

**In the Supreme Court of the State of Nevada**

KATE FELDMAN, an individual;  
STOP PREDATORY LENDING NV,  
a Nevada nonprofit corporation,

Appellants,

vs.

NEVADANS FOR FINANCIAL  
CHOICE, a Nevada Political Action  
Committee; CHRISTINA BAUER,  
an individual; FRANCISCO V.  
AGUILAR, in his official capacity as  
Nevada Secretary of State;  
DAILYPAY, INC., a Delaware  
Corporation; PREFERRED  
CAPITAL FUNDING-NEVADA,  
LLC, a Nevada limited liability  
company; ALLIANCE FOR  
RESPONSIBLE CONSUMER  
LEGAL FUNDING, an Illinois  
nonprofit corporation;  
ACTIVEHOURS, INC., a Delaware  
corporation; and STACY PRESS, an  
individual,

Respondents.

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Case No.: 88526

District Case No.:

Lead Case No.: 24 OC 00018 1B

Consolidated with:

Case No.: 24 OC 00021 1B

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Case No.: 24 OC 00029 1B

**RESPONDENTS DAILYPAY, PREFERRED AND ALLIANCE'S  
JOINT OPPOSITION TO MOTION FOR EXPEDITED  
CONSIDERATION OF APPEAL**

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**N.R.A.P. 26.1 DISCLOSURE**

Pursuant to N.R.A.P. 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

The following law firm has appeared and/or is expected to appear in this Court on behalf of Respondents:

Matthew Morris, Esq., and J. Malcolm DeVoy, Esq., of Holland & Hart LLP.

Joshua H. Reisman, Esq., Elizabeth M. Sorokac, Esq., and Michael R. Kalish, Esq., of Reisman Sorokac.

DATED this 26th day of April 2024.

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Respondents DailyPay, Inc.<sup>1</sup>, Preferred Capital Funding–Nevada, LLC (“Preferred”), and Alliance for Responsible Consumer Legal Funding (“Alliance”)<sup>2</sup> jointly<sup>3</sup> oppose appellants Kate Feldman and Stop Predatory Lending NV’s Motion for Expedited Consideration of Appeal of Petition S-01-2024.

In the court below, DailyPay, Preferred and Alliance, along with other respondents, challenged two separate initiative petitions that appellants seek to circulate to Nevada voters. These petitions are nearly identical in word and substance, proposing the same “Preventing Predatory Lending and Other Loans Act.” But the district court

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<sup>1</sup> Daily Pay, Inc, is being represented by Matthew Morris, Esq. and J. Malcolm DeVoy, Esq. of Hollard & Hart LLP.

<sup>2</sup> Preferred Capital Funding–Nevada, LLC, and Alliance for Responsible Consumer Legal Funding are being represented by Joshua H. Reisman, Esq., Elizabeth M. Sorokac, Esq., and Michael R. Kalish, Esq., of Reisman Sorokac.

<sup>3</sup> Although the Nevada Rules of Appellate Procedure do not explicitly discuss a joint opposition, the Rules encourage coordination among multiple parties to the same action. The Rules are to be “liberally construed to secure the proper and efficient administration of the business and affairs of the courts,” and, “in cases involving more than one respondent, any number of respondents may join in a single response. Multiple respondents are encouraged to consult with each other and, whenever possible, file only one response.” NRAP 1(c); NRAP 14(4)(g); NRAP 28(i) (“[A]ny number of...respondents may join in a single brief”).

invalidated Initiative Petition S-01-2024 (Petition 01), and upheld Initiative Petition S-03-2024 (Petition 03, collectively referred to herein as the “Petitions”).

Appellants challenge the order invalidating Petition 01. DailyPay through a separate appeal, challenges the district court’s order upholding Petition 03. Preferred and Alliance will be filing an appeal of the district court’s order upholding Petition 03, but has not yet filed its notice of appeal as the time period for filing such appeal, notably, has not yet expired.<sup>4</sup> Appellants seek this Court’s accelerated review and cite prior case law ordering accelerated briefing schedules. However, the cases appellants cite are inapposite to this procedurally and substantively complex matter involving multiple ballot initiatives and competing orders.

The weight of the questions at play in this appeal caution against appellants’ proposed accelerated schedule. The questions here related to the initiative and referenda process are of statewide concern and are

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<sup>4</sup> The deadline to file a Notice of Appeal on the district court's order on Petition 03 is May 15, 2024 – 19 days from the filing of this Joint Opposition to Appellant's Motion to Expedite.

substantively dense. The issues raised warrant full briefing and the Court's most considered review as set forth in NRAP 31. Nothing forecloses adherence to such a schedule here.

In any case, appellants' proposal leaves the briefing calendar on the appeal related to Petition 01 absurdly tilted in appellants' favor, reducing respondents' time to respond by more than two-thirds. That is unsupportable. Rule 31(a)(1) does not prevent appellants from preparing and filing their brief by May 1, 2024, as they propose. Regardless of when appellants submit their brief, this Court should allow respondents no less than 30 days to submit its answering brief, consistent with Rule 31(a)(1).

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

In January of this year, appellants filed two separate initiative petitions (Petition 01 and Petition 03) for circulation to Nevada voters. Respondents raised various challenges to these Petitions in district court. *See* NRS 295.061 (permitting a party to challenge an initiative or referendum on single-subject grounds and as to the proposed measure's description of effect). The parties stipulated to consolidate their actions for efficiency, resulting in two orders relevant to this appeal—an order

invalidating Petition 01 and an order upholding Petition 03.

In appellants' words, Petition 01 and Petition 03 are "companion measure[s]." App. Mot. for Expedited Consideration at 5 (Apr. 22, 2024). The Petitions "propose[ ] to enact the same 'Preventing Predatory Payday and Other Loans Act,'" with near identity, except Petition 03 "omit[s] provisions" Petition 01 included. *Id.* The district court properly invalidated Petition 01 in the order that appellants challenge. The district court erred in upholding Petition 03. DailyPay's appeal challenges that error.<sup>5</sup>

Appellants chose to circulate two separate, and nearly identical "companion measures," requiring twice as many signatures, and presumably twice as much time to qualify. Regardless of their rationale for doing so, appellants' decision to propose separate and nearly identical

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<sup>5</sup> Preferred and Alliance are preparing a Notice of Appeal on the district court's order regarding Petition 03, which is due on or before May 15, 2024. Other parties who participated in the lower court may also appeal the district court's order regarding Petition 03. The various appeals of these so-called "companion measures" may be consolidated as this court determines. NRAP 3(b)(2). Challengers to the Petitions represent different industries with varying provisions of the Petitions applicable to them. These factors add further complexity to these proceedings and further weigh against an accelerated review.

“companion” initiatives creates further complexities that should not prejudice DailyPay, Preferred, Alliance and others who have challenged the Petitions under NRS 295.061. Appellants provide no compelling reason for this Court to depart from Rule 31(a), and this Court should deny the motion.

## II. ARGUMENT

Respondents agree that “[t]he People’s power to legislate by initiative and referendum petitions is ‘one of the basic powers enumerated in this state’s constitution.’” App.’s Mot. for Expedited Consideration (Apr. 22, 2024), at 5 (citing *Nevadans for Prot. of Property Rights, Inc. v. Heller*, 122 Nev. 894, 912, 141 P.3d 1235, 1247 (2006)). But while “[t]hat power is broad” it is nonetheless “subject to some limitations. In particular, an initiative petition must be limited to a single subject” and “include a legal sufficient description of effect[.]” *Nevadans for Reproductive Freedom v. Washington, et al.*, 140 Nev. Adv. Op. 28 (April 18, 2024). It is precisely because the People’s right to legislate is sacrosanct that this appeal warrants careful and considered review after full briefing and oral argument.

This appeal focuses on the statutory procedures that “facilitate the

initiative and referendum process...such as requiring a description of effect and allowing challenges on this basis.” *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006) (citations omitted). The procedures that the Legislature codified in NRS Chapter 295 must be upheld, adhered to, and enforced. Enforcement of the codified statutory language is the only way to “facilitate the people’s right to meaningfully engage in the initiative [or referendum] process.” *Id.*

Petition 01 flatly violates NRS 295.009(1)(a)’s single-subject rule, a procedural safeguard requiring that “each petition for initiative or referendum must embrace but one subject and matters necessarily connected therewith and pertaining thereto.”<sup>6</sup> The single-subject rule makes meaningful the right to legislate by initiative petition. This Court should therefore carefully and deliberately consider the applicability of the single-subject rule to the challenged Petitions. Needlessly accelerating the *de novo* review warranted here would be unforced error. *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las*

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<sup>6</sup> Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Legal Challenges to Initiative Petition S-01-2024 (Lead Case No. 24-OC-00021B) (Exhibit A to Appellants’ Notice Appeal).



*Vegas*, 125 Nev. 165, 172, 208 P.3d 429, 433 (2009) (this Court reviews *de novo* a district court’s legal conclusions in resolving initiative petition challenges).

In addition to the substantive legal questions at issue, the procedural complexities of this particular appeal weigh against accelerated review. No less than three separate groups of plaintiffs challenged Petition 01 and presumably will be parties to this appeal, and the district court struck down Petition 01 in the face of those challenges. Somewhat contradictorily, the district court upheld the nearly identical language of Petition 01’s “companion measure” Petition 03, which DailyPay, Preferred, Alliance (and others) also challenged in the district court. Given multiple proposed measures at issue (which intend to amend and repeal the law in various industries and redefine lending in the State of Nevada) and the district court’s issuance of conflicting orders, there are procedural complexities that weigh against an accelerated review.

The “numerous cases” appellants cite in supposed support for their position are unavailing: not a single one involves multiple “companion” ballot initiatives and challenging parties in a consolidated action of this magnitude. *See* App.’s Mot. for Expedited Consideration 7; *cf. Helton v.*

*Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 312 (2022) (a single plaintiff challenged one initiative measure, the “Better Voting Nevada Initiative” and a single district court order was at issue on appeal); *Prevent Sanctuary Cities v. Haley*, 134 Nev. 998, 421 P.3d 281 (2018) (Unpublished), at \*1 (a single initiative petition proposed to amend the Nevada Constitution at issue on appeal); *Coal. for Nev.’s Future v. RIP Com. Tax, Inc.*, 132 Nev. 956 (2016) (Unpublished), 2016 WL 2842925, at \*1 (a single referendum petition proposed on Senate Bill 483’s commerce tax at issue on appeal); *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 38, 293 P.3d 874, 876-77 (2013) (a single statutory initiative petition, the “Education Initiative” at issue on appeal).

Even if expedited briefing were warranted here, which it is not, the lopsided calendar proposed by appellants would be inappropriate. Appellants would have this Court allot respondents only **9 days** to submit an answering brief. In contrast, in *Helton*, on which appellants heavily rely, this Court ordered a briefing schedule that closely tracked Rule 31(a). The *Helton* appellant’s request for expedited briefing sought to file an opening brief by March 1, 2022, allowing respondents to file an

answering brief 30 days later on April 1, 2022, with a reply brief to be filed 15 days later on April 15, 2022. App.’s Mot. to Expedite at 3, *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d 309 (Feb 7, 2022). The *Helton* appellant argued that “[t]his schedule would allow the Court more than sufficient time to hear argument, issue a reasoned decision, and render final judgment before the final layout of ballots must be set for printing.” *Id.* This Court agreed and ordered responsive briefing 30 days after opening briefing, as Rule 31(a) contemplates. Amended Order Granting Mot. to Expedite 1, *Helton* 138 Nev. Adv. Op. 45, 512 P.3d 309 (No. 84110).

Appellants argue that an expedited schedule is necessary to permit time for signature-gathering, but the deadline to obtain signatures is nearly 7 months away. This distant deadline is no basis to prejudice respondents’ due process and appeal rights, particularly when appellants created the complexities associated with circulating multiple “companion measures” in the first instance.

The proposed draconian reduction in respondents’ briefing time is unwarranted, particularly on these facts. “The purpose of briefing and oral argument is to inform this Court of all authorities relevant to the issues raised,” and inadequate briefing “may alter the outcome of an

appeal.” *State, Nev. Emp. Sec. Dep’t. v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1319 (1984). A full briefing schedule and careful review after argument is warranted by the significant and complicated legal issues raised in this appeal. *See, e.g., Ord. Denying Emer. Mot., Tyson v. State Ex Rel Nev. Athletic Comm’n.*, 115 Nev. 600, 24 P.3d 298 (1999) (No. 33132) (denying emergency motion where appeal presented “significant legal issues deserving of this Court’s considered review after full briefing and oral argument”). Appellants may file their briefing sooner than Rule 31(a) requires. But respondents respectfully request no less than 30 days to respond, as both Rule 31(a) and appellants’ own cited precedent permit.

DATED this 26th day of April 2024.

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## CERTIFICATE OF COMPLIANCE

1. I certify that this Joint Opposition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(A)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.
2. I certify that this Joint Opposition complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Joint Opposition exempted under NRAP 32(a)(7)(C), it contains 2,454 words and consists of fewer than 15 pages.
3. I certify that I have read this Joint Opposition, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I certify that this Joint Opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every asserting in the Joint Opposition regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is to be found. I understand that I may be

subject to sanctions in the event that the Joint Opposition does not conform to the requirements of applicable Nevada Rules of Appellate Procedure.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Holland & Hart LLP, and that on this 26th day of April 2024, I caused to be served through the Court's CM/ECF website true and correct copies of the above and foregoing **RESPONDENTS DAILYPAY, PREFERRED AND ALLIANCE'S JOINT OPPOSITION TO MOTION FOR EXPEDITED CONSIDERATION OF APPEAL** to all parties registered for service, as follows:

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