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Doe v. State ex rel. Legislature of the 77th Session, 133 Nev. Adv. Op. 93 (Dec. 7, 2017)

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CONSTITUTIONAL LAW: DUE PROCESS, EQUAL PROTECTION, AND SELF-
INCRIMINATION IN MEDICAL MARIJUANA REGISTRIES

Summary

The Nevada Supreme Court held that (1) a medical marijuana registry in Nevada does not encroach upon a medical marijuana user’s fundamental right; (2) the registry is rationally related to legitimate state interests beneficial to the public; and (3) the registry does not implicate a registrant’s right against self-incrimination.

Background

Appellant John Doe applied for, and received, a registry identification card for medical marijuana use to treat his migraine headaches. Subsequently, appellant filed suit against the Nevada Legislature, the Governor, and the Department of Health and Human Services (Respondents), arguing that the registry and its fees violated his rights to due process, equal protection, and against self-incrimination. Doe filed a motion for partial summary judgment on his self-incrimination claim and a countermotion for summary judgment on his due process and equal protection claims. However, Doe’s claim was dismissed for failing to sue the appropriate state official. Doe failed to sue the appropriate state official. The district court denied Doe’s request to amend his complaint, reasoning that Doe’s constitutional claims lacked merit and that the State’s sovereign immunity barred Doe’s state-law tort claims. Doe appealed.

Discussion

Nevada’s medical marijuana registry does not impinge upon a fundamental right

A medical marijuana registry and its associated fees do not impose an undue burden on a patient’s ability to access healthcare recommended by a physician. The Due Process Clauses of the United States and Nevada Constitutions prohibit the State from depriving "any person of life, liberty, or property, without due process of law."² When examining new fundamental rights, the Nevada Supreme Court (1) carefully describes the asserted liberty interest; and (2) determines whether the asserted liberty interest is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [the right was] sacrificed."³ The Court applied the same rationale as *Washington v. Glucksberg*.⁴ In *Glucksberg*, the United States Supreme Court found that assisted suicide is not so "deeply rooted in this Nation's history and tradition. . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [the right was] sacrificed" thus, declining to expand

¹ By Shady Sirsy.

² U.S. CONST. amend. XIV, § 1; Nev. CONST. art. 1, § 8(5).

³ *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997).

⁴ *Id.* at 721.

substantive due process to include a new fundamental right to use medical marijuana suggested by a physician.

Nevada's medical marijuana registry is rationally related to a legitimate state interest

Nevada's medical marijuana registry satisfies rational basis review under the Nevada Constitution, which states that the purpose of a registry is to provide enforcement officers a means "to verify a claim of authorization."⁵ Assuming a plaintiff shows injury, the Nevada Supreme Court will use rational basis review. Under a rational basis review, legislation is presumed to be valid and will be sustained " if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose."⁶ The Court concluded that because the registry seeks to aid in the enforcement of laws designed to minimize the misuse of drugs, it is rationally related to a state interest.

Nevada's medical marijuana registry does not violate a registrant's right against self-incrimination

Medical marijuana registries do not violate applicants' right against self-incrimination because it is a voluntary process. Here, after reviewing *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*⁷, the Court found the same rationale applies. Nevada law does not require anyone to seek a registry identification card and does not impose penalties on them if they do not complete the application. The Court concluded, a voluntary application for benefits does not implicate the Fifth Amendment's Self-Incrimination Clause.

Conclusion

Applying for Nevada's medical marijuana registry does not violate the Due Process, Equal Protection, and Self-Incrimination Clauses of the Nevada and United States Constitutions. The Court affirmed the district court's order.

⁵ See Nev. CONST. art. 4, § 38(1)(d).

⁶ *Heller v. Doe*, 509 U.S. 312, 320 (1993).

⁷ *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 856–58 (1984).