MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SARCOXIE NURSERY CULTIVATION CENTER, LLC, et al.,

Appellants,

v.

RANDALL WILLIAMS, et al.,

Respondents.

DOCKET NUMBER WD84492

Date: May 3, 2022

Appeal from:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division Two: Alok Ahuja, P.J., and Edward R. Ardini, Jr. and Thomas N. Chapman, JJ.

Attorneys:
Joseph P. Bednar, Jr., Jefferson City, for appellants
Gerald M. Jackson, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SARCOXIE NURSERY CULTIVATION CENTER, LLC, et al., Appellants,
v.
RANDALL WILLIAMS, et al., Respondents.

WD84492 Cole County

Before Division Two Judges: Alok Ahuja, P.J., and Edward R. Ardini, Jr. and Thomas N. Chapman, JJ.

On November 6, 2018, Missouri voters approved an amendment to the Missouri Constitution which legalized the cultivation, manufacture, and distribution of marijuana and marijuana-infused products for medicinal purposes. The amendment is codified as Article XIV of the Missouri Constitution.

Article XIV authorized the Department of Health and Senior Services to issue regulations to implement the medical marijuana program; to supervise the process by which licenses were issued for medical marijuana cultivation, manufacturing, and dispensary facilities; and to regulate and discipline licensees. Article XIV explicitly gives the Department the authority to "restrict the aggregate number of licenses granted" for medical marijuana cultivation, manufacturing, and dispensary facilities, subject to certain minimums.

The Department adopted regulations which limited the total number of licenses for cultivation facilities to sixty, the total number of licenses for marijuana-infused products manufacturing facilities to eighty-six, and the total number of dispensary facilities to 192 – the minimum number of licenses required to be issued by Article XIV.

The Appellants are multiple entities which unsuccessfully applied for licenses to cultivate, manufacture, and/or dispense marijuana and marijuana-infused products for medicinal purposes. After their license applications were denied, Appellants filed a petition for declaratory judgment in the Circuit Court of Cole County. In their lawsuit, Appellants challenged the regulations which limit the total number of medical marijuana facility licenses the Department will issue.

Following a bench trial, the circuit court rejected the Appellants' challenge to the Department's regulations. The Appellants appeal.

AFFIRMED.

Division Two holds:

On its face, Article XIV, §§ 1.3(15) through (17) of the Missouri Constitution expressly authorize the Department to limit the number of licenses to be granted for cultivation, marijuana-infused products manufacturing, and dispensary facilities. Although the Appellants contend that the circuit court's judgment permitted the Department to set numerical limits on licenses "on a whim," the circuit court found that, before imposing the license limitations, the Department considered issues of patient access to medical marijuana, patient safety, and the risk of diversion of legally produced marijuana into the black market.

The circuit court did not err in concluding that Appellants had failed to demonstrate that the Department's regulations lacked a rational connection to the facts revealed by the Department's investigations, or that the Department had acted arbitrarily or capriciously in adopting the license limits. The Department's regulations authorize cultivation of marijuana in amounts which will produce annual expected surpluses of hundreds of thousands of pounds of marijuana. The Department also had a rational basis to conclude that allowing a greater number of licensees, or imposing no limitations on the total number of licensees, created greater risks of diversion of marijuana into the illegal non-medical market, and risked patient safety if regulatory resources were overwhelmed. The fact that medical marijuana supplies remained insufficient at the time of trial in October 2020, when all licensees were not yet operational, is largely irrelevant to the validity of Department rules adopted more than a year earlier. At the time it adopted its rules, the Department was necessarily required to rely on forward-looking predictions and forecasts of expected patient demand for medical marijuana, and of the likely production capacity of cultivation facilities, and the record reflects that the Department made rational forecasts of expected supply and demand based on the available information. Although Appellants contend that the Department failed to consider the effect that the license limitations would have on the price of marijuana, and therefore on patient access to affordable medical marijuana products, this is inaccurate – the record reflects that pricing issues were considered during the rulemaking process.

Finally, Appellants contends that the license limitations adopted by the Department violate the "Right to Farm" amendment contained in Article I, § 35 of the Missouri Constitution. Because marijuana possession, cultivation, and distribution remain illegal under federal law, however, it is unreasonable to interpret the Right to Farm amendment as applicable to marijuana cultivation and distribution. *See State v. Shanklin*, 534 S.W.3d 240, 242 (Mo. 2017). Even if the Right to Farm amendment applied to medical marijuana-related activities, this still would not render the Department's license limitations unconstitutional, because

those limitations are expressly authorized by Article XIV, which was adopted after the Right to Farm amendment.

Opinion by: Alok Ahuja, Judge May 3, 2022

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