

CASE No.

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IN THE SUPREME COURT OF  
THE UNITED STATES

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LIBBY HAINES-MARCHEL, DBA ROCK ISLAND CHRONICS, LLC  
PETITIONER,

V.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD,  
RESPONDENT.

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF WASHINGTON

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PETITION FOR WRIT OF CERTIORARI

Rose Weston  
Assistant Attorney  
General for Respondent  
P.O. Box 40100  
Olympia, Washington 98504-0100  
(360) 586-0092

Robert H. Stevenson  
Attorney for Petitioner  
11 W. Aloha St. Apt 325  
Seattle, Washington 98119  
(206) 682-3624

## QUESTIONS PRESENTED

1. Can the transfer of the criminality of one spouse, be legally shifted to another innocent spouse, to deny the innocent spouse, a state license? Can this also take place despite community property law?
2. Is such a shift by a state the denial of the fundamental right of marriage, to make the transfer void as a violation of the Equal Protection and 14<sup>th</sup> Amendments?
3. Does such a denial interfere with the fundamental right of every person to earn a living?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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## OPINIONS BELOW

The state of Washington made the sale, and use of marijuana legal, by a public Initiative. Petitioner won a state lottery to sell marijuana, formed a simple limited liability company to retail the sale of marijuana, and applied to the State Liquor and Cannabis Board for a license to run her business. Little did she envision, her husband serving time in the penitentiary. would block her from securing a license for its sale.

This case started by the Responded refusing to license the Petitioner to sell legal marijuana in Washington. The refusal was solely on the basis that the Petitioner's husband had been convicted of a felony and was presently incarcerated in a state penitentiary.

Under the rules of the Board, a felony conviction is awarded criminal points. In this case, the assessment of 12 criminal points for the husband's criminal, for the husband, prevented the issuance of a license to the Petitioner wife.

The license was appealed to a state hearing officer who agreed with the denial. Constitutional issues could not be raised at this hearing. The Board affirmed the administrative decision.

Petitioner appealed to the King County Superior Court. The Court found that the denial was unconstitutional under the 14<sup>th</sup> Amendment and a substantial interference with the fundamental right of marriage. The violation was subjected to a strict scrutiny test. However, the Court held that the reasons, assigned by the Board, complied with the test of strict scrutiny.

The Petitioner appealed her loss in the Superior Court to the Washington State of Appeals. That Court held that the fundamental right of marriage had not been shown. It then held that there was

no right to pursue an occupation by the award of a license and changed the test of strict scrutiny to a “rational basis test”: The license denial was affirmed. Appendix A

Petitioner’s request to the Supreme Court was denied. Appendix C

## **JURISDICTION**

This Court has judication of constitutional issues involving State laws that have been wrongly upheld by the highest Court of the State. The denial of the state license is a violation of the 14<sup>th</sup> Amendment to our Constitution. 28 U.S.C. SEC. 2106

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The state of Washington legalized the use and sale of marijuana in 2012 by a public Initiative. The state Board of Liquor was chosen to administer and manage the initiative. RCW 69.50.331(1)(a).

The Board decided to closely control who would secure a license to sell marijuana. Members of a corporation were designated as “persons of interest “when applying for a license. A married applicant and her husband were saddled with any criminality either or both may have. In this case, the Petitioner’s husband, was a felon and serving his time in the penitentiary. A rule of the Board provided that a corporation’s members (in an LLC), were “persons of interest”, with respect to applying for a marijuana license: In this case the Petitioner and her spouse. Washington Admirative Code, WAC 314-55-035 (1).

As parties of interest, spouses with a history of a felony are labeled with criminal points. In this case the husband was assigned 12 criminal points. The time period in which points are assigned is 10 years. In this case the husband served 20 years. WAC 314-55 040.

In sum, the Petitioner was denied a license because the Board included her husband as a member of the LLC and barred from qualifying for a license based on his criminality: that criminality under the Board rule was transferred to his wife to bar her also from a license. This also effected the right of choice within the marriage under Community Property law and their agreement. RCW 26.16.120

Levinson v. Horse Racing Commission was a case directly involved with the same legal question as the present matter. Plaintiff's horse racing license was suspended because the husband has been convicted of selling heroin and serving jail time for the crime. The Horse Racing Commission suspended Levinson's license based upon the husband's felony. The commission reasoned that the criminal history would serve as a blot on horse racing. On appeal the decision was reversed because the transfer of the spouse's criminality was the interference with the fundamental right of marriage and could not pass the strict scrutiny test. Levinson v. Horse Racing Commission, 48 Wash. App. 822, 740 P.2d 898 (1987) (quoting Zablocki v. Red hail, 434 U.S. 374, 383-85, (1978)).

The right to earn a living is as fundamental as marriage. It's the essence of personal freedom and one that our Constitution protects. The denial of the state license has the practical effect of abusing this freedom to work. New State Ice Co. v. Leberman, 285 U.S. 262, 278 (1932).

"Nothing is more settled than it is beyond the power of a state, under the guise of protecting the public, arbitrarily to interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them."

## STATEMENT OF THE CASE

The Petitioner won a state lottery to obtain a marijuana license to sell the drug at retail, after the citizens of the state of Washington decided to make marijuana legal to buy and sell in the state. She made an application for the license. As part of that application she revealed that her husband was serving penitentiary time for committing the felony of murder when he was 19 years old and has served approximately 18 years of a 45-year sentence.

The Washington State Liquor and Cannabis Board (Board) denied the license bottomed on the felony conviction of her husband. The methodology used to deny the license, was to transfer the conviction directly to the applicant wife. This clever rule was passed by the Board so it personally could control who could and who couldn't obtain a license. The Board created rules that labeled certain crimes which would reflect "criminal points" against the applicant's spouse. In this appeal the points were 12, and enough to disqualify the Petitioner under the Washington Administrative Code, WAC 314.55.035(1) and 040. At the time of disqualification, the spouse had served 18 years in the penitentiary, another Board rule created what was called a "person of interest".

A person of interest was any member of a limited liability company, such as the one created by the Petitioner to sell the marijuana, and their spouse. This bizarre rule eliminated the Petitioner's right to marry and their choices within the marriage.

Petitioner appealed the license rejection to a state hearing officer who agreed with the Board's rejection of the license on the sole basis that the felon spouse did not qualify, and the transfer was legal in all respects.

A further appeal to the Superior Court produced a decision that found the denial of the license was a violation of the fundamental right of marriage and demanded a strict scrutiny standard to be

legal. But, upon further reflection, found that the methodology used passed the test.

On a further appeal to the Washington State Court of Appeals, that Court disagreed with the Superior Court entirely, and held that there was no violation of the marriage and, therefore, the standard of strict compliance had no bearing on the case. Instead, the Court found that the right to work theory had not been breached by the Board, and took only a standard of a rational basis, which the Court found justified the denial of the license.

A petition to the Washington State Supreme Court to review was denied.

### **REASONS FOR GRANTING THE WRIT**

In this country marriage is a fundamental right and protected by our Constitution and across all state lines. Loving v. Virginia, 388 U.S. 1 (1967). Loving struck down all state laws banning interracial marriage. See also Levinson v. Horse Racing Commission, *supra*. The transfer of criminality to deny a license by the state for married spouses, serves no legitimate public purpose, nor is it a reasonable means of achieving that purpose. The rule is unduly oppressive and an over-regulation in the light of a myriad of rules set forth in the Marijuana Initiation of Washington. Any doubt by the Board of future collusion between the spouses to violate criminal rules, is purely speculation.

Under the rules and statutes of the state of Washington, any license that demands an application to the state to earn a living can be infected with criminality of a spouse and rejected. It would include accounting, doctors, engineers, dentists and the like.

This Court should hear this entire appeal, and address the use of a state of demanding rejection of



any license, based upon criminality of one spouse of a marriage trying to work for a living.

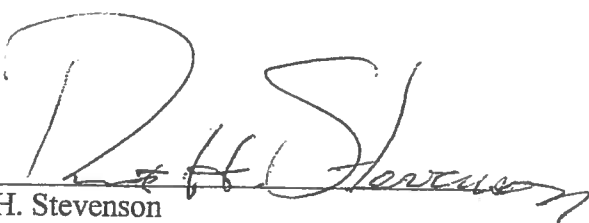
### CONCLUSION

It is of vital importance to the United States and its citizens, to have the principle of transfer of spousal criminality settled by this Court.

Our entire country is in legal difficulty, if the doctrine of the transfer of criminality can be used to thwart any application for any state license by a board or kindred commission. This kind of doctrine presupposes a conjecture that a spouse's criminality may foster some kind of a conspiracy to commit a crime between spouses. The rule of transfer of criminality gives a wrongful impression that spouses will enter into a co-conspiracy to commit a crime because marijuana is involved.

This Court should grant review of this case.

Dated this 2<sup>d</sup> day of November 2018.



Robert H. Stevenson  
11 W. Aloha St. #325  
Seattle, WA 98119  
206-682-3624  
Attorney for Petitioner