

No. 16-951

In the Supreme Court of the United States

S. ROWAN WILSON,
Petitioner,

v.

JEFFERSON B. SESSIONS, III, Attorney General, *et al.*,
Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

**BRIEF FOR THE LIBERTARIAN NATIONAL COMMITTEE
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The Libertarian National Committee is the executive body of the national Libertarian Party. Founded in 1971, the Libertarian Party is the third largest political party in the United States, and the only one that has experienced an increase in membership since October 2012. The Libertarian Party is governed according to its Statement of Principles, which was adopted at the party's national convention in Dallas in 1974. The party's founders were motivated by a deepening concern over the expansion of federal executive authority and the resulting infringement of individual liberties. As the preamble to the party's Statement of Principles provides:

We believe that respect for individual rights is the essential precondition for a free and prosperous world, that force and fraud must be banished from human relationships, and that only through freedom can peace and prosperity be realized.

Consequently, we defend each person's right to engage in any activity that is peaceful and honest, and welcome the diversity that freedom brings. The world we seek to build is one where individuals are free to follow their own dreams in their own ways, without interference from government or any authoritarian power.

¹ The parties were timely notified of the intent to file. This brief is filed with consent of the parties. Letters of consent are on file with the Libertarian National Committee. The Libertarian National Committee paid for printing costs. No counsel for any party to this case authored the brief in whole or in part.

Consistent with its foundational concern for the protection of individual liberties, the Libertarian Party takes a particular interest in this case, in which a law-abiding citizen was denied a freedom guaranteed to her by the Second Amendment, based solely upon her lawful exercise of a freedom guaranteed to her by the First Amendment. The Libertarian Party has adopted “the Party of Principle” as its slogan. It does not pick and choose among the civil liberties it supports and defends, nor does it believe the federal government has the authority to compel an American citizen to make such a choice, as the Petitioner was here. The Libertarian Party thus submits this brief in support of the Petition for Certiorari, and urges the Court to grant the Petition for the reasons set forth therein, and below.

SUMMARY OF ARGUMENT

This case involves the infringement of a right guaranteed by the Second Amendment – that of the Petitioner to purchase a firearm. In cases where a constitutional claim is asserted, it is the long-standing practice of this Court to conduct its own review of the evidence, to ensure that constitutional rights are protected against infringement on the basis of inadequate evidence. The Libertarian Party therefore submits this amicus brief for the limited purpose of demonstrating that the decision of the Court of Appeals in the proceedings below rests upon a factual conclusion that is demonstrably false. There is no “significant link” between the legalization of medical marijuana and an increase in crime rates. On the contrary, the available evidence suggests the opposite: that legalization of medical marijuana is associated

with a decrease in both violent and property crime rates. Because the available evidence flatly contradicts the conclusion of the Court of Appeals, this Court should grant the Petition for Certiorari.

ARGUMENT

I. The Court Should Conduct Its Own Review of the Evidence in This Case Involving the Infringement of Petitioner's Constitutional Rights, Because the Court of Appeals' Conclusion That There Is a "Significant Link" Between Medical Marijuana and Violence Is Demonstrably False

This Court has long recognized that it has a duty to conduct an independent review of the factual record in cases where the infringement of a constitutional right is asserted. *See, e.g., Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498-501 (1984); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 921-32 (1982); *New York Times v. Sullivan*, 376 U.S. 254, 285 (1964); *Napue v. Illinois*, 360 U.S. 264, 272 (1959); *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951); *Feiner v. New York*, 340 U.S. 315, 316 (1951); *Watts v. Indiana*, 338 U.S. 49, 50-51 (1949); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 659 (1945); *Norris v. Alabama*, 294 U.S. 587, 589-90 (1935); *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 289 (1920). As the Court has explained, such an inquiry is necessary “in order to make sure that ‘the judgment does not constitute a forbidden intrusion on the field of free expression.’” *Bose Corp.*, 466 U.S. at 499 (quoting *New York Times v. Sullivan*, 376 U.S. at 284-86). This case provides a striking confirmation of the wisdom of

that practice. Here, Respondents (“the Government”), wielding the full power of the federal government, have eviscerated the freedom guaranteed to Petitioner by the Second Amendment, merely because she chose to engage in what all parties concede is quintessentially protected First Amendment activity – namely, political speech and association in furtherance of a cause the Government has deemed undesirable. Rather than granting Petitioner relief for this violation of her constitutional rights, however, the Court of Appeals for the Ninth Circuit affirmed the District Court’s dismissal of her complaint. Worse, it did so on the basis of a factual conclusion that is demonstrably false.

In this case Petitioner challenges 18 U.S.C. § 922(d)(3), which prohibits the sale of a firearm to any person known or reasonably believed to be an unlawful user of or addicted to any controlled substance, as it is applied in conjunction with an Open Letter issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives to firearms dealers. Appendix (“App.”) 7, 10. The Open Letter advises that a firearms dealer’s awareness that an individual possesses a medical marijuana card constitutes “reasonable cause to believe that the person is an unlawful user of a controlled substance.” App. 7. The record contains no allegation or evidence that Petitioner in fact uses or is addicted to a controlled substance. On the contrary, although Petitioner possesses a medical marijuana card issued by the State of Nevada, App. at 8, it is undisputed that she does not use marijuana, but rather obtained the card as a political statement of support for the movement to legalize marijuana. App. 12 & n.3. The Court of Appeals acknowledged its obligation to accept the truth of this allegation at the pleading stage, App.

12, but nevertheless rejected Petitioner’s claim that § 922(d)(3) and the Open Letter violate her Second Amendment rights. App. 11-19. Applying an intermediate level of scrutiny, the Court of Appeals concluded that there is a “reasonable fit” between § 922(d)(3) and the Government’s asserted objective of preventing gun violence. App. 18-19.

The Court of Appeals based its conclusion on a number of “studies and surveys,” none of which are part of the record in this case, which purportedly “suggest a significant link between drug use, including marijuana use, and violence.” App. at 16 (citing *United States v. Carter*, 750 F.3d 462, 466–69 (4th Cir. 2014) (citing and discussing four studies and two government surveys); *United States v. Yancey*, 621 F.3d 681, 686 (7th Cir. 2010) (per curiam) (citing all but one of the studies and surveys in *Carter*, plus one additional study)). Despite the Government’s failure to introduce the cited materials into the record, the Court of Appeals justified its reliance on them on the ground that Petitioner had not “challenged their methodology.” App. 16. Setting aside the serious due process concerns this raises, the Court of Appeals’ reliance on evidence outside the record lays bare the fundamental error of its reasoning: Petitioner has been denied her Second Amendment rights not because she engaged in unlawful conduct of any kind – in fact, she did not – but because she engaged in an act of political speech and association, by obtaining a medical marijuana card to express her support for the movement to legalize marijuana. The Constitution does not permit such guilt by association. *Cf. NAACP v. Claiborne Hardware Co.*, 458 U.S. at 931 (“To impose liability without a finding that the NAACP authorized—either actually or

apparently—or ratified unlawful conduct would impermissibly burden the rights of political association that are protected by the First Amendment”).

The Court of Appeals’ legal error is compounded by the fact that the studies it cites do not in fact support its conclusion that use of medical marijuana is linked to violence, nor do they even purport to do so. Instead, these studies focus on the connection between *illicit* drug use and violence. *See, e.g.*, Carrie B. Oser, et al., *The Drugs-Violence Nexus Among Rural Felony Probationers*, J. OF INTERPER. VIOL., Vol. 24, No. 8 (Aug. 2009); Evelyn H. Wei, et al., *Teasing Apart the Developmental Associations Between Alcohol and Marijuana Use and Violence*, J. OF CONTEMP. CRIM. JUSTICE, Vol. 20 No. 2 (May 2004); H. Virginia McCoy, et al., *Perpetrators, Victims and Observers of Violence: Chronic and Non-Chronic Drug Users*, J. OF INTERPER. VIOL., Vol. 16, No. 9 (Sept. 2001); Lana Harrison et al., *The Intersection of Drug Use and Criminal Behavior: Results From the National Household Survey on Drug Abuse*, CRIME AND DELINQUENCY, Vol. 38, No. 4 (Oct. 1992). By contrast, the scholarly literature focusing on medical marijuana directly contradicts the Court of Appeals’ conclusion in this case: it strongly suggests that there is no link whatsoever between the legalization and use of medical marijuana and violence.

In the leading study focusing on the effect of medical marijuana on crime rates, the authors characterized their “central finding” as follows:

that [legalization of medical marijuana] is not predictive of higher crime rates and *may* be related to reductions in rates of homicide and assault. Interestingly, robbery and burglary

rates were unaffected by medicinal marijuana legislation, which runs counter to the claim that dispensaries and grow houses lead to an increase in victimization due to the opportunity structures linked to the amount of drugs and cash that are present. Although, this is in line with prior research suggesting that medical marijuana dispensaries may actually reduce crime in the immediate vicinity. In sum, these findings run counter to arguments suggesting the legalization of marijuana for medical purposes poses a danger to public health in terms of exposure to violent crime and property crimes. To be sure, medical marijuana laws were not found to have a crime exacerbating effect on any of the seven crime types. On the contrary, our findings indicated that MML precedes a reduction in homicide and assault.

Robert G. Morris, et al., *The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006*, PLOS ONE, Vol. 9, Issue 3, 6 (March 26, 2014) (emphasis added). These findings are corroborated by other other studies. See, e.g., Edward M. Shepard, et al., *Medical Marijuana and Crime: Further Evidence From the Western States*, J. OF DRUG ISSUES, Vol. 46, Issue 2 (2016) (finding “no evidence” that medical marijuana laws are linked to an increase in violent or property crime, and that such laws are actually linked to “significant drops” in crime rates); see also D. Mark Anderson, et al., *Medical Marijuana Laws, Traffic Fatalities and Alcohol Consumption*, J. OF LAW AND ECON., Vol. 56, No. 2 (May 2013) (finding that legalization of medical marijuana is associated with an 8-11 percent decrease in traffic fatalities).

In another study, the authors hypothesized that legalization of medical marijuana would lead to a decrease in violent crime along the Mexican border, by supplanting drug cartels with licit providers of marijuana. *See* Evelina Gavrilova et al., *Is Legal Pot Crippling Mexican Drug Trafficking Organizations? The Effect of Medical Marijuana Laws on US Crime*, NORGES HANDELSHOYSKOLE, NORWEGIAN SCHOOL OF ECONOMICS, (Oct. 28, 2015). They found that it did. The “main result” of the study, the authors found, is that legalization of medical marijuana leads to “a strong reduction in the violent crime rate” for the counties they studied along the Mexican border. *See id.*, at 3,

If there were in fact a “significant link” between the use of medical marijuana and violence, as the Court of Appeals concluded, it would be reasonable to expect that crime rates would increase in proximity to medical marijuana dispensaries. But no such correlation appears to exist. *See* Nancy J. Kepple, et al., *Exploring the Ecological Association Between Crime and Medical Marijuana Dispensaries*, J. STUD. ALCOHOL DRUGS, Vol. 73, 523, 528 (Jan. 2012) (after controlling for ecological variables, “no crosssectional associations were observed between the density of medical marijuana dispensaries and violent or property crime rates”). Preliminary studies also show a decrease in crime rates in states where marijuana has been legalized for recreational purposes. *See* Drug Policy Alliance, *Status Report: Marijuana Legalization in Washington After 1 Year of Retail Sales and 2.5 Years of Legal Possession* (July 2015); Colorado Dept. of Public Safety, *Marijuana Legalization in Colorado: Early Findings* (March 2016).

In sum, the available evidence does not support the conclusion of the Court of Appeals in this case, but rather refutes it. There is no link between medical marijuana and an increase in violence or other crimes. On the contrary, the available evidence suggests that medical marijuana is associated with a decrease in crime rates.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition for Certiorari, the Court should grant certiorari in this case.

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