

SYNOPSIS OF THE CASE

2016 MT 44: DA 15-0055, MONTANA CANNABIS INDUSTRY ASSOCIATION, MARC MATTHEWS, SHELLY YEAGER, JESSE RUMBLE, JOHN STOWERS, M.D., POINT HATFIELD, and CHARLIE HAMP, Plaintiffs, Appellees, and Cross-Appellants, v. **STATE OF MONTANA**, Defendant, Appellant, and Cross-Appellee.¹

The Montana Supreme Court has upheld all but one provision of the 2011 Montana Marijuana Act, rejecting most of the arguments by the Montana Cannabis Industry Association (MCIA) that the 2011 Act is unconstitutional. The MCIA brought suit after the 2011 Legislature repealed a 2004 voter initiative to legalize medical marijuana. The Legislature enacted numerous additional restrictions that MCIA claimed were unreasonable and overly burdensome. Specifically, MCIA challenged 1) a requirement that the Department of Public Health and Human Services (DPHHS) notify the Board of Medical Examiners of any doctor who certifies 25 or more medical marijuana patients in a year, 2) a three-patient limit for medical marijuana providers, 3) a ban on medical marijuana provider advertising, 4) a restriction against providers receiving any compensation for medical marijuana products or services, 5) a prohibition against persons on probation becoming registered cardholders for medical marijuana use, and 6) a provision allowing inspections of medical marijuana providers' businesses without a warrant. The Supreme Court struck down the restriction against medical marijuana providers receiving compensation but upheld the remaining provisions.

The Supreme Court reviewed the statutes to determine whether the Legislature's restrictions are rationally related to a legitimate state interest. The Court held that the State does have a legitimate interest in carefully regulating the cultivation and distribution of marijuana for medical purposes based on the fact that marijuana is illegal for all purposes under federal law. The Legislature considered abuses that had occurred under the 2004 law, such as telemedicine, traveling certification caravans, and a disproportionate number of medical marijuana users who falsified or exaggerated their need for medical marijuana. Additionally, federal law enforcement authorities had conducted raids of Montana marijuana businesses and the federal government has expressed an expectation that states carefully regulate and monitor marijuana activities authorized by state law.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

The Supreme Court upheld the 25-patient physician review provision and the three-patient limit because they are rational responses to the over-certification problems and the “drastic increase” in the number of caregivers and users under the 2004 Act. The Court noted that whether the restrictions are the most effective means to achieving the Legislature’s goals is not for the Court to decide because the Constitution does not allow courts to make such policy choices. Moreover, the restrictions are rationally related to the Legislature’s goals in keeping marijuana away from large-scale manufacturing operations that may attract illegal drug traffickers, and in addressing the federal government’s concern in making sure that the State has a strong and effective regulatory system.

The Court determined that the advertising ban is a permissible regulation of commercial speech because sale and possession of marijuana are not “lawful activities” under federal law, which controls the First Amendment analysis. The Court also upheld the laws prohibiting persons on probation from possessing medical marijuana and allowing inspection of a marijuana business without a warrant because those laws are not invalid on their face. The Court noted that specific challenges to those laws would have to be decided on a case-by-case basis.

In contrast, the Court struck down the compensation prohibition because it is at odds with the Act’s stated purpose of allowing the limited possession and use of medical marijuana where certified by a physician. The Court determined that the prohibition arbitrarily sets apart the patient who is unable to produce medical marijuana for her own use—which is not within any of the Act’s legitimate objectives or based on any reasonable consideration of differences between people with debilitating medical conditions. Additionally, the Court determined that prohibiting providers from charging for their services is contrary to the Legislature’s purpose of keeping revenues out of the hands of criminal enterprises because it would drive the business into the black market.

Two members of the Court would have upheld all of the challenged provisions of the Act, including the compensation provision. Justice Rice argued that the Legislature’s decision not to allow marijuana providers to charge for their product also was reasonable when considered in light of the complete prohibition against marijuana use and distribution under federal law. Eliminating commercial access to marijuana is a legitimate legislative purpose given concerns such as the need to police, license, and tax commercial goods. The Legislature well may have determined that prohibiting financial remuneration would alleviate those concerns, and that is within the Legislature’s prerogative.

Justice McKinnon emphasized that the Act was intended only to provide legal protections against prosecution for violation of state laws associated with the manufacture, possession or cultivation of marijuana, when a person possesses only the amount allowed for medical use. Because of that limited protection, and the federal prohibition against marijuana, she argued that it was inappropriate to analyze the Act under the usual constitutional standards. There is no substantive right to possess a substance that is illegal under both federal and state law.

Dissenting from the Court's opinion, Justice Wheat would have invalidated all of the challenged provisions and imposed a permanent injunction against their enforcement. He would conclude that, despite the federal prohibition, the State cannot go so far in creating a regulatory framework that it violates the rights of patients by limiting or eliminating access and destroys the law's purpose.