

No. 26-93

In the Supreme Court of the United States

JOHN REAM,

Petitioner,

v.

U.S. DEPARTMENT OF THE TREASURY, et al.,

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit*

**BRIEF OF THE CATO INSTITUTE AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. Whether the federal prohibition on home distilling exceeds Congress's enumerated powers.

2. Whether the Court should overrule *Raich* or at least clarify that Congress's commerce power does not extend to regulation of local, noncommercial conduct and that its exercise is subject to meaningful judicial scrutiny.

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INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies about legal issues, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs in constitutional law cases.

This case interests Cato because it concerns the limits on the federal government's power to regulate intrastate activity, a foundational feature of our constitutional structure.

¹ Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *Amicus* funded its preparation or submission. All parties were timely notified of the filing of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A former aerospace engineer and current homebrewer, Ohioan John Ream wants to home-distill spirits to enjoy with his wife.² He would gladly register a still and pay the relevant federal tax, but an 1868 federal law prohibits home distilling.³ Operating a still in your home—or on a parcel “connected with” it—is a federal felony.⁴ Mr. Ream sued the government, alleging that this ban violates the Constitution.⁵

The district court dismissed his complaint for lack of standing.⁶ Though the Sixth Circuit disagreed with this holding, it upheld the ban as a necessary and proper means of enforcing the federal tax on distilled spirits, thereby breaking with a Fifth Circuit decision issued just 11 days earlier.⁷ *See McNutt v. U.S. Dep’t of Justice*, 173 F.4th 204 (5th Cir. 2026), *reh’g en banc denied*, 2026 U.S. App. LEXIS 16688 (5th Cir. June 9, 2026).

This Court should grant Mr. Ream’s petition as to both questions presented and reverse the decision below.

² Pet. at 6–7.

³ *Id.* at 7; 26 U.S.C. § 5178(a)(1)(B).

⁴ § 5601(a)(6).

⁵ Pet. at 7.

⁶ Pet. App’x at 31 *et seq.*

⁷ *Id.* at 1 *et seq.*

Americans distilled spirits on their homesteads well before independence.⁸ Colonial Americans enjoyed drinking rum and grain whiskey, and by 1770, New England alone had over 150 distilleries.⁹ Prominent Founders like George Washington hosted successful distilleries on their homesteads.¹⁰ Yet today the federal government bans home distilling outright. *See* Revision of Distilled Spirits Plant Regulations, 76 Fed. Reg. 9080 (2011) (“While Federal law allows for the limited home production of wine and beer, no such provision exists for distilled spirits”).

Mr. Ream is right that this ban exceeds Congress’s constitutional powers. “The powers delegated by the . . . Constitution to the federal government are few and defined.” THE FEDERALIST No. 45 (Madison). Accordingly, Congress possesses only those powers enumerated in the Constitution. Yet over time, judicial expansion of the Commerce Clause and the Necessary

⁸ *See, e.g.*, WILLIAM HOGELAND, THE WHISKEY REBELLION: GEORGE WASHINGTON, ALEXANDER HAMILTON AND THE FRONTIER REBELS WHO CHALLENGED AMERICA’S NEWFOUND SOVEREIGNTY 66 (2006) (noting that in revolutionary America, “[d]istilling went on in home stillhouses, at community stills, and in large-scale commercial operations”); *cf. United States v. Hemani*, 225 L. Ed. 2d 314, 326 (2026) (detailing “a ‘culture of copious drinking’ in early America”) (citation omitted).

⁹ *See* Clay Risen, *Back in the Mix: New England Rum*, THE N.Y. TIMES (Oct. 30, 2012), <https://nyti.ms/4fojAmI>.

¹⁰ *See* Mount Vernon Ladies’ Ass’n, *George Washington’s Distillery*, GEORGE WASHINGTON’S MOUNT VERNON (accessed July 25, 2026), <https://bit.ly/4fywv3Z>.

and Proper Clause has transformed a limited power to regulate interstate trade into a sweeping license to regulate nearly all human activity—and even inactivity. *See, e.g., Boyle v. Bessent*, No. 2:24-cv-00081-SDN, 2025 WL 509519, at *36 (D. Me. Feb. 14, 2025) (holding that “the mere existence of a corporate entity [formed under state law]—even one engaging in no commercial transactions with no assets to its name”—constitutes “commerce” that Congress may regulate). The result is a national police power untethered from the Constitution’s original understanding and incompatible with the liberty-preserving structure it established.

The power to “regulate Commerce” conducted “among the . . . States” is among Congress’s “defined and limited” functions. U.S. CONST. art. I, § 8, cl. 3; *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803). The original public meaning of the Commerce Clause was that Congress could regulate the trade and transportation of goods and persons across state lines. It did not convey authority to control or prohibit purely *intrastate* activity such as home distilling.

Unfortunately, this Court has strayed from that original understanding. *See United States v. Lopez*, 514 U.S. 549, 584–602 (1995) (Thomas, J., concurring). In *Wickard v. Filburn*, the Court held that the Commerce Clause authorizes Congress to regulate even a farmer’s growing and consuming wheat entirely on his own farm. 317 U.S. 111, 118–29 (1942). The Court reasoned that Congress may regulate local

activities if, in the aggregate, they exert a substantial economic effect on interstate commerce. *Id.* at 124–29.

In *Gonzales v. Raich*, this Court extended *Wickard*’s reasoning further, upholding the Controlled Substances Act’s prohibition on the private, intrastate cultivation and use of marijuana. 545 U.S. 1, 19 (2005). The majority first concluded that the plaintiffs’ marijuana activities were “economic.” *Id.* It further held that courts need not determine whether regulated activities *actually* substantially affect interstate commerce in the aggregate, but only whether Congress had a “rational basis” for concluding that they do. *Id.* at 22, 25–26. *Raich* is the apex of congressional authority to regulate intrastate activity.

Wickard’s “substantial effects” test, coupled with *Raich*’s deferential rational basis standard, has drastically weakened the Commerce Clause’s limits. For more than a century after the Founding, Congress recognized that it lacked authority to regulate purely local activity under the Commerce Clause, notwithstanding aggregate effects on interstate markets. Yet this Court upheld novel New Deal legislation, concluding that Congress held vastly more power than it had ever been understood to.

It is time to restore the Constitution’s first principle of limited national power. This case presents an ideal vehicle. By extending federal criminal law to purely in-home, noncommercial activity, the decision below collapses the distinction between national and

state authority and erases structural limits that preserve federalism.

The Constitution does not require another century of overreach—it demands fidelity to its text and original design. This Court should grant the petition for a writ of certiorari, overrule *Raich*, and reaffirm that federal powers are both enumerated and limited.

ARGUMENT

I. THIS COURT SHOULD RESTORE THE ORIGINAL MEANING OF THE COMMERCE CLAUSE.

Properly understood, Article I, Section 8’s Commerce Clause provides that Congress can regulate only *interstate* trade. That Section’s Necessary and Proper Clause is supposed to be ancillary to provisions like this rather than a supplement to them. This Court should revive the original meaning of both Clauses.

A. The Original Meaning of the Commerce Clause Is Narrow.

1. *“Commerce” was originally understood as trade alone.*

The Commerce Clause lets Congress “regulate Commerce . . . among the several States.” U.S. CONST. art. I, § 8, cl. 3. “Whatever may be the conceptual limits upon the Commerce Clause . . . , they cannot be such as will enable the Federal Government to regulate all private conduct” *NFIB v. Sebelius*, 567 U.S. 519, 647 (2012) (Scalia, Kennedy, Thomas, & Alito, JJ., dissenting). At the time of ratification, “commerce”

referred only to trading items.¹¹ It was not an umbrella term that encompassed manufacturing and agriculture, even though these produced goods that could enter commerce. Contemporaneous dictionaries defined “commerce” as “selling, buying, and bartering, as well as transporting for these purposes.” *Lopez*, 514 U.S. at 585–86 (Thomas, J., concurring) (citing 1 SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE 361 (4th ed. 1773) (defining commerce as “Intercour[s]e; exchange of one thing for another; interchange of any thing; trade; traffick”); NATHAN BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (26th ed. 1789) (“trade or traffic”); T. SHERIDAN, A COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (6th ed. 1796) (“Exchange of one thing for another; trade, traffick”)). The Framers shared this understanding:

In Madison’s notes for the Constitutional Convention, the term “commerce” appears thirty-four times in the speeches of the delegates. Eight of these are unambiguous references to commerce with foreign nations which can only consist of trade. In every other instance, the terms “trade” or “exchange” could be substituted for the term “commerce” with the apparent meaning of the statement

¹¹ See Randy E. Barnett, *The Original Meaning of the Commerce Clause*, 68 U. Chi. L. Rev. 101, 112–25 (2001) [hereinafter Barnett, *Commerce*].

preserved. In no instance is the term “commerce” clearly used to refer to “any gainful activity” or anything broader than trade.¹²

In *The Federalist Papers*, the term “commerce” appears 63 times and never unambiguously refers to anything beyond trade and exchange.¹³ Even the staunch economic nationalist Alexander Hamilton distinguished commerce from the “supervision of agriculture and of other concerns of a similar nature,” which were “proper to be provided for by local legislation.” THE FEDERALIST No. 17 (Hamilton).

Several state ratification conventions reflect the same meaning of “commerce.” At the Massachusetts Convention, Thomas Dawes distinguished agriculture, commerce, and manufacturing from each other.¹⁴ During his discussion of “commerce,” he referred to “our own domestic traffic that passes from state to state.” *Id.* at 58. Similar examples can be found in the Connecticut, New York, Pennsylvania, and Virginia Conventions.¹⁵ “Trade” and “commerce” were often

¹² Barnett, *Commerce, supra*, at 114–15 (citations omitted).

¹³ *Id.* at 116.

¹⁴ See 2 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 57 (2d ed. 1863) [hereinafter DEBATES].

¹⁵ See Barnett, *Commerce, supra*, at 116–22; DEBATES, *supra*, at 188, 245, 261, 336; see also Randy E. Barnett, *New Evidence of the Original Meaning of the Commerce Clause*, 55 ARK. L. REV. 847 (2003) (surveying 1,594 uses of “commerce” in the *Pennsylvania Gazette* from 1728 to 1800).

used interchangeably. *Lopez*, 514 U.S. at 586 (Thomas, J., concurring). Discussing the Constitution, James Madison later wrote, “Trade and commerce are, in fact, used indiscriminately, both in books and in conversation.”¹⁶

Until the New Deal Era, this Court routinely rejected attempts to expand “commerce” to cover non-trade forms of gainful activity. Its decisions distinguished between commerce and productive activities like manufacturing and agriculture. *See, e.g., Kidd v. Pearson*, 128 U.S. 1, 20 (1888) (“No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce.”). In *United States v. E.C. Knight Co.*, Chief Justice Fuller wrote, “Commerce succeeds to manufacture, and is not a part of it The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce.” 156 U.S. 1, 12–13 (1895). As late as 1936, in *Carter v. Carter Coal Co.*, this Court ruled that Congress could not regulate the conditions under which coal was produced before it became an article of commerce. 298 U.S. 238, 298 (1936). Even in *Wickard*, the government argued that it was regulating “marketing” rather than production

¹⁶ Letter from James Madison to Professor Davis—not sent (1832), in 4 LETTERS AND OTHER WRITINGS OF JAMES MADISON 232, 233 (1865).

or consumption. 317 U.S. at 119. “Commerce” retained its original, narrow meaning.

2. *“Among the several States” originally meant “between people of different states.”*

Consistent with federalism, commerce confined entirely within one state was not originally understood to be “among the several States” and so within Congress’s reach.¹⁷ Rather, that phrase meant “between people of different states.”

St. George Tucker wrote: “The constitution of the United States does not authorize congress to regulate, or in any manner to interfere with, the domestic commerce of any state.”¹⁸ This understanding is consistent with the Commerce Clause’s purpose of promoting, not restricting, interstate trade. In THE FEDERALIST No. 42, Madison described the Clause as authorizing trade-enabling regulation and preventing protectionism. In THE FEDERALIST No. 11, Hamilton envisioned “an unrestrained intercourse between the States.”

As Chief Justice Marshall affirmed in *Gibbons v. Ogden*, the enumeration of certain classes of commerce that Congress may regulate “presupposes something

¹⁷ Barnett, *Commerce, supra*, at 135.

¹⁸ *Appendix, in* ST. GEORGE TUCKER, BLACKSTONE’S COMMENTARIES: WITH NOTES OF REFERENCE TO THE CONSTITUTION AND LAWS OF THE FEDERAL GOVERNMENT OF THE UNITED STATES AND OF THE COMMONWEALTH OF VIRGINIA 250 (1803) [hereinafter TUCKER, COMMENTARIES].

not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State.” 22 U.S. (9 Wheat.) 1, 195 (1824). This Court also acknowledged in 1869 that the Clause had “always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States.” *United States v. Dewitt*, 76 U.S. (9 Wall.) 41, 44 (1869) (invalidating a federal statute prohibiting the sale of certain oils).

This requirement of the Commerce Clause independently limits Congress’s powers. No matter how “commercial,” activity occurring wholly within a single state lies beyond the federal government’s reach. A factory or farm—or a homestead liquor still—is not engaged in commerce “between” the states unless its operations or goods cross state lines.

As originally understood, the Commerce Clause does not let Congress ban home distilling. Neither does the Necessary and Proper Clause.

B. The Necessary and Proper Clause Cannot Expand the Limited Commerce Power.

Following the Commerce Clause within Article I, Section 8, the Necessary and Proper Clause grants Congress the power “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.” U.S. CONST. art. I, § 8, cl. 18. This Court has misconstrued how this Clause relates to the

Commerce Clause in order to uphold sweeping federal laws concerning economic activity.¹⁹

Rightly understood, the Necessary and Proper Clause authorizes Congress to enact only those “incidental” laws “necessary” to execute its enumerated powers. *NFIB*, 567 U.S. at 559 (op. of Roberts, C.J.); *see also McNutt*, 173 F.4th at 216–21 (invalidating the home-distilling ban as exceeding the Necessary and Proper Clause vis-à-vis Congress’s taxation power); TUCKER, COMMENTARIES, *supra*, at 287–88 (writing that this meaning is what was ratified and necessary for a system of enumerated powers). Congress cannot “reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it.” *NFIB*, 567 U.S. at 560 (op. of Roberts, C.J.).

1. “Necessary” does not mean “convenient.”

Some Framers, like Rep. William Giles, defined “necessary” as exclusively “that means without which the end could not be produced.”²⁰ Even the more expansive readings of Hamilton²¹ and Chief Justice

¹⁹ See Stephen Gardbaum, *Rethinking Constitutional Federalism*, 74 TEX. L. REV. 795, 808 (1996).

²⁰ Randy Barnett, *The Original Meaning of the Necessary and Proper Clause*, 6 U. PA. J. CONST. L. 183, 195 (2003) [hereinafter Barnett, *Necessary and Proper*].

²¹ Alexander Hamilton, Final Version of an Opinion on the Constitutionality of an Act to Establish a Bank (Feb. 23, 1791), <https://bit.ly/49E5drU>.

Marshall²² required Congress's means to fit proper, enumerated ends. Defending his opinion in *McCulloch*, the latter wrote: "The court does not say that the word 'necessary' means whatever may be 'convenient' or 'useful.' And when it uses 'conducive to,' that word is associated with others plainly showing that no remote, no distant conduciveness to the object, is in the mind of the court." John Marshall, *A Friend to the Union No. 2*, in GERALD GUNTHER, JOHN MARSHALL'S DEFENSE OF *MCCULLOCH V. MARYLAND* 78, 100 (1969).

The earliest sources confirm a narrower meaning of the Clause than the one given to it by modern jurisprudence. In a speech to the House, then-Rep. James Madison stated that the Clause's "meaning must, according to the natural and obvious force of the terms and the context, be limited to means necessary to the end and incident to the nature of the specified powers."²³ "The essential characteristic of the government, as composed of limited and enumerated powers, would be destroyed: If instead of direct and incidental means, any means could be used."²⁴ As he wrote in THE FEDERALIST No. 44, the Clause conferred

²² *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819) ("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.").

²³ 1 ANNALS OF CONG. 1947–48 (Joseph Gales ed., 1791).

²⁴ *Id.*

nothing more than the “unavoidable implication” from the preceding enumeration of powers. He expressed the same sentiment at the Virginia Convention, stating that the Clause “only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause.”²⁵ On the same occasion, George Nicholas likewise explained that the Clause only enables Congress to execute its enumerated functions, supplying “no additional power.”²⁶ This point was reiterated at the North Carolina, Pennsylvania, and Delaware Conventions,²⁷ and noted by Tucker.²⁸

If “necessary” includes “convenient,” the Clause contradicts the system of enumerated powers as well as the Ninth and Tenth Amendments—not to mention the Framers’ specific rejection of a proposal to grant Congress general powers.²⁹ *See Bond v. United States*, 572 U.S. 844, 854 (2014) (“The States have broad authority to enact legislation for the public good—what we have often called a ‘police power.’ The Federal Government, by contrast, has no such authority”) (internal citation omitted); *United States v. Kebodeaux*, 570 U.S. 387, 402 (2013) (Roberts, C.J., concurring in the judgment) (“[A] federal police power

²⁵ DEBATES, *supra*, at 455.

²⁶ *Id.* at 246.

²⁷ *See Barnett, Necessary and Proper, supra*, at 186.

²⁸ TUCKER, COMMENTARIES, *supra*, at 288.

²⁹ Barnett, *Commerce, supra*, at 130.

. . . does not exist.”); *United States v. Morrison*, 529 U.S. 598, 617–19, 618 n.8 (2000); cf. *United States v. Comstock*, 560 U.S. 126, 161 (2010) (Thomas, J., dissenting) (noting Anti-Federalist “concern that the Necessary and Proper Clause would give Congress virtually unlimited power”). If “necessary” instead means that a law must be “incidental and closely connected to an enumerated power”³⁰—as the Framers in fact thought—then it accords with the rest of the Constitution.

2. “Proper” provides a jurisdictional test.

The accompanying term “proper” limits Congress’s power by reference to at least (1) the separation of powers, (2) federalism, and (3) “the background rights retained by the people.”³¹ It was originally understood as a crucial failsafe for these constitutional elements.³² Even if a law is “necessary,” it will still be “improper” and unconstitutional should it violate them. *See, e.g., NFIB*, 567 U.S. at 560 (op. of Roberts, C.J.); *Comstock*, 560 U.S. at 153 (Kennedy, J., concurring in the judgment) (considering “whether essential attributes of state sovereignty are compromised by the assertion of federal power under the Necessary and Proper Clause; if so, that is a factor suggesting that the power is not one properly within the reach of federal power”);

³⁰ Barnett, *Necessary and Proper*, *supra*, at 208.

³¹ *Id.* at 217; *see also* Gary Lawson & Patricia B. Granger, *The “Proper” Scope of Federal Power: A Jurisdictional Interpretation of the Sweeping Clause*, 43 DUKE L.J. 267, 297 (1993).

³² *See* Lawson & Granger, *supra*, at 297–308.

Gonzales, 545 U.S. at 65 (Thomas, J., dissenting) (“... Congress may not use its incidental authority to subvert basic principles of federalism and dual sovereignty.”). This is what Chief Justice Marshall meant in requiring Congress to choose means that “consist with the letter and spirit of the constitution.” *McCulloch*, 17 U.S. (4 Wheat.) at 421.

3. *Courts have a duty to check abuses of this Clause.*

The Court should resume holding Congress to its constitutional limits. “Congress cannot be the sole judge of whether it is acting within its powers [because that] . . . would give it license to pursue objects or ends that are beyond its powers.”³³ Falling under Article I, Section 8’s introductory term “shall,” the Necessary and Proper Clause is not discretionary.³⁴ Chief Justice Marshall explained in *McCulloch* that it was this Court’s “duty” to invalidate violations of it. 17 U.S. (4 Wheat.) at 423; *see also NFIB*, 567 U.S. at 538 (majority op.) (“[T]here can be no question that it is the responsibility of this Court to enforce the limits on federal power by striking down acts of Congress that transgress those limits.”).

The Clause was envisioned to “operate as a powerful and immediate check upon the proceedings of the federal legislature.” TUCKER, COMMENTARIES, *supra*, at 288. It must, then, be justiciable. At the

³³ Barnett, *Necessary and Proper*, *supra*, at 220.

³⁴ *See* Lawson & Granger, *supra*, at 277–85.

Virginia Convention, Nicholas commented that should some act fall beyond Congress’s enumerated powers, “the judiciary will declare it void.”³⁵ Courts should give the Necessary and Proper Clause effect by evaluating laws to ensure that (1) there is a means-ends fit; “(2) the means chosen do not prohibit the rightful exercise of freedom (or violate principles of federalism or separation of powers); and (3) Congress’s claim to be pursuing an enumerated end is not a pretext for pursuing other ends not delegated to it.”³⁶

Clarifying that federal laws failing this test—such as the home-distilling ban Mr. Ream challenges—are invalid would confirm that federal regulation of matters “traditionally reserved to the States” is “inconsistent . . . with both principles of state sovereignty and a federal government of limited and enumerated regulatory powers.” *Landor v. La. Dep’t of Corrs.*, 225 L. Ed. 2d 394, 412 (2026).

C. Current Doctrine Contradicts the Original Meaning of Both Clauses.

Until the late 1930s, this Court enforced these limits. *See Dewitt*, 76 U.S. (9 Wall.) at 44 (invalidating a federal ban on selling certain oils); *Trade-Mark Cases*, 100 U.S. 82, 95–98 (1879) (holding that Congress lacks authority to regulate trademarks not used in interstate or foreign commerce); *License Tax Cases*, 72 U.S. (5 Wall.) 462, 470–71 (1867) (stating

³⁵ DEBATES, *supra*, at 443.

³⁶ Barnett, *Necessary and Proper*, *supra*, at 221.

Congress has “no power” over the “internal commerce” of the states); *Carter*, 298 U.S. at 308 (holding that Congress lacks authority to regulate mining labor); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 543–50 (1935) (holding that Congress may not regulate intrastate poultry sales or labor).

Originally, true to the Constitution, Congress could not ban a product from intrastate commerce, whatever its aggregate effects on markets nationwide. However, modern jurisprudence has gone astray. Beginning with *Wickard* and culminating in *Raich*, this Court transformed the Commerce and Necessary and Proper Clauses into a basis for what the Founders rejected: a federal police power.

Wickard’s “substantial effects” test excises the commerce requirement from the Commerce Clause, letting Congress regulate purely intrastate activity—arguably, even intrastate *inactivity*³⁷—that it hypothesizes *might* nudge interstate markets. *Wickard*, 317 U.S. at 128–29. The test likewise erases the words “among the several States” and substitutes armchair economic forecasting for the Constitution’s jurisdictional line. Thus, *Wickard* itself upheld federal power over a farmer growing wheat on his own farm for consumption there. *Id.* at 127.

Wickard culminated six decades later in *Raich*, which determined over impassioned dissents that Congress could prohibit local cultivation and

³⁷ See *Boyle*, 2025 WL 509519, at *36.

possession of marijuana for medical use as permitted under California law. 545 U.S. at 19; *see also id.* at 57 (O'Connor, J., dissenting) ("This overreaching stifles an express choice by some States, concerned for the lives and liberties of their people, to regulate medical marijuana differently."); *id.* at 65 (Thomas, J., dissenting) ("If the Federal Government can regulate growing a half-dozen cannabis plants for personal consumption (not because it is interstate commerce, but because it is inextricably bound up with interstate commerce), then Congress' Article I powers—as expanded by the Necessary and Proper Clause—have no meaningful limits."). As Justice Thomas protested,

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."

Id. at 69 (Thomas, J., dissenting).

Modern precedent redefines "commerce" to mean all plausibly commercial activity (or inactivity) and "necessary and proper" to mean whatever Congress hypothesizes to be convenient. It has turned Article I, Section 8's carefully chosen limits into excuses ready at hand for whatever policing the federal government

wants to undertake. *See Printz v. United States*, 521 U.S. 898, 923 (1997) (describing the Necessary and Proper Clause as “the last, best hope of those who defend *ultra vires* congressional action”).

“[W]hen convinced of former error, this Court has never felt constrained to follow precedent.” *Smith v. Allwright*, 321 U.S. 649, 665 (1944). When dealing with matters of constitutional law, it “freely exercise[s] its power to reexamine” decisions, *id.*, and “places a high value on” correctness, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 264 (2022). This Court should begin to correct course with Mr. Ream’s case.

II. THIS CASE WARRANTS REVIEW.

This case squarely challenges the key distortions in Commerce Clause and Necessary and Proper Clause jurisprudence. Criminalizing home distillation of liquor for family enjoyment regulates not commerce, and not trafficking in contraband, but rather a household hobby. *Cf. Lopez*, 514 U.S. at 561 (majority op.) (invalidating “a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise”). The activity at issue here is not interstate. Banning it is neither necessary nor proper to regulating interstate commerce in untaxed alcohol.

Nor can a federal law that invades the states’ reserved police powers be “proper.” Congress’s ban prohibits a purely local activity within Ohio’s jurisdiction. *See id.* at 561 n.3; *Gonzales*, 545 U.S. at 66 (Thomas, J., dissenting) (“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. 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.”) (internal citations omitted). The Framers divided power between the national and state governments not merely to protect state prerogatives, but to preserve individual freedom. Madison wrote of federalism as providing “a double security . . . to the rights of the people.” THE FEDERALIST No. 51 (Madison). This Court, too, has recognized that federalism “reduce[s] the risk of tyranny and abuse,” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), and “secures the freedom of the individual,” *Bond v. United States*, 564 U.S. 211, 221 (2011). “In the tension between federal and state power lies the promise of liberty.” *Gregory*, 501 U.S. at 459. Allowing Congress to regulate purely local conduct is improper for a further reason: it violates federalism.

To be sure, the taxing power issues in this case merit review as well, yet it is not possible to award Mr. Ream relief and fully resolve this dispute without also addressing the Commerce Clause. Mr. Ream states that he will pay the federal tax on distilled spirits if allowed to have a home distillery.³⁸ The Sixth Circuit

³⁸ Pet. at 7.

accepted that allegation to be true—as it had to, because the case was decided on Respondents’ motion to dismiss.³⁹ Further, as the Fifth Circuit recently held, the ban on home distilling does not raise revenue; it is “an anti-revenue provision that prevents distilled spirits from coming into existence.” *McNutt*, 173 F.4th at 216. A measure “preventing activity lest it give rise to tax evasion” is not “an exercise of the taxation power.” *Id.* Perhaps recognizing this, Respondents filed a supplemental brief below arguing that the Commerce Clause sustains the ban.⁴⁰ Reviewing the taxing-power question alone could result in nothing more than a remand to the Sixth Circuit to consider the Commerce Clause argument that Respondents have already raised.

The original constitutional design reflected in the Commerce and Necessary and Proper Clauses lies dormant because the courts have refused to give it effect. Awarding Mr. Ream complete relief would entail reviving it.

CONCLUSION

“[T]here are structural limits upon federal power—upon what it can prescribe with respect to private conduct, and upon what it can impose upon the sovereign States.” *NFIB*, 567 U.S. at 647 (Scalia, Kennedy, Thomas, & Alito, JJ., dissenting). This Court should grant certiorari as to both questions presented,

³⁹ Pet. App’x at 6.

⁴⁰ Pet. App’x at 70 *et seq.*

overrule *Raich*, and restore the original meaning of the Commerce and Necessary and Proper Clauses.

Respectfully submitted,

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