstate marijuana. But, as we have emphasized, the relevant question is whether Congress could rationally conclude that an intrastate activity would “substantially affect interstate commerce” if not regulated. *Id.* at 22. And, as we have noted, in rejecting the “exemption” sought in that case, the Court in *Raich* relied on the conclusion that Congress could rationally conclude that a “vast quantity of marijuana” that a state permits to be lawfully used within its borders, *id.* at 28, subject to its regulation,

Appendix A

would not remain “hermetically sealed off from the larger interstate marijuana market,” *id.* at 30.

We thus do not see how we could conclude that Congress has no rational basis for similarly concluding as to the much larger exemption sought here. There is a difference between the factual predicate that may support a legislative choice and the kind of factual predicate that could compel a court to impose a constitutional limit on that choice. We thus conclude that the appellants have failed to show that there is no rational basis for concluding that their activity substantially affects interstate commerce.

To the extent that the appellants may be understood to be contending that Congress had to have made specific findings that the intrastate cultivation, manufacture, possession, and/or distribution of marijuana in compliance with a given state’s laws allowing for such intrastate activity would substantially affect the larger interstate market, we are also unpersuaded. Congress is not required to make “detailed findings proving that each activity regulated within a comprehensive statute is essential to the statutory scheme.” *Id.* at 21 n.32. For that reason, the Court rejected the analogous argument made by the appellants in *Raich* that Congress had not made “a specific finding that the intrastate cultivation and possession of marijuana for medical purposes based on the recommendation of a physician would substantially affect the larger interstate marijuana market.” *Id.* at 21.

Relatedly, the appellants fault the District Court for “refus[ing] to permit [the appellants] to prove that the

Appendix A

CSA's findings today are unsupported." But even they concede that "*Raich* permits courts to dispense with fact finding when the connection to Congress's interstate goals is 'visible to the naked eye.'" (Quoting *Raich*, 545 U.S. at 28-29). And, for reasons we have explained, that connection is no less "visible" here than it was in *Raich*.

C.

For the foregoing reasons, we conclude that the appellants have not plausibly alleged that the CSA's prohibition on the "intrastate cultivation, manufacture, possession, and distribution of marijuana pursuant to state law," as applied to them, exceeds Congress's authority under the Commerce Clause and the Necessary and Proper Clause.

IV.

The appellants separately challenge the District Court's dismissal of their claim that the CSA is unconstitutional under the Fifth Amendment's Due Process Clause as applied to their intrastate commercial activity involving marijuana because "the CSA's prohibition on state-regulated marijuana violates Plaintiffs-Appellants' rights to cultivate and transact in marijuana" for both medical and recreational purposes. In that regard, the appellants contend that the "right[] to cultivate and transact in marijuana" for such purposes is "deeply rooted in this nation's history and its legal traditions." They further contend that the right is "further reinforced" by "current legal trends, which include the

Appendix A

vast majority of the states . . . permitting the cultivation and distribution of marijuana.” We are not persuaded.

A.

The Due Process Clause of the Fifth Amendment “provides heightened protection against government interference with certain fundamental rights and liberty interests.” *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997). To establish such a fundamental right, a plaintiff must show that the asserted right is “objectively[] ‘deeply rooted in this Nation’s history and tradition,’” *id.* at 720-21 (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 503, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977)), and “‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed,’” *id.* at 721 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S. Ct. 149, 82 L. Ed. 288 (1937)). In addition, the plaintiff must provide a “careful description of the asserted fundamental liberty interest.” *Muñoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 721). If the plaintiff succeeds in establishing the existence of a fundamental right, the government “can act only by narrowly tailored means that serve a compelling state interest.” *Id.* “As a general matter,” the Supreme Court “has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this uncharted area are scarce and open-ended.” *Collins v. City of Harker Heights*, 503 U.S. 115, 125, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992).

Appendix A

Every circuit to have addressed similar substantive due process claims related to the use, cultivation, or sale of marijuana has rejected them. *See United States v. Kiffer*, 477 F.2d 349, 352 (2d Cir. 1973) (“[T]here is no colorable claim of a fundamental constitutional right to sell marihuana.”); *United States v. White Plume*, 447 F.3d 1067, 1075 (8th Cir. 2006) (no fundamental right to “hemp farming”); *United States v. Fry*, 787 F.2d 903, 905 (4th Cir. 1986) (no fundamental right to “produce or distribute marijuana commercially”); *Raich v. Gonzales*, 500 F.3d 850, 864-66 (9th Cir. 2007) (no fundamental right to use medical marijuana); *Borges v. Cnty. of Mendocino*, No. 22-15673, 2023 U.S. App. LEXIS 5271, 2023 WL 2363692, at *1 (9th Cir. Mar. 6, 2023) (no fundamental right to cultivate marijuana); *see also United States v. Cannon*, 36 F.4th 496, 502 (3d Cir. 2022) (per curiam) (noting, on plain error review, that “it is certainly not ‘clear under current law’ that there is any fundamental right to use medical marijuana” (quoting *United States v. Olano*, 507 U.S. 725, 734, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993))). We see no reason to part ways with our sister circuits in addressing appellants’ as-applied challenge.

In arguing that we must, the appellants first point to historical practices in the original colonies prior to the founding. They argue that “[e]ach of the thirteen original colonies enacted” laws concerning marijuana—“then known simply as ‘hemp’”—some of which “encouraged (or even *required*)” colonists to grow marijuana. The appellants also rely on allegations regarding marijuana use in the United States “[a]round the [p]assage of the Fourteenth Amendment,” which they say show that

Appendix A

“Americans were using marijuana for medicinal and recreational purposes” at the time and that “marijuana was ‘highly valued’” at the time for these uses. Finally, the appellants assert that English sources, including the Magna Carta, “created . . . rights concerning hemp cultivation” and sometimes even “made the cultivation of hemp compulsory.” The sum total of this historical evidence, the appellants contend, establishes “a long legal tradition of recognizing the importance of marijuana commerce” and proves that “the 20th-century movement towards banning and criminalizing marijuana, which culminated in 1970 with the CSA, is a historical aberration compared to the practices in this country in the 17th, 18th, [and] 19th . . . centuries.”

The appellants’ reasoning would mean that there would be a fundamental right to grow and sell any product that founding era laws encouraged residents of that time to grow and sell. We decline to adopt a line of reasoning that would support such “sweeping claims of fundamental rights,” *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 707, 378 U.S. App. D.C. 33 (D.C. Cir. 2007), particularly given that the rights in question must be those that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty,” *Glucksberg*, 521 U.S. at 721 (first quoting *Moore*, 431 U.S. at 503; and then quoting *Palko*, 302 U.S. at 325).

*Appendix A***B.**

There remains to address only the appellants' argument that "[t]he widespread adoption of state-regulated marijuana programs further demonstrates the importance of marijuana commerce." But we know of no authority—and the appellants identify none—that supports the proposition that an activity not otherwise protected as a fundamental right under the Due Process Clause may become so protected solely because many states have in recent times provided legislative protections for that activity. We thus hold that the appellants have not plausibly alleged that the CSA's prohibition on "the intrastate cultivation, manufacture, possession, and distribution of marijuana pursuant to state law," as applied to their activities, violates the Fifth Amendment.³

V.

For the foregoing reasons, the District Court's dismissal of the plaintiffs-appellants' claims is ***affirmed***.

3. For the first time in their reply brief, the appellants gesture at an argument that the CSA's ban on intrastate marijuana commerce in compliance with state law would fail even rational basis scrutiny. Insofar as they mean to make that argument, we decline to address it. See *Sparkle Hill, Inc. v. Interstate Mat Corp.*, 788 F.3d 25, 29 (1st Cir. 2015) ("Our precedent is clear: we do not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief."); see also *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

**APPENDIX B — MEMORANDUM AND
ORDER REGARDING DEFENDANT’S MOTION
TO DISMISS, IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS, FILED JULY 1, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 23-30113-MGM

CANNA PROVISIONS, INC.;
GYASI SELLERS; WISEACRE FARM, INC.;
VERANO HOLDINGS CORP.,

Plaintiffs,

v.

MERRICK GARLAND, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL
OF THE UNITED STATES,

Defendant.

**MEMORANDUM AND ORDER REGARDING
DEFENDANT’S MOTION TO DISMISS
(Dkt. No. 29)**

July 1, 2024

MASTROIANNI, U.S.D.J.

*Appendix B***I. Introduction**

Almost twenty years ago, the Supreme Court declined to find that the reach of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, exceeded the bounds of federal authority when applied to noncommercial, wholly-intrastate activities involving small-scale cultivation and possession of marijuana for personal medical use. *Gonzales v. Raich*, 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). The plaintiffs had argued that Congress lacked authority under the Commerce Clause to criminalize the cultivation and possession of marijuana that never enters the stream of commerce and is consumed in compliance with state law and pursuant to a physician’s prescription. Despite acknowledging “the troubling facts” of the case, the Court wrote that “[o]ur case law firmly establishes Congress’ power to regulate purely local activities that are part of an economic ‘class of activities’ that have a substantial effect on interstate commerce.” *Id.* at 17.

Now, Plaintiffs, four owners of marijuana businesses that operate in Massachusetts and in compliance with state law, have asked this court to reach a different conclusion about the limits the Commerce Clause imposes on Congressional authority.¹ Plaintiffs support their position by detailing the extent of changed views about

1. Massachusetts permits marijuana to be sold to and consumed by adults for both medical and recreational purposes and Plaintiffs serve both types of consumers. Although there may be reasons to separately assess the basis for regulating these distinct types of consumption, neither Plaintiffs’ Complaint, nor this decision, addresses those distinctions.

Appendix B

marijuana, state regulation, and federal enforcement since the Supreme Court decided *Raich*. While the Complaint has alleged persuasive reasons for a reexamination of the way the Controlled Substances Act (“CSA”) regulates marijuana, the relief sought is inconsistent with binding Supreme Court precedent and, therefore, beyond the authority of this court to grant. Plaintiffs do not provide a basis for this court to disregard the broad reading of the Commerce Clause first announced in *Wickard v. Filburn*, 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1942), and reaffirmed in *Raich*. See *State Oil v. Kahn*, 522 U.S. 3, 20 (1997) (explaining that it is the “[Supreme] Court’s prerogative alone to overrule one of its precedents”); see also *United States v. Diggins*, 36 F.4th 302, 311 (1st Cir. 2022) (“We are in no position to overrule binding Supreme Court precedent.”). Plaintiffs also argue that application of the CSA to their activities violates their rights to substantive due process; a claim raised in *Raich*, but not addressed by the Supreme Court. For the reasons that follow, this court discerns no plausible violation of substantive due process. Plaintiffs have not identified a basis for finding a fundamental right to engage in the cultivation and distribution of marijuana or that the CSA cannot survive rational basis review.

Finally, and as the Supreme Court noted in *Raich*, the absence of judicial relief from this court does not leave Plaintiffs without “another avenue of relief.” *Raich*, 545 at 33. Plaintiffs can pursue their claims and seek the attention of the Supreme Court. They also are free to advocate for marijuana to be reclassified or removed from the CSA.

*Appendix B***II. Background****A. The CSA and Federal Enforcement**

In 1970, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act, which contained the CSA at Title II of the Act. *Raich*, 545 U.S. at 10, 12. At the time, marijuana was banned in all 50 states, subject to some limited exceptions. *Leary v. U.S.*, 395 U.S. 6, 16-17 (1969), 89 S. Ct. 1532, 23 L. Ed. 2d 57. In the preceding year, President Nixon had “declared a national ‘war on drugs’” and the Supreme Court had “held certain provisions of the Marihuana Tax Act and other narcotics legislation unconstitutional.” *Raich*, 545 U.S. at 10, 12. In *Raich*, the Supreme Court reported that “[t]he main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” *Id.* at 12. Congress attempted to effectuate these goals by creating “a closed regulatory system” under which it was “unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Id.* at 13. All substances were “grouped together based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body.” *Id.* “Congress classified marijuana as a Schedule I drug,” grouping it with other substances considered to have a “high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.” *Id.* at 14. The CSA makes it a federal criminal offense to manufacture, distribute, dispense, or possess Schedule I drugs, including marijuana, except within a

Appendix B

preapproved research study. *Id.* In addition, the CSA imposes controls on the handling of the substances in all five classifications and separate federal approval is required before a drug can be marketed for medical use. *Id.* at 27-28; *see also* 21 U.S.C. §§ 321, 352.

Plaintiffs assert that marijuana has been miscategorized and, at the motion to dismiss stage, the court accepts as true their assertions about the safety of marijuana and its therapeutic benefits. The CSA provides a process for moving substances from one schedule to another and the Department of Justice has commenced a process that could result in marijuana being moved from Schedule I to Schedule III. However, at this time, marijuana continues to be listed on Schedule I and, therefore, almost all activities that involve growing, processing, and possessing marijuana continue to be federal crimes. This is true even though thirty-eight states have adopted programs that legalize marijuana within a strict, state regulatory framework. Some states only permit marijuana used for medical purposes, while other states also allow marijuana to be consumed on a non-medical or adult-use basis.

Massachusetts is one of the states that operates a highly regulated system permitting both medical and adult-use marijuana businesses. In order to participate in the legal marijuana marketplace, all businesses must comply with exacting local and state regulatory requirements designed to ensure that all products containing marijuana are closely traced and that businesses operate in a manner that is safe for their customers, employees, and the local

Appendix B

community. Rigorous regulation seeks to ensure that all the marijuana that moves through the legal Massachusetts market is grown, processed, and sold within the state. The regulatory scheme also includes taxes and community impact fees that generates significant revenue for state and local governments.

Plaintiffs have alleged there is data demonstrating that as state-regulated marijuana markets have grown, the amount of marijuana that travels in interstate and international commerce has declined dramatically. They assert that the federal government has responded to state-level legalization of marijuana by abandoning the “closed regulatory system” created by the CSA. Since 2014, Congress has included language in annual appropriations acts that prohibits the Department of Justice from using funds to challenge state laws legalizing medical marijuana, and Congress has not interfered with marijuana legalization programs adopted by the District of Columbia and several territories. For much of the last decade, the Department of Justice has acted in accordance with either a formal or informal policy not to prosecute individuals or companies under the CSA for conduct that complied with state laws that permit intrastate possession, cultivation, and distribution of marijuana.

B. Plaintiffs

The claims in this case are asserted on behalf of four businesses openly operating in Massachusetts in full compliance with state laws and regulations. Despite the legality of their operations under state law,

Appendix B

Plaintiffs have alleged that the federal criminalization of activities involving marijuana has negatively impacted their financial viability. Plaintiffs have alleged specific injuries suffered by each business and attributed to the criminalization of marijuana under the CSA, though they have not quantified the monetary value of those injuries.

Canna Provisions, Inc. (“Canna”) is a Massachusetts corporation that operates a cultivation facility and two retail, adult-use marijuana dispensaries within Massachusetts. The Complaint alleges there are many businesses who will not work with Canna because of federal marijuana policy. Canna’s marketing efforts have been limited because promotional companies and magazines have refused to work with it. Many business service providers, like banks, payroll services, 401(k) providers, and insurance companies also refuse to work with state-regulated marijuana businesses and, as a result, Canna has had to pay “higher interest rates, insurance premiums, and payments for goods and services.” (Compl. at ¶ 36.) Although Canna was able to accept credit cards for a period of time, credit card processors are no longer willing to work with marijuana businesses, even those operating under state law. When Canna lost the ability to accept credit cards, the average amount spent by customers at Canna’s retail stores “dropped by around 30%.” (*Id.*) Canna has also been unable to sponsor job training programs through a career services organization operated by Massachusetts because marijuana is illegal under federal law. Finally, Canna has alleged that its employees and officers have had trouble obtaining mortgages and accessing personal banking

Appendix B

services because they earn their income in the cannabis industry.

Gyasi Sellers (“Sellers”) is an entrepreneur who operates a state-licensed courier service for adult-use marijuana. He is also in the process of obtaining a license to operate a marijuana retail delivery service. Like Canna, the business operated by Sellers is not able to accept credit cards because credit card processors will not work with marijuana businesses. The inability to accept credit cards has created economic and security risks for his business. Sellers’s customers cannot prepay for their orders and the drivers he employs must interact directly with customers to collect payments. Federal rules regarding marijuana also prevent him from making deliveries to the homes of clients who live in federally-funded housing. Finally, Sellers has been unable to access financial assistance for his business from the Small Business Administration because marijuana businesses, even those which comply with state law, are ineligible for SBA assistance.

Wiseacre Farm, Inc. (“Wiseacre”) is a Massachusetts corporation licensed by Massachusetts to cultivate marijuana on its outdoor farm. Payroll processors, insurers, and banks have all refused to work with Wiseacre because its income is derived from the cultivation of marijuana, which is illegal under federal law. This has increased the operational costs and risks for Wiseacre, which must pay its employees by checks and work with banks who charge Wiseacre additional fees because it is a marijuana business. Wiseacre has also lost an opportunity to grow its operation because it was unable to lease land from

Appendix B

another farm because Wiseacre’s marijuana cultivation on a portion of the farm’s land would have disqualified the entire farm from receiving any federal assistance.

Finally, Verano Holdings Corp. (“Verano”) is a Canadian corporation with subsidiaries in several states. In Massachusetts, Verano’s wholly-owned subsidiaries operate cultivation and manufacturing facilities and medical and adult-use dispensaries. Like Canna and Sellers, Verano is not able to accept credit cards. Verano is only able to work with a limited group of business service providers because its business is illegal under federal law. Although Verano has been able to obtain insurance, it pays higher insurance premiums than it would if its business were legal under federal law.

III. Analysis**A. Standing**

This court’s “judicial power is limited by Article III of the Constitution to actual cases and controversies” involving plaintiffs who have standing to sue. *Kerin v. Titeflex Corp.*, 770 F.3d 978, 981 (1st Cir. 2014). “Standing is ‘built on a single basic idea—the idea of separation of powers.’” *FDA v. Alliance for Hippocratic Medicine*, 602 U.S., 144 S. Ct. 1540, 1545 (2024). “The requirement that the plaintiff possess a personal stake helps ensure that courts decide litigants’ legal rights in specific cases, as Article III requires, and that courts do not opine on legal issues in response to citizens who might ‘roam the country in search of governmental wrongdoing.’” *Id.* at 1554-55

Appendix B

(quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 487, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)). “‘Our system of government leaves many crucial decisions to the political processes,’ where democratic debate can occur and a wide variety of interests and views can be weighed.” *Id.* at 1555 (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974)). The standing requirement is one of several tools that play an important, though not exclusive, role in preventing courts from inadvertently usurping those political processes. *Id.*

Since this court must be assured of its jurisdiction before reaching the merits of Plaintiffs’ claims, the court turns first to Defendant’s arguments that Plaintiffs lack standing. *Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc.*, 958 F.3d 38, 46 (1st Cir. 2020). Although the government is the moving party, Plaintiffs, “as the party invoking federal jurisdiction,” bear the burden of establishing that they have standing to bring their claims in this court. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). “There are two types of challenges to a court’s subject matter jurisdiction: facial challenges and factual challenges.” *Torres-Negron v. J & N Records, LLC*, 504 F.3d 151, 162 (1st Cir. 2007). As the government has raised only a facial challenge to standing, the court accepts as true the factual allegations in the Complaint and draws all reasonable inferences favorable to Plaintiffs. *Katz v. Pershing, LLC*, 672 F.3d 64, 70 (1st Cir. 2012). Thus, to meet their burden, Plaintiffs “must sufficiently plead three elements: injury

Appendix B

in fact, traceability, and redressability.” *Kerin*, 770 F.3d at 981. Defendant challenges the sufficiency of Plaintiffs’ allegations to establish an injury in fact and that any such injury is traceable to the CSA.

1. Injury in Fact

Plaintiffs have alleged two types of injuries: economic harms and threat of prosecution. Defendant concedes that the economic harms alleged by Plaintiffs constitute an injury in fact, though it disputes that any such injuries are traceable to portions of the CSA challenged by Plaintiffs. On the other hand, Defendant contends that Plaintiffs’ factual allegations about the significant changes to cultural and governmental views and policies regarding marijuana are inconsistent with their assertion of facing a threat of prosecution sufficient to constitute an injury in fact.

“For an injury in fact to be plausibly pled, it ‘must be both concrete and particularized and actual or imminent, not conjectural or hypothetical.’” *DiCroce v. McNeil Nutritionals, LLC*, 82 F.4th 35, 39 (1st Cir. 2023) (quoting *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2016)). An injury is concrete if it “actually exists” and particular if it was caused by the defendant and the plaintiff was injured. *Id.* (internal quotations omitted). “In certain circumstances, ‘the threatened enforcement of a law’ may suffice as an ‘imminent’ Article III injury in fact.” *Reddy v. Foster*, 845 F.3d 493, 500 (1st Cir. 2017). A pre-enforcement threat of future injury is sufficient to establish an injury in fact when a plaintiff “alleges

Appendix B

‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute, and there exists a credible threat of prosecution thereunder.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979)).

In their Complaint, Plaintiffs allege that they are engaging in the intrastate cultivation, manufacture, possession, and distribution of marijuana. Since that conduct is clearly illegal under the CSA, even when permitted under Massachusetts law, federal prosecutors have a legal basis for prosecuting them. The question this court must answer is whether that threat of prosecution is credible or too remote and speculative. *Reddy*, 845 F.3d at 500. Citing *Reddy*, Defendant contends Plaintiffs’ own allegations about the significant changes in federal policy erode the theoretical threat of enforcement down to the level of mere conjecture. *Reddy*, 845 F.3d at 500 (ruling a threat of prosecution was not sufficiently imminent to satisfy the Article III injury-in-fact requirement where preconditions to enforcement had not yet occurred).

Notwithstanding the informal policy described by Plaintiffs, Defendant “has not disclaimed any intention ever to enforce [the CSA]” against persons like Plaintiffs. *N.H. Right to Life PAC v. Gardner*, 99 F.3d 8, 17 (1st Cir. 1996). Unlike the plaintiffs in *Reddy*, who faced no risk of criminal prosecution for their intended conduct and could not even face civil enforcement until after a specific buffer zone was defined and marked, Plaintiffs have already

Appendix B

engaged in conduct proscribed by the CSA, a statute containing many provisions that continue to be actively enforced. A voluntary exercise of prosecutorial discretion applied to one type of violation does not neutralize the otherwise credible threat of prosecution that exists whenever a valid statute has been violated. *Gardner*, 99 F.3d at 15 (explaining that a threat of enforcement can be sufficient to establish standing “even though the official charged with enforcement responsibilities has not taken any enforcement action against the plaintiff and does not presently intend to take any such action”).

2. Traceability

The court next considers whether Plaintiffs’ Complaint sufficiently alleges that either the threat of prosecution or the economic injuries they identify are traceable to the challenged portions of the CSA. *See Dep’t of Educ. v. Brown*, 600 U.S. 551, 561, 143 S. Ct. 2343, 216 L. Ed. 2d 1116 (2023). An injury is “fairly traceable” if there is “a causal connection between the injury and the conduct complained of.” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). There is a direct, causal connection between the threat of prosecution Plaintiffs face and the challenged portions of the CSA. Plaintiffs have alleged they variously engage in the cultivation, manufacture, distribution, and possession of marijuana, wholly within Massachusetts and the CSA makes such activity a federal crime. In the absence of any dispute regarding redressability, the court finds Plaintiffs have demonstrated that they have standing under Article III to challenge the portions of the CSA

Appendix B

applicable to intrastate activities related to marijuana. *See FDA*, 144 S. Ct. at 1556 (“Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements. So in those cases, standing is usually easy to establish.”).

The court also finds Plaintiffs have shown there is a causal connection between their economic injuries and the CSA. “The requirement that an alleged injury be fairly traceable to the defendant’s action does not mean that the defendant’s action must be the final link in the chain of events leading up to the alleged harm.” *Wine & Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 45 (1st Cir. 2005). On the other hand, “the ‘line of causation . . . must not be too speculative or too attenuated.” *FDA*, 144 S. Ct. at 1557. Courts must use care in determining whether the causal chain is strong enough to sustain standing despite independent actions by third parties. *Dantzler*, 958 F.3d at 47-48. “[T]he fact that the deleterious effect of a statute is indirect will not by itself defeat standing.” *Wine & Spirits Retailers, Inc.*, 418 F.3d at 45. However, “the plaintiff must show that the ‘third parties will likely react in predictable ways’ that in turn will likely injure the plaintiffs.” *FDA*, 144 S. Ct. at 1557.

When credited, Plaintiffs’ detailed allegations about their financial injuries meet that burden. Though individual decisions by specific third parties are the final link in the causal chain, the economic injury actually flows from the multitude of similar decisions made by many third parties, all responding to the CSA. In the aggregate,

Appendix B

the decisions have caused a predictable “downstream injury to plaintiffs” by dramatically reducing their options for obtaining business services compared to the options available to non-marijuana businesses. *Id.* Though the third-party decisions are not directly compelled by the CSA, they are all foreseeable responses to the risks and uncertainties the CSA imposes on transactions with state-regulated marijuana businesses and, together, they inflict a common injury on Plaintiffs. *See id.* at 1557-58. For these reasons, the court finds the Plaintiffs’ economic injuries provide an additional basis for standing.

B. Failure to State a Claim

The court turns to the government’s arguments that this Complaint should be dismissed “for failure to state claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)); Fed. R. Civ. P. 12(b)(6). “Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. The court accepts all well-pleaded factual allegations and draws all reasonable inferences in Plaintiff’s favor, but “do[es] not credit legal labels or conclusory statements.” *Cheng v. Neumann*, 51 F.4th 438, 443 (1st Cir. 2022). Dismissal is appropriate if the complaint fails to establish

Appendix B

at least one “material element necessary to sustain recovery under some actionable legal theory.” *N.R. by and through S.R. v. Raytheon Co.*, 24 F.4th 740, 746 (1st Cir. 2022) (internal quotations omitted). A legal theory is actionable to the extent it does not conflict with binding precedent. *See Lyman v. Baker*, 954 F.3d 351, 370 (1st Cir. 2020) (affirming dismissal of claim foreclosed by controlling case). Defendant argues Plaintiffs’ Complaint provides an insufficient basis for this court to find the CSA, as applied to Plaintiffs, either exceeds the authority Congress has under the Commerce Clause and Necessary and Proper Clause or violates Plaintiffs’ rights to due process under the Fifth Amendment. The court addresses each argument in turn.

1. Commerce Clause

“In our federal system, the National Government possesses only limited powers,” which do not include the power to criminalize an “act committed wholly within a State” unless the act has “some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.” *Bond v. United States*, 572 U.S. 844, 854, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014) (internal quotation omitted). Article I, § 8, of the Constitution vests Congress with authority “[t]o make all Laws which shall be necessary and proper for carrying into Execution’ its authority to ‘regulate Commerce with foreign Nations, and among the several states.’” *Raich*, 545 U.S. at 5 (quoting Art. 1, § 8). In *Raich*, the Supreme Court reaffirmed the already well-established view that the authority Congress enjoys under the Commerce

Appendix B

Clause permits the regulation of local, non-commercial activity, if there is a rational basis from which Congress could have concluded that such activity would substantially affect interstate commerce. *Id.* at 22. More specifically, the Supreme Court held that “[t]he CSA is a valid exercise of federal power, even as applied to” the *Raich* plaintiffs because Congress had a rational basis for concluding that even their limited, non-commercial cultivation and use of marijuana, if “taken in the aggregate” could “substantially affect interstate commerce.” *Id.* Notably, the Supreme Court deferred to the legislative process by inquiring only whether Congress could rationally conclude the plaintiffs’ conduct had a substantial affect on interstate commerce, rather than whether the plaintiffs could prove that it did not. *Id.*

This court must apply the same analytic framework in this case because Plaintiffs’ Commerce Clause claim is legally identical to the claim in *Raich*. See *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989) (explaining that only the Supreme Court can overrule its own decisions and lower courts must apply a precedent with direct application, even if there is a basis for believing the precedent has been undermined by later developments). As in *Raich*, the question this court must answer is not whether, as a factual matter, Plaintiffs’ activities substantially affect interstate commerce, but simply whether Congress had a rational basis to so conclude. *Raich*, 545 U.S. at 22. Since Congress is not required “to legislate with scientific exactitude,” conflicts between actual data about how state-sanctioned intrastate marijuana markets interact with the illicit

Appendix B

interstate marijuana market and congressional findings, or an absence of relevant findings, do not establish that Congress lacked a rational basis for using the CSA to criminalize the type of conduct alleged by Plaintiffs. *Id.* at 17.

Logically, if, as the Supreme Court found in *Raich*, an aggregation of limited, non-commercial marijuana activity provided that rational basis, this court must find the same to be true of Plaintiffs' larger-scale, commercial activities. See *Ne. Patients Grp. v. United Cannabis Patients and Caregivers of Me.*, 45 F. 4th 542, 547 (1st Cir. 2022) (noting that an intrastate medical marijuana market that welcomes customers from other states is part of a larger, interstate medical marijuana market). As Plaintiffs' own allegations demonstrate, they operate on a scale that far exceeds the activities at issue in *Raich* and *Wickard*. Their businesses, together with other Massachusetts marijuana businesses, necessarily impact interstate commerce in ways that would only increase were they to obtain the relief they seek. They consume utilities and supplies; utilize the internet and a variety of business services; recruit and train employees; and serve consumers, including individuals who travel from other states to obtain marijuana in Massachusetts.

Given the scale of Plaintiffs' operations, the court cannot find Congress lacks a rational basis for concluding Plaintiffs' activities substantially affect interstate commerce without ignoring the Supreme Court's broadly-worded holding in *Raich*. To reach a different outcome would require this court to independently determine

Appendix B

that the underlying analysis in *Raich* cannot survive the developments in intrastate regulatory schemes and federal enforcement policy alleged by Plaintiffs. Since only the Supreme Court can overrule *Raich*, this court concludes that Congress has authority under the Commerce Clause to regulate Plaintiffs' wholly-intrastate, state-sanctioned marijuana activities and dismisses their as-applied challenge to the CSA. Plaintiffs' argument, that the factual differences between their allegations and those considered in *Raich* simply permit this court to avoid application of *Raich* and substitute its own Commerce Clause analysis, has no realistic persuasive force.

2. Substantive Due Process

Plaintiffs' substantive due process challenge to the CSA is also dismissed for failure to state a claim. There is simply no precedent for concluding that Plaintiffs enjoy a fundamental right to cultivate, process, and distribute marijuana. No such right is enumerated in the Constitution and, on remand following *Raich*, a sympathetic Ninth Circuit concluded there was no unenumerated right to use marijuana for medical purposes and the issue "remain[ed] in 'the arena of public debate and legislative action.'" *Raich v. Gonzales* ("*Raich Remand*, 500 F.3d 850, 866 (9th Cir. 2007) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (2007))). The Ninth Circuit acknowledged that positive views about the medical uses for marijuana had been growing, but explained "that legal recognition has not yet reached the point where a conclusion can be drawn that the right to use medical marijuana is 'fundamental' and 'implicit in the concept of ordered liberty.'" *Id.* Although

Appendix B

many more states have since legalized marijuana, for both medical purposes and adult use, there is still no national consensus on this issue. Even if there were universally applicable laws permitting the cultivation, processing, and distribution of marijuana, legalization alone neither requires nor permits this court to recognize a fundamental right to engage in such conduct. *See e.g. Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 256-57, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022) (ruling there is no fundamental right to obtain an abortion, despite fifty years of federal caselaw legalizing abortion and recognizing such a fundamental right). In the absence of a fundamental right to engage in the cultivation, processing, and distribution of marijuana, Plaintiffs cannot prevail on their substantive due process claim. *See Hernández-Gotay v. United States*, 985 F.3d 71, 81 (1st Cir. 2021) (rejecting procedural and substantive due process challenges to a federal statute outlawing cock fighting where the statute did not infringe any cognizable liberty interest and had survived a Commerce Clause challenge).

IV. Conclusion

For the foregoing reasons, the Defendant's Motion to Dismiss (Dkt. No. 29) is ALLOWED and this case may now be closed.

It is So Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge

APPENDIX C — CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States

Article. I. Section. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Appendix C

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all

Appendix C

Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

43a

Appendix C

21 U.S.C. § 841. Prohibited acts

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

* * *

Appendix C

Consolidated Appropriations Act, 2024,
Pub. L. No. 118-42, § 531, 138 Stat. 25, 174 (2024)

SEC. 531. None of the funds made available under this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, or with respect to the District of Columbia, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.