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NO. 95321-0

SUPREME COURT OF THE STATE OF WASHINGTON

LIBBY HAINES-MARCHEL ROCK ISLAND CHRONICS, LLC,

Petitioner,

v.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Washington State Liquor and Cannabis Board (the Board) denied the marijuana retail license application of Petitioner, Rock Island Chronicles, LLC (Chronics), after it determined that the spouse of the company's owner had a disqualifying felony conviction. Now, Chronics seeks this Court's review even though Chronics has been administratively dissolved and thus can be afforded no relief. On this basis alone, this Court should deny review.

Further, this case does not warrant this Court's review because denial of Chronics' application for a retail marijuana license does not violate any constitutional rights or statutory provisions. The State of Washington has an undisputed interest in conducting a comprehensive investigation to legalize and control the issuance of such licenses. Accordingly, the Washington Administrative Code (WAC) regulations at issue require all members of a limited liability company and their spouses to pass a criminal background check before qualifying for a license. Applying well-settled legal principles, the Court of Appeals correctly held that the WAC regulations, as applied, did not impose a "direct or substantial" burden on marriage; did not deny Petitioner a vested property interest in a benefit to which Petitioner had a legitimate claim of entitlement; and did not unconstitutionally infringe on Petitioner's right to pursue an occupation.

This case does not raise novel constitutional issues, and the scant authority Petitioner cites does not suggest otherwise.

Regarding alleged statutory violations, Chronics cites no authority and offers little explanation, if any, as to how the WAC regulations violate RCW 26.16.120 or RCW 9.96A.020(1). The Court of Appeals correctly found that Mr. Marchel's unilateral affidavit relinquishing ownership and control over the LLC lacked mutuality and consideration and was, therefore, not a contract that would implicate RCW 26.16.120. The Court of Appeals did not address the alleged violation of RCW 9.96A.020(1) because Chronics has raised it for the first time in this Court. Even if Chronics had preserved the issue, it has no merit. RCW 9.96A.020(1) allows the State to consider "the fact of any prior conviction of a crime" when issuing a license. By employing a graduated point system to determine if criminal history prevents issuance of a marijuana retail license, the WAC regulations fully comport with the statute. Because Chronics' Petition for Review fails to satisfy any of the four factors in RAP 13.4(b), review should be denied.

II. COUNTERSTATEMENT OF THE ISSUES FOR REVIEW

1. This Court has held that rational basis review is applied when a statute does not impose a "direct and substantial" burden on marriage. Did the Court of Appeals appropriately apply rational basis

review in considering WAC 314-55-035, a rule that does not impact the right to marry or remain married?

2. This Court's precedent holds that a license to sell a regulated substance is a "temporary permit, in the nature of a privilege" and not a vested property right. Did the Court of Appeals correctly hold that denial of a license to sell marijuana does not implicate due process rights, because an application for a license is not a property right?

3. This Court and the United States Supreme Court have held that the right to choose one's employment is subject to reasonable government regulation that is rationally related to a legitimate state interest. Did the Court of Appeals properly hold that denial of Chronics' license application did not violate Ms. Haines-Marchel's liberty interest in pursuing an occupation?

4. This Court and the United States Supreme Court have held that a contract requires mutuality and consideration. Did the Court of Appeals correctly hold that the Board did not violate the applicant's right to contract under RCW 26.16.120 where Mr. Marchel's unilateral affidavit lacked consideration and mutuality and was not a contract?

5. Should the Court deny review of issues in the Petition for Review that are raised for the first time on appeal, unsupported by the record or any authority, and ultimately without merit: (1) whether the Board's

denial of the license application violates RCW 9.96A.020(1); and (2) whether the WAC regulations, as applied, discriminated against Ms. Haines-Marchel on the basis of her color or gender?

III. COUNTERSTATEMENT OF THE CASE

Until recently, all marijuana transactions constituted criminal conduct under both state and federal law. Washington voters approved Initiative Measure 502 in 2012 — which legalizes the possession of marijuana and creates a system for the distribution and sale of recreational marijuana — and it is undisputed that Washington has a compelling state interest in controlling the issuance of retail marijuana licenses. Accordingly, RCW 69.50.331 provides that no license will issue unless all members of a limited liability corporation are qualified to obtain a license. And for purposes of reviewing a license application, the Board may consider an applicant's prior criminal conduct.

This case involves two WAC regulations that specify what persons and entities must qualify before the Board will issue a marijuana license and what criminal history may disqualify a person or entity. WAC 314-55-035 requires that “[a] marijuana license must be issued in the name(s) of the true party(ies) of interest” and provides that true parties of interest include all members of the limited liability company and their spouses. Each true party of interest must submit a criminal history form and have fewer than eight

criminal history points as calculated in accordance with the point system set forth in WAC 314-55-040.

The Board denied Chronics'¹ retail marijuana license application on grounds that Brock Marchel, the spouse of Chronics' sole owner Libby Haines-Marchel, had twelve criminal history points stemming from his homicide conviction and ongoing 44-year incarceration. CP 158. Chronics contested the decision and submitted a hand-written statement that Mr. Marchel had signed before a notary public purporting to renounce his community property interest in Chronics and the prospective license. CP 168. After due consideration, Licensing declined to alter its decision based on Mr. Marchel's statement.

In the adjudicative proceeding before the Office of Administrative Hearings, the parties filed cross motions for summary judgment. The administrative law judge granted Licensing's motion for summary judgment, and the Board affirmed. CP 214, 231, 265, 301. The superior court affirmed Licensing's decision to deny Chronics a license, and Chronics timely appealed. CP 543.

¹ Rock Island Chronics, LLC, was the only party to the administrative appeal before the Office of Administrative Hearings, but the superior court added Ms. Haines-Marchel's name to the case caption. However, Ms. Haines-Marchel is not the license applicant.

On December 18, 2017, the Court of Appeals affirmed the Board's final order and upheld the decision to deny Chronics' license application. *Libby Haines-Marchel and Rock Island Chronics, LLC, dba Chronics, v. Washington State Liquor & Cannabis Board*, 1 Wn. App. 2d 712, 406 P. 3d 1199 (2017). The Court of Appeals determined that neither WAC 314-55-035 nor WAC 314-55-040, as applied, violated the license applicant's right to marry, own property, contract, or pursue an occupation.

IV. REASONS FOR DENYING DISCRETIONARY REVIEW

This Court should deny review because, as a dissolved entity, Chronics lacks standing to prosecute this appeal. Further, even if Chronics has standing, Petitioner fails to establish a basis for this Court's acceptance of review. Chronics incorrectly argues that this case raises issues of first impression; that the Court of Appeals' decision conflicts with settled Supreme Court precedent; and that the case raises significant constitutional issues. RAP 13.4(b). Not so. This appeal involves a straightforward application of well-settled legal principles and established case law to a different set of facts (as is the case in almost every litigation). This scenario presents nothing novel. Further, as discussed below, the scant authority Petitioner has cited does not present a conflict requiring this Court's resolution. Nor does the case raise significant constitutional questions because the regulations, as applied, do not impose a "direct or substantial"

burden on marriage; do not deny Petitioner a vested property interest; do not interfere with Petitioner's right to contract; and do not infringe on Petitioner's right to pursue an occupation. Because Chronics' Petition for Review fails to satisfy any of the four factors in RAP 13.4(b), review should be denied. Finally, this Court should decline to review the issues Chronics has raised for the first time on appeal, as they are waived.

A. This Appeal Is Moot Because Chronics, LLC, Has Been Administratively Dissolved And No Longer Has Standing To Prosecute This Appeal

Chronics no longer exists and thus lacks standing to pursue its appeal. The Secretary of State is empowered to administratively dissolve a limited liability company when the company fails to make required payments, fails to file its annual reports, or fails to maintain a registered agent within the state. RCW 23.95.605. Administrative dissolution renders the dissolved company unable to carry on any activities except those that are necessary to wind up its affairs and liquidate its assets. RCW 23.95.610(3). After the Secretary of State dissolves a limited liability company, it is no longer a separate legal entity and has no standing to bring an action. *Maple Court Seattle Condo. Ass'n v. Roosevelt, LLC*, 139 Wn. App. 257, 261, 160 P.3d 1068 (2007); *Pacesetter Real Estate, Inc., v. Fasules*, 53 Wn. App. 463, 467, 767 P.2d 961 (1989).

In April 2016, the Washington Secretary of State administratively dissolved Rock Island Chronicles, LLC, UBI No. 603 397 627.² The filing of a petition for review and the pursuit of this appeal is not only discretionary, it is clearly not an activity that is necessary for Chronicles “to wind up its activities and affairs or liquidate its assets.” RCW 23.95.610(3). Chronicles’ Petition for Review should be rejected as improperly filed by a dissolved entity.

Moreover, because Chronicles was dissolved in 2016, this case is moot because “the court can no longer provide effective relief.” *In re Cross*, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983) (citing *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983)). “It is a general rule that, where only moot questions or abstract propositions are involved, . . . the appeal . . . should be dismissed.” *Hart v. Department of Soc. and Health Servs.*, 111 Wn.2d 445, 447, 759 P.2d 1206 (1988) (quoting *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).

Rock Island Chronicles, LLC applied for a marijuana retail license and would have been the entity to which the license was granted had the true parties of interest qualified for licensure. WAC 314-55-010(1).³ But

² See Washington Office of the Secretary of State, Corps. & Charities Div., Bus. Info., available at <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation>.

³ Although Ms. Haines-Marchel and Mr. Marchel were true parties of interest in the application under the definition of “applicant” in WAC 314-55-010(1) and the true party of interest provisions in WAC 314-55-035, the application identified the limited

because Rock Island Chronicles, LLC, has been administratively dissolved, there is no longer an entity to whom the license can be issued and relief granted. Thus, this appeal is moot.

B. The Court of Appeals' Decision Is Consistent with Previous Decisions of This Court and the Court of Appeals

Contrary to Chronicles' argument, the Court of Appeals' analysis of every issue is entirely consistent with this Court's and other Courts of Appeals' prior decisions, and the decision below correctly applied well-settled legal principles to reject Chronicles' claims. Further, this case does not involve important constitutional questions, as the properly raised constitutional issues, again, rely on well-settled law. Chronicles strains to paint this case as one that raises novel issues by pointing to newly enacted marijuana regulations, but application of established legal principles to new regulations does not satisfy the criteria for this Court's review.

1. The Court of Appeals correctly rejected Chronicles' marital discrimination claim.

Other than citing to RCW 49.60.010 and providing a definition of marital discrimination, Petitioner cites no case law and offers no argument or analysis as to why the Court should address the issue of whether WAC 314-55-035 violates the Washington Law Against Discrimination,

liability company as the applicant. Therefore, even if this Court were to find that Ms. Haines-Marchel is a separate party in this litigation, there would still be no corporate entity to whom relief could be granted.

chapter 49.60 RCW. The Court of Appeals already rejected this argument after finding *Chronics'* cited authority to be inapposite. *Rock Island Chronics*, 1 Wn. App. 2d at 740. *Chronics* does not even attempt to address the Court of Appeals' reasoning or provide contrary authority. Nor could it do so, because the Court of Appeals correctly determined that "WAC 314-55-035 does not discriminate based on an individual's legal marital status." *Id.*

2. The Court of Appeals properly applied rational basis review because WAC 314-55-035 does not place a direct and substantial burden on the right to marry.

The Court of Appeals properly relied on this Court's reasoning in *City of Bremerton v. Widell*, 146 Wn. 2d 561, 51 P.3d 733 (2002) to find that the Board's application of WAC 314-55-035 to deny *Chronics* a retail marijuana license did not unconstitutionally infringe on Ms. Haines-Marchel's fundamental right to marry. In *Widell*, this Court held that strict scrutiny applies only if a regulation poses a "direct and substantial" burden on marriage — *e.g.*, antimiscegenation statutes. *Widell*, 146 Wn. 2d at 579-80. By contrast, rational basis applies to regulations that do not pose a "direct and substantial" burden on the right of marriage, including for example "the Internal Revenue Service marriage penalty" or statutes involving the "loss or reduction of governmental benefits." *Id.*

Consistent with *Widell*, the Court of Appeals here found that WAC 314-55-035, which requires spouses of each member of an LLC applying for a retail marijuana license to also qualify for the license, “does not interfere with the right of Ms. Haines-Marchel to marry or remain married to the person of her choosing.” *Rock Island Chronicles*, 1 Wn. App. 2d at 738. The court noted that “reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.” *Id.* at 738-39 (citing *Zablocki v. Redhail*, 434 U.S. 374, 386, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978) and *Califano v. Jobst*, 434 U.S. 47, 54, 98 S. Ct. 95, 54 L. Ed. 2d 228 (1977)).

Thus, applying rational basis review, the Court of Appeals concluded that the State has an undisputed and legitimate interest in verifying who the true parties of interest are for each retail marijuana license application in order to determine whether there is criminal history that disqualifies the applicant. The inclusion of spouses as true parties of interest and the screening of both spouses for criminal conduct is a legitimate means to accomplish this purpose.

Chronics relies on one pre-*Widell* Court of Appeals decision to argue that strict scrutiny should apply. Pet’n for Review at 2 (citing *Levinson v. Washington Horse Racing Comm’n*, 48 Wn. App. 822, 740 P.2d 898 (1987)). In *Levinson*, however, the regulation at issue

permanently disqualified both spouses from participating in horse racing and barred them from entering race property because of one spouse's 12-year-old narcotics conviction. *Levinson*, 48 Wn. App. at 826. The *Levinson* court held that the regulation was too sweeping and final and, therefore, impermissibly infringed on marital rights. *Levinson*, 48 Wn. App. at 826. In contrast, the Court of Appeals here correctly found that WAC 314-55-035 and WAC 314-55-040 "do not categorically disqualify a true party of interest based on criminal history" because the regulations only temporarily disqualify applicants based on certain, recent criminal factors and, therefore, do not place a direct and substantial burden on the right to marry. *Rock Island Chronics*, 1 Wn. App. 2d at 738. Further, not only is *Levinson* factually distinguishable, after *Widell*, it has been cited just once in a published case that has since been overruled, and only for the general proposition that the right to marry is a fundamental right. *See Andersen v. King Cnty.*, 158 Wn. 2d 1, 143, 138 P.3d 963 (2006), *abrogated by Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Thus, *Levinson* does not create a conflict requiring this Court's review.⁴

⁴ Petitioner does not contest that WAC 314-55-035 survives rationale basis review and has not raised this as one of the various issues it believes requires this Court's review. *See Pet'n for Review* at 1. And, in any case, there is "no dispute that the [Board] has a legitimate interest in conducting comprehensive investigation to verify the true parties of

3. The Court of Appeals correctly held that Mr. Marchel's affidavit lacked mutuality and consideration and is, therefore, not a contract.

Chronics contends that because RCW 26.16.120 permits both spouses to enter into a contract concerning the status or disposition of community property, the Board's decision somehow conflicts with RCW 69.50.331. Pet'n for Review at 4. Chronics cites no authority to support this argument and offers little (if any) explanation or argument in its Petition regarding RCW 26.16.120.

The Court of Appeals correctly found that Mr. Marchel's unilateral attempt to relinquish all ownership interest in Rock Island Chronics, LLC was not a mutually binding agreement supported by consideration. *Rock Island Chronics*, 1 Wn. App. 2d at 740-41. Accordingly, the Court of Appeals was also correct that the Board's denial of the application did not violate Ms. Haines-Marchel's constitutional right to contract. For the same reason, the denial does not implicate RCW 26.16.120.

4. The Court of Appeals correctly held that Chronics had no property interest in its license application.

The Court of Appeals correctly found that Chronics' due process rights could not have been infringed by the license denial because no property right existed in the application. *Rock Island Chronics*,

interest and determine whether criminal history disqualifies the applicant. *Rock Island Chronics*, 1 Wn. App. 2d at 738-39.

1 Wn. App. 2d at 742. In *Jow Sin Quan v. Washington Liquor Control Bd.*, 69 Wn.2d 373, 382, 418 P.2d 424 (1966) this Court held that the issuance of a license to sell intoxicants does not become a vested property right but, rather, is “a temporary permit, in the nature of a privilege, to engage in a business that would otherwise be unlawful.” Consistent with *Jow Sin Quan*, the Court of Appeals concluded: “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.” *Rock Island Chronics*, 1 Wn. App. 2d at 743. Petitioner does not attempt to distinguish or even address *Jow Sin Quan*.

Instead, the one case Petitioner cited does not support review and, in fact, supports the Court of Appeals’ reasoning. See Pet’n for Review at 5. In *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) the Supreme Court held that a professor did not have a property interest in his continued employment, and explained:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

Like the professor, Petitioner has not shown that it has a “legitimate claim of entitlement” to a marijuana retail license pursuant to statute or by any

other means. Thus, the Court of Appeals' analysis relies on settled authority from this Court and does not warrant review.

5. The Court of Appeals correctly held that the denial of Chronics' license application did not violate the applicant's liberty interest in pursuing an occupation.

Applying settled case law from this Court and the United States Supreme Court, the Court of Appeals found that the right to choose one's employment is subject to reasonable government regulation that is rationally related to a legitimate state interest. *Rock Island Chronics*, 1 Wn. App. 2d at 741-42 (citing *Aminrud v. Board of Appeals*, 158 Wn.2d 208, 220, 143 P.3d 571 (2006) quoting *Conn v. Gabbert*, 526 U.S. 286, 292, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999)). Petitioner cites no authority to the contrary and there is no basis for this Court to grant review of this issue.

C. Chronics Has Waived Arguments Raised For The First Time In This Court

Chronics raises two entirely new arguments for the first time in this appeal; the Court should decline to consider these as they are waived. Chronics argues that the Board's regulations violate RCW 9.96A.020(1). Pet'n for Review at 4. Even if this argument had been properly preserved, it would still fail. RCW 9.96A.020(1) provides that the State may not disqualify an applicant from a licensed occupation or business license "*solely* because of a prior felony conviction." (Emphasis added.) But under

RCW 9.96A.020(1), “the fact of any prior conviction of a crime” may be considered when issuing a license, and it only applies “unless there is another provision of law to the contrary.” Here, WAC 314-55-040 properly employs a point system to determine if criminal history prevents issuance of a retail marijuana license, and one of the factors that may be considered is a recent felony conviction. This argument fails.

Nor did Chronics preserve its argument that the regulations, as applied, discriminated against Ms. Haines-Marchel on the basis of her “color [and] gender.” Pet’n for Review at 1. The issue of gender was not raised in any proceeding below and is raised for the first time in this Court. The issue of race received a bare mention in a declaration submitted to the administrative tribunal, but it was not argued in Chronics’ summary judgment motion, in its petition for review to the Board, in its superior court briefing, or to the Court of Appeals. Further, nothing in the record supports either claim. Chronics has not fulfilled its obligation to provide this Court with meaningful argument to support these claims, as it simply states its assertions without analysis. As this Court has made clear, “[p]arties . . . raising constitutional issues must present considered arguments to this court.” *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). “ ‘[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.’ ” *Johnson*, 119 Wn.2d at 171,

829 P.2d 1082, quoting *In re Request of Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986). Because Chronics has failed to adequately preserve these arguments, fails to cite to relevant authority, and fails to present meaningful arguments to support its position, this Court should not consider these issues for the first time on appeal.

V. CONCLUSION

Rock Island Chronics' Petition for Review fails to satisfy any of the four criteria for accepting review in RAP 13.4(b). The issues before the Court are ordinary licensing matters that are neither novel nor unusual, and the decision of the Court of Appeals applied standard legal principles. Because Chronics has presented no issue that demands this Court's review, the Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 26 day of March 2018.

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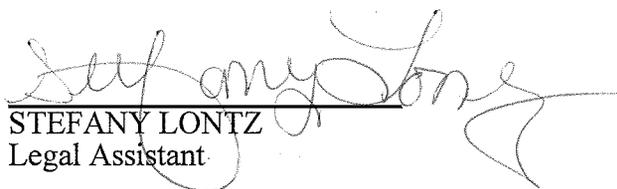
Respondent.

CERTIFICATE OF
SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on March 26, 2018, I served a true and correct copy of the *Answer to Petition for Review* and this *Certificate of Service* by electronic mail and by placing same in the U.S. mail via state Consolidated Mail Service to:

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DATED this 26 day of March, 2018, at Olympia, Washington.


STEFANY LONTZ
Legal Assistant

AGO/GCE

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