

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

Electronically Filed  
May 01 2024 02:07 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

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.

Case No.: 88526

District Court Case No.:  
Lead Case No.: 24 OC 00018 1B

Consolidated with:

Case No.: 24 OC 00021 1B

Case No.: 24 OC 00023 1B

Case No.: 24 OC 00029 1B

**APPELLANTS' APPENDIX Vol. 3 of 4**

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DATED this 1st day of May, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of May, 2024, a true and correct copy of **APPELLANTS' APPENDIX** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By:  /s/ Dannielle Fresquez  
Dannielle Fresquez, an Employee of  
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REC'D & FILED  
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13 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
14 **IN AND FOR CARSON CITY**

15 NEVADANS FOR FINANCIAL CHOICE, a  
16 Nevada Political Action Committee, and  
17 CHRISTINA BAUER, an Individual,

18 Plaintiffs,

19 v.

20 KATE FELDMAN, an individual, STOP  
21 PREDATORY LENDING NV, a Nevada  
22 Nonprofit Corp., and FRANCISCO  
23 AGUILAR, in his official capacity as Nevada  
24 Secretary of State,

25 Defendants.

Case No.: 240C000181B

Dept. No.: II

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF CONCERNING STATEWIDE  
BALLOT INITIATIVES – S-01-2024 AND  
S-03-2024**

**(Priority Matter Under NRS 295.061)**

**Arbitration Exemption: Declaratory and  
Injunctive Relief**

26 Plaintiffs Nevadans For Financial Choice, PAC and Christina Bauer file this First Amended  
27 Complaint for declaratory and injunctive relief against Defendants Kate Feldman, Stop Predatory  
28 Lending NV, and Francisco Aguilar, in his official capacity as the Nevada Secretary of State  
pursuant to NRS 295.009, 30.030 and 33.010. Plaintiffs allege as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to NRS 295.061 as this is a challenge to two  
statewide ballot initiatives. Furthermore, the Court has jurisdiction to grant declaratory and  
injunctive relief under NRS 30.030 and 33.010.

2. Venue is proper under NRS 295.061(1) which specifies that challenges to ballot  
initiatives shall be filed in the First Judicial District Court.

**PARTIES**

3. Plaintiff Nevadans For Financial Choice is a Nevada Political Action Committee duly registered in the State of Nevada.

4. Plaintiff Christina Bauer is a registered voter and resident of the State of Nevada.

5. Defendant Kate Feldman is, upon information and belief, a resident of the State of Nevada and on January 5, 2024, filed with the Nevada Secretary of State a statewide ballot measure S-01-2024 which she deceptively characterized as "Preventing Predatory Payday and Other Loans Act" (the "First Initiative"). On January 24, 2024, Feldman filed a second initiative, S-03-2024 (the "Second Initiative") which is substantively identical to the First Initiative, except deleting the First Initiative's Sections 17 and 18.

6. Defendant Stop Predatory Lending NV is, upon information and belief, a Nevada nonprofit corporation formed to support both the First Initiative and the Second Initiative.

7. Defendant Francisco Aguilar is the Nevada Secretary of State and is named in his official capacity. As the Secretary, Mr. Aguilar is responsible for the execution and enforcement of Nevada's election laws. His duties include qualifying initiatives for submission to the Nevada Legislature and to disqualify those that are invalid under Nevada law.

**COMMON FACTUAL ALLEGATIONS**

**A. The First Initiative.**

8. On January 5, 2024, Defendant Feldman filed the Initiative S-01-2024 with the Nevada Secretary of State. A true and correct copy of the Notice of Intent to Circulate Statewide Initiative associated with S-01-2024 is attached hereto as Exhibit 1.

9. The First Initiative seeks to add a new Chapter 604D to the Nevada Revised Statutes amending a multitude of existing statutory chapters.

10. While the First Initiative purports to be focused upon what it characterizes as "payday loans," in actuality its sweeping breadth covers a wide range of financial transactions. Indeed, the First Initiative's Section 8 lists nearly ten different distinct categories of financial transactions with a final catch-all provision declaring that it also applies to any "loans made by a

1 bank, savings bank, savings and loan association, or credit union organized, chartered, or holding  
2 a certificate of authorization to do business under the laws of this State.”

3 11. Without ever using the term, what the First Initiative really seeks to impose is a  
4 “usury” law – contrary to existing Nevada law – on wholly distinct and different financial  
5 transactions. On top of that, it purports to have Nevada opt out of the “Depository Institutions  
6 Deregulation and Monetary Control Act of 1980.”

7 12. Then, in Section 15, the First Initiative creates an exemption until January 1, 2030,  
8 for “entities licensed under the laws of this State to provide earn wage access services, as defined  
9 in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023) . . . .”

10 13. Of course, none of these discreet subjects is disclosed anywhere in the  
11 First Initiative’s statutory-mandated description of effect.

12 14. Rather, the very first paragraph of the First Initiative misleads Nevada citizens,  
13 declaring:

14 Section 2. *Liberal Construction.* *The provisions of this Chapter shall be liberally*  
15 *construed to achieve its purpose, which are combating predatory payday lending*  
16 *and other high cost loans; ensuring that out-of-state lenders cannot flout Nevada*  
17 *law by making payday loans, other loans, or transactions subject to this chapter at*  
18 *unlawful rates on Nevada residents; and protecting law-abiding lenders from unfair*  
19 *competition by predatory, out-of-state entities.*

20 15. In actuality, this assertion is deceptive. The First Initiative applies to virtually all  
21 types of loans and has nothing to do with protecting Nevada lenders from out-of-state entities or  
22 competition. This misleads the public by pretending that it is directed at what it characterizes as  
23 only certain “predatory payday” loans: - whatever that is supposed to mean – when in fact it is  
24 designed to apply to wide swaths and distinct forms of financial transactions throughout the State.

25 16. On top of that, the First Initiative’s Section 17 would provide a wholesale change to  
26 NRS 21.105, which governs writs of execution and writs of garnishment in the State of Nevada.  
27 This distinct aspect of the First Initiative purports to eliminate a number of specific exemptions for  
28 these writ proceedings, and then proposes to increase the financial size of a singular exemption by  
more than ten times the existing level adopted by the Nevada Legislature.

1 17. In Section 18, the First Initiative would then amend NRS 21.090 to increase the  
2 amount of the statutory exemption for disposable earnings, and then adjust that exemption for  
3 inflation.

4 18. The various distinct forms of financial transactions within the reach of the First  
5 Initiative, and the specified exemptions to it, are not related to or germane to a single subject matter  
6 as NRS 295.009(1)(a) requires.

7 19. Nor are the provisions dealing with changing Nevada's laws governing writs of  
8 execution or garnishment related to or germane to the other provisions of the First Initiative. Rather,  
9 each is a separate and distinct subject matter under NRS 295.009(1)(a).

10 20. This last point is confirmed by the First Initiative's proposed description of effect  
11 under NRS 295.009(1)(b), which confesses the single-subject violation:

#### 12 DESCRIPTION OF EFFECT

13 This measure addresses high-interest lending practices by establishing maximum  
14 interest rates charged to consumers, and shields more of people's savings and  
earnings from garnishment than under current law.

15 Currently, most consumer loans have no interest rate cap. The proposed cap would  
16 set a maximum interest rate of 36% annually on the unpaid balance of the amount  
17 financed, and would apply to consumer loans; deferred-deposit transactions  
(payday loans"); title loans; and other loan types dependent on future earnings and  
income.

18 The initiative also prohibits evading the interest rate cap by structuring transactions  
19 to mask their nature as loans covered by this measure, or partnering with  
out-of-state lenders to violate the rate cap. The initiative voids transactions that  
20 violate the cap, and establishes civil penalties.

21 Additionally, the initiative automatically protects \$5,000 of savings in a personal  
22 bank account (up from \$400 now), and \$850 of wages in any workweek (up from  
\$369), as well as a portion of disposable earnings above that amount, from seizure  
for a debt. Those amounts would be indexed to increase periodically with inflation.

23 21. As the first sentence makes clear, the Initiative embraces more than one subject "by  
24 establishing maximum interest rates charged to consumers, *and* shields more of people's savings  
25 and earnings from garnishment than under current law." (Emphasis added.)

26 22. The Initiative's description is also deficient in that it fails to accurately describe for  
27 voters just what the Initiative would actually do if enacted. Tellingly, it omits many of its  
28 provisions, including its proposal for opting out of federal law.





1 **FIRST CAUSE OF ACTION**

2 **(NRS 295.009(1)(a) – First Initiative)**

3 29. Plaintiff incorporates the allegations of Paragraph 1 through 28 as though fully set  
4 forth herein.

5 30. Pursuant to NRS 295.009(1)(a), an initiative petition must embrace "but one subject  
6 and matters necessarily connected therewith and pertaining thereto." To satisfy this requirement,  
7 the parts of the proposed initiative must be "functionally related and germane to each other in a way  
8 that provides efficient notice of the general subject of, and the interest likely to be effected by, the  
9 proposed initiative or referendum." NRS 295.009(2).

10 31. The First Initiative violates Nevada's single-subject rule by incorporating more than  
11 one subject matter.

12 32. Accordingly, the First Initiative is invalid and must be stricken, with the Defendants  
13 enjoined from taking any further action upon it.

14 **SECOND CAUSE OF ACTION**

15 **(NRS 295.009(1)(b) – The First Initiative)**

16 33. Plaintiff incorporates the allegations of Paragraph 1 through 32 as though fully set  
17 forth herein.

18 34. NRS 295.009(1)(b) specifies that an initiative must "set forth, in no more than  
19 200 words, a description of effect of the initiative or referendum if the initiative or referendum is  
20 approved by the voters." Nevada law precludes any description that is deceptive or misleading.  
21 Nevada law mandates that the description explain the ramifications of the purposed initiative so  
22 that voters can make an informed decision.

23 35. Beyond embracing more than one subject matter, the First Initiative's description is  
24 deficient because it is deceptive and misleading, and fails to inform voters of essential information  
25 regarding the Initiative's effects. It purports to impose a sweeping "usury" provision into Nevada  
26 law without ever so specifying. It furthermore deceptively tells voters that it concerns so-called  
27 "payday loans," when in fact the Initiative is much broader and includes a host of various and  
28 common financing arrangements.

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36. The description of the First Initiative also fails to inform voters of the exemptions to federal law and similar effects of the Initiative.

37. Accordingly, the First Initiative is invalid and should be stricken, with the Defendants enjoined from taking any further action upon it.

**THIRD CAUSE OF ACTION**  
**(NRS 295.009(1)(a) – Second Initiative)**

38. Plaintiff incorporates the allegations in Paragraphs 1 through 37 as though fully set forth herein.

39. The Second Initiative violates Nevada's single subject rule by incorporating more than one subject matter.

40. Accordingly, the Second Initiative is invalid and must be stricken, with the Defendants enjoined from taking any further action upon it.

**FOURTH CAUSE OF ACTION**  
**(NRS 295.009(1)(b) – Second Initiative)**

41. Plaintiff incorporates the allegations in Paragraphs 1 through 40 as though fully set forth herein.

42. NRS 295.009(1)(b) specifies that an initiative must "set forth, in no more than 200 words, a description of effect of the initiative or referendum if the initiative or referendum is approved by the voters." Nevada law precludes any description that is deceptive or misleading. Nevada law mandates that the description explain the ramifications of the proposed initiative so that voters can make an informed decision.

43. Beyond embracing more than one subject matter, the Second Initiative's description is deficient because it is deceptive and misleading, and fails to inform voters of essential information regarding the Initiative's effects. It purports to impose a sweeping "usury" provision into Nevada law without ever so specifying. It furthermore deceptively tells voters that it concerns so-called "payday loans," when in fact the Initiative is much broader and includes a host of various and common financing arrangements.

1 44. The description of the Second Initiative also fails to inform voters of the exemptions  
2 to federal law and similar effects of the Initiative, including the repealing of other statutes.

3 45. Accordingly, the Second Initiative is invalid and should be stricken, with Defendants  
4 enjoined from taking any further action upon it.

5 **FIFTH CAUSE OF ACTION**

6 **(Article 19, Section 3)**

7 46. Plaintiff incorporates the allegations in Paragraphs 1 through 45 as though fully set  
8 forth herein.

9 47. Article 19, Section 3 of the Nevada Constitution mandates that "[e]ach referendum  
10 petition and initiative petition shall include *the full text* of the measure proposed."  
11 (Emphasis added.) This means that if the initiative seeks to repeal the effect of a statute, it must set  
12 out that statute and show how it will be repealed in detail. The full text must be set forth. Similarly,  
13 if an initiative proposes to add a statute, it must set forth the full text of what is to be added.

14 48. The Initiative's proponents have failed to comply with Article 19, Section 3 of the  
15 Nevada Constitution. Both Initiatives propose to amend a whole host of different existing Nevada  
16 statutes. For instance, in Section 8, Defendants purport to identify a host of different types of loan  
17 transactions to which the new proposed Chapter 604D would apply, but in doing so then proposes  
18 to repeal/modify other provisions of Nevada law but fails to set forth just what those provisions are.

19 49. For instance, in proposed Section 8(1) the Initiatives would override NRS 604A.220  
20 without setting forth its actual terms. Similarly, in Section 8(8) both Initiatives would effectively  
21 repeal NRS 97.285 as well as "any other provision of law" because it provides that NRS Chapter 97  
22 is the "exclusive" provisions governing retail installment transactions and it expressly provides that  
23 "the provisions of any other statute do not apply to retail installment transactions governed by this  
24 Chapter."

25 50. Similarly, the proposed Section 8(10) would purport to extend the reach of the  
26 proposed new Chapter 604D to banks and other institutions, overriding a host of statutory  
27 provisions – NRS 662.015, 672.370, 672.460, 672.710, 673.225, 673.3272, 677.730 – without ever  
28

1 setting forth those terms so that voters can see the full magnitude of what these Initiatives propose  
2 to add and delete from the Nevada Revised Statutes.

3 51. Accordingly, both Initiatives are invalid and should be stricken, with the Defendants  
4 enjoined from taking any further action upon them.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief as follows:

7 1. A declaration that both Initiatives are invalid under NRS 295.009 by violating the  
8 single-subject rule;

9 2. A declaration that both Initiatives are invalid and do not comply with  
10 NRS 295.009(1)(b) because the description of effect is deficient;

11 3. A declaration that both Initiatives violate Article 19, Section 3 of the Nevada  
12 Constitution;

13 4. An injunction prohibiting the Secretary of State from taking further action on the  
14 Initiative;

15 5. An injunction prohibiting Defendants from circulating this defective petition for  
16 verification; and

17 6. Such further and additional relief that this Court deems appropriate.

18 **AFFIRMATION**

19 The undersigned does hereby affirm that this document does not contain the social security  
20 number of any person.

21 DATED this 14th day of February, 2024.

22 PISANELLI BICE PLLC

23   
24 By: \_\_\_\_\_

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25  
26  
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28

# **EXHIBIT 1**

State of Nevada  
Secretary of State  
Francisco V. Aguilar



Notice of Intent  
Statewide Initiative or  
Referendum Petition  
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

**NAME OF PERSON FILING THE PETITION**

Kate Feldman

**NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)**

1. Kate Feldman
- 2.
- 3.

**NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)**

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Kate Feldman

Signature of Petition Filer

1/4/2024

Date

Explanation - Matter in *italics* is new; matter between brackets [omitted-material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

**Section 1.** The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

**Section 2.** *Liberal construction.* The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.

**Section 3.** *Definitions.* As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.

**Section 4.** *Annual percentage rate defined.* The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.

**Section 5.** *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;



*(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and*

*(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.*

*2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.*

**Section 6. Network-branded defined.** *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

**Section 7. Application of chapter.** *This chapter applies to any payday lender or other person that:*

*1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;*

*2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;*

*3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;*



- 4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;*
- 5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.*
- 6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.*

**Section 8.** *Specific transactions subject to this chapter.* Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:

- 1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 4. Refund anticipation loans, as defined in NRS 604B.060.*
- 5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*
- 7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*
- 8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*
- 9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*
- 10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business*

*under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.*

**Section 9.** Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

**Section 10.** Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan;*  
*or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

**Section 11.** Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;
2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or
3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:
  - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;
  - (b) predominantly designs, controls or operates the loan program or transaction;
  - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or
  - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.

**Section 12.** Prohibition against facilitation of payday loans or other transactions in violation of chapter. No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.

**Section 13.** Remedies for payday loans or other transactions made in violation of this chapter.

1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.
2. An action for violation of this chapter may be brought in any court of competent jurisdiction.
3. Any person who violates this chapter is liable to the borrower for:

- (a) Actual and consequential damages;
- (b) Restitution of any amounts paid;
- (c) Treble the amount of any excess fee, interest, charge, or payment;
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;
- (e) Injunctive or declaratory relief;
- (f) Reasonable attorney's fees and costs; and
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

**Section 14.** Declaration of intent to opt out of DIDMCA. In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.

**Section 15.** Application of chapter to earned wage access services. Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.

**Section 16.** NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) "Annual percentage rate" has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) "Consumer credit":

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service



member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) "Dwelling" means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~(1. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors' benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans' benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~



- ~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~
- ~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~
- ~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~
- ~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 1717;~~
- ~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~
- ~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~
- ~~(n) Benefits provided pursuant to any other federal law;~~

1[2]. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor ~~[and the provisions of subsection 1 do not apply,]~~ \$5,000 ~~[400]~~ or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

2[3]. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 ~~[or 2, as applicable]~~.

3[4]. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 ~~[or 2]~~.

4[5]. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection ~~[1 or 2]~~ includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

5[6]. A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. [~~including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.~~] If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

6[7]. Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

**Section 18.** NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*~~82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.~~ Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

- (o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.
- (p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.
- (q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.
- (r) Money, not to exceed \$1,000,000 in present value, held in:
  - (1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;
  - (2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;
  - (3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;
  - (4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and
  - (5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.
- (s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.
- (t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;



- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
  - (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
  - (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
  - (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.
- (dd) If a trust contains a spendthrift provision:
- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
  - (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.
- (ee) Proceeds received from a private disability insurance plan.
- (ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.
- (gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.
- (hh) Unemployment compensation benefits received pursuant to NRS 612.710.
- (ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.
- (jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.
- (kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.
- (ll) Child welfare assistance provided pursuant to NRS 432.036.
2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

*4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.*

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**DESCRIPTION OF EFFECT**

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people’s savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions (“payday loans”); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

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County of \_\_\_\_\_ (**Only registered voters of this county may sign below**)  
 Petition District: \_\_\_\_\_ (**Only registered voters of this petition district may sign below**)

		Office Use
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	YOUR SIGNATURE - DATE  / /	CITY COUNTY
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**DESCRIPTION OF EFFECT**

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**AFFIDAVIT OF CIRCULATOR**

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA )  
 )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is \_\_\_\_\_; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public or person authorized to administer oath

# **EXHIBIT 2**



State of Nevada  
Secretary of State  
Francisco V. Aguilar



Notice of Intent  
Statewide Initiative or  
Referendum Petition  
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

**NAME OF PERSON FILING THE PETITION**

Kate Feldman

**NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)**

1. Kate Feldman
- 2.
- 3.

**NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)**

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Kate Feldman

Signature of Petition Filer

1-24-2024

Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

**THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS**

**Section 1.** The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

**Section 2.** *Liberal construction. The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

**Section 3.** *Definitions. As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

**Section 4.** *Annual percentage rate defined. The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

**Section 5.** *Loan defined.*

*1. For purposes of this chapter, “loan” means and includes:*

*(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;*

*(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and*

*(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.*

*2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.*

**Section 6.** Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

**Section 7.** Application of chapter. *This chapter applies to any payday lender or other person that:*

*1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;*

*2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;*

*3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;*

*4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;*

5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.

6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.

**Section 8.** *Specific transactions subject to this chapter.* Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:

1. *Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

2. *High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

3. *Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

4. *Refund anticipation loans, as defined in NRS 604B.060.*

5. *Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*

7. *Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*

8. *Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*

9. *Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*

10. *Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS*

672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

**Section 9.** Maximum interest rate permitted. For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.

**Section 10.** Prohibited acts to evade application of chapter. For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:

1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;
2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;
3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;
4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;
5. Structuring the transaction in a manner to obscure the fact that it is a loan;  
or
6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.

**Section 11.** Application of chapter to agents and service providers of exempt entities. If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9 of this chapter, a person shall be subject to the requirements of this chapter notwithstanding

*the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:*

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
  - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
  - (b) predominantly designs, controls or operates the loan program or transaction;*
  - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
  - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

**Section 12.** *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

**Section 13.** *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*
  - (a) Actual and consequential damages;*



- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

*4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.*

**Section 14.** *Declaration of intent to opt out of DIDMCA. In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

**Section 15.** *Application of chapter to earned wage access services. Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

**Section 16.** NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding



of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) "Annual percentage rate" has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) "Consumer credit":

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. §

1072(3), and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other

circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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County of \_\_\_\_\_ (**Only** registered voters of this county may sign below)  
Petition District: \_\_\_\_\_ (**Only** registered voters of this petition district may sign below)

			Office Use
<b>5</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE  / /	CITY	COUNTY
<b>6</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE  / /	CITY	COUNTY
<b>7</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE  / /	CITY	COUNTY
<b>8</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE  / /	CITY	COUNTY

**DESCRIPTION OF EFFECT**

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions (“payday loans”); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

County of \_\_\_\_\_ (**Only registered voters of this county may sign below**)  
Petition District: \_\_\_\_\_ (**Only registered voters of this petition district may sign below**)

			Office Use
<b>9</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
<b>10</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
<b>11</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
<b>12</b>	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	





**DESCRIPTION OF EFFECT**

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions (“payday loans”); title loans; and other loan types dependent on future earnings and income.

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County of \_\_\_\_\_ (Only registered voters of this county may sign below)  
Petition District: \_\_\_\_\_ (Only registered voters of this petition district may sign below)

		Office Use	
17	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY

**AFFIDAVIT OF CIRCULATOR**

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA

COUNTY OF \_\_\_\_\_

)  
)  
)

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is \_\_\_\_\_; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_,

\_\_\_\_\_  
Notary Public or person authorized to administer oath

PISANELLI BICE  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101

1 Todd L. Bice, Esq., Bar No. 4534  
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4 JTS@pisanellibice.com  
5 Daniel R. Brady, Esq., Bar No. 15508  
6 DRB@pisanellibice.com  
7 PISANELLI BICE PLLC  
8 400 South 7th Street, Suite 300  
9 Las Vegas, Nevada 89101  
10 Telephone: 702.214.2100  
11 Facsimile: 702.214.2101

12 *Attorneys for Plaintiffs*

13 **FIRST JUDICIAL DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 NEVADANS FOR FINANCIAL CHOICE, a  
16 Nevada Political Action Committee, and  
17 CHRISTINA BAUER, an Individual,

18 Plaintiffs,

19 v.

20 KATE FELDMAN, an Individual;  
21 STOP PREDATORY LENDING NV, a  
22 Nevada Non-Profit Corporation; and  
23 FRANCISCO AGUILAR, in his Official  
24 Capacity as Nevada Secretary of State,

25 Defendants.

26 Case No.: 24OC000181B  
27 Dept. No.: II

28 **BRIEF IN SUPPORT OF FIRST  
AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF CONCERNING STATE-WIDE  
BALLOT INITIATIVE**

29 **I. INTRODUCTION**

30 Pursuant to NRS 295.061, Plaintiffs Nevadans for Financial Choice and Christina Bauer  
31 submit this brief in support of their First Amended Complaint for Declaratory Injunctive Relief  
32 Concerning State-Wide Ballot Initiative, addressing two initiatives both being styled "Preventing  
33 Predatory Payday and Other Loans Act." The proponents filed the first initiative with the Nevada  
34 Secretary of State as S-01-2024 (the "First Initiative") on January 5, 2024, and filed the second  
35 initiative S-03-2024 (the "Second Initiative") on January 24, 2024. Plaintiffs commenced this  
36 action against the First Initiative on January 26, 2024, explaining why it violates Nevada law;  
37 specifically, Nevada's single subject requirement and description of effect under NRS 295.009.

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1 The Second Initiative is substantively identical, except it drops Sections 17 and 18 from the  
2 First Initiative, which proposed provisions addressing writs of garnishment and writs of execution.  
3 Other than that change, the Initiatives are the same. However, dropping Sections 17 and 18 does  
4 nothing to save the Second Initiative under Nevada law, as it continues to include a multitude of  
5 distinct subjects as evidenced by its efforts to amend a host of different chapters of the Nevada  
6 Revised Statutes. As Plaintiffs have previously set forth in their brief concerning the First Initiative,  
7 there is no single subject present as NRS 295.009(1)(a) requires. The proponents have simply  
8 cobbled together a host of distinct statutory provisions that lack a common nexus. The elimination  
9 of Sections 17 and 18 from the Second Initiative simply eliminates one of several single-subject  
10 problems and does nothing to salvage the Second Initiative. Accordingly, in the interest of judicial  
11 economy, Plaintiffs incorporate their brief filed with this Court on January 26, 2024, as though fully  
12 set forth herein.

13 For the reasons previously stated, the Second Initiative necessarily suffers from the defects  
14 which it retains from the First Initiative, including violating Nevada's single subject requirement as  
15 well as having a deceptive and incomplete description of effect. Plaintiffs limit this brief to pointing  
16 out a related defect which precludes either initiative from proceeding.

## 17 **II. ANALYSIS**

### 18 **A. The Initiatives Also Violate Article 19, Section 3, of the Nevada Constitution.**

19 The Nevada Constitution preserves for the voters the right to propose, amend or repeal  
20 legislation. Art. 19, § 2(1). But as the Constitution specifies, "[e]ach referendum petition and  
21 initiative petition shall include the full text of the measure proposed." Art. 19, § 3(1). This  
22 requirement, along with NRS 295.0575(6), is to provide and require that each signer of the initiative  
23 had the ability and "opportunity before signing to read the full text of the act or resolution upon  
24 which the initiative or referendum is demanded." NRS 295.0575(6). Failure to set forth the full  
25 and complete text of all proposed statutory changes violates Article 19, § 3.

26 Here, the sponsors of these initiatives ignore the requirements of Nevada law. They propose  
27 a whole host of sweeping statutory changes, simply referencing certain sections, but never setting  
28 forth the actual text of the various statutes that these Initiatives would amend or repeal. Just one

1 example is the Initiatives' proposed Section 8(8) which would extend the new Chapter 604D to  
2 "retail installment transactions." It then proposes to override the specific requirements of  
3 NRS 97.285 without actually setting forth for potential signers just what that provision says or does.

4 Unless members of the public are walking around with copies of the Nevada Revised  
5 Statutes, they have no way of ascertaining the actual changes to the law that these Initiatives are  
6 proposing. What NRS 97.285 actually provides is that the Legislature established an exclusive set  
7 of statutes governing "retail installment transactions." As NRS 97.285 provides, "[e]xcept as  
8 otherwise provided by specific statute, the provisions of this chapter governing retail installment  
9 transactions *are exclusive*, and the provisions of any other statute do not apply to retail installment  
10 transactions governed by this chapter. If there is a conflict between the provisions of this chapter  
11 and any other statute, *the provisions of this chapter control.*" (Emphasis added.) Yet, both  
12 proposed Initiatives would now eliminate this exclusivity by effectively repealing NRS 97.285, yet  
13 the voters would never know that because this (and a host of other) statutory changes are not set  
14 forth in the text.

15 The same is true for other sections, including (but not limited to) the proposed Section 8(10)  
16 which purports to extend the reach of the proposed new Chapter 604D to banks and other financial  
17 institutions. These Initiatives would amend/repeal a host of statutory provisions – NRS 662.015,  
18 672.370, 672.460, 672.710, 673.225, 673.3272, 677.730 – without ever setting forth the actual text  
19 of those provisions so that voters can read and understand the proposed changes. Again, this failure  
20 not only underscores a multitude of separate subjects that the proponents seek to effect, but also  
21 how the public is not being informed of the nature and magnitude of proposed statutory  
22 amendments or what these Initiatives would repeal.



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**III. CONCLUSION**

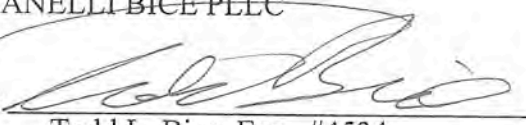
Simply eliminating one of the multitude of single-subject violations from the First Initiative does not save the Second Initiative. They are both defective under Nevada law and should be enjoined.

**AFFIRMATION**

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 14th day of February, 2024.

PISANELLI BICE PLLC

By: 

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Jordan T. Smith, Esq., #12097  
Daniel R. Brady, Esq., #15508  
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*Attorneys for Plaintiffs*



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DANIEL BRAVO, ESQ. (SBN 13078)  
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4 Email: bradley@bravoschrager.com  
Email: daniel@bravoschrager.com  
5 *Attorneys for Kate Feldman and  
Intervenor-Defendant*

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BY B. SHADRON  
DEPUTY

7 **IN THE FIRST JUDICIAL DISTRICT COURT**  
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,  
10 a Nevada Political Action Committee, and  
CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B  
Dept. No.: II

11 **Plaintiffs,**

12 vs.

13 KATE FELDMAN, an individual, STOP  
14 PREDATORY LENDING NV, a Nevada  
Nonprofit Corp., and FRANCISCO V.  
15 AGUILAR, in his official capacity as  
Nevada Secretary of State,

16 **Defendants,**

18 DAILYPAY, INC., a Delaware  
19 Corporation,

Case No.: 24 OC 00021 1B  
Dept. No.: II

20 **Plaintiff,**

21 vs.

22 FRANCISCO V. AGUILAR, in his official  
23 capacity as NEVADA SECRETARY OF  
STATE,

24 **Defendant,**

25 **and**

26 STOP PREDATORY LENDING NV, a  
Nevada Nonprofit Corp., and  
27 KATE FELDMAN, an individual,

28 **Intervenor-Defendants.**

1 PREFERRED CAPITAL FUNDING-  
2 NEVADA, LLC, a Nevada limited liability  
3 company, and ALLIANCE FOR  
4 RESPONSIBLE CONSUMER LEGAL  
5 FUNDING, an Illinois nonprofit  
6 corporation,

7 Plaintiffs,

8 vs.

9 FRANCISCO V. AGUILAR, in his official  
10 capacity as NEVADA SECRETARY OF  
11 STATE, and KATE FELDMAN, an  
12 individual,

13 Defendants,

14 and

15 STOP PREDATORY LENDING NV, a  
16 Nevada Nonprofit Corp.,

17 Intervenor-Defendant.

18 ACTIVEHOURS, INC., a Delaware  
19 corporation; STACY PRESS, an  
20 individual,

21 Plaintiffs,

22 vs.

23 KATE FELDMAN, an individual; STOP  
24 PREDATORY LENDING NV, a Nevada  
25 Nonprofit Corp.; and FRANCISCO V.  
26 AGUILAR, in his official capacity as  
27 NEVADA SECRETARY OF STATE,

28 Defendants.

Case No.: 24 OC 00023 1B

Dept. No.: I

Case No.: 24 OC 00029 1B

Dept. No.: I

29 **STIPULATION AND [~~PROPOSED~~] SCHEDULING ORDER OF THE COURT**

30 The Parties to this stipulation acknowledge the following:

31 On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition  
32 S-01-2024 ("Initiative #1"). On January 24, 2024, Ms. Feldman filed Nevada  
33 Statutory Initiative Petition S-03-2024 ("Initiative #2). Both initiatives deal with  
34 similar topics and are filed by the same ballot measure proponents, though the

1 respective Petitions' compliance with Nevada's single-subject rule, NRS 295.009, is a  
2 matter of dispute among the parties hereto, and no party to this Stipulation waives  
3 or concedes any argument in that respect by virtue of entering into it.

4 On January 26, 2024, Plaintiffs NEVADANS FOR FINANCIAL CHOICE and  
5 CHRISTINA BAUER filed a Complaint for Declaratory and Injunctive Relief  
6 challenging the legal sufficiency of Initiative #1, pursuant to NRS 295.061, and a  
7 Brief in Support of the Complaint, which became First Judicial District Case No. 24  
8 OC 00018 1B, assigned to Department 2. This suit was filed against Ms. Feldman  
9 and Nevada Secretary of State Francisco Aguilar, in his official capacity.  
10 Subsequently, on February 14, 2024, Plaintiffs in Case No. 24 OC 00018 1B filed a  
11 First Amended Complaint timely adding Initiative #2 to their challenge and Stop  
12 Predatory Lending NV as an additional defendant.

13 On January 29, 2024, Plaintiff DAILYPAY, INC. filed a Complaint for  
14 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative #1 and  
15 Initiative #2, pursuant to NRS 295.061, which became First Judicial District Case  
16 No. 24 OC 00021 1B, assigned to Department 2. This suit was filed against Nevada  
17 Secretary of State Francisco Aguilar, in his official capacity.

18 On January 29, 2024, Plaintiffs PREFERRED CAPITAL FUNDING -  
19 NEVADA, LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL  
20 FUNDING filed a Complaint for Declaratory and Injunctive Relief challenging the  
21 legal sufficiency of Initiative #1 and Initiative #2, pursuant to NRS 295.061, which  
22 became First Judicial District Case No. 24 OC 00023 1B, assigned to Department 1.<sup>1</sup>  
23 This suit was filed against Ms. Feldman and Nevada Secretary of State Francisco

24  
25 <sup>1</sup> While Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA, LLC and  
26 ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING ("Litigation  
27 Funding Plaintiffs") stipulate to the consolidation of cases and intervention of parties  
28 for purposes of judicial efficiency, it is Litigation Funding Plaintiffs' position that they  
are factually and legally distinct from other parties covered by Initiative #1 and/or  
Initiative #2 as the Litigation Funding Plaintiffs contend they are not lenders and  
are otherwise governed by Nevada Revised Statutes Chapter 604C.

1 Aguilar, in his official capacity.

2 On February 13, 2024, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS  
3 filed a Complaint for Declaratory and Injunctive Relief challenging the legal  
4 sufficiency of Initiative #2 pursuant to NRS 295.061, which became First Judicial  
5 District Case No. 24 OC 00029, assigned to Department 1. This suit was filed against  
6 Ms. Feldman, Stop Predatory Lending NV, and Nevada Secretary of State Francisco  
7 Aguilar, in his official capacity.

8 **STIPULATION**

9 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

10 1. All parties agree that consolidation of the actions referenced above is  
11 appropriate here, for reasons of judicial economy and to avoid the possibility of  
12 inconsistent resolutions of similar claims, as well as to observe the statutory charge  
13 to resolve challenges to the legal sufficiency of filed initiative petitions in a prompt  
14 manner. Nevada law favors consolidation of proceedings involving a common question  
15 of law or fact. *See Marcuse v. Del Webb Cmty., Inc.*, 123 Nev. 278, 286 (2007);  
16 NRC 42(a) (allowing consolidation of “actions involving a common question of law  
17 or fact.”). The consolidated action shall bear the caption listed above, and shall result  
18 in consolidation into and with the first-filed cases among these, First Judicial District  
19 Case No. 24 OC 00018 1B, assigned to Department 2.

20 2. All respective parties stipulate to allowing Intervenor-Defendant STOP  
21 PREDATORY LENDING NV, a Nevada nonprofit corporation serving as the  
22 proponents’ ballot measure committee in support of both Initiative #1 and #2, to  
23 intervene in each case identified herein where it was not previously joined as a  
24 defendant.

25 3. All respective parties stipulate to allowing Ms. Feldman to intervene as  
26 Intervenor-Defendant into the cases in which she has not been named, specifically  
27 *DailyPay, Inc. v. Francisco V. Aguilar*, Case No.: 24 OC 00021 1B.

1           4.     No party will object to the filing of memoranda of points and authorities  
2 by any Plaintiffs who did not accompany their initial Complaints with such  
3 memoranda, as long as such memoranda are filed on or before **February 14, 2024**,  
4 are served upon the other parties in the manner contemplated by this Stipulation,  
5 and are limited to ten (10) pages or fewer.

6           5.     All parties agree to the following deadlines to file further briefing:

7           (a)     Intervenor-Defendant Stop Predatory Lending NV and Kate  
8                 Feldman (collectively, "Proponents") will file an Omnibus  
9                 Response to all Plaintiffs by **February 28, 2024**. Given the  
10                technical nature of the subject matter and the complexity and  
11                length of the arguments and issues related to challenges to  
12                Initiatives #1 and #2, as well as the multiple Plaintiffs making  
13                disparate arguments, Proponents are not able to condense their  
14                total Response to ten pages, per FJDCR 3.23(b), without omitting  
15                relevant information necessary for the Court's consideration.  
16                Therefore, Proponents shall be allotted up to thirty pages for their  
17                Omnibus Response, though they state their intention to remain  
18                well below that upper limit. Defendant Francisco V. Aguilar shall  
19                file an answer and/or response brief by this time as well, but shall  
20                observe the ten-page limit contemplated in FJDCR 3.23(b).

21           (b)     Plaintiff(s) may file an Optional Reply by **March 8, 2024**.  
22                 Plaintiff(s) shall be allotted up to ten pages for their respective  
23                 Replies.

24           (c)     The parties will submit proposed orders to the Court by  
25                 **March 8, 2024**. Pursuant to FJDCR 3.10, the proposed orders  
26                 must include a cover sheet, a statement of facts, the applicable  
27                 standard of law, analysis, and conclusions of law and an order.  
28



1 (d) Pursuant to FJDCR 3.11, Plaintiffs will submit a request for  
2 submission as soon as possible after submission of all briefs  
3 discussed herein.

4 6. The parties agree to electronic service of all documents amongst  
5 themselves pursuant to NRCP 5(b)(2), at the email addresses listed below, and to this  
6 Court's judicial assistant, Billie Shadron, at bshadron@carson.org by the deadlines  
7 stated herein. Physical copies of documents electronically served in accordance with  
8 this Stipulation must be filed with the Court as soon as practicable thereafter,  
9 preferably within two days following the deadline for scheduled filings, or within two  
10 days of submission for all other papers.

11 7. The parties shall comply with FJDCR 3.2, which requires original  
12 signatures on all pleadings and papers. The Court waives pre-hearing statements by  
13 the parties.

14 8. Having agreed in good faith to observe the schedule contained in this  
15 Stipulation, should any party to it seek preemption of the currently-assigned judicial  
16 department, they each agree to abide by the schedule for submission of briefs herein,  
17 and contemplate only the re-scheduling of the hearing date, at the discretion and  
18 convenience of the newly-assigned judicial department shall be permitted.

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1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at  
2 \_\_\_\_\_.M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this 10 day of February, 2024.

5 By:   
6 **Bradley S. Schrager (SBN 10217)**  
7 **Daniel Bravo (SBN 13078)**  
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9 6675 South Tenaya Way, Suite 200  
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12 bradley@bravoschrager.com  
13 daniel@bravoschrager.com  
14 *Attorneys for Kate Feldman and*  
15 *Intervenor-Defendant Stop Predatory*  
16 *Lending NV*

Dated this 16<sup>th</sup> day of February, 2024.

By:   
Todd L. Bice (SBN 4534)  
Jordan T. Smith (SBN 12097)  
Daniel R. Brady (SBN 15508)  
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JTS@pisanellibice.com  
DRB@pisanellibice.com  
*Attorneys for Plaintiffs Nevadans for*  
*Financial Choice and Christina*  
*Bauer*

15 Dated this \_\_ day of February, 2024.

16 By: \_\_\_\_\_  
17 Laena St Jules (SBN 15156)  
18 **OFFICE OF THE ATTORNEY**  
19 **GENERAL**  
20 100 N. Carson Street  
21 Carson City, Nevada 89701  
22 LStJules@ag.nv.gov  
23 *Attorneys for Defendant Francisco V.*  
24 *Aguilar*

Dated this \_\_ day of February, 2024.

By: \_\_\_\_\_  
J. Malcolm DeVoy (SBN 11950)  
Matthew Morris (SBN 15068)  
**HOLLAND & HART LLP**  
5441 Kietzke Lane  
Reno, Nevada 89511  
jmdevoy@hollandhart.com  
mcmorris@hollandhart.com  
*Counsel for Plaintiff DailyPay, Inc.*

23 ///

24 ///

25 ///

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1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at  
2 \_\_\_\_\_ .M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this \_\_ day of February, 2024.

Dated this \_\_ day of February, 2024.

5 By: \_\_\_\_\_

By: \_\_\_\_\_

6 Bradley S. Schrager (SBN 10217)  
7 Daniel Bravo (SBN 13078)  
8 **BRAVO SCHRAGER LLP**  
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14 *Attorneys for Kate Feldman and*  
15 *Intervenor-Defendant Stop Predatory*  
16 *Lending NV*

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JTS@pisanellibice.com  
DRB@pisanellibice.com  
*Attorneys for Plaintiffs Nevadans for*  
*Financial Choice and Christina*  
*Bauer*

15 Dated this \_\_ day of February, 2024.

Dated this 16 day of February, 2024.

16 By: \_\_\_\_\_

By:  \_\_\_\_\_

17 Laena St Jules (SBN 15156)  
18 **OFFICE OF THE ATTORNEY**  
19 **GENERAL**  
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24 *Aguilar*

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Reno, Nevada 89511  
jmdevoy@hollandhart.com  
mcmorris@hollandhart.com  
*Counsel for Plaintiff DailyPay, Inc.*

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25 ///

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27 ///

1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at  
2 9:00 A.M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this \_\_ day of February, 2024.

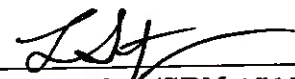
Dated this \_\_ day of February, 2024.

5 By: \_\_\_\_\_  
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7 Daniel Bravo (SBN 13078)  
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15 *Intervenor-Defendant Stop Predatory*  
16 *Lending NV*

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DRB@pisanellibice.com  
*Attorneys for Plaintiffs Nevadans for*  
*Financial Choice and Christina*  
*Bauer*

15 Dated this 26<sup>th</sup> day of February, 2024.

Dated this \_\_ day of February, 2024.

16 By:  \_\_\_\_\_  
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18 **OFFICE OF THE ATTORNEY**  
19 **GENERAL**  
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*Counsel for Plaintiff DailyPay, Inc.*

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated this 20<sup>th</sup> day of February, 2024.

2 By: Elizabeth M. Sorokac

3 Joshua H. Reisman (SBN 7152)  
4 Elizabeth M. Sorokac (SBN 8270)  
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14 *Capital Funding- Nevada, LLC, and*  
15 *Alliance For Responsible Consumer*  
16 *Legal Funding*

Dated this 21<sup>st</sup> day of February, 2024.

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*Attorneys for Plaintiffs Activehours,*  
*Inc. and Stacy Press*

12 **ORDER**

13 GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation, and  
14 the actions are consolidated into and with the first-filed case, First Judicial District  
15 Case No. 24 OC 00018 1B, assigned to Department 2. The Court further adopts the  
16 Stipulation of the Parties as the Scheduling Order for this matter. The Parties shall  
17 adhere to all dates in the Stipulation.

18 DATED this 22<sup>nd</sup> day of February, 2024.

19 Krist. Lewis  
20 District Court Judge

21 *Respectfully Submitted By:*

22 Bradley S. Schrage 13237

23 Daniel Bravo (SBN 13078)  
24 **BRAVO SCHRAGER LLP**  
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*Predatory Lending NV & Kate Feldman*

**COPY**

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WILLIAM SOUTHWORTH  
CLERK

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6  
7 *Attorneys for Defendant Secretary of State*

8  
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR CARSON CITY**

11 NEVADANS FOR FINANCIAL CHOICE,  
a Nevada Political Action Committee, and  
12 CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B

Dept. No. II

13 Plaintiffs,

14 vs.

15 KATE FELDMAN, an individual, STOP  
PREDATORY LENDING NV, a Nevada  
16 Nonprofit Corp., and FRANCISCO V.  
AGUILAR, in his official capacity as  
17 Nevada Secretary of State,

18 Defendants.

19 DAILYPAY, INC., A Delaware  
Corporation,

Case No.: 24 OC 00021 1B

Dept. No. II

20 Plaintiff,

21 vs.

22 FRANCISCO V. AGUILAR, in his official  
capacity as NEVADA SECRETARY OF  
23 STATE

24 Defendant,

25 and

26 STOP PREDATORY LENDING NV, a  
Nevada Nonprofit Corp., and KATE  
27 FELDMAN, an individual,

28 Intervenor-Defendants.

1 PREFERRED CAPITAL FUNDING-  
2 NEVADA, LLC, a Nevada limited  
3 liability company, and ALLIANCE FOR  
4 RESPONSIBLE CONSUMER LEGAL  
5 FUNDING, an Illinois nonprofit  
6 corporation,

7 Plaintiffs,

8 vs.

9 FRANCISCO V. AGUILAR, in his official  
10 capacity as NEVADA SECRETARY OF  
11 STATE, and KATE FELDMAN, an  
12 individual

13 Defendants,

14 and

15 STOP PREDATORY LENDING NV, a  
16 Nevada Nonprofit Corp.,

17 Intervenor-Defendant.

18 ACTIVEHOURS, INC., a Delaware  
19 corporation; STACY PRESS, an  
20 individual,

21 Plaintiffs,

22 vs.

23 KATE FELDMAN, an individual; STOP  
24 PREDATORY LENDING NV, a Nevada  
25 Nonprofit Corp.; and FRANCISCO V.  
26 AGUILAR, in his official capacity as  
27 NEVADA SECRETARY OF STATE,

28 Defendants.

Case No.: 24 OC 00023 1B

Dept. No. I

Case No.: 24 OC 00029 1B

Dept. No. I

### SECRETARY OF STATE'S LIMITED OMNIBUS RESPONSE

Defendant Francisco V. Aguilar, in his official capacity as the Nevada Secretary of State, submits the following Limited Omnibus Response to the cases filed in this consolidated action.

The Secretary of State does not take a position on the legality of the proposed initiative petitions, Initiative Petitions S-01-2024 and S-03-2024. The cases were brought prior to the Secretary of State having the opportunity to consider certifying the proposed initiative petitions as sufficient pursuant to NRS 295.061(2). Plaintiffs and

1 Defendants/Intervenor-Defendants will make those arguments, and the Secretary of State  
2 will comply with any final judgment in this case. The Secretary of State does not take a  
3 position on the policy merits of the proposed initiative petitions. If deemed legal and  
4 qualified for the 2024 general election ballot, Nevadan voters will have that debate and  
5 make those policy decisions.

6 Under such circumstances, no award of attorneys' fees or costs is appropriate against  
7 the Secretary of State.

### 8 AFFIRMATION

9 The undersigned does hereby affirm that the document entitled Secretary of State's  
10 Limited Omnibus Response does not contain personal information as defined in NRS  
11 239B.030(4), and further acknowledges that an affirmation will only be provided on any  
12 additional documents if the document does contain personal information.

13 DATED this 23rd day of February, 2024.

14 AARON D. FORD  
15 Attorney General

16 By:   
17 LAENA ST-JULES (Bar No. 15156)  
18 Senior Deputy Attorney General  
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25 *Attorneys for Defendant Secretary of State*  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 23rd day of February, 2024, I served a true and correct copy of the foregoing Secretary of State’s Limited Omnibus Response, by electronic mail to:

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\_\_\_\_\_  
Aaron D. Van Sickle



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9 Attorneys for Kate Feldman and  
10 Intervenor-Defendant

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WILLIAM SCOTT HOEN  
CLERK  
BY \_\_\_\_\_ DEPUTY

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**IN THE FIRST JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,  
10 a Nevada Political Action Committee, and  
11 CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B  
Dept. No.: II

11 Plaintiffs,

12 vs.

13 KATE FELDMAN, an individual, STOP  
14 PREDATORY LENDING NV, a Nevada  
15 Nonprofit Corp., and FRANCISCO V.  
16 AGUILAR, in his official capacity as  
17 Nevada Secretary of State,

16 Defendants,

18 DAILYPAY, INC., a Delaware  
19 Corporation,

Case No.: 24 OC 00021 1B  
Dept. No.: II

19 Plaintiff,

20 vs.

21 FRANCISCO V. AGUILAR, in his official  
22 capacity as NEVADA SECRETARY OF  
23 STATE,

23 Defendant,

24 and

25 STOP PREDATORY LENDING NV, a  
26 Nevada Nonprofit Corp., and  
27 KATE FELDMAN, an individual,

28 Intervenor-Defendants.

1  
2 **PREFERRED CAPITAL FUNDING-**  
3 **NEVADA, LLC, a Nevada limited liability**  
4 **company, and ALLIANCE FOR**  
5 **RESPONSIBLE CONSUMER LEGAL**  
6 **FUNDING, an Illinois nonprofit**  
7 **corporation,**

8  
9 **Plaintiffs,**

10 **vs.**

11 **FRANCISCO V. AGUILAR, in his official**  
12 **capacity as NEVADA SECRETARY OF**  
13 **STATE, and KATE FELDMAN, an**  
14 **individual,**

15 **Defendants,**

16 **and**

17 **STOP PREDATORY LENDING NV, a**  
18 **Nevada Nonprofit Corp.,**

19 **Intervenor-Defendant.**

20 **ACTIVEHOURS, INC., a Delaware**  
21 **corporation; STACY PRESS, an**  
22 **individual,**

23 **Plaintiffs,**

24 **vs.**

25 **KATE FELDMAN, an individual; STOP**  
26 **PREDATORY LENDING NV, a Nevada**  
27 **Nonprofit Corp.; and FRANCISCO V.**  
28 **AGUILAR, in his official capacity as**  
**NEVADA SECRETARY OF STATE,**

**Defendants.**

Case No.: 24 OC 00023 1B

Dept. No.: I

Case No.: 24 OC 00029 1B

Dept. No.: I

**NOTICE OF ENTRY OF STIPULATION AND ORDER**

NOTICE IS HEREBY GIVE that a STIPULATION AND SCHEDULING  
ORDER OF THE COURT was entered in the above-captioned matter on the 22nd

1 day of February, 2024. A true and correct copy of the Stipulation and Order is  
2 attached hereto as Exhibit 1.

3 **AFFIRMATION**

4 The undersigned hereby affirm that the foregoing document does not contain  
5 the social security number of any person.

6 DATED this 23rd day of February, 2024.

7 **BRAVO SCHRAGER LLP**

8  
9 By   
10 **BRADLEY S. SCHRAGER, ESQ. (SBN 10217)**  
11 **DANIEL BRAVO, ESQ. (SBN 13078)**  
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16 **Email: daniel@bravoschrager.com**

17 *Attorneys for Kate Feldman and Intervenor-Defendant*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd day of February, 2024, I served the foregoing  
3 **NOTICE OF ENTRY OF STIPULATION AND ORDER** via electronic mail, per  
4 the February 22, 2024, Stipulation and Scheduling Order of the Court, as follows:

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GENERAL**  
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Funding*

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and Stacy Press*

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First Judicial District Court, Dept. II  
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21 Bv:   
22 Dannielle Fresquez, an Employee of  
23 BRAVO SCHRAGER LLP

24 **INDEX OF EXHIBITS**

25

Exhibit No.	Document Title	No. of Pages
26 1	Stipulation and Scheduling Order of the 27 Court	10

28



# EXHIBIT 1

# EXHIBIT 1

**BRAVO SCHRAGER** LLP

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10 Intervenor-Defendant

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B. SHADRON

7 **IN THE FIRST JUDICIAL DISTRICT COURT**  
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,  
10 a Nevada Political Action Committee, and  
11 CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B

Dept. No.: II

12 Plaintiffs,

13 vs.

14 KATE FELDMAN, an individual, STOP  
15 PREDATORY LENDING NV, a Nevada  
16 Nonprofit Corp., and FRANCISCO V.  
17 AGUILAR, in his official capacity as  
18 Nevada Secretary of State,

19 Defendants,

20 DAILYPAY, INC., a Delaware  
21 Corporation,

Case No.: 24 OC 00021 1B

Dept. No.: II

22 Plaintiff,

23 vs.

24 FRANCISCO V. AGUILAR, in his official  
25 capacity as NEVADA SECRETARY OF  
26 STATE,

27 Defendant,

28 and

STOP PREDATORY LENDING NV, a  
Nevada Nonprofit Corp., and  
KATE FELDMAN, an individual,

Intervenor-Defendants.

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PREFERRED CAPITAL FUNDING-NEVADA, LLC, a Nevada limited liability company, and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING, an Illinois nonprofit corporation,  
  
Plaintiffs,  
  
vs.  
  
FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE, and KATE FELDMAN, an individual,  
  
Defendants,  
  
and  
  
STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.,  
  
Intervenor-Defendant.

Case No.: 24 OC 00023 1B  
Dept. No.: I

ACTIVEHOURS, INC., a Delaware corporation; STACY PRESS, an individual,  
  
Plaintiffs,  
  
vs.  
  
KATE FELDMAN, an individual; STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.; and FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE,  
  
Defendants.

Case No.: 24 OC 00029 1B  
Dept. No.: I

23 **STIPULATION AND [PROPOSED] SCHEDULING ORDER OF THE COURT**  
24 The Parties to this stipulation acknowledge the following:  
25 On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition  
26 S-01-2024 ("Initiative #1"). On January 24, 2024, Ms. Feldman filed Nevada  
27 Statutory Initiative Petition S-03-2024 ("Initiative #2). Both initiatives deal with  
28 similar topics and are filed by the same ballot measure proponents, though the



1 respective Petitions' compliance with Nevada's single-subject rule, NRS 295.009, is a  
2 matter of dispute among the parties hereto, and no party to this Stipulation waives  
3 or concedes any argument in that respect by virtue of entering into it.

4 On January 26, 2024, Plaintiffs NEVADANS FOR FINANCIAL CHOICE and  
5 CHRISTINA BAUER filed a Complaint for Declaratory and Injunctive Relief  
6 challenging the legal sufficiency of Initiative #1, pursuant to NRS 295.061, and a  
7 Brief in Support of the Complaint, which became First Judicial District Case No. 24  
8 OC 00018 1B, assigned to Department 2. This suit was filed against Ms. Feldman  
9 and Nevada Secretary of State Francisco Aguilar, in his official capacity.  
10 Subsequently, on February 14, 2024, Plaintiffs in Case No. 24 OC 00018 1B filed a  
11 First Amended Complaint timely adding Initiative #2 to their challenge and Stop  
12 Predatory Lending NV as an additional defendant.

13 On January 29, 2024, Plaintiff DAILYPAY, INC. filed a Complaint for  
14 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative #1 and  
15 Initiative #2, pursuant to NRS 295.061, which became First Judicial District Case  
16 No. 24 OC 00021 1B, assigned to Department 2. This suit was filed against Nevada  
17 Secretary of State Francisco Aguilar, in his official capacity.

18 On January 29, 2024, Plaintiffs PREFERRED CAPITAL FUNDING -  
19 NEVADA, LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL  
20 FUNDING filed a Complaint for Declaratory and Injunctive Relief challenging the  
21 legal sufficiency of Initiative #1 and Initiative #2, pursuant to NRS 295.061, which  
22 became First Judicial District Case No. 24 OC 00023 1B, assigned to Department 1.<sup>1</sup>  
23 This suit was filed against Ms. Feldman and Nevada Secretary of State Francisco  
24

25 <sup>1</sup> While Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA, LLC and  
26 ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING ("Litigation  
27 Funding Plaintiffs") stipulate to the consolidation of cases and intervention of parties  
28 for purposes of judicial efficiency, it is Litigation Funding Plaintiffs' position that they  
are factually and legally distinct from other parties covered by Initiative #1 and/or  
Initiative #2 as the Litigation Funding Plaintiffs contend they are not lenders and  
are otherwise governed by Nevada Revised Statutes Chapter 604C.

1 Aguilar, in his official capacity.

2 On February 13, 2024, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS  
3 filed a Complaint for Declaratory and Injunctive Relief challenging the legal  
4 sufficiency of Initiative #2 pursuant to NRS 295.061, which became First Judicial  
5 District Case No. 24 OC 00029, assigned to Department 1. This suit was filed against  
6 Ms. Feldman, Stop Predatory Lending NV, and Nevada Secretary of State Francisco  
7 Aguilar, in his official capacity.

8 **STIPULATION**

9 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

10 1. All parties agree that consolidation of the actions referenced above is  
11 appropriate here, for reasons of judicial economy and to avoid the possibility of  
12 inconsistent resolutions of similar claims, as well as to observe the statutory charge  
13 to resolve challenges to the legal sufficiency of filed initiative petitions in a prompt  
14 manner. Nevada law favors consolidation of proceedings involving a common question  
15 of law or fact. *See Marcuse v. Del Webb Cmty., Inc.*, 123 Nev. 278, 286 (2007);  
16 NRCP 42(a) (allowing consolidation of "actions involving a common question of law  
17 or fact."). The consolidated action shall bear the caption listed above, and shall result  
18 in consolidation into and with the first-filed cases among these, First Judicial District  
19 Case No. 24 OC 00018 1B, assigned to Department 2.

20 2. All respective parties stipulate to allowing Intervenor-Defendant STOP  
21 PREDATORY LENDING NV, a Nevada nonprofit corporation serving as the  
22 proponents' ballot measure committee in support of both Initiative #1 and #2, to  
23 intervene in each case identified herein where it was not previously joined as a  
24 defendant.

25 3. All respective parties stipulate to allowing Ms. Feldman to intervene as  
26 Intervenor-Defendant into the cases in which she has not been named, specifically  
27 *DailyPay, Inc. v. Francisco V. Aguilar*, Case No.: 24 OC 00021 1B.

28



1           4.     No party will object to the filing of memoranda of points and authorities  
2 by any Plaintiffs who did not accompany their initial Complaints with such  
3 memoranda, as long as such memoranda are filed on or before February 14, 2024,  
4 are served upon the other parties in the manner contemplated by this Stipulation,  
5 and are limited to ten (10) pages or fewer.

6           5.     All parties agree to the following deadlines to file further briefing:

7           (a)     Intervenor-Defendant Stop Predatory Lending NV and Kate  
8                 Feldman (collectively, "Proponents") will file an Omnibus  
9                 Response to all Plaintiffs by February 28, 2024. Given the  
10                technical nature of the subject matter and the complexity and  
11                length of the arguments and issues related to challenges to  
12                Initiatives #1 and #2, as well as the multiple Plaintiffs making  
13                disparate arguments, Proponents are not able to condense their  
14                total Response to ten pages, per FJDCR 3.23(b), without omitting  
15                relevant information necessary for the Court's consideration.  
16                Therefore, Proponents shall be allotted up to thirty pages for their  
17                Omnibus Response, though they state their intention to remain  
18                well below that upper limit. Defendant Francisco V. Aguilar shall  
19                file an answer and/or response brief by this time as well, but shall  
20                observe the ten-page limit contemplated in FJDCR 3.23(b).

21           (b)     Plaintiff(s) may file an Optional Reply by March 8, 2024.  
22                 Plaintiff(s) shall be allotted up to ten pages for their respective  
23                 Replies.

24           (c)     The parties will submit proposed orders to the Court by  
25                 March 8, 2024. Pursuant to FJDCR 3.10, the proposed orders  
26                 must include a cover sheet, a statement of facts, the applicable  
27                 standard of law, analysis, and conclusions of law and an order.  
28





1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at  
2 \_\_\_\_\_M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this 16 day of February, 2024.

Dated this 16<sup>th</sup> day of February, 2024.

5 By:   
6 Bradley S. Schrage (SBN 10217)  
7 Daniel Bravo (SBN 13078)  
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14 *Attorneys for Kate Feldman and*  
15 *Intervenor-Defendant Stop Predatory*  
16 *Lending NV*

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Jordan T. Smith (SBN 12097)  
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15 Dated this \_\_\_ day of February, 2024.

Dated this \_\_\_ day of February, 2024.

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1 9. The Court shall hold a hearing on this matter on March 22, 2024, at  
2 \_\_\_\_\_M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this \_\_ day of February, 2024.

Dated this \_\_ day of February, 2024.

5 By: \_\_\_\_\_  
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15 *Intervenor-Defendant Stop Predatory*  
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*Bauer*

15 Dated this \_\_ day of February, 2024.

Dated this 16 day of February, 2024.

16 By: \_\_\_\_\_  
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*Counsel for Plaintiff DailyPay, Inc.*

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28 ///



1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at  
2 9:00 A.M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this \_\_ day of February, 2024.


Dated this \_\_ day of February, 2024.

5 By: \_\_\_\_\_  
6 Bradley S. Schrage (SBN 10217)  
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*Financial Choice and Christina*  
*Bauer*

15 Dated this 26<sup>th</sup> day of February, 2024.

Dated this \_\_ day of February, 2024.

16 By:  \_\_\_\_\_  
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1 Dated this 20<sup>th</sup> day of February, 2024.

2 By: Charlith M. Sorokac

3 Joshua H. Reisman (SBN 7152)  
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14 *Capital Funding- Nevada, LLC, and*  
15 *Alliance For Responsible Consumer*  
16 *Legal Funding*

Dated this 21<sup>st</sup> day of February, 2024.

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*Inc. and Stacy Press*

**ORDER**

GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation, and the actions are consolidated into and with the first-filed case, First Judicial District Case No. 24 OC 00018 1B, assigned to Department 2. The Court further adopts the Stipulation of the Parties as the Scheduling Order for this matter. The Parties shall adhere to all dates in the Stipulation.

DATED this 22<sup>nd</sup> day of February, 2024.

Kate L. Lewis  
District Court Judge

Respectfully Submitted By:

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*Predatory Lending NV & Kate Feldman*

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13 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR CARSON CITY**

15 NEVADANS FOR FINANCIAL CHOICE, a  
 16 Nevada Political Action Committee, and  
 17 CHRISTINA BAUER, an Individual,

Case No.: 24 OC 000018 1B

Dept. No.: II

Plaintiffs,

v.

**ACCEPTANCE OF SERVICE**

18 KATE FELDMAN, an individual, STOP  
 19 PREDATORY LENDING NV, a Nevada  
 20 Nonprofit Corp., and FRANCISCO  
 21 AGUILAR, in his official capacity as Nevada  
 22 Secretary of State,

Defendants.

23 Pursuant to NRCPC 4.2(a)(3), I acknowledge that I am duly authorized to, and have accepted  
24 service of the

- 25 (1) Summons, issued January 26, 2024;
- 26 (2) Summons for the First Amended Complaint, issued February 14, 2024;
- 27 (3) First Amended Complaint for Declaratory and Injunctive Relief Concerning Statewide  
28 Ballot Initiatives – S-01-2024 and S-03-2024, filed February 14, 2024;
- (4) Brief in Support of First Amended Complaint for Declaratory and Injunctive Relief  
Concerning State-Wide Ballot Initiative, filed February 14, 2024; and
- (5) Brief in Support of Complaint for Declaratory and Injunctive Relief Concerning State-  
Wide Ballot Initiative, filed January 26, 2024.

PISANELLI BICE  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101




1 in the above-captioned matter on behalf of Defendant Francisco Aguilar.

2 Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any  
3 defenses or arguments Defendant Francisco Aguilar may have, which are expressly reserved.

4 DATED this 23<sup>rd</sup> day of February 2024.

5 AARON D. FORD  
6 Attorney General

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13 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR CARSON CITY**

15 NEVADANS FOR FINANCIAL CHOICE, a  
 16 Nevada Political Action Committee, and  
 17 CHRISTINA BAUER, an Individual,

Case No.: 24 DC 0000181B

Dept. No.: II

18 Plaintiffs,

19 v.

**ACCEPTANCE OF SERVICE**

20 KATE FELDMAN, an individual, STOP  
 21 PREDATORY LENDING NV, a Nevada  
 22 Nonprofit Corp., and FRANCISCO  
 23 AGUILAR, in his official capacity as Nevada  
 24 Secretary of State,

25 Defendants.

26 Pursuant to NRCPC 4.2(a)(3), I acknowledge that I am duly authorized to, and have accepted  
 27 service of the

- 28 (1) Summons, issued January 26, 2024;
- (2) Summons for the First Amended Complaint, issued February 14, 2024;
- (3) First Amended Complaint for Declaratory and Injunctive Relief Concerning Statewide  
Ballot Initiatives – S-01-2024 and S-03-2024, filed February 14, 2024;
- (4) Brief in Support of First Amended Complaint for Declaratory and Injunctive Relief  
Concerning State-Wide Ballot Initiative, filed February 14, 2024; and
- (5) Brief in Support of Complaint for Declaratory and Injunctive Relief Concerning State-  
Wide Ballot Initiative, filed January 26, 2024,

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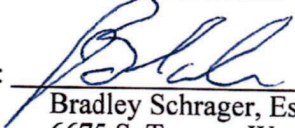
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in the above-captioned matter on behalf of Defendants Kate Feldman and Stop Predatory Lending NV.

Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any defenses or arguments Defendants Kate Feldman and Stop Predatory Lending NV may have, which are expressly reserved.

DATED this 23<sup>rd</sup> day of February, 2024.

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7 **IN THE FIRST JUDICIAL DISTRICT COURT**  
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,  
10 a Nevada Political Action Committee, and  
11 CHRISTINA BAUER, an individual,

12 Plaintiffs,

13 vs.

14 KATE FELDMAN, an individual, STOP  
15 PREDATORY LENDING NV, a Nevada  
16 Nonprofit Corp., and FRANCISCO V.  
AGUILAR, in his official capacity as  
Nevada Secretary of State,

17 Defendants.

18 DAILYPAY, INC., a Delaware  
19 Corporation,

20 Plaintiff,

21 vs.

22 FRANCISCO V. AGUILAR, in his official  
23 capacity as NEVADA SECRETARY OF  
STATE,

24 Defendant,

25 and

26 STOP PREDATORY LENDING NV, a  
27 Nevada Nonprofit Corp., and  
KATE FELDMAN, an individual,

28 Intervenor-Defendants.

Lead Case No.: 24 OC 00018 1B  
Dept. No.: II

Consolidated with

Case No.: 24 OC 00021 1B  
Dept. No.: II

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PREFERRED CAPITAL FUNDING-NEVADA, LLC, a Nevada limited liability company, and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING, an Illinois nonprofit corporation,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE, and KATE FELDMAN, an individual,

Defendants,

and

STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.,

Intervenor-Defendant.

Case No.: 24 OC 00023 1B

Dept. No.: I

ACTIVEHOURS, INC., a Delaware corporation; STACY PRESS, an individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual; STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.; and FRANCISCO V. AGUILAR, in his official capacity as NEVADA SECRETARY OF STATE,

Defendants.

Case No.: 24 OC 00029 1B

Dept. No.: I

***DEFENDANTS/INTERVENORS KATE FELDMAN'S AND STOP PREDATORY LENDING NV'S OMNIBUS RESPONSE***

Defendant KATE FELDMAN and STOP PREDATORY LENDING NV (collectively, "Proponents" or "Defendants") here submit their Memorandum of Points and Authorities in opposition to the complaint and memoranda filed by Plaintiffs in

1 this consolidated action. It is based upon a challenge to two statewide statutory  
2 initiative petitions, all papers and exhibits on file herein, and any argument the Court  
3 sees fit to allow at hearing on this matter.

4 DATED this 28th day of February, 2024.

5 **BRAVO SCHRAGER LLP**

6  
7 By: 

8 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)  
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1                                    MEMORANDUM OF POINTS & AUTHORITIES

2 I.        INTRODUCTION

3            No industry likes legislation that may affect its business, especially not  
4 through ballot initiatives, which threaten to expose financial interests to popular  
5 sentiment. But in the context of direct democracy, as long as the proponents of an  
6 initiative petition observe the basic tenets of form and procedure and then gather  
7 enough signatures from the electorate, the people get to decide at the ballot box.

8            Here, Plaintiffs seek to prevent two initiative measures from reaching the  
9 ballot based on array of grounds that mostly come down to the fact that they are  
10 opposed to the policy changes these initiatives represent. Plaintiff Nevadans for  
11 Financial Choice is essentially correct when it states that a part of the policy  
12 underpinning the two measures is to establish standards by which to regulate  
13 usurious behavior by lenders and others in Nevada. That is one way of saying that  
14 there are effectively no usury laws here currently. The common usage of "usury" is  
15 *the lending of money at unconscionable or exorbitant rates of interest.*<sup>1</sup> Similarly,  
16 Nevada lacks sufficient asset protections for debtors who suffer from an inability to  
17 keep up with payments of interest rates that can reach **300 – 500% annually**. Here,  
18 the components of the Petitions complement one another to achieve a single goal:  
19 ensuring Nevadans have better debt protections. The initiatives will require  
20 financiers to be more diligent about lending, and also ensure that a consumer's last  
21 dime won't go towards paying off a short-term loan in a cycle of repayment at  
22 spiraling rates. The fact that Petition #1 has more policy content than Petition #2 is  
23 not material to the analysis by this Court. Nevada ballot measure history is replete  
24 with proposed measures with multiple *changes* to current law that do not violate the  
25 single-subject rule; *changes to existing law* do not equal *subjects* in Nevada Supreme  
26

27 <sup>1</sup>        See, e.g., "Usury." Merriam-Webster.com Dictionary, [https://www.merriam-  
webster.com/dictionary/usury](https://www.merriam-<br/>28 webster.com/dictionary/usury). (last accessed Feb. 24, 2024).

BRAVO SCHRAGER LLP

1 Court jurisprudence. See *Helton v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45,  
2 512 P.3d 309, 315 n.5 (2022). With these ballot measures, Nevadans will have the  
3 opportunity to decide for themselves if a 36% interest limit on debt and the greater  
4 protections for basic assets in debt collection proceedings represent the will of the  
5 people.

6 To stop the voters from considering these initiatives, as Plaintiffs wish to do,  
7 Plaintiffs must show here not that the project is unwise or the wrong policy for  
8 Nevada consumers; nor that these Plaintiffs provide services that many people use;  
9 nor that the provisions of these Petitions run counter to the ways these companies  
10 have been regulated previously. None of that matters. Those are all issues for these  
11 parties' eventual election campaign in opposition, but they are not legal arguments.  
12 Instead, these Plaintiffs have to demonstrate to this Court that—within the bounds  
13 of what is and is not permitted in *pre-election* challenges to filed initiative petitions—  
14 these two filed measures are clearly invalid, such that a court cannot permit them to  
15 be circulated for signatures by registered Nevada voters.<sup>2</sup>

16 Despite their intense collective efforts, however, Plaintiffs cannot meet their  
17 heavy burden to invalidate either Petition. Each of Initiative Petition S-01-2024 and  
18 Initiative Petition S-03-2024 comprises a single-subject under NRS 295.009(1)(a)  
19 and (2); contains a perfectly accurate and non-misleading description of effect  
20 pursuant to NRS 295.009(1)(b); and does not run afoul either of Article 19, section 6's  
21 prohibition on unfunded mandates, or Article 3, Section 1's "full text" requirement."  
22 See Nev. Const. art. 19, § 6; Nev. Const. art. 3, § 1. Everything about the two Petitions  
23 is straightforward, succinct, and clearly described within the statutory parameters of  
24 a 200-word description. The Petitions provide Nevadans with what they need to make  
25

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26 <sup>2</sup> It is also worth noting that the terms of the Petitions only apply to transactions  
27 engaged in by earned-wage access Plaintiffs like DailyPay and ActiveHours after SB  
28 290, **by its own terms**, sunsets in 2030. See Nev. for Fin. Choice Amend. Compl.,  
Exs. 1 (Petition #1), 2 (Petition #2); DailyPay Memo., Ex. 1 (SB 290).

1 informed decisions about whether to affix their signatures and place them on a  
2 general election ballot. Plaintiffs' white-hot opposition to the policies contained in  
3 these two Petitions is understandable in light of their business interests, but there  
4 are no grounds for this Court to invalidate either Petition prior to their circulation  
5 among the voters.

## 6 **II. STATEMENT OF FACTS**

7 On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition  
8 S-01-2024 ("Petition #1"). On January 24, Ms. Feldman filed Nevada Statutory  
9 Initiative Petition S-03-2024 ("Petition #2").

10 On January 26, Plaintiffs NEVADANS FOR FINANCIAL CHOICE and  
11 CHRISTINA BAUER (collectively, "Nevadans for Financial Choice" or "NFFC") filed  
12 a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of  
13 Petition #1, pursuant to NRS 295.061, and a Brief in Support of the Complaint.  
14 Subsequently, on February 14, Plaintiffs Nevadans for Financial Choice filed a First  
15 Amended Complaint timely adding Petition #2 to their challenge.

16 On January 29, Plaintiff DAILYPAY, INC. ("DailyPay") filed a Complaint for  
17 Declaratory and Injunctive Relief challenging the legal sufficiency of both Petition #1  
18 and Petition #2, pursuant to NRS 295.061.

19 On January 29, Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA,  
20 LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING  
21 (collectively, "Preferred Capital") filed a Complaint for Declaratory and Injunctive  
22 Relief challenging the legal sufficiency of both Petition #1 and Petition #2, pursuant  
23 to NRS 295.061.

24 On February 13, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS  
25 (collectively, "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief  
26 challenging the legal sufficiency of Petition #2 pursuant to NRS 295.061.

27 On or about February 22, the parties stipulated to, and the Court ordered, that  
28 the filed suits be consolidated into one action, and the parties further agreed to

1 briefing and hearing schedules, as well as sundry procedural matters designed to  
2 make the matter more efficient in terms of judicial economy.

### 3 **III. LEGAL STANDARD**

4 This case turns on the proper interpretation of NRS 295.009; Article 19,  
5 Section 6 of the Nevada Constitution; and the Petitions. These are questions of law.  
6 *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017). Emphatically, plaintiffs  
7 “challenging the initiative petition bear the burden of demonstrating the proposed  
8 initiative is *clearly invalid*.” *Helton*, 512 P.3d at 313 (emphasis supplied).

### 9 **IV. LEGAL ARGUMENT**

10 The Petitions satisfy the requirements imposed by NRS 295.009 and the  
11 Nevada Constitution. Each concerns a single subject, has an appropriate description  
12 of effect, and does not mandate the expenditure of any state funds. They are properly-  
13 proposed statutory initiative petitions, not referenda, and they contain exactly the  
14 amount of text required by the Nevada Constitution in order to gather signatures to  
15 establish Nevadan’s desire to refer these Petitions to the general election ballot.  
16 These Petitions are examples of Nevada’s vibrant culture of direct democracy, and  
17 they meet the requirements for proposing statutory ballot measures.

#### 18 **A. The Constitutional Right To Initiatives In Nevada**

19 Initiative is the power of the people to propose bills and laws and to enact or  
20 reject them at the polls, independent of the legislative assembly. *See Rea v. City of*  
21 *Reno*, 76 Nev. 483, 486, 357 P.2d 585, 586 (1960). The constitutional rights of Nevada  
22 to propose initiatives and referenda are sacrosanct, and courts are charged with  
23 preserving those rights in every way it can. *See, generally*, Nev. Const. art. 19. And,  
24 just as in the case of regular legislation, “[i]n determining whether a ballot initiative  
25 proponent has complied with NRS 295.009, it is not the function of this court to judge  
26 the wisdom of the proposed initiative.” *Helton*, 512 P.3d at 316 (quoting *Educ.*  
27 *Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878  
28 (2013)).



1 The Nevada Supreme Court “has consistently held that the initiative powers  
2 granted to Nevada’s electorate are broad.” *We People Nevada ex rel. Angle v. Miller*,  
3 124 Nev. 874, 886, 192 P.3d 1166, 1174 (2008). Furthermore, the Court exercises  
4 “every effort to sustain and preserve the people’s constitutional right” under  
5 Article 19. *Id.*

6 The people’s initiative power “is legislative in nature.” *Nevadans for the Prot.*  
7 *of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006). “The  
8 people’s initiative power is ‘coequal, coextensive, and concurrent’ with that of the  
9 Legislature; thus, the people have power that is legislative in nature.” *Id.*, 122 Nev.  
10 at 914 (quoting *Gallivan v. Walker*, 54 P.3d 1069, 1080 (Utah 2002)); *see also Educ.*  
11 *Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 302 (2022). Because the  
12 people’s initiative power is legislative in nature, that power is subject to the same  
13 prerogatives and limitations placed upon a Legislature. *Educ. Freedom PAC v. Reid*,  
14 512 P.3d at 305; *see also State ex rel. Stenberg v. Moore*, 602 N.W.2d 465, 474, 258  
15 Neb. 199, 210 (1999) (“the Legislature and the electorate are concurrently equal in  
16 rank as sources of legislation”).

17 In other words, an important initial question that the majority of the Plaintiffs  
18 here do not seem to consider is whether the measure under consideration could, in  
19 fact, be proposed and enacted by the Nevada Legislature itself. Here, the answer is  
20 obviously yes—the Nevada Legislature could propose and pass a bill that defines  
21 certain transactions as “loans,” limits interest rates on those transactions, and  
22 expands the existing protections of individuals’ assets for consumers facing debt  
23 collection. The fact that there are existing laws touching on these topics enacted by  
24 the Legislature is only proof that these choices lay within the legislative capacity of  
25 the People with which Proponents are engaging.

26 In fact, ActiveHours, DailyPay, and Preferred Capital all end up rebutting  
27 their own arguments. For instance, if, as they claim, the Legislature has defined  
28 particular transactions in a certain way previously, the People acting in their



1 legislative capacity through the initiative process have full freedom to define them  
2 otherwise. ActiveHours goes so far as to title one of its section headings, "The  
3 Initiative Defines and Treats Earned Wage Access in a Manner Contrary to Current  
4 Nevada Law," to which the obvious answer is, "so what?" It is entirely irrelevant that  
5 the Legislature has regulated these industries differently up until now; that is, in  
6 fact, the very point of the popular initiative process, to permit citizens to propose and  
7 enact legislation "independent of the legislative assembly." *Rea*, 76 Nev. at 486.

8 Plaintiffs are free to disagree vehemently with the policies embodied in the  
9 Petitions, and to conduct a vigorous campaign in opposition; this is quite apart from  
10 arguing that because there are statutory differences in how current law or the  
11 proposed Petitions treat earned-wage transactions, that Proponents somehow can be  
12 enjoined from proceeding with the gathering of signatures. Direct democracy in  
13 Nevada does not work that way.

14 **B. Appropriate And Inappropriate Pre-Election Challenges To**  
15 **Initiative Petitions**

16 Relatedly, certain kinds of arguments against initiative petitions are  
17 foreclosed at the pre-election stage, because it is the policy of the State of Nevada to  
18 permit petitions to be circulated and placed upon the general election ballot without  
19 regard to their substance. *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1228–31, 122  
20 Nev. 877, 882–88 (2006). In other words, complaints by at least three of the Plaintiffs  
21 that the provisions of the two Petitions do not comport with current law are not only  
22 barred by the fact that Proponents are exercising legitimate legislative power in  
23 proposing them, but also by the fact no Nevada court may inquire into the substance  
24 of an initiative at this juncture in any event.

25 As the Nevada Supreme Court explained in *Herbst Gaming, Inc.*, only two  
26 types of challenges to an initiative are appropriate for pre-election consideration:  
27 (1) those based on an argument that the initiative did not meet the procedural  
28 requirements for placing an initiative on the ballot, and (2) those based on a

1 contention that the subject matter is not appropriate for direct legislation under  
2 constitutional or statutory limits on the initiative power. *Id.*, 122 Nev. at 883.  
3 Challenges to the substance of a proposed initiative petition, however, are not ripe  
4 for review at the pre-election stage. “[T]he substantive validity of an initiative should  
5 be challenged if and when the initiative becomes law,” because as the Court held,  
6 there is “political utility in allowing the electorate to vote on a measure, even one  
7 ultimately destined to fail on constitutional grounds.” Substantive aspects of a  
8 petition “are improperly considered before an initiative becomes law.” *Herbst*  
9 *Gaming, Inc.*, 122 Nev. at 889.

10 This is another way of saying Plaintiffs will have every opportunity not only to  
11 present their substantive concerns to the voters of Nevada, but also to the Legislature  
12 itself, both before and after these Petitions potentially become law. For the moment,  
13 however, they are limited to attempting to demonstrate that the measures are clearly  
14 invalid because they violate either the express procedural requirements for statutory  
15 initiatives (i.e., the single-subject rule, or the description of effect requirement) or  
16 that they are not lawful exercises of the people’s initiative power (i.e., that they  
17 contain unfunded mandates, or that they are not, in fact, legislative in nature at all).  
18 These showings, however, they cannot make, so the balance of their arguments go to  
19 their displeasure over the provisions of the Petitions of which they disapprove.

20 **C. Neither Petition Violates The Single Subject Rule**

21 Nevada law requires that any initiative petition “[e]mbrace but one subject and  
22 matters necessarily connected therewith and pertaining thereto.” NRS 295.009(1)(a).  
23 “The single-subject requirement ‘facilitates the initiative process by preventing  
24 petition drafters from circulating confusing petitions that address multiple subjects.’”  
25 *Helton*, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*,  
26 122 Nev. at 902).

27 Faced with a pre-election challenge brought pursuant to NRS 295.061  
28 regarding a potential single-subject violation, there is a very specific analysis that

1 courts undertake, and performing it here, at the outset of this discussion, helps to cut  
2 through the accumulated arguments of these multiple plaintiffs. “In considering  
3 single-subject challenges, the court must first determine the initiative’s purpose or  
4 subject[.]” *Helton*, 512 P.3d at 314. “To determine the initiative’s purpose or subject,”  
5 courts “look[] to its textual language and the proponents’ arguments,” as well as  
6 “whether the description of effect articulates an overarching purpose and explains  
7 how provisions relate to a single subject.” *Id.* (quoting *Las Vegas Taxpayer*  
8 *Accountability Comm. v. City Council*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009)).  
9 Once an initiative’s single subject has been identified, courts must “then determine if  
10 each provision is functionally related and germane to each other and the initiative’s  
11 purpose or subject.” *Helton*, 512 P.3d at 314. Significantly, “even if an initiative  
12 petition proposes more than one change to Nevada law, it may still meet the single-  
13 subject requirement, provided that the proposed changes are functionally related and  
14 germane to each other and a single subject.” *Id.*, 512 P.3d at 312.

15       Historically, the Supreme Court has performed this analysis many times. In  
16 the case of 2013’s Margins Tax Initiative, the Court agreed with the proponents that  
17 the measure’s “primary purpose” was “to fund public education,” and that its  
18 components were related in an overall effort to achieve that purpose, sufficient to  
19 satisfy any single subject concerns. *Educ. Initiative PAC*, 129 Nev. at 51. In 2022,  
20 concerning the Better Voting Nevada Initiative, which “eliminated partisan  
21 primaries **and** established an open top-five primary **and** a rank-choice voting general  
22 election,” the Court again agreed that, even despite two clearly different components,  
23 the initiative’s “single subject is the *framework* by which specified officeholders are  
24 presented to voters and elected.” *Helton*, 512 P.3d at 312 (“Although it proposes two  
25 changes (open primary elections and ranked-choice general elections for specified  
26 officeholders), both changes are functionally related and germane to each other and  
27 the single subject of the framework by which specified officeholders are presented to  
28

1 voters and elected.”) See Description of Effect, Better Voting Nevada Initiative.<sup>3</sup> (This  
2 also puts paid to Nevadans for Financial Choice’s argument that a mere “and” in a  
3 description of effect is somehow indicative of multiple subjects; petitions commonly  
4 have multiple components or aspects, and it is well established that the existence of  
5 multiple provisions does not mean there is a single-subject violation. Nor does the  
6 single-subject analysis depend on a hyper-technical scanning of the description for  
7 conjoining words necessary to accurately describe the initiative.)

8 Here, in the case of these two Petitions, their primary purpose is an overall  
9 program of *consumer debt relief*, and all components of the measures are functionally  
10 related and germane to alleviating the worst effects of our modern culture of  
11 consumer debt, especially the sort of debt that consumers take on due to pressing  
12 immediate needs and which therefore permit lenders to take advantage of Nevada’s  
13 current lack of an interest rate cap. Relatedly, permitting Nevada consumers to  
14 retain and protect more of their assets when debt collection threatens because the  
15 spiral of one’s debt and need has accelerated, will help Nevadans avoid some of the  
16 issues that cause them to enter into debt. Petition #1 achieves this goal by protecting  
17 a larger portion of wages from garnishment, or safeguarding \$5,000 in personal  
18 savings rather than the paltry \$400 excepted currently. The overall program is clear  
19 in its primary purpose and interconnected in its parts: limit consumer interest rates  
20 on loans, as defined, to a still-generous 36%, and protect more assets when creditors  
21 seek collection. In combination, these provisions provide consumers with an improved  
22 framework of protections on both the front and back ends of the debtor experience.

23 The Petitions’ text and description of effect both confirm the Petitions’ primary  
24

25  
26 <sup>3</sup> The Better Voting Nevada Initiative is here attached as **Exhibit A** to this brief.  
27 Its description of effect can be found at the top of pages 6 – 9. The entire petition is  
28 worth referring to by the Court, as the decision in *Helton* stands currently as the best  
and most recent sustained discussion by the Nevada Supreme Court regarding its  
single-subject and description of effect jurisprudence.



1 purpose. As the descriptions of effect explain, the Petitions “addresses high-interest  
2 lending practices by establishing maximum interest rates charged to consumers, and  
3 shields more of people’s savings and earnings from garnishment than under current  
4 law.” See NFFC Amend. Compl., Ex. 1 (Petition #1), at 19; Ex. 2 (Petition #2) at 11.  
5 The description of effect therefore “articulates an overarching purpose” that is neither  
6 undermined nor contradicted by any of the Petition’s other provisions. *Helton*, 512  
7 P.3d at 314. This is a textbook example of the description supporting the primary  
8 purpose of the Petitions generally.

9       According to the Plaintiffs’ various and overheated arguments, a petition to  
10 enshrine the “freedom of expression” would fail the single-subject rule on the ground  
11 that it regulated such unrelated matters as journalism, books, films and movies,  
12 poetry, visual arts, theater, and street-corner protests. The Nevada Supreme Court’s  
13 recent decision in *Helton* demonstrates that the Plaintiffs here are attempting to slice  
14 matters far too thin in demanding that every aspect and subpart of each provision  
15 relate directly to every aspect and subpart of all other provisions. Again, that is not  
16 how direct democracy in Nevada functions. In *Helton*, the initiative’s “single subject”  
17 was “the *framework* by which specified officeholders are presented to voters and  
18 elected.” *Helton*, 512 P.3d at 314. That the provisions were separate (and arguably  
19 independent) was not material to a single-subject analysis because the provisions had  
20 a functional relationship to one another in achieving the purpose of the initiative  
21 generally. Obviously, in *Helton*, each aspect of the new rules governing primary  
22 elections did not relate directly to each aspect of the separate rules governing general  
23 elections; the specific ranked-choice rules that would govern general elections, for  
24 example, bore no direct relationship to the rules governing which party name would  
25 be listed on a primary ballot next to a given candidate. *See id.* at 313. But that was  
26 not how the Court approached the single-subject question, and instead focused on the  
27 overall “policy changes” that the petition would have adopted, not the specific  
28 implementation details, and it assessed whether the two policy changes involved



1 unrelated matters or a single framework. *Id.* at 314–15.

2       Adopting the *Helton* Court’s approach, the case here is easy. It is not pertinent  
3 to complain, as do almost all the Plaintiffs, that there are multiple kinds of  
4 transactions that fall under the Petitions’ 36% interest rate limit; instead, the Court’s  
5 orientation should be focused upon the consumer, from whose perspective a rate  
6 limitation *regardless of which of the types of transactions listed* he or she enters into  
7 with the types of companies represented by the Plaintiff group, the annual interest  
8 rate will not lawfully exceed 36%. Furthermore, from the consumer’s perspective the  
9 expanded protections of their assets against collections is not some remote subject  
10 unconnected to their debt predicament, but rather an important part of the fabric of  
11 their fiscal well-being. It is immaterial whether industry lenders and interest groups  
12 such as Plaintiffs might draw distinctions between an “earned-wage access provider”  
13 and a “payday loan,” or between lending practices and protections for consumers who  
14 are in debt collection. These Petitions have been proposed for the benefit of consumers  
15 themselves, and from that vantage point the functional connections and germaneness  
16 are clear.

17       As for multiple Plaintiffs’ use of the buzzword *logrolling*, the opinion in *Helton*  
18 was clear on that concern as well. The single-subject requirement “prevent[s] the  
19 enactment of unpopular provisions by attaching them to more attractive proposals or  
20 concealing them in lengthy, complex initiatives (*i.e.*, logrolling).” *Helton*, 512 P.3d at  
21 314 (quoting *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176–77).  
22 “Logrolling” does not refer merely to the inclusion of multiple provisions in a single  
23 petition, as Plaintiffs here suggest. Instead, it concerns “the inclusion of *two distinct*  
24 *changes* in a single initiative petition,” which in turn “forces the electorate to choose  
25 between two potentially competing policy goals.” *Helton*, 512 P.3d at 320 (Cadish, J.,  
26 dissenting) (emphasis added); *see also Nevadans for the Prot. of Prop. Rights, Inc. v.*  
27 *Heller*, 122 Nev. at 906 (single-subject requirement “prevent[s] proposals that would  
28 not otherwise become law from being passed solely because they are attached to more

1 popular measures”); *id.* at 922 (Hardesty, J., concurring in part and dissenting in  
2 part) (logrolling “occurs when two or more *completely separate provisions* are  
3 combined in a petition, one or both of which would not obtain enough votes to pass  
4 without the other” (emphasis added)).

5       None of these concerns is present here. Far from manifesting competing policy  
6 goals, each provision of these Petitions furthers the overall program of alleviating the  
7 experience of consumer debt. Nor, for that matter, does the Petition attempt to  
8 surreptitiously enact a controversial proposal by pairing it with more popular  
9 measures. *See Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 922  
10 (Hardesty, J., concurring in part and dissenting in part) (“Generally, to ‘log-roll’ a  
11 provision into enactment, the proponent advances a proposition that the proponent  
12 expects would pass constitutional muster and be easily enacted by the voters, but  
13 then adds to the petition a provision, often ‘hidden’ deep within, that is less popular.”).  
14 The Petition does not “try[] to hide an unrelated and unpopular change within the  
15 initiative petition with the hope that the electorate decides the more popular change  
16 is worth the adoption of the less popular one.” *Helton*, 512 P.3d at 315. It cannot be  
17 persuasively argued that any of the provisions in the Petition overwhelm and  
18 dominate in some manner as to drag hidden, unpopular provisions along with them  
19 to the ballot, and no Plaintiff makes that claim anyway.

20       A few of Plaintiffs’ other specific single-subject concerns merit addressing  
21 directly: Nevadans for Financial Choice, for example, argues that the range of types  
22 of financial transactions indicates the presence of multiple subjects., because “these  
23 distinct financial transactions are not functionally related and germane to each  
24 other...” *See* NFFC Memorandum, at 6. As discussed above, this is an old canard in  
25 ballot measure litigation. Nothing in law or the Nevada Supreme Court’s  
26 jurisprudence requires each provision of an initiative to be functionally related and  
27 germane to *each other*; rather, they need only be functionally related and germane to  
28 the initiative’s overall policy goal. This argument is the equivalent of saying a ballot

1 measure proponent who wanted to cap interest rates would have to run ten or more  
2 separate statutory initiatives, one covering every imaginable kind of transaction; that  
3 interpretation and result is absurd.

4 DailyPay appears to argue that the Petitions violate the single-subject rule  
5 because their terms apply to DailyPay at all. DailyPay Compl., ¶ 63. Putting that  
6 argument in its best light, on behalf of DailyPay, what they are saying is that because  
7 an existing statute, SB 290, exempts a service that DailyPay sells from the definition  
8 of "loan," while the Petitions include that service under the definition of "loan,"  
9 somehow this change in law creates an additional subject under NRS 295.009. But as  
10 discussed above, that is simply an aspect of the policies embodied in the Petitions:  
11 the Legislature defined their transactions one way through a Senate bill, and the  
12 people are free to define them another way through direct legislation. This does not  
13 result in an additional, impermissible *subject* under Nevada law, it is just the reality  
14 of the Petitions' terms.

15 ActiveHours argues that there must be multiple subjects in these Petitions  
16 because their terms would affect multiple chapters of the Nevada Revised Code. This,  
17 too, is an old entry in the greatest hits of ballot measure opponents, and is contrary  
18 to what the courts have held. As long as the primary purpose of a proposed petition  
19 is identifiable, and as long as its components relate functionally to that primary  
20 purpose, it matters not if the measure affects one or a hundred chapters of the NRS.  
21 One would figure that if it was a commonplace that initiative petitions that affected  
22 more than one NRS chapter were invalid on that basis, ActiveHours would be able to  
23 point to a run of cases establishing that in Nevada. This state has an extremely active  
24 ballot measure litigation culture, and a long history of judicial decisions on single  
25 subject complaints stretching back to the enactment of NRS 295.009 in 2005 (and  
26 even earlier, with common-law roots going back to *Stumpf v. Lau*, 108 Nev. 826, 839  
27 P.2d 120 (1992), overruled by *Herbst Gaming, Inc.*, 122 Nev. 877). Yet ActiveHours  
28 cannot point to such a case because that is not a legitimate basis for a finding of

1 multiple subjects; it is not even a factor mentioned by the Nevada Supreme Court in  
2 any of its single-subject analyses. If that Court wants to add that to its list of criteria,  
3 it is free to do so, but no direction to this Court has ever included that factor and no  
4 initiative petition has ever been struck down on that basis, because the test for  
5 determining compliance with the single-subject rule does not credit DailyPay's  
6 approach.

7 For their part, Preferred Capital claims to have located *eleven* separate  
8 subjects in the Petitions. See Pref. Cap. Compl., ¶ 25. Maybe even fifteen, it is not  
9 entirely clear. *Id.*, ¶ 30. While such zeal is admirable, it is not a credible analysis of  
10 these initiative proposals. Preferred Capital seems to be saying it would take fifteen  
11 separate ballot measures to achieve what Proponents seek here, but it appears those  
12 Plaintiffs have mistaken *components* of the Petitions for *subjects* under NRS 295.009.  
13 Even the version of their argument that attempts to differentiate between what they  
14 call the "catch-all" interest rate cap and the "specific" interest rate cap are, in fact,  
15 the same rate cap, under the same terms, applied to the types of transactions the  
16 Petitions target, and evinces no indication of impermissible multiple subjects.

17 In short, the analysis that the Nevada Supreme Court directs this Court to  
18 make—and which it will make itself, in the inevitable appeal—establishes that both  
19 of the Petitions comply with Nevada's single-subject rule for initiative petitions.<sup>4</sup>

20 **D. The Petitions' Descriptions Of Effect Are Wholly Adequate**

21 A description of effect serves a specific and limited purpose: In no more than  
22 200 words, it "facilitates the constitutional right to meaningfully engage in the  
23 initiative process by helping to prevent voter confusion and promote informed  
24 decisions." *Helton*, 512 P.3d at 316 (quoting *Las Vegas Taxpayer Accountability*  
25

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26 <sup>4</sup> Obviously, it is also important for the Court to take notice that there are two  
27 separate petitions at issue in this litigation. While both Petitions comply with the  
28 single-subject rule, any distinction between them would need to parse specifically the  
arguments of Plaintiffs as to why either of them individually is non-compliant.



1 *Comm.*, 125 Nev. at 177). Here, the Petitions' descriptions do exactly that and  
2 therefore satisfy the requirements of NRS 295.009(1)(b).

3 An initiative's description of effect "must be straightforward, succinct, and  
4 nonargumentative, and it must not be deceptive or misleading." *Educ. Initiative PAC*  
5 *v. Comm. to Protect Nev. Jobs*, 129 Nev. at 41 (internal quotation marks and citation  
6 omitted). The purpose of the description of effect of an initiative is to inform  
7 signatories to the initiative petition about the petition's subject; it does not serve as  
8 the full, detailed explanation, including arguments for and against, that voters  
9 receive prior to a general election. *Helton*, 512 P.3d at 317-18. Because the  
10 description of effect of an initiative petition is limited to only 200 words, it cannot  
11 constitutionally be required to delineate every effect that an initiative will have; to  
12 conclude otherwise could obstruct, rather than facilitate, the people's right to the  
13 initiative process. *Id.* Courts, of course, also "must make every effort to sustain and  
14 preserve the people's constitutional right to amend their constitution through the  
15 initiative process," which is "one of the basic powers enumerated in this state's  
16 constitution," a charge that applies equally to the people's powers to propose statutory  
17 initiatives *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 912  
18 (quoting *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 734,  
19 100 P.3d 179, 195 (2004) (per curiam)).

20 The Nevada Supreme Court has extensively analyzed the legislative history  
21 and intended purpose of the description requirement under NRS 295.009(1)(b) and  
22 concluded that an "adequate" description makes a "legitimate effort to summarize  
23 what [the proponent] believes to be the Initiative's main components," noting that  
24 requiring petitions to describe "every detail or effect that an initiative may have . . .  
25 would significantly hinder the people's power to legislate by initiative and effectively  
26 bar all but the simplest of ballot measures." *Educ. Initiative PAC*, 129 Nev. at 42-50;  
27 *see also id.* at 43.

28 Most ballot initiatives will have a number of different effects if enacted, many



1 of which are hypothetical in nature,” and the Supreme Court has “previously rejected  
2 the notion that a description of effect must explain ‘hypothetical’ effects.” *Educ.*  
3 *Initiative PAC*, 129 Nev. at 47 (quoting *Herbst Gaming, Inc.*, 122 Nev. at 889). This  
4 is because,

5 [w]ith so few words in which to explain the effect of an initiative  
6 petition, a challenger will always be able to find some ramification of  
7 or provision in an initiative petition that the challenger feels is not  
8 adequately( addressed in the description of effect . . . . [T]he  
9 sufficiency of a description of effect depends not on whether someone  
else could have written it better but instead on whether, as written,  
it is “a straightforward, succinct, and nonargumentative summary of  
what the initiative is designed to achieve and how it intends to reach  
those goals.

10 *Helton*, 512 P.3d at 317–18 (footnote omitted) (quoting *Educ. Initiative PAC*, 129 Nev.  
11 at 37); see also *Herbst Gaming, Inc.*, 122 Nev. at 889 (“A ballot measure’s summary  
12 and title need not be the best possible statement of a proposed measure’s intent or  
13 address every aspect of a proposal.”).

14 Here, the descriptions easily clear the legal bar. Their language is  
15 straightforward, they are succinct, they are under 200 words, and there is no basis  
16 for a finding of any argumentative language. Each description (and they are identical  
17 except for the portions that reflect the substantive text of the respective measures,  
18 meaning Petition #1’s description discusses the expanded asset protection  
19 component, while Petition #2’s omits that portion) proceeds, succinctly and with  
20 admirable forthrightness, through (1) a general statement of the measure’s purpose;  
21 (2) a neutral and accurate statement of current law regarding interest rate  
22 limitations; (3) a description of the transactions to which the proposed cap would  
23 apply; (4) a statement of enforcement aspects of the proposal; and, in Petition #1 only,  
24 a short description of the expanded asset protections against seizure for debts.

25 The test for sufficiency of a description of effect is not whether Plaintiffs are  
26 satisfied, but rather have Proponents made good-faith efforts to describe the  
27 measures proposed in ways that adequately inform the electorate in a brief space.  
28 Keep in mind, as well, that signature collectors are required to carry the entire

1 Petition with them, so that signatories may read them in full at any time, and that  
2 the circulators sign an affidavit under penalty of perjury attesting to those facts. See  
3 NFFC Amend. Compl., Ex. 1 (Petition #1), at 24; Ex. 2 (Petition #2) at 16.  
4 Furthermore, not only is the full text of both Petitions available on the website of the  
5 Nevada Secretary of State, at <https://www.nvsos.gov/sos/elections/2024-petitions>, but  
6 all Plaintiffs retain the freedom of speech and expression to mount whatever  
7 opposition they have to these measures at the top of their lungs, over the airwaves,  
8 and in any other medium available. The descriptions of effect appended to every  
9 signature page of the Petitions, however, is real estate controlled by the Proponents,  
10 and as long as they have not abused their prerogative—and here, they have not—  
11 Plaintiffs' arguments amount to mere obstruction of Proponents' fundamental right.

12 In fact, the chorus of complaints by these Plaintiffs ends up proving the  
13 sufficiency of the Petitions' descriptions. Four voices, each of them demanding that  
14 their circumstances or their specifically-preferred issues be highlighted in the  
15 description, together demonstrating the impossibility of satisfying them all in 200  
16 words. Their description-by-committee would end up informing potential signatories  
17 and the electorate of very little, or overloading the description with unnecessary  
18 material because one or other Plaintiff feels the effect *on their business only* is worthy  
19 of inclusion. Simply put, they can flag all these individual issues themselves for  
20 voters, at the appropriate time during the campaign. But this Court should consider  
21 the descriptions of effect from the perspective of the voter: what would he or she want  
22 to know about the terms of these Petitions in a 200-word statement? Is it some  
23 confusing discursion on existing law, or rather that interest rates on amounts  
24 financed will be capped at 36%? Is it more necessary to place a definition of "person"  
25 or "consumer" in the description of effect, as DailyPay insists should have been done,  
26 or rather, to alert Nevadans that if the initiative passes more of their assets will be  
27 safe from garnishment and collection? See DailyPay Compl., ¶ 73.

28 Nevada case law is clear: "[I]t is inappropriate to parse the meanings of the

1 words and phrases used in a description of effect as closely as we would statutory  
2 text.” *Educ. Initiative PAC*, 129 Nev. at 48. Instead, courts “must determine whether  
3 the description provides an expansive view of the initiative, rather than undertaking  
4 a hyper-technical examination of whether the description covers each and every  
5 aspect of the initiative” by examining “the meaning and purpose of each word and  
6 phrase contained in the description.” *Id.* at 49. It is exceedingly easy for

7 any opponent of a ballot initiative [to] identify some perceived effect  
8 of an initiative that is not explained by the description of effect,  
9 challenge the initiative in district court, and block the people’s right  
to the initiative process. *Statutes enacted to facilitate the initiative  
process cannot be interpreted so strictly as to halt the process.*

10 *Educ. Initiative PAC*, 129 Nev. at 47 (emphasis added). Instead, what Nevada law  
11 requires is a description that provides a “straightforward, succinct, and  
12 nonargumentative summary of what the initiative is designed to achieve and how it  
13 intends to reach those goals.” *Helton*, 512 P.3d at 316. Nothing more is required, and  
14 the Petitions’ descriptions of effect readily comply here.

15 The collection of arguments mounted by these Plaintiffs as to why the  
16 descriptions are invalid read, essentially, as a laundry list of how their preferred  
17 language or issue is not included. These arguments are made less compelling by  
18 reasons of space and the need to prioritize, but also tend to cancel one another out.  
19 Talk about earned wage access, says one; no, we must have more on litigation  
20 funding, says another. But a few of the claims do deserve specific attention, as they  
21 did in the single-subject section.

22 Preferred Capital complains that the heading of the initiative petition, entitled  
23 “Initiative Petition – Statewide Statutory Measure,” “fails to provide voters with any  
24 idea regarding the subject matter or potential effect of the Petition. Pref. Cap.  
25 Compl., ¶ 42. But this title is a convention, the same one used on every statutory  
26 initiative, constitutional initiative, and referendum in Nevada for decades. See  
27 “Historical Information,” <https://www.nvsos.gov/sos/elections/initiatives-referenda>,  
28 for examples of each filed measure going back to at least 2006. It is not intended, nor

1 is it required, to inform anyone of anything other than what it is, a statewide  
2 statutory initiative petition. Neither is the header part of the 200-word description of  
3 effect.

4 Preferred Capital goes on to argue that where the descriptions state “most  
5 consumer loans have no interest rate cap,” this is somehow misleading. But this is  
6 objectively and obviously true in Nevada, and no one plausibly can say otherwise. The  
7 description does not say, as Preferred Capital infers, that most consumer loans are  
8 wholly unregulated. Pref. Cap. Compl., ¶ 44. That most consumer loans have no  
9 interest rate cap may be an uncomfortable truth for some of these Plaintiffs, but it is  
10 not in any respect a falsehood. This Plaintiff goes on to argue that the descriptions do  
11 not explain that the terms of the Petitions “will likely require lenders to modify other  
12 terms of their transactions or require lenders to cease providing certain products to  
13 consumers.” *Id.* But this would be both hypothetical and argumentative, and as  
14 already noted the Nevada Supreme Court has “previously rejected the notion that a  
15 description of effect must explain ‘hypothetical’ effects.” *Educ. Initiative PAC*, 129  
16 Nev. at 47. Plaintiffs are perfectly free to describe what they believe will be the  
17 impacts of these Petitions upon their business models in their oppositions to their  
18 enactment; they are not free to demand Proponents perform that political function  
19 for them, where the current descriptions are accurate and provided in good faith.

20 Both ActiveHours and DailyPay argue some version of the line that the  
21 descriptions are “deceptive and misleading in that [they] conspicuously omit any  
22 reference to SB 290 or Earned Wage Access services...” DailyPay Compl. ¶ 70. But  
23 again, any opponent of a filed ballot measure petition could argue that *their* specific  
24 concerns should be addressed in the descriptions. Pretty soon, however, 200 words  
25 have been consumed solely by every Plaintiffs’ personal agendas, regarding a  
26 legislative act meant to regulate generally; this is not the function of a description of  
27 effect. Let us be entirely frank: the descriptions of effect do not exist to convey what  
28 DailyPay fears may happen to their business model; it exists to inform the electorate



1 that the Petitions will cap annual interest rates on the most common financial  
2 transactions at 36% and will protect more of their assets should they face collection  
3 proceedings. It is the actual effect on consumers' lives, not the hypothetical effects on  
4 ActiveHours, that the descriptions are required to address.

5 Nevadans for Financial Choice raise two arguments that sound meaningful  
6 until you scratch them the slightest bit. First, they claim Proponents ought to be  
7 made to describe that "a whole host of [protected asset] exemptions that currently  
8 exist under NRS 21.105 ... are deleted" by the Petitions. NFFC Memorandum, at 8.  
9 It may be that this Plaintiff is unclear how asset-protection exemptions work under  
10 law, but in fact Petition #1 just increases existing protections, makes clear that  
11 independent contractors' earnings are also protected, and indexes those protections  
12 to inflation. The new protections multiply and subsume the former, smaller ones, they  
13 do not *remove* protections. In other words, for example, if existing wage or bank  
14 account protections are quadrupled or quintupled, and are also made self-executing  
15 rather than having to be applied for and itemized as they are currently, consumer  
16 protections have massively increased. In that context, demanding that the "deletion"  
17 of current provisions reflecting the paltry current protections be described is really a  
18 demand to confuse rather than inform the electorate.

19 Similarly, Nevadans for Financial Choice argues that Proponents should  
20 "identify how the Initiative would constitute an election out of the federal "Depository  
21 Institution' Deregulation and Monetary Control Act of 1980" ("DIDMCA)" *Id.* But  
22 the Petition's description actually does do this. The entire portions of the descriptions  
23 regarding how they "prohibit evading the interest rate cap" is devoted to this  
24 specifically, and includes reference to the Petitions' enforcement mechanisms.<sup>5</sup>  
25

26 <sup>5</sup> Beginning in the 1990s, certain unscrupulous lenders started to partner with  
27 state-chartered banks, in a practice known as "rent-a-bank," to evade interest rate  
28 caps by routing loans through banks chartered out of state that can "export" the  
interest rate of their home state to borrowers in other states. Section 14 of the



1 In general, Plaintiffs nibble at the portions of the description they would have  
2 tailored for themselves, or which would include confusing and potentially misleading  
3 text. The test, as this Court knows, is not whether Plaintiffs would write the  
4 descriptions differently—any 100 people would produce 100 different descriptions,  
5 obviously—but rather have the Proponents of these Petitions misled, or deceived, or  
6 failed to describe the essence of the policy proposal and its major effects, within the  
7 constraints of a 200-word space. It cannot fairly be said that they have done any of  
8 those things here, and the descriptions should be found valid by the Court.

9 **E. Unfunded Mandate**

10 Article 19, Section 6 of the Nevada Constitution, an initiative is prohibited if  
11 it “makes an appropriation or otherwise requires the expenditure of money” without  
12 providing for raising the necessary revenue. Nev. Const. art. 19, § 6. “Stated  
13 differently, an initiative makes an appropriation or expenditure when it leaves  
14 budgeting officials no discretion in appropriating or expending the money mandated  
15 by the initiative—the budgeting official must approve the appropriation or  
16 expenditure, regardless of any other financial considerations.” *Herbst Gaming, Inc.*,  
17 122 Nev. at 890; *see also Educ. Freedom PAC v. Reid*, 512 P.3d at 303. The policy  
18 behind this requirement is to “prevent[] the electorate from creating the deficit that  
19  
20

21 \_\_\_\_\_  
22 Petitions ensures that these lenders will not be able to use rent-a-bank schemes to  
23 evade the proposed rate cap by opting Nevada out of the federal statute, the  
24 Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA),  
25 that allows out-of-state banks to “export” their interest rate to Nevada consumers.  
26 Similarly, Section 11 of the Petitions also combats rent-a-bank by making any lender  
27 whose business model is routing loans through an out-of-state bank subject to the  
28 initiative’s rate cap. Both provisions are closely tied to the purposes of the rate cap  
itself because they ensure that it cannot be evaded. *See* <https://oag.ca.gov/news/press-releases/attorney-general-bonta-predatory-lending-and-illegal-rent-bank-schemes-have-no> (last accessed Feb. 24, 2024), for a statement by the Office of the California Attorney General regarding DIDMCA and the proliferation of rent-a-bank schemes to evade state regulation.

1 would result if government officials were forced to set aside or pay money without  
2 generating the funds to do so." *Herbst Gaming, Inc.*, 122 Nev. at 891.

3 Here, the Petitions "leave the mechanics of [their] enforcement with  
4 government officials," which means the Petitions need not include a revenue-raiser.  
5 *Herbst Gaming, Inc.*, 122 Nev. at 891. The Petitions do not require specific  
6 enforcement procedures, which is key to whether they are required to identify a  
7 revenue source. In *Herbst*, which concerned a statewide indoor smoking ban, the  
8 Court recognized that a petition that "merely expands the statutorily delineated  
9 areas within which one may be subject to criminal and civil penalties for smoking"  
10 did not contain an unfunded mandate because it did not "compel an increase or  
11 reallocation of police officers to enforce its provisions." *Id.*, 122 Nev. at 891. Such is  
12 the case here. It makes no sense to conclude that hypothetical enforcement and  
13 regulation associated with violation of the provisions of these Petitions expenditures  
14 would increase expenditures.

15 The unfunded mandate argument is only pursued by DailyPay. It has a heavy  
16 burden to establish that the measure[s] are invalid for causing an expenditure or an  
17 appropriation, and DailyPay does nothing to achieve that. It merely argues that the  
18 petition would increase regulation (it actually argues it would increase exposure to  
19 increased regulation and enforcement for DailyPay itself, not for the general public)  
20 and would cause some imprecise and vaguely-identified increase in expenditures, but  
21 never explains that concept. The issue that SB 290 carried fiscal costs due to  
22 application and licensure costs when it was enacted in 2023[?] is irrelevant; neither  
23 of the Petitions here have any provisions affecting the licensure of DailyPay or their  
24 colleagues.

25 DailyPay's argument is essentially the classic criminal-law red herring: any  
26 new criminal law necessarily will increase police activity, which presumably would  
27 cost more money. But police, like financial regulators, will be on the job anyway,  
28 enforcing the law as it is written. No new agencies or taskforces are created by the

1 Petitions, and they can be fully implemented without the need for any appropriated  
2 funding—a conclusion amply supported by the record, which contains no evidence to  
3 the contrary.

4 Compare this with the situation in *Helton*, in which the initiative proposed to  
5 alter completely the election procedures throughout the state of Nevada, requiring  
6 new ballot systems, new tabulation machines, and programs, which one could  
7 surmise would cost the State serious money. But the Nevada Supreme Court found  
8 that plaintiff there failed to establish that proposed ballot initiative, which sought to  
9 amend the Nevada Constitution to implement open primary elections and ranked-  
10 choice general elections for specified officeholders, would require an appropriation or  
11 the expenditure of money” and that while plaintiff “offered some references to the  
12 expected costs to implement similar changes in other places, he did not provide any  
13 evidence regarding the expected costs to make the proposed changes to the Nevada  
14 election system.” *Helton*, 512 P.3d at 318. DailyPay’s unfunded mandate argument  
15 does not persuade.

16 **F. The Full-Text Requirement**

17 Under Article 19, Section 3 of the Nevada Constitution, Petitioners must  
18 “include the full text of the measure proposed” with their petition. Nev. Const. art.  
19 19, § 3. DailyPay and Nevadans for Financial Choice make “full-text” arguments  
20 against both Petitions, claiming without authority that some other text than the text  
21 that Proponents are proposing should be included in them.

22 DailyPay, for its part, argues that the entirety of SB 290 must be appended to  
23 these Petitions, because otherwise “a potential signer has no meaningful way of  
24 knowing the context of the proposed Act’s reference to SB 290...” DailyPay  
25 Compl.¶ 83. Nevadans for Financial Choice claims that the Petitions actually have to  
26 include the text of every other Nevada statute with which their provisions may  
27 interact or conflict. But these are absurd readings of Article 19, Section 3’s  
28 requirements, and would make initiative petitions ridiculously long, unnecessarily

1 complex, and incredibly burdensome to propose. Any opponent could claim that the  
2 provisions of a petition interact with some statute, and demand it be included in the  
3 petition packet. In the case of DailyPay, it is not even mere statutes that they demand  
4 be included, because SB 290 appears to have enacted 30 new statutes. Preferred  
5 Capital could demand that all of NRS Chapter 604C be included. Every financial  
6 interest in the state could claim the same.

7 Here, the Petitions contain every provision that is proposed to be circulated for  
8 signatures and considered by the electorate.

9 This would be a novel and extremely dangerous ground upon which to  
10 invalidate a proposed initiative measure, and one for which there is *absolutely* no case  
11 authority in this state. In fact, the only mention of the “full-text” requirement in any  
12 Nevada Supreme Court case came in the unpublished case of *Coalition for Nevada’s*  
13 *Future v. RIP Com. Tax, Inc.*, 132 Nev. 956 (2016) (unpublished disposition), in dicta,  
14 when it noted that “the Nevada Constitution requires no particular form for a  
15 referendum petition, except that it include the full text of the proposed measure, as  
16 this petition does.” *Id.* By “*this* petition,” the Court in *Coalition for Nevada’s Future*  
17 was referring to a referendum petition that included only 73 of the referred bill’s 114  
18 sections, so by the Supreme Court’s own lights so far Plaintiffs’ interpretation is an  
19 unlikely one. In fact, no filed ballot measure petition in Nevada history has been held  
20 to such an implausible standard. Most recently, 2022’s Better Voting Nevada  
21 Initiative, at issue in *Helton*, would cause the immediate repeal of dozens of election  
22 laws; its petition text included none of them, and its description mentioned none,  
23 either.

24 If the Nevada Supreme Court wishes to interpret Article 19, Section 3 in the  
25 cumbersome atextual fashion urged by DailyPay and Nevadans for Financial Choice,  
26 it certainly may say so. This Court, however, should not be entertaining a break with  
27 historical jurisprudence that would strike down a lawfully-proposed initiative  
28 petition. Both these Petitions contain their “full text,” within the meaning of the

1 Nevada Constitution, already, and Plaintiffs' versions would place an obstacle in the  
2 path of the exercise of Proponents' constitutional rights to popularly propose  
3 legislation that is not warranted by any case or interpretation heretofore produced.

4 **G. Initiative Versus Referendum**

5 DailyPay further argues that these two Petitions are not really initiatives at  
6 all, but rather are referenda of SB 290. This really does not make much sense. As an  
7 initial matter, initiative proponents—like plaintiffs in any civil suit—are masters of  
8 their petitions. In other words, as far as the law is concerned, if there is any question  
9 regarding the character of the Petitions, they are exactly what Proponents say they  
10 are: statutory initiatives. Thankfully, the controversy is fabricated; there is no  
11 legitimate question about the Petitions' character, because they establish new  
12 statutory chapters and amend others, which are legislative acts only statutory  
13 initiatives can achieve in Nevada. "*Initiative* is that power reserved to the people to  
14 propose new laws and *referendum* gives them the power to veto those laws passed by  
15 their representatives ..." *Forman v. Eagle Thrifty Drugs & Markets, Inc.*, 89 Nev. 533,  
16 537, 516 P.2d 1234, 1236 (1973), overruled on other grounds by *Garvin v. Ninth Jud.*  
17 *Dist. Ct. ex rel. Cnty. of Douglas*, 118 Nev. 749, 59 P.3d 1180 (2002).

18 These Petitions do not change a single word of SB 290, but instead deal with  
19 issues upon which that bill is silent: interest rate caps for financing consumer  
20 transactions. There is no authority for construing an initiative as a referendum just  
21 because it may have some impact on existing statutes; most new laws do have some  
22 such impact.

23 ///

24 ///

25 ///

26 ///

27 ///

28



1 **V. CONCLUSION**

2 Based upon the foregoing, Proponents ask this Court to reject the various  
3 challenges to the Petitions' legal sufficiency, and to award no relief to Plaintiffs in  
4 this action.

5 **AFFIRMATION**

6 The undersigned hereby affirm that the foregoing document does not contain  
7 the social security number of any person.

8  
9 DATED this 28th day of February, 2024.

10 **BRAVO SCHRAGER LLP**

11  
12 By: 

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of February, 2024, I served the foregoing  
3 **DEFENDANTS KATE FELDMAN'S AND STOP PREDATORY**  
4 **LENDING NV'S OMNIBUS RESPONSE** via electronic mail, per the February 22,  
5 2024, Stipulation and Scheduling Order of the Court, as follows:

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EXHIBIT A

EXHIBIT A

NOTICE OF INTENT TO CIRCULATE  
STATEWIDE INITIATIVE OR  
REFERENDUM PETITION

received  
11-12-2021

State of Nevada



Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Todd L. Bice

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

- 1. Todd L. Bice
- 2.
- 3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Nevada Voters First

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Signature of Petition Filer

11-12-21

Date



**BETTER VOTING NEVADA INITIATIVE**

EXPLANATION: Matter in bolded italics is new; matter between brackets [omitted material] is material to be omitted.

**The People of the State of Nevada do enact as follows:**

**Section 1.** Article 5, Section 4 of the Nevada Constitution is hereby amended to read as follows:

Section 4. Returns of general election transmitted to secretary of state; canvass by supreme court; declaration of election. The returns of every election for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the secretary of state, and the chief justice of the supreme court, and the associate justices, or a majority thereof, shall meet at the office of the secretary of state, on a day to be fixed by law, and open and canvass the election returns for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, and forthwith declare the result and publish the names of the persons elected and the results of the vote cast upon any question submitted to the electors of the State of Nevada. The persons having the highest number of votes for the respective offices *as provided for and governed by Nevada law and/or Section 18 of Article 15 of this Constitution* shall be declared elected. [~~but in case any two or more have an equal and the highest number of votes for the same office, the legislature shall, by joint vote of both houses, elect one of said persons to fill said office.~~]

**Section 2.** Article 15, Section 14 of the Nevada Constitution is hereby amended to read as follows:

Sec: 14. Election by plurality. A plurality of votes given at an election by the people, shall constitute a choice, *except as provided in Section 18 of Article 15 or* where not otherwise provided by this Constitution.

**Section 3.** Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 17, to read as follows:

**Section 17. Top-five primary elections for partisan office.**

**1. Primary elections for partisan office shall be conducted as follows:**

- a. The primary election for partisan offices must be held on the date and time as provided by Nevada law.**
- b. A person may become a candidate at the primary election for partisan office regardless of the person's affiliation with a political party, or lack thereof.**



- c. Any registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter or any political party preference indicated by the candidate. The primary election for partisan office does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election for partisan office.*
- 2. At a primary election for partisan office, only the names of the five candidates receiving the greatest number of votes at the primary election shall advance to the general election for partisan office. If, however, there are five or fewer candidates for a specific partisan office, the primary election for partisan office will still be held and the results made public, and all must be declared the candidates for the general election.*
- 3. In the event of a tie for fifth place, the candidate who proceeds to the general election for partisan office will be decided by lot.*
- 4. The ballot for the primary election must clearly delineate the partisan offices to which the top-five process provided by this section applies.*
- 5. Immediately following the name of each candidate for a partisan office must appear the name or abbreviation of the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.*
- 6. The ballots for the primary elections for partisan office must include a conspicuously placed statement: "A candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."*
- 7. In the event that one of the five candidates who received the greatest number of votes at the primary election withdraws, is disqualified, dies, or is otherwise deemed ineligible to be elected after the primary election for partisan office but before the 5 p.m. on the fourth Friday in July, the candidate receiving the next greatest number of votes at the primary election for partisan office shall be declared a nominee, and his or her name shall be placed on the ballot at the general election for partisan office.*
- 8. As used in this section:*  
*"Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.*

**9. Implementation**

- a. *Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to require top-five primary elections for partisan office.*
- b. *Upon enactment of any law by the Legislature pursuant to Section 17 of Article 15 of this Constitution before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with Section 17 of Article 15 of this Constitution will be void. However, the Legislature may enact legislation, in whole or in part, consistent with Section 17 of Article 15 of this Constitution that to provide top-five primary elections for partisan office before July 1, 2025.*

**Section 4.** Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 18, to read as follows:

**Section 18. *Ranked-choice voting for general elections for partisan office.***

1. *All general elections for partisan office shall be conducted by ranked-choice voting.*
2. *The general election ballots for partisan office shall be designed so that the candidates are selected by ranked-choice voting.*
3. *The general election ballots for partisan office shall be designed so that the voter is directed to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.*
4. *Immediately following the name of each candidate for a partisan office must appear the name or abbreviation the political party with which the candidate is registered, the words “no political party” or the abbreviation “NPP,” as the case may be.*
5. *The ballots for the general elections for partisan office must include a conspicuously placed statement that: “Each candidate for partisan office may state a political party that he or she prefers. A candidate’s preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.”*
6. *When counting ballots in a general election for partisan office, the Registrar, County Clerk, or chief election official (as applicable) in each County shall initially tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate is elected and the tabulation is complete. If no candidate is highest-ranked on a majority of the active ballots, tabulation proceeds in sequential rounds as outlined in Section 7.*
7. *Tabulation proceeds in sequential rounds as follows:*
  - a. *If two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (b) of this subsection.*

- b. *The candidate with the fewest votes is eliminated, votes cast for the eliminated candidate shall cease counting for the eliminated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (8)(b) and (8)(c) of this section, and a new round begins under (7)(a) of this subsection.*
8. *When counting general election ballots for partisan office,*
    - a. *A voter may choose to rank just one candidate for partisan office, and that vote will be tabulated.*
    - b. *A ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate.*
    - c. *If a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot for that race.*
    - d. *Any votes for "None of These Candidates" shall be tabulated, recorded, and made public, but not be counted for the purpose of electing or ranking any candidates for partisan office.*
    - e. *In the event of a tie between the final two continuing candidates, the winner shall be decided in a manner as provided by statute.*
    - f. *In the event of a tie between two candidates with the fewest votes, the candidate eliminated shall be decided by lot.*
    - g. *An inactive ballot may not be counted for any candidate in that particular race.*
  9. *As used in this section:*
    - a. *"Continuing candidate" means a candidate who has not been eliminated.*
    - b. *"Inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.*
    - c. *"Overvote" means an instance where a voter has assigned the same ranking to more than one candidate.*
    - d. *"Ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on.*
    - e. *"Round" means an instance of the sequence of voting tabulation in a general election for partisan office.*
    - f. *"Skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.*
    - g. *"Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.*

10. ***Completion of ballot count; certificate.***
  - a. ***The certification of results shall be conducted as provided by Nevada law.***
11. ***Implementation***
  - a. ***Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with this constitutional amendment, including providing for disclosure as to the full ranking of each candidate.***
  - b. ***Upon enactment of any law by the Legislature pursuant to this constitutional amendment before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this constitutional amendment will be void. However, the Legislature may enact legislation, in whole or in part, consistent with this constitutional amendment before July 1, 2025.***

**Section 5. Severability.** If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

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**DESCRIPTION OF EFFECT**

If enacted, this initiative changes Articles 5 and 15 of Nevada's Constitution for Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller and State Legislator elections, eliminating partisan primaries and establishing an open top-five primary election and a rank-choice voting general election.

For these offices, all candidates and voters participate in a single primary election regardless of party affiliation or non-affiliation. The top five finishers advance to the general election, and the general election winner is determined by rank-choice voting:

- General election voters rank the candidates in order of preference from first to last, if they wish to rank more than their first preference.
- As traditionally, a candidate receiving first-choice votes of more than 50% wins.
- If no candidate is the first choice of more than 50%, the candidate with the fewest votes is eliminated. And each voter who had ranked the now-eliminated candidate as their first choice, has their single vote transferred to their next highest choice candidate.
- This tabulation process repeats until the one candidate with more than 50% support is determined as the winner.

The Legislature must adopt implementing legislation by July 1, 2025.

County of \_\_\_\_\_  
Petition District: \_\_\_\_\_

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**THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:**

**AFFIDAVIT OF CIRCULATOR  
(TO BE SIGNED BY CIRCULATOR)**

STATE OF NEVADA    )  
                                  )  
County of \_\_\_\_\_)

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say:  
(1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is \_\_\_\_\_; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public or person authorized to administer oath

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Attorneys for Plaintiffs Activehours, Inc.  
and Stacy Press

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE,  
a Nevada Political Action Committee, and  
CHRISTINA BAUER, an individual,

Case No. 24 OC 00018 1B

Dept. No. II

Plaintiffs,

vs.

*Consolidated with*

KATE FELDMAN, an individual, STOP  
PREDATORY LENDING NV, a Nevada  
Nonprofit Corp., and FRANCISCO V.  
AGUILAR, in his official capacity as  
Nevada Secretary of State,

**Case No. 24 OC 00021 1B**

**Dept. No. II**

**Case No. 24 OC 00023 1B**

**Dept. No. I**

Defendants.

**Case No. 24 OC 00029 1B**

**Dept. No. I**

DAILYPAY, INC., a Delaware Corporation,

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official  
capacity as NEVADA SECRETARY OF  
STATE,

Defendant,

and

STOP PREDATORY LENDING NV, a  
Nevada Nonprofit Corp., and KATE  
FELDMAN, an individual,

Intervenor-Defendants.



1 PREFERRED CAPITAL FUNDING  
2 NEVADA, LLC, a Nevada limited liability  
3 company, and ALLIANCE FOR  
4 RESPONSIBLE CONSUMER LEGAL  
5 FUNDING, an Illinois nonprofit corporation,

6 Plaintiffs,

7 vs.

8 FRANCISCO V. AGUILAR, in his official  
9 capacity as NEVADA SECRETARY OF  
10 STATE, and KATE FELDMAN, an  
11 individual,

12 Defendants,

13 And

14 STOP PREDATORY LENDING NV, a  
15 Nevada Nonprofit Corp.,

16 Intervenor-Defendant.

17 ACTIVEHOURS, INC., a Delaware  
18 corporation; STACY PRESS, an individual,

19 Plaintiffs,

20 vs.

21 KATE FELDMAN, an individual, STOP  
22 PREDATORY LENDING NV, a Nevada  
23 Nonprofit Corp., and FRANCISCO V.  
24 AGUILAR, in his official capacity as  
Nevada Secretary of State,

Defendants.

**ACTIVEHOURS, INC.'S AND STACY PRESS'S REPLY IN SUPPORT OF THEIR  
BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF CHALLENGING INITIATIVE PETITION S-03-2024**

Plaintiffs Activehours, Inc., and Stacy Press (collectively referred to as  
"Activehours"), file this Reply in response to Defendants/Intervenors Kate Feldman's and Stop  
Predatory Lending NV's Omnibus Response ("Omnibus Response") and in support of their Brief  
in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-  
03-2024.

1 **I. INTRODUCTION**

2 While the initiative power is an important one, proponents of an initiative must  
3 abide by the statutory requirements placed upon the initiative process. Those requirements,  
4 including the single subject rule and providing a description of effect that is not misleading, help  
5 to ensure the integrity of the initiative process. Here, proposed Initiative Petition S-03-2024 (the  
6 (the “Initiative”) is deficient because it violates the single subject rule and offers a misleading  
7 description of effect.

8 Through its text and description of effect, the Initiative’s overall purpose proclaims  
9 to be “combatting predatory payday lending” and “addressing high-interest lending practices.”  
10 However, after Plaintiffs asserted the Initiative violated the single subject rule through those stated  
11 purposes, Petitioners/Defendants now argue their purpose is something else entirely. In order to  
12 ensure each and every disparate part of the Initiative fits within one overarching goal, Petitioners  
13 part ways with the text of the Initiative itself and claim the purpose of *consumer debt relief*. Of  
14 course, any stated purpose, if broad enough, can encompass an array of topics, no matter how  
15 unrelated they may be. But Petitioners cannot escape the single subject rule simply by self-  
16 declaring a purpose so general and broad that virtually any aspect of life could fall within its  
17 purview. Therefore, their attempt to force the numerous subjects they address in their Initiative  
18 into one broad purpose is insufficient to meet NRS 295.009’s single subject rule. The purpose of  
19 that rule—standard across more than a dozen states in the United States—is to promote clarity,  
20 avoid deception and confusion, and avoid perverse results.

21 Similarly, because the Initiative deals with more than a single subject, its  
22 description of effect is misleading as it fails to fully inform voters of the effects and consequences  
23 of the Initiative. The description of effect tells voters the Initiative will impact and regulate “high-  
24 interest lending practices.” However, the Initiative seeks to regulate activities (subjects) that are

1 neither high-interest loans, nor services that are loans as a matter of law. As a result, a voter's  
2 ability to make an informed decision on whether to support the Initiative will be compromised,  
3 thereby rendering the description of effect inadequate.

## 4 II. ARGUMENT

### 5 A. While the Court May Not Entertain Federal or State Constitutional 6 Challenges to the Initiative at this Time, It Can Nevertheless Review the 7 Substance of the Initiative Itself.

8 Petitioners take Nevada case law out of context when urging the Court to refrain  
9 from looking too closely at the substance of their proposed Initiative. See Omnibus Response at  
10 6:14–7:19 (“[N]o Nevada court may inquire into the substance of an initiative at this juncture in  
11 any event.”). In *Herbst Gaming, Inc. v. Heller*, the case Petitioners rely upon for this notion, the  
12 Nevada Supreme Court ruled that pre-election challenges to the *substantive validity* of an initiative  
13 are off limits. 122 Nev. 877, 886, 141 P.3d 1224, 1230 (2006) (citing *Garvin v. Ninth Judicial*  
14 *Dist. Court ex rel. Cnty. of Douglas*, 118 Nev. 749, 766, 59 P.3d 1180, 1191 (2002)). In other  
15 words, the Court cannot consider whether, if enacted, the Initiative would violate substantive  
16 federal or state constitutional provisions. *Id.* at 892, 141 P.3d at 1234 (refusing to consider  
17 arguments “based on the alleged unconstitutionality of the measure, if it were passed.”) These  
18 types of challenges are similar to challenges based on a question of ripeness—they require  
19 hypothesizing on possible future harm. *Id.* at 887–88, 141 P.3d at 1230–31 (citing *In re T.R.*, 119  
20 Nev. 646, 651, 80 P.3d 1276, 1279–80 (2003)). Under this progeny of case law, what the Court  
21 cannot do is apply hypothetical facts to a proposed initiative to entertain a substantive federal or  
22 state constitutional challenge. *Id.* at 883–93, 141 P.3d at 1228–34.

23 Restricting the Court from reviewing the substance of an initiative to evaluate it for  
24 possible constitutional violations is not the same as restricting the Court from reviewing the  
substance of an Initiative for *any* purpose. Rather, the Court must, for example, review the

1 substance of the Initiative in order to determine the Initiative's purpose and whether it violates  
2 NRS 295.009's single-subject mandate. *See Las Vegas Taxpayer Accountability Comm. v. City*  
3 *Council of City of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009) (Reviewing the full  
4 text of an initiative in order to discern the initiative's purpose.) Indeed, precluding the Court from  
5 substantive review to determine whether an initiative violated the single subject rule, would  
6 effectively preclude judicial determination of that very issue. One might ask how the Court could  
7 ever determine a violation of the single subject rule without considering the substance. Moreover,  
8 Petitioners attempt to distract the Court by alluding to supposed challenges to the Initiative asserted  
9 by the various Plaintiffs that Petitioners argue would somehow violate the ruling in *Herbst* simply  
10 because the Initiative contains references to existing law that the Initiative seeks to modify.  
11 Omnibus Brief at 6:20–24. But none of those challenges referenced by Petitioners are relevant  
12 here. Instead, consistent with *Herbst*, Plaintiffs merely ask the Court to examine the Initiative to  
13 ensure its subject matter does not violate statutory limitations on the initiative power, i.e., does the  
14 Initiative violate the single subject rule and does the Initiative proffer a misleading description of  
15 effect. *See Herbst*, 122 Nev. at 883, 141 P.3d at 1228; *see also* NRS 295.009.

16 **B. The Statutory Requirements Placed on Initiatives are a Necessary Component**  
17 **to Safeguard the Integrity of the Initiative Process.**

18 Petitioners dedicate a large portion of their Omnibus Brief to laud the people's right  
19 to the initiative process in Nevada. However, statutory requirements such as the single subject  
20 rule are an integral part of that process. The single subject rule is intended to promote "informed  
21 decisions and in preventing the enactment of unpopular provisions by attaching them to more  
22 attractive proposals or concealing them in lengthy, complex initiatives." *Las Vegas Taxpayer*  
23 *Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429,  
24 436–37 (2009) (citing *Nevadans for Prop. Rights v. Sec'y of State*, 122 Nev. 894, 905, 141 P.3d

1 1235, 1242 (2006)). These necessary requirements do not detract from the initiative power, but  
2 rather ensure its integrity:

3 our precedents clearly recognize that the single-subject requirement serves an  
4 important role in preserving the integrity and efficacy of the initiative process. In  
5 this regard, it bears emphasis that proper application and enforcement of the single-  
6 subject rule is by no means inconsistent with the cherished and favored role that the  
7 initiative process occupies in our constitutional scheme, but on the contrary  
8 constitutes an integral safeguard against improper manipulation or abuse of that  
9 process.

7 *Senate of State of Cal. v. Jones*, 21 Cal. 4th 1142, 1158 (1999); *Clark v. Jordan*, 7 Cal. 2d 248,  
8 252 (1936) (“we are also of the opinion that statutes passed for the purpose of protecting electors  
9 from confusing or misleading situations should be enforced.”)

10 The restrictions placed on a description of effect similarly afford necessary  
11 protections to Nevada’s voters. *See Las Vegas Taxpayer Accountability Comm.* at 177, 208 P.3d  
12 at 437 (“the requirement that each measure include a description of effect facilitates the  
13 constitutional right to meaningfully engage in the initiative process by helping to prevent voter  
14 confusion and promote informed decisions.”) (internal citations and quotations omitted).  
15 Accordingly, no matter how fervently Petitioners believe in their Initiative, it must nevertheless  
16 comply with Nevada’s statutory requirements, to ensure, rather than detract from, the integrity of  
17 the initiative power.

18 **C. The Initiative Violates the Single Subject Rule.**

19 Petitioners attempt to force the various subjects presented in their Initiative into a  
20 single “primary purpose” by claiming a purpose so general and broad it violates the single subject  
21 rule. As outlined by Petitioners, the Court must first determine the Initiative’s “purpose” in order  
22 to evaluate whether or not it violates the single subject rule. Omnibus Brief at 8:2–7 (citing *Helton*  
23 *v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 314 (2022)). To undertake this  
24 analysis, the Court must look to the Initiative’s “textual language and the proponents’ arguments”



1 as well as the description of effect. *Las Vegas Taxpayer Accountability Comm.* at 180, 208 P.3d  
2 at 439.

3 **1. The Initiative Violates the Single Subject Rule Through the Initiative's**  
4 **Purported Purpose According to its Text and Description.**

5 Petitioners claim their “primary purpose” is “an overall program of *consumer debt*  
6 *relief.*” Omnibus Brief at 9:8–13. Interestingly, the Court will not find that stated purpose in either  
7 the text of the Initiative or its description of effect. Rather, the Initiative’s text lauds the Initiative’s  
8 purpose as protecting against *predatory payday lending*. See Ex. 1 to Activehours Brief in Support  
9 of Complaint at Sec. 2 (“The provisions of this chapter shall be liberally construed to achieve its  
10 purposes, which are combatting predatory payday lending and other high-cost loans...”).  
11 However, the phrase “predatory payday lending” is never defined in the Initiative, so one can only  
12 speculate as to what types of activities Petitioners envision being encompassed by the Initiative’s  
13 stated purpose. The description of effect, on the other hand, purports a purpose of addressing “high-  
14 interest lending practices.” *Id.* at p.12 (“This measure addresses *high-interest lending practices*  
15 by establishing maximum interest rates charged to consumers.”)

16 Activehours, and Plaintiffs in general, thoroughly set forth in their respective briefs  
17 the various reasons why the Initiative violates the single subject rule. In their Omnibus Brief in  
18 response to these arguments, Petitioners urge the Court to disregard the fact that the Initiative will  
19 effectively amend numerous existing chapters of the Nevada Revised Statutes, exclaiming “so  
20 what?” that the Initiative’s reach is so broad. But in doing so, Petitioners miss the point. The point  
21 is not that the Initiative is invalid *because* it attempts to change existing law in various Chapters  
22 of the Nevada Revised Statutes. Rather, the inquiry is, through its expansive reach into various  
23 chapters, does the Initiative touch upon more than a single (i.e., one) subject? The answer to that  
24 question is an emphatic “yes.” The Initiative’s expansive reach to amend numerous provisions of

1 Nevada law is evidence of the Initiative’s intent to address multiple subjects.

2           The clearest example of this is with the Initiative’s inclusion of earned wage access  
3 services within its framework. Nevada law prohibits earned wage access services from charging  
4 consumers any interest on earned but unpaid amounts of income. *See* Activehours Brief in Support  
5 of Complaint at 5:1–19 and Ex. 2, Sec. 31(c)–(d). Nevada law further provides that earned wage  
6 access services are not loans. *Id.* So, if the Initiative’s stated purpose is to address “*lending*  
7 *practices*,” whether “high-interest” or “predatory payday lending,” the Initiative violates Nevada’s  
8 single subject rule by including earned wage access services which, under Nevada law, are  
9 explicitly excluded from the definition of a “loan” and do not charge interest. A service that is not  
10 a loan nor permitted to charge consumers interest cannot be “functionally related or reasonably  
11 germane” to a stated purpose of addressing *lending practices* and high-interest *loans*. *See* NRS  
12 295.009(2) (An initiative petition embraces one subject “if the parts of the proposed initiative or  
13 referendum are functionally related and germane to each other in a way that provides sufficient  
14 notice of the general subject of, and of the interests likely to be affected by, the proposed initiative  
15 or referendum.”)

16           **2. The Initiative Violates the Single Subject Rule Because the Initiative’s**  
17           **Purported Purpose as Set Forth in the Omnibus Brief Is Overly Broad.**

18           Faced with challenges to the Initiative’s stated purpose through its text and  
19 description of effect, Petitioners now expand their stated purpose to encompass “*consumer debt*  
20 *relief*” generally, attempting to ensure that all challenged subjects fall within a single stated  
21 purpose. The problem with this new stated purpose is that it is so broad and general that it  
22 inherently addresses a multitude of subjects, thereby violating the single subject rule.<sup>1</sup> Here, the

23 \_\_\_\_\_  
24 <sup>1</sup> This description also fosters confusion, as earned wage access itself is not a “consumer debt relief” product.

1 Nevada Supreme Court's analysis in *Las Vegas Taxpayer Accountability Comrn.* is instructive.  
2 There, proponents of an initiative intended to amend the city charter to require voter approval for  
3 certain lease-purchase arrangements and for redevelopment decisions, arguing that the initiative's  
4 stated purpose was "to provide the voters of Las Vegas with greater input into the City's  
5 redevelopment decisions by requiring voter approval for major redevelopment decisions." 125  
6 Nev. at 181, 208 P.3d at 440. The Nevada Supreme Court ruled this stated purpose was an  
7 "excessively general subject that cannot meet NRS 295.009's requirement." *Id.*

8 In its decision, the Nevada Supreme Court relied in part on the ruling in *Senate of*  
9 *State of Cal. v. Jones*, 21 Cal. 4th 1142, 1159 (1999). There, the California Supreme Court  
10 conducted an in-depth analysis on the permitted parameters of a purported purpose. *Id.* In doing  
11 so, the California Supreme Court reviewed various rulings with facts similar to those here. For  
12 example, in *California Trial Lawyers Assn. v. Eu*, the text of an initiative claimed the purpose was  
13 to *control the cost of insurance*, but when faced with challenges, proponents broadened this  
14 purpose and instead went with "*regulate the practices of the insurance industry.*" 245 Cal. Rptr.  
15 916, 921 (Ct. App. 1988), *abrogated on other grounds by Lewis v. Superior Court*, 19 Cal. 4th  
16 1232 (1999). The Court in *California Trial Lawyers* rejected that purpose, stating:

17 we cannot accept the implied premise of [the insurers'] analysis, i.e., that any two  
18 provisions, no matter how functionally unrelated, nevertheless comply with the  
19 constitution's single-subject requirement so long as they have in common an effect  
20 on any aspect of the business of insurance. Contemporary society is structured in  
21 such a way that the need for and provision of insurance against hazards and losses  
22 pervades virtually every aspect of life. [The insurers'] approach would permit the  
23 joining of enactments so disparate as to render the constitutional single-subject  
24 limitation nugatory.

21 *Id.*

22 Similarly, in *Chem. Specialties Mfrs. v. Deukmejian*, the California Court of  
23 Appeals addressed a single subject challenge to an initiative entitled "Public's Right to Know Act."

1 278 Cal. Rptr. 128, 132 (Ct. App. 1991). The initiative in that case “contained a series of diverse  
2 provisions that ostensibly were related by the circumstance that each provision required public  
3 disclosure of some information.” *Jones*, 21 Cal. 4th at 1159–60 (citing *Deukmejian*, 278 Cal. Rptr.  
4 at 132–33). As in *California Trial Lawyers*, the Court in *Deukmejian* determined the purpose of  
5 the initiative was so broad as to render the single subject requirement meaningless:

6 Proposition 105 mandated separate disclosure requirements for (1) household toxic  
7 products, (2) senior's health insurance, (3) nursing homes, (4) statewide initiative  
8 or referendum campaigns, and (5) sales of stock or securities for corporations doing  
9 business with South Africa, requiring the disclosure of different information in each  
10 of these areas. Although the supporters of Proposition 105 asserted that all of its  
11 provisions were reasonably germane to the single subject of “public disclosure” or  
“truth-in-advertising,” the Court of Appeal in *Chemical Specialties* rejected that  
argument, finding that such a subject was clearly one of “excessive generality” and  
was “so broad that a virtually unlimited array of provisions could be considered  
germane thereto and joined in this proposition, essentially obliterating the  
constitutional requirement.”

12 *Jones*, 21 Cal. 4th at 1159–60 (internal citations and quotations omitted); *see also Las Vegas*  
13 *Taxpayer Accountability Comm.* at 181, 208 P.3d at 439–40 (reviewing and relying on the ruling  
14 in *Deukmejian*).

15 The same analysis is applicable here. When faced with a challenge to the purpose  
16 stated in the Initiative’s text, Petitioners broadened their stated purpose to “consumer debt relief.”  
17 The stated purpose is too general and overly broad. Like the court in *California Trial Lawyers*  
18 noted with regard to *controlling the cost of insurance*, the stated purpose of “consumer debt relief”  
19 is too general and overly broad because, as with insurance, consumer debt “pervades virtually  
20 every aspect of life.” Therefore, that stated purpose “would permit the joining of enactments so  
21 disparate as to render the constitutional single-subject limitation nugatory.” *See California Trial*  
22 *Lawyers, supra*. Only under such a broad umbrella can Petitioners attempt to relate so many  
23 disparate subjects including earned wage access services and relief from enforcement of  
24 judgments. But Petitioners cannot use an all-encompassing stated purpose to avoid complying with

1 the single subject rule as they clearly attempt to do here.

2 **D. The Initiative’s Misleading Description of Effect Violates NRS 295.009.**

3 The Initiative’s description of effect fails to properly inform voters of the  
4 consequences of the Initiative and is therefore misleading and inadequate. A description of effect  
5 must sufficiently “explain these ramifications of the proposed amendment” to allow voters to make  
6 an informed decision. *Nevada Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).  
7 The description must, at a minimum, accurately describe the main consequences of the initiative.  
8 *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 16 184 208 4 P.3d at 441.

9 In defending their description of effect, Petitioners argue they do not need to  
10 address, in their description of effect, each of Plaintiffs’ specific concerns with their Initiative. *See*  
11 *Omnibus Brief* at 19:20–24. Through their flippant remarks, Petitioners both miss the point and  
12 fail to address the deficiencies with their description of effect. Petitioners take the stance that the  
13 description of effect must inform voters of the effect the Initiative will have on *them*, “not the  
14 hypothetical effects on Activehours.” *Id.* at 20:3–4. Activehours agrees. But Petitioner’s  
15 description of effect does not provide the necessary information for voters to make an informed  
16 decision. As set forth in its Brief in Support of Complaint, the issue with Petitioners’ description  
17 of effect is that a voter would never know that the underlying Initiative touches upon earned wage  
18 access services because *they are not loans* as a matter of law. That is because, the description of  
19 effect specifically informs voters that the underlying Initiative fixes purported problems with  
20 “high-interest lending practices,” thereby failing to inform voters of the full consequences of the  
21 Initiative.

22 The same is true with the various other categories of loans the Initiative includes  
23 within its broad purpose of “*consumer debt relief*.” While loans, deferred deposit loans, refund  
24 anticipation loans, and title loans, to name a few, are expressly excluded from the definition of



1 “high-interest” loans. How then would a voter know that the Initiative, which tells them it will  
2 affect “high-interest lending practices,” affect not only loans that are *not* high-interest, but also  
3 services that are not loans at all under Nevada law? Voters would not and could not know that,  
4 rendering the description of effect misleading and therefore in violation of NRS 295.009.

5 **III. CONCLUSION**

6 For those reasons, as more fully set forth in Activehours’ Brief in Support of  
7 Complaint for Declaratory and Injunctive Relief, the Court should enjoin the Nevada Secretary of  
8 State from taking further action upon the Initiative as it violates NRS 295.009’s single subject rule  
9 and prohibition against misleading descriptions of effect.

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030, the undersigned affirms this document does not contain  
12 the personal information or social security number of any person.

13 KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Kaempfer Crowell; that I am familiar with the firm’s practice of collection and processing documents; that, in accordance with those practices, I caused the **ACTIVEHOURS, INC.’S AND STACY PRESS’S REPLY IN SUPPORT OF THEIR BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-03-2024** to be deposited with the U.S. Postal Service at Reno, Nevada, in a sealed envelope, with first class postage prepaid to the addressee(s) shown below:

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DATED    jrh    March, 2024

  
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7 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE, a  
10 Nevada Political Action Committee, and  
CHRISTINA BAUER, an individual,

11 Plaintiffs,

12 vs.

13 KATE FELDMAN, an individual, STOP  
14 PREDATORY LENDING NV, a Nevada  
Nonprofit Corp., and FRANCISCO V.  
15 AGUILAR, in his official capacity as Nevada  
Secretary of State,

16 Defendants.

17 DAILYPAY, INC., a Delaware Corporation,

18 Plaintiff,

19 vs.

20 FRANCISCO V. AGUILAR, in his official  
21 capacity as NEVADA SECRETARY OF  
STATE,

22 Defendant,

23 and

24 STOP PREDATORY LENDING NV, a  
25 Nevada Nonprofit Corp., and KATE  
FELDMAN, an individual,

26 Intervenor-Defendants.

27

28

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BY D. ORTIZ

Lead Case No. 24-OC-00021B

Dept. No. II

Consolidated with

Case No.: 24 OC 00021 1B

Dept. No.: II

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1 PREFERRED CAPITAL  
2 FUNDINGNEVADA, LLC, a Nevada limited  
3 liability company, and ALLIANCE FOR  
4 RESPONSIBLE CONSUMER LEGAL  
5 FUNDING, an Illinois nonprofit corporation,  
6  
7 Plaintiffs,  
8  
9 vs.  
10 FRANCISCO V. AGUILAR, in his official  
11 capacity as NEVADA SECRETARY OF  
12 STATE, and KATE FELDMAN, an  
13 individual,  
14 Defendants,  
15  
16 and  
17 STOP PREDATORY LENDING NV, a  
18 Nevada Nonprofit Corp.,  
19  
20 Intervenor-Defendant.

12 ACTIVEHOURS, INC., a Delaware  
13 corporation; STACY PRESS, an  
14 individual,  
15  
16 Plaintiffs,  
17  
18 vs.  
19 KATE FELDMAN, an individual; STOP  
20 PREDATORY LENDING NV, a Nevada  
21 Nonprofit Corp.; and FRANCISCO V.  
22 AGUILAR, in his official capacity as  
23 NEVADA SECRETARY OF STATE,  
24  
25 Defendants.

Case No.: 24 OC 00023 1B  
Dept. No.: I

Case No.: 24 OC 00029 1B  
Dept. No.: I

**PLAINTIFF DAILYPAY'S REPLY IN  
SUPPORT OF COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

21 Plaintiff DAILYPAY, INC. ("DailyPay"), by and through counsel of the law firm  
22 HOLLAND & HART LLP, hereby submits this REPLY to DEFENDANTS/INTERVENORS  
23 KATE FELDMAN's and STOP PREDATORY LENDING NV's (the "Intervenors") OMNIBUS  
24 RESPONSE filed on February 29, 2024, in the above-captioned consolidated cases challenging  
25 Initiative Petitions S-01-2024 and S-03-2024 ("Petitions") under NRS 295.061. DailyPay's Reply  
26 is based on DailyPay's Complaint and attached Exhibits, all pleadings and papers on file, and any  
27  
28



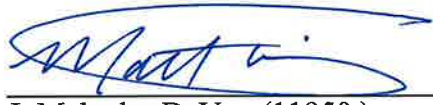
1 oral argument that this Court may allow at hearing. Pursuant to FJDCR 3.23(b), this Memorandum  
2 of Points and Authorities is limited to ten pages exclusive of exhibits.

3 **AFFIRMATION**

4 As required under NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby  
5 affirms that the REPLY IN SUPPORT OF COMPLAINT FOR DECLARATORY AND  
6 INJUNCTIVE RELIEF filed herewith does not contain the personal information of any person.

7 DATED this 8<sup>TH</sup> day of March 2024.

8 HOLLAND & HART LLP

9 

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Introduction

3 The Intervenors may believe that earned wage access services are “predatory” and may  
4 wish that Nevada’s Legislature had not approved SB 290,<sup>1</sup> which provides by statute that earned  
5 wage access services are not loans, are not lending, and are not credit products. Intervenors cannot,  
6 however, wish away the fact that the Legislature has adopted clear policy imperatives regarding the  
7 treatment of earned wage access services. These policies memorialize in state law that earned wage  
8 access services are not loans and that earned wage access service providers are not lenders nor  
9 subject to Nevada’s lending laws. Intervenors are entitled to oppose these policies if they so choose,  
10 but they may not proceed as if existing law does not already address them. If Intervenors wish to  
11 repeal by petition the Legislature’s policy decisions regarding the treatment of earned wage access  
12 services, they must inform voters of their objective and use the proper referendum process to do so.  
13 The Petitions fail on both fronts. They do not inform voters that they seek to change the  
14 Legislature’s determinations on earned wage access services as reflected in SB 290, nor do they  
15 use the appropriate referendum mechanism to do so.

16 Intervenors’ Omnibus Response simply ignores NRS 295.009(2)’s well-defined single-  
17 subject standard, requiring this Court to evaluate whether the Petitions have sufficiently notified  
18 signatories of the interests the Petitions are likely to affect. NRS 295.009(2) provides that “[A]  
19 petition for initiative or referendum embraces but one subject and matters necessarily connected  
20 therewith and pertaining thereto, if the parts of the proposed initiative or referendum are  
21 functionally related and germane to each other in a way that provides sufficient notice of the  
22 general subject of, and of the interests likely to be affected by, the proposed initiative or  
23 referendum.” NRS 295.009(2) (emphases added). Rather than defend Petitions’ compliance with  
24 NRS 295.009(2), the Intervenors instead argue that “nothing in law...requires each provision of an  
25 initiative to be functionally related and germane to each other,” despite NRS 295.009(2)’s clear  
26 language to the contrary. Omnibus Resp. (“Resp.”), at 12:25-28. Intervenors fail to cite NRS  
27 295.009(2) a single time in the entirety of their Response. Instead, and in disregard of Nevada’s

28 <sup>1</sup> All terms capitalized but not defined herein have the meanings assigned to them in DailyPay’s Memorandum in Support.

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1 existing statutory authority, Intervenor invite this Court to apply a different single-subject standard  
2 that flatly contradicts NRS 295.009(2).

3 Intervenor fail to show the Petitions' shortcomings are anything short of fatal. The  
4 Petitions violate the single-subject rule because they do not sufficiently notify signatories who are  
5 earned wage access users, earned wage access service providers, or partners of EWA providers,  
6 that their interests will be affected by the Petitions' repeal of SB 290. The Petitions not only fail to  
7 explain their proposed repeal of clear statutory language which provides earned wage access  
8 services are not loans, but the Petitions withhold the very language they ask Nevada voters to  
9 amend. Intervenor offer no explanation how the Petitions comply with NRS 295.009(2), failing  
10 even to cite the correct legal standard found within the Nevada Revised Statutes in their Response.

11 **II. Condensed Factual Background and Procedural Summary<sup>2</sup>**

12 Senate Bill 290 ("SB 290"), signed into law on June 13, 2023, authorizes the licensure and  
13 regulation of earned wage access ("EWA") services in Nevada.<sup>3</sup> The Petitions were filed on January  
14 5, and January 24, 2024.<sup>4</sup> The Petitions propose to enact the "Preventing Predatory Payday and  
15 Other Loans Act,"<sup>5</sup> which would define the term "loan" to include "any sale, assignment, order or  
16 agreement for the payment of unpaid wages, salary...or other income....whether earned, to be  
17 earned or contingent upon future earnings, that is made in consideration for....the payment of  
18 money to or for...the person earning or receiving...the wages...or other income." (emphasis  
19 added)<sup>6</sup> Thus, the Petitions would penalize EWA services, EWA service providers, and the  
20 employers who offer EWA services to workers, as authorized under SB 290, which directs that  
21 EWA services are not loans and that EWA service providers are not lenders. DailyPay filed its  
22 Complaint on January 29, 2024, challenging both Petitions under NRS 295.061 and on  
23 constitutional grounds. Specifically, the Complaint challenges both Petitions as violating the  
24 Nevada Constitution's and NRS 295.009's single-subject, description-of-effect, fiscal impacts, and  
25 "full text" requirements.

26 <sup>2</sup> DailyPay does not dispute Intervenor's Statement of Facts and Procedural History (Resp. at 3-4) and includes this  
27 condensed factual and procedural summary for ease of reference.

28 <sup>3</sup> See, DailyPay Memorandum in Support of Complaint, Ex. 1.

<sup>4</sup> Petitions S-01-2024 and S-03-2024, attached as Ex. 2 and Ex. 3 to DailyPay's Memorandum in Support.

<sup>5</sup> DailyPay Memorandum in Support, Exs. 2 and 3, at 1.

<sup>6</sup> *Id.*, Exs. 2 and 3, at Sec. 5(1)(c) ("Loan defined").

1 **III. Legal Arguments**

2 **A. *The Intervenors Ignore Clear and Controlling Law Under NRS 295.009(2).***

3 The Court should set aside Intervenors' Response because it overlooks or ignores existing  
4 law that squarely governs this dispute. Intervenors assert that "[n]othing in law or the Nevada  
5 Supreme Court's jurisprudence requires each provision of an initiative to be functionally related  
6 and germane to *each other*; rather, they need only be functionally related and germane to the  
7 initiative's overall policy goal." Resp., at 12:25-28 (emphasis in original). On this point,  
8 Intervenors are simply wrong. NRS 295.009(2) mandates what the Response claims "nothing in  
9 law," requires, and explicitly provides that "a petition for initiative or referendum embraces but  
10 one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the  
11 proposed initiative or referendum are functionally related and germane to each other in a way that  
12 provides sufficient notice for the general subject of, and of the interests likely to be affected by,  
13 the proposed initiative or referendum." NRS 295.009(2) (emphases added). Under this statutory  
14 standard, a petition that does not notify voters of the "interests likely to be affected" by the Petition  
15 necessarily fails to "embrace[ ] but one subject and matters necessarily connected therewith and  
16 pertaining thereto." NRS 295.009(1). The Petitions make no attempt to inform voters who are also  
17 EWA users, EWA providers, or partners of EWA providers that their interests are likely to be  
18 affected by the Petitions' new restrictions, and thus fall far short of NRS 295.009(2)'s standard.

19 Intervenors fail to discuss NRS 295.009(2)'s single-subject standard and misapprehend its  
20 requirement that the Petitions sufficiently notify voters of the interests the Petitions are likely to  
21 affect. Intervenors argue, for example, that whether or not DailyPay "provides services that many  
22 people use...none of that matters." Resp., at 2:8-10. To the contrary, under NRS 295.009(2) it is  
23 critical to a fair democratic process that thousands of signatories who also use or offer DailyPay's  
24 EWA services<sup>7</sup> be informed that the Petitions they are asked to support will affect their interests.

25 To agree with Intervenors that the Petitions "need only be functionally related and germane  
26 to the initiative's overall policy goal,"<sup>8</sup> is to rewrite a standard into NRS 295.009(2) that does not  
27 exist, impermissibly rendering NRS 295.009(2) a nullity. "When interpreting a statute, this court

28 <sup>7</sup> DailyPay Complaint, at ¶ 16; DailyPay Memorandum in Support of Complaint, at 8:21-24

<sup>8</sup> Omnibus Resp., at 12:27-28

1 must give its terms their plain meaning, considering its provisions as a whole so as to read them in  
2 a way that would not render words or phrases superfluous or make a provision nugatory.” *So. Nev.*  
3 *Homebuilders Ass’n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (internal quotation  
4 marks and citation omitted). DailyPay respectfully submits that this Court should decline  
5 Intervenors’ invitation to amend away NRS 295.009(2)’s single-subject standard.

6 **B. *The Petitions’ Description of Effect is Argumentative and Deceptive.***

7 NRS 295.009(1)(b) requires the Petitions to describe their effects of the petition if  
8 approved. Intervenors dismissively assert “a description of effect serves a specific and limited  
9 purpose,”<sup>9</sup> but Nevada law places far more importance on the description of effect than Intervenors  
10 care to admit. The description of effect “is significant as a tool to help ‘prevent voter confusion  
11 and promote informed decision.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City*  
12 *of Las Vegas*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting *Nevadans for Nev. v. Beers*  
13 *122 Nev. 930, 939, 142 P.3d 339, 345 (2006)*). This is because the description of effect “is what  
14 the voters see when deciding to sign a petition, and...[it] must accurately inform petition signers  
15 of the nature and effect of that which is proposed.” *No Solar Tax PAC v. Citizens for Solar and*  
16 *Energy Fairness*, 132 Nev. 1012, 2016 WL 4182739 (2016) (unpublished) (citations omitted).

17 The Petitions’ descriptions of effect are silent on the proposed repeal of SB 290’s EWA  
18 provisions. The description of effect’s sole reference potentially describing EWA services is  
19 argumentative at best, referring only to “structuring transactions to **mask their nature as loans**  
20 covered by this measure...”. (Emphasis added).<sup>10</sup> The Petitions’ failure to explain that they seek to  
21 convert non-loan transactions to become loans, and non-lender entities to become “predatory  
22 lenders” is misleading, and therefore inadequate, under NRS 295.009. The description of effect’s  
23 reference to transactions that are “masked” to hide their “nature as loans” misleadingly suggests  
24 that EWA transactions are “loans” despite existing law (SB 290) which states they are no such  
25 thing. The description of effect does not tell a signatory “what the initiative will accomplish” and  
26 “how it will achieve those goals” in a nonargumentative and transparent manner, *Educ. Initiative*  
27 *PAC*, 129 Nev. at 38, 293 P.3d at 876, and is therefore wholly inadequate.

28 <sup>9</sup> Omnibus Resp., at 14:21.

<sup>10</sup> Daily Pay Memorandum in Support of Complaint, Ex. 2, at 19; Ex 3, at 11.



1           **C.     *The Petitions Seek to Repeal SB 290 and Must Include its Full Text.***

2           Intervenors first correctly argue that “because the people’s initiative power is legislative in  
3 nature, that power is subject to the same prerogatives and limitations placed upon a Legislature.”  
4 Resp., at 5:11-16. Intervenors then reverse course to argue the Nevada Constitution’s “full text”  
5 requirement (which applies to legislative amendments) should not apply to these Petitions. To  
6 support this assertion, Petitioners argue only that the “full text” requirement would render the  
7 Petitions “ridiculously long, unnecessarily complex and incredibly burdensome to propose.”  
8 Resp., at 23:28-24:1-2. The Nevada Constitution’s “full text” requirements apply to legislation and  
9 to initiative petitions alike, and require the Petitions to include the full text of SB 290, which the  
10 Petitions effectively seek to repeal.

11           The Nevada Constitution, at Art. 4, Sec. 17, and Art. 19, Sec. 3, forbids the exercise of  
12 lawmaking power, whether by the Legislature or by direct initiative, that purports to amend  
13 existing law without providing the language to be amended in its entirety, and in full context. Thus,  
14 “***no law shall be revised or amended*** by reference to its title only; but, in such case, the act as  
15 revised or section as amended, ***shall be re-enacted and published at length.***” NEV. CONST., ART  
16 IV., Sec. 17 (emphases added). In the petition context, “each referendum and initiative petition  
17 ***shall include the full text*** of the measure proposed.” NEV. CONST. ART. XIX, Sec. 3(1)  
18 (emphases added). The Nevada Constitution’s language is unambiguous, but NRS 295.0575(6)  
19 reinforces this constitutional requirement by mandating that “each signer had an opportunity  
20 before signing to read the full text of the act or resolution on which the initiative or referendum is  
21 demanded.” NRS 295.0575(6).

22           The Petitions expressly invoke the definitions that SB 290 that codified in statute, and, if  
23 passed, would effectively repeal SB 290’s provisions that define EWA services to not constitute a  
24 loan or other credit product. It doubtless would be easier and less “burdensome” for Petitioners to  
25 withhold the full language of a bill they ask voters to repeal, and to disregard Nevada’s  
26 constitutional and statutory requirements in the process to do so. Intervenors’ expediency is  
27 irrelevant to this Court’s determination of whether constitutional and statutory prerequisites to the  
28 people’s exercise of legislative power have been met. Both the Nevada Constitution and NRS

1 295.0575 require the “full text” of the proposed measure to be included with the Petition, to ensure  
2 that signatories have a fair opportunity to consider the proposal in its entirety, and “to review the  
3 measure’s full text before signing...the requirement that each signer be given the opportunity to  
4 review a measure’s full text serves the purpose of ensuring that signers know what they are  
5 supporting.” *Las Vegas Conv. and Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138,  
6 1149 (2008).

7 While Intervenors lament the “complexities” and “burdens” that are attendant to complying  
8 with the “full text” rule, it would be absurd to allow circulators to bypass these legal requirements  
9 merely because they choose to propose an overly broad Petition attacking a constellation of  
10 disparate subjects through various statutory amendments and outright repeals. If the Intervenors  
11 wish to circulate a more concise and simplified Petition for voters to review, they are free to do  
12 so. If Intervenors insist on amending and repealing SB 290 as proposed in the Petitions,<sup>11</sup> though,  
13 then they must satisfy the procedural requirements that govern lawmaking by petition. Intervenors  
14 bear the burden to explain to voters precisely how SB 290 “defined the transactions”<sup>12</sup> the Petitions  
15 propose to re-define through voter assent, but without providing the full, original definition to  
16 serve as a basis for comparison. As was the case in *Las Vegas Convention and Visitors Authority*,  
17 here too, it is emphatically the proponents of the initiative, not the challengers, who are “required  
18 to demonstrate that they substantially complied with [NRS 295.0575]. The burden is...on the  
19 proponents in this case because they caused the situation when they failed to review the current  
20 statutes and comply with their requirements.” *Las Vegas Conv. and Visitors Auth.*, 124 Nev. at  
21 682, 191 P.3d at 1147 (emphasis added). Intervenors themselves proclaim to be “masters of their  
22 petitions,” Resp., at 25:7-8, acknowledging that they choose whether they want to ask voters to  
23 repeal existing legislation or not. If the “masters of the petition” choose to amend and repeal a  
24 complex piece of regulatory legislation, they must also abide by the “full text” rules that ensure a  
25 signatory has a fair chance to review what they are asked to amend.

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27  
28 <sup>11</sup> Intervenors admit that they wish to amend SB 290 through their Petitions, as Intervenors admit, in relevant part,  
that the legislation “defined [earned wage access] transactions one way through a Senate bill,” Resp., at 13:11-12.

<sup>12</sup> *Id.*

1 Intervenor’s failure to provide SB 290’s full text deprives potential signatories of the  
2 Petition, including EWA users or employers that offer EWA services to their workers, of notice  
3 that supporting the Petition would adversely affect their interests. It is precisely this harm that the  
4 “full text” requirement and NRS 295.0575(6)’s affidavit requirement exist to prevent.

5 **D. *Intervenors Fail to Dispute the Petitions’ Fiscal Impacts.***

6 Intervenor’s also ignore the substance of DailyPay’s argument regarding the Petitions’ fiscal  
7 impacts, asserting that “DailyPay...actually argues [the Petitions] would increase exposure to  
8 increased regulation and enforcement for DailyPay itself, not for the general public[.]” Resp., at  
9 22:15-23. DailyPay does not argue that the Petitions will increase regulatory exposure only for  
10 DailyPay itself, but that the Petitions’ broad and undefined terminology will vastly expand the  
11 required regulatory oversight and enforcement rules against business entities that are not even  
12 remotely related to Nevada’s currently regulated lending industry.

13 Intervenor’s make light of DailyPay’s argument that the Petitions fail, for example, to define  
14 the term “person,”<sup>13</sup> for purposes of new restrictions, liabilities, and penalties. Yet, without such  
15 a definition the Petitions will apply by default to an expansive class that includes: “a natural  
16 person, any form of business or social organization and any other nongovernmental legal entity,  
17 including...a corporation, partnership, association, trust or unincorporated organization.” NRS  
18 0.039. Intervenor’s correctly note that that this Court should “look to [the Petitions’] textual  
19 language” in evaluating their meaning, effects, and scope.<sup>14</sup> If the Court examines the Petitions’  
20 textual language, which lacks key definitions for operative terms such as “person,” “consumer,”  
21 and “borrower,” and instead deploys argumentative terminology such as “predatory” throughout,  
22 the Court would have to conclude that the Petitions significantly expand the State’s regulatory  
23 oversight to apply to any “other person” who “markets, offers, brokers, arranges, facilitates, makes  
24 or services a loan as defined” in the Petitions. DailyPay directs this Court to SB 290’s fiscal note  
25 because SB 290 enacted a far narrower jurisdictional and regulatory regime for State financial  
26 regulators to oversee, which still imposed a cost of several hundred thousand dollars per fiscal  
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28 <sup>13</sup> Omnibus Resp. at 17:24-26.

<sup>14</sup> Omnibus Resp. at 8:4-6 (citing *Helton*, 512 P.3d at 314).

1 year.<sup>15</sup> The Petitions seek to expand the regulatory regime State financial regulators are required  
2 to administer; it logically follows that the price tag for administering this expanded scope of  
3 regulation must increase as well.

4 Further, the Legislature’s fiscal analysis division has not determined that the Petitions have  
5 no fiscal impacts. NRS 295.015(3)(b) requires the Fiscal Analysis Division of the Legislative  
6 Counsel Bureau (LCB) to determine whether the petition for initiative or referendum may have any  
7 anticipated financial effect on the State. LCB’s Fiscal Analysis Division must “prepare a fiscal note  
8 regarding the petition that includes an explanation of any such effect.” NRS 295.015(3)(b). On  
9 February 8, 2024, LCB’s Fiscal Analysis Division stated it “is unable to provide a completed  
10 financial impact statement to be posted by the Secretary of State’s Office within the ten business  
11 days prescribed,” and “**A fiscal note that includes an explanation of any financial impact will**  
12 **be provided to the Secretary of State when completed[.]**”<sup>16</sup> If, as Intervenor urge, the Petitions’

13 financial impacts were non-existent or were impossible to determine, LCB’s fiscal experts could  
14 have stated as much, as they did for Constitutional Initiative Petition C-01-2023, for which LCB  
15 Fiscal stated it “cannot determine whether the provisions of the Initiative, if approved by voters,  
16 would have a financial effect...with any reasonable degree of certainty.”<sup>17</sup> This Court should not  
17 permit the Petitions to proceed until a fiscal impact statement is submitted under NRS 295.015(3).

18 **E. The Petitions are a Referendum on SB 290 and Must be Designated as Such.**

19 Finally, Intervenor fail to meaningfully address DailyPay’s argument that the Petitions,  
20 which effectively seek to repeal SB 290 in their substance, are misidentified as “Initiative  
21 Petitions,” and should instead be designated a referendum on SB 290. Intervenor exalt form over  
22 substance, brashly contending that they have the final say on the matter simply by how they  
23 designate their Petitions, as “initiative proponents...are masters of their petitions. In other words,  
24 as far as the law is concerned, if there is any question regarding the character of the Petitions, they  
25 are exactly what Proponents say they are[.]” Resp., at 25:7-10. Nevada law requires otherwise, and

26 <sup>15</sup> Fiscal Note 8397, SB290, Nev. Financial Institutions Div. (Mar. 22, 2023) (DailyPay Complaint, Ex. 4).

27 <sup>16</sup> See, Nev. Secretary of State Elections, Financial Impact of S-3-2024 (LCB Fiscal Analysis Div., Feb. 8, 2024) at  
<https://www.nvsos.gov/sos/home/showpublisheddocument/12990/638430618583770000> (accessed March 6, 2024).

28 <sup>17</sup> See, Nev. Secretary of State Elections, Financial Impact of C-01-2023 (LCB Fiscal Analysis Div., Sep. 28, 2023)  
at <https://www.nvsos.gov/sos/home/showpublisheddocument/12503/638338310336370000> (accessed March 6,  
2024).

1 distinguishes referenda and initiatives. Nevada’s decisional authority provides that “[r]eferendum  
2 is the electorate’s power to approve or disapprove already-enacted legislation[.]” *Garvin v. Ninth*  
3 *Judicial Dist. Ct.*, 118 Nev. 749, 753, 59 P.3d 1180, 1183 (2002). This Court cannot condone  
4 Intervenors’ interpretation, and allow petition circulators to dictate whether or not the petition is  
5 an initiative or a referendum simply upon the circulators’ say-so, and without regard to the  
6 substantive differences between initiative petitions and referenda.

7 Initiative Petitions and Referendum Petitions are subject to different sets of constitutional  
8 and statutory procedures and rules. NRS 295.045, for example, strictly limits the question  
9 presented with referenda to “Shall the statute (setting out its title) be approved?” NRS 295.045(3).  
10 This limitation does not apply to an initiative. Thus, a circulator seeking to repeal legislation has  
11 an interest in bypassing the limitations on referenda, particularly if the legislation sought to be  
12 repealed is popular. If the referendum fails, and “a majority of the voters...votes approval of such  
13 statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand  
14 as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any  
15 way made inoperative except by direct vote of the people.” NEV. CONST., Art. 19, Sec. 1(3).

16 An opponent of SB 290 has clear tactical incentives to misclassify a referendum on the bill  
17 as an initiative. SB 290 is less likely to be repealed by referendum, but its defeat would be assisted  
18 through the tools an initiative on “predatory lending” offers. SB 290, sponsored by Nevada’s  
19 Democratic Senate Majority and Assistant Majority Leaders, passed by more than a two-thirds  
20 supermajority and Nevada’s Republican Governor signed it into law. SB 290’s bipartisan  
21 consensus around EWA services is not disputed. But a referendum on SB 290 could not include  
22 references to “predatory” or “high-interest” lending, because the bill provides EWA service  
23 providers are not lenders and may not charge interest. And were a referendum on SB 290 to fail,  
24 the bill’s EWA provisions could not later be repealed without a popular vote. NEV. CONST., Art.  
25 19, Sec. 1(3). The relative flexibilities of an initiative are all the more seductive for those who wish  
26 to overturn a popular bill. A putative “initiative petition” addressing so-called “predatory lending”  
27 will ostensibly appeal to more voters, especially if they have no notice that the Petitions also  
28 encompass a popular EWA service the Legislature overwhelmingly approved.


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In any event, Intervenors are incorrect that the Petitions “do not change a single word of SB 290[.]” Resp., at 25:18-20. The Petitions explicitly re-define EWA services to be loans, EWA service providers to be lenders, and thereby seek to repeal SB 290’s provisions declaring exactly the opposite. SB 290, Sec. 33(1)-(2). Intervenors concede as much, acknowledging that “the Legislature defined [DailyPay’s] transactions one way through a Senate bill, and the people are free to define them another way through direct legislation.” Resp., at 13:10-12. But the Constitution mandates that a collective thumbs up or thumbs down on legislation must be achieved through a referendum petition, subject to specific rules and limitations, not to the whims and dictates of petition circulators who, seeking to repeal an otherwise popular legislative act, may find an easier path to repeal by masing the referendum’s true nature as an initiative petition.

**IV. Conclusion**

The Petitions violate the rules and strictures meant to safeguard the initiative and referendum processes, rules meant to ensure that such processes are transparent and fair. If Intervenors seek to repeal all or part of SB 290, their Petitions must inform voters of that intent and of the interests that are likely to be affected by repealing all or part of SB 290. The Petitions do not satisfy NRS 239.009(2)’s single-subject standard, and are otherwise unlawful and must not be circulated for signature.

Dated this 8<sup>th</sup> day of March 2024.

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8 **IN THE FIRST JUDICIAL DISTRICT COURT**  
 9 **OF THE STAT OF NEVADA IN AND FOR CARSON CITY**

10 NEVADANS FOR FINANCIAL CHOICE, a  
 11 Nevada Political Action Committee, and  
 12 CHRISTINA BAUER, an Individual,

Case No.: 24OC000181B  
 Dept. No.: II

13 Plaintiffs,

**REPLY BRIEF IN SUPPORT OF  
 CHALLENGE TO STATEWIDE  
 INITIATIVES S-01-2024 & S-03-2024**

14 v.

**HEARING DATE: March 22, 2024  
 HEARING TIME: 9:00 a.m.**

15 KATE FELDMAN, an Individual;  
 16 STOP PREDATORY LENDING NV, a  
 Nevada Non-Profit Corporation; and  
 17 FRANCISCO AGUILAR, in his Official  
 Capacity as Nevada Secretary of State,

18 Defendants.

19 AND CONSOLIDATED CASES

21 **I. INTRODUCTION**

22 The Proponents of Initiative Petitions S-01-2024 and S-03-2024 (the "Petitions"), Kate  
 23 Feldman and Stop Predatory Lending NV (collectively "Proponents") seek to misuse Nevada's  
 24 initiative process. They urge this Court to rubberstamp the Petitions out of deference to the  
 25 constitutionally-enshrined right of the public to propose direct legislation. But respectfully, it is the  
 26 Proponents who fail to show respect for that process, joining "together numerous disparate topics  
 27 into one 'grabbag proposal' held together with [little more than] a seductive title designed for voter  
 28

1 appeal." *Raven v. Deukmejian*, 801 P.2d 1077, 1090 (Cal. 1991) (Mosk, J., concurring and  
2 dissenting).

3 But as Plaintiffs Nevadans for Financial Choice and Christina Bauer (collectively  
4 "Plaintiffs" or "Financial Choice") demonstrated in their opening brief, as well as this reply, Nevada  
5 law plainly forbids what the Proponents propose with these two overbroad Petitions. Neither is  
6 limited to a single subject, and that reality cannot be evaded by retreating to an excessively  
7 generalized topic. Nor can the Proponents escape compliance with providing a forthright  
8 description of effect by complaining of how they are limited to 200 words. That excuse only  
9 underscores the overbreadth of these two nearly-identical Petitions, how they are not limited to a  
10 single subject and how the Petitions fail to disclose the full text of all the statutory changes that  
11 they propose.

## 12 II. ANALYSIS

### 13 A. Nevada Law Protects the Initiative Process from Manipulation.

14 The Proponents' suggestion that compliance with NRS 295.009 interferes with their right to  
15 propose legislation is erroneous. As the Nevada Supreme Court admonishes, "[b]y limiting petitions  
16 to a single subject, NRS 295.009 *facilitates the initiative process* by preventing petition drafters  
17 from circulating confusing petitions that address multiple subjects." *Nevadans for the Prot. of Prop.*  
18 *Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006) (emphasis added). After all,  
19 unlike the legislative process, which involves hearings and input from public stakeholders, "the  
20 initiative process typically does not allow for input in drafting proposed laws." *Las Vegas*  
21 *Taxpayers Accountability Comm. v. City Council*, 125 Nev. 165, 177 n.6, 208 P.3d 429, 437 n.6  
22 (2009).

23 Thus, "it bears emphasis that proper application and enforcement of the single-subject rule  
24 is by no means inconsistent with the cherished and favored role that the initiative process occupies  
25 in our constitutional scheme, but on the contrary constitutes an *integral safeguard* against improper  
26 manipulation or abuse of that process." *Senate of State of Cal. v. Jones*, 988 P.2d 1089, 1099 (Cal.  
27 1999) (emphasis added). After all, "[t]he single-subject rule imposes no barrier to the presentation  
28 of *any* subject to the electorate, but simply precludes drafters from combining, *in a single initiative*,



1 provisions that are not reasonably germane to a common theme or purpose. Unrelated proposals  
2 always may be placed before the voters through separate initiative measures, which may be  
3 circulated contemporaneously, affording the electorate the choice of approving all, some, or none  
4 of the distinct proposals." *Id.* (emphasis in original). The single-subject rule thus "helps both in  
5 promoting informed decisions and in preventing the enactment of unpopular provisions by attaching  
6 them to more attractive proposals or concealing them in lengthy, complex initiatives (*i.e.*,  
7 logrolling)." *LVTAC*, 125 Nev. at 176-77, 208 P.3d at 437.

8 The Proponents' Petitions are just the type of manipulation of the initiative process that NRS  
9 295.009 is designed to preclude. These Petitions abuse the process by cobbling together a host of  
10 subjects and mislead the public under the attention-grabbing veneer of supposedly regulating  
11 "payday loans."

12 *1. These Petitions Violate the Single-Subject Requirement.*

13 As outlined in Plaintiffs' opening brief, these Petitions violate NRS 295.009(1)(a) because  
14 they fail to embrace "but one subject and matters necessarily connected therewith and pertaining  
15 thereto." NRS 295.009(1)(a). As the Nevada Supreme Court notes, when analyzing the single-  
16 subject requirement, this Court must determine the proposed initiative's purpose by looking at its  
17 title, textual language and the Proponents' arguments. *LVTAC*, 125 Nev. at 180, 208 P.3d at 439.  
18 Oddly, both of these Petitions share the exact same seductive title: "Preventing Predatory Payday  
19 and Other Loans Act" (FAC at Ex. 1 p.1, Ex. 2 p.2). And both descriptions of effect proclaim that  
20 each "addresses high-interest lending practices by establishing maximum interest rates charged to  
21 consumers . . . ." (*Id.* at Ex. 1 p. 19, Ex. 2 p.11). But the actual terms of these Petitions confess  
22 something much different and broader than the payday loan boogeyman. As previously outlined,  
23 the Proponent's first proposal, S-01-2024, contains separate sections (Sections 17 & 18) addressing  
24 writs of garnishment and writs of execution. Those provisions have nothing to do with any form of  
25 loans, payday or otherwise. Nevada's laws on writs of garnishment and execution concern the  
26 manner of collection of any judicial judgment.

27 The Proponents confirm their manipulative efforts when, just two days before the deadline  
28 for legal challenges to S-01-2024, they filed Petition S-03-2024, repeating verbatim all other terms,

1 but now dropping the writ provisions (FAC at Ex. 2). But effectively conceding the single-subject  
2 violation for S-01-2024 by dropping these provisions does nothing to salvage S-03-2024's  
3 problems. As Section 8 of both Petitions specify, they reach ten distinct subjects of differing and  
4 unrelated transactions, and then even specify that the Petitions' reach "shall not be limited to" even  
5 those differing items. (FAC at Ex. 1 §8, Ex. 2 at §8). On top of that as Section 8(10) says, the  
6 Petitions also extend to any "[l]oans made by a bank, savings bank, savings and loan association,  
7 or credit union organized, chartered or holding a certificate of authority to do business under the  
8 laws of this state."

9 These Petitions are not limited to any "consumer" transactions as Proponents falsely  
10 advertise. They cover wide swaths of divergent financial transactions for which potential signers  
11 are never informed. Again, the public is repeatedly misled over and over again when Proponents  
12 tell the public that these Petitions concern "payday" loans or lenders. But neither Petition is limited  
13 to the subject of deferred deposit loans (so-called payday loans), which are already governed by  
14 NRS Chapter 604A.

15 The Proponents now tellingly propose to ignore the title of their Petitions, as well as their  
16 repeated reference to "payday lenders" to argue that these grabbag of various provisions can all be  
17 harmonized under the generic rubric of "consumer debt relief" or their "fiscal well-being."  
18 (Omnibus Response at p.9; line 9 & p.11; line 11). But that is an unoriginal and forbidden attempt  
19 to "circumvent the single-subject rule by phrasing the proposed law's purpose or object in terms of  
20 'excessive generality.'" *LVTAC*, 125 Nev. at 181, 208 P.3d at 439 (quoting *Harbor v. Deukmejian*,  
21 742 P.2d 1290, 1393 (Cal. 1987)). In *LVTAC*, the Supreme Court invalidated a proposed initiative  
22 to require voter approval for the expenditures on local redevelopment projects as violating NRS  
23 295.009's single-subject requirement because an initiative proponent is not allowed to circumvent  
24 the law by joining together discreet subjects under an overly general topic like "voter approval for  
25 major redevelopment decisions." *Id.*, 208 P.3d at 440.

26 The *LVTAC* Court endorsed the numerous California authorities which have rejected  
27 initiative petitions that sought to circumvent the single-subject rule with just the type of excessive  
28 generality that the Proponents employ here. In *Harbor*, 742 P.2d at 1303-04, the court invalidated



1 a petition that sought to impose sweeping changes under the supposed single-subject of "fiscal  
2 affairs" to justify revisions to over 20 different code sections. As the court explained, such a topic  
3 was too generic to comply with the single-subject rule. *Id.* Likewise, in *State Senate of California*,  
4 988 P.2d at 1100-02, the court invalidated an initiative petition for violating the single-subject  
5 requirement because it sought to include distinct provisions under the general subject of "voter  
6 involvement" or "voter approval of political issues" and that is a topic of "excessive generality."  
7 The same occurred in *Chemical Specialties Manufactures Ass'n., Inc. v. Deukmejian*, 278 Cal. Rptr.  
8 128, 133 (Ct. App. 1991), where the court rejected a petition that purported to reduce toxic  
9 pollution, protect health and safety standards in nursing homes and fight other alleged harms under  
10 the purported subject of "truth in advertising." The court explained that such a so-called "subject"  
11 was too generic and "so broad that a virtually unlimited array of provisions could be considered  
12 germane thereto and joined in this proposition, essentially obliterating the" single-subject rule  
13 requirement. *Id. Accord Wagner v. Evnen*, 948 N.W.2d 244, 254-55 (Neb. 2020) (invalidating a  
14 proposed initiative for "cannabis legalization" that effectively included at least 8 actual subjects  
15 under single-subject requirement because the rule cannot be "circumvented" by selecting a topic  
16 that is "so broad" as to evade "meaningful review").

17 The Proponents' proffered subjects of "debt relief" or "financial well being" are of the same  
18 defective ilk. Virtually anything relating to the subject of money – taxes, gambling, student loans,  
19 just to name a few – could all be crammed within such an overly generalized subject matter. This  
20 is precisely what the single-subject rule forbids. And, the Proponents' embrace of the initiative  
21 petition approved in *Helton v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309  
22 (2022) wildly misses the mark. In *Helton*, each of the initiative's provisions were functionally  
23 related and germane to each other in furthering the initiative's goal of changing the manner in which  
24 partisan officeholders are elected. As the divided Supreme Court determined, that petition did not  
25 present multiple distinct subjects. Each and every one of its provisions facilitated the method by  
26 which voters chose their partisan representatives. *Id.* at 314. The fact that there were two steps in  
27 the election process – the primary election to winnow the candidates followed by the general  
28 election to choose the ultimate winner – did not constitute two separate subjects as the opponents

1 of that petition erroneously contended. Instead, as a majority of the Supreme Court recognized, all  
2 of that petition's provisions worked in harmony to govern the singular function by which the  
3 partisan officeholders are elected. *Id.*

4 The Proponents effectively confess their single-subject violation here when they insist (with  
5 emphasis no less) that nothing in the law "requires each provision of an initiative to be functionally  
6 related and germane to *each other*; rather they need only be functionally related and germane to the  
7 initiative's overall policy goal." (Omnibus Response at p.12) (emphasis in original). They are  
8 fundamentally wrong. NRS 295.009(2) specifies that a petition embraces a single subject "*if the*  
9 *parts* of the proposed initiative or referendum are functionally related and germane *to each other*  
10 in a way that provides sufficient notice of the general subject of, and of the interests likely to be  
11 affected by, the proposed initiative or referendum." (emphasis added); see *Helton*, 138 Nev. Adv.  
12 Op. 45, 512 P.3d at 314 (holding that courts must assess "*if each provision* is functionally related  
13 and germane *to each other* and the initiative's purpose or subject") (emphasis added). Indeed, as  
14 the court in *California Trial Lawyers Ass'n. v. Eu* held, the suggestion "that any two initiative  
15 provisions, no matter how functionally unrelated, satisfy the single-subject rule, so long as they  
16 have some effect on the topic contained in the initiative" is untenable. *Chemical Specialties*, 278  
17 Cal. Rptr. at 132 (describing *California Trial Lawyers Ass'n. v. Eu*, 245 Cal. Rptr. 916, 921 (Ct.  
18 App. 1988)). That approach – which Proponents advance here – "would permit the joining of  
19 enactments so disparate as to render the constitutional single-subject limitation nugatory."  
20 *California Trial Lawyers*, 245 Cal. Rptr. at 921.

21 Unremarkably, other courts have consistently rejected Proponents' tactic as well. See  
22 *American Hotel & Lodging Ass'n v. City of Seattle*, 432 P.3d 434, 441-42 (Wash. Ct. App. 2018)  
23 (All provisions of initiative must "be germane not only to the general title but also to one another");  
24 *In re Title, Ballot Title & Submission Clause for 2021-2022 No. 16*, 489 P.3d 1217, 1221-22 (Colo.  
25 2021) (proposed initiatives' broad concept of "animal cruelty" as a unifying label to justify inclusion  
26 of disparate provisions is just the type of "vague subject" that "the single subject requirement was  
27 intended to prevent."); *In re Ballot Title & Submission Clause for 2005-2006 No. 74*, 136 P.3d 237,  
28 240 (Colo. 2006) (initiatives purported subject of "[l]imiting government spending" is too broad



1 and general to satisfy the single-subject requirement as it permits the joining of unrelated provisions  
2 into a single initiative in violation of the single-subject requirement).

3 Here again, as the Proponents ultimately acknowledge, the various provisions of these two  
4 Petitions do not functionally relate to each other, let alone in a way so as to alert the public of the  
5 interests impacted. Rather, as the Proponents' own arguments demonstrate, the only way in which  
6 they can cobble all of these various provisions together is by resorting to an excessively generalized  
7 topic such as "debt relief" and "financial wellbeing." And that is precisely what the single-subject  
8 rule precludes. *LVTAC*, 125 Nev. at 181, 208 P.3d at 439.

9 **2. *The Descriptions of Effect are Deceptive and Deficient.***

10 Beyond violating NRS 295.009(1)(a)'s single-subject rule, these Petitions also violate the  
11 statute's requirement for a valid description of effect. NRS 295.009(1)(b). The Proponents are  
12 correct about one thing: that as the sponsor of these Petitions it is their prerogative to prepare the  
13 statutorily required description of effect that the public reads immediately before considering  
14 whether to sign the petition. (Omnibus Response at 14-17.) But it is precisely because Nevada law  
15 grants the sponsors that right, they must act forthrightly in disclosing what the proposed petition  
16 actually does.

17 As the Nevada Supreme Court has explained, the description of effect "is significant as a  
18 tool to help 'prevent voter confusion and promote informed decisions.'" *LVTAC*, 125 Nev. at 183,  
19 208 P.3d at 441 (quoting *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)).  
20 And, while the Proponents' description "need not be the best possible statement of the proposed  
21 measure's intent," it nonetheless must still be "straightforward, succinct, and non-argumentative."  
22 *Id.* (quoting *Herbst Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006)).  
23 What Nevada law requires is that the Petitions' sponsor honestly tell the public what they would  
24 actually do if enacted.

25 Consider again the description for proposed Petition S-01-2024, where Proponents propose  
26 substantial changes to Nevada law concerning writs of garnishment and writs of execution. Under  
27 existing law, NRS 31.105 declares a number of benefits as exempt from execution, including social  
28 security and veterans benefits among others. Without mentioning these substantial changes, the

1 Proponents claim that their proposal is preferable to those existing exemptions because they are  
2 proposing an even larger - \$5,000 – overall exemption (Omnibus Response at 9). According to the  
3 Proponents, since they believe that this trade off is preferable for the public, their description need  
4 not disclose these substantial changes. Respectfully, the Proponents have the law exactly  
5 backwards. It is for the public to decide whether this trade off is preferable, and they can only do  
6 so when they are actually informed about the significant legal changes that the Petition is proposing.  
7 Proponents plainly realize that the voters might question or even disagree with that proposed trade  
8 off and thus Proponents want to conceal it by omission.

9 And the description of effect for the second Petition (S-03-2024) fares no better. Both  
10 Petitions falsely pretend that they reach only "consumer" financing. But both Petitions are much  
11 broader, reaching an untold number of financial transactions including loans from ordinary  
12 banks/financial institutions. (FAC Ex. 1 §8(10), Ex. 2 §8(10)). For just one example, they reach  
13 "[r]efund anticipation loans," which are not limited to "consumers." *Id.* §8(4). Indeed, Nevada law  
14 defines "consumer" or "consumer credit" under existing law as being limited to natural persons.  
15 NRS 604A.036 & 604C.060. The Proponents want to pretend as though these Petitions' concerns  
16 are directed at so-called "payday" loans or lenders when the reality is otherwise.

17 Another fatal failure, but hardly the only one, is Proponents' failure to address how these  
18 Petitions would constitute Nevada opting out of the Federal Depository Institution's Deregulation  
19 and Monetary Control Act of 1980. (FAC Ex. 1 §14, Ex. 2 §14). This is a serious and substantial  
20 issue. That 40-year-old federal law is designed to enhance competitive equality for FDIC-insured,  
21 state-chartered banks and credit unions by affording them the same interest rate authority as national  
22 banks have. The Petitions' proposed opt out now 40 years later would have serious implications for  
23 those institutions. Here again, the Proponents fail to understand the purpose of the statutorily-  
24 required description of effect when they claim that there is no need to disclose such a drastic change  
25 because doing so supposedly would benefit consumers. But the point of the description of effect is  
26 not to "sell" what the Proponents want – it is to inform potential signors what the Petition would  
27 actually do so that they can make an informed decision. Does Nevada really want to opt out of a  
28 federal law to create competitive inequity for in-state banks? That is not only a separate subject



1 matter, but something that voters must know about. While Proponents have the right to prepare the  
2 description, they do not have the right to omit the material aspects of what they are proposing simply  
3 because the Proponents think they know what is best for voters.

4 **B. These Petitions fail to Include "The Full Text" of What they Propose.**

5 Finally, Proponents boast that they easily satisfy Article 19, Section 3 of the Nevada  
6 Constitution – which mandates that any "initiative petition shall include the full text of the measure  
7 proposed" – by simply reciting the terms of their newly-proposed NRS Chapter 604D in the  
8 Petitions. But respectfully, that is not the extent of the "full text" requirement, particularly  
9 considering the massive overhaul of multiple chapters of the NRS that these Petitions would enact.  
10 "The purpose of the full text requirement is to provide sufficient information so that registered  
11 voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion."  
12 *Mervyn's v. Reyes*, 81 Cal. Rptr. 2d 148, 151 (Ct. App. 1999). The point of mandating the "full text"  
13 is to show the voters not just what is being added by a proposed petition, but also how the petition,  
14 if enacted, would change or repeal other statutes. *See Kerr v. Bradbury*, 89 P.3d 1227, 1238 (Or.  
15 Ct. App. 2004) ("There is no dispute that the petition sets out only the text of the amendatory  
16 wording. It does not contain the text of either ORS 336.067 or ORS 659.855 as they would read if  
17 the petition were to be enacted" in violation of the "full text" requirement and thus proposed  
18 initiative was invalid).

19 The Proponents' protest – that it is too burdensome and would take volumes of pages to  
20 actually show the voters how these Petitions would change/amend/repeal the other provisions of  
21 the Nevada Revised Statutes – only confirms the improper and excessive breath of these Petitions.  
22 The voters are entitled to actually see the sweeping changes to numerous and distinct provisions of  
23 the NRS so that they can understand in deciding whether to lend their support. Consider just one  
24 example: the changes that these Petitions would have upon NRS Chapter 97, which governs retail  
25 installment sales of goods and services. The Nevada legislature, through NRS 97.285, specifies that  
26 the "provisions of this chapter governing retail installment transactions *are exclusive*, and the  
27 provisions of any other statute do not apply to retail installment transactions governed by this  
28

1 chapter. If there is a conflict between the provisions of this chapter and any other statute, *the*  
2 *provisions of this chapter control.*" (emphasis added).

3 But potential signers of these Petitions could never understand the wholesale changes that  
4 they would have upon NRS Chapter 97, because the Proponents do not actually show and include  
5 the actual and "full text" of how they are rewriting the exclusivity in NRS 97.285. These Petitions  
6 merely state that they would apply to retail installment transactions "notwithstanding NRS 97.285  
7 or any other provision of law." (FAC Ex. 1 §8(8), Ex. 2 §8(8)). Yet that fails to show the voters the  
8 textual change and how these Petitions would eliminate the legislatively-declared "exclusivity" of  
9 Chapter 97. Of course, this is just one of the many textual omissions these Petitions make because  
10 they are so overbroad in seeking to reach a number of distinct subjects and NRS provisions<sup>1</sup>

11 **III. CONCLUSION**

12 For all the foregoing reasons, both Petitions fail under the law and should be enjoined.

13 **AFFIRMATION**

14 The undersigned does hereby affirm that this document does not contain the social security  
15 number of any person.

16 DATED this 8th day of March 2024.

17 PISANELLI BICE PLLC

18 By: 

19 Todd L. Bice, Esq., #4534  
20 Jordan T. Smith, Esq., #12097  
21 Daniel R. Brady, Esq., #15508  
22 400 South 7th Street, Suite 300  
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24 *Attorneys for Plaintiffs*

25  
26 <sup>1</sup> Indeed, the Proponents recognized this requirement when they proposed changes to NRS  
27 21.105 and NRS 21.090 in Petition S-01-2024 at Sections 17 and 18. The Proponents simply did  
28 not want to undertake that same exercise in showing the voters the extensive changes brought by  
the Petitions' earlier sections because the visualization of all those changes would truly show the  
public the massive rewrite these Petitions proposed to multiple different chapters of the NRS.



1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this  
3 8th day of March 2024, pursuant to NRCP 5(b), I served a true and correct copy of the above and  
4 foregoing **REPLY BRIEF IN SUPPORT OF CHALLENGE TO STATEWIDE INITIATIVES**  
5 **S-01-2024 & S-03-2024**, via electronic mail, per the February 22, 2024 Stipulation and Scheduling  
6 Order of the Court, to the following:

7 First Judicial District of Nevada  
8 Hon. Kristin N. Luis  
9 Carson City District Court Clerk  
10 885 East Musser Street, Room 3057  
11 Carson City, NV 89701  
12 [bshadron@carson.org](mailto:bshadron@carson.org)

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An employee of PISANELLI BICE PLLC



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8  
9 Attorneys for *Plaintiffs*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **PREFERRED CAPITAL FUNDING -**  
13 **NEVADA, LLC, a Nevada limited liability**  
14 **company, and ALLIANCE FOR**  
15 **RESPONSIBLE CONSUMER LEGAL**  
16 **FUNDING, an Illinois nonprofit corporation,**

17 **Plaintiffs,**

18 vs.

19 **FRANCISCO V. AGUILAR, in his official**  
20 **capacity as NEVADA SECRETARY OF**  
21 **STATE, and KATE FELDMAN, an individual,**

22 **Defendants,**

23 and

24 **STOP PREDATORY LENDING NV, a Nevada**  
25 **nonprofit corporation,**

26 **Intervenor-Defendant.**

27 **AND ALL RELATED ACTIONS.**  
28

ORIGINAL CASE NO. 24 OC 00023 1B

CONSOLIDATED WITH

LEAD CASE NO. 24 OC 00018 1B  
DEPT. NO. II

**REPLY OF PREFERRED CAPITAL  
FUNDING – NEVADA, LLC AND  
ALLIANCE FOR RESPONSIBLE  
CONSUMER LEGAL FUNDING IN  
SUPPORT OF COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF CHALLENGING INITIATIVE  
PETITIONS S-01-2024 and S-03-2024**

**Date of Hearing: March 22, 2024**  
**Time of Hearing: 9:00 a.m.**

REISMAN-SOROKAC  
8965 SOUTH EASTERN AVENUE, SUITE 382  
LAS VEGAS, NEVADA 89123  
PHONE: (702) 727-6258 FAX: (702) 446-6756

1 Plaintiffs Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company  
2 ("Preferred"), and Alliance For Responsible Consumer Legal Funding, an Illinois nonprofit  
3 corporation ("ARC"), by and through their attorneys, Joshua H. Reisman, Esq., Elizabeth M.  
4 Sorokac, Esq., and Michael R. Kalish, Esq., of the law firm Reisman Sorokac, hereby submit this  
5 Reply In Support of their Complaint for Declaratory and Injunctive Relief Challenging Initiative  
6 Petitions S-01-2024 and S-03-2024 ("Reply"). This Reply is based upon the Memorandum of  
7 Points and Authorities below, all papers and pleadings on file in this matter, and any oral  
8 argument heard by the Court on March 22, 2024.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 **A. Procedural History.**

12 On January 5, 2024, and January 24, 2024, Defendant Kate Feldman, an individual ("Ms.  
13 Feldman"), filed Initiative Petitions S-01-2024 and S-03-2024 (collectively, "Petitions"),  
14 respectively. On January 29, 2024, Preferred and ARC filed their Complaint for Declaratory and  
15 Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024 ("Complaint"). In  
16 January and February 2024, various complaints challenging the validity of the Petitions were filed  
17 by other parties as separate actions. On or about February 22, 2024, Preferred, ARC and the other  
18 parties challenging the Petitions entered into a Stipulation and Scheduling Order of the Court. For  
19 purposes of judicial efficiency, among other reasons, they stipulated to the consolidation of the  
20 various actions into one action before this Court and to the intervention of Stop Predatory Lending  
21 NV, a Nevada nonprofit corporation ("SPL"), as a defendant. On February 28, 2024, Ms. Feldman  
22 and SPL (collectively, "Defendants") filed their Omnibus Response ("Response") to Plaintiffs'<sup>1</sup>  
23 Complaints.

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs in the consolidated action include: Preferred; ARC; Nevada for Financial Choice, a Nevada  
28 political action committee; Christina Bauer, an individual; Dailypay, Inc., a Delaware corporation; Activehours, Inc., a  
Delaware corporation; and Stacy Press, an individual.

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**B. Preferred and ARC are consumer litigation funders; they are not lenders providing loans that create consumer debt.**

Preferred is a licensed consumer litigation funder in Nevada. ARC is an industry coalition established to preserve consumer litigation funding, as a choice, for individuals who have suffered economic loss from an accident and have a pending legal claim. Consumer litigation funding provides financial support (for living or other expenses) to a plaintiff in a personal injury case through a nonrecourse transaction that creates a lien, only, on the plaintiff's potential recovery. The transaction requires the plaintiff's attorney to assist with the agreement governing the transaction. These transactions are unique to litigation and the needs of the injured and are very different from the consumer loans otherwise addressed in the Petitions.

In 2019, the Nevada Legislature enacted a separate chapter of the Nevada Revised Statutes (Chapter 604C) to define and regulate consumer litigation funding—because the transactions did not fit into any of the categories of loans covered by existing Nevada law. Nevada was clear that consumer litigation funding transactions conforming to NRS Chapter 604C are *not loans* and are not subject to any of the provisions of laws or statutory or regulatory provisions governing loans. See NRS § 604C.220. The funds are provided to an individual on a nonrecourse basis, and the individual (a personal injury plaintiff) assigns to the funder a contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the individual's legal claim. The nonrecourse transaction does not create a debt for the individual; and the funder only receives repayment in the event the individual recovers funds in his or her case.

Consumer litigation funders, like Preferred, are not predatory. They provide an option to injured individuals that allows them to maximize the value of their legal claim. Without readily available funds, for living and other expenses, individuals may be forced to settle their legal claims, early, for far less than their true value. This option allows them to pay their rent and take care of their families while they are unable to work and are still pursuing their claim for just compensation—which can take years to resolve. Consumer litigation funding is a highly valued

1 option for injured plaintiffs embroiled in litigation.<sup>2</sup> Preferred and ARC have and will continue to  
2 advocate for this crucial option.

3 **C. The Petitions are multi-subject—with misleading descriptions of effect.**

4 The Petitions wish to regulate multiple industries, multiple types of transactions and  
5 multiple limitations and exemptions related to the collection of judgments and/or liens. The  
6 Response fails to establish that loans and consumer litigation funding transactions are the same  
7 subject and are functionally related and germane to each other. Instead, the Defendants ask the  
8 Court to take an even broader view of the purpose and effect of the Petitions. They argue that the  
9 separate and unrelated category of consumer litigation funding (already statutorily defined as not a  
10 loan) is functionally related and germane to the consumer loans the Petitions seek to regulate  
11 because they are both consumer focused. However, such a broad view of the Petitions' purposes is  
12 not permitted and does not cure the multiple subjects addressed by the Petitions.

13 In the descriptions of effect, Defendants pick and choose select industries and types of  
14 transactions covered by the Petitions<sup>3</sup>. Defendants do not even attempt to explain how consumer  
15 litigation funding transactions are addressed in the Petitions' descriptions of effect. They offer no  
16 explanation because consumer litigation funding is not even mentioned. Defendants instead point  
17 the finger at Plaintiffs, claiming it would be impossible to address all of their concerns in the  
18 descriptions of effect. However, by drafting multiple-subject Petitions, Defendants can only  
19 blame themselves for being unable to draft descriptions of effect that are not misleading to voters.  
20 Consumers have a right to know how services upon which they rely will be affected. Those  
21  
22

23 <sup>2</sup> See <http://arclegalfunding.org/testimonials/nevada-legal-funding/> (testimonials of Nevada consumer  
24 litigation funding clients).

25 <sup>3</sup> The Petitions seek to cover: (1) deferred deposit loans/payday lenders; (2) high-interest loans; (3) title  
26 loans; (4) refund anticipation loans; (5) consumer litigation funding transactions; (6) installment loans; (7) retail  
27 installment transactions; (8) loans secured by a life insurance of annuity contract; (9) loans made by a bank, savings  
28 bank, savings and loan association, or credit union; and (10) earned wage access services. The Petitions' descriptions  
of effect only highlight two of the industries by name: deferred deposit transactions/payday loans and title loans. The  
descriptions then attempt to include the remaining industries through language related to consumer loans and other  
loan types dependent on future earnings and income, which is inaccurate and misleading.

1 service providers have a right to protect themselves and their industries from misleading,  
2 unjustifiable business interference.

3 The purpose of the single-subject requirement is to require proponents of initiatives to  
4 circulate petitions with single subjects that are clear and straightforward. It is further required that  
5 petitioners address separate subjects in separate initiative petitions. That is the law of the state of  
6 Nevada. It is not "absurd" to require the Defendants to comply with Nevada law.

## 7 II. ARGUMENT

### 8 A. The Petitions embrace more than one subject, in violation of NRS § 9 295.009(1)(a).

10 A petition for initiative or referendum is required to "[e]mbrace but one subject and  
11 matters necessarily connected therewith and pertaining thereto." NRS § 295.009(1)(a). "[A]  
12 petition for initiative or referendum embraces but one subject and matters necessarily connected  
13 therewith and pertaining thereto, if the parts of the proposed initiative or referendum are  
14 functionally related and germane to each other in a way that provides sufficient notice of the  
15 general subject of, and of the interests likely to be affected by, the proposed initiative or  
16 referendum." NRS § 295.009(2). "In considering single-subject challenges, the court must first  
17 determine the initiative's purpose or subject and then determine if each provision is functionally  
18 related and germane to each other and the initiative's purpose or subject." *Helton v. Nev. Voters*  
19 *First Pac*, 512 P.3d 309, 314 (Nev. 2022). "To determine the initiative's purpose or subject, this  
20 court looks to its textual language and the proponents' arguments." *Las Vegas Taxpayer*  
21 *Accountability v. City Council of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009). "The  
22 court also will look at whether the description of effect articulates an overarching purpose and  
23 explains how provisions relate to a single subject." *Helton*, 512 P.3d at 314.

#### 24 1. *The Petitions excessively generalize their purposes, in violation of NRS §* 25 *295.009(1)(a).*

26 "[A]n initiative proponent may not circumvent the single-subject rule by phrasing the  
27 proposed law's purpose or object in terms of 'excessive generality.'" *Las Vegas Taxpayer*  
28 *Accountability*, 125 Nev. at 181, 208 P.3d at 439. An initiative petition with an excessively



1 general purpose "can lead to a violation of the single-subject requirement in NRS § 295.009(1)(a),  
2 when it masks the multifarious and distinct subjects an initiative impermissibly covers." *Prevent*  
3 *Sanctuary Cities v. Haley*, 2018 Nev. Unpub. LEXIS 442, at \*7 (2018) (unpublished disposition);  
4 *see also Howes v. Brown*, 235 P.3d 1071, 1076 (Colo. 2010) ("A proponent's attempt to  
5 characterize an initiative under some general theme will not save the initiative from violating the  
6 single-subject rule if the initiative contains multiple subjects."); *Gonzalez-Estay v. Lamm (In re*  
7 *Title & Ballot Title & Submission Clause for 2005-2006 #55)*, 138 P.3d 273, 278 (Colo. 2006)  
8 ("[A]n initiative grouping distinct purposes under a broad theme will not satisfy the single subject  
9 requirement."); *State ex rel. Wagner v. Evnen*, 948 N.W.2d 244, 254 (Neb. 2020) ("As two other  
10 jurisdictions have stated in a similar context, the single subject requirement may not be  
11 circumvented by selecting a [general subject] so broad that the rule is evaded as a meaningful  
12 constitutional check on the initiative process." (internal quotations omitted)).

13 The Petitions' stated purposes are:

14 combatting predatory payday *lending* and other high-cost *loans*; ensuring that  
15 out-of-state *lenders* cannot flout Nevada law by making payday *loans*, other  
16 *loans*, or transactions subject to this chapter at unlawful rates to Nevada residents;  
17 and protecting law-abiding *lenders* from unfair competition by predatory, out-of-  
state entities. Petitions at 1 (emphasis added).

18 The Petitions set their sights on "predatory" lending in general—whatever that means. And  
19 Defendants' definition is so expansive that it somehow includes consumer litigation funding,  
20 which is not lending, which is not predatory and which is already subject to limitations on the  
21 amounts that may be charged. *See* NRS § 604C.310. Moreover, consumer litigation funding  
22 clients' savings and earnings are in no way implicated. The funding only creates a lien on a  
23 litigation claim and is nonrecourse.

24 Defendants further generalize the Petitions' purposes, in their Response, by re-  
25 characterizing the same as (i) ensuring Nevadans have better debt protections, (ii) an overall  
26 program of consumer debt relief, (iii) alleviating the worst effects of our modern culture of  
27 consumer debt, and (iv) alleviating the experience of consumer debt. (*See* Response at 1, 9 & 12.)  
28

1 These stated purposes are extremely generalized—now encompassing "consumer debt" in its  
2 entirety. But consumer litigation funding does not contribute in any way to consumer debt – no  
3 matter how broadly defined. It is not a loan and it does not impact a consumer's finances. It is  
4 nonrecourse and is limited to an individual litigation recovery.

5 Defendants' excessively generalized purposes are not permitted under NRS § 295.009.

6 **2. Consumer litigation funding is its own distinct subject.**

7 The single-subject requirement "facilitates the initiative process by preventing petition  
8 drafters from circulating confusing petitions that address multiple subjects." *Nevadans for the*  
9 *Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). If  
10 petitioners want to address multiple subjects, the single-subject requirement "simply requires  
11 petitioners to address separate subjects in separate petitions." *Id.* at 905, 141 P.3d at 1243. Courts  
12 have found that "[a] petition includes more than one subject if its text relates to more than one  
13 subject and has at least two distinct and separate purposes which are not dependent upon or  
14 connected with each other." *In re TITLE*, 900 P.2d 104, 109 (Colo. 1995). Whether subjects are  
15 connected or related "cannot be defined so broadly that it allows the inclusion in a single petition  
16 of two or more subjects that have only a marginal relationship to one another, which might  
17 confuse or mislead voters, or which could place them in the untenable position of casting a single  
18 vote on two or more dissimilar subjects." *Weiner v. Attorney General*, 484 Mass. 687, 691, 144  
19 N.E.3d 886, 892 (2020).

20 Here, the Petitions' generalized subjects of "predatory lending" and "consumer debt relief"  
21 have no connection with consumer litigation funding. These catch-all phrases merely seek to  
22 mask the dissimilarity. The Nevada legislature has made it clear that consumer litigation funding  
23 transactions are not loans. See NRS § 604C.220(2). Indeed, such transactions are not subject to  
24 any statutory or regulatory provision that governs loans. *Id.* Consumer litigation funding  
25 companies are not lenders. See NRS §§ 604C.300 through 604C.400. Consumer litigation  
26 funding transactions are nonrecourse transactions made by Nevada licensed consumer litigation  
27 companies. See NRS § 604C.100. Such funding is only available when a consumer has a pending  
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1 legal claim and a right to assign the potential proceeds from the same. *See* NRS § 604C.100. The  
2 consumer litigation funding contract must be written in clear and comprehensible language that is  
3 understandable by an ordinary layperson and must contain written acknowledgements from the  
4 consumer's attorney. *See* NRS § 604C.350. The amount funded pursuant to such contracts cannot  
5 exceed \$500,000.00 and charges may not be assessed at a rate in excess of 40 percent annually.  
6 *See* NRS §§ 604C.100 and 604C.310.

7 Accordingly, consumer litigation funding is not lending; it does not create a loan; it is not  
8 predatory; and it does not create consumer debt. *See* Julia Kagan, *Consumer Debt: Understanding*  
9 *the Pros and Cons*, Investopedia October 29, 2021,  
10 <https://www.investopedia.com/terms/c/consumer-debt.asp#What%20Is%20Consumer%20Debt>.  
11 As consumer litigation funding is distinct from lending, voters will lack sufficient notice that  
12 personal injury plaintiffs will also be impacted by the Petitions.

13 Defendants cannot support their position that loans and consumer litigation funding  
14 transactions are the same functionally related subject. Accordingly, they attempt to blur the lines  
15 by arguing they are free to redefine consumer litigation funding transactions as loans through the  
16 Petitions. Defendants' position would eviscerate the single-subject requirement, however, by  
17 allowing petitioners to manufacture single subjects through expansive definitions. Moreover, as a  
18 matter of common sense, redefining language to suit one's needs is inherently confusing and  
19 misleading: it is deemed "Orwellian" for a reason. Voters will not realize that when Defendants  
20 use the term loan, what they really mean is "loanish."

21 This Court must determine whether there is any *functional relationship* between consumer  
22 litigation funding transactions and loans based on the current law and definitions—not as drafted  
23 within the Petitions. The answer is no. By seeking to regulate consumer litigation funding  
24 transactions along with the unrelated category of loans, the Petitions fail to provide sufficient  
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1 notice to voters that consumer litigation funding transactions are being affected. As a result,  
2 voters will be confused and misled.<sup>4</sup>

3 **B. The descriptions of effect misrepresent the Petitions' purposes, in violation of**  
4 **NRS § 295.009(1)(b).**

5 A petition for initiative or referendum is required to "[s]et forth, in not more than 200  
6 words, a description of the effect of the initiative or referendum if the initiative or referendum is  
7 approved by the voters." NRS § 295.009(1)(b). The purpose of the description of effect is to  
8 "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev.  
9 930, 939, 142 P.3d 339, 345 (2006) (quoting *Campbell v. Buckley*, 203 F.3d 738, 746 (10<sup>th</sup> Cir.  
10 2000)). "The importance of the description of effect cannot be minimized, as it is what the voters  
11 see when deciding whether to even sign a petition." *Coal. for Nev.'s Future v. RIP Commerce*  
12 *Tax, Inc.*, 2016 Nev. Unpub. LEXIS 153, at \*5 (2016) (unpublished disposition). "[A] description  
13 of effect must identify what the law proposes and how it intends to achieve that proposal." *Educ.*  
14 *Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). A  
15 description of effect, including the title of the petition, must be a "straightforward, succinct, and  
16 nonargumentative summary of an initiative's purpose and how that purpose is achieved." *Id.* at 48,  
17 293 P.3d at 883 (quoting *Las Vegas Taxpayer Accountability*, 125 Nev. at 183, 208 P.3d at 441).

18 Petition signers "must be informed at the time of signing of the nature and effect of that  
19 which is *proposed*." *Stumpf v. Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992). A description  
20 of effect must not "misrepresent what the initiative will accomplish and how it intends to achieve  
21 those goals." *Educ. Initiative PAC*, 129 Nev. at 42, 293 P.3d at 883. A description of effect *is*  
22 *invalid under NRS § 295.009(1)(b) when it fails to include the effects of a petition. See Las*  
23 *Vegas Taxpayer Accountability*, 125 Nev. at 183-84, 208 P.3d at 441 (holding that a description of  
24 effect was insufficient because it failed to accurately inform voters of the consequences that would  
25 result if the measure passed). The court must take a "holistic" approach to determine whether a

26 <sup>4</sup> Similarly, the regulation of consumer litigation funding transactions has no functional relationship with the  
27 other separate subjects within the Petitions, including the opt-out provisions with respect to the Depository Institutions  
28 Deregulation and Monetary Control Act of 1980, the wage garnishment restrictions, and waiver of civil immunity.  
(See Petitions, at 6, 10-12 & 18.)

1 description of effect complies with NRS § 295.009(1)(b). *See Educ. Initiative PAC*, 129 Nev. at  
2 48, 293 P.3d at 883.

3           The descriptions of effect in the Petitions are misleading for both what they include and  
4 what they omit. They indicate that the Petitions are addressing "high-interest lending practices"  
5 and that they seek to place an interest-rate cap on "consumer loans; deferred-deposit transactions  
6 ('payday loans'); title loans; and other loan types . . ." (*See Petitions at 19.*) However, consumer  
7 litigation funding is not a loan or a lending practice; and the descriptions of effect fail to mention  
8 consumer litigation funding transactions are being affected. Voters will not recognize that their  
9 decision also impacts consumer litigation funding—that it might limit their access to a needed  
10 lifeline should they be injured in an accident.

11           Defendants also ask the Court to review the descriptions of effect solely from the  
12 viewpoint of consumers. This is contrary to the holistic review that the Court must conduct.  
13 Consumers' views are not monolithic. They have different levels of education, outlooks and  
14 experiences. Some may have even used litigation funding to keep them afloat in a prior lawsuit  
15 and thus realize that it is not a loan—it is not predatory. *They would not assume that litigation*  
16 *funding is being affected under the Petitions.* This Court must consider *all of the ways* in which  
17 the Petitions may be misleading. The Court should not confine its review to its personal view of  
18 what the average consumer might subjectively think. This is not the standard. And Defendants  
19 have not pointed to any case that suggests it is.

20           Finally, the misrepresentations in the descriptions of effect are not cured by the fact that  
21 copies of the Petitions may be presented to voters at the time of signing. Determination by the  
22 Court, pursuant to NRS § 295.009(1)(b), is based on the Court's holistic review of the description  
23 itself. Similarly, the invalid descriptions of effect are not magically remedied by the fact that  
24 opposition campaigns will have the opportunity to educate the public. NRS § 295.009(1)(b) does  
25 not require Plaintiffs to correct Defendants' misrepresentations in the descriptions of effect during  
26 the opposition campaign.

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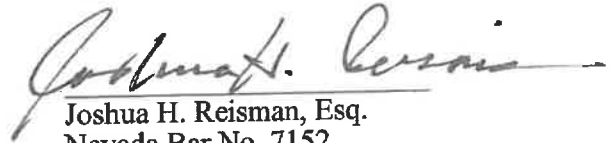
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**III. CONCLUSION**

The Petitions violate the single-subject requirement under NRS § 295.009(1)(a) by covering the separate and unrelated subjects of lending, loans, and consumer litigation funding. Defendants' improper attempt to recast the Petitions' purposes in overly generalized terms fails to cure the violation. Further, by concealing the Petitions' effect on consumer litigation funding, the descriptions of effect will cause voter confusion. As such, the Petitions violate NRS §§ 295.009(1)(a) and (1)(b); and Plaintiffs request that the Court enter an order invalidating the Petitions and granting the relief as requested by the Plaintiffs in their Complaint.

DATED this 8<sup>th</sup> day of March, 2024.

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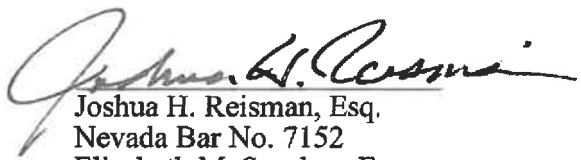
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AFFIRMATION

The undersigned hereby affirms that the foregoing document does not contain any personal information or the social security number of any person.

DATED this 8<sup>th</sup> day of March, 2024.

REISMAN·SOROKAC



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10 **IN THE FIRST JUDICIAL DISTRICT COURT**  
 11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **PREFERRED CAPITAL FUNDING -**  
 13 **NEVADA, LLC, a Nevada limited liability**  
 14 **company, and ALLIANCE FOR**  
 15 **RESPONSIBLE CONSUMER LEGAL**  
 16 **FUNDING, an Illinois nonprofit corporation,**

17 **Plaintiffs,**

18 vs.

19 **FRANCISCO V. AGUILAR, in his official**  
 20 **capacity as NEVADA SECRETARY OF**  
 21 **STATE, and KATE FELDMAN, an individual,**

22 **Defendants,**

23 and

24 **STOP PREDATORY LENDING NV, a Nevada**  
 25 **nonprofit corporation,**

26 **Intervenor-Defendant.**

27 **AND ALL RELATED ACTIONS.**

ORIGINAL CASE NO. 24 OC 00023 1B  
 CONSOLIDATED WITH  
 LEAD CASE NO. 24 OC 00018 1B  
 DEPT. NO. II

**ACCEPTANCE OF SERVICE**

28 Pursuant to NRCP 4.2(a)(3), I acknowledge that I am duly authorized to, and have  
 accepted service of the following documents on behalf of Defendant Kate Feldman in Case No. 24  
 OC 00023 1B, which has been consolidated in the lead case—Case No. 24 OC 00018 1B:

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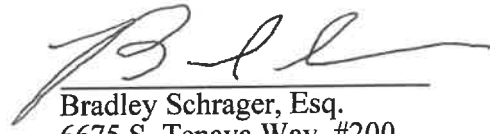
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- (1) Summons, issued January 29, 2024; and
- (2) Complaint For Declaratory and Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024, filed January 29, 2024.

Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any defenses or arguments Defendant Kate Feldman may have, which are expressly preserved.

DATED this 11<sup>th</sup> day of March, 2024.

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CERTIFICATE OF SERVICE

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I hereby certify that on this 18<sup>th</sup> day of March, 2024, I served the foregoing

**ACCEPTANCE OF SERVICE** via electronic mail, per the February 22, 2024 Stipulation and Scheduling Order of the Court, as follows:

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By:   
Rachel Lord, an employee of REISMAN SOROKAC

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