No. 25-518

In the Supreme Court of the United States

CANNA PROVISIONS, INC., ET AL.,

Petitioners,

v.

PAMELA J. BONDI, ATTORNEY GENERAL,

Respondent.

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

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

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?

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?

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies about legal issues, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs in constitutional law cases.

This case interests Cato because it concerns the limits on the federal government's power to regulate intrastate activity, a foundational feature of our constitutional structure.

[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A foundational principle of the Constitution is that "[t]he powers delegated by the . . . Constitution to the federal government are few and defined." THE FEDERALIST NO. 45 (Madison). Accordingly, Congress possesses only those powers enumerated in the Constitution. Yet over time, judicial expansion of the Commerce Clause and the Necessary and Proper Clause has transformed a limited power to regulate interstate trade into a sweeping license to regulate nearly all human activity—and even inactivity. *See*, *e.g.*, *Boyle v. Bessent*, No. 2:24-cv-00081-SDN, 2025 WL 509519, at *36 (D. Me. Feb. 14, 2025) (holding that "the mere existence of a corporate entity [formed under state law]—even one engaging in no commercial transactions with no assets to its name"—constitutes "commerce" that Congress may regulate). The result is a national authority untethered from the Constitution's original understanding and incompatible with the liberty-preserving structure it established.

The federal Controlled Substances Act ("CSA")[2] exemplifies how the federal government has all too often displaced the states as this country's primary policymakers, aided in that effort by this Court's modern Commerce Clause precedents. Before 1970, states regulated and then criminalized marijuana use

[2] *See* 21 U.S.C. § 841(a)(1).

as an exercise of their police power. But that year, Congress enacted the CSA to ban all marijuana commerce—interstate and intrastate alike. Since then, many states, including Massachusetts, have liberalized their marijuana laws and permitted marijuana use and cultivation. *See* Pet. Br. 12.

Petitioners operate Massachusetts-licensed marijuana retail and cultivation businesses. *Id*. at 11–12. The state requires strict tracking, testing, labelling, and audits of marijuana to follow the product from seed to sale, ensuring that entire supply chains are intrastate. *Id*. at 11. Yet Petitioners face credible threats of prosecution and economic injury due to the CSA. *See id*. at 11–12.

They therefore challenged Congress's authority under the CSA to prohibit the entirely intrastate production, possession, and distribution of marijuana. The district court agreed that Petitioners faced a credible threat of prosecution and economic harm but—feeling bound by this Court's decision in *Gonzales v. Raich*, 545 U.S. 1 (2005)—reluctantly dismissed their complaint. The First Circuit affirmed.

Among Congress's "defined and limited" powers, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803), is the power to "regulate Commerce . . . among the . . . States." U.S. CONST. art. I, § 8, cl. 3. The original public meaning of the Commerce Clause grants Congress the authority to regulate the trading and transporting of goods and persons across state

lines. Absent from this grant of power is the authority to control or prohibit purely *intra*state activity.

Unfortunately, this Court has strayed from that original understanding. *See United States v. Lopez*, 514 U.S. 549, 584–602 (1995) (Thomas, J., concurring) ("case law has drifted far from the original understanding of the Commerce Clause"). In *Wickard v. Filburn*, the Court upheld Congress's authority under the Commerce Clause to regulate a farmer's wheat production, even wheat grown and consumed entirely on his own farm. 317 U.S. 111, 118–29 (1942). The Court reasoned that Congress may regulate local activities if, in the aggregate, they exert a substantial economic effect on interstate commerce. *Id.* at 124–29.

In *Raich*, this Court extended *Wickard*'s reasoning further, upholding the CSA's prohibition on the private, intrastate cultivation and use of marijuana. 545 U.S. at 19. The majority first concluded that the plaintiffs' marijuana activities were "economic." And the majority further held that courts need not determine whether regulated activities in the aggregate *actually* substantially affect interstate commerce, but only whether Congress had a "rational basis" for so concluding. *Id.* at 22, 25–26. *Raich* thus marks the high-water mark of congressional authority to regulate intrastate activity.

The "substantial effects" test from *Wickard*, coupled with *Raich*'s deferential rational basis standard, has transformed the Commerce power into a rubber stamp for nearly all congressional legislation.

For more than a century after the Founding, Congress recognized that it lacked authority to regulate purely local trade like Petitioners' operations, even if that trade affected interstate commerce in the aggregate. Yet when this Court considered challenges to novel New Deal legislation, it upheld those acts, concluding that Congress possessed more power than was understood at ratification.

The time has come to correct course and restore the Constitution's first principle of limited national power. This case presents an ideal vehicle for that task. By extending federal criminal law to purely intrastate, state-licensed marijuana activity, the decision below collapses the distinction between national and state authority and erases structural limits that preserve federalism.

The Constitution does not require blind deference to congressional assertion; it demands fidelity to its design. This Court should grant the petition for a writ of certiorari, overrule *Raich*, and reaffirm that federal powers are both enumerated and limited.

ARGUMENT

I. THIS COURT SHOULD RESTORE THE ORIGINAL MEANING OF THE COMMERCE CLAUSE.

Properly understood, the Commerce Clause provides that Congress can regulate only *inter*state trade. But this meaning cannot be applied in a vacuum. This case implicates both the original

meaning of the Commerce Clause and the Necessary and Proper Clause, as these clauses work in tandem. To be both necessary and proper, a law should be evaluated to ensure that (1) there is a means-ends fit; "(2) the means chosen do not prohibit the rightful exercise of freedom (or violate principles of federalism or separation of powers); and (3) Congress's claim to be pursuing an enumerated end is not a pretext for pursuing other ends not delegated to it." Randy Barnett, *The Original Meaning of the Necessary and Proper Clause*, 6 U. PA. J. CONST. L. 183, 221 (2003) [hereinafter Barnett, *Necessary and Proper*].

A. The Original Meaning of the Commerce Clause Is Narrow.

1. "Commerce" was originally understood as confined to trade.

The Commerce Clause provides that Congress has power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST. art. 1, § 8, cl. 3. At the time of ratification, "commerce" referred only to the activity of *trading* items. *See* Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. CHI. L. REV. 101, 112–25 (2001) [hereinafter Barnett, *Commerce*]. It was not an umbrella term that encompassed the distinct activities of manufacturing and agriculture, which *produced* goods that could enter commerce.

At the Framing, contemporaneous dictionaries illustrate that "'commerce' consisted of selling, buying, and bartering, as well as transporting for these

purposes." *Lopez*, 514 U.S at 585–86 (Thomas, J., concurring) (citing 1 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE 361 (4th ed. 1773) (defining commerce as "Intercour[s]e; exchange of one thing for another; interchange of any thing; trade; traffick"); NATHAN BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (26th ed. 1789) ("trade or traffic"); T. SHERIDAN, A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1796) ("Exchange of one thing for another; trade, traffick")). And a review of the Framers' debates shows that they associated "commerce" with the narrower concept of trade:

> In Madison's notes for the Constitutional Convention, the term "commerce" appears thirty-four times in the speeches of the delegates. Eight of these are unambiguous references to commerce with foreign nations which can only consist of trade. In every other instance, the terms "trade" or "exchange" could be substituted for the term "commerce" with the apparent meaning of the statement preserved. In no instance is the term "commerce" clearly used to refer to "any gainful activity" or anything broader than trade.

Barnett, *Commerce*, *supra*, at 114–15 (citations omitted).

Likewise, in *The Federalist Papers*, the term "commerce" appears 63 times and never unambiguously refers to anything beyond trade and

exchange. *Id*. at 116. Even arch-nationalist Alexander Hamilton distinguished *commerce*—a national concern—from the "supervision of agriculture and of other concerns of a similar nature," which he considered "proper to be provided for by local legislation." THE FEDERALIST NO. 17 (Hamilton).

This narrow conception of "commerce" was also apparent in several state ratification conventions. At the Massachusetts convention, for example, Thomas Dawes distinguished agriculture, commerce, and manufacturing from each other as he expounded on the beneficial effect the Constitution would have on each. *See* 2 JONATHAN ELLIOT, THE DEBATES IN THE SEVERL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 57 (2d ed. 1863) [hereinafter DEBATES].[3] During his discussion of "commerce," he referred to "our own domestic traffic that passes from state to state." *Id.* at 58. Similar examples can be found in the Connecticut, New York, Pennsylvania, and Virginia conventions. *See* Barnett, *Commerce*, *supra*, at 116–22. *See also* Randy E. Barnett, *New Evidence of the Original Meaning of the Commerce Clause*, 55 ARK. L. REV. 847 (2003) (surveying 1,594 uses of "commerce" in the *Pennsylvania Gazette* from 1728 to 1800). Indeed, during the ratification

[3] Time and time again, "commerce" was distinguished from "manufacturing" and "agriculture" at these ratifying conventions. Barnett, *Commerce*, *supra*, at 117–18, 119; *see, e.g.*, DEBATES, *supra*, at 188, 245, 261, 336. Contemporary dictionaries reflect this same distinction. Barnett, *Commerce*, *supra*, at 113–14.

discussions, the terms "trade" and "commerce" were often used interchangeably. *Lopez*, 514 U.S. at 586 (Thomas, J., concurring).[4]

Therefore, before the 1940s and decisions like *Wickard*, this Court routinely rejected attempts to expand "commerce" to cover any gainful activity. Its decisions distinguished between commerce and the productive activities of manufacturing and agriculture.[5] *See*, *e.g.*, *Kidd v. Pearson*, 128 U.S. 1, 20 (1888) ("No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce."). In *United States v. E.C. Knight Co.*, Chief Justice Melville Fuller wrote, "Commerce succeeds to manufacture, and is not a part of it . . . . The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce." 156 U.S. 1, 12–13 (1895).

Even decades into the twentieth century, the Court emphasized the difference between "commerce" and

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[4] James Madison wrote, while discussing the Constitution in 1832, that "Trade and commerce are, in fact, used indiscriminately, both in books and in conversation." Letter from James Madison to Professor Davis—not sent (1832) *in* 4 LETTERS AND OTHER WRITINGS OF JAMES MADISON 232, 233 (1865).

[5] This likely explains why, in *Wickard*, the government expressly disclaimed that it was regulating consumption or production. *Wickard*, 317 U.S. at 119 ("[T]he Government argues that the statute regulates neither production nor consumption, but only marketing . . . .").

other gainful activity. As late as 1936, in *Carter v. Carter Coal Co.*, this Court ruled that Congress could not regulate the conditions under which coal is produced before it became an article of commerce. 298 U.S. 238, 298 (1936).

2. "Among the several states" originally meant "between people of different states."

Consistent with the Constitution's federalism-protecting design, commerce confined entirely within one state is not "among the several States" and thus falls outside Congress's reach. Barnett, *Commerce*, *supra*, at 135. The phrase "among the several States" was understood to mean "between persons of different states."

St. George Tucker, one of the earliest scholars on the Constitution, explained: "The constitution of the United States does not authorize congress to regulate, or in any manner to interfere with, the domestic commerce of any state." "Appendix," *in* ST. GEORGE TUCKER, BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE TO THE CONSTITUTION AND LAWS OF THE FEDERAL GOVERNMENT OF THE UNITED STATES AND OF THE COMMONWEALTH OF VIRGINIA 250 (1803) [hereinafter Tucker, COMMENTARIES]. This understanding is consistent with the Commerce Clause's purpose of promoting, rather than restricting, trade between the states. In the Federalist No. 42, Madison described the Clause as a provision to regulate trade *between* the states and prevent protectionist exactions. Hamilton, in the

Federalist No. 11, explained that the Constitution would allow "an unrestrained intercourse between the States."

Further, the Framers included the phrase "among the several States" to limit the type of commerce Congress could control. As Chief Justice John Marshall affirmed in *Gibbons v. Ogden*, the enumeration in the Commerce Clause of three distinct commerce powers "presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State." 22 U.S. (9 Wheat.) 1, 195 (1824). This Court also acknowledged in 1869 that the Commerce Clause had "always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States." *United States v. Dewitt*, 76 U.S. (9 Wall.) 41, 44 (1869) (invalidating a federal statute prohibiting the sale of certain oils).

Finally, even if "commerce" encompasses all "gainful activity," that breadth would not erase the Commerce Clause's geographic limitation: Congress may only regulate transactions *between* people of different states. Activity occurring wholly within a single state, no matter how "commercial," lies beyond the federal government's reach. A factory or farm is not engaged in commerce "between" states unless its operations or goods cross state lines. When a producer sells or transports goods into another state, that transaction becomes commerce among the states and

may be federally regulated. But Petitioners' mere acts of growing crops or producing goods for *intra*state sale remain a local matter. Only conduct that actually takes place "among the several States" falls within Congress's constitutional jurisdiction to regulate commerce.

B. The Necessary and Proper Clause Cannot Expand the Limited Commerce Power.

The Necessary and Proper Clause provides Congress the power "[t]o 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." U.S. CONST. art. I, § 8, cl. 18. This clause is the power through which this Court "upheld various federal enactments as necessary and proper to achieve the legitimate objective of regulating interstate commerce." Stephen Gardbaum, *Rethinking Constitutional Federalism*, 74 TEX. L. REV. 795, 808 (1996). Without an appropriate understanding of what "necessary" and "proper" mean, the scope of this clause undermines the entire scheme of enumerated powers.

The Necessary and Proper Clause authorizes Congress to enact only those "incidental" laws that are "necessary" to carry its enumerated powers into execution. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 559 (2012) ("NFIB") (opinion of Roberts, C.J.); Tucker, COMMENTARIES, *supra*, at 287–88 (explaining that this interpretation prevailed at

ratification and is necessary to maintain a system of enumerated powers). Congress cannot "reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it." *NFIB*, 567 U.S. at 560 (opinion of Roberts, C.J.). Any such law would not be "proper."

1. "Necessary" does not mean "convenient."

Some Framers, like Representative William Giles of Virginia, defined "necessary" as "that means without which the end could not be produced." Barnett, *Necessary and Proper*, *supra*, at 195 (citation omitted). But even the most expansive readings, coming from Alexander Hamilton[6] and Chief Justice Marshall,[7] required the means to fit the ends. Defending his opinion in *McCulloch*, Marshall wrote: "The court does not say that the word 'necessary' means whatever may be 'convenient' or 'useful.' And when it uses 'conducive to,' that word is associated with others plainly showing that no remote, no distant conduciveness to the object, is in the mind of the court." John Marshall, *A Friend to the Union No. 2*, *in*

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[6] Alexander Hamilton, Final Version of an Opinion on the Constitutionality of an Act to Establish a Bank (Feb. 23, 1791), https://bit.ly/49E5drU.

[7] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819) ("Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.").

GERALD GUNTHER, JOHN MARSHALL'S DEFENSE OF *MCCULLOCH V. MARYLAND* 78, 100 (1969).

In a speech to the House, Representative James Madison stated: "Its meaning must, according to the natural and obvious force of the terms and the context, be limited to means necessary to the end and incident to the nature of the specified powers." 1 ANNALS OF CONG. 1947–48 (Joseph Gales ed., 1791). Madison contended that "[t]he essential characteristic of the government, as composed of limited and enumerated powers, would be destroyed: If instead of *direct and incidental* means, any means could be used." *Id.* (emphasis added). There is "no axiom more clearly established in law, or in reason, than that whenever the end is required, the means are authorized." THE FEDERALIST NO. 44 (Madison). As George Nicholas explained at the Virginia ratifying convention, the Clause only enables the execution of the powers given to Congress, providing "no additional power." DEBATES, *supra*, at 246. This same point was made in the North Carolina, Pennsylvania, and Delaware Conventions[8] and noted[9] by St. George Tucker. Madison expressed the same sentiment at the Virginia Convention, stating that the Clause "only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause." DEBATES, *supra*, at 455.

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[8] *See* Barnett, *Necessary and Proper*, *supra,* at 186.

[9] Tucker, COMMENTARIES, *supra*, at 288.

If "necessary" includes the broader interpretation of "convenient," the term would be little more than a rubber stamp for Congress in the guise of a constitutional standard, making Article I's enumeration of powers and the enactment of the Tenth Amendment entirely futile.[10] Conversely, if "necessary" means that a law must be "incidental and closely connected to an enumerated power, then this is a matter of constitutional principle and within the purview of the Courts to assess." Barnett, *Necessary and Proper*, *supra*, at 208.

2. "Proper" provides a jurisdictional test.

While "necessary" highlights the close relationship a law must have with an enumerated power for Congress to legislate on an issue, the term "proper" imposes a jurisdictional limit on Congress's power. "This propriety of jurisdiction is determined in at least three ways: (1) according to principles of separation of powers, (2) according to principles of federalism, and (3) according to the background rights retained by the people." Barnett, *Necessary and Proper*, *supra*, at 217; *See also* Gary Lawson & Patricia B. Granger, *The "Proper" Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause*, 43 DUKE L.J. 267, 297 (1993) [hereinafter Lawson & Granger, *Proper Scope*].

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[10] Indeed, the Constitutional Convention rejected a proposal for such a general grant of power to Congress. Barnett, *Commerce*, *supra*, at 130.

The term "proper" in the Necessary and Proper Clause was originally understood as a crucial safeguard of these constitutional elements. *See* Lawson & Granger*, Proper Scope*, *supra*, at 297–308. Thus, if a law is "necessary," but violates the separation of powers, federalism,[11] or background rights retained by the people, it will still be "improper" and unconstitutional. *See, e.g.*, *NFIB*, 567 U.S. at 560 (opinion of Roberts, C.J.) (determining that even if the individual mandate to purchase health insurance is "necessary" for the statutory regime's reforms, it is not a "proper" means of making those reforms effective because it would "work a substantial expansion of federal authority" beyond the "natural limit" of the Commerce Clause). This is what Chief Justice Marshall meant when he stated that the means Congress chooses to utilize the Clause must "consist with the letter and spirit of the constitution"—propriety is a distinct limit beyond mere necessity. *McCulloch*, 17 U.S. (4 Wheat.) at 421.

3. Courts have a duty to check abuses of this Clause.

The Court should not shirk its responsibility to hold Congress to the plain and original meaning of the

[11] "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; if so, that is a factor suggesting that the power is not one properly within the reach of federal power." *United States v. Comstock*, 560 U.S. 126, 153 (2010) (Kennedy, J., concurring in judgment).

Constitution and the Necessary and Proper Clause. "Congress cannot be the sole judge of whether it is acting within its powers [because that] . . . would give it license to pursue objects or ends that are beyond its powers." Barnett, *Necessary and Proper*, *supra*, at 220. By using the term "shall," the Framers selected mandatory language, making clear that the command of the Necessary and Proper Clause was not discretionary. *See* Lawson & Granger, *Proper Scope*, *supra*, at 277–85. Chief Justice Marshall explained in *McCulloch* that it was the "duty" of this Court to declare abuses of the Clause invalid. 17 U.S. (4 Wheat.) at 423.

The Clause was envisioned to "operate as a powerful and immediate check upon the proceedings of the federal legislature." Tucker, COMMENTARIES, *supra*, at 288. Like all limits on congressional power, the Necessary and Proper Clause must be judicially enforced by the adoption of judicially administrable doctrines. George Nicholas commented at the Virginia ratification convention that the extent of the Clause's power would be determined by "the same power which, in all well-regulated communities, determines the extent of legislative powers. If they exceed these powers, the judiciary will declare it void." DEBATES, *supra*, at 443.

It is therefore imperative that this Court clarify the Necessary and Proper Clause's meaning to preserve the original scheme of limited and enumerated congressional power.

C. Current Doctrine Contradicts the Original Meaning of Both Clauses.

Up until the late 1930s, this Court recognized these limits. *See Dewitt*, 76 U.S. (9 Wall.) at 44 (invalidating a federal statute prohibiting the sale of certain oils); *Trade-Mark Cases*, 100 U.S. 82, 95–98 (1879) (holding that Congress lacks authority to regulate trademarks not used in interstate or foreign commerce); *License Tax Cases*, 72 U.S. (5 Wall.) 462, 470–71 (1867) (stating Congress has "no power" over the "internal commerce" of the states); *Carter*, 298 U.S. at 308 (holding that Congress lacked authority to regulate mining labor); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 543–50 (1935) (holding that Congress may not regulate intrastate poultry sales or the labor involved in such transactions).

Under this pre-*Wickard* jurisprudence, Congress could not ban a product from intrastate commerce, whatever its effect on interstate commerce. However, modern Commerce Clause and Necessary and Proper Clause jurisprudence bears little resemblance to the original public meaning of either provision. Beginning with *Wickard* and culminating in *Raich*, the Court transformed those Clauses into a font of general legislative authority nearly indistinguishable from a federal police power.

The "substantial effects" test severs the Clause from commerce, allowing Congress to regulate any activity—including intrastate activity and arguably

even intrastate nonactivity[12]—that Congress hypothesizes *might* "substantially affect" interstate markets. *Raich*, 545 U.S. at 22. Thus, the test also erases the textual limitation inherent in the phrase "among the several States" and substitutes an economic prediction of effects for a jurisdictional line. The Court in *Raich* determined Congress could use its Commerce Clause authority to prohibit local cultivation and possession of marijuana for medical use permitted under California law. As illustrated *supra*, nothing in the text or history of the Commerce Clause permits such an expansive authority.

The modern Commerce Clause precedents therefore invert the structure of enumerated powers. They redefine "commerce" to mean all plausibly commercial activity and "necessary and proper" to mean "convenient." In doing so, they replace a Constitution of limited powers with one of unlimited ends, and transform a union of sovereign states into a nation of fifty administrative districts.

"[W]hen convinced of former error, this Court has never felt constrained to follow precedent." *Smith v. Allwright*, 321 U.S. 649, 665 (1944). When dealing with matters of constitutional law, it "freely exercise[s] its power to reexamine" decisions, *id.*, and "places a

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[12] *See Boyle v. Bessent*, 2025 WL 509519, at *36 (holding that "the mere existence of a corporate entity [formed under state law]—even one engaging in no commercial transactions with no assets to its name" constitutes "commerce" that Congress can regulate).

high value on" getting the matter right, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264 (2022). Sustaining the CSA's continued application would wrongly reinforce these departures from the original meaning of the Constitution. The Court instead should begin to reverse its errors.

II. APPLYING THE CSA TO STATE-REGULATED, INTRASTATE MARIJUANA EXCEEDS CONGRESS'S POWER UNDER THE COMMERCE CLAUSE.

In criminalizing the cultivation and possession of marijuana that never crosses a state border, the CSA regulates not commerce but agriculture, manufacturing, and consumption—matters reserved to the states.

The commerce that the CSA regulates here isn't interstate. In Massachusetts's marijuana program, every gram of marijuana grown, processed, transported, and sold within the Commonwealth is tracked from seed to sale under comprehensive state law. Pet. Br. 11. This regulatory system prevents diversion into interstate markets and ensures that all marijuana remains within state lines and that Petitioners' businesses do not fall within the category of interstate commerce. *Id*. at 11–12.

Furthermore, criminalizing intrastate marijuana grown, sold, and consumed under a closed state system is neither necessary nor proper to the policing of interstate commerce in illicit drugs. The CSA, as

applied here, exercises a power not incidental but independent of the Commerce Clause. Under its original meaning, the Necessary and Proper Clause cannot create a new power to reach intrastate activity merely because it might indirectly affect interstate trade. Likewise, a federal law that invades the states' reserved police powers cannot be "proper" within the meaning of Article I.

That is precisely what occurred here. Congress has prohibited a purely local activity occurring within the jurisdiction of Massachusetts. The CSA's application in this case transforms the federal government into one of general jurisdiction, a result the Framers rejected and the Constitution forbids.

III. THIS CASE WARRANTS REVIEW TO PROTECT LIBERTY AND THE RULE OF LAW.

This case implicates the Constitution's most fundamental safeguard of liberty: its structure. The Framers divided power between the national and state governments not merely to protect state prerogatives, but to preserve individual freedom. They recognized that a national government, distant from the people, could do tremendous damage to liberty if not checked. Madison wrote, "In a single republic, all the power surrendered by the people is submitted to the administration of a single government . . . ." THE FEDERALIST NO. 51 (Madison). But "[i]n the compound republic of America," he continued, "the power surrendered by the people is first divided between two

distinct governments," thereby providing "a double security . . . to the rights of the people." *Id.*

As this Court has recognized, federalism "reduce[s] the risk of tyranny and abuse," *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), and "secures the freedom of the individual," *Bond v. United States*, 564 U.S. 211, 221 (2011). The states are meant to check the federal government and vice versa. "In the tension between federal and state power lies the promise of liberty." *Gregory*, 501 U.S. at 459.

This case squarely presents whether Congress may wield a near-boundless commerce power to criminalize activity that is lawful under state law and confined within a state's borders. Allowing Congress to regulate purely local conduct under a theory of aggregated economic effects erases the distinction between national and state authority on which our federal system depends. It converts the Commerce Clause into a general police power, one the Framers deliberately withheld from the national government. Such an intrusion offends the Constitution's structural guarantee of liberty and allows an unfettered Congress to regulate nearly all aspects of our lives.

That breakdown of structure is a breakdown of the rule of law. The rule of law rests on the premise that the government, no less than the governed, is bound by the law's limits. When the federal government claims the power to regulate every corner of life, those divisions collapse—and with them, the "double security" for liberty that the Framers designed. Thus,

when Congress and the courts treat the Commerce Clause as an invitation to legislate on anything that might hypothetically affect commerce, the enumeration of powers becomes a parchment barrier.

The danger is not hypothetical. Petitioners' businesses operate wholly within Massachusetts under one of the nation's most stringent regulatory regimes. Their products never cross state lines. Yet they are threatened with prosecution for engaging in conduct that their own state deems lawful and beneficial. That contradiction breeds uncertainty, discourages enterprise, and undermines respect for the law.

It's difficult to discern a limit on national power under *Raich*. It appears Congress can prohibit the planting of a backyard garden, church potlucks, or the exchange of homemade goods—each of these activities is "economic" in the aggregate. A power to regulate everything that might "affect" commerce is a power to regulate life itself. It presents a federal threat to liberty that the Constitution was designed to protect against. That design becomes obsolete when courts refuse to recognize it.

CONCLUSION

The Constitution draws a line between national and state power—a line *Raich* erased. This case presents an excellent vehicle to restore the original meaning of the Commerce and Necessary and Proper Clauses. This Court should grant certiorari, overrule

Raich, and reaffirm that Congress's powers are limited to those enumerated in the Constitution.

Respectfully submitted,

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