

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 11:01 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 45

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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
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
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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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27	Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/7/19	AA 006528 - AA 006538
4	Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/19/19	AA 000769 - AA 000878
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19	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/4/19	AA 004513 - AA 004526
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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

Koch & Scow

1 MR. GENTILE: Thanks.

2 MR. SHEVORSKI: Fair enough, Your Honor.

3 MR. GENTILE: Oh, and one other thing.

4 THE COURT: Eight o'clock in the morning. Will
5 someone tell Mr. Bice, who's apparently writing more complex
6 things than --

7 MR. PRINCE: I'll reach out to him.

8 MR. GENTILE: One other thing. Mr. Savarese was the
9 member of our team that was charged with opposing the motion
10 to dissolve the TRO. He was in the hospital yesterday. I
11 didn't learn that until last night.

12 THE COURT: I'm sorry to hear that. Is he okay?

13 MR. GENTILE: I -- maybe.

14 THE COURT: Okay.

15 MR. GENTILE: It got real tough last night.

16 THE COURT: All right. Well, I hope he does well.

17 MR. GENTILE: So can we have another -- do we have
18 until tomorrow there? He's not until Monday.

19 MR. PRINCE: Whatever you need is fine.

20 MR. GENTILE: Okay.

21 THE COURT: Mr. Prince said whatever you need, Mr.
22 Gentile. Isn't that a nice professional courtesy? Somebody
23 should note that there are lawyers in town who still remember
24 civility and professional courtesy. All right.

25 MR. PRINCE: I, for one.

1 THE COURT: Absolutely. I'm not saying you're the
2 only one in the room. There's a lot of people in the room who
3 have that.

4 All right, sir, we'll see you about 1:15. Have a
5 nice lunch.

6 (Court recessed from 12:02 p.m. until 1:14 p.m.)

7 (Court was called to order)

8 THE COURT: Are we ready to continue, Mr. Kemp?

9 MR. KEMP: I'm ready, Your Honor.

10 THE COURT: Sir, you're still under oath. If you
11 need more water, you let me know. People run it out all the
12 time.

13 THE WITNESS: Please.

14 THE COURT: Ramsey, he needs more water.

15 Okay, let's get started. Dan doesn't believe you
16 guys are going to finish. I have the utmost confidence in you
17 all.

18 MR. KEMP: Who is betting against us, Your Honor?

19 THE COURT: Dan.

20 MR. KEMP: Oh, okay.

21 CROSS-EXAMINATION (Continued)

22 BY MR. KEMP:

23 Q Where we left off is you paid \$25,000 per
24 application, \$75,000 total; right?

25 A Right.

1 Q Okay. Where did the \$75,000 come from?

2 A Where it came from? We paid part of it and --

3 Q Did the Jamesons pay part of it?

4 A I believe so.

5 Q Did they pay all of it?

6 A I don't think so, no.

7 Q Did they pay two-thirds of it and you paid one-
8 third?

9 A No, they don't. No, it didn't work out that way.
10 The consultant I was working with for while, for over a year
11 and he was consulting us with the cultivation, also --

12 Q This is the J. Whitney Group?

13 A Right. So we hired him to --

14 Q Okay. Well, let's not get bogged down. What is
15 your best recollection as we sit here today as to how much the
16 Jamesons paid of the seventy-five and how much you paid?

17 A Well, we didn't pay everything up front. I didn't
18 pay everything up front. We paid part of it and I've been
19 paying payments, so.

20 Q Just between the two of you, no matter when it was
21 paid, what is your best recollection as you sit here today?

22 A We probably paid most of it.

23 Q And by most of it, you paid half of it and they paid
24 half of it or --

25 A Probably more.

1 Q All right. Now, you said this person named Potter
2 was an architect and he prepared the building plans; right?

3 A Right.

4 Q Did the Jamesons bring Mr. Potter into the equation?

5 A Yes.

6 Q So Mr. Potter was someone they knew previously?

7 A Correct.

8 Q And then Mr. Potter I understand was on the board;
9 right?

10 A Correct.

11 Q Was he also paid for doing the building plans for
12 the three locations?

13 A I can't recall if he was paid or not.

14 Q Okay. He did do building plans for three different
15 locations?

16 A Yes, he did.

17 Q And so usually it would cost --

18 A Yeah. My wife handles that accounting part of it,
19 so I don't know what it was that was paid, so.

20 Q Okay, that's good. Did you guys set up some sort of
21 joint fund that you would contribute money to and the Jamesons
22 would contribute money to?

23 A No.

24 Q And so when you say your wife handled it, you mean
25 she handled checks on your side of it?

1 A Correct.

2 Q And when you had something that the Jamesons owed
3 money on, where did those checks come from?

4 A Well, I don't know if the Jamesons paid J. Whitney
5 directly or they gave us the money to pay, so I'm not sure
6 about that.

7 Q Okay. Other than the consultant and the architect
8 on the building plans, was there anyone else that was paid
9 money prior to September 10th? And by money I mean anything
10 over like five or ten thousand dollars.

11 A I don't think so.

12 Q Okay. Now, do you know what a CHOW is, a change of
13 ownership form?

14 A Change of ownership. Yes.

15 Q And that's what you file with the Department of
16 Taxation when you change the ownership of a marijuana entity?

17 A Yes.

18 Q And you said you've been a cultivator since 2014;
19 correct?

20 A Here in Nevada? No. We opened in 2018.

21 Q Okay. How did you get your cultivation license?

22 A We got it in 2014.

23 Q Okay. So you've been a cultivator since 2014;
24 right? Right?

25 A Yes. A cultivation license since 2014 --

1 Q Okay.

2 A -- or '15, actually.

3 Q And in the time period of 2014 to 2018, did you file
4 a change of ownership with regards to the cultivation license?

5 A I believe we did.

6 Q And when you say you believe you did, was it your
7 understanding that you had to identify -- first of all on just
8 a regular change of ownership you had to identify prospective
9 owners to the State?

10 A Yes.

11 Q And with regards to the application procedure, it's
12 your understanding that on the September 10th filing you had
13 to identify prospective owners to the State?

14 A Correct.

15 Q And at that time on September 10th, the only three
16 people identified as owners were the women, correct, the three
17 women?

18 A Yes.

19 MR. KEMP: Your Honor, can I move to admit 31 now?
20 I've shown it to counsel. It's the organizational chart in
21 the application.

22 THE COURT: Any objection to 31?

23 MR. KEMP: Well, Your Honor, we've agreed to certain
24 redactions, so we don't have a redacted copy yet, but.

25 MR. KAHN: Oh, so 31 is the entire application?

1 MR. KEMP: Right.

2 MR. KAHN: Okay. Right, we're going to redact --
3 excuse me, Your Honor. We're going to redact certain
4 identifying portions of the financials that were subject to
5 the attorney's eyes only provision, so it's not public record.

6 THE COURT: So you're going to give us a 31A with
7 agreed upon redactions and when will you have that to me?

8 MR. KAHN: I'm sure we could do that by the end of
9 the day today.

10 MR. KEMP: Yeah, hopefully by the end -- well,
11 depending on how long we go, Your Honor.

12 THE COURT: We'll say by tomorrow morning at nine
13 o'clock.

14 MR. KAHN: You got it, Your Honor.

15 MR. KEMP: We can do that, Your Honor.

16 THE COURT: Okay, Dulce?

17 THE CLERK: Yes, Your Honor.

18 THE COURT: All right.

19 MR. KAHN: Thank you.

20 THE COURT: So subject to the stipulation that with
21 the approved redactions, 31A will be admitted?

22 MR. KAHN: Correct, Your Honor.

23 THE COURT: Okay.

24 (Plaintiff's Exhibit 31A admitted)

25 MR. KEMP: Thank you, Your Honor.

1 Can I have the organizational chart now, Shane?

2 THE COURT: And are there any redactions to be made
3 on the organizational chart --

4 MR. KEMP: No, Your Honor.

5 THE COURT: -- which is part of 31A? Okay.

6 BY MR. KEMP:

7 Q I don't know if you can see that, sir.

8 A Yes.

9 THE COURT: The colors are hard for me to see.
10 Sorry.

11 BY MR. KEMP:

12 Q Okay. Who are the owners as listed on the
13 organizational chart?

14 A Alyssa Navallo, Lusine Danayan and Klaris Terteryan.

15 Q And for the record could you spell that?

16 A All of them?

17 Q Could you spell that just so whoever is listening to
18 this spells it right on the record?

19 A All the names?

20 Q Yeah, please.

21 A A-l-y-s-s-a N-a-v-a-l-l-o dash H-e-r-m-a-n.

22 Q Okay. So the three women were listed as the only
23 owners in the application; correct?

24 A Correct.

25 Q And that was filed on September 10th, 2018?

1 A Correct.

2 Q And as of today's date, which would be August 14th,
3 2018, have you filed any change of ownership for Helping Hands
4 with the State of Nevada Department of Taxation?

5 A Yes.

6 Q You have filed a change of ownership?

7 A Yes.

8 Q And what is that change of ownership for?

9 A Klaris Terteryan purchased Alyssa's shares.

10 Q Okay. And when did that happen?

11 A Well, the process went -- we take the application
12 back in I would say May.

13 Q May of 2019?

14 A 19.

15 Q Okay. Just the one change of ownership for the
16 change that you've indicated; correct?

17 A That's right.

18 Q So you haven't filed any other change with regards
19 to anyone else; right?

20 A No.

21 Q Okay. As of today's date?

22 A Correct.

23 Q And are you intending to file a change?

24 A Yes.

25 Q You are intending to file a change?

1 A Yes.

2 Q And has that been prepared?

3 A Well, that's what I was saying. The attorneys are
4 working.

5 Q Does this relate to the Jamesons?

6 A Yes.

7 Q Okay, let's save that for a little bit.

8 A Okay.

9 Q Now, with regards to the directors, who did you list
10 as directors on your organizational chart?

11 THE COURT: Would you like them to blow it up for
12 you?

13 MR. KEMP: Can you see that, sir? I'm not trying
14 to --

15 THE WITNESS: It's a little blurry, but.

16 THE COURT: Is that better?

17 THE WITNESS: Yeah, it's better. Dr. Florence
18 Jameson. Dr. Frank Gard Jameson. Julie Murray. Robert
19 Potter. Dr. Norton Roitman. Jennifer Solas.

20 BY MR. KEMP:

21 Q Okay. So those four people are listed as directors;
22 right?

23 A Six.

24 Q Excuse me. Six.

25 A Yes.

1 Q All right. And would I be correct that these people
2 were listed as directors for the Department of Taxation
3 application, but you listed different people with the
4 Secretary of State as directors?

5 A Yeah, this was the organization that was going to
6 be. Yes.

7 Q Okay. But when you did your corporate filing with
8 the Nevada Secretary of State, you listed different people as
9 your directors; right?

10 A Yes. We have the -- our original board members.

11 Q Okay. And so more specifically the Jamesons have
12 never been listed as directors in your Nevada Secretary of
13 State filing; correct?

14 A No. This was a proposed -- this one is the proposed
15 members.

16 Q Okay. So it wasn't the actual board, it was a to be
17 board. Is that what you're saying?

18 A Proposed board.

19 Q Proposed board?

20 A Yes.

21 Q All right. And is this still the proposed board,
22 it hasn't changed?

23 A No, it hasn't.

24 Q Okay. So in other words, the Jamesons and Julie
25 Murray are still on your proposed board?

1 A Correct.

2 Q Okay, great. Why did you file the proposed board
3 with the application as opposed to the board that you filed
4 with the Nevada Secretary of State?

5 A Why?

6 Q Why?

7 A I don't know. That's something consultant would
8 know.

9 Q Okay. Did you have an understanding that by listing
10 the Jamesons and Julie Murray as proposed directors that you
11 might get more points because of their charitable involvement
12 and the taxes they pay? Did you have any understanding in
13 that regard?

14 A Having them on board to get more points?

15 Q Right.

16 A Well, they were going to be our board members if we
17 were to win.

18 Q I understand that.

19 A Yeah.

20 Q But did you understand --

21 A No, because we --

22 Q -- that by having those three people --

23 THE COURT: Wait. Sir, you've got to let Mr. Kemp
24 finish.

25 THE WITNESS: Oh, sorry. Sorry.

1 BY MR. KEMP:

2 Q Did you understand that by having those three people
3 on what you call the proposed board --

4 A Yes.

5 Q -- did you understand that that would give you more
6 points in the charitable contribution section?

7 A Well, their non-profit was going to benefit from
8 them becoming our member. That's not the only reason they
9 were there. They had a prior experience with a dispensary.
10 They owned a dispensary before.

11 Q You're talking about the Jamesons, not Murray?

12 A Jamesons. I believe -- yeah.

13 Q Let's just focus on Julie Murray and try to cut
14 through --

15 A Okay.

16 Q -- this on the contributions. You knew Julie Murray
17 was involved with a lot of charitable contributions?

18 A Yes.

19 Q Was one of the reasons you put her on the
20 prospective board to get -- maybe get more points on the
21 charitable --

22 A Well, the Jamesons brought them, all the members.

23 Q So the Jamesons were the ones that formulated the
24 board of directors, the proposed board?

25 A The proposed board they brought, yeah. They

1 introduced us to board members, yes.

2 Q So it was the Jamesons' decision that Julie Murray
3 would be on the, what did you call it, proposed board, is that
4 right?

5 A They asked Julie Murray. I said sure.

6 Q Okay. And it was the Jamesons' decision that Mr.
7 Potter would be on the proposed board; correct?

8 A It's not the decision. The ultimate decision is all
9 of us, so it's not one person.

10 Q Okay. But it was -- the first suggestion that Julie
11 Murray would be on the proposed board came from the Jamesons?

12 A Yes.

13 Q The same is true of Mr. Potter?

14 A Yes.

15 Q And the same is true of Mr. Roitman?

16 A Every one of them.

17 Q Roitman and Solas?

18 A Yes.

19 Q Okay. Now, did you understand that when you put
20 Ms. Murray on the board that you would potentially get some
21 benefit in the scoring because of her charitable activities?
22 Did you understand that?

23 A No, I didn't think of it that way.

24 Q Okay. Did the Jamesons express to you why they
25 thought Ms. Murray would be a good member of this board?

1 A Because the Jamesons wanted 70 percent. The reason
2 they came into the board because they wanted us to give 70
3 percent -- up to 70 percent of the profits go to their
4 charity. And Julie Murray was involved with a lot of
5 charities, so it made sense to have them on the board.

6 Q And Mr. Roitman wasn't involved in any charities,
7 was he?

8 A I don't know.

9 Q He was the money guy; right? He was the guy that
10 had the most money?

11 A I never checked. I've never seen their finances,
12 so I couldn't tell you.

13 Q You didn't review the application after it was
14 filed?

15 A I didn't look at any privileged stuff that is in the
16 application.

17 Q Okay. All right. You mentioned that you knew that
18 the Jamesons had some involvement with a previous dispensary;
19 right?

20 A Right.

21 Q And you knew that as of, say, June of 2018 when you
22 first began talking to the Jamesons?

23 A It could be June, July.

24 Q You knew that before the application was filed?

25 A Before the application, yes.

1 Q Because they told you they had been involved with
2 Mr. Bernstein's group, ReLeaf; right? Or did you know that
3 already?

4 A I don't know who Mr. Bernstein is. I knew they --

5 Q He's the guy who you see all the TV commercials.

6 A All right.

7 Q All right. Do you know who he is now? He's a
8 personal -- I'll say famous --

9 A Okay.

10 Q A well known personal -- I will say famous -- a
11 famous personal injury lawyer here in Las Vegas.

12 A Oh, okay.

13 Q You know who Mr. Bernstein is?

14 A Yeah, yeah, yeah. Yes. Yes.

15 Q All right. So you knew that the Jamesons had been
16 involved with Mr. Bernstein's group previously?

17 A Did I know that? I didn't know who they were
18 involved with. They said they were involved in a dispensary.
19 I didn't know exactly what dispensary they were involved with.

20 Q Okay. But you had been a cultivator since 2014. I
21 assume you were out there trying to sell your product to the
22 various dispensaries; right?

23 A No. 2014, we applied for a license.

24 Q Got it.

25 A We got the provisional license in 2015.

1 Q Did you ever actually grow any product as a
2 cultivator?

3 A In 2018.

4 Q Okay. It wasn't until 2018 you actually --

5 A Yeah. We started growing sometime September --

6 Q September of 2018?

7 A 18. Yes. We were going through construction.

8 Q Okay, fair enough. So you knew the Jamesons were
9 involved in some dispensary but you didn't know which one.

10 A No.

11 Q Is that right? Right?

12 A Correct.

13 Q Did you know that they had been owners?

14 A Of dispensary? I knew they were part of dispensary
15 owners, yes.

16 Q Part of it in the sense that they were actually
17 owners?

18 A Yeah.

19 Q And did they bring certain materials over from that
20 dispensary to be used in your application?

21 A No.

22 Q Okay. Are you sure about that? Are you sure that
23 they didn't bring any operating --

24 MR. PRINCE: Objection. Relevancy, Your Honor.

25 THE COURT: Mr. Prince, are you representing Mr.

1 Bernstein and his group?

2 MR. PRINCE: I definitely do not.

3 THE COURT: Okay. The objection is overruled.

4 BY MR. KEMP:

5 Q Are you sure they didn't bring anything from ReLeaf
6 over to the application process?

7 A No, they didn't.

8 Q How do you know that?

9 A Because I've seen everything that -- J. Whitney
10 Group have been working long ago, so J. Whitney Group,
11 whatever they were doing, the SOPs, everything or whatever it
12 is, J. Whitney Group did it for us.

13 Q Okay. I thought you said that the Jamesons brought
14 in the J. Whitney Group.

15 A No, no. J. Whitney Group --

16 Q You just found the J. Whitney Group on your own
17 before the Jamesons were involved?

18 A No. I had a different consultant before --

19 Q Different than J. Whitney?

20 A -- J. Whitney. In 2000- end of 2017, my attorney
21 introduced me to this new group, J. Whitney. I didn't work
22 well with the other people, so I started working with the J.
23 Whitney Group.

24 Q Okay.

25 A Towards the end of 2017, '18, we started working

1 with them.

2 Q Let's break it down. Who was the consultant before
3 J. Whitney?

4 A Erin Buckner.

5 Q How do you spell that last name?

6 A Erin Buckner, I believe. Buckner.

7 Q I thought you told me this morning that the Jamesons
8 brought in the J. Whitney Group, but that's not true?

9 A No. If I said -- I don't --

10 Q You just found them on your own?

11 A No, no, if I said that, that's not -- I don't think
12 I said that, but if I said that, maybe we misunderstood.

13 Q Okay. So your testimony today is that you somehow
14 secured the services of the J. Whitney Group before you had
15 any conversations and meetings with the Jamesons, is that
16 correct?

17 A Correct. Correct.

18 Q Okay. And do you know what involvement, if any,
19 the J. Whitney Group had with Mr. Bernstein's previous 2014
20 application?

21 A J. Whitney?

22 Q Yeah.

23 A I don't know.

24 Q And do you know -- do you know whether or not,
25 either through the Jamesons or from some other source, if the

1 J. Whitney Group had materials from ReLeaf, Mr. Bernstein's
2 group?

3 A I don't know.

4 Q And you do know that Mr. Bernstein has sued the
5 Jamesons for stealing materials from ReLeaf and allegedly
6 using them in this application process. You do know that?

7 MR. KAHN: Objection, Your Honor. That misstates
8 the nature of the lawsuit.

9 MR. KEMP: Well, do you have an exhibit?

10 THE COURT: Okay. The objection is sustained.

11 BY MR. KEMP:

12 Q Do you know that there's a lawsuit now filed between
13 Mr. Bernstein and ReLeaf and the Jamesons?

14 MR. PRINCE: Objection. Relevance.

15 THE COURT: Overruled.

16 THE WITNESS: I knew there -- I found out that he
17 had a fallout. I don't know Mr. Bernstein or whoever. I
18 never got to know. He had -- because Florence basically in
19 August, I believe, it was sometime in August, called and said
20 I'm cancelling this whole thing, I cannot be involved because
21 I'm involved with another dispensary. So --

22 BY MR. KEMP:

23 Q This is August, so you don't mean August 2019 --

24 A August or July.

25 Q -- you mean August 2018?

1 A 18. Yeah.

2 THE COURT: One of you at a time.

3 THE WITNESS: Summertime of 2018 she called, she
4 says I'm cancelling it. I cannot be with your board. And I
5 said, okay, what's the reason? I thought we did something.
6 And they said, no, no, it's I'm an owner with another
7 dispensary. I cannot be -- I was advised not to. I said
8 okay. And then a few weeks later she called back and said,
9 hey, I can do it because I sold my shares. And I said okay,
10 fine.

11 BY MR. KEMP:

12 Q Okay. So in August 2018, and the application was
13 filed on September 10th, 2018?

14 A Right.

15 Q So in August 2018, Dr. Jameson called you and told
16 you she couldn't be involved with Helping Hands because she
17 was concerned about her involvement with Mr. Bernstein's
18 group, ReLeaf --

19 A Yes.

20 Q -- is that correct?

21 A Yeah.

22 Q Okay.

23 A But she didn't say who, she just said my previous --
24 my other dispensary ownership, I have a conflict, I cannot do
25 it. I said okay. So then later she called a few weeks, two

1 or three weeks later, I can't remember exact times, but she
2 called.

3 Q And then she got back on board?

4 A She said that she sold her shares, now she can be
5 involved with our group.

6 Q But before that phone call in August, Mr. Jameson
7 or her had gone to locations with you, they had brought the
8 architect on board, they had brought Ms. Murray on board.

9 A No. Locations, everything else, we went after that.

10 Q Oh. So after August 2018 when you had the phone
11 call with Dr. Jameson --

12 A Yeah.

13 Q -- that's when you first went to any of these three
14 locations. Is that your testimony?

15 A Well, it could -- yeah, I think so. Yeah.

16 Q I just -- I don't want to know what could. I want
17 to know what you did. So your testimony today is after August
18 2018 but before September 10th, 2018, that's when you and the
19 Jamesons went to the locations, that's when you and the
20 Jamesons hired the architect, that's when you and the Jamesons
21 put the application together and that's when you and the
22 Jamesons brought in these other board members. Is that
23 correct?

24 A That's -- I believe so, yeah. That is correct.

25 Q That seems like a lot of stuff to do in a couple

1 weeks.

2 A Not really.

3 Q Okay.

4 A When I don't do it, somebody else does it. It's
5 done.

6 Q All right. Okay.

7 A They have a whole team to do it.

8 Q And you do know that ReLeaf, Mr. Bernstein's group,
9 filed an application in this exact same process, do you not?

10 A I assume so. I don't know.

11 Q Well, you've seen their name on the list of
12 applicants, haven't you?

13 A Well, I haven't gone through every single name on
14 the applications.

15 Q Would you agree --

16 A All I cared about is mine. That's it.

17 Q All you cared about is your application?

18 A Yes.

19 Q Okay. All right. And would I be correct that the
20 change of ownership that removed the Jamesons from Mr.
21 Bernstein's group, the ReLeaf, that was not processed by the
22 State until after September 10th, 2018? Is that true?

23 MR. KAHN: Objection, Your Honor. That calls for
24 speculation.

25 MR. PRINCE: And it assumes facts.

1 MR. KAHN: Assumes facts not in evidence.

2 THE COURT: Overruled.

3 Sir, if you don't know the answer --

4 THE WITNESS: I don't know.

5 THE COURT: -- that's a perfectly good answer.

6 Thank you.

7 BY MR. KEMP:

8 Q Okay. It's kind of a little ticklish situation
9 here, isn't it, that you're dealing with someone who's an
10 owner of a competitor, a competing applicant? Kind of
11 ticklish, wouldn't you agree?

12 MR. PRINCE: Objection. Argumentative. Foundation.

13 THE WITNESS: I don't know.

14 THE COURT: Overruled.

15 THE WITNESS: What do you mean by ticklish?

16 BY MR. KEMP:

17 Q Well, you had your lawyer look at it.

18 A I didn't get tickled.

19 Q You threw the Jamesons out of the group, then you
20 met with your lawyer, you said, and then they came back into
21 the group.

22 A I didn't --

23 MR. KAHN: Objection, Your Honor. Misstates the
24 testimony.

25 MR. PRINCE: And argumentative.

1 THE COURT: Sustained. Can you rephrase your
2 question, please?

3 MR. KEMP: Okay.

4 BY MR. KEMP:

5 Q So the Jamesons left your group, right, after the
6 phone call? Yes?

7 A After who called?

8 Q After Dr. Jameson called you and said she had to
9 leave the group, they left the group?

10 A Correct.

11 Q Okay. And then you talked to your lawyer; right?
12 You said that.

13 A I said I talked to my lawyer?

14 Q They got back -- you talked to the lawyer, you
15 worked it out, and they got back in your group?

16 A I didn't say that.

17 MR. KAHN: Objection, Your Honor. That misstates
18 the testimony.

19 THE COURT: Overruled.

20 THE WITNESS: I never said that.

21 BY MR. KEMP:

22 Q Okay. So they got back in the group without you
23 talking to your lawyer?

24 A No.

25 Q They got back into your group?

1 A Should I repeat what I said?

2 Q Did they get --

3 THE COURT: Yes, please, sir. Could you tell us
4 what you said so we can all be on the same page?

5 THE WITNESS: Okay. I said Dr. Jameson called me,
6 said she couldn't -- according to her attorney she cannot be
7 on our board. She cannot be involved with us because they
8 have a conflict. I said okay, then there is nothing I can do.
9 And then sometime later, it could be two weeks, three weeks
10 later, she called back and said I settled my thing, I sold my
11 shares, I'm no longer with that dispensary, I can do it. Do
12 you want to do it? I said definitely.

13 BY MR. KEMP:

14 Q Okay. And when she told you she had a conflict, she
15 told you it was because of her ownership interest in another
16 dispensary; correct?

17 A I assumed so. She didn't a hundred percent say, but
18 yeah.

19 Q Okay. You assumed so because you knew about her
20 ownership interest in the other dispensary?

21 A When I met her, I found out that she was -- she at
22 least owned a dispensary before. Whether she was involved or
23 not involved, that I don't know. I didn't ask her, hey, do
24 you own a dispensary right now.

25 Q So when you had lunch with her in the country club

1 back in July 2018 --

2 A Yeah.

3 Q -- you didn't ask her whether or not she was still
4 in a dispensary?

5 A No, I didn't.

6 Q And she didn't say --

7 A I knew she was involved, so at that time if she was
8 involved previously, I don't know. So I knew she was involved
9 in a dispensary.

10 Q Okay. You do recognize that if she was involved in
11 a dispensary and it was filing a competing application to
12 yours, that would potentially be a problem, potentially;
13 right?

14 MR. KAHN: Objection, Your Honor.

15 THE WITNESS: Honestly don't know. That's something
16 attorneys have to tell me.

17 MR. KEMP: Okay.

18 THE COURT: You've got to be faster, Mr. Kahn.
19 You've got to get it all out so I can rule.

20 MR. KAHN: All right. I get it.

21 THE COURT: Okay.

22 MR. KEMP: All right.

23 MR. PRINCE: What's the ruling?

24 THE COURT: I didn't hear the basis of the objection
25 yet.

1 MR. KAHN: Well, the objection, Your Honor, is calls
2 for speculation --

3 THE COURT: Overruled.

4 MR. KAHN: -- lacks foundation.

5 THE COURT: Overruled.

6 BY MR. KEMP:

7 Q Okay, let's move forward. So you were declared a
8 winner in September, whatever the day was -- or excuse me, in
9 December --

10 A December 5.

11 Q -- 5th you found out you were a winner; right?

12 A Yes. Yes.

13 Q Okay. And when you found out you were a winner, you
14 had to pay twenty thousand and a half; right?

15 A Yes.

16 Q So you had to pay another \$60,000?

17 A Correct.

18 Q Where did that \$60,000 come from?

19 A That one we asked Mr. Jameson to pay for it.

20 Q So Mr. Jameson put up the entire \$60,000?

21 A Yes.

22 Q He's a great board member, isn't he?

23 A He is.

24 Q Now, all right, you earlier referenced when Mr.
25 Parker was talking to you a \$750,000 loan that was used to

1 develop the three entities; right?

2 A Not only for that. Part of it.

3 Q Well, there was a \$750,000 loan; right?

4 A Yes.

5 Q And so you told him it wasn't a financial
6 institution, it was a private individual; right?

7 A Yes.

8 Q What's the name of the private individual?

9 A It's not a -- well, it's a company, it's an LLC.

10 Q And what is it?

11 A Am I allowed to?

12 Q Sure.

13 MR. KAHN: I mean, Your Honor --

14 THE COURT: I need an objection.

15 MR. KAHN: The objection is I believe the terms of
16 that note are confidential.

17 THE COURT: The objection is --

18 MR. KEMP: I didn't ask for the terms, Your Honor.
19 I asked for the name of --

20 MR. KAHN: Which would include the identification of
21 the party, then.

22 THE COURT: Sustained. However, if there is written
23 documentation you may provide it under an attorney eyes only
24 provision. But since this is a public proceeding, I am not
25 going to consider the name as part of my deliberative process.

1 MR. KAHN: Thank you, Your Honor.

2 THE COURT: But you may inquire about the nature of
3 that transaction to your heart's content, Mr. Kemp.

4 MR. KEMP: Fair, Your Honor.

5 BY MR. KEMP:

6 Q Did the Jamesons secure that \$750,000 loan or assist
7 in getting the loan?

8 A No.

9 Q They didn't do anything?

10 A No.

11 Q They're not guarantors to that loan?

12 A Nothing.

13 Q Is that loan subject to a personal guarantee?

14 A The guarantor -- huh?

15 Q Is that loan subject to a personal guarantee?

16 MR. KAHN: Again, Your Honor, I'm going to object.

17 THE COURT: Overruled.

18 MR. KAHN: The terms of the note are confidential,
19 but he can answer.

20 THE COURT: Overruled. You can answer, sir.

21 THE WITNESS: My wife is.

22 BY MR. KEMP:

23 Q Just your wife?

24 A Just my wife.

25 Q Okay. She filed -- she got a loan with a personal

1 guarantee for \$750,000?

2 A Yes.

3 Q Isn't it true that your wife filed bankruptcy in
4 California?

5 A When?

6 MR. KAHN: Objection, Your Honor. Relevance.

7 THE COURT: Overruled.

8 MR. KEMP: It goes to her ability --

9 THE COURT: I said overruled.

10 MR. KEMP: Okay.

11 THE WITNESS: When?

12 BY MR. KEMP:

13 Q Well, let's start with did she or didn't she first
14 and then --

15 A Yes, she did.

16 MR. PRINCE: Well, let's -- Objection. Foundation
17 as to the timing as to when the bankruptcy occurred.

18 THE COURT: Overruled.

19 BY MR. KEMP:

20 Q She did?

21 A Yes. 1994.

22 Q Okay. And actually you live in California; right?

23 A No, I live in Nevada. So does my wife.

24 Q But you have a California driver's license, don't
25 you?

1 A Who?

2 Q You.

3 A I do.

4 Q You don't have a Nevada driver's license, do you?

5 A No, not now.

6 Q You live in Glendale, California, don't you?

7 A I live in Nevada. It's been close to two years.

8 Q You don't have the Glendale address anymore?

9 A I do have a Glendale. I have a house there.

10 Q So you live in both states?

11 A I have three kids there.

12 Q Right. And they go to school down in California,

13 don't they?

14 A Yeah, they -- well, yeah.

15 Q And you spend more time in California than you do

16 here, don't you?

17 A No, that's not true.

18 Q Okay. All right, let's get back to you said there

19 was a loan for seven fifty. Are there any other loans?

20 A There are some personal loans.

21 Q Okay. Personal loans for --

22 A I mean, do I need to give all my --

23 Q No, no, not -- I don't want your personal finances,

24 sir. I don't want that, okay. Are there any other loans

25 helping finance --

1 A But do I need to give you all my --

2 THE COURT: Sir, your attorney is going to make an
3 objection if he thinks it's appropriate. He's standing up
4 now. I'm going to ask Mr. Kemp to rephrase his question so
5 Mr. Kahn can make an objection if he thinks it's appropriate.
6 BY MR. KEMP:

7 Q With regard to Helping Hands, the applicant, are
8 there any other loans that were made to Helping Hands or to
9 anyone that resulted in money going to Helping Hands?

10 A Yes. There are a couple of --

11 MR. KAHN: Your Honor --

12 THE WITNESS: Oh, sorry.

13 MR. KAHN: Objection. Relevance. This is
14 confidential and proprietary information. It's not before
15 this proceeding.

16 THE COURT: The existence of the loans is fair game.
17 The identity of the lenders and the obligors may be something
18 that is protected. I don't know without additional
19 information. So the witness will answer this question, but
20 Mr. Kemp, you need to narrow your focus.

21 BY MR. KEMP:

22 Q Let me -- let's get it real tight, okay.

23 A All right.

24 Q With regards to Helping Hands --

25 A Yes.

1 Q -- are there other loans in addition to the seven
2 fifty?

3 A Yes.

4 Q And what are the other loans?

5 A What are they? They're loans.

6 MR. KAHN: Same objection, Your Honor.

7 THE COURT: Overruled.

8 BY MR. KEMP:

9 Q I mean how much money and where were they made?

10 A Oh.

11 MR. KAHN: Same objection, Your Honor.

12 THE COURT: Overruled. We're looking for the amount
13 of the loans, sir.

14 THE WITNESS: Well, 1.8.

15 BY MR. KEMP:

16 Q \$1.8 million?

17 A Yeah.

18 Q So there's just one other loan for \$1.8 million?

19 A Not one, a couple of. There's --

20 Q You're the chief operating officer.

21 A Well, no, I said there was not one loan. It's
22 friends and family lend us money.

23 Q Okay. All I want to know is who -- or excuse me,
24 not who but how many loans are there? There's the seven
25 fifty, the one eight --

1 A There are about four or five loans. Depends how you
2 -- the husband and wife. But they're family. They're family,
3 friends and family.

4 Q Okay. So, seven fifty, 1.8. How much are the other
5 ones?

6 A That's it. That 1.8 is total of all four or five
7 loans.

8 Q Including the seven fifty?

9 A Uh, yes. Yes.

10 Q Okay, fair. Now, I don't want to know what friends
11 or what family members loaned you the money. I do want to
12 know whether any of this money was guaranteed by the Jamesons
13 or came from the Jamesons.

14 A Nothing is guaranteed by the Jamesons.

15 Q Well, did it come from the Jamesons?

16 A Those monies I got it was before even Jamesons,
17 before even I knew them.

18 Q So the answer is no, none of this money came from
19 the Jamesons?

20 A No. I didn't even know them.

21 Q But the answer to my question is, Mr. Kemp, none of
22 this money came from the Jamesons?

23 A None of this -- Mr. Kemp, none of this money came
24 from Jamesons or they never guaranteed anything, any --

25 MR. KAHN: Your Honor, I was going to object to

1 leading.

2 THE COURT: Oh. Yes, but it was appropriate

3 leading.

4 MR. KEMP: Okay.

5 THE COURT: How much more you got, Mr. Kemp?

6 MR. KEMP: About ten minutes, Your Honor.

7 THE COURT: Okay.

8 MR. KEMP: Okay. Can I have the document that was
9 admitted as an exhibit today, which is --

10 THE COURT: There were four.

11 MR. KEMP: This one, which is 5063, please, the
12 first page.

13 BY MR. KEMP:

14 Q Okay, the first sentence. "The Jameson family,
15 through a related entity, was awarded two provisional
16 dispensary licenses, one in Clark County and one in the City
17 of North Las Vegas." Did I read that right?

18 A Yes.

19 Q Was the Jameson family awarded two provisional
20 licenses, one in Clark County and one in the City of North Las
21 Vegas?

22 MR. KAHN: Objection, Your Honor. The document
23 speaks for itself and he didn't draft the document.

24 THE COURT: Overruled.

25 He's asking you if that is a correct factual

1 statement, sir.

2 THE WITNESS: No, they weren't awarded it. Helping
3 Hands was awarded it.

4 BY MR. KEMP:

5 Q Okay. So they weren't owners?

6 A No.

7 Q So this was a false statement in this document?

8 A Depends when you're looking at it.

9 Q Today it would be a true statement?

10 A No, no, no. When you're saying owners, when are
11 they talking about? When was this done?

12 Q Did the Jamesons at some point become owners --

13 A Is this part of the offer we got from The Grove?

14 Q Yes.

15 A Oh, okay.

16 Q Okay.

17 A Well, at that time already we discussed it with the
18 Jamesons that they were going to be owners, yes.

19 Q Okay. And then it says, "The Jameson dispensaries
20 will be wholly owned by the Jamesons." Do you see that
21 statement?

22 A Yes. That's --

23 Q And that was true at the date this document was
24 prepared?

25 MR. KAHN: Objection, Your Honor. Again, the

1 document speaks for itself and he didn't prepare the document.

2 THE COURT: Overruled.

3 He's asking you whether the statements are factually
4 true, sir.

5 THE WITNESS: So the Jamesons -- I don't even know
6 how to try and say this, but the Jamesons --

7 THE COURT: He wants to know, do the Jamesons own
8 Helping Hands?

9 THE WITNESS: Well, this whole -- from these two
10 dispensaries --

11 BY MR. KEMP:

12 Q Three. There were three; right?

13 A Yeah, there is three.

14 Q The Jamesons got two.

15 A From this -- yeah.

16 Q I understand that. Right?

17 A The Jamesons --

18 MR. KAHN: Objection. Misstates the testimony.

19 THE COURT: Overruled.

20 THE WITNESS: Should I --

21 MR. KEMP: Yeah, go ahead. Explain, please.

22 THE COURT: Please explain.

23 THE WITNESS: So up to 70 percent of all
24 dispensaries was going to go to charity, their charity, right,
25 from the beginning.

1 BY MR. KEMP:

2 Q So you were going to give two of the three
3 dispensaries to charity from the beginning? You were just
4 going to give them the dispensaries?

5 A No, 70 -- 30 -- 70 percent of all three dispensaries
6 was going to go to charity from the beginning.

7 Q Okay, let me ask it differently.

8 A Okay. You want an answer.

9 Q The date of this document is March 18th, 2019.

10 MR. KEMP: Can you blow that up for me, Shane, just
11 so the witness can see it?

12 BY MR. KEMP:

13 Q Okay. Let's go back to the owned part. So as of
14 March 18th, 2019, it was your understanding that somehow, some
15 way the Jamesons would ultimately own these two dispensaries.
16 Is that correct?

17 A We have talked to the Jamesons and said we will --
18 what we will do is instead of 70 percent of all three, they
19 can take 100 percent of two dispensaries to their charity.

20 Q So you gave the Jamesons two of the three. Is that
21 pretty much it?

22 MR. KAHN: Objection, Your Honor. Misstates the
23 testimony.

24 THE WITNESS: It's not giving them. It still
25 belongs to Helping Hands.

1 MR. KEMP: Okay. Fair.

2 THE COURT: Overruled.

3 BY MR. KEMP:

4 Q But you didn't charge them anything? They didn't
5 pay anything for those two dispensaries, did they?

6 MR. KAHN: Objection, Your Honor. Misstates the
7 testimony.

8 THE COURT: Sustained. Can you rephrase your
9 question?

10 BY MR. KEMP:

11 Q What amount of money were the Jamesons supposed to
12 pay for those two dispensaries?

13 A We are working out the tax implications, like I
14 said. We can't --

15 Q So as we sit here today, you haven't even talked to
16 them about a purchase price. Is that your testimony?

17 A Right.

18 Q Okay. But you said you're going to sell them and
19 they're out there --

20 A Yeah. So Helping Hands keeping all three
21 dispensaries. Let's just go that scenario. All three
22 dispensaries, it's Helping Hands. Seventy percent of all the
23 proceedings is going to go to their charity --

24 Q Okay.

25 A -- from all three. So we said instead of having

1 all three contribute 70 percent, why don't we have two
2 dispensaries to contribute 100 percent of proceedings to their
3 charity.

4 Q Why don't the Jamesons take two and you keep one?

5 A Well, that's a possibility, sure.

6 Q And you discussed that possibility back at the
7 country club meeting in June; right?

8 A No.

9 MR. KAHN: Objection, Your Honor. It misstates the
10 testimony.

11 THE COURT: Overruled.

12 BY MR. KEMP:

13 Q No, you didn't talk about that then?

14 A No. At that time the Jamesons didn't have any --
15 the Jamesons was not going to be owner. Ownership conversation
16 came up after we were awarded.

17 Q And you said that you haven't consummated the
18 transaction with the Jamesons because of some sort of tax
19 situation; right?

20 A Yes.

21 Q Okay. Would another reason that the transaction
22 with the Jamesons has not been consummated be Mr. Bernstein
23 and ReLeaf's lawsuit against the Jamesons?

24 A I don't think so.

25 Q That doesn't have anything to do with it?

1 A No.

2 Q Okay. All right, back to Julie Murray. You
3 understood that Julie Murray was involved with another
4 dispensary group? Did you know that?

5 A I didn't know that.

6 Q Okay. And I don't know how much you've been here,
7 but do you know now that Julie Murray is one of the owners of
8 Thrive?

9 A I -- yes, I heard about that.

10 Q Okay, so you know that. And you know about the
11 anti-monopoly provision in which no person or entity can be
12 involved with more than eight dispensaries in Clark County?
13 Do you know about that?

14 MR. KAHN: Objection, Your Honor. Misstates the law.

15 THE COURT: Overruled.

16 MR. KEMP: We can pop the law up, Your Honor, if Mr.
17 Prince wants to see it.

18 THE COURT: That was Mr. Kahn.

19 MR. PRINCE: That was Mr. Kahn.

20 THE COURT: That was Mr. Kahn.

21 MR. KEMP: My mistake. Okay.

22 Shane -- well, let's not get into that.

23 BY MR. KEMP:

24 Q So you know that Thrive had two dispensaries. Today
25 you know that Thrive has two and that they won licenses for,

1 what, five?

2 A I don't know.

3 Q Okay.

4 A Yeah, whatever they have.

5 Q Let's say they have seven on the Thrive side and
6 you've got three on the Helping Hands side. Seven and three
7 is ten; right?

8 A Right.

9 Q Ten is two more than eight; right?

10 A Okay.

11 Q And Ms. Murray to this day is an owner of Thrive and
12 a member of your board of directors; correct?

13 A Okay.

14 Q Have you had any discussions with Thrive as to
15 whether you're going to each give up one of them to comply
16 with the anti-monopoly provisions, whether they're going to
17 throw in two, whether you're going to throw two? Have you
18 talked to them about it?

19 MR. KAHN: Objection, Your Honor. Misstates the law.

20 THE COURT: Overruled.

21 THE WITNESS: Julie Murray doesn't own anything.
22 She's just a board member.

23 BY MR. KEMP:

24 Q Right. She's just a board -- well, let me ask it
25 differently.

1 A So how does she own ten dispensaries?

2 Q If it turned out that there was a potential problem
3 with Julie Murray owning -- being a board member and an owner
4 of ten different dispensaries, would you just ask her to leave
5 the board?

6 MR. SHEVORSKI: Objection. It would be a
7 hypothetical.

8 THE COURT: Overruled.

9 THE WITNESS: If there is an issue, we may. We'll
10 seek our attorney's advice.

11 MR. KEMP: Your Honor, can I have one second?

12 THE COURT: Yes, you can have one second. How about
13 a minute?

14 MR. KEMP: Maybe 15 seconds.

15 BY MR. KEMP:

16 Q Okay. So I just want to go back to this pre-app.
17 period --

18 A Yes.

19 Q -- up to September 10th and when you first talked to
20 the Jamesons. It's your testimony as we sit here today that
21 during that four month period there was no discussion
22 whatsoever at any time about the Jamesons being prospective
23 owners of any dispensaries that Helping Hands got. Is that
24 your testimony?

25 A Correct.

1 Q Okay. And if I -- if and when we get this
2 memorandum of understanding you talked about, there won't be
3 anything in there about giving them an option to purchase,
4 splitting the dispensaries two for them, one for me, nothing
5 like that would be in there; right?

6 A All they care about is their -- for me to give 70
7 percent of proceeds to their charity.

8 MR. KEMP: Okay. Thank you very much, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Gentile.

11 CROSS-EXAMINATION

12 BY MR. GENTILE:

13 Q Mr. Terteryan --

14 A Yes.

15 Q -- you have still before you, I believe, maybe not,
16 Exhibit 5064. Do you still have that in front of you?

17 A Yes.

18 Q All right. Now, with regard to that exhibit --

19 A Yes.

20 Q -- you've identified it; am I right?

21 A I'm sorry?

22 Q You know what it is.

23 A Yes.

24 Q And you received it from the Jamesons; is that --

25 A Correct.

1 Q -- what I'm to understand?

2 A Yes.

3 Q And how long ago did you receive that? Let me give
4 you a hint. It probably couldn't have been before March.

5 A After March. How's that?

6 Q After March. Okay. And you received it at the same
7 time or really close in time to when you received 5063. Take
8 a look at 5063, please.

9 A Yes.

10 Q Am I right?

11 A Yes.

12 Q All right. Did you receive them at the same time?

13 A I can't recall if I received them same time or --

14 Q Well, pretty close?

15 A Probably. I can't recall.

16 Q You can't recall.

17 A Yeah.

18 Q Okay. Now, I want to show you -- well, I want to
19 ask you something.

20 A Yes.

21 Q With regard to 5064, does Exhibit 5064 represent all
22 of the documents that you received that had 5064 as part of
23 it, or was there more and 5064 is part of what you got? Do
24 you understand my question?

25 A Yes, I do.

1 Q Or don't you remember?

2 A I just trying to remember if I've seen more of it or
3 not.

4 Q You don't remember?

5 A No.

6 MR. GENTILE: Okay. If I may approach the witness.

7 THE COURT: You may.

8 BY MR. GENTILE:

9 Q I want to show you --

10 MR. GENTILE: Your Honor, do you have a copy of
11 this, 266?

12 THE CLERK: It's not admitted yet, but --

13 THE COURT: I don't get anything till it's admitted,
14 Mr. Gentile.

15 MR. GENTILE: Well, I understand that. But you're
16 going to need one in a minute.

17 BY MR. GENTILE:

18 Q I want to show you what is Plaintiffs' Proposed
19 Exhibit 266, all right.

20 A Okay.

21 Q That's it right there.

22 THE COURT: And this is ledger-size paper?

23 MR. GENTILE: This is ledger-size paper. And,
24 unfortunately, it's so small in terms of a font, but it's the
25 best we could do on the fly.

1 BY MR. GENTILE:

2 Q Take a look at 266. You'll notice that it's
3 multiple pages; am I right? Four pages?

4 THE COURT: Sir, I'm going to give you this
5 magnifying glass just in case. It's not my big one. I don't
6 know where the big one went.

7 THE WITNESS: Thank you.

8 THE COURT: Is there an objection to 266?

9 MR. KAHN: Well --

10 THE COURT: Has anyone been able to read 266?

11 MR. KAHN: Is this about establishing foundation,
12 Your Honor? Is there --

13 MR. GENTILE: Right now the only question I've got
14 is has he seen it before.

15 THE COURT: I know. I'm just trying to skip ahead,
16 if I could.

17 MR. KAHN: That's your only question on it, is has
18 he seen it?

19 MR. GENTILE: No. There's going to be more.

20 MR. KAHN: Okay. Well, [inaudible] if you're going
21 to establish foundation for the document for it to be
22 admitted.

23 THE COURT: Sir, have you seen it before?

24 BY MR. GENTILE:

25 Q Have you seen this before?

1 A Not in this format.

2 Q Not in that format. Have you seen it in a different
3 format? I grant you that you probably were not given this
4 document with a font that size, but have you seen it before?

5 A Well, I receive an Excel sheet.

6 Q Right.

7 A Right. So I went through it.

8 Q Does this look like the Excel sheet that you saw?

9 A I believe in the Excel sheet I saw a monthly
10 projection, I believe.

11 Q Right. So this is -- so here's my --

12 A On this one we can't see it, on this other one.

13 Q All right. Let me ask it a little different.

14 A Sure.

15 Q Would you agree that the one that your lawyer
16 put into evidence through you, Exhibit 5064, is part of
17 Exhibit 266? And just so that I can help you --

18 THE COURT: And if you need to compare the one that
19 you looked at earlier, sir, I think you still have that
20 exhibit there with you.

21 THE WITNESS: Yes, I did see -- it is part of it,
22 because this is summary, and those are more detailed. Yeah.

23 BY MR. GENTILE:

24 Q All right. So you did receive 266.

25 A I remember seeing a monthly --

1 MR. GENTILE: I move it in at this time.

2 MR. KAHN: There's no objection, Your Honor. That's
3 fine.

4 THE COURT: Be admitted.

5 (Plaintiffs' Exhibit 266 admitted)

6 BY MR. GENTILE:

7 Q Okay. Now look at the top of 266.

8 MR. GENTILE: And do we have this and do we need
9 like a super screen to make it readable?

10 THE COURT: Oh, Ramsey. You found it. Sweet.

11 (Pause in the proceedings)

12 BY MR. GENTILE:

13 Q Does that help you at all?

14 A I can see it a little.

15 Q All right. Well, had we known that this was going
16 to come into evidence, that 5064 was going to come into
17 evidence this morning before this morning, we would have had
18 this in a much larger format than you see.

19 A Okay.

20 Q But this is the best we could do in an hour, okay.

21 MR. GENTILE: Can you blow it up? Good. All right.
22 That's the portion I want.

23 BY MR. GENTILE:

24 Q All right. So can we go to the expense part. There
25 we go. Expense Categories. Would you agree -- now, we have

1 266 on the screen right now.

2 A Okay.

3 Q But what -- excuse me. I'm sorry. 266 is the
4 exhibit we're dealing with. What we have on the screen right
5 now is only the part that talks about expense category.

6 A Okay.

7 Q See that? Compare that to 5064, and I'm going to
8 ask you to agree with me that what's on the screen right now
9 as part of 266 is what 264 [sic] presents. I mean 5064
10 presents.

11 (Pause in the proceedings)

12 BY MR. GENTILE:

13 Q 5064 only contains expense categories; right?

14 A Yes, it does.

15 Q All right. And 266, what we're looking at on the
16 screen is the expense categories that have been reproduced in
17 5064; am I right?

18 A I have to look at it.

19 Q I ask you to do that. Take your time. We've spent
20 enough of it here, so a little more won't matter.

21 A Yes, they're the same.

22 Q They're the same. Okay. Now, if you will, sir,
23 please go to the top of that page, of 266 and enlarge it,
24 please. You have 266 in front of you. I again apologize that
25 we didn't have enough time to make it big enough. But I can

1 assure you that the Judge would be all over us if what's on
2 the screen right now was not 266, okay.

3 THE COURT: I can't read 266, for the record,
4 because it's really small. But what's on the screen appears
5 to be something that might be 266.

6 MR. GENTILE: As an officer of this court I assure
7 that it is.

8 THE COURT: Thank you, Mr. Gentile. I appreciate
9 that.

10 BY MR. GENTILE:

11 Q Now, would you agree that what's on the screen right
12 now is the top of the first -- actually, it's the top of the
13 second page of 266.

14 A Correct.

15 Q Right? So it is entitled "The Combined 600 Tickets
16 Per Day"; right?

17 A Right.

18 Q All right. So the numbers that it reflects, 266
19 reflects and 5064 reflects, is a combination of all, all three
20 of the licenses that you obtained -- the provisional licenses,
21 excuse me --

22 MR. KAHN: Objection, Your Honor.

23 THE COURT: Wait. Can you let him finish the
24 question.

25 //

1 BY MR. GENTILE:

2 Q It is a combination, it's a combined projection,
3 it's a projection of income that is basically a projection,
4 because those stores never operated; am I right?

5 A As that projection.

6 Q Okay. And it's a combined projection. It's for all
7 of them, not per store; am I right?

8 A No, you're not right.

9 Q I'm not right. Okay. Well, it kind of speaks for
10 itself. You would agree that everything that you're looking
11 at here was on the original that you saw?

12 A Yeah, it seems familiar.

13 Q And it was based on 600 tickets per day; am I right?

14 A Right.

15 Q Okay. Now, you didn't create this document?

16 A No, I didn't.

17 Q You weren't -- you didn't receive it directly from
18 either Mr. Ritter or Mr. Kouretas; correct?

19 A No, I didn't.

20 Q You received it from the Jamesons?

21 A Correct.

22 Q And as a matter of fact, their name, the Jamesons
23 surname, is on the very top of this document --

24 A Correct.

25 Q -- am I right? Okay.

1 A Sure.

2 Q Can I ask you why you only put part of this document
3 into evidence instead of all of it?

4 A Why I put?

5 Q Or is that your lawyer's --

6 A I print it. This is --

7 Q That was your lawyer's --

8 A No. I'm assuming --

9 Q No, I don't you to assume or speculate or anything.

10 THE COURT: We don't want you to assume, sir.

11 THE WITNESS: Well, when I print this out also, and
12 I was thinking about it, I believe when we receive the
13 attachment it was probably a print area that it -- when you
14 set a print area it print it. And I remember when I print
15 this it came out a few pages.

16 BY MR. GENTILE:

17 Q Okay.

18 A But on the spreadsheet you can see it more. So --

19 Q All right. So -- but you didn't put the spreadsheet
20 in, you just put in the part of it that printed out, is what
21 you're saying?

22 A When I print it, that's how it printed out.

23 Q When did you print that?

24 A Two weeks ago, three weeks ago --

25 Q Two weeks ago.

1 A -- a week ago? I don't know.

2 Q So you printed it when you knew you that you might
3 have to come to court and testify about it?

4 A No. I didn't even know I was going to come to
5 testify until yesterday.

6 Q So, if I'm hearing you correctly, nobody could have
7 had this printed document until two weeks ago if they got it
8 from you?

9 A From me? I don't think anybody got it from me.

10 Q You didn't give it to anybody?

11 A No.

12 Q You just printed out just the part that's in
13 evidence here as 5064, and you did it only for yourself?

14 A Right.

15 MR. KAHN: Objection, Your Honor. Mr. Terteryan
16 didn't put the document into evidence. His counsel did.

17 THE COURT: No. We're talking about printing of the
18 document, as opposed to the admission of the document, which
19 are two different events.

20 MR. KAHN: Okay, Your Honor.

21 THE COURT: Okay.

22 BY MR. GENTILE:

23 Q Well, let me ask you a little different thing here.
24 Without talking about anything that you might have said to
25 your lawyer or he said to you with regard to this exhibit,

1 5064, did you give him 5064?

2 A No, I didn't give him.

3 Q So you don't know how he got it; fair to say? I
4 mean, if he told you how he got it, don't tell us that.

5 A Yeah.

6 Q You don't know how he got it; right?

7 A I mean --

8 Q Well, listen, you could say to me, yes, I do, but I
9 can't tell you.

10 A Yeah. Yes, I do, but I can't tell you. How's that?

11 Q Okay. I can live with that. I can live with that,
12 okay. That's good. I can live with that.

13 A Okay.

14 Q And you don't know why he chose to only put the part
15 in that he did in 5064? That wasn't your decision, that was
16 his?

17 A That's not my decision what comes into the court.

18 Q Okay.

19 THE COURT: We used to call that legal strategy, Mr.
20 Gentile.

21 MR. GENTILE: I get it. We used to call it hiding
22 the ball.

23 BY MR. GENTILE:

24 Q Just a couple of other areas, and I'll be done.

25 You testified that you have been in other

1 businesses. What other businesses have you been in?

2 A I own --

3 Q I know you've got a jeans company in Downtown L.A.,

4 right, L.A. Jeans?

5 A Yes. Yes, I did.

6 Q You closed that in 2017?

7 A '16.

8 Q '16? You paid rent till '17?

9 A No. I had another company maybe in L.A. Apparel

10 that was in the same --

11 Q All right. What other businesses?

12 A Before that I owned gas station, car wash,

13 janitorial service, used car dealer.

14 Q And most of those have been in the Burbank, Glendale

15 area?

16 A Burbank, Glendale, Downtown.

17 Q And there's a really large Armenian population

18 there.

19 A That's right.

20 Q Largest in the United States, maybe largest in the

21 world outside of Armenia; fair to say?

22 A Correct. Yes.

23 Q All right. And you talked about your friends and

24 family loaning you money.

25 A Yeah.

1 Q Most of your friends and family Armenian?

2 A Sure. I have some other friends, too, sure.

3 Q Well, just -- I'm sure you do, but just to be honest
4 with you, we looked at 97-page report on you, and I didn't see
5 a single name that wasn't Armenian except Voorhis.

6 A Except who?

7 MR. KAHN: Objection, Your Honor.

8 BY MR. GENTILE:

9 Q Voorhis.

10 MR. KAHN: Lacks foundation. Relevance.
11 Argumentative.

12 THE COURT: Overruled.

13 THE WITNESS: No. I did have lot of friends. I'm a
14 popular guy.

15 BY MR. GENTILE:

16 Q All right. Here's my question for you, okay.
17 Here's my question for you. You testified that you had a --
18 you have from family and friends \$1.8 million in loans.

19 A Yes.

20 Q All right. And you testified that those loans pre-
21 existed your involvement with the Jamesons --

22 A Correct.

23 Q -- right? If I understand you correctly, since 2014
24 you have had a cultivation license in the state of Nevada; am
25 I right?

1 A Correct.

2 Q Did those loans occur after 2014?

3 A Yes.

4 Q Okay. And when the application for the retail
5 cannabis license was filed those loans existed, because you
6 say they pre-existed your knowing the Jamesons --

7 A Correct.

8 Q -- right? When -- at the time of filing the
9 application you did not file it as an owner, because you
10 weren't an owner or --

11 A Myself?

12 Q -- according to the -- according to the documents,
13 your wife, another Armenian lady, and an Asian lady were the
14 purported owners. And if you want to know what "purported"
15 means, we could deal with that.

16 A Yes.

17 Q But they were presented as the owners --

18 A Correct.

19 Q -- right? They had to put their financial
20 statements up --

21 A Yes.

22 Q -- in the course of filing. These loans were not
23 made to your wife, these loans were made to you; am I right,
24 these 1.8 million in loans?

25 MR. KAHN: Objection, Your Honor. Misstates the

1 evidence. Foundation.

2 THE COURT: Overruled. You may answer. And if you
3 need to explain, you may.

4 THE WITNESS: It's a loan that it's to my wife and
5 me.

6 BY MR. GENTILE:

7 Q Did your wife list on her financial statement the
8 persons from whom, the friends and family, most of whom are
9 Armenian, from whom the money was borrowed?

10 MS. SHELL: Your Honor, can I just lodge an
11 objection? I really don't understand what the ethnic
12 backgrounds of the people loaning money to the witness has to
13 do with anything.

14 MR. GENTILE: You will in a minute.

15 THE COURT: Overruled.

16 THE WITNESS: I believe, if I'm not mistaken, it's
17 listed on our tax returns, and we did supply the tax return --
18 well, personal we did. I don't know if we did Helping Hands,
19 but Helping Hands' tax return has show -- does show money --
20 liabilities for that company.

21 BY MR. GENTILE:

22 Q Right. No. I understand that.

23 A Yeah.

24 Q But does it say to whom, the specific people --

25 A It does.

1 Q -- to whom that money is loaned?
2 A It does.
3 Q It does?
4 A Yes.
5 Q And that's on your tax return?
6 A Yes.
7 Q Helping Hands was created in what year?
8 A 2014.
9 Q Okay. You didn't sell any -- you didn't grow any
10 cultivation --
11 A No.
12 Q -- in '14.
13 A No.
14 Q Did you make any money?
15 A No.
16 Q Why'd you file a tax return?
17 A We had to.
18 Q 2015 --
19 A Yeah.
20 Q -- did you make any money?
21 A No.
22 Q 2016 did you make any money?
23 A No.
24 Q 2017 did you make any money?
25 A No.

1 Q No. 2018, up until September you didn't even plant
2 a seed; am I right? So at least as of the time that you
3 applied for a retail license you had no real experience in the
4 cultivation business, because you hadn't done any growth.
5 Fair to say?

6 A But I had my California --

7 MR. KAHN: Objection, Your Honor. Misstates the
8 testimony.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: I had my California operation.

11 BY MR. GENTILE:

12 Q Okay. And have you ever heard of Armenian Power?

13 MR. KAHN: Objection, Your Honor. Relevance.

14 THE WITNESS: What?

15 THE COURT: Overruled.

16 BY MR. GENTILE:

17 Q You know what I just asked you.

18 A No. But it's --

19 Q Mr. Terteryan, have you ever heard --

20 A Yeah, yeah. I heard Armenian Power, I hear White
21 Power, I hear MS13, yeah. So what?

22 Q Well, you're putting it in pretty much the right
23 category. Let's add the Mafia to it, because I'm Italian and
24 I'm not ashamed of it.

25 MS. SHELL: Objection.

1 MR. KAHN: Objection, Your Honor. This is
2 argumentative.

3 THE COURT: Overruled.

4 BY MR. GENTILE:

5 Q The bottom line to it is, sir, have any of the
6 people that loaned you money been backgrounded by the State of
7 Nevada for purposes --

8 MR. KAHN: Objection. Relevance.

9 BY MR. GENTILE:

10 Q -- of this license?

11 THE COURT: Overruled.

12 THE WITNESS: Have they lent -- they loaned me
13 money, but, no, I don't think so.

14 MR. GENTILE: Nothing further.

15 THE WITNESS: Thank you.

16 THE COURT: Anyone else on -- Mr. Bult.

17 MR. BULT: Very briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BULT:

20 Q Mr. Terteryan, my name is Adam Bult. I represent
21 the ETW plaintiffs in this action.

22 You remember earlier this morning when your lawyer
23 asked you about why you applied for a dispensary license?

24 A Why I applied for this one? It's essential for --
25 to me, cultivation to have a dispensary the way the market is,

1 yes.

2 Q Right. But I think you've testified that you only
3 have a cultivation license. Or do you also have a production
4 license?

5 A Production, too.

6 Q You have a production, too?

7 A Yes.

8 Q Did you -- have you ever done anything with that
9 license?

10 A Not yet.

11 Q Okay.

12 A They've done small things, but --

13 Q Okay. And I think your testimony earlier this
14 morning was it was essential to get a dispensary license
15 because it was essential to survive. Is that what you
16 testified to?

17 A Correct. And we did apply something in 2014, also.

18 Q And why was it essential to survive that you receive
19 a recreational dispensary license?

20 A Because the way market is dispensaries control who
21 they buy it from. So I'd like to have -- if I can get my own
22 dispensary, we'll sell our own product in our dispensary.

23 Q So that you -- so that you have an outlet or --

24 A Sure.

25 Q Okay. And is that also called vertical integration,

1 Mr. Terteryan?

2 A Yes.

3 MR. BULT: Okay. Nothing further. Thank you.

4 THE COURT: Anyone else from the plaintiffs' group
5 wish to ask any questions?

6 Any questions from the State?

7 MR. SHEVORSKI: No, Your Honor.

8 THE COURT: An additional questions from any of the
9 defendants in intervention before I go to Mr. Kahn? That
10 would mean I'm going to Mr. Kahn.

11 MR. KAHN: Thank you, Your Honor. I'll try and be
12 brief.

13 REDIRECT EXAMINATION

14 BY MR. KAHN:

15 Q Mr. Terteryan, I'd like to address a couple of the
16 questions that were asked from the other side of the table.

17 Mr. Parker asked you a question earlier, why are you
18 spending money right now while the litigation is going on, and
19 he used the term, isn't that at your own peril. Would it be
20 at your own peril if you chose not to spend any money and
21 complete the dispensary buildout before December 5th, 2019?

22 A No.

23 Q It would be at your peril --

24 A Yes. I have to.

25 Q I'm sorry. You have to.

1 A I have to spend money in order to meet the deadline.

2 Q Right. You can't -- you can't not spend money
3 simply because there's a lawsuit; correct?

4 MR. PARKER: Your Honor, he's leading again.

5 THE COURT: Can you not lead.

6 BY MR. KAHN:

7 Q The fact that a lawsuit exists, would that cause you
8 to make a business decision not to spend money for purposes of
9 meeting your December 5th deadline?

10 A No. I have to spend it no matter what. You know, I
11 mean, I like to do things little different if there was no
12 lawsuit.

13 Q Okay. Did you actually prepare the Helping Hands
14 2018 dispensary application?

15 A No, I did not.

16 Q The J.W. Whitney Group consultant prepared it?

17 A Yes.

18 Q Okay. If you were to go and look at a property that
19 was raw land in seeking out proposed locations, would there be
20 a sink onsite that would comply with the regulations for a
21 dispensary?

22 A I don't think so.

23 Q Would there be a man trap onsite if raw land was
24 there?

25 A I don't think so.

1 Q Could you use a piece of raw land property as a
2 proposed location?

3 A I think so, yes.

4 Q Okay. And then the proposed location, when you're
5 putting plans together, those plans -- would those plans
6 include what would be necessary if and when you built out a
7 dispensary? Is that correct?

8 A Correct.

9 Q So it wouldn't matter if you went and looked at a
10 McDonald's as a proposed location, because that wouldn't
11 comply with the dispensary regulations; correct?

12 A No, it won't.

13 Q Do you know if the State regulations or the statute
14 require that if a entity is provided a loan that they have to
15 disclose and background check those lenders?

16 A I don't know anything about it. That lenders have
17 to disclose? Is that the question?

18 Q Yeah. Do you have to -- do you have to background
19 check your lenders?

20 A I don't think so.

21 Q Okay. You're currently employed by Helping Hands
22 Wellness Center, Inc.; correct?

23 A Correct.

24 Q You have an employment contract that you provided to
25 the State of Nevada; is that correct?

1 A Correct.

2 Q And you obtained an agent card and were background
3 checked through that process; is that correct?

4 A Correct.

5 Q Okay. And the title of COO is essentially because
6 you are operating the facility, but you haven't been
7 designated actually as a chief operating officer, that's just
8 the role you fill?

9 A Yes.]

10 Q Okay. Thank you. When you engaged with the
11 Jamesons to assist Helping Hands going forward with
12 potentially owning dispensaries what were part of the reasons
13 you engaged with them?

14 A For several reasons. They had experience in the
15 industry, they were bringing qualified team, and it was good
16 for our application. Everything was -- that's the reason.

17 Q Okay. When Helping Hands entered into a \$750,000
18 loan that's been discussed here today who signed on behalf of
19 Helping Hands Wellness Center that loan?

20 A My wife, Klaris Terteryan.

21 Q And is she the individual and officer who
22 customarily and ordinarily executes documents on behalf of the
23 company?

24 A Yes.

25 Q Do you ever sign any of those documents on behalf of

1 the company?

2 A No.

3 Q And it's been clear from Mr. Gentile's presentation
4 that you're an Armenian-American; is that correct?

5 A I've been here about almost four years.

6 Q And there was a question from Mr. Parker that didn't
7 you benefit from not putting you on the application for
8 diversity purposes. He asked that question; correct? But
9 wouldn't you actually benefit by being a minority that would
10 be included on the application?

11 A Of course.

12 MR. KAHN: I just want to clarify for the record,
13 Your Honor.

14 BY MR. KAHN:

15 Q Mr. Terteryan, you couldn't remember the charity
16 that the Jamesons are involved with. Was it the Volunteers in
17 Medicine charity?

18 MR. GENTILE: Objection. That's leading.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, it was Volunteers in Medicine.

21 BY MR. KAHN:

22 Q And from Mr. Gentile's full spreadsheet, I think it
23 was Plaintiffs' Exhibit 266, is that correct, none of the
24 numbers regarding projected net income are different from the
25 Intervention Exhibit 5064 versus Plaintiffs' Exhibit 266; is

1 that correct?

2 A It doesn't seem like.

3 Q Okay. So when the exhibit says in year one
4 projected income \$6,743,452 and then \$8,395,128 projected for
5 year two, and \$10,572,933 for year three are projected net
6 income profits, those would be -- those would match up with
7 the exhibits submitted from Exhibit 5064; is that correct?

8 A Correct.

9 Q Okay. And when you look at the expense on either
10 5064 or 266, halfway through the expense sheet there's TGIG
11 LLC management fee, 6 percent gross fee. What's the number in
12 year one. Do you see where I'm looking at? It's about
13 halfway through down the expenses.

14 A 1,489,574.

15 Q And then again in year two?

16 A 1,815,887.

17 Q And those numbers are then prior to the calculation
18 for net profit; is that correct?

19 A Correct.

20 Q And when you look at the first page of that document
21 on the assumptions it said there on flower 50 percent will be
22 provided by TGIG product; is that correct?

23 A Correct.

24 Q Concentrate, 70 percent will be TGIG product; is
25 that correct?

1 A Correct.

2 Q And edibles 60 percent will be TGIG product; is that
3 correct?

4 A Correct.

5 MR. KAHN: Okay. Just one second, Your Honor. I'm
6 sorry.

7 BY MR. KAHN:

8 Q Going to the board for Helping Hands --

9 A Yes.

10 Q -- that was a prospectus board in the event Helping
11 Hands would win any dispensaries; is that correct?

12 A Correct.

13 Q All right. And do you understand that the statute
14 calls for disclosure of prospectus owners, officers, and board
15 members?

16 A Correct.

17 Q Okay. So you had to disclose those prospective
18 board members that would be involved in the dispensary had
19 Helping Hands won licenses; is that correct?

20 A Yes.

21 Q On a community impact statement that would have been
22 required for the application do you understand community
23 impact to be just the immediate surrounding area of a proposed
24 dispensary location, or the community in general where the
25 dispensary may be located?

1 A Yeah, community in general was my understanding.

2 Q Okay. So then a actual physical location let's say
3 right across the street wouldn't necessarily only look at the
4 community impact of what occurs right here in this block, but
5 potentially of the greater Downtown Las Vegas area; is that
6 correct?

7 A Correct.

8 Q And even the city of Las Vegas area; correct?

9 A Correct.

10 Q And then even the entire Clark County potentially?

11 A Possibly.

12 Q And as part of the community impact statement would
13 Helping Hands notate in its application that it was going to
14 be donating a generous portion of its profits to nonprofits to
15 help the community?

16 A Yes.

17 Q Not just the community right next to the location;
18 correct?

19 A No.

20 MR. KAHN: That's all, Your Honor. Thank you.

21 THE COURT: Anyone else?

22 Thank you, sir. Have a nice afternoon.

23 THE WITNESS: Thank you.

24 THE COURT: Does anyone the defense side of the
25 room, including those of you sitting in the box, have any

1 additional witnesses you wish to call for purposes of this
2 hearing?

3 MR. SHEVORSKI: Nothing from the State, Your Honor.

4 MR. WIGHT: Nothing from us.

5 THE COURT: Before I ask people if they rest I am
6 now going to go to the plaintiffs' side of the room. Do any
7 of you have any additional witnesses that you intend to call
8 for this proceeding?

9 I see Mr. Miller saying, yes, which is always a
10 problem. Nice joke, Mr. Miller.

11 MR. MILLER: It was an inside joke, Judge, to see if
12 we can get you angry.

13 MR. SHEVORSKI: She's getting there.

14 MR. MILLER: Trying to egg Mr. Gentile on. No, we
15 do not.

16 THE COURT: Yeah. So no one on the plaintiffs'
17 side?

18 MR. BULT: No more witnesses, but there were a few
19 exhibits that were left out for ETW. I don't know if you want
20 to do that now.

21 THE COURT: Okay. That is now.

22 MR. BULT: Okay. Great.

23 THE COURT: So which ones are missing, Mr. Bult?

24 MR. BULT: I talked to everyone, and they were ETW's
25 Proposed 414 through -26 and 432 through -45, and there's no

1 objection.

2 THE COURT: Is there any objection to 414 through
3 426 and 432 through 435?

4 MR. BULT: -45.

5 THE COURT: What?

6 MR. BULT: -45, Your Honor.

7 THE COURT: -45, 432 through 445?

8 MR. CRISTALLI: Can we just have your indulgence for
9 one minute, Your Honor?

10 THE COURT: That's why I'm sitting here patiently.

11 MR. GRAF: I would still like to make my record,
12 Your Honor.

13 THE COURT: I have -- you're on my list, and Mr.
14 Gutierrez is on my list separately. We'll see.

15 (Pause in the proceedings)

16 THE COURT: So, Mr. Prince, even though they may
17 have identical footers, they may not be the same. I had this
18 discussion yesterday. I'm waiting. I'm waiting for a
19 response. You said, give us a minute, Judge.

20 (Pause in the proceedings)

21 THE COURT: All right. So did we finish our
22 discussions about the Proposed 414 through 426 and 432 through
23 445? Are there any objections to 414 through -26 and 432
24 through 445?

25 MR. SHEVORSKI: Not from the State, Your Honor.

1 MR. WIGHT: Not from us.

2 THE COURT: Hearing no objections, those are
3 admitted.

4 (Plaintiffs' Exhibits 414 through 426
5 and 432 through 445 admitted)

6 THE COURT: Does that conclude your presentation of
7 the evidence on behalf of ETW and the related entities?

8 MR. BULT: Yes, Your Honor.

9 THE COURT: Okay. So that takes me to Mr.
10 Cristalli.

11 MR. CRISTALLI: Yes. So what we have remaining --
12 Your Honor, are you ready?

13 THE COURT: I am.

14 MR. CRISTALLI: -- 219, 227, 232 through 234, 242
15 through 244, 247 through 249. And I believe that concludes
16 what we did not have in that we requested to get in, which the
17 State and the intervenors have agreed to stipulate to.

18 THE COURT: Any objection?

19 MR. SHEVORSKI: No objection from the State, Your
20 Honor.

21 THE COURT: Hearing none, they'll be admitted.

22 (Plaintiffs' Exhibits 219, 227, 232 through 234,
23 242 through 244, and 247 through 249 admitted)

24 THE COURT: Does that conclude the presentation of
25 the evidence by the Serenity parties? Somebody needs to say,

1 yes, Judge. I've got three attorneys.

2 MR. CRISTALLI: Yes, Your Honor.

3 THE COURT: Great. Okay. If I could go to the M&M
4 parties. Mr. Kemp, Mr. Rulis, do you have any additional
5 evidence to present at this time?

6 MR. KEMP: No, Your Honor.

7 THE COURT: Okay. Does that conclude the
8 presentation of evidence on behalf of M&M?

9 MR. KEMP: And LivFree.

10 THE COURT: I'm calling one for the top case.

11 Mr. Parker, we're on you.

12 MR. PARKER: We're done, Your Honor. Yes.

13 THE COURT: Does Mr. Hawkins and his entities have
14 any additional information to present to the Court at this
15 time?

16 MR. PARKER: That is it, Your Honor.

17 THE COURT: Are there any other plaintiff entities
18 to whom I have not made a request? Do all of the plaintiff
19 entities rest?

20 MR. GENTILE: We certainly --

21 THE COURT: For purposes of the preliminary
22 injunction hearing only do all of you rest?

23 MR. KEMP: We rest, Your Honor.

24 THE COURT: I heard a bunch of yeses. Okay. Good.
25 Now I'm going to State. Does the State have any

1 additional evidence present at this time?

2 MR. SHEVORSKI: No, Your Honor.

3 THE COURT: Does the State rest?

4 MR. SHEVORSKI: Yes, Your Honor.

5 THE COURT: Okay. Now I'm on the defendants in
6 intervention. Who wants to go first? I've got a group. I
7 don't care what order you go in.

8 MR. WIGHT: [Unintelligible] go first. No further
9 evidence. We rest.

10 THE COURT: And you checked your exhibits?

11 MR. WIGHT: Yes.

12 MR. KAHN: Your Honor, I'm standing right next to
13 him. We rest subject to providing Mr. Kemp that redacted
14 exhibit by tomorrow.

15 THE COURT: Thank you.

16 MR. KAHN: You're welcome.

17 MS. SHELL: And, Your Honor, GreenMart rests.

18 THE COURT: And you don't have any additional
19 evidence to present?

20 MS. SHELL: No, Your Honor.

21 MR. HONE: On behalf of Lone Mountain we rest, as
22 well.

23 MR. GRAF: Your Honor, on behalf of Clear River we
24 rest, also.

25 MR. GUTIERREZ: On behalf of Essence and Thrive we

1 rest, and we don't have any [inaudible].

2 THE COURT: What was this?

3 MR. GUTIERREZ: So that is what Mr. Cristalli --

4 that is what Mr. --

5 THE COURT: It was delivered over the lunch hour.

6 MR. GUTIERREZ: So that's Shane Terry's redacted

7 application that Dulce asked for yesterday that was Mr.

8 Cristalli's --

9 What exhibit was it?

10 THE COURT: Here you go.

11 THE CLERK: It hasn't been marked [inaudible].

12 MR. CRISTALLI: It would be next in --

13 THE CLERK: It wasn't marked, because we didn't have

14 it physically. So --

15 MR. CRISTALLI: So next in order.

16 THE CLERK: For you? For plaintiffs?

17 THE COURT: It was Mr. Terry's?

18 MR. GUTIERREZ: Yes.

19 THE COURT: 267.

20 THE CLERK: 267.

21 MR. CRISTALLI: Thank you.

22 THE COURT: And that was the stipulated document

23 during Mr. Terry's testimony that he stipulated that if

24 agreed-upon redactions were made he would have no objection.

25 MR. GUTIERREZ: That's correct, Your Honor.

1 THE COURT: All right. So it will be admitted.

2 (Plaintiffs' Exhibit 267 admitted)

3 THE COURT: Thank you, Mr. Gutierrez for explaining
4 that.

5 Anybody else on the defendants or defendant
6 intervention teams wish to present any additional evidence?

7 Do you all rest?

8 (All responded in the affirmative)

9 THE COURT: Okay. Mr. Graf, you wanted to make a
10 record about some stuff.

11 MR. GRAF: Your Honor, this morning there were some
12 objections made during the presentation of evidence and
13 testimony by Mr. Terteryan by Mr. Kahn. Those objections were
14 based upon leading. I believe that earlier in this hearing,
15 18, 19 days ago I myself made several objections regarding
16 leading during the presentation of proof by the plaintiff
17 entities. Those objections were all sustained -- or, excuse
18 me, they were all overruled, and the general tenor of Her
19 Honor's rulings were and I think everybody got the impression
20 that Her Honor wanted the evidence to come in and the
21 testimony to come in. And I just think that today when the
22 objection was made as to leading, Mr. Kahn was eliciting
23 evidence and testimony from Mr. Terteryan, that the general
24 atmosphere of allowing the admission of testimony and evidence
25 from a witness changed. And I thought that it was odd, and I

1 wanted to make sure that we made a record of it here today on
2 the last day of testimony. And supposedly tomorrow we're
3 going to be closing, when the most expeditious day would be
4 that you would want to ask leading questions to try and get
5 the testimony done and over with.

6 THE COURT: Okay.

7 MR. GRAF: That's it.

8 THE COURT: Usually I sustain leading questions
9 unless they're on preliminary matters or of an adverse
10 witness. But I don't remember the specific rulings, Mr. Graf,
11 but I'll take your word for it.

12 MR. GRAF: Thank you, Your Honor.

13 THE COURT: Anybody else want to say anything for
14 purposes of the record before I go to the next item on my
15 agenda?

16 Ms. Shell.

17 MS. SHELL: Your Honor, and I won't be too long, but
18 I just want to make a record that I'm very concerned about
19 some of the statements that were made in court not just today,
20 but, frankly, I found to be racist. But there have been
21 questions of witnesses in this case that have been racist and
22 of great concern to me, and I just want to make a record about
23 that. It was not just about bringing up the supposed Armenian
24 Power connection with Mr. Kahn's witness, but it was also the
25 racist PowerPoint that Mr. Kemp presented with the silhouette

1 of Shelby Brown, who is in fact as man, as we've established,
2 and referring to one of my board members as an Oriental. I'm
3 very concerned about the tenor of some of the questioning in
4 this case. That's the only record.

5 THE COURT: I understand. And I tried to address
6 those on a case-by-case basis as you made the objections.

7 MS. SHELL: Yes.

8 THE COURT: All right. There was motion practice
9 that Mr. Prince mentioned. Do you anticipate that motion
10 practice now, Mr. Prince?

11 MR. PRINCE: What motion practice are you --

12 THE COURT: I don't know. When you first started in
13 the case you had some --

14 MR. PRINCE: I think did talk about filing a motion
15 which you're going to hear next week in regard to dissolution
16 of a TRO and bond amount. So I think that was -- and I think
17 this -- I did address some other motion practice, but we are
18 not going to be filing anything before we have our final
19 argument.

20 THE COURT: So I will then just wait for the
21 briefing that I will have tomorrow morning from everybody so
22 that I can have a chance to briefly review it before I come in
23 and hear your arguments as soon as I finish my 8:30 calendar,
24 which will probably go until close to 9:30.

25 MR. SHEVORSKI: What time do you want us here, Your

1 Honor?

2 THE COURT: What?

3 MR. SHEVORSKI: What time do you want us here?

4 THE COURT: 9:15.

5 MR. SHEVORSKI: Okay.

6 THE COURT: I'm going to push the guys who are
7 supposed to be at 9:30 to try and get them done.

8 All right. So closings. Mr. Parker has a board
9 meeting tomorrow.

10 MR. PARKER: Yes.

11 THE COURT: You have to leave here at what time, Mr.
12 Parker?

13 MR. PARKER: 11:40.

14 THE COURT: So at 11:40 we will be suspending the
15 arguments until Friday morning. Who has the conflict on
16 Friday afternoon?

17 MR. PARKER: I think it's Mr. Koch.

18 MR. WIGHT: We do.

19 THE COURT: When is Mr. Koch free to do his
20 argument? Because I want to make sure we give him the time he
21 needs.

22 MR. WIGHT: On Friday morning. The trial will start
23 up at 1:30, so any time before then.

24 THE COURT: Okay. And let me just ask the question,
25 and I know you've been here almost the entire time, but he was

1 here the whole time until yesterday. So my question is, if he
2 finishes his closing argument and I've still got arguments by
3 other people going, do I need to stop?

4 MR. WIGHT: I would say no for the rest of the
5 intervenors. If there was some --

6 THE COURT: Because I'm going to give him rebuttal
7 argument.

8 MR. WIGHT: -- rebuttal coming in afterwards, I
9 believe he would like to be here for that.

10 THE COURT: Because I do have rebuttal arguments
11 that I will hear, I'm certain. Okay. We'll try and work
12 around it. Would you like to start earlier on Friday to try
13 and maximize our time?

14 MR. KEMP: Well, Judge, I was going to say from our
15 point of view Mr. Gentile told me he's going to take a half an
16 hour, so that's probably an hour. I'm going to try to go 3 to
17 5 minutes, so that's probably 10 minutes. And Mr. Parker is
18 going to be relatively quick, I hope. And Adam Bult I haven't
19 talked to.

20 MR. GENTILE: Your Honor, honestly -- I know you're
21 laughing, but honestly, assuming that there's not a lot of
22 need for changing in between arguments, I would predict that
23 there may actually be time for one of the defense to make an
24 argument tomorrow. We really have shared with each other what
25 it is that we want to cover, and I do believe that it will be

1 done in hour and a half.

2 THE COURT: Mr. Shevorski says, lucky me, so he
3 knows who it would be I would look at. And, Mr. Shevorski, if
4 you're not ready when it comes time, you tell me, and we'll
5 start you Friday morning.

6 MR. SHEVORSKI: I'll be ready.

7 THE COURT: Okay. Anything else?

8 MR. SHEVORSKI: I can't start early on Friday
9 morning, because I have to take my kid to school, but other
10 than that --

11 THE COURT: Is 9:00 o'clock okay Friday, then?

12 MR. SHEVORSKI: 9:00 o'clock is fine.

13 THE COURT: Okay. I don't remember what time school
14 starts. My kids are older now.

15 MR. SHEVORSKI: St. Francis is at 8:00.

16 UNIDENTIFIED SPEAKER: 9:15 tomorrow?

17 MR. GENTILE: 9:15 tomorrow.

18 (Court recessed at 2:45 p.m, until the following day,
19 Thursday, August 15, 2019, at 9:15 a.m.)

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<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
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EXHIBITS

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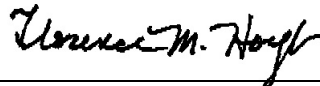
CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

8/15/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 19

THURSDAY, AUGUST 15, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

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WILLIAM KEMP, ESQ.
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JOSEPH GUTIERREZ, ESQ.
TODD BICE, ESQ.
DENNIS PRINCE, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 15, 2019, 9:17 A.M.

2 (Court was called to order)

3 THE COURT: I have some exhibits that were being
4 brought this morning for Dulce. Did everybody complete their
5 homework and bring their exhibits?

6 Does anybody have any additional exhibits for Dulce
7 that we discussed yesterday?

8 Mr. Rulis did his part, Mr. Kahn. Were those
9 redactions agreeable to you?

10 MR. KAHN: Yes, Your Honor.

11 THE COURT: All right. So that'll be admitted.

12 And the Mr. Terry one we got yesterday. Were there
13 any others?

14 So these are the briefs I got, guys. Just in case
15 you think I missed one, will somebody please let me know. I
16 received a brief from Mr. Kemp's office, I received a brief
17 Mr. Shevorski, I received a brief from Mr. Koch. I received a
18 brief from Mr. Hone, I've received a brief from Ms. Shell, I
19 received a brief and an errata from Mr. Gutierrez, I received
20 a brief from Mr. Pisanelli Bice, I think just Mr. Bice,
21 although Mr. Pisanelli's now watching us, and a brief from Mr.
22 Graf. Did I miss anybody? Any I didn't get?

23 Mr. Gentile, I know you had a tragedy in your office
24 with an illness. Did you have anything else you wanted me to
25 consider you wanted to hand me?

1 MR. GENTILE: I'm going -- I think we have cited a
2 case that I am going to -- and it's only a [inaudible]. But
3 other than that, no. We're good.

4 THE COURT: So I want you -- as soon as my two
5 lawyers get here I'm going to finish up my other calendar. So
6 I'm not going to make you start your arguments till I get them
7 here.

8 The central questions I want you to make sure you
9 focus on, because I know all of you have been preparing
10 extensively, are whether the Department exceeded the scope of
11 the powers or acted arbitrarily and capriciously in
12 implementing the provisions of Ballot Question 2; whether "all
13 owners" is ambiguous, and can that failure to require to
14 disclose all owners be cured; the physical address issue along
15 with building plan, floor plan, and community impact; the
16 diversity issue; for the plaintiffs, the specific relief you
17 are requesting that I enter. And I do not want anyone to
18 discuss the bond today. As I told you previously, we will
19 discuss the amount of the bond at a later proceeding, because
20 Mr. Gentile had a witness he wanted to call regarding that we
21 were unable to accommodate and get this part of the
22 preliminary injunction heard. So after you finish these
23 arguments, we will discuss the bond.

24 MR. SHEVORSKI: Thank you, Your Honor.

25 THE COURT: So is Mr. Sharp here? Still not. So

1 think about what I just said while I wait for my two lawyers.

2 (Pause in the proceedings)

3 MR. KEMP: Judge, could we have the list one more
4 time? When you started I didn't have a pen.

5 THE COURT: You are so funny, Mr. Kemp. Did the
6 Department exceed the scope of its power or act arbitrarily
7 and capriciously in implementing the provisions of Ballot
8 Question 2; whether the issue related to "all owners" can be
9 cured by the Department; the issue related to physical
10 address, building plans, floor plans, and community impact;
11 the diversity issue; the specific relief being requested by
12 each of the individual plaintiffs.

13 MR. KEMP: Thank you, Your Honor.

14 THE COURT: And you guys can get up and walk around
15 until I finish the two lawyers who aren't here. But, I mean,
16 Mr. Freer didn't come early, but he didn't have to. And Mr.
17 Sharp is another department with another judge who he asked to
18 be called first, but who knows if that happens.

19 MR. SHEVORSKI: Your Honor, for housekeeping
20 purposes, if they're finished at 11:30, I do not want to
21 start.

22 THE COURT: You're not going to, because I have to
23 break at 11:40 for Mr. Parker to get to his board meeting.

24 MR. SHEVORSKI: I just wanted to raise that issue.

25 THE COURT: I am not going to make you break your

1 argument up overnight.

2 MR. SHEVORSKI: Thank you, Your Honor.

3 THE COURT: How's that?

4 MR. SHEVORSKI: That works.

5 (Court recessed at 9:22 a.m., until 9:41 a.m.)

6 THE COURT: Mr. Gentile, would you like to make a
7 closing argument?

8 MR. GENTILE: I would, Your Honor. Before I start,
9 are we going to have an opportunity for rebuttal?

10 THE COURT: Yes.

11 MR. GENTILE: Okay.

12 THE COURT: Isn't that how life works? You go
13 first, he goes second, you go last.

14 MR. GENTILE: I was going to ask if the 10 minute
15 rule applied, but I didn't dare.

16 THE COURT: No.

17 SERENITY PLAINTIFFS' CLOSING ARGUMENT

18 MR. GENTILE: Your Honor, I am here representing a
19 group of people and entities that already are in the medical
20 marijuana and retail marijuana dispensary business. And, like
21 the intervenors, last year, September, they filed applications
22 for an additional license. Anybody who didn't file an
23 application shouldn't have a right to be here. But to the
24 extent that my clients did, they did all that they could do to
25 avail themselves of due process of law and equal protection of

1 the law as that process with regard to the evaluation and
2 issuing of licenses unfolded. We're here basically asking for
3 a declaratory judgment at the end of this case, but now for a
4 preliminary injunction. And it's based on the deprivation of
5 due process and equal protection because the regulations, some
6 of them, exceeded the mandate of initiative, Ballot Question
7 2. Some of them that did not exceed that mandate were
8 exercised or applied in an arbitrary and capricious manner.
9 And the injunctive relief that we're seeking at this point
10 would be for the Court to declare, enjoin the State Department
11 of -- actually, the State of Nevada, I don't care what
12 department it is, from doing anything further to remove the
13 condition from what everybody agrees is a conditional license.
14 And specifically, given the testimony in this case, it would
15 be to preclude them from conducting the final inspection that
16 would permit -- the final step toward permitting these
17 conditional licenses to go into effect and go into operation.
18 That is what we're asking for in terms of relief at this
19 point.

20 It's pretty clear that these licenses are rare, and
21 the irreparable harm should be patent to the Court, and I
22 think you've actually commented on that earlier when cutting
23 me off in further examination and putting on additional
24 witnesses. In a proper manner, by the way, Your Honor. There
25 is simply no adequate remedy at law here. The Department of

1 Taxation certainly is not going to be impeded, and neither
2 will the ability to collect taxes by the State for the sale of
3 retail marijuana, because there's testimony in this record
4 that anybody who wants it and they're over 21 could get it.
5 And apparently people under 21 can get it, but we'll get to
6 that later.

7 And so to the extent that the intervenors are here
8 and to the extent that we're seeking relief, we're not seeking
9 any against the intervenors. We have never made a claim
10 against the intervenors. They're here because they want to be
11 here.

12 And to the extent that if you issue an injunction
13 they decide to take additional steps and spend additional
14 money in pursuit of opening up stores under these conditional
15 licenses, that's a risk that they are fully aware of and they
16 are free to take. We're not telling not to do it. That's a
17 business decision.

18 And finally, with regard to the issue of how
19 important this is that it gets done within 12 months, if this
20 litigation isn't an extenuating circumstance to extend that
21 12 months, then my guess is the intervenors will be taking
22 that decision to court and contesting the State denying them
23 the opportunity, because this is an extenuating situation.

24 I think at the threshold in terms of the analysis of
25 the law here we have to compare the genesis of 453A, the

1 medical marijuana legislation, with 453D, which was enacted by
2 initiative, because they're very different. In 1998 and in
3 2000 the voters of the state of Nevada were presented with a
4 constitutional amendment, and it was very broadly stated, and
5 it was based upon health concerns. And Article 4, Section 38,
6 of our Constitution became that amendment. And I'm not -- I'm
7 going to try to abbreviate this. I have the amendment here.
8 I'm not going to read it. You know what it is.

9 But pretty clearly what they did at that time, what
10 the people did at that time is they said to the legislature,
11 look, we're going to adopt this amendment, but we're going to
12 leave it to you to enact the law, we pretty clearly want
13 medical marijuana. Thirteen years later the legislature
14 enacted 453A. From the period of 2000 until 2013 for the most
15 part people who needed medical marijuana, despite what the
16 people of the state did in terms of a directive of the
17 legislature, had to grow their own. And they had to get
18 licenses to do so. You couldn't go into a store and buy
19 marijuana. You had to use the same guy you'd been dealing
20 with for the last 30 years.

21 In 2013 something -- that's when the legislation was
22 adopted, and the legislature placed the administration of
23 medical marijuana, because it was a health issue, in the hands
24 of the Department of Public and Behavioral Health. And we
25 have testimony in this case from Mr. Gilbert and Ms. Cronkhite

1 and, frankly, I don't remember if Mr. Plaskon was there or
2 not, but both Gilbert and Cronkhite were there at that time
3 and basically moved over to the Department of Taxation when
4 the next step occurred in the evolution. Candidly, I think
5 that's part of the reason we're here. I think that's part of
6 the problem. I think it's the source of these problems.

7 In 2016, as you know, we had a ballot question, and
8 this time, maybe because it took 13 years for the legislature
9 to act, the people of the state of Nevada decided to go by way
10 of a direct initiative that embodied and was to enact
11 legislation itself. They got tired of waiting for the
12 politics of the situation. This time the people did not focus
13 on health. This time the people in the initiative focused on
14 a concern about criminal law issues, specifically the illegal
15 market in the sale of marijuana and the consequences of that
16 market, and wanted to take nonviolent crime like the smoking
17 or possession of marijuana and get it out of the law
18 enforcement quiver because of the cost so that we could free
19 policemen up to focus on violent crime. And that was
20 expressed in the ballot issue. And it also taxed this, which
21 made good sense, to tax the sale, set up a schedule of taxes,
22 and moved it from the Department of Public and Behavioral
23 Health to the Department of Taxation.

24 Now, Mr. Pupo, who was at the Department of Taxation
25 all of this time, had no background with regard to medical

1 marijuana. The people who worked for him did. The problem
2 was that they brought over their ideas that were -- and their
3 bases and their procedures that were engendered by legislation
4 and rule making and simply did not study the difference
5 between what they could do there because of how that got
6 started and what they could do here because of this being an
7 initiative.

8 In the initiative the people of the state of Nevada
9 said that they wanted retail marijuana dealt with like alcohol
10 was dealt with. And if you take a look at Exhibits 229 and
11 230, they will establish how Metro and the Clark County
12 alcohol licenses are dealt with and the kind of investigations
13 that go on with regard to those. Article 19, Section 1,
14 paragraph 3, and Article 19, Section 2, paragraph 3, which
15 deal with different types of initiatives, contain the
16 following language.

17 "If a statute or a resolution or any part thereof
18 shall is enacted, it shall stand in the law of the state --
19 stand as the law of the state and shall not be amended,
20 annulled, repealed, set aside, suspended, or in any way made
21 inoperative except by the direct vote of the people." That's
22 Article 19, Section 2. Article 19, Section 2, paragraph --
23 that's Article 19, Section 1.

24 Section 2 says, "An initiative measure so approved
25 by the voters shall not be amended, annulled, repealed, set

1 aside, or suspended," basically the same language as Section
2 1, "by the legislature within three years from the date it
3 takes effect." And so that is sacrosanct. That cannot be
4 messed with, because this court wouldn't be here and the state
5 of Nevada wouldn't be here if we didn't have a constitution.
6 It's the fundamental document. And this time it was the
7 people, the voters that spoke, not a bunch of politicians
8 sitting up in Carson City figuring out a way to get reelected,
9 and it took them 13 years to do it. So this time it went
10 effect that day, the day that the Supreme Court canvassed the
11 election results. Didn't take the legislature to do it. The
12 people did it.

13 Now, 453D.200 directed, the people directed that the
14 Department of Taxation adopt regulations necessarily and
15 convenient to carry out the provisions of this chapter, to
16 carry out the provisions of this chapter, not necessary and
17 convenient for the administrators, but necessary and
18 convenient to carry out the provisions of this chapter. And
19 we know that you can't amend those provisions or do any of the
20 other things that are prohibited. And we also know, and this
21 is the case that I was going to send you last night, but I'll
22 read it. It's only a part of it, and it's dictum, all right.
23 But in 1957 in case called Nevada Tax Commission versus Hicks,
24 which is at 73 Nev. 115, and I'm reading from 121, our Supreme
25 Court said, "Standards of suitability may be fixed which are

1 so completely unrelated to the subject as to demonstrate that
2 the administrative action of the Commission," and at that time
3 it was the Tax Commission, "in defining suitability was
4 arbitrary, discriminatory, capricious, or wholly beyond the
5 sphere of its authority." And that was -- that case dealt
6 with a statute. That did not deal with an initiative. And so
7 it's only stronger in this instance. That was a gaming case,
8 and shortly thereafter gaming was removed from the Department
9 of Taxation.

10 453D.200 also says that the regulation "shall
11 include," in other words, it was a mandate, "that there be
12 qualifications for licensure objectively --" excuse me "--
13 directly and demonstrably related to the operation of a
14 marijuana establishment." That's [unintelligible]. If it's
15 not that, you can't do it. It has to be directly and
16 demonstrably related.

17 So why are we here? What constitutional violations
18 occurred that have us before you? The first is that
19 compliance wasn't even analyzed or scored. The regulation
20 453D.272(g) adopted by the State pursuant to the power to
21 regulate and the duty, (g) reads as follows. I suppose I
22 should read the introductory. Okay. "Evidence that the
23 applicant has [unintelligible] to staff, educate, and manage
24 the proposed marijuana establishment on a daily basis, which
25 must include, without limitation --" oh. Wait a minute.

1 Sorry. Read the wrong part. This deals with where there's
2 more than one application.

3 We are talking about .272(g). The content of the
4 application has to contain under (g) whether the "owners,
5 officers, or board members of the proposed marijuana
6 establishment have direct experience with the operation of a
7 medical marijuana establishment or marijuana establishment in
8 this state and have demonstrated a record of operating such an
9 establishment in compliance with the laws a regulations of
10 this state for an adequate period of time to demonstrate
11 success."

12 And as long as I'm here, I want to read the next
13 one, too, because it fits in. (h) is, "The experience of key
14 personnel that the applicant intends to employ in operating
15 the type of marijuana establishment for which the applicant
16 seeks a license."

17 Neither of those was done. The application does not
18 contain that information. The application only requires any
19 experience operating a business or nonprofit. We have
20 testimony from Mr. Gilbert, Mr. Plaskon, Ms. Cronkhite, and
21 Mr. Pupo that compliance was not considered. And it was
22 deliberate. It wasn't scored, and it wasn't considered.

23 In the case of Helping Hands that would have been --
24 you know, they lost a benefit from that, because they got a
25 license in 2014, and by September of 2018 their compliance

1 record was pristine. Of course, they didn't do anything with
2 that license for the four years, but it would have been
3 pristine. On the other hand, some of the people, some of the
4 applicants here we have evidence in this record maybe not,
5 okay. The ballot question required that we needed to prevent
6 the sale or diversion of marijuana and marijuana products to
7 persons under 21 years of age. That's part of the ballot
8 question. That's part of the legislation enacted by the
9 initiative, and it appears many times. I'm not going to
10 belabor that at this point, but it's in there a lot.

11 However, we have evidence in this case from
12 testimony of Ms. Cronkhite, Mr. Pupo, and Exhibit 96.
13 Exhibit 96 is addressed -- relates to three different
14 licensees, all owned by the same company, NOR. And you saw it
15 and you heard the testimony, and the testimony is clear that
16 Mr. Pupo directed Ms. Cronkhite to withdraw the investigation,
17 to stop it, into the sale -- apparently three sales to someone
18 under 21 years old. We don't know how young, we don't know
19 the circumstances, we don't know if anybody was prosecuted.
20 We do know that it was never brought to the attention of any
21 law enforcement agency, including the Attorney General, who
22 certainly is the counsel for the Department of Taxation and
23 also the chief law enforcement officer in the state. A crime
24 was committed. They admitted to the crime. And they admitted
25 to suppressing it.

1 And so I suggest to you that compliance, not only
2 was it mandated that it be considered and scored, but that it
3 needed to be. Because what do we know? We know that the
4 operator who sold marijuana to somebody under 21 years old,
5 maybe three times, the email certainly indicates that, got I
6 think seven licenses. So I suggest to you that compliance was
7 an important part of this and it was not considered.

8 Second deals with location. Location was required
9 by the initiative, but it was ignored. Now, there was a
10 midstream change. And we know that. There was a change in
11 application forms. Maybe not everybody got to know that. The
12 wrong one was still on the Website when we started this trial.
13 I don't know if it still is. Try it.

14 THE COURT: Hearing.

15 MR. GENTILE: Hearing, yes. Thank goodness I'm not
16 having to summarize this case to a jury. It would take two
17 days.

18 But that whole idea with regard to location became
19 confusing, because I don't think there's any question that
20 Amanda Connor was the most successful lawyer in terms of
21 obtaining licenses for her clients far and away. But if you
22 take a look at Exhibit 310 and you listen to the testimony of
23 Mr. Pupo, even she was confused with regard to the need to
24 list a location. And that's the "DAMMIT" email, Exhibit 310.

25 Under 453D.210-5(b) it reads, "The Department shall

1 approve a license if (b) the physical address where the
2 proposed marijuana establishment will operate is owned by the
3 applicant or the applicant has the written permission of the
4 property owners to operate the proposed marijuana
5 establishment on that property."

6 Now, Department is saying, well, we could do that
7 later. The problem is it doesn't take into consideration the
8 rest of the regulations and the statute. Under 453D, and now
9 I'm talking about the regs, 453D.258-(2)(e), which deals with
10 the content of the application, and NAC 453D.272-(2), which
11 says that zoning and land use need not be proven, you could
12 certainly defer the zoning and land use issue. But there is
13 simply no way to address a couple of parts of that application
14 without knowing the location, a proposed location.

15 Exhibit 209 is the scoring criteria of the
16 Department of Taxation. There's a couple of comments I want
17 to make about that. I'm going to make them at separate times.
18 At this juncture it talks about building construction being
19 worth 20 points. I don't know how you can make a
20 determination on building construction without a location. I
21 suppose you could do it with a set of plans, but not without a
22 location if it's an existing building. You need plan details,
23 and you need plan regulatory compliance, but there's also
24 90 points, 90, 36 percent, 36 percent of the points allocated
25 out of these 250, for care, quality, safekeeping. NRS 453D

1 mandates a reg for requirements for security of marijuana
2 establishments. Security requires positioning people.
3 Security requires a lot of things, and I'm no expert on
4 security or securities. And we'll get to that later.

5 But finally, most importantly, over and above
6 everything else the impact upon the community. There is
7 simply no way to determine the impact on the community without
8 knowing the location of the proposed store. You cannot
9 determine the impact on a community by a UPS mail drop,
10 because it's not likely that the store is going to -- that the
11 license is going to be employed at the UPS mail drop. We all
12 know that. That's just silly. And without that you can't
13 really determine the impact on the community, which is a very,
14 very, very important part of this evaluation. Why? Because
15 what did the people say in enacting the initiative? They were
16 concerned about crime. That's a very important thing to most
17 communities. I don't there's any community that that's not
18 important to. And I'd sure want to know that somebody was
19 going to be opening up a marijuana store in my neighborhood.
20 There's no way for me to know that under this system, because
21 the applications themselves don't make it to the public's eye.
22 They wouldn't have made it to the public's eye but for this
23 litigation and the legislation that Governor Sisolak enacted
24 when he realized that there was no transparency to this entire
25 process.

1 THE COURT: That being SB 32.

2 MR. GENTILE: That's correct.

3 Next is background checks. The language is clear,
4 "The Department shall conduct a background check of each
5 prospective owner, officer, board member of a marijuana
6 establishment licensed applicant."

7 Now, 453D says, well, you can adopt a regulation
8 that's necessary and convenient to carry out the provisions of
9 this chapter. To ignore the clear language that says "each
10 prospective owner, officer, and board member" is to amend it.
11 This was a carryover. My best guess is that it was probably
12 the very people in this room, on both sides of the room, that
13 didn't want to have to spend the money --

14 THE COURT: You mean the industry.

15 MR. GENTILE: Industry.

16 THE COURT: Okay.

17 MR. GENTILE: Yes. Not the lawyers. Lawyers don't
18 want to spend money on anything, except suits, I guess.

19 It was the industry that probably cajoled the
20 regulators to back off of the clear mandate. That'd be my
21 guess. But guess what. You can't do it. It wasn't -- this
22 doesn't say necessary and convenient for the industry or
23 necessary and convenient for an applicant, or necessary and
24 convenient for an administrator. It says necessary and
25 convenient to carry out the provisions of this chapter, one of

1 which mandated background checks of all owners.

2 Now, there was a workaround for this, and GTI
3 found it. GTI was not publicly traded when it filed its
4 application. During the course of the application process GTI
5 made a deal with a publicly traded company. GTI is Essence, I
6 believe. I sometimes need a score card here. And so there
7 was an appropriate approach to this. Had the people that --
8 if it's so inconvenient to background each owner of a publicly
9 traded company, well, you can't change that, but you can wait
10 until you sell it to a publicly traded company. And you
11 background the original applicants, transfer it later. The
12 rule, the reg has always been that for a transfer of ownership
13 you only need to investigate anybody with 5 percent or more.
14 That was always in place. This was brought over by Cronkhite
15 and Gilbert and relied upon by Pupo, relied upon them. This
16 was brought over from there, and Mr. Gilbert basically
17 testified to that. And so you can't do that. You could do it
18 later. You could transfer it after you get the license, you
19 could even transfer it conditionally in anticipation of
20 getting a license. But the people, because they were
21 concerned about crime, said, we want every owner backgrounded.

22 There's another workaround for it, Judge, and that
23 would be to do what Colorado did, just face the fact that
24 until an amendment to that part of 453D can occur, which won't
25 be until the 23rd of November of this year, adopt the Colorado

1 position that publicly traded companies simply can't apply
2 unless they want to have every one of their shareholders
3 backgrounded. And so that's the second point -- the third
4 point, actually.

5 The next one deals with wealth beyond what is
6 directly and demonstrably related to the operation of a
7 marijuana facility, marijuana business. NRS 453D.210-6 says,
8 "When competing applications are submitted for a proposed
9 retail marijuana store within a single county the Department
10 shall use an impartial and numerically scored competitive
11 bidding process to determine which application or applications
12 among those competing will be approved." I submit to you that
13 to weigh and consider wealth beyond what it takes to operate
14 the marijuana facility, the one that's being applied for, for
15 the next 12 months, as I recall that's what the requirement
16 was, anything beyond that is absolutely not directly and
17 demonstrably related to the operation of a marijuana business.
18 It isn't.

19 More importantly -- and I'm going to get to
20 diversity, because that's my hardest one, candidly, because
21 it's a difference what I feel in my heart and what the law
22 holds, what the law permits. It's absolutely diametrically
23 opposed to diversity. The reason that we care about diversity
24 in our society is because some people have had glass ceilings,
25 racial and ethnics minorities have been thwarted in their

1 ability to financially succeed for a couple hundred years. I
2 mean, it's getting better, but it's still not where it needs
3 to be. And so to value somebody who's a rich white guy and
4 give him points for being that, how could that even come close
5 to being directly and demonstrably related, all right? It
6 can't.

7 Now, what can you do? I think you could take a look
8 at the taxes that have been paid by the applicant with regard
9 to whether they've paid them on time, whether they've had to
10 go to collection, you know. But anything beyond that -- and
11 that, by the way, doesn't deal with the number, the dollars
12 that were paid. It deals with the fact that taxes were paid
13 timely. And you have to remember that everybody that was an
14 applicant here was already in the marijuana business.

15 Now I want to look at diversity. Clearly it is not
16 mentioned in any manner in Ballot Question 2. Clearly Ballot
17 Question 2 was adopted in November of 2016. It could have
18 been put in there, it could have been put in there, just as
19 after Ballot Question 2 was passed and enacted, in 2017, after
20 the initiative, the legislature amended 453A by AB 422, which
21 did two things. It said in the 453A situation, medical
22 marijuana, you only needed to background people that had
23 5 percent or greater ownership interest. They could have put
24 that in the initiative. The people decided not to.

25 The other thing that was in 422 was diversity.

1 Diversity was included in the amendment to 453A in 2017. It
2 could have been put into the initiative, but it was not. And
3 the idea -- here's what it invited. Here's what happened
4 here. The rich white guys went out and elected minorities and
5 create boards that are phony boards and placed women and
6 people of color on those boards and got points for it. So
7 it's not just that diversity shouldn't have been there, it was
8 perverted the way they used it. And it made up 8 percent of
9 the total score.

10 If you're going to deal with diversity, why not deal
11 with gay people, lesbians, transgender, people who are
12 vertically challenged? Diversity is diversity. And it isn't
13 even defined well here. Not defined at all. We know how they
14 applied it. So I'm not suggesting that diversity should not
15 be taken into consideration. What I'm suggesting is it has no
16 business being scored, and it was trumped in the ordinary
17 sense of the word by the inclusion of this wealth and wealth
18 alone, excessive wealth as a reason and a criteria for
19 scoring.

20 Originally, it is my understanding -- I've listened
21 to so many people and so much testimony I don't remember
22 whether it came out at the trial or not, but originally the
23 idea was to use diversity as a tiebreaker. It's absolutely
24 legitimate. But that's not what happened.

25 Now let's talk a little bit about multiple LLCs

1 getting multiple licenses for the same owners, same people,
2 all right. That's not in the statute -- excuse me. That's
3 not in the initiative, that's not in the regs, but it was
4 done. And it was done with the approval of Mr. Pupo. And we
5 have an email in here indicating that. So what that was was
6 ad hoc rule making on the part of the people that work for the
7 Department of Taxation, which is clearly a violation of due
8 process and arbitrary and capricious.

9 Let's talk about lack of oversight and verification.
10 What we know is that there was none. We know that the
11 information in the applications was believed. The applicants
12 were trusted. Nobody did any verification. We know that
13 there was no oversight of the Manpower people that actually
14 graded these applications. That's an abdication of
15 responsibility, which is also arbitrary and capricious. This
16 case reminds me of "Hogan's Heros" in this regard. You may be
17 -- you're probably too young to remember "Hogan's Heros,"
18 Judge, but "Hogan's Heros" had a character in it by the name
19 of Sgt. Schultz. And Sgt. Schultz's famous line was, "I see
20 nothing!" And he said that because he didn't want to see
21 anything, because he didn't want it to come back to bite him
22 later. That's what happened here. Gilbert, Plaskon, Pupo,
23 they all told you, oh, I don't know -- you know, I didn't get
24 involved with that, we left these people at Manpower to make
25 those decisions. And that's what happened here. You had

1 abdication of responsibility.

2 Transparency. This application -- the
3 NAC 453D.260-2, and I have it, I'm going to read it. The
4 title is "Request for Applications to Operate Establishment
5 Noticed by Department Required Provisions and Time Period for
6 Submission." Paragraph 2 says, "(1) the Department issues a
7 request for applications. Pursuant to this section the
8 department will include in the request the point values that
9 will be allocated to each applicable portion of the
10 application."

11 If you look at 209, Exhibit 209, 209 -- let's just
12 look at organizational structure. It's 60 points, okay. And
13 60 points is what the application talked about. But the way
14 the evaluation criteria actually existed, 15 of those points
15 went to organizational chart, 10 went to previous business
16 experience, 5 went to educational achievement, 10 went to
17 experience with marijuana in Nevada, and -- doesn't even limit
18 it to retail marijuana or legal marijuana; that's interesting;
19 I just read it that way the first time -- and 20 goes to
20 diversity. None of those were disclosed to the applicants,
21 and that's a direct violation of that regulation that I just
22 read. Because it is clear that they should have been. Those
23 are applicable parts in accordance with that definition.

24 Disparity of information to applicants. If some
25 applicants had more information than others from the

1 Department of Taxation, it would not be a fair and impartial
2 process. There's testimony in the record, I think it was from
3 Mr. Pupo, might have been Gilbert. Exhibit 5 is the
4 application. The applicants were left to guess as to what
5 makes up the components of each category that I just read to
6 you from Exhibit 209. They were left to guess how much weight
7 was going to be given to each of those components. The
8 regulation was designed not for that to happen. And at the
9 end of the day it allowed for the possibility, the
10 possibility, and according to Dr. Amei, the probability.
11 Because she said the outcome here is statistically impossible,
12 that better-suited applicants would fail and lesser prevail
13 just on the luck of the way they answered because they didn't
14 know how many points were going to be assessed to what. So it
15 just simply leaves too much to accident.

16 I suggest to the Court that when Dr. Seaborn
17 testified -- I excerpted this from his testimony -- he said,
18 "If you remove marijuana establishment or remove other
19 business experience and remove the diversity or remove
20 volunteerism or any one of those is enough to change the
21 results in both of these jurisdictions," meaning the City and
22 the County.

23 So you have so many here. What we know from Dr.
24 Amei is that it takes a pretty substantial number of points in
25 order to be able to separate one from the other. If made this

1 whole thing 10 points, you'd have a lot of ties, a lot of
2 ties. So if you're really looking for a qualitative
3 separation, you have to have a sufficient number of points
4 to make it statistically valid. The State decided that
5 250 points was statistically valid. Dr. Amei said 250 was
6 statistically valid. So if you start redacting from this
7 application and the point-awarding process one or more of
8 these categories because of the fact of the way they deprive,
9 basically they're invalid and unconstitutional. And at the
10 end of the day you can't save it, because it requires
11 250 points. And I don't think you want to get into the
12 business of deciding how that 250 points should be
13 redistributed. That's my best guess. I know I wouldn't want
14 to be that person.

15 And so I submit to you that the injunction should
16 issue. And I went more than half an hour. I apologize.

17 THE COURT: Thank you, Mr. Gentile.

18 Mr. Kemp.

19 M&M DEVELOPMENT PLAINTIFFS' CLOSING ARGUMENT

20 MR. KEMP: Good morning, Your Honor.

21 Actually, Sgt. Schultz said, "I see nothing, I hear
22 nothing, I know nothing," which I think is a pretty accurate
23 description of the Department's testimony about what the
24 graders did. But, in any event, we join Mr. Gentile's
25 arguments on the Question 2 issue and the other issues he's

1 outlined. And if an injunction issues on any of those issues,
2 you don't have to get to the specific score, the errors that
3 we've outlined in our brief. And we had an eight-page brief.
4 I'm going to incorporate it by reference. I was going to go
5 through it a little bit. I just want to highlight two points.

6 You know, for each one of our clients we have a
7 blatant scoring error. On LivFree the test for the
8 40 financial points, everybody got that. All the winners got
9 40 financial points. Even Helping Hands that was here
10 yesterday with an 8.9 million net worth and 2 million in
11 loans, they got 40 financial points. So, you know, LivFree's
12 mistake was pretty blatant, and it hasn't been rebutted. If
13 you had 250,000 liquid and 3.5 million net worth, you were
14 supposed to get the 40 points. LivFree had, what,
15 217 million, and they 2 million in cash, and that's why we
16 went through Mr. Gilbert's testimony that cash is cash and
17 cash is a liquid asset. And for some reason these graders --
18 these graders, they gave Helping Hands with the 8.9 million
19 net worth -- LivFree had 25 times the net worth, 26 times the
20 net worth, and LivFree got a 12.67 and Helping Hands got the
21 40. So it's a pretty blatant error. It hasn't been
22 explained, no one said a thing about it.

23 And then you go to the M&M error. That was even
24 worse, Your Honor. The building construction's 20 points.
25 The attempt there is to show that you can get this building up

1 and running within 12 months. You know, there's pretty clear
2 testimony on that point.

3 So we have an existing dispensary that was actually
4 selling marijuana on the exact same day that it was being
5 scored, and for some reason these graders determined that that
6 that couldn't be built in 12 months. I just -- and there's no
7 explanation. You know, it's like Sgt. Schultz. We just don't
8 know what really happened there. And, you know, you contrast
9 that with what some of these people were allowed to do, like
10 Thrive, for example. They give the building floor plan. They
11 don't even give construction plans. They give the floor plan,
12 and Ms. Cronkhite says, well, you were supposed -- I trained
13 them to look at the flow. So their wonderful floor plan at an
14 unknown location, it was determined that they got a 19.67. So
15 a real building rates less than this theoretical location and
16 theoretical floor plan that isn't even used? But anyway,
17 there was no answer on that error, too. But like I already
18 said, if you issue an injunction on any of the grounds Mr.
19 Gentile outlined, you don't get to that point.

20 But let me briefly address the relief sought --
21 well, strike that.

22 On the public company aspect of it I want to remind
23 the Court that until 1967 Nevada prohibited, they prohibited
24 public companies from being involved in the gaming industry.
25 I mean, that's just a fact. And the reason that was done was

1 because there was a fear that they couldn't adequately do
2 background checks. So, you know, to suggest that the Colorado
3 approach is -- there's something wrong with it, you know, and
4 then the ability for public companies to survive -- or to
5 apply, rather, I mean, look at what really happened in this
6 case. Nevada Organic Remedies, they did their transfer on
7 September 4th. You're not telling me they couldn't have
8 delayed that three weeks, you know. Or, in our case, M&M's,
9 we were in the middle of our reverse merger in August. We
10 could have delayed that and applied. So the actual public
11 companies involved in this case wouldn't have really had a
12 problem complying with that requirement if the background
13 checks had been applied to it. And if you remember Mr.
14 Koehler's testimony, I think we had 164 stockholders when we
15 started training as a public company.

16 But, in any event, the last issue is the relief
17 sought. To open up a marijuana store the very last step is
18 the final inspection by the Department of Taxation. Okay.
19 Whatever the injunction says, it should -- and Mr. Bult has a
20 couple points he wants to make on that. But it should
21 definitely preclude the Department of Taxation from doing that
22 final inspection, because otherwise we might get into the
23 situation like we had with the 3500 West Sahara store. You
24 know, they're subject to a TRO that they can't open, and, lo
25 and behold, they opened because they slide a license from here

1 to there. If we had had a temporary restraining order saying
2 that they couldn't have a final inspection on that store, we
3 would have stopped that from happening, or at least it would
4 have been addressed by the Court.

5 But, in any event, the injunction should say no
6 final inspection for any of the 61 licenses. That's what --
7 that would stop I think any of these stores from opening.

8 And unless the Court has any questions, I can
9 probably do the Sgt. Schultz a little bit, if need be.

10 THE COURT: No. It's okay.

11 MR. KEMP: Okay. All right. Thank you.

12 THE COURT: Thank you.

13 All right. Mr. Bult. Mr. Parker.

14 MR. BULT: It should be Mr. Parker.

15 THE COURT: Mr. Kemp caught us back up on time, Mr.
16 Parker.

17 MR. PARKER: I can't be as helpful, Your Honor.

18 THE COURT: Okay.

19 MR. PARKER: I will try. I'm not sure I can be as
20 quick as Mr. Kemp, and perhaps not as long as Mr. Gentile.

21 NEVADA WELLNESS CENTER PLAINTIFF'S CLOSING ARGUMENT

22 MR. PARKER: Good morning, Your Honor.

23 THE COURT: Good morning, Mr. Parker.

24 MR. PARKER: How are you?

25 Your Honor, in considering today's presentation I

1 wanted to perhaps have the Court consider the broad, 3,000-
2 foot vision and then get into some of the details. So, as a
3 result, I may request that certain portions of the testimony
4 from some of the witnesses be displayed on the monitor, Your
5 Honor.

6 And, Your Honor, from the untrained practitioner's
7 standpoint I think this case started out or centered on what
8 the intervenors or the State may have thought as being issues
9 regarding the scoring given to the unsuccessful plaintiffs, as
10 opposed, perhaps, to the scoring of the intervenors. And I
11 believe initially the State, perhaps based upon a knee-jerk
12 response to the complaint, considered the plaintiffs simply
13 sore losers or perhaps that the plaintiffs just didn't try as
14 hard as the intervenors. And so with that thought in mind
15 this case developed and developed and developed. And then
16 witnesses on behalf of the intervenors, who I would say were
17 even less polite than the State or even some of the
18 intervenors' attorneys, came to this stand what I would
19 consider with consternation and gave testimony even critical
20 of the intelligence and the business savvy of the lower-
21 scoring plaintiffs. And certainly this Court probably recalls
22 certain testimony where a particular intervenor representative
23 said, perhaps they were just all confused and just didn't know
24 enough about the process. Very critical, very pointed
25 comments and commentary.

1 And so initially the State, believing that the
2 employees, their employees had followed the law, refused to
3 consider or I believe the concerns of the unsuccessful
4 applicants. The State not only refused to consider the
5 concerns of the applicants who did not prevail, but also
6 refused to provide any insight regarding the scoring or even
7 the scorers or the metric behind each criteria.

8 Now, this is something that I thought struck a chord
9 with the Court, because at one point Mr. Pupo said, and I'll
10 do my best to quote what he said, I did not want to give the
11 applicants the answers to the questions. And he said that in
12 response to my question about why not give the full criteria
13 and the scoring metrics so that everyone could put their best
14 foot forward in the application.

15 Now, we also pointed him to the statute that said
16 you have to provide that information. And so later on in my
17 discussion I will get to some of the points where Mr. Pupo
18 acknowledged and conceded that things should have been done
19 differently, things should have been improved upon, things
20 should have been done better, as opposed to the capricious and
21 arbitrary way in which they were done in this 2018 application
22 process.

23 Additionally, Your Honor, the State [inaudible]
24 they're guarded and shrouded in secrecy this process by
25 refusing any administrative rights or remedies, including an

1 appeal. So to the extent that the intervenors or the State
2 want to throw up a banner of laches, Your Honor, the
3 plaintiffs in this case, specifically Nevada Wellness Center,
4 did everything it could in advance of bringing this complaint
5 and in as short order as possible. In fact, NWC, Nevada
6 Wellness Center, met with the State on January 17th, after
7 having sent email after email after email requesting an
8 audience and requesting some insight.

9 And so the Court's familiar with the Assembly bill
10 that finally allowed during this process for the disclosure of
11 some of that information. But the Court also is aware that
12 during this process, during the questioning I believe of Mr.
13 Gilbert I asked, where are the actual scoring notes, where's
14 the quality control documentation. It was at that point we
15 finally got the State to disclose that information, thousands
16 and thousands of pages' worth of documents related to all of
17 the applicants' applications.

18 Your Honor, it was within those notes, within those
19 scoring -- evaluator's scoring tally sheets that we found
20 mistake after mistake after mistake in terms of location,
21 terms of consideration of community impact, failure to
22 consider compliance. Your Honor, it was failure to even
23 consider and tally up correctly the number of people with
24 college degrees in terms of the education criteria. The
25 scoring tally sheets were replete with mistakes. And we

1 brought several of them to light to the Court.

2 Mr. Hawkins had his time here explaining some of the
3 mistakes, where, uneducated in terms of building plans,
4 evaluators couldn't figure out where and a hand sink was and
5 deducted points, couldn't figure where the mantrap was,
6 deducted points. They didn't have an idea of security
7 requirements, lighting requirements. It was ridiculous in
8 terms of how many mistakes were made based upon those scoring
9 tally sheets, Your Honor.

10 So, Your Honor, left with no choice after denied
11 every administrative remedy it sought, Nevada Wellness Center,
12 like other applicants, filed a complaint with the court. Not
13 long thereafter Nevada Wellness Center filed a motion before
14 the Discovery Commissioner seeking an order of preservation
15 for all of the phone records, which we eventually got in terms
16 of extraction reports from phones of the State employees, as
17 well as followed the documentation regarding scoring. The
18 State opposed that motion. The Discovery Commissioner granted
19 our motion. Thereafter the State filed an objection, of
20 course, in front of the District Court. We've been without a
21 judge in that department for a long time, Your Honor. So a
22 decision on that has not been made.

23 But during this process the State continued to hide
24 how this 2018 application process took place, how it was
25 scored, how it was evaluated both from the Manpower evaluators

1 or scorers all the way through the Department's employees. At
2 every turn leading to the consolidation of these hearings,
3 Your Honor, the State has prevented transparency and stood
4 against fairness. Now, I will say, to his credit, Mr.
5 Shevorski has been attempting and has produced a significant
6 amount of documentation during these proceedings. But it took
7 these proceedings to get that documentation. They were not
8 forthcoming before your Court's involvement.

9 The public application process, Your Honor, not too
10 dissimilar to a competitive Public Works bidding process, is
11 supposed to be transparent. It's supposed to be fair to all
12 participants. A level playing ground with no bidder being
13 given any advantage is the main tenet behind this process.
14 The Nevada citizens approved Ballot Question Number 2 allowing
15 for the sale of recreational marijuana. Nevada statutes were
16 enacted related thereto, codified under NRS 453D, Your Honor.
17 The State Department of Taxation, bound to the approved ballot
18 question, created the regulations with the assistance of the
19 Governor's Task Force and with guidance from consultants and
20 industry affiliations or associations.

21 The evidence that's been developed through 18 days
22 or 19 days of hearing, Your Honor, has proven that the State
23 regulations -- or the State's created regulations are not in
24 accordance with the ballot question or the Nevada statutes.
25 The application developed by the State is inconsistent with

1 the ballot question, the statutes, and even the regulations.
2 Decisions were made during the process which further deviated
3 from the ballot question, the statutes, and the regulations.
4 The scoring criteria used by the Manpower evaluators was also
5 inconsistent with the ballot question, the statute, and the
6 regulations.

7 During the application process, as I indicated
8 before, Your Honor, changes were made to the application.
9 Many applicants were unaware of the changes to the
10 application, and the fact we have Exhibit 5 and Exhibit 5A,
11 which until this process started the State wasn't aware that
12 there were two applications available on their Website. It
13 became clear to Ms. Cronkhite, became clear to Mr. Pupo, and
14 became clear to the State's attorneys that there were two
15 available, and during this process, when it became available,
16 one of those applications was removed from the Website, Your
17 Honor.

18 Now, when I questioned the former CEO of the MGM
19 properties he was clear in indicating that in order to have an
20 apples-to-apples comparison of bids you have to have the same
21 documents that they're relying upon, and that the owner, in
22 this case the State, would be responsible for any variations
23 in those documents. We have different responses. And I can
24 tell you that NWC prepared a response based on the requirement
25 of a location, a physical location. Not a UPS Store, not a

1 floor plan giving no indication of community impact, which is
2 one of the criteria under the nonidentified portions of the
3 application, Your Honor. In fact, during the hearing, Your
4 Honor, after 10 months and we find out that there's two
5 applications we also find out that there's conversations going
6 on behind the scenes with Amanda Connor and a consultant paid
7 over -- or paid roughly \$150,000 per application with Mr. Pupo
8 regarding inconsistencies in the application and the
9 regulations. These documents, part of which we just received
10 roughly two weeks ago when I asked for Mr. Pupo's emails,
11 that's just how confusing the documents were, not only to
12 people who thought they were really versed in this, but as
13 well as to the State and the State's head person.

14 So let's take a look at that document, Your Honor.
15 This is Exhibit 310.

16 THE COURT: This is the "DAMMIT" email?

17 MR. PARKER: That is it indeed.

18 THE COURT: Okay. I've got it.

19 MR. PARKER: If you could pull that up for me,
20 Shane.

21 THE COURT: DOT46271.

22 MR. PARKER: Yes, Your Honor.

23 And so if would start at the bottom of the first
24 page, Your Honor -- I'm not sure you can hear me --

25 THE COURT: And I have my own copy, Mr. Parker.

1 MR. PARKER: You do?

2 THE COURT: I do.

3 MR. PARKER: Okay. Good enough.

4 So at the bottom of this page is an email dated
5 August 22nd, 2018, sent at 6:17 p.m. Now, I point the date
6 out because this is after the ListServ was supposedly sent
7 saying that location was not necessary. It's also important
8 to note this is at 6:17 p.m., after work hours, a
9 demonstration of the relationship between certain members of
10 the DOT, Department of Taxation, and outside influences or
11 consultants speaking on behalf and helping some of these
12 intervenors.

13 So it says here at the bottom, speaking to Jorge
14 Pupo, says, "I know that the regulations made clear that land
15 use or the property will not be considered in the application
16 and having a location secured is not required, but there seems
17 to be some inconsistency in the application." Now, this is
18 someone who had direct access to Mr. Pupo, the head of the
19 Department of Taxation in terms of Marijuana Enforcement
20 Division. It's also a person who has dealt with this from the
21 Dispensary Association, who dealt with it on behalf of several
22 of her clients, and is still confused or believed that there's
23 inconsistencies in the application.

24 So in response to that email Mr. Pupo says, "That is
25 correct. If you have a lease or own property, than --" it

1 should have said "then" "-- put those plans, but [inaudible]
2 tell us what the floor plan will look like."

3 Now, there is not a single indication in the ballot
4 question or the statutes or even the regulations saying, floor
5 plans are sufficient or adequate or is what's required. In
6 fact, it's just the opposite, just the opposite, Your Honor.

7 If you'd go down a little bit more, Shane, or
8 towards the top of the page. Right there. Thank you, sir.

9 Ms. Amanda at 8:24 p.m., later in the evening, says,
10 "But a person who has a lease or owns a property will not get
11 more points simply for having a property secured, correct?"

12 Now, again, she's thinking that scoring is involved
13 in the location. What we found out during this process is
14 that Mr. Pupo took scoring out completely in terms of having a
15 location and based it on floor plan, again, something not
16 allowed by the ballot question, the statutes, or the
17 regulations.

18 And finally, the quote of the trial -- or the
19 hearings, "Nope. LOCATION IS NOT SCORED DAMMIT."

20 Your Honor, this is inside information given to
21 Amanda Connor that materially benefitted the intervenors that
22 she represented. I can tell you on behalf of Nevada Wellness
23 Center it had no such access, had no such information, and the
24 majority of the plaintiffs did not.

25 What is also important to understand, Your Honor, is

1 that people like Ms. Connor and other successful applicants,
2 perhaps like Mr. Jolley of Nevada Organics or Armen
3 Yemenidjian, I believe, had access to DOT staff, including Mr.
4 Pupo, including Ms. Cronkhite, including Mr. Gilbert. These
5 individuals had cell numbers for the DOT staff. These
6 individuals, among others, had lunch, dinner, drinks with the
7 DOT staff. They had access to DOT representatives throughout
8 the process. Nevada Wellness Center, Your Honor, had no such
9 connections. They had no such access, they had no special
10 relationships that led them to be able to have lunch, dinner,
11 and drinks with DOT representatives.

12 And nor should they have had to. This process
13 shouldn't be based upon relationships. It shouldn't be based
14 upon favoritism, it shouldn't be based upon who you know. It
15 doesn't say that in the ballot question. It shouldn't be
16 based on how rich you are or how fair-skinned you are. That
17 shouldn't matter. It should have nothing to do, it has no
18 place in this process. The voters didn't require it to have a
19 place in this process. Diversity is something other than
20 having connections. Impact to the community is something
21 other than having connections.

22 What NWC had, Your Honor, was significant medical
23 and recreational marijuana sales experience. They were one of
24 the first to open the medical, and right there on the cutting
25 edge opening for recreational. They had a successful

1 operation, they had a functioning building space that was
2 inspected and given a clear report on September 18th, 2018,
3 two days before the closing of the application period. Nevada
4 Wellness Center is owned by all-Nevada residents. The owners
5 are all African-American, they all have college degrees,
6 they've all done well in business, and they deserve a fair
7 playing field.

8 Now, just before -- I'm sorry. Strike that, Your
9 Honor.

10 Despite the inspection that went well on September
11 18, 2018, the Manpower graders deducted points from NWC
12 because they couldn't understand what a mantrap was. But they
13 had an understanding where the hand sink was. And so what I
14 did when I questioned some of the DOT witnesses is I put
15 before them the actual plans so they could see it for
16 themselves and they could see the scoring and recognize the
17 mistakes made by the Manpower graders.

18 Now, what should have happened, Your Honor, because
19 it's spelled out in the training manuals that we looked at
20 early in this case, there was quality control and quality
21 assurance obligations for the DOT employees. But when I asked
22 Ms. Cronkhite and I asked Mr. Gilbert and Mr. Plaskon, they
23 said they did not perform any quality control and no quality
24 assurance. As a result, we have mistake after mistake after
25 mistake being made and nowhere to actually correct it. So

1 when we asked Mr. Pupo, what happens when there's a mistake,
2 how do you correct the mistake, there is no mechanism to
3 correct the mistake. So there's no administrative way of
4 correcting this mistake. Where do we go? Where are we left
5 to go? And that's why we're before this Court. And I'm
6 saying that because the standing argument that may be made
7 makes no sense. There was no other mechanism or outlet for
8 these issues to be resolved despite our attempts, including a
9 request for an appeal.

10 The graders also made mistakes in evaluating, Your
11 Honor, the education levels, as I said before, of several of
12 the applicants, including Nevada Wellness Center. There was a
13 mistake where I believe twelve of the officers and owners of
14 Nevada Wellness Center had undergraduate degrees and Masters,
15 and some had Doctorate degrees. You review it, and they gave
16 credit for only five of the twelve. A complete mistake. So
17 those are the types of mistakes that quality control and
18 quality assurance could have caught. Those are mistakes that,
19 if it was done in accordance with the practice that other
20 State of Nevada departments utilize for evaluating competitive
21 bid processes, would have been caught and corrected.

22 Now, Your Honor, what we've also found out -- and a
23 lot of these mistakes and issues that led to the position
24 we're in right now are related to the State and how it created
25 the regulations and their failure to do quality control and

1 quality assurance. But the intervenors are just as at fault.
2 And in fact, while the State may have done some things
3 unwittingly, or perhaps wittingly in terms of certain -- based
4 on certain connections, there was gamesmanship, clear
5 gamesmanship in terms of how the intervenors approached this
6 application process from illusory advisory boards stacked with
7 minorities in an attempt to get some diversity points to using
8 gender to create a sham ownership, not so much in terms of
9 ownership because of relations to husbands, but a husband
10 getting up here and saying he runs the company, but three
11 wives are the owners. It was clear based upon his testimony
12 how and who ran that company. And it wasn't the three owners,
13 because none of them appeared. Who appeared with the person
14 who put together the loan, the person who looked around at
15 properties, who was in charge of dealing with the consultant.
16 But he knew that having three women owners would give him
17 points in terms of gender for purposes of diversity, Your
18 Honor.

19 Now, Your Honor, every single witness in this case I
20 believe has given testimony supportive of an injunction.
21 Every single witness. And I don't want you to take my word
22 for it, Your Honor, but I want the Court to consider what I've
23 said simply as the backdrop before which this Court has to
24 evaluate the necessity of an injunction and then appreciate
25 that an injunction proceeding is an equitable proceeding in

1 nature. And equity involves fairness. It involves a balance
2 of interests. In the context of an injunction the Court has
3 to decide when is enough enough. It is obvious the process
4 was conducted arbitrarily and that the acts of the DOT were
5 capricious, resulting in favoritism to the connected
6 applicants.

7 The plaintiffs didn't want to have to be here, Your
8 Honor. The plaintiffs, and specifically on behalf of Nevada
9 Wellness Center, simply wanted a fair process governed by the
10 ballot question, the statutes, and hoped that that would rule
11 the day. NWC believed that the rules would be applied to all
12 applicants and each would be judged on the criteria spelled
13 out which were consistent with the ballot question and the
14 statutes. Conversely, the intervenors chose to be a part of
15 this proceeding. The intervenors could have allowed the State
16 to defend this action on its own.

17 Now, Your Honor, I want you to consider the
18 testimony of some of the witnesses. I'd like to start off
19 with Ms. Contine. And I'm not going through all of them, just
20 a few, Your Honor. But I think their testimony is a clear
21 indication of what was going on and why this process was not
22 done correctly and was done arbitrarily and capriciously.

23 Shane, can you put on the screen, please, Ms.
24 Contine's testimony beginning on Day 12, which is July 12th,
25 2019.

1 IT TECH: Do you have a page and a line?

2 MR. PARKER: I do. Page 118. And we're going to
3 start at line 11, going through line 22.

4 So, Your Honor, this deals with background checks.
5 I asked Ms. Contine -- prior to getting here I asked Ms.
6 Contine did she know Mr. Phil Peckman, Armen Yemenidjian, and
7 Andrew Jolley. She said she did. She said, in fact, that
8 some of them may have contributed to her 2018 campaign. She
9 was one who said she created the regulations. And within six
10 months of leaving the State Department of Taxation she was
11 already consulting with applicants on their submission of the
12 2018 marijuana applications, which we believe was in violation
13 of the one-year cooling-off period, Your Honor. So what we do
14 know, also, Your Honor, in terms of connections is that she
15 never went to dinner, lunch, or had drinks with Mr. Hawkins or
16 anyone from the NWC.

17 Now, in terms of background checks, Your Honor, the
18 ballot question required and statutes required, it says "each
19 prospective owner, officer, or board member. She created the
20 regulation that said 5 percent. And so I asked her first why
21 was the fee associated with the application not enough to pay
22 for the application and the background -- the application
23 review and the background check. And this testimony goes to
24 that point, Your Honor. It says, "There was enough money --"
25 and I'm not going to read the whole thing, Your Honor, to you,

1 but from line 11 to line 22 I asked her, "Was there enough
2 money in the license fee to do a background check?" And at
3 line 22 she says, "Yes." Can you --

4 THE COURT: I think we're on the wrong page.

5 MR. PARKER: Yeah. You have the wrong page, Shane.

6 IT TECH: Which page?

7 MR. PARKER: 118.

8 IT TECH: Day 12?

9 MR. PARKER: Day 14. July 12th, Day 14. Do you
10 find it? All right. Here we go.

11 So that was part of the question, Your Honor. I was
12 concerned that the State may say, yeah, we don't have the
13 financial resources to do background checks on each
14 prospective owner. But she indicated that there was
15 sufficient money.

16 Now, there is no distinction between public
17 corporation or simply another other corporation, Your Honor.
18 So for purposes of background checks, if for some reason the
19 public corporation doesn't want its owners to be background
20 checked, simply don't submit an application. If you are
21 agreeing to our ballot question approved by the citizens of
22 Nevada, then you're agreeing to comply with the ballot
23 question, you're agreeing to comply with the statutes, which
24 says "each prospective owner, officer, or board member." So
25 there was no financial reason why the State could not perform

1 background checks on each prospective owner, officer, or board
2 member, Your Honor.

3 Additionally, I asked Ms. Contine why not require it
4 and why not do it. And so -- and then I asked her about the
5 distinction.

6 So, if you could, Shane, go to page 125.

7 THE COURT: Same day?

8 MR. PARKER: Same day.

9 And this is where I asked her to clarify that there
10 was no distinction between corporations, public or non-public.

11 And we're going to go from line 6, Shane, through
12 line 17. So the question, Your Honor, is, "Would you agree
13 with me that there is no distinction in terms of this chapter
14 between public corporations and any other corporation in how
15 it's treated?"

16 She says, "I don't think there's a distinction."

17 My next question is, "Which means if you have a
18 corporation with 10 people, you do a background for those 10,
19 if you have a corporation with 100 people, you do background
20 on 100; is that correct?"

21 And she says, "Right. And that's the regulation
22 addressed 5 percent."

23 Now, we go on further to try to figure out what made
24 them believe that 5 percent was not a deviation from the
25 statute not allowed by the ballot question.

1 So we could go to page 130, Shane, same day.

2 Actually 127, Shane. I'm sorry.

3 So this is where I ask her, what happens if you
4 leave this to 5 percent and there's a 4 percent owner, Your
5 Honor, that has a criminal conviction, not allowed. And her
6 response was -- this is page 128, lines 4 through 14 -- "I
7 think the rationale in the discussion that occurred throughout
8 the process was that there would be such a low amount of
9 ownership interest that the public health or safety would be
10 protected." That's her response in terms of what happens if a
11 4 percent felony conviction owner is there.

12 Now, Your Honor, there is nothing in the ballot,
13 nothing in the statutes that allow for this. And in fact
14 the regulation itself says that a person convicted of a
15 Category 1 violation is ineligible, cannot be an applicant,
16 cannot have an ownership interest in a recreational marijuana
17 establishment.

18 So go to page 131, Shane, starting at line 17.

19 And this is looking at NAC 453D.905. It says here
20 starting at line 17 it says here, "It says here 'Category 1
21 violations are violations of a severity that make a person
22 ineligible to receive a license, including, without
23 limitation, conviction of an excluded felony...." She says,
24 "Yes."

25 Then my followup question, "So if a 4 percent owner

1 is an excluded -- has a conviction of an excluded felony
2 offense, doesn't the Code say he cannot be an owner? It says,
3 'ineligible'; is that correct?" "That's what the statute
4 says."

5 So, Your Honor, you don't have to take it from me,
6 you don't have to take it from Mr. Kemp, you don't have to
7 take it from Mr. Gentile. That's what the regulation said,
8 which is inconsistent with their own regulation, and it makes
9 an owner who, 4 percent, 1 percent, it does not matter. You
10 have to do a background check to figure this out. You won't
11 -- they're not going to stamp it on their head "I'm a
12 convicted felon, I can't have -- I can't be a marijuana
13 establishment owner." You cannot do it without actually
14 following the statute and doing a background check on each
15 owner.

16 And so I follow that up and I ask on page 132,
17 lines 7 through 18, "So, Ms. Contine, under this section
18 that 4 percent owner is ineligible if he has a conviction --
19 he or she has a conviction of an excluded felony offense;
20 isn't that correct?"

21 She says, "Yes."

22 "Thank you. And the only way you would have known
23 that person had that conviction of that excluded felony
24 offense is to actually do a background check for all
25 prospective owners; isn't that correct?"

1 She says, "Yes."

2 Your Honor, there's no way -- that alone prevents
3 this process from being not enjoined. This mistake is a
4 mistake that involves the safety of public -- of our residents
5 and the public at large given that owners with felony
6 convictions, Category 1 or 2, are ineligible. And you won't
7 know unless you do a background check on all prospective
8 owners, officers, and board members.

9 So I tried to bring a conclusion to this line of
10 questioning on page 133, Your Honor -- strike that, Your
11 Honor.

12 I moved from discussing the background check to the
13 physical address, and I was questioning Ms. Contine with
14 regards to why physical addresses were not required as part of
15 the application, because, as the Court knows, the statutes
16 make it clear that it's an important criteria. So I asked her
17 on page 133, at the top of the page, it says --

18 Shane, can you go to 133.

19 It says, "When you created this part of the
20 Administrative Code did you believe that the physical address
21 was important for the proposed marijuana establishment?"

22 She says, "Yes."

23 "And tell me why you believed it was important to
24 have a physical address."

25 "Well, you'd have to have a physical address to have

1 local government review."

2 Go to page 134, Shane, please.

3 Starting at line 13, Your Honor, I continue that
4 questioning, asking her, "So when you created this provision
5 453D.265, in particular (1)(b)(3) you had an idea of why a
6 physical address was important, and I think you just said that
7 a second ago; correct?"

8 "Yes."

9 "And did you notice that the statute also placed an
10 importance on the physical address?"

11 She says, "Right."

12 "Did you also note that the ballot placed an
13 importance on the physical address?"

14 She said, "Yes."

15 "So do you have any explanation why the Department
16 of Taxation, after you left, changed the application to remove
17 physical address?"

18 "I don't know about that, no."

19 Your Honor, she created the regulation. She knew
20 the importance of physical address, and yet it was removed
21 from the application, making the application inconsistent not
22 only with the ballot question, the statutes, but also the
23 regulations created by the Department of Taxation.

24 Now, the last point I want to hit with the testimony
25 of Ms. Contine is sales to a minor. And this deals with the

1 compliance portion that was again taken out of the scoring by
2 the Department of Taxation for some reason. And if I could
3 recall --

4 Shane, could you put up Exhibit 96 for me.

5 Just to set the stage, Your Honor. So Exhibit 96,
6 Your Honor, is the email from Ms. Kara Cronkhite --

7 And if you could bring some highlight to the first
8 paragraph for me, Shane.

9 And this involved, I believe, Nevada Organics, Mr.
10 Andrew Jolley's company. And he asked that the investigation
11 regarding selling -- reported -- self-reported incident of
12 selling to a minor be removed from the law. Now, that's a
13 Category 2 violation under the regulation, Your Honor. So if
14 Ms. Contine -- now that you have some context, Your Honor, Ms.
15 Contine says --

16 And we're going to go page 142, same day, Shane.

17 This is what she says about selling marijuana to a
18 minor, starting at line 5. "Would agree with me selling
19 marijuana to a minor is a serious offense?"

20 She says, "Yes."

21 "And you would agree with me that that's something
22 that the initiative said was prohibited?"

23 "Yes."

24 "And in fact it's reinforced in the statute?"

25 She says, "Yes."

1 "And in fact it's a Category 2 violation under the
2 Code; is that correct?"

3 "Under the civil penalties you mean?"

4 "Yes, under 905 -- NAC 453D.905."

5 She says, yes.

6 And then I ask her, and we'll go all the way to
7 page 144, "Isn't it important --"

8 This is page 144, line 8, Shane.

9 "Isn't that more important, to know how an operator
10 has done over the past several years when considering whether
11 or not to give them a license for recreational, to know they
12 had deficiencies and these types of violations?"

13 "I think the regulation anticipates that there would
14 be some review of compliance."

15 Now, this is the person, again, who made the
16 regulations, saying that that's something that should have
17 been considered, and yet it was removed from consideration
18 from Mr. Pupo -- by Mr. Pupo, her successor. Your Honor,
19 clear indications from the State themselves, former and
20 present, that the process was done inconsistent with the
21 ballot question, inconsistent with the statutes, and
22 inconsistent with their own regulations.

23 Ms. Cronkhite, Your Honor -- and I'm going to try to
24 go through hers a little quicker, because some of it's, while
25 not repetitive, hits the same points, but from their own

1 perspective.

2 So Ms. Cronkhite indicated that she had no idea why
3 this 5 percent margin or condition was created.

4 So we could go to Day 12, Shane, July 10th, and
5 we're going to start at page 85.

6 It says at the top, "The ballot question required
7 you to do certain things, and you couldn't go outside of the
8 parameters of the ballot question. Would you agree with
9 that?"

10 She agrees, Your Honor.

11 "So if I see a difference between the statute and
12 the Code, would you agree that someone made a mistake?"

13 She said, "If there's a differentiation between the
14 two, then there could be a possible error," Your Honor.

15 I set the stage in terms of this line of questioning
16 just to see where she was regarding the hierarchy or to try to
17 have her prioritize the statute from the regulations created
18 by the Department.

19 So if we go to page 90, line 6.

20 And I asked her, "Do you recall the Code section
21 that indicates 5 percent ownership?"

22 She says, "Yes."

23 And we're looking at the Nevada Administrative Code?
24 That's the Court interjecting.

25 And I said, I am. We're looking at 453D.255.

1 And I asked her if she's familiar with that statute
2 -- or that Code section, and said, "Do you see the difference
3 between each prospective owner and now one with a 5 percent
4 interest?"

5 "Yes. I don't recall if this was just for agent
6 cards or for obtaining a license. I'd have to look at it."

7 So then I asked her, "Do you know why 5 percent was
8 used?"

9 "No, I don't."

10 "You have no idea?"

11 "No."

12 Now, I asked Mr. Pupo the same question. Mr. Pupo
13 had no idea. The definition, Your Honor, of arbitrary. They
14 selected 5 percent without having any rational basis for that
15 percentage. And that's from their testimony.

16 In terms of suitability of location Ms. Cronkhite
17 testified, page 96 -- and I asked her, can you determine a
18 suitable location by looking at a floor plan -- I said, "So
19 you cannot --"

20 Page 96, lines 8 through 10, Shane.

21 "So you cannot determine a suitable location by
22 looking at a floor plan; is that correct?"

23 She says, "Correct."

24 Now, Your Honor, I'm kind of skipping some of the
25 testimony, because I'm sure the Court remembers a lot of this.

1 But that final response was after we went back and forth
2 regarding how do you know what's suitable under the statute,
3 because the statute uses the word "suitable location" versus
4 -- from a floor plan versus a physical location. And then she
5 concedes that you cannot determine suitable location as
6 required by the statute simply from a floor plan. And, as
7 Your Honor knows, Nevada Wellness Center for each of its four
8 applications had physical locations. It took the time and put
9 forth the effort to find suitable locations.

10 She also confirmed, Your Honor, that compliance was
11 not considered. This goes in part to what Mr. Gentile said
12 and what Mr. Kemp echoed regarding this whole Sgt. Schultz
13 approach. Looking at page 103, line 19, starting at line 19,
14 and this is the Court's questioning, not my question, Your
15 Honor, the Court says, "Wasn't compliance supposed to be an
16 important part of the application process?"

17 And she responds, "Yes."

18 "How did it get in there if it wasn't part of the
19 application or your training?"

20 Her response is, "I'm not sure I understand your
21 question. Do you mean compliance with the regulations
22 throughout the application as a whole?"

23 Your Honor says, "No, I don't. So you have people
24 who are currently operating either medical marijuana or
25 recreational marijuana, and they're mostly the people who are

1 applying; right? Some of them are cultivators, some of them
2 are labs, but they're mostly people who are already operating
3 a dispensary; right?"

4 She says, "Yes."

5 "They have compliance reports based on the people
6 that you supervise on how they're doing in their operations;
7 right?"

8 She says, "I understand what you're saying." And
9 she says, "We have a file on every facility. However, the
10 section of the application that I trained on was non-
11 identified. They would have no way of even knowing who they
12 were scoring. So compliance was not considered."

13 Your Honor, the statutes required compliance to be
14 considered. So this is confirmation by Ms. Cronkhite, one of
15 trainers of the Manpower scorers, that they did not consider
16 compliance, which is required by the statute, again going
17 beyond the statute, going outside of the ballot question.

18 Now, Your Honor, in terms of Mr. Pupo, Mr. Pupo's
19 testimony was on Day 10, June 20th, and he confirmed access
20 that certain applicants had to him versus others.

21 In fact, if we start at page 84, Shane.

22 IT TECH: Volume I, or Volume II?

23 MR. PARKER: This is -- good question, Shane. Let
24 me show you what I have, and you tell me. [Inaudible].

25 THE COURT: Mr. Parker, remember, you need to be

1 near a mike so Jill can include you on the digital audio-video
2 recording system.

3 MR. PARKER: Thank you, Your Honor.

4 Are we okay, Jill?

5 THE COURT RECORDER: Your fine.

6 MR. PARKER: You didn't miss much over there.

7 So page 84, says here, line 1, "Did you meet with
8 any owners -- did you know the owners of Commerce Park and
9 Cheyenne?"

10 "I know some, I don't know all the owners."

11 "What owners do you know?"

12 "Mitch Britten, Phil Peckman," he says.

13 "And who are the owners that you're aware of in
14 terms of Essence Trop and Essence Henderson?"

15 He says, "Armen."

16 "No one else have you met with or are familiar
17 with?"

18 "Not that I'm familiar with."

19 And did the owners of these companies, have you
20 spoken to them, have you given -- gone to lunch with them,
21 dinner?

22 He says, "Yes."

23 "And have they all made offers to you?" We were
24 talking about job offers.

25 He says, "Yeah."

1 "And you turned them down on the offers?

2 "I'm not interested in staying in the marijuana
3 space."

4 Now, Your Honor, I'm moving kind of quickly, but the
5 point is he knew the owners of these successful applicants and
6 some of which offered him jobs while this process was going on
7 for when he eventually left the Department of Taxation.
8 That's a demonstration of just how close some of the
9 relationships were between the Department of Taxation and
10 these intervenors.

11 Now I want to go to page 92, Shane, starting at
12 line 20.

13 Your Honor, Mr. Pupo testified that he was aware of
14 not only these owners, but also, of course, based upon the
15 email we read earlier, familiar with Ms. Amanda Connor. And
16 so I asked him about his relationship with Ms. Connor,
17 business relationship with Ms. Connor, and if he could change
18 things, if he could redo this process, would he have made
19 certain changes. And so -- let me see if I can get it
20 exactly. Court's indulgence, Your Honor.

21 THE COURT: Sure.

22 (Pause in the proceedings)

23 MR. PARKER: All right. Your Honor, this is going
24 back to the 5 percent. Let me hit this before I move on.

25 Page 26, Shane.

1 So line 8 says, "Are you familiar with the statute
2 or the Code -- I'm sorry, Administrative Code?"

3 He says, "Yes."

4 "And this deals with the 5 percent requirement in
5 terms of ownership?"

6 Again he says, "Yes."

7 "Was there a 5 percent requirement in the 2014
8 application process in terms of designation of owners,
9 officers, and board members?"

10 He says, "No."

11 "Why was it utilized for this regulation when the
12 statute nor the ballot question said 5 percent or more?"

13 His response is, "I believe the statute says we
14 would do regulations that are necessary and convenient. So at
15 some point it was determined 5 percent interest."

16 So then I asked, "Was there an analysis --" this is
17 page 27, line 3. "Was an analysis performed which would
18 support deviating from the ballot question or the statute?"

19 His response, "Was there an analysis performed was
20 your question?"

21 I said, "Yes. Any kind of scientific approach to
22 this determination? Did someone consult with an expert in the
23 field of corporate structures or with determining the value of
24 ownership? Was anything done to this decision that 5 percent
25 would be the mark or the threshold for ownership

1 identification?"

2 "No, I don't believe so."

3 "It was just picked out of the air?"

4 "I don't know. It could be something from Gaming. I
5 don't know where it came from."

6 Your Honor, conclusively now from the top to the
7 middle to the bottom of that hierarchy at the Department of
8 Taxation 5 percent had no rational basis for that number. He
9 doesn't know it, Ms. Contine didn't know, Ms. Cronkhite didn't
10 know. So that's again squarely within the definition, the
11 four corners of the definition of arbitrary conduct, Your
12 Honor.

13 Your Honor, there's one other portion I want to
14 conclude with in terms of Mr. Pupo.

15 THE COURT: And, Mr. Parker, you're at 11:21.

16 MR. PARKER: Okay. Thank you, Your Honor. Well, I
17 figured since Mr. Shevorski planned on not going today, I'd
18 finish up, Your Honor.

19 THE COURT: Well, we want Mr. Bult to go.

20 MR. PARKER: Adam, I'm sorry.

21 MR. BULT: Oh, that's great. Thank you.

22 MR. PARKER: All right. So, Your Honor, in
23 questioning Mr. Pupo I asked him about location, and I asked
24 him if it was a mistake that location was not a part of -- the
25 physical location was not a part of the application. He

1 responded on page 103 through 105 with his testimony that --
2 and I asked him quite frankly towards the end, this is page
3 105, line 19, "Would you agree with me that there was a
4 mistake that people of Nevada thought that the location was
5 important, it should have been reflected and scored in the
6 2018 -- as scored in the 2018 application?"

7 And he says, "I don't think it was a mistake. I
8 think Question 2 grants the Department authority to issue,
9 suspend, and revoke the license."

10 Then I asked him -- towards the end of his statement
11 he says, "We do our final inspection of the location and issue
12 the final license." So then he says, "So location is
13 important."

14 And then I asked him about public safety, and again
15 he indicates that it was important, but it was not scored.

16 So I don't know how you can reconcile it being
17 important and not --

18 MR. GRAF: We lost the screen. What day and page
19 were you on there?

20 MR. PARKER: This is page -- that was page 105.

21 MR. GRAF: Of which day? Day 10, Volume I?

22 MR. PARKER: 6/20.

23 MR. GRAF: Thank you.

24 MR. PARKER: Okay. Just one other thing. All
25 right. Here we go. Now, Your Honor, I want to finish in

1 terms of Mr. Pupo with these comments by him. Starting on
2 page 92. Again, this is Day 10, 6/20/19, line 20.

3 Are you there, Shane?

4 It says, "All right."

5 You've got to go further down, Shane. Oh. No.
6 You're fine. You're fine right there.

7 "As indicated a few minutes ago, there were things
8 that you could have improved upon in terms of the 2018
9 application process. Do you recall saying that a second ago?"

10 He says, "Yes."

11 "Can you tell me looking back now, considering some
12 testimony you've given, what portions of this process of the
13 application could you improve upon?"

14 "Generally I mean what I would do, I would go back
15 and look at the entire process and pinpoint specific areas. I
16 wasn't pinpointing specific areas right now, but I would say
17 that there's room for improvement. Obviously I think, you
18 know, better language, you know, clarifying, making sure
19 everyone understands what's being asked of them."

20 Now, that's something I said early on in this
21 presentation, Your Honor.

22 Then I said, "Would you agree with me --" I'm going
23 in inverse order. "Would you agree with me that perhaps it
24 was not wise to speak as much to an attorney representing
25 several applicants during the application process?"

1 After the objections he says, "No. I mean, we
2 conducted business that needs to be conducted for the State.
3 And because there's an application process the rest of the
4 business doesn't stop."

5 I said, "Well, you knew Ms. Connor was on the
6 Governor's Task Force; is that correct?"

7 "I didn't know she was a co-chair. I knew she was
8 involved."

9 "You knew that she represented several of the
10 applicants?"

11 He says, "Yes."

12 "Did you have an understanding of how much she was
13 being paid by the applicants?"

14 "Not really."

15 "What's that mean?"

16 "I heard rumors," he said, "somewhere around
17 150,000." And he said, "I heard something like 150,000."

18 "So you knew she had a financial interest in this
19 process when you were talking to her, when you were meeting
20 with her; is that correct?"

21 "Sure."

22 "And knowing that she had a financial interest in
23 this, did you stop for a second to think that perhaps having
24 conversations with someone who had a financial interest in
25 representing applicants to this process may not be the best

1 thing to do?"

2 "That's something I'm going to have go back and
3 think about, do some self analysis here."

4 "And it's good that you're doing it in front of
5 Court, because it's something that you can admit to and
6 perhaps not do in the future; right?"

7 "Possibly, yes."

8 "And would the same be true in terms of having
9 conversations with applicants that knew -- that you knew would
10 take part in the 2018 process?"

11 He says, "I can't stop talking to everyone. They
12 have a lot more business than an application."

13 And then he [sic] says, "But would you agree with me
14 that if for some reason during these conversations certain
15 information inadvertently creeps out about the process, that
16 those conversations could give someone a material advantage in
17 the process?"

18 He says, "It's possible."

19 "And for that reason at least in the 2014
20 application there was a manner in which information could be
21 disseminated to all potential applicants, to the public, and
22 through a question and answer process, a written question and
23 answer process; is that correct?"

24 "Yes."

25 Now, I bring that to your attention, Your Honor,

1 because that's the material advantage that's not allowed. The
2 caselaw -- or the Public Works statutes for competitive
3 bidding processes that was gamed by these intervenors by
4 having that type of access. And Mr. Pupo recognized it,
5 unfortunately, after the fact, after having dinners, lunches,,
6 drinks with Ms. Connor and intervenors. That's why this
7 process was not fair. That's why the playing field was not
8 level. The intervenors came to this application process with
9 a sense of entitlement, Your Honor. The entitlement was based
10 on these relationships with DOT representatives borne out of
11 drinks, lunches, and dinners. Additionally, testimony from
12 certain intervenors and DOT representatives confirmed the
13 relationships and that the prevailing applicants had greater
14 access, including cell numbers, including information,
15 including emails, none of which was shared by the majority of
16 the plaintiffs, certainly not Nevada Wellness Center.

17 Coming into these proceedings the intervenors had I
18 would say the audacity to question why the plaintiffs thought
19 that they were entitled to a fair and level playing field.
20 The overwhelming bravado by some of the intervenors I think
21 led to them giving testimony that they didn't want to give.
22 They didn't want to admit that they had the benefit of their
23 compliance issues swept under the rug so it wouldn't be
24 considered. They had the audacity and the bravado to say, I
25 run this company despite three women being identified as the

1 owners and runners of that company.

2 My thought, Your Honor, is -- and I've seen what Mr.
3 Bult is going to ask the Court. I join in what he's going to
4 ask the Court to do. And I, of course, join in the comments
5 made by Mr. -- some of the comments made by Mr. Gentile. I do
6 believe that diversity should have been a part of this
7 process. With that exception, I agree with the rest of what
8 Mr. Gentile said. And I also agree with the comments made in
9 terms of the request by Mr. Kemp. Thank you very much, Your
10 Honor.

11 THE COURT: Thank you, Mr. Parker.

12 Mr. Bult, can you finish in 10 minutes, or do I need
13 to ask Mr. Parker a question?

14 MR. BULT: Why don't you ask him the question now.

15 THE COURT: Mr. Parker, are you and Mr. Hawkins okay
16 if let Mr. Bult finish while you leave to go to your Housing
17 Authority board meeting?

18 MR. PARKER: I believe so. I got the wave.

19 THE COURT: Okay. Thank you, Mr. Hawkins.

20 All right, Mr. Bult. You're up. And you can take
21 more than 10 minutes if you need.

22 MR. BULT: Thank you. Appreciate it, Your Honor.

23 THE COURT: And, Mr. Parker, you took longer than
24 Mr. Gentile.

25 MR. PARKER: I did.

1 THE COURT: You did.

2 MR. PARKER: I know he's going to take longer. He
3 didn't cover everything I intended to cover. I thought he
4 would. So --

5 THE COURT: Mr. Bult, you're up. Go.

6 MR. PARKER: Hope I made it easier for Mr. Bult.

7 ETW PLAINTIFF' CLOSING ARGUMENT

8 MR. BULT: Thank you, Your Honor. And on behalf of
9 the ETW plaintiffs we join in the arguments of our co-counsel,
10 and I believe they've done an excellent job of addressing the
11 four questions that you had for us before we started, so I
12 don't want to regurgitate any of that information.

13 Over the next couple day, and it's already started,
14 you're going to hear a fair bit of deference. And in fact one
15 of the intervenors discusses some of the seminal decisions on
16 deference. And Mr. Parker is right that that conversation has
17 had an evolution. And I call it an evolution because the
18 State should be afforded that deference, but it cannot be
19 arbitrary or capricious. And I think from what we've seen
20 from our co-counsel and from what we've seen from the excerpts
21 it absolutely was arbitrary and capricious. The State is
22 afforded deference, but when the State admits it refused to
23 marry the initiative with the regulations and the State, that
24 is arbitrary and capricious. The State is afforded deference,
25 but what it isn't allowed to do is withhold information on how

1 that process was handled. And the State is afforded
2 deference, but what it isn't allowed to do is pass the
3 entirety of its grading process to Manpower. And the reason
4 it's not allowed to do that is because deference is no longer
5 the analysis at that point, it becomes about abdication.

6 So the evolution I'm talking about is over the last
7 nearly three months where we went from deference to
8 abdication. We saw the intervenors and the State take a
9 different tact. So then the tact became, you're sore losers.
10 But we knew that wasn't going to work, because we didn't have
11 a baseline to analyze how the scoring was done. And some of
12 that argument has started again in last night's briefing, and
13 we saw it with the sore loser arguments and I'll discuss in a
14 little bit about how irreparable harm, how we weren't going to
15 be able to meet that because we couldn't show that we would
16 have done better.

17 So the sore loser argument was pressed early on in
18 the hearing, and Your Honor, will recall where certain
19 witnesses were asked, well, would you have done better. And
20 two different avenues came out of that, and they're important.
21 Mr. Kemp did a great job of showing you that the analysis as
22 to his clients, they may have done better with a few shuffles.
23 But the trouble became with Mr. Thomas, with Mr. Viellion that
24 you didn't have a baseline, you didn't know how those points
25 had actually been rated. And so this argument that somehow we

1 were sore losers because we weren't going to do better if the
2 process was redone is an empty argument, because we didn't
3 have the baseline.

4 So the transparency issue comes up because when you
5 can't get the information about how it was graded, when you
6 can't have robust and meaningful conversations at the scoring
7 interviews in January you're left without information. So it
8 takes nearly 10 lawsuits, a legislative session, a new
9 administration, and an Assembly bill to get what we should
10 have had at the normal part of a record in due course. So we
11 get that information. That's SB 32. We learn there that we
12 still don't have a baseline, we still don't have a way to tell
13 if we would have done better. So are we really sore losers?

14 Evolution can you tell us. Now the evolution of the
15 argument is some type of a balance of harms. And that balance
16 of the harms is that, you're sore losers, you wouldn't have
17 done better, so really don't get in the way of some other
18 people who are trying to go open these and these cost a lot of
19 money, so go sit down. We'll talk about where that went. And
20 then there wasn't a single offer that came into evidence.
21 There wasn't a single value for what those would have cost.
22 Always on fact, even spoon-feeding a witness we didn't get the
23 right number.

24 So the erosion of trust and the lack of confidence
25 in the State's processes has been dramatic in this process.

1 You'd have lost anyway, was not an argument, and it didn't
2 work. So now the argument is, it'll cost the rich guys too
3 much money if you keep doing this, so go sit down. Nevada
4 deserves better.

5 If you have any questions about how this was an
6 arbitrary and capricious process, Your Honor, I ask you to do
7 one exercise and count how many times in 20 days you heard, I
8 don't know. It's fascinating.

9 Mr. Parker just did a great job. He really did. He
10 went through how many witnesses from the State, pressed, keep
11 saying, I don't know. In fact, a really telling one --

12 Shane, will you call up May 30. This is Day 4 of
13 the hearing. Mr. Gilbert's on the stand. That's page 218.

14 At line 19 Mr. Gentile asks, "Is there anything
15 there that indicates that you can submit questions in 2018?"

16 Mr. Gilbert responds, "There is not."

17 "Okay. How come?"

18 "You know, to be quite honest with you, I wasn't the
19 one that made that decision. I don't -- I don't know."

20 The Court, you, Your Honor, "So who made that
21 decision?"

22 "I don't know."

23 "Okay. Thanks."

24 And while this may appear just to be some low-
25 hanging fruit and some admin issues and, you know, there's

1 been testimony by the intervenors, if you really were up to
2 the task you would have tracked that information down. But
3 how many times do we have to hear that same example of I don't
4 know? You asked Mr. Pupo a really easy question. NRS
5 453D.210-4.

6 "Mr. Pupo, what did you do to make sure when you
7 actually got an application it was complete? The statute
8 reads 'complete.' What'd you do?"

9 Answer, "I don't know. Someone else was doing it."

10 I think the quote that really sums up what the State
11 did here is when Mr. Gilbert was on the stand the next day.
12 That's May 31st.

13 So would you call up May 31, Volume II, page 123,
14 please.

15 This line of questioning is important because it's
16 not just narrowed to a specific question, it's not, you know,
17 why didn't you have the question and answer period, or, you
18 know, or did you get this information out in the ListServ in
19 the summer. This is about the actual training given to the
20 Manpower graders that the State assigned to handle this entire
21 grading process. And it's interesting.

22 Mr. Gilbert starts at line 12, "We relied on their
23 expertise and experience to make those determinations."

24 You stepped in, Your Honor. "You relied on the
25 Manpower folks' expertise and experience?"

1 "Yes."

2 The Court, "Just making sure I understood what you
3 said."

4 At another point, Your Honor, Mr. Parker did a good
5 job talking about another set of questions and how people
6 knew, how people knew to interpret it. In the interest of
7 time and because this hearing has gone on far long enough, you
8 can pull June 19, Volume II, at page 44, and Mr. Pupo's
9 response to one of those questions about who knows it is
10 telling. He responds, "Amanda Connor knew it."

11 So if you have any question about whether or not
12 this was an arbitrary and capricious process, go through the
13 exercise. Ask how many times did the State say, I don't know.

14 Another tactic that's come up is this idea that
15 somehow because you can't show you would have received a
16 license through a re-score you lack standing. And for the
17 reasons I went over, Your Honor, and because I don't want to
18 regurgitate all the things my co-counsel said, that argument
19 is empty, because you cannot perform that process with how
20 little we know about what the graders were instructed on how
21 to actually grade these applications.

22 As it relates to irreparable harm, Your Honor, you
23 heard from a number of witnesses, and it's important to note
24 that a line of testimony that came up from my clients and from
25 their clients related to the ability to continue to be a

1 cultivator and a producer, people who had meaningfully
2 participated in the medical marijuana process, who had
3 meaningfully done everything they could many times at the
4 expense of hundreds of thousands of dollars to get their
5 cultivation licenses open. They weren't like Mr. Terteryan,
6 who opened his business a day before he needed to submit his
7 application. They were growers. They were cultivators. They
8 were producers. They knew if this process wasn't done right
9 -- and we've never asked, never asked for we want a license.
10 We asked for the process to be right. They knew if that
11 process wasn't right they'd be dead. Mr. Rombough told you
12 that. Without vertical integration, without the ability to
13 get this product up and keep it going, we'd be dead. Mr.
14 Bradley told you that. Mr. Terry told you that. Mr. Terry is
15 the one, you'll recall --

16 THE COURT: I remember which one Mr. Terry is.

17 MR. BULT: Okay. Mr. Terry. He's the one who got a
18 lot of the rural counties. But he knew. He knew he needed an
19 outlet. And then perhaps the best testimony came from Mr.
20 Terteryan, a dispensary was essential for survival.

21 A little bit more on that irreparable harm piece,
22 Your Honor. Mr. Rombough testified to an important point, and
23 that's an argument the intervenors made, which was, if you
24 want this, go buy one, you don't have irreparable harm, that's
25 a non-issue. And it's important to note they're not -- 26 of

1 them, 27 aren't available. And in fact even further proof of
2 that is we don't know the price. And even better, we don't
3 have an example that any one got sold. So, Your Honor, it's
4 not just a money issue. It's an irreparable harm issue,
5 because there are not enough to go around.

6 Finally, Your Honor -- and I will be brief, because
7 I know time is coming on us -- there's a balance of equities
8 that weighs in favor of the plaintiffs. The Richardson
9 Construction court contemplated this, and they talk of the
10 purpose of a competitive process. And it's to guard against
11 favoritism, improvidence, and oppression. Your Honor, that
12 process was not available to all the members of the
13 applicants. The idea that that public process and fairness is
14 somehow outweighed by some very important people and
15 impressive people coming here to say what they think those
16 licenses may be worth does not outweigh Nevada having a fair
17 process.

18 Finally, Your Honor, you asked us to tell you what
19 we wanted. Mr. Kemp did a good job of describing what we'd
20 like to see in an injunction and why it's important for the
21 reasons that he gave of how they just switched the license
22 around and now it's over. Had we known they would try that,
23 we would have asked for that, too.

24 So, Your Honor, the State -- we would ask that the
25 State be enjoined from taking any further action on its award

1 of conditional licenses made in December of 2018.

2 We ask that the conditional license issued by the
3 Department be declared void, as the Department did not
4 evaluate all applications for licensure in accordance with the
5 requirements and the legislative intent of the enabling
6 statute.

7 We'd ask that the conditional licenses issued by the
8 Department be declared void, as the Department applied the
9 factors and the regulations to the applications in an
10 arbitrary, capricious, and partial manner.

11 And finally, Your Honor, that the conditional
12 licenses issued by the Department be declared void, as the
13 regulations the Department promulgated, albeit applied in an
14 arbitrary, capricious, and partial manner, are invalid, as
15 they violate Article 19 of the Nevada Constitution, conflict
16 with NRS Chapter 453D, exceed the statutory authority of the
17 Department, and conflict with legislative intent.

18 Your Honor, on behalf of the ETW plaintiffs, all
19 plaintiffs in this case, we thank you for your time and the
20 Court's staff's time. I know it's been quite a few many
21 months. Thank you, Your Honor.

22 THE COURT: Thank you.

23 We'll be in recess until tomorrow morning at 9:00
24 o'clock. Mr. Shevorski, you will be up first.

25 Mr. Koch, how long do I have you tomorrow?

1 MR. KOCH: 1:30 we begin again tomorrow, so my
2 preference would be -- we could talk, but as long as I can
3 argue right after Shevorski [unintelligible] counsel. I'm
4 happy to argue and leave at that point. I don't need to
5 remain for the rest, and you can go on the rest of the day if
6 the Court has that available.

7 THE COURT: What if I have a rebuttal -- what about
8 when I have rebuttal from the people on that side of the room?

9 MR. KOCH: I trust Brody here to take that, then.

10 THE COURT: All right. I was just making sure that
11 I understand the plan.

12 MR. SHEVORSKI: I beg a favor, Your Honor.

13 THE COURT: Yes, sir.

14 MR. SHEVORSKI: Can we start at 9:15 because of
15 my --

16 THE COURT: Yes, we can get started at 9:15. All
17 you had to do was ask, Mr. Shevorski.

18 Mr. Bice, do you need a favor, too?

19 MR. BICE: No. I have an error in this brief.

20 THE COURT: No. You never have an error in your
21 briefs.

22 MR. BICE: It's not particularly material, but I
23 guess I can check.

24 (Court recessed at 11:46 a.m., until the following day,
25 Friday, August 16, 2019, at 9:15 a.m.)

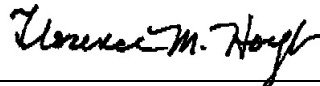
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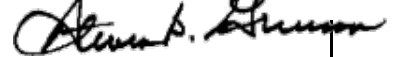
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Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

8/16/19

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 20

FRIDAY, AUGUST 16, 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:

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STEVE SHEVORSKI, ESQ.
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ERIC HONE, ESQ.
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JOSEPH GUTIERREZ, ESQ.
TODD BICE, ESQ.
DENNIS PRINCE, ESQ.

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 16, 2019, 9:17 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Are there any
4 housekeeping matters before Mr. Shevorski begins his closing
5 argument?

6 Mr. Shevorski, you're up.

7 MR. SHEVORSKI: Thank you, Your Honor.

8 It's typical in these scenarios to address the Court
9 first, but I'd like this opportunity to thank your staff for
10 putting up with for what a long, strange trip it's been. And
11 I don't think could have happened without you. We're
12 certainly from this side of the table and from that side of
13 the table very grateful here, all of your help, and especially
14 me, helping me find the binders over and over again.

15 THE COURT: Thank you, Mr. Shevorski. They are a
16 great staff. Okay.

17 DEFENDANT STATE'S CLOSING ARGUMENT

18 MR. SHEVORSKI: Very good. Your Honor, when we
19 first started chatting in May we talked about the adversarial
20 process in the Attorney General's Office and how it was our
21 goal to be fair to this side of the table and to this side of
22 the table. I hope we've been true to our word. We have
23 brought every witness that has been asked, without a subpoena.
24 We've responded and provided 50,000, over 50,000 documents
25 without a single request for production. It was our goal in

1 September of 2018 to be fair, to be honest, to be forthright.
2 It is our goal in this hearing to be that way, as well. And I
3 believe we've kept our word.

4 Addressing the merits, there are three
5 constitutional claims outstanding still. I know Your Honor
6 has ruled on summary judgment with respect to the property
7 interests, but since Mr. Gentile, my friend Mr. Gentile has
8 mentioned that as the outset, I'd like to briefly touch upon
9 those.

10 Procedural due process. My friend Mr. Gentile is
11 talking about an administrative problem. He is not talking
12 about a constitutional one when he says that the Department
13 went outside of its authority by crafting the regulations;
14 that is an administrative problem. It might be some other
15 reason for him openly on the merits to get relief, but it is
16 not a constitutional problem. There is no liberty interest
17 that it's affected that he has identified that could be the
18 subject of remaining part of procedural due process. They
19 were -- at the application -- this is not a permanent bar from
20 ever entering into a profession, if you can think back to the
21 United States Supreme Court precedent in Rah and others.
22 There's no permanent bar here. There is no bar from the
23 entirety of the profession. We're talking about a retail
24 marijuana business and the hope for a license. That is not
25 consistent with how the United States Supreme Court's defined

1 a liberty interest, nor is it consistent with the precedent in
2 this state which mirrors our federal Constitution on that
3 issue. And so the fundamental prerequisite for that claim is
4 simply not here.

5 Secondly, there still remains substantive due
6 process. Now, admittedly, that's an illusive term. But it's
7 not without some definition. And when we talk about our
8 substantive due process rights we're talking about rights that
9 go back deeply rooted in ancient liberty. And the same
10 jurisprudence has been applied recently in the Doe case by
11 Justice Periguirre in 2017 where he ruled that there isn't a
12 fundamental substantive due process right so deeply rooted in
13 ancient liberty to even use medical marijuana. My friends on
14 this side of the table have never explained -- if you don't
15 have a right to even use -- a fundamental substantive due
16 process right to use medical marijuana, how in the world can
17 you have a right to sell it under substantive due process?
18 The claim simply fails.

19 Finally, Your Honor, equal protection of the law.
20 And the Malfitano case that we've talked about so often and
21 our United States Supreme Court precedent cases, what we're
22 looking at in these [unintelligible] cases is intentional
23 discrimination against person, I'm singling you out for
24 different treatment, without any rational basis. That did not
25 -- that did not happen here. There's been no evidence in the

1 record for that. The Malfitano case controls, the federal
2 precedence Gerhart-Lake Montana, 637 F.3d 1013 control. Equal
3 protection under the law simply doesn't apply.

4 What we're talking about -- what we talked about in
5 May when we first got here and what we're talking about now is
6 an administrative law problem. It will never be a
7 constitutional law problem, and it is not. And as an
8 administrative law problem, Your Honor, that has a different
9 starting point.

10 And now I'd like to get to the questions that you
11 asked that I think my friends elided over yesterday, but
12 didn't give you very good answers. When you first asked about
13 did the Department of Taxation exceed the scope of its
14 authority, the first thing we're talking about is authority
15 from where. And my friend Mr. Gentile talked about the
16 initiative, but he didn't talk about the jurisprudence that
17 informs Your Honor's interpretation of an initiative and how
18 that might be different from how you would approach a typical
19 legislative act. Even though the voters when they approve an
20 initiative are exercising legislative power, Your Honor's
21 treatment of what they've done is slightly different.

22 And it's different in an important way here. It's
23 different because you take a liberal approach to the
24 interpretation of that initiative, and not in the political
25 sense, but in the sense that you're trying to find what the

1 spirit of the initiative is and what the policy choice was
2 before the voters and did the administrative body charged with
3 implementing that policy choice -- was it faithful to the
4 spirit. I submit, Your Honor, that the answer to that
5 question is yes. And so the answer to the first question that
6 you asked, did the Department act outside the scope of its
7 authority, is no. Is no. Because you take a liberal approach
8 to the initiative, a broad approach.

9 And we need to talk about -- when we're talking
10 about acting outside the scope of the authority we need to
11 know what authority the voters gave to the Department. And we
12 talked about a few sections with my friends yesterday, but
13 they skipped over what I believe is the most important
14 section. And that's the section that you and I have talked
15 about previously and we talked about for a pocket brief two
16 months ago, 453D.200(1), excuse me. Within those two
17 sentences are two grants of power. That's what they are.
18 There was a grant of power to the Department. The first one
19 is "adopt all regulations necessary or convenient to carry out
20 the provisions of this chapter." That is not a limiting
21 provision. That is a grant of power. "Necessary or
22 convenient." Those are not limiting provisions. Those are
23 broad provisions. That is a broad grant of power to implement
24 the chapter. And when we talked about our pocket brief maybe
25 a month or so ago there are many examples. Usually in the

1 Western states, where you had progressivism in the early part
2 of the Twentieth Century that I know you know about,
3 developing California. They amended their Constitution in
4 1911, and there you have the initiative power. And many
5 states followed suit. And so you find these initiatives
6 typically in the Western states. And one of them is
7 Washington, which used its initiative power here. And they
8 have a very similar provision, except they say "necessary or
9 advisable," not "necessary or convenient."

10 And in the decision that I cited to Your Honor in
11 the pocket brief what the Washington Court of Appeals -- and
12 it's a published decision, but it is the Court of Appeals, not
13 the highest court, and what they were talking about there to
14 the determine whether or not the Department acted unlawfully
15 is what is the spirit of this initiative and did the
16 Department, the regulating body, comply with that spirit. And
17 the answer was yes. I submit the answer is yes here, as well.
18 Those governing principles, the broad grant of power is where
19 we ought to start.

20 The second is another grant of power. But it's more
21 -- I want to say more important, because it's for the
22 protection of these folks. It's for the protection of these
23 folks. "Regulations must not prohibit the operation of
24 marijuana establishments, either expressly or through
25 regulations that make their operation unreasonably

1 impractical." And I can't think of a better example of how
2 that would be so than what I heard from the general counsel of
3 Mr. Kemp's client, MM Development, when he said, "Yeah, I
4 suppose the Department and the State of Nevada could do that,
5 run a background check every second on every transfer of a
6 public share." But that would be tragic, because he was just
7 talking about the fiscal externality of that. It would
8 bankrupt the company. So in that subsection (1) what we have
9 is a broad grant of power to keep in mind for the Department
10 to not run these companies into the ground. The voters wanted
11 practical solutions in keeping with the spirit of these
12 initiative that did not run these folks into the ground. And
13 so when we're talking about did the Department go outside the
14 scope of its authority it's important definitionally to think
15 about what that authority was. And in each instance when the
16 voters put that in writing they gave a broad grant of power.
17 A broad grant of power not only for the Department to do
18 what's best in health and public safety and the health of the
19 state, but also what's best in keeping with the spirit for
20 these folks, to not run them into the ground and not make it
21 unreasonably impractical.

22 So dealing with the particular sections I think Your
23 Honor wants me to address, start with 453D.200(1)(b),
24 "Qualifications for licensure that are directly and
25 demonstrably related to the operation of a marijuana

1 establishment." I submit to Your Honor that that section is
2 ambiguous. The definition of "ambiguous" is -- are differing
3 interpretations that are reasonable." I can't think of a
4 better example to show ambiguity than when my friends on this
5 side, particularly Serenity, brought in a sociolinguist to
6 tell the Court what that meant. That is an admission that
7 that section is ambiguous. Because if it takes an expert to
8 explain it, it's ambiguous.

9 Moreover, Your Honor, the expert got it wrong in an
10 important way, because she skipped over the part of the grant
11 of power, but also she's misinterpreting the "shall include"
12 language. That symbolizes a nonexhaustive list. A
13 nonexhaustive list. It doesn't say that this is only going to
14 be one of the regulations of the Department, it just says they
15 shall include. Moreover, when you determine ambiguity you
16 need to look at the entire chapter as a whole. And so when we
17 cross-reference the competitive bidding statute at .210(6)
18 there's no cross-reference back to qualifications. There's no
19 limitation that says, hey, Department, if you're going to
20 score applications you must only use qualifications directly
21 and demonstrably related to operation of a marijuana -- it
22 doesn't say that. If they wanted to, certainly they could.
23 But they didn't.

24 So in looking at the chapter as a whole we have a
25 broad grant of power, a nonexhaustive list, and so thinking

1 about the question you asked about diversity, does the
2 Department have the power from the voters to include diversity
3 in its competitive bidding process? Absolutely. Absolutely.
4 You don't need to read "directly and demonstrably" to common
5 to that conclusion, because the power is there anyways. It's
6 a nonexhaustive list. And the only requirement from the
7 voters on competitive bidding that it be numeric and
8 impartial. Numeric and impartial. No other indication, no
9 command from the voters to what to include.

10 But I submit to Your Honor, I submit to Your Honor
11 because the phrase "directly and demonstrably" is not defined
12 anywhere, because "operation" is not defined anywhere, and
13 because the plaintiffs' own expert Mr. Seaborn got on the
14 stand and agreed with us many different people can have a
15 different interpretation of that section. That is what Mr.
16 Seaborn said. We agree.

17 However, in the administrative law world, where many
18 people can agree or disagree, we get deference. The
19 Department of Taxation gets great deference. And if people
20 can have an equally rational solution and think that that's
21 okay, well, that's fine, that's what we debate about. But in
22 the courtroom our interpretation controls over an ambiguous
23 provision that we're charged with interpreting. We came to a
24 reasonable, rational solution and said that diversity is
25 directly and demonstrably related to the operation of a

1 marijuana establishment. And I submit that an important
2 plaintiff agrees. You need look no further than if you went
3 today on Nevada Wellness Center's Website and looked at their
4 advisory board, they would be informing the Court how
5 important diversity is to their operation. And "operation" is
6 not defined by the voters. But we can think of a definition,
7 can we? Human resources. Very important diversity, because
8 inherent diversity, people have shared experience. It's not
9 irrational to think that that shared experience is important
10 to human resources. It's not irrational to think that the
11 shared experience of the end user of these products with the
12 board members or the advisory board members is important.
13 It's so important that if you went on Nevada Wellness Center's
14 Website today, you would see it, how they trumpet diversity,
15 we share your experience, your inherent experience. So not
16 only is that, you know -- if that section is ambiguous, we get
17 the deference. We are within our authority.

18 But I submit to you, Your Honor, even if it wasn't,
19 diversity is directly and demonstrably related to the
20 operation of a marijuana establishment. And I submit it's an
21 important one. It's the important one. It should be
22 respected.

23 With respect to the address, now, when I was
24 thinking last night what an important section that my friends
25 overlook is right above 453D.200(1)(b). It's (1)(a). And in

1 that section is plenary power to the Department of Taxation to
2 establish "Procedures for the issuance, suspension, and
3 revocation of a license of a marijuana establishment." That
4 plenary power certainly includes the power to create
5 conditional licensure, which is precisely what they did. That
6 is a broad grant of power. And so if you don't read
7 subsection .210(5) in isolation, which is what my friends want
8 to do, you see in (5) of .210 there is no definition of
9 "approve." It doesn't say when it's to be approved. And
10 because we have the power to have conditional licensure
11 granted to us by the voters, we certainly have the power to
12 say, you don't have to include an address. You could, you
13 can. If you have -- if you're the owner, if you have the
14 written permission of the applicant, you can. But it's not
15 required. It certainly isn't compelled by the initiative.

16 And importantly, Your Honor, this all goes back to
17 what were the facts on the grounds that the voters knew when
18 this was being enacted? My friends operate here in the
19 Southern part of the state. But this -- the State's concerned
20 statewide. Mr. Terry got on the stand and explained the
21 situation in the rurals. According to Mr. Terry's unrebutted
22 testimony, it would be impossible to get an address in the
23 rural counties where there's a moratorium. And so when we're
24 creating a application with that reality, it makes no sense to
25 require an address where it would be impossible.

1 And also, Your Honor, if we talk -- there was some
2 talk about gamesmanship. And, as you know, [unintelligible],
3 we don't play that game. But I will say that if we're talking
4 about physical addresses, no one put before Your Honor,
5 whether it be Mr. Thomas, no one put before Your Honor -- or
6 Mr. Scolari, even, a binding lease. What they -- what Mr.
7 Scolari testified to is those were nonbinding, there was no
8 obligation on either side. And so, yes, they did -- there was
9 some effort there. But was that -- did they have the written
10 permission of the property? No. Because there's no --
11 there's nothing to bind the property owner, Mr. Scolari said.
12 That property owner could have walked and said no. Could have
13 said no. And so the address there really is fool's gold.
14 There's nothing to bind them there. They could have moved it,
15 the next property owner could have said no. More importantly,
16 they can move the address. There's nothing that my friends
17 have shown where it would be unlawful in the initiative to
18 move the address. They just have to get approval from us.

19 And so when you take into consideration the fact
20 that we have plenary power to create the conditional licensure
21 it's certainly not outside our power to not have people submit
22 a property address.

23 But addressing the community impact part, the
24 community doesn't mean physical address. It's a broader term.
25 It doesn't appear in the initiative. It appears in our

1 application. But it's a broader term. It doesn't mean the
2 4,000 square feet on the corner. There's no -- and this is
3 our interpretation of it. It's from -- it's our
4 interpretation of our own regulations. We get great deference
5 for that. And think again, Your Honor. We are not operating
6 where these fellows talking about, you know, the very
7 expensive 20 miles away from the Strip. We're talking about
8 the entire state. You don't need a physical address to know
9 about the community impact if you're talking about a negative
10 impact, even. You know, homogenous county, one of the rurals
11 perhaps. But community impact is broader. It's not just the
12 facility location. What are going to do for the community?
13 That is included in there, as well. How is this new
14 stakeholder in the community going to interact with them?
15 That's part of what we're interested in. It's not the
16 address. It's not synonymous with location. It's much
17 broader. And so for my friends to say that somehow we didn't
18 comply with our own regulations because the property address
19 there -- wasn't there, because then you can't score community
20 -- that is just wrong, because they're defining the term too
21 narrowly, too narrowly. And if there's a dispute between the
22 plaintiffs and the Department about the meaning of that term,
23 we get great deference. And I submit that we did not abuse
24 our discretion there.

25 With respect to the building plans, again, this is a

1 statewide project, a statewide roll-out. There were going to
2 be people or entities applying for licensure throughout this
3 state in counties where the local zoning boards did not
4 approve. Mr. Terry got on the stand. His testimony is
5 un rebutted. It would have been impossible, impossible. That
6 does not mean that we can't score a building plan or a floor
7 plan. That doesn't mean that we can't score that. We can
8 look at the plan and come to a determination as to adequacy.
9 As Ms. Cronkhite explained, as to the flow, dare I say even
10 the risk of Norovirus.

11 THE COURT: Norovirus.

12 MR. SHEVORSKI: Norovirus. I apologize, Your Honor.

13 THE COURT: If we're going to talk about
14 epidemiology, we have to use the right words.

15 MR. SHEVORSKI: Fair enough, Your Honor. I'm not
16 going to talk about it anymore.

17 THE COURT: Okay.

18 MR. SHEVORSKI: But you don't need -- there's no --
19 there's no indication that you need a property address to
20 thoughtfully consider the prospective proposed marijuana
21 establishment, because it's not just -- certainly you could
22 consider that it might be relevant to know the property
23 address, but it's not necessary certainly in a statewide
24 project where you couldn't even get a building, as Mr. Terry
25 said, because it was unlawful. And we were certainly -- we

1 did not act outside of our authority, we did not abuse our
2 discretion when we did not require a property address, because
3 it simply was not necessary. And if there are disputes about
4 whether it was a good system or a bad system or you could have
5 had a better system, that is not what we're here for. What
6 we're here for is an abuse of discretion. And my friend Mr.
7 Bice is going to talk about possibly why what the plaintiffs
8 are here for is not consistent with the preliminary injunction
9 standard. And we've agreed that Mr. Bice is going to handle
10 that part of the argument.

11 THE COURT: Because he loves writs.

12 MR. SHEVORSKI: He does. He does. So I won't touch
13 on that any further. To put a button it, you do not need a
14 property address, especially for the statewide project where
15 it was illegal at the time to even enter into a lease. Mr.
16 Terry said no one would do it.

17 Finally, Your Honor, the relief requested. We don't
18 care who ends up with these licenses. It's not our -- we are
19 here to show Your Honor that we did our level best, acted
20 fairly, and we'll accept Your Honor's decision whatever it is.
21 But I submit to you the relief they're requesting has very
22 little to do with typical preliminary injunction practice.

23 And I will -- I want to end by talking about the
24 background check and how that's related. We talked about
25 ambiguous. And Your Honor asked about cure, I submit to you

1 that the background check provision is ambiguous. The word
2 "prospective" is in there. When is that to occur? The voters
3 gave no indication of that. Your Honor asked about cure. If
4 Your Honor would have called out and said, everyone needs to
5 do a background check, there is a possibility to cure that,
6 because it says right in the statute "prospective." My
7 friends like to concentrate on the word "each." But the word
8 "prospective" is in there. And they provide no definition of
9 it. And they certainly don't explain how the failure to do a
10 background check at that time, in September of 2018 up until
11 December of 2018, harmed them in any way or certainly
12 threatened them with irreparable harm. If that provision --
13 if Your Honor's holding was that has to be -- the literal word
14 of that, every second day there has to be a background check
15 on public companies, we will do our level best to comply with
16 it, if it's possible. My friends from this side of the table
17 one after another said it was impossible.

18 And so what I would encourage Your Honor to do is to
19 go back to 453D.200(1) and interpret that provision to say
20 that the 5 percent rule is a rational, reasonable
21 interpretation. I understand, Your Honor.

22 THE COURT: Okay.

23 MR. SHEVORSKI: But I'd like to take two seconds to
24 try to convince you otherwise. Because that provision in
25 453D.200(1) tells us to be conscious not to regulate these

1 people into the ground. And I submit that what we did there
2 by creating the 5 percent provision is consistent with that
3 goal, is consistent with the spirit of the initiative and
4 consistent also with -- again, the general I believe of MM
5 Development testified that there is no threat to public safety
6 if you don't background check a person who owns one share of a
7 publicly traded company.

8 Finally, the 5 percent rule. That is not taken out
9 of thin air. It's a reasonable compromise, no different than
10 the compromise made by -- in the gaming world where they have
11 5 percent rules or 10 percent. It represents a reasonable
12 compromise where the State, who's charged with regulating
13 particular industries, tries to balance competing concerns and
14 comes up with a number. Is there such a thing as a perfect
15 number? No. But it represents a reasonable compromise, and
16 it's within our power to find that compromise. And I submit
17 that that's what we did. It's no more picked out of thin air
18 than when Mr. Miller was talking about SARS in the currently
19 regulates with the \$5,000 rule. Could they have picked a
20 different number? Sure. But no one's calling that \$5,000
21 rule as somehow that's an abuse of discretion. It represents
22 a reasonable compromise.

23 Your Honor, I believe that we did -- we acted within
24 the scope of our authority. I believe we crafted reasonable
25 regulations that were consistent with the spirit and the

1 intent of the voters. I would ask that Your Honor deny the
2 preliminary injunction.

3 THE COURT: Before you sit down I would ask you to
4 specifically address the incomplete information available to
5 some applicants related to two issues. Some were told that
6 diversity would be a tiebreaker, and the information related
7 to requirement of a physical location because of
8 communications by various employees of the Department of
9 Taxation with other people.

10 MR. SHEVORSKI: Certainly, Your Honor.

11 With respect to -- I'll take the first issue that
12 you talked about first.

13 THE COURT: Well, it's generally one issue.

14 MR. SHEVORSKI: Generally one --

15 THE COURT: It's the incomplete information to some
16 but not others.

17 MR. SHEVORSKI: Incomplete information. Right. So
18 the tiebreaker issue. Number one is I would say it's actually
19 true, diversity is a tiebreaker if people have the same score.
20 It's in the regulation. However, my friends never tell you
21 when they heard that information. We're here on a preliminary
22 injunction. They don't say that that was -- that diversity --
23 they were told diversity was a tiebreaker prior to the
24 application --

25 THE COURT: I had your own employees testify to

1 that.

2 MR. SHEVORSKI: Not prior. It was --

3 THE COURT: They said that was what they were told
4 it was going to be.

5 MR. SHEVORSKI: But it is a tiebreaker, Your Honor.
6 In the case where competing applications have the same score
7 it is a tiebreaker. However, also, Your Honor, what we're
8 here on in the preliminary injunction world is what is the
9 harm, how were they harmed by being told that information. No
10 one has testified and provided concrete evidence to Your Honor
11 that that harmed them in any way.

12 Now, certainly it would be unfortunate, but there is
13 no reliance, there's no injury from hearing that information.
14 So if that was true, and I'll accept that it was true, in this
15 instance where is the harm for the purposes of this hearing to
16 show that there is going -- that preliminary injunction needs
17 to be in place for the duration until the trial on the merits
18 based upon that information? My friends haven't even
19 attempted to argue that to Your Honor or show that to Your
20 Honor with any concrete evidence.

21 With respect to the address, there is a legal remedy
22 for that. A legal remedy. If you believe that the State of
23 Nevada misled you and you spent money based upon being misled,
24 you have two options, submit an administrative claim and say,
25 hey, you lied to me, I spent this money, I want it back, I --

1 THE COURT: Subject to the statutory cap.

2 MR. SHEVORSKI: Subject to the statutory cap. But
3 no one has testified that that statutory cap would even
4 pierced in this instance. No one's put forward that evidence
5 to Your Honor now. You might infer that it's higher.

6 THE COURT: You and I know the statutory cap is,
7 what, 50 grand?

8 MR. SHEVORSKI: It's a hundred, Your Honor.

9 THE COURT: Hundred. Okay.

10 MR. SHEVORSKI: I asked about it.

11 THE COURT: And you've got to go through the Board
12 of Examiners to get it, so --

13 MR. SHEVORSKI: After -- over a hundred you do,
14 below a hundred you do not.

15 THE COURT: Okay.

16 MR. SHEVORSKI: However, there is a legal remedy.
17 You may -- and no one has said it's inadequate. What they
18 have attempted to do is bootstrap that into this proceeding
19 when we're talking -- what we're only concerned with is is
20 there going to be imminent harm that if you don't stop the
21 train during the pendency of this litigation I am going to
22 suffer imminent harm. No one has said that related to that.
23 No one has said -- no one has provided concrete evidence that
24 being told that a property address was required caused -- is
25 going to cause them imminent harm. If anything, Your Honor,

1 that's a claim for damages if there's a legal remedy if that
2 was true. There's a legal remedy for that, and it would not
3 be the basis for a preliminary injunction.

4 However, I would also say, Your Honor, is after we
5 produced the ListServ no one has gotten on the stand and said
6 that, that information didn't go to my company. They said, it
7 didn't go to me, Mr. Hawkins, for example. But he identified
8 his email address, his company's email address in the ListServ
9 at 2021. And if you went to their Website right now, you
10 would see that email address. No one has said that, it didn't
11 go to my company. Even Mr. Thomas when he was on the stand
12 said he didn't check the Website, he didn't know if his
13 company got it. He knows that he didn't get it, but not that
14 his company -- and this is someone who's extraordinarily
15 sophisticated, extraordinarily sophisticated, and he was not
16 willing to say that his company didn't get it, some person in
17 his company didn't get it or it wasn't available, they
18 couldn't have found it on the Website. What he said was he
19 didn't know if they had.

20 So I would submit to you there's no concrete
21 evidence at this stage -- it's not appropriate for a
22 preliminary injunction anyways, but there's concrete evidence
23 that anyone was somehow misled by 5 and 5A. Thank you, Your
24 Honor.

25 THE COURT: Thank you, Mr. Shevorski.

1 Mr. Bice.

2 INTERVENOR DEFENDANT ESSENCE'S CLOSING ARGUMENT

3 MR. BICE: Thank you, Your Honor.

4 Your Honor, I am positive that during rebuttal I
5 will be criticized as being one of the newcomers to the case
6 and so that everything I say should just be disregarded. But
7 I would point out to the Court that when they do that that's
8 the typical response when you can't respond to the message so
9 you criticize the speaker.

10 We're going to split this up as best we can amongst
11 the defense team over here, Your Honor, and I appreciate the
12 Court.

13 THE COURT: Just remember I've got to get Mr. Koch
14 to trial by 1:00 o'clock.

15 MR. BICE: Yes. He's actually coming right after
16 me, Your Honor. I'm not going to be that long.

17 So when I sat here yesterday, Your Honor, I was very
18 interested, because I heard a closing argument on a trial on
19 the merits. I did not hear a preliminary injunction hearing.
20 I didn't even here really a discussion about the preliminary
21 injunction standard. When I started hearing this --

22 THE COURT: You know I know what that is, though.

23 MR. BICE: Oh, absolutely. You're not -- but you're
24 not the problem here. You're making the decision, but, Your
25 Honor, this is a preliminary injunction hearing. This matter

1 has been coordinated in front of Her Honor on a preliminary --

2 THE COURT: Only on the preliminary injunction
3 hearings.

4 MR. BICE: Exactly. So this is not a writ
5 proceeding, this is not a mandamus proceeding --

6 THE COURT: Not yet.

7 MR. BICE: Right. But it's not a mandamus or
8 prohibition proceeding challenging governmental action. This
9 is a motion for preliminary injunction. You know what
10 preliminary injunction is. But I'm going to focus on one
11 aspect of it that really -- it is designed to halt a
12 particular type of harm that the law says that plaintiff is
13 entitled to be protected against until a trial on the merits
14 can occur. That's all it's about. That's the sole scope of
15 it, and that is as a matter of law what a preliminary
16 injunction is all about.

17 So the question is a straightforward one. What is
18 going to happen during that window, from today until a trial
19 on the merits what is going to happen that this -- that you
20 have a legally protectable right to be protected against,
21 okay? Because that's the only thing a preliminary injunction
22 is about, that window and what is irreparably going to harm
23 you that you are entitled to be protected against.

24 When you listen to the plaintiffs they don't
25 identify anything. Their injury here, Your Honor, supposedly

1 their injury is, we didn't get a license. Their injury isn't
2 that the defendants got a license. That's not their injury.
3 Their injury is, well, we didn't get a license. The
4 preliminary injunction isn't going to give them a license. A
5 preliminary injunction, the injunction that they are seeking
6 is to halt my clients and the rest of these successful
7 applicants from using the licenses that they were awarded.
8 That's not an injury to the plaintiffs. The plaintiffs'
9 theory here, Your Honor, is the most cynical, and that is, if
10 I can't have it, no one could have it. That's not a
11 preliminary injunction. That's not a proper exercise of
12 judicial power to simply say, because I can't have something,
13 you can't have it, either. They have identified no -- is a
14 preliminary injunction going to award them revenues? No. Is
15 it going to award them anything? No.

16 Now, in reading the transcript what I saw was
17 repeatedly an assertion that the theory of harm that
18 supposedly will be protected by a preliminary injunction is
19 what they -- this vague reference to market share. But I
20 noticed yesterday I don't think that word was uttered once.
21 And I don't think it was an accident, because, as we and the
22 other defendants have pointed out in our closing briefing,
23 Your Honor, the law is clear on that. That is not a legally
24 protectable interest upon which you may obtain injunctive
25 relief, market share. These regulations that the State is

1 applying are about protecting the public health and welfare.
2 They're not about protecting the market share of applicants.
3 I cannot come to you and say, you know, Your Honor, I think
4 that the State Bar of Nevada has gotten very lax in who it
5 gives law licenses to so I want you to enjoin all future law
6 license applicants until we have a trial on the merits about
7 the State's laxness in terms of licensing.

8 THE COURT: So you don't like the bar passage rate
9 being lowered, huh?

10 MR. BICE: Exactly. Right. That's eroding my
11 market share. Every business could come to the Court and say,
12 any new competitor erodes my market share. That is not a
13 legally protectable interest, by the way, and it certainly
14 isn't entitlement to a preliminary injunction. And that is
15 what we have pointed out, Your Honor. You know, I
16 characterize it, Your Honor, as standing, because this is why
17 it is standing. I don't dispute that they have standing for
18 certain types of claims here. I heard actually an argument
19 about standing yesterday that it's actually meritorious on
20 standing. That was from Mr. Kemp. When Mr. Kemp says he had
21 the dispute about scoring -- now, others are going to address
22 that and point out that he's wrong on that, but a dispute
23 about scoring is standing for writ relief. If you actually
24 wanted to seek mandamus, that would be -- you would actually
25 have legal standing.

1 THE COURT: So let me ask you the question, given
2 that admission.

3 MR. BICE: Yes.

4 THE COURT: Since there are a limited number of
5 licenses available --

6 MR. BICE: Yes.

7 THE COURT: -- if Mr. Kemp was successful on his
8 math error issue --

9 MR. BICE: Yep.

10 THE COURT: -- there would be no available licenses
11 unless an injunction was previously issued to allow those
12 licenses to be held in abeyance pending determination of that.

13 MR. BICE: No.

14 THE COURT: Tell me why.

15 MR. BICE: That's not accurate. And here's why.
16 Because if he proved to be right on that, the State would then
17 have to take action to solve that problem. It would either
18 have to go in and say, okay, it turned out we were wrong, the
19 score was lower than the lowest score appropriate -- which, by
20 the way, is what happened in the NuLeaf case, which I'm going
21 to talk about here -- and so therefore that license has to be
22 taken from them. And that was --

23 THE COURT: But they weren't open yet on the NuLeaf
24 case, because they were still having issues with the zoning
25 and approval --

1 MR. BICE: That's right.

2 THE COURT: -- by the Commissions and the City
3 Councils.

4 MR. BICE: That's right. But Mr. Ferrario's client
5 did actually open and then did have to -- and lost his license
6 on the appeal to the Supreme Court. So the State can -- the
7 State will have to address that. Or, if the Court rules that
8 the State has to give them a license, the State will have to
9 solve that problem if they could win at a proceeding on the
10 merits. We're not here -- that's not where we're at. We're
11 here on a motion for preliminary injunction where the question
12 is what is going to happen between now and a trial on the
13 merits that you will be irreparably harmed. That's not what
14 is before -- that is not what they are arguing.

15 So they're asking you -- they're saying -- you
16 know, when people file a lawsuit against the State, for
17 example, and say, they deprived me of due process --

18 THE COURT: You've never done that.

19 MR. BICE: I've done that many times. But what
20 happens is you're adjudicating --

21 THE COURT: That was sarcasm, Mr. Bice.

22 MR. BICE: Right. You're adjudicating my rights, I
23 was deprived. If I believed that I was improperly denied
24 access to a university, either on racial discrimination
25 grounds or public university on racial discrimination grounds

1 or something else, and there's a limited number of slots, I
2 don't get to go in to the court and say, enjoin all admissions
3 to the university until I get an adjudication.

4 Let's just deal with Mr. Kemp, right. He's got one
5 license, apparently, where he says he quarrels with the
6 scoring. He wants to enjoin 61 licenses. My client scored
7 first. He wants to enjoin 61 licenses on that theory. That,
8 Your Honor, is not a preliminary injunction, that is an --
9 that is basically an adjudication on the merits, and it's not
10 about protecting him against irreparable harm. It actually is
11 just about harming his competitors and using the legal process
12 to do that.

13 So let me turn, Your Honor, to -- you know, we cite
14 the caselaw to you. And this is why, Your Honor, I
15 characterize it as standing, because standing, as the U.S.
16 Supreme Court has said, is -- it's claim specific and it is
17 relief specific. So you have to have standing for the claim,
18 and you have to have standing for each form of relief you're
19 seeking. And that's the Daimler-Chrysler case, you remember,
20 at 547 US 332. They do not have standing -- and that's why in
21 our brief I've characterized it this way -- to enjoin the
22 government from honoring licenses to third parties.
23 McDonald's might not like the building across the street run
24 by Burger King and they might think that the government isn't
25 enforcing the health care -- the sanitary laws sufficiently

1 against Burger King, but they can't go in and get an
2 injunction against the government that says, don't allow them
3 to open because it's going to eat into my market share. Those
4 laws are not about protecting your market share.

5 The fire marshal case that we gave you where the
6 fireworks makers got an injunction against the fire marshal
7 because he supposedly wasn't applying the laws stringent
8 enough against others, and the court granted him an injunction
9 saying -- enjoining the fire marshal from issuing certificates
10 to other people. And the court said that's error, those laws
11 are not about protecting your market share, you don't get to
12 do that and particularly on a preliminary injunction.

13 What is going to happen between now and a trial,
14 Your Honor, that this injunction is going to protect them
15 against that is irreparable? Nothing. All it's going to do
16 is harm my clients and harm the public and keep the black
17 market in play, because now there won't be as many people out
18 there satisfying the public's desire for this product. That's
19 all that this is about, if I can't have it, you can't have it.

20 But I don't deny, I do not deny that an injunction
21 -- if an injunction were appropriate in those circumstances it
22 would be very valuable. Because you know what it does? It
23 makes my client's license a hostage. And what's the value of
24 a hostage? Ransom. That's the value of a hostage. And
25 that's what this is about, enjoin the State, make their

1 license a hostage, and then we'll negotiate a ransom for the
2 release of the hostages. That's -- you would be hard pressed
3 to find a more improper grounds for injunctive relief, a claim
4 in equity. And that's what this is really about, Your Honor.

5 This preliminary injunction that they've asked for
6 is not going to stop any irreparable harm between now and a
7 trial on the merits. And it is just cynical to say, well, if
8 I can't have, they can't have it, either.

9 Your Honor has been extraordinarily patient. When I
10 read this transcript it just reminds me, thank goodness I
11 don't have that job and I how I would not be suited for that
12 job, because this -- the Court has given the plaintiffs day
13 after day after day for 18 days on a preliminary injunction to
14 prove some sort of irreparable harm, which is the cornerstone
15 of preliminary injunctive relief, irreparable harm, how you
16 are going to be protected from that irreparable harm until the
17 trial on the merits can occur. And despite all of that time
18 and all of that passage of time they've presented nothing in
19 that regard. All we ever -- all I can see from the transcript
20 and all I ever heard about while I was in here was this word
21 "market share." And market share is not an irreparable harm.

22 Now, Mr. Bult yesterday made an interesting
23 argument. I thought it was interesting. He said, well, the
24 irreparable harm -- because I think he's the only one that
25 addressed it -- the irreparable harm is you heard that we need

1 an integrative license and if we don't get an integrative
2 license we won't -- we may not survive, some people may not
3 survive, okay. That was his argument. Is this preliminary
4 injunction going to give them an integrative license? No.
5 Between now and the trial on the merits will they get an
6 integrative license? No. So the preliminary injunction, the
7 relief they are asking for, there's no nexus to the injury
8 that they claim they are suffering. And that's the problem
9 with this motion. If you want to seek writ relief, a writ of
10 prohibition, i.e., on the merits, that's what a writ of
11 prohibition against state government is about. But a
12 preliminary injunction, telling state government, please
13 punish my competitor while I see whether or not I have a claim
14 against the State, is not appropriate.

15 So then I want to just turn, Your Honor, briefly to
16 the merits, because I do want to address NuLeaf, because it
17 was one of my cases. And I think it's very important here,
18 because some of the arguments I have seen and heard are just
19 deja vu. And in that regard, Your Honor, I actually pulled
20 out one of the briefs from NuLeaf yesterday and read it and
21 had a good chuckle to myself; because what is the argument
22 that was made in NuLeaf? NuLeaf had actually had a location,
23 but it had been denied a special use permit. But the statute
24 said, in order to apply you had to submit -- and this is the
25 key word that everybody seized upon, in fact, here's one of

1 their brief where it's bold, highlighted, and underlined, this
2 word --

3 THE COURT: Sounds like Mr. Ferrario to me.

4 MR. BICE: That was Mr. Shapiro. But Mr. Ferrario
5 did the same thing, bold, highlighted, and underlined -- or
6 italicised and underlined. It says that they have to submit
7 all these things in order to admit their application, and that
8 included land use approval from the local jurisdiction, all
9 building authorizations, or a letter from the City, okay.
10 "All" means all. Just read it. "All" means all, black and
11 white. And Judge Johnson said, yep, I agree with that, it's
12 black and white, "all" means all. The Nevada Supreme Court
13 said, no, it doesn't, because you have to read the statute
14 entirety in its context.

15 And that's all the more important in a case like
16 this where the State is being called upon for the first time
17 to implement a new statutory scheme. That's where its --
18 that's where its discretion is at its apex. So when you look
19 at NuLeaf and you recognize what's the Nevada Supreme Court
20 pointing out there, there are -- yes, it says "all," but, you
21 know what, there are other provisions of the statute that make
22 that somewhat inapplicable or difficult to comply with, and
23 the State has the discretion to solve those problems
24 administratively and to figure out how to do it.

25 And that's the -- that's where I want to turn next

1 to, Your Honor, is the two points that you raised yesterday,
2 the location issue and then just briefly on the issue about
3 the background.

4 On the location issue, Your Honor, the State just
5 told you, and I believe it was Mr. Terry, my recollection,
6 this is a statewide system. There are many jurisdictions,
7 it's not just the cow counties. Henderson is an example. The
8 City of Henderson the State was allocating licenses to. The
9 City of Henderson had a moratorium. You can't have an actual
10 address in the city of Henderson. You can't have an actual
11 address in some of these jurisdictions. How does the State
12 solve that? Well, apparently, if the plaintiffs had their
13 way, you'd have to have two different standards, one for
14 places that wouldn't allow an address and one for places that
15 would. And you know what, had the State done that, they'd be
16 screaming from the mountaintops about how discriminatory that
17 is and how outrageous that the State would engage in such a
18 practice. But the State, to its credit, solves that problem
19 in a very reasonable and appropriate fashion. Because it has
20 the power to issue conditional licenses, you could apply, and
21 then you have to show them that location and make sure it
22 satisfies all the criteria. That's what the State is doing
23 here. It's no different than what was going on in NuLeaf
24 where NuLeaf had actually been denied a land use permit. The
25 location that they picked, the City said no. But what did the

1 State say -- or the Nevada Supreme Court say, that's not
2 disqualifying, because they can petition the State, they could
3 go seek other locations, and that is -- there's nothing
4 inappropriate about that. The same is true here today.

5 With respect to this background investigation issue,
6 Your Honor, I just want to touch on that briefly for the
7 following point. My client, it doesn't impact them. My
8 client, the Essence folks, they were all fully vetted and
9 background investigated. So even if the Court thought there
10 was some problem with that, there's no grounds to enjoin the
11 operation of Essence's license. They had their backgrounds
12 investigated.

13 But let's deal again with "each." You know, they
14 pound on the word "each." They say, each, each, each. "Each
15 means all, "each" means every. The State recognizes, and you
16 heard it from the witnesses, that is impossible to comply
17 with. And I'm going to leave others to address that, Your
18 Honor.

19 So in closing, Your Honor, I just -- on two
20 additional points. On this issue about the location and on
21 the issue of backgrounds, Your Honor, on any challenge that
22 they are making to the regulations laches applies. This is
23 exactly Miller versus Burke, Your Honor. That's exactly what
24 this is. They sat back and applied and waited to see if they
25 were successful, and only when they weren't successful did

1 they jump forward and say, haha, those regulations were
2 invalid. That was the same thing that initiative opponents
3 did in that case. They sat back, they waited, they let
4 everybody spend money, and then only when they lost did they
5 jump -- spring forward and say, aha, the initiative was
6 invalid. And the Nevada Supreme Court said, too late, you had
7 the ability to challenge that before all the time, money, and
8 effort was spent by everybody else.

9 And the same should apply here. This is too late.
10 If you wanted to complain about the location, you wanted to
11 complain about diversity, you wanted to complain about this
12 background investigation, all of which you knew about and
13 applied under, you could have brought your challenge, you
14 could have sought dec relief against those before everybody
15 spent tons of money.

16 And then finally, Your Honor, no one's talking about
17 this, but the balance of hardships. As I've already pointed
18 out to you, this injunction is not about guarding any sort of
19 irreparable harm to them in the interim period, but it will
20 impose a gigantic hardship on my clients and all the other
21 successful parties, as well as the public at large. Mr.
22 Yemenidjian, Your Honor, testified uncontroverted, no one
23 disputes it, because his background in finance and knowledge
24 of this stuff cannot be challenged, that just in the Southern
25 Nevada locations they will lose \$2.8 million per year per

1 license. Just on those five licenses in Southern Nevada, Your
2 Honor. If the injunction were to last 16 or 18 months, a year
3 and a half, they will be out over \$20 million. And that's
4 just on the profit end. That doesn't include all the time,
5 money, and effort that they've already spent. That -- again,
6 they are harmed, the public is harmed. The injunction -- such
7 an injunction would frustrate them, frustrate the public, and
8 it's not an injunction that would diminish the harm to the
9 plaintiffs. All it would do is reward the plaintiff by
10 saying, if I can't have it, no one should have it. And that's
11 not the basis for injunctive relief. Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Koch.

14 INTERVENOR DEFENDANT NOR'S CLOSING ARGUMENT

15 MR. KOCH: Thank you, Your Honor. You know, we
16 started this hearing May 24th, the day after school got out,
17 and here we are, kids are back in school, here we are on the
18 preliminary injunction hearing. Why have we been here so
19 long? Well, I would submit to you the reason why is we're at
20 a hearing in search of a legally cognizable grievance.
21 Throughout this proceeding and in the complaint certain
22 assertions were made, but at this hearing new things have come
23 up. We made a list of over 60 items that the plaintiffs have
24 raised, and I would say it's everything but the kitchen sink,
25 but there is the hand sink listed on there. Even the hand

1 sink. It's right there. And so we've wandered from side to
2 side. The plaintiffs say, well, the Department was partial,
3 went out on dares with people, they had partiality. In the
4 next breath they say, well, you were too impartial, you didn't
5 supervise the people that were being somehow influence, they
6 didn't supervise the Manpower people, they didn't go in and
7 micromanage them, you should have had more oversight with the
8 people that we were partial. So they're blamed for being
9 partial, they're blamed for being impartial. And on virtually
10 every side of this coin there are arguments being made both
11 ways, because the plaintiffs on this side, we're all in the
12 same boat. Everybody in this room, it might have been a few
13 points, maybe we're just a few points over the line, maybe
14 we're way down the list, but we can all agree everybody here
15 wanted more licenses. But there weren't enough licenses to go
16 around.

17 So the Department had to make a decision on how it
18 was going to allocate those licenses, and it had to use a
19 numerically scored and impartial system. That's really what
20 were here for. Plaintiffs have challenged all sorts of
21 problems with the imperfect system, with imperfect people
22 applying that imperfect system. And I don't think as I sat
23 here and listened to government employees that I thought, wow,
24 these are perfect government employees who did everything
25 right. In fact, there were times I thought we wavered and

1 though, man, there were a lot of problems going I'm hearing
2 right now. But that's what the system allows for. It does
3 not allow for the legislative, administrative body to be
4 overseen and changed by an imperfect judicial system. There's
5 no perfect system. They're doing the best that they can.

6 And really the ultimate aspect of this as was talked
7 about, the estoppel and laches aspect of this, the Miller case
8 really is right on point, as Mr. Bice indicated. A little
9 analogy here. We're here in a Business Court case. The
10 Serenity case is a business case, filed as a business case.
11 If you look at the Business Court designations in those rules
12 specifically carved out from business cases under EDCR
13 1.61(b)(1) it says, "The granting, denying, withholding of any
14 government approvals, permits, licenses, variances,
15 registrations, or findings of suitability are not Business
16 Court cases." Yet here we are. Everybody's shown up,
17 everybody's argued. We've spent literally millions, I'm
18 assuming, in attorneys' fees. We've submitted briefs, we've
19 called witnesses, we've made objections that all have been
20 overruled, and here we are at the end of this making our
21 arguments --

22 THE COURT: There were some that have been
23 sustained.

24 MR. KOCH: There have been a few. There have been a
25 few.

1 THE COURT: There's a list. Somebody's keeping a
2 list of the sustained ones.

3 MR. KOCH: All right. So let's come to the end of
4 this at some point. Maybe today, maybe next week the Judge
5 makes her decision --

6 THE COURT: Not today.

7 MR. KOCH: -- and that decision is made and
8 whichever party is unhappy with that decision comes back and
9 says, oh, this wasn't a Business Court case, we should have
10 never been there, let's go back to Department 8 where Mr.
11 Kemp's case was filed, that's the first case filed, that's
12 where we should have been, so let's throw out everything that
13 we did here, all the money that was spent, all the time that
14 was spent sitting here, all the witness that was had, let's
15 pretend like that never happened, let's go back to square one.
16 What would everybody say? Everybody would throw up their
17 hands and say, no way, we're not doing that, we all agreed,
18 we're all here, we all acquiesced in the process because we
19 understood what we were doing. The same goes for all of the
20 requirements and all of the issues that are being raised here.

21 And in particular I want to talk about the
22 prospective owner and the 5 percent rule. You know, that
23 5 percent rule didn't just come out of nowhere. I know the
24 Court has asked -- you know, Ms. Contine I thought did a fine
25 job explaining why they had the 5 percent rule. It's not in

1 the initiative. That's for sure. It doesn't say 5 percent.
2 One question that the Court asked Ms. Contine, why'd you
3 impose your judgment over the judgment of the voters' that
4 they in the initiative, fair question, but I think it's the
5 wrong question. I think the question would be did the voters
6 even contemplate a 5 percent, a 10 percent. any kind of a rule
7 like that. And, as Mr. Hawkins said, probably most apropos
8 was, I don't think the voters cared about that, they just
9 wanted to be able to get marijuana. That's what they were
10 thinking about, but the concern that's in there is public
11 safety. And Ms. Contine explained why public safety is
12 protected by that 5 percent rule. And the 5 percent rule did
13 not just come out of nowhere. In fact, prior to this time the
14 Task Force specifically talked about it at length. Mr.
15 Ritter, representative of TGIG, Mr. Gentile's client, was on
16 that Task Force, actually the one who proposed the 5 percent
17 rule. After the Task Force it was adopted in regulations in
18 2018, January. Nobody complained about that rule then. In
19 fact, what's most interesting is that many of the parties on
20 this side of the room who did not get a license this go around
21 are currently operating retail marijuana establishments,
22 they're public companies, and they have not had background
23 checks on those less than 5 percent owners. They have not
24 submitted their shareholder list to have that
25 1 percent owner or that .1 percent owner background checked.

1 We've heard testimony that that would be impossible, beyond
2 impracticable --

3 THE COURT: And you know it's not impossible,
4 because when we have proxy battles we make sure in regular
5 Business Court cases that we have a record date on which
6 identified shareholders are made of record, and then the proxy
7 statements go to those. It's not an impossible situation, Mr.
8 Koch.

9 MR. KOCH: It is impossible in this sense. One, let
10 me tell you the problem. The street name aspect.

11 THE COURT: Absolutely. Same thing as proxies.

12 MR. KOCH: Extremely difficult. When does that
13 background check take place? Does it take place at the time
14 of the application, does it take place a year down the road,
15 have all these individual stockholders who are sitting here
16 now with a license, happily operating, receiving retail
17 marijuana revenue and income, have they all had those
18 background checks done? Instead what we're essentially
19 proposing here is a two-tiered system. Those that are
20 operating with an existing license don't have to have
21 background checks on every single shareholder, and those that
22 apply new, they would have to have such a system.

23 Now, what the plaintiffs are suggesting really is
24 something that the legislature would have to take up. Mr.
25 Gentile said, public companies could not operate in gaming

1 until 1967, I believe it is. Well, public companies are
2 operating marijuana right now, and if the legislature or if
3 the people wanted to prohibit public companies from operating
4 in marijuana, they better say so, and they better say so
5 expressly. But the argument that's being made is an implicit
6 prohibition on public companies from operating in this space
7 because whether or not it's impossible, and I would argue it
8 is, it's certainly impracticable, unreasonably impracticable,
9 because this is what the statute provides. So instead the
10 Department adopted the 5 percent rule.

11 Now, 5 percent, Mr. Parker said, well, that's just
12 pulled out of nowhere. 5 percent is a standard number. If we
13 were talking about 6.4 percent or 7.9 percent, well, maybe
14 that's an arbitrary random number, I don't know. But 5
15 percent was in the medical marijuana regs in 2014. It's not a
16 new number. It was in the medical regs, and nobody's
17 complained about it. And we haven't seen the Sinaloa cartel
18 coming in and taking over medical marijuana. In fact, if the
19 nightmare scenario that's been talked about were actually
20 true, you would think that the existing operators who had a
21 retail establishment, who were not being background checked
22 below the 5 percent would see an influx of Canadian Mafia,
23 Sinaloa cartel, the Armenian street gangs all coming and
24 buying up these minority interests just so they can have a
25 piece of this pie. But that's not what we're seeing.

1 And certainly to the extent the public safety is the
2 concern there's been no indication, no evidence, no proof of
3 that. But really what Mr. Parker, when he asked Ms. Contine,
4 would it be okay if a felon bought 4 percent because he
5 wouldn't be background checked; and she said, under the rules
6 that would be allowed, that question is not about public
7 safety, because there's no indication that that person's now
8 going to come in and start causing public safety concerns.
9 That's a question of punishment for that felon not being
10 allowed to own stock in that entity. That's not what the
11 initiative was about. It was not about felons being
12 prohibited from ownership. It was about public safety.

13 So really when a literal interpretation of a statute
14 would result in an absurd result, and we argue and explain
15 this at great length in our pocket brief that was filed, we
16 can't do that. And that's really what the arguments that are
17 being made here. Prospective owner in particular is a major
18 problem. We talked about prospective. "Prospective" means
19 future, possible. It doesn't mean owner as of record date.
20 The statute could have said, the owner as of November 1st,
21 2018. It could have said that. It didn't say that. It says
22 "prospective owner." And there's some ambiguity there,
23 certainly.

24 And so the applicants submitted their application,
25 our company submitted application, backgrounds were checked at

1 that time. Since that I there have been many owners that have
2 turned over. The Court suggests, well, maybe we could do it
3 on one day of the year, we could pick a day, we'll do it on
4 that day and that'll be fine. That's as arbitrary as
5 anything. Because the remaining 364 days the bad guys come in
6 and buy up the stock and sell it off before the next check
7 date.

8 What this Department has done is reasonable under
9 the circumstances. They've provided a 5 percent rule that
10 everybody agreed to and everybody indicated they had no
11 problem with. And when those 30 and \$40 background checks are
12 coming in and the company's have to pay that, the Department
13 doesn't have that money, it is going to make it unreasonably
14 impracticable or impossible to be able to conduct those in a
15 way that allows those companies to continue to do business.

16 Now, public companies aren't prohibited from
17 operating in alcohol or prohibited from operating in other
18 ways. In alcohol in particular it said -- the statute said or
19 the initiative said, you can be regulated similar the alcohol.
20 And so for the rule that we have talked about, the 5 percent
21 rule, which, by the way, applies in gaming, suitability
22 checks, applies for the SEC, the 5 percent threshold is there.
23 In the SEC in particular it's very apropos in the sense that
24 that governs --

25 THE COURT: Well, but you guys are all Canadian

1 companies on Canadian exchanges, so the SEC doesn't really
2 matter, does it?

3 MR. KOCH: We're not talking about the SEC rules
4 being brought straight over. But is there a reasonable
5 interpretation? The SEC over years of regulation said
6 5 percent, we're going to have some limitations on that.
7 We're not saying the Canadian stock market is any better than
8 U.S. stock market. All we're saying is 5 percent rule is a
9 reasonable basis to decide whether that person has some
10 control over the company. And that's really what the issue
11 is.

12 Now, there's a couple of solutions here. If the
13 Court really were concerned about this, the first solution is
14 what the statute says itself. The statute does not say when
15 that background check needs to be conducted. In NRS
16 453D.200(6) it simply states that they need to conduct a
17 background check. As we sit here today we're still months
18 away from the 12 month deadline, which is really, in our view,
19 what the plaintiffs are trying -- where the plaintiffs are
20 trying to get us to, the 12 month deadline to get an
21 inspection. We're months away from that. The Department
22 could still conduct background checks of every successful
23 conditional license applicant. They could do it tomorrow,
24 they could do it the next day, they could do it before you get
25 your final inspection. That's a timing issue. The Court

1 could say, all right, my injunction is you've got to follow
2 the statute, you've got to conduct a background check before
3 you get your final license.

4 It could also decide, as the Court had indicated,
5 you could theoretically run a background check on a company.
6 That would be one solution. I don't know how exactly that
7 happens, but it could be a solution. And if the Court is
8 concerned that we've got to follow exactly what the voters
9 wanted, this would comply with that, although it may not be as
10 precise as a fingerprint background check. Or you could
11 decide that the Department would have to conduct a background
12 check of the owners at the time the application was submitted.
13 I think you'd still have issues with that, but you could at
14 least have a point in time at the time the application was
15 submitted.

16 So all these reasons, there's no basis to have a
17 preliminary injunction of the type that the plaintiffs want.
18 The plaintiffs want to burn the whole system down because
19 5 percent is a bad rule so therefore don't give anybody any
20 licenses. That's not the relief that we're looking for -- or
21 they're looking for. That's not the relief that should be
22 granted here.

23 Couple of other items I want to touch, and one is
24 compliance. The Court has talked about -- or the parties have
25 talked about compliance quite a bit, and indicated that, well,

1 we've got all these problems with compliance. They brought up
2 this Exhibit 96. They keep talking about it over and over.
3 And this is the email from Kara Cronkhite, interestingly, with
4 the blacked-out names. We never got the answer to that. The
5 reason the blacked-out names are there is because this
6 document was obtained illegally. This is a document that
7 plaintiffs got. No one has come forward and said, here's
8 who's on this, here's how I got this. It's an internal
9 Department document. Ms. Cronkhite said, that matter's being
10 investigated right now. The plaintiffs [unintelligible] come
11 forward with this illegal document said, oh, look at this,
12 look at this. What does it actually say? They're
13 misconstruing, misstating the document intentionally. It says
14 that the three entities listed there, Henderson Organic
15 Remedies, NOR, and Integral, it talks about a self-reporting
16 [inaudible] that said there was an incident, they reported it,
17 they took the necessary steps to fix it, and we're not going
18 to conduct an investigation. Plaintiffs say, oh, they swept
19 it under the rug obviously, without anybody who's corroborated
20 their version of that story. In fact, the only person that
21 wrote this email explained it clearly and clearly explained
22 what happened. Self reporting took place. That's the epitome
23 of compliance. You don't want compliance -- I guess
24 compliance could be the person who wrote this email or brought
25 this in could come forward and say, I conducted an illegal

1 act, here I am, I'm going to comply with the law now. But NOR
2 went forward and said, we had a problem, we fixed it. That's
3 what compliance is. It's not about perfect operation without
4 a single problem. In fact, Mr. Hawkins said, I've never had a
5 single deficiency. Ms. Cronkhite said, there's no operator
6 without a deficiency. And while Mr. Hawkins may not be aware
7 of it, he's not on the email, it sounded like, on the ListServ
8 or anything else. If he were, somehow he'd be the only
9 operator in the entire state of Nevada without a deficiency.
10 He's never put a cardboard box down on the ground that
11 violates the regulations on those things. Those all sorts of
12 deficiencies that could be there.

13 So compliance is something that requires the parties
14 working together with the Department to make sure that they're
15 operating properly. And compliance is considered in the
16 context of anyone who could get a license had to be in good
17 standing. You could not have had your license suspended and
18 get a new license. You're not going to be able to do that.
19 And so the Department would take into act compliance in that
20 context, are you fulfilling the regulations and requirements
21 of the law.

22 THE COURT: So did they?

23 MR. KOCH: Absolutely.

24 THE COURT: How? I haven't had any evidence that
25 the Department considered compliance as part of the

1 application process, Mr. Koch.

2 MR. KOCH: A party that was not in good standing --
3 they didn't need to score it. That's a complete insinuation.
4 We didn't get a score based on how many deficiencies you have.
5 That's not what the statute says. It said compliance would be
6 considered. I don't have the exact language. But a party in
7 good standing could get a license. A party not in good
8 standing, and there's several of them that had been suspended
9 at different points in time, would not get a license. You
10 can't grant a license to a suspended licensee.

11 THE COURT: So that's how you think compliance was
12 used as part of the application process?

13 MR. KOCH: It would be a factor in deciding whether
14 an applicant would be successful. You could not --

15 THE COURT: What evidence in our record do you have
16 that that's what the Department did?

17 MR. KOCH: I do not. And that testified that
18 somebody said that somebody was denied a license because they
19 were suspended. But a license -- I believe the parties had
20 indicated you had to be in good standing in order to be able
21 to receive to a license. And it was not part of the scoring
22 system, did not need to be scored, did not need to be part of
23 the rubric. It wasn't on there. And along the same lines, if
24 they're looking about points, there's not a point total listed
25 for compliance. Nobody complained about that. Nobody had

1 that issue that was raised.

2 THE COURT: Okay.

3 MR. KOCH: Lastly, poor Amanda Connor. Her name has
4 been brought up. She's not appeared here to testify. Brought
5 up many times, insinuations have been made, well, she was paid
6 a lot of money, she must have used some of that money to exert
7 some kind of influence. You know, we've all been paid a lot
8 of money to be here. I don't think anyone is going to
9 insinuate that we have been paid a lot therefore we must be --

10 THE COURT: Mr. Shevorski says he has not.

11 MR. KOCH: -- passing it along. Well --

12 THE COURT: You could look on Transparent Nevada and
13 figure out what he gets paid to be here.

14 MR. KOCH: All right. All right. But the
15 insinuation that someone's paid for services and therefore you
16 must be bribing someone is frankly offensive. Ms. Connor's
17 good at her job. She represented parties that got licenses,
18 and represented parties that didn't. In fact, Mr. Ritter, who
19 was on the Task Force, his company was represented by Ms.
20 Connor, still didn't get a license. The insinuation that
21 somehow that calling Jorge, asking for information from Jorge
22 meant that all her clients got licenses, not factually true.
23 If it were the case, you would expect all her clients to be at
24 the top of the list, and Jorge would have been supervising all
25 the scorers to make sure everybody got a license. Partiality,

1 impartiality breakdown there is quite clear. You can argue
2 partiality, you can argue communication, all those sorts of
3 things all you want, but the reality is there's no evidence
4 that any influence or any change was made.

5 So in the end we can sit here and hyperanalyze this
6 process, but there's been no showing of arbitrary actions by
7 the Department, no showing of capriciousness. What they've
8 showed is the Department didn't have perfect, God-like
9 confidence in carrying out this process. We all understand
10 that. There were problems. Any process that we look back on
11 -- if my day-to-day operation was watched, if anybody sat
12 there and watched me would say, wow, he's got problems, he's
13 messing things up. But that's not the basis to enjoin an
14 entire system from being -- moving forward in an industry such
15 as this, especially where it's new. The Department is doing
16 the best that it can, and we will have improvement in the
17 future.

18 And to say -- last item. To say there's a fixed
19 number of licenses that will never increase is a false
20 statement. The statutes provide for the ability to look to
21 determine if more licenses may be necessary in the future and
22 can grant more licenses in the future. So we're not dealing
23 with a finite number of resources for an indefinite period of
24 time. Thank you.

25 THE COURT: Thank you, Mr. Koch.

1 Next? Mr. Prince.

2 INTERVENOR DEFENDANT THRIVE'S CLOSING ARGUMENT

3 MR. PRINCE: Your Honor, good morning. And for the
4 record, Dennis Prince appearing -- making the argument on
5 behalf of the Thrive defendants.

6 Your Honor, I think it's no question that this
7 marijuana industry is likely the most -- second most heavily
8 regulated industry in the state of Nevada except for gaming.
9 And a diverse group of citizens of the state of Nevada voted
10 to create a comprehensive legislative and regulatory framework
11 for the sale of marijuana in the state of Nevada. And one of
12 the things that it did do was empower the State, it gave the
13 State incredible power in order to regulate this industry.
14 And I think Mr. Shevorski touched upon it, but the enabling
15 statute, which is 453D.200, the language of it is critical to
16 your analysis in this case and why an injunction shouldn't
17 issue. Because the Department, it says, "shall adopt all
18 regulations necessary or even convenient." That breadth of
19 power is widespread and sweeping, because the voters knew and
20 clearly understood that they weren't creating a complete
21 regulatory or legal framework for the operation of these
22 licenses. They were going to leave that to the Department of
23 Taxation. So they empowered the Department to come up with
24 the actual framework itself.

25 And if you look at the additional language from

1 subpart (1) regarding "the regulations shall include," that
2 language is critical, because that is the minimum requirements
3 mandated by the voters, not an exhaustive list of all the
4 criteria or the power that the State could have. It doesn't
5 prohibit the State from adopting additional criteria that in
6 its discretion and determination benefits the public and the
7 welfare of this state in order to operate one of these
8 licenses. So they were tasked with the obligation of creating
9 regulations to carry out this ballot initiative. And one of
10 the things they did was as part of the initiative as 453.200
11 is they've indicated that "qualifications for licensure which
12 are directly and demonstrably related to the operation of a
13 marijuana establishment," that was left exclusively to the
14 Department to make that determination.

15 This Court must view that expansively, not narrowly.
16 There is no prohibition anywhere that diversity should not be
17 included, because a diverse group of Nevada citizens voted for
18 this ballot initiative. So therefore when the Department
19 started to make this determination of what qualifications it
20 felt was important or even necessary to carry out this
21 legislative and regulatory framework diversity was not only
22 not prohibited, it was likely encouraged. We certainly live
23 in a time where we've been a civil rights movement for
24 probably hundreds of years, but certainly the last 50 years,
25 and certain groups, whether it be females, racial minorities,

1 or religious backgrounds, they are fighting to have their
2 voice heard and included. Where and under circumstance would
3 the State be wrong to include diversity as part of its
4 comprehensive regulation of this industry? And in fact Mr.
5 Parker on behalf of Nevada Wellness, he says, yes, that does
6 in fact go to qualifications. Mr. Peckman testified to that
7 in other testimony demonstrating to that diversity went
8 directly to qualifications of an applicant. So when you're
9 considering whether or not the State exceeded its authority,
10 it's clear that 453D.200 certainly gives this broad grant of
11 authority to the State to adopt regulations which in fact
12 promote the appropriate qualifications of all licensees based
13 upon a diverse background. They gave the State 13 areas in
14 which to implement regulation, one of which related to
15 qualifications. But it wasn't a prohibition for adopting any
16 additional criteria that it felt in its reasonable judgment to
17 include. And in this situation diversity was included.

18 Now, going back -- because what this relates to was
19 was the process fair in September of 2018. Were all
20 applicants on a level playing field? And, more importantly,
21 did they know that diversity was going to be part of the
22 scoring system? Every one of these plaintiffs, every singular
23 one, had a medical marijuana license. They're all existing
24 licensees. And in 2017 the State of Nevada determined that
25 diversity was a relevant factor for a medical marijuana

1 license. And looking at NRS 453A.328(10), they include
2 diversity on the basis of race, ethnicity, or gender of the
3 applicant or the persons who are proposed to be owners,
4 officers, or board members. Those are criteria to use. In
5 addition, the legislature gave the following to the Department
6 number (11), "adopt any other criteria of merit that the
7 Department determines to be relevant."

8 When you're construing these statutes I think you
9 have to construe both -- and harmonize 453A with 453D.

10 THE COURT: Even when they're in conflict with the
11 ballot question, Mr. Prince?

12 MR. PRINCE: You have to read them in a way that it
13 creates harmony, not disharmony. If you can't in all
14 practical ways construe them in a way that creates harmony so
15 you can carry out the voter initiative, that is your mandate,
16 as I understand it under Nevada law, and that is your mandate.

17 But the point is was the process unfair. The
18 process doesn't have to be perfect. It doesn't even state you
19 can't make mistakes along the way. They can't exceed their
20 scope of authority or act arbitrary or capricious. That's why
21 the analysis has to start with the expansiveness of the grant
22 of authority to the State.

23 But, more importantly, in February of 2018, when the
24 Department adopted NAC 453D.272, it informed everyone,
25 including every one of these plaintiffs, that, among others

1 things, diversity of ownership, officers, or board members was
2 going to be considered a criteria. And the important part of
3 this language is -- of 453D.272 of the NAC is it talks about
4 the Department's going to rank the application within what
5 applicable locality for any applicants where -- which in a
6 jurisdiction that limits the number of retail marijuana
7 stores. And one of the factors is diversity. So everyone
8 knew as of February 2018 that diversity was going to be
9 considered as part of any additional application for a retail
10 license in the state of Nevada. Everyone is charged with that
11 knowledge. Whether they chose to give it any weight, whether
12 they truly understood it, that's not the point. By February
13 of 2018 the State has now taken charge of this and made
14 diversity a factor to consider.

15 But then it goes one step further with the
16 legislature -- excuse me, with the ballot initiative. If you
17 go back to 453.200, the voters understood and knew and wanted
18 the State to come up with a process and a procedure, a
19 regulatory framework where you can operate -- have a dual-
20 license operation, which is specifically contemplated, if you
21 only could apply for one license in 2017, if you have an
22 existing license, existing medical marijuana license. So they
23 specifically contemplated a dual-license operation. That's
24 how you harmonize the diversity component. This aspect of it
25 has to be read in conjunction with 453A relating to diversity,

1 as well as the adoption of the regulation. But by certainly
2 September of 2018 every one of these applicants was clearly
3 aware that diversity was to be considered as part of the
4 application process. Whether they thought it was going to be
5 tiebreaker, whether they thought it was going to be a factor
6 or be scored, that's up to the State to make that
7 determination. That's within their regulatory and
8 discretionary authority. It does not -- each applicant does
9 not have to understand that. Their lack of knowledge does not
10 take away the State's power or the ability to consider
11 diversity for any reason.

12 And in addition to that there's not even agreement
13 between the plaintiffs. Mr. Gentile stood up here and said
14 it's breaking his heart to make this argument but diversity
15 somehow is inconsistent with the ballot initiative and that is
16 a basis to grant this preliminary injunction. Mr. Parker, on
17 the other hand, stood up here and argued that, yes, diversity
18 is directly and demonstrably relatable to the qualifications
19 of an applicant. Even using the plaintiffs' arguments, at a
20 minimum its ambiguous. If it's ambiguous, then you have the
21 right to make the determination that, yes, it was reasonable
22 and fair for the State to make that inclusion. And how are --
23 you what kind of message would it be for this Court or even
24 the Nevada Department of Taxation, for that matter, and say,
25 we are not going to consider, we're specifically not going to

1 consider diversity when considering an application for a
2 retail license in the state of Nevada. A diverse group of
3 Nevada citizens voted for this ballot initiative. Therefore,
4 there can be no reasonable challenge that diversity should not
5 have been included or that, more importantly, the State
6 exceeded its authority in including diversity in this. And it
7 makes it all -- it's all consistent with 453A, 453D when
8 you're operating a dual-license operation.

9 Now I want to talk specific about --

10 THE COURT: How many more speakers do I have after
11 Mr. Prince? Four?

12 MR. PRINCE: When Thrive was granted, as well as all
13 the other intervening defendants, its six licenses on December
14 5th, 2018, it had a vested property right in those licenses.
15 In addition, it already had a vested property right in the
16 licenses that it already had, and was operating a retail
17 marijuana dispensary. The Burgess case makes clear that once
18 you became a license holder that now you have the right before
19 you can have that license revoked to a hearing and a showing
20 of good cause. And the State has adopted comprehensive
21 regulation relating to the suspension and/or revocation of a
22 license, which includes notice and an opportunity to be heard
23 in a contested proceeding, which would then give rise to some
24 potential claim for judicial review. We don't have that here.
25 This unsuccessful applicants have no right to judicial review

1 as an unsuccessful applicant.

2 But, moreover, Thrive, in response to being awarded
3 those licenses, it paid \$120,000 in licensing fees to the
4 State of Nevada and is now subject to all of the requirements
5 for these six licenses, even though it can't use any of them
6 currently, to the rules and regulations, including relating to
7 discipline, suspension, or revocation.

8 Now, I'm showing you a slide that Thrive has now
9 started to advertise that their 3500 West Sahara location is
10 now open. You had previously granted a temporary restraining
11 order precluding Thrive from opening that location or against
12 the State from allowing it to start operation under the
13 conditional license grant from December 5th, 2018. But what
14 this demonstrates is even though that location was not on the
15 application, that they've identified an applicant -- a
16 location, they went through all the land use and zoning
17 requirements, they complied with all of the State requirements
18 and underwent a final inspection by the State, all within six
19 months.

20 THE COURT: And transferred an existing license to
21 that location.

22 MR. PRINCE: Absolutely. Which it had the absolute
23 right to do.

24 THE COURT: I'm criticizing you, Mr. Prince. I'm
25 must making the record clear that it was not a violation of

1 the TRO --

2 MR. PRINCE: Correct.

3 THE COURT: -- by doing that.

4 MR. PRINCE: Correct. And the only way that they
5 were able to do that is they actually had to close their
6 Commerce location and use the existing license in order to
7 open at 3500 West Sahara. Mr. Kemp argued, interestingly,
8 yesterday that they should -- that Thrive should have been
9 enjoined from opening that location at all. Which that's a
10 fascinating argument. Because Planet 13, in order to open
11 their location by the Fashion Show Mall on in Industrial, they
12 had to close their existing southwest store and transfer that
13 license with the approval of the State. And I'm certain he
14 doesn't want an injunction against him or his client, rather,
15 from operating that location on Industrial.

16 But a's critical to this is this 12 month issue --
17 obligation imposed by the State from the time of the
18 conditional license grant we have 12 months to be open and
19 operational. As we sit here today, Judge, and this is part of
20 the balance of harm, none of these applicants are able to
21 likely meet that. Thrive has come forward with evidence on
22 this record that it found a location, went through all the
23 land use and zoning, and has spent more than a million dollars
24 between the City of Las Vegas and the City of Reno to open a
25 location, and has been unable to do so. Part of this record

1 is, for example, if Essence, for example, can't meet this
2 12 month requirement, it's going to lose favorable zoning in
3 the City of Reno which is within 1500 feet of the Peppermill
4 Casino. They're going to lose that valuable right. So when
5 you're talking about balance of hardship, those are two
6 things, among other things, that you can be considering, is
7 the effect upon these intervening defendants, the lack of
8 ability to become open and operational.

9 Mr. Bice talked about it, but as a license holder
10 Thrive did not have to, nor did any of the other applicants
11 have to have an identifiable location on its application. The
12 NuLeaf decision makes clear that that's not a disqualifying
13 fact for the State to refuse to issue you a license. But it
14 allows an applicant like all -- and it is a level playing
15 field. This applied to everyone, not just the intervening
16 defendants and the successful applicants, it applied to even
17 the plaintiffs. They would allow you to find a suitable
18 location even after you submitted the application as long as
19 you went through the land use and the zoning requirements and
20 you got final approval by the State prior to the opening of
21 your establishment.

22 But I want to go back to -- since we want to focus
23 on what was the power given to the State through the ballot
24 initiative. And if you look at 453D.210, this was --
25 everybody focuses on subpart (b) of -- the physical address

1 where the proposed marijuana establishment will operate --

2 THE COURT: Under section (5)?

3 MR. PRINCE: It is section (5), correct.

4 -- that the physical address where the proposed
5 marijuana establishment will operate is owned by the applicant
6 or the applicant has written permission from the property
7 owner to operate the proposed marijuana establishment on that
8 property. We focused so much on Clark County and the City of
9 Las Vegas and Southern Nevada, but this is a statewide rule,
10 as I'm certain that you're aware of. But, more importantly,
11 the second largest -- just by way of example, the second
12 largest city in the state of Nevada is Henderson. They have a
13 moratorium. There is no way -- for example, when Thrive went
14 to apply it couldn't have identified a location effectively to
15 open and operate in Henderson, because there's moratorium.
16 And we don't know when that will be lifted or what the rules
17 or requirements for land use and zoning will be in the city
18 Henderson, in the second largest city in the state of Nevada.
19 So that virtually would have been an impossibility. But when
20 you're reading 453D.210 you need to read section (5) (b) with
21 (e), which says, "The locality," which is clearly ambiguous,
22 "The locality in which the proposed marijuana establishment
23 will be located does not affirm to the Department that the
24 proposed marijuana establishment will be in violation of
25 zoning or land use rules adopted by the locality." Those have

1 to read together, because that criteria is in the conjunctive,
2 that's all of the criteria. And under NuLeaf that does not
3 prohibit -- not having a specified location on the application
4 does not prohibit the State from issuing the license on a
5 conditional basis. But when you read 453D.210 as a whole and
6 you read (b) in connection with (e), it demonstrates that land
7 use and zoning is an important aspect, and that may not be
8 resolved until after the conditional license grant, because
9 you can't even go forward with land use or zoning until you
10 have the license. You can't even secure property, whether by
11 lease or even by ownership. Who would spend that type of
12 money, make that type of commitment if you can't operate the
13 establishment in a proposed location. And, as Mr. Pupo
14 testified last week, they knew that this wasn't going to be a
15 scoring item, so everybody in this regard was treated equally.
16 No one gained any additional advantage, and no one was denied
17 any due process, because everybody knew it. And the NuLeaf
18 decision made clear that the State was not obligated and could
19 not require a physical location to be considered as a
20 disqualifying aspect for an applicant.

21 And we also heard from Mr. Terry. For example, the
22 practical part of this, in other rural jurisdictions there's
23 not only a moratorium, they haven't even considered the issue
24 yet. So there's no way for him to identify -- or any
25 applicant to identify in those smaller rural counties where a

1 proposed location could even go. So that'd be impossible to
2 even meet that standard. And I'm certain that the voters were
3 trying to focus on the entirety of the state of Nevada,
4 including those rural counties, and wanted to make sure their
5 needs were effectively served. And there's no way that ,if
6 that is an absolutely requirement, a disqualifying aspect in
7 the rural counties, therefore we can't be served, every
8 applicant would be disqualified in a rural county. And that
9 is the absurd result which your interpretation can't allow to
10 occur.

11 Now, taking this a step further on location, the
12 voters specifically contemplated and authorized the Department
13 to come up with rules relating to transfers of location.
14 453D.200(j) -- or (5)(j) allows for procedures and
15 requirements -- not only allows, requires procedures and
16 requirements not only just to transfer a license, but to also
17 enable a licensee to move the location of its establishment.
18 That's exactly what Thrive had to do. But in order to do that
19 they had to close a store, all to their ongoing harm and
20 detriment, because now they're no longer able to make money.
21 Part of the downtown needs of Las Vegas are no longer being
22 served, where this location on Commerce and Charleston was
23 located. So now other needs of Southern Nevada are not being
24 met as a result of this proposed injunction by the plaintiffs.
25 But certainly the voters contemplated a change of location in

1 2016, because it doesn't even prohibit when a location can
2 change. So reading this as a whole, certainly location is not
3 disqualifying factor for anyone.

4 And with respect to the balance of hardships, my
5 client, Thrive through Mr. Peckman, has not only testified
6 that they paid \$120,000 for the licensing fees, but they've
7 also incurred more than a million dollars to become open and
8 operational not only in the city of Las Vegas, but also the
9 city of Reno. They are currently on an agenda item in Reno.
10 They've identified a location, they've been working with the
11 State, and they're waiting for that to be approved so they can
12 go forward with their pre-operational process. But, moreover,
13 the effect of them also affects them everywhere else, because
14 they can't open their Thrive location because now they don't
15 have a license to operate Thrive. They're being prevented
16 from earning money on the existing licenses.

17 There's also another harm, not just to the
18 individual applicant like Thrive, but to the public. One of
19 the requested forms of relief by Mr. Bult yesterday was you
20 need to void all of these regulations, need to void this
21 process. That's what they're advocating. The State is also
22 and the public is going to be harmed by that. Number one, the
23 State collected application fees for 462 applicants at \$5,000
24 each. They've also received for 61 licenses a \$20,000
25 licensing fee. They would have to return or be at risk of

1 returning more than \$3 million.

2 Further, they're not collecting the taxes that the
3 voters stipulated would be collected from operation of these
4 retail-licensed operations. And fourth -- or third, the black
5 market continues to go and to thrive is not part of a
6 regulated industry, which is exactly what a diverse group of
7 Nevada citizens wanted it enacted this ballot initiative.

8 So therefore the harm to Thrive, Essence, and all of
9 the other applicants it's substantial and ongoing. Moreover,
10 we heard testimony in the evidence that Mr. Ritter, the owner
11 and/or purported operator but maybe an owner, a ghost owner or
12 whatever you want to call him, of The Grove, he proposed to
13 purchase Helping Hands at two locations. He came up with
14 conservative projections that for two stores [unintelligible]
15 the earnings would be more than \$6 million, net of a \$1.4,
16 almost
17 \$1.5 million management for example. That lends credibility
18 by itself to Mr. Yemenidjian's testimony that conservatively
19 under his estimate that they're losing \$2.8 million per year
20 per store. So the losses are substantial and ongoing, Your
21 Honor. As part of your overall analysis you must consider the
22 balance of hardships not only to these potentially enjoined
23 defendants, but also to the public at large, because the
24 public is the one also who's going to be enjoined throughout
25 this process that their will will not be effectuated.

1 And then finally, Your Honor, I want to talk about
2 what are the options that you've here today in terms of some
3 type of relief. One is -- and Mr. -- and which we agree with
4 as articulated by Mr. Shevorski and Mr. Bice, there is no
5 legal basis for injunctive relief. These applicants aren't
6 going to be any different position now or at the time of a
7 trial or even after a trial, for that matter. So there's no
8 legal basis for an injunction at all. And the standard is did
9 the State exceed its authority and act in a way that's
10 arbitrary and capricious. And that's not just simply, we made
11 a mistake, we made an error somewhere. It rises to a high
12 level. Using the judiciary as one example, the Nevada Supreme
13 Court could make a determination that a District Court judge
14 abused his -- was wrong, but did not constitute an abuse of
15 discretion mandating a reversal or change of outcome. And that
16 standard is somewhat applicable here. But the three bases
17 we're talk about it is, number one, diversity. There is no
18 way that the State acted arbitrarily or capriciously in
19 considering diversity as a factor. The legislature made a
20 determination that diversity was important for medical
21 licensing, the State adopted this criteria in February of
22 2018, and every applicant knew it.

23 And going to Mr. Bice's argument with respect to the
24 Miller versus Berg case they could -- if that was a problem,
25 you should have challenged it then. There's no evidence in

1 this record of any type of a challenge to the inclusion of
2 diversity as part of the ranking process. And it would send a
3 terrible message for our state to say that diversity would
4 exceed the scope of authority for the State to consider as
5 part of a licensure grant.

6 Second, location. We believe that NuLeaf enables
7 the State and gives it -- and underscores its broad plenary
8 authority and discretion to grant conditional licensure
9 without a specified location on the application, because they
10 uniquely understood that locations may change, you may not
11 complete land use or zoning approval or financially you may
12 just need to change location or downsize or something may
13 change in the process. But as long as you comply with all of
14 the land use and zoning requirements and meet all of the
15 State's specifications and requirements prior to opening,
16 they're going to give you ability to open and remove the
17 conditional grant of authority. So location would similarly
18 not be a basis for any type of injunctive relief.

19 The third area would be background. And I want to
20 state for the record even if you used the standard from the
21 ballot initiative, Thrive met that criteria. All --

22 THE COURT: Because they had all of their owners
23 disclosed in their application.

24 MR. PRINCE: They did. Even when it's under
25 5 percent.

1 THE COURT: And I have testimony about that from
2 various defendants. Have you done an analysis, Mr. Prince of
3 how many of the defendants in intervention and other
4 applicants complied with NRS 453D.200(6) even though the
5 application didn't require it?

6 MR. PRINCE: No, I haven't.

7 THE COURT: Okay.

8 MR. PRINCE: I confirmed that on behalf of --

9 THE COURT: You only know from your people.

10 MR. PRINCE: On behalf of Thrive and Essence I did
11 make that confirmation, and both plans complied with that.
12 But I do believe that the 5 percent rule is reasonable. The
13 genesis of it was the Governor's Task Force, of which Mr.
14 Ritter, who is an operator with TGIG and under The Grove,
15 wife's name. He participated in that with not only members of
16 the State, members of the public, but members of industry. So
17 it does have a rational basis and a reasonable basis to
18 conclude that 5 percent would be a threshold.

19 But more important, Your Honor, you asked yesterday
20 is the term "owners" ambiguous. I submit that it's broad
21 enough to include even a corporate entity. The State can
22 investigate a corporate entity, and if they feel that further
23 investigation into these shareholders and the officers and
24 directors of that corporate entity is needed, they can conduct
25 that investigation. It may be more extensive than an

1 individual, but certainly the State has that capacity and
2 ability. Because, for example, nothing prohibits one day
3 after the application that a public entity or any other
4 corporation -- they can acquire a percentage interest in an
5 applicant. So, therefore, we believe that owner under these
6 regulations, as well as the ballot initiative is broad enough
7 to include a corporate form of ownership, including
8 potentially a publicly traded corporation. It would be up to
9 the State.

10 If the Court is considering any form of injunctive
11 relief, we want to offer you this alternative. We believe
12 that the background check would be the only available or
13 reasonably available alternative to any form of injunctive
14 relief, and it could be fashioned in this manner. To the
15 extent that the State did not conduct a background check for
16 each applicant, or an owner of each applicant that they be
17 enjoined from issuing a final licensure and allowing them to
18 open until that background check is complete. That gives --
19 it's consistent with the grant of authority to the State, it's
20 consistent with their regulatory authority and their plenary
21 authority with respect to investigating and approving
22 licensees without the judiciary controlling how it's done.
23 But it would allow the State to go back --

24 THE COURT: Mr. Prince, let me stop you. That is an
25 interesting modification to some of the relief being

1 requested, but how would the Department be able to do that for
2 those applicants who did not disclose the owners who owned
3 less than 5 percent?

4 MR. PRINCE: That would be up to the State to make
5 that determination. Your injunction would require the State
6 before they issue a license to do that, or go back and
7 determine if all the --

8 THE COURT: They haven't checked to see if the
9 applications were complete when they got them, Mr. Prince.

10 MR. PRINCE: But they can do that up until the time
11 of the grant of the final licensure. And I think they always
12 have that ability. For example, ownership structure could
13 change the day after the applications were submitted.

14 THE COURT: Absolutely. And it did for several of
15 these entities.

16 MR. PRINCE: For some it did. That's why I don't
17 think the date of the application can be static. I think that
18 you have to continue to look at issues up to and including the
19 time of the final approval allowing the business to operate,
20 because of that ability. That's just a static shot in time.
21 It doesn't comport with reality, and doesn't even fit with the
22 State's continuing obligations. For example, if an entity
23 sold a 5 percent or greater share, then they would have to
24 investigate that as part of the approval process, right. That
25 would be mandated.

1 THE COURT: They do that as far as transfer of
2 ownership process at this point.

3 MR. PRINCE: They would do that.

4 THE COURT: Well, they do.

5 MR. PRINCE: Right.

6 THE COURT: Apparently they're very backlogged, but
7 they do eventually do it.

8 MR. PRINCE: In addition to that, if they have
9 concerns about a person or an entity owning 5 percent or less,
10 they have the discretionary ability and the power to
11 investigate those in their reasonable decision making.

12 And interestingly enough, this is even more
13 sensitive than gaming. Gaming only has a 10 percent
14 threshold. And so you can't argue on one hand that the most
15 heavily regulated industry our state, gaming, at 10 percent
16 has no rational or reasonable basis, but somehow 5 is
17 completely irrational.

18 THE COURT: But Gaming actually does investigations.

19 MR. PRINCE: Well --

20 THE COURT: They actually do applicant
21 investigations, Mr. Prince. They don't get an application and
22 say, oh, okay, I'm going to staple it together, give it a
23 number, and then give it to the temporary employees who've
24 been hired. It's a very different process in the gaming
25 application world.

1 MR. PRINCE: I understand the process may be
2 different, and I think the process is ongoing, and there's
3 certainly going to be resources and could be dedicated even
4 after a conditional license grant to investigate all of the
5 people who are owners, board members, and/or officers of a
6 successful applicant. There was 461 or -2 applicants.

7 THE COURT: 462.

8 MR. PRINCE: 462. That -- and 90-day window that
9 would be require such an exhaustive use of manpower and labor
10 it'd almost be impossible to do that. But, nevertheless, they
11 have that obligation. The only question you're asking is were
12 they required to list the owners and background check them.

13 THE COURT: That is what I am saying. Because there
14 are some applicants who, even though they were not required to
15 list those with ownership interests below 5 percent, did.

16 MR. PRINCE: Correct.

17 THE COURT: And complied with 453D -- hold on, I've
18 got to switch screens -- 45D.200(6).

19 MR. PRINCE: Subsection (6).

20 THE COURT: And I'm just trying to figure out -- I
21 had testimony, so I had bits and pieces, but I'm trying to
22 figure out how many of all of those 462 applications complied
23 because either they were being overly cautious or for some
24 other reason.

25 MR. PRINCE: I think the issue for that would relate

1 to whether or not any of the 61 applications that were
2 approved -- the only issue would be were any one of those
3 winning applications, were they not fully background checked
4 under that standard.

5 That's why I'm saying alternative injunctive relief
6 -- if you're considering injunctive relief at all, could it
7 reasonably -- should it relate to background checking and
8 enjoin the State from allowing anyone to open or go forward
9 with final license approval if they didn't either complete the
10 application correctly or didn't have a complete background
11 check. For my clients, both Thrive and Essence, they
12 identified every owner, gave them authority to conduct a
13 background check, and they complied with that obligation,
14 because we listed that. Our clients should not be penalized
15 because some other party may not have done that. I'm not
16 trying -- respectfully to all of the other successful
17 applicants, I don't know who this would apply to completely.
18 I think I have an idea who may not -- may have a concern. But
19 that's not my concern this moment. I'm trying to make certain
20 that my clients can live within a framework of judicial relief
21 that you could grant that would not prevent them from moving
22 forward with their not only pre-opening operations and
23 expenditure of money, which at this point has been in the
24 millions of dollars, the loss of revenue has now been in the
25 millions and is continuing to grow, but it also allows you

1 some judicial discretion on how to fashion an order.

2 But, moreover, I think with regard to -- I was
3 talking to Mr. Pisanelli yesterday. Owner could include a
4 corporation, even a publicly --

5 THE COURT: We had that discussion in the first
6 couple of days of the proceeding, and you and Mr. Pisanelli
7 and Mr. Bice missed that.

8 MR. PRINCE: Mr. Bice. I know we're new. I know.
9 But nevertheless --

10 THE COURT: Well, we discussed that issue long ago,
11 Mr. Prince, sometime in May.

12 MR. PRINCE: And the other issue we raised -- I'm
13 done -- is with respect to compliance. Because you heard no
14 evidence of how each applicant complied. I think,
15 respectfully, Your Honor, that would be burden shifting. That
16 should be up to the plaintiffs to come forward with there was
17 compliance problems with one or more of the successful
18 applicants. That's their showing at the time of a trial, not
19 at the phase of a preliminary injunction. That would be a
20 trial on the merits issue and certainly not something to be
21 considered as part of a preliminary injunction proceeding.

22 And with that --

23 THE COURT: Thank you. Before you sit down, Mr.
24 Prince, we need a copy of your PowerPoint so we can mark it as
25 a Court exhibit.

1 MR. PRINCE: We will.

2 THE COURT: Thank you.

3 Dulce, if you would remind him.

4 Who's next? Mr. Kahn.

5 INTERVENOR DEFENDANT HELPING HANDS' CLOSING ARGUMENT

6 MR. KAHN: Good morning, Your Honor. Thank you for
7 providing Helping Hands Wellness Center the opportunity
8 through this whole proceeding and to present some closing
9 arguments today.

10 Without belaboring the Court with repetitive
11 arguments of what has already been presented, from our side we
12 do join some of these -- we do join in the arguments from the
13 State and what have been presented thus far from the
14 intervenor defendants and what will continue to be presented.

15 However, I do want to address a couple points that I
16 think are important for this Court to see what was presented
17 in the record so there's a greater understanding for Your
18 Honor if she were to issue an injunction or a modified
19 injunction, and I can address that, as well.

20 The plaintiffs thus far through several weeks of
21 full-day hearings have tried to paint the picture that there
22 have been mistakes created by the State through implementing
23 the statute, creating regulations, or -- and/or in
24 implementing application process, or in its grading. In
25 trying to muddy the water of this entire process what they

1 have done is try and create, well, let's throw in a whole
2 bucketful of mistakes -- that we don't agree with, by the way,
3 Your Honor -- to see if that rises to the level of arbitrary
4 and capricious conduct, and then seeking relief that they
5 described yesterday as multiple forms of relief, let's enjoin
6 the process so final licenses can't be issued, let's void
7 these licenses, let's void the regulations -- which would
8 shutter the industry, by the way, Your Honor, so I don't know
9 if they actually truly want that remedy -- or let's get more
10 points because our application was scored incorrectly.

11 Well, the problem with that, Your Honor, is that
12 many of these applicants are not taking and acknowledging the
13 responsibility of the errors in their own applications. And I
14 don't believe that that has been properly before you. The
15 evidence is there, the record is there. I'm just going to
16 show you a couple examples, Your Honor. And that's particular
17 to Mr. Kemp's clients.

18 Mr. Kemp -- and you addressed this and I'm going to
19 note this here. What if Mr. Kemp were successful in
20 establishing that he should have had higher points? Do you
21 enjoin the whole program if he pursues a writ, or do you just
22 enjoin the next person above him? And that's what they tried
23 to pursue in NuLeaf. In NuLeaf they didn't enjoin the whole
24 program because of one complainant saying, I should have
25 received more points to the person just right above me.

1 That's where MM Development stands. It would be an abuse of
2 discretion, Your Honor, to say, I'm going to enjoin the whole
3 program to allow MM Development and LivFree to come in and
4 take one or maybe two licenses, the enjoin the rest of the 61
5 applicants. That would be throwing the baby out with the bath
6 water, Your Honor.

7 But MM Development and LivFree still have to prove a
8 likelihood of success on the merits to even reach that type of
9 injunctive relief. And they have not established that. And
10 the reason they haven't established that, Your Honor, is the
11 grading process they didn't comply with. I'm going to point
12 it out to you, and we're going to bring up exhibits in one
13 second. The application was graded so there's an identified
14 and a nonidentified. I'm speaking to the choir here. I know
15 you understand. The graders -- there's testimony that the
16 graders were separated. The identified graders did not see
17 the nonidentified portions. So if you put a portion in your
18 application in the identifying section that is supposed to be
19 scored in the nonidentified section, that nonidentified grader
20 has no knowledge you've provided that writeup.

21 And if we want to take a look at MM Development's
22 application, which is Exhibit 20, and we're going to be
23 looking at what was Bate stamped MM00009, here is a great
24 writeup that Mr. Kemp has repeatedly expressed, was that they
25 submitted that they were going to be able to open up their

1 former MediZine location, it's a built-out, approved
2 location, clearly could be done within that 12 month period.
3 They included this writeup in the identified section.

4 Now if we look at Exhibit 2012, which is the scoring
5 sheet for the nonidentified section, where the building plans
6 needs to go, it indicates in there that this is in the
7 nonidentified section where you have to describe that your
8 facility can be built within the 12 months.

9 So if we go back to M&M's application, Exhibit 20,
10 on the nonidentified building provision, which is marked
11 MM001031, this is their writeup in the nonidentified section
12 -- oh. No. Excuse me. That's LivFree's.

13 While Brian is pulling it up, there's no
14 description. I'll attest to that, Your Honor. The record
15 does not -- does reflect that their application in the
16 nonidentified building portion does not have that same
17 description that was included in the identified. So when they
18 complain that the grader failed to give them the scores on the
19 nonidentified, it was their own error, Your Honor. They failed
20 to include that writeup therein. That grader never saw that
21 information, and appropriately and correctly scored it.

22 Now, we're going into basically like a trial on the
23 merits on that issue, Your Honor. But on a likelihood of
24 success on a preliminary injunction I think they're going to
25 have a hurdle and a burden that they can't achieve. Not only

1 that, why -- even if they were able to prove that it was done
2 right, why enjoin all 61 applicants if only they're jumping up
3 a couple points.

4 The next, Your Honor, is Mr. Kemp's client LivFree,
5 okay. LivFree's application was Exhibit 20 -- excuse me, 21,
6 and they complained that they submitted a plethora of
7 documents regarding their finances and weren't provided the
8 correct financial score. Your Honor, when you look at what's
9 Bates 130 and 133, in it they notate themselves that Bilko
10 Holdings is the account owned by LivFree's majority owner.
11 Then on Bate stamp 132 is a financial statement and their bank
12 statements that show it's Bilko Holdings' bank accounts. Now,
13 that's fine and sufficient, Your Honor, except for the fact
14 they didn't comply with the application's directive. The
15 application Exhibit 5 on page 17 states that, if you are going
16 to use the -- relying on the funds of an owner, that source
17 has to unconditionally commit such funds to the use of the
18 applicant. And they failed to include such a statement,
19 attestation, letter to that effect. So they've relied on
20 basically Bilko without saying, Bilko's funds in that account
21 are unconditionally for the applicant.

22 Now, I'll attest to Your Honor, and my client's
23 application was admitted to the record yesterday, and in that
24 application we have unconditional letters of attestation that
25 says, these board members, owners, and officers, each one

1 individually state our funds are going to be unconditionally
2 used for the entity. They failed to do that here. And in
3 fact I believe it was in the MM Development lawsuit even the
4 declaration from the representative for LivFree who prepared
5 the application says in her declaration failed to include the
6 unconditional commitment of funds as part of the application.

7 So now we're talking about let's enjoin this entire
8 process so that errors by the applicant can stop all of us
9 from opening. And instead of them acknowledging their errors,
10 they're saying, the State committed a scoring error and let's
11 blame the State for our own mistakes. And, Your Honor, that
12 would be an abuse of discretion to issue an injunction to that
13 regard.

14 Now, again you inquired today, Your Honor, what
15 would happen if Mr. Kemp was correct and maybe I'm wrong,
16 maybe the documents somehow don't speak for themselves, and
17 he's going to pursue a writ of mandamus for a scoring error.
18 Again, his client would bump up maybe a couple points, maybe
19 they'd get above the line, but that only, as the NuLeaf case
20 explored, was they only pursued that immediate next person
21 above the line. An injunction for everybody would be much too
22 broad. They only sought the injunction against the NuLeaf
23 entity.

24 Here what Mr. Kemp has argued for is, I want more
25 points and I'm seeking the injunction and we're stopping the

1 whole process. And I don't believe that would be a viable
2 option.

3 In dealing with an overly broad injunction, and you
4 had Mr. Prince explore some of the issues on let's say the
5 background checks, Your Honor. And I agree with you the
6 background check in the statute and the regulation are clearly
7 not identical. We support the State's ability to implement
8 their own regulations and what they did to try
9 and achieve what would work for the industry in setting a
10 5 percent benchmark. However, if you were to enjoin the
11 program, my client complied. We had every owner, officer, and
12 board member submit their background checks. So why should we
13 be enjoined if some of the parties on this side of the table
14 may not have conducted a background check on all their owners?
15 So the narrowly tailored injunction to tell the State, look,
16 go back and background check every owner, officer, and board
17 member, come up with that relief before you issue these people
18 a final license, fine. And if some of those parties can't
19 comply, what is the remedy? Well, then they don't get their
20 final license. That's the remedy of the State. They have a
21 deadline to perform and obtain those final licenses by a
22 certain date, December 5th of this year, and if those parties
23 cannot achieve that mandate from the State to background check
24 all their owners, well, then, unfortunately, they lose.

25 They would argue that the regulation is of course

1 necessary, reasonable, and within the bounds of the State's
2 discretion. But if you were to enjoin the entire program
3 because of that narrow provision, then we would attest that is
4 a wrongful injunction at least against Helping Hands.

5 Now, we've kind of explored some of the balancing of
6 the harms. There was presentation yesterday from the
7 plaintiffs that there's no evidence that these defendants are
8 going to be harmed, essentially, that there's no evidence in
9 the record. Now, my client presented LOIs and term sheets of
10 proposed offers they cannot pursue because of this injunction
11 proceeding, and that's a potential financial loss to the tune
12 of \$12 million and \$10.2 million for those licenses. But,
13 interestingly, Mr. Bult says about his client -- some of his
14 clients that are cultivators only, similar to Helping Hands
15 Wellness Center, who only had cultivation and production
16 licenses, no dispensaries, that his clients are irreparably
17 harmed and the balancing of the harm is unfair to them because
18 they can't have a dispensary and they're going to go out of
19 business because the cultivator is not going to be able to
20 succeed. Well, then that balancing of the harm test Mr. Bult
21 proposes certainly applies to my client and why we are
22 irreparably harmed under that analysis if we're not able to
23 participate in the market. However, we are. We won licenses.

24 Your Honor, I want to address the compliance issue
25 that has come up a couple times today. In NRS 453D.201, which