

Gonzales v. Raich

Argued: November 29, 2004

Decided: June 6, 2005

Background

The U.S. Constitution sets up a federalist system of government, in which the federal government and the states share power. The powers of the federal government are limited and described in the Constitution. Other powers are reserved for the states. Article 1, Section 8 of the Constitution lists Congress's powers, including the power to create post offices, raise an army, coin money, and declare war. One of Congress's broadest powers is the power to regulate commerce among the states. Many of the laws Congress passes are allowed under this power to regulate commerce. In this case, however, Congress is accused of exceeding its constitutional power.

Facts

The Compassionate Use Act, passed in California in 1996, allowed citizens of the state to use marijuana for medicinal purposes after a doctor has concluded the use would benefit the patient's health. The main federal drug law, the *Controlled Substances Act*, does not provide a similar exemption.

Angel Raich is a citizen of California and has a number of serious health problems, including an inoperable brain tumor, seizures, and chronic pain disorders. For approximately five years, Raich has been using marijuana. According to her physician, she had exhausted "essentially all other legal alternatives." Her medical condition prevents her from growing the marijuana, therefore Raich is dependent on two caregivers to grow it for her.

After a 2002 raid by the federal Drug Enforcement Agency (DEA) of another medical marijuana patient's home, Raich became concerned about being prosecuted for violating federal law. Raich asked the federal district court to prohibit enforcement of federal drug laws against a person in her situation. The district court refused to do this. Raich appealed this decision to the Ninth Circuit Court of Appeals. The Ninth Circuit decided that Raich was entitled to protection from the federal drug laws. That Court said that local, non-commercial cultivation, and sharing, possession, and use of marijuana under the direction of a physician was intrastate (not interstate) commerce. Therefore, it was beyond Congress's power to regulate or prohibit this activity. The federal government appealed this decision to the Supreme Court, and the Supreme Court agreed to hear the case.

Issue

Do federal drug laws (i.e., the *Controlled Substances Act*) exceed Congress's Commerce Clause power when applied to intrastate possession and use of medical marijuana, as authorized by state law?

Constitutional Clauses and Precedents

The Commerce Clause- U.S. Constitution, Article I, Section 8, Clause 3

"[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes."

Wickard v. Filburn (1942)

In an effort to increase wheat prices during the Great Depression, Congress passed a law limiting the amount of wheat that some farmers could grow. Farmer Filburn challenged the law, arguing that he intended to use at least some of the wheat for personal consumption, and that Congress could not stop

him from growing wheat that he did not intend to sell in interstate commerce. The Supreme Court rejected Filburn's argument and held that Congress can regulate intrastate activity when that activity, in the aggregate, would substantially affect interstate commerce. The farmer's decision to self-supply wheat meant that he would not buy wheat from the market. If many farmers did the same thing, they would substantially affect interstate commerce.

U.S. v. Lopez (1995)

Congress passed a law making it a federal crime to carry guns within a school zone. Congress argued that it had the authority to do this under the Commerce Clause because the safety of schools had spillover economic effects on neighboring states that amounted to interstate commerce. The Supreme Court ruled that the law exceeded Congress's Commerce Clause authority because carrying a gun in a school zone is not an *economic* activity. It said that Congress may only regulate:

- Channels of interstate commerce – including highways, waterways, and air traffic.
- People, machines, and things moving in, or used in carrying out interstate commerce.
- Economic activities that have a substantial effect on interstate commerce.

Arguments for Raich

- When medical marijuana patients grow, share, or possess medical marijuana, they are not engaging in economic activity. *U.S. v. Lopez* said that the Commerce Clause did not allow Congress to regulate the non-economic activity in that case.
- The patients' activities here are completely intrastate—that is, within the state of California. There is no interstate commerce going on, so regulation is beyond Congress' power under the Commerce Clause.
- The federal government argues that there is a national market for marijuana, which makes possession of medical marijuana an economic activity. Simply possessing an item, even if there is a clear market for it, does not mean that you are participating in the market. If you aren't selling or trading the item, you are not participating in the market.
- The growth and possession of medical marijuana in this case is policed by the state of California. Californians decided to allow this activity, and the federal government should not interfere.
- This situation is not like the wheat-growing activity in *Wickard v. Filburn*. There, the Court discussed the cumulative, or aggregate, effect of many farmers' economic activities. Since the activity in this case is non-economic, there cannot be any cumulative effect on interstate economic markets.
- Congress can still regulate illegal drug markets. It just does not have the power to extend that regulation to the non-economic growth, possession, and use of marijuana by medical patients in a state that has legalized such use.

Arguments for Gonzales

- Congress, in passing the *Controlled Substances Act*, was within its power under the Commerce Clause to regulate the national market for drugs which have a high potential for abuse and fostering criminal activity.
- The production, distribution, and possession of marijuana can have a substantial effect on interstate commerce, because drugs are often moved and sold between states.
- The *Lopez* case dealt with non-economic activity, which is not the case here. Medical marijuana customers still buy, sell, or trade the product, which makes it an economic activity.

- In this case, as in *Wickard v. Filburn*, the aggregated effect of allowing the use of marijuana would be staggering. Marijuana produced for medical reasons in California could end up in the illegal national drug market because there is a high demand for illegal drugs across the country.
- The government cannot distinguish between marijuana grown for illegal drug purposes and that grown for medical purposes (even if it is lawful within the state). Therefore, all marijuana is subject to the *Controlled Substances Act*.
- It is possible that the marijuana possessed by medical customers in California crossed state lines. In that situation, Congress obviously has the power to regulate it.

Decision

The Supreme Court ruled in favor of the federal government, 6-3. Justice Stevens wrote the majority opinion and was joined by Justices Kennedy, Souter, Ginsburg, and Breyer. Justice Scalia filed a concurring opinion. Justices O'Connor and Thomas and Chief Justice Rehnquist dissented.

Majority

The majority decision was based on the Court's previous ruling in *Wickard v. Filburn*. The Court in *Wickard* decided that Congress did have the power, under the Commerce Clause, to regulate an activity even though it was completely intrastate, if that activity had a substantial effect on interstate commerce. The Court held that the intrastate production of medical marijuana – like the wheat in *Wickard* – would have a substantial effect on the nationwide supply and demand for the product and therefore it falls squarely within Congress' power to regulate.

The majority also relied on the ruling in *U.S. v. Lopez* in which the Court established that the government only needed to show they had a rational reason to believe that the activity would affect interstate commerce. It is rational, they said, to believe that trying to distinguish between locally grown marijuana and non-locally grown would be extremely difficult, and that it was probable that locally grown marijuana would end up in the illegal drug market. Furthermore, the Court states that Congress can legislate in this area because prohibiting the use of illegal drugs is an "essential part of the larger regulatory scheme."

Justice Scalia, while agreeing with the outcome, wrote a concurrence in which he stated that the basis for upholding the constitutionality of the *Controlled Substances Act* (CSA) lies in Congress' power under the Necessary and Proper Clause in combination with the Commerce Clause. Scalia stated that the application of the CSA to purely intrastate activities is essential to the goal of the act – prohibiting marijuana in interstate commerce.

Dissent

Justice O'Connor wrote a dissent that Chief Justice Rehnquist joined and Justice Thomas joined in part. Justice O'Connor's dissent stressed the foundations of federalism and said that states are seen as laboratories in which they can "try novel social and economic experiments without risk to the rest of the country." As such, California voters had chosen to allow medical marijuana to be available to its citizens. The Court, in upholding the application of the *Controlled Substances Act* (CSA), destroys this state-based experiment and does so with no evidence of the effect on interstate commerce, only with an assumption of the effect.

Justice Thomas wrote a separate dissent, where he pointed out that by "allowing Congress to regulate intrastate, noncommercial activity under the Commerce Clause would confer on Congress a general police power over the nation." This would, in Thomas's view, provide no meaningful limits on the power of Congress to legislate. The notions of a federal government of limited, enumerated powers would have no meaning.