

Gonzales v. Raich

___ U.S. ___ (June 6, 2005)

JUSTICE STEVENS delivered the opinion of the Court.

California is one of at least nine States that authorize the use of marijuana for medicinal purposes. The question presented in this case is whether the power vested in Congress by Article I, §8, of the Constitution “[t]o make all Laws which shall be necessary and proper for carrying into Execution” its authority to “regulate Commerce with foreign Nations, and among the several States” includes the power to prohibit the local cultivation and use of marijuana in compliance with California law.

I.

California has been a pioneer in the regulation of marijuana. In 1913, California was one of the first States to prohibit the sale and possession of marijuana, and at the end of the century, California became the first State to authorize limited use of the drug for medicinal purposes. In 1996, California voters passed Proposition 215, now codified as the Compassionate Use Act of 1996. The proposition was designed to ensure that “seriously ill” residents of the State have access to marijuana for medical purposes, and to encourage Federal and State Governments to take steps towards ensuring the safe and affordable distribution of the drug to patients in need. The Act creates an exemption from criminal prosecution for physicians, as well as for patients and primary caregivers who possess or cultivate marijuana for medicinal purposes with the recommendation or approval of a physician.

Respondents Angel Raich and Diane Monson are California residents who suffer from a variety of serious medical conditions and have sought to avail themselves of medical marijuana pursuant to the terms of the Compassionate Use Act. They are being treated by licensed, board-certified family practitioners, who have concluded, after prescribing a host of conventional medicines to treat respondents' conditions and to alleviate their associated symptoms, that marijuana is the only drug available that provides effective treatment. Both women have been using marijuana as a medication for several years pursuant to their doctors' recommendation, and both rely heavily on cannabis to function on a daily basis. Indeed, Raich's physician believes that forgoing cannabis treatments would certainly cause Raich excruciating pain and could very well prove fatal.

Respondent Monson cultivates her own marijuana, and ingests the drug in a variety of ways including smoking and using a vaporizer. Respondent Raich, by contrast, is unable to cultivate her own, and thus relies on two caregivers, litigating as “John Does,” to provide her with locally grown marijuana at no charge. These caregivers also process the cannabis into hashish or keif, and Raich herself processes some of the marijuana into oils, balms, and foods for consumption.

On August 15, 2002, county deputy sheriffs and agents from the federal Drug Enforcement Administration (DEA) came to Monson's home. After a thorough investigation, the county

officials concluded that her use of marijuana was entirely lawful as a matter of California law. Nevertheless, after a 3-hour standoff, the federal agents seized and destroyed all six of her cannabis plants.

Respondents thereafter brought this action against the Attorney General of the United States and the head of the DEA seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act (CSA), to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use. In their complaint and supporting affidavits, Raich and Monson described the severity of their afflictions, their repeatedly futile attempts to obtain relief with conventional medications, and the opinions of their doctors concerning their need to use marijuana. Respondents claimed that enforcing the CSA against them would violate the Commerce Clause, the Due Process Clause of the Fifth Amendment, the Ninth and Tenth Amendments of the Constitution, and the doctrine of medical necessity.

The District Court denied respondents' motion for a preliminary injunction. . . .

A divided panel of the Court of Appeals for the Ninth Circuit reversed and ordered the District Court to enter a preliminary injunction.

The obvious importance of the case prompted our grant of certiorari. The case is made difficult by respondents' strong arguments that they will suffer irreparable harm because, despite a congressional finding to the contrary, marijuana does have valid therapeutic purposes. The question before us, however, is not whether it is wise to enforce the statute in these circumstances; rather, it is whether Congress' power to regulate interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally. Well-settled law controls our answer. The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case. We accordingly vacate the judgment of the Court of Appeals.

II.

Shortly after taking office in 1969, President Nixon declared a national “war on drugs.” As the first campaign of that war, Congress set out to enact legislation that would consolidate various drug laws on the books into a comprehensive statute, provide meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthen law enforcement tools against the traffic in illicit drugs. That effort culminated in the passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

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Title II of that Act, the CSA, repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs. The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.

To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA. . . .

In enacting the CSA, Congress classified marijuana as a Schedule I drug. This preliminary classification was based, in part, on the recommendation of the Assistant Secretary of HEW “that marihuana be retained within schedule I at least until the completion of certain studies now underway.” Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment. . . . By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration pre-approved research study.

The CSA provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules. Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug.

III.

Respondents in this case do not dispute that passage of the CSA . . . was well within Congress' commerce power. Nor do they contend that any provision or section of the CSA amounts to an unconstitutional exercise of congressional authority. Rather, respondents' challenge is actually quite limited; they argue that the CSA's categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeds Congress' authority under the Commerce Clause.

In assessing the validity of congressional regulation, none of our Commerce Clause cases can be viewed in isolation. As charted in considerable detail in *United States v. Lopez*, 514 U.S. 549 (1995), our understanding of the reach of the Commerce Clause, as well as Congress' assertion of authority thereunder, has evolved over time. The Commerce Clause emerged as the Framers' response to the central problem giving rise to the Constitution itself: the absence of any federal commerce power under the Articles of Confederation. For the first century of our history, the primary use of the Clause was to preclude the kind of discriminatory state legislation that had once been permissible. Then, in response to rapid industrial development and an increasingly interdependent national economy, Congress “ushered in a new era of federal regulation under the commerce power,” beginning with the enactment of the Interstate Commerce Act in 1887, and the Sherman Antitrust Act in 1890.

Cases decided during that “new era,” which now spans more than a century, have identified three general categories of regulation in which Congress is authorized to engage under its commerce power. First, Congress can regulate the channels of interstate commerce. Second, Congress has authority to regulate and protect the instrumentalities of interstate commerce, and persons or

things in interstate commerce. Third, Congress has the power to regulate activities that substantially affect interstate commerce. Only the third category is implicated in the case at hand.

Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce. *See, e.g., Wickard v. Filburn*, 317 U.S. 111 (1942). As we stated in *Wickard*, "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." We have never required Congress to legislate with scientific exactitude. When Congress decides that the "total incidence" of a practice poses a threat to a national market, it may regulate the entire class. In this vein, we have reiterated that when "a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *E.g., Lopez*, 514 U.S. at 558.

Our decision in *Wickard* is of particular relevance. In *Wickard*, we upheld the application of regulations promulgated under the Agricultural Adjustment Act of 1938, which were designed to control the volume of wheat moving in interstate and foreign commerce in order to avoid surpluses and consequent abnormally low prices. The regulations established an allotment of 11.1 acres for Filburn's 1941 wheat crop, but he sowed 23 acres, intending to use the excess by consuming it on his own farm. Filburn argued that even though we had sustained Congress' power to regulate the production of goods for commerce, that power did not authorize "federal regulation [of] production not intended in any part for commerce but wholly for consumption on the farm." Justice Jackson's opinion for a unanimous Court rejected this submission. He wrote:

"The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial."

Wickard thus establishes that Congress can regulate purely intrastate activity that is not itself "commercial," in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity.

The similarities between this case and *Wickard* are striking. Like the farmer in *Wickard*, respondents are cultivating, for home consumption, a fungible commodity for which there is an established, albeit illegal, interstate market. Just as the Agricultural Adjustment Act was designed "to control the volume [of wheat] moving in interstate and foreign commerce in order to avoid surpluses . . ." and consequently control the market price, a primary purpose of the CSA is to control the supply and demand of controlled substances in both lawful and unlawful drug markets. In *Wickard*, we had no difficulty concluding that Congress had a rational basis for believing that, when viewed in the aggregate, leaving home-consumed wheat outside the regulatory scheme would have a substantial influence on price and market conditions. Here too, Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would similarly affect price and market conditions.

More concretely, one concern prompting inclusion of wheat grown for home consumption in the 1938 Act was that rising market prices could draw such wheat into the interstate market, resulting in lower market prices. The parallel concern making it appropriate to include marijuana grown for home consumption in the CSA is the likelihood that the high demand in the interstate market will draw such marijuana into that market. While the diversion of homegrown wheat tended to frustrate the federal interest in stabilizing prices by regulating the volume of commercial transactions in the interstate market, the diversion of homegrown marijuana tends to frustrate the federal interest in eliminating commercial transactions in the interstate market in their entirety. In both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity.

Nonetheless, respondents suggest that *Wickard* differs from this case in three respects: (1) the Agricultural Adjustment Act, unlike the CSA, exempted small farming operations; (2) *Wickard* involved a “quintessential economic activity”—a commercial farm—whereas respondents do not sell marijuana; and (3) the *Wickard* record made it clear that the aggregate production of wheat for use on farms had a significant impact on market prices. Those differences, though factually accurate, do not diminish the precedential force of this Court's reasoning.

The fact that *Wickard*'s own impact on the market was “trivial by itself” was not a sufficient reason for removing him from the scope of federal regulation. That the Secretary of Agriculture elected to exempt even smaller farms from regulation does not speak to his power to regulate all those whose aggregated production was significant, nor did that fact play any role in the Court's analysis. Moreover, even though *Wickard* was indeed a commercial farmer, the activity he was engaged in—the cultivation of wheat for home consumption—was not treated by the Court as part of his commercial farming operation. And while it is true that the record in the *Wickard* case itself established the causal connection between the production for local use and the national market, we have before us findings by Congress to the same effect.

Findings in the introductory sections of the CSA explain why Congress deemed it appropriate to encompass local activities within the scope of the CSA. The submissions of the parties and the numerous *amici* all seem to agree that the national, and international, market for marijuana has dimensions that are fully comparable to those defining the class of activities regulated by the Secretary pursuant to the 1938 statute. Respondents nonetheless insist that the CSA cannot be constitutionally applied to their activities because Congress did not make a specific finding that the intrastate cultivation and possession of marijuana for medical purposes based on the recommendation of a physician would substantially affect the larger interstate marijuana market. Be that as it may, we have never required Congress to make particularized findings in order to legislate, absent a special concern such as the protection of free speech. While congressional findings are certainly helpful in reviewing the substance of a congressional statutory scheme, particularly when the connection to commerce is not self-evident, and while we will consider congressional findings in our analysis when they are available, the absence of particularized findings does not call into question Congress' authority to legislate.

In assessing the scope of Congress' authority under the Commerce Clause, we stress that the task

before us is a modest one. We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a “rational basis” exists for so concluding. Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA. Thus, as in *Wickard*, when it enacted comprehensive legislation to regulate the interstate market in a fungible commodity, Congress was acting well within its authority to “make all Laws which shall be necessary and proper” to “regulate Commerce . . . among the several States.” U.S. Const., Art. I, §8. That the regulation ensnares some purely intrastate activity is of no moment. As we have done many times before, we refuse to excise individual components of that larger scheme.

IV.

To support their contrary submission, respondents rely heavily on two of our more recent Commerce Clause cases. In their myopic focus, they overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases. Moreover, even in the narrow prism of respondents' creation, they read those cases far too broadly. Those two cases, of course, are *United States v. Lopez*, and *United States v. Morrison*, 529 U.S. 598 (2000). As an initial matter, the statutory challenges at issue in those cases were markedly different from the challenge respondents pursue in the case at hand. Here, respondents ask us to excise individual applications of a concededly valid statutory scheme. In contrast, in both *Lopez* and *Morrison*, the parties asserted that a particular statute or provision fell outside Congress' commerce power in its entirety. This distinction is pivotal for we have often reiterated that “[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances' of the class.”

At issue in *Lopez* was the validity of the Gun-Free School Zones Act of 1990, which was a brief, single-subject statute making it a crime for an individual to possess a gun in a school zone. The Act did not regulate any economic activity and did not contain any requirement that the possession of a gun have any connection to past interstate activity or a predictable impact on future commercial activity. Distinguishing our earlier cases holding that comprehensive regulatory statutes may be validly applied to local conduct that does not, when viewed in isolation, have a significant impact on interstate commerce, we held the statute invalid. We explained:

“Section 922(q) is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms. Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.”

The statutory scheme that the Government is defending in this litigation is at the opposite end of

the regulatory spectrum. As explained above, the CSA, enacted in 1970 as part of the Comprehensive Drug Abuse Prevention and Control Act, was a lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession of five classes of “controlled substances.” Most of those substances—those listed in Schedules II through V—“have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.” The regulatory scheme is designed to foster the beneficial use of those medications, to prevent their misuse, and to prohibit entirely the possession or use of substances listed in Schedule I, except as a part of a strictly controlled research project.

While the statute provided for the periodic updating of the five schedules, Congress itself made the initial classifications. It identified 42 opiates, 22 opium derivatives, and 17 hallucinogenic substances as Schedule I drugs. Marijuana was listed as the 10th item in the third subcategory. That classification, unlike the discrete prohibition established by the Gun-Free School Zones Act of 1990, was merely one of many “essential part[s] of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.” Our opinion in *Lopez* casts no doubt on the validity of such a program.

Nor does this Court's holding in *Morrison*. The Violence Against Women Act of 1994 created a federal civil remedy for the victims of gender-motivated crimes of violence. The remedy was enforceable in both state and federal courts, and generally depended on proof of the violation of a state law. Despite congressional findings that such crimes had an adverse impact on interstate commerce, we held the statute unconstitutional because, like the statute in *Lopez*, it did not regulate economic activity. We concluded that “the noneconomic, criminal nature of the conduct at issue was central to our decision” in *Lopez*, and that our prior cases had identified a clear pattern of analysis: “Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.”

Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA are quintessentially economic. “Economics” refers to “the production, distribution, and consumption of commodities.” Webster’s Third New International Dictionary 720 (1966). The CSA is a statute that regulates the production, distribution, and consumption of commodities for which there is an established, and lucrative, interstate market. Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product. Such prohibitions include specific decisions requiring that a drug be withdrawn from the market as a result of the failure to comply with regulatory requirements as well as decisions excluding Schedule I drugs entirely from the market. Because the CSA is a statute that directly regulates economic, commercial activity, our opinion in *Morrison* casts no doubt on its constitutionality.

The Court of Appeals was able to conclude otherwise only by isolating a “separate and distinct” class of activities that it held to be beyond the reach of federal power, defined as “the intrastate, noncommercial cultivation, possession and use of marijuana for personal medical purposes on the advice of a physician and in accordance with state law.” The court characterized this class as “different in kind from drug trafficking.” The differences between the members of a class so defined and the principal traffickers in Schedule I substances might be sufficient to justify a

policy decision exempting the narrower class from the coverage of the CSA. The question, however, is whether Congress' contrary policy judgment, *i.e.*, its decision to include this narrower “class of activities” within the larger regulatory scheme, was constitutionally deficient. We have no difficulty concluding that Congress acted rationally in determining that none of the characteristics making up the purported class, whether viewed individually or in the aggregate, compelled an exemption from the CSA; rather, the subdivided class of activities defined by the Court of Appeals was an essential part of the larger regulatory scheme.

First, the fact that marijuana is used “for personal medical purposes on the advice of a physician” cannot itself serve as a distinguishing factor. The CSA designates marijuana as contraband for *any* purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses. Moreover, the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner. Indeed, most of the substances classified in the CSA “have a useful and legitimate medical purpose.” Thus, even if respondents are correct that marijuana does have accepted medical uses and thus should be redesignated as a lesser schedule drug, the CSA would still impose controls beyond what is required by California law. The CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements. Furthermore, the dispensing of new drugs, even when doctors approve their use, must await federal approval. Accordingly, the mere fact that marijuana—like virtually every other controlled substance regulated by the CSA—is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA.

Nor can it serve as an “objective marke[r]” or “objective facto[r]” to arbitrarily narrow the relevant class as the dissenters suggest. More fundamentally, if, as the principal dissent contends, the personal cultivation, possession, and use of marijuana for medicinal purposes is beyond the “outer limits of Congress' Commerce Clause authority,” it must also be true that such personal use of marijuana (or any other homegrown drug) for recreational purposes is also beyond those “outer limits,” whether or not a State elects to authorize or even regulate such use. . . . That is, the dissenters' rationale logically extends to place *any* federal regulation (including quality, prescription, or quantity controls) of *any* locally cultivated and possessed controlled substance for *any* purpose beyond the “outer limits” of Congress' Commerce Clause authority. One need not have a degree in economics to understand why a nationwide exemption for the vast quantity of marijuana (or other drugs) locally cultivated for personal use (which presumably would include use by friends, neighbors, and family members) may have a substantial impact on the interstate market for this extraordinarily popular substance. The congressional judgment that an exemption for such a significant segment of the total market would undermine the orderly enforcement of the entire regulatory scheme is entitled to a strong presumption of validity. Indeed, that judgment is not only rational, but “visible to the naked eye,” *Lopez*, 514 U.S. at 563, under any commonsense appraisal of the probable consequences of such an open-ended exemption.

Second, limiting the activity to marijuana possession and cultivation “in accordance with state

law” cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is “superior to that of the States to provide for the welfare or necessities of their inhabitants,” however legitimate or dire those necessities may be. Just as state acquiescence to federal regulation cannot expand the bounds of the Commerce Clause, so too state action cannot circumscribe Congress' plenary commerce power.

Respondents acknowledge this proposition, but nonetheless contend that their activities were not “an essential part of a larger regulatory scheme” because they had been “isolated by the State of California, and [are] policed by the State of California,” and thus remain “entirely separated from the market.” The dissenters fall prey to similar reasoning. The notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.

Indeed, that the California exemptions will have a significant impact on both the supply and demand sides of the market for marijuana is not just “plausible” as the principal dissent concedes, it is readily apparent. The exemption for physicians provides them with an economic incentive to grant their patients permission to use the drug. In contrast to most prescriptions for legal drugs, which limit the dosage and duration of the usage, under California law the doctor's permission to recommend marijuana use is open-ended. The authority to grant permission whenever the doctor determines that a patient is afflicted with “any other illness for which marijuana provides relief,” is broad enough to allow even the most scrupulous doctor to conclude that some recreational uses would be therapeutic. And our cases have taught us that there are some unscrupulous physicians who overprescribe when it is sufficiently profitable to do so.

The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious. Moreover, that the national and international narcotics trade has thrived in the face of vigorous criminal enforcement efforts suggests that no small number of unscrupulous people will make use of the California exemptions to serve their commercial ends whenever it is feasible to do so. Taking into account the fact that California is only one of at least nine States to have authorized the medical use of marijuana, . . . Congress could have rationally concluded that the aggregate impact on the national market of all the transactions exempted from federal supervision is unquestionably substantial.

So, from the “separate and distinct” class of activities identified by the Court of Appeals (and adopted by the dissenters), we are left with “the intrastate, noncommercial cultivation, possession and use of marijuana.” Thus the case for the exemption comes down to the claim that a locally cultivated product that is used domestically rather than sold on the open market is not subject to federal regulation. Given the findings in the CSA and the undisputed magnitude of the

commercial market for marijuana, our decisions in *Wickard v. Filburn* and the later cases endorsing its reasoning foreclose that claim.

V.

. . . . We do note, however, the presence of another avenue of relief. As the Solicitor General confirmed during oral argument, the statute authorizes procedures for the reclassification of Schedule I drugs. But perhaps even more important than these legal avenues is the democratic process, in which the voices of voters allied with these respondents may one day be heard in the halls of Congress. Under the present state of the law, however, the judgment of the Court of Appeals must be vacated. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court's holding that the Controlled Substances Act (CSA) may validly be applied to respondents' cultivation, distribution, and possession of marijuana for personal, medicinal use. I write separately because my understanding of the doctrinal foundation on which that holding rests is, if not inconsistent with that of the Court, at least more nuanced.

Since *Perez v. United States*, our cases have mechanically recited that the Commerce Clause permits congressional regulation of three categories: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce, and persons or things in interstate commerce; and (3) activities that “substantially affect” interstate commerce. . . . The third category . . . is different in kind, and its recitation without explanation is misleading and incomplete.

It is *misleading* because, unlike the channels, instrumentalities, and agents of interstate commerce, activities that substantially affect interstate commerce are not themselves part of interstate commerce, and thus the power to regulate them cannot come from the Commerce Clause alone. Rather, as this Court has acknowledged . . . , Congress's regulatory authority over intrastate activities that are not themselves part of interstate commerce (including activities that have a substantial effect on interstate commerce) derives from the Necessary and Proper Clause. And the category of “activities that substantially affect interstate commerce,” is *incomplete* because the authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws governing intrastate activities that substantially affect interstate commerce. Where necessary to make a regulation of interstate commerce effective, Congress may regulate even those intrastate activities that do not themselves substantially affect interstate commerce.

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JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join as to all but Part III, dissenting.

We enforce the “outer limits” of Congress' Commerce Clause authority not for their own sake, but to protect historic spheres of state sovereignty from excessive federal encroachment and thereby to maintain the distribution of power fundamental to our federalist system of government. One of federalism's chief virtues, of course, is that it promotes innovation by allowing for the possibility that “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

This case exemplifies the role of States as laboratories. The States' core police powers have always included authority to define criminal law and to protect the health, safety, and welfare of their citizens. Exercising those powers, California (by ballot initiative and then by legislative codification) has come to its own conclusion about the difficult and sensitive question of whether marijuana should be available to relieve severe pain and suffering. Today the Court sanctions an application of the federal Controlled Substances Act that extinguishes that experiment, without any proof that the personal cultivation, possession, and use of marijuana for medicinal purposes, if economic activity in the first place, has a substantial effect on interstate commerce and is therefore an appropriate subject of federal regulation. In so doing, the Court announces a rule that gives Congress a perverse incentive to legislate broadly pursuant to the Commerce Clause—nestling questionable assertions of its authority into comprehensive regulatory schemes—rather than with precision. That rule and the result it produces in this case are irreconcilable with our decisions in *United States v. Lopez* and *United States v. Morrison*. Accordingly I dissent.

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II.

A.

What is the relevant conduct subject to Commerce Clause analysis in this case? The Court's decision rests on two facts about the CSA: (1) Congress chose to enact a single statute providing a comprehensive prohibition on the production, distribution, and possession of all controlled substances, and (2) Congress did not distinguish between various forms of intrastate noncommercial cultivation, possession, and use of marijuana.

Today's decision suggests that the federal regulation of local activity is immune to Commerce Clause challenge because Congress chose to act with an ambitious, all-encompassing statute, rather than piecemeal. In my view, allowing Congress to set the terms of the constitutional debate in this way, *i.e.*, by packaging regulation of local activity in broader schemes, is tantamount to removing meaningful limits on the Commerce Clause.

The Court's principal means of distinguishing *Lopez* from this case is to observe that the Gun-Free School Zones Act of 1990 was a “brief, single-subject statute,” whereas the CSA is “a lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession of five classes of ‘controlled substances.’” Thus, according to the Court, it was possible in *Lopez* to evaluate in isolation the constitutionality of criminalizing local activity (there gun possession in school zones), whereas the local activity that the CSA targets (in this case cultivation and possession of marijuana for personal medicinal use) cannot be separated from the general drug control scheme of which it is a part.

Today's decision allows Congress to regulate intrastate activity without check, so long as there is some implication by legislative design that regulating intrastate activity is essential (and the Court appears to equate “essential” with “necessary”) to the interstate regulatory scheme. . . .

I cannot agree that our decision in *Lopez* contemplated such evasive or overbroad legislative strategies with approval. . . . If the Court always defers to Congress as it does today, little may be left to the notion of enumerated powers.

The hard work for courts, then, is to identify objective markers for confining the analysis in Commerce Clause cases. . . . The task is to identify a mode of analysis that allows Congress to regulate more than nothing (by declining to reduce each case to its litigants) and less than everything (by declining to let Congress set the terms of analysis). The analysis may not be the same in every case, for it depends on the regulatory scheme at issue and the federalism concerns implicated.

A number of objective markers are available to confine the scope of constitutional review here. Both federal and state legislation—including the CSA itself, the California Compassionate Use Act, and other state medical marijuana legislation—recognize that medical and nonmedical (*i.e.*, recreational) uses of drugs are realistically distinct and can be segregated, and regulate them differently. Respondents challenge only the application of the CSA to medicinal use of marijuana. Moreover, because fundamental structural concerns about dual sovereignty animate our Commerce Clause cases, it is relevant that this case involves the interplay of federal and state regulation in areas of criminal law and social policy, where “States lay claim by right of history and expertise.” California, like other States, has drawn on its reserved powers to distinguish the regulation of medicinal marijuana. To ascertain whether Congress' encroachment is constitutionally justified in this case, then, I would focus here on the personal cultivation, possession, and use of marijuana for medicinal purposes.

B.

Having thus defined the relevant conduct, we must determine whether, under our precedents, the conduct is economic and, in the aggregate, substantially affects interstate commerce. Even if intrastate cultivation and possession of marijuana for one's own medicinal use can properly be characterized as economic, and I question whether it can, it has not been shown that such activity substantially affects interstate commerce. Similarly, it is neither self-evident nor demonstrated that regulating such activity is necessary to the interstate drug control scheme.

The Court's definition of economic activity is breathtaking. It defines as economic any activity involving the production, distribution, and consumption of commodities. And it appears to reason that when an interstate market for a commodity exists, regulating the intrastate manufacture or possession of that commodity is constitutional either because that intrastate activity is itself economic, or because regulating it is a rational part of regulating its market. . . . [T]he Court's definition of economic activity for purposes of Commerce Clause jurisprudence threatens to sweep all of productive human activity into federal regulatory reach.

The Court uses a dictionary definition of economics to skirt the real problem of drawing a meaningful line between “what is national and what is local.” It will not do to say that Congress may regulate noncommercial activity simply because it may have an effect on the demand for commercial goods, or because the noncommercial endeavor can, in some sense, substitute for commercial activity. Most commercial goods or services have some sort of privately producible analogue. Home care substitutes for daycare. Charades games substitute for movie tickets. Backyard or windowsill gardening substitutes for going to the supermarket. To draw the line wherever private activity affects the demand for market goods is to draw no line at all, and to declare everything economic. We have already rejected the result that would follow—a federal police power.

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Even assuming that economic activity is at issue in this case, the Government has made no showing in fact that the possession and use of homegrown marijuana for medical purposes, in California or elsewhere, has a substantial effect on interstate commerce. Similarly, the Government has not shown that regulating such activity is necessary to an interstate regulatory scheme. Whatever the specific theory of “substantial effects” at issue (*i.e.*, whether the activity substantially affects interstate commerce, whether its regulation is necessary to an interstate regulatory scheme, or both), a concern for dual sovereignty requires that Congress' excursion into the traditional domain of States be justified.

* * *

III.

We would do well to recall how James Madison, the father of the Constitution, described our system of joint sovereignty to the people of New York: “The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.” The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961).

Relying on Congress' abstract assertions, the Court has endorsed making it a federal crime to grow small amounts of marijuana in one's own home for one's own medicinal use. This overreaching stifles an express choice by some States, concerned for the lives and liberties of their people, to regulate medical marijuana differently. If I were a California citizen, I would not have voted for the medical marijuana ballot initiative; if I were a California legislator I would not have supported the Compassionate Use Act. But whatever the wisdom of California's experiment with medical marijuana, the federalism principles that have driven our Commerce Clause cases require that room for experiment be protected in this case. For these reasons I dissent.

JUSTICE THOMAS, dissenting.

Respondents Diane Monson and Angel Raich use marijuana that has never been bought or sold, that has never crossed state lines, and that has had no demonstrable effect on the national market for marijuana. If Congress can regulate this under the Commerce Clause, then it can regulate virtually anything—and the Federal Government is no longer one of limited and enumerated powers.

I.

Respondents' local cultivation and consumption of marijuana is not “Commerce . . . among the several States.” U.S. Const., Art. I, §8, cl. 3. By holding that Congress may regulate activity that is neither interstate nor commerce under the Interstate Commerce Clause, the Court abandons any attempt to enforce the Constitution's limits on federal power. The majority supports this conclusion by invoking, without explanation, the Necessary and Proper Clause. Regulating respondents' conduct, however, is not “necessary and proper for carrying into Execution” Congress' restrictions on the interstate drug trade. Art. I, §8, cl. 18. Thus, neither the Commerce Clause nor the Necessary and Proper Clause grants Congress the power to regulate respondents' conduct.

A.

As I explained at length in [my concurring opinion in] *United States v. Lopez*, 514 U.S. 549 (1995), the Commerce Clause empowers Congress to regulate the buying and selling of goods and services trafficked across state lines. The Clause's text, structure, and history all indicate that, at the time of the founding, the term “commerce” consisted of selling, buying, and bartering, as well as transporting for these purposes.” Commerce, or trade, stood in contrast to productive activities like manufacturing and agriculture. Throughout founding-era dictionaries, Madison's notes from the Constitutional Convention, The Federalist Papers, and the ratification debates, the term “commerce” is consistently used to mean trade or exchange—not all economic or gainful activity that has some attenuated connection to trade or exchange. . . .

Even the majority does not argue that respondents' conduct is itself “Commerce among the several States.” Art. I, §8, cl. 3. Monson and Raich neither buy nor sell the marijuana that they consume. They cultivate their cannabis entirely in the State of California—it never crosses state lines, much less as part of a commercial transaction. Certainly no evidence from the founding suggests that “commerce” included the mere possession of a good or some purely personal activity that did not involve trade or exchange for value. In the early days of the Republic, it would have been unthinkable that Congress could prohibit the local cultivation, possession, and consumption of marijuana.

On this traditional understanding of 'commerce,' the Controlled Substances Act (CSA) regulates a great deal of marijuana trafficking that is interstate and commercial in character. The CSA does not, however, criminalize only the interstate buying and selling of marijuana. Instead, it bans the entire market—intrastate or interstate, noncommercial or commercial—for marijuana. Respondents are correct that the CSA exceeds Congress' commerce power as applied to their conduct, which is purely intrastate and noncommercial.

B.

More difficult, however, is whether the CSA is a valid exercise of Congress' power to enact laws that are “necessary and proper for carrying into Execution” its power to regulate interstate commerce. Art. I, §8, cl. 18. The Necessary and Proper Clause is not a warrant to Congress to enact any law that bears some conceivable connection to the exercise of an enumerated power. Nor is it, however, a command to Congress to enact only laws that are absolutely indispensable to the exercise of an enumerated power.

* * *

1.

Congress has exercised its power over interstate commerce to criminalize trafficking in marijuana across state lines. The Government contends that banning Monson and Raich's intrastate drug activity is “necessary and proper for carrying into Execution” its regulation of interstate drug trafficking. Art. I, §8, cl. 18. However, in order to be “necessary,” the intrastate ban must be more than “a reasonable means [of] effectuat[ing] the regulation of interstate commerce.” It must be “plainly adapted” to regulating interstate marijuana trafficking—in other words, there must be an “obvious, simple, and direct relation” between the intrastate ban and the regulation of interstate commerce.

* * *

California's Compassionate Use Act sets respondents' conduct apart from other intrastate producers and users of marijuana. The Act channels marijuana use to “seriously ill Californians,” and prohibits “the diversion of marijuana for nonmedical purposes,” California strictly controls the cultivation and possession of marijuana for medical purposes. To be eligible for its program, California requires that a patient have an illness that cannabis can relieve, such as cancer, AIDS, or arthritis, and that he obtain a physician's recommendation or approval. Qualified patients must provide personal and medical information to obtain medical identification cards, and there is a statewide registry of cardholders. Moreover, the Medical Board of California has issued guidelines for physicians' cannabis recommendations, and it sanctions physicians who do not comply with the guidelines.

This class of intrastate users is therefore distinguishable from others. We normally presume that States enforce their own laws, and there is no reason to depart from that presumption here: Nothing suggests that California's controls are ineffective. The scant evidence that exists suggests that few people—the vast majority of whom are aged 40 or older—register to use medical marijuana. In part because of the low incidence of medical marijuana use, many law enforcement officials report that the introduction of medical marijuana laws has not affected their law enforcement efforts.

These controls belie the Government's assertion that placing medical marijuana outside the CSA's reach “would prevent effective enforcement of the interstate ban on drug trafficking.” Moreover, under the CSA, certain drugs that present a high risk of abuse and addiction but that

nevertheless have an accepted medical use—drugs like morphine and amphetamines—are available by prescription. No one argues that permitting use of these drugs under medical supervision has undermined the CSA's restrictions.

But even assuming that States' controls allow some seepage of medical marijuana into the illicit drug market, there is a multibillion-dollar interstate market for marijuana. It is difficult to see how this vast market could be affected by diverted medical cannabis, let alone in a way that makes regulating intrastate medical marijuana obviously essential to controlling the interstate drug market.

* * *

2.

Even assuming the CSA's ban on locally cultivated and consumed marijuana is “necessary,” that does not mean it is also “proper.” The means selected by Congress to regulate interstate commerce cannot be “prohibited” by, or inconsistent with the “letter and spirit” of, the Constitution.

In *Lopez*, I argued that allowing Congress to regulate intrastate, noncommercial activity under the Commerce Clause would confer on Congress a general “police power” over the Nation. This is no less the case if Congress ties its power to the Necessary and Proper Clause rather than the Commerce Clause. When agents from the Drug Enforcement Administration raided Monson's home, they seized six cannabis plants. If the Federal Government can regulate growing a half-dozen cannabis plants for personal consumption (not because it is interstate commerce, but because it is inextricably bound up with interstate commerce), then Congress' Article I powers—as expanded by the Necessary and Proper Clause—have no meaningful limits. Whether Congress aims at the possession of drugs, guns, or any number of other items, it may continue to “appropria[te] state police powers under the guise of regulating commerce.”

* * *

The majority prevents States like California from devising drug policies that they have concluded provide much-needed respite to the seriously ill. It does so without any serious inquiry into the necessity for federal regulation or the propriety of “displac[ing] state regulation in areas of traditional state concern.” The majority's rush to embrace federal power “is especially unfortunate given the importance of showing respect for the sovereign States that comprise our Federal Union.” Our federalist system, properly understood, allows California and a growing number of other States to decide for themselves how to safeguard the health and welfare of their citizens. I would affirm the judgment of the Court of Appeals. I respectfully dissent.

