

No. 25-1759

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

HELLO FARMS LICENSING MI, LLC,
Plaintiff-Appellee,

v.

GR VENDING MI, LLC, AND CURA MI, LLC,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Michigan
No. 1:21-cv-10499 (Hon. Matthew F. Leitman)

**BRIEF OF THE NATIONAL ORGANIZATION
FOR THE REFORM OF MARIJUANA LAWS
AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLEE'S PETITION FOR PANEL
REHEARING AND REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Statement Pursuant to Rule 29.6: The National Organization for the Reform of Marijuana Laws (NORML) is a nonprofit, nonstock corporation. It has no parent corporation, and no publicly held company owns 10% or more of its stock.

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INTEREST OF AMICUS CURIAE

For more than fifty years, the National Organization for the Reform of Marijuana Laws (NORML)¹ has worked to end the criminalization of responsible cannabis use by adults and to protect the rights and interests of cannabis patients and other consumers, and those who serve them. NORML has thousands of members nationwide and state affiliates in jurisdictions across the country.

The interest of NORML here is not in protecting a particular company's profits. It is in preserving the civil accountability on which consumers in state-regulated cannabis markets depend. Those consumers include medical patients and adults who lawfully purchase cannabis under state law without medical authorization.

NORML submits this brief to explain why the public interests omitted from the panel's analysis warrant rehearing. Its accompanying motion seeks leave under .

No counsel for a party authored this brief in whole or in part, and no person other than amicus curiae, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

¹ See NORML, Nat'l Org. for the Reform of Marijuana Laws, <https://norml.org> (last visited Oct. 13, 2026).

INTRODUCTION AND SUMMARY OF ARGUMENT

A regulated cannabis market requires more than issuing licenses. It requires settled, predictable rules on which market participants can rely, and meaningful remedies when contractual obligations are breached. Consumers depend on growers, distributors, and retailers to honor commitments that support reliable supply and product testing for safety. The panel's categorical rule removes a central means of holding businesses accountable, without asking whether that result advances the federal policy invoked to require it.

This case illustrates the problem. GR Vending agreed to purchase Hello Farms's harvests, accepted an initial shipment, and refused further deliveries when prices fell. Hello Farms resold its crops at lower prices. A jury awarded damages for breach. The panel set that award aside solely because it believed the agreement contemplated federally prohibited marijuana transactions. *Hello Farms Licensing MI, LLC v. GR Vending MI, LLC*, No. 25-1759, slip op. at 5–6, 20 (6th Cir. Sept. 10, 2026) (“Op.”).

The Controlled Substances Act (CSA) prohibits unauthorized marijuana distribution. It does not, however, expressly declare every related contract void. That distinction does not make every damages award permissible. It does require attention to the particular statute, the requested relief, and the public interests that non-

enforcement would serve. The Supreme Court's decisions and this Court's precedents require that analysis.

Hello Farms identifies the conflicts the panel created. NORML addresses why those conflicts matter to people outside the courtroom. Congress has protected implementation of state medical-marijuana laws against specified federal expenditures. Michigan has imposed consumer safeguards on both medical and adult-use markets. A judicial rule that undermines contract accountability throughout those markets cannot be justified merely by repeating that federal prohibition remains. The question is what civil consequences Congress's laws require. The significance of this question warrants rehearing.

ARGUMENT

I. The panel's rule threatens the accountability on which cannabis consumers depend.

Michigan's cannabis regulatory framework governs cultivation, distribution, and retail sales, and requires testing for contaminants and potency in both medical and adult-use markets. Op. 4–5; Mich. Comp. Laws §§ 333.27505, 333.27958. These protections address the cannabis products reaching consumers, not merely the commercial interests of the businesses supplying them.

The contract here incorporated those protections. Hello Farms agreed to test each fifty-pound batch for potency and contaminants, including heavy metals and

pesticides. These provisions illustrate how private agreements can reinforce public regulation: they make compliance a condition of the buyer's obligation to accept and pay for the product. Hello Farms' 2020 harvest passed the required testing. Op. 5. Failed testing would have permitted rejection, price renegotiation, and potentially termination.

Regulatory enforcement and contract remedies perform different work. A license authorizes a particular activity under state law; it does not compensate a supplier when a purchaser abandons its obligations. Testing requirements set standards directed at public health and consumer safety; they do not allocate the losses caused by a broken supply commitment. Civil remedies give commercial promises consequences and permit businesses to plan production and distribution around them.

Removing those remedies creates foreseeable risks for consumers. A supplier facing an unenforceable purchasing commitment must absorb the risk, demand different terms, or decline the relationship. Those responses can increase costs, discourage reliable supply arrangements, and impair consumer and patient access to regulated products at large scale. These are consequences of the rule's incentives, not assertions that this record establishes particular price increases or interrupted patient care.

Nor are consumers' interests identical to any industry's interests. NORML does not seek to protect businesses that fail consumers. Its position is squarely the opposite: participation in a cannabis market should not itself furnish a categorical escape from civil responsibility. Accountability matters when a supplier breaches just as it matters when a purchaser does. The panel expressly stated that its rule would operate in either direction. Op. 11–12.

The decision did not resolve product-liability claims, consumer warranties, or independent testing agreements. NORML does not suggest otherwise. But its reasoning makes a defined boundary between prohibited relief and permissible accountability urgently important. Courts need a rule that identifies what federal law actually forbids, rather than treating a relationship to cannabis as the end of the inquiry.

II. Federal illegality does not dispense with the required statutory inquiry.

In *A. C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 312 U.S. 38, 42–45 (1941), the Supreme Court rejected contractual invalidation based on an assumed violation of federal securities law. Congress had already prescribed statutory sanctions and specific remedies for violations that did not include automatically invalidating private contracts. The Court declined to add another sanction when doing so would frustrate the statute's protective purpose and harm innocent purchasers. To be sure, *Frost* involved a facially lawful contract, whereas the

agreement here contemplated transactions prohibited by federal law. But that distinction does not diminish the importance of the Court's reasoning: federal illegality does not, without further inquiry, dictate every civil consequence. The question remains whether withholding damages for a completed breach advances the purposes of the Controlled Substances Act, or merely permits a breaching party to escape liability without preventing any further violation of federal law.

Kelly v. Kosuga, 358 U.S. 516 (1959), reinforces that principle. There, notwithstanding an unlawful antitrust arrangement, the Supreme Court enforced the purchaser's obligation to pay for onions already delivered, reasoning that recovery would not enforce "the precise conduct made unlawful by the Act." *Id.* at 520. The distinction between that lawful sale and the marijuana transactions contemplated here is substantial, but not dispositive. *Kelly* teaches that illegality is not an invitation to dispense with analysis. The question is whether the particular relief sought would give effect to conduct Congress prohibited or frustrate the purposes of the governing statute. The illegality of the underlying bargain, standing alone, does not answer that question.

Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 77–85 (1982), supplies an important limit. A request for money cannot evade illegality when payment would enforce the prohibited restraint itself. There, the challenged payment obligation allegedly penalized dealings with nonunion producers; collecting it would

implement that restraint. The labor statute also expressly rendered the prohibited agreements unenforceable and void. 29 U.S.C. § 158(e).

NORML does not suggest that characterizing the relief as damages resolves the illegality question. The verdict awards profits expected from a marijuana supply agreement, not payment for an unrelated lawful service. The panel expressly recognized that distinction. Op. 11 & n.3. But the source of the damages does not, by itself, establish that the CSA requires their forfeiture.

Congress prescribed criminal penalties for unauthorized distribution and forfeiture of specified property. 21 U.S.C. §§ 841, 881. It did not expressly provide that a purchaser may escape liability for breaching a state-licensed supply contract. Statutory silence is not dispositive; federal illegality doctrine may apply without an express voiding provision. But courts must still determine whether denying the particular remedy sought would advance the CSA's purposes. *Frost*, 312 U.S. at 43–45.

Here, Hello Farms sold the crops to other purchasers. Op. 6. A damages judgment would require no further cultivation, delivery, or purchase of marijuana. That fact alone does not validate the award. But it distinguishes damages for a completed breach from a decree compelling unlawful performance. The question is whether the particular relief would contravene the CSA or frustrate its purposes. Any independently applicable prohibition on payment would remain controlling.

This Court's own precedent supplies the framework. In *Jackson Purchase Rural Electric Cooperative Ass'n v. Local Union 816*, 646 F.2d 264, 267–68 (6th Cir. 1981), the Court recognized a strong presumption against enforcing unlawful agreements, but rejected automatic invalidation. Instead, it considered the parties' expectations, potential forfeiture, public interests, the strength of the statutory policy, and whether nonenforcement would advance it. Although the Court ultimately denied enforcement, it did so after undertaking that analysis, and in circumstances where Congress had prohibited both the underlying conduct and the agreement itself.

Of particular importance is *Jackson Purchase's* recognition of “any special public interest in enforcement.” *Id.* at 267. NORML supplies that perspective: consumers depend on enforceable commercial obligations supporting product testing and reliable distribution. The question is not whether a disappointed grower deserves compensation, but whether denying relief advances the federal policy invoked to justify nonenforcement.

The panel questioned whether *Kaiser Steel* displaced *Jackson Purchase's* framework, then declined to apply it because the agreement contemplated felonies. *Op.* 13–17. But *Kaiser Steel* grounds nonenforcement in public policy, not illegality alone. 455 U.S. at 77–78. The CSA's criminal prohibitions warrant substantial

weight; they do not, without further analysis, establish that denying damages for a completed breach advances Congress's purposes.

The Tenth Circuit took a different approach in *Bartch v. Barch*, 111 F.4th 1043, 1062–63 & n.22 (10th Cir. 2024), remanding for consideration of whether enforcing a marijuana-related judgment would require unlawful conduct and whether other public interests warranted consideration. *Bartch* concerned postjudgment enforcement, not direct review of a supply-contract verdict; its separate Rule 60(b)(4) ruling left the underlying judgment intact. Nevertheless, its insistence on examining the particular relief sought stands in tension with the panel's categorical approach. Op. 11. Rehearing would permit this Court to address that tension and clarify its own precedent.

III. Congress's accommodation of medical markets reinforces the need for a narrower rule that respects all consumers' interests.

The public interests here are reflected in Congress's own enactments. The CSA expressly recognizes public health and welfare as statutory concerns. 21 U.S.C. § 801(1)–(2). Congress has also repeatedly barred the Justice Department from using appropriated funds to prevent states from implementing their medical-marijuana laws. Op. 3–4; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217 (2014).

The rider neither repeals the CSA nor confers permanent immunity; it restricts Justice Department spending, not judicial authority. Op. 16; *United States v. McIntosh*, 833 F.3d 1163, 1178–79 & n.5 (9th Cir. 2016). NORML seeks no contrary holding. Nor does the rider create a cause of action: Hello Farms’s claim arises independently under state law.

The rider matters because the panel invokes federal public policy to deny a state-law remedy. That inquiry cannot disregard Congress’s decision to protect state medical-marijuana programs from specified Justice Department interference merely because Congress stopped short of legalization. Those programs depend on cultivation and distribution, not merely possession and use. *See id.* at 1176–78.

Kaiser Steel directs courts to Congress’s enactments in discerning the public policy governing private agreements. 455 U.S. at 83–84. That inquiry must account for both the CSA’s prohibitions and Congress’s decision to limit Justice Department interference with state medical-marijuana programs. Neither enactment expressly requires denying damages for a completed breach of a state-licensed supply contract.

The panel responded that medical marijuana remains federally prohibited and Congress’s appropriations protection is temporary. Op. 15–16. Those propositions establish the accommodation’s limits, not its irrelevance to federal policy. Nonenforcement may deter future transactions, but the panel’s ruling neither requires the purchaser to leave the cannabis market nor compels it to relinquish its licenses

or inventory. It relieves the purchaser of contractual liability. Whether that consequence advances federal policy requires examination of the remedy, not merely the illegality of the underlying business.

The question remains even if the agreement reached recreational markets. The panel held that an exclusively medical agreement would fare no better. Op. 12–18. NORML’s argument therefore does not depend on the petition’s challenge to that classification or on treating any subsequent rescheduling as retroactively legalizing the contract.

Congress’s accommodation of medical marijuana strengthens the case for rehearing, but NORML’s concern extends to adult-use consumers. Michigan requires product testing in both markets. Op. 4–5. Contaminated products and unreliable supply threaten consumers regardless of whether they purchase marijuana for medical or adult use.

NORML does not seek to extend the medical appropriations rider to adult-use transactions. Rather, civil enforceability must turn on the governing statutes and the relief sought, not an assumption that consumer interests become irrelevant whenever the CSA applies. Adult-use consumers need not be recast as patients to have an interest in accountable commerce.

The requested reconsideration is limited. NORML does not ask this Court to compel unlawful performance or immunize anyone from federal enforcement. It

asks that the Court reject categorical nonenforcement in favor of the statutory and public-interest inquiry its precedents require. The panel left questions concerning the 2021 crop and the sufficiency of the damages evidence unresolved. Op. 6. Rehearing need not resolve those questions or guarantee reinstatement of the full award.

The panel acknowledged the windfall to the breaching purchaser but treated federal criminality as dispositive. Op. 20. Whether the CSA requires that result matters beyond these litigants: it bears directly on the civil accountability on which consumers in state-regulated cannabis markets depend.

That concern is heightened by the procedural posture. Defendants removed Hello Farms's state-law action on diversity grounds, then invoked federal illegality to defeat its claim. Op. 6. As the petition explains, the panel's categorical rule may encourage forum shopping and unsettle commercial expectations across state-regulated markets. Pet. for Reh'g 2, 16. Those consequences extend beyond these litigants and warrant *en banc* consideration. Fed. R. App. P. 40(b)(2).

CONCLUSION

The Court should grant panel rehearing or rehearing *en banc* and reject the categorical rule that the CSA's prohibition of marijuana, standing alone, forecloses the damages remedy sought here.

Respectfully submitted,

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Dated: October 15, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(b)(4) because it contains 2,440 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I certify that on October 15, 2026, the foregoing document was electronically filed with the Clerk of the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. Service on registered counsel was accomplished through that system.

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