

CONSTITUTIONAL LAW

CASES AND MATERIALS

TWELFTH EDITION

WILLIAM COHEN

JONATHAN D. VARAT

VIKRAM AMAR

2006 SUPPLEMENT

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TWELFTH EDITION

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PREFACE

After eleven years without change in the membership of the Supreme Court, two new appointments occurred during the October Term, 2005. Following the retirement of Justice Sandra Day O'Connor and the death of Chief Justice William H. Rehnquist, President George W. Bush, by and with the advice and consent of the Senate, appointed John G. Roberts, Jr. of Maryland as Chief Justice on September 29, 2005, and Samuel A. Alito, of New Jersey as Associate Justice on January 31, 2006.

*

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3. TAXPAYER AND CITIZEN STANDING

Page 76. Add at end of Note, "Taxpayer Standing":

In *DaimlerChrysler Corp. v. Cuno*, ___ U.S. ___, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006), state taxpayers brought suit (ultimately removed to federal court) challenging Ohio's grant of property tax exemptions and franchise tax credits to DaimlerChrysler Corp., on the ground that such tax breaks violated

the Commerce Clause. The Court ruled that although “*Flast* held out the possibility that ‘other specific [constitutional] limitations’ ” besides the Establishment Clause (invoked in *Flast*) might support taxpayer standing in federal court, alleged violations of the so-called Dormant Commerce Clause doctrine do not bring a case within the *Flast* exception to the general prohibition on taxpayer standing.

PART II

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545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005).

Justice Stevens delivered the opinion of the Court.

California is one of at least nine States that authorize the use of marijuana for medicinal purposes. The question presented in this case is whether the

power vested in Congress by Article I, § 8, of the Constitution “[t]o make all Laws which shall be necessary and proper for carrying into Execution” its authority to “regulate Commerce with foreign Nations, and among the several States” includes the power to prohibit the local cultivation and use of marijuana in compliance with California law.

I

... In 1996, California voters passed Proposition 215, now codified as the Compassionate Use Act of 1996. The proposition was designed to ensure that “seriously ill” residents of the State have access to marijuana for medical purposes, and to encourage Federal and State Governments to take steps towards ensuring the safe and affordable distribution of the drug to patients in need. The Act creates an exemption from criminal prosecution for physicians, as well as for patients and primary caregivers who possess or cultivate marijuana for medicinal purposes with the recommendation or approval of a physician....

Respondents Angel Raich and Diane Monson are ... being treated by licensed, board-certified family practitioners, who have concluded, after prescribing a host of conventional medicines to treat respondents’ conditions and to alleviate their associated symptoms, that marijuana is the only drug available that provides effective treatment. Both women have been using marijuana as a medication for several years pursuant to their doctors’ recommendation, and both rely heavily on cannabis to function on a daily basis....

Respondent Monson cultivates her own marijuana, and ingests the drug in a variety of ways including smoking and using a vaporizer. Respondent Raich, by contrast, is unable to cultivate her own, and thus relies on two caregivers....

On August 15, 2002, county deputy sheriffs and agents from the federal Drug Enforcement Administration (DEA) came to Monson’s home. After a thorough investigation, the county officials concluded that her use of marijuana was entirely lawful as a matter of California law. Nevertheless, after a 3-hour standoff, the federal agents seized and destroyed all six of her cannabis plants.

Respondents thereafter brought this action against the Attorney General of the United States and the head of the DEA seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act (CSA) [21 U.S.C. § 801 *et seq.*] ... to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use.... Respondents claimed [among other things] that enforcing the CSA against them would violate the Commerce Clause....

...

[The Ninth Circuit reversed the district court’s denial of respondents’ motion for a preliminary injunction.] The Court of Appeals distinguished prior Circuit cases upholding the CSA in the face of Commerce Clause challenges by focusing on what it deemed to be the “*separate and distinct class of activities*”

at issue in this case: “the intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes as recommended by a patient’s physician pursuant to valid California state law.” ...

The obvious importance of the case prompted our grant of certiorari.... Well-settled law controls our ... [resolution of this case]. The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case. We accordingly vacate the judgment of the Court of Appeals.

II

... [A]s early as 1906 Congress enacted federal legislation imposing labeling regulations on medications and prohibiting the manufacture or shipment of any adulterated or misbranded drug traveling in interstate commerce....

Marijuana itself was not significantly regulated by the Federal Government until 1937 when accounts of marijuana’s addictive qualities and physiological effects, paired with dissatisfaction with enforcement efforts at state and local levels, prompted Congress to pass the Marihuana Tax Act ... [which] did not outlaw the possession or sale of marijuana outright. Rather, it imposed registration and reporting requirements for all individuals importing, producing, selling, or dealing in marijuana, and required the payment of annual taxes in addition to transfer taxes whenever the drug changed hands....

... [I]n 1970, after declaration of the national “war on drugs,” federal drug policy underwent a significant transformation.... [Ultimately, that year] ..., prompted by a perceived need to consolidate the growing number of piecemeal drug laws and to enhance federal drug enforcement powers, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act.

Title II of that Act, the CSA, repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs. The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.²⁰ Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.

20. In particular, Congress made the following findings:

“(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

“(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

“(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

“(A) after manufacture, many controlled substances are transported in interstate commerce,

“(B) controlled substances distributed locally usually have been transported in