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,* 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971), our cases have mechanically recited that the Commerce Clause permits congressional regulation of three categories: (1) the ***34** 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. *Id.,* at 150, 91 S.Ct. 1357; see *United States v. Morrison,* 529 U.S. 598, 608-609, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000); *United States v. Lopez,* 514 U.S. 549, 558-559, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 276-277, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981). The first two categories are self-evident, since they are the ingredients of interstate commerce itself. See *Gibbons v. Ogden,* 9 Wheat. 1, 189-190, 6 L.Ed. 23 (1824). The third category, however, 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 ****2216** them cannot come from the Commerce Clause alone. Rather, as this Court has acknowledged since at least *United States v. Coombs,* 12 Pet. 72, 9 L.Ed. 1004 (1838), 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. *Id.,* at 78; *Katzenbach v. McClung,* 379 U.S. 294, 301-302, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 119, 62 S.Ct. 523, 86 L.Ed. 726 (1942); *Shreveport Rate Cases,* 234 U.S. 342, 353, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *United States v. E.C. Knight Co.,* 156 U.S. 1, 39-40, 15 S.Ct. 249, 39 L.Ed. 325 (1895) (Harlan, J., dissenting).[FN1] And the category of " activities that substantially affect interstate commerce," *Lopez, supra,* at 559, 115 S.Ct. 1624, is *incomplete* because the authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws ***35** 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.

FN1. See also *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 584-585, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O'CONNOR, J., dissenting) (explaining that it is through the Necessary and Proper Clause that "an intrastate activity 'affecting' interstate commerce can be reached through the commerce power").

I

Our cases show that the regulation of intrastate activities may be necessary to and proper for the regulation of interstate commerce in two general circumstances. Most directly, the commerce power permits Congress not only to devise rules for the governance of commerce between States but also to facilitate interstate commerce by eliminating potential obstructions, and to restrict it by eliminating potential stimulants. See *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 36-37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). That is why the Court has repeatedly sustained congressional legislation on the ground that the regulated activities had a substantial effect on interstate commerce. See, *e.g., Hodel, supra,* at 281, 101 S.Ct. 2352 (surface coal mining); *Katzenbach, supra,* at 300, 85 S.Ct. 377 (discrimination by restaurants); *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 258, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) (discrimination by hotels); *Mandeville Island Farms Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 237, 68 S.Ct. 996, 92 L.Ed. 1328 (1948) (intrastate price-fixing); *Board of Trade of Chicago v. Olsen,* 262 U.S. 1, 40, 43 S.Ct. 470, 67

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L.Ed. 839 (1923) (activities of a local grain exchange); *Stafford v. Wallace,* 258 U.S. 495, 517, 524-525, 42 S.Ct. 397, 66 L.Ed. 735 (1922) (intrastate transactions at stockyard). *Lopez* and *Morrison* recognized the expansive scope of Congress's authority in this regard: "[T]he pattern is clear. Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *514 U.S.,* at 560, 115 S.Ct. 1624; *Morrison, supra,* at 610, 120 S.Ct. 1740 (same).

This principle is not without limitation. In *Lopez* and *Morrison,* the Court-conscious of the potential of the "substantially affects" test to " 'obliterate the distinction between what is national and what is local,' " *Lopez, supra,* at 566-567, 115 S.Ct. 1624 ***36** (quoting *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 554, 55 S.Ct. 837, 79 L.Ed. 1570 (1935)); see also ****2217***Morrison, supra,* at 615-616, 120 S.Ct. 1740-rejected the argument that Congress may regulate *noneconomic* activity based solely on the effect that it may have on interstate commerce through a remote chain of inferences. *Lopez, supra,* at 564-566, 115 S.Ct. 1624; *Morrison, supra,* at 617-618, 120 S.Ct. 1740. "[I]f we were to accept [such] arguments," the Court reasoned in *Lopez,* "we are hard pressed to posit any activity by an individual that Congress is without power to regulate." *Lopez, supra,* at 564, 115 S.Ct. 1624; see also *Morrison, supra,* at 615-616, 120 S.Ct. 1740. Thus, although Congress's authority to regulate intrastate activity that substantially affects interstate commerce is broad, it does not permit the Court to "pile inference upon inference," *Lopez, supra,* at 567, 115 S.Ct. 1624, in order to establish that noneconomic activity has a substantial effect on interstate commerce.

As we implicitly acknowledged in *Lopez,* however, Congress's authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." 514 U.S., at 561, 115 S.Ct. 1624. This statement referred to those cases permitting the regulation of intrastate activities "which in a substantial way interfere with or obstruct the exercise of the granted power." *Wrightwood Dairy Co.,* supra, at 119, 62 S.Ct. 523; see also *United States v. Darby,* 312 U.S. 100, 118-119, 61 S.Ct. 451, 85 L.Ed. 609 (1941); *Shreveport Rate Cases,* supra, at 353, 34 S.Ct. 833. As the Court put it in *Wrightwood Dairy,* where Congress has the authority to enact a regulation of interstate commerce, "it possesses every power needed to make that regulation effective." 315 U.S., at 118-119, 62 S.Ct. 523.

***37** Although this power "to make ... regulation effective" commonly overlaps with the authority to regulate economic activities that substantially affect interstate commerce,[FN2] and may in some cases have been confused with that authority, the two are distinct. The regulation of an intrastate activity may be essential to a comprehensive regulation of interstate commerce even though the intrastate activity does not itself "substantially affect" interstate commerce. Moreover, as the passage from *Lopez* quoted above suggests, Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general reg ulation of interstate commerce. See *Lopez, supra,* at 561, 115 S.Ct. 1624. The relevant question is simply whether the means chosen are "reasonably adapted" to the attainment of a legitimate end under the commerce power. See *Darby, supra,* at 121, 61 S.Ct. 451.

FN2. *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), presented such a case. Because the unregulated production of wheat for personal consumption diminished demand in the regulated wheat market, the Court said, it carried with it the potential to disrupt Congress's price regulation by driving down prices in the market. *Id.,* at 127-129, 63 S.Ct. 82. This potential disruption of

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> Congress's interstate regulation, and not only the effect that personal consumption of wheat had on interstate commerce, justified Congress's regulation of that conduct. *Id.,* at 128-129, 63 S.Ct. 82.

In *Darby,* for instance, the Court explained that " Congress, having ... adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards," ****2218**312 U.S., at 121, 61 S.Ct. 451, could not only require employers engaged in the production of goods for interstate commerce to conform to wage and hour standards, *id.,* at 119-121, 61 S.Ct. 451, but could also require those employers to keep employment records in order to demonstrate compliance with the regulatory scheme, *id.,* at 125, 61 S.Ct. 451. While the Court sustained the former regulation on the alternative ground that the activity it regulated could have a " great effect" on interstate commerce, *id.,* at 122-123, 61 S.Ct. 451, it affirmed the latter on the sole ground that "[t]he requirement***38** for records even of the intrastate transaction is an appropriate means to a legitimate end," *id.,* at 125, 61 S.Ct. 451.

As the Court said in the *Shreveport R. Co.,* the Necessary and Proper Clause does not give " Congress ... the authority to regulate the internal commerce of a State, as such," but it does allow Congress "to take all measures necessary or appropriate to" the effective regulation of the interstate market, "although intrastate transactions ... may thereby be controlled." 234 U.S., at 353, 34 S.Ct. 833; see also *Jones & Laughlin Steel Corp.,* supra, at 38, 57 S.Ct. 615 (the logic of the *Shreveport Rate Cases* is not limited to instrumentalities of commerce).

II

Today's principal dissent objects that, by permitting Congress to regulate activities necessary to effective interstate regulation, the Court reduces *Lopez* and *Morrison* to "little more than a drafting guide." *Post,* at 2222 (opinion of O'CONNOR, J.). I think that criticism unjustified. Unlike the power to regulate activities that have a substantial effect on interstate commerce, the power to enact laws enabling effective regulation of interstate commerce can only be exercised in conjunction with congressional regulation of an interstate market, and it extends only to those measures necessary to make the interstate regulation effective. As *Lopez* itself states, and the Court affirms today, Congress may regulate noneconomic intrastate activities only where the failure to do so "could ... undercut" its regulation of interstate commerce. See *Lopez, supra,* at 561, 115 S.Ct. 1624; *ante,* at 2206, 2209, 2210. This is not a power that threatens to obliterate the line between "what is truly national and what is truly local." *Lopez, supra,* at 567-568, 115 S.Ct. 1624.

Lopez and *Morrison* affirm that Congress may not regulate certain "purely local" activity within the States based solely on the attenuated effect that such activity may have in the interstate market. But those decisions do not declare noneconomic intrastate activities to be categorically beyond ***39** the reach of the Federal Government. Neither case involved the power of Congress to exert control over intrastate activities in connection with a more comprehensive scheme of regulation; *Lopez* expressly disclaimed that it was such a case, 514 U.S., at 561, 115 S.Ct. 1624, and *Morrison* did not even discuss the possibility that it was. (The Court of Appeals in *Morrison* made clear that it was not. See *Brzonkala v. Virginia Polytechnic Inst.,* 169 F.3d 820, 834-835 (C.A.4 1999) (en banc).) To dismiss this distinction as "superficial and formalistic," see *post,* at 2223 (O'CONNOR, J., dissenting), is to misunderstand the nature of the Necessary and Proper Clause, which empowers Congress to enact laws in effectuation of its enumerated powers that are not within its authority to enact in isolation. See *McCulloch v. Maryland,* 4 Wheat. 316, 421-422, 4 L.Ed. 579 (1819).

And there are other restraints upon the Necessary and Proper Clause authority. As Chief Justice Marshall wrote in ****2219***McCulloch v. Maryland,* even when the end is constitutional and legitimate, the means must be "appropriate" and "plainly adapted" to that end. *Id.,* at 421. Moreover, they

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may not be otherwise "prohibited" and must be " consistent with the letter and spirit of the constitution." *Ibid.* These phrases are not merely hortatory. For example, cases such as *Printz v. United States,* 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), and *New York v. United States,* 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), affirm that a law is not " '*proper* for carrying into Execution the Commerce Clause' " " [w]hen [it] violates [a constitutional] principle of state sovereignty." *Printz, supra,* at 923-924, 117 S.Ct. 2365; see also *New York, supra,* at 166, 112 S.Ct. 2408.

III

The application of these principles to the case before us is straightforward. In the CSA, Congress has undertaken to extinguish the interstate market in Schedule I controlled substances, including marijuana. The Commerce Clause unquestionably permits this. The power to regulate interstate commerce "extends not only to those regulations which aid, ***40** foster and protect the commerce, but embraces those which prohibit it." *Darby,* supra, at 113, 61 S.Ct. 451. See also *Hipolite Egg Co. v. United States,* 220 U.S. 45, 58, 31 S.Ct. 364, 55 L.Ed. 364 (1911); *Lottery Case,* 188 U.S. 321, 354, 23 S.Ct. 321, 47 L.Ed. 492 (1903). To effectuate its objective, Congress has prohibited almost all intrastate activities related to Schedule I substances-both economic activities (manufacture, distribution, possession with the intent to distribute) and noneconomic activities (simple possession). See 21 U.S.C. §§ 841(a), 844(a). That simple possession is a noneconomic activity is immaterial to whether it can be prohibited as a necessary part of a larger regulation. Rather, Congress's authority to enact all of these prohibitions of intrastate controlled-substance activities depends only upon whether they are appropriate means of achieving the legitimate end of eradicating Schedule I substances from interstate commerce.

By this measure, I think the regulation must be sustained. Not only is it impossible to distinguish " controlled substances manufactured and distributed intrastate" from "controlled substances manufactured and distributed interstate," but it hardly makes sense to speak in such terms. Drugs like marijuana are fungible commodities. As the Court explains, marijuana that is grown at home and possessed for personal use is never more than an instant from the interstate market-and this is so whether or not the possession is for medicinal use or lawful use under the laws of a particular State. [FN3] ***41** See *ante,* at ****2220** 2211-2215. Congress need not accept on faith that state law will be effective in maintaining a strict division between a lawful market for "medical" marijuana and the more general marijuana market. See *id.,* at 2212-2213, and n. 38. "To impose on [Congress] the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution." *McCulloch, supra,* at 424.

FN3. The principal dissent claims that, if this is sufficient to sustain the regulation at issue in this case, then it should also have been sufficient to sustain the regulation at issue in *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995). See *post,* at 2226 (arguing that " we could have surmised in *Lopez* that guns in school zones are 'never more than an instant from the interstate market' in guns already subject to extensive federal regulation, recast *Lopez* as a Necessary and Proper Clause case, and thereby upheld the Gun-Free School Zones Act"). This claim founders upon the shoals of *Lopez* itself, which made clear that the statute there at issue was "*not* an essential part of a larger regulation of economic activity." *Lopez, supra,* at 561, 115 S.Ct. 1624 (emphasis added). On the dissent's view of things, that statement is inexplicable. Of course it is in addition difficult to imagine what intelligible

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> scheme of regulation of the interstate market in guns could have as an appropriate means of effectuation the prohibition of guns within 1000 feet of schools (and nowhere else). The dissent points to a federal law, 18 U.S.C. § 922(b)(1), barring licensed dealers from selling guns to minors, see *post,* at 2226, but the relationship between the regulatory scheme of which § 922(b)(1) is a part (requiring all dealers in firearms that have traveled in interstate commerce to be licensed, see § 922(a)) and the statute at issue in *Lopez* approaches the nonexistent-which is doubtless why the Government did not attempt to justify the statute on the basis of that relationship.

Finally, neither respondents nor the dissenters suggest any violation of state sovereignty of the sort that would render this regulation "inappropriate," *id.,* at 421-except to argue that the CSA regulates an area typically left to state regulation. See *post,* at 2223-2224, 2226 (opinion of O'CONNOR, J.); *post,* at 2233-2234 (opinion of THOMAS, J.); Brief for Respondents 39-42. That is not enough to render federal regulation an inappropriate means.
The Court has repeatedly recognized that, if authorized by the commerce power, Congress may regulate private endeavors "even when [that regulation] may pre-empt express state-law determinations contrary to the result which has commended itself to the collective wisdom of Congress." *National League of Cities v. Usery,* 426 U.S. 833, 840, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976); see *Cleveland v. United States,* 329 U.S. 14, 19, 67 S.Ct. 13, 91 L.Ed. 12 (1946); *McCulloch, 4 Wheat.* at 424. At bottom, respondents'***42** state-sovereignty argument reduces to the contention that federal regulation of the activities permitted by California's Compassionate Use Act is not sufficiently necessary to be "necessary and proper" to Congress's regulation of the interstate market. For the reasons given above and in the Court's opinion, I cannot agree.

* * *

I thus agree with the Court that, however the class of regulated activities is subdivided, Congress could reasonably conclude that its objective of prohibiting marijuana from the interstate market "could be undercut" if those activities were excepted from its general scheme of regulation. See *Lopez,* 514 U.S., at 561, 115 S.Ct. 1624. That is sufficient to authorize the application of the CSA to respondents.

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. *United States v. Lopez,* 514 U.S. 549, 557, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995); *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 37, 57 S.Ct. 615, 81 L.Ed. 893 (1937). 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." *New State Ice Co. v. Liebmann,* 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting).

****2221** 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. *Brecht v. Abrahamson,* 507 U.S. 619, 635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993); ***43** *Whalen v. Roe,* 429 U.S. 589, 603, n. 30, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). 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,

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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 *Lopez, supra,* and *United States v. Morrison,* 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). Accordingly I dissent.

I

In *Lopez,* we considered the constitutionality of the Gun-Free School Zones Act of 1990, which made it a federal offense "for any individual knowingly to possess a firearm ... at a place that the individual knows, or has reasonable cause to believe, is a school zone," 18 U.S.C. § 922(q)(2)(A). We explained that "Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce . .., *i.e.,* those activities that substantially affect interstate commerce." 514 U.S., at 558-559, 115 S.Ct. 1624 (citation omitted). This power derives from the conjunction of the Commerce Clause and the Necessary and Proper Clause. *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 585-586, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O'CONNOR, J., dissenting) (explaining that *United States v. Darby,* 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941), *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 62 S.Ct. 523, 86 L.Ed. 726 (1942), and *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), ***44** based their expansion of the commerce power on the Necessary and Proper Clause, and that "the reasoning of these cases underlies every recent decision concerning the reach of Congress to activities affecting interstate commerce"); *ante,* at 2216 (SCALIA, J., concurring in judgment). We held in *Lopez* that the Gun-Free School Zones Act could not be sustained as an exercise of that power.

Our decision about whether gun possession in school zones substantially affected interstate commerce turned on four considerations. *Lopez, supra,* at 559-567, 115 S.Ct. 1624; see also *Morrison, supra,* at 609-613, 120 S.Ct. 1740. First, we observed that our "substantial effects" cases generally have upheld federal regulation of economic activity that affected interstate commerce, but that § 922(q) was a criminal statute having " nothing to do with 'commerce' or any sort of economic enterprise." *Lopez,* 514 U.S., at 561, 115 S.Ct. 1624. In this regard, we also noted that " [s]ection 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****2222** of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce." *Ibid.* Second, we noted that the statute contained no express jurisdictional requirement establishing its connection to interstate commerce. *Ibid.*

Third, we found telling the absence of legislative findings about the regulated conduct's impact on interstate commerce. We explained that while express legislative findings are neither required nor, when provided, dispositive, findings "enable us to evaluate the legislative judgment that the activity in question substantially affect[s] interstate commerce, even though no such substantial effect [is] visible to the naked eye." *Id.,* at 563, 115 S.Ct. 1624. Finally, we rejected as too attenuated the Government's argument that firearm possession in school zones could result in violent crime which in turn could ***45** adversely affect the national economy. *Id.,* at 563-567, 115 S.Ct. 1624. The Constitution, we said, does not tolerate reasoning that would "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Id.,* at 567, 115 S.Ct. 1624. Later in *Morrison, supra,* we relied on the same four considerations to hold that § 40302 of the Violence Against Women Act of 1994, 108 Stat. 1941, 42 U.S.C. § 13981, exceeded Congress' authority under the Commerce Clause.

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In my view, the case before us is materially indistinguishable from *Lopez* and *Morrison* when the same considerations are taken into account.

II

A

What is the relevant conduct subject to Commerce Clause analysis in this case? The Court takes its cues from Congress, applying the above considerations to the activity regulated by the Controlled Substances Act (CSA) in general. 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. See 21 U.S.C. §§ 841(a)(1), 844(a). 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," *ante,* at 2209, see also *ante,* at 2208, ***46** 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,' " *ante, at 21.* 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****2223** is essential (and the Court appears to equate "essential" with " necessary") to the interstate regulatory scheme. Seizing upon our language in *Lopez* that the statute prohibiting gun possession in school zones was "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," 514 U.S., at 561, 115 S.Ct. 1624, the Court appears to reason that the placement of local activity in a comprehensive scheme confirms that it is essential to that scheme. *Ante,* at 2210-2211. If the Court is right, then *Lopez* stands for nothing more than a drafting guide: Congress should have described the relevant crime as "transfer or possession of a firearm anywhere in the nation" -thus including commercial and noncommercial activity, and clearly encompassing some activity with assuredly substantial effect on interstate commerce. Had it done so, the majority hints, we would have sustained its authority to regulate possession of firearms in school zones. Furthermore, today's decision suggests we would readily sustain a congressional decision to attach the regulation of intrastate activity to a pre-existing comprehensive (or even not-so-comprehensive) scheme. If so, the Court invites increased federal regulation of local activity even if, as it suggests, Congress would not enact a *new* interstate***47** scheme exclusively for the sake of reaching intrastate activity, see *ante,* at 2209, n. 31; *ante,* at 2218 (SCALIA, J., concurring in judgment).

I cannot agree that our decision in *Lopez* contemplated such evasive or overbroad legislative strategies with approval. Until today, such arguments have been made only in dissent. See *Morrison,* 529 U.S., at 657, 120 S.Ct. 1740 (BREYER, J., dissenting) (given that Congress can regulate " 'an essential part of a larger regulation of economic activity,' " "can Congress save the present law by including it, or much of it, in a

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broader 'Safe Transport' or 'Worker Safety' act?"). *Lopez* and *Morrison* did not indicate that the constitutionality of federal regulation depends on superficial and formalistic distinctions. Likewise I did not understand our discussion of the role of courts in enforcing outer limits of the Commerce Clause for the sake of maintaining the federalist balance our Constitution requires, see *Lopez,* 514 U.S., at 557, 115 S.Ct. 1624; *id.,* at 578, 115 S.Ct. 1624 (KENNEDY, J., concurring), as a signal to Congress to enact legislation that is more extensive and more intrusive into the domain of state power. 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. Here, respondents challenge the constitutionality of the CSA as applied to them and those similarly situated. I agree with the Court that we must look beyond respondents' own activities. Otherwise, individual litigants could always exempt themselves from Commerce Clause regulation merely by pointing to the obvious-that their personal activities do not have a substantial effect on interstate commerce. See *Maryland v. Wirtz,* 392 U.S. 183, 193, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968); *Wickard,* 317 U.S., at 127-128, 63 S.Ct. 82. 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 ***48** 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. See generally ****2224***Lopez,* 514 U.S., at 567, 115 S.Ct. 1624; *id.,* at 579, 115 S.Ct. 1624 (KENNEDY, J., concurring).

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. See 21 U.S.C. § 812; Cal. Health & Safety Code Ann. § 11362.5 (West Supp.2005); *ante,* at 2198-2199 (opinion of the Court). Respondents challenge only the application of the CSA to medicinal use of marijuana. Cf. *United States v. Raines,* 362 U.S. 17, 20-22, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) (describing our preference for as-applied rather than facial challenges). 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." *Lopez, supra,* at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring); see also *Morrison, supra,* at 617-619, 120 S.Ct. 1740; *Lopez, supra,* at 580, 115 S.Ct. 1624 (KENNEDY, J., concurring) ("The statute before us upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, and our intervention is required"); cf. *Garcia,* 469 U.S., at 586, 105 S.Ct. 1005 (O'CONNOR, J., dissenting) ("[S]tate autonomy is a relevant factor in assessing the means by which Congress exercises its powers" under the Commerce Clause). 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.

***49** 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

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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. Putting to one side the problem endemic to the Court's opinion-the shift in focus from the activity at issue in this case to the entirety of what the CSA regulates, see *Lopez, supra,* at 565, 115 S.Ct. 1624 ("depending on the level of generality, any activity can be looked upon as commercial")-the 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," ****2225***Jones & Laughlin Steel,* 301 U.S., at 37, 57 S.Ct. 615. 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 ***50** 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. *Lopez, supra,* at 564, 115 S.Ct. 1624.

In *Lopez* and *Morrison,* we suggested that economic activity usually relates directly to commercial activity. See *Morrison,* 529 U.S., at 611, n. 4, 120 S.Ct. 1740 (intrastate activities that have been within Congress' power to regulate have been "of an apparent commercial character"); *Lopez,* 514 U.S., at 561, 115 S.Ct. 1624 (distinguishing the Gun-Free School Zones Act of 1990 from "activities that arise out of or are connected with a commercial transaction"). The homegrown cultivation and personal possession and use of marijuana for medicinal purposes has no apparent commercial character. Everyone agrees that the marijuana at issue in this case was never in the stream of commerce, and neither were the supplies for growing it. (Marijuana is highly unusual among the substances subject to the CSA in that it can be cultivated without any materials that have traveled in interstate commerce.) *Lopez* makes clear that possession is not itself commercial activity. *Ibid.* And respondents have not come into possession by means of any commercial transaction; they have simply grown, in their own homes, marijuana for their own use, without acquiring, buying, selling, or bartering a thing of value. Cf. *id.,* at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring) ("The statute now before us forecloses the States from experimenting ... and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term").

The Court suggests that *Wickard,* which we have identified as "perhaps the most far reaching example of Commerce Clause authority over intrastate activity," *Lopez, supra,* at 560, 115 S.Ct. 1624, established federal regulatory power over any home consumption of a commodity for which a national market exists.***51** I disagree. *Wickard* involved a challenge to the Agricultural Adjustment Act of 1938(AAA), which directed the Secretary of Agriculture to set national quotas on wheat production, and penalties for excess production. 317 U.S., at 115-116, 63 S.Ct. 82. The AAA itself confirmed that Congress made an explicit choice not to reach-and thus the Court could not possibly have approved of federal control over-small-scale, noncommercial wheat farming. In contrast to the CSA's limitless assertion of power, Congress provided an exemption within the AAA for small producers. When Filburn planted the wheat at issue in *Wickard,* the statute exempted plantings less than 200 bushels (about six tons), and when he

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harvested his wheat it exempted plantings less than six acres. *Id.,* at 130, n. 30, 63 S.Ct. 82. *Wickard,* then, did not extend Commerce Clause authority to something as modest as the home cook's herb garden. This is not to say that Congress may never regulate small quantities of commodities possessed or produced for personal use, or to deny that it sometimes needs to enact a zero tolerance regime for such commodities. It is merely to say that *Wickard* did not hold or imply that small-scale production****2226** of commodities is always economic, and automatically within Congress' reach.

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.

That is why characterizing this as a case about the Necessary and Proper Clause does not change the analysis significantly.***52** Congress must exercise its authority under the Necessary and Proper Clause in a manner consistent with basic constitutional principles. *Garcia,* 469 U.S., at 585, 105 S.Ct. 1005 (O'CONNOR, J., dissenting) ("It is not enough that the 'end be legitimate'; the means to that end chosen by Congress must not contravene the spirit of the Constitution"). As Justice SCALIA recognizes, see *ante,* at 2218-2219 (opinion concurring in judgment), Congress cannot use its authority under the Clause to contravene the principle of state sovereignty embodied in the Tenth Amendment. *Ibid.* Likewise, that authority must be used in a manner consistent with the notion of enumerated powers-a structural principle that is as much part of the Constitution as the Tenth Amendment's explicit textual command. Accordingly, something more than mere assertion is required when Congress purports to have power over local activity whose connection to an interstate market is not self-evident. Otherwise, the Necessary and Proper Clause will always be a back door for unconstitutional federal regulation. Cf. *Printz v. United States,* 521 U.S. 898, 923, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997) (the Necessary and Proper Clause is "the last, best hope of those who defend ultra vires congressional action"). Indeed, if it were enough in "substantial effects" cases for the Court to supply conceivable justifications for intrastate regulation related to an interstate market, then we could have surmised in *Lopez* that guns in school zones are "never more than an instant from the interstate market" in guns already subject to extensive federal regulation, *ante,* at 2219 (SCALIA, J., concurring in judgment), recast *Lopez* as a Necessary and Proper Clause case, and thereby upheld the Gun-Free School Zones Act of 1990. (According to the Court's and the concurrence's logic, for example, the *Lopez* court should have reasoned that the prohibition on gun possession in school zones could be an appropriate means of effectuating a related prohibition on "sell[ing]" or "deliver[ing]" firearms or ammunition to "any individual who the licensee knows or has reasonable cause to believe is less than ***53** eighteen years of age." 18 U.S.C. § 922(b)(1) (1988 ed., Supp. II).)

There is simply no evidence that homegrown medicinal marijuana users constitute, in the aggregate, a sizable enough class to have a discernable, let alone substantial, impact on the national illicit drug market-or otherwise to threaten the CSA regime. Explicit evidence is helpful when substantial effect is not "visible to the naked eye." See *Lopez,* 514 U.S., at 563, 115 S.Ct. 1624. And here, in part because common sense suggests that medical marijuana users may be limited in number and that California's Compassionate Use Act and similar state legislation may well isolate activities relating to medicinal marijuana****2227** from the illicit market, the effect of those activities on interstate drug traffic is not self-evidently substantial.

In this regard, again, this case is readily

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distinguishable from *Wickard.* To decide whether the Secretary could regulate local wheat farming, the Court looked to "the actual effects of the activity in question upon interstate commerce." 317 U.S., at 120, 63 S.Ct. 82. Critically, the Court was able to consider "actual effects" because the parties had "stipulated a summary of the economics of the wheat industry." *Id.,* at 125, 63 S.Ct. 82. After reviewing in detail the picture of the industry provided in that summary, the Court explained that consumption of homegrown wheat was the most variable factor in the size of the national wheat crop, and that on-site consumption could have the effect of varying the amount of wheat sent to market by as much as 20 percent. *Id.,* at 127, 63 S.Ct. 82. With real numbers at hand, the *Wickard* Court could easily conclude that "a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions " nationwide. *Id.,* at 128, 63 S.Ct. 82; see also *id.,* at 128-129, 63 S.Ct. 82 ("This record leaves us in no doubt" about substantial effects).

The Court recognizes that "the record in the *Wickard* case itself established the causal connection between the production***54** for local use and the national market" and argues that "we have before us findings by Congress *to the same effect.*" *Ante,* at 2208 (emphasis added). The Court refers to a series of declarations in the introduction to the CSA saying that (1) local distribution and possession of controlled substances causes " swelling" in interstate traffic; (2) local production and distribution cannot be distinguished from interstate production and distribution; (3) federal control over intrastate the incidents "is essential to effective control" over interstate drug trafficking. 21 U.S.C. §§ 801(1)-(6). These bare declarations cannot be compared to the record before the Court in *Wickard.*

They amount to nothing more than a legislative insistence that the regulation of controlled substances must be absolute. They are asserted without any supporting evidence-descriptive, statistical, or otherwise. "[S]imply because that Congress may conclude a particular activity substantially affects interstate commerce does not necessarily make it so." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 311, 101 S.Ct. 2352 (1981) (REHNQUIST, J., concurring in judgment). Indeed, if declarations like these suffice to justify federal regulation, and if the Court today is right about what passes rationality review before us, then our decision in *Morrison* should have come out the other way. In that case, Congress had supplied numerous findings regarding the impact gender-motivated violence had on the national economy. 529 U.S., at 614, 120 S.Ct. 1740; *id.,* at 628-636, 120 S.Ct. 1740 (SOUTER, J., dissenting) (chronicling findings). But, recognizing that " ' "[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question," ' " we found Congress' detailed findings inadequate. *Id.,* at 614, 120 S.Ct. 1740 (quoting *Lopez, supra,* at 557, n. 2, 115 S.Ct. 1624, in turn quoting *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 273, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964) (Black, J., concurring)). If, as the Court claims, today's decision does not ***55** break with precedent, how can it be that voluminous findings, documenting extensive hearings about the specific topic of violence against women, did not pass constitutional muster in *Morrison,* while the CSA's abstract, unsubstantiated,****2228** generalized findings about controlled substances do?

In particular, the CSA's introductory declarations are too vague and unspecific to demonstrate that the federal statutory scheme will be undermined if Congress cannot exert power over individuals like respondents. The declarations are not even specific to marijuana. (Facts about substantial effects may be developed in litigation to compensate for the inadequacy of Congress' findings; in part because this case comes to us from the grant of a preliminary injunction, there has been no such development.) Because here California, like other States, has carved out a limited class of activity for distinct regulation, the inadequacy of the CSA's findings is especially glaring. The California Compassionate Use Act exempts from other state drug laws patients and their caregivers "who posses[s] or cultivat[e] marijuana for the *personal*

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medical purposes of the patient upon the written or oral recommendation or approval of a physician" to treat a list of serious medical conditions. Cal. Health & Safety Code Ann. §§ 11362.5(d), 11362.7(h) (West Supp.2005) (emphasis added). Compare *ibid.* with, *e.g.,* § 11357(b) (West 1991) (criminalizing marijuana possession in excess of 28.5 grams); § 11358 (criminalizing marijuana cultivation). The Act specifies that it should not be construed to supersede legislation prohibiting persons from engaging in acts dangerous to others, or to condone the diversion of marijuana for nonmedical purposes. § 11362.5(b)(2) (West Supp.2005). To promote the Act's operation and to facilitate law enforcement, California recently enacted an identification card system for qualified patients. §§ 11362.7-11362.83. We generally assume States enforce their laws, see *Riley v. National Federation of Blind of N. C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), and have no reason to think otherwise here.

***56** The Government has not overcome empirical doubt that the number of Californians engaged in personal cultivation, possession, and use of medical marijuana, or the amount of marijuana they produce, is enough to threaten the federal regime. Nor has it shown that Compassionate Use Act marijuana users have been or are realistically likely to be responsible for the drug's seeping into the market in a significant way. The Government does cite one estimate that there were over 100,000 Compassionate Use Act users in California in 2004, Reply Brief for Petitioners 16, but does not explain, in terms of proportions, what their presence means for the national illicit drug market. See generally *Wirtz,* 392 U.S., at 196, n. 27, 88 S.Ct. 2017 (Congress cannot use "a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"); cf. General Accounting Office, Marijuana: Early Experience with Four States' Laws That Allow Use for Medical Purposes 21-23 (Rep. No. 03-189, Nov. 2002), http:// www.gao.gov/new.items/d03189.pdf (as visited June 3, 2005 and available in Clerk of Court's case file) (in four California counties before the identification card system was enacted, voluntarily registered medical marijuana patients were less than 0.5 percent of the population; in Alaska, Hawaii, and Oregon, statewide medical marijuana registrants represented less than 0.05 percent of the States' populations). It also provides anecdotal evidence about the CSA's enforcement. See Reply Brief for Petitioners 17-18. The Court also offers some arguments about the effect of the Compassionate Use Act on the national market. It says that the California statute might be vulnerable to exploitation by unscrupulous physicians, that Compassionate Use Act patients may overproduce, and that the history of the narcotics trade ****2229** shows the difficulty of cordoning off any drug use from the rest of the market. These arguments are plausible; if borne out in fact they could justify prosecuting Compassionate Use Act patients under the federal CSA. But, without substantiation, ***57** they add little to the CSA's conclusory statements about diversion, essentiality, and market effect. Piling assertion upon assertion does not, in my view, satisfy the substantiality test of *Lopez* and *Morrison.*

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

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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***58** 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 *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624 (1995), the Commerce Clause empowers Congress to regulate the buying and selling of goods and services trafficked across state lines. *Id.,* at 586-589, 115 S.Ct. 1624 (concurring opinion). The Clause's text, structure, and history all ****2230** indicate that, at the time of the founding, the term " 'commerce' consisted of selling, buying, and bartering, as well as transporting for these purposes." *Id.,* at 585, 115 S.Ct. 1624 (THOMAS, J., concurring). Commerce, or trade, stood in contrast to productive activities like manufacturing and agriculture. *Id.,* at 586-587, 115 S.Ct. 1624 (THOMAS, J., concurring). 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. *Ibid.* (THOMAS, ***59** J., concurring); Barnett, The Original Meaning of the Commerce Clause, 68 U. Chi. L.Rev. 101, 112-125 (2001). The term " commerce" commonly meant trade or exchange (and shipping for these purposes) not simply to those involved in the drafting and ratification processes, but also to the general public. Barnett, New Evidence of the Original Meaning of the Commerce Clause, 55 Ark. L.Rev. 847, 857-862 (2003).

Even the majority does not argue that respondents' conduct is itself "Commerce among the several States." Art. I, § 8, cl. 3. *Ante,* at 2209. 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), 21 U.S.C. § 801 *et seq.,* 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.

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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 ***60** 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. [FN1] Nor is it, however, a command to Congress to enact only laws that are absolutely indispensable to the exercise of an enumerated power. [FN2]

FN1. *McCulloch v. Maryland,* 4 Wheat. 316, 419-421, 4 L.Ed. 579 (1819); Madison, The Bank Bill, House of Representatives (Feb. 2, 1791), in 3 The Founders' Constitution 244 (P. Kurland & R. Lerner eds.1987) (requiring "direct" rather than "remote" means-end fit); Hamilton, Opinion on the Constitutionality of the Bank (Feb. 23, 1791), in *id.,* at 248, 250 (requiring "obvious" means-end fit, where the end was "clearly comprehended within any of the specified powers" of Congress).

FN2. *McCulloch, supra,* at 413-415; D. Currie, The Constitution in the Supreme Court: The First Hundred Years 1789-1888, p. 162 (1985).

In *McCulloch v. Maryland,* 4 Wheat. 316, 4 L.Ed. 579 (1819), this Court, speaking through Chief Justice Marshall, set forth a test for determining when an Act ****2231** of Congress is permissible under the Necessary and Proper Clause:
"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.,* at 421.

To act under the Necessary and Proper Clause, then, Congress must select a means that is " appropriate" and "plainly adapted" to executing an enumerated power; the means cannot be otherwise " prohibited" by the Constitution; and the means cannot be inconsistent with "the letter and spirit of the [C]onstitution." *Ibid.;* D. Currie, The Constitution in the Supreme Court: The First Hundred Years 1789-1888, pp. 163-164 (1985). The CSA, as applied to respondents' conduct, is not a valid exercise of Congress' power under the Necessary and Proper Clause.

1

Congress has exercised its power over interstate commerce to criminalize trafficking in marijuana across state ***61** 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. See 21 U.S.C. § 801(6). However, in order to be "necessary," the intrastate ban must be more than "a reasonable means [of] effectuat[ing] the regulation of interstate commerce." Brief for Petitioners 14; see *ante,* at 2209 (majority opinion) (employing rational-basis review). 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. *Sabri v. United States,* 541 U.S. 600, 613, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004) (THOMAS, J., concurring in judgment); see also *United States v. Dewitt,* 9 Wall. 41, 44, 19 L.Ed. 593 (1870) (finding ban on intrastate sale of lighting oils not "appropriate and plainly adapted means for carrying into execution" Congress' taxing power).

On its face, a ban on the intrastate cultivation,

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possession and distribution of marijuana may be plainly adapted to stopping the interstate flow of marijuana. Unregulated local growers and users could swell both the supply and the demand sides of the interstate marijuana market, making the market more difficult to regulate. *Ante,* at 2203, 2209 (majority opinion). But respondents do not challenge the CSA on its face. Instead, they challenge it as applied to their conduct. The question is thus whether the intrastate ban is " necessary and proper" as applied to medical marijuana users like respondents.[FN3]

FN3. Because respondents do not challenge on its face the CSA's ban on marijuana, 21 U.S.C. §§ 841(a)(1), 844(a), our adjudication of their as-applied challenge casts no doubt on this Court's practice in *United States v. Lopez,* 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), and *United States v. Morrison,* 529 U.S. 598, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). In those cases, we held that Congress, in enacting the statutes at issue, had exceeded its Article I powers.

Respondents are not regulable simply because they belong to a large class (local growers and users of marijuana) that ***62** Congress might need to reach, if they also belong to a distinct and separable subclass (local growers and users of state-authorized, medical marijuana) that does not undermine the CSA's interstate ban. *Ante,* at 2223 (O'CONNOR, J., dissenting). The Court of Appeals found that respondents' "limited use is distinct from the broader ****2232** illicit drug market, " because "th[eir] medicinal marijuana ... is not intended for, nor does it enter, the stream of commerce." *Raich v. Ashcroft,* 352 F.3d 1222, 1228 (C.A.9 2003). If that is generally true of individuals who grow and use marijuana for medical purposes under state law, then even assuming Congress has "obvious" and "plain" reasons why regulating intrastate cultivation and possession is necessary to regulating the interstate drug trade, none of those reasons applies to medical marijuana patients like Monson and Raich.

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, " Cal. Health & Safety Code Ann. § 11362.5(b)(1)(A) (West Supp.2005), and prohibits " the diversion of marijuana for nonmedical purposes, " § 11362.5(b)(2).[FN4] 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, § 11362.5(b)(1)(A), and that he obtain a physician's recommendation or approval, § 11362.5(d). Qualified patients must provide personal and medical information to obtain medical identification cards, and there is a statewide registry of cardholders. §§ 11362.715-76. Moreover, the Medical Board of California has issued guidelines for physicians' cannabis recommendations, and it sanctions physicians who do not comply with the guidelines. ***63** See, *e.g., People v. Spark,* 121 Cal.App.4th 259, 263, 16 Cal.Rptr.3d 840, 843 (2004).

FN4. Other States likewise prohibit diversion of marijuana for nonmedical purposes. See, *e.g.,* Colo. Const., Art. XVIII, § 14(2)(d); Nev.Rev.Stat. §§ 453A.300(1)(e)-(f) (2003); Ore.Rev.Stat. § § 475.316(1)(c)-(d) (2003).

This class of intrastate users is therefore distinguishable from others. We normally presume that States enforce their own laws, *Riley v. National Federation of Blind of N. C., Inc.,* 487 U.S. 781, 795, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), 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. General Accounting Office, Marijuana: Early Experiences with Four States' Laws That Allow Use for Medical Purposes 22-23 (Rep. No. 03-189, Nov. 2002), http:// www.gao.gov/new.items/d03189.pdf (all Internet materials as visited June 3, 2005, and

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available in Clerk of Court's case file). 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. *Id.,* at 32.

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." Brief for Petitioners 33. Enforcement of the CSA can continue as it did prior to the Compassionate Use Act. Only now, a qualified patient could avoid arrest or prosecution by presenting his identification card to law enforcement officers. In the event that a qualified patient is arrested for possession or his cannabis is seized, he could seek to prove as an affirmative defense that, in conformity with state law, he possessed or cultivated small quantities of marijuana intrastate solely for personal medical use. *People v. Mower,* 28 Cal.4th 457, 469-470, 122 Cal.Rptr.2d 326, 49 P.3d 1067, 1073-1075 (2002); ****2233***People v. Trippet,* 56 Cal.App.4th 1532, 1549, 66 Cal.Rptr.2d 559-560 (1997). 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 ***64**morphine and amphetamines-are available by prescription. 21 U.S.C. §§ 812(b)(2)(A)-(B); 21 CFR § 1308.12 (2004). 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. Executive Office of the President, Office of Nat. Drug Control Policy, Marijuana Fact Sheet 5 (Feb.2004), http:// www.whitehousedrugpolicy.gov/publica tions/factsht/marijuana/index.html. 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.

To be sure, Congress declared that state policy would disrupt federal law enforcement. It believed the across-the-board ban essential to policing interstate drug trafficking. 21 U.S.C. § 801(6). But as Justice O'CONNOR points out, Congress presented no evidence in support of its conclusions, which are not so much findings of fact as assertions of power. *Ante,* at 2227 (dissenting opinion). Congress cannot define the scope of its own power merely by declaring the necessity of its enactments.

In sum, neither in enacting the CSA nor in defending its application to respondents has the Government offered any obvious reason why banning medical marijuana use is necessary to stem the tide of interstate drug trafficking. Congress' goal of curtailing the interstate drug trade would not plainly be thwarted if it could not apply the CSA to patients like Monson and Raich. That is, unless Congress' aim is really to exercise police power of the sort reserved to the States in order to eliminate even the intrastate possession and use of marijuana.

2

Even assuming the CSA's ban on locally cultivated and consumed marijuana is "necessary," that does not mean it is ***65** 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. *McCulloch,* 4 Wheat., at 421.

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. 514 U.S., at 584, 600, 115 S.Ct. 1624 (concurring opinion). 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

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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 " appropriat[e] state police powers under the guise of regulating commerce." *United States v. Morrison,* 529 U.S. 598, 627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (THOMAS, J., concurring).

Even if Congress may regulate purely intrastate activity when essential to exercising**2234 some enumerated power, see *Dewitt,* 9 Wall., at 44; but see Barnett, The Original Meaning of the Necessary and Proper Clause, 6 U. Pa. J. Const. L. 183, 186 (2003) (detailing statements by Founders that the Necessary and Proper Clause was not intended to expand the scope of Congress' enumerated powers), Congress may not use its incidental authority to subvert basic principles of federalism and dual sovereignty. *Printz v. United States,* 521 U.S. 898, 923-924, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997); *Alden v. Maine,* 527 U.S. 706, 732-733, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999); *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528, 585, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985) (O'CONNOR, J., dissenting); The Federalist No. 33, pp. 204-205 (J. Cooke ed. 1961) (A.Hamilton) (hereinafter The Federalist).

***66** Here, Congress has encroached on States' traditional police powers to define the criminal law and to protect the health, safety, and welfare of their citizens.[FN5] *Brecht v. Abrahamson,* 507 U.S. 619, 635, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993); *Hillsborough County v. Automated Medical Laboratories, Inc.,* 471 U.S. 707, 719, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985). Further, the Government's rationale-that it may regulate the production or possession of any commodity for which there is an interstate market-threatens to remove the remaining vestiges of States' traditional police powers. See Brief for Petitioners 21-22; cf. Ehrlich, The Increasing Federalization of Crime, 32 Ariz. St. L.J. 825, 826, 841 (2000) (describing both the relative recency of a large percentage of federal crimes and the lack of a relationship between some of these crimes and interstate commerce). This would convert the Necessary and Proper Clause into precisely what Chief Justice Marshall did not envision, a "pretext ... for the accomplishment of objects not intrusted to the government." *McCulloch, supra,* at 423.

FN5. In fact, the Anti-Federalists objected that the Necessary and Proper Clause would allow Congress, *inter alia,* to " *constitute new Crimes,* ... and extend [its] Power as far as [it] shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights." Mason, Objections to the Constitution Formed by the Convention (1787), in 2 The Complete Anti-Federalist 11, 12-13 (H. Storing ed.1981) (emphasis added). Hamilton responded that these objections were gross "misrepresentation[s]." The Federalist No. 33, at 204. He termed the Clause "perfectly harmless," for it merely confirmed Congress' implied authority to enact laws in exercising its enumerated powers. *Id.,* at 205; see also *Lopez,* 514 U.S., at 597, n. 6, 115 S.Ct. 1624 (THOMAS, J., concurring) (discussing Congress' limited ability to establish nationwide criminal prohibitions); *Cohens v. Virginia,* 6 Wheat. 264, 426-428, 5 L.Ed. 257 (1821) (finding it "clear that [C]ongress cannot punish felonies generally," except in areas over which it possesses plenary power). According to Hamilton, the Clause was needed only "to guard against cavilling refinements" by those seeking to cripple federal power. The Federalist No. 33, at 205; *id.,* No. 44, at 303-304 (J. Madison).

***67** II

The majority advances three reasons why the CSA is a legitimate exercise of Congress' authority under the Commerce Clause: First, respondents' conduct, taken in the aggregate, may substantially affect interstate commerce, *ante,* at 2208; second, regulation of respondents' conduct is essential to

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regulating the interstate marijuana market, *ante,* at 2210; and, third, regulation of respondents' conduct is incidental to regulating the interstate marijuana market, *ante,* at 2209. Justice O'CONNOR explains why the majority's reasons cannot be reconciled with our recent Commerce Clause jurisprudence. The majority's****2235** justifications, however, suffer from even more fundamental flaws.

A

The majority holds that Congress may regulate intrastate cultivation and possession of medical marijuana under the Commerce Clause, because such conduct arguably has a substantial effect on interstate commerce. The majority's decision is further proof that the "substantial effects" test is a " rootless and malleable standard" at odds with the constitutional design. *Morrison, supra,* at 627, 120 S.Ct. 1740 (THOMAS, J., concurring).

The majority's treatment of the substantial effects test is rootless, because it is not tethered to either the Commerce Clause or the Necessary and Proper Clause. Under the Commerce Clause, Congress may regulate interstate commerce, not activities that substantially affect interstate commerce-any more than activities that do not fall within, but that affect, the subjects of its other Article I powers. *Lopez, 514 U.S.,* at 589, 115 S.Ct. 1624 (THOMAS, J., concurring). Whatever additional latitude the Necessary and Proper Clause affords, *supra,* at 2203, the question is whether Congress' legislation is essential to the regulation of interstate commerce itself-not whether the legislation extends only to economic ***68** activities that substantially affect interstate commerce. *Supra,* at 2231; *ante,* at 2217-2218 (SCALIA, J., concurring in judgment).

The majority's treatment of the substantial effects test is malleable, because the majority expands the relevant conduct. By defining the class at a high level of generality (as the intrastate manufacture and possession of marijuana), the majority overlooks that individuals authorized by state law to manufacture and possess medical marijuana exert no demonstrable effect on the interstate drug market. *Supra,* at 2232-2233. The majority ignores that whether a particular activity substantially affects interstate commerce-and thus comes within Congress' reach on the majority's approach-can turn on a number of objective factors, like state action or features of the regulated activity itself. *Ante,* at 2223 (O'CONNOR, J., dissenting). For instance, here, if California and other States are effectively regulating medical marijuana users, then these users have little effect on the interstate drug trade.[FN6]

FN6. Remarkably, the majority goes so far as to declare this question irrelevant. It asserts that the CSA is constitutional even if California's current controls are effective, because state action can neither expand nor contract Congress' powers. *Ante,* at 2213, n. 38. The majority's assertion is misleading. Regardless of state action, Congress has the power to regulate intrastate economic activities that substantially affect interstate commerce (on the majority's view) or activities that are necessary and proper to effectuating its commerce power (on my view). But on either approach, whether an intrastate activity falls within the scope of Congress' powers turns on factors that the majority is unwilling to confront. The majority apparently believes that even if States prevented any medical marijuana from entering the illicit drug market, and thus even if there were no need for the CSA to govern medical marijuana users, we should uphold the CSA under the *Commerce* Clause and the *Necessary* and Proper Clause. Finally, to invoke the Supremacy Clause, as the majority does, *ibid.,* is to beg the question. The CSA displaces California's Compassionate Use Act if the CSA is constitutional as applied to respondents' conduct, but that is the very question at issue.

The substantial effects test is easily manipulated for

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another reason. This Court has never held that Congress can ***69** regulate noneconomic activity that substantially affects interstate commerce. *Morrison,* 529 U.S., at 613, 120 S.Ct. 1740 (" [T]hus far in ****2236** our Nation's history our cases have upheld Commerce Clause regulation of intra state activity only where that activity is *economic* in nature" (emphasis added)); *Lopez, supra,* at 560, 115 S.Ct. 1624. To evade even that modest restriction on federal power, the majority defines economic activity in the broadest possible terms as the " 'the production, distribution, and consumption of commodities.' "[FN7] *ANTE,* AT 2211 (quoting webster's third new international Dictionary 720 (1966)) (hereinafter Webster's 3d). This carves out a vast swath of activities that are subject to federal regulation. See *ante,* at 2224 (O'CONNOR, J., dissenting). If the majority is to be taken seriously, the Federal Government may now regulate quilting bees, clothes drives, and potluck suppers throughout the 50 States. This makes a mockery of Madison's assurance to the people of New York that the " powers delegated" to the Federal Government are " few and defined," while those of the States are " numerous and indefinite." The Federalist No. 45, at 313 (J. Madison).

FN7. Other dictionaries do not define the term "economic" as broadly as the majority does. See, *e.g.,* The American Heritage Dictionary of the English Language 583 (3d ed.1992) (defining " economic" as "[o]f or relating to the production, development, and management of *material wealth,* as of a country, household, or business enterprise" (emphasis added)). The majority does not explain why it selects a remarkably expansive 40-year-old definition.

Moreover, even a Court interested more in the modern than the original understanding of the Constitution ought to resolve cases based on the meaning of words that are actually in the document. Congress is authorized to regulate "Commerce," and respondents' conduct does not qualify under any definition of that term.[FN8] The majority's opinion ***70** only illustrates the steady drift away from the text of the Commerce Clause. There is an inexorable expansion from " 'commerce,' " *ante,* at 2199, to " commercial" and "economic" activity, *ante,* at 2209, and finally to all " production, distribution, and consumption" of goods or services for which there is an "established ... interstate market," *ante,* at 2211. Federal power expands, but never contracts, with each new locution. The majority is not interpreting the Commerce Clause, but rewriting it.

FN8. See, *e.g., id.,* at 380 ("[t]he buying and selling of goods, especially on a large scale, as between cities or nations"); The Random House Dictionary of the English Language 411 (2d ed.1987) ("an interchange of goods or commodities, esp. on a large scale between different countries ... or between different parts of the same country"); Webster's 3d 456 (" the exchange or buying and selling of commodities esp. on a large scale and involving transportation from place to place ").

The majority's rewriting of the Commerce Clause seems to be rooted in the belief that, unless the Commerce Clause covers the entire web of human activity, Congress will be left powerless to regulate the national economy effectively. *Ante,* at 2206-2207; *Lopez,* 514 U.S., at 573-574, 115 S.Ct. 1624 (KENNEDY, J., concurring). The interconnectedness of economic activity is not a modern phenomenon unfamiliar to the Framers. *Id.,* at 590-593, 115 S.Ct. 1624 (THOMAS, J., concurring); Letter from J. Madison to S. Roane (Sept. 2, 1819), in 3 The Founders' Constitution 259-260 (P. Kurland & R. Lerner eds.1987). Moreover, the Framers understood what the majority does not appear to fully appreciate: There is a danger to concentrating too much, as well as too little, power in the Federal Government. This Court has carefully avoided stripping Congress of its ability to regulate *inter*state commerce, but it has casually allowed the Federal Government to strip States of their ability to regulate *intra*state

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commerce-not to mention a host of local activities, ****2237** like mere drug possession, that are not commercial.

One searches the Court's opinion in vain for any hint of what aspect of American life is reserved to the States. Yet this Court knows that " '[t]he Constitution created a Federal Government of limited powers.' " *New York v. United States,* 505 U.S. 144, 155, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992) (quoting ***71***Gregory v. Ashcroft,* 501 U.S. 452, 457, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991)). That is why today's decision will add no measure of stability to our Commerce Clause jurisprudence: This Court is willing neither to enforce limits on federal power, nor to declare the Tenth Amendment a dead letter. If stability is possible, it is only by discarding the stand-alone substantial effects test and revisiting our definition of " Commerce among the several States." Congress may regulate interstate commerce-not things that affect it, even when summed together, unless truly " necessary and proper" to regulating interstate commerce.

B

The majority also inconsistently contends that regulating respondents' conduct is both incidental and essential to a comprehensive legislative scheme. *Ante,* at 2208-2209, 2209-2210. I have already explained why the CSA's ban on local activity is not essential. *Supra,* at 2232. However, the majority further claims that, because the CSA covers a great deal of interstate commerce, it "is of no moment" if it also "ensnares some purely intrastate activity." *Ante,* at 2208. So long as Congress casts its net broadly over an interstate market, according to the majority, it is free to regulate interstate and intrastate activity alike. This cannot be justified under either the Commerce Clause or the Necessary and Proper Clause. If the activity is purely intrastate, then it may not be regulated under the Commerce Clause. And if the regulation of the intrastate activity is purely incidental, then it may not be regulated under the Necessary and Proper Clause.

Nevertheless, the majority terms this the "pivotal" distinction between the present case and *Lopez* and *Morrison. Ante,* at 2209. In *Lopez* and *Morrison,* the parties asserted facial challenges, claiming "that a particular statute or provision fell outside Congress' commerce power in its entirety." *Ante,* at 2209. Here, by contrast, respondents claim only that the CSA falls outside Congress' commerce power as applied ***72** to their individual conduct. According to the majority, while courts may set aside whole statutes or provisions, they may not " excise individual applications of a concededly valid statutory scheme." *Ante,* at 2209; see also *Perez v. United States,* 402 U.S. 146, 154, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971); *Maryland v. Wirtz,* 392 U.S. 183, 192-193, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968).

It is true that if respondents' conduct is part of a " class of activities ... and that class is within the reach of federal power," *Perez, supra,* at 154, 91 S.Ct. 1357 (emphases deleted), then respondents may not point to the *de minimis* effect of their own personal conduct on the interstate drug market, *Wirtz, supra,* at 196, n. 27, 88 S.Ct. 2017. *Ante,* at 2223 (O'CONNOR, J., dissenting). But that begs the question at issue: whether respondents' "class of activities" is "within the reach of federal power," which depends in turn on whether the class is defined at a low or a high level of generality. *Supra,* at 2231. If medical marijuana patients like Monson and Raich largely stand outside the interstate drug market, then courts must excise them from the CSA's coverage. Congress expressly provided that if "a provision [of the CSA] is held invalid in one of more of its *applications,* *****2238*** the provision shall remain in effect in all its valid applications that are severable." 21 U.S.C. § 901 (emphasis added); see also *United States v. Booker,* 543 U.S. 220, ----, 125 S.Ct. 738, 779, n. 9, 160 L.Ed.2d 621 (2005) (THOMAS, J., dissenting in part).

Even in the absence of an express severability provision, it is implausible that this Court could set aside entire portions of the United States Code as outside Congress' power in *Lopez* and *Morrison,* but it cannot engage in the more restrained practice of invalidating particular applications of the CSA that

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are beyond Congress' power. This Court has regularly entertained as-applied challenges under constitutional provisions, see *United States v. Raines,* 362 U.S. 17, 20-21, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960), including the Commerce Clause, see *Katzenbach v. McClung,* 379 U.S. 294, 295, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); ***73***Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 249, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964); *Wickard v. Filburn,* 317 U.S. 111, 113-114, 63 S.Ct. 82, 87 L.Ed. 122 (1942). There is no reason why, when Congress exceeds the scope of its commerce power, courts may not invalidate Congress' overreaching on a case-by-case basis. The CSA undoubtedly regulates a great deal of interstate commerce, but that is no license to regulate conduct that is neither interstate nor commercial, however minor or incidental.

If the majority is correct that *Lopez* and *Morrison* are distinct because they were facial challenges to " particular statute[s] or provision[s]," *ante,* at 2209, then congressional power turns on the manner in which Congress packages legislation. Under the majority's reasoning, Congress could not enact-either as a single-subject statute or as a separate provision in the CSA-a prohibition on the intrastate possession or cultivation of marijuana. Nor could it enact an intrastate ban simply to supplement existing drug regulations. However, that same prohibition is perfectly constitutional when integrated into a piece of legislation that reaches other regulable conduct. *Lopez,* 514 U.S., at 600-601, 115 S.Ct. 1624 (THOMAS, J., concurring).

Finally, the majority's view-that because *some* of the CSA's applications are constitutional, they must *all* be constitutional-undermines its reliance on the substantial effects test. The intrastate conduct swept within a general regulatory scheme may or may not have a substantial effect on the relevant interstate market. "[O]ne *always* can draw the circle broadly enough to cover an activity that, when taken in isolation, would not have substantial effects on commerce." *Id.,* at 600, 115 S.Ct. 1624 (THOMAS, J., concurring). The breadth of legislation that Congress enacts says nothing about whether the intrastate activity substantially affects interstate commerce, let alone whether it is necessary to the scheme. Because medical marijuana users in California and elsewhere are not placing substantial amounts of cannabis ***74** into the stream of interstate commerce, Congress may not regulate them under the substantial effects test, no matter how broadly it drafts the CSA.

* * *

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," *id.,* at 583, 115 S.Ct. 1624 (KENNEDY, J., concurring). 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 ****2239** Union." *United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 502, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001) (STEVENS, J., concurring in judgment). 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.

U.S.,2005.
Gonzales v. Raich
545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1, 73 USLW 4407, 05 Cal. Daily Op. Serv. 4725, 2005 Daily Journal D.A.R. 6530, 18 Fla. L. Weekly Fed. S 327

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Section 3.5 of Article III of the California Constitution

WEST'S ANNOTATED CALIFORNIA CODES
CONSTITUTION OF THE STATE OF CALIFORNIA 1879
ARTICLE III. STATE OF CALIFORNIA

→§ 3.5. Administrative agencies; prohibition against declaring statute unenforceable or unconstitutional; exceptions

Sec. 3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

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§48.8. Threats Communicated Against Schools.

(a) A communication by any person to a school principal, or a communication by a student attending the school to the student's teacher or to a school counselor or school nurse and any report of that communication to the school principal, stating that a specific student or other specified person has made a threat to commit violence or potential violence on the school grounds involving the use of a firearm or other deadly or dangerous weapon, is a communication on a matter of public concern and is subject to liability in defamation only upon a showing by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication. Where punitive damages are alleged, the provisions of Section 3294 shall also apply.

(b) As used in this section, "school" means a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive. **Leg.H.** 2001 ch. 570.

§48.9. Organizations Sponsoring Silent Witness Program Are Immune From Civil Suit.

(a) An organization which sponsors or conducts an anonymous witness program, and its employees and agents, shall not be liable in a civil action for damages resulting from its receipt of information regarding possible criminal activity or from dissemination of that information to a law enforcement agency.

(b) The immunity provided by this section shall apply to any civil action for damages, including, but not limited to, a defamation action or an action for damages resulting from retaliation against a person who provided information.

(c) The immunity provided by this section shall not apply in any of the following instances:

(1) The information was disseminated with actual knowledge that it was false.

(2) The name of the provider of the information was disseminated without that person's authorization and the dissemination was not required by law.

(3) The name of the provider of information was obtained and the provider was not informed by the organization that the disclosure of his or her name may be required by law.

(d) As used in this section, an "anonymous witness program" means a program whereby information relating to alleged criminal activity is received from persons, whose names are not released without their authorization unless required by law, and disseminated to law enforcement agencies. **Leg.H.** 1983 ch. 495.

§49. Abduction, Seduction, Injury to Servant.

The rights of personal relations forbid:

(a) The abduction or enticement of a child from a parent, or from a guardian entitled to its custody;

(b) The seduction of a person under the age of legal consent;

(c) Any injury to a servant which affects his ability to serve his master, other than seduction, abduction or criminal conversation. **Leg.H.** 1872, 1905 p. 68, 1939 chs. 128, 1103.

Ref.: Cal. Fms Pl. & Pr., Ch. 394, "Parent and Child"; W. Cal. Pro., "Appeal" §§972, 973; W. Cal. Sum., "Torts" §§143, 192, 723, 729, 755, "Agency and Employment" §162.

§50. Right to Repel Invasion of Rights by Force.

Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest. **Leg.H.** 1872, 1874 p. 184.

Ref.: Cal. Fms Pl. & Pr., Ch. 58, "Assault and Battery"; W. Cal. Sum., "Torts" §§417, 419, 1099, 1141; CACI No. 1304 (Matthew Bender); CALCRIM Nos. 2514, 3470, 3475, 3476 (Matthew Bender).

§51. Unruh Civil Rights Act.

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(3) "Religion" includes all aspects of religious belief, observance, and practice.

(4) "Sex" has the same meaning as defined in subdivision (p) of Section 12926 of the Government Code.

(5) "Sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

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(6) "Sexual orientation" has the same meaning as defined in subdivision (q) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section. **Leg.H.** 1905 p. 553, 1919 p. 309, 1923 ch. 235, 1959 ch. 1866, 1961 ch. 1187, 1974 ch. 1193, 1987 ch. 159, 1992 ch. 913, 1998 ch. 195, 2000 ch. 1049, 2005 ch. 420 (AB 1400) §3.

2005 Notes: This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

Ref.: Cal. Fms Pl. & Pr., Ch. 116, "Civil Rights: Discrimination in Business Establishments," Ch. 117, "Civil Rights: Housing Discrimination," Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence," Ch. 547, "Theatres, Shows, and Amusement Places"; W. Cal. Pro., "Pleading" §137; W. Cal. Sum., "Constitutional Law" §§389, 526, 897–899, 903, 904, 908, 910, 912, 914, 915, 941, 945, 957, "Insurance" §6, "Real Property" §§116, 683, "Equity" §121, "Torts" §1131; MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3020, VF-3010 (Matthew Bender).

§51.1. Actions Requiring Copy of Petition and Brief to Be Served on State Solicitor General.

If a violation of Section 51, 51.5, 51.7, 51.9, or 52.1 is alleged or the application or construction of any of these sections is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each party shall serve a copy of the party's brief or petition and brief, on the State Solicitor General at the Office of the Attorney General. No brief may be accepted for filing unless the proof of service shows service on the State Solicitor General. Any party failing to comply with this requirement shall be given a reasonable opportunity to cure the failure before the court imposes any sanction and, in that instance, the court shall allow the Attorney General reasonable additional time to file a brief in the matter. **Leg.H.** 2002 ch. 244 (AB 2524).

§51.2. Housing Discrimination Prohibited Based Upon Age; Application of Section—Housing Specifications to Meet Needs of Senior Citizens.

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 72 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws. **Leg.H.** 1984 ch. 787, 1989 ch. 501, 1993 ch. 830, effective October 6, 1993, 1996 ch. 1147, 1999 ch. 324, 2000 ch. 1004, 2002 ch. 726 (AB 2787).

§51.3. Establishing and Preserving Accessible Housing for Senior Citizens.

(a) The Legislature finds and declares that this section

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is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4.

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That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside. **Leg.H.** 1984 ch. 1333, 1985 ch. 1505, 1989 ch. 190, 1994 ch. 464, 1995 ch. 147, 1996 ch. 1147, 1999 ch. 324, 2000 ch. 1004 §3.

Ref.: Cal. Fms Pl. & Pr., Ch. 117, "Civil Rights: Housing Discrimination," Ch. 124, "Condominiums and Other Common Interest Developments," Ch. 184, "Deeds"; W. Cal. Sum., "Constitutional Law" §908, "Real Property" §116.

§51.4. Senior Housing Constructed Prior to 1982—Exemption From Design Requirements.

(a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 ([1] **P.L.** 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments [2] **that** were constructed before the decision in *Marina Point, Ltd. v. Wolfson* (1982) [3] **30 Cal.3d 721**. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development [4] **that** relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of [5] **Chapter 1004 of the Statutes of 2000**.

(c) This section shall not apply to the County of Riverside. **Leg.H.** 1989 ch. 501, 1991 ch. 59, effective June 14, 1991, 1996 ch. 1147, 2000 ch. 1004 §4, 2006 ch. 538 (SB 1852) §37.

§51.4. 2006 Deletes. [1] Public Law **[2]** which **[3]**, 30 Cal. 3d 72 **[4]** which **[5]** Senate Bill 1382 or Senate Bill 2011 at the 1999–2000 Regular Session of the Legislature

§51.5. Discrimination or Boycott in Business Transactions Prohibited—Parties Included.

(a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

(c) This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or

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any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws. **Leg.H.** 1976 ch. 366, 1987 ch. 159, 1992 ch. 913, 1994 ch. 1010, 1998 ch. 195, 1999 ch. 591, 2000 ch. 1049, 2005 ch. 420 (AB 1400) §4.

2005 Notes: This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

1999 Note: The amendments made by Chapter 591 to Section 51.5 of the Civil Code do not constitute a change in, but are declaratory of existing law. Stats 1999 ch. 591 §16.

Ref.: Cal. Fms Pl. & Pr., Ch. 116, "Civil Rights: Discrimination in Business Establishments," Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Pro. "Pleading" §137; MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3021, VF-3011 (Matthew Bender).

§51.6. Gender Tax Repeal Act of 1995.

(a) This section shall be known, and may be cited, as the Gender Tax Repeal Act of 1995.

(b) No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender.

(c) Nothing in subdivision (b) prohibits price differences based specifically upon the amount of time, difficulty, or cost of providing the services.

(d) Except as provided in subdivision (f), the remedies for a violation of this section are the remedies provided in subdivision (a) of Section 52. However, an action under this section is independent of any other remedy or procedure that may be available to an aggrieved party.

(e) This act does not alter or affect the provisions of the Health and Safety Code, the Insurance Code, or other laws that govern health care service plan or insurer underwriting or rating practices.

(f)(1) The following business establishments shall clearly and conspicuously disclose to the customer in writing the pricing for each standard service provided:

(A) Tailors or businesses providing aftermarket clothing alterations.

(B) Barbers or hair salons.

(C) Dry cleaners and laundries providing services to individuals.

(2) The price list shall be posted in an area conspicuous to customers. Posted price lists shall be in no less than 14-point boldface type and clearly and completely display pricing for every standard service offered by the business under paragraph (1).

(3) The business establishment shall provide the customer with a complete written price list upon request.

(4) The business establishment shall display in a conspicuous place at least one clearly visible sign, printed in no less than 24-point boldface type, which reads: "CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON'S GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST."

(5) A business establishment that fails to correct a violation of this subdivision within 30 days of receiving written notice of the violation is liable for a civil penalty of one thousand dollars ($1,000).

(6) For the purposes of this subdivision, "standard service" means the 15 most frequently requested services provided by the business. **Leg.H.** 1995 ch. 866, 2001 ch. 312.

Ref.: CACI Nos. 3022, VF-3012 (Matthew Bender).

§51.7. Freedom From Violence.

(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

(b) This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing. **Leg.H.** 1976 ch. 1293, 1984 ch. 1437, 1985 ch. 497, 1987 ch. 1277, 1994 ch. 407, 2005 ch. 420 (AB 1400) §5.

2005 Notes: This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

Ref.: Cal. Fms Pl. & Pr., Ch. 117A, "Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion or Violence"; W. Cal. Pro., "Pleading" §137; W. Cal. Sum., "Constitutional Law" §§895, 914, 915, 941, 945, 949, 950, "Torts" §303; CACI Nos. 3023, 3027, VF-3013 (Matthew Bender).

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§51.8. Discrimination in Granting of Franchises Prohibited.

(a) No franchisor shall discriminate in the granting of franchises solely on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the franchisee and the composition of a neighborhood or geographic area reflecting any characteristic listed or defined in subdivision (b) or (e) of Section 51 in which the franchise is located. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees as part of a program or programs to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

(b) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws. **Leg.H.** 1980 ch. 1303, 1987 ch. 159, 1992 ch. 913, 1998 ch. 195, 2005 ch. 420 (AB 1400) §6.

2005 Notes: This act shall be known and may be cited as "The Civil Rights Act of 2005." Stats. 2005 ch. 420 (AB 1400) §1.

The Legislature affirms that the bases of discrimination prohibited by the Unruh Civil Rights Act include, but are not limited to, marital status and sexual orientation, as defined herein. By specifically enumerating these bases in the Unruh Civil Rights Act, the Legislature intends to clarify the existing law, rather than to change the law, as well as the principle that the bases enumerated in the act are illustrative rather than restrictive. Stats. 2005 ch. 420 (AB 1400) §2(c).

It is the intent of the Legislature that the amendments made to the Unruh Civil Rights Act by this act do not affect the California Supreme Court's rulings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721 and *O'Connor v. Village Green Owners Association* (1983) 33 Cal.3d 790. Stats. 2005 ch. 420 (AB 1400) §2(d).

Ref.: Cal. Fms Pl. & Pr., Ch. 515, "Securities and Franchise Regulation."

§51.9. Sexual Harassment—Elements of Cause of Action.

(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:

(A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.

(B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.

(C) Executor, trustee, or administrator.

(D) Landlord or property manager.

(E) Teacher.

(F) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) There is an inability by the plaintiff to easily terminate the relationship.

(4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by subdivision (b) of Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies or rights provided under the law.

(d) The definition of sexual harassment and the standards for determining liability set forth in this section shall be limited to determining liability only with regard to a cause of action brought under this section. **Leg.H.** 1994 ch. 710, 1996 ch. 150, 1999 ch. 964.

Ref.: MB Prac. Guide: Landlord-Tenant, Ch. 2; CACI Nos. 3024, 3027, VF-3013, VF-3014 (Matthew Bender).

§51.10. Riverside County—Housing Discrimination Prohibited Based Upon Age.

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal. 3d 721, and *O'Connor v. Village Green Owners Association* (1983) 33 Cal. 3d 790.

(c) This section shall only apply to the County of Riverside. **Leg.H.** 1996 ch. 1147, 2004 ch. 183 (AB 3082).

§51.11. Riverside County—Establishing and Preserving Accessible Housing for Senior Citizens.

(a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

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