

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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Thomas John Styczinski;  
Tom “The Coin Guy”, LLC;  
Treasure Island Coins, Inc.; and  
Numismatist United Legal Defense,  
*Petitioners,*

v.

Grace Arnold, in her capacity as Commissioner of  
the Minnesota Department of Commerce.

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether a federal court exceeds its “judicial power” under Article III and *Ayotte v. Planned Parenthood* when the federal court unilaterally imposes a constitutional avoidance narrowing construction on a state law, which contains direct extraterritorial regulation of out-of-state economic activities—in a situation where the state's highest court has not narrowed the statute in the first instance—and when the federal court rewrites the state law, under a severability analysis, contradicting the state law’s meaning for it to apply extraterritorially, creating a genuine circuit split regarding the scope of a federal court’s Article III judicial power to modify or amend state laws.
2. Whether following this Court’s decision in *National Pork Producers Council v. Ross*, the Dormant Commerce Clause and equal sovereignty principles constitutionally limit the reach of a state’s economic regulatory scheme, which mandates that once an out-of-state bullion trader does the minimum amount of \$25,000 of business within the State of Minnesota, all of the bullion trader’s out-of-state and global employees, dealers, contractors, agents, and dealer representatives must be screened, registered and pay a registration fee as if doing business in the state even though they are not doing so—or is the Eighth Circuit correct, such a state law is a permissible *cost of transacting* in Minnesota, not an *extraterritorial regulation*.

## **PARTIES TO THE PROCEEDINGS**

The Petitioners, the Bullion Traders, are Thomas John Styczinski, Tom “The Coin Guy”, LLC, Treasure Island Coins, Inc., and Numismatist United Legal Defense. They were the plaintiff-appellants below.

The Respondent is Grace Arnold, in her official capacity as Commissioner of the Minnesota Department of Commerce. She is the defendant-appellee below.

## **CORPORATE DISCLOSURE STATEMENT**

All the petitioners, the Bullion Traders, are individuals or closely held entities. There is no petitioner-entity with a parent public or private corporation owning any interest in them.

## **RELATED PROCEEDINGS**

The United States District Court for the District of Minnesota issued two decisions: *Styczinski v. Arnold*, 550 F. Supp. 3d 637 (D. Minn. 2021); *Styczinski v. Arnold*, 727 F. Supp. 3d 821 (D. Minn. 2024).

The United States Court of Appeals for the Eighth Circuit issued two decisions: *Thomas Styczinski, et al v. Grace Arnold*, 46 F.4th 907 (8th Cir. 2022) (*Styczinski I*) and *Styczinski v. Arnold*, 141 F.4th 950 (8th Cir. 2025) (*Styczinski II*). See *Styczinski v. Arnold*, No. 24-1828, 2025 WL 2178575 (8th Cir. Aug. 1, 2025) (en banc petition denial).

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Thomas John Styczinski, Tom “The Coin Guy”, LLC,  
Treasure Island Coins, Inc., and Numismatist United  
Legal Defense,  
Petitioners,

v.

Grace Arnold, in her official capacity as  
Commissioner of the Minnesota Department of  
Commerce,

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case dated on the same date as the issuance of the opinion, June 24, 2025, *Styczinski v. Arnold*, 141 F.4th 950 (8th Cir. 2025) (*Styczinski II*), 1a–16a, after which the Eighth Circuit denied en banc review on August 1, 2025. 17a.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Eighth Circuit, filed on June 24, 2025, is reported at *Styczinski v. Arnold*, 141 F.4th 950 (8th Cir. 2025) (*Styczinski II*), 1a–16a. The decision of the district court is reported at *Styczinski v. Arnold*, 727 F. Supp. 3d 821 (D. Minn. 2024). 67a–80a.

## **JURISDICTION**

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on June 24, 2025. A timely Petition for Rehearing and Rehearing En Banc was denied on August 1, 2025. 17a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Pertinent constitutional and state statutory provisions are reproduced in the appendix of this petition. 79a-82a. The principal Minnesota statutory sections at issue require dealers who reach the \$25,000 minimum threshold to meet global screening, registration and registration fee payment requirements for all their employees, contractors, agents and dealer representatives. Minn. Stat. § 80G.02, subd. 1. 79a-80a. Minnesota Statutes § 80G.01, subd. 4, defines "dealer representative" as "any natural person acting as an employee, contractor, or agent of a dealer and who has interactions with consumers for the purpose of the buying, selling, solicitation, or marketing of bullion products or investments in bullion products." *Id.* 80a. Chapter 80G requires dealers to set up a global screening process for their employees, contractors, agents and dealer representatives relating to the Minnesota registration. Minn. Stat. § 80G.05. 80a-81a. Chapter 80G also requires the Commissioner of Commerce to deny the registration of any of the Bullion Trader's employees, contractors, agents and dealer representatives who have been convicted of any financial crime or other crime involving fraud or

theft. Minn. Stat. § 80G.04. 81a. The statute also specifies a \$10 registration fee for each of the Bullion Trader's global employees, contractors, agents and dealer representatives subject to the Commissioner's registration fee adjustments. Minn. Stat. § 80G.02, subd. 5. 82a.

### STATEMENT OF THE CASE

The Eighth Circuit's constitutional avoidance narrowing construction and severability re-write on Minnesota's state law regulating out-of-state economic activities exceeds its Article III judicial power authority in violation of *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006). Federal district courts lack the Article III judicial power:

- (1) to unilaterally impose a constitutional avoidance narrowing construction to a state statute when the state's highest court has not narrowed the statute in the first instance; and,
- (2) to unilaterally impose a severability judicial rewrite contradicting the state law's meaning.

These legal issues over Article III judicial power create a genuine circuit split regarding the scope of federal courts' power to modify or amend state laws.

The Eighth Circuit's decision conflicts with the Court's decision in *National Pork Producers Council*, the Dormant Commerce Clause and equal sovereignty principles. The existing precedents constitutionally limit the reach of a state's economic regulatory scheme to in-state economic transactions. In a contradictory way, Minnesota mandates that

once an out-of-state bullion trader does the minimum amount of \$25,000 of business within the State of Minnesota, all of the bullion trader's out-of-state and global employees, dealers, contractors, agents, and dealer representatives must be screened, registered and pay a registration fee as if doing business in Minnesota even though they are not doing so. The Eighth Circuit's decision insists that such a state law is a permissible *cost of transacting* in Minnesota, not an *extraterritorial regulation*. 10a. The petitioners claim that the Eighth Circuit has erred on this critical legal issue relating to the Court's decision in *National Pork Producers Council*, the Dormant Commerce Clause and equal sovereignty principles.

Petitioners, a collection of bullion dealers (the "Bullion Traders"), challenged Minnesota's statutory scheme under Chapter 80G governing, among other things, the registration of Bullion Traders doing business in the state. The Petitioners' claims fall under the Dormant Commerce Clause, alleging that its expansive scope unconstitutionally regulated commerce occurring entirely outside Minnesota's borders. The Bullion Dealers claimed that this extraterritorial application of the state law is unconstitutional.

**1. The initial lawsuit:** The Bullion Traders filed their complaint challenging Minnesota's statutory scheme under Chapter 80G governing, among other things, the registration of Bullion Traders doing business in the state. 31a–62a. The Petitioners' claims fall under the Dormant Commerce Clause, alleging that its expansive scope illegally regulated commerce occurring entirely outside Minnesota's borders. The Bullion Traders claimed



that this extraterritorial application is unconstitutional. The statutory scheme imposed certain requirements and prohibitions on bullion product dealers and their representatives. 36a. For example, if a person or entity met the statutory definition of a dealer, having transacted \$25,000 or more in bullion products in a year, the person or entity must be screened, register and pay a registration fee with the Minnesota Department of Commerce. 33a. Failure to do so, is a misdemeanor offense. *Id.* In addition, the law mandated a surety bond in an amount determined by the amount of transactions with Minnesota consumers in the 12-month period prior to registration or renewal. *Id.* The district court initially found certain sections of Chapter 80G unconstitutional but upheld the remainder of the statute. 61a. The Bullion Traders appealed.

**2. The first appeal (*Styczinski I*).** In *Thomas Styczinski, et al v. Grace Arnold*, 46 F.4th 907 (8th Cir. 2022) (*Styczinski I*), the Eighth Circuit reversed, holding that the then-operative version of Chapter 80G's definition of a "Minnesota transaction" exerted unconstitutional extraterritorial control over transactions occurring wholly outside of Minnesota. 25a –30a. The Eighth Circuit found that this expansive definition, combined with the structural requirements of registration and bonding, violated the per se rule against projecting state regulation into other sovereign states. *Id.*

During the first appeal, after the parties had completed filing their respective appellate briefs, the Minnesota state legislature enacted a substantial amendment to Chapter 80G. 20a. 2022 Minn. Sess.

Law Serv. Ch. 375, H.F. 4030 (2022). In response, the Eighth Circuit requested supplemental briefing regarding the impact of the amendment on the initial appeal. The amendment re-defined the phrase “Minnesota transaction.” 77a. The definition went directly to the issue of extraterritorial reach of Chapter 80G. The appellate court then remanded the case to the district court to determine whether the extraterritorial provisions of Chapter 80G, as amended, were severable from the extraterritorial aspects of the state law which are unconstitutional. 30a.

**3. On remand, district court severability re-writing.** On remand, after the Petitioners argued that the state law had a meaning which applied the law extraterritorially, even after the 2022 amendment, to protect Minnesota bullion customers, the district court determined that it could cure the constitutional defect, under Minnesota’s severability law, by “re-writing” the amended statutory text. 68a–76a. The court acknowledged its aggressive severability rewriting. 70a–71a. Applying Minnesota’s severability law, the district court struck offending phrases from the 2022 definition of “Minnesota transaction” in an attempt to cure the state law of its extraterritoriality. *Id.* See also, 77a.

**4. On the second appeal, the Eighth Circuit affirmed the district court (*Styczinski II*).** In *Styczinski v. Arnold*, 141 F.4th 950 (8th Cir. 2025) (*Styczinski II*), the Eighth Circuit affirmed the district court’s severability judicial rewrite and adjudicated the constitutionality of its continued extraterritoriality. 6a–16a. The court rejected the

Bullion Traders’ arguments regarding unconstitutional extraterritoriality and regarding Article III judicial overreach in severability rewrites and in constitutional avoidance narrowing constructions. *Id.*

On extraterritoriality, the Bullion Traders agreed, in part, that the proposed definition of “Minnesota transaction” resolved the statute’s extraterritorial reach, *except for the screening, registration and registration fees for out-of-state employees, contractors, agents and dealer representatives*. 7a–7b. In this regard, within the Minnesota Chapter 80G regulatory scheme, the appellate court interpreted the amended law as not “*wholly*” unconstitutionally controlling out-of-state commerce. 9a (emphasis added). Although admitting the amended statutory provision at issue would “require[ ] a dealer to register all its representatives before the dealer or its representatives conduct a ‘Minnesota transaction’ is a permissible *cost of transacting* in Minnesota, [it is] not an extraterritorial regulation.” 10a (emphasis added). In other words, despite the fact that there exists a state law obligation to screen, register and pay a registration fee for all employees, contractors, agents, and dealer representatives, nationwide and globally—even if those specific individuals never engaged in a “Minnesota transaction” as the Bullion Traders had argued—the Eighth Circuit held that “the provision on dealer representatives does not textually contain a territorial limitation,” and that such an extraterritorial economic regulation is a permissible cost of doing business in Minnesota. *Id.*

To be sure, the Eighth Circuit also held, that, although the law requires globally that the employees, contractors, agents and dealers representatives of Minnesota-registered dealers be screened, registered and pay a registration fee in Minnesota, this registration status only limits their activities in Minnesota. 9a–10a. As an in-state restriction, such a dealer representative may not buy, sell, solicit, or market bullion products in Minnesota unless the dealer is properly registered. *Id.* The Eighth Circuit, based on the constitutional avoidance principle and Minnesota’s general presumption against extraterritorial application, held that a dealer representative who is not registered in Minnesota may nonetheless continue to conduct out-of-state transactions (non-Minnesota transactions) on behalf of the dealer. *Id.* Thus, the Eighth Circuit held the final sentence of the statute, which broadly restricts a non-registered representative, is interpreted as only applying to activities occurring within Minnesota’s borders. *Id.*

In summary, under the Eighth Circuit’s decisions, Minnesota’s state law compels global screening, registration and registration payments for all the registered dealer’s employees, contractors, agents and dealer representatives as an in-state requirement for Minnesota dealer registration, but allows these same employees, contractors, agents and dealer representatives to continue their non-Minnesota economic activities regardless of being registered in Minnesota. 74a.

The Bullion Traders’ core dispute is whether Minnesota’s compulsory global screening, registration and fee requirements for a small state trigger of

\$25,000 are constitutional prerequisites for doing business in Minnesota (as the Eighth Circuit held) or are unconstitutional projections of Minnesota's state power over sister state sovereigns (as the Bullion Traders argue).

As to Article III judicial review and overreach, the Eighth Circuit affirmed the district court applying the severability judicial re-write and constitutional avoidance narrowing constructions. The Eighth Circuit, in speculating that the Minnesota Legislature "would have preferred" the judicially "cabined statute" over no regulation at all, sanctioned the substitution of the federal courts' judicial preference in place of the state law's meaning.

We instead consider, if the legislature could keep only the severed statute, would it prefer retaining the statute or removing it altogether.

16a.

In response, the Bullion Traders, continue to argue that the federal courts exceed their Article III judicial powers when the severability rewrites and constitutional avoidance narrowing constructions contradict the state law's meaning to apply the law extraterritorially to directly regulate out-of-state economic activities. 2022 Minn. Sess. Law Serv. Ch. 375, H.F. 4030. 76a.

The Bullion Traders' core claim is that Minnesota's continuing, compulsory global screening, registration and fee requirements for a small state

trigger of \$25,000 are unconstitutional projections of Minnesota's state power over sister state sovereigns.

### **REASONS FOR GRANTING THE PETITION**

The Eighth Circuit has ignored the Article III limits of judicial power under *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006), to allow federal district courts to unilaterally impose a constitutional avoidance narrowing construction to a state statute. Although previously acknowledging that federal courts lack the authority to impose a narrowing construction to a state statute where no state court decision narrowed the statute in the first instance, the Eighth Circuit shifted its doctrinal position under a severability analysis involving the Dormant Commerce Clause. The Fourth and Sixth Circuits remain steadfast to the principle that they lack the authority to impose a narrowing construction when a state court decision has not imposed a narrowing construction.

On the other hand, the Third, Ninth, and Eleventh Circuits adhere to a more permissive view, readily presuming narrowing constructions are available to avoid constitutional issues—the constitutional avoidance doctrine. With the circuit split, the question remains as to the extent federal courts can exercise judicial power to rescue state statutes from constitutional violations without “a serious invasion of the legislative domain.” *United States v. Stevens*, 559 U.S. 460, 481 (2010). When a federal court, faced with an unconstitutional state law, undertakes to rewrite the statutory text to create a narrow, constitutionally-compliant scheme that the state legislature chose not to enact, that

court has exceeded its Article III judicial function and engaged in quintessential legislative work. The Eighth Circuit's holding in *Styczinski II* affirming the district court's severability rewrite on Chapter 80G illustrates a profound violation of the principles under Article III of the U.S. Constitution, separation of powers principles, and federalism.

Furthermore, the Eighth Circuit, contrary to the limitations of *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), allows state economic regulation schemes governing a single type of merchant, here, Bullion Traders, doing business in the state to affect out-of-state and global merchant's out-of-state employees, dealers, contractors, agents, and dealer representatives who do no business and have no connection to the state, requiring the separate registration of all, as "a permissible *cost of transacting*" in the state. The appellate decision redefines the *National Pork Producers Council* scope of how a state regulation affects out-of-state merchants to fall within state economic regulatory jurisdiction.

The Eighth Circuit's holding in *Styczinski II* creates an inconsistent application of U.S. Supreme Court precedent regarding the Dormant Commerce Clause and novel loophole in the per se rule against extraterritorial regulation, threatening the long-established constitutional structure of a unified national economy. By dismissing the imposition of personnel registration and screening requirements and mandatory registration fees on an out-of-state dealer's global operations as a mere "permissible cost," the Eighth Circuit has effectively authorized one state, Minnesota (or any other state), to project

its regulatory police power into the sovereign jurisdictions of all other States and nations.

**I. The Eighth Circuit’s narrowing construction and rewrite of a state amended law to rescue it from an otherwise unconstitutional interpretation, illustrates and reveals a genuine circuit split.**

The Eighth Circuit’s decision in *Styczinski II* to affirm the district court’s severability rewrite on an amendment to Chapter 80G governing Bullion Traders illustrates the profound violation of the principles under Article III, separation of powers, and federalism. When a federal court, faced with an unconstitutional state law, undertakes to rewrite the statutory text to create a narrow, constitutionally-compliant scheme that the state legislature chose not to enact, that court has exceeded its Article III judicial function and invaded the legislative domain.

**A. The two forms of Article III judicial overreach: constitutional avoidance narrowing construction and severability re-write.**

The Eighth Circuit’s actions in *Styczinski II* were two-fold, both resulting in the impermissible judicial rewriting of state law—a function reserved exclusively for the sovereign State of Minnesota’s judicial and legislative branches. First, the Eighth Circuit applied a constitutional avoidance narrowing construction to the final sentence of the registration statute to cure its lack of a textual territorial limitation. 74a. While agreeing that an



unconstitutional extraterritorial issue existed, the court affirmed the district court's rewrite without any state appellate court decision on a narrowing construction of the statutory provision at issue:

We agree the provision on dealer representatives does not textually contain a territorial limitation. However, we must read the provision consistent with Minnesota law. Minnesota law presumes its statutes do not apply extraterritorially. . . . As a result, Minnesota's presumption against extraterritoriality dictates that the last sentence prohibits the dealer representative from buying, selling, soliciting, or marketing in Minnesota if the dealer is not registered, while the representative remains free to conduct such activities outside of Minnesota.

10a–11a. By rewriting the limiting language, the federal court invaded the domain of the state legislature rewriting the state law and unconstitutionally overreaching beyond its Article III judicial powers, especially where no such definitive construction had been made by the Minnesota Supreme Court.

Second, the Eighth Circuit affirmed the district court's severability of the partial invalidation of the 2022 "Minnesota transaction" definition, judicially striking out phrases to create a new, cabined statute that the Minnesota Legislature had expressly refused to enact. The court admitted its action as a substitution, stating it must "consider, if the

legislature could keep only the severed statute, would it prefer retaining the statute or removing it altogether.” 16a. This judicial substitution is a form of judicial legislation—an act that replaces the sovereign state legislature’s clear policy judgment with the federal court’s preferred version.

**B. The unconstitutional narrowing construction of state laws and the circuit split.**

The federal court's imposition of a narrowing construction is impermissible because it violates the basic constitutional boundary between federal and state courts regarding statutory construction of state laws—a core federalism principle that is currently fractured across the circuits. *See, Hullverson L. Firm, P.C. v. Liberty Ins. Underwriters, Inc.*, 25 F. Supp. 3d 1185, 1190 (E.D. Mo. 2014) citing *Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 4881 (1976) (Federal courts are “bound to accept the interpretation of [state] law by the highest court of the State.”); *State ex rel. Hatch v. Employers Ins. Of Wausau*, 644 N.W.2d 820, 828 (Minn. App. 2002) (“Federal court interpretations of state law are not binding on state courts.”).

**1. The restrictive view is adhered to by the Fourth and Sixth Circuits and apparently held and then abandoned by the Eighth Circuit.**

The Fourth and Sixth Circuits adhere to the principle that a narrowing construction is outside the Article III judicial power of the federal court when a state's highest court has not issued a decision to narrow the construction of a statute at issue. *Toghill v. Clarke*, 877 F.3d 547, 557 (4th Cir. 2017); *Entertainment Productions, Inc. v. Shelby Cnty., Tenn.*, 588 F.3d 372, 386 (6th Cir. 2009). This restrictive view was previously held by the Eighth Circuit, which now appears to have been abandoned under *Styczinski II. Compare, Video Software Dealers Ass'n v. Webster*, 968 F.2d 684, (8th Cir. 1992). Regardless, *Webster*, did concisely express the restrictive view as described:

Here, there is no state court decision narrowing the statute. We thus lack authority to impose a narrowing construction.

*Id.* at 691.

Courts in these circuits emphasize that federalism forbids a federal appellate court from usurping the state court's judicial power to make narrowing constructions of state law and that a federal court's narrowing constructions of state law is not binding on state courts, creating a potentially advisory opinion issue.

Furthermore, a federal court's rewriting of state laws—either by constitutional avoidance narrowing constructions or severability rewriting of state laws—creates uncertainty for citizens reading state laws and undermines the notice function of the state law, as the lower federal courts' final interpretations of state law are not definitive until the state's highest court rules.

## **2. The Permissive View is adhered to by the Third, Ninth, and Eleventh Circuits**

The permissive view, adhered to by the Third, Ninth, and Eleventh Circuits, readily presumes constitutional avoidance narrowing constructions of state laws are available, arguing that the constitutional avoidance doctrine mandates such action if the construction is "readily susceptible" or "reasonable and readily apparent." *Bruni v. City of Pittsburgh*, 941 F.3d 73, 85 (3rd Cir.2019); *Yamada v. Snipes*, 786 F.3d 1182, 1189 (9th Cir. 2015); *Florida Right to Life, Inc. v. Lamar*, 273 F.3d 1318, 1326 (11th Cir. 2001). *See also Hignell-Stark v. City of New Orleans*, No. 24-30160, 2025 WL 2832636, at \*9 (5th Cir. Oct. 7, 2025) (modified permissive approach).

The Eighth Circuit's decision in *Styczinski II*—unilaterally supplying a territorial limitation to the non-registered dealer representative restriction—places it in contradiction with the restrictive approach the Eighth Circuit had historically applied. By acting permissively in this case where the state law was clear as to extraterritorial application and not susceptible to multiple interpretations, the court deepened the existing circuit split.

**3. A federal court severance  
rewrite of a state law  
contradicting a state law's  
meaning is a similar judicial  
overreach under Article III—  
Ayotte's mandate of judicial  
restraint.**

The federal court judicial severance of a state law contradicting the state law's meaning is a similar judicial overreach under Article III's limitations of federal courts to "judicial powers." *See* Scoville, Ryan, *The New General Common Law of Severability*, 91 Texas Law Review 543, 548 (2013) ("The [proposed] improvement is to hold that the severability of a state statute is a question of state law, subject to a potential Article III override reflecting inherent limits on federal courts' powers to engage in the legislative function of statutory revision."). The petitioners urge the Court, at the very least, to hold that Article III's limitation to "judicial powers" forbids the federal courts from constitutional avoidance narrowing constructions and severability rewrites which contradict the state law's meaning.

In this case, the constitutional avoidance narrowing constructions and severability rewriting, affirmed by the Eighth Circuit are in direct conflict with the most recent and explicit policy choice of the Minnesota state legislature's 2022 amendment, applying the law extraterritorially, violating the core restraints imposed by Article III and *Ayotte*.

Federal courts must be restrained partners in constitutional review of state laws and must not engage in the state's "quintessentially legislative

work." The touchstone for the legal analysis must be the state law's meaning—"Would the legislature have preferred what is left of its statute to no statute at all?" *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006).

**C. The judicial re-write directly contradicts the 2022 legislative amendment that reaffirmed the extraterritorial reach of statutory provisions governing Bullion Traders and transactions.**

When the federal district court initially struck down parts of Chapter 80G, the Minnesota Legislature responded with a 2022 amendment, which explicitly *reaffirmed* the extraterritorial application of the previously adjudicated unconstitutional law. The 2022 legislative amendment demonstrated a clear, active preference for an unconstitutional, broad, global law over a narrow, local law. The federal courts then claimed the state legislature *must* have preferred the opposite, stripped-down, purely narrow, local law—a law with a fundamentally different public policy than the 2022 state legislative amendment which is a broad, global law. Given the clear legislative effort to maintain extraterritorial reach in the 2022 state legislative amendment, the judicial inference that the state legislature would have preferred a purely narrow, local law is mere judicial speculation overstepping bounds of Article III. *See, e.g., Dennis v. United States*, 341 U.S. 494, 525 (1951) (noting the Court must “set aside the judgment of those whose duty it is to legislate” only if the Constitution requires such a result).

**D. Federalism as an intrusion into the state legislature's domain.**

The federal courts' constitutional avoidance narrowing constructions and severability judicial rewrites, contradicting the state law's meaning, constitute a usurpation of the state legislature's domain—a constitutional model the Framers explicitly rejected. *See Ayotte v. Planned Parenthood*, 546 U.S. 320, 329-330 (2006); *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996); *United States v. Reese*, 92 U.S. 214, 221 (1875); *United States v. Hansen*, 143 S.Ct. 1932, 1949–50 (2023) (Thomas, J., concurring); *Buckley v. Illinois Judicial Inquiry Bd.*, 997 F.2d 224, 230 (7<sup>th</sup> Cir. 1993); J. Barry, *Comment: The Council of Revision and the Limits of Judicial Power*, 56 U. Chi. L. Rev. 235, 245 (1989).

Specifically, the lower courts' narrowing constructions and severability rewriting of the state legislature's enactment intrudes on the sovereignty of a distinct, co-equal sovereign: the State of Minnesota. The lower court decisions signal to the Minnesota state legislature that a federal court will bail them out of unconstitutional overreaching statutes by substituting the court's speculation of what the legislature intended by surgically editing their language via narrowing constructions and severability rewrites. Article III limitations forbid the federal courts from substituting their narrowing constructions and severability rewrites in contradiction of the state law's meaning. The Eighth Circuit's admitted judicial *narrowing constructions* and *severability re-writes* of state law, contradicting the state law's meaning, create an untenable

precedent that threatens the structural separation of powers, federalism and equal sovereignty.

**II. There is a need for clarification and uniformity to reconcile conflicting constitutional avoidance narrowing constructions and severability rewrites within the context of Dormant Commerce Clause and equal sovereignty enforcement.**

The conflict among the Circuits, regarding constitutional avoidance narrowing constructions and severability rewrites, creates uncertainty regarding the practical application of two critical constitutional doctrines forbidding states to extraterritorially regulate out-of-state economic activities: the Dormant Commerce Clause and the equal sovereignty doctrine. This uncertainty necessitates review to restore clarity and prevent pervasive federal-court-entanglement across the 50 states regarding state laws extraterritorially regulating out-of-state economic activities.

**A. Doctrinal uncertainty in the extraterritoriality context.**

The Eighth Circuit’s holding that the mandatory, global screening, registration and registration fees for all employees, contractors, agents and dealer representatives is a “permissible cost” introduces uncertainty in applying the Dormant Commerce Clause’s per se rule. 10a. This characterization provides a blueprint for any state wishing to impose its regulatory policy extraterritorially to strategically frame the structural



compliance mandate as a "prerequisite" or "cost" of conducting even minimal business in the state.

### **1. The regulatory precedent created.**

Under the Eighth Circuit's logic, any state could require an out-of-state entity to conform its global personnel structure, safety standards, or internal compliance systems to the in-state regulator's specifications, provided the mandate is deemed a "cost" of entering the Minnesota market.

The Eighth Circuit decision threatens national uniformity across numerous regulated industries. First, for financial services, could a state require an out-of-state brokerage firm to register all its brokers globally, even those dealing exclusively with other states' residents, merely because the firm does minimal business with one in-state client? Second, for data privacy, could a state require a global tech company to adopt the state's specific employee training and compliance program for its entire global workforce as a "cost" of serving a minimal number of in-state customers? Third, for employment standards, could a state require an out-of-state contractor to comply with the state's stringent wage and hour record-keeping for all its global employees if that contractor performs any work in the regulating state?

### **2. The need for clarity on structural economic mandates.**

This Court should clarify a bright-line rule: a structural regulatory mandate that dictates the internal operations or personnel compliance of an out-of-state entity is fundamentally different from a

proportional economic fee. If the mandate controls who, how, or where an out-of-state entity may hire or operate in a sister state, it is an extraterritorial regulation, not a permissible cost. The Eighth Circuit's failure to draw this crucial distinction creates a loophole that invites the fifty states to become fifty different national regulators, an outcome explicitly prohibited by the Constitution.

**B. The compounding errors of constitutional avoidance narrowing constructions and severability judicial re-writes contradicting the state law's meaning.**

Another reason for granting the writ of certiorari lies in the Eighth Circuit's sanctioning of constitutional avoidance narrowing constructions and severability rewrites of state laws contradicting the state law's meaning. These are questions of profound importance to the balance of power between the federal and state governments and between federal and state courts.

**1. Inconsistency with separation of powers, federalism, and equal sovereignty principles.**

The Eighth Circuit affirmed acts of constitutional avoidance narrow constructions and severability re-writes of a state law in direct conflict with the state law's meaning. This judicial overreach, in violation of Article III's limitation to "judicial power," forces the Minnesota state legislature into a defensive position. The state legislature is required to convene and re-legislate a new statute to clarify their

policy in light of the federal courts' narrowing constructions and severability rewrites in contradiction of the state law's meaning—a burden that should never be imposed by a federal court acting under the guise of “constitutional avoidance” or “severability.”

The federal court's role is not to rewrite, the state law as the best possible constitutional version of the law. Instead, the federal court's role is to determine if the state law's meaning can be preserved while excising the unconstitutional aspects. When the constitutional avoidance's narrowing construction and the severability's partial invalidation contradict the state law's meaning, here reflected in the 2022 Amendment defining “Minnesota transaction,” the constitutional avoidance's narrowing construction and severability's partial invalidation removing the state law's meaning per the 2022 Amendment, are unconstitutional acts of judicial usurpation, not preservation of the state law's meaning.

In this case, the federal courts are making, not interpreting, state law. In so doing, the federal courts make themselves into super state legislatures. Article III limits the federal courts to only “judicial power,” excluding state-law-making powers. A federal court may not act upon a state law as a constitutionally-prohibited Council of Revision.

## **2. The practical need for guidance**

Without clear guidance from this Court, the federal district courts will continue to treat the Article III limitation to “judicial power” and the *Ayotte* mandate as merely precatory, using state

severability statutes and the constitutional avoidance doctrine to engage in creative judicial re-writing and narrowing constructions of state laws to avoid complete or partial invalidation. This judicial practice of federal courts rewriting state laws substitutes judicial power for constitutional limitation, weakening the structural separation of powers, federalism and equal sovereignty. The practices also diminish the sovereign right of a state to have its laws either upheld or invalidated, without federal court modification and amendment. The lower courts need this Court to provide a firm declaration on the limits of a federal court's Article III judicial power when faced with a state legislature that has recently affirmed the very constitutional defect in question.

**III. The Eighth Circuit's characterization of extraterritorial regulation as a "permissible cost" erodes the Dormant Commerce Clause and violates the equal sovereignty principles.**

The Eighth Circuit's holdings in *Styczinski II* create a loophole in the per se rule against extraterritorial regulation, threatening the long-established constitutional structure of a unified national economy. By dismissing the imposition of personnel screening, registration and registration fee requirements on an out-of-state dealer's global operations as a mere "permissible cost," the Eighth Circuit has effectively authorized one state, Minnesota, to project its regulatory police power into the sovereign jurisdictions of all other States and nations. 10a.

**A. The Court’s decision in *National Pork Producers Council* left open the question to what extent the equal sovereignty doctrine protects state sovereignty to regulate in-state transactions without out-of-state interference.**

While this case was working its way through the lower courts, the Court decided *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). The Court’s decision in *National Pork Producers* left open the question of whether the equal sovereignty doctrine is applicable to thwart state direct regulation of out-of-state economic activity involving no business in the regulating state:

To resolve disputes about the reach of one State’s power, this Court has long consulted original and historical understandings of the Constitution’s structure and the principles of “sovereignty and comity” it embraces.

*Id.* at 376 (citation omitted). *See, id.* at 376, n. 1. The Court upheld California’s Proposition 12, a law that forbids the in-state sale of whole pork meat from pigs (or their offspring) that were “confined in a cruel manner,” regardless of where the pigs were raised. *Id.* at 390. This law effectively mandated specific space requirements for breeding pigs for all producers who wish to sell pork in California. *Id.* at 365-366. The petitioners (pork producers) challenged the law primarily under the Dormant Commerce Clause, arguing that it impermissibly regulated interstate

commerce and placed an undue burden on out-of-state producers. *Id.* at 367.

The Court's use of the principles underlying the Dormant Commerce Clause, which relate to equal sovereignty among the states, rejected a broad expansion of the Commerce Clause that would have interfered with California's traditional state authority to regulate products sold within its borders. *Id.* at 371-376. The pork producers tried to invoke a doctrine, sometimes called the "extraterritoriality doctrine," to argue that the law was unconstitutional simply because its economic effects primarily fell on out-of-state businesses (since California imports most of its pork). *Id.* at 371. In defense of state sovereignty, the Court, in its majority opinion, refused to adopt this "almost per se" rule. Justice Gorsuch, writing for the Court on this point, emphasized that the Dormant Commerce Clause's core concern is preventing state laws that purposefully discriminate against out-of-state economic interests to benefit in-state ones (economic protectionism). *Id.* at 368-369. Since Proposition 12 imposed the same burdens on in-state and out-of-state pork producers, it did not facially violate the anti-discrimination principle. *Id.*

By affirming the constitutionality of Proposition 12, the Court defended the state's sovereign power to regulate the health, safety, and morals of its own citizens—in this case, by setting animal welfare standards for products sold within its territory. *Id.* at 389-390. The majority opinion essentially stated that a state is generally free to use its market power to influence the production practices of goods sold locally, even if that influences out-of-state producers. *Id.* Expanding the Dormant

Commerce Clause to strike down such a non-discriminatory law, the Court reasoned, would unduly infringe on state sovereignty and involve the judiciary in policy choices best left to the states' political processes. *Id.*

In this case, the Bullion Traders raise a new legal issue: the applicability of the equal sovereignty doctrine on state economic regulations that directly regulate out-of-state actors that do not do business in the state. In Minnesota, the state regulations apply if a Bullion Trader meets the \$25,000 monetary threshold of consumer transactions within the state. The Bullion Traders are not disputing that mandate. What is in dispute is a wholly different matter that registration enforcement is mandated upon an out-of-state employee, contractor, agent or dealer representative if they have a relationship with the in-state registered trader. The extraterritorial effect on the employees, contractors, agents and dealer representatives is apparent. But, the Court's decision in *National Pork Producers Council* does not clarify the logic of that opinion as applied to an admitted extraterritorial structural impact allowed as a "permissible cost" in Minnesota as the Eighth Circuit in *Styczinski II* held.

**B. The "almost per se rule" against extraterritorial regulation and the failure of the "permissible cost" distinction**

This Court has mandated that a state statute is invalid if it directly controls commercial activity occurring wholly outside the state's borders. The Court in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982),

invoking the Dormant Commerce Clause, declined to enforce an Illinois securities law that “*directly* regulate[d] transactions which [took] place ... wholly outside the State” and involved individuals “having no connection with Illinois.” *Id.*, at 641–643 (emphasis added). See *National Pork Producers Council*, 598 U.S. at 376, n. 1. (2023) (discussing *Edgar*); *Shelby County v. Holder*, 570 U.S. 529, 535 (2013) (“[A]ll States enjoy equal sovereignty”). The primary and indispensable purpose of the Dormant Commerce Clause is to ensure that “the flow of commerce among the States is not obstructed by local economic regulation.” *Healy v. Beer Inst.*, 491 U.S. 324, 335 (1989). “Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State.” *Id.* at 336–37. A state may not “project its legislation into other States.” *Id.* at 336.

That’s what has happened here: Minnesota has “project[ed] its legislation into other States.” *Id.* The Minnesota statute under Chapter 80G governing Bullion Traders, even after the judicial severance of the amended statute’s transaction definition, retains a core extraterritorial constitutional vice through its mandatory screening, registration and registration fees for out-of-state employees, contractors, agents and dealer representatives.

The Eighth Circuit in *Styczinski II* held that the registration, screening, and registration fee requirements, which compel an out-of-state dealer who meets a minimal \$25,000 “Minnesota transaction” threshold to register, screen and pay for its entire global workforce of “dealer representatives,”



were merely a "permissible cost of transacting in Minnesota," not an extraterritorial regulation. 10a. Minnesota's global requirements are constitutionally problematic because it imposes requirements on a dealer's global network of employees, contractors, agents and dealer representatives who are not engaged in Minnesota transactions.

Consider Treasure Island Coins, Inc, the Bullion Trader-petitioner-dealer based in North Dakota. The North Dakota dealer contracts with a dealer representative who works exclusively from a Fargo, North Dakota office, serving only North Dakota clients, and contracts with a dealer representative who works exclusively from a Tokyo office, serving only Japanese clients. If the North Dakota dealer, through its central online portal, completes \$25,000 worth of the judicially-cabined "Minnesota transactions," the entire global of the North Dakota dealer is triggered into Minnesota's registration requirements. The North Dakota dealer is instantly mandated to register, screen and make registration payments for its Fargo-based dealer representative and its Tokyo-based dealer representative with the Minnesota Department of Commerce—even though the North Dakota-based and Japan-based dealer representatives don't engage in any Minnesota transactions.

This mandatory act of global registration, screening and fee registration payments for dealer representatives is not just a \$10 fee per dealer representative; it is an act of regulatory submission of the dealer's internal, out-of-state personnel and compliance structure to a non-home state sovereign. Minnesota's registration requirements for out-of-state

dealer representatives is not an incidental effect; it is a direct structural precondition to lawful commerce in Minnesota. Specifically, the North Dakota dealer's ability to contract with a dealer representative to serve North Dakota clients, or to hire a new dealer representative in Japan to serve Japanese clients, requires their respective registrations in Minnesota, as dealer representatives, meaning they are now directly regulated by the Minnesota Department of Commerce.

The Bullion Traders are concerned about the Eighth Circuit's mischaracterization of Minnesota's global regulatory mandates as a mere "fee." The Eighth Circuit's attempt to mitigate this fundamental violation by labeling the registration requirement as a "permissible cost of transacting in Minnesota" is a fatal doctrinal misstep. 10a.

The Eighth Circuit's label confuses a permissible tax or fee, which is proportional and non-discriminatory (*see Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977)), with an impermissible structural command to register out-of-state employees, contractors, agents and dealer representatives. A permissible cost is an economic burden, such as a state corporate income tax calculated in part on apportioned interstate earnings. Such a cost does not require the company to change its internal, operational structure in the other state—as Minnesota Statutes Chapter 80G requires here.

Minnesota's Bullion Trader legal requirements are not proportional to the revenue earned in Minnesota. The state law is a fixed, mandatory, and structural burden applied wholesale to the entire out-

of-state operation. The state law mandates a change in personnel compliance and registration procedures for employees who may never step foot in Minnesota, may never interact with a Minnesota resident and may never engage in a Minnesota transaction. This is a clear exercise of Minnesota's police power—dictating the Minnesota registration, screening and registration fee payment for individuals authorized to work in other states—not a mere economic fee for in-state business.

The Eighth Circuit's decision conflicts with *Healy* and *Brown-Forman*. The Eighth Circuit's ruling contravenes the core principle established in cases like *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 579 (1986), and *Healy*, 491 U.S. at 336. For example, the Court's decision in *Healy* prohibits a state from linking the price or conduct of an in-state transaction to the price or conduct of a transaction occurring wholly outside the state. *Id.* Here, Minnesota has explicitly linked the right to engage in a minimal level of in-state activity, the \$25,000 threshold, to the conduct of the dealer's global business structure requiring global registration, screening and payment for each employee, contractor, agent and dealer representative.

**C. The Equal Sovereignty Doctrine and the imposition of regulatory hegemony.**

The Dormant Commerce Clause is not merely an economic check. The Dormant Commerce Clause is a structural safeguard of federalism and of the principle of equal sovereignty. By affirming this

regulatory scheme, the Eighth Circuit has permitted Minnesota to usurp the sovereign authority of its sister states.

**1. Usurpation of sister states' police power.**

The state's power to license, regulate, and oversee the professional conduct of individuals and entities operating entirely within a state's borders is the quintessential exercise of its police power.

Here, when Minnesota requires a North Dakota dealer to register North Dakota agents as "dealer representatives," Minnesota is asserting regulatory authority over North Dakota citizens and over North Dakota commerce within North Dakota's own borders. This is a direct intrusion into the regulatory domain of North Dakota. In effect, Minnesota is forcing the dealer to operate under a dual compliance regime—one mandated by the dealer's home state of North Dakota, and a secondary, non-home-state regime mandated by Minnesota.

The Constitution was designed to prevent this very fragmentation and coercion. If Minnesota can impose this extraterritorial regulatory preconditions, then every other state can do the same. A dealer operating nationally would be forced to maintain 50 separate, potentially conflicting, national registration databases, all because a minimal state sales threshold of \$25,000 was met in each state. This situation is regulatory chaos by multiple state mandates.

## **2. The threat of regulatory fragmentation.**

The Framers sought to create "an area of free trade among the several States," *Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318, 328 (1977), free from the protectionist and coercive burdens of local legislation.

The Eighth Circuit's decision enables regulatory fragmentation among the states by allowing one state to export its local policy preferences (in this case, screening, registration and registration fee requirements triggered by \$25,000 of bullion transactions in Minnesota). Thus, each state has regulatory authority to enact state laws regulating out-of-state economic activities. The Eighth Circuit's decision sanctions Minnesota's right to compel dealers to adopt its entire internal compliance policy—screening, registration and registration fees—as the lowest common denominator for national and international operations. The Dormant Commerce Clause was designed precisely to prohibit one State, like Minnesota, from unilaterally setting national and international standards for compliance.

## **3. The quantifiable structural harm.**

The harm here is not merely the cost of screening, registration, and registration fee payments. The greater harm is the budget-busting, quantifiable injury of being structurally required to comply with Minnesota's economic regulatory scheme. The Bullion Traders are forced to redesign

their internal employee oversight, hiring, training, and compliance systems—a massive, fixed, structural expense—to conform to the requirements of a single, non-home-state regulator.

The Eighth Circuit failed to appreciate the profound difference between a permissible economic burden and an unconstitutional structural command that projects legislative power across state lines. This failure to enforce the *per se* rule against extraterritoriality demands this Court’s intervention to prevent the further erosion of the Dormant Commerce Clause, equal sovereignty and federalism.

**D. The doctrinal error of conflating taxes with mandates.**

The Eighth Circuit's justification relies on the precedent that states can use out-of-state transactions for the calculation of a nondiscriminatory fee. However, that precedent is wholly inapposite here. This Court’s decisions distinguish between economic measurements and economic control. This Court has upheld taxation schemes that use out-of-state values to measure a proportional in-state tax base, provided the tax meets the four prongs of the *Complete Auto* test: substantial nexus; fair apportionment; nondiscrimination against interstate commerce by providing a direct commercial advantage to local business; and fairly related to the services provided by the State. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. at 274. Critically, these schemes do not mandate non-tax-related economic regulation of out-of-state economic activities.

Significantly, the Minnesota statute's requirement is not a proportional tax; it is a statutory mandate to register, screen and pay registration fees that globally cover all employees, contractors, agents and dealer representatives, including wholly out-of-state ones, once the minimal in-state threshold of \$25,000 in bullion transactions is met. Minnesota's prerequisite is a regulatory act of economic control over the dealer's global workforce and relationships, not a mere in-state economic measure or tax.

**E. Minnesota's de minimis threshold problem.**

The imposition of a global structural compliance obligation triggered by a \$25,000 de minimis state transaction threshold makes the extraterritorial nature of the regulation unmistakable. The burden (registration, screening, registration fee, and compliance overhaul) is grossly disproportionate to the activity being regulated (minimal \$25,000 state sales). By accepting this regulatory structure, the Eighth Circuit has established a precedent allowing states to impose maximal structural burdens on interstate commerce based on minimal in-state commerce, effectively allowing any state to become a national regulator of any industry that conducts even a small amount of cross-border business. This federal court approach threatens the ability of small and medium-sized enterprises, like the Bullion Traders, to engage in interstate commerce without facing overwhelming, conflicting, and coercive regulatory regimes.

**F. The constitutional imperative of equal sovereignty and the Dormant Commerce Clause.**

The Eighth Circuit's characterization of the global registration, screening and registration fee mandate as a "permissible cost" gravely misunderstands the foundational role of equal sovereignty in the constitutional structure. 10a. The principle, though perhaps most directly invoked in voting rights and admissions of new states, is an implicit but essential underpinning of the Dormant Commerce Clause jurisprudence. The Commerce Clause was conceived not just as a grant of power to Congress, but as a deliberate structural limitation on the States' ability to act as an independent economic sovereign regulating the national market, thereby ensuring the creation and maintenance of a single, uniform national market under Congressional supervision.

When one state—like Minnesota—asserts the power to regulate the internal structures, personnel, and compliance mechanisms of businesses domiciled and operating solely in other states, it directly violates the parity of equal sovereignty intended by the Framers. When the federal courts play along, the federal courts become part of the problem too.

**1. The non-negotiable autonomy of sister states.**

The essence of equal sovereignty dictates that no State can be inferior to another, and consequently, no State can claim the authority to dictate the laws or policy choices of its sister states. This autonomy is



vital to the federal structure. One state may not intrude on another state's core police powers. The State's police power—the authority reserved to states to regulate the health, safety, and welfare of its citizens—is diminished when an out-of-state sovereign can compel regulatory compliance over in-state professional licensing and personnel standards.

Under the equal sovereignty doctrine, each state, including North Dakota, has the exclusive and sovereign right to determine the licensing, training, and registration required for its own citizens to operate as bullion dealer representatives within North Dakota. And, for example, for criminal rehabilitation reasons or whatever, North Dakota does not have a law similar to Minn. Stat. § 80G.04 banning registration or renewal of employees, contractors, agents or dealer representatives who have within the last 10 years been convicted of a financial crime or other crime involving fraud or theft. Yet, Minnesota's registration ban applies to North Dakota employees, contractors, agents and dealer representatives even though they are not doing business in Minnesota.

In this way, Minnesota's law effectively vetoes or burdens North Dakota's sovereign determination by requiring a second, non-home-state registration for each of the dealer's employees, contractors, agents and dealer representatives, as a precondition for the North Dakota-based dealer to conduct any minimal commerce with Minnesota. This is not concurrent regulation; it is coercive regulatory jurisdiction. Minnesota's registration requirement creates a burden on North Dakota's governance.

When Minnesota requires an out-of-state dealer to register, screen and make registration payments for its entire workforce and relationships, it forces that dealer to comply with a foreign administrative system, diverting resources that would otherwise be used to comply with the home state's regulatory requirements. This is a practical infringement on the legislative efficiency of the home state. A state like North Dakota, which may choose a less burdensome regulatory approach for Bullion Traders as a matter of internal policy, sees its policy choice undermined because its resident businesses must, by necessity, adhere to the more stringent, national standard set by Minnesota for business being done in North Dakota. This effectively makes Minnesota's policy the national default standard, a role constitutionally reserved exclusively for Congress, not any single state legislature.

**2. Equal sovereignty principles place state regulatory parity over state regulatory hegemony.**

The Constitution's equal sovereignty principles place state regulatory parity over state regulatory hegemony. In contrast, the Eighth Circuit's holding validates a regime of Minnesota regulatory hegemony. If the imposition of Minnesota's global registration is a "permissible cost," then the most aggressive regulatory state, like Minnesota, will always win, imposing its standards on the entire globe. This "race to the top" in regulatory compliance is permissible nationally when enacted by Congress, which acts on behalf of all the people and all the States, but it is destructive when imposed

unilaterally by one State onto sister states. Here, Minnesota acts only on behalf of its own self-interest. The Dormant Commerce Clause and equal sovereignty principles stand precisely to prevent this single-state veto over the economic sovereignty of sister states.

**3. The application of equal sovereignty principles after *National Pork Producers Council v. Ross*.**

While *National Pork Producers* deployed equal sovereignty to protect authority to regulate intrastate commerce, the equal sovereignty doctrine must also extend to protect a sister state's citizens from the coercive regulatory projections of another state. The Eighth Circuit in *Styczinski II* failed to appreciate this principle and this Court should consider it.

The Court's decision in *National Pork Producers Council* creates a paradox. The equal sovereignty doctrine shielded a state's regulation of in-state transactions, but the decision did not reach the legal issue of a state's regulatory intrusion into another state. In *National Pork Producers Council*, this Court explicitly affirmed the principle of equal sovereignty by rejecting the argument that California's market size should diminish its right to regulate the sale of pork within its borders. The Court found that any framework that would grant different constitutional powers based on market size would violate the "fundamental principle of equal sovereignty among the States." This defensive application preserved California's legislative sovereignty.

Here, the paradox is stark. While equal sovereignty prevents a federal court from limiting California's right to legislate for its citizens (defensive use), it must also logically prevent Minnesota's legislation from effectively usurping the sovereign rights of sister states and their citizens (offensive use).

But, Minnesota's scheme dictates the internal business structures—including registration, screening and registration fee payment systems—of dealer representatives domiciled in North Dakota and Japan. This is not merely a discriminatory effect on interstate commerce; it is an active assertion of state sovereign authority over the internal police powers of a sister state. The Minnesota law compels out-of-state Bullion Traders, upon meeting a trivial \$25,000 threshold of in-state sales, to subject their entire global workforce of employers, contractors, agents and dealer representatives to Minnesota's regulatory framework. Minnesota's state law compels regulatory submission from the out-of-state sovereign's citizens. Minnesota imposes compulsory governance over the internal personnel structures of businesses operating entirely outside Minnesota.

So, the use of the equal sovereignty principle must also offensively assert that a state's right to be free from the coercive regulation of a sister state is just as fundamental as its right to be regulated by its own government. The Minnesota statute directly violates this principle by giving the Minnesota Department of Commerce de facto regulatory and licensing authority over professional conduct occurring in forty-nine sister states, including its global application.

The Eighth Circuit's avoidance of these legal issues calls for the Court to complete its *National Pork Producers Council* framework. In *Styczinski I*, the Eighth Circuit had the opportunity to use equal sovereignty principles against Minnesota's overreaching scheme but explicitly declined, opting instead for the more traditional, but now weakened, extraterritoriality doctrine. 23a–25a. The court stated it would not "address or opine on whether this case could also be analyzed under the equal sovereignty principle." 25a, n.3. This judicial avoidance of the equal sovereignty principle leaves doubt to the underlying legitimacy of the lower court's logic to reach its conclusion as it relates to the Dormant Commerce Clause. *See* 24a–25a.

The *National Pork Producers Council* decision itself questioned the efficacy of relying solely on the Dormant Commerce Clause's extraterritoriality principles to resolve inter-state territorial disputes, suggesting that such matters are better addressed through "original and historical understandings of the Constitution's structure and the principles of sovereignty and comity it embraces." 598 U.S. at 376.

The Minnesota case provides the ideal bookend to the *National Pork Producers Council* decision to articulate this new structural framework. First, the Court must reassert territorial limits on state laws regulating the economy. Specifically, the offensive use of equal sovereignty serves as a non-textual, but structurally mandated, territorial constraint. It prohibits a state from legislating extraterritorially where that legislation impinges on the core police powers of a sister sovereign, regardless of whether the law is technically, facially non-discriminatory.

The equal sovereignty doctrine elevates state coercion of out-of-state economic actors to a structural violation.

The Dormant Commerce Clause traditionally focuses on economic burdens. The offensive equal sovereignty argument elevates the harm from an economic cost to a structural, constitutional violation of sovereign parity. So, when Minnesota requires a North Dakota dealer to comply with its registration mandate, the harm is not just the compliance cost; it is the fundamental affront to North Dakota's sovereign right to determine the regulatory landscape for its own citizens.

The equal sovereignty doctrine also prevents regulatory capture. If this coercive power is permitted, it invites the largest states to impose their legislative standards on the entire globe by simply requiring a structural compliance prerequisite triggered by a minimal market connection. The offensive use of equal sovereignty is the only clear, high-level constitutional doctrine that can prevent the regulatory balkanization caused by such structural coercion, ensuring that no one State becomes a de facto national regulator.

The Eighth Circuit's characterization of this compulsory global personnel submission as a "permissible cost" is a functional violation of this offensive principle. It sanctions the usurpation of sovereign authority by mislabeling regulatory command as a mere fee. 10a. This creates a loophole that grants regulatory hegemony to the most zealous states, directly contravening the Framers' vision of a Union composed of equally sovereign states that

respect one another's territorial and legislative autonomy—and subject to Congressional national economic regulation. To restore the structural balance of federalism and clarify the post-*National Pork Producers Council* framework for such extraterritorial disputes, this Court should establish that the principle of equal sovereignty is not merely a shield protecting state power regulating in-state economic activities, but also a sword protecting citizens and sister states from another state's coercive extraterritorial structural mandates.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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