SUPREME COURT OF NEVADA

Case No. 79668

GREENMART OF NEVADA NLV LLC,; and NEVADA ORGANIC REMEDIES, LLC

Appellants,

v.

SERENITY WELLNESS CENTER LLC; TGIG, LLC; NULEAF INCLINE DISPENSARY, LLC,; NEVADA HOLISTIC MEDICINE, LLC; TRYKE COMPANIES SO NV, LLC; TRYKE COMPANIES RENO, LLC; PARADISE WELLENESS CENTER; GBS NEVADA PARTNERS, LLC; FIDELIS HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC; MEDIFARM, LLC; MEDIFARM IV LLC;
and STATE OF NEVADA, DEPARTMENT OF TAXATION,

Respondents,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-786962-B
The Honorable Elizabeth Gonzalez

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT APPENDIX was filed electronically with the Nevada Supreme Court on the 13th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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is a nonexhaustive list, evidence of compliance is not listed as one of the mandates for the State to consider. It's not there in any of those listed factors. Now, the State certainly could include a review of the compliance as part of what is directly and demonstrably related and within their discretion with their broad authority. But specifically it's not noted. And in then if you look at the regulations, the NACs, 453D.268(10), the only place compliance shows up there is when an applicant must provide a set of plans that shows how they're going to be compliant. They don't actually say, give us your compliance history.

So on one hand you have these plaintiffs who argue, ne need to have strict interpretation of the ballot initiative, we cannot falter or waver, we cannot include diversity, because it's not there, or some say we can't include it, we must have background checks, some of these plaintiffs who are public companies couldn't comply. All on them. Now they're saying, well, you should have included compliance. But if you look at the statute itself, a strict reading of it, it does not say compliance is required to be considered as part of the application.

So now are we going to read in new provisions? Because, if we are, are we reading in the new provisions for diversity? Are we altering the statute to adhere to what the State did with their board authority to say we're not going

include properties anymore? Once we take a 20/20 hindsight approach in saying what the State should have included, shouldn't have included, that would cause a Pandora's box of suggestions from third parties, and everybody will come up with new ideas of what they should have included or what they shouldn't have included in compliant. And it'll be endless.

Instead, that is exactly why we designate the authority to the State and their agency to implement the regulations for this industry. Because when this ballot initiative was passed in 2016 it was based on a ballot initiative written and submitted to the Legislative Council Bureau and the Secretary of State in April 2014. In April 2014, Your Honor -- and that's Exhibit 5042. In April 2014 the medical marijuana dispensaries were not even open yet. They had projected, this is what the regulations -- this is what the statute should look like in the future at some point. But that is before the industry had even had an attempt to have any operations. That's before the State had an attempt to even know how to control these folks in the industry. That ballot initiative back in 2014 could not contemplate public companies would be owners or stockholders in any of these companies, because none of these companies were even operational at the time.

So it doesn't matter that you just say, let's look at the voters' intent. But you have to look at the whole

picture. And that whole picture is what happened when that ballot initiative was written and submitted to the state in 2014 and nobody contemplated these issues. Nobody contemplated the property issues, but the State and County lawsuits that occurred, those were at the end of 2014 into 2015 when that initiative was there. Nobody contemplated NuLeaf's ruling. That's why it's a -- you have to see it as almost like a fluid document, which is why it directs the State to implement necessary regulations, which is what they did here in this case.

I'll close with that, Your Honor, unless you have any questions.

THE COURT: Thank you. And similar to the question I asked Mr. Prince, have you done an evaluation as to which of the successful applicants complied with NRS 453D.200(6) beyond your clients at the time of the application?

MR. KAHN: Your Honor, my understanding is that on our side of the table there are one or two public companies. I don't know if they have complied with that statutory initiative. However, there are many other intervenor defendants on our side of the table besides those two public companies who all have come in and have said, we have background checked all our owners, officers, and board members.

THE COURT: I remember hearing that testimony.

That's why I'm asking the question, so -- okay. Thank you.

MR. KAHN: Thank you, Your Honor.

THE COURT: Mr. Hone, Ms. Shell? Who's next?

MS. SHELL: I think Mr. Graf is next, Your Honor.

THE COURT: Mr. Graf.

INTERVENOR DEFENDANT CLEAR RIVER'S CLOSING ARGUMENT

MR. GRAF: Thank you, Your Honor.

Your Honor, I'd kind of like to start off by answering a couple of your questions.

Tiebreaker provision that you asked questions about is contained within the actual application. It's in subsection (6), Your Honor, after the discussion. And, Your Honor, so some of the questions that you've asked today are the questions about what sets each of us apart. To answer your other question, Your Honor, Clear River -- and, Your Honor, Rusty Graf on behalf of Clear River LLC. Most of the evidence and presentation of proof regarding Clear River has been presented through evidence of other people. Charts that were presented by the State as to the ownership. The ownership of Clear River LLC is two individuals, that neither one of them has less than 5 percent and both of those people were checked. And there's a certain amount of common sense that goes along with this background check, Your Honor, and there's a certain amount of common sense that goes along with this, because in the 18 months of which this application

period fell only those applicants that had previously been licensed could apply. So, Your Honor, if those entities were the same as Clear River is, those people have already been background checked. So that's one issue, Your Honor, in terms of Clear River.

The other issues that, you know, Clear River needs to bring to bear, Your Honor, is the fact that this isn't a perfect process. None of these very smart people, attorneys or the parties, got up and said, you know, we expect the State to be perfect, to throw a no-no. We didn't expect that, Your Honor. We didn't expect them to be perfect. We don't expect them during this process. There's going to be errors like Mr. Kemp's clients'. There are going to be those. But what I intend on presenting to you hopefully in about 10 or 15 minutes, Your Honor, is the fact that Clear River has none of those errors.

They talked about diversity and advisory boards, and we'll talk about that as we go through here.

One of the things that I wanted to address that was discussed yesterday was that the defendant intervenors chose to be here. Your Honor, we chose to be here like somebody walks out, sees somebody driving away with their car and they run after them so that they can get their car back. That's why we're here. We're here to protect the interests that we've got. Mr. Ritter, TGIG's representative, the Serenity

plaintiff here today, testified during his presentation that the licenses are worth ten to $12 million. Then we had to watch the excruciating and uncomfortable testimony of the cross-examination of the gentleman who came in here to testify about a document he got from Mr. Ritter that verified the very testimony of Mr. Ritter, that said, these are worth ten or $12 million, and, lo and behold, he presents an offer that says, I'll offer you $10 million for your license, I'll offer you $12 million for your license.

And Her Honor has asked questions throughout this process about, you know, what things were worth or if there was a market for these things and everything else. There's a couple of wrinkles I want to throw into Her Honor's discussion, and I don't think there's been any answers to these wrinkles. So NRS 453A.324(1)(a) provides in the medical marijuana purview that there's only to be 40 dispensaries in any county that has 700,000 or more people. That number was increased by the ballot initiative, Your Honor, that was approved by the people to 80 dispensaries.

THE COURT: For recreational.

MR. GRAF: For recreational. So there was going to be different licenses, there were going to be different dispensaries. There's going to be an increase. No expert on behalf of these plaintiffs discusses that. The only testimony that we've got is testimony from Mr. Hawkins and from several

other owners that this is going to hurt their market share. How? Forget the fact that it's mere speculation, that it's a statement by a corporate representative with no backup. There is no -- and Dr. Seaborn's the only one that testified to this, and Dr. Seaborn, what he said, and I went back and I read it yesterday and it was interesting, he said, it's kind of like economies of scale. And then I was like, well, I'm a finance major, I should know what that means. I didn't. So I went back and I looked it up. Economies of scale means that you decrease your unit price such that by having larger production. So as production increases, your unit price decreases. And I'm like, how does that affect their market share. It doesn't, Your Honor. And that's the problem with this whole case by these plaintiffs. That's the problem. The whole market was growing. Their market share was necessarily going to be decreased, and nobody, no expert on behalf of the plaintiffs, not Dr. Seaborn, not any of the testimony by any of the parties addresses that issue. Her Honor's got to guess. That's the definition of mere speculation. There's no irreparable harm. There's been no testimony, there's been no evidence to prove it, period.

Let's set aside the fact that Mr. Parker deferred to Mr. Bult when he was talking about the relief that they sought. Mr. Bult doesn't have an injunctive request in his complaint. Set that aside for now. That's probably for

dispositive motions down the road, okay. But in reviewing and getting ready for this argument I actually read the pleadings.

THE COURT: Really?

MR. GRAF: Go figure.

THE COURT: Me and you are probably the only two.

MR. GRAF: Probably.

THE COURT: Oh. Mr. Bice probably read them, too.

MR. GRAF: So then -- here's the reason why I did it, Your Honor. I got confused yesterday by Mr. Gentile's argument. Mr. Gentile's argument, he said at first -- I have to go to my notes, because I don't want to say it wrong -- that he wants an injunction enjoining the enforcement of the denial of their applications, is what it says in their complaint. And in fact on page 16 of their complaint it says, for a preliminary and permanent injunction enjoining the enforcement of the denial of their application. I was like, I don't know what that means. Fine. We're going to enjoin the denial of your applications, I don't care. I've said that several times in this case, Your Honor, and I mean it, okay.

The second thing is, Your Honor, then Mr. Gentile said something very curious. He said, I don't want this Court to issue an injunction that affects any of the intervenors' rights. And I was like, wait a second. We do have rights. We're the ones that got conditional licenses. If anybody's got a property right in this room, it's my client, who didn't

do a dang thing wrong in submitting how his applications were done by his daughter, and then they're trying to take those away.

So, Your Honor, I had a big presentation where I could go through a bunch of other information and everything else, but I really want to talk about a couple of things before I stop. And that is on the State's Website which has been produced as an exhibit whatever, I don't know what it is, they have that production that was done after May 10th. And I know Her Honor doesn't agree with our argument as to petition for judicial review, but I think it was important that what they argued during that opposition to petition for judicial review, they argued that the dispute is between them and the State. Okay. Then the people that did it right, that were awarded conditional licenses, they should keep them.

So in my trial brief what I tried to do, Your Honor, was I tried to say, besides the fact that I didn't delete the conclusion and it was about 10:30 at night; I apologize. So the issue becomes as to the petitions for judicial review and the fact that they don't want to disrupt anything that we've got, this is an equitable proceeding, Your Honor, and with equity you must do equity. And here what we're really talking about is the fact that -- and I vacillate back and forth, because, as Mr. Shevorski says in numerous occasions, I have friends on both sides of this, and my clients have friends on

both sides of this, and everybody in this room knows that it's a small community. Everybody knows everybody. Ms. Black is now the president of the NDA, I've got all kinds of things that I'm being told in different days about what we should argue and what we shouldn't argue and everything else. But here's the thing. Everybody in this room I think is for the proposition that this industry needs to be regulated, number one, and, number two, that it needs to be brought along in such a way that's cohesive and logical.

What these applications and what the allegations that are being made say is that, well, there's problems and you guys did this. Well, what I think may have happened when the case was started was all of the plaintiffs got together in a room, and for Serenity case it's Serenity, TGIG, NuLeaf, Nevada Holistic, Tryke, Fidelis, Gravitas, Pure, MediPharm -- we talked about MediPharm before, but I'll leave that for another day, also -- all of those people got together and they said, hey, you know what, we did this, this, and this. And it's all of the things that they say that they shouldn't have been doing. There's publicly traded companies in the Serenity plaintiffs. Her Honor kept asking the question of the defendants, hey, how many of you complied with subpart (6). No, Your Honor. When you do your analysis I must request and urge you to consider how many of the plaintiffs did not comply with subpart (6). That's important, because they're seeking

equity. They have to come to Her Honor with clean hands and say, Your Honor, we need this injunction because we have a right and this is good and this is what we need to do. But, Your Honor, they did not adhere to any of this. There's public companies on that side of the aisle. There are -- what else? There are -- Mr. Ritter testified that he used P.O. boxes. Your Honor, one of the only things that's actually very clear in the applications is in the section (c) where it says, you know, where you're going to put the address and everything else. And here they're saying no address, whatever. But the one thing it does says in parens on both 5 and 5A, no P.O. boxes, don't do it. He did it.

THE COURT: But a UPS Store is okay?

MR. GRAF: Your Honor, here's the thing. When you look at Exhibit 303, Exhibit 303 for Clear River, you look at bottom, Mr. Black is a well-known realtor in this town. And what does he do? There's APNs. You got it. You want to see where his place -- where he was going to put it or North Las Vegas, Henderson, Las Vegas, Unincorporated Clark County, you got the APNs. Look them up. That's what I'm saying. I could care less what anybody else does. I could care less. All I want to do is I want to walk out of this room and I want to be to tell Mr. Black, you did everything right, we got a fair hearing shake from that Judge, and I think you should keep your licenses, because there's nothing that they say you did

wrong.

Let's talk about that diversity issue. Let's talk about it. Phony. Illusory. What was the other word? Gamesmanship. I used that in my brief. Go ahead and double check it. I put it in. Gamesmanship. All kinds of stuff. All of these words. And you know what, Your Honor, they're just words. You know who's sitting at that table? Nevada Secretary of State is sitting at that table.

THE COURT: Not anymore.

MR. GRAF: Sure. Do you think he forgot everything he did when he was there for however many years? When did they step up, when did they say, hey, that's about -- your advisory board is a violation of NRS 86 whatever? Did we hear that? I'll stop now if they [inaudible]. No. They don't. Because we didn't violate any law. We didn't violate in principle, because Her Honor is well aware that in an LLC you can do what you want. That's why Nevada's great. Because we have OPAGs that let people say, hey, this is how you're going to run your business. Not Mr. Kemp, not Mr. Gentile to tell us how to run our business. And to say that a woman cannot be on an advisory board or its somehow a sham to put your daughter as the president of the Nevada Dispensary Association on your board for your cannabis company? Are you kidding me? That is completely appropriate. She is one of the bigger attorneys in this town doing administrative law and submitting

these types of applications all over the country.

Your Honor, I was subjected to, and, yes, I'm saying subjected to, Ms. Black because they have applications due in Missouri tomorrow. For the last month they've been working 15-hour days trying to figure out exactly what to do and exactly what people want and exactly what they want to have in each little section of the application. By the way, Your Honor, that's what everybody in this room did when they previously submitted all their applications. Is there some areas that are open to interpretation? Sure. Some of those areas would include, I would venture to say, Your Honor, in the ballot initiative in subsection (5) that says, not only have you been told months after the effective date -- and this is the section where we've been talking about the background checks, Your Honor, and this is before the statute. It says, "Regulations shall include," and then it goes to subpart (6) and it says this, Your Honor. And what I want Her Honor to focus on is what it doesn't say. It says, "The Department shall conduct a background check of each prospective owner, officer, and board member of the marijuana establishment license applicant." Doesn't say when.

So let's talk about all these practicalities. Everybody is like trying to argue and say that this is bad and everything's absolute. That provision says, hey, you've got to do background checks. My question is when do you do it.

There are substantial provisions contained within this ballot initiative within R092-17, and within the NRS and the NAC that all say, hey, you're going to get a conditional license and there's some things you've got to clear up after the conditional license. I don't see why you don't issue a conditional license and then say, okay, then we go fix these people and then these very provisions say if somebody doesn't pass the background check you kick 'em out.

You know, one of the questions I kept asking as we were going through all this testimony is these people are like, oh, yeah, there's bad people there. And everybody's got expulsion clauses in their OPAGs or their bylaws. Somebody's got an excluded felony, you kick 'em out of the company. That's it. But this document, this, what Her Honor is supposed to look at and review, the ballot initiative, doesn't say when that's supposed to occur. Your Honor, the only efficient and reasonable way for that to occur is to occur when you've already whinnied it done, you've gone from the 462 applicants down to whatever it -- it's 17 entities. Do you think it's a little bit different to do a background check on 17 different applicants, quote, unquote? Yeah. It is. Is it less expensive for the State? Yes. Is that a benefit to the people of Nevada if it's less expensive for the State? Yes.

If you read the ballot initiative, one of the only fiscal -- the only fiscal thing that's in there is they say

the Department of Health and Services or BPHS, whatever it's called, has to hire two more people to do the background checks. That's the fiscal analysis that they performed in there. I think it's wrong. I think we've all learned that the testimony is if there's public companies it's going to be much more expensive. But so what? Her Honor made the comment, it's like, well, you know, this isn't gaming or something to that effect and, you know, add to the process itself. Yeah. We're like the case that Mr. Gentile cited, the 1957 case that talks about gaming at that time when, as Mr. Kemp said, gaming for public companies wasn't allowed until later.

It's going to progress. It's going to grow. The Governor has already signed the order that says he's going to create a board much like Gaming, and then they'll have either a board and a commission or vice versa or whatever. But they're making that bureaucracy. And this industry's going to pay for it, and that's the other thing that Her Honor has to consider here. During the -- Her Honor has had testimony at a bare minimum that there's at least two of these defendants that have not been able to open during the pendency of this TRO/preliminary injunction hearing. The loss in revenue to the state of Nevada is weighing heavily on the side of you not granting this preliminary injunction, because they overreached. They overreached. You heard them all say it

yesterday, we want every single one of those licenses not issued. And it's not licenses that are issued. They have some sort of qualification. One qualification was --

THE COURT: Final inspection.

MR. GRAF: -- we want a final inspection. They don't want the licenses issued. Let's call it what it is.

So, Your Honor, just kind of to sum up I want to talk about two broad topics. We don't have multiple licenses, we didn't hire Amanda Connor, but they did. Mr. Ritter testified that he used -- and it was funny how he testified to it. I think he said that --

On page 64, Brian of his testimony. Kind of want to show it to the Court, because I thought it was funny.

She was asked, well, did you -- he was asked a direct question, hey --

Can you pull it up, or not?

THE COURT: So I'm trying to get the A-V guys to the trial, too. It's not Mr. Koch only. The A-V guys got to go over there, because they've got to finish [inaudible].

MR. GRAF: So, Your Honor, Mr. Ritter was asked, hey, did you use it? No. And I'll paraphrase, because I obviously don't have it up there. But it's in there. Oh, we used her for regulatory purposes. So you used her -- and there it is, Your Honor.

"There have been some allegations in this case with

respect to Amanda Connor, by the way, who's a fine person, met her multiple times. Pretty remarkable allegations, frankly based [inaudible]. You're familiar with Ms. Connor. You know who she is; correct?"

"Yes."

"Do you consider her to be a competent attorney??

"She's been helpful for us regulatorily." I didn't know that's a word. "Helpful to TGIG regulatorily?"

"Yes."

Equity, Your Honor. They can get up here and jump around and say that she shouldn't have had calls, she shouldn't have had dinner and she shouldn't have had all of this other stuff. And at the beginning of this hearing there was a lot of saber rattling as to all of these bad things that Her Honor was going to hear. There were some dinners that were done that were everything else. Not with Clear River. And there's no evidence or proof of that ever occurring on behalf Clear River.

And then, Your Honor, there's no proof or evidence as to noncompliance or anything of that nature as to Clear River. And then, Your Honor, the last thing that I wanted to talk about -- well, there's two last things. And it's just to reiterate and show Her Honor the testimony. Mr. Terteryan got up here, a very soft-spoken man who was talking about the documents that he received. And we already talked about those

offers. I wanted to show the Court on page 74 of Mr. Ritter's testimony where he testified that he wasn't an owner. But that's not what he told Mr. Terteryan.

And then on page 64 he testified about using Amanda Connor. But then on page 77 and 78, Brian, at the bottom of 77, "You don't have -- you are not being damaged, you're not receiving --" go to the next page, "-- you're not being hurt, you're not getting any additional income because you didn't qualify; correct?"

"Well, we're certainly hurt without being awarded the licenses, because the licenses themselves have values in the neighborhood of $10 million."

There's no irreparable harm. When you go from 40 to 80 licenses in a county, that's just new licenses. One of that things that Her Honor asked some questions about were, well, you know, there's only 10 in the city and there's 10 in the county, that's only 20, there's 26 plaintiffs, there's not enough. There's plenty. There's 80 in the county, and they're worth about $10 million apiece. There's no irreparable harm. If they can prove that they should have had licenses, there's no irreparable harm. That's the bottom line, Your Honor. That's what we're talking about here, their witnesses, equities that are involved on both sides, Your Honor. And if look at the rest of the plaintiffs in the Serenity case, there's multiple entities that applied for

multiple licenses in the same jurisdictions. That's the plaintiffs. That's the lack of equity. And then you've also got the public companies that exist on that side.

And then the final thing that I wanted to talk about, Your Honor, is this. In terms of a modified injunction or something along those lines I don't think Her Honor has to get there. She doesn't. Because in each and every instance that we're talking about here, the address and the P.O. boxes, there's plaintiffs that have all that. The diversity issue and everything else, we have all of that on their side. The percentage of ownership, there's public companies on that side, too.

And then the final thing is, Your Honor, I, too, would like to thank Her Honor for putting up with us for these many days, and I appreciate your time and consideration of all these facts.

THE COURT: Thank you, Mr. Graf.

Who's next? Ms. Shell.

MS. SHELL: Yes, Your Honor. Thank you.

INTERVENOR DEFENDANT GREENMART'S CLOSING ARGUMENT

MS. SHELL: It's a little difficult following Mr. Graf. I kind of wished as I was sitting there in retrospect that I had gone with my first plan, which was a musical number for everyone. But I'm not ready. So -- and I also realize --

THE COURT: Today's National Tell A Joke Day, so

you're the first. Thank you.

MS. SHELL: Thank you, Your Honor.

And I know there's a part that's difficult but also good for me about going next to last, is that a lot of what I was going to talk to Your Honor about has already been addressed by my friend colleagues in this courtroom. And so I won't belabor it. I just wanted to point out a couple of things and then talk about one issue that has only been touched upon a little bit.

Now, of course, a big topic of conversation during these closings has been background checks and whether the Department properly -- whether the Department exceeded its powers or otherwise acted arbitrarily or capriciously in implementing the regulations and limiting, putting a cap on background checks to only those people with a 5 percent membership interest. And the short answer to that is no. And in order to understand why the answer is no Your Honor has to consider some of the things that plaintiffs don't want you to think about, that they want you to ignore.

Now, as has already been talked about by my colleagues, the plaintiffs would like you to ignore the vast body of caselaw that says this Court has to grant and courts in this State have to grant great deference to an administrative agency like the Department of Taxation when they are making decisions about interpreting and implementing

statutes that they are empowered to determine and implement.

Another thing that they want you to ignore is they want you to read one little bit of Chapter 453D in isolation from all the others. They want -- and particularly they want you to read 453D.200(6) in isolation from all of the other provisions and from all of the subsections within 453D.200.

As Mr. Prince talked about and I believe Mr. Shevorski talked about a bit, under NRS 453D.200(1) the Department is specifically tasked -- it's not like optional for them. It says, "The Department shall adopt regulations that are necessary and convenient to carry out the provisions of the chapter." And not just to carry out the provisions of the Chapter 453D; they're tasked with carrying out the express desire of the Nevada voters. And what did Nevada voters ask for? You could see that right in the -- I call it legislative purpose, but if you look in the purpose section of the NRS 453D, it's at 0202, one of the things that is important and that the voters specifically asked for is a safe and legal way to purchase recreational marijuana. And so the Department is tasked with adopting regulations that will give life to that desire.

And the other thing that they have to do when they're adopting these regulations is make sure that they're not unreasonably impracticable. We already talked about what unreasonably impracticable means aside from having to say that

word. It means that you can't place conditions on licensure that are effectively going to shut the system down.

Now, here the Department properly exercised its discretion to place this 5 percent threshold on background checks for the owners, officers, and board members of the applicants. Now, there is a lot of insinuation during closing argument yesterday from the plaintiffs that this was done in a vacuum, that this was a decision -- they just plucked a number out of the air, they decided to do this just based on whim or caprice. But that's not the case. As Mr. Koch mentioned and as was talked about extensively during Ms. Contine's testimony on Day 13, this was a decision that was recommended -- this 5 percent threshold was actually recommended by the Nevada -- the Governor's Task Force. And one of the members of the Task Force, one of the members of the working group, I believe he was the chair of the working group that came up with this recommendation was Mr. Ritter, who's one of the plaintiffs in this case.

Now -- and we've talked a lot -- a lot of what was talked about during this particular part of Ms. Contine's testimony was Exhibit 2009. And they talked about in this recommendation what the guiding principles the working group considered in proposing this 5 percent threshold. One of the guiding principles that they considered was -- and I was going to have Brian throw this up on the screen, but in the interest

of time I'll just read it to you.

So this is at page 32, lines 5 through 8, on Day 13, Volume 2. The guiding principle is -- we could have put it up -- "Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome." So they thought about that. What's the burden going to be to the applicants, what's the burden going to be to the industry, and ultimately what's the burden going to be to the community that wants to go and have legal, safe access to recreational marijuana.

Another guiding principle that they considered is at page 33, at lines 17 through 23. Another thing that they considered was "The regulations must not prohibit the operation of a marijuana establishment either expressly or through regulations that make their operation unreasonably impracticable." And that came directly from the statute. That comes directly from the NRS 453D.200(1).

So it wasn't done in isolation. This threshold wasn't established just because they wanted to -- this is the number they picked. This is something that they considered. They looked at the guidance that they had -- the Department looked at the guidance that they had under the statutes and they adopted the regulations accordingly.

And we heard a lot of testimony from several witnesses about why particularly in the case of a publicly traded company like GreenMart, my client GreenMart is owned by

a publicly traded company. Not a secret. A lot of testimony about why requiring background checks of every owner of a share of a publicly traded company would be impracticable. Ms. Contine said, well, look, if we had to do this, let's assume, because the membership changes so often, the ownership of these shares changes so often it would shut down the ability to operate, the Department's ability to operate.

And I believe that someone else talked about Mr. Groesbeck, who is another plaintiff in this case, and Mr. Groesbeck when he was on the stand testified that Planet 13 has about 125 million shares outstanding. And how does the Department conduct background checks on a company that size with that kind of shares without bringing the industry, not just the Department, the full industry to a halt? And the answer is you can't. That's something that the members of this industry recognized, that's something that the Task Force recognized, and that's something that the Department recognized.

Thus, they put the 5 percent cap on. And again, that decision is consistent not just with the express purpose of -- not just with their express powers to enact all necessary and convenient regulations to govern the industry. It's consistent with the expressed interests of the people, the voters of Nevada. They said, we want to protect public safety by providing people who are 21 or older with safe,

legal access to recreational marijuana.

Now, another issue that this Court asked us to address, and I know other folks have touched on this, is the issue of diversity and was it appropriate to consider and to weight diversity in these applications.

Now, Mr. Gentile in his closing statement yesterday accused winning applicants of manipulating their board makeups to score higher on diversity. In his words, he said, and I'm going to quote from him here -- it was in the Review-Journal today, too -- that, "Rich white guys went out and rented minorities to score higher on diversity."

So we could spend hours unpacking why that statement's wrong, but I'm just going to pick on a few. The first thing that's wrong with Mr. Gentile's statement is that there is no evidence to support this statement. We've been here for weeks. Months? Months. We've been here for months. It's hard to keep track. I think -- I can't remember who observed, maybe it's Mr. Shevorski, school ended when we started and then the school year started again now that we're wrapping up.

MR. SHEVORSKI: It was Mr. Koch.

MS. SHELL: It was Mr. Koch. But here we are. We've been here three months. You haven't heard any evidence that any applicants paid off people to be on their board. It's not that they didn't try. You may remember that on Day 5

Mr. Kemp called Stacey Dougan, who's a board member of GreenMart, a board member of my client. She's an African-American businesswoman, she's a long-time cannabis activist, she's also a great chef. She owns Simply Pure over in the Container Park. Everybody go try it out. It's really good.

Now, at Volume II of Day 5 at page 138 Mr. Kemp -- and this is at lines 9 through 13 -- Mr. Kemp asked Ms. Dougan really directly. He said, "Okay. Was it your understanding that any of these promises," meaning the promises to be on the board, "would include money?"

And her answer was, "No."

He tried again. He was like, "So there was no -- Okay. So there was no monetary compensation?"

Ms. Dougan answered, not that I can remember.

Now, next Mr. Parker tried to ask -- get this same kind of evidence out of Ms. Dougan, and at page 144 of the same day he was trying to get evidence that she was somehow in cahoots with my client, with GreenMart to juke the stats by putting her on the board. And at 144, line 1, he asked her, "Okay -- right. Did anyone explain to you that diversity would be a factor for the application process in 2018?"

And her answer was, "No."

Mr. Parker, I will give him credit for being thorough, he asked a lot of questions and he kept trying to get that testimony out.

Now, if we skip ahead to the same page to lines 15 through 22 -- I'm sorry. Can you go up just a little, just a few lines up. I'm sorry. I forgot his question. Okay.

And he asked, Mr. Parker asked Stacey, "Did Krista --" Krista's another board member of GreenMart. "Did Krista ever tell you that there were diversity points that would be given for the 2018...process?"

And she answered. She answered honestly, she answered in a way that shows you exactly why she's a member of GreenMart, a board member of GreenMart and why diversity matters. She said -- Ms. Dougan answered, "She didn't tell me that there were -- there's diversity points. But we're big on women-owned business, so that's --" that's what's important to her. And she also said, "I don't know what diversity means. I don't know if it means women, gender, or if you're talking about race, but in this case there were some conversations, like, hey, we really want to make sure that we're taking care of women." This was important. That's why my client was on the board. She wasn't there because someone was paying her off to be there. That's not what was going on. But Mr. Parker asked her -- tried to get that testimony out a few more ways, but you get the point. There's no there there. So that's the first thing that's wrong with Mr. Gentile's statement, lack of evidence.

The second thing that's wrong is that Mr. Gentile's

statement really reflects plaintiffs' own cynical view about diversity. A lot of what they've been talking about is there's not enough transparency in the application process, we didn't know how points were being allotted. And when they complained about things like and they accuse without any evidence whatsoever people like my clients, applicants like my clients of juking things -- juking the stats, of paying people off to be on the board it reflects that maybe that's their own cynicism, that maybe if they knew there was going to be 20 out of 250 points allotted for diversity, maybe they would have done -- they would have done what they've accused defendants and intervenors of doing. That's the second thing.

Now there's the final thing, and this is really -- I'll leave you after this, Your Honor. The final thing that's wrong with Mr. Gentile's statement is his insensitive language. And really Mr. Gentile's statements and so many other -- I've lost count of the other statements made in this courtroom over the past several months illustrate precisely why diversity is directly and demonstrably related to the operation of a marijuana establishment. As Ms. Dougan observed, the marijuana industry is white male space. It's a space that women and people of color haven't been able to break into.

Brian, can you pull up Day 13, going to page 21, 2 through 7.

Ms. Contine also testified about why diversity is important. "If you have a diverse group of people in your organization," she said, "you might be more willing to operate in a community that, you know, has been underserved or have been disserved by the war on drugs or, you know, you have a more friendly face to some communities like that."

So you're taking white space and you're making it a space that's welcoming for everybody.

And I hope I haven't butchered his name, but Judah Zakalik from Zion Gardens also talked about another reason why diversity is important.

And, Brian, if you could pull up Day 16 at page 55, lines 7 through 8.

He said, "Our society's diverse, people that use the product are diverse, the company should be diverse."

He also -- I'm sorry. I -- did I get that right? Yeah, I got that right.

What Mr. Zakalik was talking about is it's important, you need to bring everybody's perspective to the table. And we need those perspectives if we want to continue to -- if we went the marijuana industry to continue to grow and to provide the community safe, legal access to marijuana, which is what the voters wanted. Our community is more diverse now than it's ever been. I've lived here all of my 40 years, and it's an upward trend. Over the past 40 years it

is a community that has consistently become more diverse. And as our community continues to become diverse, the marijuana industry needs to also grow and change so that it can serve the needs of every person in the community that wants to be served and also so that marijuana establishments can be good partners with the community.

And that's not something that happened in a vacuum. And, you know, I would also point you back to 453D.020(3)(b), which is one of the -- you know, the stated purposes of Chapter 453D is to confirm that applicants are suitable to sell recreational marijuana. And in order to be suitable to sell recreational marijuana in this community the Department properly exercised discretion to say diversity should be considered in that.

And with that I will turn it over to Mr. Koch. Thank you, Your Honor.

THE COURT: Thank you, Ms. Shell.

Mr. Hone.

INTERVENOR DEFENDANT LONE MOUNTAIN'S CLOSING ARGUMENT

MR. HONE: Your Honor, I have the honor of batting cleanup today, and so my presentation hopefully is not going to be duplicative or it will be as minimally duplicative as possible. I have a punchlist of items on our side that I would just like to clean up and make sure are in the record on some of the questions that have been raised today and some of

the things that have been raised yesterday and throughout the hearing, and then wrap it up with a little bit of focus back onto why we're here and what the people of Nevada really want here.

As a starting point, to answer the Court's question about 453D.200(b), Lone Mountain -- or I'm sorry, .200(6), Lone Mountain disclosed all of its owners, and they were all background checked, and so we did fall under the issue in that regard.

Going through my punchlist I'm going to jump around real quickly and make some references as quickly as I can with regard to diversity as a ranking criteria. You asked Mr. Shevorski how and when that was made known to applicants prior to submitting applications.

Your Honor -- or, Brian, if you can pull up Exhibit 5A.

I'll represent, Your Honor, Exhibit 5 is the same in this regard. 5A, page 18, Section 6.2 at the bottom, Brian, the last sentence of 6.2, the block paragraph says, "Rankings will be based on compliance with provisions of --" it lists the numbers, and then on the content of the applications relating to 6.2.2 says, "Diversity of the owners, officers, or board members." Again, both 5 and 5A, both versions show that the applicants knew that that would be scored into the process and before they submitted their applications.

With regard to the physical location and land use issue that's been talked about exhaustively I just want to point Your Honor to one additional citation in the statute that I don't think has been brought up in the last two days, but reflects the issue that there are some impossibilities or disagreements amongst the statute about what's possible. I'll refer the Court to NRS 453D.100(2)(d). And it says -- and this is with regard to the effect of the chapter. And it says, "The provisions of this chapter do not prohibit," and then subsection (d) says, "a locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments." I think that goes along with what's already been said, which is the statute and the State cannot prohibit local municipalities and the requirement of an address, a physical address at the beginning of the process instead of the final licensing process is a conflict within the statute and the process.

I would also note, Your Honor, we raised the issue of severability both in the pocket brief that we submitted on behalf of the intervenors. It's also in our final brief. But 453D.600 of the statutes, if there's a need to segregate out portions of the statute, the Court has the authority to do that.

I'm going to jump now real quickly to some of the issues that were not the main points Your Honor asked us to

focus on yesterday, but issues that have come up during the course of the proceeding the last three months and came up yesterday again, as well. One is the issue community impact and the scoring process. There's been reference that a physical location was needed to do that. Your Honor, I would just note that the scoring is for community impact, not neighborhood impact. And there's a difference there. And it was reasonable for the State to consider that in the context of the greater community, not a particular neighborhood or physical location.

Second, the issue of disclosure of point scoring the applications, again, both 5A and 5 on pages 17 and 18 break down the scoring point criteria. There has been testimony from Mr. Pupo that the reason it was not broken down any further was so that people did not artificially tailor their applications to try and score points with the scorers. Rather, as Mr. Pupo testified, the rationale there was that by giving general categories people would put in what they were really doing and they would score that without, as he said, giving away the answers.

The next point, quickly, the word "Manpower" has become a dirty word. It's been used as a dirty word throughout these proceedings. I think it's worth noting the record has reflected during the course of these proceedings that Manpower, you know, it's not a derogatory term or

process. The State was not hiring random temporary day employees that were being assigned to them. Rather, the State with its limited resources and budgets went out, hand-picked the people they wanted to do the process, and as a administrative process used Manpower to pay and retain them.

Again, this has been mentioned before, but on the one hand plaintiffs have complained that there was an abdication of oversight by using Manpower employees, but at the same time they've indicated and would say that if we used State employees that we would have, you know, again, stacking the process.

Real quickly, and Ms. Shell touched on this a little bit, a lot of the commentary in closing and a lot of the tone throughout this process the last several months has been making speculation or making allegations without any actual proof. Yesterday we heard comments in reference to this side of the room stacking their boards, exerting improper influence, engaging in clear gamesmanship, favoritism, there being an unequal playing field, and a material advantage. But there's been no indication of any particularities there with regard to any particular applicant. For example, my client, there's been no indication that Lone Mountain used Amanda Connor, was calling Jorge Pupo on the phone. They're just simply allegations. And Your Honor knows that allegations don't amount to proof.

One of the issues that came up yesterday that there was a reference, incidentally, to one of my favorite TV shows as kid, the reruns of "Hogan's Heros" and Sgt. Schultz, the character in that sit-com where he would say, "I see nothing, I hear nothing, I say nothing." There's actually a more -- unfortunately, a saying that is more contemporary now, and that is the saying, "See something, say something." All of these applicants in the room, both sides of the room, knew what the application process was going in. They knew what was required or asked for, and nobody complained about that in advance. I won't belabor the laches issue any further, but I think it's an important issue for the Court to consider.

On the compliance issue I'd like to point the Court to a section of the NRS that I don't think has been raised or pointed out in the proceedings the last two days with regard to the issue of what's required for consideration of compliance. So I'd refer to Court to NRS 453D.210(5)(f)(2) and in (f)(2) of this section it says -- (5) says, "The Department shall approve a license application if the persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked." This is in section, again .210, talking about the acceptance and final

licensing of applications. And we would propose that that compliance issue was or is considered by the statutory provision, and there's been no indication that any license was granted to any entity whose owners, officers, or board members had participated in an establishment with a revoked license.

As the final context to this I'd like us to refocus on why we're here, the issues with recreational license, and how they differ from other privilege licenses in the state of Nevada.

In 2014 when this legislation was written and submitted to the Secretary of State of it was for a new industry that had never been regulated and for which there was no context, there was not a history as in gaming with decades and decades of advancements in the regulatory process. And I think it's important also to keep in mind how that legislation was written. If I didn't understand -- I came into this room as a lay person that did not understand how the ballot initiative and the voting process works, I would have been led to believe by the context or the attempted method of plaintiffs to say that the language of this statute is -- you know, is written in stone and it's an absolutely indication of the will of the Nevada voters. That's not how the process works. The statute was written. I think there was some testimony that may have had some input from lawyers who were, you know, breaking into this space who had submitted to the

Secretary of State after people signed petitions, and there were enough signatures on petitions to submit it to the legislature, who did not pass it, and it ended up on the ballot initiative in 2016. There were no caucuses in your ward or in your county. We didn't have a meeting of all the citizens of Nevada to sit down and hammer out what this language should be. Instead, what most likely happened for most of us is we saw somebody on way into the grocery store who had a clipboard and asked us to sign whether we would like this to go up to the legislature or be put on the ballot. So the language itself may not be the best indication of what the voters of Nevada really wanted.

And we submitted in our pocket brief on behalf of the intervenors a discussion about what the Court should do if the language from the voter initiative, which is now a statute, is ambiguous, inconsistent, or there are impossibilities in there. And in that pocket brief we indicated that the Court should take a similar method to what it would do if the legislature had written a statute that had some inconsistencies or impossibilities within it. And if there were those ambiguities, the Court in a legislative process would go look at the legislative history and what the intent of the legislature was in putting this up as a statute.

We believe that there's no difference in this situation, either. And the best way we would say to figure

out what the will and the intent of the voters of Nevada was or is would be to look at the statewide ballot question, which is Exhibit 2020.

Brian, if you could pull that up real quickly.

Apart from the proposed legislation itself, and your Court can take common sense into its consideration here, what most likely the voters of Nevada saw was Question Number 2, Amendment to the Nevada Revised Statutes where there was a one-paragraph proposal and voters were asked to vote yes or no on this one paragraph. And the three primary points in the question that was in the booth when you voted were, number one, to decriminalize the possession, sale, and growth of marijuana, number 2 was to tax it at 15 percent, and number 3 was to regulate it. I would submit that that is the core will and intent of the people of the state of Nevada.

But if you go further, under the explanation and digest section there's even some additional information that may be the more active voter would go and read through, and in the explanation there's -- it flows over on pages 14 and 15, over to 16. The explanation has a number of paragraphs, and it explains even further what the point of the statute would be. The first paragraph talks about decriminalization. The second paragraph I really want to focus Your Honor on, it talks about how the ballot measure would allow for the operation of marijuana establishments. And within that

paragraph is some important language. And it indicates, and this is reflected in the statutory language, that for the first 18 months the Department of Taxation would only accept license applications for retail marijuana stores, et cetera, from persons holding a medical marijuana establishment registration certificate. So the regulatory scheme was meant to happen quickly, within 18 months, and that first round of license grants were supposed to go to people who already had experience operating medical marijuana facilities in the state of Nevada. And that's what the State has attempted to do within that time frame. And, again, we would -- you know, we take the position that that is what most directly demonstrates the will of the people. And if this process is either set aside or delayed, there are some implications upon what would happen with that process that the voters wanted. And it's been touched on here today, but I would just reiterate that if that 18 months -- once that 18 months lapses the next round of applications does not have to be limited to people who are establishments or entities that have already operated medical marijuana licenses in this state. It would be open to anybody. Any company could come in around the world, around the country, and it would greatly change that next round of licensing. And that 18 months is going to lapse in the near future. And that would impact the safety and the goals of the people of the state of Nevada, including, as Mr. Bice

indicated, a continued room for the black market to operate and for the lack of control of the majority of the marijuana in the state.

Now, Mr. Gentile said something yesterday, and I agree with him. The will of the people of Nevada to regulate recreational marijuana is a sacrosanct directive from the state of Nevada and its voters. But Mr. Gentile and I disagree on how we should determine or what best demonstrates the will of the people. Again, we would propose, Your Honor, that what most clearly demonstrates the will of the people and their intent is that recreational marijuana be decriminalized, taxed, and regulated quickly, with the first round of licenses going to people who have previously had medical marijuana licenses.

The final thing I will say, Your Honor, is that -- and we addressed this in our closing brief, is that to the extent the Court intends to enter an injunction it is required to enter the most narrow injunction possible. My colleagues on the intervenor side have talked about what some of those more narrow injunction relief might be, but we would refer your Court to our briefing on that. Thank you, Your Honor.

THE COURT: Thank you, Mr. Hone.

Are there any other defendants in intervention with a wish to make a closing argument?

So before I decide if I'm going to take a short

break, do you have rebuttal, and how long?

MR. KEMP: I think I'm about 30 minutes, Your Honor.

THE COURT: So we're going to take a break. We'll be back at 1:15. So come back at 1:20. I have two conference calls at 1:05 and [inaudible].

(Court recessed at 12:29 p.m., until 1:24 p.m.)

THE COURT: Mr. Kemp, are you ready?

MR. KEMP: Yes, Your Honor.

(Pause in the proceedings)

THE COURT: All right. You may proceed.

MM DEVELOPMENT PLAINTIFFS' REBUTTAL

MR. KEMP: Your Honor, I'd like to start with the address requirement, and I'm going to try to hit it from two different angles. One, the evidence that was introduced that an address was required, and, two, Mr. Bice talked about -- I don't remember if he used the word "standing," but his brief talks a lot about standing and would the lack of an address make any difference. And so I'd kind of like to talk about it two different angles.

First, the evidence. You know, we talked about the ballot initiative, use of the term "physical address required." The statute uses "physical address required," the regs uses "physical address required." And then we had the testimony. Mr. Shevorski called Director Contine to the stand. She was the director of the Department of Taxation.

She was the one that actually drafted the regulations. Here's what she said about whether or not a physical address was required.

And, Your Honor, this is from the July 12th -- it's hard to believe -- July 12th, 2019. I'm on page 49.

Question, "Okay. And the physical address in your mind could not be a Post Office box?"

Answer, "Right."

Question, "Or one of these companies that maintains Post Office -- fake Post Office places. Couldn't be that, either; right?"

Answer, "I think the idea was to have an office address, essentially."

Question, "Right. So you couldn't use -- I can't remember what it is, UPS --"

The Court, "UPS Stores."

Question, "You couldn't use a UPS Store because that's not a real physical address; right?"

Answer, "I don't think -- I don't think it would be allowed."

This was their principal witness. She was the director of the Department of Taxation. This testimony is from the top person of the agency that's involved in this case, and she says that you could not use a UPS Store.

Let's move on.

THE COURT: Mr. Shevorski.

MR. SHEVORSKI: I'm sorry. I know it's closing, but I have to object for the record. That is not my witness. She was produced pursuant to a subpoena. Pursuant to our policy we provided her.

THE COURT: Thank you.

MR. KEMP: Your Honor, he went first. But, in any event --

THE COURT: It doesn't matter. She was a witness who used to be the director of the DOT.

MR. KEMP: It doesn't matter. She was the director of the DOT, and she drafted the regulations, and she says an address would be required.

And it gets better. This is the next page of her testimony. It's page 49, lines 2 through 18. And we get into what would happen to the app if you didn't have an address. And this is what she says.

Question, "Let me ask it better. Your staff would have been instructed that if they didn't have a physical address apart from a Post Office box or a UPS Store that that application should not be accepted; right?"

Answer, "I think that might be the direction."

Question, "Okay. So the answer to my question is yes?"

Answer, "Yes."

Question, "Okay. And the reason for it is because the statute required it; right?"

"Repeat the question."

"I mean, the reason for your position is because the statute says that?"

"Right."

So here we have the director of the Department of Taxation saying not only was a physical address required by the statute and the regs that she drafted, but saying that the applications should have been rejected if they just used UPS Stores. That's the testimony, Your Honor. They didn't call one single person from the Department of Taxation that said, oh, after Ms. Contine left we did some sort of evaluation and study or something to the effect and we decided to change the regulation. That regulation's never been changed. The regulation as we sit here today still says an address is required.

So what happened in this case is Mr. Pupo was approached by some people who -- you know, I don't want to use the name again, but he was approached by one of the consultants. Apparently someone was having trouble giving physical addresses, and so they flip-flopped right in the middle of the proceeding. And it certainly wasn't organized, because they two applications on the Website until this hearing commenced and they discovered that out, Your Honor.

So there was certainly no organized thing.

But remember the hierarchy here. Contine is the director. She is the boss of the whole Department. Mr. Pupo is under her. He works for her. Under that is Mr. Gilbert, and under that is Cronkhite. So the bottom line here is we have the director saying that the address was required and the applications should have been thrown out.

Now let's move to Mr. Bice's point. Would that make a difference? Well --

Can I have my next chart, Shane.

This is what would have happened if you had taken the -- if you had done what Ms. Contine said and you had disqualified everybody with all these UPS Stores. And I'm just using the county to make a point of understanding, Your Honor. Essence disqualified, Essence Henderson disqualified, NOR disqualified, DeepRoots would have gone from 4 to 1, Helping Hands from 5 to 2, Cheyenne Medical, another Thrive, disqualified. GreenMart, we don't know one way or the other whether they would have been disqualified because they'd redacted so much of their application we can't tell if they gave a physical address. But let's assume that they did. Same is true of Lone Mountain. Those are assumptions. Commerce Park disqualified, UPS Store. Clear River, again, I can't tell you one way or the other whether they gave an address. But the bottom line here is when you disqualify

those five that we know for an absolute fact used a UPS Store MM Development moves from 14 to 9. There's the standing, Your Honor. It shows why this point can be raised at this time.

Now I'd like to flip over to the diversity. The fundamental problem in this case was that the applicants -- or at least with regards to diversity is that there was a manipulation of the diversity by some applicants. And, you know, GreenMart was the biggest cheater. I can't believe some of the things Ms. Shell said. At the time the application was filed GreenMart was owned by a publicly traded Canadian company. That was at the time the application was filed.

Now, when we started this case Ms. Shell told you, oh, that's not true, Your Honor, our public company didn't own them. And then --

Can I have that, Shane, please, 5/30, line 129. From the Shell portion -- I mean the -- it's from the Dougan section.

So if you remember what happened, Your Honor, is Ms. Shell, who told the Court this afternoon that she represents Ms. Dougan, well, actually what really happened is we asked her produce Ms. Dougan and some of the other advisory board members of GreenMart. She refused to do that. I had to serve a subpoena. Ms. Dougan was supposed to come testify on a Thursday. They hired another attorney, not Ms. Shell --

THE COURT: From Marquis Aurbach.

MR. KEMP: -- right, to come in and object. That guy showed up, and he said, oh, Your Honor, Ms. Dougan's a busy woman, you know, she can't be here today. So you said, "Work with Mr. Kemp and try to find a time." So then he started ignoring phone calls, ignoring emails. And so we arranged a conference call that day and we said, when can Ms. Dougan be here, okay. And so he said, can't be there on Friday -- remember, we were going into a two- or three-week break, so that was the last time we could have gotten Ms. Dougan. So he says, can't be there on Friday, Judge, because she's doing her makeup for some cooking show over on Channel 3 or 13.

THE COURT: I remember.

MR. KEMP: Yeah. So, in any event, you ordered that she be here on -- at 1:30 on Friday, and then we took her testimony.

But getting back to my point, when Ms. Shell saw that I was actually going to bring one of these advisory members on, oh, all of a sudden she had a big confession for the Court, which is right here. Your Honor, I was [unintelligible] for the last five days when I told you that GreenMart was not owned by MTX, which is the public company, at the time of the application. That was incorrect, Your Honor, I'm wrong. Because when the truth was going to come out she didn't want to -- well, she tried to correct it.

All right. So here was the problem with GreenMart. And just now, an hour ago she stood up there and said, oh, Your Honor, Ms. Dougan, you know, she's a woman, you know, we've got to promote diversity. She never once said that GreenMart was a Canadian publicly traded company. She never once said that they got 16 diversity points by using this advisory board. She never once admitted or acknowledged that the public company didn't even list their officers and directors, with the exception of two people, which would be Mr. Boyle and Ms. Davola. All the other ones they left out of the application. Instead, they put in this advisory board. And because of that, they got 16 points. We're going to get into it on the standing point in a minute. But you take away that 16 points, they wouldn't have won anything.

So we have the biggest cheater in the case, got the 16 points for diversity when they're a Canadian public company, and then they come in and -- she did it again today, she pretended that Ms. Dougan had something to do with this company. Well, let's take a look at what Ms. Dougan actually said.

First let's start with Ms. Dougan on 133, 2 through 9, Shane.

This is Ms. Dougan's testimony. Seemed like a nice woman, Your Honor. Doesn't know who any of the shareholders or owners were, never met the shareholders or owners, didn't

know that it was owned by a public company.

I think the next one's 136, 11, through 137, 18, Shane.

We tried to see if she knew Mr. Lee, okay. So we referenced the Lee's Liquor's commercials, the billboards he's on. Never met that man, never met Shelby Brown. These the are other fake advisory board members. Never met Caroline Clark, never met anybody, Shelly Hays. Never met Laura Martin, never met Rutledge. There's a part in here where we talk about Lucy Flores. Never met any of them. They never even had a board meeting, Your Honor.

Question, "Okay. So can I assume from that that you've never had a board meeting?"

Answer, "We've never had a board meeting."

This was in July. This was almost a year after they filed their application. It went on.

138, 21 through 25, Shane.

Okay. She didn't even know they won. She didn't even know they won, that they were a successful applicant until a week before she was called to testify. You know, and then we asked her the critical point, you know, all the people that use these advisory boards, they like to pretend that they did it because, oh, we're going to get some input from some people who are diverse. Well, we asked her did she give any advice to the corporation. She never --

138, 21 through 25, and 139, 10, Shane.

Didn't tell her a reason she was on the board. You know, she was a plant for what base, a chef.

Continue, Shane.

Specifically says she never gave them any advice at any time. It was a complete sham, a complete sham to get diversity points.

Now let's turn to Mr. Graf. He says, quote, "My client didn't do a darn thing wrong," okay. Well, what did his client do, which would be Mr. Black? Mr. Black, who with his family is a 100 percent owner of Clear River. They got 12 diversity points. So Mr. Parker referred to this indirectly yesterday. The problem was that white males somehow manipulate the process to get diversity points. And how did he do that? He set up his own little advisory board. And just like the GreenMart advisory board, wasn't recognized by the Secretary of State. They didn't tell the Nevada Secretary of State that these were board members. But when it came time to filet application with the DOT all of a sudden these people are board members.

So what did Mr. Black do? He packed his board with women. And I'm not going to question Tisha Black. If he had just put Tisha Black on the application, no questions would be asked, Your Honor. But that's not what he did. He put on former UNLV basketball players, specifically Flintie Ray

Williams. He put on other people. And as a result of that, here he is, a white male, instead of getting no diversity points --

MR. GRAF: Objection, Your Honor. He's misstating the evidence. The only two board were Ms. Black and --

THE COURT: Overruled. Please don't make a speaking objection.

MR. GRAF: But there's no witness, Your Honor. I want to --

THE COURT: But there's me.

MR. GRAF: Understood, Your Honor.

THE COURT: And you already had your chance to make the argument, Mr. Graf.

MR. GRAF: I get it. He's misstating the evidence.

THE COURT: Overruled.

MR. GRAF: Thank you.

THE COURT: Thank you.

You may continue.

MR. KEMP: Your Honor, the application's in evidence if you want to take a look at who he listed as officers and directors. He listed Flintie Ray Williams as an officer or director. So we explored that a little bit, because for some reason Mr. Black and Mr. Williams were not available to give testimony in this case. But, in any event, we explored with Mr. Hawkins how he felt about Flintie Ray supposedly giving

advice or controlling Clear River or helping Mr. Black out. Here's what Mr. Hawkins had to say.

And, Your Honor, this is from July 15th, 2019, 99.

"Okay. And do you have any problem with seeking his advice in running this company, a local company in the state of Nevada?"

And Mr. Hawkins, question, "Are you saying Flintie is going to run a dispensary?"

Question, "That he's on the board and providing advice and consent to this company. Do you have a problem with that?

Answer, "Let me make sure I understand what you're saying. So you're saying Flintie is on Randy's board?"

"Uh-huh."

"And Flintie is going to give direction to Randy on how to run the business?"

Answer [sic], "Sure."

"I'd say no, that will never happen, only because I know Randy and I know Flintie."

And it continues on 22. Question, "So your response is that Mr. Black won't take the advice?"

Answer, "That's my response."

Your Honor, it wasn't as bad as GreenMart, but it was still -- it was still -- caused them to win when they would have lost. It still was outcome determinative.

And can I have my next chart, Shane.

You've seen this. We took out all of the diversity to show what would have happened if you had no diversity in this process. And so what would have happened -- and this is the County. So M&M would have won. That solves the standing problem that Mr. Bice raises. GreenMart would have lost, Clear River would have lost. So by using these fake advisory boards, both GreenMart and Clear River got a County license.

Let's flip over to the Las Vegas license. Again, here's what would have happened if you take out all the diversity. GreenMart again would have lost, M&M would have won. Solves the standing problem, Your Honor.

And then let's take a look at the evidence on whether or not diversity was directly and demonstrably related. The only testimony that was referred to by the other side was the testimony of Mr. Peckman and I believe one other intervenor that they thought that diversity was directly and demonstrably related.

Well, we had testimony from the DOT on that. They hate it, they don't like it, but we did have testimony.

Can I have Mr. Gilbert's testimony, please, Shane.

Your Honor, this is from Day 4 on May 30th, 2019. That is Mr. Gentile, who did not ask the most simple question he's ever asked in his life.

Question, "I'll bet I can. In determining to

include diversity in the organizational subpart or for that matter any part of the evaluation process for awarding a license how did you find it to be directly and demonstrably related to an applicant's ability to operate a marijuana establishment? What is it about diversity that is connected to the ability to run a marijuana establishment?"

Answer, "I'm not sure I'm the expert to mention that, but I wouldn't think it would demonstrate --

Next page, please, Shane.

Question, "It wouldn't. Thank you."

Answer, "-- the ability."

This is the guy who ran the program. Mr. Gilbert ran the scoring program. He's not number one or two at this day, he's one under Mr. Pupo, and he says in his view that diversity is not related to the operation of a marijuana program.

And let's put this into a little context. Mr. Gilbert was not brand new. He was with the medical marijuana program. So he had been administering the marijuana program for fully five years at the time he supervised the scoring and at the time he gave his testimony. So what better person to say whether it's related or not? But they don't like his testimony, because he kills them on that point, Your Honor, but that's the evidence.

And then finally, Your Honor, I want to go -- a

couple quicky rebuttal points. Okay. Here we go. Mr. Shevorski said, and I quote, he said that, "Mr. Koehler testified that it would bankrupt the company," unquote, to do background checks on everybody. That was not the testimony, Your Honor. Here was the real testimony. This is Mr. Koehler. This is the part where he says it's prohibitive, but he said it was --

Where's the "tragic" part, Shane? Look for -- show me the word "tragic."

THE COURT: It's highlighted, Mr. Kemp.

MR. KEMP: Yeah. "It's tragic that this is something we can do." So not only did he say the company wouldn't be bankrupt, but he said they could do it.

And with regards to M&M I've already said this, but I'll say it again, right before this application process they did -- I can't remember what it was called, a reverse merger or somehow they bought a shell company or whatever it was. They only had 164 shareholders at that time. If the State had wanted to do background checks on each and every one, could have been done, Your Honor. Wouldn't have been prohibitive. Or they could have done what Essence did, which was delay your entry into the public sphere for a couple of months and file the application and then delay it. As you remember, Essence was acquired I think late October, early November by GTI. They could have done that, Your Honor. So it wouldn't even

have been difficult for us to give full and complete background checks that the State had asked for.

And did they call any one of their corporate counsel to tell you, oh, geez, it would be impossible for us? No. They didn't call the Essence corporate counsel, they didn't call Thrive, they didn't call Nevada Organic Remedies. All they include was Mr. Koehler, the M&M corporate counsel, who said, it would be difficult but I would do and I could do it.

Next point Mr. Shevorski said, he said, "Your Honor, none of these applicants have shown that they had a binding lease." That is simply not true. M&M had an existing facility. And, frankly, I can't remember if the lease lasted over there on Sunset for another 10 or 15 years, but we've been making lease payments each and every month since we moved the facility in November to the new location. We pay the rent every month. So it's just not true that nobody had a binding lease. And I think there were others in that boat. Dave Thomas comes to mind and a couple others.

But, in any event -- and I don't know that this makes a difference, but I want it for the record, because sometimes we can go back and do briefing. If a point's not rebutted you could get easy rebuttal. Mr. Bice said, oh, Mr. Kemp and everybody just filed a motion for preliminary injunction. Well, actually, if you look at the title of our motion, we call it, "Or, in the Alternative, for a Writ of

Mandamus." Again, Your Honor, I don't think it's important, but it's just not true that this just injunction sought.

Then Mr. Bice said, well, at most Mr. Kemp and his clients want one license or advancing scoring errors for one license. That's not true, Your Honor. LivFree -- we've gone through this 40-point financial thing a couple times. LivFree, if they got the 40 points they should have got, they would have got five licenses. M&M, I just showed you on the chart they would have got two if diversity hadn't been considered. That's seven licenses, Your Honor, not one.

Mr. Prince -- moving on, Mr. Prince says that we were upset that the injunction was violated, the TRO. No. What I said was that they got us to post a $450,000 bond on the pretext that they weren't going to open up that 3500 West Sahara store. Now they've opened it up, and they're still contesting the bond dissolution. That's what we're upset about.

Next, Mr. Kahn said that, M&M screwed up, Your Honor, it's all their fault that they lost, because they didn't put the fact that there was an existing dispensary as part of the application on both the ID-ed and the non-ID-ed portion of their application. That's what he told the Court. So he said, that's the reason that they should lose.

Can I have Exhibit 20, please, Shane, and then 1031.

Your Honor, true, we didn't complete -- repeat the

whole narrative in both of them, but we did specifically say in both sections that it was an existing facility that has been operated as a fully compliant Nevada-licensed marijuana dispensary and has previously passed Nevada Department of Taxation inspections and approvals. So there is absolutely no basis for his claim that we screwed up the application, you know. And I'm not going to repeat the argument as to why M&M should have got the 20 or the results.

Next Mr. Kahn says, oh, well, LivFree, LivFree should never have gotten the 40 points, because they made another error, they didn't tell, didn't tell on the application that Bilko is owned by Mr. Menzies.

Shane, can I have Exhibit 21, page 130, please.

It's right there, Your Honor. Statement providing the source of cash on hand from the account of Bilko Holdings. This account is the company management account. This account is owned by LivFree Wellness Center's majority owner. It's right there, Your Honor. It was disclosed. That is not the reason. You know, and again, like I said before, when you've got this much of a financial section and you spend 15 minutes reviewing it, really, could these Manpower people have even turned every page? I don't think so. But to blame us for the mistake I just think is not appropriate.

And then finally, Your Honor, LivFree, the result, I've alluded to it. Let me show it to you one more time.

Shane, can I have the LivFree Slide 5 out of 6. The LivFree slide on the scoring error.

If you add the 40 points that they should have got -- and, again, everybody got the 40 points if you had any sort of assets. Even Helping Hands, the company that we heard all the interesting testimony about the Jamesons' involvement, even Helping Hands, who listed 8.9 million of assets and 2 million in debt, they got 40. We, we with 25 times that, we got whatever it was. But these are the differences, Your Honor. With the correct 40 points it's in the red there, we would've won five out of six. We would have won in Reno, Unincorporated Clark, North Las Vegas, Lyon County, Las Vegas. So that goes directly to Mr. Bice's point that we're just talk about one license. We're talking about seven. And that's just us, Your Honor. That's just my two plaintiffs. You know, I -- that's two of the twenty-nine plaintiffs in this case. So the suggestion made that, oh, Judge, you don't need to give them an injunction because somehow or another these licenses will pop up like magic if Mr. Kemp wins the case against the State. That is not true. The legislature has authorized a specific number of licenses for Clark County. The Department of Taxation cannot give any more than his been authorized by the legislature. If these people aren't enjoined from opening the stores and taking those licenses, my remedy is -- the only possible way to get more licenses, and I

don't think it's a remedy, is to go to the legislature and ask them to issue more licenses, to increase the 80 to whatever. So there is no -- there is no remedy, Your Honor. And that's why the injunction should be issued. Thank you.

THE COURT: Thank you.

Mr. Gentile.

SERENITY PLAINTIFFS' REBUTTAL

MR. GENTILE: Mr. Kemp's passion for needing to make that argument overcame my ability to go first. I let him go first.

I have a couple of comments. Number one, in the course of making your decision it seems to me that the mechanics that you must employ, I don't think you have any option, is to use Article 19, Section 2, paragraph 3, where it says that, "An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside, or suspended by the legislature within three years from the date it takes effect." That has to be your touchstone.

And here's why. The regulations -- we don't attack the statute. We've never said that there was anything about the statute itself that was passed in the initiative that is unconstitutional -- our constitutional argument is based upon the regulations, because some of them are unconstitutional and therefore essentially have to be analyzed as amendments or nullifications of the 453D -- or the way that they were

applied. The legislature gave approval to those regulations. The legislature's ability to do so is constricted by Article 19, Section 2, paragraph 3.

Therefore, this is not a situation and cannot be a situation where you do a liberal interpretation of the grant of authority to pass regulations or where the State and the Department of Taxation benefits from deference to its decision-making power. To the extent that the regulation either textually went beyond the delegation or to the extent that the legitimate, constitutionally sound regulations were applied in an unconstitutional manner that's the way you have to approach this decision, because it's not an ordinary situation with an agency coming in benefitting from deference.

Now, there's lots of caselaw that says that an ongoing constitutional violation is irreparable harm where it is affecting someone. In this instance -- and I'm really surprised, because I wouldn't have thought it coming from him -- Mr. Bice is wrong. Market share is a protectable interest. Market share is an intangible property right. Market share, as a matter of fact, is usually what we fight over when we're in an unfair competition litigation under 598A. It becomes important to that litigation. It's what you protect.

THE COURT: I might be aware of that.

MR. GENTILE: Yeah. I'm thinking you are.

THE COURT: Yeah.

MR. GENTILE: Okay. And so under that circumstance there is plenty of federal caselaw that says that the Constitution protects intangible property rights, which is what market share is. It is part of the property liberty analysis in the due process argument.

As recently as March of this year -- and I did this on the fly during the argument, because I was a little surprised by it -- I got online and I see that Judge Jones, Federal Judge Jones in March of this year in a case called Guzy versus Guzy, which is at 2019 Westlaw 136, 8614, identified market share as an interest for which an injunction can issue to protect it. In 2005 Westlaw 158, 3514, Ride the Ducks, Philadelphia versus Duck Boat Tours, which is a Third Circuit case, same result.

So there is in fact a basis for you to issue an injunction to protect the damage that will happen going forward because, as it stands now, the record in this case is clear that if anybody other than the cow counties, I'll give you that, if anybody wants to buy marijuana in the populated areas of this state and even some of the not-so-populated areas, they can do it.

Now, with respect to the rural areas there are five that don't -- that still have a moratorium, so the 99,000 figure has to be reduced by whatever the population of the two counties that don't have moratoria in existence, and one has

to ask themselves how many of those -- let's say it is 99,000. How many are over 21? And how many of those over 21 want to buy marijuana? Because you have to make that analysis for this reason. The way the State gets damaged here, the primary damage would be from a loss of tax revenue, and that is de minimis at best in this situation as compared to what the loss of market share of the plaintiffs will be.

With regard to the --

MR. GRAF: Your Honor, I'm going to object as to talking -- improper argument, lacks foundation as to any market share by any party in this case.

THE COURT: Overruled.

MR. GRAF: Thank you, Your Honor.

MR. GENTILE: Oh, I think Mr. -- I think everybody has testified about market share. Every that owned a dispensary that testified.

With regard to the laches argument, how does one -- how does one put forth a laches argument -- I mean, excuse me, how does one put forth an as-applied argument until the application exists, until the way it is applied? You can't. And most of our arguments here are based on as applied. Not all, but most, the vast majority. So clearly laches has no place in this case at all.

I don't suggest that I remember verbatim everything that I said yesterday in my opening statement, but I can tell

you that what I said I don't believe had the word "right" in it at all when I was dealing with the intervenors being able to go forward and do whatever they wanted to do so long as it's being done at their own risk. I don't think I ever conceded that they had a right. But it doesn't really matter, because we have never come into this courtroom, certainly at the time that we filed this lawsuit -- which, by the way, was filed because the State wouldn't give us any information at all and but for the statute enacted this session we wouldn't have anything. So it's morphed a lot as transparency became available. My position yesterday and from the beginning has been that the intervenors, to the extent that they keep spending money and time chasing what they know may very well be an invalid license because it was issued through a constitutionally improper process, that's their problem. If they want to keep spending the money, they want to keep spending the time, I'm not going tell them they -- I'm not going to ask you to tell them they can't do it, all right. Because at the end of the day it's their decision.

And finally I want to talk about -- well, before I get there, there's been some arguments made about compliance not being necessarily involved in the application and scoring process. I cited it in the opening part of my summation, I'm going to cite it again. NAC 453D.272(g) without further discussion.

And finally diversity. Diversity is a good idea. It's necessary. Nobody has ever criticized that. Certainly I have never criticized that. If the people in this industry that are owners of these establishments have any sensitivity to good citizenship at all, they will employ diversity on their own. The objection that we have made here is making diversity something that should be scored. Because it is not part of the ballot initiative, it was not mentioned in the initiative, it wasn't mentioned anywhere else until amendments started to take place, which was after the initiative. And the initiative can't be amended. And I have to -- when you're making your decision in this case, you know some of the people that own these places, they've been before you on other things or you've met them in the community. Ask yourself the question, would this applicant have listed this person of color or whatever other minority would fit the diversity score if they knew they weren't going to be given points for it? Because that's the most important social question.

I don't have anything further.

THE COURT: Thank you, Mr. Gentile.

Do any of the -- Mr. Bult.

ETW PLAINTIFF'S REBUTTAL

MR. BULT: Very, very quickly, Your Honor.

Mr. Prince brought up two points. I just want to clarify those in rebuttal. I believe that the Thrive

application in Reno has actually been taken off the agenda.

The second point is the commentary that I asked for the regulations to be voided out. That's not what I asked for. I asked that the conditional licenses issued by the Department be declared void because of their -- they are invalid, as they conflict with other portions of the NRS.

And the last thing I want to comment on is Mr. Graf made a side comment about that the ETW plaintiffs had not asked for injunctive relief. That was inadvertent on our part, and certainly we have the right to have the pleadings conform to the evidence. And we'll do that at some point in time.

MR. GRAF: And, Your Honor, we did not agree to this being done by consent. And we're objecting.

THE COURT: Mr. Graf, you don't need to do anything. He didn't ask for an amendment at this time.

MR. GRAF: I understand, Your Honor. I just want to make sure the record's clear that we're not allowing it by consent pursuant to NRCP 51.

THE COURT: Mr. Graf, the matter has already been tried. That's why your consent was implied, because of the issues that were involved, or whether we're going to have other issues discussed later we'll deal with after I make the decision.

Mr. Bult, thank you.

Mr. Parker.

NEVADA WELLNESS CENTER PLAINTIFF'S REBUTTAL

MR. PARKER: Thank you, Your Honor.

Your Honor, since Mr. Gentile ended with diversity, perhaps that's where I'll start. And I'd like to address a comment made by Mr. Shevorski, the part of me addressing diversity. In terms of what the regulations said and in terms of what the application provided the parties or the applicants, certainly those represented on this side of the room, Your Honor, didn't know how diversity would be scored. And if the Court recalls, there's a statute that actually mandates that the State inform the applicants how the scoring would be done. And --

THE COURT: That's part of the regulations.

MR. PARKER: Yes, Your Honor. It is -- actually the regulation is 453D.260, I think paragraph (2).

Do you have that, Shane?

Do you have that in front of you, Your Honor?

THE COURT: I do.

MR. PARKER: It says, "When the Department issues a request for applications pursuant to this section the Department will include in the request the point values that will be allocated to each applicable portion of the application." That we know was not done. That is a violation of the regulation that Mr. Pupo acknowledged during his

testimony.

Now, I will tell you and the Court reminded -- or actually informed, because I don't believe Mr. Bice or Mr. Prince were here when it came up, but the Court informed them that certain testimony had been elicited indicating that parties were informed that diversity was a tiebreaker. Now, I don't think the State even knew how they were going to treat this. And let me tell you why.

If I could have Exhibit 108 brought up, Shane. And it's KP31. So KP stands for Kyril Plaskon, Your Honor. And page 31 is from the extraction report that we got from the [unintelligible]. And so the top email or the top text is from Mr. Plaskon to Steve Gilbert. It says, "Jeanine, Diane, and I don't find race or ethnicity in 453D. Should race have been removed as a part of retail applications? Should evaluators be even looking at diversity? AB 422 doesn't seem to apply, because it's just medical. Did we leave it in this app on accident? Just some thoughts."

Now, the date of this, Your Honor, is September 18 -- I'm sorry, September 19, 2018. This is the date -- the day before the closing of application period. So not only did they not provide the scoring information in the application, it appears they didn't know what they were doing up until the last day. And sometime after I guess September 19th they made a decision on how they would score diversity if scored at all.

So the banter we've heard about diversity and how it would be treated, the State didn't know how they were going to treat it, Your Honor. They certainly didn't tell the applicants, and they certainly had an obligation to tell the applicants.

Now, Your Honor, in terms of diversity, as well, and when I first came to the podium, Your Honor, I wanted to point out that perhaps Mr. Gentile, given some of his remarks yesterday, he and I were not on the same page in terms of diversity. In fact, Mr. Prince brought that up to my attention this morning and tried to confirm it with me where I was on diversity versus Mr. Gentile. I agree with Mr. Gentile that diversity is not within the initiative. You don't see it reflected in the statutes. I think now everyone in the room can understand that both Mr. Gentile and I agree that diversity is important. But I can't talk out of both sides of my mouth. I can't say to this Court that the regulations should follow the statute and the statute should follow the ballot question without recognizing that diversity was not in it.

Now, what I will suggest to this Court is that the arguments offered or suggested by Mr. Shevorski and several of the intervenors I think is disingenuous or at the very least they're talking out of both sides of their mouths. Because if diversity is important, then treat it as if it's important. Don't marginalize diversity by allowing advisory board,

because there's no advisory board even mentioned in the statute or the regulations. It was a creative -- fiction created I would say just to get and garner points that they weren't entitled to. So you can't have it both ways. If you're going to give diversity some meaning, some teeth, then make sure it's owners. Make sure it's real officers. That's not what was done here. This charade -- and I called it a game and I said it was gamesmanship. I wasn't using that word lightly. I was trying to find a nice word, as opposed to saying just flat out cheaters. In fact, I think the Court suggested I used the word "manipulation." That's what's been done here. And we all see it. I don't care if we try to make fun of it in terms of how we approach this Court and this argument, I don't care how we suggest that we found someone who had some tangential or peripheral reason on being on this advisory board. Maybe we just like tall basketball players on a board because we want some height. I don't know. But what I do know, that's not the level playing field that was provided if diversity was to be considered. It just wasn't.

Now, Your Honor, you made some really good points. And I'm not saying this just to say it, but I pointed out yesterday in my closing questions that I asked, questions that the Court asked, and you've asked questions today that I think have not been truly answered by the intervenors. Mr. Prince, Mr. Bice, several others talked about this 5 percent and how

it's reasonable and there may be some support for it based on gaming and other areas that the State may regulate. Your Honor, we know what the statute says. If we go to the statute, 453D.205 -- and actually, Your Honor, let's start at .200, and then we'll get to .205. 453D.200 talks about the duties of the Department. And it speaks about what's required by the State in terms of licensing. And so when I -- when you can compare the regulation to the statute, we know they don't match. I think that's been conceded by the intervenors. But .205 says, "When conducting a background check pursuant to subsection (6)," which comes from 453D.200, "the Department may require each prospective owner, officer, and board member...." Now, the State, as well as intervenors, today spent a lot of time talking about owners. They never mention whether or not their officers have been background checked or their board members. And I don't know if that even includes their advisory board members, because they didn't mention that, either. But if you were to follow the statute, what we do know is that you cannot allow an applicant who has an excluded felony conviction to become a licensee. How can you do that without doing a background check? It's impossible. You have to do it for the prospective owner, the prospective officer, and the prospective board member. Which means when the Court asked the questions of each intervenor when they got, do you know if your owners were, it's not just owners.

It's not just shareholders. The question should be, based on the statute, did all your officers also get background checked, did all your board members also get background checked. Because that's what it requires.

Now, Your Honor, another thing that I thought was either ill informed or perhaps something to just throw it over the Court's head and hope no one really looked into it. This comment about, you know, we can do it later, just don't grant the injunction, Your Honor, and let the State figure out now can we do these background checks now and figure this all out. Well, Your Honor, if you go to 453D.210, paragraph (4), and I don't think we've talked about this part of this statute during the entire 18, 19 days we've been here.

THE COURT: I talked about the word "complete."

MR. PARKER: You did.

THE COURT: I did.

MR. PARKER: But no one talked about 90 days. And that's important. Because it says here, "Upon receipt of a complete marijuana establishment license application the Department shall within 90 days issue the appropriate license if the license application is approved."

Now, think about it, Your Honor. The State came and said, we had 90 days within which to go through all of these and issue those letters, not 90 days plus six months of this hearing. Ninety days. They had until December, roughly, to

get it done. That time has come and gone. If they didn't do it, you can't revive it now, it's too late, it's done, that's it. And the reason why they didn't do it and the reason why we know they could not have done it, because we know the intervenors did not provide all of their owners, plain and simple, much less advisory board members and officers. So that time has come and gone, and there's nothing they can do about it now, Your Honor.

So Mr. Shevorski said something, and it surprised me. It truly surprised me. Mr. Shevorski said, the State doesn't care who gets the license. Now, I think the intention behind the comment was to show that he's unbiased in terms of the intervenors versus the plaintiffs. That's my belief. But you know something, Your Honor? This State, the Department of Taxation should care. They should care that cheaters or manipulators don't get licenses. They should care that those who actually have marijuana -- retail marijuana experience gets a license. They should care that marijuana establishments are in compliance. They should care that owners of marijuana establishments aren't selling to minors. They should care that owners who perhaps have convictions, excluded convictions don't become owners. And the way you do all of those things, Your Honor, the way you do those things is to actually follow the statute and consider compliance. The way you do it actually follow the statute and make all

prospective owners, officers, and board members get background checks. That's how you do it. That's how you show that you care about the Nevada residents, the Nevada taxpayers, people under 21 not getting marijuana. And that's what the State should care about.

I think it was Mr. Prince, and I'm not sure, I don't want to attribute this to him and be wrong, but compliance is actually in the regulation, Your Honor. I think either Mr. Prince or Mr. Bice, someone said that compliance was not in the regulation.

THE COURT: He said it wasn't in the statute.

MR. PARKER: Okay. Well, good enough. I'm assuming that means he -- that someone understands that it's definitely in the regulation.

THE COURT: That would be me.

MR. PARKER: Yes. And so -- thank you, Your Honor.

So if we look at .272, Your Honor --

NAC 453D.272, Shane.

-- (1)(g), it says, "Whether the owners, officers, or board members of the proposed marijuana establishment have direct experience with the operation of a medical marijuana establishment or marijuana establishment in the state and have demonstrated a record of operating such an establishment in compliance with the laws and regulations of the state for an adequate period of time to demonstrate success." Compliance

should have always been considered. The suggestion that Nevada Organic's compliance history was not or should not have been considered is completely wrong.

Now, what we have, Your Honor, is a Department of Taxation that created regulations that were inconsistent with the statute and with the initiative or the ballot question. We also have a Department of Taxation who decided not to enforce their own regulations that were not compliant with the statutes and the ballot question. So, Your Honor, if we could look at Exhibit 309, and this is a year before the applications were submitted. And again, this is the letter from Connor & Connor, Attorneys at Law, to the Nevada Department of Taxation. And it's on behalf of the Nevada Cannabis Coalition. And she's speaking on compliance with NRS 453A and 453D.

The second page of this document has a section titled, "Background Checks of All Owners, Officers, and Board Members."

If you could highlight that for me. Thank you, Shane. The entire paragraph. Can you blow that up? There we go.

And it says, "All owners, officers, and board members must be vetted and have background checks before the license can be issued, and must be maintained." So it's not like this Department did not know this requirement a year

before these applications were submitted. They knew it, they had legal advice on it, and decided not to do it.

And so one other thing, Your Honor. And I would like you to take a look at Exhibit 311.

Please, Shane.

This is why it's important that these background checks are done.

If you could blow up for me the third bullet point.

And this is an email from Karalin Cronkhite to Steve Gilbert dated August 3rd, 2017. So it was just, Your Honor, just about a month and a half after the letter from Connor & Connor. And it says, "The City of Las Vegas is conducting suitability checks through Metro for all owners and agents. This gives them a local background check, as well as pending litigation that apparently is not captured in the federal check that we conduct through DPS. Apparently there have been situations where we've found people with criminal background and warrants for drugs after we approved their agent card."

So when we talk about the safety of our residents and the responsible the Department of Taxation to carry out what the statutes say this is what we're concerned with, ownership of marijuana establishments by people who aren't eligible. So there's a real reason, Your Honor, that this should have been done. They had legal advice that it should have been done, and they simply decided not to.

Now, one other thing I wanted to talk about in terms of laches, and in part, Your Honor, in part the issue about scoring goes to laches. Because how do you object when you don't even know the scoring criteria? How do you object when you don't know how diversity is going to be handled? The State obviously didn't know that. And so how could you object to it? How do you object when Mr. Pupo says himself he wanted to keep these things a secret? Furthermore, Your Honor, how do you object when the Department of Taxation failed to even follow the Nevada Open Meetings Law in terms of postings? We discussed this seems like months ago now, but they posted certain information for the application process. They failed to post any updates on changes to that in accordance with NRS 241. Failed to, Your Honor. So the more information -- and they say knowledge is power, that perhaps if we had been given that information, everyone, not those who just had cell numbers and lunches and dinners and breakfasts and coffees and drinks, but if the public was given that same information through the proper posting in compliance with the Nevada Open Meetings Law, then maybe we could have complained of it then. But we didn't. In fact, even after the scoring came out and we tried to get information, they would not disclose it.

Now, Your Honor, I think the statutes, the initiative, and the regulations were supposed to provide for a fair and level playing field. Certainly there's been no

testimony I can recall, and I spent a long time going through all of the days of this hearing, and I believe every Department, every Department of Taxation representative testified that there were mistakes. And not just careless mistakes, but intentional mistakes. They intended to change the regulation versus the statute in terms of the 5 percent. They intended not to do background checks. They intended not to comply with the statute in terms of revealing the scoring metrics. All of those are intentional decisions, intentional mistakes that go to the heart of providing a level playing field. I don't know how this Court can not enjoin this process and the results of this unfair process given what this Court has heard.

Now, I applaud the intervenors' attorneys for doing something that Mitch Cobeaga always told me, if you don't have the facts, you argue the law, if you don't have the law, then you argue the facts, if you don't have both, just complain about the other side. They've done a lot of complaining. And, you know, I give them that. Took them two and a half, little more than two and a half hours to complain about things they are not supported by, because there are no facts that support their side, and the law doesn't, either. Thank you very much, Your Honor.

THE COURT: Thank you, Mr. Parker.

Do any of the other plaintiffs wish to make a

rebuttal, or have I finished the rebuttal arguments?

Mr. Shevorski, I have a homework assignment for you, because, as the representative of the State, you are the only one in a position to be able to provide this information.

MR. SHEVORSKI: Yes, Your Honor.

THE COURT: And then I need you to give me an estimate on how long it's going to take you to do it.

MR. SHEVORSKI: Okay.

THE COURT: And I want a realistic estimate, not one that keeps you and your staff from sleeping, okay.

MR. PRINCE: What was the last comment? I didn't hear the last comment.

MR. SHEVORSKI: She wants me to be able to sleep.

MR. PRINCE: Oh.

MS. SHELL: Objection, Your Honor.

THE COURT: We've had a couple of times during this where I told them I didn't care if they slept. But this one isn't one of those.

Which successful applicants completed the application in compliance with NRS 453D.200(6), which is the provision that says, "All owners -- " I'm sorry, it says "Each owner," at the time the application was filed in September 2018?

MR. SHEVORSKI: Completed applications, and then --

THE COURT: So I want to know which of the

successful applicants, and I heard an argument today that was a total of 17 different entities --

MR. SHEVORSKI: Yes, Your Honor.

THE COURT: -- complied with the statute, as opposed to the Department's administrative change to the statute which limited it to a 5 percent or greater ownership interest.

MR. SHEVORSKI: Yes, Your Honor.

THE COURT: Because I know there are many, because I have heard testimony during this hearing of various individuals, whether they were successful or unsuccessful, that they included all of their shareholders' or owners' interests.

MR. SHEVORSKI: Yes, Your Honor.

THE COURT: Okay. How long?

MR. SHEVORSKI: I need to talk to Director Young to figure that out. I don't want to give you an estimate and be wrong because I don't know the answer.

THE COURT: Best estimate.

MR. SHEVORSKI: Because of the way you're looking at me, let's say by Tuesday 5:00 o'clock?

THE COURT: Sure. The matter will stand submitted. I'm going to put it on my chambers calendar for next Friday.

When you get the information, Mr. Shevorski, if you will circulate it to all counsel and my law clerk.

MR. SHEVORSKI: Yes. Of course, Your Honor.

THE COURT: Thank you. Have a nice day. And --

THE CLERK: Your Honor --

THE COURT: Yes?

THE CLERK: May I return --

THE COURT: If there were any exhibits that were tendered but not offered, we are going to return them to you. Dulce will prepare receipts for you -- she has the receipts already so you can come pick them up. So don't leave.

THE PROCEEDINGS CONCLUDED AT 2:32 P.M.

* * * * *

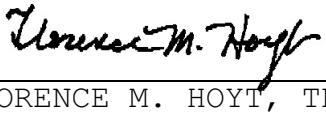
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, et al.	
Plaintiffs	CASE NO. A-19-786962-B
vs.	
STATE OF NEVADA DEPARTMENT OF TAXATION	DEPT. NO. XI
Defendant	**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON OBJECTIONS TO STATE'S RESPONSE, NEVADA WELLNESS CENTER'S MOTION RE COMPLIANCE RE PHYSICAL ADDRESS, AND BOND AMOUNT SETTING

THURSDAY, AUGUST 29, 2019

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:	DOMINIC P. GENTILE, ESQ. WILLIAM KEMP, ESQ. NATHANIEL RULIS, ESQ. ADAM BULT, ESQ. MAXIMILIEN FETAZ, ESQ. THEODORE PARKER, ESQ.
FOR THE DEFENDANTS:	STEVE SHEVORSKI, ESQ. THERESA HAAR, ESQ. RUSTY GRAF, ESQ. BRIGID HIGGINS, ESQ. ERIC HONE, ESQ. DAVID KOCH, ESQ. ALINA SHELL, ESQ. JARED KAHN, ESQ. JOSEPH GUTIERREZ, ESQ. TODD BICE, ESQ. DENNIS PRINCE, ESQ.

LAS VEGAS, NEVADA, THURSDAY, AUGUST 29, 2019, 9:21 A.M.

(Court was called to order)

THE COURT: Do I have everybody? Do I have everybody? Am I missing anyone? Look around your friends.

MR. KEMP: Everybody on our side, Your Honor.

THE COURT: Okay. Couple of agenda items. After I released the findings of fact and conclusions of law I sent a copy to each of the judges who are not Business Court judges who had cases, advised them I had completed the hearing on the preliminary injunctions, that I had this hearing scheduled, and that they needed to handle the rest of their case. I've not heard back from a single one.

So I have one other agenda item, which is a motion to strike that I signed an OST and set for tomorrow because I couldn't set it for today. Does anyone have an objection to advancing it and having it heard today?

MR. KEMP: Judge, we'd like to file an opposition to that, because there's various evidentiary points being in raised in there, and we do think we should address it. Not so much for you, Your Honor, but --

THE COURT: For your record.

MR. KEMP: Right.

THE COURT: It's okay, Mr. Kemp. I understand what record's about. I had Polsenberg here already this morning.

Anything else before we go to the discussion about

the bond? Mr. Gentile.

I'm missing Ms. Shell. Wait. I can't start. I don't have Ms. Shell or Ms. McLetchie.

(Pause in the proceedings)

THE COURT: If she circulated dial-in information, can you give it to us, Mr. Bice, so Ramsey can dial in. Thank you. If you'd help Ramsey, please.

MR. BICE: I will.

THE COURT: Thank you.

(Pause in the proceedings)

THE COURT: Good morning, Ms. Shell. How are you today?

MS. SHELL: I'm fine, Judge. Thank you.

THE COURT: All right. I have the other participants who are all gathered here. We have not advanced the motion that was filed to strike by Mr. Hone. That is scheduled for hearing tomorrow. I do not know if you are interested and plan to attend. And I also made a disclosure that I communicated my decision on the preliminary injunction and sent the written order to the judges who are not Business Court judges who had cases, and referred the remainder of the handling of those cases to them. But I've not heard back.

All right. So now I was to point where I was going to talk about a bond. Mr. Gentile.

MR. GENTILE: No. Prior to that I just wanted --

for the record, I looked at the pleadings on the other matters that are set for today, objections, and apparently we did not file a written joinder with Mr. Parker's. And so for the record we join in Mr. Parker's.

THE COURT: Okay. Anybody want to talk about the bond?

MR. KEMP: Judge, I thought we agreed to have a separate bond hearing.

THE COURT: That's what I set for today. That's why I put it in the order and the footnote that today was today. Anybody want to talk about the bond?

MR. KOCH: Your Honor, our position would be that the question of the bond would be premature as it relates to our clients. I know the Court set the bond with respect to the State, because it enjoined the State. We believe, as the Court indicated, that the issue of being included or excluded from the group as was talked about would be discussed today. And so the issue of the bond could be addressed at a later time with respect to these entities.

THE COURT: No, no. We're going to do the bond today. But if you want me to do other things first, I'll do that first.

Mr. Parker, you've got a motion about addresses, property locations.

MR. PARKER: Yes, Your Honor. I do.

THE COURT: And apparently there are joinders by Mr. Gentile and others.

MR. PARKER: Yes, there are. Your Honor, I thought I would be very brief, because I know the Court is familiar with the competitive bidding process and --

THE COURT: Did you re-read 134 Nev. Adv. Op. 17, the Nuleaf Dispensary case?

MR. PARKER: No, I did not this morning, Your Honor.

THE COURT: Here. I'm going to give you this --

MR. PARKER: Let me see it.

THE COURT: -- so you can read it. Wait. I'm going to unfold my page. There are a couple of highlights that are probably important. I think Mr. Bice forwarded them in his brief, though. So we'll wait for a minute for you to read that, because that's important to our discussion this morning.

MR. SHEVORSKI: That was Shevorski, actually.

THE COURT: That was Shevorski? Okay.

MR. SHEVORSKI: But it was his case.

THE COURT: It was his case.

(Pause in the proceedings)

THE COURT: All right. Mr. Parker, it's your motion.

MR. PARKER: Thank you, Your Honor.

That case, while helpful, is not I think completely applicable to where we are, Your Honor. First, it deals with

the medical marijuana, as opposed to recreational, which is obvious from the front of it. But it also deals with whether or not a applicant has received approved approval from a local municipality. That's not the issue here.

The question here is whether or not the applicant complied with the statute, as well as the regulation, not whether or not it's received conditional or provisional approval of a location from a municipality, in that case the City. And so that's what Nuleaf was dealing with.

What our motion is directed to is whether or not the initiative by virtue of the statute was adhered to by certain applicants, which I believe goes with and is consistent with the Court's overall request originally to the State to determine whether or not the background checks were done also in conformance with NRS 453D.200.

So, Your Honor, I think if you take a look at 453D.200 --

THE COURT: I'm there.

MR. PARKER: -- and you can consider what the applications and the applicants were required to do by statute, it points out or requires not only the portion that the Court has already addressed, that being the background checks, but also the physical address. So going to 453D.210, this is specifically where we deal with the 90-day period which is also referenced in the case you just provided me,

Your Honor. And in 453D.210(5)(b) it requires a physical address, Your Honor. And in fact it does not mention the word "floor plan" in the statute. It says, "The physical address where the proposed marijuana establishment will operate is owned by applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property." That's what it says.

Now, if you think back to the application, Exhibit 5, it's consistent with what Exhibit 5 said. This is the information that required the physical address. 5A was different, but 5 was more akin to what the statute and the initiative required.

So although Mr. Shevorski -- I can understand his attempt to advance the position that that Nuleaf decision helps his position, it does not. It simply speaks the ambiguous nature of that 453D, whether or not within the 90 days you actually have to have a location approved by a municipality versus simply providing an address, which is required by the statute. So I don't think it applies here, Your Honor.

What I do believe applies is not only that 453D.210(5)(b) mentions physical address, but it's also mentioned, as well, in the regulation, NAC 453D.265(1)(b)(3). And, Your Honor, you have that in front of you.

THE COURT: I do.

MR. PARKER: It says, "The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishments." So it's required in the statute, it's required in the regulation, Your Honor. I don't believe that there's any ambiguity in terms of that requirement.

It is also, Your Honor, mentioned in NAC 453D.268(e). So we'll go to that, as well. And it says again, "The physical address where the proposed marijuana establishment will be located and the physical address of any co-owned or otherwise affiliated marijuana establishment."

Your Honor, there is no ambiguity in terms of what 453D the statute requires or the regulations require. Now, when the Court issued its order and everyone had a chance to pore over it and pore over and pore over it, I had the pleasure of being on the plane, and I had four hours of nothing else to do but go back and forth over it.

THE COURT: Sorry.

MR. PARKER: No worries. No worries, Your Honor.

But I gleaned a lot from it, and it gave me a chance to ponder I would think all aspects of it. And that's why when you look at our brief we start out in part mentioning the statutes and as well as the regulations. But we also point out the verbiage in your order when you speak to the process.

Now, the bidding statutes, the 338 cases and those

that have followed 338 deal with a competitive bidding process. And typically that deals with the lowest response of a responsible bidder. And the Court's aware of that.

THE COURT: I am.

MR. PARKER: I know. But the cases that have come from those decisions, the Bud Mohas case, the Gulf Oil case, the cases that we cite all deal with favoritism that can be -- that should be prevented from a competitive bid process.

Now, your report has actually shown the similarities in this competitive application process to the competitive bid process, which I would suggest to Your Honor, be it a competitive bid process where you're looking for the lowest responsible bidder or a competitive application process borne out by the regulations and the statute, you have to prevent favoritism or corruption or improvidence. That's what the caselaw says in Nevada, as well as the Federal District Court in the Gulf Oil case, Your Honor.

So, Your Honor, you actually put within your order -- you said, serious issues presented by the testimony from Ms. Contine, as well as Mr. Pupo. Ms. Contine said, "I created these regulations, they were supposed to be consistent with the initiative. To the extent there is a deviation between the regulation and the initiative the priority is the initiative." She said that the application required physical address. She should have required physical address. She said

that physical address was important in the initiative and it was equally important in the regulations. And that's why I started with the initiative and then I pointed out the sections within the regulations that also indicate the requirement of physical address.

Beyond that, Your Honor, I've asked the Court -- this is the relief we're seeking in this -- by virtue of this motion. I'm asking the Court to instruct or request from the State the same exercise requested earlier, because it goes to the initiative and it goes to the requirement that the people of Nevada though were important. And that included physical address. So I think it's something that can be done fairly easily by Mr. Shevorski and his team or his team as well as the Department of Taxation. But I think it's certainly required under 453D.210, and I believe that the 90-day period of time, which is 453D.210(4). refers not only to the background check that has to be done within that time period, but also every other requirement under this statute, which also includes, of course, the physical address. That's the argument, Your Honor.

THE COURT: Thank you, Mr. Parker.

MR. PARKER: Thank you.

THE COURT: Does anyone else wish to speak in favor of the Nevada Wellness Center motion this morning?

Mr. Bult.

MR. BULT: Thank you, Your Honor.

We join Mr. Parker's motion and reiterate some of the things he noted on fairness of process, Bud Mohas, the serious issues you note in your written ruling. The only thing that we would add to that that we don't think was clear or clear enough in the motion is that if you continue through NRS 453D.210 to get through that statute, you must get to section (6), and that's without a physical address you cannot get to the competitive bidding process set out in NRS 453D.210(6). And for that reason, Your Honor, we join in the request that the State perform the same analysis it did on background.

THE COURT: Thank you.

Anyone else wish to speak in favor of the motion? Mr. Kemp.

MR. KEMP: Your Honor, we didn't file a written joinder, but I just wanted to join in the motion.

THE COURT: Thank you. I have written joinders by ETW, Mr. Gentile's oral, and yours now.

Okay. In opposition? Who wants to start? I know I have several.

MR. SHEVORSKI: Mr. Bice is going to handle it, since [inaudible].

THE COURT: Mr. Bice wants to argue his Nuleaf decision's applicability to this case because he spent so much

time dealing with it in the medical marijuana situation?

MR. BICE: Well, yes and no. I mean, this is -- there's nothing new -- this is, you know, reconsideration. There's nothing new here. This is the same argument that's been going on for about the last however many months.

Your Honor, just to sort of briefly touch on it, you know, I need to reiterate to -- particularly on this point about standing. They are not -- I mean, regardless of what they think the statute should -- how it should be interpreted and how it should be administered by the State, it's not for their protection. It's for the public's protection. So the assertion that they are entitled to some sort of an injunction based on, well, I don't think that these applications were sufficiently complete, is, again, not a claim that belongs to a losing party.

But nonetheless, turning to the merits, yes, Nuleaf does apply here, because Nuleaf -- the language is not identical, but substantively it is the same. It's under the 90-day provision. The initiative proponents took the medical marijuana provisions and modified them for purposes of the initiative. In the interim period the Nevada Supreme Court decided the Nuleaf case and explained that, notwithstanding the arguments that were made there, the statute says that if someone has complied with all of the following in that 90 days, if, then they can obtain a conditional license. And

what the Nevada Supreme Court said is, you have to read the statute as a whole, not just little snippets out of it and then -- like is going on here, and say that it's -- you know, that term about "if" and "all" are unambiguous and so therefore because you had to have a physical location there, too, in fact, you had to have even more than a physical location, you had to have the physical location and the local land use approvals. As the testimony --

THE COURT: So do you think the delay of the local authorities in granting the land use request was the reason for the decision in the Nuleaf case? You litigated it.

MR. BICE: I'm sorry.

THE COURT: The delay.

MR. BICE: The delay by the City? No. Because this happened in every jurisdiction. It happened -- did that influence ultimately or highlight the ambiguity in the statute? I think so. But every jurisdiction did something like this. The Nuleaf case was actually only one of multiple. It's the one that made it to the Supreme Court. The other cases -- there was a case in front of Judge Delaney where a preliminary injunction TRO was sought, which was denied. There was another one in front of -- I don't recall which judge handled the other one. But ultimately this is the one that was -- that ultimately made its way to the Nevada Supreme Court. But all those cases have the same issue about these

local jurisdictions, some accuse them of trying to manipulate the process by the timing and the triggering of their local land use approvals. But at the end of the day the Nevada Supreme Court said, none of that matters because the Department, in this case it was the Department of Health, has to have the discretion and has the discretion to figure out how to best implement this policy, right. Because the statute there on its face said the same argument that's being advanced to you today, well, it says that you have to have a physical address so therefore you have to have a physical address.

But that doesn't make a lot of sense, and the Department I think recognized that fact. And the reason it doesn't make sense is for multiple reasons. One, the statute also gives you the ability to move locations. So you could submit an application even if you could obtain a physical address and even if you get that conditional license, guess what, you can submit an application the next day to move the location. And so the Nevada Supreme Court recognized -- and that's -- by the way, that is the same provision in the medical marijuana statute. Doesn't make a lot of sense to say, oh, the physical location is so critical. Because it's not critical.

Then, as you heard in the evidence in this case, people couldn't even obtain physical addresses. You had over 400 applicants here spread throughout the state, 460-some.

You're not going to have 460 individual locations where people could actually put marijuana establishments. That's not going to happen. On top of that you also had jurisdictions that have moratoriums. You couldn't possibly have a physical address, because it's illegal in those locations to have submitted a physical address. You couldn't have gotten a lease, as they're trying to say the statute should be literally interpreted to require. So the Department recognized, just like the Nevada Supreme Court recognized in the medical marijuana context, is the licenses are conditional until such time as you get the final approvals for opening. Any concerns about locations --

Because you've also got to remember, Your Honor, some of these jurisdictions don't even have local land use approval -- or processes. Don't even have ordinances in places. And the State was required by the statute to act within a certain time period. So they couldn't --

THE COURT: Ms. Shell, are you still there?

Okay. Sorry.

MR. BICE: In any event, Your Honor, the point here is I believe that your order accurately notes that this is something that, just like in Nuleaf the Nevada Supreme Court said, can be addressed at a subsequent point in time as part of the final licensing criteria. And it's not possible for the State to have required everyone to have submitted a

physical address, an actual physical address at the time of application.

And that I think ties into this attempt to now claim that Ms. Contine's testimony is somehow the end all be all of all legal analysis. With all due respect to Ms. Contine, I don't believe -- my recollection is, Your Honor, she wasn't there at the time this was actually implemented, and --

THE COURT: Well, she was there at the time they were created and took responsibility for being the person in charge of them.

MR. BICE: Correct. At the time of creation.

THE COURT: Correct.

MR. BICE: But then there was implementation issues that arose, which is --

THE COURT: Really? That was sarcasm. I've been reminded by Mr. Graf recently sarcasm does not appear well on the record.

MR. BICE: It doesn't. It doesn't. And I'm obviously guilty of that, too.

But the point is the Department has the discretion and the obligation to make this process work as well as it can, and it has to reconcile these competing policy goals that are in the statute. One of them is land use consideration, one of them is physical locations. How to best achieve that in light of the public safety issues is best left to the

Department, and the Department ultimately had to implement this in recognition that you can't literally have physical addresses for an unlimited number of applicants who are particularly in jurisdictions that you couldn't even designate a location. And I know for a fact that if the State had done -- had had a different standard for those jurisdictions where there were existing land use laws so therefore you could have theoretically had a physical location, as opposed to those that not, they would have screamed, well, that's discriminatory, you can't have different standards in different jurisdictions, this is a statewide statute. So the Department has the discretion and the authority to implement this.

And my last part on discovery, Your Honor, is this case has gone on for a not insignificant amount of time.

THE COURT: We haven't even done a Rule 16 conference. Nobody's done any initial disclosures. This has not really gone on very long from a discovery standpoint.

MR. BICE: From a discovery standpoint. I agree. I understand that, Your Honor. I understand that. What I'm talking about, though, is the preliminary injunction hearing, which the Court has decided except for the bond. That's why I do object to, well, let's just start now, everyone's loading up -- I mean, this is just the briefing that has occurred on -- and not the appendix. I don't have --

THE COURT: I didn't print the appendix, either. Dani did, but --

MR. BICE: Just occurring on this simple question that you asked the State. So I object to this effort to interject new evidence and ask the State to now do an investigation into all of these other people. But, of course, don't look into any of these plaintiffs and where they acquired standing to raise these points. I mean, many of these plaintiffs don't comply with the very provisions upon which they're telling the Court it should enjoin everyone else under. How do they have standing to enjoin -- let's just use the 5 percent rule as an example. Many of them didn't have their own background investigations done, yet they're obtaining an injunction on the basis that they are likely to prevail when they didn't comply with the very same statute that they are now attacking? I think that same premise applies here, and there isn't any basis for further discovery.

THE COURT: Before you sit down, Mr. Bice --

MR. BICE: Yeah.

THE COURT: -- for record purposes I had previously marked Mr. Shevorski's email which --

MR. BICE: Yes.

THE COURT: -- answered my question as a Court exhibit. Do you want it marked again for purposes of today's hearing for your record?

MR. BICE: No. It's in the Court's record. Thank you.

THE COURT: All right. Thank you.

Next?

MR. PRINCE: On behalf of the Thrive defendants, Your Honor, good morning. Dennis Prince. We join in Mr. Bice's arguments and have nothing additional.

THE COURT: Well, aren't you the same parties as Mr. Bice sort of?

MR. PRINCE: I also represent Essence, but I'm on behalf of Thrive.

THE COURT: Anybody else? Mr. Shevorski, you filed a written opposition. Do you want to say anything else in addition to Mr. Bice?

MR. SHEVORSKI: No.

THE COURT: Okay. Mr. Parker, that means you're up. Last word.

MR. PARKER: Yes indeed. I prefer actually the rebuttal than the initial argument, Your Honor.

MR. KEMP: Judge, I had one comment, too.

MR. PARKER: You had something you want to say?

THE COURT: Mr. Kemp, do you want to go before Mr. Parker, please.

MR. KEMP: Maybe I should go before, Your Honor. I just want to talk about the standing issue.

THE COURT: Okay.

MR. KEMP: Mr. Bice argued it was impossible to get addresses. Actually, LivFree had addresses for each one of its six applications. And he also talked about standing on the 5 percent. I think he was taking a shot at MM Development, but whatever. LivFree was a private company at that time. It didn't become a public company until I believe March or April. So it had no 5 percent requirement whatsoever. So there's no standing issue with regards to LivFree on either point.

And on this address thing we're really talking about two different things here, Your Honor. You're talking about addresses in the context of grading, and then you're talking about addresses in what Mr. Bice calls implementation. I mean, I think your order's pretty clear that it was impossible to adequately grade these without an address. And I think the -- you know, using the example I've used over and over again, we had a location that was actually built out that we gave the address for, and we got a 15-something for it. They used a UPS box, referring to Thrive, and they got a 19.67. How is that -- you know, that's not an implementation issue, because they've gotten a license. That's a grading issue.

Now, implementation is did in fact all these people give the Department real addresses within 90 days of December 5th. The answer's going to be no, Your Honor. That's why

don't want the answer to be given. And it doesn't have anything to do with municipalities. They didn't give addresses for City of Las Vegas, they didn't give addresses for the County, they didn't give addresses for North Las Vegas. You know, there's no moratorium in any of those jurisdictions. The statute says specifically 90 days after the conditional license is awarded they have to provide the address. Didn't happen, Your Honor. They didn't happen in the application, they didn't have it in the implementation period like Mr. Bice addresses. And that's what's wrong about this whole process.

And those are the only points I have unless the Court has --

THE COURT: Mr. Parker, you're up.

MR. PARKER: Thank you, Your Honor.

Your Honor, let me start off where Mr. Kemp left off. On behalf of Nevada Wellness Center we provided addresses. We went through the painstaking process of finding what we believed to be appropriate, compliant locations for each of the four applications we submitted. That's number one.

Number two, Your Honor, Mr. Bice has been here long enough to hear some of the -- you know, to prepare for the closing arguments, but he was not here to hear all the testimony. And he was not here to go through all of the

regulations we've gone through with each of the Department of Taxation employees. He mentioned this issue or problem with perhaps the change of ownership and a change of location and how that could affect the Court's determination.

Well, the statutes provide for that. If you look at 453D.200, Your Honor, (1)(j), it says, "Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location." Suitability, Your Honor, again requires an actual location. Impact on the community requires a physical location.

Other portions of the application dealing with the criteria for scoring go again to physical -- a physical address. The statute -- I've mentioned already three locations in the statutes themselves that reference and require physical address. This Court has indicated in its order and throughout the questioning of several witnesses how it placed -- what importance it placed on the initiative and these statutes. All we're asking the Court to do is to follow through with those questions, which would be -- the culmination of which would be a question to the State, which of these applicants actually complied with the statute as it pertains to physical address. You've done it terms of background. This doesn't take much in terms of physical

address. And I think Mr. Kemp indicated that would have provided a physical address within the 90-day period.

Your Honor, I listed in our brief some of the Nevada cases that deal with the fundamental purpose of competitive bidding and how the competitive bidding process is placed there to make sure that contract-making officials like Mr. Pupo, Ms. Contine, Ms. Cronkhite are not placed in a position where they can alter, change, or prevent there from being a fair playing field. In fact, the caselaw says, "The fundamental purpose of competitive bidding is to deprive or limit the discretion of contract-making officials in the areas which are susceptible to such abuses as fraud, favoritism, improvidence, and extravagance."

Now, we heard and this Court heard -- Mr. Pupo talked about dinners he went with some of these applicants, lunches, drinks, conversations, access by cell phone, how certain information was not provided. I mean, you compare what was done in 2014 for the medical marijuana to what was done here, it was open question-and-answer periods, one point of contact, all by email so that everyone got the same information. That was not done here. The testimony we heard from Mr. Pupo and we heard from Ms. Contine, Your Honor, reeks of favoritism. And the only way this Court can flesh this out, complete this analysis is to require that at least in terms of what the statute required the applicants to provide

that that question be answered by the State. It took two days for the State to do it in terms of the last question. I don't -- I'm not speaking for Mr. Shevorski. I don't know how long it will take to simply check the applications. But what I say, Your Honor, is we cannot. Because many of the winning side when they presented their applications, they redacted that type of information. But we do know that the initiative never allowed for or afforded an applicant to simply put a floor plan. The changes made by Mr. Pupo through backdoor negotiations and discussions with their consultant, Ms. Connor, that's exactly the type of favoritism that the Nevada competitive bidding statute and caselaw interpreting the same was meant to prevent.

The only other thing I would say, Your Honor, and I don't want to beat this horse to death, but no one on this side has argued prior to Mr. Shevorski presenting in court the Nuleaf case that these statutes are ambiguous. They've not made that argument. And they certainly have not provided an alternative interpretation of NRS 453D.200, .210, NAC .265 or .268. So if you're not doing so, then they cannot rely on the Nuleaf case that simply talks about having to have municipality approval as a part of your application. That's not the case we have here, and that's not the analysis the Court is going through.

The Court has never asked any of the witnesses,

including not only the Department of Taxation witnesses or any of the plaintiffs in this case whether or not you have municipal approval of that location. The question is did you provide a location. And that's a question that needs to be answered, Your Honor.

Unless the Court has any other questions --

THE COURT: I don't. Thank you, Mr. Parker.

MR. PARKER: Thank you, Your Honor.

THE COURT: Everyone who participated in the hearing recognizes --

MR. BULT: Your Honor, could I clarify one thing?

THE COURT: No.

Everyone who participated in the hearing process recognizes the process used by the Department of Taxation was flawed. It was adversely impacted by changing the physical address requirement midstream in the application distribution process. But, given the Supreme Court's decision in Nuleaf, the Court denies the motion.

All right. That takes me to my issues related to Mr. Shevorski's email where the Department answered my question in three parts. I have several objections on all sides related to this, and I am happy to hear them in turn. I am going to start on the plaintiffs' side and I'm going to work around.

So anyone on the plaintiffs' side, including Mr.

Kemp, wish to say anything related to the objection to the State's answer to my question that I asked at the end of the hearing after Mr. Prince came up with a less restrictive relief for the injunction?

So, Mr. Prince, we're going to keep giving you credit for that.

MR. KEMP: Judge, you want to go applicant by applicant, or do you want to go --

THE COURT: You can go in whatever order you want, which is why there was no time limit today. Mr. Kemp.

MR. KEMP: Well, Your Honor, I think we've raised our points. I would just reserve time for rebuttal.

THE COURT: All right. Thanks.

MR. KEMP: I would make one point, however, which is, you know, everyone, Mr. Graf especially, yelled and screamed about, oh, we can't attach exhibits that weren't introduced at the hearing. And for the most part we limited ourselves to exhibits at the hearing, with the exception of the two public records and the verified complaint. But then they turn around and file the exact same kind of stuff. They filed Mr. Black's affidavit, who, according to Mr. Hawkins's testimony which was unrebutted at the hearing, was dodging service. I can file the affidavit of process server. You know, Mr. Graf says I should have tried harder. But maybe he should just produce Mr. Black. Then to suggest that now all

of a sudden they can strike all my exhibits because they weren't introduced at the hearing but then Clear River can come in with a new exhibit, this sale document which shows that the sale wasn't effectuated until sometime in December after the conditional license. But, in any event, they can come in with a new document and, in addition to that, an affidavit from Mr. Black, who was ducking service? You know, I just want a fair playing field, Your Honor. If their stuff's coming in -- and I talked to Mr. Graf about this before and he said there was a minute order allowing his stuff. I went back and I didn't find any minute order. I did find --

THE COURT: No. The minute order related to you. Mr. Graf asked a similar question by email with my law clerk, whether he was going to get in trouble for filing an objection. I was in trial, so I told Dani to tell him to look at the footnote which told him he could file an objection if he wanted to.

MR. KEMP: I just want an equal playing field, Your Honor.

THE COURT: I know.

MR. KEMP: We file stuff, they file stuff. It's fine with me.

THE COURT: Okay. Anybody else on the plaintiffs' side wish to say anything?

Okay. Mr. Koch.

MR. KOCH: Thank you, Your Honor.

And the Court had indicated in its order that it was looking for a discussion about inclusion or exclusion from this [unintelligible]. I really think my audience today is frankly Mr. Shevorski and the Department, because the Court asked the Department to make a determination of the applications and the information contained there and to report back to the Court on what it found. And the Court is not making a determination of what was there, so they're asking the Department for that information.

We have obviously considered the Court's order. We've been here. The Court considered a lot of information and put that into the order. We would disagree with the component of that order with respect to the 5 percent provision and the 453D.255 of the regulations. We're not here to argue that, we're not asking the Court to reconsider that. And if this matter goes up on appeal, I assume that will be addressed at that time. It's not what we're here for today.

What we're here for today is to confirm that in fact my client did comply with the requirement to list all prospective owners, officers, and board members so that it can move forward with its perfection of its application. When the Court asked for the State to provide information that it provided, it did so, and it said -- you know, I guess there's

three tiers.

THE COURT: So you're asking me to let the State now make a decision as to whether applications are complete when they totally abdicated their responsibility related to that last fall?

MR. KOCH: Well, that's an interesting question, because if the Court is saying -- asked the State for information as of this last Tuesday or Wednesday and it said, give me the information on that, it's a little bit ironic, I suppose, when the Court has said, well, the State didn't do its job back then, but do it now.

THE COURT: Well, I'm not sure they did it right now, which is why I had the opportunity for everybody to have an objection to determine if I am going to restructure the relief as Mr. Prince had requested.

MR. KOCH: And so with that, the State did provide those three tiers. One is some people who aren't we just trust them, they must all be good, so they got a license, we're going to let them go. There's another tier that said, we don't have anything to dispute what they said so we're going to let them -- say their application was complete, as well. And there's a third tier that said, we have some questions about what was part of that application. And when I get a question I try to provide an answer, and I saw the State had a question, and I in fact called Mr. Shevorski and said,

you got a question, I want to provide information. Mr. Shevorski is a fair guy, friend of many in the courtroom, I suppose.

THE COURT: He is a friend to all.

MR. KOCH: Friend to all.

MR. SHEVORSKI: Ecumenical, Your Honor.

MR. KOCH: But I think Mr. Shevorski probably rightly, although I may disagree, I suppose, said, look, we're neutral, the Court has asked us to do something, we're going to do what the Court asked us to do and make a decision on what the Court asked us to do and submit that, but we're not deciding anything else, we're not saying yea or nay, we have a question that cannot be answered.

And so the answer to that question we provided in our response, the answer the Department had that answer all along because Nevada Organic Remedies submitted in first August 2018 its ownership transfer request, and the Department has, attached to Exhibit A to our response, sent back a transfer of ownership approval letter dated August 20th, 2018, listing each of the owners of Nevada Organic Remedies, the applicant in this case. Listed GGV Nevada LLC and listed also individuals well below 5 percent, in fact, even Mr. Peterson, who owned one tenth of 1 percent. It listed Pat Byrne, who had one half of 1 percent, individuals -- anyone who had a membership in the applicant listed there. And the Department

approved that list. And when Nevada Organic Remedies submitted its application and provided its organizational chart that same organizational chart and list of owners was provided there, and in fact, as indicated in the footnote to our Exhibit B, that organizational chart, it states, "Please note. This ownership structure was approved by the Department of Taxation on August 20th, 2018. All owners, all prospective owners, officers, and board members were listed there and were approved by the Department.

And so when the State said, we have an open question of whether there were shareholders who owned a membership interest in the applicant, information was there all along. Because what that ownership interest is in an applicant, in an LLC, an ownership interest is a membership interest. And that information was provided. The Nevada Organic Remedies itself is not a public company, it's an LLC. None of the owners of membership interests of Nevada Organic Remedies are public companies. Each of the owners of those membership interests in Nevada Organic Remedies was disclosed, was approved by the Department, and for that reason Nevada Organic Remedies must be included -- to the extent that the Court is even going to consider that point, included within the group of those applicants that have properly disclosed all prospective owners, officers, and board members.

And to the extent that there's any question about

completing background checks or something else that had not be done, that's not what the Court's question was. And that background check could be completed at some future time if it were necessary or appropriate. But we believe background checks were in fact completed of those that were listed there. If the Department believed that there needed to be a background check done of the entity that owned membership interests in Nevada Organic Remedies, it fashioned such relief. They've not been asked to do that.

So we believe that Nevada Organic Remedies has clearly complied with the statute, the express terms of the statute as the Court has read that statute literally, and we have complied with what the Department has requested, and the Department has approved what we have submitted. And we do not believe we need to go any further than that, but to the extent that the Department would come back now and say, oh, we approved it before but now we have a question, we believe that the Department would be estopped from taking that position, because we complied with the rules and regulations in place at the time that the Department asked to provide without objection but actually explicit approval of that list that was provided to the Department.

THE COURT: And so you think the change of ownership approval trumps the ballot question?

MR. KOCH: Not at all. We provided -- the ballot

question says each prospective owner, officer, or board member.

THE COURT: Correct.

MR. KOCH: We provided a list of each prospective owner, officer, and board members. Listed right there. The change of ownership letter is there, but it's also directly in the application. We provided that as part of our Exhibit B, here are the owners, these are the owners of the applicant, and it is disclosed right there. There is no secondary question. The Court has read that statute quite literally. It's an owner of the applicant. It's not to say, well, let's see if there's, you know, somewhere else off here, we're going to engage in some investigation to see if there's some sort of secondary tertiary ownership. And, frankly, that's what, you know, plaintiffs, many of them, same type of situation. Frankly, some of them probably a little more explicit. And Mr. Kemp talked about MM, but then said, well, LivFree wasn't [unintelligible], but MM was. MM provided the disclosure of its structure which doesn't even have the same LLC -- ownership of the LLC, provided a different structure and did provide a list of any other shareholders up above.

Serenity, same thing. Said, here's our structure, here's the LLC that owns a membership in our entity. We're not saying anybody did anything wrong in that. That's what was asked for, that's what was provided. And if the Court has

made its determination of the statute precluding the regulation -- which I don't know how a regulation that adopts a 5 percent rule that's already in the medical regs that apply to the same owners that half of the owners of medical be able to apply for recreational becomes arbitrary at that point in time when you've already got the 5 percent rule there. But we submitted it at the time within the application period.

You know, it's -- frankly, the date of application period could be potentially more arbitrary than anything else. If there's a question of shareholders changing over in these public companies over here, they submit the application on the 14th, by the 18th, the end, that could change over.

THE COURT: You set a record date, Mr. Koch. You know how that works from doing proxies and --

MR. KOCH: Absolutely. Could set record date. But for that purpose, for purposes of what we had explained and clearly laid out, there is no public ownership of a membership interest in our applicant. We've complied with the statute, we've complied with the law, and for that purpose, to the extent the Court is going to make any determination, which I think that's up to the State to do or the Department to do, it should include Nevada Organic Remedies in the list of companies that provided full ownership and can move forward with perfecting their conditional licenses in a timely manner.

THE COURT: Okay. Thank you.

MR. HONE: Your Honor, Eric Hone on behalf of Lone Mountain parties. Real quickly just two points.

One, we have a motion to strike, of course, the material that was submitted by Mr. Kemp that you're hearing tomorrow, so I'll reserve the issue on that.

Secondly, just a real quick point. Our position is that to the extent that the Court asked a question of the State and the State raised a question as to completeness for the first time, that it's the State's obligation to answer that question, not abdicate its responsibility, to then actually answer that question and then come back into court. So we would say from a logistical position our point would be that if the State has a question or they do have a question with regard to our client that they raised for the first time last week, we should be able to address that with the Department of Taxation. If they can resolve their question, then we can come back to Your Honor and see whether our client can go forward with the rest of the group. But as an initial take we believe the object rests with the State. They should answer the question that they raised for the first time last week and then allow us to come back to your court to see if that satisfies Your Honor. Thank you.

THE COURT: Thank you.

Next?

MR. GRAF: Good morning, Your Honor.

THE COURT: Mr. Graf, the person who asks for affirmative relief in his objection.

MR. GRAF: I did, Your Honor. And it's not an objection.

THE COURT: It's a brief. I'm sorry.

MR. GRAF: Correct. And I wanted to make that clear, and I want to make that clear to Mr. Kemp. Our objection early on when they initially filed their objection and then the appendix was the fact that there was no procedural mechanism for doing that. That's what we objected to.

THE COURT: Not until I had Footnote Number 19 in the findings of fact and conclusions of law.

MR. GRAF: I agree. So, and that's fine, Your Honor. But the issue is here and our problem with what they produced was you didn't get leave. So then we prepared a letter to all counsel and the Court and said, hey, Your Honor, if and when we submit a brief can we submit additional information, Her Honor was --

THE COURT: I didn't see your letter at time I did the minute order.

MR. GRAF: All counsel saw it.

THE COURT: I struck it because I wasn't taking post-trial briefing.

MR. GRAF: Understood, Your Honor. We eserved it on

all counsel, just so Mr. Kemp's aware that he was aware of our request to the Court regarding that issue.

But, Your Honor, you necessarily don't need any documents. So here's the issue. The State has answered your question and said Clear River submitted a completed application pursuant to 453D.200(6). Your Honor, even in the ballot initiative it reads the same way as it does in the statute. The ballot initiative in Part 6 reads, "The Department shall conduct a background check of each prospective owners, officers, and board members of a marijuana establishment license applicant." Your Honor, Clear River couldn't be a bigger and better poster child for this very prospective owner issue. This is a case where Clear River had one other owner, Armco LLC. Armco LLC owned 8 percent. They disputed the ownership and everything else in the initiative litigation in 2015, February 26th, 2015. That litigation was resolved in September with a confidential settlement agreement signed, dated September 21st, 2016.

I raise those dates for this reason, Your Honor. It's before the initiative was passed, it's before all of these deadlines for these applications were even set. And then there were deadlines for payments that were going to be made, four in total, the last payment being made December 1st, 2018. That's coincidence, the very definition of coincidence.

So then we've got an issue where they're submitting

an application, and we know on December 1st or December 4th, when the actual last payment was made, that this entity will no longer be a member. That's the definition of prospective. What's going to happen in the future? That's what Clear River did, that's what they submitted. That's why we're not -- we didn't file an objection, Your Honor. We just wanted to file a brief that said, hey, these are all the facts and by the way that's what the State knew, that's why the State put us in Category Number 2. In our conditional letter they said, hey, you've got to file this transfer of ownership. And immediately on December 14th, within the 30 days required in the conditional letter, we filed our change and transfer of ownership to create ownership of 100 percent.

So, Your Honor, we're actually what they've been railing against. Well, not necessarily some of them, because some of these plaintiffs are publicly traded companies. And, again, Your Honor, as we argued in our closing argument to the motion for preliminary injunction, it is not lost on us the unclean hands and/or the lack of equity that some of these plaintiffs come to this Court with.

But here's the issue. Here's the issue, Your Honor. What kind of whack-a-mole are we going to keep playing in this case? Are we going to keep having -- we've had eight different theories of the case by the plaintiffs throughout this process that they have coming on for various reasons.

But on this one issue you've got before you an applicant that owns a hundred percent of the company. Her Honor asked a question, a very specific question, a very specific question, did these applicants comply with NRS 453D.200(6).

THE COURT: Actually, I asked which applicants.

MR. GRAF: Which applicants. Clear River is one of them, and Mr. Randy Black, the one man who controls Clear River LLC, that's what we're talking about.

So unless Her Honor has any questions about that process or any of the documents that were submitted -- but, again, Your Honor, we submit that all of those documents were in the possession and control of the State. The State knew all of this information. And I guess that's the final comment, Your Honor. These plaintiffs can say whatever they want, they can make whatever arguments that they want; but at the end of the day in this one issue, whether or not there was ownership in one entity, it's this case and it's this client, and it's our client, Clear River. Do you have any questions, Your Honor?

THE COURT: I do not.

MR. GRAF: Thank you, Your Honor.

THE COURT: Next?

MR. KAHN: Good morning, Your Honor. Jared Kahn for Helping Hands Wellness Center, Inc. My client representative Dr. Jameson also has the pleasure of being here today for this

hearing.

Your Honor, the State responded to your inquiry as it pertains to Helping Hands Wellness Center that it is unable to eliminate a question whether Mr. Terteryan's testimony that he was the COO and how he was not listed on Exhibit A could respond to your inquiry. What is before the Court and Helping Hands's objection that has been filed is a rundown that explains that. You asked for an objection to the State's inquiry, and we submitted the evidence. And that evidence shows in Exhibit 1 there was a corporate resolution that was executed in July of 2019 that Alyssa Navallo-Herman was no longer the president, she resigned as the president, and Klaris Terteryan was nominated as the president, and that Mr. Alfred Terteryan was nominated as the chief operating officer to assist the company.

Now, that transfer of ownership that caused Ms. Navallo-Herman to resign occurred on July 19th, 2019, in the middle of this entire process and not contemplated at the time when they submitted their application. Certainly she's listed in the application as an owner and president in there. So upon her resignation they substitute who's going to be the new president, and they nominated Mr. Terteryan as COO.

In the application itself that's designated Exhibit 3, Mr. Terteryan is disclosed in the application as a director of cultivation operations. So he's fully disclosed

in the application.

The organizational chart, which is included, as well, shows that the COO position is blank. There was no COO position at the time of the application. It was a prospective position that they did not know who would have that title until Mr. Terteryan was actually nominated in July of 2019, after Mr. Navallo-Herman resigned as president.

The State inquiry as to whether they have a question as to who should be an officer, they should look at the company's application and the company's documents. And what those company documents say now --

THE COURT: Well, but actually they should have looked at that when they got the applications; right?

MR. KAHN: Correct.

THE COURT: Okay.

MR. KAHN: And I don't know if they did look at it or not at the time, but they certainly couldn't look at Mr. Terteryan being a COO at the time, because he wasn't a COO at the time. It is not for them to hypothecate that to say he should be the COO when he's the director of cultivation operations. It's not the State's position to say who should be an officer.

Mr. Terteryan was also noted in the State's response to your inquiry, Your Honor, that he was fully background checked because he's been a key employee working at the

facility for four years. And he was background checked then, and he's background checked now. He has his agent card, and they're in full compliance as to who has been background checked in compliance with your concern, Your Honor, as to which owners, officers, and board members have been background checked.

The point of your order was to ensure that the State background checks all of those folks, essentially, your inquiry and your order that they can't issue the final license until there's that compliance. For the State to then question Mr. Terteryan and say he should be a COO as of the time of the application, that's not the State's role and that's not what your inquiry was. Your inquiry wasn't for the State to determine who should be an officer, should it be the guy who's running the dispensary who's the general manager. Should he have been an officer? At what point does the State's inquiry as to who should be an officer become a fantasy, as opposed to let's look at what is actually disclosed and what actually occurred. So now the State has this information that the corporate resolution occurred in July 2019 after the transfer of ownership occurred, and that inquiry should be complete now.

Now, we are not certain as Helping Hands and I think the other defendant intervenors whether or not it's your job, Your Honor, to actually make a determination of completeness

here today or whether it's really the State's. The State was tasked to respond to your inquiry, but you don't have the full application before you, Your Honor. You don't have the -- you weren't tasked, Your Honor, with determining whose application is actually complete. That's the State's. And certainly we're objecting to the State's objection that was filed and is now -- I think it's marked Exhibit 3 and providing that proof to respond to their inquiry. And is it up to you, Your Honor, to determine now that Helping Hands is compliant, or is it up to the State to say, well, we provided the information and we're compliant? That -- I don't know if that's happening here today or we go back to the State and have that inquiry with them. When I also reached out to Mr. Shevorski he said that was going to be your determination, essentially. Not putting words in your mouth, Mr. Shevorski, but essentially that's where we are today. He said, we're supposed to file the objection. Which we did.

So the last point I want to make, Your Honor, on this issue is the plaintiffs have made a great deal of commotion of saying who was gaming the system by not listing owners, officers, or board members or maybe listing new owners, officers, and board members to obtain diversity points. Here Mr. Terteryan was background checked. If he was actually listed as an officer, we would have received more points, Your Honor, because he's a minority. But in fact he

was not an officer at the time, and that's why he wasn't listed.

So there's no harm or foul to the State and its public policy to protect the public to ensure everyone's background checked, which was I believe Your Honor's concern as to why we should ensure everyone has been background checked, to make sure the public knows who is the owners and how they pass background checks. So that's been complied with in response to their objection as to Mr. Terteryan.

And, again, it shows that we have substantially complied. And I can understand now the confusion from the State when Mr. Terteryan comes in and testifies in August that he acts as the COO, which just occurred several weeks prior. But nobody asked him on the stand, Your Honor. There's no testimony that said, were you the COO at the time of the application. Because at the time he wasn't. He was the director of cultivation operations.

Therefore, Your Honor, I believe we have substantially complied with filing a proper objection proving Mr. Terteryan was not a COO at the time of the application, and Helping Hands' application should be deemed complete and e should move into the other tier, Your Honor. Thank you. And if you have any questions --

THE COURT: Thank you. No.

Anyone else? Anything else, Mr. Kemp?

MR. KEMP: Yes, Your Honor.

THE COURT: Anything, Mr. Shevorski?

Mr. Shevorski is standing neutral.

MR. SHEVORSKI: Mr. Shevorski is here to answer your questions, Your Honor, should you turn your fire in that direction.

MR. KEMP: Your Honor, on Lone Mountain Mr. Hone never answered the central issue, which is did Verano own Lone Mountain at the time the application was filed. The answer to that is clearly yes, and the support we rely in for that is Mr. Kahn's complaint we've attached. He filed a complaint on behalf of the Frye family against Lone Mountain, saying they stole all his trade secrets. But in that complaint he alleges clearly that Verano was the owner of Lone Mountain at the time the application was filed. But more importantly, we have the two -- I call them SEC filings. They're not really filing with the United States Securities and Exchange Commission.

THE COURT: They're Canadian.

MR. KEMP: They're whatever the Canadian SEC is. So I just want to make that clear. But I'm going to continue to call them SEC filings. But anyway, we have not one, but two SEC filings that specifically show that Verano owned Lone Mountain at the time the application was filed. I mean, that is it, Your Honor. You know, first of all, the State was right; but, second of all, it's undisputed. And you didn't

hear Mr. Hone argue this fact. He won't admit it. He just sits there and he says -- tries to be coy about it. But the undisputed fact is that Verano owned Lone Mountain at the time the application was filed and they did not disclose the Verano owners -- the officers and directors on the application. I mean, it's clear that there's support from the State's position.

Moving to Mr. Koch's argument, he says, Judge, ignore Schedule B where we listed the officers, directors, and board members, and also he listed janitors and the maintenance people and everybody else. But he says, ignore Schedule B, look at the organizational chart we provided. That was not part of Schedule B, Your Honor. What he's arguing is that he did not list the officers and directors for the parent in Schedule B but State should have figured this out and moved them over there from his organizational chart to Schedule B. Well, I mean, a couple problems with that. First, you know, it's obvious that the State and the graders used Schedule B, because they did the diversity rating -- by the way, NOR got an 8, we got a 4, we being M&M. They used the people that were listed on Schedule B as the owners, officers, and directors. That's where he should have had all these other owners, officers, and directors, not hidden somewhere on Exhibit B. And he says, oh, well, M&M's bad, too. Your Honor, we're not bad. We listed our owners, officers, and

directors of the holding company, the Canadian holding company. We listed them on Schedule B, where they're supposed to be listed. And because of that, we got lower diversity points than them. We got a 4, they got an 8. And in our case adding another 4 would have been outcome determinative. We would have won a couple of the licenses. But, you know, to say --

THE COURT: And I've deferred that to your department. I sent that --

MR. KEMP: I understand that, Your Honor. We're filing a motion with the -- you know, the new judge is probably going to call you. But, any event --

THE COURT: I hope not.

MR. KEMP: But, in any event, we'll file a motion. We're going to blame you. But, in any event --

THE COURT: I sent it to him. Even though he doesn't have a County email yet, I sent it to his email at his office.

MR. KEMP: Okay. In any event, Your Honor, I think -- I don't know, you should send him a gift or something -- or vice versa. But, in any event, the record clearly supports that on the Nevada Organic Remedies thing that it wasn't properly complete in Section B.

Moving to GreenMart, we didn't hear anything on GreenMart, so I'm going to skip over it.

THE COURT: I believe that's because we lost Ms. Shell during the conference call.

MR. KEMP: I won't take advantage of the situation, Your Honor, I'll just rely upon the brief.

THE COURT: Thank you.

MR. KEMP: On Clear River -- this is my favorite, okay.

Can I have my chart, please, Shane.

Well, one of my favorites. I've got a couple favorites here.

THE COURT: I specifically told a group yesterday they could not use Disney princesses in a PowerPoint. So let's not use any Disney princesses.

MR. KEMP: All I was going to put is the purchase and sale agreement that Mr. Black tendered.

THE COURT: Okay.

MR. KEMP: Okay, Your Honor. This is his own purchase and sale agreement, okay. This is what he tendered.

Can we have that up, Shane.

(Pause in the proceedings)

MR. KEMP: Whatever the document that he put up, Your Honor. He tendered this document. The document --

THE COURT: That Mr. Graf asked me to determine -- make a determination on today.

MR. KEMP: Yeah. What happened here is that Mr.

Black, like a lot of the applicants, started out with people who were consultants or whatever who came in to -- and supposedly knew something about marijuana, so he gave them a piece of the action. But anyway, they were actual owners at the time the application was filed. And the two men whose names we referred to in the brief are Kozar and Arbelez [phonetic]. They were actual owners at the time the application was filed in September 2016.

When the awards were announced on December 5th they were also actual owners, okay, both of these people. And then in the admitted exhibit, the May 1st list of the State's owners, officers, and directors, they're still listed as owners of Clear River. They're still listed. That's an admitted exhibit, Your Honor.

Now, he says, well, ignore the actual owners because we were in the process of buying them out. They did not buy -- what they did is they had a membership interest, and instead of just doing the buyout and executing a note, they had -- I guess they didn't trust each other -- they had the membership interest tendered into the escrow maintained by one of the attorneys, and that's where it was held to make sure all four payments were made. The final fourth payment wasn't made until after the awards were announced by the State.

So at the time that the application was filed and at the time the award was made these people were actual owners of

the LLC, Clear River LLC. So Mr. Graf's argument is, Your Honor, ignore the actual owners because we were buying them out, they were going to be prospective owners. Well, first of all, at the time the application was filed that was speculative, because all the payments hadn't been made. Maybe they were going to be actual owners, maybe they weren't. But that ignores reality. These are the actual owners who should be background checked more than anyone other than the actual owners. And for that reason, Your Honor, we submit that the Clear River application should be added to the list.

Moving to the next one --

THE COURT: Add to the list of Tier 3?

MR. KEMP: Yeah. I call it the Bad Boy List, Your Honor.

THE COURT: I called it the Tier 3 list.

MR. KEMP: Okay, the Tier 3 list. All right. It should be added to the Tier 3 list.

Helping Hands, Your Honor. This reminds me of the cases we used to read about casinos on Fremont Street in the '50s. Who knows who the real owner is, okay. I mean, we have -- you know, I've done this a while, Your Honor, and that was some of the most unbelievable testimony I've ever heard, you know. Mr. -- I don't want to pronounce his name wrong, so I'll just call him Mr. T. So Mr. T., he testifies that the Jamesons come in with all the money, they have the architect,

they have -- they put everyone on the board, they find the locations, they pay the -- some of the consultant fees, they pay when the $20,000 is due on the applications but they're not the owners, okay, that's going to be worked out at a later point. And now today we've got the client representative Dr. Jameson, who two or three weeks ago when we did Mr. T's testimony wasn't an owner at that time. I don't know what's going on.

But this is one of the squirelliest situations I think you can imagine, Your Honor. And that's why they're properly on the list. I don't want to belabor the point.

The last one we haven't -- I'll rely on the brief as to Circle S. Circle S is pretty much in the same situation as Helping Hands in that Mr. Hoffman is the husband, he's the one that's really running the show for this particular applicant, so that's why we submit they should be added on the list.

THE COURT: Thank you, Mr. Kemp.

Anyone else wish to speak?

MR. PARKER: Your Honor, I have a question for you.

THE COURT: Yes, Mr. Parker.

MR. PARKER: Just a quick one.

THE COURT: Is this a procedural question?

MR. PARKER: It is a procedural question, Your Honor.

THE COURT: Lovely.

MR. PARKER: Okay. Your Honor, in terms of Rule 60 relative to amending an order --

THE COURT: Yes.

MR. PARKER: -- we didn't put all our arguments forward today. I think the deadline is on Monday.

THE COURT: Today is not that day.

MR. PARKER: Good. I just wanted to make sure.

THE COURT: I am not doing motions to amend today.

MR. PARKER: Perfect.

THE COURT: I am handling discussions related to two issues that I addressed in the findings of fact and conclusions of law, one being who's in the categories according to the email that Mr. Shevorski and the Department of Taxation were kind enough to send me, and then the issue of the bond.

MR. PARKER: And you're not foreclosing the motion --

THE COURT: I'm not.

MR. PARKER: Thank you, Your Honor. That's it. That's all I have.

THE COURT: Anything else?

MR. KOCH: Can I just address one thing Mr. Kemp raised?

THE COURT: You can.

MR. KOCH: Mr. Kemp had indicated that the owners

were not listed in the Department's record. Exhibit 5023 is the current license's owner -- license owners of record, if it was not attached to our response here.

THE COURT: As of May.

MR. KOCH: As of the time --

THE COURT: That was in May.

MR. KOCH: These were -- these were of the applicants that were of record. Based upon the transfer of ownership letter from August 2018, DGV Nevada LLC is listed as the first owner there. The other owners, officers, and board members are each listed there. And so to say that somehow this was hidden away someplace when the Department's own records have that of record in their list at the time the applications is an inappropriate comment.

MR. KEMP: Your Honor, I didn't say the owners weren't listed. I said the officers and directors of the holding company weren't listed.

THE COURT: Okay. Anybody else?

MR. KAHN: Your Honor, I think you're going to get a couple of us standing up here.

Your Honor, just to briefly address Mr. Kemp's comments and what this Court asked the State to do, the Court asked the State to respond to the inquiry, and the State provided its response after it thoroughly went through the applications. It did not ask the plaintiffs to come in and

make a determination as to who the plaintiffs think should be on the clients' applications, it did not ask the plaintiffs to say who should be owners or officers or board members based on testimony that actually said there was not an agreement on ownership for Helping Hands until this year, Your Honor, which is still under tax attorney review, has not been finalized, has not been inked, Your Honor. And that's in our brief. It's not for Mr. Kemp to make that determination, it's really for the State, and the State did not bring that issue up before you, Your Honor.

THE COURT: Thank you.

The question that I asked the Department of Taxation at the conclusion of the arguments was made based upon a suggestion by one of the defendants in intervention that a narrower scope for injunctive relief might be appropriate. The question that I asked was which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018.

Because the Court did not have unredacted versions of the applications for all applicants, it was impossible and remains impossible for the Court to make a determination, which is why I have asked the Department of Taxation to make that determination, since that's within their records.

The standard on injunctive relief is different from the standard that the parties will face at trial or at summary

judgment if this matter should proceed. And based upon the limited information that was provided to the parties through disclosures as part of the injunctive relief hearing we've had a hearing based upon what I would characterize as extremely limited information.

I am not granting any affirmative relief to Clear River as requested, because that was not the purpose of this hearing. I have previously made a determination that I was going to exclude applicants who properly completed the applications in accordance with NRS 453D.200(6) at the time the application was filed in September 2018.

The applicants who fit into that category based upon the State's email to me are those in the first and second tier as identified by the State. While I certainly understand the arguments by the parties that certain other information was available that may not be within the scope of my question, my question was limited for a reason. Those who are in the third category will be subject to the injunctive relief which is described on page 24 the findings of fact and conclusions of law. Those who are in the first and second category will be excluded from that relief.

Any request for modifications by the State based upon the State's review of the applications that were submitted by the applicants during the application period will be submitted by motion by the State, and then all of you will

have an opportunity to submit any briefs and any argument you think is appropriate.

I am not precluding the State from making any other determinations related to this very flawed process the State decides to make related to the application process. That's within the State's determination as to how they handle any corrections to this process. And I'm not going to determine what that is. I was merely seeking to exclude applicants who filed applications in compliance with NRS 453D.200(6) at the time the applications were filed from the injunctive relief that I have granted in order that was filed last Friday on page 24.

Does anybody have any questions about the tiers? Any issues should be directed to the Department for you to resolve based upon the information that was in your applications at the time.

I am not going to do the goose-gander analysis that was urged upon me by one of the parties under the Whitehead decision.

Okay. That takes me to the bond. Anybody want to talk about a bond?

MR. KEMP: Judge, on the bond just some logistics that you should be aware of. Mr. Gentile's expert is available on the 16th or 17th.

THE COURT: That's why I'm doing the hearing today,

because I'm doing the bond hearing today. So anybody want to talk to me about a bond? Anybody think the bond's okay at the amount I've already set? Anybody want me to modify the bond? I got no briefing on that issue from anyone. I was surprised.

MR. KAHN: Your Honor, I think collectively from this table we did want to hear how the exclusion occurs before bonds are applied. However, we are prepared to address certain issues on the bond before Your Honor today based on --

THE COURT: Great.

MR. KAHN: -- based on evidence that was admitted into the record during the hearing.

THE COURT: I'm listening.

MR. KAHN: Let me approach real quick, Your Honor.

Your Honor, currently the bond that was issued in the TRO in the amount of approximately $400,000 --

THE COURT: And some related TROs.

MR. KAHN: -- and related TRO, the Nevada Organic Remedies, only applies to those two locations when you talk about Thrive and then Nevada Organic Remedies licenses and the harm that would occur as to those particular licenses. Those amounts certainly cannot cover what the Tier 3 applicants and capture 25 of the licenses. So $400,000 would certainly not compensate this side of the table if this side of the table happened to be wrong at trial.

THE COURT: Well, it's not whether you're wrong at

trial. The standard is whether the injunctive relief was improvidently granted. That's what the standard is. It's a very narrow standard. And Polsenberg's here if you want to ask him.

MR. KAHN: No, no. That's fine, Your Honor. And I appreciate the correction.

THE COURT: Because you and Polsenberg and Bice are going to spend time in Carson City now.

MR. KAHN: And I appreciate that, Your Honor. And I appreciate the correction now.

If you're taking a look at what the bond -- how much it should be issued, you should be taking a look at what these licenses will basically generate [unintelligible] on the profits potentially lost by failing to be able to be open due to the injunction.

The document that was actually prepared by one of the plaintiffs, Mr. Ritter, on behalf of his entity, TGIG LLC, which is a plaintiff in this matter, presented to my client in March of 2019, which was Exhibit 5064 in this matter, Your Honor, indicates that there are net profits to the tune of $6.7 million for the location. Now, Mr. Gentile argued at the time that that maybe encompassed two of the locations, so that net profit calculation would be 3.35 million annually for each location of the two, Your Honor, that would be lost by my client based on the plaintiffs' projections as to how valuable

these licenses are.

So we submit, Your Honor, the bond would be calculated at at least the amount the plaintiffs believe the lost profits would be in this case.

Now, Your Honor, if you take that number and you apply it times the 61 licenses or just the Tier 3, which are the 25 licenses, certainly the $400,000 isn't a compensable number, and 3.35 million per license it would be for the net profits expected to be lost.

If Your Honor were to take a look at the $400,000 number, and I think it was 385,000, if I recall, as it applied to Thrive, and you times that by 25, you would have $10 million as an appropriate bond. However, that $385,000 number for Thrive was only based on being closed temporarily during the preliminary injunction hearing.

THE COURT: For a couple months, hopefully.

MR. KAHN: For a couple months, correct.

THE COURT: That was the plan.

MR. KAHN: Correct. Pending trial, where we haven't even had a Rule 16.1 conference, Your Honor, we have not had a scheduling order on the trial date --

THE COURT: We actually have one set for September 6th.

MR. KAHN: Correct. We haven't had one yet.

THE COURT: September 9th.

MR. KAHN: Yeah. It would be inappropriate to say $385,000 for one location that's only closed for a couple months would be the correct number that would apply to 25 licenses.

THE COURT: You don't think I can get the Business Court cases to trial before the end of the year?

MR. KAHN: Well, I don't know if you can get all these lawyers in that room within a year, Your Honor. But I hope you can. You had a hard time finishing the preliminary injunction hearing.

THE COURT: I'm not worried about the rest of the departments. I'm just worried about mine.

MR. KAHN: Right. No. What I mean is we had a hard time getting everybody here already, so --

THE COURT: I know.

MR. KAHN: No. And I appreciate that, Your Honor. If it's done expeditiously, then that's the appropriate thing to do and it eliminates the --

THE COURT: That's why I called it an expedited schedule in my order.

MR. KAHN: Correct. And that eliminates the potential harm. But certainly we don't know when that is yet at this point. And a modification to the bond could occur if you set it at a higher number to predict that we're going to lose 3.35 million annually in net profits in the first year of

operations for just our licenses each, you know, that could be modified if trial was set sooner. But apparently right now there's no trial set before Your Honor.

THE COURT: I haven't had a Rule 16 conference yet.

MR. KAHN: Exactly. And last thing I would note, Your Honor, is even Mr. Yemenidjian, and I'm sorry of I butchered the name, from Essence, he testified conservatively $2.8 million annually was the profits that could be lost. And those numbers weren't disputed.

Now, at his calculation applying to the 25 licenses, you're looking at a bond, you know, in excess of $50 million. So I'm just trying to put before Your Honor that currently the plaintiffs' own party has presented what the potential net profits could be for these licenses. That was undisputed by the plaintiffs, other than whether that was for one or two license at the $6.7 million number. And that's where the bond should be set, Your Honor. Thank you.

THE COURT: Thank you.

Anyone else from the defendants in intervention wish to speak related to the bond amount? Mr. Koch.

MR. KOCH: I again join what Mr. Kahn had offered. There's been a fair amount of evidence. Frankly, we had thought there would be separate evidentiary hearings, but I think enough evidence has been presented with respect to the amounts --

THE COURT: Me, too.

MR. KOCH: -- and I've got other things to do. But I want to just talk to the State after this, because we think that there needs to be -- it needs to be modified.

For purposes of the bond here, as Mr. Kahn said, the evidence offered by the Essence representative was the 2.8 million per license per year profit, and that was a conservative number. That was internal [unintelligible] that it was conservative. We believe our store's generating a higher profit, much higher profit number. At the time Mr. Jolley was here he'd testified about that, testified about a lot of things. But at that point in time we weren't putting on dollars and cents. 2.8 million is an appropriate number. In the context of 25 licenses that would be $70 million. We have seven of those licenses. We believe that that 2.8 is an appropriate number. Frankly, I'd be shocked if these cases got to trial within a year based upon the process that has gone on so far. And to the extent that the plaintiffs, who -- you've got numerous of them, all with varying different interests and claims --

THE COURT: I've only got two sets of plaintiffs.

MR. KOCH: You will have only two sets of plaintiffs. But this injunction hearing goes out to the other judges who'll have to look at that, as well.

They have offered -- you know, Mr. Ritter got up on

the stand said each license is worth 10 million and we're shopping ours, we're trying to sell ours. We're not saying, you've got to pay us the full value of the license. 10 million for 26 licenses would be $250 million. On that basis the 70 million is a very conservative number to the extent that we are not going to be permitted to open, we're going to lose that amount of money that's pure profit. If you take the same calculation the Court's already provided with respect to Essence, Thrive -- I get the entities confused there, but the TRO bond of $400,000, that was for two months, as the Court had stated. That'd be 2.4 million for a year. Am I right? Yes. There we go. 2.4 million for the year times 25 licenses, that's $60 million.

So based upon all those calculations that number is appropriate. The plaintiffs have been the ones who have come forward talking about the massive financial largess that's here that they need to be able to grab a hold on, and now they're trying to take that away from entities like us who are going to lose revenue and profit in the meantime. So the amount that should be set for the bond is no less than $70 million to secure this injunction based upon the evidence that has been presented.

THE COURT: Thank you, Mr. Koch.

Anyone else on the defendants in intervention side wish to speak related to this issue?

MR. HONE: Your Honor, Eric Hone on behalf of Lone Mountain. We would just join in the arguments of Mr. Koch and Mr. Kahn.

THE COURT: Thank you.

Mr. Prince --

MR. PRINCE: Your Honor, thank you.

THE COURT: -- aren't you excluded from the injunctive relief?

MR. PRINCE: In part, yes.

THE COURT: Then why are you talking?

MR. PRINCE: Because I want to address -- they've been discussing the bond that's applicable to the Thrive defendants. That was part of a TRO which now obviously has dissolved as a result of you ruling. That $450,000 encompassed six weeks. It was $150,000 for two weeks, then you increased it to 300,000 for four weeks. That was approximately May 24th through June 30th only. So you have an identifiable number, number one, which particular --

THE COURT: So, Mr. Prince --

MR. PRINCE: Go ahead.

THE COURT: -- let me ask again. Your client is one of those excluded because they're in Tier 1 or 2.

MR. PRINCE: Correct.

THE COURT: Why are you talking with me about the bond?

MR. PRINCE: The only reason why is we're going to be moving separately for the release of that bond amount to our client --

THE COURT: Okay.

MR. PRINCE: -- so therefore should not be considered --

THE COURT: Right.

MR. PRINCE: -- for your purposes in --

THE COURT: I will exclude that from my calculations. Thank you.

MR. PRINCE: Thank you.

THE COURT: Anybody else on the defendants' side?

All right. The plaintiffs' side. Because the State is standing silent.

Right, Mr. Shevorski?

MR. SHEVORSKI: Correct.

MR. GENTILE: Did you ever hear the phrase, are you buying or are you selling?

THE COURT: I know.

MR. GENTILE: All right. It's got to be --

THE COURT: That's why in a settlement conference we have them write the number down on a paper, and then we try and have it exchanged. And whoever wrote that number down, they're going to take it and buy it or sell it.

MR. GENTILE: I do not want to criticize Mr. Ritter,

but I think the Court needs to look at the context in which Mr. Ritter was stating to a prospective --

THE COURT: He was trying to sell product and get a management --

MR. GENTILE: He was sure trying to sell.

THE COURT: -- percentage out of that, too.

MR. GENTILE: Absolutely. Okay. And so --

THE COURT: I read the exhibit when it was admitted.

MR. GENTILE: All right. So, you know, then I don't need to go any further. The bottom line here is that with regard to the bond the value of the license should have nothing to do with anything for two reasons. Number one, if they lose, that license isn't worth anything. And, number two, if they win, they have the license. And so nothing's at risk. So what you really have to look at is how certain, what kind of comfort can you have with regard to the profitability of any business that hasn't opened its stores. And none of these businesses have opened their doors. Our expert, Mr. Seigneur, to the best of my knowledge, he is the only person that has written a book specifically with regard to the evaluation of cannabis businesses. And he's been at it for quite some time in Colorado. And were he to have testified, were you to have conducted a hearing, I can tell you that his testimony would be that the value in this context in our community, particularly in light of Mr. Peckman's testimony

that nobody's waiting around for a store to open closer to them so that they could start smoking weed --

MR. KOCH: Your Honor, I object to Mr. Gentile testifying what his expert would testify to if he shows up at some future date.

THE COURT: No. He's talking about what Mr. Peckman testified to.

MR. KOCH: No. He's talking about his expert from Colorado.

MR. GENTILE: No. I'm talking about Mr. Peckman. Mr. Peckman --

THE COURT: He said his expert was the only one who wrote a book and it would be really nice if I continued this hearing and let him get his expert here. And I'm not doing that, because I've heard enough evidence. Now, if somebody wants to increase the bond again later, you'll have to file a motion.

MR. GENTILE: So Mr. Peckman's testimony was pretty clear, and Mr. Peckman acknowledged in addition to that that he does expect to lose some of the customers that used to go to the Commerce store at the Sahara location.

THE COURT: Because they don't want to drive as far.

MR. GENTILE: Exactly. So --

THE COURT: And there are other places in between that Commerce location and Sahara already that are open.

MR. GENTILE: So what I think is in any market, any market for any kind of a product, and this is a product, there comes a point in time when you're going to start seeing cannibalization. I think that time is now. And under the circumstances it is --

THE COURT: Then why are we all here if you're going to all --

MR. GENTILE: Market share. Exactly. That is exactly why we're here, to protect market share, okay.

THE COURT: Okay.

MR. GENTILE: And so under the circumstances, Your Honor, I think the bond that you've previously set at $400,000, it may be little low, okay, but to suggest that $70 million is a reasonable bond is certainly subject to criticism.

THE COURT: Thank you.

MR. GENTILE: So under the circumstances I'd ask you -- I'm not going to ask you for a particular number. I'm not, okay. What I'm going to ask you is to recognize that none of these stores have any kind of a track record. And so you really cannot compare apples to apples here. And it's going to take them some time to build up steam, if they ever get open. And so under the circumstances this bond -- I'm not going to ask you a number, but I'm going to tell you it shouldn't be more than seven digits.

THE COURT: Thank you.

MR. KEMP: Your Honor, I just want to add a couple facts here. Out of 25 licenses 13 of the 25 are here in Clark County. Of those 13 two are in Henderson, where there's already a moratorium. So I would submit that moratorium, you know, precludes them from arguing any damages on those two.

But anyway, so that leaves 11 that in Clark County, Las Vegas, and North Las Vegas. I just wanted the Court to be aware of that.

THE COURT: Thank you.

Anybody else from the plaintiffs' side?

Anyone else on the defense side want to speak again?

While I appreciate the comments from all counsel related to the amount of the bond, the risks of businesses actually opening prior to the trial in this matter, as well as the risks of any business that is a startup or new location, makes it very difficult for the Court to place a value on the income stream of any of those entities, which is what the bond needs to be based on, is the losses that will be suffered as a result of this injunctive relief.

For that reason the Court has set a fair bond in the amount of $5 million.

So can you post it in 10 days?

MR. GENTILE: Yes, Your Honor.

THE COURT: Okay. Anything else?

MR. KEMP: Judge, you made one comment that kind of confused me.

THE COURT: I make lots of comments that confuse you, Mr. Kemp. Ask for clarification.

MR. KEMP: You said the injunction going back to my department.

THE COURT: No, not your injunction.

MR. KEMP: It's not my --

THE COURT: The injunction's here.

MR. KEMP: The injunction stays here, so we pay the 5 million --

THE COURT: Motions for reconsideration on the thing that Mr. Parker's going to file that he wants me to reconsider certain findings or conclusions of law, that comes here.

MR. KEMP: Right.

THE COURT: You do your Rule 16 in Department 8 with whichever senior judge is there prior to your judge taking office on or about September 30th.

MR. KEMP: Yeah. We're in the discovery phase over there, Your Honor.

THE COURT: I don't know what you're going to do.

MR. KEMP: I just wanted to ask. So I put my 5 million up with Mr. Gentile; right?

THE COURT: You all as a group --

MR. KEMP: Okay. Thank you, Your Honor.

THE COURT: -- are putting up $5 million.

Anything else?

MR. KOCH: Your Honor, I just want to for the record say they as a group are putting up $5 million. Some of these plaintiffs may drop out of the case, which whoever's putting this up is ambiguous. We believe that in each case the amount should be put up as $5 million, because each of the parties that have brought that are the ones that are claiming they've been harmed. For example, MM Development, which has the same issues with respect to the application, has no irreparable harm. So in each case that $5 million should be posted.

THE COURT: So the $5 million is only being posted in the Business Court cases, because that is the only cases in which the injunctive relief has been issued. So that's the cases the bonds are going to be issued. I agreed to do the injunctive relief so all the other departments didn't have to and we only had to have one circus for the injunctive relief hearing.

(Off-record colloquy - Clerk and Court)

THE COURT: And that does not include the amount that was previously posted, which is going to be the subject of the motion practice Mr. Prince mentioned.

Anything else? 'Bye, guys. See some of you tomorrow unless you work it out.

THE PROCEEDING CONCLUDED AT 11:00 A.M.

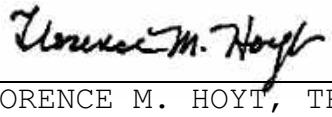
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

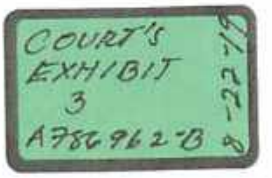
8/30/19

DATE

Meriwether, Danielle LC

From: Steven G. Shevorski <SShevorski@ag.nv.gov>
Sent: Wednesday, August 21, 2019 3:23 PM
To: Meriwether, Danielle LC; 'Michael Cristalli'; 'Vincent Savarese'; 'Ross Miller'; Ketan D. Bhirud; Robert E. Werbicky; David J. Pope; Theresa M. Haar; 'jag@mgalaw.com'; 'rgraf@blacklobello.law'; 'bhiggins@blacklobello.law'; 'alina@nvlitigation.com'; 'Work'; 'Eric Hone, Esq. (eric@h1lawgroup.com)'; 'jamie@h1lawgroup.com'; 'moorea@h1lawgroup.com'; 'jkahn@jk-legalconsulting.com'; 'dkoch@kochscow.com'; 'sscow@kochscow.com'; 'Bult, Adam K.'; 'tchance@bhfs.com'; 'a.hayslett@kempjones.com'; 'Nathanael Rulis, Esq. (n.rulis@kempjones.com)'; 'tparker@pnalaw.net'; 'Fetaz, Maximilien'; 'phil@hymansonlawnv.com'; 'shane@lasvegaslegalvideo.com'; 'joe@lasvegaslegalvideo.com'; 'Pat Stoppard (p.stoppard@kempjones.com)'; 'jdelcarmen@pnalaw.net'; Kutinac, Daniel; 'ShaLinda Creer'; 'Tanya Bain'; 'Karen Wiehl (Karen@HymansonLawNV.com)'; 'Kay, Paula'; 'Dennis Prince (dprince@thedplg.com)'; 'tlb@pisanellibice.com'; 'JTS@pisanellibice.com'
Cc: Kutinac, Daniel
Subject: RE: A786962 Serenity - Response to Judge's Question on NRS 453D.200(6)

Case : A-19-786962-B
Dept. 11



Danielle,

The Department of Taxation answers the Court's question as follows:

Court's Question: Which successful applicants completed the application in compliance with NRS 453D.200(6) at the time the application was filed in September 2018?

Answer: The Department of Taxation answers the Court's question in three parts.

First, there were seven successful applicants who are not parties to the coordinated preliminary injunction proceeding. These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and TRNVP098 LLC. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were at the time of the application, these applications were complete at the time they were filed with reference to NRS 453D.200(6).

Second, there were five successful applicants who are parties to this coordinated preliminary injunction proceeding whose applications were complete with reference to NRS 453D.200(6) if the Department of Taxation accepts as truthful their attestations regarding who their owners, officers, and board members were. These applicants were Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC.

Third, there were four successful applicants who are parties to this proceeding regarding whom the Department of Taxation could not eliminate a question as to the completeness of their applications

with reference to NRS 453D.200(6). These applicants were Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC.

With respect to the third group, the Department of Taxation could not eliminate a question as the completeness of the applications due to the following:

1. **Helping Hands Wellness Center, Inc.** – The Department of Taxation could not eliminate a question a question regarding the completeness of the applicant's identification of all of its officers on Attachment A in light of Mr. Terteryan's testimony that he is the Chief Operating Officer and was not listed on Attachment A. The Department of Taxation does note, however, that Mr. Terteryan has been the subject of a completed background check.
2. **Lone Mountain Partners, LLC** – The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether Lone Mountain Partners, LLC was a subsidiary of an entity styled "Verona" or was owned by the individual members listed on Attachment A.
3. **Nevada Organic Remedies, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners because the Department could not determine whether there were shareholders who owned a membership interest in the applicant at the time the application was submitted, but who were not listed on Attachment A, as the applicant was acquired by a publicly traded company on or around September 4, 2018.
4. **Greenmart of Nevada NLV, LLC** - The Department of Taxation could not eliminate a question regarding the completeness of the applicant's identification of all of its owners. The Department could not determine whether the applicant listed all its owners on Attachment A because a subsidiary of a publicly traded company owned a membership interest in the applicant at the time the applicant submitted its application.

In creating this answer, the Department of Taxation sought to answer the Court's question in a neutral fashion based on the information available to it from the applications themselves, testimony given at the hearing (without reference to issues of admissibility, which an affected party may raise), and information publicly available from a government website (the Canadian Securities Exchange website), which was submitted by the applicant or information submitted about the applicant by an entity claiming an affiliation to the applicant. The Department of Taxation expects that Helping Hands Wellness Center Inc., Lone Mountain Partners LLC, Nevada Organic Remedies LLC, and Greenmart of Nevada NLV LLC may explain why they believe they submitted complete applications in compliance with the provisions of NRS 453D.200(6).

Best regards,

Steve Shevorski

Steve Shevorski
Head of Complex Litigation
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Governor's Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act

Final Report
May 30, 2017

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Table of Contents

Letter from the Chairs

STATE OF NEVADA

May 30, 2017

Dear Governor Sandoval:

We hereby deliver to you the final report of the Task Force on the Implementation of Ballot Question 2: The Regulation and Taxation of Marijuana Act.

The Task Force, which you established on November 8, 2016, by Executive Order 2017-02, was given the mission to identify the legal, policy, and procedural issues that need to be resolved and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act. The executive order directed the Task Force to complete its work and issue a report of its recommendations and findings to you by May 30, 2017.

The Task Force was composed of 19 members representing diverse interests, including law enforcement, public health, state agencies, the Nevada Legislature, social services, local government, the marijuana industry, and the public. They began their work on March 3, 2017, and met regularly over the course of ten weeks. In addition to the main Task Force, eight topic-focused working groups–made up of Task Force members, subject matter experts, and affected stakeholders–met weekly. The groups worked tirelessly, deliberating issues from every angle, listening to and incorporating public comment, and thoughtfully crafting their recommendations to be heard by the Task Force. The working groups presented a total of 73 recommendations to the Task Force, where they were further deliberated, amended, and adopted by majority vote for inclusion in this report. Every meeting of the Task Force and working groups was open to the public, and the community proved actively engaged, providing frequent input via public comment.

The members of the Task Force and working groups carried out the mission you gave them with full commitment to the spirit and letter of that mission. As the great State of Nevada moves forward to regulate and tax marijuana, the Task Force members share a sense of pride in having contributed to the framework to accomplish that. We look forward to seeing our recommendations refined through the regulatory, executive, and legislative processes, and foresee a tightly regulated program that considers the needs of industry and protects public health and safety.

Respectfully submitted,

Deonne Contine, Chair
Executive Director
Nevada Department of Taxation

Chuck Callaway, Vice Chair
Director of Office of Intergovernmental Services
Las Vegas Metropolitan Police Department

Acknowledgements

The work of the Task Force would not have been possible without the support of the hard-working administrative staff led by Tina Padovano, Hector Sepulveda and Heidi Fettic. They booked rooms, scheduled all Task Force and working group meetings, created Public Notices, took the minutes and made copies of the all the agendas and recommendations for the convenience of the public and members. We would also like to thank Stephanie Klapstein for posting all the supporting documents to the Department of Taxation website and leading the communication efforts of the Task Force. Thank you for all your efforts!

It is important to recognize the contributions of the State of Colorado and Rebound Solutions to this effort. Their ground-breaking work on implementing the Retail Marijuana Program in Colorado provided the Task Force with a solid starting point and helped to ensure a thorough effort. Similarly, the work done on the Medical Marijuana Program by the Nevada Division of Public and Behavioral Health provided a strong regulatory framework from which to begin crafting a Retail Program in Nevada.

The Task Force would also like to thank our consulting team from QuantumMark, led by Kelly Jessee with the assistance of Michael Kretch. They oversaw the design and execution of the Task Force's recommendation form, process and agendas, kept track of the recommendations, and organized and wrote the final report.

Overview of the Task Force

On November 8, 2016, the voters of the State of Nevada approved Ballot Question 2: The Regulation and Taxation of Marijuana Act (the Act). The Act stated that "the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated like other legal businesses."[1] The Act provided that:

- Marijuana may only be purchased from a business that is licensed by the State of Nevada;
- Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
- Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;
- Selling or giving marijuana to persons under 21 years of age shall remain illegal;
- Individuals must be 21 years of age or older to purchase marijuana;
- Driving under the influence of marijuana will remain illegal; and
- Marijuana sold in the state will be tested and labeled.

The Act directs the Nevada Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of the Act, including accepting applications and issuing licenses for marijuana establishments, not later than January 1, 2018.

On February 3, 2017, the Governor of the State of Nevada issued Executive Order 2017-02 establishing a Task Force to deliberate on and make recommendations regarding policy, legal and procedural issues that must be considered to implement the Act. The Task Force was to report its findings and recommendations to the Governor by May 30, 2017.

Mission Statement

The Task Force's mission was to identify the legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act.

[1] Ballot Initiative Question 2, "Full Initiative Text--Regulate Marijuana Like Alcohol in Nevada", https://www.regulatemarijuanainnevada.org/full-initiative-text/ , November 8, 2016.

Guiding Principles and Goals

1. Promote the health, safety, and well-being of Nevada's communities

2. Be responsive to the needs and issues of consumers, non-consumers, local governments and the industry

3. Ensure that youth are protected from the risks associated with marijuana, including preventing the diversion of marijuana to anyone under the age of 21

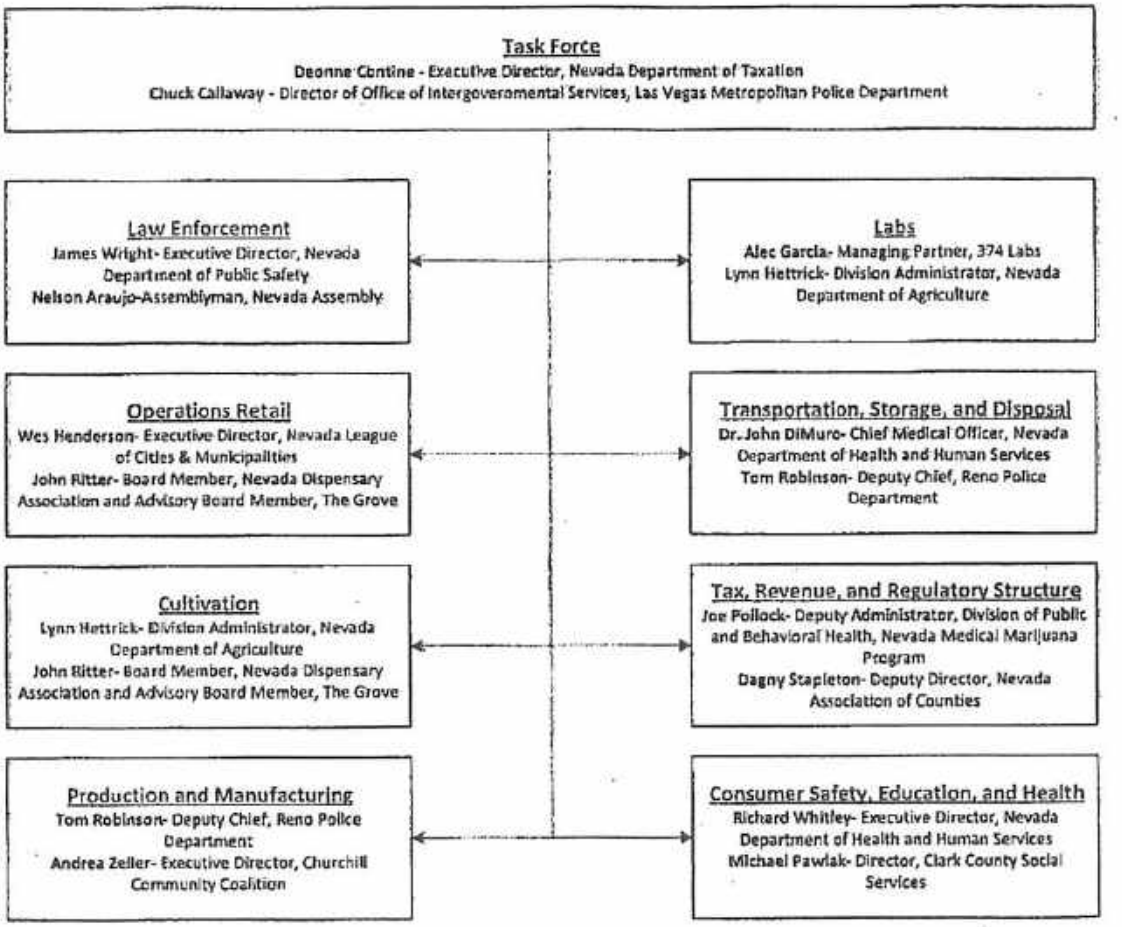
4. Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

5. Begin a discussion between the state and local governments regarding the costs of carrying out Question 2

6. Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable

7. Take action that is faithful to the text of Question 2

Task Force and Working Group Structure



Roles of The Task Force and Working Groups

Task Force

The Chair

- Issue and amend guidelines for operation of the Task Force
- Form and appoint working groups
- Identify and approve the scope of work
- Assign Task Force members to lead working groups

As a group

- Identify the legal, policy and procedural issues that need to be resolved
- Provide leadership to the working groups
- Review the recommendations from the working groups
- Present recommendations to the Governor

As leaders of working groups

- Facilitate working group meetings
- Assist working groups to prepare recommendations
- Represent the working group at Task Force meetings

Working Groups

- Accept the scope of work as assigned by the Task Force
- Discuss and debate each assigned topic in a group setting
- Participate on breakout teams to conduct research, identify best practices and gather information regarding experiences from other states where a retail marijuana program has already been implemented
- Analyze findings and present to the full working group
- Discuss findings and evaluate alternatives
- Prepare recommendations
- Identify that laws need amending or that new statutes or regulations are required for the recommendations to be implemented
- Present the recommendations to the Task Force

Scope of Work

An initial set of topics was developed through review of the Executive Order of the Governor, regulations from other states where retail marijuana has been legalized, interviews with members of the Department of Taxation and the Division of Public and Behavioral Health. The list was approved at the first Task Force meeting and distributed among the working groups. The topics were then further refined during the working group meetings.

The following table lists the topics considered by each working group.

Working Group	Topics
Law Enforcement	• State and local • DUID and testing • ARIDE training • Preventing distribution to minors • Consequences 18-20 years old • Consequences for juvenile possession • Personal transport of marijuana • Open and public consumption • Local civil offenses • Preventing the diversion to other states • Preventing violence and the use of firearms in the cultivation and distribution of marijuana • Amending current laws regarding possession of drug paraphernalia, marijuana and cultivation • Need for new statutes for time, place and manner restrictions for consumption, including conforming to existing non-smoking laws • Possession of marijuana in correctional facilities • Regulation of safety • Crime and public safety • Statutory changes for those under 21 years of age
Operations – Retail Establishments	• Dual use medical and retail • Personnel • Security • Tracking sales • Tracking inventory • Purchase by residents • Purchase by visitors

Working Group	Topics
	• Ownership interest • Local government involvement • Vending machines • Signage, marketing and advertising • Literature shared with the patient/consumer • Delivery
Operations – Cultivators	• Cultivating standards • Handling standards • Tracking inventory • Pesticides • Dual use cultivating and manufacturing • Home cultivation • Advisory group • Outdoor cultivation • Regulatory organizational structure • Security requirements
Operations – Production/Manufacturing	• Dual use cultivating and manufacturing • Tracking inventory • Packaging requirements • Ownership interest • Local government involvement • Training requirements • Home production • Inspection requirements • Serving sizes and packaging limitations • Edibles/Other products
Operations – Labs	• Operational practices • Accreditation • Tracking inventory • Sample sizes for testing and retention • Ownership interest • Local government involvement • Advisory group • Proficiency testing

Working Group	Topics
	• Validation and auditing • Homogeneity testing and adulterants
Transportation/Storage/ Disposal	• Commercial transportation and storage • Application process • Ownership interest • Local jurisdiction involvement • Public health and safety • Disposal of marijuana, products and waste • Environmental industry impacts • Delivery • Distribution centers
Taxation/Revenue/ Regulatory Structure	• Tax clarification • Sales tax • Wholesale tax • Business licensing • Licensing requirements (residency, ownership interest, suitability requirements for licensees, responsible retailers program) • Single marijuana environment • Financial plan • Operations fees • Regulatory organizational structure • Inspections • Penalties for noncompliance with regulations • Local governments and financial benefits • Impacts to local government • Data collection • Revenue for public safety • Land use • Rating criteria on applications
Consumer Safety/Education/ Health	• Signage, marketing and advertising, restrictions on advertising and display • Uniform labeling • Additives

Working Group	Topics
	• Adulterants (nicotine/alcohol) • Education for professionals and the public • Research • Oversight and responsible agent training • Health and safety standards for manufacturing, production and cultivation • Preventing drugged driving and the exacerbation of other adverse public health consequences • Education on long term health effects of marijuana use and harmful effects for those under 18 years of age • Preventing marijuana possession or use on federal property • Reconciliation of Nevada and federal laws to prevent prosecution • The effect of the Act on employers, employees and the Nevada economy • Non-consumer safety and education • Workers compensation • Health and safety – medical and clinical issues • Edible marijuana

While the working groups and Task Force addressed many issues pertaining to the regulation, implementation and taxation of marijuana, the groups chose not to make recommendations on some of the topics presented for their consideration. Some issues were not addressed and left to the Department of Taxation to work through in the development of the regulations, including requirements related to record keeping, procedures for the collection of taxes, procedures to establish fair market value and civil penalties for failure to follow the regulations created by the Department.

Methodology

Task Force members included the Nevada State Senate and Assembly and the Nevada Departments of Taxation, Health and Human Services, Public Safety and Agriculture. Members also included the Nevada Chief Medical Officer, representatives from the Nevada League of Cities and Municipalities and the Nevada Association of Counties. There was representation from the Nevada Medical Marijuana Program, law enforcement, social services agencies, the medical marijuana industry and the general public. All members were appointed by the Governor and adopted at the first meeting. See Appendix C for a complete list of Task Force members.

Deonne Contine and Chuck Callaway were appointed as Chair and Vice-Chair, respectively, to lead the Task Force. Prior to the first Task Force meeting, procedural guidelines were drafted for consideration by the Task Force. These included establishing guiding principles, drafting a comprehensive list of topics for consideration by the working groups and developing the procedural workflow for review of recommendations by the Task Force. Six meetings were held between March 3 and May 12.

The Task Force created eight working groups each chaired by two members of the Task Force and composed of persons with subject matter expertise. Five were established to address operational topics related to Production/Manufacturing, Cultivation, Labs, Retail and Transportation/Storage/Disposal. The remaining three addressed issues related to Law Enforcement, Taxation/Revenue/Regulatory Structure, and Consumer Safety/ Education/Health. Each working group met once a week for seven weeks.

Between public meetings, the working group members worked independently to conduct research and develop recommendations. Each recommendation was brought to the entire working group during public meetings for review and consideration. This was an iterative process. The advice and opinion of the full working group provided the feedback needed to direct additional work on the topic. This process continued until there was consensus by the working group on the recommendation. In some instances, where topics overlapped, there was collaboration among working groups to develop the recommendation. Dissenting opinions by any group member(s) were captured within the recommendation.

Once a recommendation was approved by a working group it was presented to the Task Force for consideration. If modifications were requested the recommendation was sent back to the working group for changes. The recommendation was then brought to the Task Force for reconsideration.

In total, the working groups presented 73 recommendations to the Task Force. Each was approved by a majority vote of the Task Force and many were unanimous in their approval.

All meetings of the Task Force and working groups were subject to Nevada's Open Meeting Law. The Task Force endeavored to solicit public comment as part of its consideration of the policy, legal and procedural issues that need to be resolved to implement the Act. To the extent it was deemed appropriate, the Task Force incorporated the public input it received into its recommendations.

Full documentation of the Task Force and working group meetings can be found on the website of the Nevada Department of Taxation (https://tax.nv.gov/Boards/Retail_Marijuana/Retail_Marijuana/).

Summary of Task Force Recommendations

Each of the 73 recommendations is summarized herein to provide a quick overview. These summaries are organized into one of the following fourteen topics:

1. Regulatory Structure
2. Taxation and Revenue
3. Application and Licensing Requirements
4. Inventory Tracking
5. Retail Store Operations
6. Cultivation Operations
7. Production/Manufacturing Operational Requirements
8. Laboratory Operations
9. Distribution and Transportation
10. Packaging, Labeling and Potency Limitations
11. Signage, Marketing and Advertising
12. Education and Research
13. Law Enforcement
14. Public Safety

The full text of the recommendations adopted by the Task Force is included in Appendix D. Reviewing the full text will provide the details necessary to understand the merits of the recommendation. Justifications and actual suggestions for changes to statute or regulations are part of the detailed recommendations.

Regulatory Structure

The recommendations grouped in this section aim to create the regulatory foundation and authority to administer the retail marijuana program at the state and local levels. Consideration was given to establishing a Marijuana Control Board and an Advisory Committee to provide advice, guidance and industry input. Other recommendations deal with ownership interest in marijuana establishments and provisions for businesses to engage in both medical and retail marijuana activities.

Regulatory Organizational Structure

The Task Force recommends that Nevada Revised Statute Chapter 453A and Nevada Administrative Code Chapter 453A (medical marijuana) be used as the regulatory foundation for the retail marijuana program, and that the Department of Taxation oversee the administration of both the medical and retail marijuana programs. State statute and regulations will need to be amended to consolidate all marijuana authority under the Department of Taxation.

There was no dissent on the recommendation.

Transfer of Medical Program to Department of Taxation

The Task Force recommends that, to streamline marijuana regulation and oversight, the Nevada Legislature transfer the regulatory responsibility of the medical marijuana program (including duties, responsibilities and budgets) from the Division of Public and Behavioral Health to the Department of Taxation.

There was no Task Force dissent on the recommendation.

There was dissent in the working group that medical marijuana is currently under the Division of Public and Behavioral Health as it is considered a medicine and as such is treated as a public health matter. Therefore, medical marijuana could continue to be regulated in a manner separate from retail marijuana. If the state prefers that medical marijuana and retail marijuana to be co-located under one department, dissenting opinion suggested the creation of an Alcohol and Marijuana Control Board as is done in other states.

Inspection Requirements

The Task Force recommends that one state agency oversees inspecting both medical and retail operations so that there is a single point for inspection and enforcement. This recommendation would ensure overall consistency in enforcement and be less onerous on marijuana establishments holding dual licenses.

There was no Task Force dissent on the recommendation.

There was a concern in the working group that, should the medical and retail marijuana programs not be merged under the Department of Taxation, a single agency performing state inspections for programs administered by different agencies might be infeasible.

Local Government Regulation

The Task Force recommends that regulations be adopted that make it clear that local governments may regulate retail marijuana establishments on zoning, general business license matters, and fire and building code compliance only. The state should occupy the entire regulatory space on matters involving edibles, packaging, concentrates, dosing, potency, serving size limitations, and product types. This recommendation ensures that state and local regulations do not conflict, and guarantee regulatory uniformity for the industry and reduce enforcement costs for local jurisdictions.

There was Task Force dissent on the recommendation. Dissent regarded the role of local governments that do not want to be restricted on regulatory issues regarding marijuana. Some local governments wish to retain the ability to regulate on matters involving edibles, packaging, concentrates, dosing, potency serving size limitations and product types and want the flexibility to make more restrictive regulations than the state may prescribe.

Marijuana Control Board

The Task Force recommends that the Nevada Legislature create, when feasible, a Marijuana Control Board to provide direct oversight and accountability to the retail and medical marijuana industries. The structure and duties of the Marijuana Control Board would be generally based on Nevada Revised Statute Chapter 463 which establishes authority for the licensing and control of gaming.

There was no dissent on the recommendation.

Ownership Interest

The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the medical marijuana program. No person with a direct or indirect interest in a marijuana testing laboratory can have a direct or indirect financial interest in a marijuana retail store, a production/manufacturing establishment, a cultivation facility or a distributor. The Task Force further recommends that marijuana laboratories be exempted from using a distributor to collect and move testing samples.

There was no dissent on the recommendation.

Advisory Committee

The Task Force recommends the Department of Taxation establish an Independent Marijuana Advisory Committee like the Independent Laboratory Advisory Committee (ILAC) under Nevada Administrative Code 453A.666. The Committee's purpose would be to address changes and challenges that the marijuana industry will face as it matures. The membership of the Committee should include representatives of the Nevada marijuana industry and local and state officials. The Committee would provide recommendations to the Department of Taxation regarding all aspects of the Nevada marijuana industry, make suggestions for any changes to Nevada Revised Statute or Nevada Administrative Code chapters relating to marijuana, and assist in creating and updating marijuana policies and procedures for the Department of Taxation.

There was no dissent on the recommendation.

Ancillary Marijuana Business Licensing

The Task Force recommends in addition to the state, local jurisdictions be allowed to license, regulate and collect fees from ancillary marijuana businesses. Ancillary businesses were defined as any person that has not received a registration certificate under Nevada Revised Statute Chapter 453A, has been licensed as a marijuana establishment under Nevada Revised Statute Chapter 453D and that directly profits from onsite adult use or consumption of marijuana or marijuana-infused products. Examples of ancillary businesses include spas, social clubs and music venues. The recommendation also allows for standardized educational materials pertaining to adult use of marijuana to be prominently displayed in such facilities. Examples include current rules and regulations for smoking, vaping, tobacco and alcohol usage in the facility.

There was Task Force dissent on the recommendation concerning whether ancillary businesses should be allowed.

Co-Location

The Task Force recommends allowing the coexistence of marijuana production, cultivation, retail and distribution establishments within the same facility. It further recommends allowing the coexistence of both retail and medical marijuana establishments within the same facility. Legislative changes in Nevada Revised Statute Chapter 453A.350 would be required to allow for shared use of facility types.

There was no dissent on the recommendation.

Dual Use Medical and Retail

The Task Force recommends that the Department of Taxation and any affected local governments enact regulations and ordinances permitting a medical marijuana establishment and a retail marijuana establishment to operate at the same location and to permit a dual licensee to serve patients and retail consumers in the same

retail area without the need to make changes in the design and construction of licensed medical marijuana dispensaries. Statutory changes would be necessary to Nevada Revised Statute Chapter 453A to allow for dual use of facilities for medical and retail marijuana businesses.

There was no dissent on the recommendation.

Taxation and Revenue

Topics of discussion in this section include using revenue to cover the implementation costs of the program at the state and local levels, and help to support common resources such as police and other public services engaged with the retail marijuana industry.

Taxation – 15% Excise Tax

The Task Force recommends that the excise tax on all wholesale marijuana, medical or retail, be 15% as provided for in Question 2 and that it should be administered in a uniform manner. This tax would replace the current tax structure applied to medical marijuana. Taxing all wholesale marijuana at the same rate allows establishments to treat marijuana and marijuana products in a "single stream" designating its use as medical or retail only at the point of purchase. Nevada Revised Statute Chapter 453A would need to be amended to enact this recommendation.

There was no dissent on the recommendation.

Taxation – Retail Tax 10%

Adopting the recommendation from Governor Sandoval's proposed budget, the Task Force recommends an additional 10% tax on retail marijuana at the point of sale. This recommended tax is in addition to the 15% tax collected at the wholesale level and is consistent with an overall target rate of 30% or less total taxation for the retail product. Other states have concluded that the balance between a healthy, regulated industry and a shrinking black market is around 30% total taxation. The tax structure would also create a significant enough difference in the retail price between retail and medical marijuana that medical patients will have a financial incentive to continue participating in the medical marijuana program.

While the Governor recommended that this tax go to education, the Task Force did not recommend how the new tax should be allocated, citing the understanding that there are impacts on local government, law enforcement, communities and agencies that should all be considered when policy makers decide on allocation. Legislation would need to be enacted to adopt this recommendation.

There was no dissent on the recommendation.

Fees – Local Government Share

The Tax Force recommends that local governments receive a share of revenue generated by the retail marijuana industry so that both the state and local governments share in the financial benefits and can mitigate the impacts from marijuana legalization. This recommendation provides revenue for critical local government services and

affirms that the aggregate tax rate at retail should remain low enough to keep the price disparity between legal regulated businesses and illegal black market operators small enough to discourage a significant black market.

There was both Task Force and working group dissent on the recommendation. Dissent was about the wording of the recommendation, not the intent. The recommendation states that local governments should receive revenue from the sale of retail marijuana, but there is no wording for revenue allocation to local governments in Question 2, rather reimbursement for costs was specified.

Application and Licensing Requirements

Recommendations in this section include topics such as the application and evaluation process, allocation of retail marijuana establishment licenses, the impact of ownership interest below 5% and the most effective method for issuing agent cards.

Application Process

The Task Force recommends that the qualifications for licensure of a marijuana establishment and the impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical marijuana program except for a change in how local jurisdictions participate in selection of locations. The Department of Taxation should rank the applicants based on an applicant's qualifications without respect to the planned location of their business. The local governments should be responsible for working with the ranked list of applicants prepared by the Department of Taxation to determine acceptable locations based on requirements within the respective jurisdiction.

If a marijuana establishment is not able to receive local jurisdiction zoning and land use approval within 18 months from the date the Department of Taxation issues the conditional license, the applicant will surrender the license back to the Department for reissuance through another application process.

There was no dissent on the recommendation.

Rating Criteria on Applications

The Task Force recommends that the impartial numerically scored process used by the medical marijuana program be revised for retail marijuana stores to remove consideration of location and focus only on the applicant qualifications for operation of a marijuana establishment. The proposed list of qualifications was ranked in order of importance to give more weight to the most important qualifications.

There was no dissent on the recommendation.

Ownership Issues/ Licensing Requirements

The Task Force recommends that Nevada Revised Statute Chapter 453A be changed to address companies that own marijuana establishment licenses in which there are owners with less than 5% ownership interest in the company. The statute should be amended to:

- Limit fingerprinting, background checks and renewal of agent cards to owners, officers and board members with 5% or less cumulatively of the company to once every five years;

- Only require owners, officers and board members with 5% or more ownership cumulatively and employees of the company to obtain agent registration cards; and
- Use the marijuana establishment's governing documents to determine who has approval rights and signatory authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory document.

There was Task Force dissent on the recommendation. The concern with this recommendation was that by changing the requirements on fingerprinting and background checks, the state would have less knowledge of when an owner, officer or board member commits an offense not allowed under current marijuana law, potentially creating a less safe environment in the state.

Monopolies - Limitations on the Number of Marijuana Establishments

The Task Force recommends that limitations similar to those in the medical marijuana program for granting establishment registration certificates be used for the retail marijuana licensing process. The recommendation applies this limitation specifically to retail marijuana stores not only in a county whose population is 100,000 or more but also in each local jurisdiction within that county. The recommendation is to adopt regulations like Nevada Revised Statute Chapter 453A.326 which places a limitation on the number of licenses issued to any one person. Suggested language includes: "to prevent monopolistic practices, the Department shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any licensee, the greater of:

- One retail store license; or
- More than 10 percent of the retail store licenses allocable in the county along with the same limitation on the local governmental jurisdiction level."

There was no dissent on this recommendation.

Agent Card Requirements

The Task Force recommends that the Department of Taxation revise the current agent card application process for medical marijuana establishments to improve efficiency by allowing potential employees or volunteers to apply directly to the state to obtain registered agent cards, allow them to work while the card is pending, allow agents to obtain one card for each facility type rather than one for each establishment and allow temporary registration of a person as an establishment agent. Changes to the current Nevada Revised Statute Chapter 453A would be required.

There was Task Force dissent on the recommendation. The concern was that by changing the requirements for attaining an agent card, the state could, for a period, allow employment of an agent who did not fulfill the requirements of the program, and therefore, potentially create a less safe environment in the state.

Retail Store Allocation

The Task Force recommends that the retail marijuana store licenses allocated to the counties be distributed to the local jurisdiction(s) within those counties based on the population in the jurisdiction(s). This recommendation assures even distribution of the retail marijuana licenses to meet the needs of consumers, non-consumers, local government and industry while preventing over or under saturation of retail marijuana stores in specific areas. There would need to be adoption of regulation or statute to address this recommendation.

There was no dissent on the recommendation.

Inventory Tracking

This section addresses the need for systems that ensure marijuana establishments follow proper distribution protocols and comply with state regulations. Electronic systems implemented at all marijuana establishments and at the state will track movement from cultivation, production, distribution and retail sale to account for all marijuana at every point in the chain. With comprehensive marijuana tracking software, the state will be able to minimize product loss from potential illegal activities and ensure a safe and effective compliance culture for the state.

Inventory Control

The Task Force recommends each marijuana establishment maintain an electronic perpetual inventory system that adequately documents the flow of controlled inventory through the cultivating, production, distribution and retail sale processes, accessible by state and local regulation authorities and updated daily. This recommendation will allow state and local authorities to effectively monitor the chain of custody of marijuana products within individual establishments, between different industry establishments and from seed to sale in real time.

There was no dissent on the recommendation.

Centralized Inventory Tracking

The Task Force recommends that all marijuana establishments maintain an internal inventory control system and monitor the movement of all controlled substances between establishments. It is further proposed that the state implement a centralized seed-to-sale system to monitor all inventory in the state to aid in the identification of suspicious activity and track business transactions so that fair market values may be established pursuant to Nevadan Revised Statute Chapter 453D.

Because inventory control systems are a very important part of how the industry interfaces with regulators, the Task Force recommends that the Department of Taxation work closely with industry to develop system requirements and regulations for a robust system that is not redundant or unduly burdensome on the industry.

There was no dissent on the recommendation.

Inventory Tracking and Separation of Product

The Task Force recommends that dual licensed medical and retail marijuana establishments not be required to designate stock into separate medical and retail product categories for inventory purposes. Although some segregation and delineation may be required based on current tax structures, the Task Force recommends that, to the degree possible, all marijuana products should be inventoried and handled in a uniform manner until the

point of sale to a patient or consumer. This recommendation would allow like products to be stored together thereby aiding in more efficient operations and effective securing of inventory.

There was no Task Force dissent on the recommendation.

There was working group dissent over changing how medical marijuana is currently regulated by the Division of Public and Behavioral Health as a medicinal product. If medical marijuana continues to be viewed by the state as a medical product, regardless of the regulatory department, the product should remain separated from other marijuana products that will be sold to the general public for retail purposes.

Retail Store Operations

These recommendations consider the priorities for serving medical versus retail consumers. They identify areas in the current medical marijuana regulations that must be revised to incorporate retail marijuana sales.

Operations – Service

The Task Force recommends the Department of Taxation include provisions in regulation to give preference in a dual use licensed facility to holders of a medical marijuana card. The inconvenience for medical marijuana patients due to an increase of traffic in dual use license establishments could result in patients having to wait in long lines with retail consumers, thus creating a hardship on those who are ill and rely on marijuana to ease their symptoms.

There was no dissent on the recommendation.

Retail Regulations

The Task Force recommends that the Department of Taxation apply the medical marijuana program regulations to the retail marijuana store program, with an understanding that many of the medical marijuana dispensary transactional requirements do not fit into the retail model or are not compatible or consistent with Question 2. The following topics will need revision through regulation for retail marijuana stores:

- Application to operate the establishment;
- Entry and identification of patients/retail consumers;
- Maintenance of patient records;
- Method of tracking sales;
- Labeling;
- Purchase limits; and
- Agent responsibilities and training requirements.

There was agreement by the Task Force that retail regulations can be no less strict than the medical marijuana regulations.

There was no dissent on the recommendation.

Cultivation Operations

The topics in this group recommend a closer working relationship with the Department of Agriculture to elevate cultivation practices and address outdoor cultivation. A broad variety of subjects were considered including buffer zones and security around outdoor cultivation areas, home cultivation, pesticides and safety, product acquisition, supply management and internal product testing.

Outdoor Cultivation - Buffer Zone

The Task Force recommends that the Department of Taxation through regulation establish a buffer zone of at least five miles between outdoor or indoor marijuana cultivation facilities, unless the Nevada Department of Agriculture grants a variance. This recommendation includes locations for cultivation of marijuana crops and industrial hemp. The recommended buffer zone would limit the possibility of female hemp species with less than 0.3% THC from being pollinated by marijuana plants cultivated for medicinal/adult consumption that contain more than 0.3% THC.

There was no dissent on the recommendation.

Home Cultivation

The Task Force recommends that the Department of Taxation draft applicable Nevada Administrative Code sections to establish clear and practical guidelines for marijuana cultivated for personal use and apply the same safety regulations as marijuana sold by marijuana establishments. Specifically,

- Individuals who cultivate marijuana must be registered with the Department of Taxation;
- Personal use cultivated marijuana is subject to the same quality standards, set forth by the Department of Taxation, as commercially cultivated marijuana, including but not limited to pesticides, heavy metal, microbial and mycotoxin contamination levels; and
- Untested personal use cultivated marijuana that is given or delivered and that has not been tested by an independent laboratory must be clearly labeled: "This marijuana is not tested and may contain harmful pesticides and other contaminants."

If there is a complaint with given or delivered personal use marijuana, an independent laboratory or the Nevada Department of Agriculture may test the product. If the product is found to have levels of contaminants exceeding the limits set forth by the Nevada Department of Agriculture, the Division of Public and Behavioral Health, or any other applicable agency, the Department of Taxation may take reasonable action against the cultivator.

There was no dissent on the recommendation.

Pesticide Application and Worker Protection Standards

The Task Force recommends the Department of Taxation establish regulations that cultivation establishments maintain compliance with Pesticide Worker Protection Standards. It further recommends certification through the Nevada Department of Agriculture Pesticide Certification Program of at least one cultivation facility staff member in the Commercial Greenhouse Category for indoor cultivation and/or the Commercial Agricultural Plant/Animal Category for outdoor cultivation. Random and/or scheduled facility visits should be conducted by NDA inspectors in conjunction with cultivation and pesticide consultations for quality assurance or for cause, such as a complaint.

There was no dissent on the recommendation.

Pesticides

To ensure uniformity, the Task Force recommends the Department of Taxation use existing statutes for pesticide application as well as existing medical marijuana cultivation statutes, regulations and policies for regulating allowable pesticides for outdoor and indoor cultivation of marijuana.

There was no dissent on the recommendation.

Outdoor Cultivation - Security Requirements

To ensure outdoor cultivation is adequately monitored the Task Force recommends that the security requirements for outdoor cultivation be similar to the current medical marijuana cultivation requirements. Additional regulations should include provisions requiring a facility:

- To be located within a 15-minute response time of local law enforcement or as otherwise determined by local law enforcement to be an acceptable response time;
- To install an alarm system and cameras monitored 24 hours a day;
- Construct a double perimeter wall or fence system; and
- Provide a secure block building suitable to dry and store marijuana and marijuana products and with prescribed security requirements as approved by the Department of Taxation.

There was both Task Force and working group dissent on the recommendation. Dissent involved concern that the 15-minute law enforcement response time forces a would-be cultivator into conflict with zoning laws and visibility restrictions and effectively eliminates all rural agricultural land that could otherwise be used for outdoor cultivation. It is not reasonable to add provisions that make it effectively impossible to find a suitable location or make it economically impossible to operate an outdoor cultivation facility. Some of the provisions of the recommendation appear to be too stringent.

Product Acquisition

The Task Force recommends the Department of Taxation adopt regulations similar to medical marijuana for product acquisition, specifying that marijuana establishments should only be able to acquire marijuana, edible marijuana products or marijuana-infused products from:

- Another marijuana establishment;
- A person who holds a valid registry identification card or his or her designated primary caregiver;
- Seeds that are legally purchased pursuant to Nevada Revised Statute Chapter 453D; or
- A home grower registered with the Nevada Department of Agriculture.

The recommendation also requires product acquisition be tracked by establishments in an inventory tracking system.

There was no dissent on the recommendation.

Cultivation Supply Management

The Task Force recommends the Department of Taxation annually evaluate the marijuana market supply to assure market stability. The Task Force recommends approving retail marijuana cultivation establishment requests to existing medical marijuana establishments at a ratio of 1 to 1, giving approved and provisional license holders the opportunity to expand into the new market and create sufficient supply to meet the demand of retail users. The Task Force believes the supply in the long run will meet market demand without the need to approve additional cultivation licenses in the State of Nevada. An oversupply could push wholesale prices down, lowering projected tax revenues for the state, and potentially cause diversion of product to the black market.

There was Task Force dissent on the recommendation. The dissenting perspective is that the recommendation limits free market enterprise, provides a barrier to entry into the marijuana market and limits the ability of local jurisdictions to make the decision to allow additional cultivation facilities in their areas.

Microbial Testing Limits

The Task Force recommends the Department of Taxation consider changing the current microbial testing limits from the American Herbal Pharmacopeia (AHP) to the American Herbal Product Association (AHPA), by adopting the American Herbal Production Association Standards for marijuana cultivation. This recommendation allows cultivators to grow using organic methods and provides more options in using organic bio-pesticides rather than using synthetic pesticides. The recommendation would require changes in current Nevada Administrative Code for medical marijuana cultivation to align with this recommendation for retail marijuana cultivation.

There was no dissent on the recommendation.

Internal Product Evaluation Standards and Procedures

The Task Force recommends allowing cultivators and production/manufacturing establishments to set aside a specific small amount of each lot's inventory to be disseminated at no cost to agents of the cultivation establishment for internal testing. The intent of this recommendation is to allow cultivators to "test" or "sample" their product prior to sale or complete testing by an external entity. New regulations would need to be adopted for this recommendation.

There was no dissent on the recommendation.

Production/Manufacturing Operational Requirements

Marijuana production and manufacturing establishments need to ensure that the workplace is monitored and fully compliant with a set of standards, rules and regulations aimed at creating and maintaining safe facilities. The medical marijuana regulations provide a foundation for the production requirements for the retail market. New recommendations focus on production of marijuana outside of licensed facilities and the proper disposal of marijuana products and waste.

Production Outside of Licensed Facilities

The Task Force recommends that changes be made to Nevada Revised Statutes and Nevada Administrative Code to allow production of concentrated, infused, and/or edible marijuana products outside of licensed facilities, but strictly prohibit the use of any non-edible solvents or chemicals which may be deemed dangerous, volatile or flammable. These solvents and chemicals include but are not limited to butane, propane, hexane and alcohol.

There was Task Force dissent on the recommendation. The dissenting position is that home production of marijuana products is currently illegal in the state and it should remain illegal to process marijuana in the home.

Disposal of Marijuana Products and Waste

The Task Force recommends that the Department of Taxation adopt regulations establishing clear and specific procedures regarding disposal of marijuana products and waste and penalties for failure to abide by the prescribed disposal methods. The Task Force also recommends that, in instances where establishments need to dispose of marijuana products, there should be no allowance for a refund of the excise tax.

There was no dissent on the recommendation.

Laboratory Operations

Topics in this section include recommendations to promote the health and safety of the consumer by vetting laboratories through an accreditation, validation and auditing process, adopting proficiency requirements, and setting requirements for inventory control, sample sizes, homogeneity testing and adulterants.

Accreditation, Validation and Auditing

The Task Force recommends that the Department of Taxation address through regulation enhanced requirements for quality lab results that promote the health and safety of the consumer. The recommendation encompasses five areas:

- Licensing by the state and accreditation to the ISO/IEC 17025 standard of laboratory operations that perform testing of marijuana and marijuana-derived products;
- Auditing and certification of independent testing labs by the Nevada Department of Agriculture;
- Participation of independent testing labs in proficiency testing and Nevada Department of Agriculture round robin events;
- Random collection and testing of equitable surveillance samples by the Nevada Department of Agriculture with the goal of preventing sample tampering by producers and inadvertently or fraudulently inaccurate test results from independent testing labs; and
- A tiered enforcement system to give laboratory compliance enforcement a structure so that repeated violations or exceptionally egregious violations result in actionable enforcement against offending laboratories.

There was no dissent on the recommendation.

Proficiency Testing

The Task Force recommends that the Department of Taxation establish practical guidelines for standardization of testing laboratories. The Department of Taxation should adopt the proficiency requirement from the medical marijuana program and allow the Departments of Taxation and Agriculture to improve the testing program as it moves forward. The Department of Taxation should require independent testing labs, as part of being issued or renewing a medical or retail marijuana establishment registration license, to have already successfully passed the proficiency testing program. Once an independent testing lab is licensed, unsuccessful performance in a proficiency test may result in limitation, suspension or revocation of the medical or retail marijuana establishment registration license.

There was no dissent on the recommendation.

Inventory Control

The Task Force recommends that inventory control for independent testing labs follow the same requirements as the medical marijuana program. In addition, labs should keep failed sample retains or any random sample collected by the Department of Agriculture for confirmation testing until prescribed disposition. Samples in retain should be stored in a manner approved by the accrediting body. The recommendation clarifies the inventory control requirements regarding the proper accounting of materials containing marijuana.

There was no dissent on the recommendation.

Sample Sizes for Testing and Retention

The Task Force recommends the Department of Taxation initially adopt the medical marijuana policies, regulations and statutes first adopted by the Division of Public and Behavioral Health that establish batch/lot size, testing tolerances and testing requirements for independent testing laboratories. Then, within 18-24 months, the regulations should be reviewed and amended based on accumulated data from ISO accredited laboratories and the Nevada Department of Agriculture to phase in the use of statistically significant sample sizes while increasing the lot size to minimize the fiscal impact on cultivators and consumers.

There was Task Force dissent on the recommendation. Concern was voiced that this recommendation could potentially delay the curing process by a few days, therefore, making the testing process less efficient.

Homogeneity Testing and Adulterants

The Task Force recommends that the Department of Taxation establish practical guidelines for standardization of edible marijuana product approval, testing, and reporting procedures to ensure homogeneous edible products upon which consumers can rely. This recommendation should be implemented through a Nevada Department of Agriculture policy that includes establishing allowable variation including weight and homogeneity between the independent testing lab results and the intended dosage.

There was Task Force dissent on the recommendation. The dissenting member(s) expressed concern with allowing a variance for the intended dosage for edibles and how this could affect public safety.

Distribution and Transportation

Question 2 tasks the Department of Taxation with developing regulations for the newly created distributor license. The Act requires those who transport marijuana and marijuana products to retail marijuana stores have a current valid license to operate as a marijuana distributor. Topics in this section include commercial transport, storage, the application process for the distributor licenses and local jurisdiction involvement in transportation.

Commercial Transportation and Storage – Operational Requirements

The Task Force recommends that regulations be developed for the operational requirements for licensed marijuana distributors including licensing requirements specific to distributors and their employees, load restrictions, vehicle and transportation requirements, issues regarding theft and document retention. These recommendations will require changes to both regulation and statute.

There was no dissent on the recommendation.

Storage Requirements

The Task Force recommends that the Department of Taxation develop regulations regarding the requirements for storage of marijuana at a licensed distributor. The summary of the recommendation includes the following:

- Marijuana must be stored in a secure, locked device, cabinet or room or locked transportation vehicle within an enclosed, locked facility;
- Distributor premises shall be made available for inspection by the Department during normal business hours without notice;
- Marijuana products shall not be stored with the distributor for more than three days without written consent from the Department. If the product is removed from the vehicle for storage, the inventory shall be verified following off-load and prior to on-load; and
- The tracking system requirements shall be consistent with current Nevada Administrative Code 453A requirements for establishments.

There was no Task Force dissent on the recommendation.

There was working group dissent on the recommendation due to concerns over allowing any storage of marijuana.

Application Process for a Distributor License

The Task Force recommends the development of a regulatory structure and administrative code specific to licensed distributors. The Task Force further recommends that the Department of Taxation accept marijuana distributor applications from individuals or entities meeting at least one of the following criteria:

- A liquor wholesaler dealer licensed pursuant to Nevada Revised Statute Chapter 369;
- A medical marijuana establishment that holds a registration certificate pursuant to Nevada Revised Statute Chapter 453A.322 (5);
- A marijuana establishment licensed pursuant to Nevada Revised Statute Chapter 453A; or
- Applicants who are currently in the business of transporting medical marijuana and whose employees hold valid agent cards pursuant to Nevada Revised Statute Chapter 453A.332(a).

The Task Force also recommends development of regulations for distributors that are consistent with the requirements of current medical marijuana establishments including application requirements, approval and denial of applications, suspension and revocation of licenses, complaints and violations, background check requirements and inspection requirements.

There was no Task Force dissent on the recommendation.

Working group dissent was due to concerns that the recommendation creates additional burdens and shows bias against current liquor distributors in applying and operating as marijuana distributors.

Local Jurisdiction Involvement in Transportation

The Task Force recommends the Department of Taxation provide guidance and support to law enforcement for addressing legal marijuana transportation in the State of Nevada to include the following:

- To expedite traffic stops and ensure officer safety, marijuana establishment agent cards should be accessible through a centralized system available 24 hours a day to law enforcement in the field; and
- Direction and education on the topic of legal transportation of marijuana should be provided to all law enforcement agencies within the state, including those jurisdictions that do not support or do not have marijuana establishments.

Addition of agent card information to the central repository will require changes to Nevada Revised Statute Chapter 179A. Allocation of funding will be required by the Department of Taxation for the ongoing maintenance of the central repository, as well as for developing education for law enforcement regarding lawful transportation of marijuana.

There was no dissent on the recommendation.

Delivery

The Task Force recommends that the Nevada Legislature, Department of Taxation, and local governments enact laws and ordinances that would support and facilitate an efficient and convenient delivery system to adult marijuana consumers by marijuana establishments while protecting public safety, including:

- Implementing a safe and convenient delivery system that supports the effort to reduce or shut down the illegal unregulated market;
- Licensing of delivery services by the Department of Taxation and local jurisdiction so consumers know that the delivery service is legal; and
- Adapting regulations governing deliveries from the medical marijuana program such as trip plans, trip logs, theft reports, verification of age, possession of proof that the person is a registered agent of a marijuana establishment, to accommodate mandates set forth in Question 2.

There was no dissent on the recommendation.

Packaging, Labeling, Potency Limitations

Recommendations in the section include packaging requirements, serving sizes and packaging limitations, product types and their equivalencies, serving size and labeling of edibles, and uniform potency labeling.

Packaging Requirements

The Task Force recommends the Department of Taxation address production and packaging requirements of retail edible marijuana products and retail marijuana-infused products in regulation. Local governments should defer to state regulations. Nevada Administrative Code 453A should be adapted for the retail program and include new language to:

- Ensure that edible products and their packaging do not appeal to children;
- Prescribe that product labels clearly and unambiguously state the product contains marijuana with information on the serving size, number of servings in the package and the concentration of THC;
- Require that single serving edible products are stamped or molded with a symbol indicating marijuana, or if not possible, are placed in an individual opaque wrapping which includes a symbol indicating marijuana; and
- Require that edible products or marijuana infused products are placed in a child-resistant container prior to sale.

There was Task Force dissent on the recommendation. The dissenting concern was that the recommendation is unduly burdensome to production and manufacturing establishments.

Serving Sizes and Packaging Limitations

The Task Force recommends the Department of Taxation limit through regulation the edible serving size to 10mg of THC and 100mg of total THC per edible product for the retail market.

- A single-serving edible retail marijuana product should be defined as an edible retail marijuana product unit for sale to consumers containing no more than 10mg of active THC;
- If the edible retail marijuana product consists of multiple pieces where each individual piece may contain less than 10mg active THC, yet in total all pieces combined within the unit for sale contains more than 10mg of active THC with a variance of +/- 15%, then the edible retail marijuana product shall be considered a multiple-serving edible retail marijuana product; and
- Liquid child-resistant containers must maintain their child-resistant effectiveness for multiple openings and the label must clearly demark each serving of marijuana in a way that enables a reasonable person to intuitively determine how much of the product a single serving constitutes.

There was no dissent on the recommendation.

Product Types and Their Equivalencies

The Task Force recognizes that due to the possession and purchase limits put in place by Question 2 for marijuana and concentrated marijuana, there may be confusion regarding the difference between marijuana flower, marijuana edibles, and marijuana concentrates and the impact on allowable possession limits. To help eliminate confusion the recommendation suggests that:

- Regulation language should clarify that topical and edible marijuana possession and purchase restrictions are not outlined in 453D.110 (1);
- Edible marijuana-infused products should be regulated by stringent THC limits related to serving size and packaging limitations as outlined in other working group recommendations;
- Topical products should not be included in the possession and purchase limits as they are not used in a manner that would activate the psychoactive effects of THC;
- Equivalency factors should be developed to determine compliance with possession limits when customers purchase a mixture of marijuana products (concentrated marijuana, marijuana-infused edible products, and marijuana flower);
- A training program should be developed and administered to law enforcement so that a clear distinction between product types can be made in the field; and
- Retail stores should develop and administer training to management and their sales staff on sales limitations of marijuana products and concentrate, and the likely combinations thereof.

There was Task Force dissent on the recommendation. Concern was expressed that law enforcement should not be expected to routinely determine equivalency factors.

Serving Size and Labeling of Edibles

The Task Force recommends that the Department of Taxation establish through regulation practical guidelines for standardization of edible marijuana product approval, testing, and reporting to provide clarification to the industry and the retail consumer on serving size and labeling of edible products. Per previous recommendations accepted by the Task Force regarding a 10mg serving, it is critical to specify how 10mg of THC is calculated. The Task Force recommends that an allowable variation in milligrams of d9-THC per serving be determined by the Department.

Marijuana contains the following most common forms of THC:

- THCA and d9-THC;
- d9-THC is the psychoactive cannabinoid that produces the "high." THCA is the non-psychoactive cannabinoid; and
- THCA can be decarboxylated to the psychoactive form d9-THC by heating or burning.

The recommendation is that edibles use the d9-THC form for calculation and labeling.

There was no dissent on the recommendation.

Uniform Potency Labeling

The Task Force recommends that there be uniform requirements for the prominent printing of THC content on packaging or labeling separate from the labels that carry the mandated lab test result data, etc., that address public health and public safety. Separate labels make it easy for the consumer to see the THC content. Further, the THC variance must be adopted as standard and should also be required to be printed on the packages and/or labels. The Task Force further recommends that these requirements be initial requirements only, and that the Department of Taxation should be empowered to amend the packaging and labeling requirements related to potency as new information becomes available.

There was no dissent on the recommendation.

Signage, Marketing and Advertising

The first set of recommendations in this section place restrictions on advertising by marijuana establishments to reduce or prevent advertising of retail marijuana that would be appealing to minors. The second set deals with educating patients and consumers through literature and signage on serving sizes and warnings regarding the use of marijuana.

Signage, Marketing and Advertising

The Task Force recommends that the Department of Taxation impose restrictions on advertising by marijuana establishments through regulation and policy to prevent marijuana usage by persons under the age of 21. All marijuana advertisements should be approved by the Department of Taxation. Specific restrictions include:

- Preventing advertising designed to appeal to or target children or persons under 21 years of age, in any media whose audience is reasonably expected to be composed of more than 30% youth;
- Preventing advertising within one thousand feet of school grounds, playgrounds, public parks, libraries, on or in a public transit vehicle or public transit shelter, at sports and entertainment events that are not restricted to persons 21 or older or where prohibited by local government ordinance;
- Preventing of advertising of "free" or "donated" product without a purchase;
- Ensuring all advertising contains warning messages including "Keep out of the reach of children" and "For use only by adults 21 years of age and older or with a medical marijuana card;" and
- Ensuring signage in stores includes the following messages "No minors on the premises unless accompanied by a caregiver" and "No on-site consumption of any marijuana products is allowed."

There was no Task Force dissent on the recommendation.

Concern in the working group was regarding whether that the language of the recommendation supports Guiding Principle 1 – to promote the health, safety, and well-being of Nevada's communities. To limit exposure to marijuana products among minors, consideration should be given to implementing the same types of marketing and advertising limitations that have been effectively placed on tobacco and alcohol products to prevent youth initiation and use.

Literature Shared with the Patient/Consumer

The Task Force recommends that the Department of Taxation require, upon each purchase in a retail establishment or dual license establishment, that the establishment make available to the consumer an educational leaflet. Information should also be posted on signage in retail stores. Warnings should include:

- Information on serving size and suggestions for consumption that assist consumers to gauge impairment; and

- Warnings that consumption is only allowed by those who are 21 and over or with a medical marijuana card and that marijuana must be kept away from children.

There was no dissent on the recommendation.

Education and Research

Recommendations in this section deal with increasing public knowledge and awareness and promoting and protecting public health through comprehensive education and research programs. Recommendation topics include education, research, data collection, oversight and responsible agent training, federal property and funding.

Education

The Task Force recommends the Department of Taxation develop, support and fund education and training to the citizens of Nevada specific to retail marijuana and its impacts. Safety and education campaigns should be informed by the experience of other states that have developed effective messages on the safe, legal and responsible use of retail marijuana. Education should be provided to the public at large, consumers, visitors, workplace employers and employees, health care professionals and the industry. This recommendation also supports the collection of baseline data to determine impacts on the emerging issues associated with the legalization of retail marijuana and support research and/or monitor emerging science.

There was no dissent on the recommendation.

Research

The Task Force recommends that the State of Nevada establish and fund a program of research to evaluate and assess the immediate and long-term impact of the legalization of marijuana use and the effect on public health in Nevada. This program of research and data collection should include clinical and observational research, health policy and health economics research, and public health and public safety research.

A funding mechanism would need to be established by the Department of Taxation.

There was no dissent on the recommendation.

Data Collection

The Task Force recommends development of a strategic plan for implementation of an on-going multi-jurisdictional data collection, management, extraction, comparison and reporting process to evaluate the impacts of retail marijuana on public welfare, health and safety. The Department of Taxation will need to identify the data that should be collected. The Department will also need to identify what, if any, changes to state law need to be made to accomplish the collection and management of data.

There was no dissent on the recommendation.

Oversight and Responsible Agent Training

The Task Force recommends that the current training for marijuana establishment agents be built upon to ensure the health, safety and well-being of the consumers of retail products. To obtain a marijuana agent card, any agent of a retail marijuana establishment will be required to take a marijuana education course, in addition to what is currently required in Nevada Administrative Code 453A.336 for medical marijuana establishments. This course should meet the minimum standard requirements as determined by the Department of Taxation. Proof of successful completion must be submitted to the Department of Taxations before an agent begins unsupervised employment.

There was both Task Force and working group dissent on the recommendation. The dissent concerned the administration of additional training being offered through an outside vendor.

Federal Property and Funding

The Task Force encourages action by the Department of Taxation to maintain compliance with the Controlled Substance Act and Drug-Free Workforce Act of 1988 for federal funding awards to Nevada applicants, and further recommends a program to educate residents and visitors to the State of Nevada on the Controlled Substance Act for use and possession of marijuana on federal land.

The Task Force also recommends that Nevada State Representatives in Washington D.C. pursue working with the other western states that have legalized marijuana in a cooperative effort to ensure the federal government recognizes the multi-state cooperative effort to minimize legal differences and to reduce potential regulatory confusion.

There was no dissent on the recommendation.

Law Enforcement

Recommendations in this section include driving under the influence of drugs, marijuana in correctional facilities, open container and personal transport, request for evidentiary testing and restrictions for firearms.

Driving Under the Influence of Drugs (DUID)

The Task Force recommends that the state emphasize public safety through training, improved data collection and review of scientific findings. Specific recommendations include:

- Initiating a media campaign to educate the motoring public on the effects of marijuana and the consequences of driving under the influence;
- Training law enforcement officers to detect levels of impairment;
- Improving data collection through increased drug screening; and
- Ensuring that Nevada's per se limits are consistent with scientific findings.

There was Task Force dissent on the recommendation. The concern was about the cost of the recommendation and a lack of funding for additional training for local law enforcement.

Statutory Changes

The Task Force recommends a statutory change to Nevada Revised Statute Chapter 453.411 - Unlawful use of controlled substance; penalties. The recommendation decreases the penalty for a person less than 21 years of age determined to be under the influence of marijuana from a felony to a misdemeanor.

There was no dissent on the recommendation.

Marijuana in Correctional Facilities

The Task Force recommends that the state expand existing Nevada Revised Statutes that prohibits possession of marijuana or marijuana products to apply not only to a prisoner confined in an institution of the Nevada Department of Corrections but also to a person detained in any local, county or city jail or detention center. Additionally, this recommendation seeks to include new language to make possession of marijuana paraphernalia by a person in correctional centers prohibited by law. The law should be further amended to clearly articulate and apply the statutory authority to "prisoners" held in custody under process of law, or under lawful arrest in local, city or county jails or detention centers.

There was no dissent on the recommendation.

Open Container and Personal Transport

The Task Force recommends that the legislature add language to an existing Nevada Revised Statute for Open Container/Personal Transportation to clarify that it is unlawful for a person to ingest marijuana, concentrated marijuana, edibles or THC-infused drinks while the person is driving or in actual physical control of a motor vehicle upon a highway or where the public has access. Additional language should be added to clarify that it is unlawful for a person to have drug paraphernalia, concentrated marijuana, edibles or THC-infused drinks within the passenger area of a motor vehicle while the motor vehicle is upon a highway.

There was no dissent on the recommendation.

Request for Evidentiary Testing

The Task Force recommends standardization of forms for evidentiary testing across the state that includes the following language:

> "I have reasonable grounds to believe you were driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or Marijuana and/or controlled substances. You may submit to evidentiary testing. Refusing to submit to evidentiary testing will result in a revocation of your driver's license/driving privilege by the Nevada Department of Motor Vehicles and I may apply for a search and seizure warrant from the court for evidentiary testing. If the search and seizure warrant is granted by the court, reasonable force may be used to obtain an evidentiary test. You do not have the right to speak with an attorney prior to testing. Will you submit to evidentiary testing?"

There was no Task Force dissent on the recommendation.

There was objection in the working group to use of the word "submit" in the recommended language instead of the word "consent" which is a legal term that is used to determine when a person voluntarily agrees to the action being asked of them by a law enforcement officer.

Fees Associated with DUID

The Task Force recommends an update to Nevada Revised Statute Chapter 484.510 to allow the state to collect fines and fees from the court in accordance with the cost of chemical tests.

There was no dissent on the recommendation.

Restrictions and Minimum Security Standards Regarding Firearms

The Task Force recommends modifying Nevada Revised Statutes for dangerous weapons to include marijuana establishments to the list of places where a person cannot carry a firearm. An exception should be granted to peace officers, licensed security guards on duty at said location or owners of the licensed marijuana establishment.

There was Task Force and working group dissent on the recommendation. Task Force dissent included opposition to allowing any firearms in marijuana establishments and allowing local jurisdictions to make the decision regarding allowing firearms in the marijuana establishments. Working group dissent concerned the fiscal impact on current in-house security for existing medical dispensaries because of the verbiage in the recommendation requiring establishments that want to employ armed security guards to engage "licensed" security guards.

Public Safety

Recommendations in this section include preventing distribution to minors, diversion, dispensing machines, banking, revenue for public safety, the Clean Air Act, edible marijuana, worker's compensation, and medical and clinical issues related to health and safety.

Preventing Distribution to Minors

The Task Force recommends that the state focus on prevention efforts pertaining to distribution to minors by:

- Adapting Nevada Revised Statute Chapter 453 statutes regarding requirements for medical marijuana establishments pertaining to security personnel during business hours, ID check stations, video surveillance and locked access to inventory to be applied to retail establishments;
- Prohibiting all use of self-service machines such as vending machines for the purchase and dispensing of marijuana products;
- Creating policy to reduce or prevent certain advertising of retail marijuana that would be appealing to minors; and
- Creating a structure for graduated civil and/or criminal penalties for knowingly selling or giving marijuana to a person under 21 years of age

Legislation would be required for retail establishment restrictions, civil and criminal penalty structures and judicial guidelines for treatment orders.

There was no dissent on the recommendation.

Preventing Diversion to Other States

The Task Force recommends that the state develop a comprehensive plan for preventing marijuana diversion to outside states, which is an enforcement priority for the federal government. The following recommendations will support prevention of marijuana diversion to other states:

- Develop public service announcements and other signage, in and/or near retail stores, informing marijuana consumers that travelling into other states with marijuana and other related products is unlawful;
- Partner with members of the travel and parcel industry to educate their patrons and foster cooperation when criminal activity is detected;
- Encourage and strengthen criminal interdiction efforts on interstate traffic routes;
- Promote the understanding that marijuana possession over a certain quantity is still a felony crime with various legal consequences;

- Enforce both criminal and civil penalties against any marijuana establishment that knowingly or negligently is found to be involved in selling large amounts of marijuana to those who travel out of state; and
- Monitor the impact of marijuana being transported out of state.

There was no dissent on the recommendation.

Revenue for Public Safety

The Task Force recommends that the Department of Taxation and each locality be required to develop a plan outlining how the revenue collected from retail marijuana will be used to carry out the implementation of Question 2 with a priority on public safety and law enforcement.

Local impacts include responding to complaints, allegations of criminal conduct and crimes directed at the industry and dealing with crimes occurring outside of industry related to retail marijuana. These impacts will require additional police resources, investigators, training requirements and purchase of equipment.

There was Task Force dissent on the recommendation. Dissent was related to how the revenue from marijuana legalization is spent should be the decision of the local jurisdiction.

Dispensing Machines

The Task Force recommends prohibiting marijuana products from being dispensed from self-service vending machines. This recommendation ensures that direct sales of marijuana products are made between the consumer and a retail marijuana establishment sales person to allow for verification of the identity and age of the buyer. This will assist with keeping marijuana products out of the hands of juveniles and allow the retail sales person to have direct contact with a consumer, answer questions and determine if the sale is appropriate.

The Nevada Legislature would need to prohibit self-service vending machines that dispense marijuana products in statute.

There was no dissent on the recommendation.

Banking

The Task Force recommends that the Legislature consider passing a bill that provides financial institutions protection from criminal liability for providing financial services to licensed marijuana businesses. It should also allow the agency to share registrant/licensee information with state banks if they request it. While the legislation would protect banks from what would have been violations of state banking law, the effect would be minimal

because federal banking laws largely govern these institutions. The Task Force also recommends that the State of Nevada allow credit unions with state charters to provide services to marijuana businesses in Nevada.

There was no dissent on the recommendation.

Clean Air Act

The Task Force recommends that marijuana smoke be included in the Nevada Clean Indoor Air Act. The recommendation would provide for safer and healthier indoor air in businesses and public areas. This recommendation would require legislative action.

There was no dissent on the recommendation.

Edible Marijuana

The Task Force recommends that changes be made in Nevada Revised Statute language authorizing the health authorities in Nevada to regulate the production and labeling of edible marijuana products for safety of consumption. Each regulatory authority (Carson City Health and Human Services, Washoe County Health District, the Division of Public and Behavioral Health, and the Southern Nevada Health District) needs to develop and have approved regulations consistent with their current authorities and regulations related to edible marijuana. This includes both medical and retail marijuana products.

Nevada Revised Statutes will need to be addressed to authorize the health authorities to create regulations.

There was no dissent on the recommendation.

Health and Safety – Medical and Clinical Issues

The Task Force recommends that steps be taken to resolve health and safety issues of consumers by encouraging medical professionals and healthcare providers to bring forward issues created by the legalization of retail marijuana that need to be considered. Examples include:

- Treatment programs for individuals needing substance abuse treatment will need to be assessed to ensure they will meet the needs of the state once retail marijuana sales begin;
- Poison control centers will need to be made aware of intoxication issues and where access to professional expertise exists;
- Medical providers will need to consider incorporating THC levels into routine patient blood work for chronic users; and
- A website will need to be created as an information repository with appropriate links to research articles and relevant links to health, treatment and outcomes.

There was no dissent on the recommendation.

Workers Compensation

This Task Force recommends that the state address the rules and regulations about ensuring worker's compensation and employer/employee safety as they pertain to the legalization of retail marijuana. This recommendation addresses workplace injuries and possible denial of coverage on claims. The following should be addressed:

- Providing updates to Nevada Revised Statute language regarding denial of insurance claims for employees working under the influence of marijuana or those injured by others under the influence of marijuana; and
- Outlining responsibilities of worker's compensation carriers, private insurance carriers and health care providers in regards to workman's compensation benefits which may be denied, reduced or suspended based on evidence of and examination for use of controlled substances.

There was no dissent on the recommendation.

Appendices

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A. Question 2

INITIATIVE TO REGULATE AND TAX MARIJUANA

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Sec. 1. Short Title. Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.

Sec. 2. Preamble. In the interest of the public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.

The People of the State of Nevada declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and to the enforcement of the regulations in this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

(a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;

(b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;

(c) Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;

(d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;

(e) Individuals will have to be 21 years of age or older to purchase marijuana;

(f) Driving under the influence of marijuana will remain illegal; and

(g) Marijuana sold in the state will be tested and labeled.

Sec. 3. Definitions. As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:

1. "Community facility" means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. "Concentrated marijuana" means the separated resin, whether crude or purified, obtained from marijuana.

3. "Consumer" means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. "Department" means the Department of Taxation.

5. "Dual Licensee" means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to Chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. "Excluded felony offense" means a conviction of an offense that would constitute a category A felony if committed in Nevada or conviction for two or more offenses that would constitute felonies if committed in Nevada. "Excluded felony offense" does not include:

(a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or

(b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to Chapter 453A of NRS, except that the conduct occurred before the effective date of Chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.

7. "Locality" means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

8. "Marijuana" means all parts of any plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include:

(a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. "Marijuana cultivation facility" means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

10. "Marijuana distributor" means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

11. "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.

12. "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

13. "Marijuana products" means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

14. "Marijuana paraphernalia" means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

15. "Marijuana testing facility" means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

16. "Process" means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. "Public place" means an area to which the public is invited or in which the public is permitted, regardless of age. "Public place" does not include a retail marijuana store.

18. "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.

19. "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Sec. 4. Limitations. 1. Sections 1 to 18 do not permit any person to engage in, and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to Chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act.

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of Chapter 453A of NRS relating to the medical use of marijuana.

Sec. 5. **Powers and duties of the Department.** 1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18,

inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

(b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(c) Requirements for the security of marijuana establishments;

(d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.

3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of Chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.

4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 of 18, inclusive, of this act or to Chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.

5. To ensure that individual privacy is protected:

(c) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and

(d) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. Personal Use and Cultivation of Marijuana. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;

2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:

(a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and

(b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;

3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or

4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. Marijuana Paraphernalia Authorized. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

Sec. 8. Lawful operation of marijuana establishments. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting

the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.

2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.

3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.

4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.

5. Possess, process, repackage, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.

6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. Contracts pertaining to marijuana enforceable. It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Sec. 10. Certification of marijuana establishments. 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act, from persons holding a medical marijuana establishment registration certificate pursuant to Chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to Chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

3. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;

(b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;

(c) The property is not located within:

(1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) 80 licenses already issued in a county with a population greater than 700,000;

(2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) 2 licenses already issued in a county with a population that is less than 55,000;

(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. Competing applications. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall use an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. Expiration and renewal. 1. All licenses expire one year after the date of issue.

2. The Department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if the license is not under suspension or has not been revoked.

Sec. 12. Fee schedule. 1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of $5,000.

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store $20,000

For a renewal license for a retail marijuana store $6,600

For the initial issuance of a license for a marijuana cultivation facility $30,000

For a renewal license for a marijuana cultivation facility $10,000

For the initial issuance of a license for a marijuana product manufacturing facility $10,000

For a renewal license for a marijuana product manufacturing facility $3,300

For the initial issuance of a license for a marijuana distributor $15,000

For a renewal license for a marijuana distributor $5,000

For the initial issuance of a license for a marijuana testing facility $15,000

For a renewal license for a marijuana testing facility $5,000

Sec. 13. Marijuana establishment operating requirements. In addition to requirements established by rule pursuant to section 5 of this act:

1. Marijuana establishments shall:

(a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;

(b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;

(c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

Sec. 14. Penalties. 1. Restrictions on personal cultivation.

(a) Except as otherwise provided in 453A of NRS, any person who:

(1) Cultivates marijuana plants within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;

(2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or

(3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property,

(b) Is guilty of:

(1) For a first violation, a misdemeanor punished by a fine of not more than $600.

(2) For a second violation, a misdemeanor punished by a fine of not more than $1,000.

(3) For a third violation, a gross misdemeanor.

(4) For a fourth or subsequent violation, a category E felony.

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than $600.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than $500 unless the person is authorized to possess marijuana pursuant to Chapter 453A NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by Chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. Marijuana excise tax. 1. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

(a) Is the obligation of the marijuana cultivation facility; and

(b) Is separate from and in addition to any general sales and local sales and use taxes that apply to retail sales of tangible personal property.

Sec. 16. Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. Severability. If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 18. Effective Date. This act shall become effective on October 1, 2015 if approved by the legislature, or on January 1, 2017 if approved by the voters.

- See more at: https://www.regulatemarijuananevada.org/fifth-initiative-text/#sthash.3BEetb9p.dpuf

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B. Executive Order

State of Nevada

Executive Department

Executive Order 2017-02

ORDER ESTABLISHING A TASK FORCE ON THE IMPLEMENTATION OF BALLOT QUESTION 2: THE REGULATION AND TAXATION OF MARIJUANA ACT

WHEREAS, on November 8, 2016, the voters of the State of Nevada approved Ballot Question 2: The Regulation and Taxation of Marijuana Act (the "Act"), declaring that "the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses" and providing for the regulation of marijuana so that:

a. Marijuana may only be purchased from a business that is licensed by the State of Nevada;

b. Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;

c. Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;

d. Selling or giving marijuana to persons under 21 years of age shall remain illegal;

e. Individuals must be 21 years of age or older to purchase marijuana;

f. Driving under the influence of marijuana will remain illegal;

g. Marijuana sold in the state will be tested and labeled;

WHEREAS, The Act directs the Nevada Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of the Act, including accepting applications and issuing licenses for marijuana establishments, not later than 12 months after the effective date of the Act;

WHEREAS, The Act took effect on January 1, 2017; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides that, "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada."

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of Nevada, I hereby direct and order as follows:

1. The Task Force on the Implementation of Ballot Question 2: The Regulation and Taxation of Marijuana Act (the "Task Force") is hereby established.

2. Members of the Task Force shall be appointed by and serve at the pleasure of the Governor, and shall be comprised as follows:

   - The Executive Director of the Nevada Department of Taxation
   - The Director of the Department of Health and Human Services
   - One member nominated by the Majority Leader of the Nevada State Senate
   - One member nominated by the Minority Leader of the Nevada State Senate
   - One member nominated by the Speaker of the Nevada State Assembly
   - One member nominated by the Minority Leader of the Nevada State Assembly
   - The Director of the Department of Public Safety, or his designee
   - The Director of the Department of Agriculture, or his designee
   - The Nevada Chief Medical Officer
   - A representative of the Nevada League of Cities & Municipalities
   - A representative of the Nevada Association of Counties

- A representative of the Nevada Medical Marijuana Program.
- A member of the general public from a Nevada county with a population of less than 250,000.
- Two representatives from local law enforcement agencies.
- Two representatives of local social service agencies.
- Two representatives of the medical marijuana industry.

3. The Executive Director of the Nevada Department of Taxation is appointed to Chair the Task Force.

4. One of the two representatives from local law enforcement will be appointed Vice Chair of the Task Force.

5. The Chair will have the ability to issue guidelines for operation of the Task Force and amend those guidelines as needed. The Task Force Chair may form and appoint working groups, chaired by one or more members of the Task Force and composed of persons with subject matter expertise, to aid it in its work. The Task Force Chair will identify and approve the scope of work and issues for the Task Force and working groups.

6. The Task Force's mission shall be to identify the legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative, regulatory, and executive actions that need to be taken for the effective and efficient implementation of the Act.

7. The issues that the Task Force shall address include, but are not limited to:

   A. The need to amend current laws regarding the possession, sale, distribution or transfer of marijuana and marijuana products to conform them to Ballot Question 2: The Regulation and Taxation of Marijuana Act's decriminalization provisions, including, but not limited to, laws related to:
      i. Possession of drug paraphernalia;
      ii. Possession of marijuana; and
      iii. Marijuana cultivation.

   B. The possible need for new statutes, including, but not limited to, laws related to:
      i. Marijuana testing facilities;
      ii. Marijuana product manufacturing facilities;
      iii. Marijuana retail facilities;
      iv. Time, place, and manner restrictions for marijuana consumption, including conforming to existing non-smoking laws;
      v. Possession of marijuana in correctional facilities;
      vi. Driving while under the influence of and/or impaired by marijuana; and
      vii. Increased penalties for selling marijuana products outside of the system allowed by Nevada law.

   C. The need for new regulations, including, but not limited to, those related to:
      i. Procedures for issuing, renewing, suspending, and revoking a license to operate a marijuana establishment;
      ii. A schedule of application, licensing, and renewal fees;
      iii. Qualifications for a license that are related to operating a marijuana establishment;
      iv. Security requirements for marijuana establishments;
      v. Labeling requirements;
      vi. Health and safety standards for the manufacture of marijuana products, including food, and the cultivation of marijuana;
      vii. Restrictions on advertising and display of marijuana and marijuana products; and
      viii. Penalties for noncompliance with regulations.

   D. Education regarding long-term health effects of marijuana use and harmful effects of marijuana use by those under the age of 18.

   E. Reconciliation of Nevada and Federal laws such that the new laws and regulations do not subject Nevada state and local governments and state and local government employees to prosecution by the federal government.

   F. The effect of the Act on employers, employees, and the Nevada economy

8. The Task Force shall explore any and all options that address the preceding issues and help clarify and/or better coordinate state and local government implementation of the Act. Such options examined shall include, but are not limited to:

   A. Memorandums of agreement, intergovernmental agreements, and letters of cooperation and consent between the state and any other jurisdiction;

B. Changes to existing laws or regulations; and

C. New laws and regulations.

9. Members of the Task Force shall receive no compensation for their service.

10. The Task Force shall meet at the discretion and direction of the Chair.

11. The Department of Taxation shall provide the administrative support for the Task Force.

12. All meetings of the Task Force and any working groups of the Task Force shall be subject to the Open Meeting Law, as codified in NRS Chapter 241. The Task Force shall endeavor to solicit public comment as part of its consideration of the policy, legal, and procedural issues that need to be resolved to implement the Act. To the extent it deems appropriate, the Task Force shall incorporate the public input it receives into its recommendations and findings.

13. All records documenting the Task Force's activities shall be retained and furnished to the State Archives for permanent retention in accordance with the State record retention policy.

14. This Executive Order shall continue in existence until the Task Force reports its recommendations and findings to the Governor, but no later than May 30, 2017, unless it is either terminated earlier or extended beyond that date by further Executive Order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 3rd day of February, in the year two thousand seventeen.

Governor of the State of Nevada

By the Governor:

Barbara K. Cegavske

Secretary of State

Deputy Secretary of State

C. Task Force and Working Group Membership

Task Force Membership	
Member	**Affiliation**
Deonne Contine, Executive Director Nevada Department of Taxation Chair of the Task Force	Executive Director of the Nevada Department of Taxation
Chuck Callaway, Director of Office of Intergovernmental Services, Las Vegas Metropolitan Police Department Co-Chair of the Task Force	Representative from Local Law Enforcement
Richard Whitley, Executive Director Nevada Department of Health and Human Services	Director of the Department of Health and Human Services
Richard "Tick" Segerblom, Senator Nevada State Senate	Member nominated by the Majority Leader of the Nevada State Senate
Joe Hardy, Senator Nevada State Senate	Member nominated by the Minority Leader of the Nevada State Senate
Nelson Araujo, Assemblyman Nevada State Assembly	Member nominated by the Speaker of the Nevada State Assembly
Jill Tolles, Assemblywoman Nevada State Assembly	Member nominated by the Minority Leader of the Nevada State Assembly
James Wright, Executive Director Nevada Department of Public Safety	Director of the Department of Public Safety
Lynn Hettrick, Division Administrator Nevada Department of Agriculture	Director of the Department of Agriculture
Dr. John M. DiMuro, DO Nevada Chief Medical Officer Nevada Department of Health and Human Services	Nevada Chief Medical Officer
Wes Henderson, Executive Director Nevada League of Cities and Municipalities	Representative from the Nevada League of Cities and Municipalities
Dagny Stapleton, Deputy Director Nevada Association of Counties	Representative of the Nevada Association of Counties
Joe Pollock, Deputy Administrator Nevada Division of Public and Behavior Health, Medical Marijuana Program	Representative of the Nevada Medical Marijuana Program
Andrea Zeller, Executive Director Churchill Community Coalition	A member of the general public from a Nevada County with a population of less than 200,000
Tom Robinson, Deputy Chief Reno Police Department	Representative from Local Law Enforcement
Kevin Schiller, Assistant County Manager Washoe County	Representative from Local Social Services Agency
Michael Pawlak, Director Clark County Social Services	Representative from Local Social Services Agency

Task Force Membership	
Member	Affiliation
John Ritter, Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Representative from the Medical Marijuana Industry
Alec Garcia, Managing Partner 374 Labs	Representative from the Medical Marijuana Industry

Working Group - Law Enforcement		
Name	Affiliation	Interests Represented
James Wright	Executive Director, Nevada Department of Public Safety	Law Enforcement
Nelson Araujo	Nevada Assembly	Nevada Legislature - Assembly
Jill Tolles	Nevada Assembly	Nevada Legislature - Assembly
Chuck Callaway	Las Vegas Metropolitan Police Department	Law Enforcement
Brian Sooudi	Assistant City Attorney, City of Reno	Local Government
Terry Johnson	Nevada Gaming Control Board	Gaming
Mark James	CannaCopia Las Vegas	Marijuana Industry
Mike Allen	Sheriff, Humboldt County	Law Enforcement
Josh Cheney	Deputy Sheriff, Carson City Sheriff's Office	Law Enforcement
Todd Raybuck	Las Vegas Metropolitan Police Department	Law Enforcement
Keith Carter	Director, High Intensity Drug Trafficking Area	Law Enforcement
Tina Talim	Deputy District Attorney, Clark County	District Attorney
Adam Page	Captain, Nevada Department of Public Safety, Nevada Highway Patrol	Law Enforcement
Demetri Kouretas	CEO, The Grove	Marijuana Industry
Pamela Del Porto	Inspector General, Nevada Department of Corrections	Corrections
John Piro	Clark County Public Defender	Public Defender
Maggie McLetchie	McLetchie Shell LLC	Attorney
Riana Durrett	Executive Director, Nevada Dispensary Association	Marijuana Industry

Working Group - Operations Retail		
Name	Affiliation	Interests Represented
Wes Henderson	Executive Director, Nevada League of Cities & Municipalities	Local Government
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Riana Durrett	Executive Director, Nevada Dispensary Association	Marijuana Industry
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Karalin Cronkhite	Program Supervisor (Auditor), Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Vince Queano	Special Agent, Clark County	Local Government
Paulina Oliver	Deputy Executive Director, Nevada Department of Taxation	Department of Taxation
Jennifer DeLett-Snyder	Join Together Northern Nevada (JTNN)	Substance Abuse Prevention
Andrew Jolley	President, Nevada Dispensary Association, The Source	Marijuana Industry
Mona Lisa Samuelson	Marijuana Patient Advocate	Member of the Public
Tommy Rayl	Marijuana Non-Consumer	Member of the Public

Working Group – Cultivation		
Name	Affiliation	Interests Represented
Lynn Hettrick	Division Administrator, Nevada Department of Agriculture	Department of Agriculture
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Amanda Connor	Attorney at Connor & Connor PLLC	Marijuana Industry
David Standard	Director of Cultivation, Deep Roots Harvest	Marijuana Industry
Dan Schinhofen	Commissioner, Nye County	Local Government
Tessa Rognier	Compliance Officer, Nevada Department of Agriculture	Department of Agriculture
Patricia Farley	Nevada Senate	Nevada Legislature –Senate
Mike Stewart	Police Officer, Reno Police Department	Law Enforcement
Maria Wilson	Vegas Valley Growers	Marijuana Industry
Jason Strull	Lab Director, 374 Labs	Marijuana Industry
Armen Yemenidjian	Integral Associates II	Marijuana Industry
Wes Henderson	Executive Director, Nevada League of Cities & Municipalities	Local Government

Working Group - Production / Manufacturing		
Name	Affiliation	Interests Represented
Tom Robinson	Deputy Chief, Reno Police Department	Law Enforcement
Andrea Zeller	Executive Director, Churchill Community Coalition	Member of the Public from a County with Less than 200,000
Bill Erlach	Reno Fire Department	First Responders
Jennifer Lazovich	Lawyer and Partner with Kaempfer Crowell	Land Use, Zoning, Legislative Affairs and Marijuana
Chad Westom	Health Bureau Chief, Nevada Division of Public and Behavioral Heath, Medical Marijuana Program	Medical Marijuana Program
Bryan Hyun	Production Manager and Owner of The Grove	Marijuana Industry
Amber Howell	Director of Social Services, Washoe County	Social Services
Kelly Zaugg	DB Labs	Marijuana Industry
Jake Ward	President, Pure Tonic Concentrates	Marijuana Industry
Meg Collins	Good Chemistry	Marijuana Industry
Anna Thornley	Deputy Executive Director, Nevada Department of Taxation	Department of Taxation
Alex Woodley	Director of Code Enforcement, City of Reno	Law Enforcement

Working Group – Labs		
Name	Affiliation	Interests Represented
Alec Garcia	374 Labs	Marijuana Industry
Lynn Hettrick	Division Administrator, Nevada Department of Agriculture	Department of Agriculture
Ed Alexander	ILAC - Grow Washoe	Marijuana Industry
Jorge Pupo	Revenue Tax Manager, Nevada Department of Taxation	Department of Taxation
Darin Carpenter	Director of Cultivation, TRYKE	Marijuana Industry
Sarah Chapman	President, Nye County Consultants Association	Marijuana Industry
Shane Johnson	SJ3D Holdings, Inc.	Marijuana Industry
Allison Gigante	Assistant Operations Manager, Clark County Business License Division	Local Government
Darryl Johnson, Ph.D.	Scientific Laboratory Director, Ace Analytical	Marijuana Industry
Benjamin Chew, Ph.D.	Scientific Laboratory Director, MM Lab, Inc.	Marijuana Industry
Sharryn Cohen	Operating Chemist, Nevada Department of Agriculture	Department of Agriculture
David L. Grenz	Microbiologist III, Nevada Department of Agriculture	Department of Agriculture

Working Group - Transportation, Storage and Disposal		
Name	Affiliation	Interests Represented
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Tom Robinson	Deputy Chief, Reno Police Department	Law Enforcement
Nelson Araujo	Nevada Assembly	Nevada Legislature - Assembly
Joe Pollock	Deputy Administrator, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Mike Harwell	Compliance and Disposal, Clark County	Local Government
David Witkowski	Inspector, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Bob Brown	Director of Security and Transportation, Deep Roots Harvest	Marijuana Industry
Shellie Hughes	Chief Deputy Director, Nevada Department of Taxation	Department of Taxation
Margaret (Peggy) Arquilla	President, West Coast Wine and Spirits	Liquor Wholesaler
Tim Conder	Blackbird Transportation	Transportation / Marijuana Industry
Brett Scolari	General Counsel, Director of Government and Regulatory Affairs, TRYKE	Marijuana Industry
Kurt Brown	Capital Beverages, Inc.	Liquor Wholesaler

Working Group - Taxation/ Revenue/ Regulatory Structure		
Name	Affiliation	Interests Represented
Joe Pollock	Deputy Administrator, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Dagny Stapleton	Deputy Director, Nevada Association of Counties	Local Government
Jacqueline Holloway	Director of Business License Development, Clark County	Local Government
Neil Krutz	Assistant City Manager, City of Sparks	Local Government
Steve Gilbert	Program Manager, Nevada Division of Public and Behavioral Health, Medical Marijuana Program	Medical Marijuana Program
Marla McDade-Williams	Strategies 360	Marijuana Industry
Deonne Contine	Executive Director, Nevada Department of Taxation	Department of Taxation
John Ritter	Board Member, Nevada Dispensary Association and Advisory Board Member, The Grove	Marijuana Industry
Amanda Connor	Attorney at Connor & Connor PLLC – Marijuana law	Marijuana Industry
Kenny Furlong	Carson City Sheriff	Law Enforcement
David Goldwater	Member, Nevada Dispensary Association	Marijuana Industry
Jennifer Wilcox	Essence Marijuana Dispensary	Marijuana Industry
Karen Abowd	Carson City Board of Supervisors, Taxation	Local Government

Working Group - Consumer Safety, Education and Health		
Name	Affiliation	Interests Represented
Richard Whitley	Executive Director, Nevada Department of Health and Human Services	Medical Marijuana Program
Michael Pawlak	Director, Clark County Social Services	Social Services
Dr. John DiMuro	Chief Medical Officer, Nevada Department of Health and Human Services	Public Health
Dr. Joe Hardy	Nevada Senate	Nevada Legislature - Senate
Kevin Schiller	Assistant County Manager, Washoe County	Local Government
Linda Lang	Nevada Statewide Coalition Partnership	Substance Abuse Resources
Michelle Berry	Center for the Application of Substance Abuse Technologies (CASAT)	Substance Abuse Resources
Dr. Joseph Iser	Chief Health Officer, Southern Nevada Health District	Environmental Health
Jen Solas	Wellness Education Cannabis Advocates of Nevada	Marijuana Education
Shannon Ernst	Director of Social Services, Churchill County	Social Services
Dr. John Packham	Director of Health Policy Research, UNR School of Medicine	Rural Health
Shane Johnson	SJ3D Holdings, Inc.	Marijuana Industry

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D. Task Force Recommendations

The Working groups developed recommendations with the aid of a common form to ensure that the format would be consistent for presentation to the Task Force. The form included the following sections:

- Working group name;
- Individual sponsor(s);
- Description of the recommendation;
- Which guiding principle(s) the recommendation supported;
- What provision(s) of Question 2 the recommendation applied to;
- What issue(s) the recommendation resolved;
- Summary of the dissenting opinion regarding the recommendation, if any;
- Action(s) necessary to adopt the recommendation, specifically noting if statute, policy or regulations would need to be addressed; and
- Any additional information (cost of implementation, priority per the recommendations, etc.).

Where language changes to existing Nevada Revised Statute or Nevada Administrative Code language were proposed, the changes to current language were reflected in red on the recommendation. New language was also reflected in red for the ease of Task Force review.

The process for discussion and approval of recommendations was also considered and approved by the Task Force so that it would remain consistent for all working groups. The working groups met separately from the Task Force to discuss topics, issues and questions for consideration. Upon reaching consensus or majority opinion, the working groups forwarded their recommendations to QuantumMark to ensure each section was filled out appropriately. The recommendations were then forwarded to the Task Force for further discussion and final approval. When the working groups occasionally disagreed on the recommendation, explanations of the dissenting viewpoints were included. Based on Task Force discussion, the recommendation was either approved for the final report or modifications were requested from the working group. The working groups then presented the modified recommendations to the Task Force. In total, the Task Force approved 73 recommendations.

Full documentation of the recommendations of the Task Force is included in this appendix.

Regulatory Structure

Regulatory Organizational Structure

1. **Working group name:**

   Cultivation Working Group

2. **Individual sponsor(s):**

   Lynn Hettrick – Division Administrator - Nevada Department of Agriculture
   Tessa Rognier – Agriculturist III - Nevada Department of Agriculture

3. **Describe the recommendation:**

   The cultivation working group recommends that NRS 453A and NAC 453A be used as the regulatory foundation for both Medical and Recreational marijuana programs, and the program to be administered by the Department of Taxation.

4. **Which guiding principle(s) does this recommendation support?**

   Guiding Principle 1 - Promote the health, safety, and well-being of Nevada's communities

   Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

   Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state and federal levels), consumers, and licensees are predictable and understandable

   Guiding Principle 7 - Take action that is faithful to the text of Question 2

5. **What provision(s) of Question 2 does this recommendation apply to?**

   The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

   a) Marijuana may only be purchased from a business that is licensed by the State of Nevada;
   b) Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;
   c) Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation; and
   g) Marijuana sold in the state will be tested and labeled

6. **What issue(s) does the recommendation resolve?**

   Cultivation Standards, licensing, testing and enforcement

7. **Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.**

   No dissent

8. **What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?**

   Statute and regulations will need to be amended to consolidate all marijuana authority under the Department of Taxation and to address outdoor cultivation.

9. **Additional information (cost of implementation, priority according to the recommendations, etc.).**

   None

Transfer of Medical Program to Department of Taxation

1. **Working group name:**

   Retail Establishments

2. **Individual sponsor(s):**

   Riana Durrett, Executive Director, Nevada Dispensary Association

3. **Describe the recommendation:**

   The Operations-Retail Establishment working group recommends that Nevada Legislature transfer the responsibility for regulating the Nevada medical marijuana program from the Department of Health and Human Services to the Department of Taxation. The working group recommends that the Nevada Legislature enact any necessary legislation to transfer the duties, responsibilities, and budgets relating to medical marijuana from Department of Health Human Services to the Department of Taxation during the 2017 regular legislative session.

4. **Which guiding principle(s) does this recommendation support?**

   Guiding Principle 2 - Be responsive to the needs and issues of consumers, non-consumers, local governments, and the industry

   Guiding Principle 4 - Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome

   Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state, and federal levels), consumers, and licensees are predictable and understandable.

5. **What provision(s) of Question 2 does this recommendation apply to?**

   This recommendation pertains to the mandate under Question 2 that the Department of Taxation regulate marijuana establishments and retail marijuana. This mandate creates two different regulatory structures and state departments when they are both essentially regulating the same product.

6. **What issue(s) does the recommendation resolve?**

   This recommendation would resolve inefficiencies created by regulation of medical and retail marijuana by two different state Departments. Oregon and Colorado officials in their departments of health and taxation have advised Nevada officials to avoid regulation of medical and retail under two different departments. Regulation by two different departments creates unnecessary inefficiencies, wastes State resources, and causes confusion as to which department is responsible for enforcement of certain issues.