No. 11-398

IN THE

Supreme Court of the United States

UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES, *et al.*,
Petitioners,

v.

STATE OF FLORIDA, *et al.*,
Respondents.

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

BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS ON THE MINIMUM COVERAGE PROVISION ISSUE

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QUESTION PRESENTED

Does Congress have the power, under Article I of the United States Constitution, to compel citizens to buy health insurance?

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IDENTITY AND INTEREST OF *AMICUS CURIAE* [1]

The Rutherford Institute is an international non-profit organization headquartered in Charlottesville,

[1] This amicus brief is filed with the parties' consent. The parties filed their consents with the Clerk of Court in October 2011. No counsel for any party authored this brief in whole or in part, and no monetary contribution intended to fund the preparation or submission of this brief was made by such counsel or any party.

Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute specializes in providing legal representation without charge to individuals whose civil liberties are threatened or infringed and in educating the public about constitutional and human rights issues. The Rutherford Institute is interested in the instant case because this Court's decision on the breadth of Congress's authority under the Commerce Clause has implications not only as to the freedom of citizens to decide how to provide for their health care but more broadly on the federalism embodied in the United States Constitution that is meant to preserve liberty by preventing the concentration of power in the national government. The Rutherford Institute urges this Court to affirm the decision below on minimum coverage and prevent the arrogation of power represented by the Individual Mandate of the Patient Protection and Affordable Care Act.

SUMMARY OF THE ARGUMENT

The Individual Mandate is a wholly unprecedented exercise of unauthorized federal power in a field that has historically been a concern of the states. Congress has purported to act pursuant to its power to regulate interstate commerce, but that power has never been thought to reach persons who are not participating and do not wish to participate in the commerce that Congress is seeking to regulate. Heretofore, the power to compel individual action has been reserved to police or war powers. A law seeking to regulate interstate commerce in this fashion is not a "necessary and proper" exercise of the power given to Congress under Article I – either as those words were understood when they were written or at any time since.

ARGUMENT

The Patient Protection and Affordable Care Act (the "ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, requires that all United States citizens obtain and maintain health insurance or else pay a penalty (the "Individual Mandate"). 26 U.S.C. § 5000A. It is likely – although still uncertain – that most health insurance plans provided by or through an employer will be deemed to satisfy this mandate. The statute also includes certain exemptions, either from the mandate itself or from the penalty it imposes. As a result, most citizens who are below a certain income level will not be compelled to buy health insurance.

It follows that the citizens most affected by the Individual Mandate are those at whom it was aimed: people who at least arguably have the resources to buy health insurance but who have heretofore declined to do so. Congress concluded that these individuals – who have chosen, in effect, to "self-insure" their health in favor of spending their earnings in other ways – adversely affect the health insurance markets as a whole because their decision not to purchase insurance increases the costs of the product for everybody else.[2] As a matter of pure public policy, the choice that Congress has made is

[2] This is so because many of the "self-insured" are relatively young and relatively healthy and thus less likely to make claims on the health insurance policies Congress wants them to buy. From the point of view of an insurance company, the premiums paid by such insureds are particularly desirable because they help cover losses arising out of claims made by older and sicker insureds.

certainly defensible. It is a form of "cost-shifting" whereby some citizens are obliged to pay for services that they probably will not use so that others who are more likely to need those services will have them available to them. Congress engages in such "cost-shifting" all the time when it levies taxes.[3]

The Individual Mandate, however, is something entirely new. It is the first time that Congress has ever invoked its power "to regulate Commerce … among the several States" to compel citizens to participate in such commerce. This power to compel a purchase is not a power listed in Article I. To the contrary, the authorization to "regulate" interstate commerce presumes that those persons who are to be regulated are engaged in the interstate commerce that Congress wishes to regulate. By definition, the citizens who have elected *not* to buy health insurance are *not* engaged in the insurance markets that Congress wishes to regulate. If Congress can force them to participate in that sort of "commerce"– or more precisely, if it can impose a penalty on them if

[3] Ironically, Congress identified those who do not buy insurance as creating a "cost-shifting" problem of their own because they can end up using health resources if and when they get sick – at which point health providers may be obliged to treat them without sufficient compensation. No doubt that happens from time to time in particular cases. Nevertheless, the principal policy reason for imposing the Individual Mandate on younger, healthier people is to force them to pay premiums in excess of their likely aggregate claims, thereby providing to the insurance companies at least some of the funds needed to cover the cost of treating the other insureds. In other words, the Individual Mandate is itself designed to accomplish a shift in the cost of health care, by – as Petitioner puts it – "regulating how health care consumption is financed." Pet. Br. at 17. One's perception of the desirability of "cost-shifting" thus depends on one's policy preferences.

they do not – it is transforming its power to regulate commercial activity into a power to compel conduct it deems to be socially desirable. That is a kind of police power. It is not a power that the Constitution gave to Congress as a part of the Interstate Commerce Clause.

The brief of the State Respondents correctly and persuasively addresses the constitutional flaws in the Individual Mandate, and The Rutherford Institute concurs wholeheartedly in its compelling arguments. There are, however, three aspects of the Petitioner's argument that are predicated on fallacies that may not be fully addressed in the briefing thus far. The Rutherford Institute writes to draw the Court's attention to these three.

I. The Means of Financing Certain Health Care Choices is Not the Same as the Choice Itself.

The Petitioner argues that compelling an individual to purchase insurance prior to his decision to use health care is the same as regulating that individual at the point at which he is using health care. Indeed, it is a pervasive assumption in the Petitioner's brief that there is no legally significant difference between the purchase of health insurance and the purchase of health care services because the former is just a means of "financing" the latter. Thus, Petitioner contends that a citizen's likely future participation in the market for health care services justifies forcing him or her to enter now into the insurance market so that insurance will be available to pay for the services he

or she will inevitably use in the future. *E.g.*, Pet. Br. at 38; *id*. at 50 ("The minimum coverage provision regulates the way in which the uninsured finance *what they will consume in the market for health care services (in which they participate)*, requiring that they 'resort to the market' for insurance rather than attempt to 'meet (their) own needs' through attempted self-insurance" (emphasis added)).

But none of this makes any sense. Perhaps most obviously, the proposition that a citizen will inevitably need to enter into interstate commerce by purchasing some kind of health care services simply isn't true. Citizens can and do die suddenly without purchasing any health care services. And others rightly conclude that any health care services they may want to purchase in the short term will be far less expensive than the cost of "financing" a portion of those services by purchasing insurance. A decision to obtain some health-related service (e.g., having a tooth pulled) may or may not be a decision to engage in interstate commerce, but it is logically as well as temporally distinct from a decision not to purchase dental insurance – which is a decision to refrain from commerce, interstate or otherwise. Forcing someone to engage in one sort of interstate commerce (by buying insurance) on the ground that it is probable that he will someday engage in a different kind of interstate commerce (by consulting a physician) is to mix apples and oranges and, more importantly, to compel participation in commerce by some citizens who would prefer not to participate at all.[4]

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[4] There are constitutional powers, to be sure, that permit Congress to impose duties that transcend individual choice. Thus, for example, Congress's power "to compel military service and the duty of the citizen to render it when called for were

Which leads to another point. Even if a citizen does need to purchase some form of "health care," the decisions he or she makes about how to meet that need are not necessarily the same choices as those "financed" by Congressionally prescribed health insurance. Conspicuously absent from the ACA is any requirement that insurers cover all the health care providers and services available. Thus a citizen who thinks she wants or needs a midwife to deliver a child, or who wants to use acupuncture or herbs rather than prescriptions to relieve pain is not assured that she will be financing those choices by complying with the Individual Mandate. Telling citizens that they *must* subsidize some of the cost of certain services from whatever providers the insurance companies choose effectively prevents them from making other choices they might have made had they been left alone. The purchase of insurance does not deliver health care; health care providers deliver health care, and by coercing individuals to purchase insurance, the government is depriving them of the ability to make an informed decision among all available health care options. In other contexts, this Court has been very protective of "intimate and personal choices . . . central to personal dignity and autonomy" and very leery of any attempts to constrain such choices. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992). It should be here as well.

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derived from the authority given to Congress by the Constitution to declare war and to raise armies" – unrestricted by the militia clause. *Perpich v. Dep't of Def.*, 496 U.S. 334, 344 (1990). But it would be laughable to apply the "duty" rationale underlying a national need for all eligible persons to defend their country in time of war to a national need for all eligible persons to buy insurance.

For these reasons (among others) Petitioner's analogy to *Wickard v. Filburn*, 317 U.S. 111 (1942), and *Gonzales v. Raich*, 545 U.S. 1 (2005), fails. In both of those cases, the regulation of commerce that the Court upheld was designed to control the price of a given good. In this regard, the Petitioner notes that in *Raich* the Court upheld regulation of marijuana cultivation for personal use because it was "never more than an instant from the interstate market." Pet. Br. at 43. Likewise, the wheat at issue in *Wickard*, grown on a farm for use by that farm, could be regulated even though the farmer stated that he did not sell or intend to sell the wheat in interstate commerce. 317 U.S. at 119. Both the marijuana and the wheat contributed to the overall level of production of products Congress was regulating. But Congress did not try to tell Filburn that he had to use his farm to grow wheat. And that is a significant difference. Attaching consequences to a decision to grow wheat is different in kind from attaching consequences to a decision not to. And, while The Rutherford Institute is among those who question whether the Interstate Commerce Clause should have been construed to reach the conduct in *Wickard* and *Raich*, the idea that the Clause can now be relied on to compel participation by citizens in a market in which they would prefer not to participate is surely to leave the Clause without any limitations at all.

II. The Legislation at Issue Here is Not "Necessary and Proper" as Those Terms Were Understood by the Framers.

Congress's power under the Interstate Commerce Clause is fully understood and appreciated only by reference to its authority under the Necessary and Proper Clause. *See Raich*, 545 U.S. at 34-35 (Scalia,

J., concurring) (explaining that Congress's power to regulate activities that have a "substantial effect" on interstate commerce depends for its authority on the Necessary and Proper Clause); *see also Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co.*, 334 U.S. 219, 232 n.11 (1948) (suggesting that the substantial effect theory of the commerce power revived the Necessary and Proper Clause). In their article in the online Yale Law Journal (121 Yale L.J. Online 267, November 2011), *Bad News for Professor Koppelman: The Incidental Unconstitutionality of the Individual Mandate*, Gary Lawson and David Kopel explain the antecedents of the "Necessary and Proper" Clause and the use of those words to reflect the then well-recognized agency law ensuring that actions of an agent were undertaken "only within granted authority" from his principal. *Id*. at 272.

It was commonly understood in the eighteenth century that an agent had to have the powers he needed to carry out the authority expressly given to him. *Id*. at 272-73. A power was "necessary" to the exercise of the granted authority if it was incidental to or a necessary part of that power. *Id*. at 274. If, on the other hand, the power was an entirely different power – a power of equal "dignity" with the expressly authorized power – but was not itself expressly authorized, it could not be presumed to go with the authorized power as a matter of course. *Id*. at 279-80. "Necessity" thus described the "requisite attachment of the incidental power to its principal end." *Id*. at 275. "Propriety," on the other hand, described the regard for individual rights: "conformance with other fiduciary norms, such as the duty of impartiality, the duty of good faith, and the primary duty to stay within the scope of granted authority." *Id*. at 275, 287. In other words, an agent could be

deemed to have powers "necessary and proper" to do what he was authorized to do but he was not thereby authorized to exercise *other* powers that were not within (incidental to) the expressly granted power.

As Lawson and Kopel explain, the Individual Mandate here is neither "necessary" nor "proper" in the sense that those words were used when the Constitution was written. The power to compel an individual to purchase a product has never been deemed "incidental" to the power to regulate existing interstate commerce. To the contrary, if a power to compel a person to purchase existed, it would be instead "an extraordinary power of independent significance, or 'high[] dignity.'" *Id*. at 280. Similarly, there is no way to characterize what Congress has done here as a reasonable, impartial, or "measured and proportionate" exercise in "causal efficacy," taken with regard for that individual's rights. *Id*. at 287. As set forth above, the rights of the individual are not respected in these statutes. Moreover, given the fact that the mandate requires the purchase of insurance rather than health care, one might also conclude that the mandate has no "causal efficacy." After all, there are many instances in the law where the threshold question is whether the person complaining is directly aggrieved. *See, e.g*., *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199, 207 (1990) (consumers who purchased gas from utilities could not reach the suppliers that were alleged to be conspiring to fix prices). And, in fact, the statutory scheme here is even more attenuated, because here – by analogy – the consumer is being ordered to buy from the utility whatever the utility and producer together choose to supply.

In this regard, as Lawson and Kopel suggest, the Individual Mandate is not unlike the government-chartered monopolies with which the founders were well familiar and of which they strongly disapproved:

> Although the individual mandate is unprecedented, the Founders were familiar with a related, although less intrusive, commercial regulation: the government-chartered monopoly. When the government chartered a monopoly, it limited the market to one provider – although, unlike under the individual mandate, citizens remained free to choose not to purchase goods or services from the monopolist. Grants of monopolies were unpopular, since by erecting a system of commercial favoritism, they violated the government's fiduciary obligation to treat citizens impartially, and they were held to violate common law.

Lawson & Kopel, *supra*, at 290. Lawson and Kopel go on to argue that the men who drafted the Constitution would have been surprised to learn that the Necessary and Proper Clause could be misconstrued to authorize the very sort of conduct the Clause was intended to prohibit.

They observe that during the ratification debates there were many Anti-Federalists who warned that the new government would be able to create monopolies, but that – aside from "the textual, and obviously limited, examples of patents and copyrights," not one Federalist ascribed to Congress such power. *Id*. They quote a Federalist writer calling himself the "Impartial Citizen":

> In this case, the laws which Congress can make…must not only be *necessary*, but *proper* – So that if those powers cannot be executed without the aid of a law[ ] granting commercial monopolies … such a law would be manifestly *not proper*, it would not be warranted by this clause, without absolutely departing from the usual acceptation of words.

Id. at 290-91, *quoting An Impartial Citizen V*, PETERSBURG VA. GAZETTE, Feb. 28, 1788, *reprinted in* 8 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 428, 431 (John P. Kaminski & Gaspare J. Saladino eds., 1988) (emphasis and ellipsis in original). With all due respect, the argument that the Necessary and Proper Clause authorizes Congress to do what it has never done before and what the common law never permitted is to make the words "necessary" and "proper" mean the very opposite of what they meant in 1789 – and what they mean today.

III. Under the Factors Set Forth in this Court's Most Recent "Necessary and Proper" Decision, the Legislation is Unconstitutional.

This Court has treated the Necessary and Proper Clause as requiring that Congress's authority under the Commerce Clause be exercised by means that are reasonably adapted to the end permitted by the Constitution. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261-62 (1964). It has recognized that this connection is particularly important when – as here – Congress regulates activities that "substantially affect" interstate commerce. *See Raich*, 545 U.S. at 34-35 (Scalia, J., concurring). In fact, the

Court has never approved a regulatory scheme under Congress's commerce power when the scheme lacks a connection between the regulatory means and the end. *Cf. id*. at 25-27 (majority opinion) (finding regulation of home-cultivated marijuana essential to scheme to regulate controlled substances); *Wickard*, 317 U.S. at 127-29 (concluding farmer's personal use of wheat crop could affect control of market supply and demand); *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 120-21 (1942) (affirming regulation of intrastate milk because it could affect Congress's goal of regulating milk prices nationally).

The Court's most recent opinion addressing the Necessary and Proper Clause is *United States v. Comstock*, 560 U.S. __, 130 S. Ct. 1949 (2010). Three courts of appeals have addressed the constitutionality of the Individual Mandate.[5] But only one, the Court of Appeals for the Eleventh Circuit, in *Florida v. United States Department of Health & Human Services*, 648 F.3d 1235 (11th Cir. 2011) undertook a thorough analysis of the Interstate Commerce Clause in light of the necessary and proper aspects of the mandate.[6] Although it ultimately found the

[5] The two decisions of the Court of Appeals for the Fourth Circuit did not reach the constitutional questions at all.

[6] In *Thomas More Law Center v. Obama*, (S. Ct. Dkt. 11-117), the Court of Appeals for the Sixth Circuit produced three opinions, only one of which cited *Comstock* and none of which considered whether the Individual Mandate is "necessary." Instead, the opinions offered varying interpretations of the proper scope of Congress's commerce power, divorced from its necessary and proper moorings. *See generally* 651 F.3d 529, 542-49 (6th Cir. 2011); *id.* at 554-66 (Sutton, J., concurring); *id.* at 568-73 (Graham, Dist. J., concurring in part and dissenting in part). In *Seven-Sky v. Holder*, the majority and concurring opinions acknowledged the Necessary and Proper Clause, but

Individual Mandate unconstitutional but severable, *id*. at 1307, 1328, the Court of Appeals considered at length the implications of *Comstock*, and recognized that it established the proper framework on which to base its Commerce Clause analysis, *id.* at 1279-82. The Court considered the scope of the ACA, *id.* at 1293-95, the attenuated nature of the link between the regulated activity and interstate commerce, *id.* at 1300-02, and the fact that health care and health insurance are traditional areas of state concern, *id.* at 1304-06. And, after concluding that the Individual Mandate falls outside the scope of Congress's commerce power, *see id.* at 1307, the Court of Appeals also considered whether the provision was necessary and proper as an essential piece of a larger regulatory scheme, *id.* at 1307-11. "[T]he Necessary and Proper Clause enables Congress in some instances to reach intrastate activities that markedly burden or obstruct Congress's ability to regulate interstate commerce." *Id.* at 1310.

The Rutherford Institute agrees with the Court of Appeals' analysis in this regard, but it notes as well – consistent with the above discussion – that in the process of subordinating individual autonomy the statutory scheme runs roughshod over the rights of the states to exercise the police power when and to the extent necessary. Indeed, only a police power might justify such a preemption of personal autonomy as Congress has undertaken here.

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did not evaluate the Individual Mandate under necessary and proper principles. *See* 661 F.3d 1, 5, 14-20 (D.C. Cir. 2011); *id.* at 21 (Edwards, J., concurring).

To find a comparable mandatory statute, one would have to look to cases such as *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (concluding compulsory smallpox vaccination is within a state's general police power) or *Zucht v. King*, 260 U.S. 174, 175-77 (1922) (holding that a state could compel public students to be vaccinated pursuant to the state's general police power). "According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety." 197 U.S. at 25. But, as this Court said in considering whether plasma regulation was preempted: "the regulation of health and safety matters is primarily, and historically, a matter of local concern." *Hillsborough Cnty. v. Automated Med. Labs., Inc*., 471 U.S. 707, 719 (1985) (internal citations and quotations omitted). It follows from that statement that in fields "traditionally occupied by the States 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Id*. at 715. The Court has consistently denied that the federal government possesses a general police power, *see United States v. Morrison*, 529 U.S. 598, 618 (2000); *United States v. Lopez*, 514 U.S. 549, 567 (1995), and Congress has not asserted that it is exercising such a power here.

Indeed, it is difficult to infer anything about Congress's purposes regarding *health care* – the area that would be regulated pursuant to the police power – because the statute is facially directed to the regulation of *insurance*. The Individual Mandate does not require a person to be vaccinated or take

prescribed medication; it simply requires him or her to purchase insurance. Moreover, the ACA does not require insurance companies to cover all health care services or even to cover all of the cost of the services they insure. And even the Petitioner acknowledges that there is no intrinsic value in the insurance *qua* insurance. "No one purchases health insurance for its own sake; it exists only as a means of financing participation in the health care market." Pet. Br. at 41. In short, even if pressing health and safety concerns might be said to justify resort to the exercise of a police power (and even assuming such a federal police power exists), the Individual Mandate to purchase health *insurance* can hardly be said to fit that bill.

As a corollary, this Court has traditionally recognized that the Constitution permits *states* to make general health and welfare decisions for the public good, *see Zucht*, 260 U.S. at 175-76; *Jacobson*, 197 U.S. at 25-26; *Raich*, 545 U.S. at 42 (O'Connor, J., dissenting) ("The States' core police powers have always included authority . . . to protect the health, safety, and welfare of their citizens."). Indeed, both health and welfare and the business of insurance are traditionally matters of *state* concern. *See* 15 U.S.C. §§ 1011, 1012(a), (b); S. Rep. No. 79-20, at 2 (1945); H.R. Rep. No. 79-143, at 3 (1945); *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 39 (1996) (characterizing McCarran-Ferguson Act as Congress's effort to avoid inadvertently regulating insurance).

In this regard it is notable that Congress's action overrode the legislation of several states, some of which required some form of insurance and others of which did not. *Compare*, *e.g.*, Mass. Gen. Laws

ch. 111M, § 2 (requiring adults over age eighteen to "obtain and maintain creditable coverage"), *and* N.J. Stat. Ann. § 26:15-2 (requiring adults over age eighteen to obtain and maintain insurance providing hospital and medical benefits), *with* Utah Code Ann. § 63M-1-2505.5(4) (providing that individuals in Utah may not be required to obtain or maintain health insurance), *and* Va. Code Ann. § 38.2-3430.1:1 (excusing residents from obtaining or maintaining health insurance coverage). Sensitivity to federal-state relations cautions against the Petitioner's rationale that it can require of the citizens of *all* states what the citizens of *some* states have chosen. *See* Pet. Br. at 36-37 ("Congress therefore acted well within its constitutional authority by adopting a means of regulation parallel to insurance measures enacted by the states to address comparable risk-shifting").

Placed in the context of the *Comstock* factors, then, the statutory scheme here cannot be said to represent a "modest addition" to pre-existing federal statutes, nor a reasonable extension of those statutes by Congress. *See Comstock*, 130 S. Ct. at 1958, 1959-61. And the ACA fails adequately to accommodate states' interests. *Id.* at 1962. In *Comstock*, the detention statute was related to pre-existing statutes and reflected a modest extension because of the federal government's interest in protecting the community at large from mentally ill, sexually dangerous prisoners. *Id*. at 1959-62. That is not the case here. It is certainly true that Congress has heretofore enacted laws to protect patients, to ensure the availability of health care, and to facilitate state provision of health care. *See*, *e.g.*, Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, 110 Stat. 1936; Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No.

99-272, 100 Stat. 82 (including requirement that hospitals treat any patient with an "emergency medical condition"); Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. No. 93-406, 88 Stat. 829; Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286. But this legislation cannot be characterized as an "extension" of those laws. By determining to regulate insurance and to compel the purchase of insurance without regard to state law, Congress has divorced itself from what might in the face of a different sort of legislation have been statutory precedents.

This Court explored an analogous concern in *Lopez* in the context of federal statutes that criminalized conduct already denounced by the states, observing that the intrusion "effects a change in the sensitive relation between federal and state criminal jurisdiction." *See Lopez*, 514 U.S. at 561 n.3 (internal quotations and citations omitted). In short, Congress has intruded on individuals' rights to make private decisions about their own health and in the process has disrupted the federal-state balance. *See Comstock*, 130 S. Ct. at 1962.

CONCLUSION

It is probably true that this Court has given both the Interstate Commerce Clause and the Necessary and Proper Clause a more expansive reading and a more extensive reach than the authors of those clauses anticipated when they wrote them down. And perhaps that has been a good result. But those clauses were intended to give Congress specific powers; they were not intended to give it the power to do anything and everything. Petitioner's argument here is for a power that is not and can not be limited. A faithful reading of the Constitution requires that such overreaching be rejected.

Respectfully submitted,

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