IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV LLC, a Nevada Limited Liability Company; NEVADA ORGANIC REMEDIES, LLC; and LONE MOUNTANT PARTNERS, LLC,

Appellants,

vs.

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

Respondents.

Supreme Court Case No.: 79668

District Court Case No.: A-19-786962-B

RESPONDENTS' ANSWERING BRIEF
(regarding Lone Mountain Partners, LLC's Opening Brief)

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(**less** the State of Nevada, Department of Taxation)

NRAP 26.1 DISCLOSURE

This NRAP 26.1 Disclosure is made in connection with the following Respondents: SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company, TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company, TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, GBS NEVADA PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company, NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada limited liability company; and MEDIFARM, IV LLC, a Nevada limited liability company (collectively the "Serenity Applicants").

The undersigned attorney of record certifies that the following are person and entities as described in NRAP 26.1(a). These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.[1]

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[1]PARADISE WELLNESS CENTER, LLC, a Nevada limited liability company ("PWC"), is listed in the caption as a Respondent. However, at a hearing on July 2, 2019, in case number A-19-786962-B, in connection with the underlying Plaintiffs' motion for leave to file a first amended complaint, the district court granted PWC leave to withdraw as a Plaintiff.

1. SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company is owned 100% by Alternative Solutions, LLC, which is owned 100% by CLS Holdings USA, Inc., a public company.

2. TGIG, LLC, a Nevada limited liability company is 63.12% owned by Core TGLV, Kouretas Capital LLC is 16.88% owner of TGIG, LLC, and Kouretas Management LLC is 20% owner of TGIG.

3. NULEAF INCLINE DISPENSARY, LLC, a Nevada limited liability company is 100% owned by Nuleaf, Inc. Nuleaf Capital Investors Group, LLC is 55% owner of Nuleaf, Inc. Nuleaf Operators, LLC is 45% owner of Nuleaf, Inc.

4. NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited liability company. It has no parent corporations and no publicly held company owns 10% or more of its stock.

5. TRYKE COMPANIES SO NV, LLC a Nevada limited liability company is 100% owned by Seacoast Investments Fund II, LLC. Seacoast Fund II, LLC is the 100% owner of Seacoast Investments Fund II, LLC. TH Fund II, LLC is the 100% owner of Seacoast Fund II, LLC. Thomas F Ryan 2008 Revocable Trust is 84% owner of TH Fund II, LLC. The Ryan Family 2011 Irrevocable Trust is 15% owner of TH Fund II, LLC. Thomas F. Ryan Qualified Annuity Trust #1 is 1% owner of TH Fund II, LLC.

6. TRYKE COMPANIES RENO, LLC, a Nevada limited liability company is 100% owned by Seacoast Investments Fund II, LLC. Seacoast Fund II, LLC is the 100% owner of Seacoast Investments Fund II, LLC. TH Fund II, LLC is the 100% owner of Seacoast Fund II, LLC. Thomas F Ryan 2008 Revocable Trust is 84% owner of TH Fund II, LLC. The Ryan Family 2011 Irrevocable Trust is 15% owner of TH Fund II, LLC. Thomas F. Ryan Qualified Annuity Trust #1 is 1% owner of TH Fund II, LLC.

7. GBS NEVADA PARTNERS, LLC, a Nevada limited liability company is 15.450% owned by MMJ Investment Facility, LLC, 24.850% owned by Hammermeister NV, LLC, 24.850% owned by The Meservey Family Trust, 24.850% owned by Greenacre Trust, and 10% owned by 483 Management, LLC.

8. FIDELIS HOLDINGS, LLC, a Nevada limited liability company. It has no parent corporations and no publicly held company owns 10% or more of its stock.

9. GRAVITAS NEVADA, LLC, a Nevada limited liability company is 60% owned by Green Ache'rs Consulting Limits and 40% owned by Verdant Nevada LLC.

10. NEVADA PURE, LLC, a Nevada limited liability company. It has no parent corporations and no publicly held company owns 10% or more of its stock.

11. MEDIFARM, LLC, a Nevada limited liability company is 100% owned by Terra Tech Corp.

12. MEDIFARM, IV LLC, a Nevada limited liability company is 100% owned by Terra Tech Corp.

The following law firms have appeared for the Serenity Applicants at the district court: Gentile, Cristalli, Miller, Armeni & Savarese, PLLC, and Clark Hill, PLLC.

The following attorneys have appeared for the Serenity Applicants at the district court: Dominic Gentile, Esq., Michael Cristalli, Esq., Ross Miller, Esq., Vincent Savarese, III, and John A. Hunt, Esq.

The following law firms have or are expected to appear for the Serenity Applicants in this matter before this Court: Clark Hill, PLLC.

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The following attorneys have or are expected to appear for the Serenity Applicants in this matter before this Court: Dominic Gentile, Esq., Ross Miller, Esq., and John A. Hunt, Esq.

Respectfully submitted this 6th day of March, 2020.

CLARK HILL, PLLC

By: /s/ *John A. Hunt*

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I.
SUMMARY OF THE ARGUMENT

The initiative to legalize recreation marijuana, Ballot Question 2 ("BQ2") was enacted by the Nevada Legislature and codified at NRS 453D. BQ2 specifically identified regulatory and public safety concerns and one of the mechanisms to address those safety concerns was the mandatory language set forth in NRS 453D.200(6), which requires the State of Nevada, Department of Taxation ("DoT") to conduct a background check "of each prospective owner, officer, and board member of a marijuana establishment license applicant." Instead of carrying out the voters' mandate, the DoT adopted a regulation limiting the background check to any owner with a five percent (5%) or greater interest.

Nuleaf CLV Dispensary, LLC v. State Dept't of Health & Human Servs., Div. of Pub. & Behavior Health, 134 Nev. 129, 414 P.3d 305 (2018), is inapplicable because of fundamental factual differences and differing statutory requirements involved here and in Nuleaf. As a consequence, Appellant, Lone Mountain Partners, LLC's ("Lone Mountain") reliance upon Nuleaf for its argument NRS 453D.200(6)'s requirements for licensure should be required only by the time of final licensure, not by the time a provision license is issued, is misplaced and should be rejected.

The district court properly addressed NRS 453D.200(6), notwithstanding Lone Mountain's argument DoT's interpretation of NRS 453D.200(6) deserves

great deference. The district court properly found the "The DoT did not comply with BQ2 by requiring applicants to provide information for each prospective owner, officer and board member or verify the ownership of applicants applying for retail recreational marijuana licenses. Instead, the DoT issued conditional licenses to applicants who did not identify each prospective owner, officer and board member[]." See *Findings of Fact and Conclusions of Law Granting Preliminary Injunction* ("FFCL"), ¶ 47, at 22 AA 5292:9-12 (footnote omitted)[2]. The district court correctly recognized that initiative petitions must be kept intact "otherwise, the people's voice would be obstructed." See FFCL, 22 AA 005295, ¶ 64 (quoting Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034, 1039-40 (2001)). Further, the district court similarly correctly found that the DoT did not have the authority to legislate amendments because BQ2 was initiative legislation. Id., FFCL, at ¶ 65.

Contrary to Lone Mountain's contention, the district court's ruling regarding NRS 453D.200(6) does not lead to an absurd result. The district court correctly noted, BQ2 specifically identified regulatory and public safety concerns. Given the lack of robust investigative process for applicants, the requirement of the background check for each prospective owner, officer and board member as part of

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[2] Citation to "AA" is to the Appellants' Appendix documents filed on or about January 10, 2020, by Appellant, Nevada Organic Remedies.

the application process facilitates the important public safety goal in BQ2. See, FFCL, 22 AA 005292, ¶ 45. Without question, conducting a thorough background check of each prospective owner, officer and board member was the only way the DoT could ensure it prevented the infiltration of criminals and criminal organizations into Nevada's regulated marijuana market application process. Accordingly, Lone Mountain's argument regarding the district court's ruling regarding NRS 453D.200(6) providing for an absurd result is without merit.

Lone Mountain's contention to district court abused its discretion by basing the preliminary injunction on alleged unauthenticated hearsay should be rejected or not considered because Lone Mountain's Opening Brief fails to cite any portion of the record where it raised any hearsay objection at the district court to the DoT's submission regarding completeness of applications in compliance with NRS 455D.200(6), i.e., the district court's Exhibit 3. Lone Mountain's failure to raise any such hearsay objection at the district court bars review of this issue in this appeal.

In light of Lone Mountain's failure to raise hearsay objections at the district court and when combined with Lone Mountain's recognition of DoT's duty to assess completeness of applications in compliance with NRS 453D,200(6) – which is what the district court's Exhibit 3 represents -- Lone Mountain's argument the

preliminary injunction rests upon inadmissible hearsay is without merit, should be rejected, and, therefore, the district court's FFCL should be upheld.

II.
ARGUMENT

1. Contrary to Lone Mountain Partner's contentions, the district court's application of NRS 453D.200(6) was proper and not contradicted by *Nuleaf.*

For its first argument, Lone Mountain contends the district court's preliminary injunction contradicts NRS 453D.200(6) and Nuleaf CLV Dispensary, LLC v. State Dept't of Health & Human Servs., Div. of Pub. & Behavior Health, 134 Nev. 129, 414 P.3d 305 (2018) ("Nuleaf"). See Opening Brief, pgs. 17-21. As more fully addressed below, Lone Mountain's contentions are misplaced.

The district court on August 23, 2019, issued a preliminary injunction with the filing of its *Findings of Fact and Conclusions of Law Granting Preliminary Injunction* ("FFCL"). 22 AA 5277-5300. It runs for twenty-four (24) pages and includes at least ninety-one (91) numbered paragraphs of findings of fact and conclusions of law. Id.

The district court's findings of fact as contained in its FFCL provide, in part, as follows with respect to NRS 453D.200(6).

> 36. **NAC 453D.272(1) required the DoT to determine that an Application is "complete and in compliance"** with the provisions of NAC 453D in order to properly apply the licensing criteria set forth therein and the provisions of the Ballot Initiative and the enabling statute.

37. **When the DoT received applications, it undertook no effort to determine if the applications were in fact "complete and in compliance."**

38. **In evaluating whether an application was "complete and in compliance" the DoT made no effort to verify owners, officers or board members** (except for checking whether a transfer request was made and remained pending before the DoT).

39. For purposes of grading the applicant's organizational structure and diversity, if an applicant's disclosure in its application of its owners, officers, and board members did not match the DoT's own records, the DoT did not penalize the applicant. Rather the DoT permitted the grading, and in some cases, awarded a conditional license to an applicant under such circumstances, and dealt with the issue by simply informing the winning applicant that its application would have to be brought into conformity with DoT records.

40. **The DoT created a Regulation that modified the mandatory BQ2 provision "[t]he Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant" and determined it would only require information on the application from persons "with an aggregate ownership interest of 5 percent or more in a marijuana establishment." NAC 453D.255(1).**

41. **NRS 453D.200(6) provides that "[t]he DoT shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." The DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the application process to verify that the applicant's complied with the mandatory language of the BQ2 or even the impermissibly modified language.**

42. The DoT made the determination that it was not reasonable to require industry to provide every owner of a prospective licensee. The DOT's determination that only owners of a 5% or greater interest in the business were required to submit information on the application was not a permissible regulatory modification of BQ2. This

determination violated Article 19, Section 3 of the Nevada Constitution. The determination was not based on a rational basis.

43. The limitation of "unreasonably impracticable" in BQ2[3] does not apply to the mandatory language of BQ2, but to the Regulations which the DoT adopted.

44. The adoption of NAC 453D.255(1), as it applies to the application process is an unconstitutional modification of BQ2.[4] The failure of the DoT to carry out the mandatory provisions of NRS 453D.200(6) is fatal to the application process.[5] The DoT's decision to adopt regulations in direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of the Nevada Constitution.

45. **Given the lack of a robust investigative process for applicants, the requirement of the background check for each prospective owner, officer, and board member as part of the application process impedes an important public safety goal in BQ2.**

46. Without any consideration as to the voters' mandate in BQ2, the DoT determined that requiring each prospective owner be subject to a background check was too difficult for implementation by

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[3] [Original fn. 12] NRS 453D.200(1) provides in part:

> The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable.

[4][Original fn. 13] For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership appears within the DoT's discretion.

[5][Original fn. 14] That provision states:

> 6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

industry. This decision was a violation of the Nevada Constitution, an abuse of discretion, and arbitrary and capricious.

47. **The DoT did not comply with BQ2 by requiring applicants to provide information for each prospective owner, officer and board member or verify the ownership of applicants applying for retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who did not identify each prospective owner, officer and board member.**[6]

Id., FFCL, ¶¶ 36-47, at 22 AA 5290:7-5292:12 (emphasis added).

The district court's conclusions of law as contained in its FFCL also address BQ2, NRS 453D.200(6), and NAC 453D.255(1), including:

81. Certain of DoT's actions related to the licensing process were nondiscretionary modifications of BQ2's mandatory requirements. **The evidence establishes DoT's deviations constituted arbitrary and capricious conduct without any rational basis for the deviation.**

82. The DoT's decision to not require disclosure on the application and to not conduct background checks of persons owning less than 5% prior to award of a conditional license is **an impermissible deviation from the mandatory language of BQ2**, which mandated

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[6] [Original fn. 15] Some applicants apparently provided the required information for each prospective owner, officer and board member. 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). 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, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

"a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." NRS 453D.200(6).

83. The argument that the requirement for each owner to comply with the application process and background investigation is "unreasonably impracticable" is misplaced. The limitation of unreasonably impracticable applied only to the Regulations not to the language and compliance with BQ2 itself.

84. Under the circumstances presented here, the Court concludes that **certain of the Regulations created by the DoT are unreasonable, inconsistent with BQ2 and outside of any discretion permitted to the DoT**.

85. **The DoT acted beyond its scope of authority when it arbitrarily and capriciously replaced the mandatory requirement of BQ2**, for the background check of each prospective owner, officer and board member with the 5% or greater standard in NAC 453.255(1). This decision by the DoT was not one they were permitted to make as it **resulted in a modification of BQ2 in violation of Article 19, Section 2(3) of the Nevada Constitution**.

86. **As Plaintiffs have shown that the DoT clearly violated NRS Chapter 453D, the claims for declaratory relief, petition for writ of prohibition, and any other related claims is likely to succeed on the merits**.

87. **The balance of equities weighs in favor of Plaintiffs**.

Id., FFCL, 22 AA 5298:1-27, at ¶¶ 81-87 (bold emphasis added).

In reviewing a statute, it "should be given [its] plain meaning and must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." Mangarella v. State, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (internal quotation omitted). When the language of a

statute is unambiguous, courts are not permitted to look beyond the statute itself when determining its meaning. Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995).

With regards to Nuleaf, Lone Mountain argues:

> Just as in Nuleaf, statutory requirements for licenser should be required only by the time of final licensure, not by the time a provisional license is issued. That is especially true where here, just as in Nuleaf, the Department was subject to a statutory 90-day deadline within which to review, score and rank 462 applications, each totaling hundreds of pages. See NRS 4553D.210(4) (requiring the Department to approve or reject applications within 90 days from receipt).

See Opening Brief, pg. 20.

Lone Mountain's reliance upon Nuleaf is misplaced. As to the issues and its decision, the Nuleaf Court stated, in summary:

> In light of the district court's order granting summary judgment on GB's declaratory judgment claim, the parties dispute the proper construction of NRS 453A.322(3)(a)(5) regarding whether an applicant must obtain prior approval from a local government to receive a registration certificate. GB and Acres argue that NRS 453A.322(3)(a)(5) plainly provides that an applicant must provide proof of local licensure or a letter certifying compliance with all relevant requirements from the applicable local government before the Department's 90–day statutory deadline for issuing certificates. Nuleaf argues that an applicant's failure to satisfy NRS 453A.322(3)(a)(5)'s requirement merely renders any registration certificate provisional until the applicant is able to do so. We agree with Nuleaf.

Id., 134 Nev. at 133, 414 P.3d at 308-09.

Central to Nuleaf was NRS 453A.322(3)(a)(5) which plainly provides that an applicant must provide proof of local licensure or a letter certifying compliance with all relevant requirements from the applicable local government before the Department's 90–day statutory deadline for issuing certificates. In part, the Nuleaf Court addressed the matter as follows:

> Here, all of the parties agree that NRS 453A.322 plainly requires the Department to issue registration certificates no later than 90 days after receiving an application. However, NRS Chapter 453A imposes no such time requirement on local governments in submitting letters to the Department pursuant to NRS 453A.322(3)(a)(5). In light of the time requirement imposed on the Department, and lack thereof for applicable local governments, adopting GB and Acres' interpretation of NRS 453A.322(3)(a)(5) would produce unreasonable results. Leven, 123 Nev. at 405, 168 P.3d at 716 (providing that "[w]hen construing an ambiguous statutory provision," this court should avoid rendering any part of a statute meaningless, "and a statute's language should not be read to produce absurd or unreasonable results" (internal quotation marks omitted)). For example, under GB and Acres' interpretation, local governments may (1) interject last minute and effectively force the Department to readjust its applicant rankings and potentially violate its statutorily mandated deadline for issuing certificates, or (2) preclude otherwise qualified applicants from receiving certificates for that calendar year by simply failing to notify the Department pursuant to NRS 453A.322(3)(a)(5).

Id., 134 Nev. at 135, 414 P.3d at 310.

Nuleaf is distinguishable. Here, unlike with NRS 453A.322(3)(a)(5) in Nuleaf, NRS 453D.200(6) has no provision which would enable or allow local governments to "(1) interject last minute and effectively force the Department [DoT] to readjust its applicant rankings and potentially violate its statutorily

mandated deadline for issuing certificates [or, like here, licenses for retail recreational marijuana], or (2) preclude otherwise qualified applicants from receiving certificates [licenses]" by failing to notify the DoT of some requirement, like NRS 453A.322(3)(a)(5) in Nuleaf. Id.

Put another way, unlike Nuleaf, this case does not involve facts, a statutory requirement, or a situation where the DoT and retail recreational marijuana license applicants are waiting on local governments to submit some statutorily required document or letter (again, unlike in Nuleaf with NRS 453A.322(3)(a)(5)) for applications and, therefore, there is no statutorily required third-party (i.e., like a local government in NuLeaf) impact upon the DoT's obligation to approve or reject applications within 90 days from receipt, pursuant to NRS 453D.210(4) (again, unlike in Nuleaf).

Nuleaf is, therefore, inapplicable because of the fundamental factual differences and differing statutory requirements involved here and in Nuleaf. As a consequence, Lone Mountain's reliance upon Nuleaf for its argument NRS 453D.200(6)'s requirements for licensure should be required only by the time of final licensure, not by the time a provision license is issued, is misplaced and should be rejected.

Nuleaf is also distinguishable because NRS 453D.200(6) is not ambiguous. In Nuleaf, the Court determined NRS 453A.322 was ambiguous in light of three

interrelated statutes, NRS 453A.322 itself, NRS 453.326, and NRS 453A.328. Id., 134 Nev. at 134-35, 414 P.3d at 309-10. As best is determined, Lone Mountain makes no argument and cites no statutes for an argument NRS 453D.200(6) is ambiguous. Here, NRS 453D.200(6) provides, "[t]he Department **shall** conduct a background check of each prospective owner, officer, or board member of a marijuana establishment license applicant." (Emphasis added.) The statute is clear on its face and mandatory in application. All owners, or anticipated owners, officers, or board members, must undergo a background check. Moreover, requiring any person with any potential ownership or control interest in the applicant applying for the license, comports with the stated declaration in NRS 453D.020, providing that marijuana should be regulated in a manner similar to alcohol "so that...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." NRS 453D.020(3)(b).

Accordingly, the district court properly found the "The DoT did not comply with BQ2 by requiring applicants to provide information for each prospective owner, officer and board member or verify the ownership of applicants applying for retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who did not identify each prospective owner, officer and

board member[7]." See FFCL, ¶ 47, at 22 AA 5292:9-12. Thus, contrary to Lone Mountain's argument, the above demonstrates the district court's preliminary injunction comports with the plain language of NRS 453D.200(6).

2. Lone Mountain's "great deference" argument is without merit.

Lone Mountain next argues the DoT is entitled to great deference in interpreting NRS Chapter 453D. See Opening Brief, pgs. 21-23. Lone Mountain takes issue with the district court's finding the adoption of NAC 453D.255(1), as it applies to the application process, is an unconstitutional modification of BQ2. See FFCL, 22 AA 5291:17-18, at ¶ 44.[8] Lone Mountain also apparently takes issue with the district court's finding "the failure of the DoT to carry out the mandatory

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[7] [Original fn. 15] Some applicants apparently provided the required information for each prospective owner, officer and board member. 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). 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, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

[8] The district court's FFCL in fn. 13 also noted "[f]or administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership appears within the DoT's discretion." 22 AA 5291:25-26, fn. 13.

provisions of NRS 453D.200(6) is fatal to the application process[][9][and] [t]he DoT's decision to adopt regulations in direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of the Nevada Constitution." See FFCL, 22 AA 5291:18-21, at ¶ 44.

The district court's FFCL addresses various levels of discretion and deference to be applied:

> The initiative to legalize recreational marijuana, Ballot Question 2 ("BQ2"), went to the voters in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to modify);[10] those provisions with which the DoT was granted some discretion in implementation;[11] and the

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[9][Original fn. 14] That provision states:

> 6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

[10] [Original fn. 4] Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

> . . . . An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect.

[11] [Original fn. 5] NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those regulations would include.

> . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter. The regulations must not prohibit the operation of marijuana establishments, either expressly or through

inherent discretion of an administrative agency to implement regulations to carry out its statutory duties. The Court must give great deference to those activities that fall within the discretionary functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2 or were arbitrary and capricious.

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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 this chapter;

(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;

(1) 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 NRS 453D.300.

See FFCL, 22 AA 5281:1-8. The district court, in addressing this issue in its FFCL, made the following conclusions of law:

> 63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent part:
>
> > "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, **the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls**.
> > ***
> > 3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the secretary of state before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the legislature is held. After its circulation, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The circulation of the petition shall cease on the day the petition is filed with the secretary of state or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next

succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. **An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect**." (Emphasis added.)

64. The Nevada Supreme Court has recognized that "[i]nitiative petitions must be kept substantively intact; otherwise, the people's voice would be obstructed. . . [I]nitiative legislation is not subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will of the people and should proceed, if at all, as originally proposed and signed. For this reason, our constitution prevents the Legislature from changing or amending a proposed initiative petition that is under consideration." Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034,1039-40 (2001).

65. BQ2 provides, "the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter." NRS 453D.200(1). This language does not confer upon the DoT unfettered or unbridled authority to do whatever it wishes without constraint. The DoT was not delegated the power to legislate amendments because this is initiative legislation. The Legislature itself has no such authority with regard to NRS 453D until three years after its enactment under the prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

66. Where, as here, amendment of a voter-initiated law is temporally precluded from amendment for three years, the administrative agency may not modify the law.

67. NRS 453D.200(1) provides that "the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter." The Court finds that the words "necessary or convenient" are susceptible to at least two reasonable interpretations. This limitation applies only to Regulations adopted by the DoT.

See FFCL, 22 AA 5294:14 to 5295:26, at ¶¶ 61-67 (Emphasis in original.)

In reviewing a statute, it "should be given [its] plain meaning and must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." Mangarella v. State, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (internal quotation omitted). When the language of a statute is unambiguous, courts are not permitted to look beyond the statute itself when determining its meaning. Erwin v. State of Nevada, 111 Nev. 1535, 1538-39, 908 P.2d 1367, 1369 (1995).

NRS 453D.200(6) provides, "[t]he Department **shall** conduct a background check of each prospective owner, officer, or board member of a marijuana establishment license applicant." (Emphasis added.) The statute is clear on its face and mandatory in application. All owners, or anticipated owners, officers, or board members, must undergo a background check. Moreover, requiring any person with any potential ownership or control interest in the applicant applying for the license, comports with the stated declaration in NRS 453D.020, providing that marijuana should be regulated in a manner similar to alcohol "so that...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." NRS 453D.020(3)(b).

As addressed above, the district court properly addressed NRS 453D.200(6). Lone Mountain's argument (see Opening Brief, pg. 21) DoT's interpretation of NRS 453D.200(6) deserves great deference is incorrect. Nevada Courts do not "defer to the agency's interpretation if, for instance, a regulation conflicts with existing statutory provisions or exceeds the statutory authority of the agency." Public Agency Comp. Trust v. Blake, 127 Nev. 863, 868-869, 265 P.3d, 694, 697 (2011) (internal citations and quotations omitted); see also Manke Truck Lines v. Public Service Comm'n, 109 Nev. 1034, 1036–37, 862 P.2d 1201, 1203 (1993) (holding that questions of statutory construction are purely legal issues to be "reviewed without any deference whatsoever to the conclusions of the agency").

Rather, DoT, in violation of the law, materially changed the substance of BQ2. "Administrative regulations cannot contradict the statute they are designed to implement" nor can an administrative regulation "lawfully modify or contravene a statute." Id. citing Jerry's Nugget v. Keith, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995).

Thus, contrary to Lone Mountain's argument, DoT's interpretation does not deserve great deference. Further, there is no justification offered for DoT decision to illegally amend a Ballot Initiative in contravention of the Nevada Constitution to set an arbitrary limit on ownership interests needed to require background checks.

DoT's decision to ignore the law, by failing to conduct the appropriate background checks, violated Plaintiffs' rights.

Lone Mountain also argues, with reference to two (2) witnesses,[12] it is not reasonable to require background checks for all owners, officers, and board members of a prospective licensee. See Opening Brief, pgs. 22-23. Lone Mountain contends Robert Groesbeck testified that requiring background checks on shareholders of publicly traded companies "would potentially have a chilling effect on the industry." See Opening Brief, pg. 23. It is submitted that isn't completely accurate. Instead, actual relevant questions and answers were as follows:

> Q Do you have any opinion as to whether providing shareholder lists for the department is necessary under the law in order to be able to sell retail marijuana in the state of Nevada currently?
>
> A **Well, I don't really have an opinion**. Again, I follow the directives of the department. If they tell us to do something, **we'll do it. So if they want to see our shareholder lists, I'll instruct my general counsel and our CFO to produce whatever they request.**
>
> Q All right. **What if** the department asks you **every day** to submit a new shareholder list to the department for background checks. Do you think that would be a reasonable request?

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[12] To the extent Lone Mountain is arguing the district court failed to give proper weight to witness testimony, this Court has noted it will not reweigh witness credibility or the weight of the evidence on appeal. See Ellis v. Carucci, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determination on appeal); Quintero v. McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

> A Well, I don't know about reasonable. I think it would potentially have a chilling effect on the industry, publicly traded companies. I'm not aware of any industry that requires that.

See 42 AA 10356:16 to 10357:7 (emphasis added).

Lone Mountain also references Deonne Contine's testimony that requiring background checks on every shareholder of a publicly traded company would be impractical if not impossible. See Opening Brief, pg. 23. Ms. Contine, however, acknowledged on cross-examination, she did not know how difficult it is for a public company to send a list of shareholders to someone upon request. 41 AA 10172, 10173. Similarly, she acknowledged the DoT did not conduct any studies concerning any difficulties with regards to public companies identify their ownership interests. 41 AA 10176. She also acknowledged that DoT did not conduct any studies regarding alleged burdensomeness or cost regarding background check on 5 percent or any other percentage, even all owners, officers, or shareholders. 41 AA 10169.

The district court addressed such matters in its FFCL where it found, in part, the DoT's determination that only owners of a 5% or greater interest in the business were required to submit information on the application was not a permissible regulatory modification of BQ2, that the DoT's determination violated Article 19, Section 3 of the Nevada Constitution, and the DoT's determination was not based on a rational basis:

42. The DoT made the determination that it was not reasonable to require industry to provide every owner of a prospective licensee. The DOT's determination that only owners of a 5% or greater interest in the business were required to submit information on the application was not a permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the Nevada Constitution. The determination was not based on a rational basis.

43. The limitation of "unreasonably impracticable" in BQ2[13] does not apply to the mandatory language of BQ2, but to the Regulations which the DoT adopted.

44. The adoption of NAC 453D.255(1), as it applies to the application process is an unconstitutional modification of BQ2.[14] The failure of the DoT to carry out the mandatory provisions of NRS 453D.200(6) is fatal to the application process.[15] The DoT's decision to adopt regulations in direct violation of BQ2's mandatory application requirements is violative of Article 19, Section 2(3) of the Nevada Constitution.

45. **Given the lack of a robust investigative process for applicants, the requirement of the background check for each prospective owner, officer, and board member as part of the application process impedes an important public safety goal in BQ2.**

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[13] [Original fn. 12] NRS 453D.200(1) provides in part:

> The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable.

[14][Original fn. 13] For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership appears within the DoT's discretion.

[15][Original fn. 14] That provision states:

> 6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

46. Without any consideration as to the voters' mandate in BQ2, the DoT determined that requiring each prospective owner be subject to a background check was too difficult for implementation by industry. **This decision was a violation of the Nevada Constitution, an abuse of discretion, and arbitrary and capricious.**

47. **The DoT did not comply with BQ2 by requiring applicants to provide information for each prospective owner, officer and board member or verify the ownership of applicants applying for retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who did not identify each prospective owner, officer and board member.**[16]

Id., FFCL, ¶¶ 42-47, at 22 AA 5291:9-5292:12 (emphasis added).

As best is understood, Lone Mountain, with citation to State v. Nevada N. Ry. Co., 48 Nev. 436, 233 P. 531 (1925) ("Nevada N. Ry. Co."), also argues the DoT's purported interpretation of NRS 453D.200(6) that background checks of "each owner" is consistent with its regulation for background checks on those with an ownership interest of five percent (5%) or more. Initially, it should be noted that

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[16] [Original fn. 15] Some applicants apparently provided the required information for each prospective owner, officer and board member. 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). 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, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

the 1925 Court in Nevada N. Ry. Co. refused to deviate from the plain meaning and purpose of the at-issue statute and applied its "each way" language without interpreting it to also mean "every way" as was urged by the railroad. Id., 48 Nev. at 436, 233 P. at 532. Moreover, this case does involve a discussion between "each" and "every" as was addressed in Nevada N. Ry. Co. Instead, as framed by Lone Mountain, it is taking the position that "each" can mean "5% or more." This is distinguishable and a far cry from the discussion had in Nevada N. Ry. Co. regarding "each way" and "every way."

Also contrary to Lone Mountain's argument, the district court's finding is proper in light of Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034,1039-40 (2001), where this Court recognizing that "[i]nitiative petitions must be kept substantively intact; otherwise, the people's voice would be obstructed. . . [and] initiative legislation is not subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will of the people and should proceed, if at all, as originally proposed and signed." Id., ¶64.

Wherefore, based upon the above, the district court properly found the 5% regulation found at NAC 453D.255(1) was not permitted under NRS 453D.200(1), which requires DoT to "adopt all regulations necessary or convenient to carry out the provisions of" NRS 453D because the 5% rule is counter to the mandatory provisions of NRS 453D.200(6). See FFCL, 22 AA 5291, ¶¶41-44. The district

court's preliminary injunction, as more fully addressed in its FFCL (22 AA 5277-5300), should be upheld.

3. The district court properly interpreted NRS 453D.200(6) and, contrary to Lone Mountain's arguments, it was not against public policy and does not lead to an absurd result.

At page 24 of its Opening Brief, Lone Mountain begins its next argument section with a heading which, in part, contends the district court's interpretation of NRS 453D.200(6) is against public policy. Id. The argument that follows (pgs. 24-25), however, fails to include authority, citation to the record, or substantive argument addressing any contention the district court's interpretation of NRS 453D.200(6) was somehow against public policy. This Court, therefore, should not consider and/or summarily reject any such claim or contention. See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 117 P.3d 193, 198–99 (2005); Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); City of Las Vegas v. Bailey, 92 Nev. 756, 558 P.2d 622 (1976); Ellison v. State, 87 Nev. 4, 4 n. 1, 479 P.2d 461, 461 n. 1 (1971); NRAP 28(a)(10)(A).

Lone Mountain also argues in the same section of its Opening Brief that the district court's interpretation of NRS 453D.200(6) leads to an absurd result. Id., pgs. 24-25. While Lone Mountain fails to cite any portion of the record for this argument, it does rely upon Smith v. Kisorin U.S.A., Inc., 127 Nev. 444, 254 P.3d 636 (2011) ("Kisorin"). Id. Kisorin, however, addressed a corporations obligation

to provide notice of dissenters' rights to beneficial owners. Id. There is no such issue here (i.e., dissenters' rights) and there is no issue involving a corporation being required to provide notice to its shareholders. Kisorin addressed a distinction between stockholders of record and beneficial owners, while addressing certain related statutes. Id. Here, the district court addressed BQ2 and its implementing statute addressing the issue of all owners, officers, or shareholders. Kisorin is inapplicable because it does not involve public policy. Here, however, BQ2 and the statute (NRS 453D.200(6)) were initiated to prevent a criminal element infiltrating the retail marijuana industry, as well as to protect the citizens of Nevada and maintain the integrity of the industry. See, FFCL, 22 AA 005292, ¶ 45; see also further discussion below.

Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent part:

> Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but subject to the limitations of Section 6 of this Article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls.

If a majority of voters voting on such question votes to approve such statute or amendment, it becomes law. Nevada Constitution, Art. 19, Sec. 2(3). "An initiative measure so approved by the voters shall not be amended, annulled,

repealed, set aside or suspended by the legislature within 3 years from the date it takes effect." Id. (emphasis added).

The district court correctly recognized that initiative petitions must be kept intact "otherwise, the people's voice would be obstructed." See FFCL, 22 AA 005295, ¶ 64 (quoting Rogers, supra, 117 Nev. at 178, 18 P.3d at 1039-40). Further, the district court similarly correctly found that the DoT did not have the authority to legislate amendments because BQ2 was initiative legislation. Id., FFCL, at ¶ 65. The DoT's decision to not require disclosure on the application and to not conduct background checks of persons owning less than five percent prior to award of conditional license was an obvious and impermissible deviation from the mandatory language of BQ2, which was voter approved, and which mandated a "background check of each prospective owner, officers, and board member of a marijuana license establishment." Id., FFCL, at ¶¶ 81-85. Pursuant to the Nevada Constitution, the DoT could not, as the district court properly held, modify the background check requirement set forth in BQ2.

The district court's interpretation of NRS 453D.200(6) was reasonable. "When the words of a statute are clear and ambiguous, they will be given their plain, ordinary meaning," and this Court does not look beyond the language of the statute. State v. Friend, 118 Nev. 115, 120, 40 P.3d 436, 439 (2002) (citing Banegas v. State Indus. Ins. System, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001).

If a statute is susceptible to more than one interpretation it is ambiguous, *and it is only then*, when the Court interprets the statute in accord with reason and public policy to avoid an absurd result. Friend, 118 Nev. at 120; 40 P.3d at 439.

A plain reading of NRS 453D.200(6) demonstrates that there is nothing ambiguous about the language of the statute. This Court does not need to look beyond the plain, language of the statute. NRS 453D.200(6) states: "The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant." The language is clear. It requires mandatory background checks for each owner, officer and board member of an applicant. The statute clearly does not say that the DoT is to conduct background check on half of the prospective owners, on a few of the owners, or on owners who are identified as having a five percent or less ownership interest in the interest applicant. Consequently, it was arbitrary and capricious, as the district found, for the DoT to replace the voter-approved background check requirement in NRS 453D.200(6) with the standard set forth in NAC 453D.255(1), *i.e.*, limiting background checks to only those prospective owners, officers, and board members with an ownership interest of five percent or greater. The DoT had no discretion to do so and the revised requirement was inconsistent with the voter-approved language. "The mere enacting of the mentioned administrative regulation obviously cannot countermand the statutory mandate." Clark County Social

Service Dept. v. Newkirk, 106 Nev. 177, 179, 789 P.2d 227, 228 (1990). Administrative regulations cannot contradict or conflict with the statute they are intended to implement. Roberts v. State of Nevada, Univ. of Nevada System, 104 Nev. 33, 37, 752 P.2d 221, 223 (1988) (citing Agsalud v. Blalack, 67 Haw. 588, 699 P.2d 17 (1985); New Mexico Bd. of Pharmacy v. New Mexico Bd. of Osteopathic Medical Examiners, 95 N.M. 780, 626 P.2d 854 (N.M. App. 1981) (an administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority)).

As the district court correctly noted, BQ2 specifically identified regulatory and public safety concerns. Given the lack of robust investigative process for applicants, the requirement of the background check for each prospective owner, officer and board member as part of the application process facilitates the important public safety goal in BQ2. See, FFCL, 22 AA 005292, ¶ 45. Without question, conducting a thorough background check of each prospective owner, officer and board member was the only way the DoT could ensure it prevented the infiltration of criminals and criminal organizations into Nevada's regulated marijuana market application process. In its 2001 report entitled "Behind the Corporate Veil, Using Corporate Entities for Illicit Purposes," the Organization for Economic Cooperation and Development found the following:

> ... a critical factor in misusing corporate vehicles is the potential for anonymity. Not surprisingly, therefore, the types of corporate vehicles

> that are misused most frequently are those that provide the greatest degree of anonymity, such as international business corporations (IBCs), exempt companies, trusts, and foundations established in jurisdictions that offer a high degree of secrecy and which do not maintain effective mechanisms that would enable their authorities to identify the true owners when illicit activity is suspected. The use of these vehicles can also frustrate financial institutions' efforts to comply with customer identification requirements under anti-money laundering laws. Corporate vehicles, such as corporations, trusts, foundations, and partnerships, are often used together to maximize anonymity. In addition, perpetrators of illicit activities frequently employ various corporate vehicles, each established in a different jurisdiction, in order to frustrate any effort by the authorities to discover the ultimate beneficial owner and controller.[17]

What would actually be absurd is if the DoT could abdicate its responsibilities to conduct background checks of each prospective owner, officer and board member to ensure Nevada's recreational marijuana industry is safe and void of criminal elements because it was a "herculean task" or because it would get "bogged down in meaningless background checks." It is doubtful the voters who approved BQ2 would consider background checks that addressed their regulatory and public safety concerns meaningless.

Accordingly, Lone Mountain's argument regarding an absurd result is without merit.

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[17] Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes, Organization for Economic Cooperation and Development , pp. 21-22, https://www.oecd.org/corporate/ca/43703185.pdf.

4. Lone Mountain failed to raise at the district court hearsay objections to the district court's Exhibit 3 and, therefore, should be deemed to have waived same on appeal.

For its final argument, Lone Mountain contends the district court abused its discretion by basing the preliminary injunction on alleged unauthenticated hearsay. See Opening Brief, pgs. 25-28. Namely, Lone Mountain takes issue with the DoT's submission regarding completeness of applications in compliance with NRS 455D.200(6), i.e., the Court's Exhibit 3.

This Court should reject and not consider this argument because Lone Mountain has failed to comply with NRAP 28(e)(1) ("A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected."); see also Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n. 38 (2006).

Lone Mountain's Opening Brief also fails to cite any portion of the record where it raised any hearsay objection at the district court to the DoT's submission regarding completeness of applications in compliance with NRS 455D.200(6), i.e., the district court's Exhibit 3. Lone Mountain's Opening Brief also cites no portion of the record where it asked the district court to rule upon any such hearsay objection. Lone Mountain's failure to raise any such hearsay objection at the district court bars review of this issue in this appeal. In re T.M.C., 118 Nev. 563,

569, 52 P.3d 934, 938 (2002) ("Failure to object to asserted errors at trial will bar review of an issue on appeal."), Fick v. Fick, 109 Nev. 458, 462, 851 P.2d 445, 448 (1993), McCollough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983); see also NRS 47.040(1)(a).

In response to the district court's explicit request for any objections (see FFCL, 22 AA 5300:27-28, fn. 19), to the district court's Exhibit 3, Lone Mountain failed to raise any hearsay objection. Instead, it filed *Lone Mountain Partners, LLC's Response to the Department of Taxation's Submission Regarding Completeness of Applications in Compliance with NRS 453D.200(6)* which raises no hearsay objection to the district court's Exhibit 3. See 22 AA 5320-22. Also, at the oral argument hearing on any objections, Lone Mountain failed to raise any hearsay objections. See 46 AA 11368.

Instead of raising hearsay objections to the district court's Exhibit 3 at the district court level, Lone Mountain noted the duty to assess completeness of applications in compliance with NRS 453D,200(6) rests with the DoT by virtue of both the applicable statute and regulation. NRS 453D.210(4) (providing that the DoT is to process "complete" applications); NAC 453D.272(1) (DoT is to determine whether applications arc "complete and in compliance" with the applicable regulations). See Lone Mountain's submission to the district court, 22 AA at 5321:16-22. Lone Mountain further represented in its submission to the

district court it would be addressing the DoT's questions it recently raised regarding the company's ownership structure directly with the DoT. Id., 22 AA at 5321.

In light of Lone Mountain's failure to raise hearsay objections at the district court and when combined with Lone Mountain's recognition of DoT's duty to assess completeness of applications in compliance with NRS 453D.200(6) – which is what the district court's Exhibit 3 represents -- Lone Mountain's argument the preliminary injunction rests upon inadmissible hearsay is without merit, should be rejected, and, therefore, the district court's FFCL should be upheld.

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III.
CONCLUSION

Wherefore, consistent with the above, the at-issue orders of the district court should be affirmed.

Respectfully submitted this 6th day of March, 2020.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify I have read this Answering Brief, that it complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Answering Brief, pursuant to NRAP 32(a)(5)(A), has been prepared in a proportionally spaced typeface using Word in Times New Roman style at a font size of 14.

2. I further certify that this Answering Brief complies with the page or type-volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), this Answering Brief contains 8,376 words.

3. I further certify to the best of my knowledge, information, and belief, this Answering Brief is not frivolous or interposed for any improper purpose. I further certify this Answering Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the transcript or appendix where the matter relied upon may be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted this 6th day of March, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to NRAP 25(1)(d) on the 10th day of March, 2020, I served a true and correct copy of the foregoing **RESPONDENTS' ANSWERING BRIEF (regarding Lone Mountain Partners, LLC's Opening Brief)** via the Court's electronic filing and service program (Document Access) to all registered counsel and/or parties.

Phyllis Lee

An employee of Clark Hill PLLC

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