

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

No. 82014

TGIG, LLC; NEVADA HOLISTIC  
MEDICINE, LLC; GBS NEVADA  
PARTNERS, LLC; FIDELIS  
HOLDINGS, LLC; GRAVITAS NEVADA,  
LLC; NEVADA PURE, LLC;  
MEDIFARM, LLC; MEDIFARM IV LLC;  
THC NEVADA, LLC; HERBAL CHOICE,  
INC.; RED EARTH LLC; NEVCANN  
LLC, GREEN THERAPEUTICS LLC;  
AND GREEN LEAF FARMS  
HOLDINGS, LLC,

Appellants/Cross-Respondents,

vs.

THE STATE OF NEVADA  
DEPARTMENT OF TAXATION,  
Respondent/Cross-Appellant,

and

INTEGRAL ASSOCIATES, LLC D/B/A  
ESSENCE CANNABIS DISPENSARIES;  
ESSENCE TROPICANA, LLC;  
ESSENCE HENDERSON, LLC; AND  
LONE MOUNTAIN PARTNERS LLC,  
Respondents.

**FILED**

SEP 08 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal and cross-appeal from a final judgment denying judicial review and granting injunctive relief in an action concerning entitlement to a marijuana dispensary provisional license.<sup>1</sup> Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

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<sup>1</sup>The clerk of this court shall amend the caption to conform to the caption on this order.

Appellants are a group of unsuccessful applicants for recreational marijuana licenses who filed a complaint challenging the Department of Taxation's (DOT) license application process and DOT's grading of the applications submitted. Former NRS 453D and NAC 453D governed the application process for marijuana dispensary licenses.<sup>2</sup> Appellants alleged, *inter alia*, that DOT improperly disregarded statutorily mandated ownership and location disclosure requirements in the applications. *See* former NRS 453D.210(5); Nevada Ballot Questions 2016, Nevada Secretary of State, Question No. 2, § 10 (effective Jan. 1, 2017); NAC 453D.268(4). Appellants further alleged that DOT conducted the application process and the application grading in a manner which arbitrarily and capriciously favored certain applicants. Appellants' claims included petitions for judicial review, constitutional claims based on a deprivation of their access to a license and an alleged negative impact to their share of the marijuana market, a petition for a writ of mandamus, and declaratory relief. The district court granted injunctive relief prohibiting certain applicants from obtaining licenses because they failed to adequately disclose their ownership. However, the prohibition on these applicants was subsequently lifted because DOT deemed any deficiencies in the applications cured. Because appellants have no right to judicial review and lack standing to assert a challenge to DOT's license application process, we affirm.<sup>3</sup>

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<sup>2</sup>NRS 453D was repealed in 2019 and the authority to license and regulate persons and establishments involved in the marijuana industry was transferred to the Cannabis Compliance Board. *See* 2019 Nev. Stat., ch. 595, § 245, at 3896.

<sup>3</sup>In its cross-appeal, DOT challenges the district court's issuance of an injunction. Since the injunction no longer prohibits any applicants from

Petitions for judicial review of administrative decisions are statutorily authorized under NRS 233B.130. *See State, Dep't of Health & Human Servs. v. Samantha Inc.*, 133 Nev. 809, 811, 407 P.3d 327, 329 (2017) (“A party seeking to challenge an administrative agency’s decision may pursue such judicial review as is available by statute or, if appropriate, equitable relief.”). Under the statute, “[a]ny party . . . [i]dentified as a party of record by an agency in an administrative proceeding; and . . . [a]ggrieved by a final decision in a contested case, is entitled to judicial review of the decision.” NRS 233B.130(1). A contested case is defined as “a proceeding, including but not restricted to . . . licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” NRS 233B.032. NRS 233B.127(1) provides that “[t]he provisions of NRS 233B.121 to 233B.150, inclusive, do not apply to the grant, denial or renewal of a license unless notice and opportunity for hearing are required by law to be provided to the applicant before the grant, denial or renewal of the license.”

“Giving NRS 233B.130 and NRS 233B.032 their plain meaning, only final agency decisions from a proceeding requiring an opportunity for a hearing or imposing an administrative penalty are judicially reviewable contested cases.” *Samantha*, 133 Nev. at 813, 407 P.3d at 330. Here, an opportunity for a hearing was not required before an application denial. Moreover, nothing in former NRS 453D or NAC 453D provided for any right to an appeal or review of a decision denying an application for a retail recreational marijuana license. Accordingly, appellants were not entitled to judicial review of DOT’s decision to deny them a retail marijuana license.

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obtaining a license, however, DOT asks this court to affirm the judgment of the district court.

*See id.* at 815, 407 P.3d at 331 (holding that an unsuccessful medical marijuana license applicant could not seek judicial review).

On appeal, respondents aver that appellants failed to establish standing to assert their remaining claims. “Standing is a question of law reviewed de novo.” *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). “The Nevada Constitution does not include the ‘case or controversy’ requirement stated in Article III of the United States Constitution, so we are not strictly bound to federal constitutional standing requirements.” *Nat’l Ass’n of Mut. Ins. Cos. v. State, Dep’t of Bus. & Indus.*, 139 Nev., Adv. Op. 3, 524 P.3d 470, 476 (2023). “But the Nevada Constitution includes a robust separation of powers clause that the United States Constitution does not.” *Id.* “Both as a prudential matter, and because of the justiciability requirements the separation-of-powers doctrine imposes on the Nevada judiciary, our caselaw generally requires the same showing of injury-in-fact, redressability, and causation that federal cases require for Article III standing.” *Id.* (citations omitted). Appellants failed to establish any of the necessary elements of standing here.

Appellants cannot establish an injury in fact because they have not shown a right to, or property interest in, a retail marijuana license or a market share in the retail marijuana market. *See Malfitano v. County of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819-20 (2017) (“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” (quotation marks omitted)). Therefore, appellants have not shown a concrete injury sufficient to establish an injury in fact.

Moreover, appellants cannot establish an injury in fact because a generalized grievance challenging DOT’s adherence to the statutorily

imposed application process is not sufficiently particularized. A failure by DOT to adhere to the statutory application process, without more, cannot be the basis for a claim by an unsuccessful applicant because such conduct is a generalized harm to the taxpayers, not a particularized harm to the applicant. *See, e.g., Gulf Oil Corp. v. Clark Cty.*, 94 Nev. 116, 118-19, 575 P.2d 1332, 1333 (1978) (explaining that statutes governing the bidding process for state contracts “are deemed to be for the benefit of the taxpayers and not the bidders, and are to be construed for the public good”).

Finally, appellants have not shown redressability or causation. They presented no evidence establishing a causal link between DOT’s alleged misconduct and their failure to obtain a license and the alleged harm is unlikely to be redressed by the relief sought. Therefore, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.  
Stiglich

Cadish, J.  
Cadish

Pickering, J.  
Pickering

Herndon, J.  
Herndon

Lee, J.  
Lee

Parraguirre, J.  
Parraguirre

cc: Chief Judge, Eighth Judicial District Court  
Hon. Joanna Kishner, District Judge  
Sugden Law  
Clark Hill PLLC  
N.R. Donath & Associates PLLC  
Chattah Law Group  
Hone Law  
Pisanelli Bice, PLLC  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk