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WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 95321-0

COA. NO. 756699-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LIBBY HAINES-MARCHEL
ROCK ISLAND CHRONICS, LLC,
dba CHRONICS
Appellant/Petitioner,

v.

WASHINGTON STATE LIQUOR & CANNABIS BOARD,
Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER(S)

Libby Haines-Marchel, Rock Island Chronics, LLC, dba Chronics, hereafter for brevity, referred to as the wife asks this court to accept review of the Court of Appeals decision designated in Part II of this petition.

II. COURT OF APPEALS DECISION

This appeal is from a published opinion of Division One, of the Court of Appeals and made and entered on December 18th, 2017.

III. ISSUES FOR REVIEW

- A. Can the imputation of the criminality of a husband to his wife violate the fundamental right of marriage?
- B. Does the standard of strict scrutiny override reasons of the Board, if there is a marriage violation?
- C. Does *Levinson v. Horseracing Commission*, 48 Wash. App. 822 (1987), control this appeal in light of a direct conflict with the lower court's decision?
- D. Has the Appellant wife been discriminated against under RCW 49.60.030, which permits her to pursue a common occupation, because of her color, gender and marital status?
- E. Is the disqualification of the wife for a state license, based solely upon her husband's criminality, barred by RCW 9.96A.020?
- F. Does RCW 26.16.120 entitle the wife and her spouse to enter into an agreement so she remains the sole individual applicant and only person to qualify per RCW 69.50.331?
- G. As applied does WAC 314-55-035 & -040 violates the wife's right to pursue an occupation free from unreasonable governmental interference under the 5th and 14th Amendments to U.S. Const. and our States Const.?
- H. After being selected and entitled to enter into a community property agreement, and be free from marital discrimination. Is Mrs. Haines-Marchel property right to the license being denied in violation of her 5th and 14th Amendment rights due process under the U.S. Const. and under Article 1 Sec 3 of our State Constitution?

IV. STATEMENT OF THE CASE

This appeal is one of first impression on the question of the constitutionality of barring an applicant licensee wife from receiving the license for the sale of marijuana, on the sole ground that her husband was a felon and serving jail time this state.

Libby Haines-Marchel (wife), applied for a retail marijuana license in 2014. She was selected as a first priority applicant after winning a lottery conducted by the Washington State Liquor and Cannabis Board. (Board).

When the Board learned she was married to a husband who was in the Washington State Penitentiary, it refused her a license based upon a criminal points structure created by the Board. WAC 314-55-035(1). It referred the wife to the rule that labeled both the wife and her husband as “true parties in interest” and as such disqualified as licensees.

Prior to the denial, the husband and wife both signed a renunciation agreement under which the husband irrevocably renounced all community interest in the future business. The Board summarily rejected the agreement and its clear intent of parties.

The license disqualification was appealed to a State Hearing Officer, who on cross- motions of both parties, granted the Board’s summary judgment and denied the wife’s.

The Wife appealed the order of summary judgement to the Superior Court.

The Superior Court overruled *Levinson, supra* by at first, applying strict scrutiny to the fundamental right of marriage, but avoiding the outcome, by adopting the reasons set out below in the “spirit” of the rules. Cross summary judgments were made by both the Board and the wife, with the Court granting the motion of the Board and denying that of the wife.

The Superior Court adopted the Board’s reasons for imputing the criminality of the husband to his wife, even in light of the stringent standard of strict scrutiny:

- A. Keeps the marijuana industry out of the hands of criminal.
- B. Prevents marijuana revenue from being used to support criminal enterprises.
- C. Stops the marijuana business from being used as a cover for illegal activities.

D. Prevents the use of a qualified spouse as “a straw person” to disguise an unqualified spouse’s true interest in the business.

E. Complies with the expectations and interests of the United States Department of Justice in ensuring public safety.

The Superior Court’s judgment was appealed to the Court of Appeals by the wife. That Court found no fundamental right to marry was present in the case. It applied a rational basis standard, relying on *Amunrud v. Board of Appeals*, 158 Wash 2nd 208 (2006). *Amunrud* was a taxi cab driver who had his license to drive a cab revoked because he owed back child support. The Court focused on the right to a license and found the right to pursue his long-held occupation was not a fundamental right to work when he owed back child support. The decision contained nothing concerning criminality, or the fundamental right of marriage, nor discrimination on the basis of marital status and is not in point in distinguishing the appellant’s case on appeal.

V. ARUGUMENT

This Country has long found marriage to be a fundamental right of all citizens. *Griswold v. Connecticut*, 381 U.S. 479 (1965): The concept has been followed in all types of factual patterns.

Zablocki v. Redhail, 434 U.S. 374 (1978). *Zablocki*, rejected a statue, forbidding a citizen of the state of Wisconsin from marrying without approval of a court that was conditioned on proof that all child support was paid. The court held that state interference with marriage required a very careful examination when it was displayed by the state.

“Since the right to marry is of fundamental importance, e.g. *Loving v. Virginia*, 388 U.S. 1, and the statutory classification involved significantly interferes with the exercise with that right, critical examination of the state interest, advanced in support of the classification (marriage) is needed *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976).

This appeal is one of first impression and of public importance. Appellant Wife was refused a marijuana license based on her husband’s criminal history. The Court of Appeals decision is in direct conflict with *Levinson v. Washington Horseracing Comm’n*, 48 Wash Ap. 822 (1987), *Levinson* held that a license applicant based on her spouse’s prior conviction of the sale of heroine infringed on her constitutional right to marry. *Magula v. Benton Franklin Title Co.*, 131 Wash. 2nd 171 (1997),

reversed a judgement with respect to the marital status of a wife by the misconduct of her husband. RCW 49.60.180(1) bars any person's conduct that is an unfair practice in the pursuit of a job, on the bases of marital status. Accord: *Kastanis v. Educational Employees Credit Union*, 122 Wash 2nd 483 (1993), approving the definition of marital status in WAC 162 -16-150.

In 1993 Washington Law employed a broad definition of marital status. The Humans Rights Commission promulgated WAC 162-16-150, defining marital status discrimination. Discrimination against an applicant for employment because of the persons marital status as to who her spouse is, or what the spouse does, is an unfair practice because the action is based on marital status of being married. RCW 49.60.010 and 49.60.030 (1)(a)

The decision below avoids criminality by asserting that the real issue is the failure of the husband to avoid the definition of "the true party in interest" and denying that marriage has any relevancy. The Court then cites *Amunrud, supra*, in an effort to avoid the fundamental right of marriage, and the criminality issue of the husband in this appeal. The use of *Amunrud*, is not in point in this appeal. *Amunrud* was used by the lower Court to avoid the standard of strict security imposed in a marriage case and is clearly distinguishable. As a result of avoiding marriage the court diverted from the standard and used a new test of rationality in a 6-3 decision.

The rules of the Board also violate RCW 9.96A .020(1). This statue forbids disqualification by the State of a person's license application based upon a prior felony conviction:

"----- nor is a person disqualified from occupational licensing (by the state) to ----- pursue or engage in an occupation ----- or business for which a license is required to be issued by the state of Washington ----- solely because of a prior felony".

The Court of Appeals deflects the demands of the statue by disclaiming any focus on criminality or marital status under WAC 314-55-035, and citing *Amunrud, supra*.

Mrs. Haines-Marchel claims spouses have a right of choice to enter into a Community Property Agreement so she remains the sole owner and only person to qualify as the individual applicant. This court's review of this Community Property Issue is necessary. This issue is of public importance because it has been a long-standing rule for years that a married couple has a statutory right per RCW 26.16.050 and 26.16.120 to change community property into separate property in order to own and pursue a business separate from their spouse. This is an issue of first impression.

As applied WAC 314-55-035 & -040 violates Mrs. Haines-Marchel's right to pursue an occupation free from unreasonable governmental interference. The due process clause of the 14th Amendment of the U.S. Const. confers both procedural and substantive protections and even more so with our own States constitution. This issue is "of public importance and an issue needed to materialize for resolution." The state deems the regulation justifiable regardless of the extent in which it abandons liberty towards perusing prosperity.

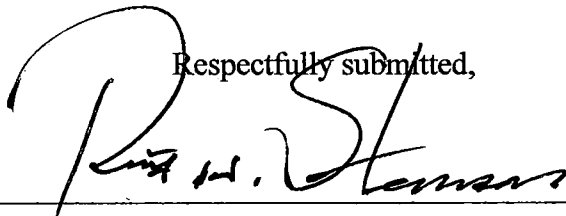
After being selected and entitled to enter into a community property agreement, and be free from marital discrimination. Haines-Marchel property right to the license was denied in violation of her 5th and 14th Amendment rights due process and under article 1 sec 3 of our state's constitution. The Court of appeals decision on this issue is in conflict with Bd. Of Regents of State Colls v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed 2d 548 (1972)

VI. CONSLUSION

RCW 69.50, covers the regulation of Manufacturing, Distribution and Dispensing of Controlled Substances. A myriad of rules on a day to day provide for management and sanctions on the sale of marijuana. The rules are put in place and strongly enforced by the Board and are believed to be far and away enough to prohibit possible violations of the business and ensure the wife cannot act as a possible "straw person" for her husband serving time in jail. Because these Issue are of first impression and the Opinion conflicts with rulings of the Supreme Court, and because it raises significant issues under the U.S. Constitution and our State's Constitution review should be accepted.

January 16, 2018

Respectfully submitted,



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APPENDIX
Division 1 Court of Appeals Opinion
King County Superior Court Opinion
Washington State ALJ Opinion

APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LIBBY HAINES-MARCHEL and ROCK)
ISLAND CHRONICS, LLC, Dba)
CHRONICS,)

Appellants,)

v.)

WASHINGTON STATE LIQUOR &)
CANNABIS BOARD, an Agency of the)
State of Washington,)

Respondent.)

No. 75669-9-I

PUBLISHED OPINION

FILED: December 18, 2017

SCHINDLER, J. — In 2012, Washington voters approved Initiative Measure 502. LAWS OF 2013, ch. 3, codified as part of chapter 69.50 RCW. Initiative 502 legalizes the possession and sale of marijuana and creates a system for the distribution and sale of recreational marijuana. Under RCW 69.50.325(3)(a), a retail marijuana license shall be issued only in the name of the applicant. No retail marijuana license shall be issued to a limited liability corporation unless all members are qualified to obtain a license. RCW 69.50.331(1)(b)(iii). The true party of interest of a limited liability company is “[a]ll members and their spouses.”¹ Under RCW 69.50.331(1)(a), the Washington State

¹ WAC 314-55-035(1).

Liquor and Cannabis Board (WSLCB) considers prior criminal conduct of the applicant.² Criminal history of eight or more points is grounds for denial of a retail marijuana license application.³ The WSLCB denied the application of Rock Island Chronics LLC (Chronics LLC) for a retail marijuana license based on the criminal history of the spouse of the sole member of the limited liability company, Libby Haines-Marchel. Chronics LLC and Haines-Marchel appeal the WSLCB decision to deny the application for a retail marijuana license. We affirm.

Application for a Retail Marijuana License

The material facts are not in dispute. In 2013, Rock Island Chronics LLC (Chronics LLC) submitted an application to the Washington State Liquor and Cannabis Board (WSLCB) for a retail marijuana license in Douglas County. The application identifies Libby Haines-Marchel as the sole member and manager of Chronics LLC with a “100%” ownership interest. The application identifies Brock Marchel as her spouse.

The WSLCB determines the maximum number of retail marijuana locations for each county. WAC 314-55-081(1). If the number of applications exceeds the allotted number, the WSLCB conducts a lottery. Former WAC 314-55-081(1) (2013).

RCW 69.50.331(1) states the WSLCB shall conduct an evaluation of the application. The WSLCB may consider the criminal history of the applicant and has the discretion to grant or deny the application for a marijuana license. RCW 69.50.331(1)(a). If the application “is disqualified for any reason,” the WSLCB will issue a notice of intent to deny and “the next application on the lottery list will take its place.”

² We note the legislature amended chapter 69.50 RCW and chapter 314-55 WAC after 2013. Unless otherwise noted, because the language pertinent to our analysis has not changed, we cite the current statutes and regulations throughout the opinion.

³ WAC 314-55-040(1).

On May 1, 2014, the WSLCB notified Chronics LLC that following the lottery for Douglas County, its application was "selected number 1."⁴ The letter states, in pertinent part:

Your application was selected number 1.

We will begin processing applications for the allotted number of stores in the coming weeks. If an application is disqualified for any reason or withdrawn by the applicant, the next application on the lottery list will take its place. If an application appears to not qualify, a statement of Intent to Deny will be issued with the right to appeal that decision. Once all licenses have been issued in a jurisdiction the remaining applications will be administratively closed.

Applicants selected in the lottery to move forward in the licensing process are not guaranteed to receive a license. The application must undergo our rigorous investigation process and pass a final inspection prior to issuance.⁵

Under RCW 69.50.331(1)(b)(iii), "[n]o license of any kind may be issued to" a corporation "unless all of the members thereof are qualified to obtain a license." WAC 314-55-035 identifies "What persons or entities have to qualify for a marijuana license."⁶ WAC 314-55-035(1) defines the true parties of interest for a limited liability company as "[a]ll members and their spouses" and "[a]ll managers and their spouses." Because the "marijuana license must be issued in the name(s) of the true party(ies) of interest," Chronics LLC had to submit a "Personal/Criminal.History Form" for each member and spouse of the limited liability company. WAC 314-55-020(6)(a), -035(1).

On December 2, 2014, WSLCB License Investigator Tim Lynch met with Haines-Marchel. For the first time, Haines-Marchel "disclosed that her spouse, Brock Marchel,

⁴ Boldface omitted.

⁵ Boldface in original.

⁶ Boldface omitted.

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is currently incarcerated.” Haines-Marchel told Lynch that she “was hoping the power of attorney she holds will allow her to complete the documents for him.”

WAC 314-55-040 addresses consideration of criminal history for a retail marijuana license. WAC 314-55-040(1) uses a “point system” to determine if criminal history prevents issuance of a retail marijuana license. Under WAC 314-55-040(1), a felony conviction is 12 points. Felony convictions remain in effect for 10 years. WAC 314-55-040(1). The WSLCB will not issue a retail marijuana license if an applicant has “accumulated eight or more points.” WAC 314-55-040(1).

Lynch asked Haines-Marchel to provide “more information on the incarceration (the circumstances behind the incarceration and when Brock may be released).” On December 11, Lynch sent an e-mail to Haines-Marchel “regarding the requirement for her husband to complete his own documents”—the Personal/Criminal History Form. In response, Haines-Marchel stated her spouse is incarcerated “for a homicide” and “is serving a 44 ½ year” sentence.⁷ On December 15, Haines-Marchel sent an e-mail to Lynch and attached a copy of a “Spousal Renunciation of Rights Affidavit” dated July 3, 2014. The December 15 e-mail states, in pertinent part:

My husband is currently incarcerated for a homicide charge and is serving a 44-1/2 year sentence with an ERD (earliest possible release date) of 2038. The board knows of my situation however I want to make you of [sic] aware that my husband has relinquished all community rights to property pursuant to RCW 26.16.050 which states “a spouse m[a]y give grant sell or convey directly to the other his or her community right title interest and all or any portion of their community real property[.]” [M]y husband has no community property interest in this business and is not a true party of interest. I have attached my husband’s Spousal Renunciation of Rights Affidavit.

The Spousal Renunciation of Rights Affidavit states Brock “will relinquish, irrevocably

⁷ The record does not indicate when the felony conviction occurred.

deny and renounce any and 'all' ownership interest and management decisions in Rock Island Chronicles."

On December 15, Lynch forwarded his report to the WSLCB Marijuana Licensing and Regulation Division (Licensing Division). The comment portion of the report states:

The applicant is currently married to Brock Marchel who according to the applicant is serving time in prison for a homicide conviction. The conviction is a felony that holds a 44½ year term. Although the spouse would like to give all rights to the business over to his wife [WAC] 314-55-035 requires that all true parties of interest have to qualify for a licenses [sic].

[WAC] 314-55-040 — what criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license.

"Felony conviction["] - 12 points. Because the applicant did not complete a criminal history form it is unclear what other conviction or charges he may have.

Denial of Retail Marijuana License

On January 12, 2015, the Licensing Division sent Chronics LLC a "Statement of Intent to Deny Marijuana License." The "Summary of Relevant Facts" states, in pertinent part:

- 2.2 [Haines-Marchel]'s spouse, Brock Marchel, is currently incarcerated, serving a 44.5 year term for a homicide conviction. Although the spouse would like to give all rights to the business over to his wife, they remain married in the state of Washington. WAC 314-55-035 requires that all true parties of interest must qualify for a license.

The "Relevant Authority and Conclusions" cite RCW 69.50.331(1) and WAC 314-55-035 and -040(1) as "grounds for denial."

- 3.1 The conduct outlined in paragraph 2.2 constitutes grounds for denial of the marijuana license application under the provisions of RCW 69.50.331(1) for the purpose of reviewing any application for a license and for considering the denial, suspension, revocation or

- renewal or denial thereof, of any license, the state liquor control board may consider any prior criminal conduct of the applicant.
- 3.2 The conduct outlined in paragraph 2.2 also constitutes grounds for denial under the provisions of WAC 314-55-035 and WAC 314-55-040(1).
 - 3.3 Paragraphs 3.1 through 3.2 above each establish a separate and independently sufficient basis for denial.

Administrative Appeal

Chronics LLC filed an administrative appeal of the Intent to Deny Marijuana License application and a motion for summary judgment. Chronics LLC argued that because Brock Marchel disclaimed any interest in the limited liability company, Haines-Marchel was the only true party of interest under WAC 314-55-035. Chronics LLC asserted the Spousal Renunciation of Rights Affidavit "changed community property to separate property solely in [Haines-Marchel]." Chronics LLC also argued denial of the license application infringed on the constitutional right of Haines-Marchel to work and earn a living and violated state law on "[m]arital status discrimination in employment."

The Licensing Division filed a cross motion for summary judgment. The Licensing Division asserted that under WAC 314-55-035 and -040, Brock Marchel "remains a true party of interest" and does not "qualify because of his criminal history." The Licensing Division argued the true party of interest for a limited liability company is not based on "a community property interest in the business."

The administrative law judge (ALJ) affirmed the decision of the Licensing Division to deny the application for a retail marijuana license.⁸ The "Initial Order on Summary Judgment Motion" sets forth the undisputed facts:

- 4.6. Chronics applied for a marijuana retailer license during the application window.

⁸ The ALJ ruled it did not have authority to address Haines-Marchel's argument that denial of the application violated her constitutional liberty interest to work and be free of marital discrimination.

- 4.7. [The Licensing Division] required each applicant to submit a Personal/Criminal History [Form].
- 4.8. Chronics is a limited liability company.
- 4.9. [The Licensing Division] required each member of a limited liability company and the spouse of each member to submit a Personal/Criminal History [Form].
- 4.10. Chronics's only member is Libby Haines-Marchel.
- 4.11. Ms. Haines-Marchel is married to Brock Marchel.
- 4.12. During the initial interview, Ms. Haines-Marchel disclosed that Mr. Marchel is incarcerated. [The Licensing Division] sought more information from her. Ms. Haines-Marchel subsequently advised [the Licensing Division] that Mr. Marchel is serving a 44.5-year term for a homicide conviction and will be released no earlier than 2038.
- 4.13. On or about June 15, 2014, Mr. Marchel signed a Spousal Renunciation of Rights Affidavit, whereby he irrevocably relinquished any ownership or management interest in and any rights to profits from Chronics, and renounced any community property interest in Chronics that might otherwise be attributed to him.
- 4.14. Mr. Marchel did not submit a Personal/Criminal History [Form] nor did he provide a copy of his fingerprints. Therefore, [the Licensing Division] was unable to determine whether he had any criminal history in addition to his homicide conviction. [The Licensing Division] assigned to Mr. Marchel 12 criminal history points for the homicide conviction.
- 4.15. As a result of the 12 criminal history points assigned to Mr. Marchel and consequently attributed to Chronics, [the Licensing Division] denied Chronics's application for a marijuana retailer license.

The conclusions of law state, in pertinent part:

- 5.12. [The Licensing Division] may investigate and consider criminal history when determining whether to grant an applicant a license. RCW 69.50.331(1); WAC 314-55-020[(6)].
- 5.13. "A marijuana license must be issued in the name(s) of the true party(ies) of interest." WAC 314-55-035.

- 5.14. For the purposes of Title 314 WAC, when the “true party of interest” is a limited liability company, the “persons to be qualified” are “all members and their spouses”. WAC 314-55-035(1). In other words, the criminal history of both member and spouse are attributed to the limited liability company. Here, Ms. Haines-Marchel is the only member of Chronics, a limited liability company. Mr. Marchel is her spouse. Therefore, he must qualify, or put another way, if his criminal history disqualifies him, it disqualifies Chronics.
- 5.15. Chronics argued that [the Licensing Division] is interfering with community property law. But the regulation specifically limits its definition of “true party of interest” to Title 314 WAC. Title 314 WAC addresses [the Licensing Division]’s regulation of tobacco, liquor, and marijuana. It does not address property rights, much less the regulation, definition, or application of property rights. Thus, WAC 314-55-035(1) does not clash with community property law.
- 5.16. Chronics argued that Mr. Marchel disclaimed any and all property rights, interest, and control as to Chronics. However, the definition of “true party of interest”, or perhaps more correctly “persons to be qualified” is based upon the relationship of the individual to either the limited liability company or a member of the limited liability company. It has nothing to do with property rights, interest, or control. Further, “true party of interest” is specifically distinguishable from “financiers” (WAC 314-55-035(3)) and “persons who exercise control of business” (WAC 314-55-035(4)). Accordingly, that Mr. Marchel disclaimed any and all property rights, interest, and control as to Chronics is not relevant.
- 5.17. Therefore, for the purposes of Title 314 [WAC] and for the purposes of Chronics qualifying for licensure, Mr. Marchel is a “true party of interest” and a “person to be qualified” and his criminal history must not disqualify him from licensure.
- 5.18. Mr. Marchel’s failure to meet the criminal history standards outline[d] in WAC 314-55-040 constitutes a basis for [the Licensing Division] to deny Chronics’s marijuana license application. WAC 314-55-050(4).
- 5.19. More specifically, a criminal history accumulating eight or more points as described in WAC 314-55-040(1) is grounds for denying a marijuana license application. WAC 314-55-040(1), (3).
- 5.20. Here, Mr. Marchel is serving time for a felony conviction. A current felony conviction is assigned 12 criminal history point[s]. WAC 314-55-040(1). So, Mr. Marchel’s criminal history points are 12.

Moreover, this conviction is not subject to the exceptions expressed in WAC 314-55-040(3). Further, Mr. Marchel has never submitted a criminal history [form] or submitted to [a Licensing Division] investigation of the criminal history. He may have additional criminal history points for conduct of which [the Licensing Division] is unaware. [The Licensing Division] will not normally issue a license to an applicant with eight or more criminal history points. WAC 314-55-040(1).

5.21. Here, by virtue of Mr. Marchel's criminal history points, Chronics exceeds the regulatory threshold for a negative criminal history and its application should be denied.

Chronics LLC filed a petition for review with the WSLCB. The petition asserts the Licensing Division exceeded its statutory authority by denying the application of Chronics LLC and violated the procedural due process rights of Haines-Marchel.

The WSLCB affirmed the ALJ decision and entered a "Final Order" adopting the Initial Order on Summary Judgment. The Final Order states, in pertinent part:

The Licensing Division of the Liquor and Cannabis Board issued a Statement of Intent to Deny Marijuana License dated January 12, 2015, asserting that the Applicant's spouse, Brock Marchel, is currently incarcerated, serving a 44.5 year term for a homicide conviction. Although the Applicant's spouse has offered to disavow any interest in the business or proceeds from it, the Applicant and her spouse remain married in the state of Washington. WAC 314-55-035 requires that all true parties of interest must qualify for a license. Mr. Marchel's criminal history makes him ineligible for a marijuana license. In addition, he has not completed the personal/criminal history portion of the application, thus the Board has been unable to determine whether he may have additional disqualifying criminal history.

...
... [T]he Administrative Law Judge's Initial Order on Summary Judgment Motion: Denying Applicant's Motion for Summary Judgment and Granting Agency's Cross Motion for Summary Judgment is AFFIRMED and adopted as the Final Order of the Board.

Superior Court Appeal

Chronics LLC and Haines-Marchel filed a petition for review in superior court under the Washington Administrative Procedure Act (WAPA), chapter 34.05 RCW, citing RCW 34.05.570(3) and (2)(c).

RCW 34.05.570(3) provides, in pertinent part:

Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

- (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
- (b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
-
- (d) The agency has erroneously interpreted or applied the law; [or]
-
- (i) The order is arbitrary or capricious.

RCW 34.05.570(2)(c) states, in pertinent part:

In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; [or] the rule was adopted without compliance with statutory rule-making procedures.

The petition alleged that under RCW 34.05.570(3), denial of the retail marijuana license unconstitutionally infringed on Haines-Marchel's fundamental right to marry and to pursue a "profession or occupation" and deprived her of a property interest without due process. The petition alleged that under RCW 34.05.570(2)(c), the WSLCB adoption of WAC 314-55-035 and -040 exceeded its statutory authority.

The superior court affirmed the WSLCB Final Order. The court concluded WAC 314-55-035 and -040 were "a narrowly tailored means to further the State's compelling interest" in closely regulating the sale of marijuana and "screening out criminal

involvement in the marijuana industry.”⁹ The court concluded the question of whether a license to sell marijuana is a property right subject to due process is “moot because Petitioner was never granted a retail marijuana license.”

The court ruled the WSLCB had the statutory authority to adopt WAC 314-55-035 and -040.

WAC 314-55-035 requires that when a marijuana license is issued to a limited liability company, members’ spouses be included as true parties of interest.

. . . Under WAC 314-55-035, Ms. Haines-Marchel and Mr. Marchel were both true parties of interest in Petitioner’s retail marijuana license application and both were required to qualify to hold such a license.

. . . WAC 314-55-035 and -040 act to screen out the involvement of criminals in the marijuana industry.

. . . Under WAC 314-55-040, Mr. Marchel’s criminal history excluded him from qualifying to hold a retail marijuana license.

. . . WAC 314-55-035 and -040 are within the scope and intent of Initiative Measure 502, which gave the Board broad authority to take marijuana out of the hands of criminals and bring marijuana under a tightly regulated, state-licensed system, and RCW 69.50.342, which empowers the Board to adopt rules it deems necessary and advisable to accomplish the purposes of and are not inconsistent with the spirit of Chapter 3, Laws of 2013.

Standard of Review

Chronics LLC and Haines-Marchel appeal the superior court order. WAPA governs review of the final administrative decision and the validity of an agency rule.

Tapper v. Emp’t Sec. Dep’t, 122 Wn.2d 397, 402, 858 P.2d 494 (1993); Ass’n of Wash.

⁹ The court found, in pertinent part:

The State of Washington has a compelling interest in closely regulating the sale of marijuana in order to (1) keep the marijuana industry out of the hands of criminals, (2) prevent revenue from the marijuana industry from being used to support criminal enterprises, (3) stop marijuana businesses from being used as a cover for illegal activities, (4) prevent the use of a qualified spouse as a “straw person” to disguise an unqualified spouse’s true interest in the marijuana business, and (5) comply with the expectations and interests of the United States Department of Justice in ensuring public safety.

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Spirits & Wine Distribs. v. Wash. Liquor Control Bd., 182 Wn.2d 342, 350, 340 P.3d 849 (2015).

When reviewing a final administrative decision, this court “sits in the same position as the superior court, applying the standards of the WAPA directly to the record before the agency.” Tapper, 122 Wn.2d at 402; Brown v. Dep’t of Commerce, 184 Wn.2d 509, 544, 359 P.3d 771 (2015). This court sits in the same position as the superior court and we do not give deference to the superior court’s rulings. Verizon Nw., Inc. v. Emp’t Sec. Dep’t, 164 Wn.2d 909, 915, 194 P.3d 255 (2008). We review constitutional issues de novo and are not bound by the trial court’s conclusions of law. Spirits & Wine, 182 Wn.2d at 350; Utter v. Dep’t of Soc. & Health Servs., 140 Wn. App. 293, 300, 165 P.3d 399 (2007). Under RCW 34.05.570(3), we determine only whether the administrative order is unconstitutional, outside the agency’s statutory authority, the agency has erroneously applied the law, or the decision is arbitrary and capricious. Ames v. Dep’t of Health, Med. Quality Assur. Comm’n, 166 Wn.2d 255, 260, 208 P.3d 549 (2009).

Under RCW 34.05.570(2)(c), an agency rule may be invalidated only if it is unconstitutional, exceeds the agency’s statutory rule-making authority, or is arbitrary and capricious. If the administrative decision is on summary judgment, we overlay the WAPA standard of review with the summary judgment standard. Verizon, 164 Wn.2d at 916. “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.” Verizon, 164 Wn.2d at 916. The moving party bears the burden of demonstrating the invalidity of the denial. RCW 34.05.570(1)(a).

Regulation of Marijuana

In 1923, the legislature enacted a criminal statute making possession and sale of narcotics unlawful. LAWS OF 1923, ch. 47, § 3; State v. Bradshaw, 152 Wn.2d 528, 532, 98 P.3d 1190 (2004). The statute defined “narcotic drugs” as opiates, cocaine, and marijuana. LAWS OF 1923, ch. 47, § 2.

In 1970, Congress passed the “Comprehensive Drug Abuse Prevention and Control Act of 1970,”¹⁰ known as the Controlled Substances Act (CSA), 21 U.S.C. §§ 801-904. “The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.” Gonzales v. Raich, 545 U.S. 1, 12, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). The CSA classifies marijuana as a “Schedule I” controlled substance. 21 U.S.C. §§ 802(6), 812(c)(Schedule I)(c)(10). Under the CSA, it is “unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.” 21 U.S.C. § 841(a)(1); see also Gonzales, 545 U.S. at 14; United States v. Oakland Cannabis Buyers’ Co-op, 532 U.S. 483, 489-90, 121 S. Ct. 1711, 149 L. Ed. 2d 722 (2001). The sale of marijuana is a felony under federal law. 21 U.S.C. §§ 841(a)(1)(i), (b)(1)(A)(vii), (b)(1)(B)(vii), (b)(1)(D); 18 U.S.C. §§ 3559(a)(3)-(5).

In 1971, Washington adopted the Uniform Controlled Substances Act, chapter 69.50 RCW. LAWS OF 1971, 1st Ex. Sess., ch. 308. The Uniform Controlled Substances Act paralleled the CSA. Seeley v. State, 132 Wn.2d 776, 790-91, 940 P.2d 604 (1997). Under the Uniform Controlled Substances Act, it was a crime to “manufacture, deliver, or possess with intent to manufacture or deliver” marijuana.

¹⁰ Pub. L. No. 91-513, 84 Stat. 1236 (1970).

Former RCW 69.50.401(a)(1)(i), .204(d)(10) (1971); Cannabis Action Coal. v. City of Kent, 183 Wn.2d 219, 222, 351 P.3d 151 (2015).

In 1998, Washington voters approved Initiative Measure 692 legalizing the medical use of marijuana. LAWS OF 1999, ch. 2.

Initiative 502

In November 2012, Washington voters approved Initiative Measure 502. LAWS OF 2013, ch. 3, codified as part of chapter 69.50 RCW. Initiative 502 legalizes the possession of small quantities of marijuana for individuals over 21 years old¹¹ and authorizes regulation and a “system for the licensed distribution of recreational marijuana.” Cannabis Action Coal., 183 Wn.2d at 222-23; No on I-502 v. Wash. NORML, 193 Wn. App. 368, 370, 372 P.3d 160 (2016). A stated purpose of Initiative 502 is to take “marijuana out of the hands of illegal drug organizations and bring[] it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.” LAWS OF 2013, ch. 3, § 1. The Laws of 2013, chapter 3, section 1 state:

The people intend to stop treating adult marijuana use as a crime and try a new approach that:

- (1) Allows law enforcement resources to be focused on violent and property crimes;
- (2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
- (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana.

Consistent with Initiative 502, RCW 69.50.360 states, in pertinent part:

The following acts, when performed by a validly licensed marijuana retailer or employee of a validly licensed retail outlet in compliance with rules

¹¹ RCW 69.50.4013(3)(a).

adopted by the state liquor and cannabis board to implement and enforce chapter 3, Laws of 2013, do not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana concentrates, useable marijuana, or marijuana-infused products that have been properly packaged and labeled from a marijuana processor validly licensed under this chapter;

(3) Delivery, distribution, and sale, on the premises of the retail outlet, of any combination of the following amounts of marijuana concentrates, useable marijuana, or marijuana-infused product to any person twenty-one years of age or older:

- (a) One ounce of useable marijuana;
- (b) Sixteen ounces of marijuana-infused product in solid form; [or]
- (c) Seventy-two ounces of marijuana-infused product in liquid form.

Initiative 502 is codified as part of chapter 69.50 RCW. RCW 69.50.325(3)(a) states, "Every marijuana retailer's license shall be issued in the name of the applicant." RCW 69.50.331(1)(b)(iii) states, "No license of any kind may be issued to . . . [a] partnership, employee cooperative, association, nonprofit corporation, or corporation . . . unless all of the members thereof are qualified to obtain a license as provided in this section." RCW 69.50.325(3)(a) states, in pertinent part:

There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor and cannabis board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license.

RCW 69.50.331(1)(a) expressly states that "[s]ubject to the provisions of this section, the state liquor and cannabis board may, in its discretion, grant or deny the . . . license applied for." RCW 69.50.331(1)(a) states the WSLCB "may consider any prior

criminal conduct of the applicant” in determining whether to deny an application for a license. RCW 69.50.331(1)(a) states, in pertinent part:

For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor and cannabis board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor and cannabis board and a criminal history record information check. The state liquor and cannabis board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms.

The legislature authorizes the WSLCB to adopt regulations and a system to implement Initiative 502 and legalize issuance of a retail marijuana license. RCW 69.50.342(1). RCW 69.50.342(1) gives the WSLCB broad authority to adopt rules that are “not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable.”

Adoption of Chapter 314-55 WAC

The WSLCB adopted rules in November 2013. WAC 314-55-005 (Wash. St. Reg. 13-21-104, filed Oct. 21, 2013, effective Nov. 21, 2013). Chapter 314-55 WAC governs the requirements for a retail marijuana license. WAC 314-55-010(1) defines a “marijuana license applicant” as “any person or business entity who is considered by the WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.” A “marijuana licensee” is “any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.” WAC 314-55-010(15).

If the applicant meets the minimum requirements for a retail marijuana license, the Licensing Division conducts a comprehensive investigation to verify “the true party(ies) of interest,” including criminal history based on submission of a Personal/Criminal History Form. WAC 314-55-020(5)-(7). WAC 314-55-020 states, in pertinent part:

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The WSLCB may inquire and request documents regarding all matters in connection with the marijuana license application. . . .

. . . .
(5) The WSLCB will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(6) The WSLCB will conduct an investigation of the applicants’ criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.^[12]

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. . . .

. . . .
(7) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants’ right to the real and personal property, and to verify the true party(ies) of interest.^[13]

WAC 314-55-035 identifies “What persons or entities have to qualify for a marijuana license.”¹⁴ WAC 314-55-035 states, “A marijuana license must be issued in the name(s) of the true party(ies) of interest.” WAC 314-55-035(1) defines “true party of

¹² WAC 314-55-045 identifies “What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license.” (Boldface omitted.)

¹³ Boldface in original.

¹⁴ Boldface omitted.

interest” and the persons who must qualify. WAC 314-55-035(1) states:

True parties of interest - For purposes of this title, “true party of interest” means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> • All general partners and their spouses. • All limited partners and their spouses.
Limited liability company	<ul style="list-style-type: none"> • All members and their spouses. • All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none"> • All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.	<p>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p> <ul style="list-style-type: none"> • “Gross profit” includes the entire gross receipts from all

	<p>sales and services made in, upon, or from the licensed business.</p> <ul style="list-style-type: none"> • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws. ^[15]

WAC 314-55-040 addresses "What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license."¹⁶ WAC 314-55-040(1) states, in pertinent part:

The WSLCB will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three Years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each. ^[17]

Constitutional Right to Marry and Contract

Chronics LLC and Haines-Marchel contend WAC 314-55-035 violates her constitutional right to marry and the decision to deny the retail marijuana license violates her right to contract.

¹⁵ Boldface in original.
¹⁶ Boldface omitted.
¹⁷ Boldface in original.

We review constitutional issues de novo as a matter of law. Spirits & Wine, 182 Wn.2d at 350. We presume an agency's regulations are constitutional. Campbell v. Tacoma Pub. Sch. Dist. No. 10, 192 Wn. App. 874, 883, 370 P.3d 33 (2016); Wash. Hosp. Ass'n v. Dep't of Health, 183 Wn.2d 590, 595, 353 P.3d 1285 (2015).

Where, as here, the legislature specifically delegates rule-making power to an agency, the regulations are presumed valid. Anderson, Leech & Morse, Inc. v. Wash. Liquor Control Bd., 89 Wn.2d 688, 695, 575 P.2d 221 (1978); St. Francis Extended Health Care v. Dep't of Soc. & Health Servs., 115 Wn.2d 690, 702, 801 P.2d 212 (1990). A party may assert either a facial or an as-applied challenge to a regulation.

To prevail on a facial challenge, the party must show "no set of circumstances" where the regulation "as currently written . . . can be constitutionally applied." City of Redmond v. Moore, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). To prevail on an as-applied challenge, the party must prove an otherwise valid regulation is unconstitutional as applied to that individual. Moore, 151 Wn.2d at 668-69.

Chronics LLC and Haines-Marchel do not assert a facial challenge to WAC 314-55-035. Haines-Marchel contends that as applied, WAC 314-55-035 violates her constitutional right to marry. In an as-applied challenge, the party alleges the regulation is unconstitutional "in the specific context of the party's actions or intended actions." Moore, 151 Wn.2d at 668-69; City of Seattle v. Evans, 184 Wn.2d 856, 862, 366 P.3d 906 (2015).

The right to marry is a fundamental substantive due process right under the Fourteenth Amendment to the United States Constitution. Obergefell v. Hodges, ___ U.S. ___, 135 S. Ct. 2584, 2597-98, 192 L. Ed. 2d 609 (2015); Zablocki v. Redhail, 434

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U.S. 374, 383, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978); Loving v. Virginia, 388 U.S. 1, 12, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); City of Bremerton v. Widell, 146 Wn.2d 561, 575-76, 51 P.3d 733 (2002). But not “every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny.” Zablocki, 434 U.S. at 386; Parsons v. County of Del Norte, 728 F.2d 1234, 1237 (9th Cir. 1984).

We apply a two-part test to determine whether state action unconstitutionally infringes on the right of marriage. Widell, 146 Wn.2d at 579. First, “ ‘a court must ask whether the policy or action is a direct or substantial interference with the right of marriage.’ ” Widell, 146 Wn.2d at 579 (quoting Montgomery v. Carr, 101 F.3d 1117, 1124 (6th Cir. 1996)). “ ‘[I]f the policy or action is a direct and substantial interference with the right of marriage,’ ” strict scrutiny applies. Widell, 146 Wn.2d at 579 (quoting Carr, 101 F.3d at 1124). Otherwise, we apply a “ ‘rational basis scrutiny.’ ” Widell, 146 Wn.2d at 579 (quoting Carr, 101 F.3d at 1124); Parsons, 728 F.2d at 1237. “[R]easonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.” Zablocki, 434 U.S. at 386; see Califano v. Jobst, 434 U.S. 47, 54, 98 S. Ct. 95, 54 L. Ed. 2d 228 (1977).

Chronics LLC and Haines-Marchel assert denial of the application for a retail marijuana license directly interferes with the right to marry. Chronics LLC and Haines-Marchel assert the decision was “solely based on her marriage to Brock.” The record does not support this argument. The record establishes the WSLCB denied the application of Chronics LLC because Brock is a true party of interest who did not qualify for a retail marijuana license.

A retail marijuana license must be issued in the name of the applicant. Under WAC 314-55-035(1), if the applicant is a limited liability company, all true parties of interest must qualify. The true parties of interest for a limited liability company are all members and the spouses of each member. WAC 314-55-035(1). Because WAC 314-55-035 does not interfere with the right of Haines-Marchel to marry or remain married to the person of her choosing, it does not place a "direct and substantial" burden on the right of marriage, and the rational basis test applies. Widell, 146 Wn.2d at 579-80.

Under the rational basis test, WAC 314-55-035 need only be "rationally related to a legitimate state interest." Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 222, 143 P.3d 571 (2006).

In determining whether a rational relationship exists, a court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest.

Amunrud, 158 Wn.2d at 222; Heller v. Doe, 509 U.S. 312, 320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993).

There is no dispute that the WSLCB has a legitimate interest in conducting a comprehensive investigation to verify the true parties of interest and determine whether criminal history disqualifies the applicant. See RCW 69.50.331(1)(b). Because WAC 314-55-035 is rationally related to the legitimate interest of the State to legalize and strictly control issuance of a retail marijuana license, Chronics LLC and Haines-Marchel cannot show that as applied, WAC 314-55-035 is unconstitutional.

Levinson v. Horse Racing Commission, 48 Wn. App. 822, 740 P.2d 898 (1987), is distinguishable. In Levinson, the Washington Horse Racing Commission suspended a "racehorse ownership license" after learning the owner's spouse had a 12-year-old

narcotics conviction. Levinson, 48 Wn. App. at 823-24. Under former WAC 260-12-160 (1980), an individual convicted of selling narcotics was barred from horse racing. Former WAC 260-40-160(3) (1961) stated, “[N]o entry [of a horse in a horse race] shall be accepted from husband or wife, while either is disqualified.” The court concluded former WAC 260-12-160 unconstitutionally infringed on Levinson’s right to marry because the regulation was “very sweeping” and applied to individuals “who many years after their conviction still cannot attend racing events, and cannot get ownership licenses.” Levinson, 48 Wn. App. at 826. But here, unlike in Levinson, WAC 314-55-040 does not categorically disqualify a true party of interest based on criminal history. WAC 314-55-040(3) states:

The WSLCB may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment.

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.^[18]

The cases Haines-Marchel cites to argue denial of the application under WAC 314-55-035 violates the Washington Law Against Discrimination, chapter 49.60 RCW,

¹⁸ Boldface in original.

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are inapposite. Magula v. Benton Franklin Title Co., Inc., 131 Wn.2d 171, 930 P.2d 307 (1997), and Kastanis v. Educational Employees Credit Union, 122 Wn.2d 483, 859 P.2d 26, 865 P.2d 507 (1993), address claims filed under RCW 49.60.180 against former employers for employment discrimination based on marital status. See RCW 49.60.180 (it is "unfair practice for any employer" to refuse to hire, to discharge, or to discriminate against any person based on a number of protected categories, including "marital status"). WAC 314-55-035 does not discriminate based on an individual's legal marital status.

Chronics LLC and Haines-Marchel also claim denial of the application violated the constitutional right of Haines-Marchel to contract by disregarding the Spousal Renunciation of Rights Affidavit executed by Brock in determining whether Brock qualified under WAC 314-55-035.

The Spousal Renunciation of Rights Affidavit states, in pertinent part:

It is my intention to knowingly and willingly make this agreement that I will relinquish, irrevocably deny and renounce any and 'all' ownership interest and management decisions in Rock Island Chronics.

It is also my understanding spouses [sic] may agree to change the character of their property from community to separate property. This is my intention.

I agree to renounce and convey my rights in claiming to have a right to the companies [sic] asset acquisition, profits, bank accounts, sales revenue, or the profits she makes in the sale of the business as a whole.

I also agree to convey and renounce my rights within the color of the law that the Washington State Liquor Control Board deems necessary in this process.

We conclude the Spousal Renunciation of Rights Affidavit is not a binding contract. "[U]nless both parties are bound by mutual promises or considerations, neither is bound." Lande v. S. Kitsap Sch. Dist. No. 402, 2 Wn. App. 468, 477, 469 P.2d 982 (1970); Larkins v. St. Paul & Tacoma Lumber Co., 35 Wn.2d 711, 722, 214 P.2d

700 (1950). Further, “[e]very contract must be supported by a consideration to be enforceable.” King v. Riveland, 125 Wn.2d 500, 505, 886 P.2d 160 (1994); SAK & Assocs., Inc. v. Ferguson Constr., Inc., 189 Wn. App. 405, 411, 357 P.3d 671 (2015). “Consideration is a bargained-for exchange of promises” or “ ‘any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange.’ ” Labriola v. Pollard Grp., Inc., 152 Wn.2d 828, 833, 100 P.3d 791 (2004) (quoting King, 125 Wn.2d at 505). The unilateral intent in the Spousal Renunciation of Rights Affidavit to “relinquish, irrevocably deny and renounce any and ‘all’ ownership interest and management decisions in Rock Island Chronics” is not a mutually binding agreement supported by consideration.

Due Process Liberty and Property Interest

Haines-Marchel asserts that as applied, WAC 314-55-035 violates her right to pursue an occupation. The right to pursue an occupation or profession is a protected liberty interest. Conn v. Gabbert, 526 U.S. 286, 291-92, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999). The “Due Process Clause” of the Fourteenth Amendment “ ‘includes some generalized due process right to choose one’s field of private employment.’ ” Amunrud, 158 Wn.2d at 220 (quoting Conn, 526 U.S. at 291-92); Dittman v. California, 191 F.3d 1020, 1029 (9th Cir. 1999). But that right is “ ‘subject to reasonable government regulation.’ ” Amunrud, 158 Wn.2d at 220¹⁹ (quoting Conn, 526 U.S. at 292). We apply the rational basis test to regulations alleged to burden the right to employment. Amunrud, 158 Wn.2d at 222 (“Because the right to pursue a trade or profession is a protected right but not a fundamental right, we apply a rational basis test.”); Johnson v. Dep’t of Fish & Wildlife, 175 Wn. App. 765, 775, 305 P.3d 1130 (2013). We conclude

¹⁹ Emphasis omitted.

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WAC 314-55-035 and WAC 314-55-040 are rationally related to a legitimate state interest and do not violate Haines-Marchel's right to pursue an occupation.

Haines-Marchel claims that because the WSLCB selected her application for processing, she acquired a property right to issuance of a marijuana license, and denial of the application violated due process.

To state a claim for deprivation of property without due process of law, a party must identify a property interest protected by the Due Process Clause. Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); Bang Nguyen v. Dep't of Health, Med. Quality Assur. Comm'n, 144 Wn.2d 516, 522-23, 29 P.3d 689 (2001).

Haines-Marchel relies on Wedges/Ledges of California, Inc. v. City of Phoenix, Arizona, 24 F.3d 56 (9th Cir. 1994), to assert Chronics LLC had a property interest in the issuance of a marijuana license. In Wedges/Ledges, the Phoenix City Code (PCC) that stated a game license tag " 'shall be issued' " to certain coin-operated game machines made issuance of licenses mandatory and eliminated the city's discretion to deny licenses. Wedges/Ledges, 24 F.3d at 63 (quoting former PCC § 7-28(c)(1) (1986-1987)). The court concluded the city code created a property interest in issuance of a license because it was an " 'articulable standard' sufficient to give rise to a legitimate claim of entitlement." Wedges/Ledges, 24 F.3d at 63-64 (quoting Parks v. Watson, 715 F.2d 646, 657 (9th Cir. 1983)). The court held, "[A]n individual has a reasonable expectation of entitlement deriving from 'existing rules or understandings that stem from an independent source such as state law.'" Wedges/Ledges, 24 F.3d at 62 (quoting

Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)).

Here, unlike in Wedges/Ledges, Haines-Marchel cannot show Chronics LLC had “ ‘a legitimate claim of entitlement to’ ” the issuance of a retail marijuana license. Town of Castle Rock, Colo. v. Gonzales, 545 U.S. 748, 756, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005) (quoting Roth, 408 U.S. at 577). The issuance of a marijuana license is not mandatory. RCW 69.50.331 expressly gives the WSLCB discretion to deny an application for a marijuana license. RCW 69.50.331(1)(a) states, in pertinent part, that “[s]ubject to the provisions of this section, the state liquor and cannabis board may, in its discretion, grant or deny the . . . license applied for.” Further, the “issuance of any license by the board shall not be construed as granting a vested right in any of the privileges so conferred.” WAC 314-12-010; see also Jow Sin Quan v. Wash. Liquor Control Bd., 69 Wn.2d 373, 382, 418 P.2d 424 (1966) (license to sell intoxicants “does not become a vested property right upon the issuance thereof”). A license is “a temporary permit, in the nature of a privilege, to engage in a business that would otherwise be unlawful.” Jow Sin Quan, 69 Wn.2d at 382; see also RCW 69.50.325(3).

Because Chronics LLC and Haines-Marchel do not have a property interest in the issuance of a marijuana license, the WSLCB did not violate due process by denying the application for a license.

Statutory Authority to Adopt WAC 314-55-035 and WAC 314-55-040

– Chronics LLC and Haines-Marchel cite RCW 34.05.570(2)(c) and RCW 34.05.570(3) to argue the WSLCB exceeded its statutory authority in adopting WAC 314-55-035 and WAC 314-55-040 and denying the application.

We review the validity of an agency's rule de novo. Local 2916, IAFF v. Pub. Emp't Relations Comm'n, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995). The validity of a rule is governed by RCW 34.05.570(2)(c). We determine the extent of an administrative agency's rule making authority de novo as a matter of law. Local 2916, 128 Wn.2d at 379; Spirits & Wine, 182 Wn.2d at 350; Wash. Hosp. Ass'n, 183 Wn.2d at 595. The authority of an administrative agency is " 'limited to that which is expressly granted by statute or necessarily implied therein.' " Conway v. Dep't of Soc. & Health Servs., 131 Wn. App. 406, 419, 120 P.3d 130 (2005) (quoting McGuire v. State, 58 Wn. App. 195, 198, 791 P.2d 929 (1990)); Anderson, Leech & Morse, 89 Wn.2d at 694. A rule is invalid if it conflicts with the intent and purpose of the legislation, exceeds the statutory authority of the agency, or is arbitrary and capricious. RCW 34.05.570(2)(c). Under RCW 34.05.570(2)(c), the court "shall declare the rule invalid" if it finds the rule exceeds the statutory authority of the agency. " '[R]egulation[s] will not be struck down unless compelling reasons are presented sufficient to show the scheme is in conflict with the intent and purpose of the legislation.' " Hi-Starr, Inc. v. Liquor Control Bd., 106 Wn.2d 455, 459, 722 P.2d 808 (1986)²⁰ (quoting Anderson, Leech & Morse, 89 Wn.2d at 695).

Where the legislature specifically delegates the power to adopt regulations, those regulations are presumed to be valid. St. Francis, 115 Wn.2d at 702. "The burden of overcoming this presumption rests on the challenger, and judicial review will be limited to a determination of whether the regulation in question is reasonably consistent with the statute being implemented." St. Francis, 115 Wn.2d at 702. Because administrative agencies are " 'creatures of the legislature without inherent or common-law powers,' " an agency has only those powers that are conferred either expressly or by necessary

²⁰ (Alterations in original) (internal quotation marks omitted).

No. 75669-9-1/29

implication. Human Rights Comm'n v. Cheney Sch. Dist. No. 30, 97 Wn.2d 118, 125, 641 P.2d 163 (1982) (quoting State v. Munson, 23 Wn. App. 522, 524, 597 P.2d 440 (1979)).

Statutory interpretation is a question of law we review de novo. W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wn.2d 599, 607, 998 P.2d 884 (2000). Our primary goal in interpreting statutes is to ascertain and give effect to legislative intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, we give effect to that plain meaning. Campbell & Gwinn, 146 Wn.2d at 9-10.

Under RCW 34.05.570(3), we review the legal determination of the WSLCB under the error of law standard. Verizon, 164 Wn.2d at 915. This standard accords substantial weight to an agency's interpretation of a statute within its expertise and an agency's interpretation of rules that the agency promulgated. Verizon, 164 Wn.2d at 915.

Haines-Marchel cannot show the adoption of WAC 314-55-035 or WAC 314-55-040 is in conflict with the intent and purpose of the statute or that the WSLCB acted outside its statutory authority.

The adoption of WAC 314-55-035 and -040 is consistent with the purpose and intent of the statute. Initiative 502 unambiguously states the purpose of the initiative is to take "marijuana out of the hands of illegal drug organizations and bring[] it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol." LAWS OF 2013, ch. 3, § 1. RCW 69.50.325(3)(a) states that the WSLCB shall regulate the

marijuana retailer licenses and that “[e]very marijuana retailer’s license shall be issued in the name of the applicant.”

Under RCW 69.50.331(1)(b)(iii), “[n]o license of any kind may be issued to” a corporation “unless all of the members thereof are qualified to obtain a license as provided in this section.” RCW 69.50.331(1)(a) expressly states that “[s]ubject to the provisions of this section, the state liquor and cannabis board may, in its discretion, grant or deny the renewal or license applied for.” RCW 69.50.331(1)(a) unambiguously states the WSLCB “may consider any prior criminal conduct of the applicant” in determining whether to deny an application for a license. RCW 69.50.331(1)(a) states, in pertinent part:

For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor and cannabis board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor and cannabis board and a criminal history record information check. The state liquor and cannabis board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms.

RCW 69.50.342(1) and .345(1) expressly give the WSLCB the authority to adopt rules governing the investigation and approval of an application for a retail marijuana license. RCW 69.50.342(1) authorizes the WSLCB to adopt regulations “[f]or the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein,” including regulations governing application for marijuana licenses. RCW 69.50.342(1) grants the WSLCB broad authority to adopt rules that are “not inconsistent with the spirit of chapter 3, Laws of

2013 as are deemed necessary or advisable.”²¹ RCW 69.50.342(1) states, in pertinent part:

For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the state liquor and cannabis board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor and cannabis board is empowered to adopt rules regarding the following:

-
(i) Application . . . for licenses issued under this chapter.

RCW 69.50.345(1) states the WSLCB “must adopt rules that establish the procedures and criteria necessary to implement the . . . [l]icensing of . . . marijuana retailers.” WAC 314-55-035 and -040 are consistent with the purpose of carrying out the intent of Initiative 502. We hold the WSLCB did not exceed its authority in adopting WAC 314-55-035 and WAC 314-55-040.

We also note that the regulations are nearly identical to the regulations governing the issuance of licenses to sell hard alcohol. Like WAC 314-55-035, WAC 314-07-035 provides that “a liquor license must be issued in the name(s) of the true party(ies) of interest.” Like WAC 314-55-035(1), where the applicant for a liquor license is a limited liability company, WAC 314-07-035(1) defines the true parties of interest to be qualified as “[a]ll members . . . with more than 10% interest in the LLC and spouses” and “[a]ll managers . . . and their spouses.”²² Likewise, the “point system” used to determine

²¹ See also RCW 69.50.345(1) (WSLCB “must adopt rules that establish the procedures and criteria necessary to implement the . . . [l]icensing of . . . marijuana retailers.”)

²² The regulatory scheme governing the issuance of gambling licenses, chapter 230-03 WAC, is also consistent with WAC 314-55-035. WAC 230-03-065(1) states:

Applicants' spouses must also meet the qualifications to hold a gambling license when married persons who maintain a marital community apply for or hold a license to operate gambling activities. This includes, but is not limited to, owners and substantial interest holders of commercial gambling establishments.

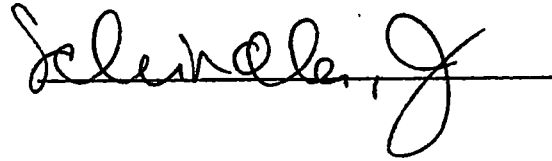
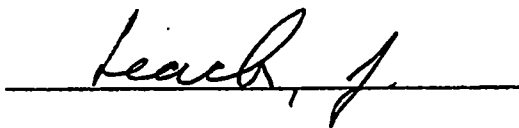
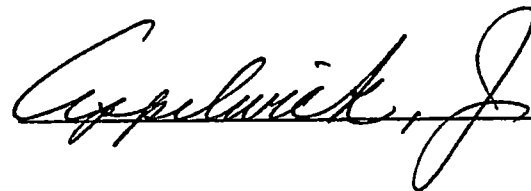
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whether an individual's criminal history bars them from receiving a marijuana license is also used to determine if an individual is eligible for a liquor license. Compare WAC 314-55-040(1) with WAC 314-07-040(1).

Haines-Marchel does not carry her burden to establish that the adoption of WAC 314-55-035 or WAC 314-55-040 is inconsistent with the intent of the statute or that the WSLCB exceeded its authority in denying the Chronics LLC application.

We affirm.

WE CONCUR:

Handwritten signature of Haines-Marchel in cursive script, written over a horizontal line.Handwritten signature of Leach in cursive script, written over a horizontal line.Handwritten signature of Applegate in cursive script, written over a horizontal line.

FILED
KING COUNTY WASHINGTON

JUL 29 2016

SUPERIOR COURT CLERK
BY Dawn Tubbs
DEPUTY

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

**LIBBY HAINES-MARCHEL
ROCK ISLAND CHRONICS, LLC,**

NO. 15-2-30136-5 SEA

Petitioner,

ORDER

v.

**WASHINGTON STATE LIQUOR
AND CANNABIS BOARD, an agency
of the State of Washington,**

Respondent.

This case came before the Court on July 15, 2016, on a petition for judicial review of a final order of the Washington State Liquor and Cannabis Board (Board) filed by Petitioner, Rock Island Chronics, LLC. Appearing for Petitioner was ROBERT H. STEVENSON, and appearing for the Board was ROSE WESTON, Assistant Attorney General.

The court having heard the oral arguments of the parties and having reviewed the entire record in this case, including all motions, pleadings, and briefing, makes the following:

FINDINGS OF FACT

1. On November 12, 2015, the Board issued a Final Order denying Petitioner's application for a retail marijuana license.
2. The deadline for filing a petition for review of the Final Order fell on Monday, December 14, 2015.

ORDER

1

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9036

1 3. On December 11, 2015, Petitioner filed a petition for review and mailed it to
2 the Board and the Washington Attorney General.

3 4. The Board received the petition for review in the mail on Tuesday, December
4 15, 2015.

5 5. Petitioner did not personally serve its petition for review on the Board.

6 6. In 2014, Petitioner's application for a retail marijuana license was selected for
7 processing as a first priority applicant by a lottery conducted by the Board at the time under
8 WAC 314-55-081.

9 7. Petitioner never held a license to sell marijuana in the State of Washington.

10 8. Libby Haines-Marchel is the registered agent and sole member of Rock Island
11 Chronics, LLC.

12 9. Ms. Haines-Marchel is legally married to Brock Marchel.

13 10. WAC 314-55-035 states that marijuana licenses "must be issued in the name(s)
14 of the true party(ies) of interest" and designates the true parties of interest of a limited liability
15 company as consisting of, in relevant part, "[a]ll members and their spouses" and "[a]ll
16 managers and their spouses."

17 11. RCW 69.50.331(1)(b) states that the Board "may consider any prior criminal
18 conduct of the applicant" in reviewing an application for a marijuana license.

19 12. WAC 314-55-040(3) states that the Board "may not issue a marijuana license
20 to anyone who has accumulated eight or more [criminal history] points" as calculated using
21 the WAC's chart showing types of convictions, time periods during which points will be
22 assigned, and the number of points to be assigned for each category.

23 13. Mr. Marchel is serving a 44.5-year sentence in the state of Washington for a
24 felony murder conviction.

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ORDER

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1 14. Although Mr. Marchel did not submit fingerprints or a criminal history
2 information statement, the Board assigned him twelve criminal history points based on his
3 murder conviction.

4 15. The Board rejected Petitioner's application for a retail marijuana license based
5 on Mr. Marchel's disqualifying criminal history.

6 16. Mr. Marchel executed a written renunciation of his community property,
7 ownership, and management interests in Petitioner's business and any license it might be
8 granted.

9 17. When the Board rejected Petitioner's license application, Petitioner received
10 notice of the decision and an opportunity to be heard.

11 18. Following briefing and a hearing, an administrative law judge granted the
12 Board's motion for summary judgment and affirmed the Board's decision to deny Petitioner's
13 license application.

14 19. The Board issued a Final Order affirming the denial of Petitioner's license
15 application, and the petition for judicial review followed.

16 CONCLUSIONS OF LAW

17 1. Petitioner erred in failing to timely and properly serve its Petition for Review
18 on the Board, but Petitioner substantially complied with the service requirements of RCW
19 34.05.542, and the error was not fatal and caused no prejudice to Respondent.

20 2. Petitioner, having received notice and an opportunity to be heard, was not
21 denied the right to due process.

22 3. WAC 314-55-035 requires that when a marijuana license is issued to a limited
23 liability company, members' spouses be included as true parties of interest.
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1 4. Under WAC 314-55-035, Ms. Haines-Marchel and Mr. Marchel were both true
2 parties of interest in Petitioner's retail marijuana license application and both were required to
3 qualify to hold such a license.

4 5. WAC 314-55-035 and -040 act to screen out the involvement of criminals in
5 the marijuana industry.

6 6. Under WAC 314-55-040, Mr. Marchel's criminal history excluded him from
7 qualifying to hold a retail marijuana license.

8 7. WAC 314-55-035 and -040 act to infringe on a person's constitutional right to
9 marry and are subject to strict scrutiny.

10 8. Regulations survive strict scrutiny when they are necessary and narrowly
11 tailored means to further a compelling government interest.

12 9. The State of Washington has a compelling interest in closely regulating the
13 sale of marijuana in order to (1) keep the marijuana industry out of the hands of criminals, (2)
14 prevent revenue from the marijuana industry from being used to support criminal enterprises,
15 (3) stop marijuana businesses from being used as a cover for illegal activities, (4) prevent the
16 use of a qualified spouse as a "straw person" to disguise an unqualified spouse's true interest
17 in the marijuana business, and (5) comply with the expectations and interests of the United
18 States Department of Justice in ensuring public safety.

19 10. The State of Washington has a compelling interest in including spouses as true
20 parties of interest under WAC 314-55-035 because the marital unit functions together under
21 the law and constitutes a special category of connection.

22 11. WAC 314-55-040 takes into account the seriousness and age of crimes and is a
23 narrowly tailored means to further the State's compelling interest in screening out criminal
24 involvement in the marijuana industry.

25 12. Mr. Marchel's renunciation of his community property interest does not
26 remove Mr. Marchel as a true party of interest in Petitioner's license application as it does not

1 bind third parties; the Board has no power to enforce the renunciation; and the parties are free
2 to choose to ignore, change, or eliminate the agreement at any time without notice to or the
3 knowledge of the Board.

4 13. WAC 314-55-035 and -040 are within the scope and intent of Initiative
5 Measure 502, which gave the Board broad authority to take marijuana out of the hands of
6 criminals and bring marijuana under a tightly regulated, state-licensed system, and RCW
7 69.50.342, which empowers the Board to adopt rules it deems necessary and advisable to
8 accomplish the purposes of and are not inconsistent with the spirit of Chapter 3, Laws of
9 2013.

10 14. The question of whether a license is a property right is moot because Petitioner
11 was never granted a retail marijuana license.

12 15. The state's infringement on the right to marry survives strict scrutiny.

13 16. The question of whether the regulations infringed on Ms. Haines-Marchel's
14 right to work is moot because the infringement on a fundamental right survives strict scrutiny.

15 17. The administrative law judge did not err in granting the Board's motion for
16 summary judgment.

17 18. The Board did not err in denying a retail marijuana license to Rock Island
18 Chronics, LLC.

19 19. Petitioner has not prevailed and is not entitled to damages or attorney fees.

20 **ORDER**

21 1. The Board's motion to dismiss for failure to properly and timely serve the
22 petition for review is DENIED.

23 2. The petition for review of the Board's Final Order is DENIED.
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3. Upon a showing that the argument was properly raised below, Rock Island
Chronics, LLC, may file a request for a hearing on whether the Board assigned Mr. Marchel
the correct number of criminal history points.

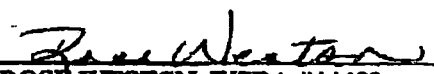
DATED this 29th day of July, 2016.



JUDGE BILL BOWMAN

Submitted by:

ROBERT W. FERGUSON
Attorney General


ROSE WESTON, WSBA #44493
Assistant Attorney General
Attorneys for Respondent

RECEIVED

SEP 01 2015

Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

Rock Island Chronics LLC dba Chronics,

Location Address:
Parcel 1010200301
Rock Island, WA 98850,

Applicant.

License Application No. 415292
UBI No. 603 397 627 001 0001

Docket No. 03-2015-LCB-00048

INITIAL ORDER ON SUMMARY JUDGMENT
MOTION:
DENYING APPLICANT'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING AGENCY'S CROSS MOTION FOR
SUMMARY JUDGMENT

Agency: Liquor and Cannabis Board¹
Program: Marijuana Licensing
Agency No. M-25,403

1. ISSUES

- 1.1. Whether Brock Marchel is the spouse of Libby-Haines-Marchel, manager and sole member of Rock Island Chronics LLC dba Chronics.
- 1.2. If so, what criminal history points should be assigned to Brock Marchel?
- 1.3. Given that criminal history point assignment, if any, whether the Liquor and Cannabis Board was correct to deny Rock Island Chronics LLC dba Chronics's application for a marijuana license under RCW 69.50.331(1), WAC 314-55-035, and/or WAC 314-55-040(1).

2. ORDER SUMMARY

- 2.1. Brock Marchel is the spouse of Libby Haines-Marchel, manager and sole member of Rock Island Chronics LLC dba Chronics.
- 2.2. Twelve criminal history points should be assigned to Brock Marchel.
- 2.3. The Liquor and Cannabis Board was correct to deny Rock Island Chronics LLC dba Chronics's application for a marijuana license under RCW 69.50.331(1), WAC 314-55-035, and/or WAC 314-55-040(1).

¹ Effective July 24, 2015, the Liquor Control Board was renamed the Liquor and Cannabis Board. To avoid confusion, all references to the agency will be to the Liquor and Cannabis Board or to LCB.

3. SUMMARY JUDGMENT MOTION HEARING

- 3.1. Hearing Date: July 28, 2015
- 3.2. Administrative Law Judge: Terry A. Schuh
- 3.3. Applicant: Rock Island Chronics LLC dba Chronics
- 3.3.1. Representative: Robert H. Stevenson, Attorney at Law
- 3.3.2. Member/Manager: Libby Haines-Marchel appeared as well.
- 3.4. Agency: Liquor and Cannabis Board
- 3.4.1. Representative: Kim O'Neal, Sr. Counsel, Attorney General's Office
- 3.5. Record Relied Upon: [Applicant's] Motion for Summary Judgment; Supplemental Memorandum of Libby Marchel; Declaration of Libby Marchel in Support of Motion for Summary Judgment; Brock Marchel's Renunciation Dated June 15, 2014; Licensing Division's Memorandum in Opposition to Summary Judgment for Applicant and in Support of Summary Judgment Affirming License Denial; Reply to Liquor Control Board's Answer to Summary Judgment; Oral Argument heard on July 28, 2015; and the pleadings and documents filed in this matter.

////

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish "no genuine issue as to any material fact".² "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law."³ Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party's version of that fact.⁴ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. So, the record here supports the following facts for the purposes of summary judgment:

² WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

³ *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).

⁴ *Verizon NW*, 164 Wn.2d 916.

Jurisdiction

- 4.1. The Liquor and Cannabis Board (hereafter, "LCB") issued to the Applicant, Rock Island Chronics LLC dba Chronics (hereafter "Chronics"), the Statement of Intent to Deny Marijuana License, dated January 12, 2015.
- 4.2. Chronics filed its appeal on January 29, 2015, dated January 2, 2015.

Summary Judgment

- 4.3. Chronics filed a Motion for Summary Judgment on June 15, 2015.
- 4.4. LCB filed a response on July 14, 2015.
- 4.5. Chronics filed a reply on July 22, 2015.

Criminal History

- 4.6. Chronics applied for a marijuana retailer license during the application window.
- 4.7. LCB required each applicant to submit a Personal/Criminal History Statement.
- 4.8. Chronics is a limited liability company.
- 4.9. LCB required each member of a limited liability company and the spouse of each member to submit a Personal/Criminal History Statement.
- 4.10. Chronics's only member is Libby Haines-Marchel.
- 4.11. Ms. Haines-Marchel is married to Brock Marchel.
- 4.12. During the initial interview, Ms. Haines-Marchel disclosed that Mr. Marchel is incarcerated. LCB sought more information from her. Ms. Haines-Marchel subsequently advised LCB that Mr. Marchel is serving a 44.5-year term for a homicide conviction and will be released no earlier than 2038.
- 4.13. On or about June 15, 2014, Mr. Marchel signed a Spousal Renunciation of Rights Affidavit, whereby he irrevocably relinquished any ownership or management interest in and any rights to profits from Chronics, and renounced any community property interest in Chronics that might otherwise be attributed to him.
- 4.14. Mr. Marchel did not submit a Personal/Criminal History Statement nor did he provide a copy of his fingerprints. Therefore, LCB was unable to determine whether he

had any criminal history in addition to his homicide conviction. LCB assigned to Mr. Marchel 12 criminal history points for the homicide conviction.

- 4.15. As a result of the 12 criminal history points assigned to Mr. Marchel and consequently attributed to Chronics, LCB denied Chronics's application for a marijuana retailer license.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter in this matter under RCW 69.50.334, RCW 34.05.485(1)(c), RCW 34.12.040, Chapter 34.05 RCW, and Chapter 314-42 WAC.

Summary Judgment

- 5.2. "A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135.
- 5.3. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' CR 56(c)." *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).
- 5.4. "The facts and reasonable inferences therefrom are construed most favorably to the nonmoving party." *Korslund v. Dycorp-Tri-Cities Services, Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005) (citations omitted).
- 5.5. "Summary judgment should be granted if reasonable persons could reach but one conclusion from the evidence presented." *Korslund*, 156 Wn.2d at 177.
- 5.6. "The burden is on the moving party to demonstrate there is no issue as to a material fact, and the moving party is held to a strict standard." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 811, 828 P.2d 549 (1992)(citation omitted).
- 5.7. If the moving party meets this initial showing, "the non-moving party may not rest upon the mere allegations or denial of [its] pleadings, but [its] response, by affidavits or as

otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial." *McGough v. City of Edmonds*, 1 Wn.App. 164, 168, 460 P.2d 302 (1969).

- 5.8. Here, the parties agree that no material fact is in dispute. Moreover, here both parties moved for summary judgment: Chronics asserted that it should *not* be denied a license based upon criminal history points assigned to Brock Marchel and LCB asserted that Chronics should be denied a license based upon criminal history points assigned to Brock Marchel. Accordingly, this matter is ripe for summary judgment.

Constitutional Arguments

- 5.9. Chronics argued that LCB's decision to deny its application for a marijuana retailer license relied upon statutes and/or regulations that violate Ms. Haines-Marchel's constitutional rights, including, but not limited to, her right to not be deprived of life, liberty, and property without due process of law, her right to work, her right to be free of marital discrimination, and her right to equal protection. However, "[a]n administrative tribunal is without authority to determine the constitutionality of a statute. . . ." *Yakima County Clean Air Authority v. Glascam Builders, Inc.*, 85 Wn.2d 255, 257, 534 P.2d 33 (1975). "An administrative body does not have authority to determine the constitutionality of the law it administers; only the courts have that power." *Bare v. Gorton*, 84 Wn.2d 380, 383, 526P.2d 379 (11974) (citations omitted). Accordingly, I do not reach the constitutional arguments raised by Chronics.

Economic Damage

- 5.10. Chronics argued that LCB's decision to deny its application for a marijuana retailer license economically damaged Ms. Haines-Marchel and her children. However, the right to retail marijuana products in Washington State is a right regulated by LCB and subject to licensure. Moreover, LCB's decision to deny licensure took nothing away from Ms. Haines-Marchel. Rather, that decision declined to grant her something. At most, LCB's action closed a door on an economic opportunity perceived by Ms. Haines-Marchel; it did not create economic damage.

Criminal History Points

- 5.11. Chronics argued that Mr. Marchel is not a "person of interest" because he disclaimed any community property interest he might hold in the proposed marijuana retailer business, converting it to Ms. Haines-Marchel's separate property; and because he also disclaimed any right to assets or profits associated with that business. In other words,

Mr. Marchel denied or disclaimed any property interest he might otherwise claim or assert in Chronics.

- 5.12. LCB may investigate and consider criminal history when determining whether to grant an applicant a license. RCW 69.50.331(1); WAC 314-55-020(3).
- 5.13. "A marijuana license must be issued in the name(s) of the true party(ies) of interest." WAC 314-55-035.
- 5.14. For the purposes of Title 314 WAC, when the "true party of interest" is a limited liability company, the "persons to be qualified" are "all members and their spouses". WAC 314-55-035(1). In other words, the criminal history of both member and spouse are attributed to the limited liability company. Here, Ms. Haines-Marchel is the only member of Chronics, a limited liability company. Mr. Marchel is her spouse. Therefore, he must qualify, or put another way, if his criminal history disqualifies him, it disqualifies Chronics.
- 5.15. Chronics argued that LCB is interfering with community property law. But the regulation specifically limits its definition of "true party of interest" to Title 314 WAC. Title 314 WAC addresses LCB's regulation of tobacco, liquor, and marijuana. It does not address property rights, much less the regulation, definition, or application of property rights. Thus, WAC 314-55-035(1) does not clash with community property law.
- 5.16. Chronics argued that Mr. Marchel disclaimed any and all property rights, interest, and control as to Chronics. However, the definition of "true party of interest", or perhaps more correctly "persons to be qualified" is based upon the relationship of the individual to either the limited liability company or a member of the limited liability company. It has nothing to do with property rights, interest, or control. Further, "true party of interest" is specifically distinguishable from "financiers" (WAC 314-55-035(3)) and "persons who exercise control of business" (WAC 314-55-035(4)). Accordingly, that Mr. Marchel disclaimed any and all property rights, interest, and control as to Chronics is not relevant.
- 5.17. Therefore, for the purposes of Title 314 and for the purposes of Chronics qualifying for licensure, Mr. Marchel is a "true party of interest" and a "person to be qualified" and his criminal history must not disqualify him from licensure.
- 5.18. Mr. Marchel's failure to meet the criminal history standards outline in WAC 314-55-040 constitutes a basis for LCB to deny Chronics's marijuana license application. WAC 314-55-050(4).

5.19. More specifically, a criminal history accumulating eight or more points as described in WAC 314-55-040(1) is grounds for denying a marijuana license application. WAC 314-55-040(1), (3).

5.20. Here, Mr. Marchel is serving time for a felony conviction. A current felony conviction is assigned 12 criminal history point. WAC 314-55-040(1). So, Mr. Marchel's criminal history points are 12. Moreover, this conviction is not subject to the exceptions expressed in WAC 314-55-040(3). Further, Mr. Marchel has never submitted a criminal history statement or submitted to an LCB investigation of the criminal history. He may have additional criminal history points for conduct of which LCB is unaware. LCB will not normally issue a license to an applicant with eight or more criminal history points. WAC 314-55-040(1).

5.21. Here, by virtue of Mr. Marchel's criminal history points, Chronics exceeds the regulatory threshold for a negative criminal history and its application should be denied.

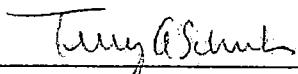
6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The decision by the Liquor and Cannabis Board to deny the application for a marijuana retailer license submitted by Rock Island Chronics LLC dba Chronics is AFFIRMED.

6.2. The application for a marijuana retailer license submitted by Rock Island Chronics LLC dba Chronics is denied.

Signed at Tacoma, Washington, on August 18, 2015.



Terry A. Schuff
Senior Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order: Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the Liquor and Cannabis Board within twenty (20) days of the date of service of the initial order. RCW 34.05.464, WAC 10-08-211 and WAC 314-42-095.

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;

- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. **Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the Liquor and Cannabis Board.** WAC 314-42-095(2) (a) and (b). Copies of the response must be mailed to all other parties and their representatives at the time the response is filed.

Address for filing a petition for review with the board: Washington State Liquor and Cannabis Board, Attention: Kevin McCarroll, 3000 Pacific Avenue, PO Box 43076, Olympia, Washington 98504-3076

Final Order and Additional Appeal Rights:

The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

CERTIFICATE OF MAILING IS ATTACHED

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DECLARATION OF SERVICE

LIBBY HAINES-MARCHEL
ROCK ISLAND CHRONICS, LLC,
dba CHRONICS

Appellant/Petitioner,

v.

No. 95321-0
COA. 756699-I

WASHINGTON STATE LIQUOR
& CANNABIS BOARD

Respondent.

I, LIBBY HAINES-MARCHEL, declare that on January 17, 2018 I mailed a copy of PETITION FOR REVIEW and MOTION FOR WAIVER OF FEES to Kim O'Neal, Senior Counsel Attorney General Attn: Rose Weston, Assistant Attorney General of Washington State P.O. Box 40100, Olympia, WA 98504 by U.S. Mail.

I, LIBBY HAINES-MARCHEL, declare I delivered PETITION FOR REVIEW and MOTION FOR WAIVER OF FEES to The Supreme Court of Washington State.

Respectfully Submitted on this 17th day of January 2018.


LIBBY HAINES-MARCHEL