

## **Libertarian Group Urges Supreme Court to Hear Cannabis Case**

### **Libertarian Think Tank Urges Supreme Court to Consider Marijuana Case, Claiming Federal Prohibition Undermines States' Rights and Core Constitutional Principles**

A leading libertarian think tank is urging the U.S. Supreme Court to take up a case challenging the constitutionality of federal marijuana prohibition, arguing that the enforcement of federal law against state-licensed cannabis programs erodes a “foundational feature of our constitutional structure.”

The Cato Institute filed an amicus brief with the Supreme Court on Tuesday in support of Massachusetts-based cannabis companies seeking a ruling to protect intrastate marijuana activity from federal intervention. The brief contends that the Controlled Substances Act (CSA), which designates marijuana as a Schedule I drug, exemplifies federal overreach, displacing states as primary policymakers under modern Commerce Clause precedents.

### **Cato Institute Argues Federal Marijuana Prohibition Exceeds Constitutional Limits by Targeting State-Regulated Programs**

“Before 1970, states regulated and then criminalized marijuana use as an exercise of their police power,” the brief states. “But that year, Congress enacted the CSA to ban all marijuana commerce—interstate and intrastate alike.” The institute argues that federal enforcement against state-licensed marijuana programs collapses the distinction between national and state authority, violating structural limits designed to preserve federalism.

The amicus filing coincides with the Supreme Court’s scheduling of a closed-door meeting next month to consider whether to hear *Canna Provisions v. Bondi*. The case, filed by four Massachusetts-based marijuana companies, seeks clarification on whether Congress can extend federal criminal law to purely intrastate cannabis activity.

### **Case Could Determine Whether Congress Can Criminalize Intrastate Marijuana Activity Under Commerce Clause Authority**

According to Cato, the CSA’s prohibition of marijuana cultivation and possession within state borders regulates “agriculture, manufacturing, and consumption—matters reserved to the states.” The institute asserts that allowing Congress to regulate local activity under the theory of aggregated economic effects converts the Commerce Clause into a general police power, which the Constitution explicitly withholds from the federal government.

“This case presents an ideal vehicle for restoring the Constitution’s first principle of limited national power,” the brief continues. “Extending federal criminal law to purely intrastate, state-licensed marijuana activity erases structural limits that preserve federalism and allows Congress to regulate nearly all aspects of our lives.”

## **High-Profile Legal Team Seeks Certiorari From Supreme Court as Federal Government Declines to Intervene**

Boies Schiller Flexner LLP, representing the petitioning companies, submitted their petition for a writ of certiorari last month. The Department of Justice declined to file a brief either supporting or opposing the Supreme Court’s consideration. Lead attorney Josh Schiller expressed cautious optimism, emphasizing the need for clarity amid shifting public opinion and evolving state marijuana laws.

“Time is of the essence,” Schiller said. “The industry needs relief from federal oversight, and this case presents the right opportunity.”

## **Additional Libertarian Advocacy and Historical Context Add Momentum to Appeal**

The Koch-founded Americans for Prosperity Foundation also filed an amicus brief encouraging the Supreme Court to hear the case, signaling growing libertarian support for challenging federal overreach in cannabis policy.

The case’s legal trajectory reflects a series of setbacks for state-legal marijuana companies. In May, a U.S. appeals court rejected the arguments of the Massachusetts companies, following a lower court’s dismissal. Nevertheless, the plaintiffs have long anticipated an appeal to the Supreme Court, which requires the agreement of four justices to accept a petition for certiorari.

Justice Clarence Thomas has previously indicated interest in revisiting cannabis precedent. In 2021, he suggested reconsidering *Gonzales v. Raich*—the 2005 case in which the Supreme Court allowed federal enforcement against cannabis cultivation confined entirely within California—providing a potential opening for the current challenge.

## **Oral Arguments Highlight Federal Limits and States’ Autonomy Over Marijuana Regulation**

During oral arguments on appeal last year, David Boies argued that under the Constitution, Congress can regulate in-state commercial activity related to marijuana only if failing to do so would substantially interfere with legitimate federal regulation of interstate commerce.

Boies, chairman of Boies Schiller Flexner LLP, is a high-profile attorney with experience representing the Justice Department, former Vice President Al Gore, and plaintiffs in landmark cases, including those challenging bans on same-sex marriage.

Judges on appeal, however, ruled that the CSA remains fully intact regarding non-medical marijuana, noting that past Supreme Court precedent in *Raich* constrains their ability to alter federal enforcement. The lower court recognized “persuasive reasons for a reexamination” of cannabis scheduling but acknowledged it was bound by precedent.

# Broader Legal and Policy Context Highlights Intersection of Cannabis, Federal Authority, and Public Opinion

The case unfolds against the backdrop of potential cannabis rescheduling by the Trump administration, which announced intentions in August to consider moving marijuana to Schedule III under the CSA but has not acted. Additionally, the Supreme Court recently agreed to hear a separate case addressing federal restrictions on firearm possession by marijuana users, highlighting ongoing judicial engagement with cannabis-related constitutional questions.

With public opinion shifting and 38 states now allowing some form of legal cannabis sales, the decision in *Canna Provisions v. Bondi* could have sweeping implications for the industry. A ruling in favor of the petitioners would reinforce state autonomy, limit federal overreach, and potentially reshape the balance of federalism in other policy areas where states exercise regulatory authority.

## Supreme Court Consideration Could Reshape Federalism and Cannabis Policy Nationwide

If the Supreme Court accepts the case and rules in favor of the Massachusetts companies, it could reaffirm that Congress cannot criminalize activity that is legal within state borders and confined to intrastate commerce. The outcome would provide legal certainty for state-licensed cannabis businesses, clarify limits on federal authority, and potentially catalyze broader reforms in federal cannabis policy.

As the Supreme Court weighs whether to hear the challenge, libertarian think tanks, industry stakeholders, and constitutional scholars are watching closely. Their combined advocacy underscores a growing consensus that the intersection of cannabis legalization, states' rights, and federal authority remains a critical issue for the nation's legal and regulatory landscape.

For more information contact at [info@cannabisriskmanager.com](mailto:info@cannabisriskmanager.com)

Email: [info@cannabisriskmanager.com](mailto:info@cannabisriskmanager.com) | Phone: +415-226-4060

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