

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA BOARD OF PHARMACY, A PUBLIC ENTITY OF THE STATE OF NEVADA,

Appellant,

vs.

CANNABIS EQUITY AND INCLUSION COMMUNITY (CEIC), A DOMESTIC NONPROFIT CORPORATION; AND ANTOINE POOLE, AN INDIVIDUAL,

Respondents.

No. 85756

FILED
AUG 05 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

THE STATE OF NEVADA BOARD OF PHARMACY, A PUBLIC ENTITY OF THE STATE OF NEVADA,

Appellant,

vs.

CANNABIS EQUITY AND INCLUSION COMMUNITY (CEIC), A DOMESTIC NONPROFIT CORPORATION; AND ANTOINE POOLE, AN INDIVIDUAL,

Respondents.

No. 86128

ORDER OF REVERSAL

These are consolidated appeals from a district court judgment declaring that the Nevada Board of Pharmacy lacks authority to regulate cannabis and a post-judgment order awarding attorney fees. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Cannabis has long been regulated in Nevada as a schedule I substance pursuant to the Uniform Controlled Substances Act of 1971. 1971 Nev. Stat., ch. 667, § 1, at 1999; see NRS 453.011-348 (the CSA); NAC 453.510. By definition, a schedule I substance has a high potential for abuse and either "no accepted medical use in treatment in the United States" or no "accepted safety for use in treatment under medical supervision." NRS

24.27454

453.166. Federal law currently holds that cannabis has no accepted medical use in the United States. See, e.g., *Gonzalez v. Raich*, 545 U.S. 1, 27 (2005).

As public perception of cannabis shifted, so too did state law. In 2000, Nevada voters approved a constitutional amendment to allow cannabis for medical use. Nev. Const., art. 4 § 38. That new provision specifically instructed the Legislature to provide by law for medical cannabis “use by a patient, upon the advice of his physician.” Nev. Const., art. 4, § 38 (1)(a), 2(a). The Legislature thereafter promulgated Title 56—codified in NRS Chapters 678A-678D—providing laws governing medical and adult nonmedical use and possession of cannabis with limited exemptions from state prosecution. See NRS 678A.005.

In district court, respondents Antoine Poole and the Cannabis Equity and Inclusion Community (CEIC) challenged appellant the State Board of Pharmacy’s authority to continue listing cannabis as a schedule I drug. Poole and the CEIC sought to remove cannabis from that schedule by petitioning the district court for a writ of mandamus under NRS Chapter 34, for declaratory relief under NRS Chapter 30, and injunctive relief under NRS 33.010. They argued that the schedule I listing violated the Nevada Constitution, and that in view of Title 56, the Board no longer had authority to schedule cannabis pursuant to NRS 435.146.

The district court agreed and granted the writ of mandamus, ordering the Board to remove cannabis from the list of schedule I substances and to cease regulating it. The district court also granted declaratory relief concluding that the schedule I listing of cannabis violates Nevada’s Constitution and NRS 453.166, and in a subsequent order awarded Poole and CEIC attorney fees and costs. The Board appeals these orders on the

merits. It further argues Poole and CEIC lack standing, and for the reasons below, we agree.

Appellants have not demonstrated the justiciability required for traditional standing

“Standing is a question of law reviewed de novo.” *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). The party seeking relief bears the burden to prove standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Article III of the United States Constitution confers courts with jurisdiction over “cases” and “controversies,” and thus federal standing requires the plaintiff to show an injury-in-fact caused by the defendant that can be redressed by the courts. *Food and Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). Though Nevada’s Constitution does not share Article III’s “case or controversy” requirement, it includes a robust separation of powers clause that imposes justiciability requirements and requires plaintiffs to make the same showings of an injury-in-fact, causation, and redressability. *Nat’l Ass’n of Mut. Ins. Cos. v. Nev. Dep’t of Bus. & Indus.*, 139 Nev., Adv. Op. 3, 524 P.3d 470, 476-77 (2023) (*NAMIC*) (addressing standing in the context of a declaratory relief action); *see also* NRS 34.170 and *Heller v. Legis. of Nev.*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (addressing standing in the context of a mandamus proceeding). A speculative injury that “is merely apprehended or feared” is insufficient to establish justiciability. *All. for Hippocratic Med.*, 602 U.S. at 379; *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (addressing declaratory relief and providing examples).

In their petition, Poole and CEIC sought to remove cannabis from the schedule I list and prevent the Board from continuing to regulate cannabis. They contend they have standing to seek this relief because they are suffering “collateral consequences” from cannabis-related felony

convictions. As support, they point to the declarations from Poole and CEIC's founder and executive director, A'Esha Allums-Goins, that were attached to the petition. Poole's declaration states that he was convicted in Nevada of possession of marijuana, a category E felony, in 2017, and that he has suffered collateral consequences as a result, including hardship in obtaining employment. The Allums-Goins declaration states that CEIC "provides support to individuals from underrepresented communities as they apply for licenses to participate in the legal cannabis market," that "[a]t least one member of CEIC has been convicted [in Nevada] of a cannabis-related offense after the legalization of medical marijuana in Nevada," and that it conducts bi-annual workshops "to assist individuals with prior cannabis-related criminal convictions in applying for pardons and sealing criminal records." On appeal, CEIC argues that its purpose of helping minorities obtain cannabis licenses is frustrated by its need to divert resources to deal with the consequences of cannabis-related convictions, noting that underrepresented communities, and Black people in particular, are disproportionately arrested for marijuana possession.

The declarations do not establish the justiciability required for standing. As a threshold matter, while the declarations establish that Poole and at least one of CEIC's members sustained a possession-of-marijuana conviction after medical marijuana was legalized, they do not tie the conviction(s) to the Board's classification of cannabis as a schedule I substance as opposed to their possession of it under circumstances not authorized for medical or adult recreational use or as a controlled substance under schedules II through V. Without showing that the classification caused the harm Poole and CEIC allege, the injury-in-fact and causation components of justiciability appear impermissibly speculative. *See Nev.*

Pol'y Rsch. Inst., Inc. v. Cannizzaro, 138 Nev. 259, 262, 507 P.3d 1203, 1207 (2022) (holding that, to challenge an act as unconstitutional, a plaintiff generally must show “a personal injury traceable to that act”). And the expense CEIC incurs at its biannual workshops on record-sealing and the pardons process does not change this conclusion, since if the convictions do not establish injury-in-fact and causation, the expense of dealing with them does not either.

But even accepting that Poole and CEIC have adequately established injuries traceable to cannabis's schedule I listing, they still fail to establish justiciability because they do not show that these harms are redressable by the court in this case. Nevada's post-judgment habeas corpus statute, NRS 34.724(1), provides the method of redress for the concerns Poole and CEIC raise. *Harris v. State*, 130 Nev. 435, 444, 329 P.3d 619, 625-26 (2014). The statute allows a person convicted of a crime and sentenced to prison, and who claims the conviction was obtained, or the sentence imposed, in violation of Nevada's Constitution or statutes, to file a postconviction petition for a writ of habeas corpus. NRS 34.724(1). Though this remedy is not a substitute for remedies incident to trial court or direct-appeal proceedings, it “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the judgment of conviction or sentence, and must be used exclusively in place of them.” NRS 34.724(2). The Legislature intended by this language to adopt a single post-conviction remedy. *Cf. Harris*, 130 Nev. at 447, 329 P.3d at 627-28 (interpreting and limiting NRS 34.724's “incident to the proceedings” exception to accord with this legislative intent). Neither Poole's nor CEIC's declaration points to a harm unrelated to a cannabis-related conviction, and therefore pursuant to NRS

34.724(2) Poole and CEIC's judicial challenges to cannabis-related convictions as violative of the constitution or state law must be brought in the context of the criminal case, either by pretrial petition or direct appeal, or, following conviction, by a post-conviction habeas challenge.

In sum, Poole and CEIC do not clearly demonstrate the injury-in-fact or causation components of standing, and they cannot show redressability in view of Nevada's statutory scheme. Accordingly, the district court erred by concluding Poole and CEIC had traditional standing to bring their petition for a writ of mandamus and complaint for declaratory and injunctive relief.

CEIC does not have public-importance standing

CEIC contends the district court correctly found it also has public-importance standing under *Cannizzaro*. We disagree.

Public-importance standing has historically been limited to cases in which a plaintiff challenges public expenditures or allocations, neither of which are at issue. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). *Cannizzaro* cautiously extended *Schwartz*, observing "that in limited circumstances this court must use its discretion to exercise jurisdiction in cases involving separation-of-powers questions as a matter of controlling necessity, because the conduct at issue affects, in a fundamental way, the sovereignty of the state, its franchises or prerogatives, or the liberties of its people." 138 Nev. at 262, 507 P.3d at 1207-08 (internal quotation marks and alterations omitted). "[T]he [public importance] doctrine must be kept in check" and, to prevent paradoxically expanding judicial jurisdiction beyond its constitutional reach, it may be exercised only in limited and "extraordinary" cases "that are likely to recur and for which there is a need for future guidance." *Id.* at 263, 507 P.3d at 1208.

This case does not meet the demanding criteria for public importance standing that Nevada law establishes. Although enforcing the will of the voters is undeniably an important matter, CEIC does not show that cannabis's continued schedule I listing by the Board is unlawfully harming individuals. Nor does CEIC show that this matter is evading review, where any person charged with or convicted of a cannabis-related offense may seek relief in the context of their criminal case, such as a pretrial writ petition, direct appeal, or postconviction petition for habeas corpus, or to mitigate the effects of the conviction by seeking a pardon or to seal the record. No other case on our docket challenges NAC 453.510 as inconsistent with the constitution, nor the Board's ability to continue listing cannabis as a schedule I drug. The district court therefore erred by finding public-importance standing applied to CEIC.

CEIC fails to show organizational or representational standing

The district court also found organizational and representational (or "associational") standing applied to CEIC.

As to organizational standing, the district court concluded it applied because CEIC's mission was frustrated by cannabis's schedule I listing and it had to divert resources to address the injuries caused by that listing. This conclusion overextends organizational standing's reach. In *Alliance for Hippocratic Medicine*, the U.S. Supreme Court rejected the proposition that organizational standing will lie wherever the action impairs the organization's ability to achieve its mission and the organization uses its resources to oppose the action and advocate for change. 602 U.S. at 393-95. The Court clarified that organizations, like individuals, "must satisfy the usual standards for injury in fact, causation, and redressability." *Id.* at 393-94. The organization must therefore show it suffered a concrete injury that directly affected and interfered with its core

business activities. *Id.* It “cannot spend its way into standing” by diverting resources to oppose disfavored policies. *Id.* at 394-95. Even when the organization has sincere objections, such issues are better left to plaintiffs with clear standing to sue, or to the political and democratic process. See *id.* at 396.

CEIC’s declaration provides that its core business is to support individuals from underrepresented communities in applying for cannabis licenses. It also conducts outreach and hosts bi-annual workshops to assist individuals in sealing criminal records and applying. But CEIC does not thread the needle to show how cannabis’s schedule I listing directly affects or interferes with its core mission. Further, any argument that cannabis’s listing or regulation pursuant to NRS Chapter 453 has wrongly injured CEIC organizationally is belied by NRS 453.005, which states that Title 56’s provisions protecting medical and recreational cannabis will control over any inconsistent provisions in Chapter 453. Given that the Supreme Court has cautioned against “an expansive theory of [organizational] standing,” *Alliance for Hippocratic Medicine*, 602 U.S. at 395, we conclude CEIC falls short of showing that organizational standing should apply here.


As to representational or associational standing, the district court’s order acknowledges it is available only where the individuals the organization represents would have standing to sue in their own right, and CEIC does not contend otherwise on appeal. See also *NAMIC*, 139 Nev., Adv. Op. 3, 524 P.3d at 478 (confirming this limitation). Because CEIC fails to show its members have standing to sue in their own right, as addressed above, that standing is likewise unavailable.

Conclusion

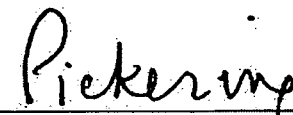
The constitutionality or illegality of a conviction must be challenged through a postconviction petition for habeas corpus, and Poole


and CEIC fail to establish justiciability because they do not demonstrate how their alleged injuries would likely be redressed by the relief sought. The district court therefore erred in granting relief and subsequently awarding respondents attorney fees, and we need not reach the remaining arguments. Accordingly, we


ORDER the judgments of the district court REVERSED.

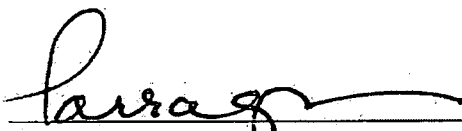

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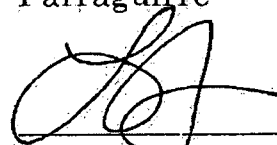

_____, J.
Stiglich


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Pickering


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Herndon


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Lee


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Parraguirre


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Bell

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