CONSTITUTIONAL LAW — COMMERCE CLAUSE — FIRST CIRCUIT UPHOLDS APPLICATION OF RICO TO CRIMINAL GANG NOT ENGAGED IN ECONOMIC ACTIVITY. — *United States v. Nascimento*, 491 F.3d 25 (1st Cir. 2007).

Beginning with *United States v. Lopez*,[1] the Rehnquist Court's "new federalism"[2] put modest limits on the reach of federal criminal law under the Commerce Clause.[3] The Court's decisions nevertheless left untouched one key element of the post–New Deal legislative arsenal: the use of jurisdictional elements requiring individualized assessments of defendants' ties to interstate commerce.[4] When the Court drew back from *Lopez* in *Gonzales v. Raich*,[5] however, it partially obviated the need for jurisdictional elements; under *Raich*, Congress can reach any conduct so long as it acts pursuant to a comprehensive regulatory scheme.[6] Recently, in *United States v. Nascimento*,[7] the First Circuit interpreted the jurisdictional element of the Racketeer Influenced and Corrupt Organizations Act[8] (RICO) to require only a de minimis effect on commerce[9] and upheld the Act's application to noneconomic gang activity under *Raich*.[10] While the activity at issue ultimately does fall within the ambit of both RICO and the Commerce Clause, the court should have interpreted RICO more narrowly to ensure congressional accountability and prevent judicial overreaching.

From 1998 to 2000, two street gangs in Boston — known as Wendover and Stonehurst — undertook a Pyrrhic campaign of murder

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[1] 514 U.S. 549 (1995).

[2] *E.g.*, Mark Tushnet, *What Is the Supreme Court's New Federalism?*, 25 OKLA. CITY U. L. REV. 927 (2000). From the inception of the "revolution," commentators questioned its scope and likely impact. *See, e.g.*, *id.*

[3] *See Lopez*, 514 U.S. at 567–68 (insisting on maintaining the "distinction between what is truly national and what is truly local"); *see also* United States v. Morrison, 529 U.S. 598, 618 (2000) ("The regulation and punishment of intrastate violence . . . has always been the province of the States."). Noneconomic activity, the Court held, may be regulated on the basis of its effects on interstate commerce only if its non-aggregated effects are "substantial." *See Lopez*, 514 U.S. at 559 (requiring substantial effects); *see also Morrison*, 529 U.S. at 615 (rejecting the view that Congress may "regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on [interstate commerce]"); *Lopez*, 514 U.S. at 567 ("The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect . . . interstate commerce.").

[4] *See Lopez*, 514 U.S. at 561–62 (distinguishing statutes with jurisdictional elements).

[5] 125 S. Ct. 2195 (2005); *see also* Ilya Somin, *A False Dawn for Federalism: Clear Statement Rules After* Gonzales v. Raich, *in* CATO SUPREME COURT REVIEW 2005–2006, at 113, 115–20 (Mark K. Moller ed., 2006) (assessing *Raich*'s sweeping authorization of federal regulatory power).

[6] *See Raich*, 125 S. Ct. at 2205. The class regulated must also be "economic." *See id.*

[7] 491 F.3d 25 (1st Cir. 2007).

[8] 18 U.S.C.A. §§ 1961–1968 (West 2000 & Supp. 2007).

[9] *Nascimento*, 491 F.3d at 37–38. In so holding, the First Circuit split with the Sixth Circuit's holding in *Waucaush v. United States*, 380 F.3d 251 (6th Cir. 2004).

[10] *Nascimento*, 491 F.3d at 30.

and gun violence.[11] Defendants were all members of Stonehurst.[12] The gang as a whole did not engage in drug trafficking, although some members did deal drugs.[13] According to the federal indictment, Stonehurst's chief purpose was "to shoot and kill members, associates, and perceived supporters of . . . Wendover."[14] In pursuit of that goal, Stonehurst used guns that were manufactured out of state, and one of its members crossed state lines to purchase a firearm.[15]

Defendants were convicted by a jury in the U.S. District Court for the District of Massachusetts.[16] Judge Saris instructed the jury that RICO's jurisdictional element — limiting application to an "enterprise engaged in, or the activities of which affect, interstate or foreign commerce"[17] — requires only a "de minimis" effect on commerce.[18] Although Judge Saris found insufficient evidence to support a finding that Stonehurst was engaged in drug trafficking, she held that the purchase, use, and possession of the gang's weapons provided a sufficient factual basis for the jury to find the requisite effect on commerce.[19]

The First Circuit upheld defendants' RICO convictions[20] against a challenge to the sufficiency of the evidence under RICO's jurisdictional element, and against an as-applied challenge under the Commerce Clause.[21] Writing for a three judge panel, Judge Selya[22] affirmed the district court's use of the de minimis standard.[23] While

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[11] *Id.* (describing a "cacophony of ongoing mayhem").

[12] *Id.*

[13] *Id.* at 30 n.1.

[14] *Id.* at 30 (internal quotation marks omitted).

[15] *Id.* at 45. Members also maintained an "arsenal" of weapons, pooled information, and trained each other to use "night vision goggles, binoculars, and police evasion tactics." *Id.* at 33.

[16] United States v. Nascimento, No. 03-10329-PBS, 2005 U.S. Dist. LEXIS 30836 (D. Mass. Dec. 2, 2005).

[17] *Nascimento*, 491 F.3d at 37 (quoting 18 U.S.C. § 1962(c) (2000)). Because Stonehurst, the relevant enterprise, was not "engaged in" commerce, the appellate court's inquiry focused on the statute's "affect" language. *See id.* at 37–40.

[18] *See id.* at 37; *see also Nascimento*, 2005 U.S. Dist. LEXIS 30836, at *6 (citing United States v. Marino, 277 F.3d 11, 35 (1st Cir. 2002)).

[19] *See Nascimento*, 2005 U.S. Dist. LEXIS 30836, at *6–8.

[20] *Nascimento*, 491 F.3d at 30. Defendants Nascimento and Talbert were also convicted under the Violent Crimes in Aid of Racketeering Act (VICAR), 18 U.S.C. § 1959 (2000), and Nascimento was convicted of firearm use in the commission of a federal violent crime, *id.* § 924(c). *Nascimento*, 491 F.3d at 31. Reversal of the RICO convictions would have nullified these other convictions, as the VICAR charges were premised on the defendants' racketeering activities and the § 924 charge was premised on conviction for VICAR assault. *See id.* at 31–32.

[21] *Nascimento*, 491 F.3d at 29–30. Judge Selya also held that the evidence was sufficient to show the existence of an "enterprise," *id.* at 32–33, that the jury instructions on that point were not confusing, *id.* at 33–34, and that the discrepancy between the longevity of the enterprise as determined by the jury and as charged in the indictment was not prejudicial, *id.* at 34–35.

[22] Senior Judge Selya was joined by District Judge Stafford of the Eleventh Circuit, sitting by designation.

[23] *Nascimento*, 491 F.3d at 37.

acknowledging a Sixth Circuit opinion that applied a substantial effects test for noneconomic RICO activity,[24] the court found "no room [for] constitutional avoidance."[25] In light of an earlier decision imposing a de minimis requirement for economic activity,[26] the court felt itself constrained by the Supreme Court's holding in *Clark v. Martinez*[27] that courts may not give a statutory term more than one meaning to avoid constitutional concerns.[28] Applying the de minimis standard, the court affirmed the decision below.[29]

In response to the as-applied constitutional challenge, the court eschewed particularized inquiry into the regulated conduct's effects on interstate commerce and applied *Raich* to uphold this application of RICO as pursuant to a comprehensive regulatory scheme.[30] The court construed RICO as a regulation of the class of "racketeering activity,"[31] which the court deemed "sufficiently economic" to justify regulation under *Raich*.[32] Just as the Supreme Court "refuse[d] to excise" intrastate possession of marijuana from Congress's regulatory scheme,[33] the court in *Nascimento* declared it would not excise noneconomic gang activity from the larger racketeering class.[34]

In his concurrence, Chief Judge Boudin declined to apply *Raich*, writing that RICO's jurisdictional element "requires that the particular enterprise itself affect interstate commerce."[35] He cited the Supreme Court's pre-*Lopez* decision in *Scarborough v. United States*,[36] in which the Court upheld a statute regulating the possession of firearms that had previously traveled through interstate commerce.[37] If previous movement through commerce made the possession of guns amenable to federal regulation, Stonehurst's purchase, use, and possession of guns must also satisfy the Commerce Clause.[38]

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[24] *Id.* at 38 (citing Waucaush v. United States, 380 F.3d 251, 255–56 (6th Cir. 2004)).

[25] *Id.* at 39.

[26] *Id.* at 37 (citing United States v. Marino, 277 F.3d 11, 35 (1st Cir. 2002)).

[27] 543 U.S. 371 (2005).

[28] *Nascimento*, 491 F.3d at 38. The court also found nothing in RICO's language or legislative history suggesting that Congress intended the meaning of the jurisdictional element to vary depending on the economic or noneconomic nature of the conduct at issue. *Id.* at 37.

[29] *Id.* at 45.

[30] *Id.* at 42–43.

[31] *Id.* at 43 (citing 18 U.S.C.A. § 1961(1) (West 2000 & Supp. 2007)) (internal quotation marks omitted). RICO defines "racketeering activity" as, inter alia, "any act or threat involving murder, kidnapping, [or] arson . . . which is chargeable [as a felony] under State law." § 1961(1).

[32] *Nascimento*, 491 F.3d at 43. The court noted that "love of money is the root of all evil," *id.* (citing 1 *Timothy* 6:10), and that racketeering includes a range of "financially driven crimes," *id.*

[33] Gonzales v. Raich, 125 S. Ct. 2195, 2209 (2005).

[34] *See Nascimento*, 491 F.3d at 43.

[35] *Id.* at 53 (Boudin, C.J., concurring).

[36] 431 U.S. 563 (1977).

[37] *Nascimento*, 491 F.3d at 52 (Boudin, C.J., concurring).

[38] *Id.*

The First Circuit in *Nascimento* gave insufficient weight to RICO's jurisdictional element as evidence of Congress's intent. Congress used a term of art to signify its intent to regulate to the fullest extent of its Commerce Clause authority under a case-by-case inquiry. The use of any jurisdictional element should weigh against finding that Congress regulated comprehensively, and in this case the structure of RICO's regulatory scheme provided further evidence of noncomprehensiveness. In performing the requisite "substantial effects" analysis, the court also should have limited its inquiry to the effects of the "activities" of the enterprise — as directed by RICO's jurisdictional element. By encouraging Congress to legislate either broadly or clearly, this approach would promote Congress's political accountability and control of the federal-state balance.

The First Circuit erred when it separated the statutory prong of its analysis from the requirements of the Commerce Clause. The term "affect[ing] . . . commerce," used in RICO's jurisdictional element, is a term of art indicating Congress's intent to reach all activity with effects on commerce sufficiently substantial to justify regulation under the Commerce Clause.[39] If the standard imposed by the Commerce Clause varies depending on the class of activity regulated, the jurisdictional element incorporates that variation.[40] Although the Supreme Court stated in *Clark* that courts may not pick and choose between "plausible statutory constructions" depending on context,[41] nothing in *Clark* demands that courts ignore Congress's adoption of a constitutional standard that will — of necessity — require contextual inquiry and reflect the evolving jurisprudence of the Supreme Court.[42]

The presence of a jurisdictional element should weigh in favor of a finding that Congress did not regulate comprehensively. The Court in *Raich* distinguished *Lopez* — itself a regulation of the "class" of persons in possession of guns in school zones — on the ground that the statute in *Raich* was a "comprehensive" regulation of a class of economic activities.[43] Regulation is "comprehensive" when it occupies a

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[39] *See Scarborough*, 431 U.S. at 571 (stating that "Congress is aware" of such language's function as an "assertion of its full Commerce Clause power so as to cover all activity substantially affecting interstate commerce" (quoting United States v. Am. Bldg. Maint. Indus., 422 U.S. 271, 280 (1975)) (internal quotation mark omitted)); *see also Nascimento*, 491 F.3d at 51 (Boudin, C.J., concurring) (discussing RICO's use of this "term of art").

[40] *Cf.* United States v. Juvenile Male, 118 F.3d 1344, 1347–48 (9th Cir. 1997) (applying judicial interpretations of the Commerce Clause to determine the meaning of RICO's jurisdictional hook).

[41] Clark v. Martinez, 543 U.S. 371, 380 (2005).

[42] *Cf.* NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937) ("Undoubtedly the scope of this power must be considered in the light of our dual system of government . . . . The question is necessarily one of degree.").

[43] The Court referred to the Controlled Substances Act as "a comprehensive framework for regulating . . . production, distribution, and possession," and distinguished *Lopez* on the ground that the "statutory scheme . . . is at the opposite end of the regulatory spectrum." Gonzales v.

field[44] such that removing intrastate, noneconomic activities from the scheme would impair its operation.[45] In some instances, Congress may have included a jurisdictional element to bolster the constitutionality of a comprehensive regulatory statute without in fact impairing its reach.[46] However, courts should begin with the assumption that a jurisdictional element does excise a meaningful amount of conduct.[47] Where that is the case, and Congress itself has deliberately exempted activity from regulation based on the activity's lack of connection to commerce, the realization of congressional purpose is less likely to require the scheme to reach every instance of the regulated conduct.

RICO is not a comprehensive scheme that relies on the regulation of intrastate, noneconomic activities for its effective operation. RICO does not occupy the "field" of racketeering: interpreted as requiring that noneconomic activities substantially affect interstate commerce, RICO's jurisdictional element will excise a significant number of murders, kidnappings, and arsons in service of a collective enterprise.[48] Moreover, removing those crimes from the regulatory scheme would not impair the effectiveness of the Act. There is no national market for racketeering,[49] and leaving one instance of racketeering to be cov-

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Raich, 125 S. Ct. 2195, 2210 (2005); *see also id.* at 2209 (characterizing prior precedents as "holding that comprehensive regulatory statutes may be validly applied to local conduct").

[44] *See, e.g.*, Pennsylvania v. Nelson, 350 U.S. 497, 513 (1956) ("[S]tate legislation is superseded when it conflicts with [a] comprehensive regulatory scheme . . . ."); Bedford Affiliates v. Sills, 156 F.3d 416, 426 (2d Cir. 1998) ("[I]t was not part of the legislative purpose that [the Act at issue] be a comprehensive regulatory scheme occupying the entire field . . . .").

[45] *Lopez* noted that the statute in that case was "not an essential part of a larger regulation . . . in which the regulatory scheme could be undercut unless the intrastate activity were regulated." United States v. Lopez, 514 U.S. 549, 561 (1995); *see also Raich*, 125 S. Ct. at 2212 (noting the presumptive validity of Congress's conclusion "that an exemption for such a significant segment of the total market would undermine the orderly enforcement of the entire regulatory scheme").

[46] Following *Raich*, for instance, lower courts upheld federal regulation of intrastate possession of child pornography under a comprehensive regulatory scheme rationale. *See* United States v. Maxwell, 446 F.3d 1210, 1218 (11th Cir. 2006); United States v. Forrest, 429 F.3d 73, 77 n.1 (4th Cir. 2005). That statute's jurisdictional element, requiring that the materials used to make the pornography have traveled in commerce, did not meaningfully constrain the statute's reach; the Eleventh Circuit cited the ineffectual nature of the jurisdictional element as evidence that Congress had regulated comprehensively. *See Maxwell*, 446 F.3d at 1218 n.8.

[47] *See* Walters v. Metro. Educ. Enters., Inc., 519 U.S. 202, 209 (1997) (stating that courts should interpret statutes to give every provision independent effect).

[48] *See* Jones v. United States, 529 U.S. 848, 857 (2000) (casting doubt on whether the federal government could constitutionally reach all instances of arson); *Nascimento*, 491 F.3d at 53 (Boudin, C.J., concurring) ("Conceivably, the link in a particular case may be too slight . . . .").

[49] A market is not required under *Raich*, but it bolsters the argument that exempting intrastate activities will negatively impact the regulatory scheme. *See, e.g.*, *Raich*, 125 S. Ct. at 2205 (market in drugs); United States v. Stewart, 451 F.3d 1071, 1077 (9th Cir. 2006) (market in machine guns); *Maxwell*, 446 F.3d at 1215 (market in child pornography). The same rationale might apply to regulations targeting infectious diseases with effects on interstate commerce, or to regulations of intrastate activities forming an integral part of a larger network of interstate activity.

ered by other criminal laws will not make it more difficult to prevent or address other instances of racketeering.

Chief Judge Boudin's concurring opinion, although correctly eschewing application of *Raich*, passed up an opportunity to give the proper weight to Congress's delineation, in RICO's jurisdictional element, of the relevant conduct for purposes of the analysis. In *Jones v. United States*,[50] the Supreme Court suggested that courts should focus on the kinds of ties to interstate commerce specified by Congress in a statute's jurisdictional element.[51] RICO's jurisdictional element directs the judge and jury to the "activities" of the regulated enterprise — not the implements with which they are carried out.[52] Cases, relied upon by Chief Judge Boudin, that uphold statutes whose jurisdictional elements specifically refer to the interstate movement of an object used in or affected by the regulated conduct are therefore not exactly on point.[53] He was likely correct that those statutes regulate "conduct," and not guns or cars as instrumentalities of commerce.[54] Nevertheless, Congress in those statutes *defined* the prohibited conduct by reference to the object's interstate origins and directed the jurisdictional inquiry toward the objects.[55] The same cannot be said of RICO.

Focusing on the "activities" of the enterprise would not alter the outcome in this case, but it would prevent a drastic shift in the federal balance absent clear indicia of legislative intent. Many crimes feature at least one object that has moved through interstate commerce — whether a weapon, a vehicle, or a ski mask.[56] By contrast, the use of guns to shoot and kill — the "activity" at issue in this case, under a

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[50] 529 U.S. 848 (2000).

[51] In *Jones*, the Court interpreted a jurisdictional element requiring that a building be "used in . . . any activity affecting interstate or foreign commerce." *Id.* at 853 (quoting 18 U.S.C. § 844(i) (1994 & Supp. IV 1998)). The Court put particular emphasis on the word "used," *id.* at 855, in order to ensure that the jurisdictional element would excise a meaningful amount of conduct, *id.* at 857. The Court suggested that this approach was consonant with canons of constitutional avoidance, federalism, and lenity. *Id.* at 857–58.

[52] *See* 18 U.S.C. § 1962(c) (2000). For confirmation that regulation of conduct on the basis of an object's movement in interstate commerce is distinct from regulation of conduct on the basis of its *independent* effects on commerce, one need look no further than the Supreme Court's foundational opinion in *United States v. Darby*, 312 U.S. 100 (1941). The Court upheld the regulation of labor practices on the basis of the manufactured products' movement in commerce. *See id.* at 118, 121. The Court observed, however, that the provisions were "also" sustainable on the grounds that the practices themselves caused a "dislocation of . . . commerce." *Id.* at 122.

[53] *See Nascimento*, 491 F.3d at 52 (Boudin, C.J., concurring). The federal felon-in-possession statute in *Scarborough* and the federal car-jacking statute in *United States v. Cobb*, 144 F.3d 319 (4th Cir. 1998), both contained such language. *See id.*

[54] *Nascimento*, 491 F.3d at 52.

[55] *See, e.g.*, 18 U.S.C. § 922(g) (2000) (regulating possession of "any firearm or ammunition which has been shipped or transported in interstate or foreign commerce").

[56] *Cf. Jones*, 529 U.S. at 857 (noting that a narrow interpretation of the jurisdictional element was desirable because "[p]ractically every building in our cities, towns, and rural areas is constructed with supplies that have moved in interstate commerce").

more restrained reading of the term — almost certainly does not substantially affect commerce.[57] In this case, the action of crossing state lines to purchase a firearm most likely did bring the activities of Defendants' enterprise within the scope of the Commerce Clause.[58] As a general matter, however, deciding the case on these narrow grounds would prevent a drastic expansion of RICO's scope.[59] This in itself commends a restrained approach; as a unanimous Court reaffirmed in *Jones*, Congress must "convey[] its purpose clearly" before it will be read to have "significantly changed the federal-state balance."[60]

Focusing the inquiry under RICO on the tie to commerce specified by Congress — both by creating a presumption against the application of *Raich* and by looking to the specific terms of the jurisdictional element — serves values of political accountability and judicial restraint. As a form of clear statement rule, this approach requires Congress to actively delimit the boundaries of federal power and prevents judicial overreaching.[61] By making the question political, it enhances the protection of the states and the people by the political process.[62] At the

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[57] Murder is noneconomic, and any chain of causation running from it to interstate commerce would necessarily be quite attenuated. *Cf.* United States v. Lopez, 514 U.S. 549, 567 (1995) ("To uphold the Government's contentions here, we would have to pile inference upon inference . . . .").

[58] As an economic activity, subject to aggregation, that also took place across state boundaries, this act fell close to the heart of the Commerce Clause. *See id.* at 561 (noting Congress's power to regulate activities "connected with a commercial transaction"). Although some interstate travel or purchases of goods by a RICO enterprise might be too tenuous to establish a connection between the enterprise as a whole and interstate commerce, the act of crossing state lines to purchase a firearm for use in the alleged criminal activity is hardly tangential to the "activities" of the enterprise. *Cf. Nascimento*, 491 F.3d at 53 (Boudin, C.J., concurring) ("[T]he arsenal of guns in this case is not a slight or faint connection . . . .").

[59] The Sixth Circuit, in *Waucaush v. United States*, 380 F.3d 251 (6th Cir. 2004), adopted the alternative argument that use or purchase of an object that had traveled through interstate commerce did not establish a "substantial" effect on commerce. *Id.* at 257 (stating that accepting such "occasional acts of interstate commerce" as "substantial" would lead to "virtually limitless" federal power). This argument, if accepted, would similarly rein in the scope of RICO. However, it would also undermine vast swaths of the federal legislative edifice — including the felon-in-possession statute relied on by Chief Judge Boudin — a project that courts are rightly hesitant to undertake. *Cf. Lopez*, 514 U.S. at 574 (Kennedy, J., concurring) ("[T]he Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point.").

[60] *Jones*, 529 U.S. at 858 (quoting United States v. Bass, 404 U.S. 336, 349 (1971)) (internal quotation mark omitted).

[61] As Justice Kennedy emphasized in *Lopez*, Congress — not the courts — is to control the federal balance. 514 U.S. at 578 (1995) (Kennedy, J., concurring). For a cogent argument in favor of clear statement rules, see Thomas W. Merrill, *Rescuing Federalism After* Raich*: The Case for Clear Statement Rules*, 9 LEWIS & CLARK L. REV. 823 (2005). For the argument that process federalism, including clear statement rules, can and should coexist with substantive restraints, see Ernest A. Young, *Two Cheers for Process Federalism*, 46 VILL. L. REV. 1349 (2001). For the case against process federalism, as largely ineffective, see Somin, *supra* note 5, at 133–40.

[62] *See* Merrill, *supra* note 61, at 828 ("The participation of the political branches injects a dynamic element into the process of interpretation . . . ."); Young, *supra* note 61, at 1358–59 ("[I]n

same time, by ensuring that Congress either legislates comprehensively (in which case its presence in the field will be unmistakable) or through a clear enunciation of a set of potential ties to commerce, this approach provides notice of the reach of federal power to states and potential defendants.[63] In turn, notice promotes accountability by giving states and regulated entities time and motivation to lobby in favor of their preferred balance of federal-state power.[64]

Although RICO was intended to expand the reach of federal criminal law,[65] courts should be cognizant that even a statute with a broad reach must have an outer limit.[66] RICO's legislative findings demonstrate that Congress was particularly concerned with the infiltration of legitimate businesses that would necessarily be engaged in economic activities.[67] Indeed, legislative history demonstrates that at least some members of Congress had no intention of reaching the conduct at issue in *Nascimento*.[68] To be sure, courts must hesitate to restrict the powers of Congress in pursuit of ill-defined notions of limited federal power. However, they must similarly hesitate before they expand the reach of federal power beyond the bounds deemed prudent or constitutional by the legislature.[69] Absent clear congressional authorization, the judiciary's expansion of RICO can go only so far.

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order for political safeguards to work, the important governmental decisions actually have to be made through channels in which the states are represented.").

[63] *See* Young, *supra* note 61, at 1359 (noting that clear statement rules provide notice to regulated entities and allow for more effective political resistance to unwanted federal measures).

[64] *See id.* at 1360–61.

[65] *See* United States v. Turkette, 452 U.S. 576, 586–87 (1981) ("As the hearings and legislative debates reveal, Congress was well aware of the fear that RICO would 'mov[e] large substantive areas formerly totally within the police power of the State into the Federal realm.'" (alteration in original) (quoting 116 CONG. REC. 35,217 (1970) (statement of Rep. Eckhardt))). RICO itself declares that its language is to be "liberally construed" in light of "its remedial purposes." Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947.

[66] *See* Reves v. Ernst & Young, 507 U.S. 170, 183 (1993) (stating that the "'liberal construction' clause" of RICO "is not an invitation to apply RICO to new purposes that Congress never intended").

[67] *See* Organized Crime Control Act of 1970, 84 Stat. at 922–23 (Statement of Findings and Purpose). The Act's findings suggest it was intended to provide criminal provisions for use as tools in the fight against organized crime — not a comprehensive regulation of racketeering. *See id.* at 923 (stating that the act targets organized crime "by establishing new penal prohibitions").

[68] *See, e.g.*, 116 CONG. REC. 18940 (1970) (statement of Sen. McClellan) (reassuring his colleagues that "[u]nless an individual not only commits [one of the state law crimes enumerated in § 1961] but engages in a pattern of such violations, and uses that pattern to obtain or operate an interest in an *interstate* business, he is not made subject to proceedings under title IX." (emphasis added)); *id.* at 35,210–11 (statement of Rep. Conyers) (stating that there is "not one provision" in the bill that addresses the problem of street crime); *id.* at 35,211 (statement of Rep. Bingham) (stating that he "certainly would not want the Federal police to be given" the power to prosecute local street crimes).

[69] *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 507 (1985) (Marshall, J., dissenting). For a discussion of the adverse effects of the promulgation of federal criminal law, see William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 781, 843–45 (2006).