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The Court and Marijuana – In 2005 America

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We read the Supreme Court's decision on the medicinal use of marijuana with mixed emotions. We certainly wish that the Justice Department could be weaned from the gross misuse of the federal Controlled Substances Act that led to its campaign against the use of marijuana by terminally ill people in the 11 states where it is legal for doctors to prescribe it. But we take very seriously the court's concern about protecting the Commerce Clause, the vital constitutional principle that has allowed the federal government to thwart evils like child labor and segregation.

The dissenters in the 6-to-3 decision, Justices Sandra Day O'Connor and Clarence Thomas and Chief Justice William Rehnquist, opened the door for conservatives who want to sharply reduce Congress's use of its power to regulate and protect interstate commerce. These conservatives want to turn the clock back to before the New Deal, when workers were exploited, factories polluted at will and the elderly faced insecure retirements.

The law the Bush administration used in attempting to crack down on medical marijuana in states where it is legal was intended to stop interstate trafficking in dangerous drugs. Most Americans would agree that using small amounts of marijuana in private under a doctor's supervision has nothing to do with narcotics trafficking. To stop the Justice Department from pursuing this ideological obsession, Congress should amend the law to specifically exempt prescribed marijuana. It should not be a partisan issue; both red and blue states have laws allowing the medicinal use of marijuana.

We hope good sense prevails. And we hope that Justice Antonin Scalia, who seems to be campaigning for chief justice, remembers that he concurred with the majority this week the next time the court hears a federal-powers case on, say, air pollution.