

SUPREME COURT OF NEVADA

Case No. 79669

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC
Appellants/Cross-Respondents,

Electronically Filed
Apr 15 2020 10:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

ETW MANAGEMENT GROUP LLC; GLOBAL HARMONY LLC; GREEN
LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; HERBAL
CHOICE INC.; JUST QUALITY LLC; LIBRA WELLNESS CENTER LLC;
ROMBOUGH REAL ESTATE INC. D/B/A MOTHER HERB; NEVCANN LLC;
RED GARDENS LLC; THC NEVADA LLC; ZION GARDENS LLC; and
MMOF VEGAS RETAIL INC.,
Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-797004-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 41

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46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
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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5, 6	Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length	4/10/19	AA 001163 - AA 001288

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32, 33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4	5/30/19	AA 007844 - AA 008086
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45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th 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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/s/ David R. Koch

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1 orderly placement of equipment and materials
2 to prevent misuse.

3 So to prevent misuse and to maintain operations and
4 facilitate cleaning, that to me is what I meant by flow.

5 Q Okay. So when you're talking about flow, what you're
6 really talking about is one part of one of the subparts of the
7 building plans section; right?

8 A Yes.

9 Q Because that's -- I mean, that's -- on page 3, that's
10 one of the parts that is also included with I think the next
11 Section which is adequate lighting --

12 A Yeah.

13 Q -- et cetera, and that all adds up to 10 points?

14 A Yes.

15 Q But that's separate from the prior section which
16 talks about things like work tasks, required resources, the
17 stuff we were talking about yesterday when Mr. Gilbert said the
18 basic idea was that the building could be completed within 12
19 months; right?

20 A Yes.

21 Q So have you ever been to the MM Development facility,
22 the one on Sunset, the medicine facility?

23 A It's possible, but I don't recall being there.

24 Q Okay. So you wouldn't know if there were any flow
25 issues with that particular facility?

1 A No, I wouldn't.

2 Q And Mr. Koch was also asking you about hand sinks. I
3 agree with him we've talked more about hand sinks than is
4 probably necessary. I'll limit my questions on it, and
5 that's -- under that NAC, I didn't see anything in there, and I
6 think you said this yesterday, but I want to confirm, there's
7 nothing that requires a hand sink to be in or on the retail
8 floor; right?

9 A No. And we would never require that. No.

10 Q Okay. So to the extent that flow is part of the
11 grading, the scoring that was used here for floor plans, the
12 Manpower graders are grading on flow based on floor plans that
13 are submitted, but what you're telling me is they get points
14 for flow, but it doesn't really matter because they can go out
15 and build a different facility anyway; right?

16 A I suppose that that would be accurate.

17 Q So essentially they get points for a floor plan
18 that's submitted, and then they go out and change that floor
19 plan, but they got the points anyway. They got the license
20 anyway. So it doesn't really matter. It doesn't affect their
21 score; does it?

22 A No. But we would have to review and approve those
23 revisions to the floor plans.

24 Q Right. But you wouldn't go back -- what you're
25 telling me is it wouldn't change their score; would it?

1 A No, it would not.

2 Q So their score is based on aspirational floor plans,
3 but not actual plans?

4 A Correct.

5 MR. RULIS: Nothing further, Your Honor.

6 THE COURT: Anything further?

7 MR. SHEVORSKI: Very briefly.

8 THE COURT: As I see our next witness is here.

9 MR. SHEVORSKI: Understood, Your Honor. I got it
10 yesterday, and I understand now.

11 THE COURT: Okay.

12 MR. SHEVORSKI: We're moving.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. SHEVORSKI:

15 Q My friend Mr. Rulis talked to you and showed you a
16 letter where the word approve was. That was issued -- that's
17 the 90-day letter?

18 A Yes.

19 Q Okay. And we talked about NRS 453D.210 until we're
20 blue in the face.

21 A Yes.

22 Q Subpart B of 4A says, Issue appropriate license if
23 the application is approved. Is the word appropriate defined
24 anywhere?

25 A No, I don't believe so.

1 Q So you would -- reading those together, approved and
2 appropriate, it's up for the department to determine that;
3 correct?

4 A Yes.

5 Q And the department determines procedures for issuance
6 of licenses?

7 A Yes.

8 MR. SHEVORSKI: No further questions.

9 THE COURT: Anyone else?

10 (No audible response)

11 THE COURT: Thank you, Miss. We appreciate your
12 time. Have a very nice afternoon. Drive safely.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Our next witness.

15 Who's my --

16 MR. GUTIERREZ: Your Honor, we'll be calling Deonne
17 Contine.

18 THE COURT: Ms. Contine, if you'd come forward,
19 please. You are being called out of order because something
20 happened, and I'm not entirely sure, and we don't have one of
21 the plaintiff's witnesses. So we're up to you.

22 THE CLERK: Please raise your right hand.

23 **DEONNE CONTINE**

24 [having been called as a witness and being first duly sworn,
25 testified as follows:]

JD Reporting, Inc.

1 THE CLERK: Thank you. Please be seated. Please
2 state and spell your name for the record.

3 THE WITNESS: My name is Deonne. It's D-e-o-n-n-e.
4 Contine, C-o-n-t-i-n-e.

5 THE CLERK: Thank you.

6 THE COURT: Thank you. And there is a pitcher of
7 water there. If you get hungry, we've been asked to work
8 through the lunch hour so Mr. Gentile can make it to a
9 1:00 o'clock hearing across the street. There's M&Ms if you
10 need some. If you need a break, let us know.

11 There's a bunch of exhibits. Counsel will hope to
12 help you through them, whether it's by the video next to you or
13 one of the binders. And the statute book, in case you need it,
14 is sitting on the bar between you and I.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: Uh-huh.

17 MR. GUTIERREZ: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. GUTIERREZ:

20 Q Good morning, Ms. Contine.

21 A I need to get my glasses out just in case.

22 All right. Go ahead.

23 Q Okay. Good morning. Ms. Contine, what's your -- my
24 name is Joe Gutierrez. I represent Essence and Thrive in this
25 case. Tell us, what's your current position with the State of

1 Nevada?

2 A I'm the director of the Nevada Department of
3 Administration, which is the department that has most of the
4 internal agencies of state government. So there's 11 agencies
5 within the department.

6 Q How long have you been in that position?

7 A Since February 25th of 2019.

8 Q And what are your duties as a director of Department
9 of Administration?

10 A I oversee the HR, IT, state purchasing, public works,
11 the grant office, the state library, fleet services, risk
12 management, the hearings and appeals division. So I'm the kind
13 of point person for the governor and the governor's staff with
14 respect to those agencies.

15 Q And what was your previous position with the State of
16 Nevada?

17 A I've had several previous positions with the State.
18 My most recent previous position was director of the Nevada
19 Department of Taxation. I was also a deputy director at the
20 Nevada Department of Taxation, and I also was a senior deputy
21 Attorney General where I represented the Department of Taxation
22 and other state agencies and other state clients.

23 Q What was the time frame that you were employed as
24 executive director of the Department of Taxation?

25 A I was appointed in November of 2014, and I left in

1 January of 2018.

2 Q And what were your duties as executive director of
3 the department tax?

4 A Basically I had -- when I was initially appointed the
5 director, it was during the legislation that became known as
6 the commerce tax. So I participated in the legislative process
7 with respect to that and then implemented the commerce tax.

8 And then I implemented question 2 to some degree
9 before I left.

10 And then overall was responsible for the collection
11 and distribution of the state's revenue, about \$6 billion of
12 state and local taxation revenue and including all the systems
13 that went into that, processing people that, you know, people
14 filing returns, people being audited, people being, you know,
15 having revenue issues, a local government piece, and so I was
16 over pretty much all of that.

17 Q And who do you report to as executive director?

18 A Now?

19 Q No. As the executive director of the Department of
20 Tax.

21 A So the way that it's set up is that there's
22 governor's staff, and they all have liaisons to state agencies.
23 So my liaison is kind of -- has always generally been the chief
24 of staff or the general counsel.

25 Q And who was that in 2017 or 2018?

1 A The chief of staff was Mike Willden [phonetic], and
2 the general counsel was -- at that time I was the liaison with
3 the chief of staff. Towards the end I -- you know, towards as
4 the administration came -- was coming to an end, there were
5 various people who served at general counsel. I can't remember
6 who was general counsel -- oh, Katie Reynolds was general
7 counsel at the end. I think Joe Reynolds was there for a
8 period of time Mishawn [phonetic] Martin. But Mike was
9 consistent through the -- pretty much the end of the
10 administration.

11 Q Can you just give us a brief overview of your
12 educational background after high school.

13 A Sure. I actually worked for 10 years in the San
14 Francisco Bay area as a legal secretary. After working for
15 about seven years, I decided to go to college. I went to
16 junior college in Redwood City, California. I transferred to
17 UC Berkeley where I obtained my undergrad degree in 1999.

18 I'm from Nevada. I moved back here in 2000 for a
19 temporary job, which ended up being a more permanent situation,
20 and I ended up going to Boyd for law school. And after law
21 school, I clerked here in the Eighth JD for Judge Adair.

22 And then after about a year I moved to Northern
23 Nevada in 2007, and that's when I started working for the
24 Attorney General.

25 Q And are you a licensed attorney in the State of

1 Nevada?

2 A Yeah. Yes, I am.

3 Q And tell us about your experience with the attorney
4 general's office. What type of work were you doing?

5 A When I first started at the attorney general's
6 office, my main client was the State health plan. So I -- I
7 sat with the board, the agency on day-to-day issues, and I
8 participated in litigation that the board -- that the program
9 was involved in at that time.

10 And then I also represented real estate related
11 commissions, so real estate division, appraisal division and
12 common interest community commission as board counsel. I sat
13 with the board when they heard disciplinary actions.

14 And I did -- and I had other just kind of semi, you
15 know, projects that were -- I wasn't the official person, or I
16 just did work for them for a while. I represented the state
17 treasurer for a period, business and industry. Any state
18 agency client that needed some help, I would help out on if I
19 had time, and sometimes you just go in and do projects for --
20 to help your other -- to help your colleagues. So I did a few
21 of those.

22 I wrote Attorney General -- I drafted Attorney
23 General opinions and provided day-to-day advice.

24 Q Did you have experience when you were at the attorney
25 general's office in giving advice on the adoption of

1 regulations?

2 A Not too much, but as I would sit with the board, the
3 boards, the various boards or -- there would all -- there could
4 be adoption hearings for regulations so, but the AG's office
5 doesn't have -- when I was at the AG's office, we didn't spend
6 a lot of time working on regs with the agency. If the agencies
7 needed help, they would come to us, and we would help them.

8 Q Tell us about your experience as you got into working
9 with the department in adopting regulations.

10 A Okay. I'm sorry. The -- when I was the lawyer, or
11 when I became --

12 Q As you got into working with the Department of Tax.

13 A So when I became the deputy director, that was one of
14 my areas that -- so I worked with staff to oversee any
15 regulatory changes that needed to come about. And then when
16 the commerce tax was enacted in the 2015 legislation, it was a
17 brand-new tax scheme. So it needed a whole set of regulations.
18 So I shepherded that process and then worked on the regulations
19 to implement the various programs in marijuana.

20 Q What are the purpose of regulations?

21 A To interpret the provisions of statute and to provide
22 some, in some cases to provide process that's not in the
23 statute, to clarify concepts sometimes if the term's not clear
24 or -- that's it.

25 Q Okay. I'll let you drink your water. You look like

1 you were trying to do that for a while.

2 Ms. Contine, can you walk us through the steps in how
3 regulations are adopted by the department.

4 A Sure. So I'll go way back and start kind of a big
5 macroview review, and you can just tell me if you don't want
6 this information. I'm not quite sure what you want. So --

7 So under 233B is the regulatory process, the
8 administrative procedures act for adopting regulations.

9 There's three types of regulations: Emergency,
10 temporary and permanent.

11 Temporary regulations can only be adopted during
12 the -- so temporary regulations are for adoption during
13 legislative sessions because there's a process for legislative
14 review on permanent regulation. So when the legislature is in,
15 there is no legislative review of regulations. So from July
16 1st of the even-numbered year through June 30th of the
17 odd-numbered year, that's the temporary regulation period.
18 From July 1st of the odd-numbered year through June 30th of
19 the even-numbered year, that's the permanent regulation
20 process.

21 And emergency regulations are essentially emergency
22 is not defined in the statute. It's often been said that
23 emergency is what the governor says is an emergency because the
24 governor has to sign off on emergency regs, and those can be
25 made at any time, and they're good for 120 days.

1 So the temporary regulations expire. I can't
2 remember the time frame, but they expire. If you make a
3 temporary regulation, they expire after a time period; however,
4 when you go into the permanent regulation process, you can
5 essentially shortcut a little bit of the permanent process by
6 just if there were no changes and you just wanted to make the
7 temporary regulations permanent.

8 The permanent regulatory process is a little bit more
9 involved, and it takes a lot more time, and so by statute
10 you're required to have one public workshop. It's supposed to
11 be 15 day's notice. You can or cannot have draft language for
12 review.

13 You take public comment. There's no specific period
14 of public comment, but you would work to have public comment at
15 the hearing. You notice the meeting, and then you can accept
16 public comment after that.

17 Then the regulations -- so generally the way it
18 works, you have language, you go to workshop, and then you --
19 after you've cleaned up the language, taken public comment,
20 considered input from different groups, people, you know, and
21 what they have to say about the regulations, think about it a
22 little bit more, do some analysis, maybe get some legal review.
23 You also have to perform -- prepare a small business impact
24 statement and generally discuss how it's going to affect
25 businesses.

1 And then -- and then the language will go to the
2 Legislative Counsel Bureau, the legal division, and they --
3 they review the language for statutory intent and to make sure
4 the process has been followed up to that point.

5 Then they put it into the fancy format that you would
6 see if a regulation was adopted, and they send it back to the
7 agency. That's a process too along the way. So sometimes
8 you'll have some communication with the legislative counsel,
9 and they'll give you feedback or say like I don't think you can
10 do this under this statute, or I don't know if this is the
11 intent. Did you consider this or look at this? So there's
12 some kind of back and forth along the way sometimes.

13 Once the language comes back to the agency, the
14 agency can -- well, once the agency receives the language from
15 LCB and only when they receive the language from LCB can they
16 notice it for adoption, and you have to give 30 days for an
17 adoption hearing.

18 And then if it's adopted, either depending on whether
19 the law says you adopt by a board or, you know, sometimes
20 directors have authority to adopt, but if there's a board
21 involved, it would go before the board. The board or
22 commission would adopt the regulations, and then it goes back
23 to the legislature to be reviewed by the legislative
24 commission.

25 The legislative commission is -- I think it's a

1 permanent commission within the legislative structure that --
2 by permanent I mean not an interim. It meets all year round.
3 They review regulations and give a final approval, and they
4 also have a subcommittee for regulations. So I think they can
5 delegate some of that work to the subcommittee.

6 And once the legislative commission reviews the
7 regulations, then it goes to essentially the Secretary of State
8 for filing, and then they become.

9 Q Great. And I want to back up where you said there's
10 a back and forth between the department and LCB --

11 A Yes.

12 Q -- to look for statutory intent.

13 A Yes. Well, they do a review to make sure that the
14 regulations that you're making are within the legal provisions,
15 so whether that be the statute or initiative.

16 Q And when they make that review, do they put like a
17 number, like an I next to the regulation when they send it
18 back? Is there some sort of symbol that shows they did a
19 review?

20 A Yeah. So there's -- if you look at how the
21 regulation has been through the -- I don't know all the -- I
22 don't know all the letters that go in to their numbering system
23 because it's their numbering system. So it'll be LCB file
24 number, and then you'll have various numbers, and then
25 sometimes it'll be just the agency's version. And as it goes

1 through that position -- I'm sorry. As it goes through that
2 process, it will indicate in some way that it had been sent
3 back, and that's the language that's been reviewed by the
4 Legislative Counsel.

5 Q Who were you working with at the Legislative Counsel
6 Bureau for the adoption of the permanent regulations for 453D?

7 A I think Asher Killian [phonetic] or maybe Bryan
8 Fernley [phonetic] and maybe even Brenda Erdose [phonetic].

9 Q Asher Killian. I know that name was mentioned by
10 Kara earlier. Who's that?

11 A He's a -- he's a lawyer at the Legislative Counsel.
12 He's -- he -- I think he's drafted most of the regulations
13 related to the marijuana program.

14 And Bryan Fernley is a tax -- well, he sits with the
15 revenue and taxation committees at the legislature. He's -- so
16 it might have been one or both of them and occasionally maybe
17 Brenda Erdose, who is the director.

18 Q And is Asher the person who actually drafted the
19 regulations, or was there somebody within the department who
20 does that?

21 A No --

22 Q And I'm focusing on --

23 A The agencies -- the agencies submit their draft
24 language, and then the LCB reviews it and changes it and puts
25 in, you know, makes -- you know, does its review, and then

1 there's certain drafting conventions that they are confined to.
2 So they make some of those changes.

3 I mean, sometimes an agency will get back a
4 regulation, and there will be something in the regulation that
5 wasn't in the original regulation, and then you say well,
6 what's the point of this? And then it turns out that it was a
7 drafting error -- or drafting decision made by LCB that it
8 made, you know, that they're trying to -- they're thinking of
9 this regulation in the context of all regulations.

10 Q How are those discussions, those back-and-forth
11 discussions on intent done between the department and LCB? Is
12 it over the phone? Are they made in person? How was that
13 done?

14 A Over the course of my career, both.

15 Q Okay. And the steps that you just outlined for us,
16 those are the steps that were taken when the regulations for
17 the recreational marijuana process were adopted?

18 A Yes.

19 Q Okay. Now, when you're adopting regulations, can you
20 tell us a difference when you're dealing with adopting
21 regulations that are focusing on the ballot initiative versus a
22 legislative amendment?

23 A It's basically the same process. There might be a
24 little bit more legislative intent if you're looking at a
25 statute that was enacted by the legislature, but it may not

1 surprise you to know that sometimes there's no legislative
2 intent. So it's kind of a similar process.

3 Q And when you're adopting regulations that need to
4 comport with the ballot initiative, is it your understanding
5 that there can't be any modification or amendments to those, to
6 that statute?

7 A Well, in the case -- in this case, there's no --
8 there was no ability to make the change to what was Question
9 2 for three years.

10 Q Okay. And that was followed by the department as the
11 department adopted regulations; is that correct?

12 A Well, we weren't -- at the department we weren't
13 making changes to the legislation. I mean, we -- the
14 department didn't ask for any changes to the statute.

15 Q I guess, okay, my question is, in adopting the
16 regulations, is it your understanding that the regulations need
17 to comport with the statute under Ballot Question 2?

18 A Yes.

19 Q Okay. Now, what was your involvement with the 2018
20 process for adopting the regulations for the recreational
21 marijuana process?

22 A So starting at the beginning or starting in 2016?

23 Q Start at the beginning, in the beginning when what
24 were you tasked with in adopting those regulations, and what
25 was your involvement?

1 A So I think the first time that I became involved in
2 kind of what might happen at the State was in the summer of
3 2016 thinking that possibility -- that there was a possibility
4 that the initiative would pass and trying to kind of get in
5 front of what was likely to be a pretty quick process.

6 I went to Denver with on like a fact-finding group,
7 with a group of, you know, regulators and legislators and other
8 people in the state that were interested in the process, just
9 kind of understanding what they're doing and trying to learn as
10 best as I could, as we could about what might be coming our
11 way.

12 And then in one of the concepts that Denver -- or
13 that Colorado had used for legalization was to create this task
14 force. So after the initiative passed, then recommending that
15 we use -- recommending to the governor that we use this, a
16 similar type of process.

17 And then also, you know, when the governor -- there
18 was some discussions between November and January about the
19 revenue picture and what, you know, what that expectation was.
20 So in January, the governor issued the -- you know, did the
21 state of the state where he included revenue from marijuana
22 starting on July 1st and talked about an additional tax, and
23 so that was really kind of the policy. You know, that was the
24 level up for me that meant we're going to go forward and do
25 this now essentially. So starting in -- so basically starting

1 to review the initiative, looking at the language, deciding,
2 kind of comparing it to medical, deciding what we could use and
3 what we couldn't use as we moved forward.

4 Also at this same period of time -- so this is the
5 January, February. This is the early 2017 time period. So the
6 legislation -- the legislature's in session. The work -- the
7 task force is formed. We're working on temporary regulations
8 essentially to get the program going, and I can --

9 Do you want me to briefly talk about each of those,
10 or --

11 Q Yes. Well, we'll walk through those, but back up
12 really quick to your trip to Colorado. When was that? Was
13 that --

14 A June of -- I think it was June or July of 2016.

15 Q And that was in preparation in case the ballot
16 initiative passed?

17 A Yes.

18 Q And who -- when you went to Colorado, was one of your
19 purposes to see how Colorado's system in adopting regulations
20 was implemented, what they looked at and how to improve on
21 that?

22 A Yes. I mean, one of -- it was just to -- I mean,
23 honestly, we knew nothing at that time. So just kind of how
24 to -- so basically what happened was the regulators in Colorado
25 kind of put together a team of people to speak to us. So

1 somebody from taxation, somebody from the regulatory, a
2 legislator. They took us on tours of facilities. You know,
3 just a general fact-finding, like what's going on here? What's
4 working? What's not working? I think one of the things that
5 we discussed specifically at that time was when they went from
6 medical to rec and how they -- how they set that up with, like,
7 separate -- you had to have a separate facility or a separate
8 entrance and what issues came about because of that. So just
9 kind of understanding the transition and how they worked
10 through those issues and some of the things that -- that they
11 have done along the way.

12 Q How long was that trip?

13 A A couple days, two, three days.

14 Q And who was on the trip with you?

15 A Well, with me, there was somebody else from my
16 office. I mean, and then there was a -- do you want a -- I
17 could try to tell you. I think Nelson Araujo, who was an
18 assemblyman, was there. John Ritter was on that trip.

19 I can't remember anybody else.

20 Q Okay.

21 A I mean, but it was a -- it was a -- oh, I think Joe
22 Pollock -- he was from the Department of Public and Behavioral
23 Health -- was on the trip.

24 I'm sure there was a couple of other legislators.

25 Patty Farley. She was a legislator at the time.

1 She's not now. She was on the trip.

2 And Amanda Connor.

3 So it was a broad group of people that went on the
4 trip.

5 Q Okay. And going back to January 2017, the ballot
6 initiative passes, and now the governor has tasked you with
7 moving forward with not permanent -- I'm sorry, temporary, then
8 permanent regulation; is that correct?

9 A Correct. I mean, he tasked me with implementing the
10 program, and then I kind of developed I guess the strategy to
11 do that in the confines of the regulatory structure that we
12 had, and then also in an attempt to have a lot of transparency
13 and to get a lot of input from people by using the task force
14 process.

15 Q So the task force was adopted because that's how
16 Colorado had -- that was one of the things you saw from
17 Colorado that worked for them; is that correct?

18 A I think, yeah. I mean, I recommended that the
19 governor do it because I thought it would give a level of
20 transparency. It would allow a place for people that, you
21 know, wanted to see the program go forward go forward, but
22 also, you know, with all the public meetings people could
23 indicate their concerns, and just it was a place where
24 everybody could be at the table.

25 Q And what was your position with the governor's task

1 force?

2 A I was the chair of the task force.

3 Q What were your duties as chair of the task force?

4 A I guess my main duty was to run the task force
5 meetings.

6 Q Go ahead.

7 A I mean, yeah. Well, I ran the meetings. We
8 developed the agenda, you know, checked in on the process
9 making sure that all of the working groups were assigned, that
10 the working groups were actually working, you know, being --
11 overseeing that process. I mean, I -- we ended up hiring a
12 contractor that helped facilitate. So just making sure that
13 they were doing their -- the things that they were supposed to
14 be doing during the process as well so that when we came to the
15 end we would have the report, a good draft of the report that
16 could be reviewed and sent to the governor.

17 Q And what was -- what was the purpose of the task
18 force? Was one of the purposes to ensure that any regulations
19 adopted were in compliance with the ballot initiative?

20 A I think it was more to be a basis for the
21 regulations. So some of the discussion that occurred within
22 the task force was -- and the various working groups were, you
23 know, what worked in the medical program, what didn't work in
24 the medical program, what were some concerns that people still
25 had or issues that they would like to see addressed during that

1 process that we could potentially address in regulation. So it
2 was a basis and a starting point for conversation.

3 MR. GUTIERREZ: Okay. And if you could pull up
4 exhibit -- Proposed Exhibit 5049. Move to admit. March 3rd,
5 2017, minutes from the governor's task force.

6 THE CLERK: Mr. Gutierrez, here's the hard copy for
7 the --

8 THE COURT: And you can either look at it on the
9 monitors which work okay but are really small, or at the hard
10 copy if you'd like it from counsel.

11 THE CLERK: That's proposed.

12 MR. GUTIERREZ: We move to admit it, Your Honor.

13 THE COURT: Any objection to Exhibit 5049?

14 MR. SHEVORSKI: No objection.

15 UNIDENTIFIED SPEAKER: No objection.

16 THE COURT: Be admitted. Thank you.

17 (Defense Exhibit Number 5049 admitted)

18 MR. GUTIERREZ: And, Bryan, can we pull that up.

19 BY MR. GUTIERREZ:

20 Q Ms. Contine, what we have are March 3rd, 2017,
21 minutes from the governor's task force. I think your name is
22 right under the members present. Do you see that?

23 A Yes.

24 Q Okay. I want to walk through this with you. You
25 called the meeting that day. Who's Daniel Stewart? And is --

1 A Yeah. So Daniel Stewart at the time was general
2 counsel to the governor.

3 Q Okay. So was he the person that you were working
4 with in adopting the temporary regulations or the permanent
5 regulations? Who -- what was his role?

6 A I actually think his role was really pretty limited
7 in that day. He was just there. I think this was the first
8 meeting kind of welcome everybody and indicate kind of where
9 the governor was coming from, so to be a presence from the
10 governor's office.

11 If there would have been -- so he -- he left -- if
12 there would've been any issues, I probably would have dealt
13 with Mike Willden, and then Mike would have dealt with Daniel
14 Stewart, or, I mean, I could have been in meetings with Daniel,
15 but I don't remember specifically.

16 Q Okay. If you could turn to page 2, and I'm going to
17 focus on the bottom where it says, Madam Chair identified the
18 role of the task force. Do you see that?

19 A Yes.

20 Q Okay. What was the second role that the task force
21 was supposed to implement?

22 A Offer suggestions and proposals for legislative and
23 regulatory actions to be taken for the effective and efficient
24 implementation of Question 2.

25 Q Did you believe the task force accomplished that

1 goal?

2 A Yes.

3 Q And can you explain that. What -- how did the task
4 force go through with ensuring that Question 2 was going to be
5 complied with when adopting regulations and making
6 recommendations for regulations?

7 A So if you want more than, like, process, just let me
8 know.

9 Q Definitely.

10 A But first was setting up the process, you know, what
11 are the working groups, identifying -- identifying the
12 categories of what needed to be addressed, kind of going
13 through each one of those, assigning working group members to
14 those working groups, facilitating some of that discussion and,
15 you know, looking at the initiative, looking at how the
16 initiative was again like how -- what we could use from their
17 medical program and what we could use from other jurisdictions
18 and kind of having discussions of programs across the board and
19 how -- how we might implement Question 2.

20 One of the -- one of the things that I think might be
21 important and relevant is that there was some discussion
22 initially that somebody that opposed marijuana legalization
23 would be on the task force, and I asked that that not happen
24 because I kind of felt like we need to have feedback from
25 people that, you know, care about public health and safety, and

1 we made every effort to make sure that those types of people
2 were included, but having somebody that opposed legalization as
3 a task force member I thought wouldn't be in conjunction with
4 implementing this program.

5 I mean, the voters had decided, and so it was just --
6 so that was one issue where, like, looking at the initiative
7 and that it had passed and what it meant and how we needed to
8 go forward, you know, I was concerned if we had somebody that
9 was -- that was vocally opposed to the initiative and was
10 actually a task force member that that would not allow us to
11 get the work done that we needed to get done.

12 So it was basically like looking at the initiative,
13 looking, reviewing some of the regulations, reviewing kind
14 of -- and, you know, there were industry members on the various
15 task force working groups, looking at how the process had
16 worked for them within the medical, what were some challenges,
17 what were some regulatory challenges, could they be addressed
18 under this -- under Question 2 as we moved forward, you know,
19 and those types of kind of back-and-forth discussions that
20 occurred during that process.

21 Q So having someone on the task force that would oppose
22 Question 2 wouldn't be beneficial if you're trying to implement
23 Question 2 effectively; is that correct?

24 A Right. And it wouldn't be true to, I mean, the task
25 of this body was to help kind of deal with issues after

1 legalization had been decided by the voters, and so to have
2 somebody that was -- that was vocally opposed to it, you know,
3 I was just concerned that we'd get bogged down in overall
4 discussion on whether marijuana should be legal or not and not
5 how we would go about regulating it and providing the, you
6 know, the structure for businesses to operate, the state to
7 collect its revenue and to protect public health and safety.

8 Q And can you go to the next page, page 3. On the top
9 you introduce the staff that's facilitating the task force. Do
10 you see that under --

11 A Yes.

12 Q And I want to walk through who some of these people
13 are. Who's Shelley Hughes?

14 A She's the chief deputy of the department.

15 Q What was her role with assisting you with the task
16 force?

17 A She was the second -- she would, you know, she was
18 the second in command of the department. So she would -- in my
19 absence she would be in charge, or she would, you know, she --
20 we basically worked hand in hand on some things.

21 Q And she worked in helping with the adoption of the
22 regulations?

23 A Some, yeah, but more would be the position of the
24 deputy director of marijuana.

25 Q And who was that?

1 A Well, so at that time it was Anna Thornley
2 [phonetic]. And then -- and then -- do you want me to just go
3 through --

4 Q Yes, please.

5 A Anna left I think mid -- she left before the session
6 was over. So she left pretty early on. She was only with the
7 department for a couple months.

8 So that says Pauline Oliver, but it should say
9 Paulina. And she's the deputy director of compliance.
10 Compliance is revenue and audit. So she's responsible for
11 making sure the people that don't voluntarily comply with tax
12 provisions are taken care of.

13 Jorge Pupo was the tax manager of revenue at the
14 time. He's now the deputy director of the marijuana program.

15 Stephanie Clappstein [phonetic] was the public
16 information officer for the Department of Taxation. So she
17 handled all press inquiries and public facing questions, and I
18 think she developed the website, interacted with people in that
19 regard.

20 Tina was my assistant or is the -- she's the
21 executive assistant for the director.

22 And Kelly, Jesse and Mike Kratz [phonetic] were
23 consultants with QuantumMark, and that was the -- that was the
24 company that we used to help facilitate the process of the task
25 force.

1 Q What was the role of QuantumMark in this process?

2 A So they prepared agendas. They attended all of the
3 task force meetings, all of the working group meetings. They
4 prepared the minutes. They, you know, would prepare the
5 initial draft of the minutes, and they would be reviewed by
6 staff and -- or actually, you know what, I'm not sure about
7 that now that I say that.

8 Tina might have done the initial draft of the
9 minutes.

10 And then they -- they gathered -- so basically we had
11 a worksheet. So you'd have a working group meeting. There was
12 a worksheet that they developed, that they helped develop that
13 kind of walked through the recommendation from the working
14 group and indicated the discussion that occurred, if there was
15 any disagreements, you know, generally recorded in summary the,
16 you know, the proceedings that were happening, and then -- and
17 then they would prepare that document for the task force. And
18 a task force member who was on the working group or maybe
19 somebody who wasn't on the task force would use that document
20 as the presentation of the recommendation from the working
21 group to the task force.

22 Q Okay.

23 A So they facilitated all of the -- all of the process
24 of that.

25 Q Okay. Great. And the next section, it says,

1 Discussion and approval of guiding principles under Section 3.
2 Do you see that? We're on page 3.

3 A Oh, yeah.

4 Q Okay. Where did these guiding principles come from?

5 A So I think, if I remember right, and I'm trying to go
6 on my memory -- I think a lot of the principles came from the
7 executive order setting up the task force. So they were kind
8 of the governor's principles, and I think many of them were
9 borrowed from the Colorado process.

10 Q Do you know if Colorado's marijuana -- recreational
11 marijuana laws were passed through ballot initiative?

12 A Yes, they were.

13 Q Number 4 on the task force says, Propose efficient
14 and effective regulation that is clear and reasonable and not
15 unduly burdensome. What does that mean?

16 A I'm sorry. Can I go back to the last question?

17 Q Yes. Go ahead.

18 A I'm not a hundred percent sure if the legalization,
19 but under Colorado law, every tax has to go through an
20 initiative process. So that's what makes me think that the
21 marijuana and the taxation were probably together, and they had
22 to -- so they had to go to initiative, but I -- so that's my
23 explanation.

24 Q Okay. No, that's all fine. In Colorado, the
25 Department of Taxation runs recreational marijuana; is that --

1 A The department of -- so they have a department of
2 revenue. Within the department of revenue they have marijuana
3 enforcement. Nevada doesn't have a department of revenue. We
4 have just taxation, and then there's tax collections from other
5 various other agencies in Nevada as well.

6 Q Okay. Great. And my question, my prior question was
7 on Number 4 under the guiding principles proposing efficient
8 and effective regulation that is clear and reasonable and not
9 unduly burdensome. What does that mean to you?

10 A So basically making sure that we have, you know, a
11 strict enforcement, a tightly controlled market that's -- that
12 promotes a stable market but also allows businesses to operate
13 and isn't -- isn't so restrictive that it is unreasonable to
14 think that a licensee or establishment would be able to comply
15 with the -- with the rules.

16 And I think that language is partially from
17 Question 2 because I --

18 Q Go ahead.

19 A You know, I think there was some concern in the
20 initiative that if they didn't have some language like that,
21 they might get a governor and/or a regulator that didn't like
22 the concept of marijuana and might try to regulate it out of
23 existence. So I think there was -- it was being mindful of we
24 have, you know, we need, you know, there's public health and
25 safety concerns, but there's also industry operational

1 concerns, and then there was the revenue concern after the
2 money was put in the budget.

3 Q That's an important point. So what you said is that
4 you're mindful of not regulating the companies out of business.
5 Is that fair to say?

6 A Yes.

7 Q And that's where the unduly burdensome language comes
8 in as far as this task force guideline?

9 A Yes.

10 Q Okay. The next one, Number 5, says, the beginning, A
11 discussion between the state and local governments regarding
12 the cost of carrying out Question 2. Tell us about that.

13 A So in Question 2, there is a provision that says the
14 revenue generated from the 15 percent wholesale tax would go to
15 support the Department of Taxation and local governments in
16 carrying out the provisions of Question 2, and so there was
17 discussion about what local government responsibilities would
18 be and what money essentially from that 15 percent tax the
19 local governments would be entitled to.

20 Q And did the local governments have a say in some of
21 the task force recommendations?

22 A Yes.

23 Q Number 7 talks about taking action that is faithful
24 to the text of Question 2?

25 A Right.

1 Q Explain that for us.

2 A So just making sure that we're complying with
3 Question 2. I mean, some of it is fleshed out a little bit
4 more in the provisions above, you know, but, you know, read the
5 language of the -- or read the language of the initiative, and
6 then work off of that in terms of regulation.

7 Q And go to page 6 and specifically on your discussion
8 of future meeting dates and timelines, do you see that, where
9 it talks about Senator Segerblom?

10 A Uh-huh. Yes.

11 Q Recommending that -- it gives -- there's a May
12 30th, 2017, deadline. Do you see that?

13 A Yes.

14 Q What was the -- were there deadlines that you were
15 working underneath during this time frame when adopting some of
16 the regulations or getting -- I'm sorry. Strike that.
17 Deadlines and getting task force recommendations back to the
18 governor?

19 A There -- you know, we were trying to get the work
20 done within a few months; however, what I -- what he's
21 referring to there is the -- the process was going on during
22 the legislative session, and he wanted -- if there was going to
23 be legislation, that he wanted, you know, he wanted people to
24 be mindful. I mean, the session ends the first Monday in June.
25 So he was trying to suggest that any legislative changes would

1 need to be made, you know, would need to be put forth by then.

2 And, I mean, with all due respect to Senator
3 Segerblom, I don't know that he really quite understand --
4 quite understood with respect to Question 2 that there wouldn't
5 be a legislative change, but his concern, I believe just based
6 on his testimony in public and in private, is that he wanted
7 there to be an early start. So he was working on a bill that
8 if the -- if the executive branch wasn't going to do an early
9 start, that he wanted to have a separate bill that would
10 require an early start.

11 Q And --

12 A Because he thought that would -- or I think there was
13 some discussion as to whether that would be, you know, because
14 Question 2 said by January 1st, 2018. So then the question
15 was could you have a separate legislation that said before
16 then, before it would be up and operational before then.

17 Q And were you put in charge of the early start program
18 and helping getting the regulations for that --

19 A Yeah.

20 Q -- off the ground?

21 A Yes.

22 Q Okay. And tell us about that. How were those
23 temporary regulations developed?

24 A So basically the temporary regulation process isn't
25 as restrictive, but you do have a draft of the regulations, and

1 I, you know, we drafted those internally with some, you know,
2 if we needed -- if we had legal questions, we would ask the
3 attorney general's office or others. They were workshops so
4 that you still have to have a workshop, and they were still
5 adopted by the Nevada Tax Commission, but they don't have to
6 go -- they don't have to do that intermediate review by the
7 legislature.

8 There is a provision, however, that after the
9 regulations were adopted by the agency that the legislative
10 commission has 45 days where they can pull the regulations in
11 to a ledge [phonetic] commission process review. So because of
12 that, I had internal discussions with legislative counsel about
13 the regulations and whether they -- whether the legislative
14 counsel was comfortable, you know, recommending to their bosses
15 that the -- those regulations not be pulled into legislative
16 review.

17 Q Okay. And can you -- how did the medical marijuana
18 regulations help shape what eventually became the permanent
19 regulations under NAC 453D?

20 A Well, they were part of -- so the permanent
21 regulations looked at what -- so the permanent regulations
22 looked at the work of the task force in some ways and also and
23 as that related to the medical. So what is -- what was working
24 in medical? Again, what wasn't, you know, what are some --
25 given the language of the initiative, what's different in the

1 language of initiative in the initiative, you know, and how do
2 we have to plan for that because there were some key
3 differences, provisions that were new that had to be regulated
4 that weren't regulated in -- in the medical program.

5 So basically looking at the language of the
6 initiative, deciding what is the basis that we can start with
7 at least initially and then what can we build off from that as
8 we move forward. So and that involved all those discussions
9 that went into the working group, the regulatory process both
10 in the temporary process, which is the workshop and the
11 adoption hearings and then the permanent process that started
12 after July 1st.

13 Q And let's turn to what's previously been admitted as
14 Exhibit 2009, which is the governor's task force final report?

15 MR. GUTIERREZ: And may I approach?

16 THE COURT: You may.

17 THE CLERK: Mr. Gutierrez, 2009 is at the very bottom
18 of the cart. It should say 2000 onward.

19 BY MR. GUTIERREZ:

20 Q Ms. Contine, I've handed you the final report for the
21 governor's task force dated May 30th, 2017. Do you see that?

22 A Yes.

23 Q Okay. Turn to page 1 of the document.

24 MR. GUTIERREZ: Where it says, Letter from the
25 chairs, May 30th, 2017, Bryan.

1 Do you have that, Bryan?

2 THE WITNESS: Yeah.

3 MR. GUTIERREZ: Okay.

4 EXHIBIT TECHNICIAN: Letter of the chair?

5 MR. GUTIERREZ: Yes. Do you have the actual page,
6 Bryan? Page 1?

7 EXHIBIT TECHNICIAN: What's the Bates stamp number on
8 the bottom right?

9 MR. GUTIERREZ: I don't have it on mine.

10 There we go. Okay.

11 BY MR. GUTIERREZ:

12 Q Is that the document you have in front of you,
13 Ms. Contine, that's on the screen?

14 A Yes.

15 Q Okay. Now, this is a letter from you and Chuck
16 Calloway to the governor; is that correct?

17 A Yes.

18 Q And what's the purpose of this letter? Just to
19 summarize the reports?

20 A Yeah, summarize the report, talk about the work that
21 everybody does, did and recognize that process and that work
22 that was involved.

23 Q And what was Chuck Calloway's role with the task
24 force?

25 A Chuck Calloway was the vice chair.

1 Q Okay. And now let's go to page 3, and, specifically
2 right where it says, The act directs the Nevada Department of
3 Taxation. Do you see that paragraph?

4 A Yes.

5 Q It says, The act directs the department -- the Nevada
6 Department of Taxation should adopt all regulations necessary
7 or convenient to carry out the provisions of this act. What
8 was your understanding as to what that meant, Necessary or
9 convenient to carry out the provisions of the act?

10 A Well, it means that the act had some specific
11 provisions where the department was required to make
12 regulations so that it would be necessary to make regulations
13 on those.

14 And then convenient is whatever other regulations
15 that needed to be made, and this is broad language in almost
16 every agency statute.

17 Q Explain that for me. What do you --

18 A So if you have -- so the -- the -- the statute that
19 creates an agency or a board will almost always have the
20 provision that says the agency or the department or whatever it
21 is, the board may make all regulations necessary or convenient
22 to carry out the provisions of this statute. So it's across
23 the board you look in. In many statutes that have to deal with
24 the creation of state agencies you'll see that provision.

25 Q Okay.

1 A So it basically means that they make the regulations
2 to interpret and operate or give process or somehow interpret
3 or in some way the provisions of that chapter so that people
4 know what they have to do or what the expectations are.

5 Q Okay. Great.

6 THE COURT: Is this a good place to break for lunch?

7 MR. GUTIERREZ: Yes, it would be, Your Honor.

8 THE COURT: All right. So we're going to break
9 until --

10 I just looked at the minutes from what Judge Crockett
11 used to set your hearing, Mr. Gentile. I don't think an hour
12 is going to be long enough.

13 MR. GENTILE: I really don't know. I know that the
14 issue deals with alter ego.

15 THE COURT: Yeah.

16 MR. RULIS: And, you know, I don't know the answer.

17 / / /

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1 THE COURT: Okay. So we're going to shoot for you
2 being gone until 2:00 o'clock.

3 So we'll be back here at 2:00 o'clock, which gives us
4 an hour and 15 minutes, which is our usual lunch break time.
5 So I apologize for the late lunch.

6 But good luck.

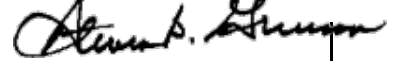
7 (Proceedings recessed at 12:43 p.m., until 2:08 p.m.)

8 -oOo-

9 ATTEST: I do hereby certify that I have truly and correctly
10 transcribed the audio/video proceedings in the above-entitled
11 case.

12 
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14 Dana L. Williams
15 Transcriber
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TRAN

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**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 13
VOLUME II**

THURSDAY, JULY 11, 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:

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WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
MAXIMILIEN FETAZ, ESQ.
MAHOGANY TURFLEY, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.
STEVE SHEVORSKI, ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JULY 11, 2019, 2:09 P.M.

2 (Court was called to order)

3 UNKNOWN: Your Honor, too, we want to take care of
4 it. We do have that motion to seal our Exhibit F. We have
5 the documents that we think should --

6 THE COURT: Let's wait a second. Let me get through
7 what I've got on my mind first. I'm looking for plaintiffs'
8 lawyers. I've got a Mr. Kemp. That's pretty close.

9 UNKNOWN: Some are coming. I haven't seen Dominic.

10 THE COURT: I don't need Dominic. I need one person
11 from his office, any one of them.

12 Thank you, Ms. Haar.

13 MR. KEMP: Judge, they went over their -- Judge, I
14 know Mr. Cristalli --

15 THE COURT: Mr. Cristalli is walking in right now.

16 Thank you, Mr. Rulis. You're very fine at your
17 fashion advice.

18 All right. So my trial for next week settled. So
19 how many more days you guys need?

20 MR. KOCH: Five.

21 MR. KEMP: Judge, we were going to rest as soon as
22 we came back. And I've talked to Mr. Parker, and we just want
23 to formally rest the plaintiffs' case.

24 THE COURT: I've got to finish this -- oh. Before
25 this witness finishes?

1 MR. KEMP: Yeah.

2 THE COURT: Okay. That's fine.

3 MR. KEMP: Because we thought --

4 THE COURT: Wait. So I'm looking at this side of
5 the room. How many more days do you guys need?

6 MR. KOCH: The only witness that I have is Mr.
7 Groesbeck, and we've had discussions. He's potentially going
8 to be here tomorrow, but Mr. Kemp says maybe not. Tomorrow
9 I'll know. But he's a relatively brief witness. I don't know
10 if the State has --

11 THE COURT: Other than finishing Ms. Contine and
12 getting Mr. Groesbeck, what else?

13 MR. GUTIERREZ: Your Honor, we would -- on behalf of
14 Essence and Thrive we want to call at least five or six of the
15 plaintiffs' principals.

16 THE COURT: You can call anybody you want. I'm
17 trying to figure --

18 MR. GUTIERREZ: It's more coordination, Your Honor.
19 We've been coordinating with counsel, so if you have
20 availability next week we can just make sure by tonight --

21 THE COURT: Well, that's what I'm trying to do right
22 now.

23 MR. GUTIERREZ: What's the availability next week?
24 Is it every day?

25 THE COURT: It's like Monday through Friday.

1 MR. GUTIERREZ: Perfect. Okay.

2 THE COURT: I just made a doctor's appointment for
3 Tuesday afternoon, though, because I didn't have Mental Health
4 Court. So I took the time to make a doctor's appointment. So
5 other than that, I'm at your disposal. I don't know if I have
6 a settlement conference on Monday. Hold on. Let's see. I
7 don't have a settlement conference on Monday, so I can start
8 as early as 10:30. The question, though, is do you have
9 witnesses that you would like to call?

10 MR. KOCH: Tomorrow -- if Mr. Groesbeck is not
11 available tomorrow, I'd like to call him on Monday. Is he
12 available Monday?

13 MR. KEMP: I'd have to check with him, Your Honor.
14 I'd kind of like to know why all of a sudden we're -- as of
15 yesterday we were hoping to try to get done tomorrow, and last
16 night they substituted --

17 THE COURT: Nobody told me that.

18 MR. KEMP: Judge, I've been trying to get this thing
19 done for two weeks, okay. So, Judge, last night is the first
20 we hear all of a sudden they want four more plaintiffs. I
21 just don't understand why they think they need --

22 THE COURT: Mr. Kemp, it's okay. As I think you've
23 recognized, no discovery occurred in this case prior to us
24 starting this hearing. As a result of no discovery happening
25 in this case, I have certainly allowed everybody in the room

1 enough rope to hang themselves or call the witnesses that they
2 want to. If people want to call some more witnesses, I'm
3 going to let them call them so that we have a full and
4 complete record given the lack of discovery that was done
5 prior to this hearing starting.

6 Now I'm just trying to figure out what to do,
7 because I want to finish up next week.

8 MR. KOCH: And I think the witnesses that are
9 potentially going to be called will be relatively brief. Mr.
10 Groesbeck, for example, my questioning of him would be done in
11 20, 25 minutes --

12 THE COURT: Great.

13 MR. KOCH: -- whatever additional -- I think all the
14 witnesses would be of that type --

15 MR. GUTIERREZ: That's correct, Your Honor. Every
16 witness we would propose is 20 or 30 minutes.

17 MR. KOCH: -- if they're all available.

18 MR. GUTIERREZ: Just it's availability.

19 THE COURT: All right. So --

20 MR. KOCH: We could get them -- frankly, we could
21 get them done today, but, you know, I'm not counting on that.

22 MR. KEMP: Judge, can we at least see why we're
23 calling these witnesses while we've got time.

24 THE COURT: Hold on a second. So has anyone heard
25 from Mr. Gentile?

1 MR. CRISTALLI: Yeah. Your Honor, Mr. Miller and
2 myself were up there. He looks like he's completing his
3 testimony now. He should be back I would imagine very
4 shortly.

5 THE COURT: Okay. So we've got a half hour.

6 MR. CRISTALLI: Next week is a little concerning,
7 but he did -- I think Mr. Gentile -- listen, we could continue
8 to go forward without his presence with the witnesses that are
9 remaining. That's not an issue. But I think he really wants
10 to be present, so he may vacate his travel plans. So I don't
11 want to speak on his behalf. I'm just anticipating that he
12 will say that.

13 THE COURT: I'll listen to it if he says it.

14 MR. CRISTALLI: Yeah.

15 THE COURT: So we had Mr. Groesbeck?

16 MR. KOCH: Right.

17 THE COURT: Who else?

18 MR. GUTIERREZ: Frank Hawkins.

19 THE COURT: Okay.

20 MR. GUTIERREZ: Brett Scolari from Tryke, one of the
21 plaintiffs; John Matos from ETW; Jesse McCrea, one of the
22 plaintiffs; and Riana Durrett, who's part of the NDA, but
23 she's out of the country, Your Honor.

24 THE COURT: So other than Mr. Groesbeck can you tell
25 me, because Mr. Kemp requested it, the purpose for which you

1 intend to call each of those witnesses.

2 MR. GUTIERREZ: Absolutely. We're talking about
3 irreparable harm. We have to talk to the plaintiffs about
4 their -- what they've done, what they're doing to buy
5 licenses, which we think goes directly against the irreparable
6 harm problem. We also want to talk about some of their
7 applications. We also want to talk about some of the things
8 that they've done and told our clients when it comes to the
9 application process. So, you know, it's not going to take
10 long, Your Honor. At least estimated 30 minutes each one.
11 It's just about scheduling and getting them in. Once we do
12 that I think we'll be fine.

13 THE COURT: Okay. All right.

14 MR. CRISTALLI: If I could just inquire, then, Mr.
15 Gutierrez. I think that also Damon Hernandez is on the
16 witness list. And then there were two yesterday, that was
17 Chad Christensen and Shawn Luz [phonetic] and Ben Sillitoe.
18 So are -- 'cause you just mentioned Brett. Are you intending
19 to call all of those additional witnesses, as well?

20 MR. GUTIERREZ: My intent is to call at least
21 somebody from the plaintiffs' side. We'll talk with you about
22 that. But, like I said, each one, Your Honor, wouldn't be
23 more than 20 minutes, 30 minutes.

24 THE COURT: If I can get them in the room.

25 MR. CRISTALLI: And what about Hernandez?

1 MR. SHEVORSKI: The State is not calling Mr.
2 Hernandez.

3 MR. CRISTALLI: Yes, but he's also on --

4 MR. GUTIERREZ: We're not calling Mr. Hernandez,
5 either.

6 MR. CRISTALLI: Okay.

7 MR. SHEVORSKI: I'm sorry.

8 THE COURT: You're just down to plaintiff party
9 representatives at this point from the defendants in
10 intervention. Okay.

11 MR. GUTIERREZ: That's correct. With the exception
12 of Riana Durrett, who's part of the NDA. But that's -- the
13 rest will be plaintiff party witnesses, Your Honor.

14 THE COURT: Okay. All right. Thanks.

15 Now I'm going to go to Mr. Kemp. Mr. Kemp, you
16 wanted to tell me something.

17 MR. KEMP: I have eight, which is Groesbeck,
18 Scolari, Hawkins, Matso, Riana Durrett, Christensen, Losee,
19 and Hilltop.

20 THE COURT: No reason I can't finish that in four
21 and a half days?

22 MR. KEMP: I would think not, Your Honor, especially
23 if they're promising in Mr. Koch's case 20 or 25 minutes and
24 Mr. Gutierrez's case 20 to 30 minutes. So I would think you
25 could get done in four days.

1 But getting back to what we started with, we would
2 rest our case.

3 THE COURT: Okay. Does that include all of the
4 plaintiff parties that have participated in the preliminary
5 injunction hearing?

6 MR. GENTILE: I just heard Mr. Gutierrez say
7 something that tells me that I can use my expert in rebuttal.
8 Let me lay it out for you. If he's going to go into in his
9 case in chief the concept of irreparable harm and he intends
10 to do it through these four, then I have retained a gentleman
11 from Colorado who is an expert in the evaluation of cannabis
12 businesses.

13 THE COURT: Okay.

14 MR. GENTILE: So I'll call him in rebuttal.

15 THE COURT: Then you would have a rebuttal witness.
16 It's okay. But I'm only on case in chief. All of the
17 plaintiff parties who've been participating in our preliminary
18 injunction hearing, all of you agree to rest at this point for
19 purposes of this hearing?

20 Max -- I'm sorry. Mr. Fetaz.

21 MR. FETAZ: On behalf of ETW plaintiffs, yes, we
22 rest.

23 THE COURT: Mr. Gentile?

24 MR. GENTILE: We rest.

25 THE COURT: Mr. Kemp, you already rested.

1 MS. TURFLEY: We rest.

2 THE COURT: Okay. So the plaintiffs' group has
3 rested with the understanding that, depending upon what you
4 guys put on in your case in chief, they may have a rebuttal
5 witness. So are we ready to continue with our current
6 witness?

7 MR. GUTIERREZ: Yes, Your Honor.

8 THE COURT: Can you all, and those are you all
9 sitting at the plaintiffs' table, check with your respective
10 clients about their availability for next week. I understand
11 that Mr. Gentile may have some travel challenges, but --

12 MR. GENTILE: I'm going to forgo it. This is far
13 more important.

14 MS. TURFLEY: I can represent Mr. Parker does have
15 his board meeting on Thursday.

16 THE COURT: We'll let him get to his board meeting.
17 I've broken for board meetings for Mr. Parker before.

18 DEONNE CONTINE, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

19 Ms. Contine, are you ready? You're still under
20 oath.

21 THE WITNESS: Yes. Okay.

22 MR. CRISTALLI: And, Your Honor, before we start
23 with Ms. Contine, I didn't address this prior to her beginning
24 her testimony, but -- and I did speak to Mr. Gutierrez with
25 regard to this issue prior to the testimony starting -- Ms.

1 Contine, after her employment with the Department I believe
2 went into private practice for a period of time with Kaempfer
3 Crowell, and during that period of time, it was March of 2018,
4 represented the interests of Nevada Pure, Shango. And so we
5 talked about some concern that may exist with regard to
6 privileged communications and potential conflict as it relates
7 to her representation of that company during that period of
8 time. We haven't gotten there yet. I don't know whether or
9 not we will or not, but I wanted to make the Court aware of
10 it.

11 THE COURT: I am sure she will respect the attorney-
12 client privilege and any communications she had with the
13 client. It's one of the problems with litigating in the State
14 of Nevada. Some of you may have read a report from
15 Massachusetts. They don't understand that when you're in a
16 state as small as Nevada it is impossible to avoid having
17 relationships with people.

18 MR. CRISTALLI: Yes, Your Honor.

19 THE COURT: Okay. Anything else? Now you may
20 continue.

21 MR. GUTIERREZ: Thank you, Your Honor.

22 DIRECT EXAMINATION (Continued)

23 BY MR. GUTIERREZ:

24 Q Ms. Contine, when we left we were talking about the
25 final report of the Governor's Task Force. Do you have that

1 still in front of you?

2 A Yes.

3 Q Okay. And I want you to turn -- if you can, turn to
4 page 19.

5 THE CLERK: I'm sorry, Mr. Gutierrez. Is this
6 Exhibit 2009?

7 MR. GUTIERREZ: Yes. I'm sorry. It's 2009, which
8 was previously admitted.

9 THE CLERK: Thank you.

10 MR. GUTIERREZ: Thank you.

11 BY MR. GUTIERREZ:

12 Q And are you there, Ms. Contine, on page 19?

13 A Yes.

14 Q Okay. And the first paragraph talks about
15 application and licensing requirements, and there's several
16 recommendations. And one of the recommendations is about the
17 impact of ownership interest below 5 percent and the most
18 effective way of issuing agent cards. Do you recall having
19 discussions with the Governor's Task Force about ownership
20 interest less than 5 percent?

21 A Yes.

22 Q Okay. Can you tell us about those discussions.

23 A So there were several discussions along the way in
24 various processes about the difficulty that the industry had
25 faced in the medical program in obtaining -- and essentially

1 the burden that it was to actually get anything done through
2 the process when they had to get a signature or a background
3 check from somebody that maybe was a -- had like a, you know,
4 half a percent interest or something like that and lived in
5 Ohio. And so that was an ongoing discussion with the industry
6 about making that process a little bit less burdensome.

7 Q So the concern when discussing background checks of
8 owners less than 5 percent was to make sure it wasn't
9 burdensome on the industry; is that fair to say?

10 A Right. And it was their request. And our -- the
11 Department's, you know, the State's interest was kind of
12 looking at the overall purpose of the regulations and, you
13 know, protecting public health and safety and kind of coming
14 to this conclusion that there could be some give on that,
15 because if you have a really small interest in a company,
16 you're not going to be able to dictate actions that may lead
17 to black market sales or things like that. So it was kind of
18 a balance between, again, as I spoke of before, like balancing
19 that public health and safety in the interest of the industry
20 and the interest of the State in trying to come up with
21 something that the State could work with and that the industry
22 could also work with.

23 Q And when you were having those discussions was --
24 did the Department and the Task Force look at the ballot
25 initiative and NRS 453D to make sure that was in compliance?

1 A Yes.

2 MR. GUTIERREZ: Okay. And if we can, turn to,
3 Brian, NRS 453D.

4 Judge, do you mind if I hand her the --

5 THE COURT: You may. Sure. It's right there.

6 THE WITNESS: Okay.

7 (Pause in the proceedings)

8 BY MR. GUTIERREZ:

9 Q Ms. Contine, are you at -- can you turn to NRS
10 453D.200.

11 A Okay.

12 Q And you've seen this and read the statute before;
13 correct?

14 A Yes.

15 Q Okay. Now. the statute says. "The department shall
16 adopt all regulations necessary or convenient to carry out the
17 provisions of this chapter." We discussed already what you
18 stated was your interpretation of necessary or convenient; is
19 that correct?

20 A Correct.

21 Q But the next sentence, tell me what you -- what your
22 position is on the next sentence that says, "The regulations
23 must not prohibit the operation of a marijuana establishment
24 either expressly or through the regulations that make their
25 operation unreasonably impracticable."

1 A And that's kind of in line with what I discussed
2 earlier, which is -- well, I think the -- I'm making an
3 assumption, but I think that I've even had discussions with
4 maybe some of the drafters is that the fear that going forward
5 if somebody didn't like -- if there was -- if somebody didn't
6 like the fact that marijuana had been voted in, legalized by
7 the public, you could make -- you could theoretically make
8 regulations so unreasonable that it would eliminate the
9 ability to operate. So I think that language is meant to
10 address some of that. And so, again, as I testified before,
11 there's always this kind of balance between what's reasonable
12 in terms of regulatory structure, but which still allows the
13 agent -- or the entities to operate the establishments.

14 Q So in your interpretation the Department in looking
15 at this provision of the statute also had to consider a
16 balancing, not adopting regulations that would make the
17 operation of an establishment impossible or impracticable as
18 it says; is that correct?

19 A Right. Correct.

20 Q And then if you could turn to the definition of
21 "unreasonably impracticable," which is 453D.030(19). And do
22 you have that in front of you, Ms. Contine?

23 A Yes.

24 Q Okay. And is that definition of unreasonably
25 impracticable, was that used by the Department in adopting

1 regulations to ensure that the marijuana businesses -- that
2 regulations weren't adopted they were going to put them out of
3 business or increase costs unnecessarily high?

4 A Correct.

5 Q Could you explain that a little more for us about
6 how this was utilized with the adoption of the regulations.

7 A So I guess the way that it was utilized was to
8 really consider what were some of the barriers that the
9 industry had faced in the past and how that was affecting how
10 they could operate and whether they could do their business.
11 And so, I mean, the basis for that -- I mean, I think the
12 language is meant to basically say, you know, you can't say,
13 you know, you can't sell edibles or you can't -- you know, so
14 that people couldn't come in and do those types of things.
15 But I think -- but in addition to that it was really kind of
16 having that input that, you know, these are some of the
17 challenges that we face in just operating the business and
18 considering those as we went forward under that section and,
19 you know, the reasonable -- you know, making the regulations
20 reasonable and necessary and convenient to carry out the
21 provisions of the chapter.

22 Q And you said you spoke -- or you thought you had
23 discussions with some of the drafters. Who would those be --
24 those people be?

25 A Well, or some of the people that were involved in

1 the initiative. I don't know everybody's involvement. Matt
2 Griffin, Joe Bresnie [phonetic], Will Adler, they were all
3 really involved in Question 2 from -- in some sort.

4 Q Did you ever speak to Heather Azzi at the Cannabis
5 Trade Federation?

6 A I don't think so.

7 Q Does that name ring a bell to you?

8 A No. But she might have been associated with one of
9 the other people, and maybe there was a conversation that
10 occurred in a group or -- but I don't -- I don't recall her.

11 Q She stated that the intent behind the "necessary or
12 convenient" language was to give the regulatory authority to
13 regulate the cannabis industry. Is that consistent with what
14 the Department looked at?

15 A Yes.

16 Q Okay. Do you believe the Department had some
17 deference when interpreting NRS 453D.200 in adopting
18 regulations?

19 A Yes.

20 Q Can you explain that for us.

21 A Well, generally, you know, a chapter has a lot of
22 provisions in it, and the agency goes about trying to
23 interpret and apply those provisions. With respect to the
24 initiative it was somewhat of a shell and gave kind of the
25 Department the broad authority to do maybe some work that

1 would have been done legislatively if it had been legislation.
2 And so to really hone in and fine tune the points of the
3 regulatory responsibilities, especially the categories of
4 regulatory responsibility, and then also look more broadly at
5 how -- you know, what would be necessary and/or convenient to
6 carry out the initiative.

7 Q Great. And if you could turn back to 453D.200. In
8 adopting the regulations the statute gave a list of criteria
9 that the regulations shall include. Do you see that --

10 A Yes.

11 Q -- under (a) through (m)?

12 A Yes.

13 Q And under (b) it discusses qualifications for
14 licensure. Do you see that?

15 A Yes.

16 Q And it says, "qualifications for licensure that are
17 directly and demonstratively related to the operation of a
18 marijuana establishment."

19 A Right.

20 Q How did the Department interpret that particular
21 provision of the statute in adopting the regulations?

22 A Well, I think the term related to -- so just looking
23 at -- it's kind of a more general provision and then just
24 narrowing it down within the regulations and what's related to
25 operation in a marijuana establishment similar to how you'd

1 look at other businesses and then what other specific
2 provisions maybe that are directly related to and that are
3 directly -- there is some broadness in it, I guess. And so I
4 think in the categories under the regs there's categories for
5 involvement in, you know, operating a marijuana business, and
6 then there's more general categories for other -- you know,
7 for other things to consider more generally in operating
8 businesses.

9 Q Okay. And did you receive input from operators of
10 marijuana establishments as you adopted the regulations to
11 interpret that provision?

12 A Yes.

13 Q Okay. Do you recall how diversity as a merit for
14 scoring was included in the regulations?

15 A So I think, you know -- frankly, I think the -- you
16 know, there's an ongoing discussion throughout the country,
17 really, on the effects of marijuana legalization and the
18 effects of the war on drugs in communities of color or
19 underserved or underrepresented communities, and they've
20 somehow bore the brunt of that. So the discussion in -- you
21 know, there was legislative discussion during that same time
22 in 2017 and I think AB422, which was a broad marijuana bill
23 where they talked about that.

24 And then just considering that, you know, the
25 importance of, you know, different types of diversity and

1 different -- different ways of thinking, different
2 perspectives, where you're coming from. If you have a diverse
3 group of people in your organization, you might be more
4 willing to operate in a community that is -- you know, has
5 been underserved or has been disserved by the war on drugs or,
6 you know, you have a more friendly face to some communities
7 like that. And I think there was just -- you know, that was
8 how it was related to the marijuana industry.

9 Q Did the Department receive input from the marijuana
10 industry on diversity either through the Task Force or through
11 AB422?

12 A Well, I -- you know, I think it would have been
13 discussed through the regulatory process. I mean, it could
14 have been -- I believe it was probably discussed in almost
15 every forum, so that through the Task Force, through the
16 legislature, through the workshops and the adoption hearings
17 for the regulations. So I think it was an ongoing discussion
18 that was happening at the time.

19 Q Did you have input or recall testifying at the --
20 either the Assembly or Senate when AB422 was being proposed?

21 A I don't think I testified.

22 Q Okay.

23 A I'm not 100 percent sure, but I don't think I did.
24 I think I would have only come to the table if I was called by
25 the Committee. I didn't --

1 Q Got it. And AB422, correct me if I'm wrong, was to
2 amend NRS 453A; is that correct?

3 A Yes, that's correct.

4 Q And added diversity to 453A?

5 A So -- yes. And they did amend some provisions in
6 453D that made them effective on January 1st of 2020.

7 Q And can you explain that. Where in 453D did they --

8 A I'm sorry. So in AB422 they made those changes. I
9 think -- I'm not 100 percent sure of all of them. I want to
10 say some related to advertising and maybe some other
11 provisions. But because they weren't going to be effective
12 with respect to -- so they weren't going to be relevant to
13 what we were doing necessarily, although, again, you know, I
14 would try not to make regulations that, you know, would have
15 to be changed once -- you know, there was a desire to have
16 some consistency in the regulations at that point, because if
17 we made -- if the State made a regulation and the legislature
18 had already made a decision on something that would be
19 effective later, you know, then you'd have to go through the
20 whole regulatory process. So to the extent that those
21 provisions complied with the initiative and were reasonable to
22 implement the chapter and the vote of the people, you know, we
23 consider that as important.

24 Q So to be clear, diversity wasn't added to 453D;
25 correct?

1 A No.

2 Q Okay. It was added to the regulations under NAC
3 453; is that correct?

4 A Yes.

5 Q The consideration of diversity?

6 A Yes. So the bill I believe added that diversity
7 provision only with respect to 453A. I could be wrong on
8 that. They could have made it effective to 453D on January
9 1st, 2020. I'm not 100 percent sure. But with respect to
10 that requirement for licensing it was added through the
11 regulatory process into NAC 453D.

12 Q And in putting diversity in NAC 453D did the
13 Department look at the "directly and demonstratively related"
14 language as for qualifications to include diversity?

15 A Yeah. I mean, it would have to be -- yes, it would
16 have to be within that -- within that criteria to advance and
17 go through the process and be approved.

18 Q And is that the reason why -- or is that the basis
19 or one of the bases the Department felt it can add diversity
20 as a qualification for licensure or a scoring criteria under
21 the regs?

22 A I mean, I think the initial analysis was that this
23 would -- our own internal analysis would be that this -- you
24 know, these regulations, the drafts that we're putting forward
25 comply with the statute. And then it goes through that legal

1 process and review, and, again, that's the kind of the second
2 check.

3 Q Okay. And on 453D.200 it says, "The regulations
4 shall include" when it's discussing adoption of the regs. Did
5 you believe that language was limited to only (a) through (m)
6 as what's in there, or did you believe that language gave the
7 Department the ability to say, this isn't an exhaustive list,
8 this is a list that the Department can, if it falls under this
9 qualification for directly and demonstratively related, we can
10 add this in the regulations?

11 A Yes. So the interpretation is that these are the
12 categories for which the State must -- the Department must
13 make regulations, and then they can make all other regulations
14 within the provisions as long as they comply with the
15 provisions of the -- as long as they're reasonable and not
16 unduly burdensome and not -- I wouldn't say that the State is
17 limited to this.

18 I'll make one kind of caveat on this, is that there
19 was discussion -- so Colorado, when they initiated they had a
20 more expansive -- kind of a more expansive public health
21 provisions, and so the Department did not make public-health-
22 related regulations. And it's not because, you know, they
23 weren't necessarily important or that they -- it's just it was
24 out of the expertise of that department and it wasn't
25 specifically called for. So I guess if there was a case where

1 we could have made regulations on something and other states
2 maybe did, and I thought that it would -- you know, it would
3 be to the legislature to kind of flesh that out. And so I
4 didn't want to -- I was trying not to over -- I was trying to
5 be -- you know, have a reasonable interpretation of these
6 provisions and then whatever was reasonable and necessary
7 outside of that without going too broadly outside of kind of
8 the authority that we had.

9 Q And in doing that you took the recommendations of
10 the people in the industry, correct, on how they handled their
11 day-to-day operations and what was important to them; is that
12 correct?

13 A Yes.

14 Q And you also took -- go ahead.

15 A And also, I mean, you know, again, the Task Force
16 was made up of public health professionals, public safety
17 professionals, industry, local governments, the Department of
18 Public and Behavioral Health. So just taking -- and many of
19 those people testified in the regulatory process, too. So
20 just having that broad -- you know, everybody having a seat at
21 the table.

22 Q Okay. I want to turn to background checks, which is
23 on 453D.200(6) if you turn down there. Do you have that in
24 front of you, Ms. Contine?

25 A Yes.

1 Q Okay. It says, "The Department shall conduct a
2 background check of each prospective owner, officer, and board
3 member of a marijuana establishment license applicant." How
4 did the Department interpret that provision when adopting the
5 regulations?

6 A So, again, that was slightly limited by the
7 5 percent rule, and so -- I mean, do you -- like the process
8 or how -- you want me to explain?

9 Q Yeah. And actually you mentioned the 5 percent
10 rule. Let's look at that. Let's look at NAC 453D.255. You
11 wouldn't have that in front of you, but we'll put it up on the
12 screen. You mentioned the 5 percent rule. Do you see it on
13 the screen, Ms. Contine?

14 A Yes.

15 Q Is this the 5 percent rule you were talking about
16 under 453D.255?

17 A Yes.

18 Q Okay. And in looking at this particular provision
19 of the regulation it says, "Except as otherwise required in
20 subsection (2), the requirements of this chapter concerning
21 owners of marijuana establishments only apply to a person with
22 an aggregate ownership of 5 percent or more in a marijuana
23 establishment." Do you see that?

24 A Yes.

25 Q And if you go to section (2), it says, "If in the

1 judgment of the Department the public interest will be served
2 by requiring any owner with an ownership interest of less than
3 5 percent in a marijuana establishment to comply with any
4 provisions of this chapter concerning owners of marijuana
5 establishments, the Department will notify that owner and he
6 or she must comply with these provisions." Do you see that?

7 A Yes.

8 Q Does subsection (2) of this give the Department some
9 discretion when it comes to potentially checking, if it needs
10 to, the background checks of owners under 5 percent interest?

11 A Yes.

12 Q And do you recall discussions regarding that
13 particular provision of the regulation?

14 A Well, yeah. I mean it -- yes, I mean, again, the
15 whole -- the whole idea behind the process was to balance the
16 public safety, you know, related to public health and safety
17 and then the interest of the industry. So that was a way that
18 we could craft -- you know, we could interpret that -- that
19 provision to allow -- you know, to not be as burdensome on the
20 industry, but also still take into account that there may be a
21 time when the department may see something and think ooh, you
22 know, I'm not sure about this, there might be something fishy
23 going on or -- you know, I mean, the whole goal is to keep a
24 regulated, robust market and to not have potential for a black
25 market. It's to bring this -- you know, an unregulated, you

1 know, illegal market into a legal market. And so that was the
2 intent of that.

3 Q Do you believe that the regulation under NAC
4 453D.255 is consistent with the ballot initiative in NRS
5 453D.200 on background checks?

6 A Yes.

7 THE COURT: So can you explain why.

8 BY MR. GUTIERREZ:

9 Q Can you explain why.

10 A Yeah, sure. I think it interprets the provisions.
11 Again, I think the process that the regulations went through,
12 the overall discussion, the input into it, the requirement to
13 make regulations that aren't unduly burdensome and going
14 through that whole process is -- you know, the State has the
15 ability to interpret the provisions when it makes -- to
16 reasonably interpret the provisions to make regulations, and
17 that's what --

18 THE COURT: So you think changing the interpretation
19 of the word "each" to "each who owns 5 percent or more" is
20 reasonable?

21 THE WITNESS: I think -- yes. I think it's the
22 ability to alleviate a burden as the statute -- or as the
23 initiative requires, but also make sure that the interests of
24 the State are protected, as well, with respect to the public
25 safety part.

1 THE COURT: But this wasn't a regulation that was
2 being imposed by the Department, it's part of the ballot
3 question. That's why I'm trying to ask why you thought you
4 had authority to make that change.

5 THE WITNESS: I think we that had -- for a couple of
6 reasons. I think we have authority because the agencies
7 generally have authority and deference in interpreting the
8 provisions that they are responsible for regulating or
9 enacting, and that that was an interpretation of that
10 provision.

11 THE COURT: So you think "each," which was approved
12 by the voters in Ballot Question 2, could be interpreted by
13 the Department to be "each with 5 percent or more"?

14 THE WITNESS: Right. And that --

15 THE COURT: Okay. Thanks.

16 THE WITNESS: That's because of the other language
17 within the statute -- or the initiative that required the
18 Department to not have unduly burdensome processes and to
19 effectively not make regulations that prohibited businesses
20 from operating.

21 THE COURT: Okay. Thanks.

22 BY MR. GUTIERREZ:

23 Q And was the Department getting feedback from the
24 members of the industry that background checks for owners with
25 less than 5 percent interest would have been unduly

1 burdensome?

2 A Yes.

3 Q Okay. Can you explain that.

4 A Yeah. I mean, it was a major issue in terms of
5 discussion. I think it was a discussion at the Task Force, it
6 was discussion through the regulatory process. Again, as I
7 mentioned when I first -- when you first started asking about
8 this, this was, you know, the examples of having, you know, a
9 half a percent owner that lived in Ohio that had nothing to do
10 with the operation of the business, that didn't live in
11 Nevada, the burdens that industry was having in complying with
12 those provisions, and how long everything was taking because
13 of that.

14 Q And with that, Ms. Contine, can we go back to the
15 Governor's Task Force report -- final report --

16 MR. GUTIERREZ: Which is 2009, Brian, and go to
17 page 114.

18 BY MR. GUTIERREZ:

19 Q Do you have that in front of you, Ms. Contine? The
20 title would be "Ownership Issues, Licensing Requirements."
21 Ms. Contine, is that the page you have in front of you?

22 A Yes.

23 Q Okay. And we talked about this 5 percent and where
24 it came from. And we have here the Task Force recommending
25 this 5 percent standard. Do you see that?

1 A Yes.

2 Q Okay. And who's on the -- who are the sponsors of
3 that?

4 A So this is the taxation revenue regulatory structure
5 working group. The individuals are John Ritter and David
6 Goldwater. And the recommendation is that they require only
7 owners with 5 percent or more cumulative ownership to be
8 fingerprinted, to be required to undergo a background check,
9 and resubmit any application for license renewal.

10 Q And that's the recommendation from John Ritter and
11 David Goldwater on behalf of the Governor's Task Force; is
12 that correct?

13 A So they would have been on that working group. So
14 some of the Task Force members were also on individual working
15 groups. So in that working group there would have been many
16 other people on that working group, and I think that when --
17 as issues were discussed various people within the working
18 group were responsible for working on an individual or a
19 singular recommendation, and that would have been -- in this
20 case it would have been John Ritter and David Goldwater who
21 were tasked from their working group members.

22 Q Okay. And go to the next page. Under section (4)
23 it talks about what guiding principles that those
24 recommendations support. Do you see that?

25 A Right.

1 Q And it says "to be responsive to the needs and
2 issues of consumers, non-consumers, local governments, and the
3 industry."

4 A Right.

5 Q And the Guiding Principle 4, "Propose efficient and
6 effective regulation that is clear and reasonable and not
7 unduly burdensome." Is that correct?

8 A Right.

9 Q And that's what you've been talking about, not being
10 unduly burdensome with this 5 percent requirement?

11 A Right.

12 Q Okay. And John Ritter, he's a plaintiff in this
13 particular case. We had the opportunity to hear from him
14 early on. Would it surprise you if he testified that his
15 definition of "owner" was that it meant that, "Every owner
16 flows to the initiative, the statute, the regulation and the
17 application, and it's my understanding that the intent was
18 that every single owner in every single company, every single
19 applicant was to be background checked." Is that consistent
20 with what he just -- he recommended as part of his work on the
21 Task Force?

22 A I mean, the recommendation is what it is. I mean,
23 it's clear to me. I mean, based on my experience and all the
24 discussions that occurred I think it was clear that people
25 were in agreement that the 5 percent would help lessen the

1 burden.

2 Q And Mr. Ritter went on and said, "Every single owner
3 in our company, whether they had a minute percentage of
4 ownership, was background checked." But yet he's here in the
5 Governor's Task Force saying -- recommending 5 percent or more
6 as part of the regulations that are going to be adopted; is
7 that correct?

8 A Yes.

9 Q Okay. Now, part of the Task Force's job, as we
10 discussed, was to go through and look and to see what
11 provisions of Ballot Question 2 were implicated; is that
12 correct?

13 A Right.

14 Q And that's done on number (5), is that what your
15 understanding is?

16 A Right. Yes.

17 Q It talks under (5) -- section (5), paragraph (1) of
18 IP1 states that, "The regulations must not prohibit the
19 operation of a marijuana establishment either expressly or
20 through regulations that make their operation unreasonably
21 impracticable." And that's what we've been talking about; is
22 that correct?

23 A Yes.

24 Q Is it fair to say that the Governor's Task Force
25 took Ballot Question 2 into consideration when they

1 recommended this 5 percent threshold within the adoption of
2 the regulations?

3 A Yes.

4 Q Was there any dissent on the group under number (7)?

5 A No.

6 Q Number (6) discusses "What issues does the
7 recommendation resolve?" Do you see that?

8 A Yes.

9 Q The State said, "To allow companies that own
10 marijuana establishment licenses in which there are multiple
11 owners that own less than 5 percent and in some cases far less
12 to be able to operate practically and efficiently." Is that
13 consistent with the Ballot Question 2 and the Statute NRS
14 453D?

15 A Yes. I mean, if you consider, you know, it's kind
16 of the opposite of unduly burdensome or not reasonable.

17 Q It goes on to say, "To allow companies that own
18 marijuana establishment license to function based on their
19 governing documents as companies are allowed to with other
20 industries." That was a consideration, correct, as well?

21 A Yes.

22 Q And it didn't want to have a standard that would
23 have put unduly burdensome pressure on a marijuana
24 establishment; is that correct?

25 A Yes.

1 Q Okay. So as we sit here do you believe that the
2 regulations on the 5 percent threshold complied with Ballot
3 Question 2 and the Statute --

4 A I do.

5 Q -- 453D?

6 A Yes, I do.

7 Q Okay. One of the other provisions we've been
8 talking about -- if you can turn on this report to page 109,
9 the same exhibit. Ms. Contine, you testified earlier that you
10 left the Department in January of 2018; is that correct?

11 A Yes.

12 Q And you went into private practice for about a year;
13 is that correct?

14 A A little bit less than that, yes.

15 Q Okay. And did you have any involvement in the
16 creation of the application for the 2018 recreational
17 application process?

18 A No.

19 Q Okay. So any questions about the application itself
20 would be outside of your scope and knowledge. Is that fair to
21 say?

22 A Yes.

23 Q You don't have personal knowledge, because you
24 didn't create that application. Is that fair to say?

25 A No, I did not. In fact, when I left the regulations

1 hadn't been fully adopted.

2 Q And if you could explain that more for us.

3 Q So they hadn't been -- so earlier when I explained
4 the process the regulations hadn't gone to the Legislative
5 Commission.

6 Q They had been drafted. They hadn't gone through the
7 Legislative Commission for feedback?

8 A Well, they hadn't gone -- the Legislative Commission
9 is the last --

10 Q I'm sorry. They'd already gone through Legislative
11 Council Bureau --

12 A Right.

13 Q -- and they just haven't gone to the Legislative
14 Commission?

15 A They hadn't gone to the Legislative Commission. So
16 they weren't fully adopted.

17 Q Do you know when they were fully adopted?

18 A February, I think, sometime.

19 Q February. Okay. And it was after you were gone --

20 A Right.

21 Q -- is that correct? Okay.

22 A Or -- yeah.

23 THE COURT: February 27th, 2018.

24 MR. GUTIERREZ: February 27th?

25 //

1 BY MR. GUTIERREZ:

2 Q So any questions that I may have or anyone may have
3 about the application itself and the scoring criteria, is that
4 something that you have no knowledge on?

5 A I have no knowledge of it.

6 Q Okay. Any questions about how certain companies
7 were graded or the use of Manpower, for example, is that
8 something you would have knowledge on?

9 A No.

10 Q Okay. So we'll limit your questions on this to the
11 Task Force and with the regulations; is that fair?

12 A I guess I should say that there were some -- you
13 know, as you plan for something there were some discussions
14 about, you know, that some need to staff up and to, you know,
15 be able to complete the process. So I wouldn't say that I --
16 but I wasn't involved in that decision making ultimately.

17 Q Were you involved with any of the decisions to, when
18 you talked about staffing, to outsource and hire Manpower or
19 independent contractors to grade the applications?

20 A Well, I want to -- I'm not going to say I wasn't
21 involved in any conversations, but it wasn't under my purview
22 by the time that happened. I wasn't responsible for that.

23 Q You didn't make the decisions; is that fair to say?

24 A Exactly.

25 Q Okay. And you also didn't make decisions that were

1 part of the interview process for --

2 A No.

3 Q -- graders? Okay. And you don't have knowledge as
4 to whether they were qualified or any questions as to that?

5 A I don't have any internal knowledge, no.

6 Q Do you even know who some of the graders were?

7 A No.

8 Q Okay.

9 A I don't know who anybody is.

10 Q So let's go back. We're on page 109 on the
11 application and licensing requirement. And could you just
12 tell us what this particular recommendation is for.

13 A On page 109? I'm sorry. That same --

14 Q It's 109. It should say "Application and Licensing
15 Requirements" up top. Do you see that?

16 A Right.

17 Q And I believe they were talking about at least
18 Bullet Point Number 2 where the Department will not require
19 zoning approval --

20 A Right.

21 Q -- to be submitted in the marijuana establishment
22 application. Do you see that?

23 A Yes.

24 Q Do you recall some of the discussions regarding
25 zoning approval and requiring that as part of the application

1 process?

2 A So in the initiative the zoning and land use
3 determinations were reserved for the local government.

4 Q And can you explain why.

5 A I think because the State isn't in the community and
6 the State isn't responsible for, you know, issuing special use
7 permits or the like, and so it was determined that the State
8 wouldn't review the land use.

9 Q That bullet point number -- I'm sorry. Go ahead.

10 A Well, at the time of the initial application.

11 Q It would still be required as part of the final
12 approval; is that fair to say?

13 A Yes.

14 Q Okay. And what was the reason why it wouldn't be
15 required as part of the initial application?

16 A I think this is another lesson learned from medical
17 and also just a slightly different wording in the initiative
18 than the wording in the medical statute was intended to take
19 into consideration, that you would get your marijuana license
20 -- your State marijuana license, and then you would make the
21 investment in the local government process, which also can be
22 expensive and a long process. So -- and, you know, it's
23 difficult -- well, the local governments, you know, could make
24 some determinations on location and the like, but not really
25 knowing if somebody had a -- would ultimately have a license

1 for operation.

2 Q And, again, this was an adopted regulation. This
3 was something that the Department looked for input from the
4 industry on what's the most practical and efficient and not
5 unduly burdensome way to adopt; is that fair to say?

6 A Correct.

7 Q And you had people at least that are listed here
8 that are part of the industry. We have John Ritter, again; is
9 that correct?

10 A Yes.

11 Q Okay. Amanda Connor?

12 A Right.

13 Q Steve Gilbert was part of this process, at least
14 this Task Force; is that correct?

15 A Yes.

16 Q Okay. And if you go back down to Bullet Point 2, it
17 says, "No extra point of merit will be awarded for it being
18 included," regarding zoning approval?

19 A Right.

20 Q So was it clear in adopting the regulations that
21 that was the intent, that we want to make sure that any zoning
22 gets left to the local governments and that it's not done
23 until the final application -- or the final approval is done?

24 A Yes, that's correct. And this was another -- there
25 was some internal discussions between the State -- between the

1 executive --

2 THE COURT: Hold on a second. We need a five-minute
3 break.

4 I need a five-minute break? Why do I need a five-
5 minute break?

6 Oh. I'm sorry. I have to talk to some lawyers
7 who've been bad. Please feel free to get up and move around.

8 MR. SHEVORSKI: You don't mean us, though; right?

9 THE COURT: No. You guys have all been good today.

10 (Court recessed at 2:58 p.m., until 3:06 p.m.)

11 THE COURT: Okay. We ready?

12 MR. GUTIERREZ: Ready. Thank you, Your Honor.

13 THE COURT: I'm going to stand up because my back's
14 hurting. So you keep going.

15 BY MR. GUTIERREZ:

16 Q Ms. Contine, before we continue with the Governor's
17 Task Force report, you were talking earlier about the
18 different steps and adopting regulations. Do you recall that?

19 A Yes.

20 Q And the regulations are always sent to LCB for
21 review. Do you recall --

22 A Permanent regulations, yes.

23 Q Permanent regulations. Now, these regulations under
24 453D were sent to LCB for review?

25 A Yes.

1 Q And that reviews for constitutionality to make sure
2 it complied with the Nevada Constitution?

3 A Yeah. It's for intent and to make sure it's within
4 the scope of the chapter essentially.

5 Q So the provision that we've been talking about with
6 background checks and the 5 percent threshold and the proposed
7 location was all sent to LCB for review; is that correct?

8 A Yes.

9 Q And LCB did not find any type of constitutional
10 violation with that; is that correct?

11 A Right.

12 Q Do you recall any back and forth with LCB on the
13 issue, on these particular points that we've been talking
14 about?

15 A So one thing I would mention, I think I mentioned
16 earlier that the -- in the temporary regulations the
17 regulation, which doesn't require Legislative Council review
18 or the Legislative Commission review but gives the legislature
19 the option to pull the regulations in within that 45-day
20 period, there was some conversation with Legislative Council
21 regarding the wording of one of the provisions, and it was
22 specifically related to the issue of zoning and land use and
23 whether the Department would require that that happen first
24 before the issue -- the license was conditionally issued. And
25 it was their -- the way they read the reg it didn't seem to

1 comport with the initiative. And so when I explained that
2 that wasn't our intent and that, you know, the language was
3 maybe just off a little bit they were fine with it. We
4 recognize that you don't have to have a local government
5 approval. Our interpretation of the initiative was you don't
6 have to have local government approval prior to getting your
7 marijuana establishment license. And so as long as they -- as
8 long as -- they wanted to confirm that that was the intent and
9 that we understood that so that they could give their elected
10 bosses some comfort that we were complying with the initiative
11 and that that regulation wouldn't be pulled into that 45-day
12 period.

13 Q Thank you. So that back and forth happened in order
14 to get clarification --

15 A During the temporary regulation period, yes.

16 Q During the temporary regulation. Okay. Do you
17 recall who that was with?

18 A Brenda Erdos and Brian Fernly, I think.

19 Q Okay. Now we're back on the Governor's Task Force.
20 You have that in front of you, Ms. Contine?

21 A Yes.

22 Q I think we're at page 109. Now, this is talking
23 about application licensing requirements and the application
24 process, correct, with zoning?

25 A Yes.

1 Q Okay.

2 A So that was what I was going to explain about this
3 section.

4 Q Oh. Great. Okay. So that's what you were going to
5 cover on that issue. And the guiding principles list for the
6 Task Force, again, health, safety, well being of the Nevada
7 communities, do you see that?

8 A Yes.

9 Q To be responsive of needs and issues of the
10 consumers, non-consumers, and local governments industry.
11 That was considered; correct?

12 A Yes.

13 Q And regarding Principle 3 it says, "This
14 recommendation will improve upon the medical marijuana
15 application process that was already successfully used."

16 A Correct.

17 Q "These minor improvements will make it clear to the
18 applicant, the Department, and remove ambiguity." Can you
19 explain that.

20 A That goes back to what I was just talking about. So
21 there was -- I think there was some -- and I don't know,
22 because I wasn't really involved in the medical, but I know
23 there was some issue with the timing and whether -- whether
24 the local government or the State had final sign off and those
25 types of issues. So I think that was to clarify that. And so

1 -- and to also, you know, relieve any burden of investment in
2 a local -- in a local establishment at the local level if the
3 applicant was not going to receive a State license. So it's
4 to clarify that you couldn't actually operate without the
5 State license, and so once you had that condition that you've
6 passed the general requirements, then you'd work on your local
7 government stuff.

8 Q And the Department relayed that to LCB and had the
9 discussion for the permanent regs, or just for the temporary
10 regs?

11 A No. Just for the temporary regs, because there is
12 no legislative review. And so that was the issue, was that
13 there wasn't a requirement for legislative review, but in
14 order to advise their own elected bosses they wanted to make
15 sure that we were all on the same page so that they could say,
16 hey, these don't need to be pulled in.

17 Q That makes sense. And then by the time you were
18 brought the permanent regulations, 453D, those regulations
19 still got run through LCB on these issues to ensure
20 constitutionality; is that correct?

21 A Yes.

22 Q Can you turn to 112, page 112 on the same document,
23 which is rating criteria on applications. Now, this document
24 discusses the rating criteria for the applications for the
25 2018 process and the recommendations from the Task Force. Do

1 you see that?

2 A Yes.

3 Q Now, John Ritter, Amanda Connor again on discussing
4 this. Do you see that?

5 A Yes.

6 Q Okay. So although you weren't involved with the
7 application process, when it came to the adoption of the
8 regulations for the application process do you recall having
9 discussions with the Task Force or with people within the
10 Department about this criteria?

11 A Yes. Lots of discussion about the process and how
12 -- the requirements. I mean, I think, you know, initially it
13 was the preference of the Department to flip a coin, but that
14 was outside of the authority in the initiative, so, you know,
15 just recognizing that there had to be, you know, criteria that
16 were put into the regulation, that that could be -- that could
17 distinguish people, because there was only a limited number of
18 licenses.

19 Q And with the limited license and trying to
20 distinguish between winners and losers on this process you
21 have to go through and the statute required the qualifications
22 for licensure that are directly and demonstrably related to
23 the operation of a marijuana establishment; is that correct?

24 A Right. Yes.

25 Q Now, when determining those qualifications that were

1 directly and demonstrably related to the operation of a
2 marijuana establishment did the Department rely also on the
3 Task Force and on working groups and public input?

4 A Yes.

5 Q Okay. And it took those considerations in when
6 developing the regulations or 453D; is that correct?

7 A Yes.

8 Q And if you go to the next page, 113 --

9 A Okay.

10 Q -- the guiding principles, again the Department --
11 the Task Force, I'm sorry, was providing guiding principles to
12 promote these qualifications. Do you see that?

13 A Yes.

14 Q Again, number (4), propose efficient and effective
15 regulation that is clear and reasonable, not unduly
16 burdensome, is that your understanding as to these
17 qualifications being complaint with the statute?

18 A Yes.

19 Q Section (5) talks about what provision of Question 2
20 does this apply to.

21 A Right.

22 Q And it discusses the provision of NRS 453D.200 that
23 we've been talking about; is that correct?

24 A Yes.

25 Q Okay. And after this -- there's no dissent;

1 correct?

2 A Right.

3 Q After this is done and the regulations are drafted
4 it's sent again to LCB for their review to ensure compliance;
5 is that correct?

6 A Right. So the Task Force made recommendations, and
7 then the Task Force recommendations along with additional
8 analysis and research and going through the entire regulatory
9 process would ultimately lead to what would be the regulations
10 that were approved by the Leg Commission.

11 Q Talk to me a little about the Governor's Task Force
12 reports dated May 30th, 2017.

13 A Yes.

14 Q After you received those recommendations back from
15 Task Force can you walk us through how the regulations are
16 then -- the permanent regulations are then adopted.

17 A Sure. So I think once we got the recommendations we
18 again used QuantumMark, as they had facilitated the Task Force
19 and the medical Task Force -- or the medical process, and they
20 basically put all the categories together and did some
21 benchmarking from other states. So just look at -- because by
22 then, you know, there'd been a few other states that were
23 coming online and with legalization. So looking at some other
24 states and what other states were doing. And then, you know,
25 there would be a decision -- you know, then there would be

1 communications, meetings between them on the different
2 sections of the regulations and asked myself and staff
3 internally to kind of -- you know, when there were decisions
4 points that had to be made. So, you know, hey, you know,
5 Washington does it this way and Colorado does it this way,
6 we've done it this way here before, and kind of just the
7 discussions would revolve around, you know, what was the best
8 language to come up with for the draft of the regulations.
9 And that's how -- so that's internally how we did it, and then
10 I'm pretty sure -- well, I can't remember. So under the
11 permanent regulation process you can, of course, go and have a
12 workshop without any language. And I -- but I don't think we
13 did that in this case. I can remember, though. We might have
14 just had a general workshop to get input or maybe we had
15 really rough language, but I can't remember.

16 But then we did have the general -- once we sent the
17 language off to LCB and it was put in the format that, you
18 know, that goes how they format it and do all the things that
19 they do in the review, then it comes because and then we would
20 have a workshop. So in this case we had a series of
21 workshops, so I think we had like a week's worth of workshops
22 on various categories of regulation in July of 2017, and after
23 that we took into consideration, you know, the various
24 comments, additional issues. I think -- I don't -- I think
25 there were -- there were some categories of regulation or some

1 decisions that were to be made that weren't completely fleshed
2 out, so we might have done some work on those. And then we
3 sent them to LCB. And then LCB reviewed and sent them back.
4 And then we noticed the adoption hearing.

5 Q Now could we turn to Exhibit 5045, which has already
6 been admitted.

7 Actually, I think I gave you two copies.

8 Ms. Contine, these are what is Commission minutes
9 dated February 27, 2018. Have you ever seen these minutes?

10 A I have.

11 Q Okay. Now, you've already -- you'd already left the
12 Department and went in private practice when these minutes
13 were submitted.

14 A I had left the Department, yes.

15 Q Okay. But if you could turn -- this is -- turn to
16 page 3. Will Adler, do you know who that is?

17 A Yes.

18 Q Okay. He made some comments. He said that the
19 regulation was reviewed at length in multiple hearings. He
20 concluded -- I'm going to the very end -- he concluded the
21 Department of Taxation has done a great job and he fully
22 supports R02-17 as written. Do you see that?

23 A Yes.

24 Q Was it your understanding as those regulations were
25 in the process of being adopted that you were getting full

1 support from the marijuana industry?

2 A I don't know about full support, but I think there
3 was a lot of work that had gone on during the regulatory
4 process to build a consensus to, you know -- again, I think
5 everybody was on board with balancing, you know, the public
6 health and safety concerns of the State with the
7 reasonableness to be able to operate. And I think in general
8 the industry wanted the same thing, a tightly controlled,
9 tightly regulated market with strict control because they
10 don't -- they didn't want a black market, as well. So I think
11 it was -- I think it was a -- you know, a group -- a group
12 effort. I don't think that everybody was supportive of it,
13 because I know that some of the people on there didn't offer
14 support in their comments. But I think there was a really
15 strong consensus that all the work that had been done led to a
16 workable and reasonable and legal set of rules.

17 Q And would you agree that everybody had an
18 opportunity to be heard throughout the regulation adoption
19 process with the workshops and public --

20 A I would say the there were -- yes, there were plenty
21 of public avenues to discuss your concerns and have your voice
22 heard, yes.

23 Q If you could turn to page 6. Do you know who
24 Nicholas Spirtos is?

25 A No, not really. I've never met him.

1 Q Okay.

2 A I mean, I just know the name.

3 Q Well, I'll represent that he's one of the plaintiffs
4 suing the State of Nevada in these cases. But he said there
5 are no perfect regulations under number (1). Do you see that?

6 A Yes.

7 Q Do you agree with him?

8 A Yes.

9 Q Okay.

10 A Yes. As much as I'd like to be perfect.

11 Q Number (2) he says, "Not everyone got what they
12 wanted during discussions on R092-17, but everybody was
13 heard." And that's what you said; is that correct?

14 A Yes.

15 Q He then says, "There should be flexibility in the
16 legislature and the Department of Taxation." Do you agree
17 with that?

18 A Yes.

19 Q And on number (5) he says, "If R092-17 is not
20 adopted, the dispensary industry would be operating without
21 guidance." What does that mean? Do you know what he was
22 talking about?

23 A Yes. Because the -- like I said, there's a time
24 frame for the temporary regulations, and also without the
25 permanent regulations you couldn't go forward and do -- and do

1 another application period under the permanent regs. So
2 without some -- without rules in place you're not able to
3 operate the industry, essentially.

4 Q And the Department had the time to adopt these
5 regulations? Did it have enough time to go through thoroughly
6 and vet these regulations?

7 A Yes.

8 Q Okay.

9 A I mean, I don't know about time. I don't know if
10 there was enough time. It's difficult to get the work done in
11 the time period, but because we started with kind of multiple
12 processes and had discussion and basically started talking
13 about it at the beginning of the year, I think the process
14 played out as well as could be expected. It's very, very
15 difficult to get regulations, permanent regulations adopted
16 within a year. The process is a little cumbersome. And with
17 respect -- I think I mentioned that I implemented the commerce
18 tax right before that, and the commerce tax became effective
19 on July 1st, 2015, and the regulations became effective about
20 a little bit more than a year later, but before the first
21 return was due. So that was the -- that was the level of
22 success we were shooting for. So it's just a -- it's a
23 cumbersome process with a lot of, you know, discussion and
24 meetings and things that have to occur [inaudible].

25 Q And in this process, though, you said the Governor's

1 Task Force was -- do you consider that very helpful in moving
2 this process along for the Department?

3 A Yes.

4 Q And having Legislative Council Bureau to make sure
5 that these regulations complied with the ballot initiative and
6 all the legal requirements, that's also very helpful for the
7 Department; correct?

8 A Yes.

9 Q This isn't a decision you were making on your own
10 whether it complied legally; is that correct?

11 A Correct.

12 Q That you had inputted a lot of people; fair to say?

13 A Yeah.

14 Q Okay. I want to -- if you can -- if we could pull
15 up NAC 453D.295. I want to ask you about this, Ms. Contine.
16 Do you see it on your screen, discussing "Surrender of a
17 license of a marijuana establishment who's not received final
18 inspection"?

19 A Yes.

20 Q Are you familiar with this provision in the
21 regulations?

22 A Yes.

23 Q And it states that, "If a marijuana establishment
24 has not received a final inspection in 12 months after the
25 date the Department issued a license to the marijuana

1 establishment, the marijuana establishment must surrender the
2 license to the Department."

3 A Right.

4 Q Then it says, "The Department may extend the periods
5 specified in this subsection if the Department in its
6 discretion determines the extenuating circumstances --" I'm
7 sorry "-- that extenuating circumstances prevented the
8 marijuana establishment from receiving a final inspection
9 within the period specified in this subsection." See that?

10 A Yes.

11 Q And then the next section talks about the -- that
12 the fee paid would be nonrefundable. You see that?

13 A Yes.

14 Q So what would constitute extenuating circumstances,
15 in your opinion?

16 A So it's fairly vague in this provision, but the
17 Department of Taxation has other provisions that deal with
18 extenuating circumstances, especially with respect to tax
19 liability. And so we would look -- probably in interpreting
20 that we'd look to those like provisions, which are act of God,
21 nature, things that are really beyond the person's control of
22 getting their business up and running. So -- and this was --
23 this provision was -- and do you want me to explain the
24 background of kind of how this --

25 Q Please.

1 A So under the medical program the Department of
2 Public and Behavioral Health gave 18 months to get
3 operational, and then would basically for almost any reason as
4 long as the applicant could show that they were making
5 reasonable steps to be operational, the DPBH would just --
6 would essentially extend that deadline. So the result of that
7 is that there were a lot of provisional certificates as we
8 moved into -- as we moved into recreational. And so in order
9 to deal with that on the recreational side, kind of putting
10 this basically hard and fast rule but also recognizing that
11 sometimes that there are just things that are beyond the
12 control of the -- of the applicant or the establishment as
13 they're working to get things going. And so extenuating
14 circumstances, again, would just be it's not within your
15 control to become operational.

16 Q Not within the applicant's control?

17 A Yes.

18 Q Would this litigation and these lawsuits that have
19 been filed against the State of Nevada constitute extenuating
20 circumstances that would justify an extension?

21 THE COURT: Are you asking her to speak for the
22 Department of Taxation, since she's no longer in charge of it
23 and she's now with the Department of Administration, who's in
24 charge of the computers at the Listserv?

25 MR. GUTIERREZ: I'm asking for her opinion as a

1 former head of the Department of Taxation with knowledge of
2 this particular statute -- or regulation.

3 THE WITNESS: I guess there would have to be -- so
4 your question is is litigation an extenuating circumstance?

5 BY MR. GUTIERREZ:

6 Q Correct. Would this litigation that's been the
7 reason we've been here for six weeks, there's seven other
8 lawsuits against the State of Nevada, there's an injunction
9 against my client Thrive currently. Would that be extenuating
10 circumstances as you interpret NAC 453D.295 that justifies an
11 extension of the 12-month requirement?

12 A I think it's -- it's somewhat beyond your control to
13 -- when you're enjoined from doing the things that you need to
14 do under the statute to get your license. So I think there
15 would be some consideration there.

16 Q Who's the person from the Department now that would
17 -- that would make the decision as to the extending the
18 12-month requirement. Do you have -- do you know?

19 A I don't know.

20 Q Okay. Jorge Pupo worked with --

21 A Yeah.

22 Q -- underneath you. He answered to you; is that fair
23 to say?

24 A Yes.

25 Q How much involvement did he have in the adoption of

1 the regulation process?

2 A All of the staff -- it was kind of all hands on deck
3 for the -- for the whole process. So it would have been -- I
4 mean, all of us -- there were -- it was a limited staff in
5 marijuana initially, so everybody had a role in it. I mean,
6 we all -- we all went to the workshops, we all went to the
7 Task Force meetings, we all -- we all participated.

8 Q But when it came to the decision of interpreting the
9 ballot initiative and deciding whether it complied or the regs
10 complied with that, that was something -- was that something
11 Mr. Pupo did, or was it something that was done as a group
12 effort and included LCB and [inaudible]?

13 A Yeah. I mean, it was done -- you know, ultimately
14 it was done by myself. I mean, I wouldn't put it -- I
15 wouldn't put something out there that I didn't think was
16 legally compliant, and then if I did, then there would be
17 discussion either with -- or, you know, sometimes if I wasn't
18 sure, I could even ask the AG's Office or, you know, along the
19 way. But generally, you know, I was the director of the
20 Department, and I approved, you know -- I mean, we all worked
21 on it, we all contributed, we had, you know, hours of
22 discussion and analysis, but if essentially, you know, if --
23 the buck stopped with the Governor, but right below him then
24 it would have stopped with me.

25 Q So the buck stops with you when it came to adoption

1 of the regulations; fair to say?

2 A Yeah.

3 Q And --

4 A Yeah. Making sure it happened, the process, making
5 sure issues were addressed.

6 Q And making those decisions you relied heavily on
7 Legislative Council Bureau, the AG, and everyone else when it
8 came to --

9 A Well, I wouldn't -- I wouldn't necessarily say that
10 I relied on the Legislative Council Bureau, but I relied on
11 the process. And the process is very specific, and we
12 followed the process. So it wasn't like I was calling them
13 every day and saying, are you guys good with this. But if
14 there were issues back and forth, we all discussed them and
15 made sure that we were on the right track.

16 Q But having Legislative Council Bureau involved
17 helped?

18 A Having that -- well, knowing that -- and under the
19 provisions in .233(b) that they review for legislative intent
20 or statutory intent.

21 Q Great. And then, Ms. Contine, as you sit here the
22 regulations for the 2018 marijuana recreational process, do
23 you believe that they followed and complied with the ballot
24 initiative and statute 453D?

25 A I do.

1 MR. GUTIERREZ: And I'll pass the witness.

2 THE COURT: I have some questions before we go,
3 because I want to make sure I get my issues addressed before
4 these guys bog us down.

5 So do you know how the initiative process of writing
6 the initiative occurred?

7 THE WITNESS: I believe -- I believe that maybe the
8 lady that he had mentioned earlier did some drafting and some
9 other people that I mentioned, so Matt Griffin and some of the
10 other people were involved in it. I think they did the
11 drafting. I think they pulled a lot from Colorado, but that's
12 just what I've been told.

13 THE COURT: And when you say they, those are people
14 who are in the industry?

15 THE WITNESS: I don't -- yeah. I don't know exactly
16 what their relationship with the industry, but they work in --
17 you know, they worked in legalization essentially. And --
18 yeah. There was something else I was going to say, but I
19 forgot. I don't remember.

20 THE COURT: All right. So let's skip ahead, then,
21 and the --

22 THE WITNESS: Oh. I'm sorry.

23 THE COURT: I'm sorry.

24 THE WITNESS: I remembered. I remember at one point
25 when I was the deputy director that there was some

1 conversations with the drafter about them wanting to draft and
2 put the program in the Department of Taxation, and the
3 director at the time not agreeing to it, but basically saying,
4 we're not going to fight you over this. So there was some
5 even communication before.

6 THE COURT: As long as you fund us, we're not going
7 to fight you about it. I've had those discussions at
8 legislative hearings.

9 So let me skip ahead to ballot question passes.
10 When the ballot question passes you've already had an idea the
11 summer before that there might be a situation where you're
12 going to have to gear up to be ready.

13 THE WITNESS: Uh-huh.

14 THE COURT: Who did you assign within the Department
15 to start the regulatory process for the recreational
16 marijuana?

17 THE WITNESS: So at that time there was nobody to
18 assign, so I assigned myself.

19 THE COURT: Okay.

20 THE WITNESS: So I started doing the initial
21 groundwork, having some additional conversations with people,
22 figuring out -- and, again, I had already met with some
23 people, kind of figuring out what we needed to do. And then
24 -- so then we need some money because we need to hire people,
25 so I need to go to the Interim Finance Committee, so preparing

1 all of that work. People in my office do that kind of work.
2 But essentially those initial steps. And then basically
3 telling people within the agency, hey, you know, we're doing
4 this and this and this and so I'm going to need all hands on
5 deck. And, again, we had just come off of an implementation
6 process for one whole year, so everybody was used to like the
7 franticness of all the deputies. So the Department of
8 Taxation has four deputies, compliance -- at that time it did,
9 compliance, IT, administration, and local government. And so
10 at that time there was no marijuana deputy. So what do we --
11 how do we implement this from a -- from a legal perspective,
12 from, you know, the rules. That's just one part of it. We
13 have to -- we have to create a system that allows collection
14 of tax, we have to, you know, consider those types of things.
15 We have a budgeting issue, so who in budget, you know,
16 somebody is going to have to come up with a budget and then
17 we're going to have to present that. So it's basically -- I
18 mean, we developed a timeline and we worked. So it was
19 essentially initially just me and the four deputies that were
20 in my staff at that time.

21 THE COURT: And at some point Behavioral Health let
22 you have their marijuana people from medical marijuana.

23 THE WITNESS: Okay. So that was a legislative
24 decision. That wasn't -- they didn't let us have them. The
25 legislature decided to move that program into the Department

1 of Taxation, and that happened on July 1st. So after the
2 legislature had convened that became effective on July 1st.
3 Theoretically they worked for the Department at that point.
4 There was still structure with budget and space and all of
5 that that had to happen in order for the transition to be
6 fully done. By that time I did have the deputy, and I think
7 we got -- I don't know exactly what other positions. We
8 probably got some tax-related positions. So we have like tax
9 examiners, things like that. And then the DPBH staff became
10 part of the Department of Taxation staff on July 1st of 2017.
11 However, they were somewhat involved in the whole process
12 because they didn't work for the Department before that, but
13 they were the experts in the area of like -- you know, we
14 didn't have a -- I think Kara has some type of an
15 environmental science type background, so with respect to --

16 THE COURT: Epidemiology.

17 THE WITNESS: Yeah. So like with lab stuff and all
18 of -- you know, that was part of the process, as well, like
19 regulating the labs. So having that level of expertise and
20 the people that had regulated the market going into that. So
21 they were involved in that process, as well.

22 THE COURT: Okay. So did the drafting of the
23 regulations begin before or after the team moved over?

24 THE WITNESS: Pretty much a bit simultaneously.

25 THE COURT: About the time they got there.

1 THE WITNESS: Yeah.

2 THE COURT: Had you assigned the task?

3 THE WITNESS: So -- so the -- so the -- the
4 regulations, we hired QuantumMark, essentially. So what they
5 did is they took a lot of the information from the Task Force
6 and then they benchmarked it -- or they -- then they looked at
7 other states and provided kind of information what other
8 states were doing, and then we would collectively, so myself,
9 Jorge, Kara, Steve, and maybe a few others -- the deputy, the
10 chief deputy, we would all get together and kind of discuss
11 like, okay, well, what is the best -- because this is the
12 drafting phase, right, so we're just looking for the best
13 draft that we can put out there for review and public comment.
14 And so discussing some of the issues that had occurred in
15 medical.

16 And I thought back on one of the issues that Dr.
17 Spirtos I knew was not happy about, was the inclusion of
18 testing, lab testing for aspergillus, which had been reported
19 to -- somebody had died in California, and, you know, he
20 didn't like that, because he's like, there's aspergillus
21 everywhere so I think I --

22 THE COURT: That's that desert fever bacteria?

23 THE WITNESS: Yeah. It's some -- I don't know. You
24 would have to ask Kara for more. But it guess the point is
25 like he was concerned about that. Kara was the subject matter

1 expert. She wanted it. I ultimately decided I think I said
2 at a meeting, like I know there's some controversy over this,
3 but I think in terms of going forward, you know, I'm going to
4 err, if this is an error, on the side of public health. And
5 so those were kind of -- you know, that was the process that
6 we went through internally before we got to this draft, which
7 was who's worked on this or who's an expert in an area and,
8 you know, pulling it all together, having those conversations,
9 weighing what, you know, concerns of industry are with the,
10 you know, concerns for public health and safety, and, you
11 know, not being unduly burdensome. And so that was kind of
12 the process, internal process. And then it went out for --

13 So when we did the workshops we all sat at the
14 table, and so there were different questions --

15 THE COURT: I'm still before workshops. I'm not
16 there yet.

17 THE WITNESS: Oh.

18 THE COURT: So who was your point person?

19 THE WITNESS: For?

20 THE COURT: Drafting the internal version of the
21 regs. I'm still back a couple steps behind you. Somebody has
22 to be point person in rule drafting. You've got a whole team
23 of people you've got working on it, but somebody's got to be
24 in charge.

25 THE WITNESS: Well, I was the point person.

1 THE COURT: Okay. So you're point person. How did
2 you as the point person make sure that the regulations your
3 team and QuantumMark were pulling from every place else, other
4 states, medical, other things that it complied with Ballot
5 Question 2?

6 THE WITNESS: Well, I read Ballot Question 2 and I
7 looked at the plain language of the statute, and then I looked
8 at some regulations that existed and decided, well, can we use
9 these regulations. So, for instance, in the initial -- in the
10 initial process there's a -- under Question 2 there's a new
11 license category that didn't exist before, so we can't borrow
12 -- at least for the temporary regs, you know, we -- no way
13 could we borrow from another -- from that process or there was
14 nothing to kind of guide us. So then the thinking was, how do
15 we -- how do we move forward with that. So then moving
16 forward with that and addressing it in the regulation it was
17 something that was new and different.

18 So recognizing that there were things within the
19 initiative that were going to be different than the medical
20 program and so we couldn't always rely on that or we couldn't
21 always rely on those states, and so identifying those by
22 reading the language of the initiative and figuring out what
23 we could use from all the -- based on all the information that
24 I've already talked about.

25 THE COURT: Okay. So let me go to the first part of

1 my questions related to Ballot Question 2. The voters decided
2 that they wanted marijuana to be regulated similar to liquor.
3 How did you investigate the way that liquor is regulated to
4 make a determination that you would regulate recreational
5 marijuana in the same way?

6 THE WITNESS: Okay. So I have a couple things to
7 say on that. So first of all, the Department of Taxation
8 regulates liquor partly.

9 THE COURT: They tax liquor. It's regulated on a
10 local level.

11 THE WITNESS: Well, you can't get a wholesale -- you
12 can't get a wholesale liquor license without applying to the
13 Department of Taxation. The liquor scheme is a three-tiered
14 system, so you can't -- you can't regulate marijuana like you
15 regulate liquor, because the initiative also says that the
16 Department can only issue licenses to entities that are part
17 of the medical program. And in the medical program there's
18 vertical integration. So the way I interpreted that is that,
19 you know, they wanted it to be taxed like liquor, essentially.
20 So the tax -- the tax provision is a 15 percent at wholesale,
21 and that's how the Department taxes liquor, as well. And
22 because there's not -- it's not possible to regulate it like
23 liquor under the current scheme knowing that there's already
24 vertical integration. So if the people that you can only give
25 licenses to are already vertically integrated, you know, you

1 can't undo that. You can't say, oh, well, you can't be
2 vertically integrated when you're already vertically
3 integrated. And so I think that was -- it was -- I mean, in
4 all honesty, frankly, I believe it was a way to communicate to
5 voters that marijuana should be considered a recreational
6 device just like alcohol.

7 THE COURT: So that's why in (3)(b) the voters said,
8 business owners are subject to review by the State of Nevada
9 to determine if the business owners and the business location
10 are suitable to produce or sell marijuana; right?

11 THE WITNESS: Right. And so that's the local
12 portion, I believe.

13 THE COURT: Okay. So let me go to my next part.
14 I'm just getting your answers.

15 THE WITNESS: Okay.

16 THE COURT: You don't get to ask me questions or the
17 lawyers, but we'll get there some day.

18 So why, if the voters decided we were going to
19 handle it like alcohol and liquor are handled, did the
20 Department determine that you did not need to conduct a
21 background check of each prospective owner, officer, and board
22 member of a marijuana establishment license applicant similar
23 to liquor and alcohol applicants?

24 THE WITNESS: So I would -- I think -- I believe
25 that that is similar to how we treat liquor and -- how the

1 Department treated liquor applicants. Because there's a
2 recognition in the liquor context that pretty much every
3 liquor wholesaler has some public component. So there's not
4 this ability to have every single entity that has some small
5 piece of ownership reviewed, essentially.

6 And, again, in interpreting that provision, kind of
7 creating a framework under which the industry could operate
8 that would still be true to the overall goals and the purpose
9 in regulating the industry is to make sure we have a regulated
10 market, make sure that we don't have people coming into this
11 regulated market that have, you know, ill intent or bad
12 intent, and in applying that 5 percent rule that that would
13 allow the Department to -- and also allowing the Department to
14 do its work over time, that it would be -- it would be based
15 on also the feedback from the industry and the reasonableness
16 of it. That's how we got there. And I believe that it
17 complies with that provision, because of what I just explained
18 and then also I think the value of the process and going
19 through the process and having all those levels of review,
20 especially legislative review and then the Legislative
21 Commission review.

22 THE COURT: Legislative Council, or Legislative
23 Commission?

24 THE WITNESS: Both.

25 THE COURT: Okay. Tell me what your definition of

1 "owner" is.

2 THE WITNESS: Well, owner is individual or entity
3 that maybe has individuals in it, so those types of
4 individual. But if there's a -- if there's an entity that
5 owns another entity, then you would look down to those -- to
6 that level at some point.

7 THE COURT: Okay. Can you maybe use in more
8 layman's terms for me how you define "owner."

9 THE WITNESS: John Ritter is an owner.

10 THE COURT: I don't need examples.

11 THE WITNESS: I mean, that's how -- I mean, at that
12 time there were individuals, and so I think that's what the
13 interpretation is. You can't -- you can't background an
14 entity. So it was individual entity -- or the individual
15 person within an entity at that 5 percent limit.

16 THE COURT: So you --

17 THE WITNESS: By regulation.

18 THE COURT: -- read "owner" as someone who had an
19 equity interest in the financial proceeds of the business.

20 THE WITNESS: Yes. Yes.

21 THE COURT: Okay. I'm just trying to get the right
22 words. What about --

23 THE WITNESS: Somebody who had invested some money.

24 THE COURT: Or sweat equity.

25 THE WITNESS: Right.

1 THE COURT: Let's go to officer. What was your
2 definition of "officer"?

3 THE WITNESS: So like secretary, president, vice
4 president, traditional corporate officers.

5 THE COURT: Chapter 78 corporate officers?

6 THE WITNESS: Right.

7 THE COURT: Okay. What about "board member"?

8 THE WITNESS: Somebody who was -- who served on the
9 board that was -- participated in board meetings as a board
10 member or an officer. I mean, sometimes officers participate
11 in the board meetings.

12 THE COURT: Like a board of director.

13 THE WITNESS: Yes.

14 THE COURT: Okay. Like a Chapter 78 corporate board
15 member.

16 THE WITNESS: Yeah.

17 THE COURT: All right. So how did you treat LLCs or
18 believe LLCs should be treated when you were drafting the
19 regulations to implement 453D.200(6), which is the part about
20 each owner and every owner?

21 THE WITNESS: Right. And so I guess that that's
22 what I get to -- you go to essentially the individual with a
23 5 percent ownership interest. So 5 percent equity interest.

24 THE COURT: And how did you determine that 5 percent
25 was the way to comply with the ballot question that says, each

1 perspective owner?

2 THE WITNESS: Again, in balancing kind of the
3 requirement to create reasonable rules that businesses can
4 operate under and thinking about the public health and safety
5 aspect of the goals, you know, the public health and safety
6 interests of the state, especially public safety, and the
7 thinking was a person with less than a 5 percent ownership is
8 not going to have an ownership interest such that they could
9 sway or there could be situations where they have enough
10 control to bring in -- to sell product out the back door. And
11 so that was a reasonable amount based on feedback from the
12 industry and concerns that they had about how the process had
13 become so burdensome to them, and then also balancing that
14 with the public safety piece.

15 THE COURT: Okay. The ballot question has a lot of
16 information about locations on where operations could be
17 located. Can you tell me how you implemented that in the
18 regulations.

19 THE WITNESS: I'm not quite sure I understand.

20 THE COURT: So the ballot question has a lot of
21 restrictions as to whether marijuana establishments can be
22 located.

23 THE WITNESS: Right.

24 THE COURT: And that requires a specific
25 identification of a location to be able to do that; right?

1 THE WITNESS: Right.

2 THE COURT: Whether there's zoning issues or not,
3 that's a local government issue.

4 THE WITNESS: Right.

5 THE COURT: But, you know, you do have other issues
6 that are in the ballot question related to location.

7 THE WITNESS: Right.

8 THE COURT: How did you as the point person in
9 developing the regulations implement that provision?

10 THE WITNESS: Well, I didn't implement these
11 regulations, but I -- you know, I helped --

12 THE COURT: Created them. You drafted them.

13 THE WITNESS: I helped in the process. And I think
14 that there's something in the regulation regarding distance
15 requirements.

16 THE COURT: There are.

17 THE WITNESS: And so developed those distance
18 requirements. I think there was general input in that
19 category from local governments because they, you know, they
20 do that, as well. The -- you know, and being mindful of the
21 State has this overall structure that we're trying to create,
22 but these businesses are actually located in a local
23 government. So trying to be true to their -- you know, their
24 -- some of the distance requirements that they have in place
25 or looking to them for feedback. And, you know, when you guys

1 are okaying a business are you talking about the -- like how
2 that would be approved, or --

3 THE COURT: I'm only trying to find out your process
4 as the point person in taking Ballot Question 2 and creating
5 regulations that are reasonably and convenient to carry out
6 the provisions of this statute -- of this chapter. And I keep
7 reading back to the statute to [inaudible].

8 THE WITNESS: So yeah. I -- so that -- so thinking
9 about that and looking at distance requirements that have been
10 used in terms of location in the past and providing the
11 guidance in that in regulation and having -- having the public
12 process and doing -- taking the input from the various
13 stakeholders that I've already mentioned, the local
14 government, the industry.

15 THE COURT: So part of what the ballot question also
16 requires is that you adopt regulations with conditions that
17 are demonstrably related to operation of a marijuana
18 establishment. Tell me how you implemented that provision in
19 drafting the regulations.

20 THE WITNESS: So are you talking about the licensing
21 piece of it?

22 THE COURT: No. I'm talking about the application
23 process, because that's what --

24 THE WITNESS: Right. Yeah. Okay.

25 THE COURT: -- it's all coming down to in this part

1 of the hearing.

2 THE WITNESS: So -- right. So some of the -- some
3 of the considerations in that section were, you know, fairly
4 -- fairly board. Like do -- you know, do you have -- are --
5 you know, can you plan for the safekeeping product and things
6 like that. So -- but then some of the other categories were
7 looked at under the guise of like we -- the Department is
8 going to have to distinguish people in some ways. And so then
9 looking at the categories -- so looking at -- so diversity,
10 for instance, how is diversity related to that. And as I
11 discussed earlier, kind of some of those policy considerations
12 and kind of how we viewed them to be related to the operation
13 of the establishment and also would provide some ways -- some
14 ways for people to distinguish themselves in various
15 categories. So having some categories that you might be able
16 to distinguish yourself and then some -- having some general
17 categories that just looked at are we going to -- are -- you
18 know, what are they doing and how is that related to
19 protecting -- to their business and then how is it related to
20 protecting the public health and safety.

21 THE COURT: Okay. Tell me what the taxes paid have
22 to do with that.

23 THE WITNESS: The taxes paid?

24 THE COURT: That's part of the regulations that got
25 adopted.

1 THE WITNESS: Well, the taxes -- there's a provision
2 in there that provides -- that requires the tax in Question 2,
3 the 15 percent.

4 THE COURT: Well, no. We all know that we have to
5 pay taxes, and the marijuana business got sold to the public
6 because of the taxes it was going to pay. I understand. But
7 the taxes that an individual pays unrelated to a marijuana
8 business, how is that demonstrably related to the operation of
9 a marijuana business?

10 THE WITNESS: Oh. You mean the requirement to
11 provide information about taxes paid? I think that that isn't
12 -- so is that what you're talking about within that? So the
13 taxes, the education, the civic --

14 THE COURT: Those kind of things, yep.

15 THE WITNESS: -- those kind of things, those are
16 basically to show that you -- that you're invested in the
17 business, that you've been invested in the business, that you
18 are -- again, we're only looking at right now the people who
19 have already been in the business, so that you can follow the
20 rules, essentially that you can -- that you've followed rules
21 in the past, that you've contributed when you were required
22 to, that you -- that you have some type of economic
23 involvement, that you -- that in all of those categories, the
24 education, as well, are related to your operation of the
25 business and being -- being -- having these levels of

1 stability within the process. And I believe that there's that
2 provision that you have to read, and then you have to read the
3 overall other provisions within the chapter together and you
4 have to be able to rank people, so you have to have some
5 categories where people can distinguish themselves. And so
6 those all relate to operation of the business, and so that's
7 why those were put into the regulations.

8 THE COURT: Okay. Why did you decide to hire
9 QuantumMark to assist you with the drafting of the
10 regulations?

11 THE WITNESS: Because they had assisted in the
12 drafting of the medical. They had also assisted in the Task
13 Force, and they -- and they had a level of expertise from
14 those processes. And -- but mostly because they're really
15 good at process organization. So because we had to get
16 through these processes fairly quickly -- like the most
17 tedious and burdensome thing about the process is that you --
18 pulling everything together. So just --

19 THE COURT: Right. That's why I asked who the point
20 person was.

21 THE WITNESS: Yes. So they -- they pulled all the
22 information together and made -- based on all the conversation
23 that was happening throughout the way and made -- and put it
24 in a format that it could be easily reviewed by the decision
25 makers. And that was really the reason to have them, is that

1 they created the process that allowed us to facilitate it
2 quickly.

3 THE COURT: And who were the decisions makers?

4 THE WITNESS: Well, I mean, I was the end decision
5 maker on what we would put out for regulation to be
6 workshopped in conjunction with, again, the various people in
7 the office. The industry had a role in that, the -- you know,
8 if there were things that were -- you know, I wasn't sure of,
9 I'd take it up the chain of command. So there was, you know,
10 a level of back and forth.

11 THE COURT: Okay.

12 THE WITNESS: But, again --

13 THE COURT: Who decided you were going to use temp
14 employees to do the application review process?

15 THE WITNESS: So I wasn't involved in that.

16 THE COURT: Okay. So you wouldn't be involved in
17 the decision on how many you've asked Interim Finance and how
18 many you actually utilized. That's was after you left.

19 THE WITNESS: Right. That was after me.

20 THE COURT: I have a note to myself that refers to a
21 statute number, so I've got to look at it and see what my
22 question was. Hold on a second.

23 When you in regulations, which you don't have a copy
24 of, that said after you get the applications somebody's going
25 to review them to determine if they are complete, why was that

1 included in the regulation?

2 THE WITNESS: I think so that if they weren't
3 complete the person could be notified and cure.

4 THE COURT: Okay. And so was there an anticipation
5 by you as the point person on the regulations that somebody
6 was actually going to look at them to see if they were
7 complete?

8 THE WITNESS: Yes.

9 THE COURT: And that something would happen if they
10 weren't complete?

11 THE WITNESS: Yes.

12 THE COURT: Whether it's a cure period or a letter
13 saying, we got your application, it's not complete, sorry.

14 THE WITNESS: I mean, there would be some -- well,
15 yes. I mean, and I think that there would be -- if somebody
16 just didn't provide a whole section of the -- of the
17 application or, you know, I think there would be some -- some
18 initial review and -- yes.

19 THE COURT: Did you anticipate when you created the
20 regulations and identified owners that there would be accurate
21 information as to the owners that would be provided to the
22 Department?

23 THE WITNESS: Yes.

24 THE COURT: Okay. And was there any way the
25 Department was to in reviewing an application for completeness

1 to determine if the information provided by the applicant on
2 the ownership was accurate?

3 THE WITNESS: I don't -- I don't know, because I
4 wasn't --

5 THE COURT: I'm just asking about if -- the
6 intent --

7 THE WITNESS: Yeah.

8 THE COURT: -- as you drafted them. Because you
9 have a plan on how you're going to implement it, you're on
10 short time, how are you going to get this done.

11 THE WITNESS: Right.

12 THE COURT: Okay. And you don't know the last one,
13 since you'd already left. Okay. I'm done. Thank you.

14 Who's up next?

15 MR. SHEVORSKI: Mr. Koch.

16 THE COURT: Mr. Koch wants to go next.

17 MR. KOCH: I'll be quick.

18 THE COURT: I was not quick. I tried, but.

19 MR. KOCH: Those are the most questions I think
20 you've asked.

21 THE COURT: Well, I found the decision-maker.

22 MR. KOCH: We got answers. The buck stops here.

23 THE COURT: I got something that wasn't "I don't
24 know." Thank you, by the way.

25 MR. KOCH: Thank you.

DIRECT EXAMINATION

BY MR. KOCH:

Q Ms. Contine, my name is David Koch. I represent one of the applicants or licensees here. I just have a few follow-up questions, maybe a few additional items. You were asked about the taxes paid and those kinds of things. Was economic stability for applicants, was that a concern or consideration that the Department had?

A Yes.

Q Would it concern the Department if an entity got a license but was unable to financially operate its business?

A Yes.

Q Why would that be a concern?

A Well, for a couple of reasons. You know, when you issue a license or when you regulate businesses, which the Department of Taxation does, you necessarily are concerned about tax revenue so you want to give a license or, you know, you want to have people that are actually going to use a license that they give you -- that you give them or that they receive. So you have to demonstrate some ability to do that, that you can actually operate an establishment, so that's part of it.

Also, kind of just a recognition generally that, you know, in this case specifically like -- you know, that there's competition, so if there's competition you have to have a way,

1 again, to distinguish people. And so looking at that economic
2 stability and then also, as I've mentioned in the past, you
3 know, looking at -- having a public safety component to it
4 that if you don't have the money to operate, then how are you
5 going to get the money? And then there could be -- and
6 because all of these entities already have some sort of
7 license, there could be some, you know, temptation to operate
8 outside the regulated market.

9 Q Okay. During these discussions that took place
10 regarding potential regulations that may be adopted, were
11 there any proposed regulations that were considered but not
12 adopted or not put in, even the workshop regulations?

13 A I'm not sure. I mean, I think we tried to be fairly
14 broad and to take consideration, but you have to start with
15 the drafts. I'm sure there were some ideas or some desires
16 that came about that were just not included, but I can't
17 identify them specifically at this time.

18 Q In that decision whether -- if something were not
19 included, would that be something that would be discussed
20 among the group that was considering those regulations?

21 A Yes.

22 Q And would part of the discussion be -- pertain to
23 whether that proposal related or complied with the initiative
24 and the ballot question?

25 A Yes. And some of the other concerns, too, like

1 having -- you know, the other concerns that I've already
2 talked about. I mean, if you -- you know, if you were
3 thinking, you know, controlled market, you know, ability to
4 have a black market and protecting that public health and
5 safety, so some of those considerations.

6 Q Okay. And one of the lines of questions or
7 considerations that's been talked about during this hearing
8 was this possibility that somehow cartels or some criminal
9 organizations may come in and infiltrate Nevada's market. Was
10 that a concern?

11 A No. I don't think that was a huge concern. I think
12 more the concern was having businesses be viable so they
13 wouldn't -- well, I guess ultimately down the line that could
14 be a concern, but if the business is not viable then what are
15 the possibilities that they could leave the regulated market
16 and go to the black market.

17 Q Okay. Would you say by that, would that be if a
18 business isn't viable, they'd take their inventory and sell
19 it?

20 A Yeah. Or they're not financially viable and they're
21 not making money, so they figure out another way to earn money
22 off their product.

23 Q All right. So selling it out the back door
24 perhaps, or doing something else?

25 A Yeah.

1 Q Was there any consideration to this 5 percent
2 requirement and a concern that maybe a whole bunch of cartel
3 members may buy up 4 percent of a marijuana establishment so
4 they could slip under the 5 percent?

5 A I mean, that wasn't specifically considered. You
6 know, the discussions along the way did not involve any type
7 of people gaming that system to create some illegal activity.
8 But again, I think that second part of that regulation that
9 allows the Department to have some flexibility in reviewing
10 below the 5 percent addresses that and also would address
11 other concerns that may come about.

12 Q So if the Department, for example, received an
13 application that had twenty-five 4 percent owners and they
14 said please don't check our backgrounds, would you anticipate
15 the Department would check those backgrounds still?

16 A I would anticipate if they saw something that was
17 out of the ordinary or irregular in the application. They
18 would still be required to put the people on the list; that
19 they would -- that would warrant further review. I would
20 expect that, yes.

21 Q All right. And you talked -- the fact that alcohol,
22 there are public companies that own entities that operate
23 liquor or alcohol establishments, is that right?

24 A Yes.

25 Q And the Department was aware of that?

1 A Yes.

2 Q And the Department regulates at least in part
3 alcohol in the state of Nevada?

4 A Right.

5 Q And you're aware the ballot initiative, I think the
6 judge asked you about that, the fact that it says that
7 marijuana would be regulated in a manner similar to alcohol.
8 Are you aware of that?

9 A Right.

10 Q Did you understand there to be a requirement that it
11 would be regulated identically to alcohol?

12 A No. And as I explained earlier, I didn't think that
13 was possible.

14 Q Okay. There are seven items listed in the ballot
15 initiative that talk about the characteristics or the
16 similarities. You reviewed those as part of your process?

17 A Yes.

18 Q And did you believe that what was being proposed
19 with respect to regulations carried out those considerations
20 as far as similar regulations to alcohol?

21 A Yes.

22 Q For example, not operating a vehicle while you're
23 intoxicated or impaired; right?

24 A Right.

25 Q Or not selling products to somebody who's under the

1 age of 21, that was a consideration, is that right?

2 A Right.

3 Q Okay. So based upon the regulations that were
4 submitted prior to the time that you left, you believe that
5 those regulations were in compliance with that section of the
6 ballot initiative?

7 A With the section you just read or --

8 Q Regarding the similarity, regulations similar to
9 alcohol, that you believe that that aspect was considered and
10 applied in drafting the regulations?

11 A Yeah. Yes.

12 Q Okay. A lot of discussion has been had during this
13 hearing about these physical locations and whether the
14 physical location itself had to be part of the application
15 score as part of that process. You were at least involved or
16 aware of some discussion of that prior to the regulations
17 being drafted, is that right?

18 A Yes.

19 Q That was part of the Task Force?

20 A Yes. Well, and again, as I mentioned before, the
21 way that the initiative was written I think was slightly
22 different than it had been applied before and it was
23 attempting to clarify that -- you know, clarify the timing of
24 the various licenses. So, you know, you can't -- you
25 obviously can't operate in a local government without local

1 government approval and you can't sell marijuana without a
2 marijuana license. So kind of determining, you know, kind of
3 how those two systems -- I mean, we had to regulate for those
4 two systems to work together because both of them required
5 some work from different regulating entities.

6 Q Did you anticipate that there would be a process to
7 review specific locations after conditional licenses were
8 granted?

9 A The regulations specifically say that you can't open
10 an establishment unless you have final Department inspection,
11 so that would be the final say in whether you can operate.

12 Q Okay.

13 A And with respect to providing the location, I think
14 the intent was if you have a location and you know your
15 location and you want to tell the State about it, that
16 information would be available. But again, in the regulation
17 with identifying that, it wouldn't be scored.

18 Q So the State or the Department was not actually
19 going out and looking at the proposed location if you had one
20 and say, well, this is a great spot, let's give them extra
21 points or anything like that?

22 A Well, I don't know what they did in the review
23 because I wasn't there, but the intent in the regulation was
24 that there would not be a review of a specific address within
25 that initial review. And it would be the applicants would

1 apply for a jurisdiction because the licenses were allocated
2 to the jurisdictions proportionate to population in that
3 county. So if you didn't identify on the application, we
4 didn't provide a place to identify -- if the Department didn't
5 request some identification of the jurisdiction, then you
6 wouldn't know how many licenses were in that jurisdiction.

7 Q Okay. I want to ask you about a provision in the
8 statute. If we can pull up NRS 453D.210. And we'll put this
9 on the screen for you or if you have it in the book --

10 A Yeah, I have it right here.

11 Q -- if it's easier for you there. And NRS 453D.210,
12 subsection 5 where it says, "The Department shall approve a
13 license application if."

14 A Right.

15 Q You've reviewed this subsection of the statute
16 before?

17 A Yeah. Yes.

18 Q Okay. And it says -- it has a number of items
19 there. Let me ask you about (e), which -- I just want to get
20 a little bit more understanding of how you interpret that. It
21 says, (e) if "the locality in which the proposed marijuana
22 establishment will be located does not affirm to the
23 Department that the proposed marijuana establishment will be
24 in violation of zoning or land use rules adopted by the
25 locality." What does that mean? It's a little confusing to

1 me, but what do you understand that to mean?

2 A It essentially means that they have to be properly
3 zoned at the local level.

4 Q And did the locality have to affirm that the
5 marijuana establishment was in compliance with zoning and land
6 use?

7 A No. I think this is kind of the provision that I've
8 been talking about in some ways that was the difference,
9 essentially, in the drafting of this from medical, which made
10 it clear that there was a local government responsibility
11 essentially to say that people aren't -- they don't have the
12 proper zoning. I think the way -- you know, the way that it
13 would be applied essentially is that the applicant at some
14 point -- you know, after the initial approval, we've reviewed
15 it, then the applicant would -- there would be some
16 discussion, they would be -- they would show that, you know,
17 they had the local government sign off, so in the final
18 inspection. I mean, I'm not sure how. There's various ways
19 to apply that and to insure that, but I guess in its most
20 basic -- the way that it's written that would mean that the
21 Department didn't do anything at all unless the local
22 government said we're not doing X.

23 So in some cases like when initially the letters
24 were sent from the local government saying we're not going to
25 have an Early Start or we're not going to expand or those

1 types of things. So there was some of that communication, but
2 there's other ways to determine that information other than
3 getting an affirmance or nonaffirmance from the local
4 government.

5 Q So did the Department ask local jurisdictions, then,
6 to submit an affirmance or nonaffirmance as part of the -- did
7 you anticipate that would be part of the application process
8 itself in order to approve an application that the local
9 government would first have to affirm that that location was
10 okay?

11 A Well, I think it would happen during the process
12 after a conditional license was reviewed or issued.

13 Q And so when this section 5 of subsection or .210
14 says shall approve a license application, did you anticipate
15 that constituted final approval and not just conditional
16 approval?

17 A Yes.

18 Q So it would be some future action taken after
19 conditional approval?

20 A Yes.

21 Q And staying in that same section, 5(c), it says a
22 license application will be approved if "the property is not
23 located within: (1) One thousand feet of a public or private
24 school that provides formal education traditionally associated
25 with preschool or kindergarten through grade 12 and that

1 existed on the date on which the application for the proposed
2 marijuana establishment was submitted to the Department." And
3 I'm interested in that last phrase where it says and which
4 "existed on the date on which the application was submitted."
5 Do you know what that referred to or how did you understand
6 that?

7 A That statute, that provision?

8 Q Right.

9 A So basically at the time that they submitted the
10 application to the Department if then they had received a
11 conditional license they'd go look at wherever they were going
12 to locate it and that analysis would be done at that time.

13 Q Okay. And so that was anticipated that it would
14 look back when the application was submitted --

15 A Right.

16 Q -- and then the final approval would be issued after
17 the fact?

18 A Right.

19 Q We looked at the Task Force report. Go to Exhibit
20 2009 again. I think you may have that in front of you or
21 we'll put it up on the screen. And let's go to page 19, Bates
22 number 2515. Mr. Gutierrez looked at a couple of these
23 sections with you. I just want to ask about one or two of
24 them. On the application process it says, "The Task Force
25 recommends the qualifications for licensure of a marijuana

1 establishment and the impartial numerically-scored bidding
2 process for retail marijuana stores be maintained as in the
3 medical marijuana program except for a change in how local
4 jurisdictions participate in selection of locations."

5 And so first, the item on qualifications for
6 licensure being maintained as the medical marijuana program,
7 did the Department look at the qualifications for licensure
8 that were outlined in the medical marijuana program?

9 A Yes. I mean, it was part of discussion, you know,
10 through the process.

11 Q And what we're talking about, drafting these
12 regulations, it sounds like the medical marijuana
13 establishment regulations were used as kind of a starting
14 point; right?

15 A Right.

16 Q You didn't just sit down yourself and say, okay, I'm
17 going to take a blank page and start writing regulations, did
18 you?

19 A I mean, partially yes. So the basis -- again, a lot
20 of discussion -- I mean, you can see from the Task Force that
21 there's identification of issues that had come up, things that
22 didn't really work that were either unduly burdensome or
23 weren't, you know, able to be -- you know, that were just
24 difficult or weren't, you know, looking at the policy behind
25 it, you know, didn't make sense. So there was a lot of that

1 analysis that went into it. But, yes, the medical, especially
2 considering that everybody that was going to be getting a
3 license initially was going to be already in that regulated
4 market.

5 Q All right. And so it sounds like the Task Force
6 recognized that we'll use medical as a starting point, but
7 maybe we can make some improvements?

8 A Right.

9 Q And what else is referenced there, it says, "Except
10 for a change in how local jurisdictions participate in
11 selection of locations." So that -- is that what we've been
12 talking about with respect to the selection of locations?

13 A Yes.

14 Q And that was something that was talked about in the
15 Task Force and among the industry?

16 A Right.

17 Q And was there anybody that was vehemently opposed to
18 that?

19 A To --

20 Q To changing so that the selection of the locations,
21 that that modification was proposed. Did anybody come forth
22 and say, no, no, no, no, no, it was perfect under medical, we
23 want to keep it just like it was, we want to have locations
24 all locked up?

25 A Well, I think under the initiative the wording was a

1 little bit different. So there was a recognition that that
2 process would be a little bit different because of that
3 affirmance language. So it wasn't like the local government
4 could say no, they could just, you know, not say yes. You
5 know, the way that it's worded was a little awkward.

6 Q Yeah.

7 A But the understanding of that was that -- was to
8 eliminate some of the initial problems that had occurred under
9 the medical licensing wherein the State issued licenses and
10 the County issued licenses to different people. And so
11 basically if you -- you need an overall marijuana license and
12 when you've been, you know, deemed to have met some of those
13 requirements then you go -- you do the local government piece.
14 And, you know, because it's -- again, because specifically in
15 the initiative there's land use and zoning requirements that
16 are left to the local government, you have to figure out how
17 the two pieces can work together. And so there was in the
18 Task Force and in other -- the regulatory process there was
19 the discussion that the State does the initial review and
20 issues the conditional -- you know, does the ranking, issues
21 the conditional approval and then the local government does
22 its piece.

23 Q Okay. And there was -- during this Task Force and
24 during the workshops and during the lead up to the adoption of
25 the regulations, was there consideration or discussion about

1 maybe we should require specific locations and grade those and
2 consider those as part of the ranking of the applications?

3 A Uh, you know, I think there was some consideration,
4 but just looking at the language of the initiative, you know,
5 and again the conversations that I had with various legal
6 counsel, including at the legislature, that the process was to
7 be the State reviews and then the local government does their
8 piece.

9 Q All right. And I guess just in sum it sounds to me
10 like this wasn't just on a lark I'm going to make a decision
11 and just put it as part of the regulations, it was discussed
12 quite a bit.

13 A Yeah. Everything was discussed extensively.

14 Q Let's go to page 114, Bates number 2610 of that same
15 exhibit. And this is the section regarding -- from the
16 working group for taxation revenue, regulatory structure,
17 ownership issues and licensing requirements. And I believe
18 Mr. Gutierrez asked you about a couple of these spots where
19 the sponsor was, among others, John Ritter. Do you see that?

20 A Yes.

21 Q Okay. And the recommendations here -- before we
22 talk about the text of the actual recommendations, there are
23 several items that are bracketed below in bold. And the first
24 one says, "In order to make the medical program consistent,
25 you need to change NRS 453A.332, paragraph 5." And the next

1 one under B says, "In order to make the medical program
2 consistent, you need to change NRS 453A." So was there a
3 concern or consideration about consistency between medical and
4 recreational regulations and statutes?

5 A Well, to the extent that initially only -- Yes, I
6 mean, that was a consideration. I mean, the entities had been
7 working under one process and, you know, how would they go and
8 work under another process, so there was some attempt to be
9 consistent.

10 Q And those -- you're talking about the entities. All
11 these entities were essentially the same entities?

12 A Yes, they were the same.

13 Q They had to have a medical license?

14 A Yeah. Yes.

15 Q And one of the recommendations here, then, it
16 specifically says under 5A: "Require only owners of 5 percent
17 or more cumulatively -- see below for a definition of
18 cumulatively -- officers and board members of the company
19 holding license to be fingerprinted, be required to undergo a
20 background check and resubmit a new application for license
21 renewal." So that was specifically something discussed by the
22 Task Force and recommended as part of the Task Force, the 5
23 percent requirement?

24 A Yes.

25 Q Do you know, by the time that you left, were any of

1 the marijuana establishments that you're aware of, did they
2 have any public ownership, publicly traded companies?

3 A I don't -- I don't recall. I wouldn't know.

4 Q Okay. Based upon the requirement to perform
5 background checks and do fingerprints, do you have an opinion
6 of whether it would be reasonable to expect the Department to
7 conduct background checks and obtain fingerprints if a company
8 had let's say millions of shareholders? Would that be
9 possible for the Department to do that?

10 A No.

11 Q What was that?

12 A No.

13 Q Okay. And would you expect --

14 A I mean, it would be possible, but it would take a
15 really, really long time.

16 Q It would maybe be --

17 A Longer than it does already. I know that's a
18 complaint.

19 Q It might be impractical?

20 A Yes.

21 Q And if you turn to the next page, 2611 Bates number,
22 when that 5 percent of the ownership recommendations were
23 considered, the Task Force appears to have considered Guiding
24 Principles there under Item 4. Do you see that?

25 A Yes.

1 Q And Guiding Principle 2 is being responsive to the
2 needs and issues of consumers, non consumers, local
3 governments and the industry. And then Guiding Principle 4,
4 to propose efficient and effective regulation that is clear
5 and reasonable and not unduly burdensome. Did you believe
6 that those guiding principles were satisfied with respect to
7 this 5 percent requirement?

8 A Yes.

9 Q And it actually says in Item 5, "What provision or
10 provisions of Question 2 does this recommendation apply to?"
11 And then it points to section 2(b) of I.P. 1, stating that the
12 business owners must be suitable. And then in section 5 of
13 paragraph 1 of I.P. 1, that the regulations should not be
14 unreasonably impracticable. So these specific sections of the
15 initiative were considered in making this recommendation, is
16 that right?

17 A Yes.

18 Q And then lastly, Item 6, "What issue does the
19 recommendation resolve?" It states, "To allow companies that
20 own marijuana establishment licenses in which there are
21 multiple owners no less than 5 percent, in some cases far
22 less, to be able to operate practically and efficiently; to
23 allow companies that own marijuana establishment licenses to
24 function based on their governing documents as companies are
25 allowed to do in other industries." So did you believe that

1 this proposed regulation did allow marijuana establishments to
2 operate as companies are allowed to do in other industries --

3 A Yes.

4 Q -- such as alcohol?

5 A Yes.

6 Q Any of the regulations that you believe were adopted
7 did you consider them to be arbitrary?

8 A No.

9 Q Did you believe them to be reasonably related to the
10 operation of marijuana establishments?

11 A Yes.

12 MR. KOCH: Thank you. No further questions.

13 THE COURT: Anybody else on the defendants in
14 intervention team? Mr. Shevorski?

15 MR. SHEVORSKI: No questions, Your Honor.

16 THE COURT: Anyone from the plaintiff side? We've
17 got 18 minutes before we break for the day.

18 MR. KEMP: Might as well, Your Honor.

19 THE COURT: Thank you, Mr. Kemp.

20 CROSS-EXAMINATION

21 BY MR. KEMP:

22 Q Good afternoon, ma'am.

23 A Good afternoon.

24 Q Now, when we were discussing -- when Mr. Gutierrez
25 was discussing the phrase "unreasonably impracticable," you

1 brought up three times an example of someone in Ohio that
2 owned .5 percent that had to sign something. Do you recall
3 that?

4 A Yes.

5 Q And so that was the example that you gave and that
6 was .5 percent; right?

7 A Well, it was just a random thing. It was based on
8 a cumulation of examples or discussions that had occurred
9 with --

10 Q Okay. Well, maybe it was random, but that was the
11 random one that you used three different times, .5 percent;
12 right?

13 A Yeah.

14 Q Now, as the Court went on with you that the
15 initiative petition said "every," it didn't say everyone with
16 50 percent; right?

17 A Right.

18 Q And if the Department wanted to it could have done
19 background checks on, say, everyone over 51 percent ownership;
20 right?

21 A Well, I think it would have had to go through the
22 regulatory process. I mean -- you mean it could have adopted
23 -- it could have --

24 Q Sure. Sure.

25 A Yes, it could have proposed that, I guess, yes.

1 Q And you think over 51 percent would have met the
2 standard of unreasonably impracticable that would have allowed
3 you to do that; right?

4 A Well, I think that that's one prong of it, making
5 regulations that -- to carry out -- that are necessary and
6 convenient to carry out the provisions. And also looking at
7 some of the other guiding principles and the overall public
8 health and safety issues related to implementation.

9 Q And obviously it would have been more convenient
10 just to do background checks on people with 51 percent
11 ownership because there would be less of them; right?

12 A Well, then you're not looking at necessarily the
13 public health and safety component.

14 Q So you think the public health requirement should be
15 somewhat under 51 ownership for background checks?

16 A I think that some discussion throughout this process
17 that occurred was what provision --

18 Q Could you answer my question first and then I'll let
19 you explain out -- expand.

20 A I think the Department could say they wanted 51
21 percent. I don't think that that regulation would go through
22 the process and be approved because of the balancing of --

23 Q You think 51 percent would be inconsistent with
24 Question 2?

25 A Well, I think if the Department had to apply -- if

1 the Department was only going to background somebody that had
2 51 percent, then they wouldn't be looking at any other factors
3 within the initiative. And so I think, yes, it would be
4 inconsistent.

5 Q How about 50 percent?

6 A I think the discussion was around this 5 percent
7 that was proposed.

8 Q I'm not asking what the discussion was around. I'm
9 asking whether you thought 50 percent would be inconsistent
10 with Question 2?

11 A Uh, if 50 percent would be inconsistent with
12 Question 2? I think it would be, yes.

13 Q How about 40 percent?

14 A I don't know.

15 Q So 40 percent could have been --

16 A I think --

17 Q -- consistent with Question 2 in your view?

18 A I don't know. I'd probably have to do a little bit
19 more research. I think that the 5 percent was a suggestion
20 and then there was some analysis that went in looking at it
21 and making sure that, you know, it would still be consistent
22 and that it would fall under the Department making -- you
23 know, not making regulations that prohibited operations of the
24 industry.

25 Q So 40 percent could have been consistent, but you'd

1 have to think about it? Is that where we wind up?

2 A Yes.

3 Q And so I guess 35, 30, 25, those all could have been
4 consistent, too, but you'd have to think about them, too?

5 A Five percent is a relatively low amount of ownership
6 traditionally. If somebody has a 5 percent ownership of a
7 company they're not making decisions, they're not -- they
8 don't have enough influence over what is happening, and that
9 was the analysis that kind of went into that. So I guess if
10 you threw out a number, then you'd have to kind of do that
11 same type of analysis along the way and determine if --

12 Q Okay. But just to be clear here, 40, 35, 30, 25,
13 20, 15, 10 percent, your position is that they could all be
14 consistent with Question 2, but you'd have to think about it;
15 right?

16 A Right.

17 Q Okay. And I guess -- let's go to 10 --

18 A I mean, based on kind of the parameters that I just
19 explained.

20 Q Let's go to 10 percent. Ten percent you would agree
21 would probably be consistent in your mind with Question 2?

22 A I don't know.

23 Q Okay. Now, the voters voted on every owner having
24 background checks; right? Right?

25 A Yes.

1 Q They didn't vote on 1 percent, 5 percent, 10
2 percent, 51 percent. That's not what they voted on, did they?

3 A No.

4 Q Okay. And you remember that that was a pretty close
5 vote, ten thousand?

6 A Right.

7 Q So do you think it would have been the same vote if
8 you had every person having to have a background checked as
9 opposed to only 51 percent owners have background checks? Do
10 you think that might have changed some voters?

11 MS. SHELL: Objection. Calls for speculation.

12 THE COURT: Overruled.

13 THE WITNESS: I don't know.

14 BY MR. KEMP:

15 Q Could it change --

16 A I don't -- honestly, I don't believe the owners even
17 knew about this provision, but --

18 Q Owners or voters?

19 A I mean the voters.

20 Q So was one of the reasons the Department discarded
21 the language every owner should have background checks was
22 because you didn't think the voters understood that?

23 MS. SHELL: Objection. Misstates the testimony.

24 THE COURT: Overruled.

25 MR. KOCH: Lacks foundation. Argumentative.

1 THE COURT: Overruled.

2 MS. SHELL: Thank you.

3 THE WITNESS: I don't think that the Department
4 disregarded that language.

5 BY MR. KEMP:

6 Q Well, it didn't apply that language, did it?

7 A I think the Department applied the language in
8 interpreting the statute to make the regulation. When it did
9 so it was also balancing that provision with the provision
10 that it not make rules that are impractical or unreasonable or
11 unduly burdensome. And so --

12 Q Can you really testify under oath that it would have
13 been unreasonably burdensome to background checks on 4.5, 5,
14 5.5, 6? Can you really say under oath that that would have
15 made a difference to the Department?

16 MS. SHELL: Objection.

17 MR. SHEVORSKI: Objection. Argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: I don't know. I'm saying that the
20 Department was taking into consideration and concern some of
21 the feedback that the industry had with respect to the burden
22 that each -- that everybody operating, even in a very
23 inability to control any kind of aspect of the business. And
24 so --

25 //

1 BY MR. KEMP:

2 Q Okay, listen to my question. My question was --

3 THE COURT: Wait. Let her finish.

4 MR. KEMP: Go ahead.

5 THE COURT: You can finish.

6 THE WITNESS: And so the analysis that went into
7 that percentage was, okay, is there some ability for the
8 Department to still protect the public safety of -- does this
9 still protect public safety? Does this allow us to -- allow
10 the Department to have information with respect to a
11 background check of the people that are essentially in control
12 of what happens at the establishment as opposed to somebody
13 that doesn't live in the state or --

14 BY MR. KEMP:

15 Q Would 4.5 percent or 5.5 percent be in your view any
16 more unreasonably impracticable than 5 percent?

17 A No.

18 Q 3.5 percent to 6.6 percent, any more unreasonably
19 impracticable than 5 percent?

20 A I don't know. I mean, as you start to get to 10, I
21 think we'd have to look at some additional analysis. I don't
22 know all the constructs of what goes into a company, so I
23 think there would have to be some advice that we'd seek.

24 Q Okay. Well, earlier you told me that .5 percent
25 was, in your words, random. Do you recall that?

1 A Yes.

2 Q Five percent is random, too, isn't it?

3 A Well, again, it was -- as I've stated, the analysis
4 went along the lines of what is burdening the industry and
5 Question 2 says that we don't make rules that are impractical
6 or unduly burdensome. This is something that has said -- that
7 the industry has said is burdensome to them. And then looking
8 at what our responsibility was in order to maintain -- to make
9 sure that people were vetted that could affect the operations
10 of the business and could -- to have an overall say in the
11 business that could lead to some type of criminal activity.
12 Five percent is a low enough percentage that the Department
13 felt that it could balance those competing interests.

14 Q So is that a yes answer to my question that 5
15 percent is random or was that a no answer to my question as to
16 5 percent being random?

17 A No.

18 Q So that was a no. You don't think 5 percent was
19 just a random figure that the Department pulled out of the
20 air?

21 A It was not random in the context of the explanation
22 that I gave.

23 Q Okay. You keep talking about this analysis that the
24 Department -- the Department supposedly did at 5 percent;
25 right?

1 A Well, through --

2 Q That's what you said --

3 A Yes.

4 Q -- the Department did an analysis of the 5 percent
5 figure. The Department did it; right? Right? That's what
6 you said. Is that what you said?

7 A Yes.

8 Q Mr. Gilbert testified that he drafted the temporary
9 regulations. Is that true or not?

10 MR. KOCH: Objection. Misstates the testimony.

11 THE COURT: Overruled.

12 THE WITNESS: I'm sorry, the question is did --

13 BY MR. KEMP:

14 Q Mr. Gilbert said that he was the primary
15 draftsperson of the temporary regulations. True or false?
16 Was he or was he not?

17 A I don't know what he means by primary. Again, I
18 think I've explained the process. I mean, he was involved.

19 Q Well, actually you haven't explained the process.
20 You said, quote, "We drafted temporary regulations." You
21 never said who put pen to paper to draft them. Did you do
22 that?

23 A Yes, as part --

24 Q You were the one who took -- you put pen to paper
25 and drafted it?

1 MR. SHEVORSKI: Objection. He's got to let her
2 finish her answer, please.

3 THE COURT: You do have to let her finish it.

4 MR. KEMP: Go ahead.

5 THE WITNESS: So as I explained the process before,
6 it was a group effort. And nobody put pen to paper because
7 they put fingers to keyboards. So we all had, you know, kind
8 of different categories. Maybe some person drafted -- I don't
9 remember who drafted every single piece of information. There
10 was a drafting process internally within the agency and those
11 provisions were submitted for public review.

12 BY MR. KEMP:

13 Q So as we sit here today, you don't remember if you
14 drafted it, if Mr. Gilbert drafted it, if Mr. Pupo drafted it
15 or someone else drafted it, is that correct?

16 MR. SHEVORSKI: Objection. Vague.

17 THE COURT: Overruled.

18 THE WITNESS: Drafted what?

19 BY MR. KEMP:

20 Q The regulations.

21 A The temporary regulations?

22 Q The temporary regulations.

23 A We all drafted the temporary regulations.

24 Q Okay. With regards to the 5 percent provision, who
25 drafted that?

1 A I guess I'm -- you mean who typed it up?

2 Q What do you understand the word draft to mean?

3 Writing apparently is not what was used. Typing? Who typed
4 it up originally?

5 A So as I've explained the process, so the Task Force
6 met. There were the recommendations. Those recommendations
7 were typed up by QuantumMark. They were adopted. Then
8 information from those regulations were copied and pasted into
9 a separate document, along with other information that was
10 gathered along the way, or if somebody in staff was like, hey,
11 look at what they're doing in Colorado or look at what they're
12 doing this. And then the document was put all together and
13 the document was actually physically put together and
14 information was sent to the compiler and then once everything
15 was compiled the agency made some decisions on what the final
16 draft would look like that we would workshop.

17 Q So my question was who drafted the 5 percent. Can
18 you answer that?

19 A The 5 percent came out of a recommendation from the
20 working group.

21 Q So the government's advisory task force drafted the
22 5 percent?

23 A Well, the recommendation --

24 Q Who first drafted --

25 THE COURT: Wait. You've got to let her finish,

1 Mr. Kemp.

2 MR. KEMP: Your Honor, I'm getting flashbacks of --

3 THE COURT: I know, but we've still got to let her
4 finish.

5 THE WITNESS: Well, I guess I'm just having trouble
6 with what you mean by drafted. As I've explained, the process
7 is --

8 Q Okay. Let's try --

9 THE COURT: Wait. Let her finish.

10 THE WITNESS: The process initiated with the
11 Governor's Task Force. There were recommendations that came
12 out of that. The process also considered -- so it reviewed
13 those recommendations and it also -- the process also
14 considered what was in 453A, what other states were doing.
15 An original draft was compiled. So nobody just sat down on a
16 blank slate and started writing. There was information that
17 was all compiled together and then the agency went through and
18 made decision points on the 5 percent. So based on the
19 recommendation from the Task Force that was drafted into a
20 document that a lot of people had input into drafting and then
21 it went through the workshop process.

22 BY MR. KEMP:

23 Q So if Mr. Gilbert said it was copied from the
24 medical marijuana provision, that's a mistake, that's wrong;
25 right?

1 A I don't know about -- I don't know where -- again,
2 medical was a basis. The Task Force was a basis. Other
3 states was a basis. At this point I'm not sure where
4 everything -- you know, what decision points happened at which
5 time and how things were pulled together, but that was the
6 process that we went through.

7 Q So is it fair to say you don't know who drafted the
8 5 percent or what the basis of it was? Is that fair to say?

9 A No.

10 Q Okay. Then who drafted it? Who was the first
11 person that wrote 5 percent after Question 2 was passed?

12 MR. KOCH: Objection. Asked and answered many
13 times.

14 THE COURT: Overruled.

15 THE WITNESS: That basically took the recommendation
16 and put it in written form?

17 BY MR. KEMP:

18 Q Question 2 was passed; yes? Yes?

19 A Yes.

20 Q Who was the first person at the Department of
21 Taxation to draft 5 percent for background checks?

22 A So, the contractor compiled information in writing
23 based --

24 Q That would be QuantumMark?

25 A Yes. Based on --

1 Q So -- Go ahead.

2 A Based on the work in the working group, it was
3 reduced to writing. Maybe John Ritter wrote some of it. I
4 don't know because I wasn't in every working group. But that
5 process then was reduced to this -- the recommendation within
6 the Task Force, that was then presented to the overall Task
7 Force for review and approval. And then -- so I guess the
8 answer to your question would be the first time such a
9 recommendation was reduced to writing would have been the
10 recommendation of the working group. And then --

11 Q Which would have been in the year 2017, is that
12 right?

13 A Yes.

14 Q Is that right?

15 A Yes.

16 Q Okay. So the fact that it's basically identical to
17 the medical marijuana one in 2014, that's a mere coincidence?

18 A I don't -- it's not a coincidence.

19 Q So that was not the source of the 5 percent?

20 A Well, again, like I just said, I don't know where
21 everything came from, but -- and I explained kind of where
22 different things came from. And once the information was all
23 compiled, then the discussion happened about what would be in
24 and what would be out and then we went through the working
25 group.

1 Q Okay. Let's stay away from --

2 THE COURT: This is our -- wait. This is our place
3 for breaking for the day. It's 4:45. I have an argument on
4 closing on another trial tomorrow morning at 8:30. I should
5 be ready for you by ten o'clock.

6 MR. KEMP: Ten o'clock, Your Honor.

7 THE COURT: What's my plan for next week, guys?

8 MR. KOCH: Can I ask first, are we -- tomorrow after
9 finishing Ms. Contine, is there anybody else that is going to
10 be called?

11 THE COURT: Is Mr. Groesbeck coming tomorrow or any
12 of the other people who were identified coming tomorrow?

13 MR. KOCH: I've been told he's not coming tomorrow.

14 MR. KEMP: Your Honor, let's --

15 THE WITNESS: I just wanted to know about tomorrow a
16 little bit, like when we might be done, because I do have some
17 actual work.

18 THE COURT: Real work?

19 THE WITNESS: Yeah.

20 THE COURT: How long have you got, Mr. Kemp, at the
21 pace you're going?

22 MR. KEMP: At the pace I'm going, I probably have
23 five hours, Your Honor. I'm serious, Your Honor. This is
24 turning into another --

25 THE COURT: Mr. Kemp, that's okay.

1 What obligations do you have, ma'am? Because I've
2 got next week, too. So unless you're going to be on vacation
3 next week, we could call Friday off and see you on Monday.

4 THE WITNESS: I kind of have to clear it with my
5 boss, too.

6 THE COURT: Isn't your boss the Governor now?

7 THE WITNESS: Yes. And he expects me to do my --

8 THE COURT: He wanted this thing about transparency.

9 THE WITNESS: Tomorrow I have a one o'clock and a
10 three o'clock. If I have to move them -- well, the three
11 o'clock is a large conference call on an issue.

12 THE COURT: Is it easier for you to come Monday or
13 tomorrow?

14 THE WITNESS: Tomorrow.

15 THE COURT: Okay.

16 THE WITNESS: But can I be done by three?

17 MR. KEMP: Judge, it's up to her, it's not up to me.

18 THE COURT: I'm going to work through lunch.

19 THE WITNESS: Or 2:45 because I have to make -- I
20 have to be on a large conference call.

21 MR. GENTILE: Your Honor, we have no problem if she
22 leaves at three and comes back on Monday, but I don't see any
23 way she's done by three.

24 THE COURT: Okay. So I will have you talk with Mr.
25 Shevorski and the team --

1 THE WITNESS: Okay.

2 THE COURT: -- to see what the other options are if
3 we do not finish. In any case, we will break you at 2:45
4 tomorrow so you can get to your conference call.

5 THE WITNESS: Okay. Thank you.

6 THE COURT: How's that?

7 THE WITNESS: Yes.

8 THE COURT: And then you and Mr. Shevorski are going
9 to work out because poor Mr. Gilbert I think sat here for four
10 days. Some of the time he was just in the audience.

11 MR. SHEVORSKI: Over several weeks.

12 THE COURT: Yeah. All right, what else have you
13 got? What's my plan for next week, guys?

14 MR. KOCH: We have Monday available. Is everyone
15 available Monday? Is Mr. Groesbeck available?

16 THE COURT: I've got to have witnesses. Having you
17 guys show up without witnesses is not productive.

18 MR. KEMP: Judge, I want to talk about --

19 MR. KOCH: I understand Mr. Groesbeck to be the next
20 witness.

21 MR. KEMP: He keeps saying Mr. Groesbeck. I told
22 him if we were going to get done today, which was the original
23 plan, that I would have Mr. Groesbeck cancel ten different
24 business appointments and be here tomorrow so we can get done.
25 Last night, knowing that, they added five more plaintiff's

1 witnesses -- witnesses of plaintiffs. So I told Mr. --

2 THE COURT: They did. They did. You've got
3 different groups. Remember, it was over there.

4 MR. KEMP: Yeah, they did. So I told Mr. Groesbeck
5 that, you know, there's really no need to cancel his
6 appointments because he's going to -- you know, they're going
7 to go on through next week, so I've not talked to him about
8 what day. But this isn't my case-in-chief, this is their
9 case-in-chief.

10 THE COURT: Well, all I'm trying to figure out is
11 scheduling. There was an identification of five to six people
12 that needed to still testify in their case. I have given the
13 plaintiffs a lot of latitude because no discovery was done
14 prior to this evidentiary hearing. I am going to extend the
15 same courtesy to the defendants because that's the fair thing
16 to do. So since they're your client representatives, I just
17 need to know what day you want me here to hear them next week.

18 MR. KEMP: Judge, I would say Tuesday for Mr.
19 Groesbeck, without talking to him, because I don't think we're
20 going to get done with Ms. Contine until --

21 THE COURT: She says she can't come back on Monday.
22 Assume for a minute she can't come back on Monday but maybe
23 can come later in the week.

24 MR. KEMP: I thought she said she could come on
25 Monday.

1 THE COURT: No, which is why I told her to talk to
2 Mr. Shevorski because I don't want to get involved in the
3 prioritization of State business.

4 MS. HIGGINS: Your Honor, neither I nor Mr. Graf is
5 available Tuesday. I have ten hearings and he has hearings
6 all day on Tuesday.

7 MR. KEMP: Judge, I can try and get Mr. Groesbeck
8 here on Monday, but he's only one of the eight.

9 THE COURT: I know. That's why I'm asking.
10 Mr. Gentile.

11 MR. GENTILE: We have agreed to accept service with
12 regard to Mr. Scolari, not to the others, so I don't know if
13 service has been had.

14 THE COURT: Well, they don't need to subpoena your
15 client representative.

16 MR. GENTILE: Well, it's --

17 THE COURT: Okay.

18 MR. GENTILE: I haven't even been able to --

19 THE COURT: Pick a client representative to show up,
20 you know.

21 MR. GENTILE: Any client representative?

22 THE COURT: It's like he's going to ask them --

23 MR. GENTILE: Well, he's asked for specific people.

24 THE COURT: I know, but he's got a list of six
25 questions to ask and they're basically the same, so it doesn't

1 really -- I know what he's trying to do and I'm going to let
2 him do it, but we just need to have the people show up.

3 MR. GENTILE: Well, believe it or not --

4 THE COURT: Really?

5 MR. GENTILE: -- we found Jimmy Hoffa.

6 THE COURT: Did you?

7 MR. GENTILE: Yes.

8 THE COURT: Good.

9 MR. GENTILE: And he will be there on the stand.

10 THE COURT: Good. Great. I'm so glad to hear that.
11 So what day -- you don't need me on Tuesday because we have a
12 conflict with Clear River's counsel not being able to be here.
13 And since I made a doctor's appointment that day, it's going
14 to be okay. So do you guys want to plan to do at least one
15 witness on Monday and then try to do the rest on Wednesday?

16 MR. KOCH: I think we do as many as we can on
17 Monday. I'm not available on Wednesday, but Monday if we can
18 do as many -- Mr. Groesbeck and as many of the other
19 individuals. Maybe we can get them all done if they're all
20 here. If Ms. Contine is not available on Monday, we can get
21 the rest of them done, finish her up, if necessary. I don't
22 think she needs to go past tomorrow, but that's not my call.
23 I would ask --

24 THE COURT: I know it's not.

25 MR. KOCH: Keep arguing with her. So I think we can

1 get that done tomorrow, get the other witnesses done on Monday
2 and I think we're pretty close.

3 THE COURT: So, Mr. Shevorski, I'm going to task you
4 with talking to Ms. Contine because I understand she does have
5 other responsibilities. And since she's no longer with the
6 Department of Taxation, I'm not going to do what I did to Mr.
7 Gilbert and just make her sit in the room the whole time. I
8 would like you to try and -- your team to try and figure out
9 when a convenient day next week is if she doesn't finish
10 tomorrow before 2:45 so I know what the plan is because I'm
11 just trying to figure out my week next week. So if I have to
12 volunteer to help other judges with settlement conferences I
13 will have that, since I've gotten the third email today asking
14 if I can help out and I keep ignoring them.

15 MR. SHEVORSKI: We'll get it done.

16 THE COURT: Okay. Will you tell me tomorrow?

17 MR. SHEVORSKI: Yes, Your Honor.

18 THE COURT: Okay.

19 (Court recessed at 4:51 p.m. until the following day,
20 Friday, July 12, 2019, at 10:00 a.m.)

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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DEFENDANTS' WITNESSES

Deonne Contine	12/81	99	-	-
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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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PLAINTIFFS' EXHIBIT NO.

NONE ADMITTED IN AFTERNOON SESSION

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DEFENDANTS' EXHIBIT NO.

NONE ADMITTED IN AFTERNOON SESSION

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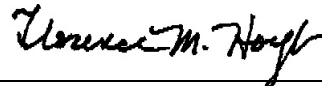
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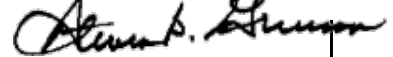
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

7/12/19

DATE



TRAN

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**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 14

FRIDAY, JULY 12, 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.
MICHAEL CRISTALLI, ESQ.
ROSS MILLER, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.
STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH GUTIERREZ, ESQ.
PHILIP HYMANSON, ESQ.

1 LAS VEGAS, NEVADA, FRIDAY, JULY 12, 2019, 10:02 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, everyone. Remember our
4 plan today is to get Ms. Contine out of here by 2:45, even if
5 she's not finished. Okay. Come on up, Ms. Contine. I didn't
6 want anybody to forget.

7 MR. SHEVORSKI: I took care of business on my end,
8 as well, the question you asked me.

9 DEONNE CONTINE, DEFENDANT, STATE'S WITNESS, SWORN

10 THE CLERK: Please be seated. Please state and
11 spell your name for the record.

12 THE WITNESS: My name is Deonne, D-E-O-N-N-E,
13 Contine, C-O-N-T-I-N-E.

14 THE CLERK: Thank you.

15 THE COURT: Mr. Kemp, you may continue.

16 CROSS-EXAMINATION (Continued)

17 BY MR. KEMP:

18 Q Good morning, ma'am. Let's go back to what I call
19 the Memorex question. You remember those Memorex commercials
20 back in the old days?

21 THE COURT: Ah, Mr. Kemp.

22 MR. KEMP: Judge, come on, Judge. I'm testing the
23 depths --

24 THE COURT: I remember them, but --

25 MR. KEMP: -- of your memory.

1 THE COURT: I remember them, but not everybody's as
2 old as me and you and Mr. Gentile.

3 BY MR. KEMP:

4 Q Do you remember them, ma'am?

5 A No.

6 Q Basically it was a commercial that says is it
7 Memorex or is it the original, and Memorex was the copy.
8 Okay. Are you kind of with me so far?

9 A Yes, I think I am.

10 Q So yesterday my questions were asking whether the
11 Department just copied the medical marijuana regulation, and
12 you said, no, that you and Mr. Pupo and others drafted a new
13 regulation after Question 2 in the Government's Task Force;
14 correct? That was the testimony yesterday; right?

15 A So I guess if I could try to clarify what I --
16 because I think there was some miscommunication that we had
17 yesterday.

18 Q Well, yesterday your position was it wasn't a
19 copy --

20 THE COURT: Wait. Let her finish, please.

21 MR. KEMP: Judge, I'd rather not have the
22 clarification of --

23 THE COURT: Counsel, I need her to finish her
24 answers. I understand you may disagree with what she's saying
25 and cross-examine her extensively and aggressively, but give

1 her the courtesy of answering the question --

2 MR. KEMP: Yes, Your Honor.

3 THE COURT: -- and then we'll keep going. And we
4 may get done next week.

5 MR. KEMP: We may

6 THE COURT: All right. Keep going, Ms. Contine.

7 THE WITNESS: So the physical process of taking all
8 of the ideas and the concepts that we were working with and
9 putting it on a piece of paper was QuantumMark. So they --
10 BY MR. KEMP:

11 Q That's it?

12 A If that's what you consider to be a draft then they
13 drafted putting the pen to paper as you said yesterday.

14 Q Yesterday I was suggesting to you that there was
15 testimony from Mr. Gilbert and others that you just copied the
16 medical marijuana reg, and you disagree with that; right?

17 A I didn't disagree with that. I didn't -- I don't
18 know what you mean by just copied.

19 Q Did the Department not, in fact, simply copy the
20 medical marijuana reg especially with regards to the 5 percent
21 ownership section?

22 A So with respect to the 5 percent ownership section
23 specifically there's testimony, there's written documentation
24 that was a Task Force recommendation. It was discussed
25 extensively at the Task Force based on that recommendation.

1 The consensus, the fact that it was in the -- also part of the
2 medical it was put into that original draft document that the
3 Department of Taxation then workshopped and took input on and
4 then went through with adoption.

5 Q They copied the 5 percent directly from the medical;
6 yes?

7 A Yes.

8 Q Yes?

9 A Yes.

10 Q Okay. So there was no big discussion about whether
11 it should be 5 percent or 3 percent or 7 percent, right, no
12 discussions such as that?

13 A There was discussion about the 5 percent both at the
14 working group, the Task Force, the regulation process, and
15 that discussion indicated that it was something that had been
16 working for the industry. It wasn't unduly burdensome, and it
17 was a way that we could move forward and implement the
18 program.

19 Q Were alternatives such as 3 percent, 7 percent
20 explored?

21 A I don't know.

22 Q Okay. And did you do any studies to focus on the
23 complexities of 5 percent as opposed to the Question 2 mandate
24 of every owner?

25 MR. SHEVORSKI: Objection. Vague.

1 THE COURT: Overruled.

2 THE WITNESS: No. I mean, we didn't do any studies
3 on the 5 percent, because, again, there was a significant
4 consensus around that.

5 BY MR. KEMP:

6 Q So because the industry and whoever was on the study
7 group liked the 5 percent you went with the 5 percent, that
8 was the reason?

9 A We analyzed internally whether we could make that
10 regulation in the recreational under the initiative, and we
11 considered whether we had the authority and then whether it
12 would be unduly burdensome and whether using that 5 percent
13 would also protect the public safety part.

14 Q And unduly burdensome, did you do any studies as to
15 the cost --

16 A No.

17 Q -- of using a different figure other than 5 percent?

18 A No.

19 Q So as we sit here today you can't tell me whether or
20 not in terms of cost there's any undue burden on checking
21 everyone as opposed to 3 percent, 5 percent, 7 percent, you
22 can't tell me?

23 A I can't tell you the difference, no.

24 Q You can't even tell me if there is a difference?

25 A Well, I can tell you what people testified to --

1 Q Okay.

2 A -- in which I think I have.

3 THE COURT: And when you say testify you mean before
4 the Task Force?

5 THE WITNESS: The Task Force --

6 THE COURT: Okay.

7 THE WITNESS: -- all the various public meetings
8 that were conducted.

9 THE COURT: Thank you. We don't use that as
10 testimony as litigators --

11 THE WITNESS: Oh. Okay. Sorry.

12 THE COURT: -- I know that in administrative you do.
13 So I just wanted to make sure we were clear.

14 BY MR. KEMP:

15 Q And are you suggesting that there was testimony that
16 anything less than 5 percent would be unduly burdensome?

17 A I don't recall if there was, but --

18 Q And are you suggesting that there was testimony that
19 requiring a background check of some sort on every owner would
20 be unduly burdensome?

21 A I believe that there was testimony to that
22 effect.

23 Q Okay. And why would that be? Why would that be
24 unduly burdensome --

25 A Well, you mean --

1 Q -- based on the testimony as you understood it?

2 A So my understanding in the examples that I've given
3 previously was that it was difficult with small owners that
4 maybe lived out of the jurisdiction to facilitate operation of
5 the business because of the requirements.

6 Q As I understand, those people were already licensed,
7 because they already had to have a medical license if they
8 were applying in this round; correct?

9 A Yes.

10 Q So these people were already licensed, and you
11 thought it was unduly burdensome to do background checks?

12 A The way that the program had been run up until that
13 point was that every year annually there was a background
14 check requirement. And every time there was a transfer of
15 ownership the information had to be submitted and that that
16 was -- the requirements to have everyone who had any kind of
17 investment in the company to submit to those requirements was
18 difficult to operate the business.

19 Q Basically they had to go and have their fingerprints
20 taken somewhere and then send it to the Department. That's
21 basically what they had to do; right?

22 A Yes, they had to have fingerprints annually.

23 Q Anything else?

24 A They had to file the application -- I can't remember
25 -- or file the renewal. I don't know everything that was on

1 the renewal. I never did the renewal.

2 Q You're not suggesting to me they had to have new
3 fingerprints annually as opposed to some sort of updated form,
4 or are you suggesting that?

5 A They had to have new fingerprints annually.

6 Q That's your understanding?

7 A That's my understanding.

8 Q All right.

9 A In fact, I believe in Assembly Bill 422 in the 2017
10 session the industry had that changed.

11 Q Okay. And Mr. Koch brought up the subject of public
12 companies yesterday. Do you remember that?

13 A Yes.

14 Q And he was implying that there's some extreme
15 difficulty in ascertaining the ownership of a public company.
16 Do you recall those questions?

17 A Yes.

18 Q And do you know how difficult it is for a public
19 company to send a list of shareholders to someone upon
20 request?

21 A I don't know how difficult that is, but I guess I
22 was thinking of it a little differently in that if you're --
23 the way that a public market works the ownership changes all
24 the time with the rules the way that they are if you are
25 required to submit something, you know, if somebody makes a

1 trade right now it could be different than, you know, in an
2 hour from now. So just the vast number of people that would
3 be coming in and out for a really small portion.

4 Q Okay. Before we get to coming in and out let's get
5 to identifying the owners, see how difficult that is. Do you
6 know, as we sit here today, how difficult it is for a public
7 company to identify all of its shareholders?

8 MR. SHEVORSKI: Objection. Vague.

9 THE COURT: Overruled.

10 THE WITNESS: I don't.

11 BY MR. KEMP:

12 Q And have you ever heard of a transfer agent?

13 A No.

14 Q So if told you that most public companies can log
15 in on Odyssey and print out all their shareholders in less
16 than 10 minutes, prepare a list, that'd be news to you?

17 THE COURT: Odyssey or EDGAR?

18 MR. KEMP: It's Odyssey, Your Honor.

19 THE COURT: Okay.

20 MR. KEMP: Well, I guess it depends on which company
21 it is. Okay.

22 THE WITNESS: Yeah. I mean, I've never used a
23 service like that. I wouldn't have -- I wouldn't know about
24 those services .

25 //

1 BY MR. KEMP:

2 Q Okay. Do you think that's an unreasonable burden
3 that someone spends 10 minutes giving their list of
4 shareholders?

5 A But how good is that list? How long is that list
6 good for I guess. That's the question. And, you know, how
7 long is that list good for? How do those people submit the
8 information that's required those types of things. I just, I
9 mean, the process of implementing something like that and the
10 process of getting that information would be.

11 Q In this rhetorical question you just asked me, how
12 long is the list good for. That was not discussed at any time
13 by anyone at the Department of Taxation, right, because you
14 didn't know they could get the list?

15 A Well, I guess just conceptually the way markets
16 work, the way that the trading happens there was a general
17 understanding of that and the difficulty of obtaining accurate
18 information in real time, and, again, balancing those burdens
19 and the abilities to review all of that to get all of that and
20 submit all of that with the recognition that we could still
21 protect public health and safety I think.

22 Q I just told you you could generate the list in 10
23 minutes, and you said there were difficulties in getting that
24 in real time. Is 10 minutes what you consider to be a
25 difficulty?

1 MR. SHEVORSKI: Objection. Foundation.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 BY MR. KEMP:

5 Q So you didn't want to impose the burden on any of
6 the applicants that were public companies that they would
7 spend 10 minutes. That's the reason you disregarded Question
8 2 say to everyone -- every owner. Is that what you're telling
9 me?

10 MR. KOCH: Objection. Argumentative. Misstates --

11 THE COURT: Overruled.

12 MR. KOCH: -- the initiative, as well.

13 THE WITNESS: No, that's not what I'm saying. What
14 I'm saying is that, again, we were trying to balance the
15 request and what the industry was saying at various meetings
16 on the public that would be -- that we would consider
17 testimony but not legal testimony, and balance that burden
18 with also the internal, you know, how do you implement a
19 process like this that is going to essentially review and sign
20 off of every single person at one point in time who has an
21 ownership interest because they own whatever and how many
22 ever, you know, pieces of stock or whatever they own when
23 tomorrow that might be different.

24 So even as you're reviewing it you couldn't have
25 that accurate information. And so given that situation and

1 that makeup those burdens and the, again, the policy to kind
2 of work and implement this program with public safety in mind,
3 that's why it was chosen.

4 BY MR. KEMP:

5 Q Okay. Getting back to the question three questions
6 ago that hasn't been answered yet. These considerations were
7 never discussed by the Department; correct? These specific
8 considerations of the difficulty of updating the public list
9 of shareholders were not discussed by the Department?

10 A It was discussed generally, but the specifics of a
11 list and how long we could get a list that was not discussed.

12 Q Okay. Do you know what the Gaming Control Board
13 does?

14 A No.

15 Q You don't know that they require a shareholder's
16 list to be filed on a I believe it's a quarterly basis and
17 updated by the public companies?

18 A No, I don't know that.

19 Q Okay. That'd be a reasonable thing for the
20 Department to do, do you think?

21 MR. KOCH: Objection. Lacks foundation.
22 Argumentative.

23 THE COURT: Overruled.

24 MR. SHEVORSKI: Also misstates the law.

25 THE COURT: Overruled.

1 THE WITNESS: I don't know. I don't know enough
2 about it to know if it'd be reasonable.

3 BY MR. KEMP:

4 Q Well, it would be one option that could be employed,
5 right, you could do that, because the Gaming authorities do it
6 and you can do it?

7 MS. SHELL: Objection. Calls for speculation.

8 THE COURT: Overruled.

9 THE WITNESS: Again, I don't know. I don't know if
10 it's reasonable. I don't know.

11 BY MR. KEMP:

12 Q Okay. So you think it's potentially unreasonable to
13 require a marijuana company that's a public company to provide
14 an updated shareholder list once a quarter. You think it's
15 potentially unreasonable?

16 A I don't know.

17 Q Okay. And you don't know because the Department
18 didn't study any difficulties with regards to public companies
19 identify their ownership; right?

20 A Again, no.

21 Q Okay. Yes, I'm right, you did not study that?

22 A Again, no.

23 Q No, you did study that?

24 A No, we did not study it.

25 Q Okay. Thank you.

1 A I'm answering the question.

2 Q All right. Now getting back to Question 2.

3 Question 2 required background checks for everyone, right;
4 yes?

5 MR. KOCH: Objection. Misstates the initiative.

6 THE COURT: Overruled.

7 BY MR. KEMP:

8 Q That's your understanding?

9 A I don't -- can I have the language.

10 THE COURT: The book's right there, ma'am.

11 THE WITNESS: What specific provision are you
12 talking about?

13 THE COURT: Ma'am, 453D's in the pocket part.

14 BY MR. KEMP:

15 Q The background check --

16 A I don't know if the language says each or every. I
17 don't know the exact provision, and I can't find it quickly.
18 So -- but, yes, it required background checks on each or every
19 owner.

20 Q Okay. But it didn't require any specific type of
21 background check; right?

22 A No.

23 Q So, for example, it didn't require you to
24 fingerprint every single owner; right?

25 A Right.

1 Q Okay. So if someone were to suggest that the
2 statute or that Question 2 couldn't be complied with because
3 it demanded fingerprinting every owner, that would be wrong;
4 right?

5 A I don't think fingerprinting is in the initiative,
6 no, or in the chapter.

7 Q Now, are you familiar with what's known here in
8 Nevada as the Black Book?

9 A No.

10 Q It's a book that they maintain at the Gaming Control
11 Board that has a list of undesirables, you know, people that
12 were in the Mob, slot cheats, you know --

13 MS. SHELL: Objection. relevance.

14 THE COURT: Overruled.

15 BY MR. KEMP:

16 Q You're not familiar with that at all?

17 A Okay. I mean, I'm familiar with it now.

18 Q Okay.

19 A You just explained it.

20 Q Let's say there's 100 names in the Black Book. As
21 we sit here today do you know whether or not the Gaming
22 Control Board uses an optical scanner to compare those 100
23 names in the Black Book to lists of shareholders of public
24 gaming companies?

25 A I don't know.

1 Q That'd be a reasonable thing to do; right?

2 MR. KOCH: Objection. Lacks foundation. Personal
3 knowledge.

4 THE COURT: Overruled.

5 THE WITNESS: I don't know. I don't know.

6 BY MR. KEMP:

7 Q If you did that you could tell at least from the
8 gaming perspective you could tell if these 100 people had
9 bought shares in a gaming company; right?

10 A I think if you did what you just explained I think
11 you probably could tell that.

12 Q And that's a pretty simple thing to do now and use.
13 I mean I can't do it, but I watch Nate do it all the time.
14 You know, he pushes a button and he does an optical scan and,
15 you know, we search through thousands of pages of transcript
16 and things pop up right away. That's pretty simple nowadays;
17 right?

18 A I'll take your word for it.

19 Q So if they wanted to, the Department of Taxation
20 could have required the public companies to update their list
21 periodically even weekly, and they could have run some sort of
22 optical scan on names of undesirables if they wanted to. They
23 could have done that; right?

24 MR. SHEVORSKI: Objection. Foundation.

25 THE COURT: Overruled.

1 THE WITNESS: I, you know, I don't know. I mean,
2 it's a large process to go through and, you know, it could
3 have been an idea that would -- as explored, yes.

4 BY MR. KEMP:

5 Q Okay. And you could have taken situations where
6 people maybe had five shares of a \$2 a share marijuana stock,
7 \$10 worth of stock. You could have done a really minimal type
8 of background check on that; right?

9 MR. SHEVORSKI: Objection. Foundation.

10 THE COURT: Overruled.

11 BY MR. KEMP:

12 Q I mean, there was nothing that said you had to do
13 the same degree of background check on every particular owner;
14 right? Nothing in Question 2 made you do that?

15 A Yeah, there could have been regulations that were
16 made that took certain different characteristics into --

17 Q Okay. So in general you would agree with me you
18 could have complied with Question 2 in ways other than just
19 having a 5 percent cutoff?

20 A Right. Yes. The regulations could have been
21 different, yes.

22 Q Okay. And getting back to those regulations. I
23 don't want to belabor the Memorex point, but I told you
24 yesterday that Mr. Gilbert testified that they just copied the
25 medical marijuana regs. It was actually Mr. Pupo who said

1 that, okay. So your position is that that testimony is
2 erroneous?

3 A My -- I think I've explained the process quite a
4 bit. There was different information that was taken from
5 different areas. There were different states that were
6 considered, and all of the information with respect to the
7 regulations that were compiled as a draft was done by -- was
8 put into a document by QuantumMark.

9 Q Okay.

10 A And the analysis and the work and the revisions and
11 the process was done throughout that whole process from when
12 the Task Force started until the Legislative Commission
13 adopted the regs.

14 Q Well, let's pop up Mr. Pupo's exact testimony, and
15 we'll see if you think it's wrong and if we've got to bring
16 you back for some reason, okay?

17 MR. PARKER: Can we have that, please, Shane.

18 THE COURT: Can you give us the date of the
19 testimony, please. Because he was here for more than one day.
20 And that'd be you, Mr. Rulis, upon whom lauds have been given
21 for your ability to use OCR systems.

22 MR. RULIS: July 1st, Your Honor. We're talking
23 about the transcripts from July 1st.

24 THE COURT: Thank you. And, ma'am, you can see it
25 on the screen. I'm sure --

1 THE WITNESS: Yes.

2 THE COURT: -- Mr. Kemp will read it to you.

3 BY MR. KEMP:

4 Q Okay. Let's take a look at page 78, line 9, Shane.

5 And the Court asked Mr. Pupo a question.

6 "I'm trying to understand the process the Department
7 used in implementing Ballot Question 2 so I can make
8 a determination as to whether it was reasonable and
9 being compliant with Ballot Question 2."

10 Says, "Yes, Your Honor."

11 "Okay."

12 Answer, "So the majority or a lot of the regulation
13 came over -- came from what was brought over from
14 453A and incorporated in these regulations. And
15 then, you know, we looked at the initiative to see
16 what differences there were, cut out what applied
17 and what didn't apply."

18 So Mr. Pupo says you started with the med mal -- or,
19 excuse me, medical marijuana regulations, copied them, and
20 took some things out.

21 MR. SHEVORSKI: Objection. Misstates testimony.

22 THE COURT: Overruled.

23 THE WITNESS: I think I've explained the process
24 extensively. I'm not disagreeing that 453A wasn't considered
25 and wasn't a place to begin the analysis after reading the

1 initiative, but there were other provisions that had to be
2 done and dealt with that were -- and in addition to these the
3 provisions that were in 453A were discussed at the Task Force,
4 discussed through the regulatory process. So, yes, there were
5 provisions from 453A that were used in 453D.

6 BY MR. KEMP:

7 Q Okay. And specifically the 5 percent was just a cut
8 and paste, wasn't it?

9 MS. SHELL: Objection. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: I don't know. I'd have to go and --

12 MS. SHELL: Misstates prior testimony.

13 THE COURT: Overruled.

14 BY MR. KEMP:

15 Q Well, we will go to it in a second. But it was a
16 cut and paste, wasn't it?

17 A I don't know.

18 Q Okay. Let's take a look at page 82, line 8, Shane.
19 Again, this is Mr. Pupo answering another question by the
20 Judge.

21 "So did it appear to you that the Department just
22 took 453A and made a few changes and then developed
23 regulations for 453D?"

24 Answer, "We took -- we took a good portion of 453A,
25 yes, Your Honor."

1 The Court, "So tell me why the Department decided
2 that it was going to use a 5 percent level for
3 owner?"

4 Answer, "Well, you know, I don't know if that came
5 over from 453A, as well."

6 And then he continues talking about the Governor's
7 Task Force. So basically Mr. Pupo was saying that you took
8 the regulation 453A and you used it for 453D.

9 MR. SHEVORSKI: Objection. Misstates testimony.

10 THE COURT: Overruled.

11 BY MR. KEMP:

12 Q Right?

13 A No. I think --

14 Q No?

15 A -- I think he's saying -- what I'm saying and what he
16 is saying are consistent. And, again, I talked extensively
17 about the process.

18 MR. KEMP: Okay. Let's pop up 453A, the 5 percent
19 requirement with the changes, Shane, please. I have prepared
20 for you 453A, the 5 percent requirement -- pull up the one
21 that Nate had this morning, yeah. Okay. The 5 percent
22 requirement with all the changes -- I can't remember what the
23 word is --

24 THE COURT: Redline.

25 MR. KEMP: Compare right. Yeah, redline.

1 THE COURT: Redline.

2 MR. KEMP: Okay. Redline compare right.

3 BY MR. KEMP:

4 Q So you can see what the Department actually did,
5 okay? And then we'll get back to the cut and paste question,
6 all right? So could you show it to her, please.

7 Maybe I should just show it to you.

8 THE COURT: Jill, can you let him have the Elmo.

9 MR. KEMP: Judge, we're done with Memorex. We might
10 as well go to the Elmo.

11 THE COURT: It's better than an overhead projector.

12 BY MR. KEMP:

13 Q Okay. So you see, we started with 453A on one side,
14 and they cross that out and it becomes 453D; right? See the
15 change that was made?

16 A Okay.

17 Q Why don't we start with paragraph (1). The only
18 changes made were they took the word "medical" out twice;
19 right?

20 A Yes, it looks like on this document.

21 Q That's cut and paste; right?

22 A Yes.

23 Q You would agree with me that's a cut and paste?

24 MR. SHEVORSKI: Objection. Vague.

25 THE COURT: Overruled.

1 THE WITNESS: I mean -- yeah, it was a starting
2 point, yes.

3 BY MR. KEMP:

4 Q Okay. Cut and paste, okay. And (2), same thing,
5 you took the word "medical" out twice. That was a cut and
6 paste; right?

7 MR. SHEVORSKI: Objection. Vague.

8 THE COURT: Overruled.

9 THE WITNESS: Yes. I mean, that's what this
10 document shows. I don't know what this document --

11 THE COURT: Mr. Kemp, I need you to mark that as a
12 demonstrative exhibit, please, since it's not otherwise part
13 of my record. Thank you.

14 BY MR. KEMP:

15 Q And if I'm correct, the medical marijuana statute
16 was enacted in 2014.

17 A 2013.

18 Q 2013?

19 A I think.

20 Q So this would have been three years before
21 Question 2 passed?

22 A Right.

23 Q So the determination to use 5 percent was made three
24 years before the voters' initiative passed?

25 A I'm not sure when the regulations were adopted. So,

1 yeah. Yeah.

2 Q Okay. Two or three years; is that fair?

3 A Yes.

4 Q Okay. Two or three years. So would I be correct
5 that -- the 5 percent ownership requirement for background
6 checks that the Department imposed in the 2018 regs, would I
7 be correct that they really weren't related in any way, shape,
8 or form to the voters' initiative?

9 MR. KOCH: Objection. Vague. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: Can you kind of rephrase that. I'm
12 not -- I'm not sure what you're getting at.

13 BY MR. KEMP:

14 Q You were using the 5 percent in the medical
15 marijuana statute; right?

16 A Well, that was what was in the statute, yes.

17 Q In 2013, 2014; right?

18 A I believe -- I'm going to --

19 MR. SHEVORSKI: Objection. Misstates the law.

20 THE COURT: Overruled.

21 THE WITNESS: I don't know exactly --

22 BY MR. KEMP:

23 Q Give me a range. It was before the voters'
24 initiative; right?

25 A Well, the medical program was enacted before the

1 voters' initiative, yes.

2 Q Okay. So the reason the 5 percent was used had
3 nothing to do with Question 2 in its -- which referenced to
4 every owner. It was just because you took it from the medical
5 marijuana; right?

6 MR. SHEVORSKI: Objection. Misstates the
7 initiative.

8 THE COURT: Overruled.

9 THE WITNESS: No.

10 BY MR. KEMP:

11 Q No?

12 A No.

13 Q No, it was not.

14 THE COURT: Mr. Kemp, you still have the Elmo on, so
15 your notes, they aren't very good.

16 (Pause in the proceedings)

17 BY MR. KEMP:

18 Q Okay. Let's turn to another area. Are you familiar
19 in general with the litigation that ensued after the medical
20 marijuana licenses were initiated -- issued?

21 A No.

22 Q Did you know that there was litigation?

23 A I knew at some point.

24 Q At some point when?

25 A I'm not sure.

1 Q At some point when you were --

2 A I mean, so the Department of Public and Behavioral
3 Health managed the medical marijuana. So there would have
4 been no nexus to what I did. So at some point I was aware
5 there was litigation, but I don't know when.

6 Q Okay. When the decision was made to issue new
7 licenses were you aware that there was the potential for some
8 people to be disappointed and some people to perhaps bring
9 lawsuits?

10 A Yes.

11 Q So you were aware that there was the potential for
12 some applicants to say that they were not scored properly or
13 that the scoring mechanism was improper, make such argument?

14 A Anybody can file a lawsuit, yes.

15 Q Well, that's true. But you at the Department knew
16 that this was a potential problem?

17 A I knew that there could be potential disputes, yes.

18 Q Okay. And did the Department have any discussions
19 as to the procedure that would be employed in the case there
20 was an acknowledged error in the scoring?

21 A No, not that -- I mean, I wasn't around during that
22 period of time so I don't -- I don't -- but there wasn't --
23 there wasn't a discussion about that in 2017.

24 Q Okay. Well, let's put marijuana licensing process
25 aside and just talk about the Department in general for a

1 second. In general the Department is overseen by something
2 called the Tax Commission?

3 A Yeah, there's an -- yes.

4 Q And as I understand it, there's some sort of
5 appellate process from decisions made by the Department to the
6 Tax Commission?

7 A Yes.

8 Q And can you explain to me what that is.

9 A So generally it's taxpayer disputes or decisions
10 made by the Department, and they can be reviewed by the Tax
11 Commission.

12 Q Okay. So if a taxpayer thinks he's paying too much,
13 he can take that up to the Tax Commission and argue his case?

14 A Well, generally the way it works is if there's an
15 audit performed or if somebody's designated to be a
16 responsible person for liability or there's been a deficiency
17 issued that a taxpayer will dispute. There's a process that
18 it goes through the Department for review and then up through
19 the Tax Commission.

20 Q Okay. And the Tax Commission meets once a month or
21 once every two months?

22 A Yeah.

23 Q So there's a lot of appeals that go up to it?

24 A There's a few, yeah.

25 Q Usually there's about 20 or 30, sometimes as many as

1 40 items on their agenda?

2 A Well, yes. But the agenda includes things other
3 than appeals. There's other things in the statute that
4 require -- that the Department is required to have the Tax
5 Commission review. Generally the largest thing is the consent
6 agenda, which is just general administrative work that's done
7 under -- is required by the statute to be reviewed by the
8 Commission.

9 Q When you were the director of the Department of
10 Taxation did you attend Tax Commission meetings?

11 A Yes.

12 Q On a regular basis?

13 A Yes.

14 Q So you've been to dozens of them?

15 A Yes.

16 Q So in addition to disputes to amount, they hear
17 appeals about other things?

18 A Generally they can hear any type of taxpayer dispute
19 with the Department.

20 Q Let's say, for example, that Mr. Pupo or someone in
21 a position of authority at the Department decided, we want to
22 suspend someone or cancel their license totally apart from
23 this process. Is there an appellate right to the Tax
24 Commission?

25 MR. SHEVORSKI: Objection. Vague. Calls for a

1 legal conclusion.

2 THE COURT: Overruled.

3 THE WITNESS: In what context?

4 BY MR. KEMP:

5 Q Mr. Pupo goes in and he says, your license is
6 suspended. Is that it? Can that person appeal?

7 A License for what? I guess.

8 Q License for a marijuana establishment.

9 A I can't remember the process that's in the regs at
10 this point.

11 Q There's some process for some sort of review; right?

12 A I think there is, yes.

13 Q In other words, Mr. Pupo, as nice of a fellow as he
14 is, is not the sole arbiter of what is and isn't to be done
15 with regards to marijuana licenses; correct?

16 A In that context I think that there's a -- the
17 regulation provides a process for review.

18 Q Okay. What is the process of review for disputes
19 such as scoring in the present [inaudible]?

20 A There's not a process in the regulation.

21 Q No process of review?

22 A Correct.

23 Q Okay. And why is that? Why is Mr. Pupo the sole
24 arbiter -- arbitrator in this case, whereas in other cases if
25 you are arguing about \$1,000 tax liability he's not the sole

1 arbitrator?

2 A Well, I think -- first of all, I don't think Mr.
3 Pupo's the sole arbitrator of the licenses. I mean, I think
4 that, again, there's the process, and the process was applied.
5 Generally there's no -- in licensing statutes and other --
6 there's no -- there's no appeal process through the
7 administrative agency. So the appeal -- so we're in the
8 appeal process I guess is my point.

9 Q We are in the appeal process. You mean the Court
10 review?

11 A Yes.

12 Q So there's no --

13 A There's no administrative review.

14 Q Okay. All right. Let me just give you a
15 hypothetical. And you understand we have all the scores now
16 of every applicant and all the subparts. We have the graders'
17 notes, and we can see --

18 A Okay. I -- yeah.

19 Q Did you know that?

20 A I knew there was some stuff out there, but I didn't
21 know the extent of it.

22 Q Let's say we went through all of that and we found
23 one applicant that a grievous mistake was made. You know, a
24 mathematical mistake that, instead of adding correctly, they
25 were 20 points undercounted, okay, aAnd that everybody who

1 looked at it, Mr. Pupo, the director at the time, everybody
2 who looked at it says, wow, there was a 20-point mistake here,
3 okay. You're telling me that there's no procedure to fix
4 that?

5 A There's no administrative procedure that I know of.

6 Q So that's just tough luck --

7 A I mean, there's no administrative procedure. I
8 mean, I don't know what kind of internal communication would
9 occur at an agency, but there might be some consideration and
10 a review of it, but I don't -- there's no -- there's no
11 administrative procedure in the regulations. I mean, I don't
12 know --

13 Q So basically if there's an arithmetic error like I
14 hypothesized and someone loses 20 points and that causes them
15 to lose five marijuana licenses that we've heard some wild
16 evaluations about, there's nothing that can be done
17 administratively. Is that what you're saying?

18 A I'm not saying that there's nothing that can be
19 done, because I don't know what could be done. But I'm saying
20 there's no administrative procedure.

21 Q Okay. There's no administrative procedure by
22 appealing it to the Tax Commission?

23 A Right.

24 Q That's your position?

25 A Well, there's no regulatory -- there's no

1 regulations that provide for that, and so that's yes.

2 Q And do you know whether or not members of the Tax
3 Commission have taken the position that Mr. Pupo should allow
4 errors like that to come to them?

5 A I don't know.

6 MR. KEMP: Okay. Here. Let's pop up --

7 Your Honor, I'd move to admit Proposed 133 and
8 Proposed 134, which are transcripts from -- 133 is the
9 transcript from the Tax Commission dated January 14th, 2019.
10 And 134 is the transcript from the Tax Commission dated
11 March 4th, 2019.

12 THE COURT: Any objection?

13 MR. SHEVORSKI: No objection from the State.

14 THE COURT: Be admitted.

15 (Plaintiffs' Exhibits 133 and 134 admitted)

16 MR. KEMP: Okay. Can we pop up I guess it's --

17 THE COURT: Would you like a hard copy, or are you
18 okay looking at it on the screen?

19 THE WITNESS: I'm fine with the screen. Thank you.

20 THE COURT: Okay.

21 BY MR. KEMP:

22 Q Let's start with 133. And I would like to focus
23 your attention to page 65, lines 6 through 21. And these are
24 comments by Commissioner Kelesis. Am I saying that right,
25 ma'am? Is it Kelesis?

1 A I think so.

2 Q Okay. All right. You know who that is?

3 A Yes.

4 Q He's a lawyer?

5 A Yes, I know who he is.

6 Q He's been on the Tax Commission for quite some time?

7 A Right.

8 Q Okay. And he says, "And we're going to from the
9 issuance of the license directly to court. It's like they're
10 skipping us. Somebody is under the distinct impression that
11 we as a commission do not have jurisdiction over this. I
12 suggest they read 360 real close." I assume he's referring to
13 some sort of regulation. "We are the head of the Department,
14 and we are the head of Division and it comes to us. So that's
15 why I'm asking for the action on it as soon as possible, not
16 to wait, because it seems like anytime -- and I'm frustrated
17 and disappointed. I'm told we're going to have something -- I
18 don't even get the courtesy of a phone call, told we're taking
19 it off. I've got to find out myself. Well, you know, that's
20 an insult. So having said that, that's my request for a
21 special meeting. And I'll give Ms. Oliver the email."

22 Okay. With regards to his position there that the
23 Tax Commission has jurisdiction over appeals concerning these
24 licenses, do you agree or disagree with that?

25 A Would I agree that the Department -- I'm sorry, the

1 Tax Commission has jurisdiction to hear an appeal?

2 Q Yes.

3 A No.

4 Q So you think Mr. Kelesis -- Commissioner Kelesis is
5 wrong?

6 A Yes.

7 Q Okay. Why is that?

8 A Because there's no process for that.

9 Q Okay. Let's take a look at the next section, 134,
10 page --

11 A So just -- can I make a note. I didn't actually see
12 it on the screen. So --

13 Q Do you want to look -- do you want to read it?

14 A I mean, I'm going to take your word for it.

15 Q Okay.

16 A I just wanted to make that for the record that it
17 didn't pop up.

18 MR. SHEVORSKI: You have to turn it off and on.
19 It's called Plaskoning.

20 THE WITNESS: So it was on a minute -- a little bit
21 ago. Do I need to turn it on, again?

22 MR. KOCH: Turn it off and on.

23 THE WITNESS: Oh. I see.

24 THE COURT: Is it on now?

25 THE WITNESS: It says, "Out of range."

1 THE COURT: Can we put it back up real quick just to
2 test, Shane.

3 IT TECHNICIAN: Yes.

4 THE COURT: Is it visible now with the big yellow
5 line?

6 THE WITNESS: No.

7 THE COURT: Okay. Ramsey --

8 THE WITNESS: Now. Thank you.

9 THE COURT: Okay. Let us know when you're done
10 reading, Ms. --

11 BY MR. KEMP:

12 Q You want to just read the first paragraph to confirm
13 that what I read was accurate.

14 A Okay.

15 Q So Commissioner Kelesis says they have jurisdiction;
16 right?

17 A I think he believes that, yes.

18 Q Okay. And in the hierarchy here how does this work?
19 Are they technically your bosses, or is it co-equal, or how
20 does that work?

21 A Under statute the Department -- the Tax Commission
22 is head of the Department. That's the actual language in the
23 statute. But -- so they do review -- again, they review
24 disputes with taxpayers, they adopt the regulations, and those
25 types of things. They're not involved in the day-to-day

1 operations of the agency, and they're appointed by the
2 Governor.

3 Q And since they're the head of the Department, that's
4 why you took the temporary regs in for approval; right?

5 A Right. Or all regs, essentially.

6 Q Okay.

7 A So -- and I was -- and there -- it's an eight-member
8 body.

9 Q Okay.

10 A So, you know, what Mr. Kelesis wants to do or not do
11 is really subject to his discussion with the others on the
12 Commission. And I guess if they would have thought as a
13 majority that they would have -- they wanted to review that,
14 they could have done that.

15 Q Okay. So you're saying there is a procedure now to
16 appeal. Is that what you're saying?

17 A Well, again, the Tax Commission can, you know,
18 nobody's going to tell the Tax Commission that they can't do
19 something.

20 Q Except Mr. Pupo.

21 A But he didn't tell --

22 MR. SHEVORSKI: Objection. Argumentative.

23 THE COURT: Overruled. You can continue.

24 THE WITNESS: But obviously it's an eight-member
25 board. They act in an open meeting. They have to agree on

1 what they can do. I would maintain that in licensing across
2 the board that it's generally that the licensing agencies do
3 not take license denial disputes to the board or Commission
4 that is -- oversees them.

5 BY MR. KEMP:

6 Q In competitive bidding process they don't take it to
7 the board that oversees it. Is that what you're telling me?

8 A In competitive bidding?

9 Q When you have competitive bidders for either a
10 government contract or government licenses they don't take
11 disputes to the board that oversees it? That's what you're
12 telling me?

13 MR. KOCH: Objection. Vague.

14 THE COURT: Overruled.

15 THE WITNESS: Well, generally, I mean, I -- there
16 might be some specific provisions in some specific chapters,
17 but even in State contract awards there's no -- there's a
18 limited review that happens, and it's provided by in the
19 statute and regulation.

20 BY MR. KEMP:

21 Q Well, let's start with County contract awards. I
22 think Mr. Parker may add to what I'm going to say on this. In
23 County contract awards there is a bid protest procedure that
24 in some cases ultimately go to the Clark County Commission; am
25 I right?

1 A I don't know.

2 Q So when you say generally there's no appeal you're
3 not saying there's no appeal in these cases of County
4 contracts or --

5 A I'm saying at the State level generally there's no
6 appeal process unless it's specifically provided for --
7 there's no administrative process for appeal unless it's
8 specifically provided for in the statute.

9 Q Okay.

10 A In this case it's not specifically provided for.

11 Q Did you know Mr. Pupo wrote a letter when appeals
12 were filed saying, no appeal, that's it, we're done? Did you
13 know that?

14 A No.

15 Q Did he have authority to do that?

16 A I don't know. I didn't know he wrote a letter, so I
17 don't know.

18 Q Okay. I mean, if you had been the director at the
19 time, would he have had authority to make that decision
20 without consulting you?

21 MR. KOCH: Objection. Lacks foundation.

22 THE COURT: Overruled.

23 THE WITNESS: I don't think he would have, but --

24 BY MR. KEMP:

25 Q That would have been something that would have had

1 to be run by the director of the Department; right?

2 A I mean, I -- you know, that's the kind of
3 relationship that I have with my staff. I would have expected
4 at least a heads up, so --

5 Q Okay. And the situation that I've outlined in the
6 hypothetical, if someone just lost 20 points because of a
7 mathematical error, would it have been your practice to look
8 at that?

9 MR. KOCH: Objection. Incomplete hypothetical.

10 THE COURT: Overruled.

11 THE WITNESS: I mean, I -- you know, I'd like to
12 think that I would have, you know, been concerned if there was
13 truly an error. I don't know if there -- at that point if
14 there was anything I would have been able to do about it, but
15 I would have looked into it and tried to figure it out.

16 BY MR. KEMP:

17 Q So even if there's a pure mathematical error of
18 20 points and it's recognized by everybody, you're not going
19 to fix it?

20 MR. KOCH: Objection. Incomplete hypothetical.

21 THE COURT: Overruled.

22 THE WITNESS: I think that's the opposite of what I
23 just said. If I could --

24 BY MR. KEMP:

25 Q Well, you said you'd look at it. You didn't say --

1 MR. SHEVORSKI: I'm sorry, Your Honor. He's got to
2 let her finish.

3 THE COURT: Ma'am, were you done?

4 THE WITNESS: What I was trying to express is that
5 if there was a true error and the people that work for me made
6 an error, as the person who reviews their work I would look
7 into that error potentially. If there was something within
8 the processes and the laws that govern us that the State could
9 do on that, I would try to figure it out and make -- but if
10 there was not something -- because that's a little bit
11 different than just appealing a denial. That's -- if it's
12 truly an error, then, you know, look into that and see what
13 are the possibilities there.

14 BY MR. KEMP:

15 Q Okay. And you said if the people that work for you
16 made that error. That was the phrase you used?

17 A Well, if an error was made under my watch I guess.

18 Q Okay. And I assume that in this case since we had
19 temporary employees, the Manpower employees doing the grading,
20 you would include errors by them as being people that work for
21 you?

22 A Yeah. I think they were contractors of the
23 Department. I would have considered them to be the same.

24 Q Okay. And just briefly on that subject. You had
25 nothing to do with that?

1 A No.

2 Q Okay. And in general you would agree with me that
3 most government employees are pretty professional people. A
4 lot of them have Doctorates and the like?

5 MR. KOCH: Objection. Vague.

6 THE COURT: Overruled.

7 THE WITNESS: I think most -- yes, I think most
8 people that do work for the State have a professional
9 competency.

10 BY MR. KEMP:

11 Q Okay. And most of them have been there for years;
12 right?

13 A Not anymore.

14 Q Okay. Is that something you need to address with
15 the Governor or the past Governor or what?

16 A Well, people get, you know, they retire. That's --

17 Q You do recognize that there is a potential -- when
18 you get temporary workers doing a task that's normally done by
19 a corporation's own employees, you do recognize that there's a
20 higher potential for mistakes to be made?

21 MR. KOCH: Objection. Incomplete hypothetical and
22 vague.

23 THE COURT: Overruled.

24 THE WITNESS: I don't know. I mean, as I said just
25 a second ago, I think that everybody, you know, that is

1 qualified to do work for the State has a level of competency
2 to do their job.

3 BY MR. KEMP:

4 Q Okay. Let's explore this hypothetical. since Mr.
5 Koch objects that it's vague. Are you familiar with the
6 Boeing Air Max cases where the two airplanes went up and down
7 and --

8 A Yeah.

9 Q -- then they crashed?

10 A Yes.

11 Q Okay. Five hundred people got killed?

12 MS. SHELL: Objection as to relevance.

13 THE COURT: Sustained. Okay. I need you to tell me
14 why that's relevant. Ms. Shell is celebrating.

15 MR. KEMP: Have you read the news reports that the
16 Boeing --

17 THE COURT: No. Okay. So assume for a minute that
18 all of us have read those news reports of the tragic accidents
19 relating to the Max.

20 MR. KEMP: I'm getting to the temporary workers,
21 Your Honor.

22 BY MR. KEMP:

23 Q Have you reads the news reports that Boeing subbed
24 out the engineering function on that particular part on that
25 plane --

1 A No.

2 Q -- to temporary workers in India?

3 A No.

4 MS. SHELL: The same objection, Your Honor.

5 THE COURT: Overruled.

6 MS. SHELL: Oh.

7 THE COURT: Temp workers.

8 BY MR. KEMP:

9 Q Have you read those news reports?

10 A No, not in that detail.

11 Q Okay. And that was in Bloomberg last week, okay.

12 Bloomberg was the one that came out with that revelation.

13 MR. KEMP: In fact, here's the article, Your Honor,
14 if you want to look at it.

15 THE COURT: No. That's okay. I don't need to. I'm
16 not handling that litigation.

17 MR. KEMP: All right. Well, not yet.

18 BY MR. KEMP:

19 Q So they outsourced an engineering function to \$9-an-
20 hour engineers in India. You think there's something wrong
21 with that?

22 MR. KOCH: Objection. Personal knowledge.

23 MR. SHEVORSKI: Objection. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: I don't know.

1 BY MR. KEMP:

2 Q Do you recognize that when you outsource a function
3 that's traditionally done by the State to someone like
4 Manpower that there's a higher potential for error?

5 MR. KOCH: Objection. Foundation.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 BY MR. KEMP:

9 Q And are you familiar with the way the 2014
10 applications were graded?

11 A I think they used contractors, if I remember right.

12 Q Well, actually that grading process was led by Chad
13 Sorrenson. Do you know him?

14 A No.

15 Q You don't know him?

16 A Chad Sorrenson?

17 Q Right. Weston. I'm sorry.

18 A No. I know Chad Weston, yes.

19 Q Okay. Chad Weston. And he's the Department --

20 A I mean, I -- yeah, I know him. I never really
21 worked with him, but I know him.

22 Q Okay. And he was the head of the Department of
23 Health and Human Services?

24 A No.

25 Q What was he the head of?

1 A I think he was a deputy administrator maybe in the
2 Department of Public and Behavioral Health.

3 Q Okay. And he and approximately 25 other full-time
4 State employees graded the last application with the
5 assistance of several temporary workers. Is that your
6 understanding?

7 A I don't know.

8 Q Okay. But assuming I'm right, you -- someone you,
9 and when I say you I mean DOT, made the decision to use
10 temporary workers instead of full-time State employees to
11 grade; right?

12 A The Department of Taxation did that, yes.

13 Q Okay. You weren't part of that decision?

14 A No, I wasn't there.

15 Q Okay. Would you have made a different decision?

16 A I don't know.

17 Q Okay. All right. Now, we talked a little bit about
18 this building address requirement. The regulations required
19 the applicants to provide a building address; right?

20 MR. KOCH: Objection. Misstates the regulations.

21 THE COURT: Overruled.

22 THE WITNESS: No.

23 BY MR. KEMP:

24 Q You don't know one way or the other?

25 A No. No, I don't think it does require a building

1 address.

2 Q A physical address?

3 A Yes.

4 Q Okay. And a physical address in your mind could not
5 be a Post Office box?

6 A Right.

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

9 A I think the idea was to have an office address
10 essentially.

11 Q Right. So you couldn't use -- I can't remember what
12 it is, UPS.

13 THE COURT: UPS Stores.

14 BY MR. KEMP:

15 Q You couldn't use a UPS Store, because that's not a
16 real physical address; right?

17 A I don't think -- I don't think that it would be
18 allowed.

19 Q Okay. And if you'd been the director at the time,
20 you would have disqualified those applications?

21 A I wouldn't have even reviewed the applications.

22 Q Okay. Because it was disqualified, or because you
23 wouldn't be the person doing the review?

24 A Well, I don't know. I mean, I --

25 Q And let me ask it --

1 A -- I would --

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

6 A I think that would be the direction.

7 Q Okay. So the answer to my question is yes?

8 A Yes.

9 Q Okay. And the reason for that is because the
10 statute required it; right?

11 MR. KOCH: Objection. Misstates the law.

12 THE COURT: Overruled.

13 BY MR. KEMP:

14 Q I mean, the reason for your position is because the
15 statute says that?

16 A Right.

17 Q Okay. All right. Okay. I'm going to go to my last
18 area. Mr. Gutierrez asked you some questions about
19 extenuating circumstances. Do you recall those?

20 A Yes.

21 Q And your answer said, and I wrote it down -- I tried
22 to write it down verbatim. You said, if they were enjoined,
23 that would be beyond their control. Do you recall saying
24 that?

25 A I guess what I -- yes, I recall saying that.

1 Q Okay. Now, am I correct that extenuating
2 circumstances in this context, which is whether you need more
3 time to open a marijuana dispensary than a year, am I correct
4 that extenuating circumstances is determined on a case-by-case
5 basis?

6 A Yes.

7 Q So, in other words, you look at things like whether
8 they've applied with the local municipality for approval, when
9 they applied, whether they started construction, the
10 construction process, all those factors are looked at to
11 determine whether or not there truly are extenuating
12 circumstances?

13 A I think that would be part of it, yes.

14 Q Okay. Now, let's take a case where an applicant --
15 and the initial licenses came out say December 6th or 5th;
16 right?

17 A Okay.

18 Q Okay. And today is July 12th, okay. Let's take the
19 case of an applicant who has done -- a winning applicant who
20 has done absolutely nothing to move the ball forward as of
21 this date. They haven't applied in a local jurisdiction, they
22 haven't got a lease, they haven't started building their
23 project. Under those circumstances where someone lets seven
24 or eight months go by without even starting would you agree
25 with me that there would not be extenuating circumstances for

1 an extension in that case?

2 MR. SHEVORSKI: Objection. Incomplete hypothetical.

3 THE COURT: Sustained. Can you rephrase your
4 question.

5 BY MR. KEMP:

6 Q Assuming for the sake of argument that we had
7 someone given a conditional license on December 6th and we
8 come to today, July 12th, and they have not applied for
9 approval nor gotten approval from the local jurisdiction where
10 they intend to build the store, they haven't retained a
11 contractor, they haven't started construction, and they
12 haven't even entered into a lease. Would you agree with me
13 that there's not extenuating circumstances in that situation?

14 MR. SHEVORSKI: Same objection. Incomplete
15 hypothetical.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 BY MR. KEMP:

19 Q You would not agree with me, or would agree with me?

20 A I would not agree with you. I mean, it's not the
21 end of the 12 -- it's not the end of the 12-month period, so
22 you don't --

23 Q Okay. Fair. But those factors would mitigate
24 against a determination of extenuating circumstances; correct?

25 MR. KOCH: Objection. Vague. Speculation.

1 THE COURT: Overruled.

2 THE WITNESS: Yeah, I think a totality of the
3 circumstances type of analysis would occur and --

4 BY MR. KEMP:

5 Q Okay. So let's say an injunction entered on
6 December 4th, the day before they were supposed to be done,
7 and they hadn't done anything, hadn't done any of these
8 things, okay. Would you agree that there's no extenuating
9 circumstances in that case?

10 A I don't know all the circumstances, so I can't agree
11 that there's not extenuating circumstances.

12 Q Okay. What are the other circumstances you would
13 want to review?

14 A I don't know.

15 Q Okay. Getting local jurisdiction approval would be
16 one; right? Were there efforts in that regard?

17 A I mean, yes. Like what efforts have you --
18 basically they would demonstrate -- under that reg the purpose
19 was to demonstrate that you've made efforts to open and that
20 despite your best efforts there were circumstances that were
21 beyond your control and you couldn't do that. So you would
22 talk about your efforts, and then you'd talk about your
23 circumstances.

24 Q And having a signed lease would be another one?
25 That'd be another thing you'd look at potentially?

1 A I don't know.

2 Q Okay. Starting construction, would that be
3 something else you'd look at?

4 A Again, it would be a totality of the entire package.
5 So I don't know what would be in there and what wouldn't be in
6 there. It would be based on a case-by-case basis.

7 Q Okay. Is that determination made in the discretion
8 of the Department?

9 A Yes.

10 Q So, in other words, the Department has the
11 discretion to decide whether or not there's extenuating
12 circumstances?

13 A Yes.

14 Q And if that decision is made one way or the other,
15 yes there are, no there aren't, is the appealable to the Tax
16 Commission?

17 A I don't know. I'm not sure. I'd have to look at
18 360.

19 Q So if you automatically -- and your understanding is
20 if they don't build in 12 months, they automatically lose the
21 license?

22 A Essentially.

23 Q So whether or not there's extenuating circumstances
24 that would result in a termination of a license in your view
25 is potentially appealable to the Tax Commission, but the first

1 step, the application for the license itself, is not
2 appealable. Is that what you're telling me?

3 A I don't know.

4 Q Don't know one way or the other?

5 A I don't know the second part, the extenuating
6 circumstances. I'd have to look into that and get some advice
7 and --

8 Q Okay. Have you ever been involved in a case where
9 you've given -- not just in marijuana, but given anyone an
10 additional period of time to do something under this
11 extenuating circumstance criteria?

12 A No. You mean personally involved?

13 Q Yeah, personally involved.

14 A I don't think so.

15 Q Okay. And when you were the director of the
16 Department of Taxation do you know of any instances where the
17 Department of Taxation gave anyone more time to do something
18 because of extenuating circumstances?

19 A I don't recall. I don't -- I don't know. It wasn't
20 -- I don't recall.

21 Q In general do you believe that men are better
22 operators of marijuana establishments than women?

23 A No.

24 Q In general do you believe that women are better
25 operators of marijuana establishments than men?

1 A No.

2 Q And in general do you believe that people that were
3 born in Spain would be better operators of marijuana
4 establishments than people born in France?

5 A Not necessarily.

6 Q And in general do you think people born in France
7 would be better operators of marijuana establishments than
8 people born in Spain?

9 A No. I don't know.

10 Q Okay. So in your view those factors, whether you're
11 a man or a woman, whether you're born in Spain or born in
12 France, those aren't related to the operation of a marijuana
13 establishment in your view?

14 MR. KOCH: Objection. Misstates testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I don't -- they're not related to -- I
17 don't -- that's not what I said. You said who would be
18 better.

19 BY MR. KEMP:

20 Q Okay.

21 A And I don't know who would be better.

22 Q Well, if one is not better than the other, would you
23 agree with me that you shouldn't favor one as opposed to the
24 other in selecting persons to operate a marijuana
25 establishment?

1 A No.

2 Q No, you would not agree with me, or yes, you would
3 agree with me?

4 A No, I would not agree with you.

5 Q Okay. So you think even though someone from Spain
6 is not better than someone from France, that it's okay to
7 favor one category or the other?

8 A I think that there are considerations to go into the
9 total analysis of a person. And I think it's fine to consider
10 -- I think you're getting at the diversity, and I think it's
11 -- diversity, it's fine to consider the diversity.

12 Q Okay. So let's just give you a more complete
13 hypothetical. Let's say you had 10 owners of a marijuana
14 establishment and they're all Spaniards, and you had 10 owners
15 of a marijuana establishment and they're all French, okay.
16 You think it's fair that just because these people are born in
17 Spain, that they -- and just because the people are born in
18 France, that one group gets more points than the other group?

19 A No.

20 Q Okay. That's not fair, is it?

21 A I don't know if it's fair. I don't understand the
22 question.

23 Q Okay. Well, that's not related to the operation of
24 a marijuana establishment, whether they're born in France or
25 Spain; right?

1 A I don't know what people being born in France and
2 Spain has to do with anything. But --

3 Q I don't, either. But I didn't establish the program
4 here, okay? You would agree with me, though, that whether
5 they're born in Spain or France doesn't have anything to do
6 with the operation of a marijuana establishment?

7 MR. KOCH: Objection. Vague.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know anything about those
10 people. There needs to be a totality analysis of different
11 people in their roles and what's going on and considering all
12 the other criteria, I think.

13 BY MR. KEMP:

14 Q Okay. Well, let's slow down a little bit, then. If
15 you merely knew where they were born, if they were born in
16 France or born in Spain, you would agree with me that that
17 does not relate to the operation of a --

18 A It could.

19 Q It could, but it doesn't necessarily?

20 A Yeah, but it could if you knew more about the person
21 and --

22 Q It could in some cases, but it doesn't in all cases,
23 does it?

24 MR. KOCH: Objection. Incomplete hypothetical and
25 vague.

1 THE COURT: Overruled.

2 THE WITNESS: Yes. You could consider it or you
3 could not consider it.

4 BY MR. KEMP:

5 Q Because you would agree with me that there are some
6 cases where they're born in France or Spain, but that doesn't
7 have anything to do with their ability to operate a marijuana
8 establishment; right?

9 A I don't know.

10 Q Okay. And from that remark I'm assuming that you
11 would not endorse an application procedure that favored people
12 born in France, as opposed to people born in Spain or vice
13 versa. You wouldn't endorse that, would you?

14 A I don't think so. Just that one factor, I don't
15 know.

16 Q And the reason you wouldn't endorse it is because it
17 really doesn't have anything to do with the operation of a
18 marijuana establishment; right?

19 A I mean, it could if you knew more about the person
20 and the experience, so --

21 Q It could, but the mere birth in a specific country
22 doesn't have anything to do with the operation of a marijuana
23 establishment?

24 A No.

25 MR. KEMP: Okay. Thank you.

1 THE COURT: Ma'am, do you need a break before I go
2 to Mr. Gentile?

3 THE WITNESS: Can we?

4 THE COURT: Yes.

5 THE WITNESS: I would like that.

6 THE COURT: You're allowed to ask for a break
7 anytime.

8 THE WITNESS: Thank you. I'd appreciate it.

9 THE COURT: They're not, but you are.

10 All right. So the witness has requested a recess.
11 This is a requested recess under BrightSource-Coyote Springs.

12 MR. SHEVORSKI: Understood, Your Honor.

13 (Court recessed at 11:06 a.m., until 11:17 a.m.)

14 THE COURT: Okay. Ms. Contine, are you ready?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Mr. Miller, you're up.

17 CROSS-EXAMINATION

18 BY MR. MILLER:

19 Q Ms. Contine, I believe you testified that you went
20 to Colorado in an attempt to learn a little bit about that
21 regulatory process to assist in the development of
22 regulations, is that right?

23 A Yes.

24 Q Did you go to any other states?

25 A No.

1 Q Okay.

2 A Well, I have gone to other states since then, yes.
3 I went to Oregon. I've been to a few -- I've been to Colorado
4 again for conferences that regulator-type conferences. I've
5 been to a few of those.

6 Q Was that prior to the drafting or the implementation
7 of the regulations?

8 A During.

9 Q So when you looked at other states' requirements,
10 how many states did you review in terms of how they chose to
11 regulate things like ownership?

12 A I think -- well, I think at the time we only looked
13 at probably Colorado, Washington and Oregon, and maybe not
14 specifically with respect -- if issues would come up and
15 wanted to see -- so I don't know specifically if we looked to
16 ownership, but if issues would come up and we kind of thought,
17 oh, well this is unique and maybe there's something we could
18 borrow from something else.

19 Q Okay. Do you recall whether or not you looked at
20 the provisions in Colorado as they apply to a determination of
21 suitability and ownership requirements?

22 A I don't think so.

23 Q Do you recall whether or not you looked at those
24 provisions in any other jurisdictions?

25 A I don't recall specifically, no.

1 Q Okay. When the Department moved forward with
2 proposing a regulation with a definition of the requirement
3 that they conduct a background check on each owner to instead
4 define that as 5 percent ownership interest, 5 percent or
5 more, right?

6 A Right.

7 Q The Department could have adopted any number of
8 other regulations that would have more closely resembled the
9 intent of the ballot question, is that correct?

10 MR. KOCH: Objection. Argumentative.

11 THE COURT: Overruled.

12 THE WITNESS: I think, yes, we could have adopted a
13 different regulation. Yes.

14 BY MR. MILLER:

15 Q So you could have, for example, imposed a limitation
16 to a regulation that said if you have an ownership interest
17 that includes a publicly traded corporation, the Department
18 won't consider this application?

19 A That could have been, you know, part of the process
20 in workshop and gone through regulation, yes.

21 Q Okay. And if you had adopted such a provision, you
22 might have been able to background check all ownership
23 interest; correct?

24 MR. KOCH: Objection. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: I don't know.

2 BY MR. MILLER:

3 Q You could have adopted a regulation that limited the
4 number of owners that an applicant could provide for in an
5 application, is that correct?

6 A I don't know. I don't know if we could have done
7 that. I don't know.

8 Q Why wouldn't you have been able to?

9 A Well, I don't know -- again, it's a process.
10 Everybody has their input in your point of review and it goes
11 to LCB. So I don't know at this point right now if that would
12 have been a possibility.

13 Q But you didn't explore any of those possibilities --

14 A No.

15 Q -- is that right?

16 A Not that possibility, no.

17 Q But you would agree that the Department's definition
18 of the background check provision expands or puts in place a
19 more lax regulatory structure than a background check on each
20 owner; correct?

21 A I think it keeps in the spirit of protecting the
22 public safety when interpreting that provision with that 5
23 percent.

24 Q But maintaining strict regulatory control is
25 obviously an important provision; correct?

1 A Right. And again, balancing that with the burden
2 and the -- you know, the time frame that everything takes and
3 all of that. So keeping those -- balancing those different
4 concerns.

5 Q Okay. So if you're saying balancing, when there's a
6 provision in the ballot question that says you're going to
7 background check each owner, right, and you had an obligation
8 to maintain strict regulatory compliance on the regulatory
9 structure, what weighed against background checking every
10 owner?

11 A I think, you know, not making regulations that make
12 the operation, you know, difficult or impractical or
13 burdensome, so making your regulations in a way that recognize
14 that business needs to operate as well and balancing those
15 things, okay. Can you do this and is this still going to take
16 care of the public safety aspect of it.

17 Q But you would agree that only background checking
18 ownership interest of greater than 5 percent is a more lax
19 regulatory structure than background checking each owner, is
20 that right?

21 MR. KOCH: Objection. Vague.

22 THE COURT: Overruled.

23 THE WITNESS: More lax? I guess. I don't -- I
24 wouldn't characterize it like that, but it's basically, again,
25 balancing those two provisions. If the people that you're

1 looking at have so little interest in a company, I don't know
2 that it's more safe to necessarily -- or less safe to
3 background check them. But, so I don't know -- yeah, it's not
4 as high a burden for compliance.

5 BY MR. MILLER:

6 Q You wouldn't say that was more lax? I mean, if an
7 ownership interest that had not been background checked and it
8 turned out to be member of the Sinaloa cartel, that would be a
9 significant problem for the Department, wouldn't you agree?

10 MR. KOCH: Objection. Vague.

11 THE COURT: Overruled.

12 THE WITNESS: I think, again, to the extent that
13 that interest has the ability to control the business was
14 weighed in the case of the 5 percent rule.

15 BY MR. MILLER:

16 Q At any point when you were drafting the regulations
17 or at any point when you were the head of the Department did
18 you review the Cole memorandum or any of the associated
19 documents that outlined some of the federal concerns?

20 A Yes.

21 Q And you're aware that the Cole memo priorities
22 talked about ownership interest that would include criminal
23 elements?

24 A Right. The State should try to prevent that.

25 Q Should try?

1 A Yeah. Well, if -- yeah.

2 Q States have an obligation to, do they not?

3 A Well, I think it was some guidance that said if the
4 states do these regulations then the Federal Government is not
5 going to be involved in the business of the state -- at that
6 time.

7 Q And part of those provisions were intended to make
8 sure that criminal elements did not have ownership interest?

9 A Right.

10 Q And so when you expanded the definition from
11 background checking each individual to ownership interest of
12 over 5 percent, you opened the door, didn't you, to that
13 possibility that there could be ownership interest that could
14 trigger federal scrutiny?

15 MR. SHEVORSKI: Objection. Vague. Misstates the
16 law.

17 THE COURT: Overruled.

18 THE WITNESS: Again, the thinking along those lines
19 was that the interest would be so insignificant that they
20 would not be able to control the business operations, but yes.

21 BY MR. MILLER:

22 Q Did you read that anywhere in the Cole memo, that
23 so long as there might be some criminal elements that had
24 ownership interest that are so insignificant that the federal
25 authorities might not care about that?

1 A I don't think the Cole memo addresses that, no.

2 Q Are you aware that provisions -- the provisions in
3 Colorado law until only recently imposed a ban on ownership
4 interest of marijuana establishment from publicly traded
5 corporations?

6 A No.

7 Q You're not aware that only recently that they
8 removed that ban?

9 A I don't know.

10 Q Okay. So when you went to Colorado and you were
11 reviewing their provisions, you didn't look into how they
12 might have dealt with the determination of --

13 A No, not that I recall.

14 Q I'm going to read to you a provision of the law, the
15 previous law before they made the recent changes. It says,
16 "A medical marijuana business under this subsection 3B is
17 limited to no more than 15 direct beneficial owners, including
18 all parent and subsidiary entities, all of whom are natural
19 persons." There would have been nothing that prevented you
20 from adopting a regulation similar to that in Nevada; right?

21 MR. SHEVORSKI: Objection. Foundation.

22 THE COURT: Overruled.

23 THE WITNESS: I think one of the other key points is
24 that only people that have licenses were going to be able to
25 get licenses initially. So any change to a structure would

1 have meant that they would have essentially had to change that
2 structure as well for the medical. So I think there was some
3 consideration of that and to the extent that the medical
4 provision, as I've discussed with Mr. Kemp, were working And
5 there was consensus built around them and they were applied
6 and were able to be dealt with by the agency and the industry
7 that those provisions were carried forward. So, yeah, I mean,
8 there was nothing that could have restricted us, I think, but
9 there's other parts of the initiative that we had to take into
10 consideration as well.

11 BY MR. MILLER:

12 Q Like what?

13 A Like the fact that only people that are licensed
14 medical establishments would get recreational licenses.

15 Q So you don't think it was possible, then, under
16 those confines to adopt provisions that would have somehow
17 allowed for you to still background check each owner?

18 A No, that's not what I'm saying.

19 Q What are you saying?

20 A I was saying that we were considering a totality of
21 the whole initiative and figuring out how do we implement this
22 as we transition from this medical to rec and recognizing that
23 there's provisions that apply that seemingly have been working
24 that have been vetted, that have been discussed extensively,
25 and what provisions of those make sense to carry forward.

1 Q I'm going to read to you -- Colorado, in fact,
2 attempted to repeal the provisions banning publicly traded
3 ownership and interest and the cap that marijuana
4 establishments have of more than 15 direct beneficial owners
5 and the first measure was vetoed by Governor Hickenlooper.
6 I'm going to read to you his veto message dated June 5th,
7 2018.

8 It says, "Today I vetoed House Bill 18-1011
9 concerning measures to allow greater investment flexibility in
10 a marijuana business at 4:56 p.m. House Bill 18-1011 modifies
11 the statutory ownership and investment definitions for medical
12 and retail marijuana licenses and allows publicly traded
13 corporations to invest in marijuana businesses." He goes on
14 to state the rationale for it, which in part includes that
15 "while recreational and medical marijuana are legal under
16 Colorado law, however federal law constraints continue to
17 exist. With such uncertainty, expansion of the capital
18 availability of this industry must be done methodically and
19 incrementally." Do you remember any of those kinds of
20 concerns being discussed before you expanded the definition
21 of who that background check would apply to?

22 A No. Not that, no.

23 Q So nobody raised the concern that if we didn't
24 maintain strict regulatory compliance and background check
25 each owner that maybe this would subject us to additional

1 federal scrutiny?

2 A No. I think we thought we were doing strict
3 regulatory compliance.

4 Q By expanding the definition from each owner to
5 ownership interest of over 5 percent?

6 A By interpreting the provision in conjunction with
7 the other provisions in the initiative and looking at what had
8 been working under medical, yes.

9 Q You also did not put any restrictions in place that
10 might have constrained out-of-state ownership interest;
11 correct?

12 A I don't think so, no.

13 Q Are you aware that that was a specific concern that
14 was outlined on the ballot question itself by opponents of the
15 measure?

16 A No, I don't.

17 Q Did you review the ballot question prior to the --

18 A Yes.

19 Q Yes?

20 A Yes. Oh, did I review the arguments or the --

21 Q Yes, the arguments.

22 A Yes, probably.

23 Q Okay.

24 A I don't remember the exact time of reviewing it, but
25 I probably reviewed it when I --

1 Q Because yesterday I believe you testified that you
2 didn't believe that maybe the voters were aware of any
3 requirement that there would be a background check.

4 A I don't know. I mean, I did review the ballot. I
5 just don't know what level of review happens when people
6 decide to vote. That was the point of that.

7 Q But the presumption is that they read the materials
8 and then go and cast a form ballot, right?

9 A I guess, yeah.

10 Q You weren't going to give deference to the voters as
11 to whether or not they were sufficiently educated on whether
12 or not a background check might have been important to them?

13 A That's not what I was saying, no.

14 Q Another would be a provision, the regulations that
15 mandate that an establishment's track record of operating in
16 compliance with the laws for an adequate period of time to
17 demonstrate success would have been a scored criteria as part
18 of the application; right?

19 A Okay. Yeah.

20 Q Why is that included as part of the criteria?

21 A I think the thinking behind that I that
22 demonstrating that you're operating -- again, it was only the
23 medical establishments that were applying for licenses at this
24 point, and so demonstrating that you understand a regulated
25 market, you've operated in a regulated market, you've been

1 compliant in a regulated market is evidence of your ability to
2 do that in the future. That was the rationale.

3 Q And do you believe that should have been strongly
4 considered as part of the applications?

5 A I believe -- I mean, it was put in the regulations,
6 so.

7 Q In fact, you've testified to that several times
8 through different forms, haven't you?

9 A Testified to?

10 Q To the fact that the track record of regulatory
11 compliance is an important criteria and those individuals who
12 have shown that they can operate in compliance with the
13 regulations and demonstrate success should be rewarded. You
14 testified to that; right?

15 A Well, yeah, it should be considered in moving
16 forward I think, yes.

17 Q I'll show you, just so we're clear, Exhibit 235,
18 page 15. This is the minutes of the Tax Commission hearing
19 where your proposed regulation was adopted. Do you recall
20 that meeting?

21 A Yes.

22 Q Do you recall that there was a public comment period
23 and during those public comments there were a number of
24 objections raised about those regulations; right?

25 A There were objections along the way, yes.

1 Q And there were people that testified about specific
2 concerns about what the regulations may or may not have
3 specified for; right?

4 A Yes.

5 Q Okay. Can you read for me -- this is your statement
6 in response when the commissioners asked you to respond to
7 those public comments, the sentence that begins, "From a
8 regulatory standpoint" midway through the paragraph.

9 THE COURT: Do we need to blow it up or can you see
10 it on the screen, ma'am?

11 THE WITNESS: Right. Right.

12 BY MR. MILLER:

13 Q Can you read it out loud?

14 A Oh, sorry. "From a regulatory standpoint I don't
15 know how I cannot give some type of scoring criteria to an
16 entity that has been operating an establishment in compliance
17 with the rules, doesn't have violations, follows the rules,
18 doesn't have civil penalties, is paying their taxes, is doing
19 all the things that they have been asked to do in a regulated
20 market up until now. We will consider that and we will
21 consider the work that the people who testified today have
22 been doing as well. We have a situation where only marijuana
23 establishments can apply for licenses, so we have to set --
24 we have one set of people that are being favored."

25 Q That's essentially what we were just talking about;

1 right?

2 A Yes.

3 Q You responded to concerns about public comment by
4 showing people that there was a requirement that you reward
5 the applicants that have shown a track record of compliance;
6 right?

7 A Well, yeah, because it was part of the regulation.
8 Yes.

9 Q Okay.

10 A And then the last sentence, just to clarify that,
11 what I was referring to there is that we already are starting
12 with a category of people that are being favored because the
13 initiative only allows those that have been operating in the
14 industry to go forward at that point, so -- to apply at that
15 point. So that was -- that last sentence had to do with that.

16 Q All right. Was it your expectation, then, that that
17 provision of the regulation of evaluating and scoring a
18 history of regulatory compliance would have been followed by
19 the Department?

20 A I think it was a scoring criteria, yes. I mean, it
21 was in the regulation so, yes, I think it would have been part
22 of the process.

23 Q Okay. You believe that that was part of the scoring
24 criteria?

25 A Yes.

1 Q And what are you using to -- what basis do you have
2 to believe that that was part of the scoring criteria?

3 A Actually, I don't know -- I don't know all the
4 categories in the scoring criteria, but in the regulation that
5 was given some --

6 Q Okay. But it would surprise you if regulatory
7 compliance was not scored, would it not?

8 A Yeah, I think it's in the regulation.

9 Q So they should have followed the law?

10 A I don't know if they didn't follow the law.

11 Q Again, the same statute or regulation, 453.272,
12 subsection (h): "The experience of key personnel that the
13 applicant intends to employ in operating the type of marijuana
14 establishment for which the applicant seeks a license."

15 A Right.

16 Q What do you interpret that provision to mean?

17 A In addition to the other people that you've listed,
18 do you have anybody else that's helping you along the way to
19 establish your business -- that you're going to use to
20 establish your business. I think that was the purpose of that.

21 Q A business. But this does not say -- "for which the
22 applicant seeks a license," so that would mean that it's the
23 experience on operating a retail establishment, correct, or a
24 dispensary?

25 A Well, yeah. Or, you know, I guess you could include

1 somebody if you thought that was relevant and make a
2 connection into whatever -- how what they had done in the past
3 was relevant to them being considered a key person in this
4 capacity. But, yeah, I mean, it would be the person -- what
5 type of experience did that person have.

6 Q That would apply towards a dispensary application;
7 correct?

8 A Right.

9 Q Would it surprise you to learn that that provision
10 was not evaluated or scored as part of the application?

11 MR. KOCH: Objection. Lacks foundation.

12 THE COURT: Overruled.

13 THE WITNESS: I don't know. I don't know. I mean,
14 I assume that that was in the scoring criteria and that came
15 from the reg. I just don't have the reg in front of me, and
16 so if it was in the reg and it was in the criteria, I would be
17 surprised if it wasn't scored, yes.

18 Q When you say the criteria, what are you referring
19 to?

20 A The application and the scoring criteria in the
21 regulation.

22 Q All right. Have you reviewed the application?

23 A Yeah, but I don't have it memorized. I reviewed the
24 regulations, but I don't have everything memorized. But I
25 guess the answer to your question is if it was in the

1 regulation and if it was part of the scoring criteria, then I
2 would be surprised if it wasn't evaluated.

3 Q That wasn't my question. You said if it was
4 included in the application. Are you aware whether or not it
5 was included in the application?

6 A My memory says that it was part of -- that it was in
7 the criteria, but -- so I don't know. If you give me a
8 document to look at I'll tell you, but I just don't -- just
9 from my memory I just don't remember everything.

10 Q Okay. The ballot question itself said that upon
11 receipt of a complete marijuana establishment license
12 application, the Department shall within 90 days, A) Issue the
13 appropriate license if the license application is approved.
14 And it says the Department shall approve a license application
15 if 80 licenses already issued in a county with a population
16 greater than 700,000. Do you remember that provision?

17 A Yes.

18 Q When you adopted the reg, it added an additional
19 restriction that allowed the Department to rank applicants by
20 individual localities, is that right?

21 A No. I don't think they were ranked, but the
22 licenses were -- there was a regulation, I believe, that
23 provided for the allocation of licenses to jurisdictions based
24 on population.

25 MR. MILLER: Can we pull up NAC 453D.272(1).

1 BY MR. MILLER:

2 Q Do you see where it says, "The Department will rank
3 the applications within each applicable locality for any
4 applicants which are in a jurisdiction that limits the number
5 of retail marijuana stores"?

6 A Right.

7 Q But the ballot question didn't impose any such
8 restrictions, did it?

9 A Well, that's an interpretation of the statute and
10 that there's no way to issue licenses within a county in any
11 proportion. So if you looked at just the language it says in
12 Clark County, so you need to come up with some type of a
13 format to determine where in Clark County those licenses go.

14 Q Where does it say that in the ballot question?

15 A You need to have a regulation on it for
16 interpretation. I mean, I don't know how -- you just would
17 give them to only unincorporated Clark County entities or -- I
18 mean, there has to be a way to hand out licenses proportionate
19 to the population within the county. It was the responsibility
20 of the State to hand out the licenses, so.

21 Q Right. And I believe you testified that you
22 understood that it was the responsibility of the State to hand
23 out the licenses and that a lot of the other determinations
24 should be left to the local jurisdictions. Is that right?

25 A Well, the determinations regarding zoning and land

1 use.

2 Q Okay. So when the ballot question itself said that
3 the Department shall approve a license application if -- and
4 it provides a cap of 80 licenses issued in a county with a
5 population greater than 700,000 like Clark, where is the
6 authority to impose an additional limitation on that?

7 A I don't see that as a limitation. It's a function
8 of the process to hand out the licenses and it lets everybody
9 know that what jurisdictions are going to get licenses based
10 on the population. I mean, there's another reg that explains
11 that.

12 Q Right. But I'm talking about the ballot question
13 itself. It doesn't mention anything about jurisdictions or
14 localities being a consideration of the applicants in terms of
15 ranking; right?

16 A The statute specifically says in the county, but if
17 you read that you would say, oh, well only the county gets
18 licenses, and I don't think that was -- we didn't think that
19 was the intent, that they would be issued throughout the
20 county and then you have to figure out a proportionate way to
21 issue them. The Department made a regulation to say that the
22 licenses would be issued proportionately to the various
23 jurisdictions based on population. And then --

24 Q That was done through the regulatory process; right?

25 A Right.

1 Q The language adding that it had to be done
2 proportionately, there's nothing in there in the ballot
3 question that specified that; right?

4 MR. SHEVORSKI: I'm sorry, Your Honor. He's got to
5 let her finish.

6 THE COURT: Were you finished, ma'am?

7 THE WITNESS: Yes, I'm finished.

8 THE COURT: Okay.

9 THE WITNESS: I don't know how to -- I mean, you had
10 to have -- you have to have regulation on carrying out the
11 provisions of the statute and this is one of the -- I don't
12 know how you would have just issued 80. We would have just
13 had to issue -- then are you suggesting to just issue 80
14 licenses only in Clark County? So this is how you hand out
15 the licenses. The ranking piece of it is -- relates to the
16 ranking that was required under the initiative and so when --
17 the intent was when the applicants applied they would list
18 their jurisdictions and they would be -- as the applications
19 were reviewed and approved, do they want a license in
20 Henderson or do they want a license in Clark County
21 unincorporated. And so this was the process to implement the
22 handing out of the licenses, to interpret that provision and
23 create a process by which the licenses could be handed out to
24 the various jurisdictions.
25 //

1 BY MR.MILLER:

2 Q Could you not have just said we're going to issue
3 80 licenses that can be used in Clark County?

4 A Well, somewhere in Clark County? You mean some
5 jurisdiction in Clark County?

6 Q Just Clark County. Right. Any jurisdiction they
7 want to go to. That's what the plain language says, does it
8 not?

9 A Well, I guess there could have been -- that could
10 have been in the regulation, yes, if the --

11 Q Why would it need to be in the regulation? It says
12 it right there in the plain meaning. If the plain meaning is
13 clear, you don't need to turn to the regulations; right?

14 MR. SHEVORSKI: Objection. Argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: Well, again, I don't -- I mean, I
17 think -- I don't know how it's possible. Do you just give
18 them to Clark County and then Clark County gives them out? I
19 just -- like, how do you proportionately give out the -- if
20 you have the State responsible for issuing the licenses, you
21 have to come up with some proportional way to distribute the
22 licenses within the jurisdiction that the initiative calls
23 for, so that's what we were attempting to do. That was my
24 understanding of the language and that's what we were
25 attempting to do.

1 BY MR. MILLER:

2 Q Where is that in the ballot question about the
3 proportionality of individual jurisdictions within a county?

4 A It's not in the ballot.

5 Q Okay.

6 A Again, it was the process by which we were
7 interpreting distribution of the licenses within the
8 jurisdictions.

9 Q But you determined that you were going to -- the
10 State was going to impose a limitation as to which
11 jurisdictions and how many licenses would be given out in each
12 jurisdiction; right?

13 MR. SHEVORSKI: Objection. Misstates testimony.

14 THE COURT: Overruled.

15 THE WITNESS: We were attempting to apply the
16 initiative as written by developing the system by which the
17 licenses would be allocated within the jurisdiction. That's
18 what we were doing.

19 BY MR. MILLER:

20 Q And in that interpretation were you not supposed to
21 adopt regulations that could not be unnecessarily impractical
22 towards the issuance of licenses?

23 A Yes.

24 Q So by imposing an additional limitation that granted
25 these licenses by jurisdiction, aren't you in effect limiting

1 how some of those applications could be used?

2 A No. I didn't see it -- we didn't see it that way.

3 Q Some of these jurisdictions had moratoriums, did
4 they not?

5 A I don't know the status now.

6 Q But like the City of Henderson, for example, at one
7 point had a moratorium on issuing licenses; correct?

8 A Yes.

9 Q So when the Department chose to further define the
10 provision that said we're going to give out 80 licenses in
11 Clark County and instead say it means 80 licenses in Clark
12 County which means X have to be awarded to Henderson, that
13 restricted the number of licenses that were issued in Clark
14 County that could be opened, is that right?

15 A Well, not necessarily. If the -- if you got a
16 license in Henderson and you couldn't get open, the license
17 could go back into the -- I mean, I think at that time, you
18 know, there wasn't an understanding of moratoriums or not
19 moratoriums. I think, again, there were a certain number of
20 licenses available to a county. We interpreted that provision
21 within the regulations to distribute the licenses within that
22 county based on a reasonable determination of population and
23 that's how it came about. I don't see that it was limiting.
24 I think it was interpreting that provision.

25 Q Is there any authority either in the ballot question

1 or the regulations to then additionally limit the applications
2 so that any applicant could only obtain one license per
3 jurisdiction?

4 MR. SHEVORSKI: Objection. Misstates the statute.

5 THE COURT: Overruled.

6 THE WITNESS: The regulation says that you can have
7 one or 10 percent in a county, I think.

8 MR. MILLER: Could you pull up Exhibit 5, page 8.

9 I.T. TECHNICIAN: Ross, what page?

10 MR. MILLER: Sorry, page 8; 433.

11 BY MR. MILLER:

12 Q Talking about this -- it's a provision on the
13 application that's in red letter. Have you read that?

14 A Okay.

15 Q What do you interpret that to mean?

16 A It's basically saying you wouldn't necessarily be
17 entitled to more than one license.

18 Q It says, "No applicant may be awarded more than one
19 retail store license in a jurisdiction/locality unless there
20 are less applicants than licenses allowed in the
21 jurisdiction." So what do you interpret that to mean?

22 A I don't know. I wasn't here. I wasn't at the
23 Department. I wasn't involved in any of this. So I think
24 it's meant to apply a regulation, but I don't know exactly
25 where it is and I don't know -- I wasn't involved in any of

1 that.

2 Q I understand you weren't involved, but you drafted
3 the regulations and that's where the authority to impose rules
4 come from, do they not?

5 A Right. But I wasn't involved in kind of how it was
6 put together and what was in that, so I don't know the
7 thinking behind putting it together this way or any of that.
8 I think it means that you're just notifying people that you're
9 not necessarily entitled to more than one license.

10 Q Not necessarily entitled to more than one license?
11 That's the way you interpret that provision?

12 A Uh-huh.

13 Q It says, "No applicant may be awarded." That's a
14 strict requirement, isn't it?

15 A Yeah. And so jurisdiction/locality, I guess that
16 would apply to the different jurisdictions within the county.

17 Q So would you interpret that to mean that an
18 applicant could not obtain more than --

19 A Yeah, so like one in Henderson, one in Vegas, one in
20 Clark County, one in North Las Vegas.

21 Q So if you had -- if an applicant with identical
22 ownership structure who had applied for two licenses in
23 unincorporated Clark County, they would only be given one
24 license; right?

25 A I think so, yes.

1 Q And if they had been given more than one license,
2 that would be a violation of that provision presumably; right?

3 A Again, I'm not exactly sure where that provision
4 comes from, so if it's a provision in the regulation -- again,
5 I didn't put that there and I don't know what the intent of
6 that was.

7 Q Right. But you're familiar, obviously, with the
8 fact that an agency can conduct ad hoc rule making; right?

9 A Right.

10 Q What is ad hoc rule making?

11 A Generally it's when you do -- you make a decision
12 that should have been made by regulation.

13 Q Right. And so --

14 A And there's lots of legal case law that addresses
15 what that is.

16 Q So if this was the intention of the Department to
17 further limit how many licenses could be issued to an
18 applicant in a jurisdiction, it should have been put in the
19 regulations; isn't that right?

20 A I think yes. I mean, I don't know -- I think this
21 is interpreting a regulation. I don't -- again, I'm not
22 completely familiar with how that got there and why it's
23 there, so. But generally, yes, the regulations should be
24 applied.

25 Q The regulations should be applied. And I understand

1 your testimony is that if this was an additional rule that
2 isn't in the regulations, it should have gone through the
3 regulatory process; right?

4 A I don't -- generally, yes, but I don't really know
5 -- Yes. I don't really know what this is or why it was
6 included.

7 Q You now oversee the Purchasing Division; right?

8 A Yes.

9 Q And what's the purpose of -- what's the mission of
10 the Purchasing Division?

11 A It's the internal State contracting division, so if
12 somebody wants a contract with the State, an agency wants a
13 contractor, they go through a process that's in the statute.

14 Q And they have provisions that are designed to make
15 sure that that process is an impartial and a fair process;
16 right?

17 A Yes.

18 Q And part of those provisions is the Department that
19 is issuing a contract designate a sole point of contact for
20 all questions to be submitted by potential applicants; right?

21 A Yes.

22 Q And then once those questions are submitted, then
23 there's a number of processes that the Division could follow
24 but generally they're giving the same information or responses
25 to all applicants; right?

1 A Right.

2 Q And if a department such as Marijuana Division was
3 issuing an application, they can use the resources of the
4 Purchasing Division, right, to assist in the administration of
5 that application?

6 A No.

7 Q They can't use additional resources --

8 A No.

9 Q -- within the State in order to assist?

10 A They can't use Purchasing. Purchasing only does
11 work under Chapter 333, so it would have to be in compliance
12 with that and it's not. No.

13 Q So resources such as the RFP template that might
14 have been provided to any State agencies aren't available to
15 this marijuana process?

16 A Yeah, I don't -- no, I wouldn't say that it would
17 be. They're not -- the State isn't issuing a contract for
18 somebody to provide services to the State or goods to the
19 State, so you wouldn't use the provisions of 333 in this case.

20 Q You wouldn't use any of the provisions that outline
21 things like maintaining a sole point of contact for questions
22 and answers?

23 A I mean, I think you could designate a sole point of
24 contact, but you wouldn't use the Purchasing Division for
25 that.

1 Q You're familiar with the provisions of NAC 333.155?

2 A No.

3 Q Okay. It's communication with contact person and it
4 indicates that the agency "designate a person to answer
5 questions concerning the contract to be awarded by competitive
6 selection pursuant to the request for proposals." And it
7 says, "A person who wishes to submit a proposal or a
8 representative of such a person shall not ask questions of or
9 otherwise discuss the contents of a request for proposals with
10 an employee or representative of an agency." It goes on to
11 say that if they do that they can be disqualified from the
12 application process. Are you familiar with that provision?

13 A Yes. You just read it to me, so yeah.

14 Q Right. But in fact you've had contested bids and
15 application of awards only recently in the Department; right?

16 A Yeah. There has been in Purchasing, yes, before I --

17 Q And there's been allegations that there was
18 violations of that provision; right?

19 A Yes.

20 Q And to the extent that there were violations of
21 those provisions that would have resulted in some individuals
22 potentially getting information from the Department that
23 wasn't provided on an equal basis to all applicants, they can
24 be disqualified; right?

25 A I think so, yes. I'm not -- you know, I'm not 100