

**SUPREME COURT OF NEVADA**

Case No. 79669

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

Electronically Filed  
Apr 15 2020 11:02 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

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**APPELLANT'S APPENDIX – VOLUME 46**

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

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

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

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

7           Instead, that is exactly why we designate the  
8 authority to the State and their agency to implement the  
9 regulations for this industry. Because when this ballot  
10 initiative was passed in 2016 it was based on a ballot  
11 initiative written and submitted to the Legislative Council  
12 Bureau and the Secretary of State in April 2014. In April  
13 2014, Your Honor -- and that's Exhibit 5042. In April 2014  
14 the medical marijuana dispensaries were not even open yet.  
15 They had projected, this is what the regulations -- this is  
16 what the statute should look like in the future at some point.  
17 But that is before the industry had even had an attempt to  
18 have any operations. That's before the State had an attempt  
19 to even know how to control these folks in the industry. That  
20 ballot initiative back in 2014 could not contemplate public  
21 companies would be owners or stockholders in any of these  
22 companies, because none of these companies were even  
23 operational at the time.

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



1 picture. And that whole picture is what happened when that  
2 ballot initiative was written and submitted to the state in  
3 2014 and nobody contemplated these issues. Nobody  
4 contemplated the property issues, but the State and County  
5 lawsuits that occurred, those were at the end of 2014 into  
6 2015 when that initiative was there. Nobody contemplated  
7 NuLeaf's ruling. That's why it's a -- you have to see it as  
8 almost like a fluid document, which is why it directs the  
9 State to implement necessary regulations, which is what they  
10 did here in this case.

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

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

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

25 THE COURT: I remember hearing that testimony.

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

2 MR. KAHN: Thank you, Your Honor.

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

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

5 THE COURT: Mr. Graf.

6 INTERVENOR DEFENDANT CLEAR RIVER'S CLOSING ARGUMENT

7 MR. GRAF: Thank you, Your Honor.

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

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

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

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

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

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

1 plaintiff here today, testified during his presentation that  
2 the licenses are worth ten to \$12 million. Then we had to  
3 watch the excruciating and uncomfortable testimony of the  
4 cross-examination of the gentleman who came in here to testify  
5 about a document he got from Mr. Ritter that verified the very  
6 testimony of Mr. Ritter, that said, these are worth ten or  
7 \$12 million, and, lo and behold, he presents an offer that  
8 says, I'll offer you \$10 million for your license, I'll offer  
9 you \$12 million for your license.

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

20           THE COURT: For recreational.

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

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

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

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

3           THE COURT: Really?

4           MR. GRAF: Go figure.

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

6           MR. GRAF: Probably.

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

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

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

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

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

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

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

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



1 equity. They have to come to Her Honor with clean hands and  
2 say, Your Honor, we need this injunction because we have a  
3 right and this is good and this is what we need to do. But,  
4 Your Honor, they did not adhere to any of this. There's  
5 public companies on that side of the aisle. There are -- what  
6 else? There are -- Mr. Ritter testified that he used P.O.  
7 boxes. Your Honor, one of the only things that's actually  
8 very clear in the applications is in the section (c) where it  
9 says, you know, where you're going to put the address and  
10 everything else. And here they're saying no address,  
11 whatever. But the one thing it does says in parens on both  
12 5 and 5A, no P.O. boxes, don't do it. He did it.

13 THE COURT: But a UPS Store is okay?

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

1 wrong.

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

9 THE COURT: Not anymore.

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

1 these types of applications all over the country.

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

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

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

9           You know, one of the questions I kept asking as we  
10 were going through all this testimony is these people are  
11 like, oh, yeah, there's bad people there. And everybody's got  
12 expulsion clauses in their OPAGs or their bylaws. Somebody's  
13 got an excluded felony, you kick 'em out of the company.  
14 That's it. But this document, this, what Her Honor is  
15 supposed to look at and review, the ballot initiative, doesn't  
16 say when that's supposed to occur. Your Honor, the only  
17 efficient and reasonable way for that to occur is to occur  
18 when you've already whinnied it done, you've gone from the 462  
19 applicants down to whatever it -- it's 17 entities. Do you  
20 think it's a little bit different to do a background check on  
21 17 different applicants, quote, unquote? Yeah. It is. Is it  
22 less expensive for the State? Yes. Is that a benefit to the  
23 people of Nevada if it's less expensive for the State? Yes.

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

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

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

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

4 THE COURT: Final inspection.

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

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

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

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

16 Can you pull it up, or not?

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

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

25 "There have been some allegations in this case with

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

5 "Yes."

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

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

9 "Yes."

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

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

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

4 And then on page 64 he testified about using Amanda  
5 Connor. But then on page 77 and 78, Brian, at the bottom of  
6 77, "You don't have -- you are not being damaged, you're not  
7 receiving --" go to the next page, "-- you're not being hurt,  
8 you're not getting any additional income because you didn't  
9 qualify; correct?"

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

13 There's no irreparable harm. When you go from 40 to  
14 80 licenses in a county, that's just new licenses. One of  
15 that things that Her Honor asked some questions about were,  
16 well, you know, there's only 10 in the city and there's 10 in  
17 the county, that's only 20, there's 26 plaintiffs, there's not  
18 enough. There's plenty. There's 80 in the county, and  
19 they're worth about \$10 million apiece. There's no  
20 irreparable harm. If they can prove that they should have had  
21 licenses, there's no irreparable harm. That's the bottom  
22 line, Your Honor. That's what we're talking about here, their  
23 witnesses, equities that are involved on both sides, Your  
24 Honor. And if look at the rest of the plaintiffs in the  
25 Serenity case, there's multiple entities that applied for



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

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

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

17 THE COURT: Thank you, Mr. Graf.

18 Who's next? Ms. Shell.

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

20 INTERVENOR DEFENDANT GREENMART'S CLOSING ARGUMENT

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

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

1 you're the first. Thank you.

2 MS. SHELL: Thank you, Your Honor.

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

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

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

1 statutes that they are empowered to determine and implement.

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

7 As Mr. Prince talked about and I believe Mr.  
8 Shevorski talked about a bit, under NRS 453D.200(1) the  
9 Department is specifically tasked -- it's not like optional  
10 for them. It says, "The Department shall adopt regulations  
11 that are necessary and convenient to carry out the provisions  
12 of the chapter." And not just to carry out the provisions of  
13 the Chapter 453D; they're tasked with carrying out the express  
14 desire of the Nevada voters. And what did Nevada voters ask  
15 for? You could see that right in the -- I call it legislative  
16 purpose, but if you look in the purpose section of the NRS  
17 453D, it's at 0202, one of the things that is important and  
18 that the voters specifically asked for is a safe and legal way  
19 to purchase recreational marijuana. And so the Department is  
20 tasked with adopting regulations that will give life to that  
21 desire.

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

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

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

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

1 of time I'll just read it to you.

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

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

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

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

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

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

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

1 legal access to recreational marijuana.

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

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

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

21 MR. SHEVORSKI: It was Mr. Koch.

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

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

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

11 And her answer was, "No."

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

14 Ms. Dougan answered, not that I can remember.

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

22 And her answer was, "No."

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



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

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

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

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

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

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

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

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

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

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

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

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

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

18 What Mr. Zakalik was talking about is it's  
19 important, you need to bring everybody's perspective to the  
20 table. And we need those perspectives if we want to continue  
21 to -- if we want the marijuana industry to continue to grow  
22 and to provide the community safe, legal access to marijuana,  
23 which is what the voters wanted. Our community is more  
24 diverse now than it's ever been. I've lived here all of my  
25 40 years, and it's an upward trend. Over the past 40 years it

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

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

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

17 THE COURT: Thank you, Ms. Shell.

18 Mr. Hone.

19 INTERVENOR DEFENDANT LONE MOUNTAIN'S CLOSING ARGUMENT

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

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

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

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

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

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

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

18           I would also note, Your Honor, we raised the issue  
19 of severability both in the pocket brief that we submitted on  
20 behalf of the intervenors. It's also in our final brief. But  
21 453D.600 of the statutes, if there's a need to segregate out  
22 portions of the statute, the Court has the authority to do  
23 that.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

4 Brian, if you could pull that up real quickly.

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

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

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

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

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

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

22 THE COURT: Thank you, Mr. Hone.

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

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

1 break, do you have rebuttal, and how long?

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

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

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

7 THE COURT: Mr. Kemp, are you ready?

8 MR. KEMP: Yes, Your Honor.

9 (Pause in the proceedings)

10 THE COURT: All right. You may proceed.

11 MM DEVELOPMENT PLAINTIFFS' REBUTTAL

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

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

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

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

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

8 Answer, "Right."

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

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

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

16 The Court, "UPS Stores."

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

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

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

25 Let's move on.



1 THE COURT: Mr. Shevorski.

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

6 THE COURT: Thank you.

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

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

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

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

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

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

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

25 Answer, "Yes."

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

3           "Repeat the question."

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

6           "Right."

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

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

1 So there was certainly no organized thing.

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

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

10 Can I have my next chart, Shane.

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

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

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

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

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

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

25 THE COURT: From Marquis Aurbach.

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

13           THE COURT: I remember.

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

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

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

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

21 First let's start with Ms. Dougan on 133, 2 through  
22 9, Shane.

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

1 know that it was owned by a public company.

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

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

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

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

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

17 138, 21 through 25, Shane.

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

1           138, 21 through 25, and 139, 10, Shane.

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

4           Continue, Shane.

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

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

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



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

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

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

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

10 THE COURT: But there's me.

11 MR. GRAF: Understood, Your Honor.

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

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

15 THE COURT: Overruled.

16 MR. GRAF: Thank you.

17 THE COURT: Thank you.

18 You may continue.

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

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

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

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

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

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

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

14 "Uh-huh."

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

17 Answer [sic], "Sure."

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

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

22 Answer, "That's my response."

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

1           And can I have my next chart, Shane.

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

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

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

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

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

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

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

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

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

9 Next page, please, Shane.

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

11 Answer, "-- the ability."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Can I have Exhibit 20, please, Shane, and then 1031.  
25 Your Honor, true, we didn't complete -- repeat the

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

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

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

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

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



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

3           If you add the 40 points that they should have got  
4 -- and, again, everybody got the 40 points if you had any sort  
5 of assets. Even Helping Hands, the company that we heard all  
6 the interesting testimony about the Jamesons' involvement,  
7 even Helping Hands, who listed 8.9 million of assets and  
8 2 million in debt, they got 40. We, we with 25 times that, we  
9 got whatever it was. But these are the differences, Your  
10 Honor. With the correct 40 points it's in the red there, we  
11 would've won five out of six. We would have won in Reno,  
12 Unincorporated Clark, North Las Vegas, Lyon County, Las Vegas.  
13 So that goes directly to Mr. Bice's point that we're just talk  
14 about one license. We're talking about seven. And that's  
15 just us, Your Honor. That's just my two plaintiffs. You  
16 know, I -- that's two of the twenty-nine plaintiffs in this  
17 case. So the suggestion made that, oh, Judge, you don't need  
18 to give them an injunction because somehow or another these  
19 licenses will pop up like magic if Mr. Kemp wins the case  
20 against the State. That is not true. The legislature has  
21 authorized a specific number of licenses for Clark County.  
22 The Department of Taxation cannot give any more than has been  
23 authorized by the legislature. If these people aren't  
24 enjoined from opening the stores and taking those licenses, my  
25 remedy is -- the only possible way to get more licenses, and I

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

5 THE COURT: Thank you.

6 Mr. Gentile.

7 SERENITY PLAINTIFFS' REBUTTAL

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

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

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

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

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

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

23 THE COURT: I might be aware of that.

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

25 THE COURT: Yeah.

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

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

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

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

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

8 With regard to the --

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

12 THE COURT: Overruled.

13 MR. GRAF: Thank you, Your Honor.

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

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

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

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

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

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

19           I don't have anything further.

20           THE COURT: Thank you, Mr. Gentile.

21           Do any of the -- Mr. Bult.

22                       ETW PLAINTIFF'S REBUTTAL

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

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

1 application in Reno has actually been taken off the agenda.

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

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

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

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

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

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

25 Mr. Bult, thank you.



1 Mr. Parker.

2 NEVADA WELLNESS CENTER PLAINTIFF'S REBUTTAL

3 MR. PARKER: Thank you, Your Honor.

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

14 THE COURT: That's part of the regulations.

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

17 Do you have that, Shane?

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

19 THE COURT: I do.

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

1 testimony.

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

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

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

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

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

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

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

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

1 it's reasonable and there may be some support for it based on  
2 gaming and other areas that the State may regulate. Your  
3 Honor, we know what the statute says. If we go to the  
4 statute, 453D.205 -- and actually, Your Honor, let's start at  
5 .200, and then we'll get to .205. 453D.200 talks about the  
6 duties of the Department. And it speaks about what's required  
7 by the State in terms of licensing. And so when I -- when you  
8 can compare the regulation to the statute, we know they don't  
9 match. I think that's been conceded by the intervenors. But  
10 .205 says, "When conducting a background check pursuant to  
11 subsection (6)," which comes from 453D.200, "the Department  
12 may require each prospective owner, officer, and board  
13 member...." Now, the State, as well as intervenors, today  
14 spent a lot of time talking about owners. They never mention  
15 whether or not their officers have been background checked or  
16 their board members. And I don't know if that even includes  
17 their advisory board members, because they didn't mention  
18 that, either. But if you were to follow the statute, what we  
19 do know is that you cannot allow an applicant who has an  
20 excluded felony conviction to become a licensee. How can you  
21 do that without doing a background check? It's impossible.  
22 You have to do it for the prospective owner, the prospective  
23 officer, and the prospective board member. Which means when  
24 the Court asked the questions of each intervenor when they  
25 got, do you know if your owners were, it's not just owners.

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

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

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

15 MR. PARKER: You did.

16 THE COURT: I did.

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

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

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

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

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

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

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

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

15 THE COURT: That would be me.

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

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

18 NAC 453D.272, Shane.

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



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

4 Now, what we have, Your Honor, is a Department of  
5 Taxation that created regulations that were inconsistent with  
6 the statute and with the initiative or the ballot question.  
7 We also have a Department of Taxation who decided not to  
8 enforce their own regulations that were not compliant with the  
9 statutes and the ballot question. So, Your Honor, if we could  
10 look at Exhibit 309, and this is a year before the  
11 applications were submitted. And again, this is the letter  
12 from Connor & Connor, Attorneys at Law, to the Nevada  
13 Department of Taxation. And it's on behalf of the Nevada  
14 Cannabis Coalition. And she's speaking on compliance with NRS  
15 453A and 453D.

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

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

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

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

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

5 Please, Shane.

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

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

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

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

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

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

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

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

24           THE COURT: Thank you, Mr. Parker.

25           Do any of the other plaintiffs wish to make a

1 rebuttal, or have I finished the rebuttal arguments?

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

5 MR. SHEVORSKI: Yes, Your Honor.

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

8 MR. SHEVORSKI: Okay.

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

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

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

14 MR. PRINCE: Oh.

15 MS. SHELL: Objection, Your Honor.

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

19 Which successful applicants completed the  
20 application in compliance with NRS 453D.200(6), which is the  
21 provision that says, "All owners -- " I'm sorry, it says "Each  
22 owner," at the time the application was filed in September  
23 2018?

24 MR. SHEVORSKI: Completed applications, and then --

25 THE COURT: So I want to know which of the

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

3 MR. SHEVORSKI: Yes, Your Honor.

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

7 MR. SHEVORSKI: Yes, Your Honor.

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

13 MR. SHEVORSKI: Yes, Your Honor.

14 THE COURT: Okay. How long?

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

18 THE COURT: Best estimate.

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

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

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

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

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

2 THE CLERK: Your Honor --

3 THE COURT: Yes?

4 THE CLERK: May I return --

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

9 THE PROCEEDINGS CONCLUDED AT 2:32 P.M.

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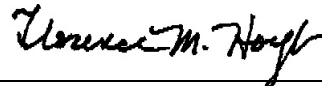
**CERTIFICATION**

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**

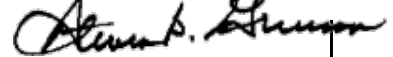


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FLORENCE M. HOYT, TRANSCRIBER

8/19/19

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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

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

THURSDAY, AUGUST 29, 2019

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.  
WILLIAM KEMP, ESQ.  
NATHANIEL RULIS, ESQ.  
ADAM BULT, ESQ.  
MAXIMILIEN FETAZ, ESQ.  
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

STEVE SHEVORSKI, ESQ.  
THERESA HAAR, ESQ.  
RUSTY GRAF, ESQ.  
BRIGID HIGGINS, ESQ.  
ERIC HONE, ESQ.  
DAVID KOCH, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
JOSEPH GUTIERREZ, ESQ.  
TODD BICE, ESQ.  
DENNIS PRINCE, ESQ.

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

2 (Court was called to order)

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

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

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

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

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

21 THE COURT: For your record.

22 MR. KEMP: Right.

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

25 Anything else before we go to the discussion about

1 the bond? Mr. Gentile.

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

4 (Pause in the proceedings)

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

8 MR. BICE: I will.

9 THE COURT: Thank you.

10 (Pause in the proceedings)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MR. PARKER: Let me see it.

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

16 MR. SHEVORSKI: That was Shevorski, actually.

17 THE COURT: That was Shevorski? Okay.

18 MR. SHEVORSKI: But it was his case.

19 THE COURT: It was his case.

20 (Pause in the proceedings)

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

23 MR. PARKER: Thank you, Your Honor.

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

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

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

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

16 So, Your Honor, I think if you take a look at  
17 453D.200 --

18 THE COURT: I'm there.

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

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

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

13 So although Mr. Shevorski -- I can understand his  
14 attempt to advance the position that that Nuleaf decision  
15 helps his position, it does not. It simply speaks the  
16 ambiguous nature of that 453D, whether or not within the  
17 90 days you actually have to have a location approved by a  
18 municipality versus simply providing an address, which is  
19 required by the statute. So I don't think it applies here,  
20 Your Honor.

21 What I do believe applies is not only that  
22 453D.210(5)(b) mentions physical address, but it's also  
23 mentioned, as well, in the regulation, NAC 453D.265(1)(b)(3).  
24 And, Your Honor, you have that in front of you.

25 THE COURT: I do.



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

7           It is also, Your Honor, mentioned in NAC  
8 453D.268(e). So we'll go to that, as well. And it says  
9 again, "The physical address where the proposed marijuana  
10 establishment will be located and the physical address of any  
11 co-owned or otherwise affiliated marijuana establishment."

12           Your Honor, there is no ambiguity in terms of what  
13 453D the statute requires or the regulations require. Now,  
14 when the Court issued its order and everyone had a chance to  
15 pore over it and pore over and pore over it, I had the  
16 pleasure of being on the plane, and I had four hours of  
17 nothing else to do but go back and forth over it.

18           THE COURT: Sorry.

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

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

25           Now, the bidding statutes, the 338 cases and those

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

4 THE COURT: I am.

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

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

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

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

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

21 THE COURT: Thank you, Mr. Parker.

22 MR. PARKER: Thank you.

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

25 Mr. Bult.

1 MR. BULT: Thank you, Your Honor.

2 We join Mr. Parker's motion and reiterate some of  
3 the things he noted on fairness of process, Bud Mohas, the  
4 serious issues you note in your written ruling. The only  
5 thing that we would add to that that we don't think was clear  
6 or clear enough in the motion is that if you continue through  
7 NRS 453D.210 to get through that statute, you must get to  
8 section (6), and that's without a physical address you cannot  
9 get to the competitive bidding process set out in NRS  
10 453D.210(6). And for that reason, Your Honor, we join in the  
11 request that the State perform the same analysis it did on  
12 background.

13 THE COURT: Thank you.

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

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

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

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

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

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

1 time dealing with it in the medical marijuana situation?

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

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

16 But nonetheless, turning to the merits, yes, Nuleaf  
17 does apply here, because Nuleaf -- the language is not  
18 identical, but substantively it is the same. It's under the  
19 90-day provision. The initiative proponents took the medical  
20 marijuana provisions and modified them for purposes of the  
21 initiative. In the interim period the Nevada Supreme Court  
22 decided the Nuleaf case and explained that, notwithstanding  
23 the arguments that were made there, the statute says that if  
24 someone has complied with all of the following in that 90  
25 days, if, then they can obtain a conditional license. And

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

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

12 MR. BICE: I'm sorry.

13 THE COURT: The delay.

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

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

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

23 Then, as you heard in the evidence in this case,  
24 people couldn't even obtain physical addresses. You had over  
25 400 applicants here spread throughout the state, 460-some.

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

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

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

19 Okay. Sorry.

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



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

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

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

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

12 THE COURT: Correct.

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

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

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

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

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

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

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

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

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

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

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

19           MR. BICE: Yeah.

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

22           MR. BICE: Yes.

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

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

3 THE COURT: All right. Thank you.  
4 Next?

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

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

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

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

15 MR. SHEVORSKI: No.

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

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

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

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

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

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

1 THE COURT: Okay.

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

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

23 Now, implementation is did in fact all these people  
24 give the Department real addresses within 90 days of December  
25 5th. The answer's going to be no, Your Honor. That's why

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

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

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

15 MR. PARKER: Thank you, Your Honor.

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

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

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

5 Well, the statutes provide for that. If you look at  
6 453D.200, Your Honor, (1)(j), it says, "Procedures and  
7 requirements to enable the transfer of a license for a  
8 marijuana establishment to another qualified person and to  
9 enable a licensee to move the location of its establishment to  
10 another suitable location." Suitability, Your Honor, again  
11 requires an actual location. Impact on the community requires  
12 a physical location.

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

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

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

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



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

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

25           The Court has never asked any of the witnesses,

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

6 Unless the Court has any other questions --

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

8 MR. PARKER: Thank you, Your Honor.

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

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

12 THE COURT: No.

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

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

25 So anyone on the plaintiffs' side, including Mr.

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

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

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

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

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

13 THE COURT: All right. Thanks.

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

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

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

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

21 THE COURT: I know.

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

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

1           Okay. Mr. Koch.

2           MR. KOCH: Thank you, Your Honor.

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

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

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

1 three tiers.

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

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

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

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

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

4 THE COURT: He is a friend to all.

5 MR. KOCH: Friend to all.

6 MR. SHEVORSKI: Ecumenical, Your Honor.

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

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

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

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

25 And to the extent that there's any question about



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

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

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

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

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

3 THE COURT: Correct.

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

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

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

8           You know, it's -- frankly, the date of application  
9 period could be potentially more arbitrary than anything else.  
10 If there's a question of shareholders changing over in these  
11 public companies over here, they submit the application on the  
12 14th, by the 18th, the end, that could change over.

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

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

25           THE COURT: Okay. Thank you.

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

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

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

23 THE COURT: Thank you.

24 Next?

25 MR. GRAF: Good morning, Your Honor.

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

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

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

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

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

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

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

22 MR. GRAF: All counsel saw it.

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

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

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

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

19 I raise those dates for this reason, Your Honor.  
20 It's before the initiative was passed, it's before all of  
21 these deadlines for these applications were even set. And  
22 then there were deadlines for payments that were going to be  
23 made, four in total, the last payment being made December 1st,  
24 2018. That's coincidence, the very definition of coincidence.

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

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

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

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

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

5 THE COURT: Actually, I asked which applicants.

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

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

20 THE COURT: I do not.

21 MR. GRAF: Thank you, Your Honor.

22 THE COURT: Next?

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



1 hearing.

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

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

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

1 in the application.

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

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

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

14 MR. KAHN: Correct.

15 THE COURT: Okay.

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

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

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

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

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