The Supreme Court: Medical Marijuana Gonzales v. Raich

Introduction

The Supreme Court in the now famous medical marijuana case (*Gonzales v. Raich*) held on June 6, 2005, that the Controlled Substances Act (CSA), which is the general federal regulation scheme that controls the use and production of various drugs, may (by authority of the Constitution's Commerce Clause) be validly applied to the cultivation, distribution, and possession of marijuana for personal, medicinal use.

California permits the use of marijuana for medicinal purposes (through the California Compassionate Use Act); it can be prescribed by doctors and can be grown in limited quantities by those who are approved to use it. The two plaintiffs in this case, Angel Raich and Diane Monson, suffer from severe pain and other medical conditions that all agree can be substantially alleviated by the use of marijuana (and maybe *only* by marijuana).

California law is in direct conflict with the federal CSA statute, which makes the use, cultivation, and distribution of marijuana illegal. Congress is able to make laws affecting "interstate commerce" by way of the Commerce Clause of the U.S. Constitution. It says that ". . . Congress shall have Power ... To regulate Commerce ... among the several States ... ." This portion of the Constitution has always been understood as permitting Congress to makes laws that affect *interstate* commerce, and not just *intrastate* commerce. The issue in this case was that the marijuana that was being cultivated and used by the plaintiffs was merely an *intrastate* occurrence, having no effect on *interstate* commerce and thus it falls outside the authority delegated to Congress.

Crux of the Case

The Supreme Court disagreed. They began their opinion by noting that "case law firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." The "class of activities" in this case is the general production and use of drugs in the U.S. The local activity is the very limited use of marijuana within a state by a few people. The court noted that "[w]hen Congress decides that the " 'total incidence' " of a practice poses a threat to a national market, it may regulate the entire class." Congress did decided that the total incidence of a practice poses a threat to a national market when it passed the CSA and regulated all drugs that it deemed in need of regulation. Within that general class of drugs falls this local incident of marijuana use.

The court then turned to its previous opinion in *Wickard v. Filburn*, which held that, even though a farmer sought to produce wheat intended wholly for his own consumption, "Congress can regulate purely intrastate activity that is not itself 'commercial,' *i.e.*, not produced for sale, if it concludes that the failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity." The court drew on the similarities between this marijuana case and that wheat case because, "[i]n both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for the commodity." The Supreme Court made clear that it did not have to decide in fact whether the marijuana use of the plaintiffs in this case have a substantial effect on the national market for marijuana, but rather whether there is a "rational basis" for

concluding so. In discussing the “rational basis” for concluding this local grown marijuana used for medicinal purposes would have a substantial effect on the national market, the court noted the enforcement difficulties in distinguishing between marijuana cultivated legally and that which is cultivated illegally; additionally, the court mentioned concerns that the permissibly cultivated marijuana would be diverted into illicit channels (for example, doctors might find it lucrative to utilize their legal authority to prescribe marijuana as a means of making illegal profit; moreover, those to whom marijuana is approved for medicinal use might be tempted to divert their resources to the illegal drug market; also, as profitable the illegal marijuana market is, drug dealers would likely find a way to channel some of the legally grown marijuana into their illegal trade.)

In addition to all of this, the court clarified two previous Commerce Clause cases, *Lopez* and *Morrison*, which the court said was misunderstood and misapplied by the plaintiffs lawyers. In those cases, “a particular statute or provision fell outside Congress’ commerce power in its entirety.” But in this case, the plaintiffs deem the statute in question, the CSA, as being valid except for the part which prohibits marijuana use and production. This attempt to excise a portion of a valid statute has repeatedly been stated as a power which the court does not have. “Where the class of activities is regulated and that class is within the reach of federal power, the courts have no power ‘to excise, as trivial, individual instances’ of the class.”

Holding

So, the court held: “Congress’ Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana in compliance with California law.”

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