IN THE

Supreme Court of the United States

OCTOBER TERM, 2004

JOHN ASHCROFT,
ATTORNEY GENERAL, AS UNITED STATES ATTORNEY GENERAL;
AND
ASA HUTCHINSON, AS ADMINSTRATOR OF THE DRUG ENFORCEMENT ADMINISTRATION

PETITIONERS

v.

ANGEL MCCLARY RAICH; DIANE MONSON; JOHN DOE, Number One; AND JOHN DOE, Number Two

RESPONDENTS

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR PETITIONERS

Sarah Summers
Attorney for Petitioners
1215 Wilbraham Road
Springfield, MA 01119

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QUESTION PRESENTED

Whether the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, exceeds Congress's power under the Commerce Clause as applied to the intrastate cultivation and possession of marijuana for purported personal "medicinal" use or to the distribution of marijuana without charge for such use.

A STATEMENT OF THE CASE

Congress sought to halt the corrosive impact that drugs had on the American people by passing the Controlled Substances Act, 21 U.S.C. § 801 (2004) ("CSA"). The CSA regulates the illegal transportation, manufacture, distribution and possession of controlled substances. *Id.* The CSA places regulated drugs into a five-tier classification system called schedules. 21 U.S.C. § 812 (2004). Drugs are placed into a schedule based on their potential for abuse, their medical purpose and their level of safety. *Id.* Congress placed marijuana in Schedule I, the highest level. *Id*. Drugs placed in Schedule I are deemed by Congress to have a high potential for abuse, lack medical use and have a low level of safety. *Id.* In its findings, Congress found that marijuana was likely to be abused, that it lacked any medical purpose and that it was not safe. 21 U.S.C. § 801. Because of this classification, the cultivation, distribution and possession of marijuana is illegal throughout the United States. 21 U.S.C. § 841(a)(1) (2004).

The California legislature in 1996 attempted to carve out a medical exception to the CSA through the Compassionate Use Act ("CUA"). Cal. Health & Safety Code § 11362.5 (1996). The CUA allows chronically ill persons to use marijuana legally. *Id*. Under the statute, the patient is exempt from criminal prosecution if a physician determines that the marijuana is

medically necessary. *Id*. In addition, physicians that recommend marijuana and the primary caregivers of the patients, that help the patients obtain or cultivate marijuana, are also exempt from criminal prosecution and sanctions. *Id*.

The Respondents Angel McClary Raich and Diane Monson are two patients under the CUA. *Raich v. Ashcroft*, 352 F.3d 1222, 1225 (9th Cir. 2003). Raich has an inoperable brain tumor, which qualifies her as a patient, and has smoked marijuana approximately every two of her waking hours for over five years. *Id.* at 1225. Raich receives marijuana free of charge from her caregivers. *Id*. Respondent Monson has chronic back pain. Monson grows her own marijuana. *Id*.

On August 15, 2002, DEA agents went to Monson's home and destroyed her six illegal marijuana plants. *Id.* at 1225-26. In response to the seizure, on October 9, 2002, the caregivers of Raich, John Doe Number One and John Doe Number Two, and Monson filed an action against the Petitioners, Attorney General John Ashcroft and the Administrator of the Drug Enforcement Agency Asa Hutchinson, to prevent future seizures of marijuana. *Id.* at 1226. The suit sought preliminary and permanent injunctive relief. *Id*. The Respondents claimed that the CSA was unconstitutional because it prevented them from obtaining, possessing, manufacturing or providing marijuana for medical use. *Id*.

On March 5, 2003, the district court denied the Respondents' motion for preliminary relief. *Id*. The court recognized the severity of the Respondents' medical conditions. *Id*. However, the district court held that Respondents were not likely to prevail under the rules of the circuit and therefore were not entitled to preliminary relief. *Id*. The Respondents filed an appeal on March 12, 2003. *Id*.

In their appeal, the Respondents argued that they were entitled to preliminary injunctive relief. *Id*. The Ninth Circuit used the traditional four-prong test for granting preliminary injunctive relief. *Id.* at 1227. The first prong is the likelihood of success on the merits of the case, the second is the threat of irreparable harm, the third weighs the balance of the hardships and the fourth looks at the public interest in granting the injunction. *Id*.

The Ninth Circuit found that the CSA did not adequately address the medicinal usage of marijuana and therefore the court did an analysis to determine whether the statute should stand under the Commerce Clause. *Id.* at 1228-29. The Commerce Clause grants Congress the power to regulate both interstate as well as intrastate commerce so long as the intrastate commerce has a substantial economic effect on interstate commerce. U.S. Const. art. I, § 8, cl 3. The Respondents argued that their usage of marijuana did not substantially affect interstate

commerce and was not subject to Congressional legislation. *Id.* at 1228. The Ninth Circuit found that, because the marijuana was grown in California and was not sold, the marijuana cultivation and usage did not substantially affect interstate commerce. *Id.* at 1228-29. Therefore, the application of the CSA to this case was inappropriate. *Id*. The Ninth Circuit then concluded that the Respondents' suit was likely to succeed, satisfying the first prong of the test for a preliminary injunction. *Id.* at 1234.

The Ninth Circuit then looked at the hardship placed on the Respondents and the public interest in allowing marijuana to be used medicinally. *Id*. The Ninth Circuit found that significant hardship would be placed on the Respondents if the preliminary injunction were denied. *Id*. The Ninth Circuit also concluded that there was a public interest in allowing the Respondents relief from a statute that was unconstitutionally applied to them. *Id*.

Based on its analysis, the court found that the four prongs of the preliminary injunction test had been fulfilled. *Id.* at 1235. Therefore the Ninth Circuit granted the Respondents a preliminary injunction. *Id.*

Petitioners then filed a petition for certiorari, which this Court granted.

SUMMARY OF THE ARGUMENT

The Commerce Clause of the United States Constitution states that Congress is empowered to regulate interstate commerce. U.S. Const. art. I, § 8, cl. 3. Congress may regulate activities that have a substantial economic effect on interstate commerce. *Wickard v. Filburn*, 317 U.S. 111 (1942). To determine what level of review is required the Court has to determine as a matter of law whether the activity is economic or non-economic. *United States v. Lopez*, 514 U.S. 549, 567 (1995).

When the Court finds that an activity is economic in nature, the Court applies the standard in *Wickard*, 317 U.S. 111. The Court examines the case to determine whether Congress could have rationally found that the activity has a substantial effect on interstate commerce. *Id.* at 133. In this case, the local cultivation of medicinal marijuana, an economic activity, has an substantial economic effect on interstate commerce.

The Respondents' home cultivation of marijuana influences the Respondents' purchases of legal drugs in the open market. The sales of legal drugs are diminished by the Respondents' actions and this has an effect on interstate commerce. This effect on the marketplace is similar to the effect Filburn's homegrown wheat had on the commercial grain market and therefore this Court should find that the Respondents' actions have an effect on interstate commerce. *Id.* at 127.

By cultivating marijuana for home use, the Respondents, together with others authorized to grow marijuana under the CUA, have potentially added to the supply made available to the illegal market. This Court has held that when it is impossible to distinguish between the home use product and the commercial product in the open market, Congress is permitted to regulate the home use product. *Id.* at 128. In this case Congress has a compelling reason to regulate marijuana intended for medical use because it is not possible to differentiate between medicinal marijuana and marijuana grown for other purposes in the illegal market. This Court should find that Congress is permitted to regulate marijuana intended for medical use because medicinal marijuana cannot be differentiated from marijuana grown for other reasons in the illegal marketplace.

Congress can regulate a class of activity if the entire activity has a substantial effect on interstate commerce. *Id.* at 131. In this case, the Respondents belong to a class, medicinal marijuana growers, which as a whole has a substantial effect on interstate commerce. Therefore, this Court should find that Congress can regulate the Respondents because they belong to a class that substantially affects interstate commerce.

Even if the Court were to find that the Respondents' activity is non-economic, the activity should be found to be

within the legislative power of Congress. To determine if an activity is within the legislative power of Congress, the Court looks at the Congressional findings to determine if there is a significant and substantial connection between interstate commerce and the regulated activity. *Lopez*, 514 U.S. at 562. In this case, the Congressional findings for the CSA show that there are distinct and substantial connections between medicinal marijuana and interstate commerce. Because Congress has shown the connection between interstate commerce and medicinal marijuana, this Court should find that the CSA is constitutional.

The Respondents argue that they should be permitted to have a medical exception to the CSA. The legislative history and the Congressional findings show that Congress did not want there to be a medicinal marijuana exception to the CSA. 21 U.S.C. § 801. In addition, this Court has held that Congress did not intend for there to be a medical exception to the CSA. *United States v. Oakland Cannabis Buyers' Coop*., 532 U.S. 483 (2001). Based on this Courts' finding, the Ninth Circuit erred when it granted the Respondents a preliminary injunction based on the merits of their claim to a medical exception. Therefore this Court should reverse the Ninth Circuit's grant of a preliminary injunction.

ARGUMENT

I. CONGRESS MAY REGULATE THE CULTIVATION AND USE OF MEDICINAL MARIJUANA BECAUSE IT IS A LOCAL ECONOMIC ACTIVITY THAT HAS A SUBSTANTIAL ECONOMIC EFFECT ON INTERSTATE COMMERCE.

The Commerce Clause of the constitution explicitly empowers Congress to regulate interstate commerce. U.S. Const. art. I, § 8, cl 3. Congress is permitted to regulate economic activities that have an effect on interstate commerce. *Wickard v. Filburn*, 317 U.S. 111 (1942). Moreover, Congress is permitted to regulate non-economic activities when there is a significant and substantial connection between those activities and a substantial effect on interstate commerce. *United States v. Lopez*, 514 U.S. 549, 567 (1995). *United States v. Morrison*, 529 U.S. 598 (2000).

This Court, in *Wickard*, defined the extent of what Congress is permitted to regulate. 317 U.S. 111. In *Wickard*, Filburn grew more wheat than he was permitted to grow under the Agricultural Adjustment Act of 1938, 7 U.S.C. § 1281 (1938). *Id.* at 114. Filburn stated that the wheat grown over his quota was for home use. *Id.* at 114. Filburn argued that since the wheat was for home use, it was a local activity and therefore was outside the legislative power of Congress. *Id.* at 125. This Court found that the wheat did have an effect on interstate commerce. *Id.* at 127. The Court concluded that under the

Commerce Clause, Congress had the right to regulate a local activity when the aggregate activity had an effect on interstate commerce that was substantial. *Id.* at 133. The *Wickard*, analysis applies to the Congressional regulation of local economic activities and thus is applicable in this case.

A. THE CULTIVATION OF MARIJUANA FOR MEDICINAL USE IS AN ECONOMIC ACTIVITY BECAUSE IT REDUCES DEMAND FOR LEGAL DRUGS AND BECAUSE IT ADDS TO THE ILLEGAL DRUG SUPPLY.

The Respondents argue that their case is distinguishable from *Wickard* because Filburn was engaged in the commercial activity of farming while their activity is non-economic. *Raich v. Ashcroft*, 352 F.3d 1222, 1238 (9th Cir. 2003). This argument is not well founded. *Id.* at 1238-1239. The growing of marijuana is an economic activity. *Id.* at 1239. Marijuana has an illegal market and by using marijuana instead of legal drugs the Respondents are having an economic impact on the market. *Id.* at 1240. This is similar to the economic impact that Filburn had when he grew his wheat for home usage. *Wickard*, 317 U.S. at 127-128.

This Court found that, by producing wheat in excess of his quota, Filburn had an impact on interstate commerce because Filburn’s actions affected his purchases on the open marketplace. *Id.* at 128. Filburn’s excess cultivation of wheat prevented him from having to purchase wheat in the open

marketplace. *Id.* By not having to purchase wheat, he depressed the demand for wheat in the marketplace. *Id.*

Similarly, in this case, the Respondents' home cultivation of marijuana influences their purchases of legal drugs in the marketplace. *Raich*, 352 F.3d at 1240. By growing their own drug, marijuana, the Respondents do not have a need to purchase legal marijuana substitutes such as Marinol. *Id.* at 1240. Their actions diminish the demand for legal substitutes and this has an effect on legal drugs, which are a product of interstate commerce. *Id.* This effect on interstate commerce is substantial and therefore the Court should find that the Respondents' actions are an economic activity within the legislative power of Congress.

The Respondents' cultivation of marijuana also has an economic effect on the illegal marijuana supply. *Id.* at 1239. By cultivating marijuana for home use, the Respondents have a supply of marijuana that can be sold illegally. *Id.* This homegrown marijuana, which was originally intended for medicinal use, could readily enter the illegal drug market. *Id.* This activity would further the usage of drugs, which is the exact activity Congress intended to curtail by passing the CSA. *Id.* In addition, there is no way to differentiate between marijuana that was grown for medicinal use and marijuana grown for other uses in the illegal marketplace. *Id.* at 1241. This is similar

to the finding of the Court in *Wickard*, which found that the government could not distinguish between wheat grown for home use and wheat grown for commercial use in the open market. *Wickard*, 317 U.S. at 128.

The Court held in *Wickard*, that since there was no way to differentiate between wheat grown for home use and commercial use, the government had a compelling interest in regulating homegrown wheat. *Id.* The Court concluded that Congress could regulate Filburn's cultivation of wheat to prevent homegrown wheat from entering the market. *Id.* at 131. In this case, because it cannot be differentiated from marijuana grown for other purposes, Congress has a compelling reason to regulate homegrown medicinal marijuana to prevent it from entering the illegal market and stimulating economic activity in that market. 21 U.S.C. § 801. Therefore this Court should find that marijuana grown for medicinal use, has as an economic effect on interstate commerce.

B. THE CULTIVATION OF MEDICINAL MARIJUANA HAS A SUBSTANTIAL AGGREGATE EFFECT ON INTERSTATE COMMERCE.

In *Wickard*, Filburn argued that his homegrown wheat did not have a substantial effect on interstate commerce. *Wickard*, 317 U.S. at 119. In the Congressional findings it was stated that homegrown wheat was about 20 percent of the wheat grown in this country. *Id.* at 127. The Court concluded that although

Filburn's activity alone may not have had a substantial effect on interstate commerce, his activity along with the activity of other farmers like himself did have a substantial effect on interstate commerce. *Id.* at 131. The Court held that Congress can regulate a class of activity when the entire class of activity has a substantial effect on interstate commerce. *Id.*

In this case, the Respondents' activity comprises a class of activity that Congress is trying to control. *Raich*, 352 F.3d at 1228. Though the Respondents' home cultivation of marijuana for medicinal use may not have a substantial effect on interstate commerce, the Respondents belong to a class that does have a substantial effect on interstate commerce. *Id.* at 1239-40. And under the holding in *Wickard*, Congress is permitted to regulate a class of activity that in the aggregate has a substantial effect on interstate commerce. *Wickard*, 317 U.S. at 124. Because the Respondents belong to a class that Congress is permitted to regulate, this Court should find that the laws regulating that class also apply to the Respondents.

The Second Circuit has upheld a conviction under the CSA in related circumstances. In *Proyect v. United States*, 101 F.3d 11, 14 (2d Cir. 1996), the defendant was convicted of manufacturing marijuana under 21 U.S.C. § 841(a)(1). 21 U.S.C. § 841(a)(1) prohibits the manufacture, distribution, dispensing, or possession of controlled substances. The defendant argued

that the CSA should not apply to him because the marijuana was not intended for commercial use and was therefore outside Congress's legislative power. *Proyect*, 101 F.3d at 12. The Second Circuit held "Congress may regulate activity that occurs wholly within a particular state if the activity has a sufficient nexus to interstate commerce." *Id.* at 13 (quoting *United States v. Genao*, 79 F.3d 1333, 1335 (2d Cir. 1996)). The court held that "the nexus to interstate commerce, moreover, is determined by the class of activities regulated by the statute as a whole, not by the simple act for which an individual defendant is convicted." The court concluded that

> Thus, Congress unquestionably has the power to declare that an entire class of activities affects commerce. The only question for the courts is then whether the class is within the reach of the federal power. The contention that in Commerce Clause cases the courts have the power to excise, as trivial, individual instances falling within a rationally defined class of activities has been put entirely to rest.

Id. at 13 (quoting *Maryland v. Wirtz*, 392 U.S. 183, 192-93 (1968)).

The Ninth Circuit's focus on the facts of an individual case rather than a class of activities is inconsistent with the Second Circuit ruling in *Proyect.* The CSA does apply to the Respondents because their conduct falls within the class of activities Congress has chosen to regulate, yet the Ninth Circuit chose to ignore this fact. The Ninth Circuit's grant of

a preliminary injunction is improper because it is based on an erroneous interpretation of Congressional power under the Commerce Clause. *Raich*, 352 F.3d at 1233. Therefore, this Court should find that the Ninth Circuit erred when it granted the preliminary injunction because the CSA is constitutional as applied to the Respondents.

II. THERE ARE DIRECT AND SUBSTANTIAL CONNECTIONS TO INTERSTATE COMMERCE AND THE CULTIVATION OF MARIJUANA FOR MEDICINAL USE.

The Ninth Circuit defines the regulated class as "the intrastate, noncommercial cultivation, possession and use of marijuana for personal medical purposes on the advice of a physician." *Raich*, 352 F.3d at 1238. If this Court were to consider the Respondents' home cultivation as a non-economic activity as the Ninth Circuit did, an analysis under the *Wickard* standard would not be sufficient because *Wickard* dealt with the economic activity of homegrown wheat. Instead, we must look to United States v. Lopez, 514 U.S. 549 (1995), to determine when a non-economic local activity has a sufficient effect on interstate commerce to be within the legislative power of Congress.

In 1990, Congress passed the Gun-Free School Zones Act using its enumerated power under the Commerce Clause. 18 U.S.C. § 922(q) (1990). This act prohibited the possession of guns within a school zone. *Id.* Lopez was a twelfth grader who had

brought a gun to school and was charged with possession under the federal statute. *Lopez*, 514 U.S. at 552.

In its analysis, the Court first looked to see if possession of a gun in a school zone was an economic activity. *Id.* at 561. After finding that the possession of guns in school zones was a non-economic activity, the Court applied a more rigorous level of scrutiny than that applied in *Wickard* to determine the statute's constitutionality under the Commerce Clause. *Id.* The Court first examined Congressional findings to determine whether Lopez's gun possession had an affect on interstate commerce. *Id.* at 562. This Court found that, although Congress had found that guns were a product of interstate commerce, it had not made any findings about gun possession in a school zone. *Id.* at 563-564.

The Court also examined the government's argument that gun possession was linked to interstate commerce. *Id.* at 564. The Court found that if Congress were permitted to use this method of remote linking to tie proposed legislation to interstate commerce, no area of life would be outside the legislative power of Congress. *Id.*

The Court finally looked at the statute to determine if Congress was attempting to enter a field that the states had traditionally occupied. *Id.* at 561. The Court found that this was a criminal statute, an area traditionally occupied by the

states. Allowing Congress into this field would deny states their legislative right and would permit Congress to exercise a police power that was inconsistent with the United States Constitution. *Id.* The Court finally concluded that the Gun-Free School Zones Act was unconstitutional because guns in school zones did not substantially affect interstate commerce. *Id.* at 567.

In this case if the Court were to find home cultivation of marijuana for medicinal use a non-economic activity, the Court should find that this activity does have a substantial effect on interstate commerce. The Congressional finding explicitly states that, "A major portion of the traffic in controlled substances flows through interstate and foreign commerce." 21 U.S.C. § 801(3). Also the findings that are included in 21 U.S.C. § 801 closely link controlled substances to interstate commerce. This is distinguishable from the Congressional findings in *Lopez*, which were too remote to connect guns in school zones to interstate commerce.

The final analysis under *Lopez* would be to determine if Congress were attempting to enter a field that it had previously not occupied and which had been left to the states. The CSA regulates controlled substances. 21 U.S.C. § 801. Controlled substances and prescription drugs were controlled by the Federal Drug Administration prior to the enactment of this statute. 21

U.S.C. § 351 (2004). Therefore the Petitioners assert that Congress is only expanding its regulation in a field that Congress had already chosen to occupy.

Because the Petitioners have shown that Congress had sufficient findings that linked controlled substances to interstate commerce and that Congress has traditionally occupied the field of drug regulation, this statute should be found to satisfy the standard in *Lopez*. Since this statute satisfies the standard in *Lopez*, this Court should find that, even if the Respondents' activity is viewed as non-economic, it falls within the regulatory reach of Congress. Therefore this Court should find that the CSA is constitutional.

This case is also distinguished from *United States v. Morrison*, 529 U.S. 598 (2000). In *Morrison,* the respondents attacked the petitioner Brzonkala while they were students at Virginia Polytechnic Institute. *Id.* at 601. Brzonkala filed suit under the Violence Against Women Act, 42 U.S.C. § 13981 (1994) ("VAWA"). *Id.* at 604. VAWA allows the victims of gender violence to have a civil remedy under federal law. 42 U.S.C. § 13981. The Respondents argued that VAWA's civil remedy was unconstitutional. *Morrison*, 529 U.S. at 604. The district court agreed with the respondents and dismissed the claim because gender-based violence did not have a substantial

affect on interstate commerce. *Id.* The United States came in to replace Brzonkala to defend the statute. *Id.*

This Court first had to determine whether gender-based violence was an economic activity. *Id.* at 612-13. Finding that gender-based violence was a non-economic activity, the Court then had to look at the Congressional findings. *Id.* at 613. The government argued that Congress determined in its findings that violence against women had a substantial effect on interstate commerce. *Id.* at 614. Despite the fact that Congress had made numerous findings, the Court ruled that findings alone are not sufficient if there is not a substantial link between the legislation and interstate commerce. *Id.* The Court noted that,

> Congress found that gender-motivated violence affects interstate commerce "by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; . . . by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products."

Id. at 614 (quoting H. R. Conf. Rep. No. 103-711, at 385).

The Court found that this linkage between gender based violence and interstate commerce was remote, and that under this reasoning all activities could be considered to have an impact on interstate commerce. *Id.* at 615. This Court also concluded that if this type of reasoning were permitted there would cease

to be a distinction between the activities that could be regulated on a national and on a local level. *Id.* at 615-16. Because of the lack of sufficiency of the Congressional findings, this Court ruled that the VAWA was unconstitutional. *Id*. at 617-618.

Unlike *Morrison*, in this case Congress has sufficiently shown that there is a direct linkage between interstate commerce and the use of controlled substances. *Morrison*, 529 U.S. at 614. 21 U.S.C. § 801. In addition, this Court has upheld federal laws regulating commodities because those commodities affect interstate commerce. *See United States v. Carolene Products Co*., 304 U.S. 144 (1938) (finding that the Filled Milk Act, 21 U.S.C. § 61(c) (1923), was constitutional because milk had an effect on interstate commerce.) Therefore, in this case the Court should find that the statute is constitutional because controlled substances have an effect on interstate commerce.

III. CONGRESS DID NOT INTEND FOR THERE TO BE A MEDICAL EXCEPTION TO THE CONTROLLED SUBSTANCES ACT.

This Court has held that Congress did not intend for there to be a medicinal marijuana exception in the CSA. *United States v. Oakland Cannabis Buyers' Coop*., 532 U.S. 483 (2001). In *Oakland Cannabis Buyers' Coop*., the respondents argued that medicinal use of marijuana was a permissible defense for criminal prosecution. *Id.* at 490. This Court held that under

the unambiguous language of the CSA, medicinal use of marijuana was prohibited and therefore a defense for medicinal usage of marijuana was not available to the respondents. *Id.* at 491.

In the legislative history of the CSA, Congress stated in its findings that controlled substances have a substantial effect on the welfare of the American people. 21 U.S.C. § 801(1). In addition, 21 U.S.C. § 801(6) states that, to effectively control interstate traffic of controlled substances, the federal government would have to control intrastate usage of drugs. The Petitioners argue that these two findings demonstrate that Congress intended to occupy the entire field of controlled substances regulation. And under the Supremacy Clause when Congress intends to occupy an entire field, federal law is superior to all other laws. U.S. Const. art. VI cl. 2. *See McCulloch v. Maryland*, 17 U.S. 316, 424 (1819).

This Court also held that, “Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is . . . for the courts to enforce them when enforcement is sought." *Oakland Cannabis Buyers' Coop*., 532 U.S. at 497 (quoting *Tennessee Valley Auth. v. Hill,* 437 U.S. 153, 194 (1978)). Therefore, when Congress acts within the scope of its power under Article I, §8, as is has in this case, to prohibit an activity, its judgment should be upheld.

The Ninth Circuit's grant of a preliminary injunction is in conflict with this Court's holdings in *Oakland Cannabis Buyers' Coop., Wickard and Lopez*. *Raich*, 352 F.3d at 1235. Therefore, this Court should reverse the Ninth Circuit's grant of a preliminary injunction to the Respondents.

CONCLUSION

The Ninth Circuit decision should be reversed and the CUA found unconstitutional.

4 November 2004

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Sarah Summers
Attorney for Petitioners
1215 Wilbraham Road
Springfield, MA 01119